The Cullen Commission of Inquiry into Money Laundering in British Columbia

Overview Report on the Regulation of Legal Professionals in British Columbia

Overview Report on the Regulation of Legal Professionals in British Columbia

A. Scope of Overview Report

1. This overview report sets out information and attaches documents related to the regulation of the practice of law in British Columbia. Its purpose is to provide background and contextual information to support *viva voce* evidence to be called during Commission hearings.

B. Lawyers and Paralegals - Overview

i. Lawyers

2. Subject to limited statutory exceptions, lawyers have an exclusive right to engage in the practice of law in British Columbia.[1] The practice of law, generally, involves meeting with clients, giving legal advice, representing clients in negotiations and court proceedings, and drafting legal documents. The *LPA* defines the "practice of law" to include:

> (a) appearing as counsel or advocate,
>
> (b) drawing, revising or settling
>
> > (i) a petition, memorandum, notice of articles or articles under the Business Corporations Act, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,
> >
> > (ii) a document for use in a proceeding, judicial or extrajudicial,
> >
> > (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or a grant of administration or the estate of a deceased person,
> >
> > (iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or
> >
> > (v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,
>
> (c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,
>
> (d) agreeing to place at the disposal of another person the services of a lawyer,
>
> (e) giving legal advice,

[1] *Legal Profession Act*, S.B.C. 1998, c. 9 [*LPA*] (Attached as Appendix "A").

> (f) making an offer to do anything referred to in paragraphs (a) to (e), and
>
> (g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e) …[2]

3. Canadian lawyers, save for those practicing in Quebec,[3] may call themselves "barristers and solicitors". A barrister is a litigator, or, in other words, a lawyer whose work is associated with the court process, arbitration, mediation and administrative tribunals. A litigator's practice can involve drafting pleadings, preparing for hearings, attending examinations for discovery and advocacy. A solicitor's work generally involves assisting clients with non-court related legal matters, including real estate and asset transactions, incorporating and maintaining companies, charities and trusts, and drafting contracts or wills. Lawyers may engage in either or both sets of tasks.

4. Law societies regulate the legal profession in Canada. Law societies in each Canadian territory and province regulate the legal profession in that jurisdiction, and have the duty to ensure it is served by legal professionals who meet standards of professional conduct and competence. To fulfill their mandates, law societies set standards for admission to the profession, provide education and practice support, require professional liability and trust protection indemnification coverage, audit and monitor the use of trust funds, and investigate complaints and discipline members who violate the standards of conduct.

5. A lawyer must, by law, be a member of a Canadian law society to offer his or her services as a lawyer to the public. The *LPA* defines a "practising lawyer" to mean a member in good standing who holds or is entitled to hold a practicing certificate.[4] A member in good standing is an officer of the court in British Columbia, and may also exercise the powers of a notary public.[5]

6. As of 2018, there were 130,808 individuals with membership in a Canadian law society, of which 96,911 were actively practising. In 2017, there were 104,497 practising lawyers across Canada. In 2016, there were 102,274 practising lawyers across Canada. Membership statistics for 2016 – 2018 produced by the Federation of Law Societies of Canada (the "FLSC"), the

[2] *LPA*, s. 1(1) "practice of law".
[3] The term used in Quebec is "avocat" or advocate.
[4] *LPA*, s. 1(1) "practising lawyer".
[5] *LPA*, s. 14.

coordinating body for law societies in Canada, which is described in detail beginning at para. 12, below, are attached as Appendix "B".

7. In British Columbia, the number of practising lawyers has grown from approximately 10,500 in 2010 to 13,000 in 2020. The bulk of these lawyers practise in large urban centres such as Metro Vancouver, Greater Victoria and Kelowna. A briefing note dated January 7, 2020 prepared by the Law Society of British Columbia ("LSBC") that contains these statistics is attached as Appendix "C".

ii. Paralegals

8. A paralegal is an individual employed by a lawyer, law office, corporation or other entity, who performs delegated substantive legal work.

9. The *Report to Benchers on Delegation and Qualification of Paralegals* (*"LSBC Paralegal Report*"), prepared by the LSBC in April 2006 is attached as Appendix "D". The LSBC defines "paralegal" as a "non-lawyer employee who is competent to carry out legal work that, in the paralegal's absence, would need to be done by the lawyer",[6] or as a "non-lawyer who is a trained professional working under the supervision of a lawyer".[7] Unlike lawyers and notaries, there is no set curricula to become a paralegal. Individuals do so, for example, by way of formal programs or job experience and training.[8]

10. The nature of work paralegals may undertake varies between jurisdictions. Except in Ontario, Canadian paralegals are not regulated by legislation. Supervising lawyers maintain ultimate responsibility for work conducted by paralegals, and remain bound by their professional, contractual and fiduciary obligations to their client. The LSBC regulates the supervising lawyer of a paralegal in the event of misconduct, or a breach of the *LPA* or the Law Society Rules 2015[9] ("Rules") committed by the paralegal. In other words, the services performed by paralegals are regulated and insured indirectly through oversight of the supervising lawyer.[10]

11. The LSBC permits lawyers practising in British Columbia to make use of "designated paralegals" who may, under a lawyer's supervision, give legal advice to clients, or appear before

[6] *LSBC Paralegal Report* at 4, 12-13.
[7] *Code of Professional Conduct for British Columbia* (the "*BC Code*"). Attached as appendix "E".
[8] *LSBC Paralegal Report* at 4.
[9] Attached as Appendix "F".
[10] *LSBC Paralegal Report* at 5.

permitted tribunals or at family law mediations. Designation is an active process by the supervising lawyer, and does not affix to the paralegal as of right. A lawyer must not supervise more than two designated paralegals at one time.[11]

C. The Federation of Law Societies

12. The FLSC serves as the national coordinating body for Canada's 14 provincial and territorial law societies, which are its members. As part of its mandate, the FLSC develops national standards, encourages harmonized law society rules and procedures, and raises law societies' awareness of emerging issues that may warrant attention. The FLSC's mandate is to serve the public interest.

13. The FLSC develops national rules and practices aimed at ensuring similar levels of competence and ethics on the part of lawyers across Canada. To this end, the FLSC has led initiatives with respect to: (a) national mobility of the legal profession; (b) a model code of professional conduct; (c) national discipline standards; (d) access to legal services; (e) advocacy on behalf of Canadian law societies; (f) educational matters such as Canadian law school programs; (g) national admission standards; and (h) the development of national model rules for anti-money laundering and terrorist financing.

14. The FLSC has, over time, published a series of model rules and guidance documents relevant to the issue of money laundering intended for adoption by Canadian law societies.[12] These model rules often form the basis for nearly identical rules and regulations passed by provincial and territorial law societies. By way of example, two particular rules, aimed at limiting cash handled by lawyers and requirements for client verification, were early examples of such initiatives drafted and published by the FLSC in 2004 and 2008, respectively, and have since been implemented by all Canadian law societies.

15. Key examples of relevant model rules and guidance documents produced by the FLSC include:

a. the *Model Rule on Cash Transactions*, adopted by the Council of the FLSC September 2004 and amended in October 2018;

[11] Rule 2-13(2).
[12] For a chronology of these changes, see the overview report *Anti-Money Laundering Initiatives of the LSBC and FLSC*.

b. the *Model Rule on Client Identification and Verification*, adopted by the Council of the FLSC in March 2008, and amended in December 2008 and October 2018. Of particular note is the requirement in the 2018 amendments that legal counsel make reasonable efforts to obtain and verify information on the beneficial owners of organizations and the beneficiaries of trusts;

c. the *Model Trust Accounting Rule* approved by the Council of the FLSC in October 2018. This rule restricts the use of lawyers' trust accounts for purposes directly connected to the provision of legal services;

d. the Anti-Money Laundering and Terrorist Financing Working Group *Guidance for the Legal Profession* published in February 2019;

e. the Anti-Money Laundering and Terrorist Financing Working Group *Risk Advisories for the Legal Profession*, covering: (i) real estate; (ii) shell corporations; (iii) private lending; (iv) trusts; and (v) litigation, published in December 2019; and

f. the Anti-Money Laundering and Terrorist Financing Working Group *Risk Assessment Case Studies for the Legal Profession* published in February 2020.

D. Overview of the Legal Framework Governing the Practice of Law in BC

i. The Law Society of British Columbia

16. The Law Society of British Columbia ("LSBC") is a non-profit society that acts as the regulatory body for lawyers in British Columbia. LSBC was founded in 1869 and formally incorporated by the British Columbia Legislature in 1884. Today, it employs approximately 225 staff, and is governed by a board of both elected Benchers, who are lawyers elected by other lawyers, and appointed Benchers, who are members of the public.

17. Canada's laws provide for the self-regulation of the legal profession as a result of the public's right to obtain legal advice from and be represented by a legal profession independent from government. The legal profession must exercise this privilege of self-regulation in the public interest.[13]

[13] *Ryan v. Law Society (New Brunswick)*, 2003 SCC 20 at para. 36.

18. The LSBC is empowered by and accountable under the *LPA*. The *LPA* establishes the organization and objectives of the LSBC and outlines the authority of the Benchers. The object of the LSBC is to "uphold and protect the public interest in the administration of justice" by:

a. preserving and protecting the rights and freedoms of all persons;

b. ensuring the independence, integrity, honour and competence of lawyers;

c. establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;

d. regulating the practice of law, and

e. supporting and assist lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.[14]

19. The LSBC carries out a range of services for lawyers and the public, including: (a) determining the standards of admission to the legal profession; (b) providing educational programs and overseeing the mandatory continuing professional development program ("CPD Program"); (c) setting ethical standards for lawyers; (d) setting practice standards of competency; (e) providing indemnity and trust protection coverage for lawyers; and (f) investigating allegations of lawyer misconduct, resolving complaints, and taking disciplinary action.

a. Admissions

20. The LSBC has statutory authority to determine who may be admitted to the British Columbia bar.[15] Enrollment in the bar admission program requires proof of "academic qualification". This requirement is met with a bachelor or laws or equivalent degree issued by an approved common law faculty in a Canadian university.[16] Prospective lawyers in British Columbia must also complete the 12-month Law Society Admission Program ("LSAP") administered by the LSBC. LSAP is comprised of nine months of articles and the Professional Legal Training Course (PLTC) 10-week bar admission course, which includes four skill assessments and two qualification examinations.

[14] *LPA*, s. 3.
[15] *LPA*, ss. 19-21.
[16] A law degree from outside Canada may also be recognized by obtaining a Certificate of Qualification from the National Committee on Accreditation before completing the LSAP program.

21. The *LPA* imposes an obligation on the LSBC to ensure that each applicant seeking to become a lawyer in the province is of "good character and repute and is fit to become a barrister and solicitor of the Supreme Court".[17] In discharging this obligation, LSBC staff evaluate prospective articled students and other applicants, which may include investigating criminal charges, financial difficulties, drug or alcohol abuse, treatment for serious illnesses or any other factors that may affect an applicant's character or fitness for practice.[18] The Credentials Committee is responsible for overseeing the enrolment, education, examination and call to the bar of articled students in British Columbia, as well as the transfer of a lawyer to the province and the reinstatement of former lawyers. Concerns over the character or fitness of an applicant may result in a formal credentials hearing before a Hearing Panel.[19]

22. New lawyers are mostly commonly presented to the court in a call and admission ceremony. All lawyers must take an oath to gain admission to the bar that includes a pledge to conduct themselves with integrity, to uphold the rule of law, and to uphold the rights and freedoms of all persons in accordance with the laws of Canada and the province of British Columbia.

23. Lawyers practising in other Canadian jurisdictions may also be eligible to transfer to British Columbia. The LSBC has signed mobility agreements[20] and adopted rules[21] to more readily permit a lawyer from elsewhere in Canada to transfer their jurisdiction of practice.

24. After being called to the British Columbia bar, lawyers must meet annual education requirements. The mandatory CPD Program requires that practising lawyers complete at least 12 hours each calendar year of professional development courses in accredited activities, and that at least two of those hours must pertain to professional responsibility, ethics or practice management.

25. The LSBC created the CPD requirement in January 2009. Since the introduction of the CPD requirement, the LSBC has maintained a record of educational activities approved for CPD credit. As of October 7, 2020, there have been approximately 376 courses, symposia, conferences and other activities since 2009 for which CPD credit has been claimed that

[17] *LPA*, s. 19.
[18] See online: https://www.lawsociety.bc.ca/becoming-a-lawyer-in-bc/what-you-need-to-know-if-you-plan-to-practise-in-b/.
[19] *LPA*, ss. 19-22.
[20] The FLSC *National Mobility Agreement* and the *Territorial Agreement* are attached as Appendix "G".
[21] Rules 2-79, 2-81.

involved some degree of information or education about money laundering. The course with the highest number of lawyers requesting CPD credit has been the CLEBC Anti-Money Laundering – Client Identification and Verification Rules Program, for which 598 lawyers have claimed CPD credit, followed by the CLEBC Anti-Money Laundering for Lawyers and Law Firms, with 161 lawyers having claimed CPD credit. A list of educational activities for which lawyers have claimed CPD since 2009, together with a description of the courses offered and the number of lawyers claiming CPD for each activity is attached as Appendix "H".

26. The LSBC's current Executive Director and Chief Executive Officer is Don Avison, Q.C.

ii. Benchers

27. The LSBC is overseen by a board of governors known as Benchers. The Benchers comprise 25 lawyers elected across nine regions by LSBC registrants, up to six Benchers who are not lawyers appointed by the Lieutenant Governor in Council, and the Attorney General of British Columbia.

28. Benchers have statutory authority to govern and administer the affairs of the LSBC and may take any action "they consider necessary for the promotion, protection, interest or welfare of the society".[22]

29. Benchers also have authority to make rules for the governing of the LSBC, lawyers, law firms, articled students and applicants, and for the carrying out of the *LPA*.[23] The Rules are binding,[24] and are regarded as public policy statements regarding the profession's collective views as to the standards to which it should adhere.[25] They address the organization of the LSBC, membership in the LSBC, insurance, custodianships, complaints and the discipline process. The Benchers have also published the *BC Code*, which sets out the standards of conduct expected of lawyers.

30. Other notable aspects of the Benchers statutory authority include:

a. setting standards of practice for lawyers and permitting an investigation into a lawyer's competence to practice law (*LPA*, s. 27);

[22] *LPA*, s. 4(2-5).
[23] *LPA*, s. 11(1).
[24] *LPA*. S. 11(3).
[25] *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 at para. 19.

b. rulemaking in respect of:

    a. admission requirements and procedures (*LPA*, ss. 20-21);

    b. the establishment and maintenance of trust accounts (*LPA*, s. 33);

    c. disciplinary matters (*LPA*, s. 36);

    d. whether or not a member is in good standing (*LPA*, s. 14(1);

c. establishing various committees, including an Executive Committee (*LPA*, ss. 9-10); and

d. establishing and maintaining legal education programs (*LPA*, s. 28).

31. The president is the chief elected official of the Law Society, and serves a one-year term in that position. Currently Craig Ferris, Q.C., holds the position of President of the LSBC.

32. The Ethics Committee provides support to the Benchers in developing ethical standards. It identifies current issues and develops policy recommendations on matters of professional responsibility. The Ethics Committee also interprets the *Rules*, gives advice to individuals lawyers and publishes opinions to the profession.

iii. Standards of Conduct and the *BC Code*

33. Lawyers in British Columbia must maintain standards of conduct as set out in the *BC Code* (as adopted by the Benchers). The *BC Code* came into effect in 2013, replacing the *Professional Conduct Handbook*, which was effective as of May 1993. The *BC Code* is not a part of the *Rules*, but rather an expression of the Benchers' views about standards that lawyers must meet in fulfilling their professional obligations. A breach of the *BC* Code by a lawyer may or may not be the basis of disciplinary action against that lawyer.

34. The *BC Code* is divided into three components: rules, commentary and appendices, each of which contains statements that are mandatory and/or advisory. The *Canons of Legal Ethics* form a part of the *BC Code* and reinforce a lawyer's duties to uphold the law and discharge all responsibilities with honour and integrity.

35. A lawyer is required to perform all legal services undertaken on a client's behalf to the standard of a competent lawyer, and must provide a quality of service that is competent, timely,

conscientious, diligent, efficient and civil.[26] Lawyers must withdraw from a matter if a client persists in instructing the lawyer to act contrary to professional ethics.[27]

36. The *BC Code* contains several provisions directed at preventing lawyers' involvement in illegality, including money laundering. Lawyers owe a duty to the state and may not aid, counsel or assist any person to act contrary to the law.[28] Similarly, 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.[29] When a lawyer is 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, further steps must be taken in addition to those in *BC Code* rule 3.2-7.[30]

iv. Trust Accounts

37. Many law firms located in British Columbia have trust accounts. Funds flow through these accounts as part of client transactions and litigation matters, or as retainers. Lawyers who handle trust funds for clients or third parties are subject to trust assurance standards set out in Part 3, Division 7 of the Rules dealing with trust accounts and other client property.

38. The LSBC established the current Trust Assurance Program in 2006. Pursuant to the *Rules*, every practising lawyer in British Columbia must file an annual trust report. Under the program, the Trust Assurance Department conducts audits of law firm trust accounts, reviews annual trust reports and lawyer self-reports,[31] and provides education, resources and advice to ensure that lawyers' trust accounting practices meet the expected standards. Compliance audits of books, records and accounts are conducted on a periodic rotational basis[32] to determine whether those books and records are maintained in compliance with Part 3, Division 7 Trust Accounts and Other Client Property) of the Rules*,* Part 3, Division 9 (Real Estate Practice), and Part 3 Division 11 (Client Identification and Verification). They also cover parts of Part 2, Division 3 (Fees and Assessments), Part 3, Division 6 (Financial Responsibility), Part 3, Division

[26] *BC Code*, rules 3.1-2, 3.2-1.
[27] *BC Code*, rule 3.7-7(b).
[28] *BC Code*, Canon 2.1-1(a).
[29] *BC Code*, rule 3.2-7.
[30] *BC Code,* rule 3.2-8.
[31] Rule 3-79.
[32] Rule R. 3-85.

8 (Unclaimed Trust Money), Part 10, (Security of Records), and various parts of the *LPA,* the *BC Code,* and the *Wills, Estates and Succession Act*.[33]

39. Every law firm in British Columbia that operates a trust account will be audited at least once every six years. An audit can also be prompted by indicators such as failure to file a trust report, indications of non-compliance with the Rules, complaints, or referrals from other departments. At the conclusion of an audit, the LSBC may: (a) close the file; (b) arrange a follow-up to address more serious deficiencies; (c) provide a written request for further documentation to support deficiencies; (d) place a lawyer on a file monitor for a period of time; and/or (e) in the event of a serious breach, refer the file to the Investigations Group for investigation.

40. In 2018, the LSBC adopted a plan to re-audit every four years law firms that primarily practise in the areas of real estate and wills. Based on the results of an audit, the LSBC may require the firm to have an external audit conducted annually. New firms must undergo an external audit for the first two years of practice. Firms considered to be at a higher risk of non-compliance may be audited more frequently, either by the Trust Assurance Department or by an external accounting firm. In each six-year audit cycle, the Law Society will also audit a sample of firms that report having no trust account.

41. As of October 2020, seven accountants engaged in trust account regulation at the LSBC have obtained certification from the Association of Certified Anti-Money Laundering Specialists ("ACAMS") and nine other accountants are currently pursuing this certification. Three staff are certified fraud examiners ("CFE"), and all trust assurance auditors and management hold Chartered Professional Accountant ("CPA") designations.

42. The LSBC has increased the department's staffing budget by more than 30% from 2015 to 2019.[34] Over that same period, the number of trust compliance audits conducted has increased from 460 in 2015 to 675 in 2019. In 2016, 83 of those audits required follow-up, and there were 57 total referrals made to Professional Conduct for investigation. In 2019, 89 of those audits required followed-up and there were 109 referrals made to Professional Conduct for investigation. The LSBC *2019 Annual Report* is attached as Appendix "I".

[33] S.B.C. 2009, c. 13.
[34] Opening statement of the LSBC at para. 43.

43. Cases in which trust audits uncover suspected breaches of the "no-cash"[35] and client identification and verification ("CIV") rules,[36] and/or the misuse of trust accounts, are referred to the Investigations Group. The "no-cash" rule is discussed below at para. 75. The CIV rules are discussed below at para. 76.

v. Investigations

44. The LSBC serves to protect the public. The *LPA* and the Rules provide the LSBC with significant audit and investigative powers in furtherance of this object. In exercising these powers to audit and investigate lawyers' conduct under the *LPA*, the LSBC is entitled to review otherwise privileged documents and information without breaching or destroying privilege. Lawyers are obligated to respond to LSBC requests for information, files, or records, even if otherwise confidential or privileged.[37]

45. Under the *LPA*, a person who believes a lawyer has practised law incompetently or been guilty of professional misconduct, conduct unbecoming the profession or a breach of the *LPA* or the Rules, may make a complaint to the LSBC.[38] The Executive Director must consider every complaint received.[39] The LSBC will open files on its own initiative when conduct concerns come to its attention through other means,[40] such as referrals from the Trust Assurance Department and the Practice Standards Department.

46. The LSBC's Professional Regulation Department is responsible for investigations, monitoring and enforcement, and disciplinary proceedings. Investigations are conducted by lawyers or a CPA/CFE or both, with assistance from accountants, investigators, analysts, and paralegals. Three investigators have CAMS designation, as does the Deputy Chief Legal Officer.

47. Lawyers, law firms and the LSBC cannot be required to disclose or produce complaints, or reports or records made under the authority of the *LPA*, subject to written consent of certain statutorily prescribed persons.[41] Although the Law Society may learn privileged information in

[35] Rule 3-59.
[36] Rule 98-110.
[37] *LPA*, s. 88.
[38] *LPA*, s. 26(1); Rule 3-2.
[39] Rule 3-4(1).
[40] Opening statement of the LSBC at para. 45
[41] *LPA*, s. 87.

the course of its audits, investigations or proceedings, that information will remain protected from the government, parties adverse in interest to the client and the public at large.

48. The LSBC may compel a person to attend to answer questions on oath or affirmation and to produce records.[42] A lawyer who fails to cooperate with an investigation will be suspended from practice until such time as they cooperate.[43]

49. Complaints disclosing competency concerns may be referred to the Practice Standards Committee. The Practice Standards Committee reviews information about lawyers who may have competency-related problems and, may order investigations. The Practice Standards Committee recommends ways for lawyers with competency problems to become competent, such as through remedial programs, or restricts them from some areas of practice when necessary to protect the public. The Practice Standards Committee also helps plan programs to assist lawyers to practise more competently and maintain their own competence, and assists the Benchers in setting competency-related policy.

50. If the Practice Standards Committee's assessment is that disciplinary action is warranted, the matter may be referred to the Discipline Committee.

vi. Discipline Committee

51. Following an investigation, where staff determine a disciplinary outcome may be appropriate, an LSBC staff lawyer prepares an opinion for the Discipline Committee with a recommendation for an outcome. Any breach of the Rules, the *BC* Code or the *LPA* may be referred to the Discipline Committee. Matters may, in defined circumstances, also be referred to the Discipline Committee by the Practice Standards Committee, the Complaints' Review Committee and the Trust Assurance Department.

52. The Discipline Committee reviews and assesses complaints regarding lawyers, former lawyers, or articled students. It must determine the appropriate disposition of complaints about alleged misconduct and incompetence of lawyers. The Discipline Committee also has authority to make certain directions or orders related to investigations, disciplinary actions and citations.

[42] *LPA*, s. 26(4); Rule 3-5.
[43] Rule 3-6.

The Discipline Committee also approves or rejects proposed conditional admissions or consents to specified disciplinary actions,[44] and determines applications made under the Rules.

53. The Discipline Committee is comprised of four or more lawyer Benchers, one or more appointed Bencher, and one or more non-Bencher lawyers. The composition of the Committee changes each year. Deliberations of the Discipline Committee are strictly confidential.[45]

54. The disciplinary outcomes available to the Discipline Committee include a conduct letter from the Chair, a conduct meeting, a conduct review, or a citation.[46] The Discipline Committee may also refer matters back to staff for further investigation.

55. A conduct letter is one from the Chair of the Discipline Committee, typically expressing the Discipline Committee's concerns and reminding the lawyer of their professional obligations. A conduct letter does not form part of a lawyer's professional conduct record, and is inadmissible in any future citation hearings.

56. A conduct meeting is one held between a lawyer and one or more Benchers or lawyers to discuss the conduct of that lawyer. Meetings are held in private, and do not form part of the lawyer's professional conduct record. The purpose of a conduct meeting is to educate the lawyer about the conduct that resulted in the complaint and deter them from engaging in future misconduct.

57. A conduct review is a privately conducted meeting between at least one Bencher and one other lawyer to discuss the conduct that led to a complaint. The review becomes part of the lawyer's record and, accordingly, may be considered if any future discipline violations are proved against the lawyer. The purpose of a conduct review is to ensure the lawyer understands the issues created by their conduct and to satisfy the Review Committee that they are unlikely to repeat the behaviour.

58. A citation is the most serious of form of proceeding the Discipline Committee may authorize, which may result in a discipline hearing before a hearing panel. The citation sets out the allegation(s) made against a lawyer on which the LSBC will be adducing evidence at a hearing. The Discipline Committee applies the principle of progressive discipline or, in other

[44] See Rules 4-29 and 4-30
[45] Rule 4-8.
[46] Rules. 4-4 and 4-17.

words, aims to ensure that subsequent incidents of misconduct result in more significant disciplinary consequences.

59. At a discipline hearing, lawyers may be required to give evidence under oath or by affirmation, regardless of a potential claim to privilege by the client.[47] A lawyer subject to a proceeding under the *LPA* may appear with counsel and is entitled to written reasons regarding a particular panel's determination.[48] At any time prior to the authorization of a citation, the LSBC may bring interim proceedings seeking a suspension or restrictions on a lawyer's practice if there are reasonable grounds to believe extraordinary action is necessary to protect the public.[49]

60. The LSBC may also obtain orders from the chair of the Discipline Committee to conduct a forensic investigation of a lawyer's practice where reasonable grounds exist to believe a discipline violation may have occurred.[50] A lawyer is not given prior notice that a Rule 4-55 order will be sought, and is required to immediately produce books, records and accounts of their practice and to answer questions. The procedure under a Rule-55 order also generally involves a mirror imaging of the lawyer's electronic records.

61. Hearings are open to the public and presided over by a three-person panel that must include a member of the public. Lawyers subject to discipline hearings may be found to have committed professional misconduct, conduct unbecoming the profession, a breach of the *LPA* or the Rules, or incompetent performance of duties undertaken in the capacity of a lawyer.

62. The term "professional misconduct" is not defined in the *LPA*, the Rules or the *BC Code*. The test for professional misconduct is "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct".[51] Conduct unbecoming the profession is statutorily defined to include a matter, conduct or thing that is considered: (a) to be contrary to the best interest of the public or of the legal profession; or (b) to harm the standing of the legal profession.[52] Incompetence reflects a pattern of conduct over time.

---

[47] *LPA*, s. 41(2).
[48] *LPA*, ss. 38(3), 43.
[49] Rule 3-10.
[50] Rule 4-55.
[51] *Law Society of British Columbia v. Martin*, 2005 LSBC 16 at para. 171.
[52] *LPA*, s. 1 "conduct unbecoming the profession".

63. Adverse determinations permit a panel to take a variety of action against a lawyer, including:

a. reprimanding the lawyer;

b. imposing a fine not exceeding $50,000;

c. imposing conditions or limitations on a lawyer's practice;

d. suspending the lawyer from the practice of law or from the practice in one or more fields of law;

e. disbarring the lawyer;

f. requiring the lawyer to undertake specific remedial programs or steps; or

g. make any other order and declarations, and impose any conditions or limitations the panel considers appropriate.[53]

64. The Executive Director of the LSBC may disclose to law enforcement evidence of an offence gathered in the course of a complaint investigation or a practice standards investigation with the consent of the Discipline Committee.[54] Both the Complaints Review Committee and the Practice Standards Committee may refer matters to the Executive Director for further investigation.[55]

vii. Gurney (Re)

65. In 2016, the LSBC authorized a citation against Donald Franklin Gurney alleging that he used his trust account to receive and disburse approximately $25.8 million on behalf of a client without making reasonable inquiries about the circumstances and without providing substantial legal services in connection with the trust matters. Mr. Gurney received funds through his trust account with respect to four line of credit agreements for which the client was the borrower.

66. Mr. Gurney's services consisted solely of receiving and immediately disbursing $25.8 million in offshore funds by converting the funds into bank drafts. He made only *pro forma* inquiries about the transactions and knew little about the borrower, its business, its principal or the purpose of the loans.

[53] *LPA*, s. 38. Similar provisions exist with respect to articled students (s. 38(6)) and law firms (s. 38(6.1)).
[54] Rules 2-53(4), 3-3(5), 3-23(3), 3-46(5) and 4-8(5).
[55] Rules 3-14(5) and 3-17(6).

67. The panel determined that Mr. Gurney committed professional misconduct by allowing his trust account to be used improperly when he allowed substantial funds to flow through it without, in the panel's view, the provision of any substantive legal services. There was no finding of fraud or money laundering related to the funds. However, the panel found Mr. Gurney failed to perform adequate due diligence in the face of red flags. Mr. Gurney was ordered to serve a six-month suspension from the practice of law and disgorge his fee, which was based on a percentage of the money he allowed to flow through his trust account.

68. The decision of the hearing panel on facts and determination is attached as Appendix "J". The decision of the hearing panel on disciplinary action is attached as Appendix "K".

viii. Information Sharing, Education and Publications

69. The LSBC has information sharing protocols with law enforcement agencies, and informal information sharing agreements with organization such as the BC Securities Commission.

70. The LSBC offers various educational and other resources in respect of anti-money laundering. By way of a recent example, the Law Society published the updated *Client Identification and Verification Procedure Checklist*, attached as Appendix "L", intended to assist lawyers with their CIV obligations under Rules 3-98 to 3-110.

71. Practice advisors, who are LSBC staff lawyers, also provide advice to lawyers regarding practice and ethical issues that may arise under the *LPA*, the *BC Code* and the Rules. As a matter of policy, advice is provided on a confidential basis. The LSBC's Trust Assurance department has prepared a course, handbook and other materials in order that lawyers better understand their trust-related responsibilities.

72. The LSBC also publishes practice advice, trust advice, web resources, quarterly *Benchers' Bulletins*, *Discipline Advisories,* E-Briefs, Notices to the Profession and CPD courses relevant in whole or in part to anti-money laundering. The LSBC also publishes on its website decisions issued by Discipline Hearing Panels where lawyers have been found to have breached the rules or committed professional misconduct.

ix. Measures Implemented by the LSBC with Respect to Money Laundering

73. As the regulator of lawyers in British Columbia, the LSBC has engaged with and implemented a number of anti-money laundering measures. The LSBC has been engaged with anti-money laundering initiatives since at least the 1980s, however, its involvement increased following the enactment of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*[56] in 2000. This includes by way of rule-setting, audits, investigations and discipline, education, enforcement, and collaboration with other stakeholders.

74. Recognizing that lawyers are exposed to significant money laundering risks due in part to (a) the nature of the services lawyers provide, including their roles in forming corporations and trusts, purchasing and selling assets, handling client money, arranging wills, and dealing with real estate transactions, and (b) the appearance of legitimacy and respectability that engaging a lawyer provides to any activity undertaken, the LSBC has implemented a number of rule changes relevant to the issue.[57] Working closely with the FLSC, many of these rules are developed and implemented based on the FLSC *Model Rules*.

75. In 2004, the LSBC became the first provincial law society to adopt a rule limiting the amount of cash a lawyer may accept from a client. Rule 3-59, the "no-cash rule", provides that a lawyer may not accept greater than $7,500 on one client matter. There are limited exceptions to the "no-cash rule" as set out in Rules 3-59(2) and (4). Where lawyers refund monies to clients that were originally paid in cash, any refund must be made in cash with attendant maintenance of specific records.[58]

76. The rules in Part 3, Division 11 – Client Identification and Verification (Rules 3-98 to 3-110) were introduced by the LSBC in 2008. They require lawyers to follow specific procedures when providing legal services, particularly in respect of a "financial transaction" (defined in Rule 3-98). Lawyers are required to obtain and record information regarding the identity of a "client" (as defined in Rule 3-98), including the individual instructing the lawyer, and, in addition, another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer. If the legal services are in respect of a "financial transaction", the lawyer must take additional steps to verify the client's identity. If the client is an

[56] S.C. 2000, c. 17 [*PCMLTFA*].
[57] For a chronology of these changes, see the overview report *Anti-Money Laundering Initiatives of the LSBC and FLSC*.
[58] Rule 3-70.

"organization" (defined in Rule 3-98), the lawyer must obtain the names of all directors and must make reasonable efforts to obtain specific information about owners, shareholders, trustees, beneficiaries, settlors of trusts, and information identifying the organization's ownership, control and structure.

77. There are six main requirements under the client identification and verification ("CIV") rules:

a. identify the client (Rule 3-100);

b. verify the client's ID if there is a financial transaction (Rules 3-102 to 3-106);

c. obtain from the client and record, with the date, information about the source of money if there is a financial transaction (Rules 3-102(1)(a), 3-103(4)(b)(ii) and 3-110(1)(a)(ii);

d. maintain and retain records (Rule 3-107);

e. withdraw if a lawyer knows or ought to know they are assisting in fraud or other illegal conduct (Rule 3-109); and

f. monitor the business relationship periodically while retained in respect of a financial transaction, with appropriate records of the measures taken and information obtained (Rule 3-110).

78. Recent amendments to the CIV rules address information about a client's source of "money" (as defined in Rule 3-98). These amendments are consistent with a lawyer's obligation to "know his or her client, understand the client's financial dealings … and manage any risks arising from the professional business relationship with the client".[59] These amendments to the CIV rules came into effect January 1, 2020.

79. In July 2019, the LSBC adopted new rules with respect to trust accounts. Under the new Rule 3-58.1, lawyers may not move funds into or out of a trust account unless the funds relate directly to the provision of legal services.[60] Rule 3-58.1 also requires that lawyers take

[59] Rule 99.
[60] Rules 1 "trust funds", 3-53, 3-58.1, 3-59, 3-70(1) and 3-98(1).

reasonable steps to obtain instructions and pay out funds held in a trust account as soon as practicable on completion of related legal services.

80. Commentary in respect of trust accounts under *BC Code* rule 3.2-7 that was in effect before the new Rule 3-58.1 reads as follows:

> [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.

E. Ethical Obligations

81. British Columbia lawyers are, by statute, officers of the court.[61] With this status comes attendant legal and ethical obligations to the state, courts and tribunals, clients, and other lawyers.[62] Essential to the administration of justice are two key duties owed by lawyers to clients: (a) the duty to keep clients' confidences; and (b) a duty of commitment to the client's cause.[63]

i. Duty of Confidentiality

82. Subject to certain exceptions, lawyers must, at all times, hold in strict confidence information concerning the affairs of a client acquired in the course of their professional relationship.[64] By extension, a lawyer must not use or disclose confidential information to the disadvantage of a client or former client, nor for the benefit of the lawyer or a third party, without that client's or former client's consent. A lawyer may divulge confidential information where required by law or a court to do so and where required by the LSBC.

83. The duty extends to each and every client, without exception, and continues indefinitely after the lawyer has ceased to act for the client.[65] A lawyer may disclose confidential information, to the extent necessary, where he or she believes on reasonable grounds there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the

[61] *LPA*, s. 14(2).
[62] *BC Code*, sections 2.1, 2.2, 3.3, 5.1.
[63] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at paras. 1, 82-84, 96 [*Federation Case*].
[64] *BC Code*, rule 3.3-1.
[65] *BC Code*, rule 3.3-1 commentary [3]

death or harm.[66] Lawyers may also disclose confidential information to respond to certain allegations, establish or collect fees, secure legal or ethical advice about the lawyer's proposed conduct, or to detect and resolve conflicts of interest arising from a change of employment or change in the composition of a law firm.[67]

84. Confidentiality is a distinct concept from solicitor-client privilege. The latter concerns oral or documentary communications passing between the client and the lawyer. The former applies "without regard to the nature or source of the information or the fact that others may share the knowledge".[68]

ii. Duty of Loyalty / Candour

85. The lawyer-client relationship is a fiduciary one. A lawyer's fiduciary obligations in this respect stem from all of the circumstances creating a relationship of trust and confidence, from which flow the obligations of loyalty and transparency.[69]

86. As fiduciaries, lawyers and their firms owe a duty of loyalty to their clients, which includes three dimensions: a duty to avoid conflicting interests; a duty of commitment to the client's cause; and a duty of candour.[70] Justice Binnie explained the importance of the duty of loyalty in *R. v. Neil*[71]:

> Unless a litigant is assured of the undivided loyalty of the lawyer, neither the public nor the litigant will have confidence that the legal system, which may appear to them to be a hostile and hideously complicated environment, is a reliable and trustworthy means of resolving their disputes and controversies …[72]

87. The duty to avoid conflicting interests addresses the potential for misuse of confidential client information and the concern that, to be an effective representative, a lawyer must serve as a zealous advocate for the interests of his or her client.[73] It seeks to balance, on the one hand, the high repute of the legal profession and the administration of justice and, on the other hand, the value of allowing a client's choice of counsel and permitting reasonable mobility in the profession.[74]

---

[66] *BC Code*, rule 3.3-3.
[67] *BC Code*, rules 3.3-4, 3.3-7.
[68] *BC Code*, rule 3.3-1 commentary [2].
[69] *3464920 Canada Inc. v. Strother*, 2007 SCC 24 at para. 34 [*Strother*].
[70] *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 19 [*Wallace*].
[71] 2002 SCC 70 [*Neil*].
[72] *Neil* at para. 12.
[73] *Wallace* at paras. 25-27; see also *BC Code* s. 3.4.
[74] *Wallace* at para. 22.

88. The "Bright Line Rule" attempts to minimize these concerns by prohibiting representation of a client "whose interests are adverse to those of another existing client, unless both clients consent".[75] The rule recognizes the inability of a fiduciary, such as a lawyer, to act at the same time both for and against the same client.[76] In *Neil*, Justice Binnie articulated the Bright Line Rule as follows:

> The bright line is provided by the general rule that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client — even if the two mandates are unrelated — unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting the other.[77]

89. The scope of the Bright Line Rule is not unlimited. It applies only where the *immediate legal interests* of clients are *directly adverse* in the matters on which the lawyer acts. It does not apply to condone tactical abuses, nor where it is unreasonable to expect a lawyer will not concurrently represent adverse parties in unrelated legal matters.[78]

90. Where a situation falls outside the Bright Line Rule, the question becomes whether "concurrent representation of clients creates a substantial risk that the lawyer's representation of the client would be materially and adversely affected".[79] This is a contextual assessment that examines whether a situation is "liable to create conflicting pressures on judgment" as a result of "the presence of factors which may reasonably be perceived as affecting judgment".[80]

91. The duty of commitment to the client's cause prevents a lawyer from undermining the lawyer-client relationship by "'soft-[peddling]' his or her [representation] of a client out of concern for another client".[81] It is closely related to the duty to avoid conflicting interests, in that a lawyer must avoid conflicting interests in order to remain committed to the client. The duty prevents a lawyer from undermining the lawyer-client relationship, and, subject to the Rules, prohibits lawyers from dropping a client simply to avoid conflicts of interest with existing or future clients.[82]

---

[75] *Wallace* at para. 31.
[76] *Wallace* at para. 31.
[77] *Neil* at para. 29.
[78] *Wallace* at paras. 32-37.
[79] *Wallace* at para. 38.
[80] *Wallace* at para. 38.
[81] *Wallace* at para. 43, citing *Neil* at para. 19.
[82] *Wallace* at para. 44.

92. Lawyers are also subject to a duty of candour with a client on matters relevant to a retainer.[83] The duty requires that lawyers and law firms disclose to clients factors relevant to a lawyer's ability to provide effective representation.[84] It demands that lawyers inform an existing client prior to accepting a retainer that requires them to act against that client, even if the situation falls outside the scope of the bright line rule.[85]

93. Under the duty of candour, lawyers must also give clients a competent, open, and undisguised opinion as to the merits and probable results of a particular matter based on a sufficient knowledge of the relevant facts.[86]

iii. Solicitor-Client Privilege

94. Solicitor-client privilege arises from a "communication between a lawyer and the client where the latter seeks lawful legal advice".[87] It exists to facilitate the administration of justice by encouraging clients to speak freely to lawyers, so that lawyers can advise clients to the best of their abilities.[88]

95. Solicitor-client privilege has evolved from a rule of evidence to a substantive rule,[89] with the Supreme Court of Canada noting it is a "a rule of evidence, an important civil and legal right and a principle of fundamental justice in Canadian law".[90] As a substantive rule, the privilege must remain as close to absolute as possible, and, unless absolutely necessary, should not be interfered with.[91] It will be set aside only in the "most unusual circumstances".[92]

96. Solicitor-client privilege can be waived either expressly or by implication. Express waiver of privilege is established where the possessor of the privilege: (1) knows of the existence of the privilege; and (2) voluntarily evinces an intention to waive the privilege.[93] Privilege can be waived by implication where a litigant "voluntarily takes a position in litigation that is inconsistent

---

[83] *BC Code*, rule 3.2-2.
[84] *Wallace* at para. 45.
[85] *Wallace* at para. 46.
[86] *BC Code*, rule 3.2-2, commentary [2].
[87] *R. v. McClure*, 2001 SCC 14 at para. 36 [*McClure*].
[88] *McClure* at para. 33.
[89] *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 at para. 38 [*University of Calgary*].
[90] *R. v. Lavallee, Rackel & Heintz*, 2002 SCC 61 at para. 49 [*Lavallee, Rackel & Heintz*].
[91] *Lavallee, Rackel & Heintz* at paras. 36-37, *McClure* at para. 35; *University of Calgary* at para. 43.
[92] *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para. 17.
[93] *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.) at 220.

with the maintenance of the privilege" or makes legal assertions that "make it unfair for the holder of the privilege to retain the benefit of the privilege".[94]

97. Legislatures and Parliament may limit or abrogate solicitor-client privilege by statute.[95] A statute purporting to limit or abrogate solicitor-client privilege must be interpreted "restrictively" and demonstrate a "clear and unambiguous legislative intent to do so" before it will be given such effect.[96] Privilege cannot be set aside by inference:

> ... it is only where legislative language evinces a clear intent to abrogate solicitor-client privilege in respect of specific information that a court may find that the statutory provision in question actually does so. Such an intent cannot simply be inferred from the nature of the statutory scheme or its legislative history, although these might provide supporting context where the language of the provision is already sufficiently clear. If the provision is not clear, however, it must not be found to be intended to strip solicitor-client privilege from communications or documents that this privilege would normally protect.[97]

98. Solicitor-client privilege belongs to the client, not the lawyer.[98] It has been described as "fundamental to the proper functioning of [the] legal system and a cornerstone of access to justice",[99] as, without the assurance of confidentiality, clients would not speak honestly and candidly with their lawyers, which compromises the legal advice they receive.[100]

99. For privilege to attach, the communications must be made for the "legitimate purpose of obtaining lawful professional advice or assistance".[101] The privilege will not exist where communications are "criminal or else made with a view to obtaining legal advice to facilitate the commission of a crime".[102] Privilege will also be set aside where innocence at stake is engaged,[103] or where it is necessary to protect public safety.[104]

iv. Litigation Privilege

100. Litigation privilege protects against the compulsory disclosure of documents, including non-confidential documents,[105] and communications whose dominant purpose is preparation for

---

[94] *ProSuite Software Ltd. v. Infokey Software Inc.*, 2015 BCCA 52 at para. 23.
[95] *McClure* at para. 34; *Minister of National Revenue v. Thompson*, 2016 SCC 21 at para. 25 [*Thompson*].
[96] *University of Calgary* at para. 28.
[97] *Thompson* at para. 25, cited in *University of Calgary* at para. 28.
[98] *University of Calgary* at para. 35.
[99] *University of Calgary* at para. 34.
[100] *Smith v. Jones*, [1999] 1 S.C.R. 455 at para. 46 [*Smith v. Jones*].
[101] *McClure* at para. 37.
[102] *R. v. Shirose*, [1999] 1 S.C.R. 565 at para. 55.
[103] See *McClure*.
[104] See *Smith v. Jones*.
[105] *Blank v. Canada (Department of Justice)*, 2006 SCC 39 at para. 28 [*Blank*].

litigation. The privilege seeks to ensure the efficacy of the adversarial process and maintains a "protected area to facilitate investigation and preparation of a case for trial by the adversarial advocate".[106]

101. Litigation privilege operates even absent a solicitor-client relationship and applies to all litigants, whether or not they are represented by a lawyer.[107] It can be asserted against anyone, including third parties, not just against the other party to the litigation.[108]

102. Litigation privilege is neither absolute in scope nor permanent in duration. The privilege comes to an end, absent closely related proceedings, upon termination of the litigation that gave rise to the privilege.[109] In *Blank*, the Court defined "litigation" to include "separate proceedings that involve the same or related parties and arise from the same or a related cause of action … [and] proceedings that raise issues common to the initial action and share its essential purpose".[110]

103. The exceptions to solicitor-client privilege, including those relating to public safety, the innocence of the accused and criminal communications, apply with equal force to litigation privilege. Litigation privilege will also not apply in respect of "evidence of the claimant party's abuse or process or similar blameworthy conduct".[111]

104. The jurisprudential requirements imposed in respect of legislative abrogation from solicitor-client privilege apply with equal force to litigation privilege.[112]

v. Other Ethical Duties

105. Lawyers in British Columbia are subject to a number of additional ethical duties. While not an exhaustive list, these include that a lawyer must:

- advise and encourage a client to compromise or settle a dispute whenever possible, and discourage a client from commencing or continuing "useless" legal proceedings;[113]

[106] *Blank* at paras. 27, 40.
[107] *Blank* at para. 32.
[108] *Lizotte c. Aviva Cie d'assurance du Canada*, 2016 SCC 52 at para. 47 [*Lizotte*].
[109] *Blank* at para. 36.
[110] *Blank* at para. 39.
[111] *Lizotte* at para. 41.
[112] *Lizotte* at para. 63.
[113] *BC Code*, rule 3.2-4.

- care and preserve clients' property;[114]
- not withdraw from representation of a client except for good cause and on reasonable notice;[115]
- not enter into a transaction with a client, unless the transaction is fair and reasonable to the client, the client consents and the client has independent legal representation with respect to the transaction;[116]
- promptly meet financial obligations in relation to his or her practice when called upon to do so;[117] and
- unless it would involve a breach of solicitor-client confidentiality or privilege, report, among other things, to the LSBC: (i) a shortage of trust monies; (ii) participation in criminal activity related to a lawyer's practice; and (iii) any other situation in which a lawyer's clients are likely to be materially prejudiced.[118]

F. Federation Decision

106. In 2015, the Supreme Court of Canada read down specific provisions of the *PCMLTFA*[119] and its regulations to exclude their application to legal counsel and law firms. As a result, lawyers are not currently subject to any of the reporting, record keeping or other requirements under the *PCMLTFA*.

107. The *PCMLTFA*, which originally came into force in 2000 and was subsequently renamed and amended to include measures related to terrorist financing, creates a mandatory reporting system for suspicious transaction reports, large cash transaction reports and other prescribed transactions. Its object is to detect and deter money laundering and financing terrorist activity by establishing record keeping and client identification standards, requiring reporting from financial intermediaries and situating FINTRAC as an agency to oversee compliance.

108. In 2001, the federal government made the legislation applicable to lawyers and Quebec notaries. Key aspects of the scheme:

[114] *BC Code*, section 3.5.
[115] *BC Code*, section 3.7
[116] *BC Code*, rule 3.4-28.
[117] *BC Code*, rule 7.1-2
[118] *BC Code*, rule 7.1-3.
[119] SOR/2002-184.

a. required lawyers to identify persons and entities on whose behalf they acted as financial intermediaries by verifying the identity of persons or entities on whose behalf a lawyer received or paid funds other than in respect of disbursements, expenses, professional fees or bail. It also required lawyers to collect information that varied depending on the entity seeking to conduct a transaction;

b. unless the funds received were from a financial entity or public body, mandated that lawyers create a "receipt of funds record" when $3,000 or more in funds were received in a transaction. The records were required to be kept for at least five years after the completion of the transaction, and FINTRAC could request production of those records; and

c. authorized FINTRAC to "examine the records and inquire into the business and affairs" of a lawyer, including the power to search through computers and to print or copy records, and required lawyers to comply with requests from FINTRAC for information.

109. In response, the FLSC and LSBC, supported by the Canadian Bar Association, launched litigation challenging the constitutionality of the impugned legislation and sought interlocutory relief from its application to legal counsel. The basis for the challenge was an argument that the legislative and regulatory scheme as they applied to lawyers violated solicitor-client privilege and threatened fundamental constitutional principles related to lawyers' duties to their clients. The British Columbia Supreme Court granted an interim injunction relieving legal counsel of the reporting requirements, which order was affirmed by the BC Court of Appeal, with the Supreme Court of Canada denying the government's application for a stay of the interlocutory order.

110. In response to similar orders in other provinces and territories, the Attorney General of Canada suspended application of the legislation to Canadian lawyers and Quebec notaries pending the outcome of the challenge. The litigation was adjourned and the parties entered an agreement that precluded the federal government from applying any new regulations applicable to lawyers and Quebec Notaries under the *PCMLTFA* without consent of the FLSC (the "Agreement"). In 2006, the *PCMLTFA* was amended to exempt lawyers and Quebec notaries from the suspicious and prescribed transaction reporting requirements.[120]

[120] See *PCMLTFA*, s. 10.1.

111. By December 2008, new regulations were set to enter into force with respect to the legal profession. However, relying on its rights pursuant to the Agreement, the FLSC refused to consent and the litigation was recommenced in 2010.

112. At first instance, Justice Gerow held that the challenged provisions were contrary to s. 7 of the *Charter*, and that the infringement could not be justified under s. 1.[121] The Court of Appeal for British Columbia agreed that the obligations imposed on lawyers by these provisions breached s. 7 of the *Charter*, and were not saved by s. 1.[122]

113. In reasons penned by Justice Cromwell, the Supreme Court of Canada dismissed the Attorney General's appeal.[123] The Court held that the provisions of the *PCMLTFA* and its regulations permitting sweeping law office searches, along with the attendant lack of protection of solicitor-client privilege, constituted a significant limitation of the right to be free from unreasonable search and seizure under s. 8 of the *Charter*. The Court further held that regulations forcing lawyers to collect information about their clients and their financial transactions beyond what the legal profession thought was necessary for ethical and effective client representation interfered with legal counsels' duty of commitment to the client's cause, which the Court identified as a principle of fundamental justice.

114. The first constitutional failing identified by the Court was that the impugned legislation contained insufficient requirements for notice to clients, who held the privilege, and no protocol for independent legal intervention where it was not feasible to notify a client.[124] The second constitutional failing identified by the Court was the scheme's denial of a judge's discretion "to assess the claim of privilege on [their] own motion", in cases where lawyers or clients claimed privileged but failed to file a formal application.[125]

115. The Court also held that the legislation similarly violated s. 7 of the *Charter*, as it limited the liberty of lawyers in a way that was "not in accordance with the principle of fundamental justice in relation to the lawyer's duty of commitment to the client's cause".[126]

[121] *Federation of Law Societies of Canada v. Canada (Attorney General)*, 2011 BCSC 1270.
[122] See 2013 BCCA 147.
[123] *Federation Case*.
[124] *Federation Case* at para. 50.
[125] *Federation Case* at paras. 51, 52.
[126] *Federation Case* at para. 70.

116. The Court also observed the following general principles that govern the legality of law office searches as particularly relevant:

a. that authorities, before searching a law office, "must satisfy a judicial officer that there exists no reasonable alternative to the search";[127]

b. that, unless otherwise specifically authorized by a warrant, "all documents in possession of a lawyer must be sealed before being examined or removed from the lawyer's possession";[128] and

c. that requiring lawyers to name clients or those clients' latest known address in order to claim solicitor-client privilege could, in some cases, constitute a breach of the privilege.[129]

117. The Court found that these limitations were not justified under s. 1 of the *Charter*. Although the Court found that the objectives of combatting money laundering and terrorist financing were pressing and substantial, and there existed a logical and direct link between combating of money laundering and governmental supervision through searches of law offices, the justification failed the minimal impairment test. In Justice Cromwell's view, there were "other less drastic means of pursuing the same identified objectives".[130]

118. The Court left open the possibility that Parliament could craft a constitutionally-sound scheme without the requirement of a warrant:

> … Warrantless searches, such as those permitted under this scheme, are presumptively unreasonable. Moreover, the judicial pre-authorization requirement is, in itself, an important protection against improper search and seizure of privileged material. However, I do not foreclose the possibility that Parliament could devise a constitutionally compliant inspection regime without a judicial pre-authorization requirement.[131]

119. The *Federation Case* also contains discussion as to the different considerations that arise in relation to audits of lawyers conducted by their professional governing bodies, on the one hand, when compared to similar methods used by the state:

[127] *Federation Case* at para. 54.
[128] *Federation Case* at para. 55.
[129] *Federation Case* at para. 55.
[130] *Federation Case* at paras. 58-62.
[131] *Federation Case* at para. 56.

> The issues that would arise in the event of a challenge to professional regulatory schemes are not before us in this case. Different considerations would come into play in relation to regulatory audits of lawyers conducted on behalf of lawyers' professional governing bodies. The regulatory schemes in which the professional governing bodies operate in Canada serve a different purpose from the Act and Regulations and generally contain much stricter measures to protect solicitor-client privilege.[132]

120. Law societies are not "prevented from adopting stricter rules than those applied by the courts in their supervisory role".[133]

121. The majority wrote, in *obiter*, on the potential for Parliament to make the scheme compliant with s. 7 of the *Charter*:

> [112] … I do not want to venture into speculation about how a modified scheme could appropriately respond to the requirements of s. 7. However, it seems to me that if, for example, the scheme were to provide the required constitutional protections for solicitor-client privilege as well as meaningful derivative use immunity of the required records for the purposes of prosecuting clients, it would be much harder to see how it would interfere with the lawyer's duty of commitment to the client's cause.
>
> [113] The information gathering and record retention provisions of this scheme serve important public purposes. They help to ensure that lawyers take significant steps so that when they act as financial intermediaries, they are not assisting money laundering or terrorist financing. The scheme also serves the purpose of requiring lawyers to be able to demonstrate to the competent authorities that this is the case. In order to pursue these objectives, Parliament is entitled, within proper limits which I have outlined, to impose obligations beyond those which the legal profession considers essential to effective and ethical representation. Lawyers have a duty to give and clients are entitled to receive committed legal representation as well as to have their privileged communications with their lawyer protected. Clients are not, however, entitled to make unwitting accomplices of their lawyers let alone enlist them in the service of their unlawful ends.[134]

122. In concurring reasons, Chief Justice McLachlin and Justice Moldaver agreed with the approach taken s. 8 of the *Charter*, but held that the principle of a lawyer's commitment to a client's cause "[lacked] sufficient certainty to constitute a principal of fundamental justice" and did not provide a workable constitutional standard.[135] Instead, the concurring Justices held, the s. 7 challenge would have been better resolved by reference to solicitor-client privilege.[136]

---

[132] *Federation Case* at para. 68.
[133] *Wallace* at paras. 15-16.
[134] *Federation Case* at paras. 112-113.
[135] *Federation Case* at para. 119.
[136] *Federation Case* at para. 120.

G. FATF Mutual Evaluation Report

123. In September 2016, the Financial Action Task Force ("FATF") published the *Mutual Evaluation Report of Anti-Money Laundering and Counter-Terrorist Financing Measures in Canada*.[137] The *FATF Canada Report 2016* found the non-application of the *PCMLTFA* and its regulations to the legal profession, other than to British Columbia notaries, to be a "significant loophole in Canada's AML/CFT framework" [138] and "that AML/CFT obligations are inoperative for legal counsels, legal firms and Quebec notaries is of significant concern"[139] which "has a negative impact on the effectiveness of the [AML/CFT supervisory] regime as a whole".[140] The *FATF Canada Report 2016* noted the particular risk of the lack of reporting in relation to high-risk sectors and activities:

> AML/CFT requirements are inoperative towards legal counsels, legal firms and Quebec notaries. These requirements were found to breach the constitutional right to attorney-client privilege by the Supreme Court of Canada on 13 February 2015. In light of these professionals' key gatekeeper role, in particular in high-risk sectors and activities such as real-estate transactions and the formation of corporations and trusts, this constitutes a serious impediment to Canada's efforts to fight ML.[141]

124. As required by the FATF Standards, the Department of Finance conducted a national risk assessment. The *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*[142] assigned legal professionals a "high vulnerability rating" in the assessment of inherent vulnerability, and a high to very high risk of exposure to scenarios with a risk of money laundering.[143] Mortgage fraud and real estate transactions in general were noted as providing for particular opportunity for the involvement of lawyers in money laundering,[144] and the *2015 Canada Assessment* noted that lawyers may be used an intermediaries to create distance between criminal activities and the proceeds of crime.[145]

125. A report prepared by FINTRAC that analyzed 40 cases, and 62 individuals charged with money laundering under s. 462.31 of the *Criminal Code* with a resulting 43 convictions, shows

[137] Attached as Appendix "M" [*FATF Canada Report 2016*].
[138] *FATF Canada Report 2016* at 5.
[139] *FATF Canada Report 2016* at 4.
[140] *FATF Canada Report 2016* at 8.
[141] *FATF Canada Report 2016* at 7.
[142] Attached as Appendix "N" [*2015 Canada Assessment*].
[143] *2015 Canada Assessment* at page 52.
[144] *2015 Canada Assessment* at page 53.
[145] *2015 Canada Assessment* at page 52.

that lawyers represented 15 per cent of individuals charged. The FINTRAC report is attached as Appendix “O”.

126. In June 2019, the FLSC and the Government of Canada created a Working Group to explore issues related to money laundering and terrorist financing in the legal profession and to strengthen information sharing between Canadian law societies and the federal government. The group intends to explore information sharing between participants, particularly data, trends, typologies, indicators and case examples related to money laundering. The Working Group also intends to facilitate discussions around improvements to the FLSC *Model Rules* and discuss on an exploratory basis appropriate practices for referrals between law enforcement and provincial law societies.

LEGAL PROFESSION ACT

S.B.C. 1998, c. 9

Effective date: December 31, 1998

CONTENTS

Definitions

1 (1) In this Act:

"applicant" means a person who has applied for

(a) enrolment as an articled student,

(b) call and admission, or

(c) reinstatement;

"articled student" means a person enrolled in the society's admission program;

"bencher" means a person elected or appointed under Part 1 to serve as a member of the governing body of the society;

"chair" means a person appointed to preside at meetings of a committee or panel;

"conduct unbecoming the profession" includes a matter, conduct or thing that is considered, in the judgment of the benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"disbar" means to declare that a lawyer or former lawyer is unsuitable to practise law and to terminate the lawyer's membership in the society;

"executive committee" means the committee established under section 10;

"executive director" means the executive director or acting executive director of the society;

"foundation" means the Law Foundation of British Columbia continued under section 58 (1);

"law corporation" means a corporation that holds a valid permit under Part 9;

"law firm" means a legal entity or combination of legal entities carrying on the practice of law;

"lawyer" means a member of the society, and

(a) in Part 2, Division 1, includes a member of the governing body of the legal profession in another province or territory of Canada who is authorized to practise law in that province or territory,

(b) in Parts 4 to 6 and 10 includes a former member of the society, and

(c) in Part 10 includes an articled student;

"member" means a member of the society;

"officer" means the executive director, deputy executive director or other person appointed as an officer of the society by the benchers;

"panel" means a panel appointed in accordance with section 41;

"practice of law" includes

(a) appearing as counsel or advocate,

(b) drawing, revising or settling

(i) a petition, memorandum, notice of articles or articles under the *Business Corporations Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,

(ii) a document for use in a proceeding, judicial or extrajudicial,

(iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or a grant of administration or the estate of a deceased person,

(iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or

(v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,

(c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,

(d) agreeing to place at the disposal of another person the services of a lawyer,

(e) giving legal advice,

(f) making an offer to do anything referred to in paragraphs (a) to (e), and

(g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e),

but does not include

(h) any of those acts if performed by a person who is not a lawyer and not for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,

(i) the drawing, revising or settling of an instrument by a public officer in the course of the officer's duty,

(j) the lawful practice of a notary public,

(k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the *Financial Institutions Act*, or

(l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program;

"practising lawyer" means a member in good standing who holds or is entitled to hold a practising certificate;

"president" means the chief elected official of the society;

"resolution" means a motion passed by a majority of those voting at a meeting;

"respondent" means a person whose conduct or competence is the subject of a hearing or an appeal under this Act;

"review board" means a review board appointed in accordance with section 47;

"rules" means rules enacted by the benchers under this Act;

"society" means the Law Society of British Columbia continued under section 2;

"suspension" means temporary disqualification from the practice of law;

"written" or **"in writing"** includes written messages communicated electronically.

(2) In Parts 1 to 5, **"costs"** means costs assessed under a rule made under section 27 (2) (e) or 46.

[2003-70-209; 2007-14-216; 2012-16-1; 2009-13-235, effective March 31, 2014; 2016-5-41]

Application

1.1 This Act does not apply to a person who is both a lawyer and a part time judicial justice, as that term is defined in section 1 of the *Provincial Court Act*, in the person's capacity as a part time judicial justice under that Act.

[2008-42-33]

PART 1 – ORGANIZATION

Division 1 – Law Society

Incorporation

2 (1) The Law Society of British Columbia is continued.

(2) For the purposes of this Act, the society has all the powers and capacity of a natural person.

Object and duty of society

3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

(a) preserving and protecting the rights and freedoms of all persons,

(b) ensuring the independence, integrity, honour and competence of lawyers,

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,

(d) regulating the practice of law, and

(e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[2012-16-2]

Benchers

4 (1) The following are benchers:

(a) the Attorney General;

(b) the persons appointed under section 5;

(c) the lawyers elected under section 7;

(d) the president, first vice-president and second vice-president.

(2) The benchers govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society.

(3) The benchers may take any action consistent with this Act by resolution.

(4) Subsections (2) and (3) are not limited by any specific power or responsibility given to the benchers by this Act.

(5) The benchers may

(a) use the fees, assessments and other funds of the society, including funds previously collected or designated for a special purpose before this Act came into force, for the purposes of the society,

(b) raise funds by the issue of debentures, with or without a trust deed, for the purposes of the society,

(c) provide for a pension scheme for its officers and employees out of the funds of the society, and

(d) approve forms to be used for the purposes of this Act.

Appointed benchers

5 (1) The Lieutenant Governor in Council may appoint up to 6 persons to be benchers.

(2) Members and former members of the society are not eligible to be appointed under this section.

(3) A bencher appointed under this section has all the rights and duties of an elected bencher, unless otherwise stated in this Act.

(4) If a bencher appointed under this section fails to complete a term of office, the Lieutenant Governor in Council may appoint a replacement to hold office for the balance of the term of the bencher who left office.

(5) A bencher appointed under this section is not eligible to hold the position of president, first vice-president or second vice-president.

[heading updated 2009]

Meetings

6 (1) The benchers may make rules respecting meetings of the benchers.

(2) For a quorum at a meeting of the benchers, at least 7 benchers must be present and a majority of those present must be members of the society.

(3) A motion assented to in writing by at least 75% of the benchers has the same effect as a resolution passed at a regularly convened meeting of the benchers.

[2012-16-3]

Elections

7 (1) The benchers may make rules respecting the election of benchers and of the second vice-president.

(2) The rules made under subsection (1) must be consistent with the following:

(a) voting is by secret ballot;

(b) the right of each member to vote for a bencher or the second vice-president carries the same weight as any other member who is entitled to vote for that bencher or the second vice-president;

(c) only members in good standing are entitled to vote.

(3) Section 11 (4) applies to the rules made under subsection (1) of this section unless they deal directly with a matter referred to in section 12.

(4) Section 12 applies to the rules made under subsection (1) of this section that deal directly with a matter referred to in that section.

Officers and employees

8 The benchers may make rules to do either or both of the following:

(a) delegate to the executive director, or the executive director's delegate, any power or authority of the benchers under this Act except rule-making authority;

(b) authorize a committee established under this Act to delegate authority granted to it under this Act to the executive director or the executive director's delegate.

[2007-14-201]

Division 2 – Committees

Law Society committees

9 (1) The benchers may establish committees in addition to those established by this Act.

(2) The benchers may authorize a committee to do any act or to exercise any jurisdiction that, by this Act, the benchers are authorized to do or to exercise, except the exercise of rule-making authority.

(3) The benchers may make rules providing for

(a) the appointment and termination of appointments of persons to committees, and

(b) the practice and procedure for meetings of committees, including proceedings before committees.

(4) For a quorum at a meeting of a committee, at least 1/2 of the members of the committee must be present.

[2012-16-4]

Executive committee

10 (1) The benchers must establish an executive committee.

(2) The benchers may delegate any of the powers and duties of the benchers to the executive committee, subject to any conditions they consider necessary.

(3) A quorum of the executive committee is 4.

(4) A motion assented to in writing by at least 75% of the executive committee's members has the same effect as a resolution passed at a regularly convened meeting of the executive committee.

Division 3 – Rules and Resolutions

Law Society rules

11 (1) The benchers may make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of this Act.

(2) Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this Act.

(3) The rules are binding on the society, lawyers, law firms, the benchers, articled students, applicants and persons referred to in section 16 (2) (a) or 17 (1) (a).

(4) Enactment, amendment or rescission of a rule is not effective unless at least 2/3 of the benchers present at the meeting at which the rule, amendment or rescission is considered vote in favour of it.

(5) Unless section 12 applies, no approval other than that required under subsection (4) of this section is necessary to enact, rescind or amend a rule.

[2012-16-5]

Rules requiring membership approval

12 (1) The benchers must make rules respecting the following:

(a) the offices of president, first vice-president or second vice-president;

(b) the term of office of benchers;

(c) the removal of the president, first vice-president, second vice-president or a bencher;

(d) the electoral districts for the election of benchers;

(e) the eligibility to be elected and to serve as a bencher;

(f) the filling of vacancies among elected benchers;

(g) the general meetings of the society, including the annual general meeting;

(h) the appointment, duties and powers of the auditor of the society;

(i) life benchers;

(j) [repealed]

(k) the qualifications to act as auditor of the society when an audit is required under this Act.

(2) The first rules made under subsection (1) after this Act comes into force must be consistent with the provisions of the *Legal Profession Act*, R.S.B.C. 1996, c. 255, relating to the same subject matter.

(3) The benchers may amend or rescind rules made under subsection (1) or enact new rules respecting the matters referred to in subsection (1), in accordance with an affirmative vote of 2/3 of those members voting at a general meeting or in a referendum respecting the proposed rule, or the amendment or rescission of a rule.

[2007-14-216; 2012-16-6]

Implementing resolutions of general meeting

13 (1) A resolution of a general meeting of the society is not binding on the benchers except as provided in this section.

(2) A referendum of all members must be conducted on a resolution if

(a) it has not been substantially implemented by the benchers within 12 months following the general meeting at which it was adopted, and

(b) the executive director receives a petition signed by at least 5% of members in good standing of the society requesting a referendum on the resolution.

(3) Subject to subsection (4), the resolution is binding on the benchers if at least

(a) 1/3 of all members in good standing of the society vote in the referendum, and

(b) 2/3 of those voting vote in favour of the resolution.

(4) The benchers must not implement a resolution if to do so would constitute a breach of their statutory duties.

[2012-16-7]

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

14 (1) The benchers may make rules to do any of the following:

(a) establish categories of members;

(b) determine the rights and privileges associated with categories of members;

(c) set the annual fee for categories of members other than practising lawyers;

(d) determine whether or not a person is a member in good standing of the society.

(2) A member in good standing of the society is an officer of all courts of British Columbia.

(3) A practising lawyer is entitled to use the style and title of "Notary Public in and for the Province of British Columbia", and has and may exercise all the powers, rights, duties and privileges of the office of notary public.

[2019-40-16]

Authority to practise law

15 (1) No person, other than a practising lawyer, is permitted to engage in the practice of law, except

(a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf,

(b) as permitted by the *Court Agent Act*,

(c) an articled student, to the extent permitted by the benchers,

(d) an individual or articled student referred to in section 12 of the *Legal Services Society Act*, to the extent permitted under that Act,

(e) a lawyer of another jurisdiction permitted to practise law in British Columbia under section 16 (2) (a), to the extent permitted under that section,

(f) a practitioner of foreign law holding a permit under section 17 (1) (a), to the extent permitted under that section, and

(g) a lawyer who is not a practising lawyer to the extent permitted under the rules.

(2) A person who is employed by a practising lawyer, a law firm, a law corporation or the government and who acts under the supervision of a practising lawyer does not contravene subsection (1).

(3) A person must not do any act described in paragraphs (a) to (g) of the definition of "practice of law" in section 1 (1), even though the act is not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, if

(a) the person is a member or former member of the society who is suspended or has been disbarred, or who, as a result of disciplinary proceedings, has resigned from membership in the society or otherwise ceased to be a member as a result of disciplinary proceedings, or

(b) the person is suspended or prohibited for disciplinary reasons from practising law in another jurisdiction.

(4) A person must not falsely represent himself, herself or any other person as being

(a) a lawyer,

(b) an articled student, a student-at-law or a law clerk, or

(c) a person referred to in subsection (1) (e) or (f).

(5) Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court.

(6) The benchers may make rules prohibiting lawyers from facilitating or participating in the practice of law by persons who are not authorized to practise law.

[2002-30-29; 2012-16-8]

Interprovincial practice

16 (1) In this section, **"governing body"** means the governing body of the legal profession in another province or a territory of Canada.

(2) The benchers may permit qualified lawyers of other Canadian jurisdictions to practise law in British Columbia and may promote cooperation with the governing bodies of the legal profession in other Canadian jurisdictions by doing one or more of the following:

(a) permitting a lawyer or class of lawyers of another province or a territory of Canada to practise law in British Columbia;

(b) attaching conditions or limitations to a permission granted under paragraph (a);

(c) submitting disputes concerning the interjurisdictional practice of law to an independent adjudicator under an arbitration program established by agreement with one or more governing bodies;

(d) participating with one or more governing bodies in establishing and operating a fund to compensate members of the public for misappropriation or wrongful conversion by lawyers practising outside their home jurisdictions;

(e) making rules

(i) establishing conditions under which permission may be granted under paragraph (a), including payment of a fee,

(ii) respecting the enforcement of a fine imposed by a governing body, and

(iii) allowing release of information about a lawyer to a governing body, including information about practice restrictions, complaints, competency and discipline.

(3) Parts 3 to 8 and 10 apply to a lawyer or class of lawyers given permission under this section.

Practitioners of foreign law

17 (1) The benchers may do any or all of the following:

(a) permit a person holding professional legal qualifications obtained in a country other than Canada to practise law in British Columbia;

(b) attach conditions or limitations to a permission granted under paragraph (a);

(c) make rules establishing conditions or limitations under which permission may be granted under paragraph (a), including payment of a fee.

(2) Parts 3 to 8 and 10 apply to a person given permission under this section.

[2012-16-9]

Association with non-resident lawyers or law firms

18 The benchers may make rules concerning the association of members of the society or law firms in British Columbia with lawyers or law firms in other jurisdictions.

[2012-16-10]

Division 2 – Admission and Reinstatement

Applications for enrolment, call and admission, or reinstatement

19 (1) No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

(2) On receiving an application for enrolment, call and admission or reinstatement, the benchers may

(a) grant the application,

(b) grant the application subject to any conditions or limitations to which the applicant consents in writing, or

(c) order a hearing.

(3) If an applicant for reinstatement is a person referred to in section 15 (3) (a) or (b), the benchers must order a hearing.

(4) A hearing may be ordered, commenced or completed despite the applicant's withdrawal of the application.

(5) The benchers may vary conditions or limitations made under subsection (2) (b) if the applicant consents in writing to the variation.

[2016-5-41]

Articled students

20 (1) The benchers may make rules to do any of the following:

(a) establish requirements, including academic requirements, and procedures for enrolment of articled students;

(b) set fees for enrolment;

(c) establish requirements for lawyers to serve as principals to articled students;

(d) limit the number of articled students who may be articled to a principal;

(e) stipulate the duties of principals and articled students;

(f) permit the investigation and consideration of the fitness of a lawyer to act as a principal to an articled student.

(2) The benchers may establish and maintain an educational program for articled students.

[2016-5-41]

Admission, reinstatement and requalification

21 (1) The benchers may make rules to do any of the following:

(a) establish a credentials committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;

(b) establish requirements, including academic requirements, and procedures for call to the Bar of British Columbia and admission as a solicitor of the Supreme Court;

(c) set a fee for call and admission;

(d) establish requirements and procedures for the reinstatement of former members of the society;

(e) set a fee for reinstatement;

(f) establish conditions under which a member in good standing of the society who is not permitted to practise law, may apply to become a practising lawyer.

(2) The fee set under subsection (1) (c) must not exceed 1/6 of the practice fee set under section 23 (1) (a).

(3) The benchers may impose conditions or limitations on the practice of a lawyer who, for a cumulative period of 3 years of the 5 years preceding the imposition of the conditions, has not engaged in the practice of law.

[2012-16-11]

Prohibition on resignation from membership

21.1 (1) A lawyer may not resign from membership in the society without the consent of the benchers if the lawyer is the subject of

(a) a citation or other discipline process under Part 4,

(b) an investigation under this Act, or

(c) a practice review under the rules.

(2) In granting consent under subsection (1), the benchers may impose conditions.

[2012-16-12]

Credentials hearings

22 (1) This section applies to a hearing ordered under section 19 (2) (c).

(2) A hearing must be conducted before a panel.

(3) Following a hearing, the panel must do one of the following:

(a) grant the application;

(b) grant the application subject to conditions or limitations that the panel considers appropriate;

(c) reject the application.

(4) If an application is rejected,

(a) the panel must, on the written request of the applicant, give written reasons for its decision, and

(b) the applicant must not be enrolled as an articled student, called and admitted or reinstated as a member.

(5) On application, the benchers may vary or remove conditions or limitations imposed by a panel under this section.

(6) The benchers may make rules requiring payment of security for costs of a hearing.

Division 3 – Fees and Assessments

Annual fees and practising certificate

23 (1) A practising lawyer must pay to the society an annual fee consisting of

(a) a practice fee in an amount set by the benchers, and

(b) [repealed]

(c) an indemnity fee set under section 30 (3) (a), unless exempted from payment of the indemnity fee under section 30 (4) (b).

(2) The benchers may waive payment of all or part of the annual fee or a special assessment for a lawyer whom they wish to honour.

(3) A lawyer who is suspended under section 38 (5) (d) or the rules made under section 25 (2), 32 (2) (b), 36 (h) or 39 (1) (a) must pay the annual fee or special assessment when it is due in order to remain a member of the society.

(4) The executive director must issue to each practising lawyer a practising certificate on payment of the annual fee, if the lawyer is otherwise in good standing and has complied with this Act and the rules.

(5) A certificate purporting to contain the signature of the executive director stating that a person is, or was at the time specified in the certificate, a member in good standing of the society is proof of that fact, in the absence of evidence to the contrary.

(6) A lawyer who is suspended or who, for any other reason, ceases to be a member in good standing of the society must immediately surrender to the executive director his or her practising certificate and any proof of professional liability indemnification issued by the society.

(7) The benchers may make rules to do any of the following:

(a) set the date by which the annual fee is payable, subject to rules made under section 30 (4) (a);

(b) permit late payment of the annual fee or a special assessment;

(c) set a fee for late payment of fees and assessments;

(d) determine the circumstances in which a full or partial refund of a fee or assessment may be made;

(e) deem a lawyer to have been a practising lawyer during a period in which the lawyer was in default of payment of fees or an assessment on conditions that the benchers consider appropriate.

[2012-16-13; 2018-49-39]

Fees and assessments

24 (1) The benchers may

(a) set fees, and

(b) set special assessments to be paid by lawyers and applicants for the purposes of the society and set the date by which they must be paid.

(c) [repealed]

(2) [repealed]

(3) If the benchers set a special assessment for a stated purpose and do not require all of the money collected for that stated purpose, they must return the excess to the members.

(4) On or before the date established by the benchers, each lawyer and applicant must pay to the society any special assessments set under subsection (1) (b), unless the benchers otherwise direct.

[2012-16-14]

Failure to pay fee or penalty

25 (1) If a lawyer fails to pay the annual fee or a special assessment as required under this Act by the time that it is required to be paid, the lawyer ceases to be a member, unless the benchers otherwise direct, subject to rules made under section 23 (7).

(2) The benchers may make rules providing for the suspension of a lawyer who fails to pay a fine, costs or a penalty by the time payment is required.

[2007-14-145]

PART 3 – PROTECTION OF THE PUBLIC

Complaints from the public

26 (1) A person who believes that

(a) a lawyer, former lawyer or articled student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules, or

(b) a law firm has been guilty of professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules

may make a complaint to the society.

(2) The benchers may make rules authorizing an investigation into the conduct of a law firm or the conduct or competence of a lawyer, former lawyer or articled student, whether or not a complaint has been received under subsection (1).

(3) For the purposes of subsection (4), the benchers may designate an employee of the society or appoint a practising lawyer or a person whose qualifications are satisfactory to the benchers.

(4) For the purposes of an investigation authorized by rules made under subsection (2), an employee designated or person appointed under subsection (3) may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the designated employee or appointed person to answer questions on oath or affirmation, or in any other manner;

(b) produce for the designated employee or appointed person a record or thing in the person's possession or control.

(5) The society may apply to the Supreme Court for an order

(a) directing a person to comply with an order made under subsection (4), or

(b) directing an officer or governing member of a person to cause the person to comply with an order made under subsection (4).

(6) The failure or refusal of a person subject to an order under subsection (4) to

(a) attend before the designated employee or appointed person,

(b) take an oath or make an affirmation,

(c) answer questions, or

(d) produce records or things in the person's possession or control

makes the person, on application to the Supreme Court by the society, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

[2012-16-15]

Suspension during investigation

26.01 (1) The benchers may make rules permitting 3 or more benchers to make the following orders during an investigation, if those benchers are satisfied it is necessary to protect the public:

(a) suspend a lawyer who is the subject of the investigation;

(b) impose conditions or limitations on the practice of a lawyer who is the subject of the investigation;

(c) suspend the enrolment of an articled student who is the subject of the investigation;

(d) impose conditions or limitations on the enrolment of an articled student who is the subject of the investigation.

(2) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made,

(b) set out the term of a suspension, condition or limitation, and

(c) provide for review of an order made under subsection (1) and for confirmation, variance or rescission of the order.

(3) Rules made under this section and section 26.02 may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) or section 26.02 (3) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

[2012-16-16; 2016-5-41]

Medical examination

26.02 (1) The benchers may make rules permitting 3 or more benchers to make an order requiring a lawyer or an articled student to

(a) submit to an examination by a medical practitioner specified by the benchers, and

(b) instruct the medical practitioner to report to the benchers on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete his or her articles.

(2) Before making an order under subsection (1), the benchers making the order must be of the opinion that the order is likely necessary to protect the public.

(3) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made, and

(b) provide for review of an order under subsection (1) and for confirmation, variation or rescission of the order.

[2012-16-16]

Written notification to chief judge

26.1 If an investigation is conducted in accordance with the rules established under section 26 (2) of this Act respecting a lawyer or former lawyer who is also a "part time judicial justice", as that term is defined in section 1 of the *Provincial Court Act*, the society must, as soon as practicable, provide a written notification to the chief judge designated under section 10 of the *Provincial Court Act* that includes the following information:

(a) the name of the lawyer or former lawyer;

(b) confirmation that an investigation is being conducted with respect to that lawyer or former lawyer.

[2008-42-34]

Practice standards

27 (1) The benchers may

(a) set standards of practice for lawyers,

(b) establish and maintain a program to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems, and

(c) establish and maintain a program to assist lawyers on issues arising from the practice of law.

(2) The benchers may make rules to do any of the following:

(a) establish a practice standards committee and delegate any or all authority and responsibility under this section, other than rule-making authority, to that committee;

(b) permit an investigation into a lawyer's competence to practise law if

(i) there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner, or

(ii) the lawyer consents;

(c) require a lawyer whose competence to practise law is under investigation to answer questions and provide access to information, files or records in the lawyer's possession or control;

(d) provide for a report to the benchers of the findings of an investigation into the competence of a lawyer to practise law;

(d.1) permit the practice standards committee established under paragraph (a) to make orders imposing conditions and limitations on lawyers' practices, and to require lawyers whose competence to practise law has been investigated to comply with those orders;

(e) permit the benchers to order that a lawyer, a former lawyer, an articled student or a law firm pay to the society the costs of an investigation or remedial program under this Part and set and extend the time for payment;

(f) permit the discipline committee established under section 36 (a) to consider

(i) the findings of an investigation into a lawyer's competence to practise law,

(ii) any remedial program undertaken or recommended,

(iii) any order that imposes conditions or limitations on the practice of a lawyer, and

(iv) any failure to comply with an order that imposes conditions or limitations on the practice of a lawyer.

(3) The amount of costs ordered to be paid by a person under the rules made under subsection (2) (e) may be recovered as a debt owing to the society and, when collected, the amount is the property of the society.

(3.1) For the purpose of recovering a debt under subsection (3), the executive director may

(a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(3.2) A certificate filed under subsection (3.1) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

(4) Rules made under subsection (2) (d.1)

(a) may include rules respecting

(i) the making of orders by the practice standards committee, and

(ii) the conditions and limitations that may be imposed on the practice of a lawyer, and

(b) must not permit the imposition of conditions or limitations on the practice of a lawyer before the lawyer has been notified of the reasons for the proposed order and given a reasonable opportunity to make representations respecting those reasons.

[2007-14-38; 2012-16-17]

Education

28 The benchers may take any steps they consider advisable to promote and improve the standard of practice by lawyers, including but not limited to the following:

(a) establishing and maintaining or otherwise supporting a system of legal education, including but not limited to the following programs:

(i) professional legal training;

(ii) continuing legal education;

(iii) remedial legal education;

(iv) loss prevention;

(b) granting scholarships, bursaries and loans to persons engaged in a program of legal education;

(c) providing funds of the society and other assistance to establish or maintain law libraries in British Columbia;

(d) providing for publication of court and other legal decisions and legal resource materials.

Specialization and restricted practice

29 The benchers may make rules to do any of the following:

(a) provide for the manner and extent to which lawyers or law firms may hold themselves out as engaging in restricted or preferred areas of practice;

(b) provide for the qualification and certification of lawyers as specialists in areas of practice designated under paragraph (c);

(c) designate specialized areas of practice and provide that lawyers must not hold themselves out as restricting their practices to, preferring or specializing in a designated area of practice unless the lawyer has met the qualifications required for certification under a rule made under paragraph (b);

(d) establish qualifications for and conditions under which practising lawyers may practise as mediators.

[2012-16-18]

Indemnification

30 (1) In this section, **"trust protection indemnification"** means indemnification for lawyers to compensate persons who suffer pecuniary loss as a result of dishonest appropriation of money or other property entrusted to and received by a lawyer in his or her capacity as a barrister and solicitor.

(1.1) The benchers must make rules requiring lawyers to maintain professional liability and trust protection indemnification.

(2) The benchers may establish, administer, maintain and operate a professional liability indemnification program and may use for that purpose fees set under this section.

(2.1) The benchers

(a) must establish, administer, maintain and operate a trust protection indemnification program and may use for that purpose fees set under this section,

(b) may establish conditions and qualifications for a claim against a lawyer under the trust protection indemnification program, including time limitations for making a claim, and

(c) may place limitations on the amounts that may be paid out of the indemnity fund established under subsection (6) in respect of a claim against a lawyer under the trust protection indemnification program.

(3) The benchers may, by resolution, set

(a) the indemnity fee, and

(b) the amount to be paid for each class of transaction under subsection (4) (c).

(4) The benchers may make rules to do any of the following:

(a) permit lawyers to pay the indemnity fee by instalments on or before the date by which each instalment of that fee is due;

(b) establish classes of membership for indemnification purposes and exempt a class of lawyers from the requirement to maintain professional liability or trust protection indemnification or from payment of all or part of the indemnity fee;

(c) designate classes of transactions for which the lawyer must pay a fee to fund the professional liability or trust protection indemnification program.

(5) The benchers may use fees set under this section to act as the agent for the members in obtaining professional liability or trust protection indemnification.

(6) The benchers must establish an indemnity fund, comprising fees set under this section and other income of the professional liability and trust protection indemnification programs, and the fund

(a) must be accounted for separately from other funds,

(b) is not subject to any process of seizure or attachment by a creditor of the society and

(c) is not subject to a trust in favour of a person who has sustained a loss.

(7) Subject to rules made under section 23 (7), a lawyer must not practise law unless the lawyer has paid the indemnity fee when it is due, or is exempted from payment of the fee.

(8) A lawyer must immediately surrender to the executive director his or her practising certificate and any proof of professional liability or trust protection indemnification issued by the society, if

(a) the society has, on behalf of the lawyer,

(i) paid a deductible amount under the professional liability indemnification program in respect of a claim or potential claim under that program, or

(ii) made an indemnity payment under the trust protection indemnification program in respect of a claim under that program, and

(b) the lawyer has not reimbursed the society, at the date that the indemnity fee or an instalment of that fee is due.

(9) The benchers may waive or extend the time

(a) to pay all or part of the indemnity fee, or

(b) to repay all or part of a deductible amount paid under the professional liability indemnification program or an indemnity payment made under the trust protection indemnification program on behalf of a lawyer.

(10) If the benchers extend the time for a payment under subsection (9), the later date for payment is the date when payment is due for the purposes of subsections (7) and (8).

(11) A payment made from the indemnity fund established under subsection (6) in respect of a claim against a lawyer under the trust protection indemnification program

(a) may be recovered from the lawyer or former lawyer on whose account it was paid, or from the estate of that person, as a debt owing to the society, and

(b) if collected, is the property of the society and must be accounted for as part of the fund.

[2012-16-19; 2016-5-44; 2018-49-45]

Application of other Acts to society indemnification program

30.1 (1) In this section:

"society indemnification program" means

(a) a professional liability indemnification program established, administered, maintained and operated by the benchers under section 30 (2), or

(b) a trust protection indemnification program established, administered, maintained and operated by the benchers under section 30 (2.1) (a);

"subsidiary" means

(a) a corporation that is a company, as defined in the *Business Corporations Act*, of which the society holds all of the issued shares, or

(b) a corporation that is a society, as defined in the *Societies Act*, of which the society is the only member, as defined in that Act.

(2) Despite the *Financial Institutions Act* and the *Insurance Act*, in relation to the establishment, administration, maintenance and operations of a society indemnification program,

(a) the society or a subsidiary is not an insurer as defined in the *Financial Institutions Act* and the *Insurance Act*,

(b) the society or a subsidiary is not carrying on insurance business in British Columbia,

(c) a contract entered into respecting an undertaking to indemnify given under a society indemnification program is not a contract as defined in the *Insurance Act*,

(d) the society or a subsidiary is not required to be licensed under Division 2 of Part 6 of the *Financial Institutions Act* as an insurance adjuster or insurance agent, and

(e) an employee of the society or a subsidiary is not required to be licensed under Division 2 of Part 6 of the *Financial Institutions Act* as an insurance adjuster, employed insurance adjuster, insurance agent or insurance salesperson.

(3) Subsection (2) does not apply in respect of a subsidiary that is a captive insurance company registered under the *Insurance (Captive Company) Act*.

(4) Divisions 4 and 8 of Part 9 of the *Business Corporations Act* do not apply to a subsidiary in respect of a society insurance program.

[2018-49-46]

Third person right of action against indemnitor

30.2 (1) If a judgment has been granted against a lawyer in respect of a liability against which the lawyer is indemnified under a society indemnification program, as defined in section 30.1, and the judgment has not been satisfied, the judgment creditor may recover by action against the indemnitor the lesser of

(a) the unpaid amount of the judgment, and

(b) the amount that the indemnitor would have been liable under the policy to pay to the lawyer had the lawyer satisfied the judgment.

(2) The claim of a judgment creditor against the indemnitor under subsection (1) is subject to the same equities as would apply in favour of the indemnitor had the judgment been satisfied by the lawyer.

[2018-49-46]

31 [repealed 2012-16-20]

Financial responsibility

32 (1) The benchers may establish standards of financial responsibility relating to the integrity and financial viability of the professional practice of a lawyer or law firm.

(2) The benchers may make rules to do any of the following:

(a) provide for the examination of the books, records and accounts of lawyers and law firms and the answering of questions by lawyers and representatives of law firms to determine whether standards established under this section are being met;

(b) permit the suspension of a lawyer who does not meet the standards established under subsection (1);

(c) permit the imposition of conditions and limitations on a law firm that, or the practice of a lawyer who, does not meet the standards established under subsection (1).

(3) Rules made under subsection (2) (b) and (c) must not permit the suspension of a lawyer or imposition of conditions and limitations on the practice of a lawyer or the imposition of conditions and limitations on a law firm before the lawyer or law firm, as the case may be, has been notified of the reasons for the proposed action and given a reasonable opportunity to make representations respecting those reasons.

[2012-16-21]

Trust accounts

33 (1) The benchers may require a lawyer or law firm to do any of the following:

(a) provide information or an annual report concerning the lawyer's or law firm's books and accounts;

(b) have all or part of the lawyer's or law firm's books and accounts audited or reviewed annually;

(c) provide the executive director with an accountant's report on the lawyer's or law firm's books and accounts.

(2) The benchers may

(a) exempt classes of lawyers or law firms from some or all of the requirements of subsection (1), and

(b) determine the qualifications required of a person performing an audit or review referred to in subsection (1).

(3) The benchers may make rules to do any of the following:

(a) establish standards of accounting for and management of funds held in trust by lawyers or law firms;

(b) designate savings institutions and classes of savings institutions in which lawyers or law firms may deposit money that they hold in trust;

(c) provide for precautions to be taken by lawyers and law firms for the care of funds or property held in trust by them.

(4) The rules referred to in subsection (3) apply despite section 19 of the *Trustee Act*.

(5) The rules made under subsection (3) may be different for

(a) lawyers and law firms, or

(b) different classes of lawyers and law firms.

[2012-16-22]

Unclaimed trust money

34 (1) A lawyer who or a law firm that has held money in trust on behalf of a person whom the lawyer or law firm has been unable to locate for 2 years may pay the money to the society.

(2) On paying money to the society under subsection (1), the liability of the lawyer or law firm to pay that money to the person on whose behalf it was held or to that person's legal representative is extinguished.

(3) The society must hold in trust any money paid to it under subsection (1).

(4) The society is entitled to retain, for its purposes, interest on any money held by it under subsection (3).

(5) A person or the person's legal representative who, but for subsections (1) and (2), could have claimed money held by a lawyer or law firm may claim the money from the society.

(6) On being satisfied that the person claiming money under subsection (5) is entitled to it, the society must pay the money to that person together with interest on it at a rate that the benchers consider reflects market rates during the time the society held the money.

(7) If the money is not paid out under subsection (6) within 5 years after its receipt by the society under subsection (1), the society must pay the money, excluding any interest retained under subsection (4), to the foundation for its purposes, but subsections (5) and (6) continue to apply as though the money had not been paid to the foundation.

(8) The foundation must indemnify the society for any claims paid under subsection (6) in respect of money received from the society under subsection (7), including interest paid by the society under subsection (6) for the period when the money was held by the foundation.

(9) A person whose claim against the society under subsection (5) has been refused may apply to the Supreme Court for a review of the decision of the society.

(10) On a claim under subsection (9), the court may allow the claim plus interest in an amount determined by it.

(11) The benchers may make rules to do any of the following:

(a) create and maintain a fund consisting of money paid to the society under subsection (1);

(b) establish procedures for investigating and adjudicating claims made under subsection (5).

(12) [repealed]

[1999-48-28; 2012-16-23]

Restriction on suspended and disbarred lawyers

35 On application of the society, the Supreme Court may order that a person referred to in section 15 (3) (a) or (b) be prohibited from acting as any or all of the following until the person is a member in good standing of the society or until the court orders otherwise:

(a) a personal representative of a deceased person;

(b) a trustee of the estate of a deceased person;

(c) a committee under the *Patients Property Act*;

(c.1) an attorney under Part 2 of the *Power of Attorney Act*;

(d) a representative under the *Representation Agreement Act*.

[1998-9-107; 2007-34-92]

PART 4 – DISCIPLINE

Discipline rules

36 The benchers may make rules to do any of the following:

(a) establish a discipline committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;

(b) authorize an investigation of the books, records and accounts of a lawyer or law firm if there is reason to believe that the lawyer or law firm may have committed any misconduct, conduct unbecoming the profession, or a breach of this Act or the rules;

(c) authorize an examination of the books, records and accounts of a lawyer or law firm;

(d) require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request;

(e) require a lawyer or articled student to appear before the benchers, a committee or other body to discuss the conduct or competence of the lawyer or articled student;

(e.1) require a representative of a law firm to appear before the benchers, a committee or other body to discuss the conduct of the firm;

(f) authorize the ordering of a hearing into the conduct or competence of a lawyer or an articled student, or the conduct of a law firm, by issuing a citation;

(g) authorize the rescission of a citation;

(h) permit the benchers to summarily suspend or disbar a lawyer convicted of an offence that was proceeded with by way of indictment or convicted in another jurisdiction of an offence that, in the opinion of the benchers, is equivalent to an offence that may be proceeded with by way of indictment.

(i) establish a process for the protection of the privacy and the severing, destruction or return of personal, business or other records that are unrelated to an investigation or examination and that, in error or incidentally, form part of

(i) the books, records or accounts of a lawyer, an articled student or a law firm authorized to be investigated or examined under a rule made under paragraph (b) or section 26, or

(ii) files or other records that are seized in accordance with an order of the Supreme Court under section 37.

[2012-16-24]

Search and seizure

37 (1) The society may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer, an articled student or a law firm be seized from the person named in the order, if there are reasonable grounds to believe that a lawyer, articled student or law firm may have committed or will commit

(a) any misconduct,

(b) conduct unbecoming the profession, or

(c) a breach of this Act or the rules.

(2) An application under subsection (1) may be made without notice to anyone or on such notice as the judge requires.

(3) If the application under subsection (1) is in relation to the conduct of an articled student, the order may be made in respect of the books, accounts, files or other records of the student's principal or the principal's firm.

(4) In an application under subsection (1), the person making the application must state on oath or affirmation the grounds for believing the matter referred to in subsection (1) and the grounds for believing that the seizure will produce evidence relevant to that matter.

(5) In an order under subsection (1), the court may

(a) designate the person who will conduct the seizure and authorize that person to conduct it,

(b) state the time and place where the seizure will take place, and

(c) give any other directions that are necessary to carry out the seizure.

[2012-16-25]

Personal records in investigation or seizure

37.1 In conducting an investigation or examination of books, records or accounts under section 26 or rules made under section 36 (b) or in the seizure of files or other records in accordance with an order of the Supreme Court under section 37, the society may collect personal information unrelated to the investigation or examination that, in error or incidentally, is contained in those books, accounts, files or records, but the society must, subject to rules made under section 36 (i),

(a) return that personal information if and as soon as practicable, or

(b) destroy the personal information.

[2012-16-26]

Discipline hearings

38 (1) This section applies to the hearing of a citation.

(2) A hearing must be conducted before a panel.

(3) A panel must

(a) make a determination and take action according to this section,

(b) give written reasons for its determination about the conduct or competence of the respondent and any action taken against the respondent, and

(c) record in writing any order for costs.

(4) After a hearing, a panel must do one of the following:

(a) dismiss the citation;

(b) determine that the respondent has committed one or more of the following:

(i) professional misconduct;

(ii) conduct unbecoming the profession;

(iii) a breach of this Act or the rules;

(iv) incompetent performance of duties undertaken in the capacity of a lawyer;

(v) if the respondent is an individual who is not a member of the society, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming the profession, or a breach of this Act or the rules.

(c) [repealed]

(5) If an adverse determination is made under subsection (4) against a respondent other than an articled student or a law firm, the panel must do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent an amount not exceeding $50 000;

(c) impose conditions or limitations on the respondent's practice;

(d) suspend the respondent from the practice of law or from practice in one or more fields of law

(i) for a specified period of time,

(ii) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,

(iii) from a specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or

(iv) for a specific minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection;

(e) disbar the respondent;

(f) require the respondent to do one or more of the following:

(i) complete a remedial program to the satisfaction of the practice standards committee;

(ii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent is competent to practise law or to practise in one or more fields of law;

(iii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;

(iv) practise law only as a partner, employee or associate of one or more other lawyers;

(g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under section 16 (2) (a) or 17 (1) (a) from practising law in British Columbia indefinitely or for a specified period of time.

(6) If an adverse determination is made under subsection (4) against an articled student, the panel may do one or more of the following:

(a) reprimand the articled student;

(b) fine the articled student an amount not exceeding $5 000;

(c) extend the period that the articled student is required to serve under articles;

(d) set aside the enrolment of the articled student.

(6.1) If an adverse determination is made under subsection (4) against a law firm, the panel may do one or both of the following:

(a) reprimand the law firm;

(b) fine the law firm an amount not exceeding $50 000.

(7) In addition to its powers under subsections (5), (6) and (6.1), a panel may make any other orders and declarations and impose any conditions or limitations it considers appropriate.

(8) A fine imposed under this Act may be recovered as a debt owing to the society and, when collected, it is the property of the society.

(9) For the purpose of recovering a debt under subsection (8), the executive director may

(a) issue a certificate stating that the fine is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(10) A certificate filed under subsection (9) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

[2012-16-27; 2016-5-41]

Suspension

39 (1) The benchers may make rules permitting 3 or more benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing:

(a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients;

(b) impose conditions or limitations on the practice of a respondent who is an individual;

(c) suspend the enrolment of a respondent who is an articled student;

(d) impose conditions or limitations on the enrolment of a respondent who is an articled student.

(2) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made,

(b) set out the term of a suspension, condition or limitation, and

(c) provide for review of an order made under subsection (1) and for confirmation, variation or rescission of the order.

(3) Rules made under this section may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

[2012-16-28; 2016-5-41]

40 [repealed 2012-16-29]

PART 5 – HEARINGS AND APPEALS

Panels

41 (1) The benchers may make rules providing for any of the following:

(a) the appointment and composition of panels;

(b) the practice and procedure for proceedings before panels.

(2) A panel may order an applicant or respondent, or a representative of a respondent law firm, to do either or both of the following:

(a) give evidence under oath or by affirmation;

(b) at any time before or during a hearing, produce all files and records that are in the possession of that person and that may be relevant to a matter under consideration.

[2012-16-30]

Failure to attend

42 (1) This section applies if an applicant, a respondent or the representative of a respondent law firm fails to attend or remain in attendance at

(a) a hearing on an application for enrolment as an articled student, call and admission, or reinstatement,

(b) a hearing on a citation, or

(c) a review by a review board under section 47.

(2) If satisfied that the applicant, respondent or representative of the respondent law firm has been served with notice of the hearing or review, the panel or the review board may proceed with the hearing or review in the absence of the applicant or respondent and make any order that the panel or the review board could have made in the presence of the applicant or respondent.

[2012-16-31; 2016-5-41]

Right to counsel

43 (1) An applicant, a respondent or a person who is the subject of a proceeding may appear at any hearing with counsel.

(2) The society may employ or retain legal or other assistance in conducting an investigation under Part 2, 3 or 4 or on the issue of a citation and may be represented by counsel at any hearing.

[2012-16-32]

Witnesses

44 (1) In this section

"party" means an applicant, a respondent or the society;

"tribunal" means the benchers, a review board or a panel, or a member of the benchers, a review board or a panel, as the context requires.

(2) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, a party may prepare and serve a summons, in a form established in the rules, requiring a person to attend an oral or electronic hearing to give evidence, on oath or affirmation or in any other manner, that is admissible and relevant to an issue in the proceeding.

(3) A party may apply to the Supreme Court for an order directing

(a) a person to comply with a summons served by a party under subsection (2),

(b) any directors and officers of a person to cause the person to comply with a summons served by a party under subsection (2), or

(c) the custodian of a penal institution or another person who has custody of a person who is the subject of the summons to ensure the person in custody attends the hearing.

(4) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, a tribunal may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence, on oath or affirmation or in any other manner, that is admissible and relevant to an issue in the proceeding, or

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in the proceeding.

(5) A tribunal may apply to the Supreme Court for an order directing

(a) a person to comply with an order made by the tribunal under subsection (4),

(b) any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (4), or

(c) the custodian of a penal institution or another person who has custody of a person who is the subject of an order made by the tribunal under subsection (4) to ensure the person in custody attends the hearing.

(6) On an application under subsection (3) or (5), the Supreme Court may make the order requested or another order it considers appropriate.

[2007-9-54; 2010-6-97; 2012-16-33]

Application of *Administrative Tribunals Act*

44.1 (1) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, sections 48, 49 and 56 of the *Administrative Tribunals Act* apply, subject to the following:

(a) **"decision maker"** in section 56 means a member of the benchers, of a review board or of a panel;

(b) **"tribunal"** in those sections has the same meaning as in section 44(1).

(2) A tribunal may apply to the Supreme Court for an order directing a person to comply with an order referred to in section 48 of the *Administrative Tribunals Act*, and the court may make the order requested or another order it considers appropriate.

[2012-16-33]

45 [repealed 2012-16-34]

Society request for evidence

45.1 (1) On application by the society, if it appears to the Supreme Court that a person outside British Columbia may have evidence that may be relevant to an investigation or a hearing under this Act, the Supreme Court may issue a letter of request directed to the judicial authority of the jurisdiction in which the person who may have evidence is believed to be located.

(2) A letter of request issued under subsection (1) must be

(a) signed by a judge of the Supreme Court, and

(b) provided to the society for use under subsection (5).

(3) A letter of request issued under subsection (1) may request the judicial authority to which it is directed to do one or more of the following:

(a) order the person referred to in the letter of request to be examined under oath in the manner, at the place and by the date referred to in the letter of request;

(b) in the case of an examination for the purposes of a hearing, order that a person who is a party to the hearing is entitled to

(i) be present or represented by counsel during the examination, and

(ii) examine the person referred to in paragraph (a);

(c) appoint a person as the examiner to conduct the examination;

(d) order the person to be examined to produce at the examination a record or thing specified in the letter of request;

(e) direct that the evidence obtained by the examination be recorded and certified in the manner specified in the letter of request;

(f) take any other action that the Supreme Court considers appropriate.

(4) The failure of a person entitled under subsection (3) (b) to be present or represented by counsel during an examination or to examine the person referred to in subsection (3) (a) does not prevent the society from reading in the evidence from the examination at a hearing, if the examination has otherwise been conducted in accordance with the letter of request.

(5) The society must send a letter of request issued under subsection (1),

(a) if an examination is to be held in Canada, to the Deputy Attorney General for the Province of British Columbia, or

(b) if an examination is to be held outside Canada, to the Under Secretary of State for Foreign Affairs of Canada.

(6) A letter of request must have attached to it all of the following:

(a) any questions to be put to the person to be examined;

(b) if known, the name, address and telephone number of

(i) the solicitor or agent of the society,

(ii) the person to be examined, and

(iii) if applicable, the person entitled under subsection (3) (b) to be present or represented by counsel during the examination and to examine the person referred to in subsection (3) (a);

(c) a translation of the letter of request and any questions into the official language of the jurisdiction where the examination is to take place, if necessary, along with a certificate of the translator, bearing the full name and address of the translator, and certifying that the translation is a true and complete translation.

(7) The society must file with the Deputy Attorney General for the Province of British Columbia or with the Under Secretary of State for Foreign Affairs of Canada, as the case may be, an undertaking to be responsible for any charge and expense incurred by either of them in relation to the letter of request and to pay them on receiving notification from them of the amount.

(8) This section does not limit any power the society may have to obtain evidence outside British Columbia by any other means.

(9) The making of an order by a judicial authority in accordance with a letter of request issued under subsection (1) does not determine whether evidence obtained under the order is admissible in evidence in a hearing.

(10) Unless otherwise provided by this section, the practice and procedure for appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, is the same as the practice and procedure that govern similar matters in civil proceedings in the Supreme Court.

[2007-14-39]

Costs

46 (1) The benchers may make rules governing the assessment of costs by a panel, a review board or a committee under this Act including

(a) the time allowed for payment of costs, and

(b) the extension of time for payment of costs.

(2) If legal assistance employed by the benchers is provided by an employee of the society, the amount of costs that may be awarded under the rules in respect of that legal assistance may be the same as though the society had retained outside counsel.

(3) The amount of costs ordered to be paid by a respondent or applicant under the rules may be recovered as a debt owing to the society and, when collected, the amount is the property of the society.

(4) For the purpose of recovering a debt under subsection (3), the executive director may

(a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(5) A certificate filed under subsection (4) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

[2012-16-35]

Review on the record

47 (1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6), (6.1) or (7), the applicant or respondent may apply in writing for a review on the record by a review board.

(2) Within 30 days after the decision of a panel under section 22 (3), the credentials committee may refer the matter for a review on the record by a review board.

(3) Within 30 days after the decision of a panel under section 38 (4), (5), (6), (6.1) or (7), the discipline committee may refer the matter for a review on the record by a review board.

(3.1) Within 30 days after an order for costs assessed under a rule made under section 27 (2) (e) or 46, an applicant, a respondent or a lawyer who is the subject of the order may apply in writing for a review on the record by a review board.

(3.2) Within 30 days after an order for costs assessed by a panel under a rule made under section 46, the credentials or discipline committee may refer the matter for a review on the record by a review board.

(4) If, in the opinion of a review board, there are special circumstances, the review board may hear evidence that is not part of the record.

(4.1) [repealed]

(5) After a hearing under this section, the review board may

(a) confirm the decision of the panel, or

(b) substitute a decision the panel could have made under this Act.

(6) The benchers may make rules providing for one or more of the following:

(a) the appointment and composition of review boards;

(b) establishing procedures for an application for a review under this section;

(c) the practice and procedure for proceedings before review boards.

[2007-14-40, 216; 2012-16-36]

Appeal

48 (1) Subject to subsection (2), any of the following persons who are affected by a decision, determination or order of a panel or of a review board may appeal the decision, determination or order to the Court of Appeal:

(a) an applicant;

(b) a respondent;

(c) a lawyer who is suspended or disbarred under this Act;

(d) the society.

(2) An appeal by the society under subsection (1) is limited to an appeal on a question of law.

[2007-14-216; 2012-16-37]

PART 6 – CUSTODIANSHIPS

Definitions

49 In this Part:

"court" means the Supreme Court;

"custodian" means a person appointed by an order under section 50 (2) or 54 (2) (b);

"practice" includes a law practice carried on by a lawyer on behalf of a law corporation whether as an employee of the law corporation or otherwise;

"property" includes books, records, accounts, funds, securities and any other real or personal property, wherever located,

(a) within a lawyer's possession or control, if held or used by the lawyer for the benefit of a client or other person, or otherwise held or used in the lawyer's capacity as a barrister and solicitor,

(b) in the possession or control of a person other than a lawyer if the lawyer has a duty to account to a client or other person for the property, or

(c) referred to in paragraph (a) or (b), if held or used by a corporation, including a law co*rporation.

Appointment of custodian

50 (1) The society may apply to the court, with or without notice to anyone, for an order appointing a practising lawyer or the society as a custodian of the practice of another lawyer to

(a) take possession of or control over all or part of the property of the lawyer, and

(b) determine the status of, manage, arrange for the conduct of and, if appropriate, terminate the practice of the lawyer.

(2) The court may grant a custodianship order applied for under subsection (1) if, in the opinion of the court, sufficient grounds exist.

(3) Without limiting the discretion of the court to grant an order under subsection (2), sufficient grounds for the appointment of a custodian of a lawyer's practice exist if the lawyer

(a) consents to the appointment of a custodian,

(b) dies, resigns or otherwise terminates membership in the society,

(c) is unable to practise as a lawyer because of physical or mental illness or for any other reason,

(d) disappears or neglects or abandons the practice of law, or

(e) is disbarred or suspended from the practice of law in British Columbia or any other jurisdiction.

(4) When a law corporation carries on the business of providing legal services to the public through a lawyer who is the subject of an application under this section, the court may order the custodian appointed under subsection (2) to

(a) take possession of or control over all or part of the law corporation's property, and

(b) determine the status of, manage, arrange for the conduct of and, if appropriate, terminate the practice of the law corporation.

(5) An order under this section must direct that any person receiving notice of the order must retain all the lawyer's property that is within or comes into that person's possession or control, until directed otherwise by the custodian or by an order of the court.

(6) An order under this section may

(a) direct the sheriff to search for, seize, remove and place into the possession or control of the custodian all or part of the lawyer's property,

(b) authorize the sheriff, for the purpose of paragraph (a), to enter

(i) any building or place other than the lawyer's dwelling house and open any safety deposit box or other receptacle, and

(ii) the lawyer's dwelling house and open any safe or other receptacle, if there are grounds to believe that the lawyer's property may be found there,

(c) direct any savings institution or other person to deal with, hold or dispose of the lawyer's property as the court directs, and to deliver to the custodian or otherwise, as the court directs, one or more of the following:

(i) the lawyer's property;

(ii) a copy of records relating to the lawyer's practice;

(iii) a copy of other records, when it is necessary for the effective conduct of the custodianship to do so,

(d) give directions to the custodian respecting the disposition of the lawyer's property and the manner in which the custodianship should be conducted,

(e) give directions as to the service of an order made or notice required under this Part,

(f) include other orders or give other directions to facilitate the conduct of the custodianship, and

(g) if the lawyer is a person referred to in section 15 (3) (a) or (b), prohibit the lawyer from acting as any or all of the following until the lawyer is a member in good standing of the society or until the court orders otherwise:

(i) a personal representative of a deceased person;

(ii) a trustee of the estate of a deceased person;

(iii) a committee under the *Patients Property Act*;

(iii.1) an attorney under Part 2 of the *Power of Attorney Act*;

(iv) a representative under the *Representation Agreement Act*.

(7) Unless otherwise directed by the court, the custodian must cause an order made under this Part to be served promptly on the lawyer.

(8) A sheriff, deputy sheriff or court bailiff executing an order under this Part has the same powers as that person has in the execution of a writ of seizure and sale.

[1998-9-108; 2007-14-41; 2007-34-93]

If society appointed as custodian

50.1 If the society is appointed as a custodian, the executive director must

(a) designate a person who is

(i) an employee of the society, and

(ii) a practising lawyer, or

(b) retain the services of a practising lawyer

to perform the duties and functions and exercise the powers of a custodian on behalf of the society.

[2007-14-42]

Powers of custodian

51 A custodian may do any or all of the following:

(a) notify a client of the lawyer, or any other person, of the custodian's appointment, and may communicate with that client or person respecting the conduct of the custodianship;

(b) represent a client of the lawyer, in place of that lawyer, in any cause or matter in respect of which that lawyer was acting at the time a custodian was appointed, to the extent necessary to preserve the interests of the client;

(c) conduct or authorize an investigation of the property of the lawyer;

(d) require from the lawyer or any other person records and information that may be reasonably necessary to facilitate the conduct of the custodianship and, if necessary, apply to the court for an order to enforce the requirement;

(e) report to an insurer any facts of which the custodian becomes aware that indicate that the lawyer in that lawyer's professional capacity may be liable to a client or other person;

(f) cooperate with an insurer respecting any claim arising out of the lawyer's practice, to the extent required by the policy;

(g) advise a client or other person of any facts of which the custodian becomes aware that may give rise to a claim for payment under section 31;

(h) deal with the assets and liabilities of the lawyer's practice to the extent necessary to protect the interests of clients and, subject to the interests of clients,

(i) pay all or part of the expenses and disbursements of and incidental to any acts done or proceedings taken under this Part, and

(ii) preserve the value of the practice;

(i) employ or retain assistance in the conduct of the custodianship.

Society access to property

52 (1) The executive director may at any time examine and make copies of any of the lawyer's property in the possession or control of the custodian.

(2) Copies made under subsection (1) must be made at the society's expense and only for its own use.

Property in the custody of a custodian

53 (1) A custodian may deliver property in the custodian's possession or control to a person claiming it if the custodian is satisfied that

(a) the person is entitled to the property,

(b) no solicitor's lien exists or appears to exist in relation to it, and

(c) the executive director has been given a reasonable opportunity to examine the property under section 52.

(2) A lawyer whose property is in the custody of a custodian under this Part may make a claim for a solicitor's lien in relation to any part of the property by filing notice of a claim for lien with the custodian.

(3) A notice under subsection (2) must

(a) be in writing,

(b) be filed within 30 days after service on the lawyer of the order under section 50 (2), and

(c) give full particulars of the claim.

(4) On receiving a notice under subsection (2), the custodian must promptly give written notice of the claim for lien to the apparent owner of the property on which the lien is claimed, and the rights of the parties must then be determined according to law.

(5) If a lawyer fails to file a claim of lien under this section within the period referred to in subsection (3), the custodian may deliver the property to the person entitled to it if the custodian is otherwise satisfied that it is proper to do so.

Applications to the court

54 (1) A custodian, the society, the lawyer concerned or any other interested person may apply to the court for an order under this section, with or without notice to anyone.

(2) On an application under subsection (1), the court may do one or more of the following:

(a) discharge the custodian, unless the society shows cause why the custodianship should be continued;

(b) appoint another practising lawyer or the society as a custodian;

(c) make any other order provided for in section 50 (4), in which case section 50 (5) and (6) applies;

(d) summarily determine the validity of a claim to a solicitor's lien;

(e) make no order.

(3) Despite anything in this Part, the court may at any time extend or shorten the time within which anything is required to be done or dispense with any of the requirements of this Part.

[2007-14-43]

Custodianship rules

55 The benchers may make rules regarding custodianships, including rules imposing duties on a lawyer whose practice is the subject of a custodianship authorized under this Part.

Liability and costs

56 (1) Section 86 applies to protect a custodian, the society and a person acting for either of them, for anything done or not done by one of them in good faith while acting or purporting to act under this Part.

(2) No costs may be awarded against a custodian, the society or a person acting for either of them, for anything done or not done by any of them in good faith while acting or purporting to act under this Part.

(3) Unless the court otherwise orders, the lawyer or the estate of a deceased lawyer must pay to the society the fees, expenses and disbursements of and incidental to any acts done or proceedings taken under this Part, including the fees, expenses and disbursements of a custodian.

(4) Part 8 applies to payment for fees, expenses and disbursements under subsection (3) of this section.

PART 7 – LAW FOUNDATION

Definitions

57 In this Part:

"board" means the board of governors of the foundation;

"governor" means a member of the board.

Law Foundation of British Columbia

58 (1) The Law Foundation is continued as a corporation with the name "Law Foundation of British Columbia" consisting of the members of the board appointed under section 59 (1).

(2) The foundation may acquire, dispose of and otherwise deal with its property for the purposes of the foundation.

Board of governors

59 (1) The foundation is administered by a board of governors consisting of 18 governors as follows:

(a) the Attorney General or his or her appointee;

(b) 3 persons, not lawyers, appointed to the board by the Attorney General;

(c) 12 lawyers or judges appointed by the executive committee, of whom at least one must be from each county referred to in the *County Boundary Act;*

(d) 2 lawyers appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association.

(2) Governors, other than the Attorney General, hold office for a term of 3 years or until their successors are appointed, and they may be re-appointed.

(3) The Attorney General may revoke the appointment of a governor appointed by the Attorney General, during that governor's term of office.

(4) The benchers may revoke the appointment of a governor appointed by the executive committee, during that governor's term of office.

(5) The Provincial Council of the British Columbia Branch of the Canadian Bar Association may revoke the appointment of a governor appointed by the executive committee of the branch, during that governor's term of office.

(6) The board must elect one governor to be chair of the board.

(7) If a vacancy occurs in the office of a governor, the person or body by whom the governor was appointed may appoint to the vacant office a person eligible to be appointed to that office by that person or body under subsection (1), and the person so appointed holds office for the balance of the term for which the governor was appointed, or until a successor is appointed.

(8) The continuing governors may act despite a vacancy in the board.

(9) An act of the board is not invalid because of a defect that is afterwards discovered in the appointment of one or more governors.

(10) An appointed governor may resign from office on giving one month's notice in writing to the board of an intention to do so, and the resignation takes effect on the expiration of the notice or on its earlier acceptance by the board.

(11) A governor ceases to hold office if the governor

(a) ceases to hold the qualifications necessary for appointment,

(b) becomes a mentally disordered person,

(c) becomes bankrupt, or

(d) contravenes a provision of this Act or the rules, and a majority of the other governors considers that the contravention is sufficiently serious to justify the governor's removal from the board.

(12) A quorum of the board is 8 governors.

Bylaws

60 The board may make bylaws for purposes relating to the affairs, business, property and objects of the foundation including bylaws respecting the

(a) number and designation of officers of the foundation,

(b) appointment and terms of office of officers of the foundation and all matters relating to their offices,

(c) establishment of an executive committee and the delegation of powers to it,

(d) resignation or removal from office of officers of the foundation,

(e) number, designations and conditions of employment of employees of the foundation, other than officers,

(f) remuneration, if any, of officers of the foundation, and

(g) operation of the foundation's account.

Application of fund

61 (1) The purpose of the foundation is to establish and maintain a fund to be used for the following purposes:

(a) legal education;

(b) legal research;

(c) legal aid;

(d) law reform;

(e) establishing, operating and maintaining law libraries in British Columbia.

(2) The board may apply the funds of the foundation for the purposes of the foundation in the manner that the board may decide and may grant loans of the funds on terms and conditions the board determines.

(3) The foundation may employ or retain lawyers to advance the purposes of the foundation.

(4) The funds of the foundation consist of the following:

(a) all money remitted to the foundation by or on behalf of lawyers and law firms under section 62 (2) or held in trust under section 63 (12);

(b) interest accruing from investment of the funds of the foundation;

(c) other money received by the foundation.

(5) The board may pay out of the funds of the foundation the costs, charges and expenses

(a) involved in the administration of the foundation, and

(b) incurred by the board in carrying out the purposes of the foundation.

(6) All money of the foundation must be paid into a savings institution designated under section 33 (3) (b) until invested or applied in accordance with this section, and that money must be used for the purposes of the foundation.

(7) Money that is not immediately required for the purposes of the foundation may be invested in the name of the foundation by the board in any manner in which trustees are authorized to invest trust funds.

(8) The accounts of the foundation must be audited annually by a person appointed for that purpose by the board who is

(a) a member of a provincial organization of chartered professional accountants within Canada, authorized by that organization to perform an audit,

(b) a professional accounting corporation as defined in the *Chartered Professional Accountants Act*, authorized by the CPABC as defined in that Act to perform an audit, or

(c) a registered firm as defined in the *Chartered Professional Accountants Act*, authorized by the CPABC as defined in that Act to perform an audit.

[2012-16-38; 2018-36-27]

Interest on trust accounts

62 (1) A lawyer or law firm must deposit money received or held in trust in an interest bearing trust account at a savings institution designated under section 33 (3) (b).

(2) Subject to subsection (5), a lawyer or law firm who is credited by a savings institution with interest on money received or held in trust,

(a) holds the interest in trust for the foundation, and

(b) must remit the interest to the foundation in accordance with the rules.

(3) The benchers may make rules

(a) permitting a lawyer or law firm to hold money in trust for more than one beneficiary in the same trust account, and

(b) respecting payment to the foundation of interest on trust accounts.

(4) A relationship between a lawyer or law firm and client or a trust relationship between a lawyer or law firm, as trustee, and the beneficiary of the trust does not

make the lawyer or law firm liable to account to the client or beneficiary for interest received by the lawyer or law firm on money received or held in an account established under subsection (1).

(5) On instruction from a client, a lawyer or law firm may place money held on behalf of the client in a separate trust account, in which case

(a) this section and the rules made under it do not apply, and

(b) interest paid on money in the account is the property of the client.

[2012-16-39]

Security and investment of trust funds

63 (1) In this section:

"pooled trust funds" means money that has been received by a lawyer or law firm in trust and that is not the subject of instructions under section 62 (5);

"society trust account" means a Law Society Pooled Trust Account established under subsection (5).

(2) The benchers may make rules requiring that a lawyer or law firm do any or all of the following:

(a) use an approved form of agreement respecting the terms and conditions under which pooled trust funds will be held at designated savings institutions;

(b) tender the agreement, prepared and approved under paragraph (a), at a designated savings institution before the lawyer or law firm deposits pooled trust funds at that savings institution;

(c) report annually to any savings institution into which the lawyer or law firm has deposited pooled trust funds the information required under the *Canada Deposit Insurance Corporation Act*.

(3) The society may enter into an agreement with a savings institution with whom lawyers or law firms have deposited pooled trust funds, respecting the investment and security of pooled trust funds on deposit at all branches of that savings institution.

(4) Without limiting subsection (3), an agreement under that subsection may provide that

(a) pooled trust funds be transferred to the society, in trust, to be held in the account referred to in subsection (5) and to be invested in the manner permitted by subsection (6), and

(b) the society obtain a line of credit, either secured or unsecured, from the savings institution for the purpose of ensuring that there is always sufficient money on deposit to guarantee that lawyers' and law firms' trust cheques on their pooled trust fund accounts will be honoured.

(5) The society may establish and operate an account, to be known as a Law Society Pooled Trust Account, at any branch of the savings institution into which pooled trust funds may be deposited in accordance with an agreement under subsection (3).

(6) Money in a society trust account may be invested in

(a) securities of Canada or a province,

(b) securities, the payment of the principal and interest of which is guaranteed by Canada or a province, or

(c) guaranteed trust or investment certificates of the savings institution that has the pooled trust account.

(7) Money earned on investments under subsection (6) may be used to

(a) purchase insurance in an amount that the society considers necessary to ensure that all lawyers' and law firms' trust cheques drawn on their pooled trust fund accounts will be honoured, and

(b) pay service and other similar charges in respect of services provided by the savings institution at which the society operates an account under subsection (5).

(8) The society may pay money out of a society trust account to a person who has suffered a loss directly resulting from the inability or refusal of the savings institution to honour a lawyer's or law firm's trust cheque drawn on a pooled trust fund account, up to a maximum, in any year, set by the benchers.

(9) The benchers must not pay out any money under subsection (8) unless they are satisfied that they will be reimbursed or indemnified, through agreements referred to in subsection (10) or the insurance purchased under subsection (7), for any money that has been paid out.

(10) The society may enter into agreements with the Canada Deposit Insurance Corporation and the Credit Union Deposit Insurance Corporation of British Columbia respecting reimbursement or indemnity by those corporations of money that has been paid out under subsection (8).

(11) The society may retain or employ a person to manage society trust accounts and may pay that person fees or remuneration out of interest earned on money in society trust accounts.

(12) Subject to subsections (7), (8) and (11), all interest earned on money deposited into a society trust account is held in trust by the society for the benefit of the foundation, and the society is not liable to account to any client of any lawyer or law firm in respect of that interest.

(13) Despite any agreement between a lawyer or law firm and a savings institution, if the pooled trust fund account of the lawyer or law firm is overdrawn by an amount exceeding $1 000, the savings institution must, as soon as practicable, inform the society of the particulars.

(14) Subsection (13) and the failure of a savings institution to comply with it has no effect on the civil liability of that savings institution to any person, and that liability, if any, must be determined as though that subsection were not in force.

[2012-16-40]

PART 8 – LAWYERS' FEES

Definitions and interpretation

64 (1) In this Part:

"agreement" means a written contract respecting the fees, charges and disbursements to be paid to a lawyer or law firm for services provided or to be provided and includes a contingent fee agreement;

"bill" means a lawyer's written statement of fees, charges and disbursements;

"charges" includes taxes on fees and disbursements and interest on fees and disbursements;

"contingent fee agreement" means an agreement that provides that payment to the lawyer for services provided depends, at least in part, on the happening of an event;

"court" means the Supreme Court;

"person charged" includes a person who has agreed to pay for legal services, whether or not the services were provided on the person's behalf;

"registrar" means the registrar of the court.

(2) Unless otherwise ordered by the court, this Part, except sections 65, 66 (1), 68, 77, 78 and 79 (1), (2), (3), (6) and (7), does not apply to a class proceeding within the meaning of the *Class Proceedings Act.*

(3) This Part applies to a lawyer's bill or agreement even though the lawyer has ceased to be a member of the society, if the lawyer was a member when the legal services were provided.

[2012-16-41]

Agreement for legal services

65 (1) A lawyer or law firm may enter into an agreement with any other person, requiring payment for services provided or to be provided by the lawyer or law firm.

(2) Subsection (1) applies despite any law or usage to the contrary.

(3) A provision in an agreement that the lawyer is not liable for negligence, or that the lawyer is relieved from responsibility to which the lawyer would otherwise be subject as a lawyer, is void.

(4) An agreement under this section may be signed on behalf of a lawyer or law firm by an authorized agent who is a practising lawyer.

Contingent fee agreement

66 (1) Section 65 applies to contingent fee agreements.

(2) The benchers may make rules respecting contingent fee agreements, including, but not limited to, rules that do any of the following:

(a) limit the amount that lawyers or law firms may charge for services provided under contingent fee agreements;

(b) regulate the form and content of contingent fee agreements;

(c) set conditions to be met by lawyers and law firms making contingent fee agreements.

(3) Rules under subsection (2) apply only to contingent fee agreements made after the rules come into force and, if those rules are amended, the amendments apply only to contingent fee agreements made after the amendments come into force.

(4) A contingent fee agreement that exceeds the limits established by the rules is void unless approved by the court under subsection (6).

(5) If a contingent fee agreement is void under subsection (4), the lawyer may charge the fees that could have been charged had there been no contingent fee agreement, but only if the event that would have allowed payment under the void agreement occurs.

(6) A lawyer may apply to the court for approval of a fee higher than the rule permits, only

(a) before entering into a contingent fee agreement, and

(b) after serving the client with at least 5 days' written notice.

(7) The court may approve an application under subsection (6) if

(a) the lawyer and the client agree on the amount of the lawyer's proposed fee, and

(b) the court is satisfied that the proposed fee is reasonable.

(8) The following rules apply to an application under subsection (6) to preserve solicitor client privilege:

(a) the hearing must be held in private;

(b) the style of proceeding must not disclose the identity of the lawyer or the client;

(c) if the lawyer or the client requests that the court records relating to the application be kept confidential,

(i) the records must be kept confidential, and

(ii) no person other than the lawyer or the client or a person authorized by either of them may search the records unless the court otherwise orders.

(9) Despite subsection (8), reasons for judgment relating to an application under subsection (6) may be published if the names of the lawyer and client are not disclosed and any information that may identify the lawyer or the client is not disclosed.

[2010-6-69; 2012-16-42]

Restrictions on contingent fee agreements

67 (1) This section does not apply to contingent fee agreements entered into before June 1, 1988.

(2) A contingent fee agreement must not provide that a lawyer is entitled to receive both a fee based on a proportion of the amount recovered and any portion of an amount awarded as costs in a proceeding or paid as costs in the settlement of a proceeding or an anticipated proceeding.

(3) A contingent fee agreement for services relating to a child guardianship or custody matter, or a matter respecting parenting time of, contact with or access to a child, is void.

(4) A contingent fee agreement for services relating to a matrimonial dispute is void unless approved by the court.

(5) A lawyer may apply to the court for approval of a contingent fee agreement for services relating to a matrimonial dispute and section 66 (7) to (9) applies.

[2011-25-400]

Examination of an agreement

68 (1) This section does not apply to agreements entered into before June 1, 1988.

(2) A person who has entered into an agreement with a lawyer or law firm may apply to the registrar to have the agreement examined.

(3) An application under subsection (2) may only be made within 3 months after

(a) the agreement was made, or

(b) the termination of the solicitor client relationship.

(4) Subject to subsection (3), a person may make an application under subsection (2) even if the person has made payment under the agreement.

(5) On an application under subsection (2), the registrar must confirm the agreement unless the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into.

(6) If the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into, the registrar may modify or cancel the agreement.

(7) If an agreement is cancelled under subsection (6), a registrar

(a) may require the lawyer to prepare a bill for review, and

(b) must review the fees, charges and disbursements for the services provided as though there were no agreement.

(8) A party may appeal a decision of the registrar under subsection (5) or (6) to the court.

[2012-16-43]

(9) The procedure under the Supreme Court Civil Rules for the assessment of costs, review of bills and examination of agreements applies to the examination of an agreement.

[2010-6-97]

Lawyer's bill

69 (1) A lawyer must deliver a bill to the person charged.

(2) A bill may be delivered under subsection (1) by mailing the bill to the last known business or residential address of the person charged.

(3) The bill must be signed by or on behalf of the lawyer or accompanied by a letter, signed by or on behalf of the lawyer, that refers to the bill.

(4) A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements.

(5) A lawyer must not sue to collect money owed on a bill until 30 days after the bill was delivered to the person charged.

(6) The court may permit a lawyer to sue to collect money owed on a bill before the end of the 30 day period if the court finds that

(a) the bill has been delivered as provided in subsection (1), and

(b) there is probable cause to believe that the person charged is about to leave British Columbia other than temporarily.

Review of a lawyer's bill

70 (1) Subject to subsection (11), the person charged or a person who has agreed to indemnify that person may obtain an appointment to have a bill reviewed before

(a) 12 months after the bill was delivered under section 69, or

(b) 3 months after the bill was paid,

whichever occurs first.

(2) The person who obtained an appointment under subsection (1) for a review of the bill must deliver a copy of the appointment to the lawyer at the address shown on the bill, at least 5 days before the date set for the review.

(3) Subject to subsection (11), a lawyer may obtain an appointment to have a bill reviewed 30 days or more after the bill was delivered under section 69.

(4) The lawyer must serve a copy of the appointment on the person charged at least 5 days before the date set for the review.

(5) The following people may obtain an appointment on behalf of a lawyer to have a bill reviewed:

(a) the lawyer's agent;

(b) a deceased lawyer's personal representative;

(c) the lawyer's assignee;

(d) in the case of a partnership, one of the partners or a partner's agent;

(e) the custodian of the lawyer's practice appointed under section 50.

(6) If a lawyer has sued to collect on a bill, the court in which the action was commenced may order that the bill be referred to the registrar.

(7) The court may make an order under subsection (6) whether or not any party has applied for an order.

(8) On a referral under subsection (6), the registrar may

(a) review the bill and issue a certificate, or

(b) make a report and recommendation to the court.

(9) When making an order under subsection (6), the court may direct that the registrar take action under subsection (8) (a) or (b).

(10) Section 73 applies to a certificate issued under subsection (8) (a).

(11) In either of the following circumstances, the lawyer's bill must not be reviewed unless the court finds that special circumstances justify a review of the bill and orders that the bill be reviewed by the registrar:

(a) the lawyer has sued and obtained judgment for the amount of the bill;

(b) application for the review was not made within the time allowed in subsection (1).

(12) If a lawyer sues to collect money owed on a bill, the lawsuit must not proceed if an application for review is made before or after the lawsuit was commenced, until

(a) the registrar has issued a certificate, or

(b) the application for review is withdrawn.

(13) The procedure under the Supreme Court Civil Rules for the assessment of costs, review of bills and examination of agreements applies to the review of bills under this section.

(14) The registrar may refer any question arising under this Part to the court for directions or a determination.

[2010-6-97]

Matters to be considered by the registrar on a review

71 (1) This section applies to a review or examination under section 68 (7), 70, 77 (3), 78 (2) or 79 (3).

(2) Subject to subsections (4) and (5), the registrar must allow fees, charges and disbursements for the following services:

(a) those reasonably necessary and proper to conduct the proceeding or business to which they relate;

(b) those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.

(3) Subject to subsections (4) and (5), the registrar may allow fees, charges and disbursements for the following services, even if unnecessary for the proper conduct of the proceeding or business to which they relate:

(a) those reasonably intended by the lawyer to advance the interests of the client at the time the services were provided;

(b) those requested by the client after being informed by the lawyer that they were unnecessary and not likely to advance the interests of the client.

(4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including

(a) the complexity, difficulty or novelty of the issues involved,

(b) the skill, specialized knowledge and responsibility required of the lawyer,

(c) the lawyer's character and standing in the profession,

(d) the amount involved,

(e) the time reasonably spent,

(f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,

(g) the importance of the matter to the client whose bill is being reviewed, and

(h) the result obtained.

(5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.

Costs of a review of a lawyer's bill

72 (1) Costs of a review of a lawyer's bill must be paid by the following:

(a) the lawyer whose bill is reviewed, if 1/6 or more of the total amount of the bill is subtracted from it;

(b) the person charged, if less than 1/6 of the total amount of the bill is subtracted from it;

(c) a person who applies for a review of a bill and then withdraws the application for a review.

(2) Despite subsection (1), the registrar has the discretion, in special circumstances, to order the payment of costs other than as provided in that subsection.

Remedies that may be ordered by the registrar

73 (1) On the application of a party to a review under this Part, the registrar may order that a party

(a) be permitted to pay money in instalments on the terms the registrar considers appropriate, or

(b) not be permitted to collect money on the certificate for a period the registrar specifies.

(2) On a review under this Part, the registrar may

(a) give a certificate for the amount the registrar has allowed the lawyer for fees, charges and disbursements, and

(b) summarily determine the amount of the costs of the review and add it to or subtract it from the amount shown on the certificate.

(3) If a registrar gives a certificate under subsection (2), the registrar must add to the amount certified an amount of interest calculated

(a) on the amount the registrar has allowed the lawyer for fees, charges and disbursements, exclusive of the costs of the review,

(b) from the date the lawyer delivered the bill to the date on which the certificate is given, and

(c) at the rate agreed to by the parties at the time the lawyer was retained or, if there was no agreement, at the same rate the registrar would allow under the *Court Order Interest Act* on an order obtained by default.

(4) If a registrar gives a certificate under subsection (2) that requires that the lawyer refund money to another person, the registrar must add to the amount to be refunded an amount of interest calculated

(a) on the amount the lawyer is required to refund to the other person,

(b) from the date the money to be refunded was paid to the lawyer to the date on which the certificate is given, and

(c) at the same rate the registrar would allow under the *Court Order Interest Act* on an order obtained by default.

[2016-5-44]

Refund of fee overpayment

74 A lawyer must, on demand,

(a) refund fees, charges and disbursements received or retained in excess of the amount allowed under this Part or the rules, and

(b) pay any interest added under section 73 (4).

Appeal

75 (1) A party to a review may appeal to the court, within

(a) 14 days from the date the certificate of the registrar was entered,

(b) the period the court may permit, or

(c) the period the registrar specifies at the time of signing the certificate.

(2) On the appeal, the court may make any order it considers appropriate.

(3) If the terms of an order of the court require it, the registrar must amend the certificate.

Registrar's certificate

76 (1) If it appears to the registrar that there is money due from the lawyer to the person charged, the registrar may make an interim certificate as to the amount payable by the lawyer.

(2) If an interim certificate is entered under subsection (1), the court may order the money certified to be paid immediately

(a) to the person charged, or

(b) into court.

(3) After a review under sections 70 and 71, the certificate of the registrar may be filed in a registry of the court and, on the expiry of the time specified or permitted under section 75, the certificate is deemed to be a judgment of the court.

Order to deliver bill or property

77 (1) The court may order, on terms it considers appropriate, delivery of a bill to the person charged, if

(a) a bill has not been delivered, and

(b) the bill, if it had been delivered, could have been the subject of an application for a review under section 70.

(2) A person charged may apply to the court for an order that the client's lawyer or former lawyer deliver to the court, to the client or to the client's agent

(a) an accounting,

(b) property, or

(c) a list of any property of the client in the lawyer's control.

(3) When an order under subsection (2) is made, the court may

(a) order the review of the lawyer's bill and require the person charged to pay or secure the lawyer's claim before delivery is made, and

(b) relieve the lawyer of any undertakings given or any other responsibilities in relation to the property.

Change of lawyer

78 (1) If a client changes lawyers or begins acting on his or her own behalf, the client or the new lawyer may apply to the court for an order directing that the client's former lawyer deliver the client's records to another lawyer nominated by the client or to the client, as the case may be.

(2) If the court makes an order under subsection (1), the court may

(a) make the direction conditional on the client

(i) paying all amounts due to the client's former lawyer from the client, or

(ii) giving security for the payment of the lawyer's claim in an amount and manner satisfactory to the court, and

(b) order a review by the registrar.

Lawyer's right to costs out of property recovered

79 (1) A lawyer who is retained to prosecute or defend a proceeding in a court or before a tribunal has a charge against any property that is recovered or preserved as a result of the proceeding for the proper fees, charges and disbursements of or in relation to the proceeding, including counsel fees.

(2) Subsection (1) applies whether or not the lawyer acted as counsel.

(3) The court that heard the proceeding or in which the proceeding is pending may order the review and payment of the fees, charges and disbursements out of the property as that court considers appropriate.

(4) Sections 70 to 73 apply to a review under subsection (3) of this section.

(5) If the proceeding referred to in subsection (1) was before a tribunal, the lawyer may apply to the court for an order under subsection (3).

(6) All acts done and conveyances made to defeat, or that operate or tend to defeat, the charge are void against the charge, unless made to a bona fide purchaser for value without notice.

(7) A proceeding for the purpose of realizing or enforcing a charge arising under this section may not be taken until after application has been made to the appropriate court for directions.

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Definitions

80 In this Part:

"limited liability partnership" means a partnership registered as a limited liability partnership under Part 6 of the *Partnership Act*;

"permit" means a permit issued under section 82 and includes a permit and a renewal of a permit issued to a law corporation or personal law corporation under the *Legal Profession Act*, R.S.B.C. 1996, c. 255.

[2004-38-18]

Authorized and prohibited activities of law corporations

81 (1) A law corporation is authorized to carry on the business of providing legal services to the public through one or more persons each of whom is

(a) a practising lawyer, or

(b) subject to this Act and the rules, a person referred to in section 15 (1) (c), (e) or (f) or (2) who is an employee of the law corporation.

(2) A partnership consisting of law corporations or of one or more lawyers and one or more law corporations is authorized to carry on the business of providing legal services to the public through one or more persons described in subsection (1).

(3) A corporation that has the words "law corporation" as part of its name must not carry on any business unless it holds a valid permit.

(4) A law corporation must not carry on any activities, other than the provision of legal services or services directly associated with the provision of legal services.

(5) Subsection (4) does not prohibit a law corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance or any other type of investment.

(6) A voting trust agreement, proxy or any other type of agreement vesting in a person who is not a practising lawyer or a law corporation the authority to exercise the voting rights attached to shares in a law corporation is prohibited.

Law corporation permit

82 (1) The executive director must issue a permit to a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is an extraprovincial company as defined in that Act, if the executive director is satisfied that

(a) the corporation has complied with the rules made under this Part,

(b) the name of the corporation includes the words "law corporation,"

(c) each voting share is legally and beneficially owned by a practising lawyer or by a law corporation,

(d) each non-voting share is legally and beneficially owned by

(i) a practising lawyer,

(ii) a law corporation that is a voting shareholder,

(iii) a person who is a relative of or resides with a practising lawyer who is a shareholder or who is a shareholder in a law corporation that is a shareholder,

(iv) a corporation, all the shares of which are beneficially owned by one or more of the individuals referred to in subparagraph (i) or (iii), or

(v) a trust, all the beneficiaries of which are individuals referred to in subparagraph (i) or (iii),

(e) all of the directors and the president of the corporation are practising lawyers, and

(f) all of the persons who will be practising law on behalf of the corporation are persons described in section 81 (1).

(2) The executive director may refuse to issue a permit under subsection (1) if

(a) the law corporation has previously had its permit revoked, or

(b) a shareholder of the law corporation was a shareholder of a law corporation or personal law corporation that previously had its permit revoked.

(3) The executive director must inform the Registrar of Companies of the revocation of any permit under this Part or the rules.

(4) Unless the benchers otherwise direct and subject to rules made under this Part, if a law corporation fails to pay the renewal fee set by the benchers by the date it is due, its permit ceases to be valid and the corporation must

(a) immediately surrender its permit to the executive director, and

(b) cease providing legal services to the public.

[2003-70-210]

Law corporation rules

83 (1) The benchers may make rules as follows:

(a) establishing procedures for the issue and renewal of permits;

(b) establishing procedures for revocation of permits, including

(i) the adaptation of rules respecting practice and procedure in hearings before a panel, and

(ii) rules to authorize a panel to consider action against a law corporation as part of a hearing on a citation issued against a respondent who is or was a shareholder, director, officer or employee of a law corporation;

(c) authorizing the executive director to attach conditions or limitations to permits issued or renewed under this Part;

(d) respecting names and the approval of names including the types of names by which the following may be known, be incorporated or practise law:

(i) a law corporation;

(ii) a partnership consisting of one or more law corporations and one or more lawyers;

(iii) a partnership consisting of law corporations;

(iv) a law corporation that has shareholders that consist of one or more law corporations or one or more practising lawyers, or both;

(e) setting fees for

(i) obtaining a permit, and

(ii) renewing a permit;

(f) respecting the disposition of shares of a shareholder of a law corporation who ceases to be a practising lawyer;

(g) setting an amount of insurance that the holder of the permit must carry or must provide to each of its employees or contractors for the purpose of providing indemnity against professional liability claims;

(h) any other rules the benchers consider necessary or advisable for the purposes of this Part.

(2) The amount set by a rule made under subsection (1.1) (g) is in addition to any amount that must be carried by a lawyer under a rule made under section 30 (1), and the amount that may be set under this subsection may be different for different permit holders, at the discretion of the benchers.

(3) An act of a corporation, including a transfer of property to or by the corporation, is not invalid because it contravenes this Part or the rules made under this Act.

(4) This Act and the rules apply, insofar as is possible, to law corporations in the same way that they do to individual lawyers.

[2012-16-44]

Limited liability partnerships

83.1 The benchers may make rules

(a) authorizing lawyers and law corporations to carry on the practice of law through limited liability partnerships, and

(b) establishing prerequisites, conditions, limitations and requirements for lawyers and law corporations to carry on the practice of law through limited liability partnerships.

[2004-38-19]

Responsibility of lawyers

84 (1) The liability of a lawyer, carrying on the practice of law, for his or her own professional negligence is not affected by the fact that the lawyer is carrying on that practice

(a) as an employee, shareholder, officer, director or contractor of a law corporation or on its behalf, or

(b) through a limited liability partnership.

(2) The application of the provisions of this Act and the rules to a lawyer is not affected by the lawyer's relationship to

(a) a law corporation as an employee, shareholder, officer, director or contractor, or

(b) a limited liability partnership as a partner, employee or contractor.

(3) Nothing in this Part affects, modifies or limits any law applicable to the fiduciary, confidential or ethical relationships between a lawyer and a person receiving the professional services of the lawyer.

(4) The relationship between a law corporation carrying on business as authorized under this Part and the rules, and a person receiving legal services provided by the corporation is subject to all applicable law relating to the fiduciary, confidential and ethical relationships that exist between a lawyer and a client.

(5) All rights and obligations respecting professional communications made to or information received by a lawyer, or in respect of advice given by a lawyer, apply to a law corporation and its employees, shareholders, officers, directors and contractors.

(6) An undertaking given by or on behalf of a law corporation that would constitute a solicitor’s undertaking if given by a lawyer is deemed to be a solicitor’s undertaking given by the lawyer who gives, signs or authorizes it.

[2004-38-20; 2005-35-21]

PART 10 – GENERAL

Enforcement

85 (1) A person commits an offence if the person

(a) contravenes section 15, or

(b) uses or discloses information contrary to section 88 (3) or (4).

(2) If an offence under this Act is committed by a corporation, each director, manager, secretary or other officer of that corporation who has assented to the commission of the offence is a party to that offence.

(3) An information alleging an offence against this Act may be laid in the name of the society on oath or by affirmation of the executive director or of a person authorized by the benchers.

(4) Section 5 of the *Offence Act* does not apply to this Act or to the rules.

(5) The society may apply to the Supreme Court for an injunction restraining a person from contravening this Act or the rules.

(6) The court may grant an injunction sought under subsection (5) if satisfied that there is reason to believe that there has been or will be a contravention of this Act or the rules.

(7) The court may grant an interim injunction until the outcome of an action commenced under subsection (5).

(8) On the application of the society or a person interested in the proceeding, the court in which a proceeding is brought may find a person in breach of section 15 (5) to be in contempt and may punish that person accordingly.

Protection against actions

86 (1) No action for damages lies against a person, for anything done or not done in good faith while acting or purporting to act on behalf of the society or the foundation under this Act.

(2) The society or the foundation, as the case may be, must indemnify a person referred to in subsection (1) for any costs or expenses incurred by the person in any legal proceedings taken for anything done or not done in good faith while acting or purporting to act on behalf of the society or the foundation under this Act.

Certain matters privileged

87 (1) In this section:

"proceeding" does not include a proceeding under Part 2, 3, 4 or 5;

"report" includes any document, minute, note, correspondence or memorandum created or received by a person, committee, panel, review board or agent of the society in the course of an investigation, audit, inquiry or hearing, but does not include an original document that belongs to a complainant or respondent or to a person other than an employee or agent of the society.

(2) If a person has made a complaint to the society respecting a lawyer or law firm, neither the society nor the complainant can be required to disclose or produce the complaint and the complaint is not admissible in any proceeding, except with the written consent of the complainant.

(3) If a lawyer or law firm responds to the society in respect of a complaint or investigation, none of the lawyer, the law firm or the society can be required to disclose or produce the response or a copy or summary of it, and the response or a copy or summary of it is not admissible in any proceeding, except with the written consent of the lawyer or law firm, even though the executive director may have delivered a copy or a summary of the response to the complainant.

(4) A report made under the authority of this Act or a record concerning an investigation, an audit, an inquiry, a hearing or a review must not be required to be produced and is not admissible in any proceeding except with the written consent of the executive director.

(5) Except with the consent of the executive director, the society, an employee or agent or former employee or agent of the society or a member or former member of a committee, panel or review board established or authorized under this Act

(a) must not be compelled to disclose information that the person has acquired during the course of an investigation, an audit, an inquiry, a hearing or a review or in the exercise of other powers or the performance of other duties under this Act, and

(b) is not competent to testify in a proceeding if testifying in that proceeding would result in the disclosure of information referred to in paragraph (a).

[2012-16-45]

Non-disclosure of privileged and confidential information

88 (1) [repealed]

(1.1) A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege, must do so, despite the confidentiality or privilege.

(1.2) Information, files or records that are provided in accordance with subsection (1.3) are admissible in a proceeding under Part 2, 3, 4 or 5 of this Act, despite the confidentiality or privilege.

(1.3) A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records.

(2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of exercising powers or carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained.

(3) A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or the rules.

(4) A person who, during the course of an appeal under section 48 or an application under the *Judicial Review Procedure Act* respecting a matter under this Act, acquires information or records that are confidential or are subject to solicitor client privilege must not

(a) use the information other than for the purpose for which it was obtained, or

(b) disclose the information to any person.

(5) The Court of Appeal, on an appeal under section 48, and the Supreme Court, on an application under the *Judicial Review Procedure Act* respecting a matter under this Act, may exclude members of the public from the hearing of the appeal or application if the court considers the exclusion is necessary to prevent the disclosure of information, files or records that are confidential or subject to solicitor client privilege.

(6) In giving reasons for judgment on an appeal or application referred to in subsection (5), the Court of Appeal or the Supreme Court must take all reasonable precautions to avoid including in those reasons any information before the court on the appeal or application that is confidential or subject to solicitor client privilege.

(7) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, the benchers may make rules for the purpose of ensuring the non-disclosure of any confidential information or information that, but for this Act, would be subject to solicitor client privilege, and the rules may be made applicable to any person who, in the course of any proceeding under this Act, would acquire the confidential or privileged information.

(8) Section 47 (4) of the *Freedom of Information and Protection of Privacy Act* does not apply to information that, but for this Act and the production of the information to the commissioner under that Act, would be subject to solicitor client privilege.

[2012-16-46]

89 [repealed 2012-16-47]

Service

90 The benchers may make rules respecting service of documents under this Act.

[2007-14-145]

Law society insurance

91 (1) The benchers may purchase and maintain insurance protecting the society, the benchers, officers and employees of the society and former benchers, officers and employees against liability arising out of the operations or activities of the society and providing for indemnity with respect to any claims arising out of acts done or not done by those individuals in good faith while acting or purporting to act on behalf of the society.

(2) The benchers may enter into, on behalf of members, contracts of life, accident, income replacement and any other type of insurance that they consider will benefit the members.

Legal archives

92 (1) The benchers may make rules permitting a lawyer or law firm to deposit records in the possession of the lawyer or law firm in an archives, library or records management office in Canada.

(2) Rules made under this section may provide for

(a) the time after which the records may be deposited,

(b) the restrictions or limitations on public access that the lawyer or law firm may attach on depositing them, and

(c) circumstances under which the lawyer or law firm cannot be liable for disclosure of confidential or privileged information arising out of the deposit.

[2012-16-48]

PART 11 – TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

93 [repealed 2012-16-49]

94 – 109 [spent]

LEGAL PROFESSION AMENDMENT ACT, 2012

Transitional Provisions

Transition – special compensation fund

50 On repeal of section 31 of the *Legal Profession Act* by this Act, the benchers

(a) must promptly deposit any monies remaining in the "fund," as it was defined in section 31 (1) of the *Legal Profession Act* before its repeal by this Act, to the account of the insurance fund established under section 30 (6) of the *Legal Profession Act*, and

(b) may use the monies for the purposes of the insurance programs referred to in sections 30 (2) of the *Legal Profession Act* and 30 (2.1) of the *Legal Profession Act* as enacted by this Act.

[2012-16-50]

51 [2012-16-51 – spent May 14, 2014]

MEMBERSHIP (2017 Statistical Report of the Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec (1)	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut	2017 Total
Practicing Members - Insured															
Female	3,185	2,455	714	560	8,585	7,643	2,248	308	734	53	192	37	28	N/A	
Male	5,659	4,367	1,180	1,088	15,910	8,143	1,261	558	1,105	94	332	38	42	N/A	
TOTAL	**8,844**	**6,822**	**1,894**	**1,648**	**24,495**	**15,786**	**3,509**	**866**	**1,839**	**147**	**524**	**75**	**70**	**N/A**	**66,519**
Practicing Members - Exempted From Insurance/ Not insured															
Female	1,442	1,419	175	205	8,011	6,259	S/O	186	49	43	112	40	43	N/A	
Male	1,148	1,535	180	170	6,737	4,163	S/O	176	42	26	86	27	51	N/A	
TOTAL	**2,590**	**2,954**	**355**	**375**	**14,748**	**10,422**	0	**362**	**91**	**69**	**198**	**67**	**94**	**N/A**	**32,325**
Practicing - Canadian Legal Advisor															
Female	1	D/A	D/A	0	17	16	D/A	D/A	0	0	D/A	0	0	N/A	
Male	1	D/A	D/A	0	34	18	D/A	D/A	0	0	D/A	0	0	N/A	
TOTAL	**2**	D/A	D/A	**0**	**51**	**34**	**0**	D/A	**0**	**0**	D/A	**0**	**0**	**N/A**	**87**
Practicing - Non-Resident															
Female	149	160	28	27	1,801	474	D/A	42	38	6	19	56	69	N/A	
Male	316	316	80	42	1,942	434	D/A	61	65	16	31	128	174	N/A	
TOTAL	**465**	**476**	**108**	**69**	**3,743**	**908**	0	**103**	**103**	**22**	**50**	**184**	**243**	**N/A**	**6,474**
Non Practicing Members															
Female	1,237	1,920	233	127	5,302	97	260	165	565	45	117	25	48	N/A	
Male	1,538	3,621	274	152	8,630	142	105	268	778	55	161	27	77	N/A	
TOTAL	**2,775**	**5,541**	**507**	**279**	**13,932**	**239**	**365**	**433**	**1,343**	**100**	**278**	**52**	**125**	**N/A**	**25,969**
Others - Suspended or Disbarred, Not Practicing *(NOTE: Not included in totals, represented in Non-Practicing Members)*															
Female	3	D/A	D/A	N/A	D/A	D/A	D/A	N/A	0	N/A	D/A	0	N/A	N/A	
Male	9	D/A	D/A	N/A	D/A	D/A	D/A	N/A	0	N/A	D/A	0	N/A	N/A	
TOTAL	**12**	D/A	D/A	**12**	**4,648**	D/A	D/A	**220**	**412**	**N/A**	D/A	**0**	N/A	**N/A**	
Others - RAC *(NOTE: Not included in totals, represented in Non-Practicing Members)*															
Female	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	0	N/A	D/A	0	N/A	N/A	
Male	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	0	N/A	D/A	0	N/A	N/A	
TOTAL	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	**0**	**N/A**	D/A	**0**	N/A	**N/A**	
Others - Retired *(NOTE: Not included in totals, represented in Non-Practicing Members)*															
Female	299	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	N/A	N/A	0	D/A	N/A	
Male	851	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	N/A	N/A	0	D/A	N/A	
TOTAL	**1150**	D/A	D/A	D/A	**3,811**	D/A	D/A	**154**	**213**	**22**	N/A	**10**	D/A	**N/A**	
Others - Students/Articled Clerks *(NOTE: Not included in totals, represented in Non-Practicing Members)*															
Female	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	45	D/A	D/A	2	D/A	N/A	
Male	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	27	D/A	D/A	2	D/A	N/A	
TOTAL	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	**72**	D/A	D/A	**4**	D/A	**N/A**	
Others - Life Members/ Honorary/ Judiciary/ Disabled *(NOTE: Not included in totals, represented in Non-Practicing Members)*															
Female	D/A	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	2	N/A	0	D/A	N/A	
Male	D/A	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	2	N/A	0	D/A	N/A	
TOTAL	D/A	D/A	D/A	3	**1,281**	D/A	D/A	**50**	**50**	**4**	N/A	**39**	D/A	**N/A**	
Total Active/Practicing Membership															
Female	4,777	4,034	917	792	18,414	13,918	2,248	536	821	102	323	133	140	N/A	
Male	7,124	6,218	1,440	1,300	24,623	12,324	1,261	795	1,212	136	449	193	267	N/A	
TOTAL	**11,901**	**10,252**	**2,357**	**2,092**	**43,037**	**26,242**	**3,509**	**1,331**	**2,033**	**238**	**772**	**326**	**407**	**N/A**	**104,497**
Total Membership															
Female	6,014	5,954	1,150	919	24,259	14,015	2,508	701	1,386	147	440	158	188	N/A	
Male	8,662	9,839	1,714	1,452	33,825	12,466	1,366	1,063	1,990	191	610	220	344	N/A	
TOTAL	**14,676**	**15,793**	**2,864**	**2,371**	**58,084**	**26,481**	**3,874**	**1,764**	**3,376**	**338**	**1,050**	**378**	**532**	**N/A**	**127,707**

(1) Reporting period for the Barreau du Quebec wa s April 1, 2017 to March 31, 2018

(2) Law Society of Nunavut does not report by gender

YEARS AS MEMBER (2017 Statistical Report of the Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
0-5 Years														
Female	1,697	1,485	307	281	5,321	3,746	510	163	346	30	109	80	61	D/A
Male	1,687	1,556	354	296	4,974	2,155	176	113	310	48	94	74	103	D/A
TOTAL	**3,384**	**3,041**	**661**	**577**	**10,295**	**5,901**	**686**	**276**	**656**	**78**	**203**	**154**	**164**	D/A
6-10 Years														
Female	1,105	974	206	172	4,075	2,422	636	107	197	21	83	37	68	D/A
Male	1,064	988	192	163	3,734	1,510	207	112	214	18	67	48	90	D/A
TOTAL	**2,169**	**1,962**	**398**	**335**	**7,809**	**3,932**	**843**	**219**	**411**	**39**	**150**	**85**	**158**	D/A
11-15 Years														
Female	829	868	169	134	3,509	2,096	300	106	203	23	59	15	20	D/A
Male	811	885	161	108	3,043	1,322	99	80	167	15	68	16	32	D/A
TOTAL	**1,640**	**1,753**	**330**	**242**	**6,552**	**3,418**	**399**	**186**	**370**	**38**	**127**	**31**	**52**	D/A
16-20 Years														
Female	652	664	158	89	3,348	1,758	163	95	186	25	65	10	16	D/A
Male	774	844	178	123	3,389	1,259	48	72	154	14	55	18	40	D/A
TOTAL	**1,426**	**1,508**	**336**	**212**	**6,737**	**3,017**	**211**	**167**	**340**	**39**	**120**	**28**	**56**	D/A
21-25 Years														
Female	647	545	139	76	2,517	1,543	206	66	143	26	53	16	12	D/A
Male	898	711	169	114	2,928	1,241	66	115	184	18	64	22	22	D/A
TOTAL	**1,545**	**1,256**	**308**	**190**	**5,445**	**2,784**	**272**	**181**	**327**	**44**	**117**	**38**	**34**	D/A
26 Years plus														
Female	1,084	1,256	331	167	5,489	2,764	693	164	356	26	71	7	15	D/A
Male	3,428	4,541	1,178	648	15,757	5,195	770	571	986	77	262	33	58	D/A
TOTAL	**4,512**	**5,797**	**1,509**	**815**	**21,246**	**7,959**	**1,463**	**735**	**1,342**	**103**	**333**	**40**	**73**	D/A
Total Membership														
Female	6,014	5,792	1,310	919	24,259	14,329	2,508	701	1,431	151	440	165	192	D/A
Male	8,662	9,525	2,232	1452	33,825	12,682	1,366	1,063	2,015	190	610	211	345	D/A
TOTAL	**14,676**	**15,317**	**3,542**	**2,371**	**58,084**	**27,011**	**3,874**	**1,764**	**3,446**	**341**	**1,050**	**376**	**537**	D/A

FIRMS (2017 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario (1)	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Sole Practioners														
	2,646	892	179	315	9,027	NA	1,127	309	255	20	68	30	40	N/A
Firms With 2-10 Lawyers														
	852	455	136	148	2,581	NA	551	84	119	12	58	12	9	N/A
Firms With 11-25 Lawyers														
	96	50	11	17	185	NA	7	2	10	4	5	0	0	N/A
Firms With 26-50 Lawyers														
	16	24	4	4	46	NA	0	1	3	0	3	0	0	N/A
Firms With 51 "Plus" Lawyers														
	17	14	3	6	32	NA	0	2	4	0	0	0	0	N/A
Professional Corporations														
	4,082	3,012	659	534	7,129	6	1,462	283	463	60	147	25	14	N/A
Foreign Legal Consultants														
	50	9	0	3	287	26	D/A	5	4	3	D/A	0	0	N/A

(1) In Ontario, status as a sole practitioner is determined solely by a lawyer's status and does not take into account the size of the law firm at which they work. This number represents the total number of lawyers with a status that indicates they are a Sole Practitioner, regardless of whether or not they work by themselves or with others.

Firms include both law firms and legal clinics. The business size is determined by the number of licensees attached to the business.

ADMISSIONS (2017 Statistical Report of The Federation of Law Societies of Canada))

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut	2017 Total
Articling Students/Stagiaires															
Female	280	273	58	53	1109	703	2	43	48	3	17	2	0	N/A	
Male	261	249	40	48	878	382	0	29	36	10	14	2	3	N/A	
TOTAL	**541**	**522**	**98**	**101**	**1,987**	**1,085**	**2**	**72**	**84**	**13**	**31**	**4**	**3**	N/A	**4,543**
Students Admitted to Bar Admission Course															
Female	113	172	58	44	970	929	106	43	41	2	10	2	0	N/A	
Male	116	176	40	40	818	501	38	28	44	11	13	2	3	N/A	
TOTAL	**229**	**348**	**98**	**84**	**1,788**	**1,430**	**144**	**71**	**85**	**13**	**23**	**4**	**3**	N/A	**4,311**
Students Admitted to Bar Admission Course with NCA Certificate															
Female	59	67	N/A	8	393	N/A	D/A	1	5	0	2	0	0	N/A	
Male	60	52	N/A	11	342	N/A	D/A	0	1	0	0	0	0	N/A	
TOTAL	**119**	**119**	**N/A**	**19**	**735**	N/A	D/A	**1**	**6**	**0**	**2**	**0**	**0**	N/A	**1,001**
Students called to the Bar/ Admitted to Order															
Female	244	209	34	52	1,053	711	N/A	31	41	4	16	1	0	N/A	
Male	216	225	43	59	966	394	N/A	18	47	8	21	0	2	N/A	
TOTAL	**460**	**434**	**77**	**111**	**2,019**	**1,105**	**-**	**49**	**88**	**12**	**37**	**1**	**2**	N/A	**4,395**
Transfers From Other Jurisdictions															
Female	81	37	19	10	78	7	0	8	25	2	10	11	5	N/A	
Male	96	58	14	10	78	6	0	5	28	1	9	12	6	N/A	
TOTAL	**177**	**95**	**33**	**20**	**156**	**13**	**0**	**13**	**53**	**3**	**19**	**23**	**11**	N/A	**616**
Canadian Legal Advisors															
Female	0	D/A	D/A	0	6	3	D/A	0	0	0	D/A	0	**0**	N/A	
Male	0	D/A	D/A	0	6	3	D/A	0	0	0	D/A	0	**1**	N/A	
TOTAL	**0**	**D/A**	**D/A**	**0**	**12**	**6**	**D/A**	**0**	**0**	**0**	**D/A**	**0**	**1**	N/A	**19**
Occasional Appearance Certificates															
Female	0	N/A	N/A	0	N/A	4	D/A	1	8	0	D/A	16	14	N/A	
Male	3	N/A	N/A	0	N/A	8	D/A	8	13	0	D/A	43	37	N/A	
TOTAL	**3**	**N/A**	**N/A**	**0**	**151**	**12**	D/A	**9**	**21**	**0**	**D/A**	**59**	**51**	N/A	**306**
Total Admissions															
Female	**777**	**758**	**169**	**167**	**3,638**	**2,357**	**108**	**126**	**168**	**11**	**55**	**16**	19	N/A	
Male	**752**	**760**	**137**	**168**	**3,118**	**1,294**	**38**	**88**	**169**	**30**	**57**	**16**	52	N/A	
TOTAL	**1,529**	**1,518**	**306**	**335**	**6,907**	**3,651**	**146**	**214**	**337**	**41**	**112**	***(1)*** **32**	**71**	N/A	**13,663**

(1) *In Yukon, Occasional Appearance Certificates are not considered Admissions*

FEES for the period January 01 - December 31, 2017 (2017 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Application & Admission Fee														
App. & Admission Fee	$ 450.00	$ 620.00	N/A	(2) $625/$750	$ 250	D/A	D/A	$ 450	$300	$ 100	$ 300	$ 300	$ 435	D/A
Application Fee	D/A	N/A	$ 175.00	$ 625	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Admission Fee	D/A	D/A	$ 175.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Call to the Bar Fee	D/A	D/A	D/A	N/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Admission Fee														
Students	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$ 300	D/A	D/A	D/A
Articling Students	D/A	D/A	D/A	$ 625	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Bar Admission Course	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Application & Admission Fee - Transfers														
Transfer Applicants	D/A	D/A	D/A	$ 750	D/A	D/A	D/A	D/A	$ 1,325	D/A	D/A	D/A	D/A	D/A
Transfer Jurisdiction (1)	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Practising Fee														
Year One Full Time	D/A	D/A	D/A	D/A	D/A	$ 588.94	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Year Two Full Time	D/A	D/A	D/A	D/A	D/A	$ 1,122.68	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Year Three Full Time	D/A	D/A	D/A	D/A	D/A	$ 1,354.09	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Full Time	$ 3,875.57	$ 2,600	$ 1,750.00	$ 2,650	$ 1,916	$ 1,642.61	$ 1,120.17	$ 1,900	$ 2,407	$ 1,425	$ 1,750	$ 1,100	$ 1,270	D/A
Part-time	$ 3,000.57	D/A	D/A	D/A	$ 1,916	$ 1,701.37	$ 1,120.17	D/A	D/A	D/A	D/A	D/A	N/A	D/A
Canadian Legal Advisor	$ 2,125.57	D/A	D/A	$ 2,650	$ 1,916	$ 1,642.61	D/A	D/A	$ 2,777	$ 2,500	D/A	$ 1,100	$ 1,270	D/A
In-House Counsel	N/A													
Practising Fee - Other Categories														
Quarterly Fee	D/A	D/A	$ 437.50	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Law Student	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$ 150.00	D/A	D/A
Professor	D/A	D/A	$ 875.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Articling Student	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Prof. Corp. Renewal	D/A	$ 200	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
LLP Renewal	D/A	$ 70	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A

(1) Members transferring from another jurisdiction

(2) $575 for articling students, $600 plus $150 application fee for transfer applicants

OTHER FEES (2017 Statistical Report of The Federatyion of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Non-Practising Fee														
	$ 300	$ 200	$ 150	$ 100	$ 958.00	D/A	D/A	$ 500.00	$ 300	$ 200	$ 350	$ 300	$ 230	D/A
Non-Practising Fee - Other Categories														
Retired	$ 75	D/A	$ -	D/A	D/A	$ 348.93	D/A	$ 95.00	$ 50	$ 53	D/A	$ 25	D/A	D/A
Honorary	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Life	D/A	D/A	$ -	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Disabled	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Other Fee - No remunerative work/Attending university/Maternity Leave														
	D/A	D/A	D/A	D/A	$ 479.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Other Fee - Occasional Appearance Application & Admission Fee														
	$ 500	N/A	D/A	D/A	$ 100.00	D/A	D/A	D/A	$ 1,000	$ 100	D/A	$ 650	$ 635	D/A
Other Fee - Occasional Appearance Renewal Fee														
	$ 100	D/A	D/A	D/A	$ 100.00	D/A	D/A	D/A	D/A	$ 100	D/A	$ 350	$ 155	D/A
Other Fee - Occasional Appearance Reciprocal Fee														
	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	N/A	D/A
Other Fee - Promotion/Advertising Fee														
	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Other Fee - Notary Assistance Program														
	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A

INSURANCE FEES (2017 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Insurance Fee - Full Time														
Full Time	$ 1,750.00	$ 4,038.00	$ 1,280.00	$ 1,645.00	$ 2,950.00	$ 970.00	$ 3,950.00	$ 2,477.00	$ 1,875.00	$ 2,900.00	$ 1,655.00	$ 1,044.75	$ 2,302.00	D/A
Part Time	$ 975	D/A	D/A	D/A	$ 1,475.00	$ 970.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Adjustments or Surcharges														
	(6) $1,000	*(4)* 30%-300%	D/A	*(5)* Varies	*(7)* <$35,000	D/A	D/A	*(3)* Varies	*(8)* Varies	D/A	D/A	N/A	N/A	D/A
Other Fees														
Levies	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$30-$75	D/A	D/A	D/A
Retro assessments	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Compensation Fund	D/A	$ 512.00	$ 200.00	$ 300.00	N/A	D/A	D/A	$ 195.00	D/A	*(2)* $50/$25	$ 50.00	$ 100.00	$ 155.00	D/A
Real Estate Practice	D/A	D/A	D/A	D/A	$ 100.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Innocent Party	D/A	D/A	D/A	D/A	$ 250.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Compulsory Coverage														
	$ 1 million	$ 1 million	$ 1 million	$ 1 million	$ 1 million	N/A	$ 1 million	$1 million	$ 1 million	$ 1 million	$ 1 million	$ 1 Million	$1 million	D/A
Annual Aggregate														
	$ 2 million	$ 2 million	$ 2 million	$ 2 million	$ 2 million	D/A	$ 2 million	$ 2 million	$ 2 million	$ 2 million	$ 2 million	$2 Million	$2 million	D/A
Deductible														
Group	D/A	$ 500,000	$ 300,000	$ 300,000	N/A	D/A	D/A	$ 300,000	$ 300,000	D/A	$ 300,000	N/A	N/A	D/A
Individual	$5-10,000	$5,000	$5-$7,500	$5,000	$ 0-$25,000	D/A	$ 3,000	$5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	D/A

1) 30% on first claim, graduated thereafter.
2) $50 for practising members, $25 for non-practising
3) 150% after 2 or more paid claims in excess of $5,000 within 7 years, 175% if 3 claims, 200% if 4 claims
4) Based on past claim history, 30% ($870),75% ($2,175), 150% ($4,350), or 300% ($8,700)
5) $5,000 base deductible, $7,500 for 2nd paid claim, $10,000 for 3rd paid claim, $15,000 for 4th paid claim, $20,000 for 6th and successive paid claims
6) $1,000 for 5 years based on paid indemnity
7) 1 claim paid, $2,500 surcharge; 2 claims $5,000. 3 claims $10,000, 4 claims $15,000, 5 claims $25,000, 6 claims $35,000 plus $10,000 per claim if more than 6.
8) 40% of Gross Insurance Premium each year for 5 years following a claim payment; $842.40 in 2017.

COMPENSATION FUND (2017 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Coverage per individual														
	D/A	$5 M	$10 M	$ 10 M	D/A	$ 500,000	D/A	$ 1 M	D/A	$5 M	$ 10 M	D/A	$ 300,000	N/A
Coverage Per Claim														
	$ 300,000	$5 M	$10 M	$ 300,000	$ 500,000	$ 100,000	$ 100,000	$ 100,000	$10 M	D/A	$ 10 M	D/A	$ 50,000	N/A
Coverage - Annual Aggregate														
	$17.5 M	$25 M	$10 M	$10 M	N/A	D/A	D/A	N/A	$ 10 M	$5 M	$ 10 M	D/A	D/A	N/A
New Claims received														
	28	23	1	4	239	45	30	4	4	21	97	0	0	0
Outstanding Claims														
	50	167	3	19	341	74	131	12	1	0	106	0	0	0
Number of Claims Paid														
	7	N/A	0	3	129	63	9	6	1	0	8	0	0	0
Total Amount Paid														
	$ 45,000	$ 283,482.99	$ -	$12,900.00	$9,755,964.20	$ 502,003.21	$ 381,958	$ 206,119.53	$ -	$ -	$ 388,120.00	$ -	$ -	$ -

DISCIPLINE (2017 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	Nfld & Labrador	Yukon	N.W.T.	Nunavut
Complaints Received														
	1,146	1,256	471	342	5,227	2,039	N/A	139	596	9	67	10	8	N/A
Complaints Screened Out														
	533	40	318	129	3,353	21	N/A	N/A	474	D/A	25	1	0	N/A
Informal Resolutions														
	70	653	222	18	421	44	N/A	N/A	25	0	16	0	1	N/A
Other Dispositions														
	523	219	150	140	1,447	1,521	N/A	N/A	49	5	13	9	1	N/A
Resulting In Charges														
	32	70	7	26	105	27	26	N/A	1	4	6	0	1	N/A
Discipline Panel Hearings														
	18	37	8	12	117	223	66	6	1	0	6	0	1	N/A
Number of Acquittals														
	3	2	0	0	6	8	1	0	0	N/A	0	0	0	N/A
Number of Convictions														
	15	22	8	12	79	37	33	6	1	N/A	5	0	0	N/A
Number of Lawyers (or Notaries) Disbarred														
	0	4	0	1	10	25	4	1	1	N/A	1	0	0	N/A
Number of Suspensions														
	10	4	2	3	42	2	18	4	0	N/A	1	0	0	N/A
Number of Resignations														
	2	1	0	1	4	501	D/A	0	0	N/A	1	0	0	N/A
Custodial Orders/Decisions/Trusteeship														
	14	6	0	0	D/A	D/A	D/A	1	0	N/A	0	0	1	N/A

Ontario discipline statistics apply to lawyers only (not paralegals).
In Nova Scotia, both written and telephone complaints are included in the totals.

MEMBERSHIP (2018 Statistical Report of the Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec (1)	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut	2018 Total
Practicing Members - Insured															
Female	3,282	2,435	726	571	8,954	7,925	2,539	317	760	56	197	37	37	N/A	
Male	5,736	4,302	1,178	1,075	16,015	8,162	1,318	547	1,092	102	329	38	47	N/A	
TOTAL	**9,018**	**6,737**	**1,904**	**1,646**	**24,969**	**16,087**	**3,857**	**864**	**1,852**	**158**	**526**	**75**	**84**	**36**	**67,813**
Practicing Members - Exempted From Insurance/ Not insured															
Female	1,539	1,353	171	201	8,350	6,455	S/O	204	47	43	114	39	37	N/A	
Male	1,201	1,242	186	177	6,896	4,230	S/O	179	38	33	88	25	51	N/A	
TOTAL	**2,740**	*** 2,598**	**357**	**378**	**15,246**	**10,685**	**0**	**383**	**85**	**76**	**202**	**64**	**88**	**41**	**30,345**
Practicing - Canadian Legal Advisor															
Female	2	D/A	D/A	0	20	21	D/A	D/A	0	0	D/A	0	0	0	
Male	2	D/A	D/A	0	33	20	D/A	D/A	0	0	D/A	0	0	1	
TOTAL	**4**	D/A	D/A	**0**	**53**	**44**	**0**	D/A	**0**	**0**	D/A	**0**	**0**	**1**	**102**
Practicing - Non-Resident															
Female	181	239	35	26	1,831	492	D/A	44	35	7	17	66	69	N/A	
Male	329	411	95	44	1,922	423	D/A	69	67	17	26	132	182	N/A	
TOTAL	**510**	*** 651**	**130**	**70**	**3,753**	**915**	**0**	**113**	**102**	**24**	**43**	**198**	**251**	**197**	**6,306**
Non Practicing Members															
Female	1,266	1,996	211	144	5,560	81	245	159	589	45	127	25	54	N/A	
Male	1,530	3,780	253	165	9,097	97	92	284	811	52	166	27	74	N/A	
TOTAL	**2,796**	**5,776**	**464**	**309**	**14,657**	**178**	**337**	**443**	**1,400**	**97**	**293**	**52**	**128**	**64**	**26,994**
Others - Suspended or Disbarred, Not Practicing ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	7	D/A	D/A	N/A	D/A	D/A	D/A	N/A	0	N/A	D/A	0	N/A	N/A	
Male	10	D/A	D/A	N/A	D/A	D/A	D/A	N/A	0	N/A	D/A	0	N/A	N/A	
TOTAL	**17**	D/A	D/A	**16**	**4,921**	D/A	D/A	**37**	**418**	**N/A**	D/A	**0**	N/A	**3**	
Others - RAC ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	0	N/A	D/A	0	N/A	N/A	
Male	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	0	N/A	D/A	0	N/A	N/A	
TOTAL	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	**0**	**N/A**	D/A	**0**	N/A	**N/A**	
Others - Retired ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	329	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	N/A	N/A	0	D/A	N/A	
Male	861	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	N/A	N/A	0	D/A	N/A	
TOTAL	**1190**	D/A	D/A	D/A	**4,208**	D/A	D/A	**165**	**258**	**24**	N/A	**12**	D/A	**40**	
Others - Students/Articled Clerks ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	44	D/A	D/A	3	D/A	N/A	
Male	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	32	D/A	D/A	2	D/A	N/A	
TOTAL	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	**76**	D/A	D/A	**5**	D/A	**N/A**	
Others - Life Members/ Honorary/ Judiciary/ Disabled ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	D/A	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	2	N/A	0	D/A	N/A	
Male	D/A	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	2	N/A	0	D/A	N/A	
TOTAL	D/A	D/A	D/A	**2**	**1,399**	D/A	D/A	**57**	**56**	**4**	N/A	**0**	D/A	**N/A**	
Total Active/Practicing Membership															
Female	5,004	4,027	932	798	19,155	14,401	2,539	565	842	106	328	142	143	N/A	
Male	7,268	5,955	1,459	1,296	24,866	12,412	1,318	795	1,197	152	443	195	280	N/A	
TOTAL	**12,272**	*** 9,986**	**2,391**	**2,094**	**44,021**	**26,813**	**3,857**	**1,360**	**2,039**	**258**	**771**	**337**	**423**	**275**	**96,911**
Total Membership															
Female	6,270	6,023	1,143	942	25,258	14,482	2,784	724	1,431	151	455	167	197	N/A	
Male	8,798	9,735	1,712	1,461	34,535	12,509	1,410	1,079	2,008	204	609	222	354	N/A	
TOTAL	**15,068**	**15,758**	**2,855**	**2,403**	**59,793**	**26,991**	**4,194**	**1,803**	**3,439**	**355**	**1,064**	**389**	**551**	**339**	**130,808**

(1) Reporting period for the Barreau du Quebec wa s April 1, 2018 to March 31, 2019

(2) Law Society of Nunavut does not report by gender

YEARS AS MEMBER (2018 Statistical Report of the Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
0-5 Years														
Female	1,824	1,551	329	285	5,636	3,901	493	174	358	25	111	60	63	D/A
Male	1,780	1,627	361	310	5,038	2,242	148	133	329	46	91	66	94	D/A
TOTAL	**3,604**	**3,178**	**690**	**595**	**10,674**	**6,143**	**641**	**307**	**687**	**71**	**202**	**126**	**157**	**130**
6-10 Years														
Female	1,118	977	210	183	4,283	2,539	641	102	198	19	75	45	68	D/A
Male	1,100	980	211	175	4,001	1,495	217	107	195	28	67	44	75	D/A
TOTAL	**2,218**	**1,957**	**421**	**358**	**8,284**	**4,034**	**858**	**209**	**393**	**47**	**142**	**89**	**143**	**93**
11-15 Years														
Female	876	907	163	140	3,534	2,154	369	111	202	21	67	21	16	D/A
Male	846	929	160	111	3,127	1,373	129	83	180	16	73	30	60	D/A
TOTAL	**1,722**	*** 1,838**	**323**	**251**	**6,661**	**3,527**	**498**	**194**	**382**	**37**	**140**	**51**	**76**	**39**
16-20 Years														
Female	659	714	154	96	3,446	1,769	163	90	174	22	65	10	22	D/A
Male	758	842	170	118	3,364	1,264	42	66	163	15	53	14	39	D/A
TOTAL	**1,417**	**1,556**	**324**	**214**	**6,810**	**3,033**	**205**	**156**	**337**	**37**	**118**	**24**	**61**	**40**
21-25 Years														
Female	653	702	155	69	2,571	1,558	168	75	167	28	57	16	15	D/A
Male	857	527	177	117	2,935	1,201	57	110	166	15	63	15	30	D/A
TOTAL	**1,510**	**1,229**	**332**	**186**	**5,506**	**2,759**	**225**	**185**	**333**	**43**	**120**	**31**	**45**	D/A
26 Years plus														
Female	1,138	1,345	385	169	5,906	2,897	705	172	374	35	80	15	12	D/A
Male	3,462	4,653	1,163	630	16,151	5,188	725	580	1005	85	262	53	54	D/A
TOTAL	**4,600**	*** 6,000**	**1,548**	**799**	**22,057**	**8,085**	**1,430**	**752**	**1,379**	**120**	**342**	**68**	**66**	D/A
Total Membership														
Female	6,268	6,196	1,396	942	25,376	14,818	2,539	724	1,473	150	455	167	196	D/A
Male	8,803	9,558	2,242	1461	34,616	12,763	1,318	1,079	2,038	205	609	222	352	D/A
TOTAL	**15,071**	*** 15,758**	**3,638**	**2,403**	**59,992**	**27,581**	**3,857**	**1,803**	**3,511**	**355**	**1,064**	**389**	**548**	**302**

FIRMS (2018 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario (1)	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Sole Practioners														
	2,612	904	185	328	9,104	NA	1,110	247	241	19	69	27	37	9
Firms With 2-10 Lawyers														
	873	469	131	148	2,579	NA	501	109	125	12	57	39	8	N/A
Firms With 11-25 Lawyers														
	97	49	9	16	204	NA	9	10	9	5	6	0	0	N/A
Firms With 26-50 Lawyers														
	20	21	3	4	54	NA	0	1	2	0	3	0	0	N/A
Firms With 51 "Plus" Lawyers														
	16	14	7	6	33	NA	0	2	4	0	0	0	0	N/A
Professional Corporations														
	4,171	2,931	510	534	7,473	28	1,637	288	440	60	139	30	14	N/A
Foreign Legal Consultants														
	56	11	0	3	290	7	D/A	5	6	3	D/A	0	0	N/A

(1) In Ontario, status as a sole practitioner is determined solely by a lawyer's status and does not take into account the size of the law firm at which they work. This number represents the total number of lawyers with a status that indicates they are a Sole Practitioner, regardless of whether or not they work by themselves or with others.

Firms include both law firms and legal clinics. The business size is determined by the number of licensees attached to the business.

ADMISSIONS (2018 Statistical Report of The Federation of Law Societies of Canada))

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut	2018 Total
Articling Students/Stagiaires															
Female	309	266	31	54	1118	702	D/A	25	44	7	21	3	1	3	
Male	281	264	50	50	974	367	D/A	29	32	6	19	1	1	1	
TOTAL	**590**	**530**	**81**	**104**	**2,092**	**1,069**	D/A	**54**	**76**	**13**	**40**	**4**	**2**	**4**	**4,659**
Students Admitted to Bar Admission Course															
Female	263	144	34	37	965	929	113	24	40	7	15	3	1	2	
Male	241	229	48	45	821	503	34	29	30	5	18	2	1	1	
TOTAL	**504**	**373**	**82**	**82**	**(2) 1787**	**1,432**	**147**	**53**	**70**	**12**	**33**	**5**	**2**	**3**	**2,789**
Students Admitted to Bar Admission Course with NCA Certificate															
Female	59	62	#######	14	420	N/A	D/A	0	2	0	3	0	0	0	
Male	44	54	#######	13	337	N/A	D/A	0	0	1	0	0	0	0	
TOTAL	**103**	**116**	#######	**27**	**757**	N/A	D/A	**0**	**2**	**1**	**3**	**0**	**0**	**0**	**1,014**
Students called to the Bar/ Admitted to Order															
Female	271	223	38	53	1,208	754	N/A	41	42	2	14	2	1	0	
Male	259	215	43	48	1,004	412	N/A	26	30	10	13	0	1	0	
TOTAL	**530**	**438**	**81**	**101**	**2,212**	**1,166**	**-**	**67**	**72**	**12**	**27**	**2**	**2**	**0**	**4,710**
Transfers From Other Jurisdictions															
Female	109	61	14	7	93	4	0	7	27	2	5	10	5	N/A	
Male	92	73	21	12	78	3	0	6	27	6	7	13	7	N/A	
TOTAL	**201**	**134**	**35**	**19**	**171**	**7**	**0**	**13**	**54**	**8**	**12**	**23**	**12**	**37**	**726**
Canadian Legal Advisors															
Female	1	D/A	D/A	0	4	2	D/A	0	0	0	D/A	1	**0**	2	
Male	1	D/A	D/A	0	1	3	D/A	0	0	0	D/A	0	**0**	2	
TOTAL	**2**	**D/A**	**D/A**	**0**	**5**	**5**	**D/A**	**0**	**0**	**0**	**D/A**	**1**	**0**	**4**	**17**
Occasional Appearance Certificates															
Female	0	N/A	N/A	0	N/A	5	D/A	4	1	0	D/A	14	11	N/A	
Male	5	N/A	N/A	0	N/A	4	D/A	5	5	0	D/A	24	27	N/A	
TOTAL	**5**	**N/A**	**N/A**	**0**	**229**	**9**	D/A	**9**	**6**	**0**	**D/A**	**38**	**38**	**32**	**366**
Total Admissions															
Female	**1012**	**756**	**119**	**165**	**3,837**	**2,396**	**113**	**101**	**156**	**18**	**58**	**19**	19	N/A	
Male	**923**	**835**	**165**	**168**	**3,245**	**1,292**	**34**	**95**	**124**	**28**	**57**	**16**	37	N/A	
TOTAL	**1,935**	**1,591**	**284**	**333**	**7,311**	**3,688**	**147**	**196**	**280**	**46**	**115**	***(1)*** **32**	**56**	**80**	**14,152**

(1) *In Yukon, Occasional Appearance Certificates are not considered Admissions*

(2) *Includes undeclared in total*

FEES for the period January 01 - December 31, 2018 (2018 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Application & Admission Fee														
App. & Admission Fee	$ 450.00	$ 650.00	N/A	(2) $625/$750	$ 250	D/A	D/A	$ 450	$300	$ 1,000	$ 300	$ 300	$ 1,400	D/A
Application Fee	D/A	N/A	$ 175.00	$ 625	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$ 200
Admission Fee	D/A	D/A	$ 175.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$ 1,750
Call to the Bar Fee	D/A	D/A	D/A	N/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Admission Fee														
Students	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$ 300	D/A	D/A	D/A
Articling Students	D/A	D/A	D/A	$ 625	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Bar Admission Course	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Application & Admission Fee - Transfers														
Transfer Applicants	D/A	D/A	D/A	$ 750	D/A	D/A	D/A	D/A	$ 1,325	D/A	D/A	D/A	D/A	D/A
Transfer Jurisdiction (1)	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Practising Fee														
Year One Full Time	D/A	D/A	D/A	D/A	D/A	$ 550.10	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Year Two Full Time	D/A	D/A	D/A	D/A	D/A	$ 1,041.75	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Year Three Full Time	D/A	D/A	D/A	D/A	D/A	$ 1,260.10	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Full Time	$ 3,939.72	$ 2,600	$ 1,875.00	$ 2,550	$ 2,183	$ -	$ 850.00	$ 1,900	$ 2,400	$ 1,425	$ 1,750	$ 1,100	$ 1,250	$ 1,750
Part-time	$ 3,039.72	D/A	D/A	D/A	$ 2,183	$ -	$ 850.00	D/A	D/A	D/A	D/A	D/A	N/A	D/A
Canadian Legal Advisor	$ 2,139.72	D/A	D/A	$ 2,650	$ 2,183	$ 1,642.61	D/A	D/A	$ 2,777	$ 500	D/A	$ 1,100	$ 1,250	$ 1,750
In-House Counsel	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Practising Fee - Other Categories														
Quarterly Fee	D/A	D/A	$ 468.75	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Law Student	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$ 150.00	D/A	D/A
Professor	D/A	D/A	$ 937.50	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Articling Student	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Prof. Corp. Renewal	D/A	$ 200	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
LLP Renewal	D/A	$ 70	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A

(1) Members transferring from another jurisdiction

(2) $575 for articling students, $600 plus $150 application fee for transfer applicants

OTHER FEES (2018 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Non-Practising Fee														
	$ 300	$ 200	$ 150	$ 100	$ 1,091.50	D/A	D/A	$ 500.00	$ 300	$ 200	$ 350	$ 300	$ 230	$ 500
Non-Practising Fee - Other Categories														
Retired	$ 75	D/A	$ -	D/A	D/A	$ 307.04	D/A	$ 95.00	$ 50	$ 53	D/A	$ 25	D/A	D/A
Honorary	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Life	D/A	D/A	$ -	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Disabled	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Other Fee - No remunerative work/Attending university/Maternity Leave														
	D/A	D/A	D/A	D/A	$ 547.75	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Other Fee - Occasional Appearance Application & Admission Fee														
	$ 500	N/A	D/A	D/A	$ 113.00	$ 220.00	D/A	D/A	$ 1,000	$ 100	D/A	$ 650	$ 635	$ 2,175.00
Other Fee - Occasional Appearance Renewal Fee														
	$ 100	D/A	D/A	D/A	$ 113.00	$ 1,085.00	D/A	D/A	D/A	$ 100	D/A	$ 350	$ 155	$ 2,073.75
Other Fee - Occasional Appearance Reciprocal Fee														
	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	N/A	D/A
Other Fee - Promotion/Advertising Fee														
	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Other Fee - Notary Assistance Program														
	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A

COMPENSATION FUND (2018 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Coverage per individual														
	D/A	$5 M	$10 M	$ 10 M	D/A	$ 500,000	D/A	$ 1 M	D/A	$5 M	$ 10 M	D/A	$ 300,000	$ 5 M
Coverage Per Claim														
	$ 300,000	$5 M	$10 M	$ 300,000	$ 500,000	$ 100,000	$ 100,000	$ 1 M	$10 M	D/A	$ 10 M	D/A	$ 50,000	$100,000
Coverage - Annual Aggregate														
	$17.5 M	$25 M	$10 M	$10 M	N/A	D/A	D/A	N/A	$ 10 M	$5 M	$ 10 M	D/A	D/A	$500,000
New Claims received														
	22	30	1	10	312	52	11	2	5	0	66	0	0	0
Outstanding Claims														
	19	82	1	20	443	65	16	9	3	0	101	0	0	0
Number of Claims Paid														
	19	N/A	2	6	114	61	10	0	2	0	8	0	0	0
Total Amount Paid														
	$1,427,100	$ 1,093,339	$ 89,500	$51,393.92	$5,172,967.82	$ 714,798.27	$ 533,704	$ -	$ 10,559.43	$ -	$ 631,498	$ -	$ -	$ -

DISCIPLINE (2018 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	Nfld & Labrador	Yukon	N.W.T.	Nunavut
Complaints Received														
	1,145	1,122	306	331	4,527	1,998	1,020	139	110	15	57	7	8	8
Complaints Screened Out														
	514	39	18	115	3,698	51	408	34	NA	7	16	5	0	1
Informal Resolutions														
	95	346	155	25	357	39	340	14	NA	2	5	0	1	0
Other Dispositions														
	511	313	130	170	872	1,543	234	101	NA	6	23	0	0	4
Resulting In Charges														
	43	52	3	31	92	46	38	21	NA	0	6	0	0	1
Discipline Panel Hearings														
	34	44	7	9	96	178	35	6	1	0	4	0	0	0
Number of Acquittals														
	0	2	0	0	2	18	4	0	0	N/A	0	0	0	0
Number of Convictions														
	19	23	7	7	71	28	24	6	1	N/A	3	0	0	0
Number of Lawyers (or Notaries) Disbarred														
	5	1	0	1	13	25	18	1	1	N/A	0	0	0	0
Number of Suspensions														
	7	5	3	1	35	2	0	3	0	N/A	0	0	0	0
Number of Resignations														
	0	1	1	1	8	496	D/A	0	0	N/A	0	0	0	0
Custodial Orders/Decisions/Trusteeship														
	18	7	0	5	D/A	D/A	D/A	2	0	N/A	0	0	0	0

Ontario discipline statistics apply to lawyers only (not paralegals).

In Nova Scotia, both written and telephone complaints are included in the totals.

MEMBERSHIP (2016 Statistical Report of the Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec (1)	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut	2016 Total
Practicing Members - Insured															
Female	3,064	2,366	672	534	8,355	7,399	2,204	305	1,119	53	191	36	30	N/A	
Male	5,691	4,348	1,164	1,082	15,922	8,100	1,294	576	757	100	340	35	48	N/A	
TOTAL	**8,755**	**6,714**	**1,836**	**1,616**	**24,277**	**15,499**	**3,498**	**881**	**1,876**	**153**	**531**	**71**	**78**	**N/A**	**65,785**
Practicing Members - Exempted From Insurance/ Not insured															
Female	1,390	1,274	85	215	7,749	6,087	D/A	189	44	44	111	39	40	N/A	
Male	1,129	1,259	114	178	6,582	4,144	D/A	173	41	25	83	26	46	N/A	
TOTAL	**2,519**	**2,533**	**199**	**393**	**14,331**	**10,231**	0	**362**	**85**	**69**	**194**	**65**	**86**	**N/A**	**31,067**
Practicing - Canadian Legal Advisor															
Female	1	D/A	D/A	0	12	16	D/A	D/A	0	0	D/A	0	0	N/A	
Male	2	D/A	D/A	0	29	20	D/A	D/A	0	0	D/A	0	0	N/A	
TOTAL	**3**	D/A	D/A	**0**	**41**	**36**	**0**	D/A	**0**	**0**	D/A	**0**	**0**	**N/A**	**80**
Practicing - Non-Resident															
Female	103	157	30	20	1,786	470	D/A	37	18	6	13	52	66	N/A	
Male	276	316	93	35	1,924	428	D/A	46	38	16	15	128	167	N/A	
TOTAL	**379**	**473**	**123**	**55**	**3,710**	**898**	0	**83**	**56**	**22**	**28**	**180**	**233**	**N/A**	**6,240**
Non Practicing Members															
Female	1,202	1,823	200	126	5,049	74	280	156	561	45	108	25	51	N/A	
Male	1,449	3,438	240	149	8,273	132	102	263	779	50	160	25	71	N/A	
TOTAL	**2,651**	**5,261**	**440**	**275**	**13,322**	**206**	**382**	**419**	**1,340**	**95**	**268**	**50**	**122**	**N/A**	**24,831**
Others - Suspended or Disbarred, Not Practicing ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	2	D/A	D/A	2	D/A	D/A	D/A	N/A	0	N/A	D/A	0	N/A	N/A	
Male	8	D/A	D/A	41	D/A	D/A	D/A	N/A	0	N/A	D/A	0	N/A	N/A	
TOTAL	**10**	D/A	D/A	**43**	**4,520**	D/A	D/A	**44**	**413**	**N/A**	D/A	**0**	N/A	**N/A**	
Others - RAC ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	0	N/A	D/A	0	N/A	N/A	
Male	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	0	N/A	D/A	0	N/A	N/A	
TOTAL	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	**0**	**N/A**	D/A	**0**	N/A	**N/A**	
Others - Retired ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	223	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	N/A	N/A	0	D/A	N/A	
Male	713	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	N/A	N/A	0	D/A	N/A	
TOTAL	**936**	D/A	D/A	D/A	**3,473**	D/A	D/A	**143**	**211**	**N/A**	N/A	**10**	D/A	**N/A**	
Others - Students/Articled Clerks ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	44	D/A	D/A	1	D/A	N/A	
Male	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	29	D/A	D/A	0	D/A	N/A	
TOTAL	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	**73**	D/A	D/A	**1**	D/A	**N/A**	
Others - Life Members/ Honorary/ Judiciary/ Disabled ***(NOTE: Not included in totals, represented in Non-Practicing Members)***															
Female	D/A	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	2	N/A	0	D/A	N/A	
Male	D/A	D/A	D/A	D/A	D/A	D/A	D/A	N/A	0	2	N/A	0	D/A	N/A	
TOTAL	D/A	D/A	D/A	D/A	**1,211**	D/A	D/A	**46**	**50**	**4**	N/A	**39**	D/A	**N/A**	
Total Active/Practicing Membership															
Female	4,558	3,797	787	769	17,902	13,502	2,204	531	1,181	103	315	127	136	N/A	
Male	7,098	5,923	1,371	1,295	24,457	12,264	1,294	795	836	141	438	189	261	N/A	
TOTAL	**11,656**	**9,720**	**2,158**	**2,064**	**42,359**	**25,766**	**3,498**	**1,326**	**2,017**	**244**	**753**	**316**	**397**	**N/A**	**102,274**
Total Membership															
Female	5,760	5,620	987	895	22,951	13,576	2,484	687	1,742	148	423	152	187	N/A	
Male	8,547	9,361	1,611	1,444	32,730	12,396	1,396	1,058	1,615	191	598	214	332	N/A	
TOTAL	**14,307**	**14,981**	**2,598**	**2,339**	**55,681**	**25,972**	**3,880**	**1,745**	**3,357**	**339**	**1,021**	**366**	**519**	**N/A**	**123,225**

(1) Reporting period for the Barreau du Quebec wa s April 1, 2015 to March 31, 2016

(2) Law Society of Nunavut does not report by gender

YEARS AS MEMBER (2016 Statistical Report of the Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
0-5 Years														
Female	1,612	1,257	287	268	5,192	3,653	556	149	383	23	100	59	66	D/A
Male	1,658	1,293	345	284	4,815	2,128	196	116	344	41	81	63	82	D/A
TOTAL	**3,270**	**2,550**	**632**	**552**	**10,007**	**5,781**	**752**	**265**	**727**	**64**	**181**	**122**	**148**	D/A
6-10 Years														
Female	1084	980	201	175	3,893	2,333	600	110	194	27	82	56	57	D/A
Male	1004	994	187	152	3,522	1,472	201	104	208	28	66	69	95	D/A
TOTAL	**2,088**	**1,974**	**388**	**327**	**7,415**	**3,805**	**801**	**214**	**402**	**55**	**148**	**125**	**152**	D/A
11-15 Years														
Female	764	871	169	127	3,917	1,972	244	104	196	23	57	0	18	D/A
Male	773	892	152	107	3,490	1,288	77	79	165	15	71	17	31	D/A
TOTAL	**1,537**	**1,763**	**321**	**234**	**7,407**	**3,260**	**321**	**183**	**361**	**38**	**128**	**17**	**49**	D/A
16-20 Years														
Female	680	664	157	80	2,701	1,782	158	98	182	9	65	0	18	D/A
Male	794	850	182	130	2,912	1,272	52	82	157	24	63	18	44	D/A
TOTAL	**1,474**	**1,514**	**339**	**210**	**5,613**	**3,054**	**210**	**180**	**339**	**33**	**128**	**18**	**62**	D/A
21-25 Years														
Female	646	557	134	77	2,500	1,526	240	72	141	28	58	14	13	D/A
Male	950	719	166	117	3,018	1,306	72	111	183	18	65	24	25	D/A
TOTAL	**1,596**	**1,276**	**300**	**194**	**5,518**	**2,832**	**312**	**183**	**324**	**46**	**123**	**38**	**38**	D/A
26 Years plus														
Female	888	1,272	309	168	5,072	2,630	669	154	329	26	61	10	15	D/A
Male	3,264	4,578	1,159	654	15,294	5,143	815	566	949	77	252	36	56	D/A
TOTAL	**4,342**	**5,850**	**1,468**	**822**	**20,366**	**7,773**	**1,484**	**720**	**1,278**	**103**	**313**	**46**	**71**	D/A
Total Membership														
Female	5,674	5,601	1,257	895	23,275	13,896	2,467	687	1,425	136	423	139	187	D/A
Male	8,443	9,326	2,191	1444	33,051	12,609	1,413	1,058	2,006	203	598	227	333	D/A
TOTAL	**14,307**	**14,927**	**3,448**	**2,339**	**56,326**	**26,505**	**3, 818**	**1,745**	**3,431**	**339**	**1,021**	**366**	**520**	D/A

FIRMS (2016 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario (1)	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Sole Practioners														
	2,606	1,216	185	278	8,789	NA	1,127	199	247	21	70	26	38	N/A
Firms With 2-10 Lawyers														
	848	1928	136	139	2,464	NA	550	80	120	9	55	11	9	N/A
Firms With 11-25 Lawyers														
	90	797	11	13	180	NA	7	2	10	4	5	0	0	N/A
Firms With 26-50 Lawyers														
	19	813	3	3	47	NA	0	1	3	0	3	0	0	N/A
Firms With 51 "Plus" Lawyers														
	15	1,501	3	5	32	NA	0	2	4	0	0	0	0	N/A
Professional Corporations														
	4,008	2,856	664	510	6,573	4	1,415	310	547	80	141	27	14	N/A
Foreign Legal Consultants														
	62	15	0	3	282	23	D/A	5	4	3	D/A	0	0	N/A

(1) In Ontario, status as a sole practitioner is determined solely by a lawyer's status and does not take into account the size of the law firm at which they work. This number represents the total number of lawyers with a status that indicates they are a Sole Practitioner, regardless of whether or not they work by themselves or with others.

Firms include both law firms and legal clinics. The business size is determined by the number of licensees attached to the business.

ADMISSIONS (2016 Statistical Report of The Federation of Law Societies of Canada))

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut	2015 Total
Articling Students/Stagiaires															
Female	255	215	36	51	991	653	110	32	40	5	16	1	0	N/A	
Male	227	222	47	63	887	392	25	18	43	6	15	0	2	N/A	
TOTAL	**482**	**437**	**83**	**114**	**1,878**	**1,045**	**135**	**50**	**83**	**11**	**31**	**1**	**2**	N/A	**4,352**
Students Admitted to Bar Admission Course															
Female	N/A	160	36	38	977	935	114	32	45	5	15	0	0	N/A	
Male	N/A	174	47	48	740	505	29	18	46	6	17	1	2	N/A	
TOTAL	**456**	**334**	**83**	**86**	**1,717**	**1,440**	**143**	**50**	**91**	**11**	**32**	**1**	**2**	N/A	**4,437**
Students Admitted to Bar Admission Course with NCA Certificate															
Female	54	45	N/A	12	330	N/A	D/A	1	6	0	2	0	0	N/A	
Male	36	37	N/A	12	310	N/A	D/A	1	3	1	3	0	0	N/A	
TOTAL	**90**	**82**	**N/A**	**24**	**640**	N/A	D/A	**2**	**9**	**1**	**5**	**0**	**0**	N/A	**853**
Students called to the Bar/ Admitted to Order															
Female	N/A	199	44	50	1,085	935	122	31	58	5	16	2	0	N/A	
Male	N/A	217	39	60	982	505	45	19	41	3	12	1	0	N/A	
TOTAL	**466**	**416**	**83**	**110**	**2,067**	**1,440**	**167**	**50**	**99**	**8**	**28**	**3**	**-**	N/A	**4,937**
Transfers From Other Jurisdictions															
Female	83	50	12	13	56	2	0	7	20	0	4	16	4	N/A	
Male	85	45	27	10	49	6	0	3	15	0	5	17	6	N/A	
TOTAL	**168**	**95**	**39**	**23**	**105**	**8**	**0**	**10**	**35**	**0**	**9**	**33**	**10**	N/A	**535**
Canadian Legal Advisors															
Female	1	D/A	D/A	0	6	16	D/A	0	0	0	D/A	0	**0**	N/A	
Male	1	D/A	D/A	0	8	20	D/A	0	0	0	D/A	0	**1**	N/A	
TOTAL	**2**	**D/A**	**D/A**	**0**	**14**	**36**	**D/A**	**0**	**0**	**0**	**D/A**	**0**	**1**	N/A	**53**
Occasional Appearance Certificates															
Female	1	N/A	N/A	0	45	2	D/A	4	5	2	D/A	22	15	N/A	
Male	1	N/A	N/A	0	84	6	D/A	4	8	10	D/A	49	30	N/A	
TOTAL	**2**	**N/A**	**N/A**	**0**	**129**	**8**	D/A	**8**	**13**	**12**	**D/A**	**71**	**45**	N/A	**288**
Total Admissions															
Female	**N/A**	**669**	**128**	**164**	**3,474**	**2,543**	**346**	**106**	**174**	**17**	**53**	**19**	19	N/A	
Male	**N/A**	**695**	**160**	**193**	**3,006**	**1,434**	**99**	**62**	**156**	**26**	**52**	**19**	41	N/A	
TOTAL	**1,666**	**1,364**	**288**	**357**	**6,577**	**3,977**	**445**	**168**	**330**	**43**	**105**	***(1)*** **38**	**60**	N/A	**13,739**

(1) *In Yukon, Occasional Appearance Certificates are not considered Admissions*

FEES for the period January 01 - December 31, 2016 (2016 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Application & Admission Fee														
App. & Admission Fee	$ 450.00	$ 620.00	N/A	(2) $625/$750	$ 250	D/A	D/A	$ 450	$300	$ 100	$ 300	$ 300	$ 435	D/A
Application Fee	D/A	N/A	$ 100.00	$ 625	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Admission Fee	D/A	D/A	$ 100.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Call to the Bar Fee	D/A	D/A	D/A	N/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Admission Fee														
Students	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$ 300	D/A	D/A	D/A
Articling Students	D/A	D/A	D/A	$ 625	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Bar Admission Course	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Application & Admission Fee - Transfers														
Transfer Applicants	D/A	D/A	D/A	$ 750	D/A	D/A	D/A	D/A	$ 1,325	D/A	D/A	D/A	D/A	D/A
Transfer Jurisdiction (1)	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Practising Fee														
Year One Full Time	D/A	D/A	D/A	D/A	D/A	$ 645.66	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Year Two Full Time	D/A	D/A	D/A	D/A	D/A	$ 1,180.06	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Year Three Full Time	D/A	D/A	D/A	D/A	D/A	$ 1,412.18	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Full Time	$ 3,875.57	$ 2,520	$ 1,750.00	$ 2,600	$ 1,916	$ 1,701.37	$ 1,120.17	$ 1,787	$ 2,040	$ 1,425	$ 1,870	$ 1,100	$ 1,270	D/A
Part-time	$ 3,000.57	D/A	D/A	D/A	$ 1,916	$ 1,701.37	$ 1,120.17	D/A	D/A	D/A	D/A	D/A	N/A	D/A
Canadian Legal Advisor	$ 2,057.09	D/A	D/A	$ 2,600	$ 1,916	$ 1,701.37	D/A	D/A	$ 2,777	$ 2,500	D/A	$ 1,100	$ 1,270	D/A
In-House Counsel	N/A													
Practising Fee - Other Categories														
Quarterly Fee	D/A	D/A	$ 437.50	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Law Student	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$ 150.00	D/A	D/A
Professor	D/A	D/A	$ 875.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Articling Student	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Prof. Corp. Renewal	D/A	$ 190	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
LLP Renewal	D/A	$ 60	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A

(1) Members transferring from another jurisdiction

(2) $575 for articling students, $600 plus $150 application fee for transfer applicants

OTHER FEES (2016 Statistical Report of The Federatyion of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Non-Practising Fee														
	$ 300	$ 200	$ 150	$ 100	$ 958.00	D/A	D/A	$ 500.00	$ 300	$ 200	$ 350	$ 300	$ 230	D/A
Non-Practising Fee - Other Categories														
Retired	$ 75	D/A	$ -	D/A	D/A	$ 306.35	D/A	$ 89.35	$ 50	$ 53	D/A	$ 25	D/A	D/A
Honorary	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Life	D/A	D/A	$ -	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Disabled	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Other Fee - No remunerative work/Attending university/Maternity Leave														
	D/A	D/A	D/A	D/A	$ 479.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Other Fee - Occasional Appearance Application & Admission Fee														
	$ 500	N/A	D/A	D/A	$ 100.00	D/A	D/A	D/A	$ 1,000	$ 100	D/A	$ 650	$ 635	D/A
Other Fee - Occasional Appearance Renewal Fee														
	$ 100	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$ 100	D/A	$ 350	$ 155	D/A
Other Fee - Occasional Appearance Reciprocal Fee														
	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	N/A	D/A
Other Fee - Promotion/Advertising Fee														
	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Other Fee - Notary Assistance Program														
	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A

INSURANCE FEES (2016 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Insurance Fee - Full Time														
Full Time	$ 1,750.00	$ 3,483.00	$ 1,560.00	$ 1,550.00	$ 3,350.00	$ 1,048.00	$ 3,750.00	$ 2,550.00	$ 1,974.00	$ 2,900.00	$ 1,655.00	$ 1,940.00	$ 758.00	D/A
Part Time	$ 875	D/A	D/A	D/A	$ 1,675.00	$ 1,048.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Adjustments or Surcharges														
	(6) $1,000	***(4)*** 30%-300%	D/A	***(5)*** Varies	***(7)*** <$35,000	D/A	D/A	***(3)*** Varies	***(8)*** Varies	D/A	D/A	N/A	***(1)*** $5-$20,000	D/A
Other Fees														
Levies	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	$30-$70	D/A	D/A	D/A
Retro assessments	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Compensation Fund	D/A	D/A	$ 200.00	$ 500.00	N/A	D/A	D/A	$ 75.00	D/A	***(2)*** $50/$25	$ 50.00	$ 100.00	$ 155.00	D/A
Real Estate Practice	D/A	D/A	D/A	D/A	$ 65.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Innocent Party	D/A	D/A	D/A	D/A	$ 250.00	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A	D/A
Compulsory Coverage														
	$ 1 million	$ 1 million	$ 1 million	$ 1 million	$ 1 million	N/A	$ 1 million	$1 million	$ 1 million	$ 1 million	$ 1 million	$ 1 Million	$1 million	D/A
Annual Aggregate														
	$ 2 million	$ 2 million	$ 2 million	$ 2 million	$ 2 million	D/A	$ 2 million	$ 2 million	$ 2 million	$ 2 million	$ 2 million	$2 Million	$2 million	D/A
Deductible														
Group	D/A	$ 500,000	$ 300,000	$ 300,000	N/A	D/A	D/A	$ 300,000	$ 300,000	D/A	$ 300,000	N/A	N/A	D/A
Individual	$5-10,000	$5,000	$5-$7,500	$ 5-$20,000	$ 5-$25,000	D/A	$ 3,000	$5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	D/A

1) 30% on first claim, graduated thereafter.
2) $50 for practising members, $25 for non-practising
3) 150% after 2 or more paid claims in excess of $5,000 within 7 years, 175% if 3 claims, 200% if 4 claims
4) Based on past claim history, 30% ($870),75% ($2,175), 150% ($4,350), or 300% ($8,700)
5) $5,000 base deductible, $7,500 for 2nd paid claim, $10,000 for 3rd paid claim, $15,000 for 4th paid claim, $20,000 for 6th and successive paid claims
6) $1,000 for 5 years based on paid indemnity
7) 1 claim paid, $2,500 surcharge; 2 claims $5,000. 3 claims $10,000, 4 claims $15,000, 5 claims $25,000, 6 claims $35,000 plus $10,000 per claim if more than 6.
8) 40% of Gross Insurance Premium each year for 5 years following a claim payment; $842.40 in 2016.

COMPENSATION FUND (2016 Statistical Report of The Federation of Law Societies of Canada)

	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	NFLD & Labrador	Yukon	N.W.T.	Nunavut
Coverage per lawyer														
	D/A	$5 M	$10 M	$ 10 M	D/A	$ 500,000	D/A	$ 1 M	D/A	$5 M	$ 10 M	D/A	$ 300,000	N/A
Coverage Per Claim														
	$ 300,000	$5 M	$10 M	$10 M	$ 500,000	$ 100,000	$ 100,000	$ 100,000	$10 M	D/A	$ 10 M	D/A	$ 50,000	N/A
Coverage - Annual Aggregate														
	$17.5 M	$25 M	$10 M	$10 M	N/A	D/A	D/A	N/A	$ 10 M	$5 M	$ 10 M	D/A	D/A	N/A
New Claims received														
	29	18	1	5	156	76	34	10	2	27	61	D/A	0	0
Outstanding Claims														
	29	149	5	4	341	92	134	11	0	45	85	D/A	0	0
Number of Claims Paid														
	7	N/A	3	3	99	57	60	4	1	0	16	D/A	0	0
Total Amount Paid														
	$ 94,000	$ 298,471.00	$ 9,148.63	$34,455.63	$2,949,148.18	$ 182,825.10	$ 1,171,566	$ 7,037.02	$ 1,150.00	$ -	$ 560,843.00	$ -	$ -	$ -

DISCIPLINE (2016 Statistical Report of The Federation of Law Societies of Canada)

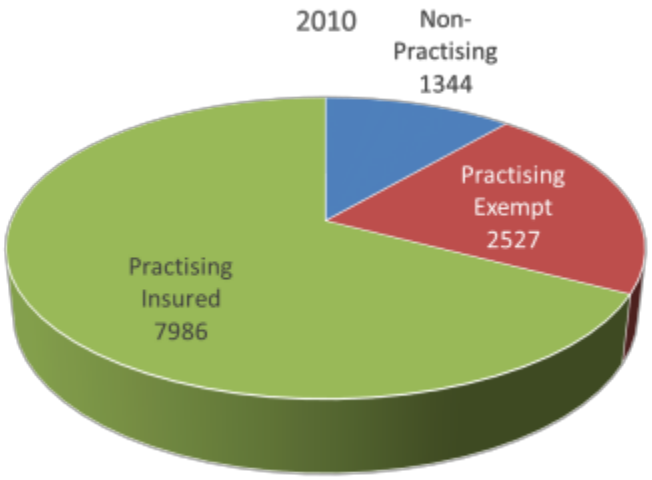
	British Columbia	Alberta	Sask.	Manitoba	Ontario	Barreau du Québec	Chambre des Notaires du Québec	New Brunswick	Nova Scotia	P.E.I.	Nfld & Labrador	Yukon	N.W.T.	Nunavut
Complaints Received														
	1,232	1,479	432	300	5,153	2,129	N/A	130	144	11	120	13	6	N/A
Complaints Screened Out														
	543	1,643	141	98	2,385	21	N/A	42	29	N/A	78	3	0	N/A
Informal Resolutions														
	78	292	232	105	736	22	N/A	42	16	0	13	0	0	N/A
Other Dispositions														
	433	979	234	131	1,808	1,760	N/A	N/A	99	10	22	6	3	N/A
Resulting In Charges														
	21	65	10	23	123	47	N/A	N/A	1	1	1	0	1	N/A
Discipline Panel Hearings														
	26	38	12	15	127	124	54	7	1	N/A	5	0	1	N/A
Number of Acquittals														
	2	3	0	0	5	18	5	0	0	N/A	0	N/A	0	N/A
Number of Convictions														
	22	29	12	14	76	37	13	7	0	N/A	2	N/A	0	N/A
Number of Lawyers (or Notaries) Disbarred														
	0	4	0	1	9	20	4	2	0	N/A	0	N/A	0	N/A
Number of Suspensions														
	6	5	4	0	39	0	14	N/A	0	N/A	0	N/A	0	N/A
Number of Resignations														
	0	6	1	0	9	435	D/A	N/A	0	N/A	D/A	N/A	1	N/A
Custodial Orders/Decisions/Trusteeship														
	11	6	1	3	D/A	D/A	D/A	N/A	0	N/A	2	N/A	0	N/A

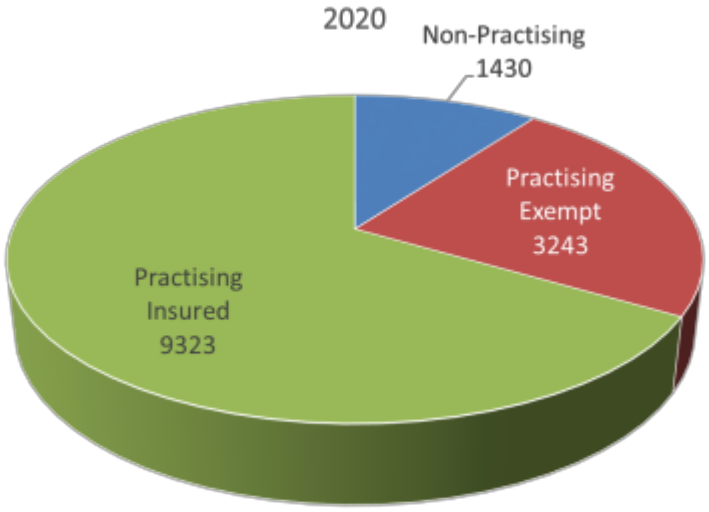
The Law Society of British Columbia

Briefing note

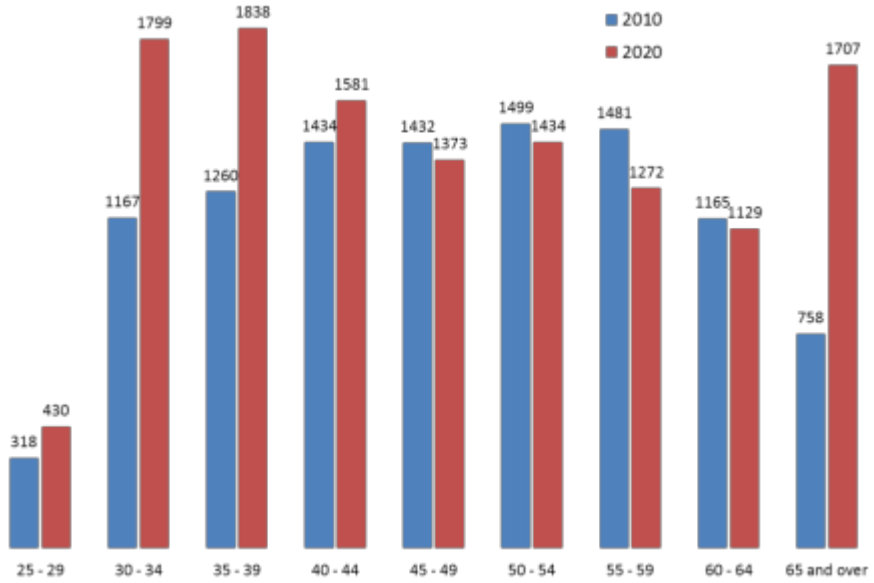
Prepared for: Cullen Commission of Inquiry into Money Laundering in British Columbia
Dated: January 7, 2020

Over the past decade, the number of practising lawyers in British Columbia has grown from just over 10,500 to nearly 12,600.



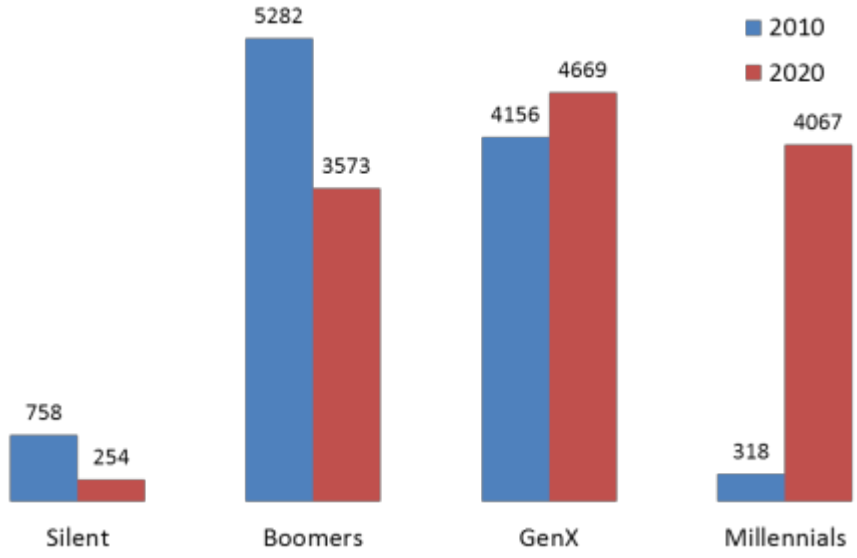


Over the same period, the number of younger lawyers in practice and the number of senior lawyers remaining in practice has grown significantly.

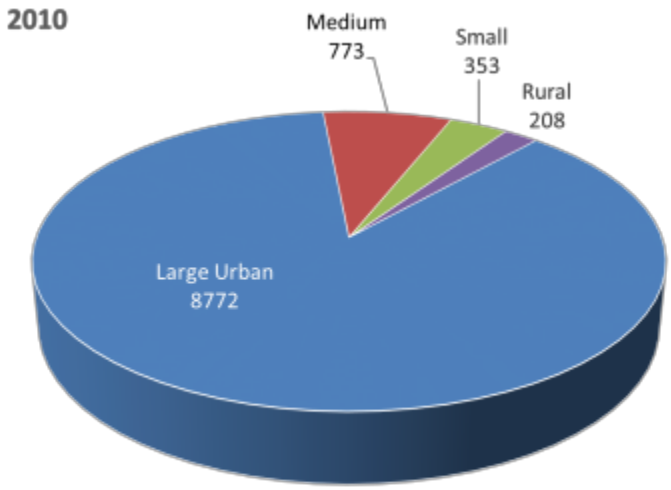


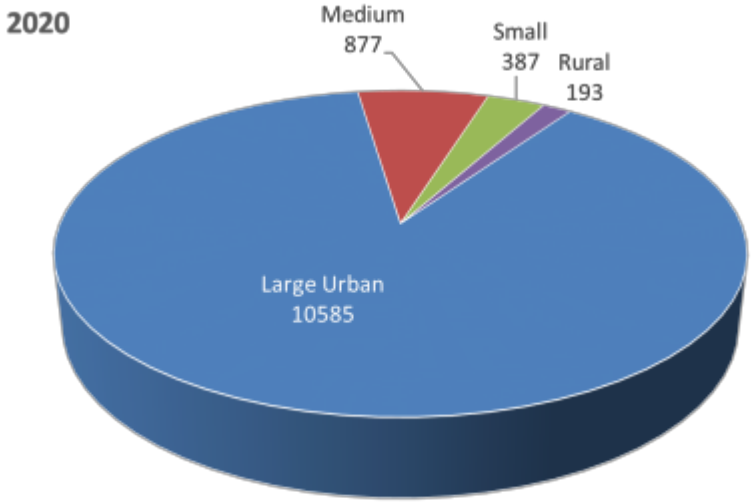
As the chart illustrates, in 2010 the distribution of practising lawyers by age was much more consistent across the age range. Today, however, there are just over 5,600 lawyers under the age of 45 compared with 4,200 ten years ago. And today there are just over 1,700 practising lawyers 65 or older compared with 760 ten years ago.

Looking at the change in the number of practising lawyers between 2010 and 2020 by generation, the increase in the number of Millennials and the decline the Boomer generation is notable.



Since 2010, we have seen continued growth in the number of lawyers practising in BC's large urban centers[1] while the number practising in the rural areas[2] of the province has declined slightly.



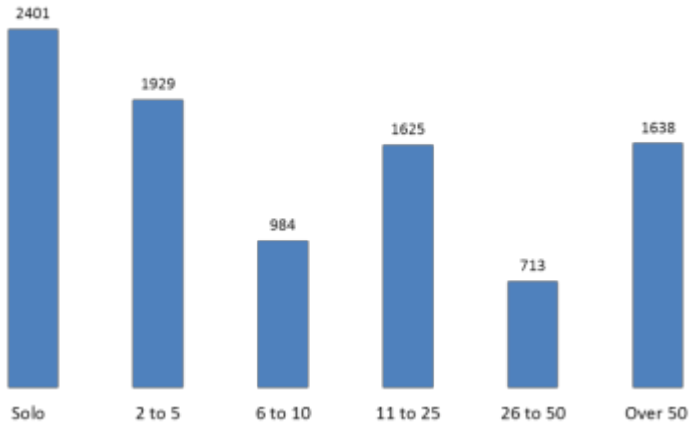


[1] Large Urban Centers are Metro Vancouver, Greater Victoria and Kelowna

[2] Rural locations are 100 Mile House, 108 Mile Ranch, Agassiz, Aiyansh, Argenta, Armstrong, Barriere, Bella Bella, Blind Bay, Bowen Island, Bowser, Burns Lake, Chemainus, Christina Lake, Cobble Hill, Creston, Fernie, Fort St James, Gabriola Island, Galiano Island, Gibsons, Gold River, Golden, Grand Forks, Harrison Hot Springs, Harrison Mills, Hazelton, Hope, Invermere, Kaslo, Klemtu, Lantzville, Lax Kw'alaams, Lazo, Lions Bay, Lone Butte, Lumby, Lytton, Masset, Mill Bay, Nakusp, Oliver, Osoyoos, Peachland, Pemberton, Pender Island, Port Edward, Port Hardy, Quathiaski Cove, Queen Charlotte Is., Radium Hot Springs, Revelstoke, Roberts Creek, Rossland, Royston, Sechelt, Smithers, Sointula, Summerland, Sun Peaks, Ucluelet, Vanderhoof, Whistler

The following graphic shows the number of practising lawyers around the province by electoral district.

As can be seen, a significant majority of BC's practising lawyers can be found in Metro Vancouver and Greater Victoria. The same is true for the distribution of law firms.



Of the 18 firms with more than 50 private practice lawyers, all of them are located within Vancouver and more than half of the private practice lawyers do so in firms of 10 or fewer lawyers.

The following table shows the proportion of practice by area of practice as reported by BC lawyers for 2018.[3]

Administrative Law	10.3%
Civil Litigation Plaintiff	8.6%
Civil Litigation Defendant	8.3%
Commercial Lending - Lender	1.6%
Commercial Lending - Borrower	1.5%
Commercial - Other	5.7%
Corporate	8.6%
Creditor's Remedies - Plaintiff	1.5%
Creditor's Remedies - Defendant	0.7%
Criminal	6.6%
Family	11.3%
Intellectual Property	1.6%
Mediation/Arbitration	2.0%
Motor Vehicle Plaintiff	8.2%
Motor Vehicle Defendant	3.9%
Real Estate Residential	5.4%
Real Estate Commercial	3.4%
Securities	2.9%
Tax	1.7%
Wills & Estates	6.2%

As the table illustrates, civil litigation/motor vehicle (including both plaintiff and defendants), administrative law and family practice account for just over ½ of all practice in the province. Together residential and commercial real estate account for 8.8% of the reported practice.

[3] Area of practice data is collected from insured lawyers on the annual practice declaration. The most recent completed APD year is 2018.

The Law Society
of British Columbia

REPORT TO BENCHERS ON DELEGATION AND QUALIFICATIONS OF PARALEGALS

April 2006

Purpose of Report:	**Discussion and Decision**
Prepared by:	**Paralegal Task Force -** **Brian J. Wallace, Q.C., Chair** **Ralston S. Alexander, Q.C.** **William Sullivan, Q.C.** **Jaynie W. Clark**
Staff:	**Carmel Wiseman, Policy and Legal Services, (604) 443-5774**

I. INTRODUCTION

The Benchers considered the Paralegal Task Force Report dated October 27, 2003 at their meeting of November 14, 2003. The Benchers resolved to ask the Paralegal Task Force to consider revisions to Chapter 12 of the *Professional Conduct Handbook* to expand the range of services that could be delegated by lawyers to their non-lawyer employees. They also asked the Task Force to consider defining the qualifications of the non-lawyer employees to whom particular services could be delegated.

The Paralegal Task Force provided an interim report on that dual mandate to the Benchers at their meeting April 8, 2005. At the time, the Task Force was still in discussions with the Provincial Court about the role of paralegals on Provincial Court matters.

This is the Task Force's final report.

II. QUALIFICATIONS FOR PARALEGALS

The Benchers asked the Task Force to consider defining qualifications for non-lawyer employees to whom particular duties may be delegated. The Task Force considered setting out specific qualifications for such paralegals and also considered approving particular paralegal programs. However, in the Task Force's experience, paralegals who were suitable candidates for delegation of particular matters, did not all share the same background. The Task Force noted that paralegals in this province come from a variety of educational backgrounds and have quite varied experience. Some paralegals are qualified in only one area; some paralegals are qualified in several. Some have completed formal extensive paralegal programs; others may have little formal paralegal education but have extensive job experience and training in a given area.

The Task Force was of the view that the key to appropriate delegation was to require the lawyer to evaluate the non-lawyer employee's abilities to perform the duty to be delegated. In each case, the lawyer would be responsible and accountable for the decision.

The Task Force recognized that there may be concerns about lawyers who improperly delegate tasks to their non-lawyer employees. The Law Society's Discipline Committee has considered situations of lawyers delegating particular services to employees who were not qualified by education, training or experience to provide the service delegated. Accordingly, the Task Force concluded that the test for delegation to a paralegal should contain some objective elements by which to evaluate the lawyer's judgment to delegate work.

The Task Force considered various descriptions and definitions of paralegals. The Task Force adopted the following definition of "paralegal", which in its view contains objective elements coupled with flexibility: "A paralegal is a non-lawyer employee who is competent to carry out legal work that, in the paralegal's absence, would need to be done by the lawyer. A lawyer must be satisfied that the paralegal is competent by

determining that one or more of the paralegal's training, work experience, and education is sufficient for the paralegal to carry out the work delegated.

The Task Force is of the view that it is in the public interest that paralegals, like lawyers, maintain and improve their skills by taking courses and pursuing programs that are available in their practice area. The Task Force also notes that courses taken by the paralegal in the relevant practice area would be objective evidence of the paralegal's training and education for the work delegated.

III: THE TASK FORCE'S CONSIDERATIONS

The Task Force started with the proposition that it does not make economic sense to use lawyers for all legal services. Some cases, or some aspects of a case, do not warrant payment of a lawyer's fees where there is an economical alternative. An obvious example would be hiring a lawyer to act on a traffic violation ticket with a nominal fine. Another example would be hiring a lawyer to act on a Small Claims matter, particularly where the amount in issue is significantly less than the current $25,000 jurisdictional limit. Central to this discussion is the principle of proportionality: that the cost of legal services being delivered is proportionate to the amount in issue or the risk to the client.

The Task Force noted that the principle of proportionality has limitations. One such limitation is that the complexity of a case is not always tied to its dollar value. For example, a Small Claims Court matter where there is very little at risk from a monetary standpoint can still raise complex issues of fact and law. The Task Force thinks that the principle of proportionality is really nothing more than economic common sense for the consumer of legal services.

The Task Force considered that allowing paralegals employed and supervised by lawyers to provide some legal services is a way to deliver proportionate legal services to the public who wish to access legal assistance while at the same time ensuring that the consumer of legal services is protected. The lawyer will continue to be responsible for overseeing the services delivered by the paralegal. Because lawyers are responsible for all work entrusted to them, the services are regulated and insured.

The Task Force was of the view that the key to determining what services may be appropriately delegated to paralegal staff is to articulate principles which balance the risk in delegating certain services to paralegals with the benefit to the public in having access to those services. The key to making sure that the public is protected is to require the lawyer to supervise any work delegated and to delegate work only to employees whose training, education, and experience is appropriate to the work being delegated.

The Task Force also considered what is meant by a lawyer's supervision of a paralegal. The Task Force does not believe that supervision requires a lawyer to oversee or review every aspect of every task that a paralegal performs. Supervision of a paralegal requires the lawyer to provide the guidance and review appropriate to the paralegal's experience with similar matters and the complexity of the task. The degree of supervision of a particular paralegal will vary with time. For example, a paralegal newly hired by a lawyer will require significant supervision at the outset. However, when it becomes clear

that the paralegal understands and can competently perform the task and can identify for the lawyer any novel aspects to a particular matter, the lawyer's hands-on supervision can be reduced accordingly.

The Task Force wrestled with the concept of supervision of a paralegal appearing in a court or before an administrative tribunal when the lawyer is not present. The Task Force acknowledges that in such settings the supervision that the lawyer can provide is limited. A lawyer can and should review a matter with a paralegal before a proceeding to ensure that the paralegal is as prepared as possible for the proceeding but new issues can still arise. In these circumstances the paralegal may not be able to contact the lawyer about the new issue and the paralegal will have to proceed without guidance from the lawyer. The Task Force acknowledges that such situations will probably arise if paralegals are allowed to provide some representation before administrative tribunals or provincial courts. Not having a lawyer present to deal with all the issues that arise in a proceeding is a corollary of proportionality. The question is whether the risk to the client when this occurs is so great that such representation should never be allowed. As set out later in this paper, the Task Force concluded that, notwithstanding the risk, there are situations where paralegals should be permitted to provide legal services before administrative tribunals and courts.

IV. CHAPTER 12 OF THE PROFESSIONAL CONDUCT HANDBOOK

Chapter 12 of the *Professional Conduct Handbook* deals with the supervision of employees. Chapter 12 is attached as Appendix "A" to this Report. The Chapter contains a number of principles together with lists of services that may be delegated by lawyers to their employees and lists of what the lawyer must do personally.

A significant limitation on what may be delegated to a non-lawyer employee is Ruling 9(i) which prohibits a non-lawyer employee from appearing before any Court, Registrar, or administrative tribunal or at an examination for discovery, except in support of the lawyer.

The Task Force was of the view that some of the items contained in the list of services the lawyer must handle personally were not, in fact, always handled by the lawyer. For example, the Task Force noted that Ruling 9(b) specifies that only a lawyer can review a title search report. In the Task Force's experience, such reports are routinely reviewed by legal assistants with the legal assistant reporting on his or her review to the lawyer in charge. The Task Force concluded that the time was right to revise Chapter 12 in order to better reflect appropriate practice by lawyers. The Task Force has not produced a new Chapter 12. It has, however, developed principles for the delegation of work to paralegals. It has not developed principles for delegation of work to or supervision of other non-lawyer employees. If the principles articulated in this Report are adopted by the Benchers, Chapter 12 will have to be revised.

V. DISCUSSIONS WITH THE CHIEF JUDGE OF THE PROVINCIAL COURT

Members of the Task Force met with former Chief Judge Carol Baird Ellan and Associate Chief Judge Anthony Spence twice and with Chief Judge Hugh Stansfield twice to discuss the issue of paralegals employed by lawyers representing clients on Provincial Court matters. The discussions as they relate to particular types of matters are set out below. The Task Force also spent two half days observing cases in the Provincial Court (Small Claims Division).

VI. CONSIDERATION OF ACTIVITIES TO BE DELEGATED

The lists of activities in Chapter 12 of the *Professional Conduct Handbook* provided a starting point for the Task Force's discussions on what services could appropriately be delegated to paralegals. The Task Force considered the purpose in allowing delegation of some legal services to paralegals is to make legal services more affordable and, accordingly, more accessible to the public. The Task Force thought that a supervising lawyer should be guided by proportionality in delivering legal services, i.e. ensuring that the cost of services being delivered is proportionate to the complexity of the matter considered, the amounts in issue or the risks to the client, and the means of the client to pay for legal services.

(a) Solicitor's Services

The Task Force noted that a great deal of solicitor's work is currently done by non-lawyer employees working under the supervision of a lawyer. The Task Force discussed the appropriateness of having paralegal employees meet with clients in the absence of a lawyer to take instructions with respect to uncontested divorces, simple conveyances, simple wills, and other services that might be provided by a notary public. The Task Force is of the view that it is appropriate for lawyers' paralegals to provide services in relation to these matters where the issues are not complex and the amounts in question are not large, provided the matters are appropriately supervised by the lawyer.

Ruling 9(a) requires a lawyer to attend personally on a client to advise and take instructions on all substantive matters. The Task Force is of the view that there is a role for paralegal employees to attend on the client in the absence of a lawyer to take instructions on substantive matters in appropriate cases. Whether or not the case is appropriate will depend upon a number of things: the complexity of the case, the amounts in issue, the sophistication and expectations of the client, and the paralegal's training, work experience, and education.

(b) Small Claims Court Matters

The Task Force considered the provision of two different types of services by paralegals in relation to Small Claims Court matters: (i) preparation and organization of documents and witnesses prior to a hearing and (ii) representation at a hearing.

The Provincial Court Judiciary was of the view that paralegals could be of real assistance to the parties and the Court by organizing a party's documents and assisting parties to

prepare their evidence. The Task Force agrees. In their view, paralegals should be entitled and encouraged to draft Small Claims documents and prepare matters for hearing in Small Claims Court.

The issue of allowing paralegals to represent parties in Small Claims proceedings was more contentious. The Chief Judge, former Chief Judge and Associate Chief Judge all expressed concerns about allowing paralegal representation in Small Claims matters. They noted that the issues in Small Claims Court are often as complex as in Supreme Court matters - the only difference is the amount in issue. The Chief Judge also pointed out that the Provincial Court Judiciary conducts thousands of trials in which the parties are unrepresented. He expressed a high level of confidence that Small Claims Judges ensure fairness and just results in those cases even though the parties are unrepresented.

The Task Force acknowledges that Provincial Court Judges are experienced in dealing with unrepresented parties and are confident that Judges take steps to ensure that the results are fair and just. The Task Force also acknowledges that Small Claims Court is designed for parties to appear without representation and that many people are comfortable appearing in Small Claims Court on that basis.

However, the Task Force believes that there are also some members of the public who, for a variety of reasons, do not wish to appear on Small Claims Court matters on their own. The Task Force considered that, for the most part, it is not economical for clients to retain lawyers in relation to Small Claims matters. The Task Force is of the view that allowing paralegals employed by lawyers to represent clients in Small Claims Court would enhance the public's right to affordable, trained, and regulated legal assistance. Prior to the trial, the supervising lawyer would be available to review and consider the issues raised in the smalls claims action and instruct a paralegal on how to conduct a matter. In all cases, the lawyer would be responsible for the matter and the client would thus be protected. Given the amounts in issue, the Task Force is of the view that the benefits to the public outweigh the risk to the public in being represented by a paralegal employed and supervised by a lawyer. It is a question of proportionality.

As the amount in issue increases, it makes more economic sense for a lawyer to provide the services. However, even at $50,000 (which the *Justice Modernization Statutes Amendment Act*, 2004, S.B.C. 2004 c. 65, provides may be declared, by regulation, to be the Small Claims jurisdictional limit), it may be uneconomic to hire a lawyer.

The Task Force agrees with the Chief and former Chief Judge and Associate Chief Judge that the issues in Small Claims matters can be complex. However, even when the issues are complex, it may be uneconomic to hire a lawyer to provide representation. The Task Force is of the view that it is important to provide the public with an economical, but nonetheless regulated, alternative to being represented in Court by a lawyer. The supervising lawyer would be responsible to determine whether, given a matter's complexity, delegation to the paralegal was appropriate, and to advise the client of the risks.

With respect to allowing lawyers paralegals to represent parties in Small Claims proceedings, the Task Force notes that the *Small Claims Act* and *Rules* do not allow a party to be represented by a paralegal employed by a lawyer.

Rule 17(20) of the *Small Claims Rules* provides as follows:

> **How the parties may be represented**
>
> (20) Any party who wishes to be represented in court may be represented by a lawyer or an articled student, or
>
> (a) if the party is a company, by a director, officer or authorized employee,
>
> (b) if the party is a partnership, by a partner or an authorized employee, or
>
> (c) if the party is using a business name, by the owner of the business or any authorized employee.

The Chief Judge indicated his view that Rule 17(20) describes those persons who are entitled, as of right, to represent a party in a proceeding. He notes that there is no barrier to any agent, including a paralegal, appearing in Court if permitted by the Judge. He indicated that the Provincial Court Judiciary would oppose any presumptive right of paralegals to appear in adjudicative proceedings. The Task Force agrees with the Provincial Court Judiciary that paralegals should not be allowed, as of right, to appear in adjudicative proceedings.

The Task Force notes, however, that it is likely that the Courts will only grant a privilege of audience only to those who do not, by appearing, breach the provisions of the *Legal Profession Act* see e.g. *B.C. Telephone Company v. Rueben* 1982 5 W.W.R. 428 (1982) 138 D.L.R. (3d) 549 *R. v. Dick*, 2002, BCCA 27 *Law Society of British Columbia et al. v. Constantini et al.* 2004 BCCA 279. The *Legal Profession Act* prohibits non-lawyers from appearing in Court for a fee although a paralegal employed by a practising lawyer. . . and who acts under the supervision of a practising lawyer s. 15(2) does not breach the general prohibition against non-lawyers practising law.

As paralegals employed by lawyers are not included in Rule 17(20), if a paralegal is to represent a party in a Small Claims matter, it would be necessary for the paralegal or the employing lawyer to seek the Courts permission for the paralegal to appear on behalf of a party.

The Task Force considered how such an application should be made if the paralegal prepares for a trial but is refused audience on the day of the trial then either the matter would have to be adjourned or the client would have to proceed alone. The Task Force does not consider the uncertainty of that process to be in the best interests of the Court, the opposing party, the client, or the administration of justice.

The Task Force concludes that an application to allow a paralegal to act should not be made on the trial date. The Task Force is of the view that the Law Society should enter into discussions with the Court with a view to developing a Protocol for such applications. The Task Force envisions that the Protocol might provide that, prior to a hearing, the supervising lawyer would seek permission for the paralegal to appear for a party on a matter by writing to the Court. The letter to the Court should include the following:

- the reason(s) for the client to be represented;
- the qualifications of the paralegal; and
- the name and contact information of the supervising lawyer.

The Court could then determine, prior to the hearing, whether to grant the application, with or without conditions. Of course, any grant of privilege to appear is subject to the agents conducting themselves appropriately. If a paralegal who is granted a privilege of audience does not conduct him or herself appropriately, then the privilege would be lost. The Protocol could specify that any concerns about a paralegal should be brought to the supervising lawyer's attention. The Protocol could also provide that concerns about the supervising lawyer, including concerns about the adequacy of the lawyer's supervision of the paralegal, could be brought to the Law Society's attention.

(c) Criminal Matters – Provincial Court

The Task Force considered what representation, if any, could appropriately be delegated by a lawyer to a paralegal on criminal or quasi-criminal matters. The Task Force noted that sections 800 and 802 of the *Criminal Code*, which deal with summary convictions, allow for an accused to appear by agent. In *R. v. Romanowicz* (1999) O.J. 3191, the Ontario Court of Appeal found that those provisions allowed paid agents to act for an accused in summary conviction proceedings. British Columbia Courts have not yet determined whether *Romanowicz* applies in British Columbia.

The Task Force is of the view that paralegals ought not to act on behalf of clients with respect to an indictable offence, as the risks to the client upon conviction are significant and the issues are generally more complex.

Initially, the Task Force considered recommending that a lawyer be allowed to delegate representation of a client to his or her paralegal only on uncontested interlocutory matters or on summary conviction matters when, in the lawyer's opinion, the client faced no significant risk of imprisonment or of a fine exceeding the monetary jurisdiction of the Provincial Court. The Task Force thought that it was only appropriate for a lawyer to delegate a criminal or quasi-criminal matter to a paralegal where there was no risk that the client might be imprisoned or face a significant fine or other serious consequence (e.g. the loss of a driver's license). The former Chief Judge and Associate Chief Judge shared our concerns about paralegal representation in this area. They suggested that lawyers should only allow their paralegals to represent clients on "ticket offences" where there is no risk of imprisonment or significant fines or other serious consequences. They

noted that these are cases that the Chief Judge assigns to Sitting Justices of the Peace, who may not have been lawyers.

The Task Force agrees with and has adopted the former Chief Judge's suggestion that lawyers be allowed to delegate to their paralegals only those classes of cases that the Chief Judge assigns to Judicial Justices of the Peace, from time to time.

The Task Force believes that there are also uncontested interlocutory applications in criminal cases that proceed before Provincial Court Judges, which may be suitable for delegation by a lawyer to their paralegals provided that such applications do not bear on the liberty of an accused. For example, the Task Force believes it appropriate for a paralegal to appear on behalf of the lawyer to fix a date for trial.

The Task Force also considered whether lawyers should only be entitled to delegate adult criminal matters to paralegals. The Task Force is of the view that, given the limited delegation contemplated, delegation to a paralegal should not be restricted in that way.

The Task Force's comments on a non-lawyer's privilege of audience apply equally to this section. The Task Force believes that the Law Society and the Provincial Court Judiciary should set out a process whereby a lawyer can seek permission for a paralegal to appear for a client on a criminal matter in the Provincial Court. The Protocol could also specify those uncontested interlocutory applications which the Provincial Court and the Law Society believe are appropriate for delegation to a paralegal.

(d) Provincial Family Court Matters

The Task Force considered the issues that proceed in Provincial Family Court. The Task Force noted that many of the issues dealt with in Provincial Family Court are very serious ones which have major consequences for the clients. For example, custody, guardianship, and access are all matters dealt with in Provincial Family Court. These are many of the same issues in Supreme Court family matters. The Task Force concluded that there was only a very limited role for paralegal representation in Family Court. In Provincial Family Court matters, the Task Force concluded that lawyers should only allow their paralegals to represent clients on uncontested or consent applications. The former Chief Judge agreed with the Task Force's position on paralegal representation in Provincial Family Court matters. Once again, a Protocol with the Provincial Court, could set out the process for seeking permission for the paralegal to appear.

(e) Administrative Tribunals

The Task Force noted that some administrative tribunals allow non-lawyers to represent clients in proceedings before tribunals. They also noted that because of the provisions of Chapter 12 of the *Professional Conduct Handbook*, non-lawyers employed by lawyers may not represent clients in administrative hearings although if they were not employed by lawyers they could do so. Allowing paralegals employed by lawyers to represent clients before administrative tribunals would provide the public with access to paralegals who are regulated and supervised in their delivery of services.

The Task Force observed that the provincial government appears to be interested in allowing for increased representation by non-lawyers, as illustrated by the government's amendments to the *Workers Compensation Act* RSBC 1996 c. 492 as amended. In the case of the *Workers Compensation Act*, while non-lawyer representation is allowed, no regulatory scheme has been put in place to protect the public in the delivery of those services.

The Task Force is of the view that lawyers should be permitted to allow their paralegals to represent clients before administrative tribunals if permitted by the tribunals and not prohibited by law. The client is protected by having services delivered through a responsible lawyer. The client is in a better position than if he or she retains a "consultant" as the paralegal employed by a lawyer is supervised and the lawyer employer is regulated and insured and responsible for all work done by his or her employees.

(f) Supreme Court Matters

The Task Force considered whether paralegals should be allowed to provide representation in the Supreme Court and determined not to recommend any such representation at this time. The Task Force was of the view that it would be beneficial for both the Judiciary and the Law Society to have the benefit of the experience of having paralegals appear on Provincial Court and administrative matters before engaging in discussions about allowing paralegal representation on any Supreme Court matters. The Task Force also believes that there may be additional considerations for the Supreme Courts that do not apply to Provincial Courts. The Task Force concluded that if the experience with paralegals in the Provincial Courts is positive, in the future the Law Society may wish to consider approaching the Supreme Court about limited paralegal representation for Supreme Court matters.

VII. PRINCIPLES OF DELEGATION

(a) New Principles

The Task Force considered that Chapter 12 already contains a number of principles pursuant to which a lawyer can delegate services to a non-lawyer employee. The Task Force has revised the principles to accord with its conclusions that more services can appropriately be delegated to paralegals. The Task Force also concluded that lawyers should only be able to delegate advocacy functions to paralegals who met the definition and not to other non-lawyer employees.

Set out below are the principles of delegation to paralegals which the Task Force has developed:

"It is in the interests of the profession and the public in the efficient delivery of legal services that lawyers be permitted and encouraged to delegate legal tasks to their paralegals.

By delegating work to paralegals, lawyers can ensure the legal services they provide are delivered cost-effectively to clients. A "paralegal" in this context is a non-lawyer

employee who is competent to carry out legal work that, in the absence of a paralegal, would need to be done by a lawyer. A lawyer must be satisfied that the paralegal is competent by determining that one or more of the paralegal's training, work experience or education is sufficient for the paralegal to carry out the work delegated.

A lawyer who delegates work to paralegals should do so in accordance with the following principles:

1. A lawyer is responsible for all work delegated.

2. A lawyer must be satisfied that a paralegal is qualified to competently carry out the work delegated to the paralegal by one or more of education, training and work experience.

3. A lawyer must appropriately supervise and review the work of a paralegal taking into consideration that person's qualifications and skills and the tasks that the lawyer delegates.

4. The lawyer may, with the consent of the client, allow a paralegal to perform certain advocacy work on behalf of that client. Because a lawyer cannot directly supervise a paralegal's advocacy work, the delegation of such work is permitted only as follows:

   (a) A paralegal may, with the permission of the Court, represent a client in Provincial Court:

      (i) in the Small Claims Division;

      (ii) in criminal or quasi-criminal matters:

         a. on those uncontested interlocutory applications which the Chief Judge of the Provincial Court and the Law Society deem suitable for paralegal representation;

         b. on those hearings that the Chief Judge of the Provincial Court assigns to Judicial Justices of the Peace[1];

---

[1] Pursuant to Chief Judge Baird Ellan's Assignment of Duties September 1, 2004 the following types of hearings are assigned to Judicial Justices of the Peace:

"(a) Hearings in respect of all provincial offences in which proceedings are commenced by ticket information;

(b) Hearings in respect of all traffic-related municipal bylaw offences;

(c) Hearings in respect of any traffic-related offence under the *Government Property Traffic Regulations* and *Airport Traffic Regulations* made pursuant to the *Government Property Traffic Act of Canada* (adult only).

(iii) in the Family Division, only on consent or uncontested matters which the Chief Judge of the Provincial Court and the Law Society deem suitable for paralegal representation.

(b) A paralegal may represent a client on matters before administrative tribunals if permitted by the tribunal and not prohibited by legislation.

5. A paralegal must be identified as such in correspondence and documents that he or she signs, and in any appearance before a Court or tribunal on behalf of a client.

(b) Discussion

Many of the principles that are currently contained in Chapter 12 of the *Professional Conduct Handbook* are reflected in the revised principles set out above. The principles developed by the Task Force, however, are limited to the principles of delegation to paralegals. Delegation to and supervision of other non-lawyer employees are not included. If the Benchers adopt the principles, Chapter 12 would have to be revised. The significant changes on delegation to paralegals are highlighted in this section.

As in Chapter 12 of the *Professional Conduct Handbook*, the revised principles recognize the value of using paralegal employees in the delivery of legal services. The principles also repeat the overarching principle that a lawyer is responsible for all legal work which is performed by his or her employees.

While the determination that a paralegal is qualified for delegation of certain work is still left to the lawyer, the paralegal's qualifications now include reference to the paralegal's education as well as training and work experience. This makes it clear that formal education is one of the elements that a lawyer should take into account in considering whether the work should be delegated.

Under the revised principles, lawyers are still required to provide an appropriate level of supervision. Principle 4, however, recognizes that direct supervision is inconsistent with the expanded services that may be delegated to paralegals. Accordingly, the requirement for direct supervision is removed and the principle is revised to require appropriate supervision.

The revised principles do not contain the prohibition contained in Chapter 12 against a paralegal acting finally without reference to the lawyer in matters involving professional legal judgment. The Task Force is of the view that this limitation is inconsistent with advocacy functions performed by a paralegal and not always necessary in relation to solicitor's work that may be appropriately delegated to a paralegal as set out above.

The revised principles no longer contain the requirement that a lawyer maintain a direct relationship with the client. The revised principles recognize that some work may be largely conducted by paralegals dealing directly with the client.

The prohibition against paralegals giving legal advice has also been taken out of the revised principles. Paralegals who have conduct of a matter which the lawyer deems appropriate for delegation may be required to give advice to the client.

The Task Force also considered the prohibition against a non-lawyer employee giving or receiving undertakings (Ch. 12 Ruling 6(a)(ii)). The Task Force noted that the lawyer would be responsible for the undertaking even if given by a non-lawyer employee.

In its Interim Report to the Benchers, the Task Force recommended that there be one exception to the general rule that lawyers be involved in the giving or receiving of undertakings. That exception would have allowed a paralegal to give or receive an undertaking in advocacy situations where the circumstances required it. However, the Benchers, at their April 2005 meeting, rejected that proposition. Accordingly, the Task Force reconsidered and has abandoned that recommendation. A paralegal's inability to give an undertaking in advocacy situations may cause some inefficiencies in the proceedings and may require supervising lawyers to make themselves available. However, the Task Force believes that inefficiency is proportional to maintaining the sanctity of a lawyer's undertaking.

Finally, the Task Force has not developed specific lists of tasks that paralegals can or cannot do as found in Chapter 12. While the Task Force is of the view that such lists are not necessary as the principles should determine what may or may not be done by a paralegal, they also recognize that members and their employees may find such lists helpful. The Task Force defers to the views of the Benchers and the Ethics Committee on that issue.

VIII. STEPS TO BE TAKEN

This report is placed before the Benchers for discussion and if accepted, the Task Force recommends that the Report be referred to the Ethics Committee so that Chapter 12 of the *Professional Conduct Handbook* can be revised in accordance with this Report. If the Benchers agree with the Task Force's recommendation with respect to paralegal representation on Provincial Court matters, then the Task Force recommends that this issue be referred to a Committee or Task Force of Benchers to work with the Chief Judge to develop a Protocol for paralegal appearances on Provincial Court matters.

APPENDIX "A"

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 12
SUPERVISION OF EMPLOYEES

Responsibility for all business entrusted to lawyer

1. A lawyer is completely responsible for all business entrusted to the lawyer. The lawyer must maintain personal and actual control and management of each of the lawyer's offices. While tasks and functions may be delegated to staff and assistants such as students, clerks and legal assistants, the lawyer must maintain direct supervision over each non-lawyer staff member.

[amended 05/00]

Matters requiring professional skill and judgement

2. A lawyer must ensure that all matters requiring a lawyer's professional skill and judgement are dealt with by a lawyer and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

[amended 05/00]

Signing correspondence

3. Letters on the letterhead of a law firm, when signed by a person other than a practising lawyer, must indicate the status or designation of the signing person for the information of the recipient.

[amended 05/00]

Legal assistants

4. There are many tasks that can be performed by a legal assistant working under the supervision of a lawyer. It is in the interests of the profession and the public for the delivery of more efficient, comprehensive and better quality legal services that the training and employment of legal assistants be encouraged.

[amended 05/00]

5. Subject to this chapter, a legal assistant may perform any task delegated and supervised by a lawyer, but the lawyer must maintain a direct relationship with the client and has full professional responsibility for the work.

[amended 05/00]

5.1 A lawyer may delegate tasks or functions to a legal assistant if

(a) the training and experience of the legal assistant is appropriate to protect the interests of the client, and

(b) provision is made for the professional legal judgement of the lawyer to be exercised whenever it is required.

[added 05/00]

6. Except as permitted under the *Legal Services Society Act*, section 9, a lawyer must not permit a legal assistant to:

(a) perform any function reserved to lawyers, including but not limited to

(i) giving legal advice,

(ii) giving or receiving undertakings, and

(iii) appearing in court or actively participating in legal proceedings on behalf of a client, except in a support role to the lawyer appearing in the proceedings,

(b) do anything that a lawyer is not permitted to do,

(c) act finally and without reference to the lawyer in matters involving professional legal judgement, or

(d) be held out as a lawyer, or be identified other than as a legal assistant when communicating with clients, lawyers, public officials or with the public generally.

[amended 05/00]

7. A lawyer who employs a legal assistant must ensure that the assistant is adequately trained and supervised for the tasks and functions delegated to the assistant.

[amended 05/00]

8.This rule is subject to Rule 5.1. It illustrates, but does not limit, the general effect of that rule. The following are examples of tasks and functions that legal assistants may perform with proper training and supervision:

(a) attending to all matters of routine administration,

(b) drafting or conducting routine correspondence,

(c) drafting documents, including closing documents and statements of accounts,

(d) drafting documentation and correspondence relating to corporate proceedings and corporate records, security instruments and contracts of all kinds, including closing documents and statements of account,

(e) collecting information and drafting documents, including wills, trust instruments and pleadings,

(f) preparing income tax, succession duty and estate tax returns and calculating such taxes and duties,

(g) drafting statements of account, including executors' accounts,

(h) attending to filings,

(i) researching legal questions,

(j) preparing memoranda,

(k) organizing documents and preparing briefs for litigation,

(l) conducting negotiations of claims and communicating directly to the client, provided that the lawyer reviews proposed terms before the legal assistant offers or accepts a settlement.

[amended 05/00]

9. The following are examples of tasks and functions that a lawyer must attend to personally and that legal assistants must not perform. This list illustrates, but does not limit, the general effect of Rule 6:

(a) attending on the client to advise and taking instructions on all substantive matters,

(b) reviewing title search reports,

(c) conducting all negotiations with third parties or their lawyers, except as permitted in Rule 8,

(d) reviewing documents before signing,

(e) attending on the client to review documents,

(f) reviewing and signing the title opinion and/or reporting letter to the client following registration,

(g) reviewing all written material prepared by the legal assistant before it leaves the lawyer's office, other than documents and correspondence relating to routine administration,

(h) signing all correspondence except as permitted in this chapter,

(i) attending at any hearing before the court, a registrar or an administrative tribunal or at any examination for discovery except in support of a lawyer also in attendance.

[added 05/00]

Real estate assistants

10. In Rules 10 to 12,

"purchaser" includes a lessee or person otherwise acquiring an interest in a property;

"sale" includes lease and any other form of acquisition or disposition;

"show," in relation to marketing real property for sale, includes:

(a) attending at the property for the purpose of exhibiting it to members of the public;

(b) providing information about the property, other than preprinted information prepared or approved by the lawyer; and

(c) conducting an open house at the property.

[added 10/04]

11. A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

(a) the assistant is employed in the office of the lawyer; and

(b) the lawyer personally shows the property.

[added 10/04]

12. A real estate marketing assistant may:

(a) arrange for maintenance and repairs of any property in the lawyer's care and control;

(b) place or remove signs relating to the sale of a property;

(c) attend at a property without showing it, in order to unlock it and let members of the public, real estate licensees or other lawyers enter; and

(d) provide members of the public with pre-printed information about the property prepared or approved by the lawyer.

[added 10/04]

Code of Professional Conduct for British Columbia

(the BC Code)

Published under the authority of the Benchers for the guidance of BC lawyers

The rules in this Code should guide the conduct of lawyers, not only in the practice of law, but also in other activities.

Published by the Law Society of British Columbia
Effective date: January 1, 2013

Table of Contents

Appendix C – Real Property Transactions

Appendix D – Conflicts Arising as a Result of Transfer Between Law Firms

[Appendix D rescinded 11/2016 – see rules 3.4-17 to 3.4-23]

Appendix E – Supervision of Paralegals

Introduction

(1) One of the hallmarks of civilized society is the rule of law. Its importance is reflected in every legal activity in which citizens engage. As participants in a justice system that advances the rule of law, lawyers hold a unique and important role in society. Self-regulatory powers have been granted to the legal profession in Canada on the understanding that the profession will exercise those powers in the public interest. Part of that responsibility is ensuring the appropriate regulation of the professional conduct of lawyers. Members of the legal profession who draft, argue, interpret and challenge the law of the land can attest to Canada's robust legal system. They also acknowledge the public's reliance on the integrity of the people who work within the legal system and the authority exercised by the governing bodies of the profession. While lawyers are consulted for their knowledge and abilities, more than mere technical proficiency is expected of them. A special ethical responsibility comes with membership in the legal profession. This *Code of Professional Conduct for British Columbia* attempts to define and illustrate that responsibility in terms of a lawyer's professional relationships with clients, the justice system and other members of the profession.

(2) The *Legal Profession Act* provides that it is the object and duty of the Law Society of British Columbia to uphold and protect the public interest in the administration of justice. A central feature of that duty is to ensure that lawyers can identify and maintain the highest standards of ethical conduct. This Code attempts to assist lawyers to achieve that goal. While the Code should be considered a reliable and instructive guide for lawyers, the obligations it identifies are only the minimum standards of professional conduct expected of members of the profession. Lawyers are encouraged to aspire to the highest standards of competence, integrity and honour in the practice of their profession, whether or not such standards are formally addressed in the Code.

(3) The Code is published under the authority of the Benchers of the Law Society of British Columbia for the guidance of BC lawyers. It is significantly related to the Federation of Law Societies' Model Code of Professional Conduct, though there are points of variance from the Model Code that the Benchers have considered to be appropriate for guiding practice in British Columbia. Where there is a corresponding provision in the Model Code, the numbering of the *BC Code* is similar to that of the Model Code. The *BC Code* is not a formal part of the Law Society Rules but, rather, an expression of the views of the Benchers about standards that British Columbia lawyers must meet in fulfilling their professional obligations.

(4) The Code is divided into three components: rules, commentary and appendices. Each of these components contain some statements that are mandatory, some that are advisory and others with both mandatory and advisory elements. Some issues are dealt with in more than one place in the Code, and the Code itself is not exhaustive of lawyers' professional conduct obligations. In determining lawyers' professional obligations, the Code must be consulted in its entirety and lawyers should be guided in their conduct equally by the language in the rules, commentary and appendices. Mandatory statements have equal force wherever they appear in the Code.

(5) A breach of a provision of the Code by a lawyer may or may not be the basis of disciplinary action against that lawyer. A decision by the Law Society to take such action will include a consideration of the language of the provision itself and the nature and seriousness of the conduct in question.

(6) The correct or best answer to ethical questions that arise in the practice or lives of lawyers may often be difficult to discern, whether or not the Code addresses the question directly. Lawyers should always be aware that discussion of such questions with Benchers, Law Society practice advisors, the Law Society's Ethics Committee or other experienced and trusted colleagues is the approach most likely to identify a reasonable course of action consistent with lawyers' ethical obligations. This Code is intended to be a valuable asset for lawyers in the analysis, discussion and resolution of such issues.

[Introduction added 12/2016]

Chapter 1 – Interpretation and Definitions

1.1 Definitions

1.1-1 In this Code, unless the context indicates otherwise,

"associate" includes:

(a) a lawyer who practises law in a law firm through an employment or other contractual relationship; and

(b) a non-lawyer employee of a multi-discipline practice providing services that support or supplement the practice of law;

"client" means a person who:

(a) consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or

(b) having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf.

Commentary

[1] A lawyer-client relationship may be established without formality.

[2] When an individual consults a lawyer in a representative capacity, the client is the corporation, partnership, organization, or other legal entity that the individual is representing;

[3] For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.

"**conflict of interest"** means the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person.

"consent" means fully informed and voluntary consent after disclosure

(a) in writing, provided that, if more than one person consents, each signs the same or a separate document recording the consent; or

(b) orally, provided that each person consenting receives a separate written communication recording the consent as soon as practicable;

"disclosure" means full and fair disclosure of all information relevant to a person's decision (including, where applicable, those matters referred to in commentary in this Code), in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed;

"interprovincial law firm" means a law firm that carries on the practice of law in more than one province or territory of Canada;

"law firm" includes one or more lawyers practising:

(a) in a sole proprietorship;

(b) in a partnership;

(c) as a clinic under the [provincial or territorial Act governing legal aid];

(d) in a government, a Crown corporation or any other public body; or

(e) in a corporation or other organization;

"lawyer" means a member of the Society and includes a law student enrolled in the Law Society Admission Program;

"limited scope retainer" means the provision of legal services for part, but not all, of a client's legal matter by agreement with the client;

"Society" means the Law Society of British Columbia;

"tribunal" includes a court, board, arbitrator, mediator, administrative agency or other body that resolves disputes, regardless of its function or the informality of its procedures.

["limited scope retainer" added 09/2013]

Chapter 2 – Standards of the Legal Profession

2.1 Canons of Legal Ethics

These Canons of Legal Ethics in rules 2.1-1 to 2.1-5 are a general guide and not a denial of the existence of other duties equally imperative and of other rights, though not specifically mentioned. A version of these Canons has formed part of the *Code of Professional Conduct* of the Law Society of British Columbia since 1921. They are included here both for their historical value and for their statement of general principles that underlie the remainder of the rules in this Code.

A lawyer is a minister of justice, an officer of the courts, a client's advocate and a member of an ancient, honourable and learned profession.

In these several capacities, it is a lawyer's duty to promote the interests of the state, serve the cause of justice, maintain the authority and dignity of the courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

2.1-1 To the state

(a) 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.

(b) When engaged as a Crown prosecutor, a lawyer's primary duty is not to seek a conviction but to see that justice is done; to that end the lawyer should make timely disclosure to the defence of all facts and known witnesses whether tending to show guilt or innocence, or that would affect the punishment of the accused.

(c) A lawyer should accept without hesitation, and if need be without fee or reward, the cause of any person assigned to the lawyer by the court, and exert every effort on behalf of that person.

2.1-2 To courts and tribunals

(a) A lawyer's conduct should at all times be characterized by candour and fairness. The lawyer should maintain toward a court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of clients, at the same time discharging professional duties to clients resolutely and with self-respecting independence.

(b) Judges, not being free to defend themselves, are entitled to receive the support of the legal profession against unjust criticism and complaint. Whenever there is proper ground for serious complaint against a judicial officer, it is proper for a lawyer to submit the grievance to the appropriate authorities.

(c) A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law and should not, either in argument to the judge or in address to the jury, assert a personal belief in an accused's guilt or innocence, in the justice or merits of the client's cause or in the evidence tendered before the court.

(d) A lawyer should never seek privately to influence a court or tribunal, directly or indirectly, in the lawyer's or a client's favour, nor should the lawyer attempt to curry favour with juries by fawning, flattery or pretended solicitude for their personal comfort.

2.1-3 To the client

(a) A lawyer should obtain sufficient knowledge of the relevant facts and give adequate consideration to the applicable law before advising a client, and give an open and undisguised opinion of the merits and probable results of the client's cause. The lawyer should be wary of bold and confident assurances to the client, especially where the lawyer's employment may depend on such assurances. The lawyer should bear in mind that seldom are all the law and facts on the client's side, and that *audi alteram partem* (hear the other side) is a safe rule to follow.

(b) A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the controversy, if any, that might influence whether the client selects or continues to retain the lawyer. A lawyer must not act where there is a conflict of interests between the lawyer and a client or between clients.

(c) Whenever the dispute will admit of fair settlement the client should be advised to avoid or to end the litigation.

(d) A lawyer should treat adverse witnesses, litigants and counsel with fairness and courtesy, refraining from all offensive personalities. The lawyer must not allow a client's personal feelings and prejudices to detract from the lawyer's professional duties. At the same time, the lawyer should represent the client's interests resolutely and without fear of judicial disfavour or public unpopularity.

(e) A lawyer should endeavour by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence that is authorized by law. The lawyer must, however, steadfastly bear in mind that this great trust is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less demand, for any client, violation of law or any manner of fraud or chicanery. No client has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer's own sense of honour and propriety.

(f) It is a lawyer's right to undertake the defence of a person accused of crime, regardless of the lawyer's own personal opinion as to the guilt of the accused. Having undertaken such defence, the lawyer is bound to present, by all fair and honourable means and in a manner consistent with the client's instructions, every defence that the law of the land permits, to the end that no person will be convicted except by due process of law.

(g) A lawyer should not, except as by law expressly sanctioned, acquire by purchase or otherwise any interest in the subject-matter of the litigation being conducted by the lawyer. A lawyer should scrupulously guard, and not divulge or use for personal benefit, a client's secrets or confidences. Having once acted for a client in a matter, a lawyer must not act against the client in the same or any related matter.

(h) A lawyer must record, and should report promptly to a client the receipt of any moneys or other trust property. The lawyer must use the client's moneys and trust property only as authorized by the client, and not commingle it with that of the lawyer.

(i) A lawyer is entitled to reasonable compensation for services rendered, but should avoid charges that are unreasonably high or low. The client's ability to pay cannot justify a charge in excess of the value of the service, though it may require a reduction or waiver of the fee.

(j) A lawyer should try to avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. A lawyer should always bear in mind that the profession is a branch of the administration of justice and not a mere money-making business.

(k) A lawyer who appears as an advocate should not submit the lawyer's own affidavit to or testify before a court or tribunal except as to purely formal or uncontroverted matters, such as the attestation or custody of a document, unless it is necessary in the interests of justice. If the lawyer is a necessary witness with respect to other matters, the conduct of the case should be entrusted to other counsel.

2.1-4 To other lawyers

(a) A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith. Any ill feeling that may exist between clients or lawyers, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. Personal remarks or references between lawyers should be scrupulously avoided, as should quarrels between lawyers that cause delay and promote unseemly wrangling.

(b) A lawyer should neither give nor request an undertaking that cannot be fulfilled and should fulfil every undertaking given. A lawyer should never communicate upon or attempt to negotiate or compromise a matter directly with any party who the lawyer knows is represented therein by another lawyer, except through or with the consent of that other lawyer.

(c) A lawyer should avoid all sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accede to reasonable requests that do not prejudice the rights of the client or the interests of justice.

2.1-5 To oneself

(a) A lawyer should assist in maintaining the honour and integrity of the legal profession, should expose before the proper tribunals without fear or favour, unprofessional or dishonest conduct by any other lawyer and should accept without hesitation a retainer against any lawyer who is alleged to have wronged the client.

(b) It is the duty of every lawyer to guard the Bar against the admission to the profession of any candidate whose moral character or education renders that person unfit for admission.

(c) A lawyer should make legal services available to the public in an efficient and convenient manner that will command respect and confidence. A lawyer's best advertisement is the establishment of a well-merited reputation for competence and trustworthiness.

(d) No client is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the state or disrespect for judicial office, or the corruption of any persons exercising a public or private trust, or deception or betrayal of the public.

(e) A lawyer should recognize that the oaths taken upon admission to the Bar are solemn undertakings to be strictly observed.

(f) All lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity.

2.2 Integrity

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.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[4] Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

2.2-2 A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

Commentary

[1] Collectively, lawyers are encouraged to enhance the profession through activities such as:

(a) sharing knowledge and experience with colleagues and students informally in day-to-day practice as well as through contribution to professional journals and publications, support of law school projects and participation in panel discussions, legal education seminars, bar admission courses and university lectures;

(b) participating in legal aid and community legal services programs or providing legal services on a pro bono basis;

(c) filling elected and volunteer positions with the Society;

(d) acting as directors, officers and members of local, provincial, national and international bar associations and their various committees and sections; and

(e) acting as directors, officers and members of non-profit or charitable organizations.

[This page is intentionally left blank.]

Chapter 3 – Relationship to Clients

3.1 Competence

Definitions

3.1-1 In this section

"competent lawyer" means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including:

(a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises;

(b) investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;

(c) implementing as each matter requires, the chosen course of action through the application of appropriate skills, including:

(i) legal research;

(ii) analysis;

(iii) application of the law to the relevant facts;

(iv) writing and drafting;

(v) negotiation;

(vi) alternative dispute resolution;

(vii) advocacy; and

(viii) problem solving;

(d) communicating at all relevant stages of a matter in a timely and effective manner;

(e) performing all functions conscientiously, diligently and in a timely and cost-effective manner;

(f) applying intellectual capacity, judgment and deliberation to all functions;

(g) complying in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers;

(h) recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;

(i) managing one's practice effectively;

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and

(k) otherwise adapting to changing professional requirements, standards, techniques and practices.

Competence

3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary

[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

[2.1] For a discussion of the correct procedure in swearing an affidavit or taking a solemn declaration, see Appendix A to this Code.

[3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

(a) the complexity and specialized nature of the matter;

(b) the lawyer's general experience;

(c) the lawyer's training and experience in the field;

(d) the preparation and study the lawyer is able to give the matter; and

(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

[4] In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[6] A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

(a) decline to act;

(b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] The lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[7.1] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1.1.

[7.2] In providing short-term summary legal services under rules 3.4-11.1 to 3.4-11.4, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.

[9] A lawyer should be wary of bold and over-confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or services unrelated to the legal services retainer will also be subject to the constraints outlined in the Rules governing multi-discipline practices.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] Incompetence, negligence and mistakes – This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

[[7.1] added 09/2013; [7.2] added 06/2016]

3.2 Quality of service

3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

Commentary

[1] This rule should be read and applied in conjunction with section 3.1 regarding competence.

[2] A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service.

[3] A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions.

[4] A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about his or her options, such as whether to retain new counsel.

Examples of expected practices

[5] The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

(a) keeping a client reasonably informed;

(b) answering reasonable requests from a client for information;

(c) responding to a client's telephone calls;

(d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;

(e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;

(f) answering, within a reasonable time, any communication that requires a reply;

(g) ensuring that work is done in a timely manner so that its value to the client is maintained;

(h) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;

(i) maintaining office staff, facilities and equipment adequate to the lawyer's practice;

(j) informing a client of a proposal of settlement, and explaining the proposal properly;

(k) providing a client with complete and accurate relevant information about a matter;

(l) making a prompt and complete report when the work is finished or, if a final report cannot be made, providing an interim report when one might reasonably be expected;

(m) avoidance of self-induced disability, for example from the use of intoxicants or drugs, that interferes with or prejudices the lawyer's services to the client;

(n) being civil.

[6] A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in prosecuting a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

Limited scope retainers

3.2-1.1 Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

Commentary

[1] Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

[2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services to the client.

[3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[4] A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed (see rule 7.2-6.1).

[5] This rule does not apply to situations in which a lawyer is providing summary advice, for example over a telephone hotline or as duty counsel, or to initial consultations that may result in the client retaining the lawyer.

[rule and commentary added 09/2013]

Honesty and candour

3.2-2 When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

Commentary

[1] A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the matter, if any that might influence whether the client selects or continues to retain the lawyer.

[2] A lawyer's duty to a client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the lawyer's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks about the merits and probable results.

[3] Occasionally, a lawyer must be firm with a client. Firmness, without rudeness, is not a violation of the rule. In communicating with the client, the lawyer may disagree with the client's perspective, or may have concerns about the client's position on a matter, and may give advice that will not please the client. This may legitimately require firm and animated discussion with the client.

Language rights

3.2-2.1 A lawyer must, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.

[added 12/2016]

3.2-2.2 Where a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

Commentary

[1] The lawyer should advise the client of the client's language rights as soon as possible.

[2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the *Canadian Charter of Rights and Freedoms*, s.19(1) and Part XVII of the *Criminal Code* regarding language rights in courts under federal jurisdiction and in criminal proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages.

[3] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by rule 3.1-2 and related commentary.

[4] Civil trials in British Columbia must be held in English: *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2013 SCC 42. Under section 530 of the *Criminal Code*, R.S.C 1985, c. C-46 an accused has the right to a criminal trial in either English or French.

[rule and commentary added 12/2016]

When the client is an organization

3.2-3 Although a lawyer may receive instructions from an officer, employee, agent or representative, when a lawyer is employed or retained by an organization, including a corporation, the lawyer must act for the organization in exercising his or her duties and in providing professional services.

Commentary

[1] A lawyer acting for an organization should keep in mind that the organization, as such, is the client and that a corporate client has a legal personality distinct from its shareholders, officers, directors and employees. While the organization or corporation acts and gives instructions through its officers, directors, employees, members, agents or representatives, the lawyer should ensure that it is the interests of the organization that are served and protected. Further, given that an organization depends on persons to give instructions, the lawyer should be satisfied that the person giving instructions for the organization is acting within that person's authority.

[2] In addition to acting for the organization, a lawyer may also accept a joint retainer and act for a person associated with the organization. For example, a lawyer may advise an officer of an organization about liability insurance. In such cases the lawyer acting for an organization should be alert to the prospects of conflicts of interests and should comply with the rules about the avoidance of conflicts of interests (section 3.4).

Encouraging compromise or settlement

3.2-4 A lawyer must advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings.

Commentary

[1] A lawyer should consider the use of alternative dispute resolution (ADR) when appropriate, inform the client of ADR options and, if so instructed, take steps to pursue those options.

Threatening criminal or regulatory proceedings

3.2-5 A lawyer must not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten:

(a) to initiate or proceed with a criminal or quasi-criminal charge; or

(b) to make a complaint to a regulatory authority.

Commentary

[1] It is an abuse of the court or regulatory authority's process to threaten to make or advance a complaint in order to secure the satisfaction of a private grievance. Even if a client has a legitimate entitlement to be paid monies, threats to take criminal or quasi-criminal action are not appropriate.

[2] It is not improper, however, to notify the appropriate authority of criminal or quasi-criminal activities while also taking steps through the civil system.

Inducement for withdrawal of criminal or regulatory proceedings

3.2-6 A lawyer must not:

(a) give or offer to give, or advise an accused or any other person to give or offer to give, any valuable consideration to another person in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint, unless the lawyer obtains the consent of the Crown or the regulatory authority to enter into such discussions;

(b) accept or offer to accept, or advise a person to accept or offer to accept, any valuable consideration in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint, unless the lawyer obtains the consent of the Crown or regulatory authority to enter such discussions; or

(c) wrongfully influence any person to prevent the Crown or regulatory authority from proceeding with charges or a complaint or to cause the Crown or regulatory authority to withdraw the complaint or stay charges in a criminal or quasi-criminal proceeding.

Commentary

[1] "Regulatory authority" includes professional and other regulatory bodies.

[2] A lawyer for an accused or potential accused must never influence a complainant or potential complainant not to communicate or cooperate with the Crown. However, this rule does not prevent a lawyer for an accused or potential accused from communicating with a complainant or potential complainant to obtain factual information, arrange for restitution or an apology from an accused, or defend or settle any civil matters between the accused and the complainant. When a proposed resolution involves valuable consideration being exchanged in return for influencing the Crown or regulatory authority not to proceed with a charge or to seek a reduced sentence or penalty, the lawyer for the accused must obtain the consent of the Crown or regulatory authority prior to discussing such proposal with the complainant or potential complainant. Similarly, lawyers advising a complainant or potential complainant with respect to any such negotiations can do so only with the consent of the Crown or regulatory authority.

[3] A lawyer cannot provide an assurance that the settlement of a related civil matter will result in the withdrawal of criminal or quasi-criminal charges, absent the consent of the Crown or regulatory authority.

[4] When the complainant or potential complainant is unrepresented, the lawyer should have regard to the rules respecting unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused. If the complainant or potential complainant is vulnerable, the lawyer should take care not to take unfair or improper advantage of the circumstances. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

Dishonesty, fraud by client

3.2-7 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.

[amended 04/2013]

Commentary

[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.

[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.

[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 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.

[4] A bona fide test case is not necessarily precluded by this rule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case. In all situations, the lawyer should ensure that the client appreciates the consequences of bringing a test case.

Dishonesty, fraud when client an organization

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.

Commentary

[1] The past, present, or proposed misconduct of an organization may have harmful and serious consequences, not only for the organization and its constituency, but also for the public who rely on organizations to provide a variety of goods and services. In particular, the misconduct of publicly traded commercial and financial corporations may have serious consequences for the public at large. This rule addresses some of the professional responsibilities of a lawyer acting for an organization, including a corporation, when he or she learns that the organization has acted, is acting, or proposes to act in a way that is dishonest, criminal or fraudulent. In addition to these rules, the lawyer may need to consider, for example, the rules and commentary about confidentiality (section 3.3).

[2] This rule speaks of conduct that is dishonest, criminal or fraudulent.

[3] Such conduct includes acts of omission. Indeed, 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.

[4] In considering his or her responsibilities under this section, a lawyer should consider whether it is feasible and appropriate to give any advice in writing.

[5] A lawyer acting for an organization who learns that the organization has acted, is acting, or intends to act in a wrongful manner, may advise the chief executive officer and must advise the chief legal officer of the misconduct. If the wrongful conduct is not abandoned or stopped, the lawyer must report the matter "up the ladder" of responsibility within the organization until the matter is dealt with appropriately. If the organization, despite the lawyer's advice, continues with the wrongful conduct, the lawyer must withdraw from acting in the particular matter in accordance with rule 3.7-1. In some but not all cases, withdrawal means resigning from his or her position or relationship with the organization and not simply withdrawing from acting in the particular matter.

[6] This rule recognizes that lawyers as the legal advisers to organizations are in a central position to encourage organizations to comply with the law and to advise that it is in the organization's and the public's interest that organizations do not violate the law. Lawyers acting for organizations are often in a position to advise the executive officers of the organization, not only about the technicalities of the law, but also about the public relations and public policy concerns that motivated the government or regulator to enact the law. Moreover, lawyers for organizations, particularly in-house counsel, may guide organizations to act in ways that are legal, ethical, reputable and consistent with the organization's responsibilities to its constituents and to the public.

Clients with diminished capacity

3.2-9 When a client's ability to make decisions is impaired because of minority or mental disability, or for some other reason, the lawyer must, as far as reasonably possible, maintain a normal lawyer and client relationship.

Commentary

[1] A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions depends on such factors as age, intelligence, experience and mental and physical health and on the advice, guidance and support of others. A client's ability to make decisions may change, for better or worse, over time. A client may be mentally capable of making some decisions but not others. The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision. Accordingly, when a client is, or comes to be, under a disability that impairs his or her ability to make decisions, the lawyer will have to assess whether the impairment is minor or whether it prevents the client from giving instructions or entering into binding legal relationships.

[2] A lawyer who believes a person to be incapable of giving instructions should decline to act. However, if a lawyer reasonably believes that the person has no other agent or representative and a failure to act could result in imminent and irreparable harm, the lawyer may take action on behalf of the person lacking capacity only to the extent necessary to protect the person until a legal representative can be appointed. A lawyer undertaking to so act has the same duties under these rules to the person lacking capacity as the lawyer would with any client.

[3] If a client's incapacity is discovered or arises after the solicitor-client relationship is established, the lawyer may need to take steps to have a lawfully authorized representative, such as a litigation guardian, appointed or to obtain the assistance of the Office of the Public Trustee to protect the interests of the client. Whether that should be done depends on all relevant circumstances, including the importance and urgency of any matter requiring instruction. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned. Until the appointment of a legal representative occurs, the lawyer should act to preserve and protect the client's interests.

[4] In some circumstances when there is a legal representative, the lawyer may disagree with the legal representative's assessment of what is in the best interests of the client under a disability. So long as there is no lack of good faith or authority, the judgment of the legal representative should prevail. If a lawyer becomes aware of conduct or intended conduct of the legal representative that is clearly in bad faith or outside that person's authority, and contrary to the best interests of the client with diminished capacity, the lawyer may act to protect those interests. This may require reporting the misconduct to a person or institution such as a family member or the Public Trustee.

[5] When a lawyer takes protective action on behalf of a person or client lacking in capacity, the authority to disclose necessary confidential information may be implied in some circumstances: See Commentary under rule 3.3-1 (Confidentiality) for a discussion of the relevant factors. If the court or other counsel becomes involved, the lawyer should inform them of the nature of the lawyer's relationship with the person lacking capacity.

Restricting future representation

3.2-10 A lawyer must not participate in offering or making an agreement in which a restriction on any lawyer's right to practise is part of the settlement of a client lawsuit or other controversy.

3.3 Confidentiality

Confidential information

3.3-1 A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

(a) expressly or impliedly authorized by the client;

(b) required by law or a court to do so;

(c) required to deliver the information to the Law Society, or

(d) otherwise permitted by this rule.

Commentary

[1] A lawyer cannot render effective professional service to a client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client's part, matters disclosed to or discussed with the lawyer will be held in strict confidence.

[2] This rule must be distinguished from the evidentiary rule of lawyer and client privilege, which is also a constitutionally protected right, concerning oral or documentary communications passing between the client and the lawyer. The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.

[3] A lawyer owes the duty of confidentiality to every client without exception and whether or not the client is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client, whether or not differences have arisen between them.

[4] A lawyer also owes a duty of confidentiality to anyone seeking advice or assistance on a matter invoking a lawyer's professional knowledge, although the lawyer may not render an account or agree to represent that person. A solicitor and client relationship is often established without formality. A lawyer should be cautious in accepting confidential information on an informal or preliminary basis, since possession of the information may prevent the lawyer from subsequently acting for another party in the same or a related matter. (See rule 3.4-1 Conflicts.)

[5] Generally, unless the nature of the matter requires such disclosure, a lawyer should not disclose having been:

(a) retained by a person about a particular matter; or

(b) consulted by a person about a particular matter, whether or not the lawyer-client relationship has been established between them.

[6] A lawyer should take care to avoid disclosure to one client of confidential information concerning or received from another client and should decline employment that might require such disclosure.

[7] Sole practitioners who practise in association with other lawyers in cost-sharing, space-sharing or other arrangements should be mindful of the risk of advertent or inadvertent disclosure of confidential information, even if the lawyers institute systems and procedures that are designed to insulate their respective practices. The issue may be heightened if a lawyer in the association represents a client on the other side of a dispute with the client of another lawyer in the association. Apart from conflict of interest issues such a situation may raise, the risk of such disclosure may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

[8] A lawyer should avoid indiscreet conversations and other communications, even with the lawyer's spouse or family, about a client's affairs and should shun any gossip about such things even though the client is not named or otherwise identified. Similarly, a lawyer should not repeat any gossip or information about the client's business or affairs that is overheard or recounted to the lawyer. Apart altogether from ethical considerations or questions of good taste, indiscreet shoptalk among lawyers, if overheard by third parties able to identify the matter being discussed, could result in prejudice to the client. Moreover, the respect of the listener for lawyers and the legal profession will probably be lessened. Although the rule may not apply to facts that are public knowledge, a lawyer should guard against participating in or commenting on speculation concerning clients' affairs or business.

[9] In some situations, the authority of the client to disclose may be inferred. For example, in court proceedings some disclosure may be necessary in a pleading or other court document. Also, it is implied that a lawyer may, unless the client directs otherwise, disclose the client's affairs to partners and associates in the law firm and, to the extent necessary, to administrative staff and to others whose services are used by the lawyer. But this implied authority to disclose places the lawyer under a duty to impress upon associates, employees, students and other lawyers engaged under contract with the lawyer or with the firm of the lawyer the importance of non-disclosure (both during their employment and afterwards) and requires the lawyer to take reasonable care to prevent their disclosing or using any information that the lawyer is bound to keep in confidence.

[10] The client's authority for the lawyer to disclose confidential information to the extent necessary to protect the client's interest may also be inferred in some situations where the lawyer is taking action on behalf of the person lacking capacity to protect the person until a legal representative can be appointed. In determining whether a lawyer may disclose such information, the lawyer should consider all circumstances, including the reasonableness of the lawyer's belief the person lacks capacity, the potential harm that may come to the client if no action is taken, and any instructions the client may have given the lawyer when capable of giving instructions about the authority to disclose information. Similar considerations apply to confidential information given to the lawyer by a person who lacks the capacity to become a client but nevertheless requires protection.

[11] A lawyer may have an obligation to disclose information under rules 5.5-2, 5.5-3 and 5.6-3. If client information is involved in those situations, the lawyer should be guided by the provisions of this rule.

Use of confidential information

3.3-2 A lawyer must not use or disclose a client's or former client's confidential information to the disadvantage of the client or former client, or for the benefit of the lawyer or a third person without the consent of the client or former client.

Commentary

[1] The fiduciary relationship between a lawyer and a client forbids the lawyer or a third person from benefiting from the lawyer's use of a client's confidential information. If a lawyer engages in literary works, such as a memoir or autobiography, the lawyer is required to obtain the client's or former client's consent before disclosing confidential information.

Lawyers' obligation to claim privilege when faced with requirement to surrender document

3.3-2.1 A lawyer who is required, under federal or provincial legislation, to produce a document or provide information that is or may be privileged must, unless the client waives the privilege, claim solicitor-client privilege in respect of the document.

Commentary

[1] A lawyer who is required by law or by order of a court to disclose a client's affairs must not disclose more information than is necessary.

Future harm / public safety exception

3.3-3 A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.

Commentary

[1] Confidentiality and loyalty are fundamental to the relationship between a lawyer and a client because legal advice cannot be given and justice cannot be done unless clients have a large measure of freedom to discuss their affairs with their lawyers. However, in some very exceptional situations identified in this rule, disclosure without the client's permission might be warranted because the lawyer is satisfied that truly serious harm of the types identified is imminent and cannot otherwise be prevented. These situations will be extremely rare.

[2] The Supreme Court of Canada has considered the meaning of the words "serious bodily harm" in certain contexts, which may inform a lawyer in assessing whether disclosure of confidential information is warranted. In *Smith* v. *Jones*, [1999] 1 SCR 455 at paragraph 83, the Court also observed that serious psychological harm may constitute serious bodily harm if it substantially interferes with the health or well-being of the individual.

[3] In assessing whether disclosure of confidential information is justified, a lawyer should consider a number of factors, including:

(a) the seriousness of the potential injury to others if the prospective harm occurs;

(b) the likelihood that it will occur and its imminence;

(c) the apparent absence of any other feasible way to prevent the potential injury; and

(d) the circumstances under which the lawyer acquired the information of the client's intent or prospective course of action.

[4] How and when disclosure should be made under this rule will depend upon the circumstances. A lawyer who believes that disclosure may be warranted should contact the Law Society for ethical advice. When practicable and permitted, a judicial order may be sought for disclosure.

[5] If confidential information is disclosed under rule 3.3-3, the lawyer should prepare a written note as soon as possible, which should include:

(a) the date and time of the communication in which the disclosure is made;

(b) the grounds in support of the lawyer's decision to communicate the information, including the harm the lawyer intended to prevent, the identity of the person who prompted the lawyer to communicate the information as well as the identity of the person or group of persons exposed to the harm; and

(c) the content of the communication, the method of communication used and the identity of the person to whom the communication was made.

[[5] amended 05/2019]

3.3-4 If it is alleged that a lawyer or the lawyer's associates or employees:

(a) have committed a criminal offence involving a client's affairs;

(b) are civilly liable with respect to a matter involving a client's affairs;

(c) have committed acts of professional negligence; or

(d) have engaged in acts of professional misconduct or conduct unbecoming a lawyer,

the lawyer may disclose confidential information in order to defend against the allegations, but must not disclose more information than is required.

3.3-5 A lawyer may disclose confidential information in order to establish or collect the lawyer's fees, but must not disclose more information than is required.

3.3-6 A lawyer may disclose confidential information to another lawyer to secure legal or ethical advice about the lawyer's proposed conduct.

3.3-7 A lawyer may disclose confidential information to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a law firm, but only if the information disclosed does not compromise the solicitor-client privilege or otherwise prejudice the client.

Commentary

[1] As a matter related to clients' interests in maintaining a relationship with counsel of choice and protecting client confidences, lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice.

[2] In these situations (see rules 3.4-17 to 3.4-23 on Conflicts from transfer between law firms), rule 3.3-7 permits lawyers and law firms to disclose limited information. This type of disclosure would only be made once substantive discussions regarding the new relationship have occurred.

[3] This exchange of information between the firms needs to be done in a manner consistent with the transferring lawyer's and new firm's obligations to protect client confidentiality and privileged information and avoid any prejudice to the client. It ordinarily would include no more than the names of the persons and entities involved in a matter. Depending on the circumstances, it may include a brief summary of the general issues involved, and information about whether the representation has come to an end.

[4] The disclosure should be made to as few lawyers at the new law firm as possible, ideally to one lawyer of the new firm, such as a designated conflicts lawyer. The information should always be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship.

[5] As the disclosure is made on the basis that it is solely for the use of checking conflicts where lawyers are transferring between firms and for establishing screens, the disclosure should be coupled with an undertaking by the new law firm to the former law firm that it will:

(a) limit access to the disclosed information;

(b) not use the information for any purpose other than detecting and resolving conflicts; and

(c) return, destroy, or store in a secure and confidential manner the information provided once appropriate confidentiality screens are established.

[6] The client's consent to disclosure of such information may be specifically addressed in a retainer agreement between the lawyer and client. In some circumstances, however, because of the nature of the retainer, the transferring lawyer and the new law firm may be required to obtain the consent of clients to such disclosure or the disclosure of any further information about the clients. This is especially the case where disclosure would compromise solicitor-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge).

[rule 3.3-7 and commentary added 11/2016]

3.4 Conflicts

Duty to avoid conflicts of interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

Commentary

[0.1] In a real property transaction, a lawyer may act for more than one party with different interests only in the circumstances permitted by Appendix C.

[1] As defined in these rules, a conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer. A client's interests may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflicts of interest.

[2] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.

[3] The general prohibition and permitted activity prescribed by this rule apply to a lawyer's duties to current, former, concurrent and joint clients as well as to the lawyer's own interests.

Representation

[4] Representation means acting for a client and includes the lawyer's advice to and judgment on behalf of the client.

The fiduciary relationship, the duty of loyalty and conflicting interests

[5] The value of an independent bar is diminished unless the lawyer is free from conflicts of interest. The rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries. The lawyer-client relationship is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client. To maintain public confidence in the integrity of the legal profession and the administration of justice, in which lawyers play a key role, it is essential that lawyers respect the duty of loyalty. Arising from the duty of loyalty are other duties, such as a duty to commit to the client's cause, the duty of confidentiality, the duty of candour and the duty not to act in a conflict of interest. This obligation is premised on an established or ongoing lawyer client relationship in which the client must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship.

[6] The rule reflects the principle articulated by the Supreme Court of Canada in the cases of *R.* v. *Neil* 2002 SCC 70 and *Strother v, 3464920 Canada Inc.* 2007 SCC 24, regarding conflicting interests involving current clients, that a lawyer must not represent one client whose legal interests are directly adverse to the immediate legal interests of another client without consent. This duty arises even if the matters are unrelated. The lawyer client relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client, and an existing client may legitimately feel betrayed by the lawyer's representation of a client with adverse legal interests. The prohibition on acting in such circumstances except with the consent of the clients guards against such outcomes and protects the lawyer client relationship.

[7] Accordingly, factors for the lawyer's consideration in determining whether a conflict of interest exists include:

- the immediacy of the legal interests;
- whether the legal interests are directly adverse;
- whether the issue is substantive or procedural;
- the temporal relationship between the matters;
- the significance of the issue to the immediate and long-term interests of the clients involved; and
- the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.

Examples of areas where conflicts of interest may occur

[8] Conflicts of interest can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that may give rise to conflicts of interest. The examples are not exhaustive.

(a) A lawyer acts as an advocate in one matter against a person when the lawyer represents that person on some other matter.

(c) A lawyer provides legal advice to a small business on a series of commercial transactions and at the same time provides legal advice to an employee of the business on an employment matter, thereby acting for clients whose legal interests are directly adverse.

(d) A lawyer, an associate, a law partner or a family member has a personal financial interest in a client's affairs or in a matter in which the lawyer is requested to act for a client, such as a partnership interest in some joint business venture with a client.

(i) A lawyer owning a small number of shares of a publicly traded corporation would not necessarily have a conflict of interest in acting for the corporation because the holding may have no adverse influence on the lawyer's judgment or loyalty to the client.

(e) A lawyer has a sexual or close personal relationship with a client.

(i) Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning his or her affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by his or her lawyer. If the lawyer is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work.

(f) A lawyer or his or her law firm acts for a public or private corporation and the lawyer serves as a director of the corporation.

(i) These two roles may result in a conflict of interest or other problems because they may

1. affect the lawyer's independent judgment and fiduciary obligations in either or both roles,
2. obscure legal advice from business and practical advice,
3. jeopardize the protection of lawyer and client privilege, and
4. disqualify the lawyer or the law firm from acting for the organization.

(g) Sole practitioners who practise with other lawyers in cost-sharing or other arrangements represent clients on opposite sides of a dispute. See rules 3.4-42 and 3.4-43 on space-sharing arrangements.

(i) The fact or the appearance of such a conflict may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

Consent

3.4-2 A lawyer must not represent a client in a matter when there is a conflict of interest unless there is express or implied consent from all clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

(a) Express consent must be fully informed and voluntary after disclosure.

(b) Consent may be inferred and need not be in writing where all of the following apply:

(i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;

(ii) the matters are unrelated;

(iii) the lawyer has no relevant confidential information from one client that might reasonably affect the other; and

(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

Commentary

Disclosure and consent

[1] Disclosure is an essential requirement to obtaining a client's consent. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

[2] The lawyer should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[3] Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

Consent in advance

[4] A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

[5] While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent must be recorded, for example in a retainer letter.

Implied consent

[6] In some cases consent may be implied, rather than expressly granted. As the Supreme Court held in *Neil* and in *Strother*, however, the concept of implied consent is applicable in exceptional cases only. Governments, chartered banks and entities that might be considered sophisticated consumers of legal services may accept that lawyers may act against them in unrelated matters where there is no danger of misuse of confidential information. The more sophisticated the client is as a consumer of legal services, the more likely it will be that an inference of consent can be drawn. The mere nature of the client is not, however, a sufficient basis upon which to assume implied consent; the matters must be unrelated, the lawyer must not possess confidential information from one client that could affect the other client, and there must be a reasonable basis upon which to conclude that the client has commonly accepted that lawyers may act against it in such circumstances.

Lawyer belief in reasonableness of representation

[7] The requirement that the lawyer reasonably believe that he or she is able to represent each client without having a material adverse effect on the representation of, or loyalty to, the other client precludes a lawyer from acting for parties to a transaction who have different interests, except where joint representation is permitted under this Code.

Dispute

3.4-3 Despite rule 3.4-2, a lawyer must not represent opposing parties in a dispute.

Commentary

[1] A lawyer representing a client who is a party in a dispute with another party or parties must competently and diligently develop and argue the position of the client. In a dispute, the parties' immediate legal interests are clearly adverse. If the lawyer were permitted to act for opposing parties in such circumstances even with consent, the lawyer's advice, judgment and loyalty to one client would be materially and adversely affected by the same duties to the other client or clients. In short, the lawyer would find it impossible to act without offending these rules.

Concurrent representation with protection of confidential client information

3.4-4 Where there is no dispute among the clients about the matter that is the subject of the proposed representation, two or more lawyers in a law firm may act for current clients with competing interests and may treat information received from each client as confidential and not disclose it to the other clients, provided that:

(a) disclosure of the risks of the lawyers so acting has been made to each client;

(b) each client consents after having received independent legal advice, including on the risks of concurrent representation;

(c) the clients each determine that it is in their best interests that the lawyers so act;

(d) each client is represented by a different lawyer in the firm;

(e) appropriate screening mechanisms are in place to protect confidential information; and

(f) all lawyers in the law firm withdraw from the representation of all clients in respect of the matter if a dispute that cannot be resolved develops among the clients.

Commentary

[1] This rule provides guidance on concurrent representation, which is permitted in limited circumstances. Concurrent representation is not contrary to the rule prohibiting representation where there is a conflict of interest provided that the clients are fully informed of the risks and understand that if a dispute arises among the clients that cannot be resolved the lawyers may have to withdraw, resulting in potential additional costs.

[2] An example is a law firm acting for a number of sophisticated clients in a matter such as competing bids in a corporate acquisition in which, although the clients' interests are divergent and may conflict, the clients are not in a dispute. Provided that each client is represented by a different lawyer in the firm and there is no real risk that the firm will not be able to properly represent the legal interests of each client, the firm may represent both even though the subject matter of the retainers is the same. Whether or not a risk of impairment of representation exists is a question of fact.

[3] The basis for the advice described in the rule from both the lawyers involved in the concurrent representation and those giving the required independent legal advice is whether concurrent representation is in the best interests of the clients. Even where all clients consent, the lawyers should not accept a concurrent retainer if the matter is one in which one of the clients is less sophisticated or more vulnerable than the other.

[4] In cases of concurrent representation lawyers should employ, as applicable, the reasonable screening measures to ensure non-disclosure of confidential information within the firm set out in the rule on conflicts from transfer between law firms (see rule 3.4-26).

Joint retainers

3.4-5 Before a lawyer is retained by more than one client in a matter or transaction, the lawyer must advise each of the clients that:

(a) the lawyer has been asked to act for both or all of them;

(b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and

(c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

Commentary

[1] Although this rule does not require that a lawyer advise clients to obtain independent legal advice before the lawyer may accept a joint retainer, in some cases, the lawyer should recommend such advice to ensure that the clients' consent to the joint retainer is informed, genuine and uncoerced. This is especially so when one of the clients is less sophisticated or more vulnerable than the other. The Law Society website contains two precedent letters that lawyers may use as the basis for compliance with rule 3.4-5.

[2] A lawyer who receives instructions from spouses or partners to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint retainer and comply with rule 3.4-5. Further, at the outset of this joint retainer, the lawyer should advise the spouses or partners that, if subsequently only one of them were to communicate new instructions, such as instructions to change or revoke a will:

(a) the subsequent communication would be treated as a request for a new retainer and not as part of the joint retainer;

(b) in accordance with rule 3.3-1, the lawyer would be obliged to hold the subsequent communication in strict confidence and not disclose it to the other spouse or partner; and

(c) the lawyer would have a duty to decline the new retainer, unless:

(i) the spouses or partners had annulled their marriage, divorced, permanently ended their conjugal relationship or permanently ended their close personal relationship, as the case may be;

(ii) the other spouse or partner had died; or

(iii) the other spouse or partner was informed of the subsequent communication and agreed to the lawyer acting on the new instructions.

[3] After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with rule 3.4-7.

3.4-6 If a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts a joint retainer from that client and another client, the lawyer must advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

3.4-7 When a lawyer has advised the clients as provided under rules 3.4-5 and 3.4-6 and the parties are content that the lawyer act, the lawyer must obtain their consent.

Commentary

[1] Consent in writing, or a record of the consent in a separate letter to each client is required. Even if all the parties concerned consent, a lawyer should avoid acting for more than one client when it is likely that an issue contentious between them will arise or their interests, rights or obligations will diverge as the matter progresses.

3.4-8 Except as provided by rule 3.4-9, if a contentious issue arises between clients who have consented to a joint retainer,

(a) the lawyer must not advise them on the contentious issue and must:

(i) refer the clients to other lawyers; or

(ii) advise the clients of their option to settle the contentious issue by direct negotiation in which the lawyer does not participate, provided:

1. no legal advice is required; and

2. the clients are sophisticated;

(b) if the contentious issue is not resolved, the lawyer must withdraw from the joint representation.

Commentary

[1] This rule does not prevent a lawyer from arbitrating or settling, or attempting to arbitrate or settle, a dispute between two or more clients or former clients who are not under any legal disability and who wish to submit the dispute to the lawyer.

[2] If, after the clients have consented to a joint retainer, an issue contentious between them or some of them arises, the lawyer is not necessarily precluded from advising them on non-contentious matters.

3.4-9 Subject to this section, if clients consent to a joint retainer and also agree that, if a contentious issue arises, the lawyer may continue to advise one of them, the lawyer may advise that client about the contentious matter and must refer the other or others to another lawyer.

Commentary

[1] This rule does not relieve the lawyer of the obligation, when the contentious issue arises, to obtain the consent of the clients if there is or is likely to be a conflicting interest, or if the representation on the contentious issue requires the lawyer to act against one of the clients.

[2] When entering into a joint retainer, the lawyer should stipulate that, if a contentious issue develops, the lawyer will be compelled to cease acting altogether unless, at the time the contentious issue develops, all parties consent to the lawyer's continuing to represent one of them. Consent given before the fact may be ineffective since the party granting the consent will not at that time be in possession of all relevant information.

Acting against former clients

3.4-10 Unless the former client consents, a lawyer must not act against a former client in:

(a) the same matter,

(b) any related matter, or

(c) any other matter, if the lawyer has relevant confidential information arising from the representation of the former client that may reasonably affect the former client.

Commentary

[1] This rule prohibits a lawyer from attacking legal work done during the retainer, or from undermining the client's position on a matter that was central to the retainer. It is not improper, however, for a lawyer to act against a former client in a matter wholly unrelated to any work the lawyer has previously done for that person if previously obtained confidential information is irrelevant to that matter.

3.4-11 When a lawyer has acted for a former client and obtained confidential information relevant to a new matter, another lawyer in the lawyer's firm may act against the former client in the new matter, if the firm establishes, in accordance with rule 3.4-20, that it is reasonable that it act in the new matter, having regard to all relevant circumstances, including:

(a) the adequacy and timing of the measures taken to ensure that no disclosure of the former client's confidential information to the partner or associate having carriage of the new matter will occur;

(b) the extent of prejudice to any party; and

(c) the good faith of the parties.

Commentary

[1] The guidelines following commentary [3] to rule 3.4-20 regarding lawyer transfers between firms provide valuable guidance for the protection of confidential information in the rare cases in which, having regard to all of the relevant circumstances, it is appropriate for the lawyer's partner or associate to act against the former client.

[[1] amended 11/2016]

Short-term summary legal services

3.4-11.1 In rules 3.4-11.2 to 3.4-11.4 **"short-term summary legal services"** means advice or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

[heading and rule amended 06/2016]

3.4-11.2 A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

[amended 06/2016]

3.4-11.3 Except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

[amended 06/2016]

3.4-11.4 A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

[amended 06/2016]

Commentary

[1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the *pro bono* or not-for-profit legal services provider or between the lawyer and the client receiving short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in rules 3.4-11.1 to 3.4-11.4 will not be imputed to the lawyers in the lawyer's firm or to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services.

[4] In the provision of short-term summary legal services, the lawyer's knowledge about possible conflicts of interest is based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of consulting with the pro bono or not-for-profit legal services provider to receive its services.

[[1] to [4] added 06/2016; [2] amended 09/2016]

Conflicts from transfer between law firms

Application of rule

3.4-17 In rules 3.4-17 to 3.4-23:

"matter" means a case, a transaction, or other client representation, but within such representation does not include offering general "know-how" and, in the case of a government lawyer, providing policy advice unless the advice relates to a particular client representation.

[amended 11/2016]

Commentary

[2] Rules 3.4-17 to 3.4-23 apply to lawyers sharing space. Treating space-sharing lawyers as a law firm recognizes:

(a) the concern that opposing clients may have about the appearance of proximity of lawyers sharing space, and

(b) the risk that lawyers sharing space may be exposed inadvertently to confidential information of an opposing client.

[[5] updated 07/2015; [2] amended, [3] to [5] rescinded 11/2016]

3.4-18 Rules 3.4-17 to 3.4-23 apply when a lawyer transfers from one law firm ("former law firm") to another ("new law firm"), and either the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers that:

(a) it is reasonable to believe the transferring lawyer has confidential information relevant to the new law firm's matter for its client; or

(b) (i) the new law firm represents a client in a matter that is the same as or related to a matter in which a former law firm represents or represented its client ("former client");

(ii) the interests of those clients in that matter conflict; and

(iii) the transferring lawyer actually possesses relevant information respecting that matter.

[amended 11/2016]

Commentary

[1] The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to disqualification. As stated by the Supreme Court of Canada in *Macdonald Estate* v. *Martin*, [1990] 3 SCR 1235, with respect to the partners or associates of a lawyer who has relevant confidential information, the concept of imputed knowledge is unrealistic in the era of the mega-firm. Notwithstanding the foregoing, the inference to be drawn is that lawyers working together in the same firm will share confidences on the matters on which they are working, such that actual knowledge may be presumed. That presumption can be rebutted by clear and convincing evidence that shows that all reasonable measures, as discussed in rule 3.4-20, have been taken to ensure that no disclosure will occur by the transferring lawyer to the member or members of the firm who are engaged against a former client.

[2] The duties imposed by this rule concerning confidential information should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.

[3] Law firms with multiple offices — This rule treats as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments and an interjurisdictional law firm.

[[1] to [3] added 11/2016]

3.4-19 Rules 3.4-20 to 3.4-22 do not apply to a lawyer employed by the federal, a provincial or a territorial government who, after transferring from one department, ministry or agency to another, continues to be employed by that government.

[amended 11/2016]

Commentary

[1] Government employees and in-house counsel — The definition of "law firm" includes one or more lawyers practising in a government, a Crown corporation, any other public body or a corporation. Thus, the rule applies to lawyers transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.

[[1] added 11/2016]

Law firm disqualification

3.4-20 If the transferring lawyer actually possesses confidential information relevant to a matter respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must cease its representation of its client in that matter unless:

(a) the former client consents to the new law firm's continued representation of its client; or

(b) the new law firm has:

(i) taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring lawyer to any member of the new law firm; and

(ii) advised the lawyer's former client, if requested by the client, of the measures taken.

[amended 11/2016]

Commentary

[0.1] There are two circumstances in which the new law firm should consider the implementation of reasonable measures to ensure that there will be no disclosure of the former client's confidential information to any member of the new firm:

(a) if the transferring lawyer actually possesses confidential information respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, and

(b) if the new law firm is not sure whether the transferring lawyer possesses such confidential information, but it wants to strengthen its position if it is later determined that the transferring lawyer did in fact possess such confidential information.

[1] It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Instead, the new law firm that seeks to implement reasonable measures must exercise professional judgment in determining what steps must be taken "to ensure that no disclosure will occur to any member of the new law firm of the former client's confidential information." Such measures may include timely and properly constructed confidentiality screens.

[2] For example, the various legal services units of a government, a corporation with separate regional legal departments, an interjurisdictional law firm, or a legal aid program may be able to demonstrate that, because of its institutional structure, reporting relationships, function, nature of work, and geography, relatively fewer "measures" are necessary to ensure the non-disclosure of client confidences. If it can be shown that, because of factors such as the above, lawyers in separate units, offices or departments do not "work together" with other lawyers in other units, offices or departments, this will be taken into account in the determination of what screening measures are "reasonable."

[3] The guidelines that follow are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

Guidelines: How to screen / measures to be taken

1. The screened lawyer should have no involvement in the new law firm's representation of its client in the matter.

2. The screened lawyer should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.

3. No member of the new law firm should discuss the current matter or the previous representation with the screened lawyer.

4. The firm should take steps to preclude the screened lawyer from having access to any part of the file.

4.1 The measures taken by the new law firm to screen the transferring lawyer should be stated in a written policy explained to all lawyers and support staff within the firm.

5. The new law firm should document the measures taken to screen the transferring lawyer, the time when these measures were put in place (the sooner the better), and should advise all affected lawyers and support staff of the measures taken.

6. These guidelines apply with necessary modifications to situations in which non-lawyer staff leave one law firm to work for another and a determination is made, before hiring the individual, on whether any conflicts of interest will be created and whether the potential new hire actually possesses relevant confidential information.

How to determine if a conflict exists before hiring a potential transferee

[4] When a law firm ("new law firm") considers hiring a lawyer, or an articled law student ("transferring lawyer") from another law firm ("former law firm"), the transferring lawyer and the new law firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law firm that the transferring lawyer is leaving and with respect to clients of a firm in which the transferring lawyer worked at some earlier time.

[5] After completing the interview process and before hiring the transferring lawyer, the new law firm should determine whether any conflicts exist. In determining whether the transferring lawyer actually possesses relevant confidential information, both the transferring lawyer and the new law firm must be very careful, during any interview of a potential transferring lawyer, or other recruitment process, to ensure that they do not disclose client confidences. See rule 3.3-7 which provides that a lawyer may disclose confidential information to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of interest where lawyers transfer between firms.

[6] A lawyer's duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these rules.

[7] Issues arising as a result of a transfer between law firms should be dealt with promptly. A lawyer's failure to promptly raise any issues may prejudice clients and may be considered sharp practice.

[[2] and [3] amended, [0.1], [1] and [4] to [7] added 11/2016]

Transferring lawyer disqualification

3.4-21 Unless the former client consents, a transferring lawyer referred to in rule 3.4-20 must not:

(a) participate in any manner in the new law firm's representation of its client in the matter; or

(b) disclose any confidential information respecting the former client except as permitted by rule 3.3-7.

[added 11/2016]

3.4-22 Unless the former client consents, members of the new law firm must not discuss the new law firm's representation of its client or the former law firm's representation of the former client in that matter with a transferring lawyer referred to in rule 3.4-20 except as permitted by rule 3.3-7.

[amended 11/2016]

Lawyer due diligence for non-lawyer staff

3.4-23 A lawyer or a law firm must exercise due diligence in ensuring that each member and employee of the law firm, and each other person whose services the lawyer or the law firm has retained:

(a) complies with rules 3.4-17 to 3.4-23; and

(b) does not disclose confidential information:

(i) of clients of the firm; or

(ii) any other law firm in which the person has worked.

[heading added, rule amended 11/2016]

Commentary

[1] This rule is intended to regulate lawyers and articled law students who transfer between law firms. It also imposes a general duty on lawyers and law firms to exercise due diligence in the supervision of non-lawyer staff to ensure that they comply with the rule and with the duty not to disclose confidences of clients of the lawyer's firm and confidences of clients of other law firms in which the person has worked.

[2] Certain non-lawyer staff in a law firm routinely have full access to and work extensively on client files. As such, they may possess confidential information about the client. If these staff move from one law firm to another and the new firm acts for a client opposed in interest to the client on whose files the staff worked, unless measures are taken to screen the staff, it is reasonable to conclude that confidential information may be shared. It is the responsibility of the lawyer/law firm to ensure that staff who may have confidential information that, if disclosed, may prejudice the interests of the client of the former firm, have no involvement with and no access to information relating to the relevant client of the new firm.

[[1] and [2] added 11/2016]

3.4-24 to 3.4-26 [rescinded 11/2016]

Conflicts with clients

3.4-26.1 A lawyer must not perform any legal services if there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's

(a) relationship with the client, or

(b) interest in the client or the subject matter of the legal services.

[amended 11/2013]

Commentary

[1] Any relationship or interest that affects a lawyer's professional judgment is to be avoided under this rule, including ones involving a relative, partner, employer, employee, business associate or friend of the lawyer.

3.4-26.2 The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client is not a disqualifying interest under rule 3.4-26.1.

Commentary

[1] Generally speaking, a lawyer may act as legal advisor or as business associate, but not both. These principles are not intended to preclude a lawyer from performing legal services on his or her own behalf. Lawyers should be aware, however, that acting in certain circumstances may cause them to be uninsured as a result of Exclusion 6 in the B.C. Lawyers Compulsory Professional Liability Insurance Policy and similar provisions in other insurance policies.

[2] Whether or not insurance coverage under the Compulsory Policy is lost is determined separate and apart from the ethical obligations addressed in this chapter. Review the current policy for the exact wording of Exclusion 6 or contact the Lawyers Insurance Fund regarding the application of the Exclusion to a particular set of circumstances.

Doing business with a client

Independent legal advice

3.4-27 In rules 3.4-27 to 3.4-43, when a client is required or advised to obtain independent legal advice concerning a matter, that advice may only be obtained by retaining a lawyer who has no conflicting interest in the matter.

3.4-27.1 A lawyer giving independent legal advice under this section must:

(a) advise the client that the client has the right to independent legal representation;

(b) explain the legal aspects of the matter to the client, who appears to understand the advice given; and

(c) inform the client of the availability of qualified advisers in other fields who would be in a position to advise the client on the matter from a business point of view.

Commentary

[0.1] A client is entitled to obtain independent legal representation by retaining a lawyer who has no conflicting interest in the matter to act for the client in relation to the matter.

[1] If a client elects to waive independent legal representation and to rely on independent legal advice only, the lawyer retained has a responsibility that should not be lightly assumed or perfunctorily discharged.

[2] Either independent legal representation or independent legal advice may be provided by a lawyer employed by the client as in-house counsel.

3.4-28 Subject to this rule, a lawyer must not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction.

Commentary

[1] This provision applies to any transaction with a client, including:

(a) lending or borrowing money;

(b) buying or selling property;

(c) accepting a gift, including a testamentary gift;

(d) giving or acquiring ownership, security or other pecuniary interest in a company or other entity;

(e) recommending an investment; and

(f) entering into a common business venture.

[2] The relationship between lawyer and client is a fiduciary one, and no conflict between the lawyer's own interest and the lawyer's duty to the client can be permitted. The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

Investment by client when lawyer has an interest

3.4-29 Subject to rule 3.4-30, if a client intends to enter into a transaction with his or her lawyer or with a corporation or other entity in which the lawyer has an interest other than a corporation or other entity whose securities are publicly traded, before accepting any retainer, the lawyer must

(a) disclose and explain the nature of the conflicting interest to the client or, in the case of a potential conflict, how and why it might develop later;

(b) recommend and require that the client receive independent legal advice; and

(c) if the client requests the lawyer to act, obtain the client's consent.

Commentary

[1] If the lawyer does not choose to disclose the conflicting interest or cannot do so without breaching confidence, the lawyer must decline the retainer.

[2] A lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined.

[3] Generally, in disciplinary proceedings under this rule, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, and that the client's consent was obtained

[4] If the investment is by borrowing from the client, the transaction may fall within the requirements of rule 3.4-32.

3.4-30 When a client intends to pay for legal services by issuing or causing to be transferred to a lawyer a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the lawyer must recommend but need not require that the client receive independent legal advice before accepting a retainer.

Borrowing from clients

3.4-31 A lawyer must not borrow money from a client unless

(a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, or

(b) the client is a related person as defined by the *Income Tax Act* (Canada) and the lawyer is able to discharge the onus of proving that the client's interests were fully protected by the nature of the matter and by independent legal advice or independent legal representation.

Commentary

[1] Whether a person is considered a client within this rule when lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

Certificate of independent legal advice

3.4-32 A lawyer retained to give independent legal advice relating to a transaction in which funds are to be advanced by the client to another lawyer must do the following before the client advances any funds:

(a) provide the client with a written certificate that the client has received independent legal advice, and

(b) obtain the client's signature on a copy of the certificate of independent legal advice and send the signed copy to the lawyer with whom the client proposes to transact business.

3.4-33 Subject to rule 3.4-31, if a lawyer's spouse or a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest borrow money from a client, the lawyer must ensure that the client's interests are fully protected by the nature of the case and by independent legal representation.

Lawyers in loan or mortgage transactions

3.4-34 If a lawyer lends money to a client, before agreeing to make the loan, the lawyer must:

(a) disclose and explain the nature of the conflicting interest to the client;

(b) require that the client receive independent legal representation; and

(c) obtain the client's consent.

Guarantees by a lawyer

3.4-35 Except as provided by rule 3.4-36, a lawyer must not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

3.4-36 A lawyer may give a personal guarantee in the following circumstances:

(a) the lender is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer's spouse, parent or child;

(b) the transaction is for the benefit of a non-profit or charitable institution, and the lawyer provides a guarantee as a member or supporter of such institution, either individually or together with other members or supporters of the institution; or

(c) the lawyer has entered into a business venture with a client and a lender requires personal guarantees from all participants in the venture as a matter of course and:

(i) the lawyer has complied with this section (Conflicts), in particular, rules 3.4-27 to 3.4-36 (Doing Business with a Client); and

(ii) the lender and participants in the venture who are clients or former clients of the lawyer have independent legal representation.

Testamentary instruments and gifts

3.4-37 A lawyer must not include in a client's will a clause directing the executor to retain the lawyer's services in the administration of the client's estate.

3.4-38 Unless the client is a family member of the lawyer or the lawyer's partner or associate, a lawyer must not prepare or cause to be prepared an instrument giving the lawyer or an associate a gift or benefit from the client, including a testamentary gift.

3.4 39 A lawyer must not accept a gift that is more than nominal from a client unless the client has received independent legal advice.

Judicial interim release

3.4-40 A lawyer must not act as a surety for, deposit money or other valuable security for, or act in a supervisory capacity to an accused person for whom the lawyer acts.

3.4-41 A lawyer may act as a surety for, deposit money or other valuable security for or act in a supervisory capacity to an accused who is in a family relationship with the lawyer when the accused is represented by the lawyer's partner or associate.

Space-sharing arrangements

3.4-42 Rule 3.4-43 applies to lawyers sharing office space with one or more other lawyers, but not practising or being held out to be practising in partnership or association with the other lawyer or lawyers.

3.4-43 Unless all lawyers sharing space together agree that they will not act for clients adverse in interest to the client of any of the others, each lawyer who is sharing space must disclose in writing to all of the lawyer's clients:

(a) that an arrangement for sharing space exists,

(b) the identity of the lawyers who make up the firm acting for the client, and

(c) that lawyers sharing space with the firm are free to act for other clients who are adverse in interest to the client.

Commentary

[1] Like other lawyers, those who share space must take all reasonable measures to ensure client confidentiality. Lawyers who do not wish to act for clients adverse in interest to clients of lawyers with whom they share space should establish an adequate conflicts check system.

[2] In order both to ensure confidentiality and to avoid conflicts, a lawyer must have the consent of each client before disclosing any information about the client for the purpose of conflicts checks. Consent may be implied in some cases but, if there is any doubt, the best course is to obtain express consent.

3.5 Preservation of clients' property

3.5-1 In this section, **"property"** includes a client's money, securities as defined in the *Securities Act*, original documents such as wills, title deeds, minute books, licences, certificates and the like, and all other papers such as client's correspondence, files, reports, invoices and other such documents, as well as personal property including precious and semi-precious metals, jewellery and the like.

3.5-2 A lawyer must:

(a) care for a client's property as a careful and prudent owner would when dealing with like property; and

(b) observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.

Commentary

[1] The duties concerning safekeeping, preserving, and accounting for clients' monies and other property are set out in the Law Society Rules.

[2] These duties are closely related to those regarding confidential information. A lawyer is responsible for maintaining the safety and confidentiality of the files of the client in the possession of the lawyer and should take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information. A lawyer should keep the client's papers and other property out of sight as well as out of reach of those not entitled to see them.

[3] Subject to any rights of lien, the lawyer should promptly return a client's property to the client on request or at the conclusion of the lawyer's retainer.

[4] If the lawyer withdraws from representing a client, the lawyer is required to comply with section 3.7 (Withdrawal from Representation).

Notification of receipt of property

3.5-3 A lawyer must promptly notify a client of the receipt of any money or other property of the client, unless satisfied that the client is aware that they have come into the lawyer's custody.

Identifying clients' property

3.5-4 A lawyer must clearly label and identify clients' property and place it in safekeeping distinguishable from the lawyer's own property.

3.5-5 A lawyer must maintain such records as necessary to identify clients' property that is in the lawyer's custody.

Accounting and delivery

3.5-6 A lawyer must account promptly for clients' property that is in the lawyer's custody and deliver it to the order of the client on request or, if appropriate, at the conclusion of the retainer.

3.6 Fees and disbursements

Reasonable fees and disbursements

3.6-1 A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion.

Commentary

[1] What is a fair and reasonable fee depends on such factors as:

(a) the time and effort required and spent;

(b) the difficulty of the matter and the importance of the matter to the client;

(c) whether special skill or service has been required and provided;

(d) the results obtained;

(e) fees authorized by statute or regulation;

(f) special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;

(g) the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer's inability to accept other employment;

(h) any relevant agreement between the lawyer and the client;

(i) the experience and ability of the lawyer;

(j) any estimate or range of fees given by the lawyer; and

(k) the client's prior consent to the fee.

[2] The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

[3] A lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest, as is reasonable and practical in the circumstances, including the basis on which fees will be determined.

[4] A lawyer should be ready to explain the basis of the fees and disbursement charged to the client. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should give to the client an immediate explanation. A lawyer should confirm with the client in writing the substance of all fee discussions that occur as a matter progresses, and a lawyer may revise an initial estimate of fees and disbursements.

Contingent fees and contingent fee agreements

3.6-2 Subject to rule 3.6-1, a lawyer may enter into a written agreement in accordance with governing legislation that provides that the lawyer's fee is contingent, in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.

Commentary

[1] In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The test is whether the fee, in all of the circumstances, is fair and reasonable.

[2] Although a lawyer is generally permitted to terminate the professional relationship with a client and withdraw services if there is justifiable cause as set out in rule 3.7-1, special circumstances apply when the retainer is pursuant to a contingency agreement. In such circumstances, the lawyer has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a lawyer cannot withdraw from representation for reasons other than those set out in Rule 3.7-7 (Obligatory withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.

[[1] amended 04/2013]

Statement of account

3.6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Commentary

[1] A lawyer's duty of candour to a client requires the lawyer to disclose to the client at the outset, in a manner that is transparent and understandable to the client, the basis on which the client is to be billed for both professional time (lawyer, student and paralegal) and any other charges.

[[1] rescinded 04/2013; added 06/2015]

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

Joint retainer

3.6-4 If a lawyer acts for two or more clients in the same matter, the lawyer must divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

Division of fees and referral fees

3.6-5 If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

3.6-6 If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

(a) the fee is reasonable and does not increase the total amount of the fee charged to the client; and

(b) the client is informed and consents.

3.6-6.1 In rule 3.6-7, **"another lawyer"** includes a person who is:

(a) a member of a recognized legal profession in any other jurisdiction; and

(b) acting in compliance with the law and any rules of the legal profession of the other jurisdiction

3.6-7 A lawyer must not:

(a) directly or indirectly share, split or divide his or her fees with any person other than another lawyer; or

(b) give any financial or other reward for the referral of clients or client matters to any person other than another lawyer.

Commentary

[1] This rule prohibits lawyers from entering into arrangements to compensate or reward non-lawyers for the referral of clients. It does not prevent a lawyer from engaging in promotional activities involving reasonable expenditures on promotional items or activities that might result in the referral of clients generally by a non-lawyer. Accordingly, this rule does not prohibit a lawyer from:

(a) making an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold;

(b) entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the law practice;

(c) paying an employee for services, other than for referring clients, based on the revenue of the lawyer's firm or practice; or

(d) occasionally entertaining potential referral sources by purchasing meals providing tickets to, or attending at, sporting or other activities or sponsoring client functions.

Exception for multi-disciplinary practices

3.6-8 Despite rule 3.6-7, a lawyer permitted to practise in a multi-disciplinary practice (MDP) under the Law Society Rules may share fees, profits or revenue from the practice of law in the MDP with a non-lawyer member of the MDP only if all the owners of the MDP are individuals or professional corporations actively involved in the MDP's delivery of legal services to clients or in the management of the MDP.

Commentary

[2] This rule also allows a lawyer to share fees or profits of an MDP with a non-lawyer for the purpose of paying out the ownership interest of the non-lawyer acquired by the non-lawyer's active participation in the MDP's delivery of services to clients or in the management of the MDP.

[3] See also the definitions of **"MDP"** and "**professional corporation**" in Rule 1 and Rules 2-38 to 2-49 of the Law Society Rules.

[[3] updated 07/2015]

Payment and appropriation of funds

3.6-9 If a lawyer and client agree that the lawyer will act only if the lawyer's retainer is paid in advance, the lawyer must confirm that agreement in writing with the client and specify a payment date.

3. 6-10 A lawyer must not appropriate any client funds held in trust or otherwise under the lawyer's control for or on account of fees, except as permitted by the governing legislation.

Commentary

[1] The rule is not intended to be an exhaustive statement of the considerations that apply to payment of a lawyer's account from trust. The handling of trust money is generally governed by the Law Society Rules.

[2] Refusing to reimburse any portion of advance fees for work that has not been carried out when the contract of professional services with the client has terminated is a breach of the obligation to act with integrity.

3.6-11 If the amount of fees or disbursements charged by a lawyer is reduced on a review or assessment, the lawyer must repay the monies to the client as soon as is practicable.

Prepaid legal services plan

3.6-12 A lawyer who accepts a client referred by a prepaid legal services plan must advise the client in writing of:

(a) the scope of work to be undertaken by the lawyer under the plan; and

(b) the extent to which a fee or disbursement will be payable by the client to the lawyer.

3.7 Withdrawal from representation

3.7-1 A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.

Commentary

[1] Although the client has the right to terminate the lawyer-client relationship at will, a lawyer does not enjoy the same freedom of action. Having undertaken the representation of a client, the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship. It is inappropriate for a lawyer to withdraw on capricious or arbitrary grounds.

[2] An essential element of reasonable notice is notification to the client, unless the client cannot be located after reasonable efforts.-No hard and fast rules can be laid down as to what constitutes reasonable notice before withdrawal and how quickly a lawyer may cease acting after notification will depend on all relevant circumstances. When the matter is covered by statutory provisions or rules of court, these will govern. In other situations, the governing principle is that the lawyer should protect the client's interests to the best of the lawyer's ability and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril. As a general rule, the client should be given sufficient time to retain and instruct replacement counsel. Nor should withdrawal or an intention to withdraw be permitted to waste court time or prevent other counsel from reallocating time or resources scheduled for the matter in question. See rule 3.7-8 (Manner of withdrawal).

[3] Every effort should be made to ensure that withdrawal occurs at an appropriate time in the proceedings in keeping with the lawyer's obligations. The court, opposing parties and others directly affected should also be notified of the withdrawal.

[4] When a lawyer leaves a law firm to practise alone or to join another law firm, the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter that the clients have a right to choose who will continue to represent them. The same duty may arise when a firm is winding up or dividing into smaller units.

[5] This duty does not arise if the lawyers affected by the changes, acting reasonably, conclude that the circumstances make it obvious that a client will continue as a client of a particular lawyer or law firm.

[6] When this Chapter requires a notification to clients, each client must receive a letter as soon as practicable after the effective date of the changes is determined, informing the client of the right to choose his or her lawyer.

[7] It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes. However, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send letters in substantially the form set out in a precedent letter on the Law Society website (see Practice Resources).

[8] Lawyers whose clients are affected by changes in a law firm have a continuing obligation to protect client information and property, and must minimize any adverse effect on the interests of clients. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

[9] The right of a client to be informed of changes to a law firm and to choose his or her lawyer cannot be curtailed by any contractual or other arrangement.

[10] With respect to communication other than that required by these rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

Optional withdrawal

3.7-2 If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.

Commentary

[1] A lawyer may have a justifiable cause for withdrawal in circumstances indicating a loss of confidence, for example, if the lawyer is deceived by the client, the client refuses to accept and act upon the lawyer's advice on a significant point, the client is persistently unreasonable or uncooperative in a material respect, or the lawyer is facing difficulty in obtaining adequate instructions from the client. However, the lawyer should not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

[[1] amended 12/2018]

Non-payment of fees

3.7-3 If, after reasonable notice, the client fails to provide a retainer or funds on account of disbursements or fees, a lawyer may withdraw.

Commentary

[1] When the lawyer withdraws because the client has not paid the lawyer's fee, the lawyer should ensure that there is sufficient time for the client to obtain the services of another lawyer and for that other lawyer to prepare adequately for a hearing or trial.

[2] In criminal matters, if withdrawal is a result of non-payment of the lawyer's fees, the court may exercise its discretion to refuse counsel's withdrawal. The court's order refusing counsel's withdrawal may be enforced by the court's contempt power. See *R.* v. *Cunningham*, 2010 SCC 10.

[3] The relationship between a lawyer and client is contractual in nature, and the general rules respecting breach of contract and repudiation apply. Except in criminal matters involving non-payment of fees, if a lawyer decides to withdraw as counsel in a proceeding, the court has no jurisdiction to prevent the lawyer from doing so, and the decision to withdraw is not reviewable by the court, subject to its authority to cite a lawyer for contempt if there is evidence that the withdrawal was done for some improper purpose. Otherwise, the decision to withdraw is a matter of professional responsibility, and a lawyer who withdraws in contravention of this Chapter is subject to disciplinary action by the Benchers. See *Re Leask and Cronin* (1985), 66 BCLR 187 (SC). In civil proceedings the lawyer is not required to obtain the court's approval before withdrawing as counsel, but must comply with the Rules of Court before being relieved of the responsibilities that attach as "solicitor acting for the party." See *Luchka* v. *Zens* (1989), 37 BCLR (2d) 127 (CA)."

Withdrawal from criminal proceedings

3.7-4 If a lawyer has agreed to act in a criminal case and the interval between a withdrawal and the trial of the case is sufficient to enable the client to obtain another lawyer and to allow such other lawyer adequate time for preparation, the lawyer who has agreed to act may withdraw because the client has not paid the agreed fee or for other adequate cause provided that the lawyer:

(a) notifies the client, in writing, that the lawyer is withdrawing because the fees have not been paid or for other adequate cause;

(b) accounts to the client for any monies received on account of fees and disbursements;

(c) notifies Crown counsel in writing that the lawyer is no longer acting;

(d) in a case when the lawyer's name appears on the records of the court as acting for the accused, notifies the clerk or registrar of the appropriate court in writing that the lawyer is no longer acting; and

(e) complies with the applicable rules of court.

3.7-5 If a lawyer has agreed to act in a criminal case and the date set for trial is not such as to enable the client to obtain another lawyer or to enable another lawyer to prepare adequately for trial and an adjournment of the trial date cannot be obtained without adversely affecting the client's interests, the lawyer who agreed to act must not withdraw because of non-payment of fees.

3.7-6 If a lawyer is justified in withdrawing from a criminal case for reasons other than non-payment of fees and there is not a sufficient interval between a notice to the client of the lawyer's intention to withdraw and the date on which the case is to be tried to enable the client to obtain another lawyer and to enable such lawyer to prepare adequately for trial, the first lawyer, unless instructed otherwise by the client, should attempt to have the trial date adjourned and may withdraw from the case only with the permission of the court before which the case is to be tried.

Commentary

[1] If circumstances arise that, in the opinion of the lawyer, require an application to the court for leave to withdraw, the lawyer should promptly inform Crown counsel and the court of the intention to apply for leave in order to avoid or minimize any inconvenience to the court and witnesses.

Obligatory withdrawal

3.7-7 A lawyer must withdraw if:

(a) discharged by a client;

(b) a client persists in instructing the lawyer to act contrary to professional ethics; or

(c) the lawyer is not competent to continue to handle a matter.

Manner of withdrawal

3.7-8 When a lawyer withdraws, the lawyer must try to minimize expense and avoid prejudice to the client and must do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.

3.7-9 On discharge or withdrawal, a lawyer must, as soon as practicable:

(a) notify the client in writing, stating:

(i) the fact that the lawyer is no longer acting;

(ii) the reasons, if any, for the withdrawal; and

(iii) in the case of litigation, that the client should expect that the hearing or trial will proceed on the date scheduled and that the client should retain new counsel promptly;

(a.1) notify in writing all other parties, including the Crown where appropriate, that the lawyer is no longer acting;

(b) subject to the lawyer's right to a lien, deliver to or to the order of the client all papers and property to which the client is entitled;

(c) subject to any applicable trust conditions, give the client all relevant information in connection with the case or matter;

(d) account for all funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during the representation;

(e) promptly render an account for outstanding fees and disbursements;

(f) co-operate with the successor lawyer in the transfer of the file so as to minimize expense and avoid prejudice to the client; and

(g) notify in writing the court registry where the lawyer's name appears as counsel for the client that the lawyer is no longer acting and comply with the applicable rules of court and any other requirements of the tribunal.

[amended 07/2015]

Commentary

[1] If the lawyer who is discharged or withdraws is a member of a firm, the client should be notified that the lawyer and the firm are no longer acting for the client.

[3] The obligation to deliver papers and property is subject to a lawyer's right of lien. In the event of conflicting claims to such papers or property, the lawyer should make every effort to have the claimants settle the dispute.

[4] Co-operation with the successor lawyer will normally include providing any memoranda of fact and law that have been prepared by the lawyer in connection with the matter, but confidential information not clearly related to the matter should not be divulged without the written consent of the client.

[5] A lawyer acting for several clients in a case or matter who ceases to act for one or more of them should co-operate with the successor lawyer or lawyers to the extent required by the rules and should seek to avoid any unseemly rivalry, whether real or apparent.

[6] In the absence of a reasonable objection, a lawyer who is discharged or withdraws continues to have a duty to promptly sign appropriately drafted court orders that have been granted or agreed to while the lawyer was counsel. This duty continues, notwithstanding subsequent instructions of the client.

[[6] added 03/2017]

Confidentiality

3.7-9.1 Subject to exceptions permitted by law, if the reason for withdrawal results from confidential communications between the lawyer and the client, the lawyer must not disclose the reason for the withdrawal unless the client consents.

Commentary

[1] One such exception is that in *R.* v. *Cunningham*, 2010 SCC 10, which establishes that, in a criminal case, if the disclosure of information related to the payment of the lawyer's fees is unrelated to the merits of the case and does not prejudice the accused, the lawyer may properly disclose such information to the court. See para. 31:

> Disclosure of non-payment of fees in cases where it is unrelated to the merits and will not cause prejudice to the accused is not an exception to privilege, such as the innocence at stake or public safety exceptions (see generally *R.* v. *McClure*, 2001 SCC 14 and *Smith* v. *Jones*, [1999] 1 S.C.R. 455). Rather, non-payment of legal fees in this context does not attract the protection of solicitor-client privilege in the first place. However, nothing in these reasons, which address the application, or non-application, of solicitor-client privilege in disclosures to a court, should be taken as affecting counsel's ethical duty of confidentiality with respect to payment or non-payment of fees in other contexts.

Duty of successor lawyer

3.7-10 Before agreeing to represent a client, a successor lawyer must be satisfied that the former lawyer has withdrawn or has been discharged by the client.

Commentary

[1] It is quite proper for the successor lawyer to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the former lawyer, especially if the latter withdrew for good cause or was capriciously discharged. But, if a trial or hearing is in progress or imminent, or if the client would otherwise be prejudiced, the existence of an outstanding account should not be allowed to interfere with the successor lawyer acting for the client.

[This page is intentionally left blank.]

Chapter 4 – Marketing of Legal Services

4.2 Marketing

Application of rule

4.2-3 This section applies to any marketing activity undertaken or authorized by a lawyer in which he or she is identified as a lawyer, mediator or arbitrator.

Definitions

4.2-4 In this Chapter:

"marketing activity" includes any publication or communication in the nature of an advertisement, promotional activity or material, letterhead, business card, listing in a directory, a public appearance or any other means by which professional legal services are promoted or clients are solicited;

"lawyer" includes a member of the Law Society, and a person enrolled in the Law Society Admission Program.

Content and format of marketing activities

4.2-5 Any marketing activity undertaken or authorized by a lawyer must not be:

(a) false,

(b) inaccurate,

(c) unverifiable,

(d) reasonably capable of misleading the recipient or intended recipient, or

(e) contrary to the best interests of the public.

Commentary

[1] For example, a marketing activity violates this rule if it:

(a) is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,

(b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results that the lawyer can achieve, or

(c) otherwise brings the administration of justice into disrepute.

4.2-6 [rescinded 10/2014]

Notary public

4.2-7 A lawyer who, on any letterhead, business card or sign, or in any other marketing activity:

(a) uses the term "Notary," "Notary Public" or any similar designation, or

(b) in any other way represents to the public that the lawyer is a notary public,

must also indicate in the same publication or marketing activity the lawyer's status as a lawyer.

Designation

4.2-8 A lawyer must not list a person not entitled to practise law in British Columbia on any letterhead or in any other marketing activity without making it clear in the marketing activity that the person is not entitled to practise law in British Columbia.

In particular, a person who fits one or more of the following descriptions must not be listed without an appropriate indication of the person's status:

(a) a retired member,

(b) a non-practising member,

(c) a deceased member,

(d) an articled student,

(e) a legal assistant or paralegal,

(f) a patent agent, if registered as such under the *Patent Act*,

(g) a trademark agent, if registered as such under the *Trade-marks Act*, or

(h) a practitioner of foreign law, if that person holds a valid permit issued under Law Society Rule 2-18., or

(i) a qualified member of another profession, trade or occupation, provided that the lawyer and the other person are members of a Multi-Disciplinary Practice (MDP) permitted under the Law Society Rules.

4.3 Advertising nature of practice

Preferred areas of practice

4.3-0.1 A lawyer may state in any marketing activity a preference for practice in any one or more fields of law if the lawyer regularly practises in each field of law in respect of which the lawyer wishes to state a preference.

Specialization

4.3-1 Unless otherwise authorized by the *Legal Profession Act*, the Law Society Rules, or this Code or by the Benchers, a lawyer must:

(a) not use the title "specialist" or any similar designation suggesting a recognized special status or accreditation in any other marketing activity, and

(b) take all reasonable steps to discourage use, in relation to the lawyer by another person, of the title "specialist" or any similar designation suggesting a recognized special status or accreditation in any marketing activity.

Real estate sales

4.3-2 When engaged in marketing of real property for sale or lease, a lawyer must include in any marketing activity:

(a) the name of the lawyer or the lawyer's firm, and

(b) if a telephone number is used, only the telephone number of the lawyer or the lawyer's firm.

Multi-disciplinary practice

4.3-3 Unless permitted to practise law in an MDP under the Law Society Rules, a lawyer must not, in any marketing activity

(a) use the term Multi-Disciplinary Practice or MDP, or

(b) state or imply that the lawyer's practice or law firm is an MDP.

4. 3-4 A lawyer practising law in an MDP must ensure that all marketing activity for the firm indicates that the firm is an MDP.

[This page is intentionally left blank.]

Chapter 5 - Relationship to the Administration of Justice

5.1 The lawyer as advocate

Advocacy

5.1-1 When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary

[1] Role in adversarial proceedings – In adversarial proceedings, the lawyer has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing in which justice can be done. Maintaining dignity, decorum and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected.

[2] This rule applies to the lawyer as advocate, and therefore extends not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals, arbitrators, mediators and others who resolve disputes, regardless of their function or the informality of their procedures.

[3] The lawyer's function as advocate is openly and necessarily partisan. Accordingly, the lawyer is not obliged (except as required by law or under these rules and subject to the duties of a prosecutor set out below) to assist an adversary or advance matters harmful to the client's case.

[4] In adversarial proceedings that will likely affect the health, welfare or security of a child, a lawyer should advise the client to take into account the best interests of the child, if this can be done without prejudicing the legitimate interests of the client.

[5] A lawyer should refrain from expressing the lawyer's personal opinions on the merits of a client's case to a court or tribunal.

[6] When opposing interests are not represented, for example, in without notice or uncontested matters or in other situations in which the full proof and argument inherent in the adversarial system cannot be achieved, the lawyer must take particular care to be accurate, candid and comprehensive in presenting the client's case so as to ensure that the tribunal is not misled.

[7] The lawyer should never waive or abandon the client's legal rights, such as an available defence under a statute of limitations, without the client's informed consent.

[8] In civil proceedings, a lawyer should avoid and discourage the client from resorting to frivolous or vexatious objections, attempts to gain advantage from slips or oversights not going to the merits or tactics that will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.

[9] Duty as defence counsel – When defending an accused person, a lawyer's duty is to protect the client as far as possible from being convicted, except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged. Accordingly, and notwithstanding the lawyer's private opinion on credibility or the merits, a lawyer may properly rely on any evidence or defences, including so-called technicalities, not known to be false or fraudulent.

[10] Admissions made by the accused to a lawyer may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits to the lawyer the factual and mental elements necessary to constitute the offence, the lawyer, if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, the form of the indictment or the admissibility or sufficiency of the evidence, but must not suggest that some other person committed the offence or call any evidence that, by reason of the admissions, the lawyer believes to be false. Nor may the lawyer set up an affirmative case inconsistent with such admissions, for example, by calling evidence in support of an alibi intended to show that the accused could not have done or, in fact, has not done the act. Such admissions will also impose a limit on the extent to which the lawyer may attack the evidence for the prosecution. The lawyer is entitled to test the evidence given by each individual witness for the prosecution and argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but the lawyer should go no further than that.

5.1-2 When acting as an advocate, a lawyer must not:

(a) abuse the process of the tribunal by instituting or prosecuting proceedings that, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;

(b) knowingly assist or permit a client to do anything that the lawyer considers to be dishonest or dishonourable;

(c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence or inducement affecting the impartiality of the officer, unless all parties consent and it is in the interests of justice;

(d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;

(e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed or otherwise assisting in any fraud, crime or illegal conduct;

(f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;

(g) knowingly assert as fact that which cannot reasonably be supported by the evidence or taken on judicial notice by the tribunal;

(h) make suggestions to a witness recklessly or knowing them to be false;

(i) deliberately refrain from informing a tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by another party;

(j) improperly dissuade a witness from giving evidence or advise a witness to be absent;

(k) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;

(l) knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation

(m) abuse, hector or harass a witness;

(n) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge;

(o) needlessly inconvenience a witness; or

(p) appear before a tribunal while under the influence of alcohol or a drug.

Commentary

[1] In civil proceedings, a lawyer has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

[2] A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, when the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. If the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

[3] It is an abuse of the court's process to threaten to bring an action or to offer to seek withdrawal of a criminal charge in order to gain a benefit. See also rules 3.2-5 and 3.2-6 and accompanying commentary.

[4] When examining a witness, a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

[5] In the absence of a reasonable objection, lawyers have a duty to promptly sign appropriately drafted court orders that have been granted or agreed to. This duty continues, notwithstanding subsequent instructions of the client.

[[5] added 03/2017]

Incriminating physical evidence

5.1-2.1 A lawyer must not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence so as to obstruct or attempt to obstruct the course of justice.

Commentary

[1] In this rule, "evidence" does not depend upon admissibility before a tribunal or upon the existence of criminal charges. It includes documents, electronic information, objects or substances relevant to a crime, criminal investigation or a criminal prosecution. It does not include documents or communications that are solicitor-client privileged or that the lawyer reasonably believes are otherwise available to the authorities.

[2] This rule does not apply where a lawyer is in possession of evidence tending to establish the innocence of a client, such as evidence relevant to an alibi. However, a lawyer must exercise prudent judgment in determining whether such evidence is wholly exculpatory and therefore falls outside of the application of this rule. For example, if the evidence is both incriminating and exculpatory, improperly dealing with it may result in a breach of the rule and also expose a lawyer to criminal charges.

[3] A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its mere existence. A lawyer's possession of illegal things could constitute an offence and may require that the client obtain new counsel or disadvantage the client in other ways. It is imperative that a lawyer consider carefully the implications of accepting incriminating physical evidence. A lawyer should obtain the advice of senior criminal counsel or a Law Society practice advisor before agreeing to take possession. Where a lawyer already has possession this advice should be promptly obtained with respect to how the evidence should be handled.

[3.1] Unless a lawyer's handling of incriminating physical evidence is otherwise prescribed by law, the options available to a lawyer who has taken possession of such evidence include, as soon as reasonably possible:

(a) delivering the evidence to law enforcement authorities or the prosecution, either directly or anonymously;

(b) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination;

(c) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it; or

(d) returning the evidence to its source, provided doing so will not cause the evidence to be concealed, destroyed or altered.

[4] A lawyer should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a lawyer discloses or delivers incriminating physical evidence to law enforcement authorities or the prosecution, the lawyer has a duty to protect client confidentiality, including the client's identity, and to preserve solicitor-client privilege. This may be accomplished by the lawyer retaining independent counsel, who is not informed of the identity of the client and who is instructed not to disclose the identity of the instructing lawyer, to disclose or deliver the evidence.

[5] A lawyer has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. The lawyer's advice to a client that the client has the right to refuse to divulge the location of physical evidence does not constitute hindering an investigation. A lawyer who becomes aware of the existence of incriminating physical evidence or declines to take possession of it must not counsel or participate in its concealment, destruction or alteration.

[6] A lawyer may determine that non-destructive testing, examination or copying of documentary, electronic or other evidence is needed. A lawyer should ensure that there is no concealment, destruction or any alteration of the evidence and should exercise caution in this area. For example, opening or copying an electronic document may alter it. A lawyer who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

[7] A lawyer must never take possession of an item the mere possession of which is illegal, such as stolen property, unless specific dispensation is afforded by the law, such as under the "innocent possession" exception, which allows a person to take possession of such an item for the sole purpose of promptly turning it over to the police.

[rule and commentary added 12/2016]

Duty as prosecutor

5.1-3 When acting as a prosecutor, a lawyer must act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy and respect.

Commentary

[1] When engaged as a prosecutor, the lawyer's primary duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. The prosecutor should not do anything that might prevent the accused from being represented by counsel or communicating with counsel and, to the extent required by law and accepted practice, should make timely disclosure to defence counsel or directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

Disclosure of error or omission

5.1-4 A lawyer who has unknowingly done or failed to do something that, if done or omitted knowingly, would have been in breach of this rule and who discovers it, must, subject to section 3.3 (Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

Commentary

[1] If a client desires that a course be taken that would involve a breach of this rule, the lawyer must refuse and do everything reasonably possible to prevent it. If that cannot be done, the lawyer should, subject to rule 3.7-1 (Withdrawal from Representation), withdraw or seek leave to do so.

Courtesy

5.1-5 A lawyer must be courteous and civil and act in good faith to the tribunal and all persons with whom the lawyer has dealings.

Commentary

[1] Legal contempt of court and the professional obligation outlined here are not identical, and a consistent pattern of rude, provocative or disruptive conduct by a lawyer, even though unpunished as contempt, may constitute professional misconduct.

Undertakings

5.1-6 A lawyer must strictly and scrupulously fulfill any undertakings given and honour any trust conditions accepted in the course of litigation.

Commentary

[1] A lawyer should also be guided by the provisions of rule 7.2-11 (Undertakings and trust conditions).

Agreement on guilty plea

5.1-7 Before a charge is laid or at any time after a charge is laid, a lawyer for an accused or potential accused may discuss with the prosecutor the possible disposition of the case, unless the client instructs otherwise.

5.1-8 A lawyer for an accused or potential accused may enter into an agreement with the prosecutor about a guilty plea if, following investigation,

(a) the lawyer advises his or her client about the prospects for an acquittal or finding of guilt;

(b) the lawyer advises the client of the implications and possible consequences of a guilty plea and particularly of the sentencing authority and discretion of the court, including the fact that the court is not bound by any agreement about a guilty plea;

(c) the client voluntarily is prepared to admit the necessary factual and mental elements of the offence charged; and

(d) the client voluntarily instructs the lawyer to enter into an agreement as to a guilty plea.

Commentary

[1] The public interest in the proper administration of justice should not be sacrificed in the interest of expediency.

5.2 The Lawyer as witness

Submission of evidence

5.2-1 A lawyer who appears as advocate must not testify or submit his or her own affidavit evidence before the tribunal unless

(a) permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal;

(b) the matter is purely formal or uncontroverted; or

(c) it is necessary in the interests of justice for the lawyer to give evidence.

Commentary

[1] A lawyer should not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge. The lawyer should not, in effect, appear as an unsworn witness or put the lawyer's own credibility in issue. The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer. There are no restrictions on the advocate's right to cross-examine another lawyer, however, and the lawyer who does appear as a witness should not expect or receive special treatment because of professional status.

Appeals

5.2-2 A lawyer who is a witness in proceedings must not appear as advocate in any appeal from the decision in those proceedings, unless the matter about which he or she testified is purely formal or uncontroverted.

5.3 Interviewing witnesses

5.3 Subject to the rules on communication with a represented party set out in rules 7.2-4 to 7.2-8, a lawyer may seek information from any potential witness, whether under subpoena or not, but the lawyer must disclose the lawyer's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

5.4 Communication with witnesses giving evidence

5.4-1 A lawyer involved in a proceeding must not, during an examination and a cross-examination, obstruct the examination and the cross-examination in any manner.

5.4-2 Subject to the direction of the tribunal, a lawyer must observe the following rules respecting communication with witnesses giving evidence:

(a) during examination-in-chief, the examining lawyer may discuss with the witness any matter;

(b) during cross-examination of the lawyer's own witness, the lawyer must not discuss with the witness the evidence given in chief or relating to any matter introduced or touched on during the examination-in-chief;

(c) upon the conclusion of cross-examination and during any re-examination, with the leave of the court, the lawyer may discuss with the witness any matter;

(d) during examination for discovery, the lawyer may discuss the evidence given or to be given by the witness on the following basis:

(i) where a discovery is to last no longer than a day, counsel for the witness should refrain from having any discussion with the witness during this time.

(ii) where a discovery is scheduled for longer than one day, counsel is permitted to discuss with his or her witness all issues relating to the case, including evidence that is given or to be given, at the conclusion of the discovery each day. However, prior to any such discussion taking place, counsel should advise the other side of his or her intention to do so.

(iii) counsel for the witness should not seek an adjournment during the examination to specifically discuss the evidence that was given by the witness. Such discussion should either wait until the end of the day adjournment or until just before re-examination at the conclusion of the cross-examination.

Commentary

[1] The application of these rules may be determined by the practice and procedures of the tribunal and may be modified by agreement of counsel.

[2] The term "cross-examination" means the examination of a witness or party adverse in interest to the client of the lawyer conducting the examination. It therefore includes an examination for discovery, examination on affidavit or examination in aid of execution. The rule prohibits obstruction or improper discussion by any lawyer involved in a proceeding and not just by the lawyer whose witness is under cross-examination.

[3] The opportunity to conduct a fully ranging and uninterrupted cross-examination is fundamental to the adversarial system. It is counterbalanced by an opposing advocate's ability to ensure clarity of testimony through initial briefing, direct examination and re-examination of that lawyer's witnesses. There is therefore no justification for obstruction of cross-examination by unreasonable interruptions, repeated objection to proper questions, attempts to have the witness change or tailor evidence, or other similar conduct while the examination is ongoing.

[6] This rule is not intended to prohibit a lawyer with no prior involvement in the proceedings, who has been retained by a witness under cross-examination, from consulting with the lawyer's new client.

[8] For a discussion of issues relating to counsel speaking to the witness during examination for discovery see *Fraser River Pile & Dredge Ltd.* v. *Can-Dive Services Ltd*. (1992), 72 B.C.L.R. (2nd) 240 (B.C.S.C) and *Iroquois Falls Power Corp.* v. *Jacobs Canada Inc.* [2006] O.J. No. 4222 (Ont.Sup.Ct.). See also Shields and Shapray, "Woodshedding, Interruptions and Objections: How to Properly Conduct and Defend an Examination for Discovery", *the Advocate*, Vol. 68, Part 5, Sept. 2010.

5.5 Relations with jurors

Communication before trial

5.5-1 When acting as an advocate before the trial of a case, a lawyer must not communicate with or cause another to communicate with anyone that the lawyer knows to be a member of the jury panel for that trial.

Commentary

[1] A lawyer may investigate a prospective juror to ascertain any basis for challenge, provided that the lawyer does not directly or indirectly communicate with the prospective juror or with any member of the prospective juror's family. But a lawyer should not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of either a member of the jury panel or a juror.

Disclosure of information

5.5-2 Unless the judge and opposing counsel have previously been made aware of the information, a lawyer acting as an advocate must disclose to them any information of which the lawyer is aware that a juror or prospective juror:

(a) has or may have an interest, direct or indirect, in the outcome of the case;

(b) is acquainted with or connected in any manner with the presiding judge, any counsel or any litigant;

(c) is acquainted with or connected in any manner with any person who has appeared or who is expected to appear as a witness; or

(d) may be legally disqualified from serving as a juror.

5.5-3 A lawyer must promptly disclose to the court any information that the lawyer reasonably believes discloses improper conduct by a member of a jury panel or by a juror.

Communication during trial

5.5-4 Except as permitted by law, a lawyer acting as an advocate must not communicate with or cause another to communicate with any member of the jury during a trial of a case.

5.5-5 A lawyer who is not connected with a case before the court must not communicate with or cause another to communicate with any member of the jury about the case.

5.5-6 A lawyer must not have any discussion after trial with a member of the jury about its deliberations.

Commentary

[1] The restrictions on communications with a juror or potential juror should also apply to communications with or investigations of members of his or her family.

5.6 The lawyer and the administration of justice

Encouraging respect for the administration of justice

5.6-1 A lawyer must encourage public respect for and try to improve the administration of justice.

Commentary

[1] The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet, for the same reason, a lawyer should not hesitate to speak out against an injustice.

[2] Admission to and continuance in the practice of law implies, on the part of a lawyer, a basic commitment to the concept of equal justice for all within an open, ordered and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public, and, because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby, to maintain public respect for it.

[3] Criticizing Tribunals - Proceedings and decisions of courts and tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, but judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate or unsupported by a bona fide belief in its real merit, since, in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, when a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to, and should, support the tribunal, both because its members cannot defend themselves and because, in doing so, the lawyer contributes to greater public understanding of, and therefore respect for, the legal system.

[4] A lawyer, by training, opportunity and experience, is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions and public authorities. A lawyer should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.

Seeking legislative or administrative changes

5.6-2 A lawyer who seeks legislative or administrative changes must disclose the interest being advanced, whether the lawyer's interest, the client's interest or the public interest.

Commentary

[1] The lawyer may advocate legislative or administrative changes on behalf of a client although not personally agreeing with them, but the lawyer who purports to act in the public interest should espouse only those changes that the lawyer conscientiously believes to be in the public interest.

Security of court facilities

5.6-3 A lawyer who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility must inform the persons having responsibility for security at the facility and give particulars.

Commentary

[1] If possible, the lawyer should suggest solutions to the anticipated problem such as:

(a) further security, or

(b) reserving judgment.

[2] If possible, the lawyer should also notify other lawyers who are known to be involved in proceedings at the court facility where the dangerous situation is likely to develop. Beyond providing a warning of danger, this notice is desirable because it may allow them to suggest security measures that do not interfere with an accused's or a party's right to a fair trial.

[3] If client information is involved in those situations, the lawyer should be guided by the provisions of section 3.3 (Confidentiality).

5.7 Lawyers and mediators

Role of mediator

5.7 A lawyer who acts as a mediator must, at the outset of the mediation, ensure that the parties to it understand fully that:

(a) the lawyer is not acting as a lawyer for either party but, as mediator, is acting to assist the parties to resolve the matters in issue; and

(b) although communications pertaining to and arising out of the mediation process may be covered by some other common law privilege, they will not be covered by solicitor-client privilege.

Commentary

[1] [rescinded]

[1.1] Appendix B contains additional rules that govern the conduct of famly law mediation.

[2] Generally, neither the lawyer-mediator nor a partner or associate of the lawyer-mediator should render legal representation or give legal advice to either party to the mediation, bearing in mind the provisions of section 3.4 (Conflicts) and its commentaries and the common law authorities.

[3] If the parties have not already done so, a lawyer-mediator generally should suggest that they seek the advice of separate counsel before and during the mediation process, and encourage them to do so.

[4] If, in the mediation process, the lawyer-mediator prepares a draft contract for the consideration of the parties, the lawyer-mediator should expressly advise and encourage them to seek separate independent legal representation concerning the draft contract.

[5] A lawyer who has acted as a mediator in a family law matter may act for both spouses in a divorce action provided that all relief is sought by consent and both parties have received independent legal advice in relation to the matter.

[[1] rescinded, [1.1] and [5] added 07/2014]

Chapter 6 - Relationship to Students, Employees, and Others

6.1 Supervision

Direct supervision required

6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

[1] A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

[3] If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

[4] A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

[5] Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

Definitions

6.1-2 In this section,

"designated paralegal" means an individual permitted under rule 6.1-3.3 to give legal advice and represent clients before a court or tribunal;

"non-lawyer" means an individual who is neither a lawyer nor an articled student;

"paralegal" means a non-lawyer who is a trained professional working under the supervision of a lawyer.

Delegation

6.1-3 A lawyer must not permit a non-lawyer to:

(a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b) give legal advice;

(c) give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

(d) act finally without reference to the lawyer in matters involving professional legal judgment;

(e) be held out as a lawyer;

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;

(g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

(i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

  (i) it is of a routine administrative nature,

  (ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated;

(m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction*;*

(n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o) issue statements of account.

Commentary

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

[3] In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

6.1-3.1 The limitations imposed by rule 6.1-3 do not apply when a non-lawyer is:

(a) a community advocate funded and designated by the Law Foundation;

(b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and

(c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

6.1-3.2 A lawyer may employ as a paralegal a person who

(a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c) carries out his or her work in a competent and ethical manner.

Commentary

[1] A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

[2] In arriving at this determination, lawyers should be guided by Appendix E.

[3] Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

6.1-3.3 Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

(a) to give legal advice;

(b) to represent clients before a court or tribunal, other than a family law arbitration, as permitted by the court or tribunal; or

(c) to represent clients at a family law mediation.

[amended 12/2015]

Commentary

[1] Law Society Rule 2-13 limits the number of designated paralegals performing the enhanced duties of giving legal advice, appearing in court or before a tribunal or appearing at a family law mediation.

[2] Where a designated paralegal performs the services in rule 6.1-3.3, the supervising lawyer must be available by telephone or other electronic means, and any agreement arising from a family law mediation must be subject to final review by the supervising lawyer.

[[1] updated 07/2015; [1] amended, [2] added 12/2015]

Suspended or disbarred lawyers

6.1-4 Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction,

(a) has been disbarred and struck off the Rolls,

(b) is suspended,

(c) has undertaken not to practise,

(d) has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted,

(e) has failed to complete a Bar admission program for reasons relating to lack of good character and repute or fitness to be a member of the Bar,

(f) has been the subject of a hearing ordered, whether commenced or not, with respect to an application for enrolment as an articled student, call and admission, or reinstatement, unless the person was subsequently enrolled, called and admitted or reinstated in the same jurisdiction, or

(g) was required to withdraw or was expelled from a Bar admission program.

[amended 04/2013]

Electronic registration of documents

6.1-5 A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not

(a) permit others, including a non-lawyer employee, to use such access; or

(b) disclose his or her password or access phrase or number to others.

[This page is intentionally left blank.]

6.1-6 When a non-lawyer employed by a lawyer has a personalized encrypted electronic access to any system for the electronic submission or registration of documents, the lawyer must ensure that the non-lawyer does not

(a) permit others to use such access; or

(b) disclose his or her password or access phrase or number to others.

Commentary

[1] The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

[2] In a real estate practice, when it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has such access, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the system.

Real estate assistants

6.1-7 In rules 6.1-7 to 6.1-9,

"purchaser" includes a lessee or person otherwise acquiring an interest in a property;

"sale" includes lease and any other form of acquisition or disposition;

"show", in relation to marketing real property for sale, includes:

(a) attending at the property for the purpose of exhibiting it to members of the public;

(b) providing information about the property, other than preprinted information prepared or approved by the lawyer; and

(c) conducting an open house at the property.

6.1-8 A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

(a) the assistant is employed in the office of the lawyer; and

(b) the lawyer personally shows the property.

6.1-9 A real estate marketing assistant may:

(a) arrange for maintenance and repairs of any property in the lawyer's care and control;

(b) place or remove signs relating to the sale of a property;

(c) attend at a property without showing it, in order to unlock it and let members of the public, real estate licensees or other lawyers enter; and

(d) provide members of the public with preprinted information about the property prepared or approved by the lawyer.

6.2 Students

Recruitment and engagement procedures

6.2-1 A lawyer must observe any procedures of the Society about the recruitment and engagement of articled or other students.

Duties of principal

6.2-2 A lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.

Commentary

[1] A principal or supervising lawyer is responsible for the actions of students acting under his or her direction.

Duties of articled student

6.2-3 An articled student must act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

6.3 Harassment and discrimination

6.3-1 The principles of human rights laws and related case law apply to the interpretation of this section.

6.3-2 A term used in this section that is defined in human rights legislation has the same meaning as in the legislation.

6.3-3 A lawyer must not sexually harass any person.

6.3-4 A lawyer must not engage in any other form of harassment of any person.

6.3-5 A lawyer must not discriminate against any person.

Commentary

[1] A lawyer has a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws.

[This page is intentionally left blank.]

Chapter 7 – Relationship to the Society and Other Lawyers

7.1 Responsibility to the Society and the profession generally

Regulatory compliance

7.1-1 A lawyer must

(a) reply promptly and completely to any communication from the Society;

(b) provide documents as required to the Law Society;

(c) not improperly obstruct or delay Law Society investigations, audits and inquiries;

(d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;

(e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and

(f) otherwise comply with the Law Society's regulation of the lawyer's practice.

Meeting financial obligations

7.1-2 A lawyer must promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability indemnity policy, when called upon to do so.

[amended 12/2019, effective 01/2020]

Commentary

[1] In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken on behalf of clients, unless, before incurring such an obligation, the lawyer clearly indicates in writing that the obligation is not to be a personal one.

[2] When a lawyer retains a consultant, expert or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, the lawyer should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

[3] If there is a change of lawyer, the lawyer who originally retained a consultant, expert or other professional should advise him or her about the change and provide the name, address, telephone number, fax number and email address of the new lawyer.

Duty to report

7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society, in respect of that lawyer or any other lawyer:

(a) a shortage of trust monies;

(a.1) a breach of undertaking or trust condition that has not been consented to or waived;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) [rescinded]

(e) conduct that raises a substantial question as to the honesty, trustworthiness, or competency of a lawyer; and

(f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

[amended 12/2019]]

Commentary

[1] Unless a lawyer who departs from proper professional conduct or competence is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer). In all cases, the report must be made without malice or ulterior motive.

[2] Nothing in this rule is meant to interfere with the lawyer-client relationship.

[3] A variety of stressors, physical, mental or emotional conditions, disorders or addictions may contribute to instances of conduct described in this rule. Lawyers who face such challenges should be encouraged by other lawyers to seek assistance as early as possible.

[4] The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received in the course of such confidential counselling. A lawyer serving in the capacity of a peer support or counsellor in the Lawyers Assistance Program, or another Law Society approved peer assistance program, is not required to report any information concerning another lawyer acquired in the course of providing peer assistance. The potential disclosure of these communications is not subject to requirement by the Law Society. Such disclosure can only be required by law or a court but is permissible if the lawyer-counsellor believes on

reasonable grounds that there is an imminent risk of death or serious harm and disclosure is necessary to prevent the death or harm.

[amended, [4] added 12/2019]

Encouraging client to report dishonest conduct

7.1-4 A lawyer must encourage a client who has a claim or complaint against an apparently dishonest lawyer to report the facts to the Society as soon as reasonably practicable.

7.2 Responsibility to lawyers and others

Courtesy and good faith

7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

Commentary

[1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

[2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

[3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

[4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

[5] A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

[[5] added 04/2013]

7.2-2 A lawyer must avoid sharp practice and must not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of a client's rights.

7.2-3 A lawyer must not use any device to record a conversation between the lawyer and a client or another lawyer, even if lawful, without first informing the other person of the intention to do so.

Communications

7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

7.2-5 A lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.

7.2-6 Subject to rules 7.2-6.1 and 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:

(a) approach, communicate or deal with the person on the matter; or

(b) attempt to negotiate or compromise the matter directly with the person.

[amended 09/2013]

7.2-6.1 Where a person is represented by a lawyer under a limited scope retainer on a matter, another lawyer may, without the consent of the lawyer providing the limited scope legal services, approach, communicate or deal with the person directly on the matter unless the lawyer has been given written notice of the nature of the legal services being provided under the limited scope retainer and the approach, communication or dealing falls within the scope of that retainer.

Commentary

[1] Where notice as described in rule 7.2-6.1 has been provided to a lawyer for an opposing party, the opposing lawyer is required to communicate with the person's lawyer, but only to the extent of the limited representation as identified by the lawyer. The opposing lawyer may communicate with the person on matters outside of the limited scope retainer.

[rule and commentary added 09/2013]

7.2-7 A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a lawyer with respect to that matter.

Commentary

[1] Rule 7.2-6 applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by a lawyer concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This rule does not prevent parties to a matter from communicating directly with each other.

[2] The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise when there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other lawyer by closing his or her eyes to the obvious.

[3] Rule 7.2-7 deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first lawyer involved. The lawyer should advise the client accordingly and, if necessary, consult the first lawyer unless the client instructs otherwise.

[This page is intentionally left blank.]

7.2-8 A lawyer retained to act on a matter involving a corporate or other organization represented by a lawyer must not approach an officer or employee of the organization:

(a) who has the authority to bind the organization;

(b) who supervises, directs or regularly consults with the organization's lawyer; or

(c) whose own interests are directly at stake in the representation,

in respect of that matter, unless the lawyer representing the organization consents or the contact is otherwise authorized or required by law.

Commentary

[1] This rule applies to corporations and other organizations. "Other organizations" include partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals, regulatory bodies and sole proprietorships. This rule prohibits a lawyer representing another person or entity from communicating about the matter in question with persons likely involved in the decision-making process for a corporation or other organization. If an agent or employee of the organization is represented in the matter by a lawyer, the consent of that lawyer to the communication will be sufficient for purposes of this rule. A lawyer may communicate with employees or agents concerning matters outside the representation.

[2] A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the lawyer must comply with the requirements of section 3.4 (Conflicts), and particularly rules 3.4-5 to 3.4-9. A lawyer must not represent that he or she acts for an employee of a client, unless the requirements of section 3.4 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.

7.2-9 When a lawyer deals on a client's behalf with an unrepresented person, the lawyer must:

(a) urge the unrepresented person to obtain independent legal representation;

(b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the lawyer; and

(c) make it clear to the unrepresented person that the lawyer is acting exclusively in the interests of the client.

Commentary

[1] If an unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in this rule about joint retainers.

Inadvertent communications

7.2-10 A lawyer who has access to or comes into possession of a document that the lawyer has reasonable grounds to believe belongs to or is intended for an opposing party and was not intended for the lawyer to see, must:

(a) in the case of a paper document, return it unread and uncopied to the party to whom it belongs,

(b) in the case of an electronic document, delete it unread and uncopied and advise the party to whom it belongs that that was done, or

(c) if the lawyer reads part or all of the document before realizing that it was not intended for him or her, cease reading the document and promptly return it or delete it, uncopied, to the party to whom it belongs, advising that party:

(i) of the extent to which the lawyer is aware of the contents, and

(ii) what use the lawyer intends to make of the contents of the document.

Commentary

[3] For purposes of this rule, **"electronic document"** includes email or other electronic modes of transmission subject to being read or put into readable form, such as computer hard drives and memory cards.

Undertakings and trust conditions

7.2-11 A lawyer must:

(a) not give an undertaking that cannot be fulfilled;

(b) fulfill every undertaking given; and

(c) honour every trust condition once accepted.

Commentary

[1] Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as "on behalf of my client" or "on behalf of the vendor" does not relieve the lawyer giving the undertaking of personal responsibility.

[2] Trust conditions, which are equivalent to undertakings, should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed in writing and communicated to the other party at the time the property is delivered. Trust conditions should be accepted in writing and, once accepted, constitute an obligation on the accepting lawyer that the lawyer must honour personally. The lawyer who delivers property without any trust condition cannot retroactively impose trust conditions on the use of that property by the other party.

[3] The lawyer should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a lawyer accepts property subject to trust conditions, the lawyer must fully comply with such conditions, even if the conditions subsequently appear unreasonable. It is improper for a lawyer to ignore or breach a trust condition he or she has accepted on the basis that the condition is not in accordance with the contractual obligations of the clients. It is also improper to unilaterally impose cross conditions respecting one's compliance with the original trust conditions.

[4] If a lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition should be immediately returned to the person imposing the trust condition, unless its terms can be forthwith amended in writing on a mutually agreeable basis.

[5] Trust conditions can be varied with the consent of the person imposing them. Any variation should be confirmed in writing. Clients or others are not entitled to require a variation of trust conditions without the consent of the lawyer who has imposed the conditions and the lawyer who has accepted them.

[6] Any trust condition that is accepted is binding upon a lawyer, whether imposed by another lawyer or by a lay person. A lawyer may seek to impose trust conditions upon a non-lawyer, whether an individual or a corporation or other organization, but great caution should be exercised in so doing since such conditions would be enforceable only through the courts as a matter of contract law and not by reason of the ethical obligations that exist between lawyers.

Trust cheques

7.2-12 Except in the most unusual and unforeseen circumstances, which the lawyer must justify, a lawyer who withdraws or authorizes the withdrawal of funds from a trust account by cheque undertakes that the cheque

(a) will be paid, and

(b) is capable of being certified if presented for that purpose.

Commentary

[1] Unless funds are to be paid under an agreement that specifically requires another form of payment or payment by another person, a lawyer must not refuse to accept another lawyer's uncertified cheque for the funds. It is not improper for a lawyer, at his or her own expense, to have another lawyer's cheque certified.

Real estate transactions

7.2-13 If a lawyer acting for a purchaser of real property accepts the purchase money in trust and receives a registrable conveyance from the vendor in favour of the purchaser, then the lawyer is deemed to have undertaken to pay the purchase money to or as directed by the vendor on completion of registration.

7.3 Outside interests and the practice of law

Maintaining professional integrity and judgment

7.3-1 A lawyer who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize the lawyer's professional integrity, independence or competence.

Commentary

[1] A lawyer must not carry on, manage or be involved in any outside interest in such a way that makes it difficult to distinguish in which capacity the lawyer is acting in a particular transaction, or that would give rise to a conflict of interest or duty to a client.

[2] When acting or dealing in respect of a transaction involving an outside interest, the lawyer should be mindful of potential conflicts and the applicable standards referred to in the conflicts rule and disclose any personal interest.

7.3-2 A lawyer must not allow involvement in an outside interest to impair the exercise of the lawyer's independent judgment on behalf of a client.

Commentary

[1] The term "outside interest" covers the widest possible range of activities and includes activities that may overlap or be connected with the practice of law such as engaging in the mortgage business, acting as a director of a client corporation or writing on legal subjects, as well as activities not so connected, such as a career in business, politics, broadcasting or the performing arts. In each case, the question of whether and to what extent the lawyer may be permitted to engage in the outside interest will be subject to any applicable law or rule of the Society.

[2] When the outside interest is not related to the legal services being performed for clients, ethical considerations will usually not arise unless the lawyer's conduct might bring the lawyer or the profession into disrepute or impair the lawyer's competence, such as if the outside interest might occupy so much time that clients' interests would suffer because of inattention or lack of preparation.

7.4 The lawyer in public office

Standard of conduct

7.4-1 A lawyer who holds public office must, in the discharge of official duties, adhere to standards of conduct as high as those required of a lawyer engaged in the practice of law.

Commentary

[1] The rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the lawyer attained the office because of professional qualifications. Because such a lawyer is in the public eye, the legal profession can more readily be brought into disrepute by a failure to observe its ethical standards.

[2] Generally, the Society is not concerned with the way in which a lawyer holding public office carries out official responsibilities, but conduct in office that reflects adversely upon the lawyer's integrity or professional competence may be the subject of disciplinary action.

[3] Lawyers holding public office are also subject to the provisions of section 3.4 (Conflicts) when they apply.

7.5 Public appearances and public statements

Communication with the public

7.5-1 Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.

Commentary

[1] Lawyers in their public appearances and public statements should conduct themselves in the same manner as they do with their clients, their fellow practitioners, the courts, and tribunals. Dealings with the media are simply an extension of the lawyer's conduct in a professional capacity. The mere fact that a lawyer's appearance is outside of a courtroom, a tribunal or the lawyer's office does not excuse conduct that would otherwise be considered improper.

[2] A lawyer's duty to the client demands that, before making a public statement concerning the client's affairs, the lawyer must first be satisfied that any communication is in the best interests of the client and within the scope of the retainer.

[3] Public communications about a client's affairs should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that a lawyer's real purpose is self-promotion or self-aggrandizement.

[4] Given the variety of cases that can arise in the legal system, particularly in civil, criminal and administrative proceedings, it is impossible to set down guidelines that would anticipate every possible circumstance. Circumstances arise in which the lawyer should have no contact with the media, but there are other cases in which the lawyer should contact the media to properly serve the client.

[5] Lawyers are often involved in non-legal activities involving contact with the media to publicize such matters as fund-raising, expansion of hospitals or universities, programs of public institutions or political organizations. They sometimes act as spokespersons for organizations that, in turn, represent particular racial, religious or other special interest groups. This is a well-established and completely proper role for lawyers to play in view of the obvious contribution that it makes to the community.

[6] Lawyers are often called upon to comment publicly on the effectiveness of existing statutory or legal remedies or the effect of particular legislation or decided cases, or to offer an opinion about cases that have been instituted or are about to be instituted. This, too, is an important role the lawyer can play to assist the public in understanding legal issues.

[7] Lawyers should be aware that, when they make a public appearance or give a statement, they ordinarily have no control over any editing that may follow or the context in which the appearance or statement may be used or under what headline it may appear.

Interference with right to fair trial or hearing

7.5-2 A lawyer must not communicate information to the media or make public statements about a matter before a tribunal if the lawyer knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

Commentary

[1] Fair trials and hearings are fundamental to a free and democratic society. It is important that the public, including the media, be informed about cases before courts and tribunals. The administration of justice benefits from public scrutiny. It is also important that a person's, particularly an accused person's, right to a fair trial or hearing not be impaired by inappropriate public statements made before the case has concluded.

7.6 Preventing unauthorized practice

7.6-1 A lawyer must assist in preventing the unauthorized practice of law.

Commentary

[1] Statutory provisions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, from regulation and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of confidentiality, the professional standard of care that the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include mandatory professional liability indemnification, the assessment of lawyers' bills, regulation of the handling of trust monies and the maintenance of compensation funds.

[amended 12/2019, effective 01/2020]

7.7 Retired judges returning to practice

7.7-1 A judge who returns to practice after retiring, resigning or being removed from the bench must not, for a period of three years, unless the governing body approves on the basis of exceptional circumstances, appear as a lawyer before the court of which the former judge was a member or before any courts of inferior jurisdiction to that court or before any administrative board or tribunal over which that court exercised an appellate or judicial review jurisdiction in any province in which the judge exercised judicial functions.

7.8 Errors and omissions

Informing client of errors or omissions

7.8-1 When, in connection with a matter for which a lawyer is responsible, a lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer must:

(a) promptly inform the client of the error or omission without admitting legal liability;

(b) recommend that the client obtain independent legal advice concerning the matter, including any rights the client may have arising from the error or omission; and

(c) advise the client of the possibility that, in the circumstances, the lawyer may no longer be able to act for the client.

Commentary

[1] Under Condition 4.1 of the Lawyers Compulsory Professional Liability Indemnity Policy, a lawyer is contractually required to give written notice to the indemnitor immediately after the lawyer becomes aware of any actual or alleged error or any circumstances that could reasonably be expected to be the basis of a claim or suit covered under the policy. This obligation arises whether or not the lawyer considers the claim to have merit. Rule 7.8-2 imposes an ethical duty to report to the indemnitor or insurer. Rule 7.8-1 should not be construed as relieving a lawyer from the obligation to report to the indemnitor before attempting any rectification.

[amended 12/2019, effective 01/2020]

Notice of claim

7.8-2 A lawyer must give prompt notice of any circumstances that may reasonably be expected to give rise to a claim to an indemnitor or insurer so that the client's protection from that source will not be prejudiced.

[amended 12/2019, effective 01/2020]

Commentary

[1] The introduction of compulsory indemnification coverage has imposed additional obligations upon a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. A lawyer has an obligation to comply with the provisions of the indemnity policy. The indemnitor's rights must be preserved, and the lawyer, in informing the client of an error or omission, should be careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity policy, or otherwise. There may well be occasions when a lawyer believes that certain actions or a failure to take action have made the lawyer liable for damages to the client when, in reality, no liability exists. Further, in every case, a careful assessment will have to be made of the client's damages arising from a lawyer's negligence.

[amended 12/2019, effective 01/2020]

Co-operation

7.8-3 A lawyer facing a claim or potential claim of professional negligence must not fail to assist and co-operate with the indemnitor or insurer to the extent necessary to enable the claim or potential claim to be dealt with promptly.

[amended 12/2019, effective 01/2020]

Responding to client's claim

7.8-4 If a lawyer is not indemnified for a client's errors and omissions claim or to the extent that the indemnity may not fully cover the claim, the lawyer must expeditiously deal with the claim and must not take unfair advantage that would defeat or impair the client's claim.

7.8-5 If liability is clear and the indemnitor or insurer is prepared to pay its portion of the claim, a lawyer has a duty to pay the balance. (See also Rule 7.1-2]

[amended 12/2019, effective 01/2020]

[This page is intentionally left blank.]

Appendix A – Affidavits, Solemn Declarations and Officer Certifications

Affidavits and solemn declarations

1. A lawyer must not swear an affidavit or take a solemn declaration unless the deponent:

(a) is physically present before the lawyer,

(b) acknowledges that he or she is the deponent,

(c) understands or appears to understand the statement contained in the document,

(d) in the case of an affidavit, swears, declares or affirms that the contents of the document are true,

(e) in the case of a solemn declaration, orally states that the deponent makes the solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath, and

(f) signs the document, or if permitted by statute, swears that the signature on the document is that of the deponent.

Commentary

Non-practising and retired members

[1] Non-practising and retired members are not permitted to act as notaries public or commissioners for the purpose of taking affidavits or solemn declarations. See Law Society Rules 2-3 and 2-4 for the definitions of non-practising and retired members.

Interjurisdictional practice

[2] A British Columbia lawyer, as a notary public, may administer oaths and take affidavits, declarations and affirmations only within British Columbia: See section 14 of the *Legal Profession Act* for a lawyer's right to act as a notary public, and section 18 of the *Notaries Act*, RSBC 1996, c. 334 for rights and powers of a notary public, including the right to draw affidavits, affirmations or statutory declarations for other jurisdictions.

[3] A British Columbia lawyer, as a commissioner for taking affidavits for British Columbia, has authority to administer oaths and take affidavits, declarations and affirmations outside of BC *for use in BC*: See sections 59, 63 and related sections of the *Evidence Act*, RSBC 1996, c.124.

[4] Notwithstanding Law Society mobility provisions across Canada, a British Columbia lawyer cannot swear an affidavit in another province or territory for use in that jurisdiction unless the lawyer is a member of the bar in that jurisdiction or the jurisdiction's own legislation allows it. For example, because of Alberta legislation, a member of the Law Society of British Columbia, while in Alberta acting under the mobility provisions on an Alberta matter, cannot swear an affidavit for use in Alberta.

[5] British Columbia lawyers should contact the law society of the other province or territory if they need to check whether they are entitled to swear an affidavit in that jurisdiction.

[6] Likewise, lawyers from other jurisdictions visiting British Columbia may not swear affidavits in BC for use in BC: See section 60 of the *Evidence Act* and the definition of "practising lawyer" in section 1(1) of the *Legal Profession Act.*

Deponent present before commissioner

[7] See *R.* v. *Schultz*, [1922] 2 WWR 582 (Sask. CA) in which the accused filled in and signed a declaration and left it on the desk of a commissioner for taking oaths, later meeting the commissioner outside and asking him to complete it. The court held that it was not a solemn declaration within the meaning of the *Canada Evidence Act*, stating that: "The mere fact that it was signed by the accused does not make it a solemn declaration. The written statement by the commissioner that it was 'declared before him' is not true. The essential requirement of the *Act* is not the signature of the declarant but his solemn declaration made before the commissioner." (p. 584) Likewise, it has been held in the U.S. that the taking of an affidavit over the telephone is grounds for a charge of negligence and professional misconduct: *Bar Association of New York City* v. *Napolis* (1915), 155 N.Y. Sup. 416 (N.Y. Sup. Ct. App. Div.). In B.C., the conduct of a lawyer who affixed his name to the jurat of the signed affidavit without ever having seen the deponent constituted professional misconduct: Law Society *Discipline Case Digest* 83/14.

Identification

[8] The commissioner should be satisfied that the deponent is who the deponent represents himself or herself to be. Where the commissioner does not know the deponent personally, identification should be inspected and/or appropriate introductions should be obtained.

Appearing to understand

[9] To be satisfied of this, the commissioner may read the document aloud to the deponent, have the deponent read it aloud or accept the deponent's statement that its contents are understood: *R.* v. *Whynot* (1954), 110 CCC 35 at 42 (NSCA).

[10] It is also important that the deponent understands the significance of the oath or declaration he or she is proposing to take. See *King* v. *Phillips* (1908), 14 CCC 239 (B.C. Co. Ct.); *R.* v. *Nichols*, [1975] 5 WWR 600 (Alta SC); and *Owen* v. *Yorke*, (6 December, 1984), Vancouver A843177 (BCSC).

[11] If it appears that a deponent is unable to read the document, the commissioner must certify in the jurat that the document was read in his or her presence and the commissioner was satisfied that the deponent understood it: B.C., *Rules of Court*, Rule 22-2(6). If it appears that the deponent does not understand English, the lawyer must arrange for a competent interpreter to interpret the document to the deponent and certify by endorsement in Form 60 [now Form 109] that he or she has done so: *Rules of Court*, Rule 22-2(7).

Affirmation

[12] The British Columbia Law Reform Commission has raised the question of whether an affidavit may properly be created by solemn affirmation under provincial law. For this reason, in cases where a deponent does not want to swear an affidavit, it may be prudent to create the affidavit by solemn declaration rather than by solemn affirmation. See Appendix B to Law Reform Commission of British Columbia, *Report on Affidavits: Alternatives to Oaths* LRC 115 (1990).

Swear or affirm that the contents are true

[13] This can be accomplished by the commissioner asking the deponent: "Do you swear that the contents of this affidavit are true, so help you God?" or, if the affidavit is being affirmed, "Do you solemnly affirm [or words with the same effect] that the evidence given by you is the truth, the whole truth and nothing but the truth?," to which the deponent must answer in the affirmative. In taking an affirmation the lawyer should comply with section 20 of the *Evidence Act*, RSBC 1996, c. 124 and the *Affirmation Regulation*, B.C. Reg. 396/89.

[14] Section 29 of the *Interpretation Act*, RSBC 1996, c. 238, defines an affidavit or oath as follows:

> "affidavit" or "oath" includes an affirmation, a statutory declaration, or a solemn declaration made under the *Evidence Act*, or under the *Canada Evidence Act*; and the word "swear" includes solemnly declare or affirm;

[15] If an affidavit is altered after it has been sworn, it cannot be used unless it is resworn. Reswearing can be done by the commissioner initialling the alterations, taking the oath again from the deponent and then signing the altered affidavit. A second jurat should be added, commencing with the word "resworn."

[16] Generally, an affidavit is sworn and filed in a proceeding that is already commenced. An affidavit may also be sworn before the proceeding is commenced: *Rules of Court*, Rule 22-2(15). However, an affidavit may not be postdated: *Law Society of BC v. Foo*, [1997] LSDD No. 197.

[17] Swearing to an affidavit exhibits that are not in existence can amount to professional misconduct: *LSBC v. Foo*.

Solemn declaration

[18] A solemn declaration should be made in the words of the statute: *King* v. *Phillips*, *supra*; *R.* v. *Whynot*, *supra*.

[19] The proper form for a solemn declaration is set out in section 41 of the *Canada Evidence Act*, RSC 1985, c. C-5:

> **Solemn declaration**
>
> 41. Any judge, notary public, justice of the peace, provincial court judge, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or federal courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the declaration before him, in the following form, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:
>
> > I, , solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.
> >
> > Declared before me at this . day of , 20

and in section 69 of the *Evidence Act*, RSBC 1996, c. 124:

> **Statutory declarations**
>
> 69. A gold commissioner, mayor or commissioner authorized to take affidavits, or any other person authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making it before him or her in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing, in the following words:
>
> > I, A.B., solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

Execution

[20] A deponent unable to sign an affidavit may place his or her mark on it: *Rules of Court*, Rule 22-2(4)(b)(ii). An affidavit by a person who could not make any mark at all was accepted by the court in *R.* v. *Holloway* (1901), 65 JP 712 (Magistrates Ct.).

[[11], [16] and [20] amended 05/2016]

Witnessing the execution of an instrument

2. When a lawyer witnesses the execution of an instrument by an individual under the *Land Title Act*, RSBC 1996, c. 250, the lawyer's signature is a certification by the lawyer that:

(a) the individual appeared before and acknowledged to the lawyer that he or she is the person named in the instrument as transferor, and

(b) the signature witnessed by the lawyer is the signature of the individual who made the acknowledgment. (See section 43 of the *Land Title Act*.)

Commentary

[1] Non-practising and retired members are not permitted to act as officers for the purpose of witnessing the execution of instruments under the *Land Title Act*.

[This page is intentionally left blank.]

Appendix B – Family Law Mediation, Arbitration and Parenting Coordination

Definitions

1. In this Appendix:

"dispute resolution process" means the process of family law mediation, family law arbitration or parenting coordination;

"family law arbitration" means a process by which participants submit issues relating to their marriage, cohabitation, separation or divorce to an impartial person (the family law arbitrator) for decision;

"family law mediation"

(a) means a process by which participants attempt, with the assistance of an impartial person (the family law mediator), to reach a consensual settlement of issues relating to their marriage, cohabitation, separation, divorce, children or finances, including division of assets, and

(b) includes, without limiting the generality of the foregoing, one or more of the following acts when performed by a lawyer acting as a family law mediator:

(i) informing the participants of and otherwise advising them on the legal issues involved,

(ii) advising the participants of a court's probable disposition of the issue,

(iii) preparing any agreement between the participants other than a memorandum recording the results of the family law mediation;

"parenting coordination" means a process by which an impartial person (the parenting coordinator), by agreement of participants or by court order, mediates a dispute with respect to the implementation of an agreement or a court order respecting the allocation of parenting time or parenting responsibilities, or contact with a child or makes a determination respecting that dispute that is binding on the participants;

"participant" means a person with issues relating to marriage, cohabitation, separation or divorce who has agreed to the intervention of an impartial person as family law mediator or arbitrator or parenting coordinator or is subject to a court order appointing such a person to assist in the resolution of such issues.

[amended 01/2013, effective March 18, 2013]

Disqualifications

2. (a) If a lawyer or a partner, associate or employee of that lawyer has previously acted or is currently acting for any of the participants to a dispute resolution process in a solicitor-client relationship with respect to any matter that may reasonably be expected to become an issue during the dispute resolution process, that lawyer may not act as a family law mediator or arbitrator or parenting coordinator for any of the participants;

(b) If a lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor any partner, associate or employee of that lawyer may act in a solicitor-client relationship for either participant against the other participant;

(c) If a lawyer or a partner, associate or employee of that lawyer has acted in a dispute resolution process for the participants, neither that lawyer nor a partner, associate or employee of that lawyer may act for or against any person if to do so might require the lawyer to disclose or make use of confidential information given in the course of the dispute resolution process.

[amended 01/2013, effective March 18, 2013]

Obligations of family law mediator or arbitrator or parenting coordinator when participants unrepresented

3. A lawyer who acts as a family law mediator or arbitrator or parenting coordinator for participants who are unrepresented must:

(a) urge each unrepresented adult participant to obtain independent legal advice or representation, both before the commencement of the dispute resolution process and at any stage before an agreement between the participants is executed;

(b) take care to see that the unrepresented participant is not proceeding under the impression that the lawyer will protect his or her interests;

(c) make it clear to the unrepresented participant that the lawyer is acting exclusively in a neutral capacity, and not as counsel for either participant; and

(d) explain the lawyer's role in the dispute resolution process, including the scope and duration of the lawyer's powers.

[amended 01/2013, effective March 18, 2013]

Obligations of family law mediator or parenting coordinator

4. Unless otherwise ordered by the court, a lawyer who acts as a family law mediator or parenting coordinator and the participants must, before family law mediation or parenting coordination begins, enter into a written agreement that includes at least the following provisions:

(a) an agreement that the lawyer, throughout the family law mediation or parenting coordination, is not acting as legal counsel for any participant;

(b) an agreement that the lawyer may disclose fully to each participant all information provided by the other participant that is relevant to the issues;

(c) with respect to family law mediation, an agreement that, subject to rule 3.3-3, the family law mediation is part of an attempt to settle the differences between the participants and that all communications between participants or between any participant and the family law mediator will be "without prejudice" so that no participant will attempt:

(i) to introduce evidence of the communications in any legal proceedings, or

(ii) to call the family law mediator as a witness in any legal proceedings;

(c.1) with respect to parenting coordination, an agreement that no communications between the parenting coordinator and a participant, the child of a participant or a third party are confidential, except that the parenting coordinator may withhold any such information if, in the opinion of the parenting coordinator, the disclosure of the information may be harmful to a child's relationship with a participant, or compromise the child's relationship with a third party;

(d) an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law mediation or parenting coordination in which the lawyer has reasonable grounds to believe that a child is in need of protection;

(e) an agreement as to the lawyer's rate of remuneration and terms of payment;

(f) an agreement as to the circumstances in which family law mediation or parenting coordination will terminate.

[amended 01/2013, effective March 18, 2013; amended 04/2015]

Obligations of family law arbitrator

5. A lawyer who acts as a family law arbitrator and the participants must, before the lawyer begins his or her duties as family law arbitrator, enter into a written agreement that includes at least the following provisions:

(a) an agreement that the lawyer, throughout the family law arbitration, is not acting as legal counsel for any participant;

(b) an acknowledgment that the lawyer must report to the Director of Family and Child Services any instance arising from the family law arbitration in which the lawyer has reasonable grounds to believe that a child is in need of protection;

(c) an agreement as to the lawyer's rate of remuneration and terms of payment.

[added 01/2013, effective March 18, 2013]

Lawyer with dual role

6. A lawyer who is empowered to act as both family law mediator and family law arbitrator in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

[added 01/2013, effective March 18, 2013]

7. A parenting coordinator who may act as a family law mediator as well as determine issues in a dispute resolution process must explain the dual role to the participants in writing and must advise the participants in writing when the lawyer's role changes from one to the other.

[added 01/2013, effective March 18, 2013]

Commentary – designated paralegals and family law mediation

[1] The purpose of this commentary is to provide guidance to supervising lawyers who are considering sending a designated paralegal to represent a client at a family law mediation.

[2] Designated paralegals are permitted to represent a client at family law mediations in circumstances the supervising lawyer deems appropriate. However, family law mediations present unique challenges and before permitting a paralegal to represent a client in such processes the supervising lawyer must:

(a) determine whether the designated paralegal possesses the necessary skill and knowledge to act in the matter (consistent with the general obligation for determining whether to delegate work to the designated paralegal);

(b) ensure that there is no prohibition at law that prevents the designated paralegal from representing the client. For example, consider the restrictions in the Notice to Mediate Regulations regarding who has the right to accompany a party to a mediation;

(c) obtain the client's informed consent to the use of the designated paralegal.

[3] It is prudent for the supervising lawyer to advise the mediator and the other party, through their counsel if they are represented, that the designated paralegal will be representing the client and provide the name and contact information for the supervising lawyer.

[4] In addition to considering the process in Appendix E of the *BC Code*, lawyers should consider the following before permitting a designated paralegal to represent a client at a family law mediation:

- Mediation requires as much competency of the legal representative as is required before a court or tribunal. The supervising lawyer must bear this in mind when determining when it is appropriate to have a designated paralegal represent a client;
- Family law is a unique area of law in which many other areas of law intersect. In addition, clients are often dealing with considerable emotional stress and in some cases come from environments where family violence exists. It is an area of practice fraught with risks that both the lawyer and the designated paralegal need the skills and knowledge to identify and properly manage. Considerable skill is required to represent a client effectively at a family law mediation. A supervising lawyer should ensure the designated paralegal has received specific training in representing a client at a family law mediation. It is prudent to have the designated paralegal shadow the lawyer for several sessions and then have the lawyer shadow the designated paralegal for his or her first few sessions.

[5] Despite more family law matters being directed to consensual dispute resolution processes rather than to court, it remains essential that those processes and the settlements that arise in them be fair. It is important, therefore, for both the supervising lawyer and the designated paralegal to understand the case law surrounding circumstances in which settlement agreements have been set aside by the court on the grounds that the settlement was unfair.

[6] Lawyers must review any settlement agreement arising from a family law mediation where their designated paralegal represented the client, and such agreements are provisional until such time as the lawyer has signed off on it. This provides an opportunity for review and an additional safeguard for the client. The lawyer would also be prudent to advise the client about this process as a standard part of the retainer agreement.

[added 12/2015]

[This page is intentionally left blank.]

Appendix C – Real Property Transactions

Application

1. This Appendix does not apply to a real property transaction between corporations, societies, partnerships, trusts, or any of them, that are effectively controlled by the same person or persons or between any of them and such person or persons.

Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:

(a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,

(b) the transaction is a simple conveyance, or

(c) paragraph 9 applies.

[amended 12/2014]

3. When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in rule 3.4-5 to 3.4-9.

Simple conveyance

4. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:

(a) the value of the property or the amount of money involved,

(b) the existence of non-financial charges, and

(c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

Commentary

[1] The following are examples of transactions that may be treated as simple conveyances when this commentary does not apply to exclude them:

(a) the payment of all cash for clear title,

(b) the discharge of one or more encumbrances and payment of the balance, if any, in cash,

(c) the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,

(d) a mortgage that does not contain any commercial element, given by a mortgagor to an institutional lender to be registered against the mortgagor's residence, including a mortgage that is

(i) a revolving mortgage that can be advanced and re-advanced,

(ii) to be advanced in stages, or

(iii) given to secure a line of credit,

(e) transfer of a leasehold interest if there are no changes to the terms of the lease,

(f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or

(g) any combination of the foregoing.

[2] The following are examples of transactions that must not be treated as simple conveyances:

(h) a transaction in which there is any commercial element, such as:

(i) a conveyance included in a sale and purchase of a business,

(ii) a transaction involving a building containing more than three residential units, or

(iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,

(i) a lease or transfer of a lease, other than as set out in subparagraph (e),

(j) a transaction in which there is a mortgage back from the purchaser to the vendor,

(k) an agreement for sale,

(l) a transaction in which the lawyer's client is a vendor who:

(i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property,

(ii) is or was the developer of property being sold, unless subparagraph (f) applies,

(m) a conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage, or

(n) the drafting of a contract of purchase and sale.

[3] A transaction is not considered to have a commercial element merely because one of the parties is a corporation.

[[1] and [2] amended 12/2014; 01/2015]

Advice and consent

5. If a lawyer acts for more than one party in the circumstances as set out in paragraph 2 of this Appendix, then the lawyer must, as soon as is practicable,

(a) advise each party in writing that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict of interest arises, the lawyer cannot continue to act for any of them in the transaction,

(b) obtain the consent in writing of all such parties, and

(c) raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party.

Commentary

[1] If a written communication is not practicable at the beginning of the transaction, the advice may be given and the consent obtained orally, but the lawyer must confirm that advice to the parties in writing as soon as possible, and the lawyer must obtain consent in writing prior to completion.

[2] The consent in writing may be set out in the documentation of the transaction or may be a blanket consent covering an indefinite number of transactions.

Foreclosure proceedings

6. In this paragraph, "mortgagor" includes "purchaser," and "mortgagee" includes "vendor" under an agreement for sale, and "foreclosure proceeding" includes a proceeding for cancellation of an agreement for sale.

If a lawyer acts for both a mortgagor and a mortgagee in the circumstances set out in paragraph 2, the lawyer must not act in any foreclosure proceeding relating to that transaction for either the mortgagor or the mortgagee.

This prohibition does not apply if

(a) the lawyer acted for a mortgagee and attended on the mortgagor only for the purposes of executing the mortgage documentation,

(b) the mortgagor for whom the lawyer acted is not made a party to the foreclosure proceeding, or

(c) the mortgagor has no beneficial interest in the mortgaged property and no claim is being made against the mortgagor personally.

Unrepresented parties in a real property transaction

7. If one party to a real property transaction does not want or refuses to obtain independent legal representation, the lawyer acting for the other party may allow the unrepresented party to execute the necessary documents in the lawyer's presence as a witness if the lawyer advises that party in writing that:

(a) the party is entitled to obtain independent legal representation but has chosen not to do so,

(b) the lawyer does not act for or represent the party with respect to the transaction, and

(c) the lawyer has not advised that party with respect to the transaction but has only attended to the execution and attestation of documents.

8. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 7, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

9. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:

(a) the lawyer's engagement is of a limited nature, and

(b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.

Appendix D – Conflicts Arising as a Result of Transfer Between Law Firms

[Appendix D rescinded 11/2016 – see rules 3.4-17 to 3.4-23]

[The next page is page 113.]

[This page is intentionally left blank.]

Appendix E – Supervision of Paralegals

Key concepts

Lawyers who use paralegals need to be aware of several key concepts:

1. The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;
2. Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;
3. The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the *Legal Profession Act* or Law Society Rules committed by the paralegal;
4. A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person.
5. A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal.
6. A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for supervising paralegals

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

(a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?

(b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?

(c) How complex is the matter being delegated?

(d) What is the risk of harm to the client with respect to the matter being delegated?

2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

(a) Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;

(b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

(c) Gradually increasing the paralegal's responsibilities;

(d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:

(i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;

(ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;

(iii) ensuring the paralegal follows best practices regarding client communication and file management.

3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

2. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.

3. Facilitate continuing legal education for the paralegal.

4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

5. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A checklist for assessing the competence of paralegals

1. Does the paralegal have a legal education? If so, consider the following:

(a) What is the reputation of the institution?

(b) Review the paralegal's transcript;

(c) Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.

(d) Ask the paralegal about the education experience.

2. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.

3. What work experience does the paralegal have, with particular importance being placed on legal work experience?:

(a) Preference/weight should be given to work experience with the supervising lawyer and/or firm;

(b) If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

(c) Does the paralegal have experience in the relevant area of law?

(d) What responsibilities has the paralegal undertaken in the past in dealing with legal matters?

4. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:

(a) How responsible, trustworthy and mature is the paralegal?

(b) Does the paralegal have good interpersonal and language skills?

(c) Is the paralegal efficient and well organized?

(d) Does the paralegal possess good interviewing and diagnostic skills?

(e) Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?

(f) Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

Screening for family violence

1. The *Family Law Act*, SBC 2011, c. 25 requires family dispute resolution professionals to screen for family violence. Lawyers who practise family law are strongly encouraged to take at least 14 hours of training in screening for family violence, and lawyers who are acting as family law mediators, arbitrators or parenting coordinators are required to take such training.

[added 12/2015]

2. While designated paralegals do not fall within the definition of family dispute resolution professionals, lawyers who delegate to designated paralegals the ability to give legal advice in family law or represent clients in the permitted forums are strongly encouraged to ensure the designated paralegal has at least 14 hours of training in screening for family violence.

[added 12/2015]

3. If a designated paralegal has reason to believe family violence may be present, it is essential the paralegal bring this to the supervising lawyer's attention so the lawyer can turn his or her mind to the issue and the potential risks associated with it.

[added 12/2015]

Designated paralegals giving legal advice

1. As part of the process of supervising a designated paralegal, a lawyer should instruct the designated paralegal as to the key aspects of what giving sound legal advice involves.

[added 12/2015]

2. Giving legal advice and independent legal advice involves consideration of process and of the content of the advice. As a matter of process the lawyer, or designated paralegal, must obtain the relevant factual information from the client. This requires the skill of focusing on necessary factual material, rather than an exhaustive and costly exploration of all potential facts no matter how tangential they may be. Once the lawyer, or designated paralegal, has the factual foundation, he or she advises the client of the legal rights, obligations and/or remedies that are suggested by the facts. Finally, the lawyer should make a recommendation as to the preferred course of conduct and explain in clear terms why the suggested course is preferred.

[added 12/2015]

3. When a lawyer is training a designated paralegal it is essential to instruct the paralegal as to the proper process for ensuring the paralegal is imparting sound and cost effective legal advice to the lawyer's client.

[added 12/2015]

LAW SOCIETY RULES 2015

Adopted by the Benchers of the Law Society of British Columbia
under the authority of the *Legal Profession Act*, S.B.C. 1998, c. 9

Effective date: July 1, 2015

CONTENTS

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Division 2 – Limited Liability Partnerships

PART 10 – GENERAL

SCHEDULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

"Act" means the *Legal Profession Act*, SBC 1998, c. 9;

"admission program" means the program for articled students administered by the Society or its agents, commencing on an articled student's enrolment start date and including the period during which the student is

(a) articled to a principal, or

(b) registered in the training course;

"advertising" includes letterhead, business cards and the use of paid space or time in a public medium, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public or a group of people, for the purpose of promoting professional services or enhancing the image of the advertiser;

"agreed statement of facts" means a written statement of facts signed by discipline counsel and by or on behalf of the respondent;

"applicant" means a person who has applied under Part 2 *[Membership and Authority to Practise Law]* for enrolment as an articled student, for call and admission or for reinstatement;

"appointed Bencher" means a person appointed as a Bencher under section 5 *[Appointed benchers]*;

"articled student" means a person who is enrolled in the admission program;

"articling agreement" means a contract in a form approved by the Credentials Committee executed by an applicant for enrolment and his or her prospective principal;

"articling start date" means the date on which an articled student begins employment with his or her principal;

"articling term" means the 9 month period referred to in Rule 2-59 *[Articling term]*;

"Barreau" means the Barreau du Québec;

"Bencher" does not include the Attorney General unless expressly stated;

"chair" means a person appointed to preside at meetings of a committee, panel or review board;

"Chambre" means the Chambre des notaires du Québec;

"company" means a company as defined in the *Business Corporations Act*;

"complainant" means a person who has delivered a complaint about a lawyer or a law firm to the Society under Rule 3-2 *[Complaints]*;

"complaint" means an allegation that a lawyer or a law firm has committed a discipline violation;

"conduct unbecoming the profession" includes a matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"costs" includes costs assessed under Rule 3-25 *[Costs]* or 3-81 *[Failure to file trust report]* or Part 5 *[Hearings and Appeals]*;

"disbarred lawyer" means a person to whom section 15 (3) *[Authority to practise law]* applies;

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of

(i) professional misconduct,

(ii) incompetence,

(iii) conduct unbecoming the profession,

(iv) lack of physical or mental capacity to engage in the practice of law,

(v) any other breach of a lawyer's professional responsibilities;

(b) disbarment;

(c) a lawyer's resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;

(d) restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.

"discipline violation" means any of the following:

(a) professional misconduct;

(b) conduct unbecoming the profession;

(c) a breach of the Act or these rules;

(d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;

(e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the Act or these rules if done by a lawyer or law firm;

"enrolment start date" means the date on which an articled student's enrolment in the admission program becomes effective;

"Executive Committee" means the Committee elected under Rule 1-41 *[Election of Executive Committee]*;

"Executive Director" [rescinded]

"fiduciary property" means

(a) funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer's appointment is derived from a solicitor-client relationship,

but does not include

(b) any funds and valuables that are subject to a power of attorney granted to the lawyer if the lawyer has not taken control of or otherwise dealt with the funds or valuables;

"firm" [rescinded – see **"law firm"** or **"firm"**]

"foreign jurisdiction" means a country other than Canada or an internal jurisdiction of a country other than Canada;

"Foundation" means the Law Foundation of British Columbia continued under section 58 (1) *[Law Foundation of British Columbia]*;

"funds" includes current coin, government or bank notes, bills of exchange, cheques, drafts, money orders, charge card sales slips, credit slips and electronic transfers;

"general" in relation to accounts, books, records and transactions means those pertaining to general funds;

"general funds" means funds received by a lawyer in relation to the practice of law, but does not include

(a) trust funds, or

(b) fiduciary property;

"governing body" means the governing body of the legal profession in another province or territory of Canada;

"inter-jurisdictional law firm" means a firm carrying on the practice of law in British Columbia and in one or more other Canadian or foreign jurisdictions, unless all lawyers in all offices of the firm are practising lawyers;

"inter-jurisdictional practice" includes practice by a member of the Society in another Canadian jurisdiction;

"investigate" includes authorizing an investigation and continuing an investigation in progress;

"law clerk" means a law clerk employed by a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court, the Federal Court of Appeal or the Tax Court of Canada;

"law firm" or **"firm"** means a legal entity or combination of legal entities carrying on the practice of law;

"lawyer" means a member of the Society;

"limited liability partnership" or **"LLP"** means a limited liability partnership under Part 6 of the *Partnership Act*, including an extraprovincial limited liability partnership registered under that Part;

"metadata" includes the following information generated in respect of an electronic record:

(a) creation date;

(b) modification dates;

(c) printing information;

(d) pre-edit data from earlier drafts;

(e) identity of an individual responsible for creating, modifying or printing the record;

"multi-disciplinary practice" or **"MDP"** means a partnership, including a limited liability partnership or a partnership of law corporations, that

(a) is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and

(b) provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;

"National Mobility Agreement" means the National Mobility Agreement, 2013, of the Federation of Law Societies of Canada, as amended from time to time;

"net interest" means the total interest earned on a pooled trust account, minus any service charges and transmittal fee that the savings institution charges to that account;

"officer" means the Executive Director, a Deputy Executive Director or other person appointed as an officer by the Benchers;

"Ombudsperson" means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articled students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age, and includes anyone employed to assist the Ombudsperson in that capacity;

"panel" means a panel established in accordance with Part 5 *[Hearings and Appeals]*;

"practice management course" means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

"practice review" means an investigation into a lawyer's competence to practise law ordered under Rule 3-17 (3) (d) *[Consideration of complaints]* or 3-18 (1) *[Practice review]*;

"practice year" means the period beginning on January 1 and ending on December 31 in a year;

"practitioner of foreign law" means a person qualified to practise law in a foreign jurisdiction who provides foreign legal services in British Columbia respecting the laws of that foreign jurisdiction;

"principal" means a lawyer who is qualified to employ and employs an articled student;

"pro bono legal services" means the practice of law not performed for or in the expectation of a fee, gain or reward;

"professional conduct record" means a record of all or some of the following information respecting a lawyer:

(a) an order under Rule 2-57 (5) *[Principals]*, prohibiting the lawyer from acting as a principal for an articled student;

(b) any conditions or limitations of practice or articles accepted or imposed under the Act or these rules;

(c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;

(d) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;

(e) any suspension or disbarment under the Act or these rules;

(f) recommendations made by the Practice Standards Committee under Rule 3-19 *[Action by Practice Standards Committee]*;

(g) an admission accepted by the Discipline Committee under Rule 4-29 *[Conditional admissions]*;

(h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 4-30 *[Conditional admission and consent to disciplinary action]*;

(i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 *[Conduct Review Subcommittee report]*, and any written dispute of that report considered by the Committee;

(j) a decision made under section 38 (4) (b) *[Discipline hearings]*;

(k) an action taken under section 38 (5), (6) or (7);

(l) an action taken by a review board under section 47 *[Review on the record]*;

(m) a payment made under section 31 on account of misappropriation or wrongful conversion by the lawyer;

(n) an order for costs made against the lawyer under Part 5 *[Hearings and Appeals]*;

(o) any failure to pay any fine, costs or penalty imposed under the Act or these rules by the time that it is to be paid.

(p) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these rules, including a predecessor of either;

(q) the outcome of an appeal under section 48 *[Appeal]*;

(r) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

(s) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

"professional corporation" includes a law corporation and means a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is registered under Part 10 of the *Business Corporations Act*, through which a member of a profession, trade or occupation is authorized under a statute governing the profession, trade or occupation to carry on the business of providing services to the public;

"Protocol" means the Inter-Jurisdictional Practice Protocol signed on behalf of the Society on February 18, 1994, as amended from time to time;

"provide foreign legal services" means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;

"qualification examination" means an examination set by the Executive Director for the purposes of Rule 2-89 *[Returning to practice after an absence]*;

"qualified CPA" means a person in public accounting practice who is permitted to perform audit engagements by the Organization of Chartered Professional Accountants of British Columbia;

"reciprocating governing body"

(a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and

(b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

"record" includes metadata associated with an electronic record;

"remedial program" includes anything that may be recommended by the Practice Standards Committee under Rule 3-19 (1) (b) *[Action by Practice Standards Committee]*;

"respondent" means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]*, or

(b) under review by a review board under section 47 *[Review]*;

"review board" means a review board established in accordance with Part 5 *[Hearings and Appeals]*;

"rule" or **"subrule"** means a rule or subrule contained in these rules;

"Second Vice-President-elect" means the Bencher elected under Rule 1-19 *[Second Vice-President-elect]*, from the time of the election until he or she takes office as Second Vice-President;

"section" means a section of the *Legal Profession Act*;

"Society" means the Law Society of British Columbia continued under section 2 (1) *[Incorporation]*;

"suspension" means temporary disqualification from the practice of law;

"Territorial Mobility Agreement" means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

"training course" includes any assessments, examinations or remedial work taken during or after the training course, or an educational program required by the Credentials Committee;

"trust funds" means funds directly related to legal services provided by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, including funds

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

"valuables" means anything of value that can be negotiated or transferred, including but not limited to

(a) securities,

(b) bonds,

(c) treasury bills, and

(d) personal or real property;

"vice-chair" means a person appointed to preside at meetings of a committee in the absence of the chair;

"visiting lawyer" means a member of a governing body who is qualified to practise law in another Canadian jurisdiction.

PART 1 – ORGANIZATION

Division 1 – Law Society

Benchers

Term of office

1-1 (1) The term of office for an appointed Bencher begins on the date that the appointment is effective and ends on January 1 of the next even-numbered year.

(2) Despite subrule (1), an appointed Bencher continues to hold office until a successor is appointed.

(3) An elected Bencher holds office for 2 years beginning on January 1 following his or her election.

Term limits

1-2 (1) A Bencher is ineligible to be elected or appointed as a Bencher if

(a) at the conclusion of the Bencher's term of office, he or she will have served as a Bencher for more than 7 years, whether consecutive or not, or

(b) the Bencher has been elected Second Vice-President-elect.

(2) Despite subrule (1) (a) but subject to subrule (1) (b), a Bencher who was a Bencher on January 10, 1992 and who, at the conclusion of his or her term of office, will not have served as a Bencher for more than 11 years, whether consecutive or not, is eligible to be elected or appointed as a Bencher.

Oath of office

1-3 (1) At the next regular meeting of the Benchers attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office in the following form:

I, [name] do swear or solemnly affirm that:

I will abide by the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct*, and I will faithfully discharge the duties of [a Bencher/ President/First or Second Vice-President], according to the best of my ability; and

I will uphold the objects of the Law Society and ensure that I am guided by the public interest in the performance of my duties.

(2) An oath under this rule must be taken before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Bencher.

Life Benchers

1-4 (1) A person, including the Attorney General, who is ineligible for further election or appointment as a Bencher under Rule 1-2 *[Term limits]* is a Life Bencher on leaving office as a Bencher.

(2) A Life Bencher

(a) may attend and speak at meetings of the Benchers,

(b) has no vote in Bencher meetings,

(c) except as a member of a committee under Rule 1-49 *[Committees of the Benchers]*, may not exercise any of the powers of a Bencher, and

(d) is ineligible to be elected or appointed as a Bencher.

(3) A Bencher who was a Bencher on January 10, 1992 and who has served for at least 7 years as a Bencher is a Life Bencher on leaving office as a Bencher.

(4) A person who was a Life Bencher on January 1, 2010 continues to be a Life Bencher.

President and Vice-Presidents

1-5 (1) The term of office for the President, First Vice-President and Second Vice-President is from January 1 to December 31 of each year.

(2) Subject to subrule (7), on January 1 of each year,

(a) the First Vice-President becomes President,

(b) the Second Vice-President becomes First Vice-President, and

(c) the Second Vice-President-elect becomes Second Vice-President.

(3) Each year, the members must elect a Bencher who is a member of the Society as the Second Vice-President-elect in accordance with Rule 1-19 *[Second Vice-President-elect]*.

(4) Without further election by the district, the Bencher elected by the members under subrule (3) holds office as a Bencher representing the district that last elected the Bencher until he or she completes a term as President.

(5) If there is a vacancy in the office of President or a Vice-President for any reason, including the operation of this subrule or the failure of a Bencher to take office under this rule, the Bencher who would have assumed the office at the end of the term immediately assumes the vacant office.

(6) If a vacancy under subrule (5) occurs when there is no Bencher elected by the members to assume the office,

(a) the Benchers may elect a Bencher who is a member of the Society to act in the vacant office until a ballot of all members, the next general meeting or December 31, whichever comes first, and

(b) if the next general meeting or a ballot takes place before December 31, the members must elect a Bencher who is a member of the Society to the vacant office for the remainder of the year, and a Second Vice-President-elect.

(7) If the First Vice-President assumes the office of President under subrule (5) on or after July 1, subrule (2) does not operate on January 1 of the following year and the President and the Vice-Presidents continue in office for an additional full year.

(8) The powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President

(a) if the President is absent or otherwise unable to act, or

(b) with the consent of the President.

Removal of the President or a Vice-President

1-6 (1) On a resolution of a majority of the Benchers to remove the President or a Vice-President from office, the Executive Director must conduct a referendum of all members of the Society to determine if the President or Vice-President, as the case may be, should be removed from office.

(2) If a 2/3 majority of the members voting in a referendum under this rule vote to remove the President or a Vice-President from office, he or she ceases to hold that office and ceases to be a Bencher.

(3) Before conducting a referendum under subrule (1), the Executive Director must notify the President or Vice-President who is affected.

(4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must make available to each member of the Society in good standing

(a) a notice stating

(i) that the Benchers have resolved to remove from office the President or a Vice-President, as the case may be,

(ii) the reasons for the Benchers' resolution,

(iii) that a referendum from among the membership is being conducted to determine if the President or Vice-President, as the case may be, should be removed from office, and

(iv) the date on which the referendum votes will be counted,

(b) a statement by the President or Vice-President, as the case may be, stating why he or she should not be removed from office, if that person wishes to have such a statement provided to each member, and

(c) voting materials as required in Rule 1-27 *[Voting procedure]*.

(5) The President or Vice-President in respect of whom the referendum is conducted may attend personally or by agent during proceedings under this rule.

(6) After the counting of the ballots is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

Bencher ceasing to be member

1-7 A Bencher, other than an appointed Bencher, must be a member of the Society in good standing to take or hold office as a Bencher.

Meetings

Annual general meeting

1-8 (1) The Benchers must hold an annual general meeting of the members of the Society each year.

(2) Subject to subrule (3) and Rule 1-9 *[Telephone connections]*, the Executive Committee may determine the place and time of the annual general meeting.

(3) Unless the Benchers direct otherwise, the President must preside at the annual general meeting from a location in the City of Vancouver.

(4) At the annual general meeting, the Benchers must present a report of their proceedings since the last annual general meeting.

(5) At least 60 days before an annual general meeting, the Executive Director must issue a notice of the date and time of the annual general meeting.

(6) In order to be considered at the annual general meeting, a resolution must be

(a) signed by at least 2 members of the Society in good standing, and

(b) received by the Executive Director at least 35 days before the annual general meeting.

(6.1) On receipt of a resolution under subrule (6), the Executive Director must promptly issue a notice of the resolution, including the text of the resolution and the names of the 2 members who signed it.

(6.2) Not later than 21 days before the annual general meeting, the 2 members who signed a resolution submitted under subrule (6) may, by notifying the Executive Director in writing,

(a) withdraw the resolution, or

(b) make changes to the resolution.

(7) Before advance voting is permitted under Rule 1-13.1 *[Voting in advance of general meeting]* and at least 16 days before an annual general meeting, the Executive Director must issue

(a) a notice containing the following information:

(i) the locations at which the meeting is to be held,

(ii) each resolution received in accordance with subrule (6), with any changes submitted under subrule (6.2), unless the resolution has been withdrawn under that subrule, and

(iii) notice of advance voting if it is to be permitted under Rule 1-13.1, and

(b) the audited financial statement of the Society for the previous calendar year.

(8) The accidental failure to comply with any requirement under subrule (5), (6.1) or (7) does not invalidate anything done at the annual general meeting.

(9) A notice or other document required to be issued under this rule must be made available to Benchers and members in good standing by electronic or other means.

Telephone and internet connections

1-9 (1) The Benchers may conduct a general meeting by joining any number of locations by

(a) telephone, or

(b) internet connection.

(1.1) Persons participating in and entitled to vote at a general meeting who are connected by telephone or internet connection must be able to hear all others participating in person or by telephone.

(1.2) Persons participating in and entitled to vote at a general meeting who are connected by telephone must be able to speak at the meeting if recognized by the President.

(1.3) Persons participating in and entitled to vote at a general meeting who are connected by the internet must be able to vote in real time when called upon by the President to do so.

(2) The Executive Director may appoint a Bencher or a member of the Society in good standing to act as local chair of a location where the President is not present.

(3) The local chair must record the names of those in attendance and, unless the Executive Director directs otherwise, may dispense with registration and voting, non-voting and student cards under Rule 1-13 *[Procedure at general meeting]*.

(4) A person participating in a general meeting at any location connected under subrule (1) is present at the meeting for the purpose of Rule 1-13 *[Procedure at general meeting]* and the calculation of a quorum.

(5) The Executive Committee must designate locations to be joined to the annual general meeting by telephone, including at least the following locations:

(a) one in District No. 1, County of Vancouver, or District No. 4, County of Westminster;

(b) one in District No. 2, County of Victoria;

(c) one in District No. 3, County of Nanaimo;

(d) one in District No. 5, County of Kootenay;

(e) one in District No. 6, Okanagan;

(f) 2 in District No. 7, County of Cariboo;

(g) one in District No. 8, County of Prince Rupert;

(h) one in District No. 9, Kamloops.

(6) As an exception to subrule (5), if, 7 days before an annual general meeting, fewer than 15 members of the Society have indicated to the Executive Director an intention to attend the meeting at any location announced under Rule 1-8 (7) *[Annual general meeting]*, the Executive Committee may cancel that location.

(6.1) The Executive Director

(a) may retain a contractor to assist in any part of a general meeting conducted by way of the internet,

(b) must ensure that votes cast electronically in a secret ballot remain secret, and

(c) must take reasonable security measures to ensure that only members entitled to vote can do so.

(7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting.

Auditors

1-10 (1) At each annual general meeting, the members of the Society must appoint an auditor.

(2) The auditor appointed under subrule (1) must be a qualified CPA.

(3) A Bencher, Life Bencher or an employee of the Society is not eligible to be appointed auditor under subrule (1).

(4) A member of the Society may require the attendance of the auditor at the meeting at the expense of the Society by giving notice in writing to the Executive Director at least 10 days before a meeting at which the financial statements of the Society are to be considered or the auditor is to be appointed or removed, and, in that case, the auditor must attend the meeting.

(5) The auditor of the Society is entitled to

(a) attend any general meeting of the Society and to receive every notice and other communication relating to the meeting that a member of the Society is entitled to receive, and

(b) be heard at any general meeting that the auditor attends on any part of the business of the meeting that concerns the auditor or the financial statements of the Society.

(6) At any general meeting, the auditor, if present, must answer enquiries directed to the auditor concerning the financial statements of the Society and the opinion on them stated in his or her report.

(7) The auditor is entitled at all times to have access to every record of the Society and is entitled to require from the Benchers, officers and employees of the Society information and explanations that the auditor considers necessary to enable the auditor to prepare his or her report.

Special general meeting

1-11 (1) The Benchers may at any time convene a special general meeting of the Society.

(2) The Benchers must convene a special general meeting of the Society on a written request

(a) delivered to the Executive Director,

(b) stating the nature of the business that is proposed to be considered for the meeting, and

(c) signed by 5 per cent of the members of the Society in good standing at the time the request is received by the Executive Director.

(3) The Benchers must convene a special general meeting within 60 days of the receipt of a request under subrule (2).

(4) Subject to subrule (3), a special general meeting must be held at a time and place that the Benchers may determine.

(5) At least 21 days before a special general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing

(a) a notice of the meeting stating the business that will be considered at the meeting, and

(b) any resolution to be voted on under Rule 1-13.1 *[Voting in advance of general meeting]*.

(6) The accidental omission to give notice of a special general meeting to any Bencher or member of the Society, or the non-receipt of that notice, does not invalidate anything done at the meeting.

(7) No business other than the business stated in the notice under subrule (5) may be considered at a special general meeting.

Quorum

1-12 At a general meeting of the Society, 50 members of the Society in good standing constitute a quorum.

Procedure at general meeting

1-13 (1) Benchers, members of the Society in good standing and articled students are entitled to be present and to speak at a general meeting.

(1.1) Despite subrule (1), a person participating in a general meeting by way of internet connection is not entitled to speak at the meeting.

(2) The Executive Director must register all persons attending a general meeting as follows:

(a) members of the Society in good standing who have not previously voted on any resolution under Rule 1-13.1 *[Voting in advance of a general meeting]*, who must be given a voting card;

(a.1) members of the Society in good standing who have previously voted on any resolution under Rule 1-13.1, who must be given a non-voting member card;

(b) articled students, who must be given a student card;

(c) appointed Benchers and persons given permission to attend the meeting by the President, who may be given a card for identification only.

(3) As an exception to subrule (2), the Executive Committee may authorize the Executive Director to dispense with registration or voting and student cards at a special general meeting.

(4) At a general meeting, the President may allow a person who is not a Bencher, a member in good standing or a student to speak.

(5) Subject to subrules (6) and (7), in the absence of the President, the First Vice-President or the Second Vice-President must preside at a general meeting and assume the duties of the President under Rules 1-8 to 1-13.

(6) In the absence of the President and Vice-Presidents, one of the other Benchers present must preside at a general meeting and assume the duties of the President under Rules 1-8 to 1-13.

(7) The members of the Society present at a general meeting must choose one of their number to preside at the meeting if

(a) no Bencher is present 30 minutes after the time appointed for holding the meeting, or

(b) all Benchers present are unwilling to preside.

(8) At the beginning of the meeting, the President must declare whether or not a quorum is present.

(9) If a quorum is not present 30 minutes after the time appointed for a general meeting, the meeting

(a) if convened at the written request of members, is terminated, or

(b) in any other case, may be adjourned to a specified place and a new date within one week, as determined by the President.

(10) No business, other than the election of a presiding Bencher and the adjournment or termination of the meeting, can be begun unless and until a quorum is present.

(11) If the President has declared that a quorum is present, a quorum is deemed to remain present until a member present at the meeting challenges the quorum.

(12) The Executive Committee is authorized to set the agenda for a general meeting.

(12.1) A resolution on which members have voted in advance of the general meeting must not be amended, postponed or referred at the general meeting.

(13) The President must decide questions of procedure to be followed at a general meeting not provided for in the Act or these Rules.

(14) When a decision of the President is appealed, the President must call a vote of all members present, without debate, on whether they are in favour of or opposed to sustaining the President's decision.

(15), (15.1), (16) and (17) [moved to Rule 1-13.2]

(18) A general meeting may be adjourned from time to time and from place to place, but no business can be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Voting in advance of general meeting

1-13.1 (1) The Benchers may authorize the Executive Director to permit members of the Society in good standing to vote by electronic means on general meeting resolutions in advance of the general meeting.

(2) When advance voting is permitted under subrule (1), all members of the Society in good standing must have the opportunity to vote by electronic means on all general meeting resolutions.

(3) The Executive Director

(a) may retain a contractor to assist in any part of electronic voting on general meeting resolutions,

(b) must ensure that votes cast electronically in a secret ballot remain secret, and

(c) must take reasonable security measures to ensure that only members entitled to vote can do so.

(4) A ballot on a general meeting resolution may be produced electronically, and to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.

(5) The period of voting in advance of a general meeting must be at least 15 days ending at the close of business on the last business day before the general meeting.

(6) A person who has voted electronically in advance of the meeting is present at the meeting for the purpose of calculation of a quorum under Rule 1-12 *[Quorum]*.

Voting at general meeting

1-13.2 (1) A member of the Society in good standing who is present at a general meeting and has not previously voted on any resolution under Rule 1-13.1 *[Voting in advance of general meeting]* is entitled to one vote.

(2) A member of the Society must not

(a) cast a vote or attempt to cast a vote that he or she is not entitled to cast, or

(b) enable or assist a person

(i) to vote in the place of the member, or

(ii) to cast a vote that the person is not entitled to cast.

(3) Voting at a general meeting must be by show of voting cards, or by show of hands if voting cards have not been issued, unless the President orders a secret ballot.

(4) A member of the Society is not entitled to vote by proxy.

Bencher meetings

1-14 (1) Bencher meetings are held in British Columbia, unless the Benchers direct otherwise.

(2) The President or any 2 Benchers may call a special meeting of the Benchers.

(3) At a meeting of the Benchers, 7 Benchers constitute a quorum, provided that a majority of the Benchers present are members of the Society.

Notice of Bencher meeting

1-15 (1) The Executive Director must notify the Benchers of the date, time and place of the next Bencher meeting or of an adjourned Bencher meeting.

(2) The Executive Director must notify the Benchers under subrule (1) at least 48 hours before the meeting, or within less time if that is reasonable in the circumstances.

Procedure at Bencher meeting

1-16 (1) Subject to subrule (4), members of the Society in good standing and articled students are entitled to be present at Bencher meetings.

(2) The President may allow a member of the Society in good standing or an articled student to speak at the meeting.

(3) The President may allow a person not referred to in subrule (1) to be present at all or part of a Bencher meeting, with or without the right to speak at the meeting.

(4) The President may order that only Benchers, or Benchers and specified employees of the Society, be present during the discussion of a confidential matter at a Bencher meeting.

(5) In the absence of the President, or at the request of the President, the First Vice-President or Second Vice-President must preside at a Bencher meeting and assume the duties of the President under this rule.

(6) In the absence of the President, First Vice-President and Second Vice-President, the Benchers present must choose one of their number to preside at the meeting and assume the duties of the President under this rule.

(7) If a quorum is not present 30 minutes after the time appointed for a Bencher meeting, the meeting may, as determined by the President, stand adjourned to a date, time and place set by the President.

(8) The Benchers must not conduct business other than the election of a presiding Bencher and the adjournment of the meeting unless a quorum is present.

(9) A dispute concerning the procedure to be followed at a Bencher meeting that is not provided for in the Act or these rules is to be resolved in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*.

(10) When a decision of the President is appealed, the President must call a vote of all Benchers present, without debate, on whether they are in favour of or opposed to sustaining the President's decision.

(11) A Bencher present at a Bencher meeting is entitled to one vote.

(12) Voting at a Bencher meeting must be by show of hands, unless the President orders a secret ballot.

(13) A Bencher is not entitled to vote by proxy.

(14) A Bencher meeting may be adjourned from time to time and from place to place.

(15) The Benchers may conduct a meeting by joining together 2 or more locations by telephone or by any other means of communication that allows all persons participating in and entitled to vote at the meeting to hear each other, and a Bencher participating in the meeting in that way is, for the purpose of this rule and the calculation of a quorum, present at the meeting.

Quorum for committee meetings

1-17 (1) At least half the members of a committee constitutes a quorum.

(2) As an exception to subrule (1), a quorum of the Executive Committee is 4.

Procedure for committee meetings

1-18 (1) A member of a committee may not vote by proxy.

(2) A meeting of a committee may be conducted by joining together 2 or more locations by telephone or by any other means of communication that allows all persons participating in and entitled to vote at the meeting to hear each other, and a member of the committee participating in the meeting in that way is present at the meeting for all purposes, including the calculation of a quorum.

(3) A committee may take any action consistent with the Act and these rules by resolution of a majority of the members of the committee present at a meeting, if the members constitute a quorum.

Elections

Second Vice-President-elect

1-19 (1) The election of a Second Vice-President-elect is held at the annual general meeting each year.

(2) A nomination for election as Second Vice-President-elect is valid only if

(a) the nominator is a member of the Society in good standing,

(b) the candidate is a Bencher and a member of the Society in good standing, and

(c) the candidate consents to the nomination.

(3) All members of the Society in good standing in attendance are entitled to vote for Second Vice-President-elect.

(4) A vote for Second Vice-President-elect must be conducted by secret ballot.

(5) If only one candidate is nominated, the President must declare that candidate the Second Vice-President elect.

Bencher elections

1-20 (1) Elections for the office of Bencher in all districts must be held on November 15 of each odd-numbered year.

(2) An election in the district represented by the President must be held on November 15 of each even-numbered year.

(3) The Bencher elected under subrule (2) holds office for one year starting on the following January 1.

Regional election of Benchers

1-21 (1) Benchers must be elected from electoral districts as follows:

(a) 13 Benchers from District No. 1, the County of Vancouver;

(b) 2 Benchers from District No. 2, the County of Victoria;

(c) one Bencher from District No. 3, the County of Nanaimo;

(d) 3 Benchers from District No. 4, the County of Westminster;

(e) one Bencher from District No. 5, the County of Kootenay;

(f) one Bencher from District No. 6, Okanagan, being those parts of the County of Yale

(i) east of 120 degrees west longitude and south of the northernmost point of Okanagan Lake, or

(ii) west of 120 degrees west longitude and south of 50 degrees north latitude;

(g) 2 Benchers from District No. 7, the County of Cariboo;

(h) one Bencher from District No. 8, the County of Prince Rupert;

(i) one Bencher from District No. 9, Kamloops, being that part of the County of Yale not included in District No. 6, Okanagan.

(2) The number of Benchers to be elected from each district must be reduced by one for each Bencher from that district who holds office as First Vice-President, Second Vice-President or Second Vice-President-elect.

Qualifications of candidate

1-22 (1) To be eligible to be a candidate for election as a Bencher, a member of the Society must

(a) be in good standing at the time of nomination,

(b) [rescinded]

(c) if a practising lawyer, maintain his or her chief place of practice or employment in the district in which he or she seeks to be a candidate, and

(d) if a retired or non-practising member, reside in the district in which he or she seeks to be a candidate.

(2) An incumbent Bencher who qualifies under subrule (1) and is not disqualified under Rule 1-2 *[Term limits]* is eligible to be nominated as a candidate for re-election as a Bencher.

Nomination

1-23 The nomination of a candidate for election as a Bencher is valid only if

(a) it is in writing, signed by at least 2 members of the Society in good standing who are eligible to vote in the district in which the nominee seeks to be a candidate,

(b) the nominee consents in writing to the nomination, and

(c) the nomination and consent are received by the Executive Director on or before October 15 before the election is to take place.

Acclamation

1-24 If the number of candidates nominated does not exceed the number to be elected in a district, the Executive Director must declare that those nominated are elected as Benchers for that district.

Eligibility and entitlement to vote

1-25 (1) A member of the Society in good standing is eligible to vote in a Bencher election.

(1.1) A member of the Society must not cast a vote or attempt to cast a vote that he or she is not entitled to cast.

(1.2) A member of the Society must not enable or assist a person

(a) to vote in the place of the member, or

(b) to cast a vote that the person is not entitled to cast.

(2) Only those members of the Society whose names appear on the voter list prepared under Rule 1-26 *[Voter list]*, as corrected, are entitled to vote in a Bencher election.

(3) A non-resident member may vote

(a) in the district in which the member was last eligible to vote as a resident member, or

(b) if paragraph (a) does not apply, in District No. 1.

(4) A resident member of the Society may vote only in the district in which the member maintains his or her

(a) chief place of practice or employment, in the case of a practising member, or

(b) residence, in the case of a retired or non-practising member.

(5) A member of the Society may apply to the Executive Committee to have his or her name placed on the voter list for a District other than the one required by this rule, and the Executive Committee may direct the Executive Director to make the change if it is satisfied that the member has a significantly greater connection to the District the member wishes to vote in.

Voter list

1-26 (1) By October 10 of each year, the Executive Director must prepare a list of voters for each district in which an election is to be held that year.

(2) The list of voters for each district must list in alphabetical order the names of all members of the Society entitled to vote in the district.

(3) A member of the Society may examine the voter list at the Society office during normal office hours of the Society.

(4) A member of the Society who has reason to believe that a voter list improperly includes or omits a name, or contains an error respecting the district in which a member is entitled to vote may, before the election, report the error to the Executive Director.

(5) The Executive Director must promptly investigate a report made under subrule (4) and correct any error that exists.

(6) A member of the Society who is not satisfied with the action taken by the Executive Director under subrule (5) may apply in writing to the Executive Committee for a review.

(7) The Executive Committee must promptly review an application made under subrule (6), and must

(a) confirm the decision of the Executive Director, or

(b) order the Executive Director to correct the voter list as the Committee directs.

Voting procedure

1-27 (1) By November 1 of each year, the Executive Director must make available to each member of the Society whose name is on the voter list prepared under Rule 1-26 *[Voter list]*

(a) a ballot containing, in the order determined under Rule 1-28 *[Order of names on ballot]*, the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,

(b) instructions on marking of the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote,

(c) a ballot envelope,

(d) a declaration,

(e) a mailing envelope, and

(f) biographical information received from the candidates.

(2) The accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material does not invalidate an election.

(3) For a ballot to be valid, the voter must

(a) vote in accordance with the instructions provided with the ballot,

(b) not vote for more candidates than the number of Benchers to be elected in the district,

(c) place the ballot in the ballot envelope and seal the envelope,

(d) complete the declaration and sign it,

(e) place the ballot envelope in the mailing envelope and seal the envelope, and

(f) deliver, or mail postage prepaid, the mailing envelope to the Executive Director.

(4) The Executive Director may issue a replacement ballot to a voter who informs the Executive Director in writing that the original ballot has been misplaced or spoiled or was not received.

(5) The Executive Director may issue a new set of ballot materials to a voter who informs the Executive Director in writing that the original ballot material sent to him or her relates to a district other than the one in which he or she is entitled to vote.

Electronic voting

1-27.1 (1) The Executive Committee may authorize the Executive Director to conduct a Bencher election partly or entirely by electronic means.

(2) The Executive Director

(a) may retain a contractor to assist in any part of an election conducted electronically,

(b) must ensure that votes cast electronically remain secret, and

(c) must take reasonable security measures to ensure that only members entitled to vote can do so.

(3) A ballot may be produced electronically and, to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.

(4) Rules 1-20 to 1-44 apply, with the necessary changes and so far as they are applicable, to an election conducted partly or entirely by electronic means.

Order of names on ballot

1-28 (1) The order of names on a ballot under this division must be determined by lot in accordance with this rule.

(2) The Executive Director must notify all candidates as to the date, time and place when the determination is to be made.

(3) The procedure for the determination is as follows:

(a) the name of each candidate is written on a separate piece of paper, as similar as possible to all other pieces prepared for the determination;

(b) the pieces of paper are folded in a uniform manner in such a way that the names of the candidates are not visible;

(c) the pieces of paper are placed in a container that is sufficiently large to allow them to be shaken for the purpose of making their distribution random, and the container is shaken for this purpose;

(d) the Executive Director withdraws the papers one at a time;

(e) the name on the first paper drawn is the first name on the ballot, the name on the second paper is the second, and so on until the placing of all candidates' names on the ballot has been determined.

Rejection of ballots

1-29 (1) A ballot must be rejected if it

(a) contains, or is enclosed in an envelope that contains, a marking that could identify the voter,

(b) contains votes for more candidates than the number to be elected in the district concerned,

(c) is dissimilar to those issued by the Executive Director, or

(d) is received by the Executive Director on or after the election date.

(2) A vote is void if it is

(a) not cast for a candidate whose name appears on the ballot provided by the Society, or

(b) ambiguous or unclear as to the candidate voted for.

Alternative vote ballot

1-30 (1) In a district in which only one Bencher is to be elected and there are more than 2 candidates, voting must be by an alternative vote ballot on which voters may indicate their preference for candidates.

(2) When an alternative vote ballot is conducted under subrule (1), the ballots in that election must be counted according to the following procedure:

(a) on the first count, each voter's first preference is recorded in favour of the candidate preferred;

(b) on the second count, the candidate who received the least votes on the first count is eliminated and that candidate's first count ballots are distributed among the remaining candidates according to the second preferences indicated;

(c) on each subsequent count, the candidate who received the least votes in the preceding count is eliminated, and that candidate's ballots are distributed among the remaining candidates according to the next preferences indicated;

(d) the first candidate to receive a majority of votes on any count is elected.

Scrutineers

1-31 (1) The Executive Director is a scrutineer for each Bencher election.

(2) The Executive Committee must appoint 2 members of the Society in good standing who are not Benchers or employees of the Society, to be scrutineers of the election.

(3) The failure of one scrutineer to attend at the time and place set for the vote counting does not prevent the votes from being counted at that time and place.

(4) The scrutineers must

(a) ensure that all votes are counted in accordance with the Act and these rules, and

(b) decide whether a vote is void or a ballot is rejected, in which case their decision is final.

Counting of votes

1-32 The Executive Director must supervise the counting of votes according to the following procedure:

(a) the name of each voter who votes is crossed off the voter list, and all the ballots of a voter who submits more than one ballot must be rejected;

(b) each voter declaration is read, and the ballot of a voter who has not completed and signed the declaration correctly is rejected;

(c) the ballot envelopes containing ballots are separated by district, and mixed to prevent identification of voters;

(d) for each district, the ballot envelopes are opened and the ballots removed;

(e) ballots that are rejected according to the Act or these rules are kept separate;

(f) all votes are counted and recorded unless void or contained in a rejected ballot.

Attendance of candidate

1-33 A candidate may attend personally or by agent during proceedings under Rules 1-28 *[Order of names on ballot]*, 1-32 *[Counting of votes]* and 1-34 *[Declaration of candidates elected]*.

Declaration of candidates elected

1-34 (1) The Executive Director must declare elected the candidates who receive the greatest number of votes, up to the number of Benchers to be elected in each district.

(2) If, as a result of a tie vote, the Executive Director cannot determine all of the candidates elected in a district, the Executive Director must report to the Executive Committee that the positions affected have not been filled by the election, and Rule 1-38 *[Bencher by-election]* or 1-39 *[Appointment of Bencher to represent a district]* applies.

Election record and disclosure of votes received

1-35 (1) The Executive Director must ensure that a permanent record is kept of the number of votes received by each candidate, and the candidates who are declared elected.

(2) The information referred to in subrule (1) is public information.

Review by Executive Committee

1-36 (1) A candidate who is not elected in a Bencher election may apply to the Executive Committee for a review of the election.

(2) An application under subrule (1) can only be made

(a) in writing, and

(b) not more than 10 days after the election date.

(3) On an application under subrule (1), the Executive Committee must promptly review the election in that district, and must

(a) confirm the declaration made by the Executive Director under Rule 1-34 *[Declaration of candidates elected]*,

(b) rescind the declaration made by the Executive Director under Rule 1-34 and declare that the candidate who applied under subrule (1) or another candidate is elected, or

(c) order a new election in the district concerned, and give directions for it.

(4) The decision of the Executive Committee under subrule (3) is final.

Retention of documents

1-37 The Executive Director must retain the ballots and other documents of a Bencher election for at least 14 days after the election or, if a review is taken under Rule 1-36 *[Review by Executive Committee]*, until that review has been completed.

Bencher by-election

1-38 (1) If an elected Bencher ceases to hold office in an even numbered year or before July 1 of an odd numbered year, a by-election must be held to fill the vacancy for the remainder of the term of office.

(2) When a Bencher by-election is required under subrule (1), the Executive Committee must set a date for the prompt holding of the by-election.

(3) Rules 1-21 to 1-37 apply to a by-election under subrule (1), except that the Executive Director may change the dates referred to in Rules 1-23 (c) *[Nomination]*, 1-26 (1) *[Voter list]* and 1-27 (1) *[Voting procedure]*.

Appointment of Bencher to represent a district

1-39 (1) The Benchers may fill a vacancy by appointment in the following circumstances:

(a) an elected Bencher ceases to hold office on or after July 1 of an odd-numbered year;

(b) an electoral district fails to nominate enough candidates at an election to elect the required number of Benchers;

(c) an amendment to Rule 1-21 *[Regional election of Benchers]* increases the number of Benchers to be elected from a district.

(2) A Bencher appointed under subrule (1) takes office on appointment and continues in office until the end of the current term.

(3) The Benchers may appoint any member of the Society in good standing eligible to be a candidate for Bencher in the district concerned.

(4) When the Benchers appoint a Bencher under this rule, they may conduct a non-binding plebiscite of the members of the Society in the district concerned.

Referendum ballots

1-40 (1) The Benchers may direct the Executive Director to conduct a referendum ballot of all members of the Society or of all members in one or more districts.

(2) The rules respecting a Bencher election apply, with the necessary changes and so far as they are applicable, to a referendum under this rule, except that the votes need not be reported by districts.

Election of Executive Committee

1-41 (1) The Benchers must elect 4 Benchers to serve as members of the Executive Committee for each calendar year as follows:

(a) 3 elected Benchers;

(b) 1 appointed Bencher.

(2) A person elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (a).

(2.1) A Bencher reappointed as a Bencher, or eligible to be reappointed as a Bencher, for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (b).

(3) A Bencher who is eligible for election under subrule (1) may become a candidate by notifying the Executive Director in writing by November 22.

(4) If there are more candidates than there are positions to be elected, the Executive Director must conduct a ballot.

(5) The Executive Director must specify a date no later than December 6 for the return of the ballots, and a ballot returned after that date is not valid.

(6) Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee as follows:

(a) all Benchers are eligible to vote for elected Benchers;

(b) appointed Benchers are eligible to vote for appointed Benchers.

(7) to (9) [rescinded; (8) moved to (2.1)]

(10) If a vote is required for an election under this rule,

(a) it must be conducted by secret ballot,

(b) a ballot must be rejected if it contains votes for more candidates than there are positions to be filled, and

(c) when more than one Bencher is to be elected, the candidates with the most votes, up to the number of positions to be filled, are elected.

(11) If, because of a tie vote or for any other reason, the Benchers fail to elect 4 members of the Executive Committee under subrule (1), or if a vacancy occurs in any position elected under this rule, the Benchers or the appointed Benchers, as the case may be, must hold an election to fill the vacancy at the next regular meeting of the Benchers.

(12) The Executive Director may conduct an election for members of the Executive Committee partly or entirely by electronic means.

(13) This rule applies, with the necessary changes and so far as applicable, to an election conducted partly or entirely by electronic means.

Date falling on Saturday, Sunday or holiday

1-42 If the time for doing an act in this division falls or expires on a day when the Society office is not open during regular business hours, the time is extended to the next day that the office is open.

1-43 [rescinded 12/2015]

Extension of dates

1-44 The Executive Committee may, on application by the Executive Director, extend any date stated in Rule 1-20 to 1-44.

General

Executive Director's delegate

1-44.1 (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director's delegate.

(2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director's delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

Seal

1-45 (1) Subject to subrule (2), the seal of the Society may be affixed to a document in the presence of

(a) 2 persons, one of whom must be the President or a Vice-President, and the other of whom must be an officer of the Society, or

(b) one or more persons appointed by resolution of the Executive Committee.

(2) The seal may be affixed in the presence of any one of the persons referred to in subrule (1) in the case of

(a) a certificate, or

(b) a document that certifies true copies of any document or resolution.

(3) The person or persons in whose presence the seal is affixed must sign the certificate or document of certification.

Laying of information

1-46 Any information alleging an offence against the Act may be laid in the name of the Society on oath of an officer of the Society or a member of the Executive Committee.

Freedom of Information and Protection of Privacy Act

1-47 The Executive Director is designated as the head of the Society for the purposes of the *Freedom of Information and Protection of Privacy Act*.

Appointment of Law Society counsel

1-48 (1) Subject to Rule 1-51 (a) *[Powers and duties]*, the Executive Director may appoint an employee of the Society or retain another lawyer to advise or represent the Society in any legal matter.

(2) When Rule 1-51 (a) *[Powers and duties]* applies and it is not practicable to call a meeting of the Executive Committee before the advice of counsel is required, the Executive Director may appoint counsel on an interim basis.

Division 2 – Committees

Committees of the Benchers

1-49 Subject to these rules, the President may

(a) appoint any person as a member of a committee of the Benchers, and

(b) terminate the appointment.

Executive Committee

1-50 (1) The Executive Committee consists of the following Benchers:

(a) the President;

(b) the First and Second Vice-Presidents;

(c) the Second Vice-President-elect, if not elected under paragraph (d);

(d) 4 other Benchers elected under Rule 1-41 *[Election of Executive Committee]*.

(2) The President is the chair of the Executive Committee, and the First Vice-President is the vice chair.

(3) The Executive Committee is accountable and reports directly to the Benchers as a whole.

Powers and duties

1-51 The powers and duties of the Executive Committee include the following:

(a) authorizing appointment of counsel to advise or represent the Society when the Society is a plaintiff, petitioner or intervenor in an action or proceeding;

(b) authorizing the execution of documents relating to the business of the Society;

(c) appointing persons to affix the seal of the Society to documents;

(d) approving forms under these rules;

(e) approving agreements relating to the employment, termination or resignation of the Executive Director and the remuneration and benefits paid to him or her;

(f) assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;

(g) planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;

(h) assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources;

(i) providing constructive performance feedback to the President;

(j) recommending to the appointing bodies on Law Society appointments to outside bodies;

(k) determining the date, time and locations for the annual general meeting;

(l) overseeing Bencher elections in accordance with Division 1 of this Part;

(m) appointing members of the Board of Governors of the Foundation under section 59 *[Board of Governors]*;

(n) deciding matters referred by the Executive Director under Rule 2-113 *[Referral to Executive Committee]*;

(o) declaring that a financial institution is not or ceases to be a savings institution under Rule 3-57 *[Removal of designation]*;

(p) adjudicating claims for unclaimed trust funds under Rule 3-91 *[Adjudication of claims]*;

(q) other functions authorized or assigned by these rules or the Benchers.

Division 3 – Law Society Rules

Act, Rules and Code

1-52 The Executive Director must provide each lawyer and each articled student with a copy of the *Legal Profession Act*, all rules made by the Benchers, and the *Code of Professional Conduct*.

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Categories of membership

2-1 The following are the categories of members of the Society:

(a) practising lawyers, as defined in section 1;

(b) retired members;

(c) non-practising members;

(d) Canadian legal advisor.

Member in good standing

2-2 Subject to Rules 3-18 (7) *[Practice review]* and 4-6 (2) *[Continuation of membership under investigation or disciplinary proceedings]*, a member of the Society is a member in good standing unless suspended under section 38 (5) (d) *[Discipline hearings]* or under these rules.

Non-practising members

2-3 (1) Any member of the Society in good standing may become a non-practising member by

(a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and

(b) paying the application fee specified in Schedule 1 and a prorated annual fee for non-practising members as provided in Schedule 3.

(2) Non-practising members must pay the annual fee specified in Schedule 1 by the preceding November 30.

Retired members

2-4 (1) A member of the Society in good standing who has done one of the following qualifies to become a retired member:

(a) reached the age of 55 years;

(b) been a member of the Society in good standing for 20 of the previous 25 years;

(c) engaged in the full-time active practice of law for 20 of the previous 25 years.

(2) A lawyer who qualifies under subrule (1) may become a retired member by

(a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and

(b) paying the application fee specified in Schedule 1 and the prorated annual fee for retired members as provided in Schedule 3.

(3) Retired members must pay the annual fee specified in Schedule 1 by the preceding November 30.

(4) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members.

Release from undertaking

2-5 (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 *[Non-practising members]* or 2-4 *[Retired members]* by delivering to the Executive Director

(a) an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society, and

(b) the application fee specified in Schedule 1.

(2) The Executive Director must not grant a release from undertaking under this rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 *[Returning to practice of law after an absence]*.

Legal services by non-practising and retired members

2-6 Despite an undertaking given under Rule 2-3 (1) (a) *[Non-practising members]* or 2-4 (2) (a) *[Retired members]*, a non-practising or retired member may

(a) provide pro bono legal services, or

(b) act as a designated paralegal under Rule 2-13 *[Paralegals]*.

Certificates and permits

2-7 The Executive Director may approve the form of

(a) practising certificate issued under section 23 *[Annual fees and practising certificate]*,

(b) retired membership certificate issued under Rule 2-4 *[Retired members]*,

(c) non-practising membership certificate issued under Rule 2-3 *[Non-practising members]*,

(d) practitioner of foreign law permit issued under Rule 2-29 *[Practitioners of foreign law]*,

(e) inter-jurisdictional practice permit issued under Rule 2-20 *[Application for inter-jurisdictional practice permit]*, and

(f) Canadian legal advisor certificate issued under Rule 2-84 *[Barristers and solicitors' roll and oath]*.

Member information

Annual practice declaration

2-8 (1) In this rule, **"declaration"** means the Annual Practice Declaration in a form approved by the Executive Committee.

(2) A practising lawyer must complete and deliver a declaration to the Executive Director in each calendar year.

(3) A declaration is not delivered under this rule unless it is

(a) complete to the satisfaction of the Executive Director,

(b) received by the Executive Director by the date set by the Executive Director, and

(c) signed by the practising lawyer.

(4) The Executive Director must not issue a practising certificate to a lawyer who fails to deliver a declaration as required under this rule, unless the Credentials Committee directs otherwise.

Definitions

2-9 In Rules 2-10 *[Business address]* and 2-11 *[Residential address]*, **"address"** includes

(a) the name under which a lawyer carries on business, and

(b) street address, including suite number if applicable, and mailing address, if that is different from the street address;

"contact information" includes the following for the purpose of a lawyer receiving communication from the Society, including confidential communication:

(a) a telephone number;

(b) an email address;

"place of practice" includes

(a) a lawyer's chief place of practice or employment, including the residence of a lawyer who carries on a law practice from the lawyer's residence, and

(b) any other location from which a lawyer conducts the practice of law or is held out to conduct the practice of law.

Business address

2-10 A lawyer must advise the Executive Director of the address and contact information of all of the lawyer's places of practice and inform the Executive Director immediately of a change of address or contact information of any of the lawyer's places of practice.

Residential address

2-11 A lawyer who does not carry on the practice of law must advise the Executive Director of the address and contact information of the lawyer's residence and any change in the address and contact information of the lawyer's residence.

Practice history

2-12 (1) In this rule, **"practice history"** means a record of

(a) the dates and places that a lawyer or former lawyer has practised law or been enrolled in the admission program, including the name of the firms through which the lawyer or former lawyer practised law, and

(b) dates of any periods since call and admission during which the lawyer or former lawyer has been a non-practising or retired member or a former member.

(2) At the request of any person, the Executive Director may disclose all or part of the practice history of any member or former member of the Society.

Law firms

Definitions and application

2-12.1 (1) In Rules 2-12.1 to 2-12.5

"deliver" means to deliver to the Executive Director;

"designated representative" means a practising lawyer designated by a law firm under Rule 2-12.5;

"registration form" means a form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;

"self-assessment report" means a report required under Rule 2-12.3 in a form approved by the Executive Committee completed to the satisfaction of the Executive Director.

(2) Rules 2-12.1 to 2-12.5 do not apply to

(a) a public body such as government or a Crown corporation,

(b) a corporation that is not a law corporation, or

(c) a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the firm.

Registration

2-12.2 (1) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must deliver a registration form within 30 days.

(2) A law firm must inform the Executive Director immediately of a change of any information included in the registration form.

Self-assessment report

2-12.3 (1) From time to time, the Executive Director may require a law firm to complete and deliver a self-assessment report.

(2) The Executive Director must notify the law firm of the requirement to deliver a self-assessment report at least 3 months before the date on which the Executive Director requires the law firm to deliver it.

(3) All information and documents received by the Society under this rule are confidential, and no person is permitted to disclose them to any person.

(4) Despite subrule (3), the Society may use information and documents received under this rule only for the purpose of statistical and other analysis regarding the practice of law.

Late delivery

2-12.4 (1) A law firm that fails to deliver a document required under Rule 2-12.2 *[Registration]* or 2-12.3 *[Self-assessment report]* by the time that it is due is deemed to have been in compliance with the rules if the law firm does the following within 60 days:

(a) deliver the document required;

(b) pay the late delivery fee specified in Schedule 1.

(2) A law firm that fails to deliver a document required under Rule 2-12.2 *[Registration]* or 2-12.3 *[Self-assessment report]* beyond 60 days from the time that it is due is in breach of the rules and must immediately do the following:

(a) deliver the document required;

(b) pay the late delivery fee specified in Schedule 1;

(c) pay an additional late delivery fee specified in Schedule 1.

Designated representative

2-12.5 (1) A law firm that is engaged in the practice of law must designate as its designated representative one or more practising lawyers engaged in the practice of law as members of the law firm.

(2) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must notify the Executive Director of the designation of designated representative as part of the registration process under Rule 2-12.2 *[Registration]*.

(3) A law firm that changes its designation of designated representative must inform the Executive Director within 7 days.

(4) A designated representative must respond promptly and completely to any communication from the Society.

(5) A designated representative

(a) is not responsible for a disciplinary violation by a law firm as a result of being a designated representative, and

(b) must not knowingly or recklessly provide false or inaccurate information in any form or report required under Rules 2-12.1 to 2-12.5.

Paralegals

Supervision of limited number of designated paralegals

2-13 (1) In this rule, **"designated paralegal"** means an individual permitted under section 6.1 *[Supervision]* of the *Code of Professional Conduct* to give legal advice and represent clients before a court or tribunal.

(2) A lawyer must not supervise more than 2 designated paralegals at one time.

Unauthorized practice

Unauthorized practice of law

2-14 (1) A lawyer must not knowingly facilitate by any means the practice of law by a person who is not a practising lawyer or otherwise permitted to practise law under sections 15 to 17 or Rule 2-39 *[Conditions for MDP]*.

(2) Without limiting subrule (1), a lawyer must not knowingly do any of the following:

(a) act as an agent or permit his or her name to be used or held out in any way that enables a person to engage in the unauthorized practice of law;

(b) send a process or other document to a person or do any other act that enables a person to engage in the unauthorized practice of law;

(c) open or maintain an office for the practice of law unless the office is under the personal and actual control and management of a practising lawyer.

(3) When the Society obtains a court order or an agreement restraining a person who is not a practising lawyer from the practice of law, the Executive Director may publish generally a summary of the circumstances and of the order or agreement, in a form that appears appropriate to the Executive Director.

Inter-jurisdictional practice

Definitions

2-15 In Rules 2-15 to 2-27,

"business day" means any calendar day or part of a calendar day in which a lawyer provides legal services;

"entitled to practise law" means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

"legal matter" includes any activity or transaction that constitutes the practice of law and any other activity or transaction ordinarily conducted by lawyers in British Columbia in the course of practising law, whether or not persons other than lawyers are legally capable of conducting it;

"National Registry" means the National Registry of Practising Lawyers established under the National Mobility Agreement;

"permit" means an inter-jurisdictional practice permit issued under Rule 2-19 *[Inter-jurisdictional practice permit]*;

"provide legal services" means to engage in the practice of law

(a) physically in British Columbia, except with respect to the law of a home jurisdiction, or

(b) with respect to the law of British Columbia physically in any jurisdiction,

and includes to provide legal services respecting federal jurisdiction in British Columbia;

"resident" has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

Inter-jurisdictional practice without a permit

2-16 (1) Subject to the other requirements of this rule, a visiting lawyer may provide legal services without a permit

(a) in the case of a visiting lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, for a maximum of 100 business days in any calendar year, or

(b) in all other cases, on not more than 10 legal matters and for not more than 20 business days in total during any 12-month period.

(2) A visiting lawyer must not hold himself or herself out or allow himself or herself to be held out as willing or qualified to provide legal services, except as a visiting lawyer.

(3) Subject to subrule (4), to qualify to provide legal services on a temporary basis under this rule, a visiting lawyer must at all times

(a) maintain professional liability insurance that

(i) is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers under Rule 3-39 (1) *[Compulsory professional liability indemnification]*, and

(ii) extends to the visiting lawyer's temporary practice in British Columbia,

(b) maintain trust protection insurance or other defalcation compensation coverage from a governing body that extends to the visiting lawyer's temporary practice in British Columbia,

(c) not be subject to conditions of or restrictions on the visiting lawyer's practice or membership in the governing body in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,

(d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,

(e) have no disciplinary record in any jurisdiction, and

(f) not establish an economic nexus with British Columbia, contrary to Rule 2-17 *[Disqualifications]*.

(4) On application of a visiting lawyer who otherwise qualifies under subrule (3), the Executive Director may allow the visiting lawyer to provide legal services without a permit beyond the limits set in subrule (1).

(5) At the written request of a visiting lawyer affected by a decision made by the Executive Director under subrule (4), the Credentials Committee may

(a) confirm the decision, or

(b) substitute its decision.

(6) The requirement in subrule (3) (a) does not apply to a visiting lawyer who is exempt from professional liability indemnification under Rule 3-43 *[Exemption from professional liability indemnification]* with respect to legal services to be provided in British Columbia.

(7) A visiting lawyer who provides legal services without a permit must, on request,

(a) provide evidence to the Executive Director that the visiting lawyer has complied with and continues to comply with this rule, and

(b) disclose to the Executive Director each governing body of which the visiting lawyer is a member.

(8) Notwithstanding Rules 2-15 to 2-27, a member of the Canadian Forces who is entitled to practise law in a home jurisdiction in which he or she is a member of the governing body

(a) may provide legal services for or on behalf of the Office of the Judge Advocate General without a permit, and

(b) does not establish an economic nexus with British Columbia under Rule 2-17 *[Disqualifications]*, provided that he or she provides legal services exclusively for or on behalf of the Office of the Judge Advocate General.

Disqualifications

2-17 (1) A visiting lawyer who has established an economic nexus with British Columbia is not permitted to provide legal services without a permit under Rule 2-16 *[Inter-jurisdictional practice without a permit]*.

(2) For the purposes of this rule, an economic nexus is established by actions inconsistent with a temporary basis for providing legal services, including but not limited to doing any of the following in British Columbia:

(a) providing legal services beyond 100 business days, or longer period allowed under Rule 2-16 (4) *[Inter-jurisdictional practice without a permit]*;

(b) opening an office from which legal services are offered or provided to the public;

(c) becoming resident;

(d) opening or operating a trust account, or accepting trust funds, except as allowed under Rule 2-25 *[Trust funds]*;

(e) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a visiting lawyer.

(3) A visiting lawyer who provides legal services in or from an office affiliated with the visiting lawyer's law firm in his or her home jurisdiction does not, for that reason alone, establish an economic nexus with British Columbia.

(4) A visiting lawyer who becomes disqualified under this rule must cease providing legal services forthwith, but may apply under Rule 2-19 *[Inter-jurisdictional practice permit]* for an inter-jurisdictional practice permit or under Rule 2-79 *[Transfer from another Canadian jurisdiction]* for call and admission.

(5) On application by a visiting lawyer, the Executive Director may allow the visiting lawyer to continue to provide legal services pending consideration of an application under Rule 2-19 *[Inter-jurisdictional practice permit]* or 2-79 *[Transfer from another Canadian jurisdiction]*.

Federal jurisdiction

2-18 (1) Despite Rule 2-16 *[Inter-jurisdictional practice without a permit]*, a visiting lawyer who is not disqualified under Rule 2-17 (2) (b) to (e) *[Disqualifications]* may appear before any of the following tribunals without a permit:

(a) the Supreme Court of Canada;

(b) the Federal Court of Appeal;

(c) the Federal Court;

(d) the Tax Court of Canada;

(e) a federal administrative tribunal;

(f) service tribunals as defined in the *National Defence Act*;

(g) the Court Martial Appeal Court of Canada.

(2) Subrule (1) applies when a visiting lawyer is preparing for an appearance allowed under that subrule and otherwise furthering the matter giving rise to the appearance.

Inter-jurisdictional practice permit

2-19 (1) A visiting lawyer who does not qualify to provide legal services without a permit under Rule 2-16 *[Inter-jurisdictional practice without a permit]* or is disqualified under Rule 2-17 *[Disqualification]* may apply for a permit.

(2) A permit allows a visiting lawyer to provide legal services as follows:

(a) in the case of a visiting lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, for a maximum of 100 business days;

(b) in all other cases, for a specific legal matter.

(3) A visiting lawyer applying under subrule (1) must deliver to the Executive Director

(a) a completed permit application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society,

(b) the application fee or renewal fee specified in Schedule 1,

(c) certificates of standing dated not more than 30 days before the date of application and in a form acceptable to the Credentials Committee, issued by each governing body of which the visiting lawyer is a member,

(d) proof of professional liability insurance as required under Rule 2-16 (3) (a) *[Inter-jurisdictional practice without a permit]*, and

(e) proof that the visiting lawyer maintains the trust protection insurance or other defalcation coverage required under Rule 2-16 (3) (b) *[Inter-jurisdictional practice without a permit]*.

(4) Subrule (3) (b) does not apply to an application made by a visiting lawyer who is a member of a governing body in a jurisdiction in which

(a) the visiting lawyer is entitled to practise law, and

(b) the governing body does not charge members of the Society a fee for the equivalent of a permit.

Application for inter-jurisdictional practice permit

2-20 (1) On receipt of an application for a permit, the Executive Director must

(a) issue or renew the permit, or

(b) refer the application to the Credentials Committee.

(2) If the Executive Director refers an application to the Credentials Committee under subrule (1), the Committee must

(a) issue or renew a permit, subject to any conditions or limitations the Committee may direct, or

(b) reject the application.

(3) If the Credentials Committee rejects an application, the Committee must, at the written request of the person applying under Rule 2-19 (1) *[Inter-jurisdictional practice permit]*, give written reasons for the decision.

Non-practising and retired members

2-21 (1) If a permit is issued under Rule 2-20 *[Application for inter-jurisdictional practice permit]* to a non-practising member or a retired member, the member is released from the undertaking given under Rule 2-3 *[Non-practising members]* or 2-4 *[Retired members]* only for the purpose allowed by the permit.

(2) If a non-practising member or a retired member qualifies to provide legal services as a visiting lawyer without a permit under Rule 2-16 *[Inter-jurisdictional practice without a permit]*, the member is released from the undertaking given under Rule 2-3 *[Non-practising members]* or 2-4 *[Retired members]* only for the purpose of providing legal services under Rule 2-16.

Expiry and renewal of inter-jurisdictional practice permit

2-22 (1) Subject to subrules (2) to (4), a permit issued or renewed under Rule 2-20 *[Application for inter-jurisdictional practice permit]* is valid for one year from the date it was issued.

(2) In the case of a visiting lawyer who is not entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, the permit expires on the completion of the legal matter for which the permit was granted.

(3) A permit ceases to be valid if the holder of the permit

(a) is not a practising member in good standing of a governing body,

(b) fails to maintain professional liability insurance as described in Rule 2-19 (3) (d) *[Inter-jurisdictional practice permit]*,

(b.1) fails to maintain the trust protection insurance or other defalcation coverage described in Rule 2-16 (3) (b) *[Inter-jurisdictional practice without a permit]*, or

(c) is suspended or disbarred by any governing body.

(4) Before expiry of a permit under subrule (1), the holder of the permit may apply under Rule 2-19 *[Inter-jurisdictional practice permit]* for its renewal.

Responsibilities of visiting lawyer

2-23 (1) The Act, these rules and the *Code of Professional Conduct* apply to and bind a visiting lawyer providing legal services.

(2) It is the responsibility of a visiting lawyer providing legal services to

(a) record and verify the number of business days in which he or she provides legal services, and

(b) prove that he or she has complied with these rules.

Enforcement

2-24 (1) and (2) [rescinded]

(3) A fine imposed on a lawyer or former lawyer by a governing body may be enforced under Rule 4-45 (4) *[Discipline proceedings involving members of other governing bodies]*.

(4) A lawyer who practises law in another Canadian jurisdiction must comply with the applicable legislation, regulations, rules and *Code of Professional Conduct* of that jurisdiction.

(5) The Executive Director may require a visiting lawyer to

(a) account for and verify the number of business days spent providing legal services, and

(b) verify compliance with any rules specified by the Executive Director.

(6) If a visiting lawyer fails or refuses to comply with a requirement under subrule (5) within 20 days, or such longer time that the Executive Director may allow in writing,

(a) the visiting lawyer is prohibited from providing legal services without a permit,

(b) any permit issued to the visiting lawyer under Rule 2-19 *[Inter-jurisdictional practice permit]* is rescinded, and

(c) the Executive Director must advise each of the governing bodies of which the visiting lawyer is or has been a member, of the visiting lawyer's failure to comply and the consequences.

(7) A visiting lawyer who is affected by subrule (6) may apply to the Credentials Committee for restoration of any or all rights lost under that subrule and the Committee may, in its discretion, grant the application, subject to any conditions or limitations it considers to be in the public interest.

Trust funds

2-25 A visiting lawyer providing legal services must not maintain a trust account in British Columbia, and must

(a) promptly remit funds received in trust to the visiting lawyer's trust account in the home jurisdiction, or

(b) ensure that trust funds received are handled

(i) by a practising lawyer in a trust account controlled by the practising lawyer, and

(ii) in accordance with the Act and these rules.

Dispute resolution

2-26 If a dispute arises with a governing body concerning any matter under the Protocol, the Credentials Committee may do one or both of the following:

(a) agree with a governing body to refer the matter to a single mediator;

(b) submit the dispute to arbitration under Appendix 5 of the Protocol.

National Registry of Practising Lawyers

2-27 (1) The Executive Director must provide to the National Registry the current and accurate information about practising lawyers required under the National Mobility Agreement.

(2) No one may use or disclose information obtained from the National Registry except for a purpose related to enforcement of the Act and these rules.

Information sharing

Sharing information with a governing body

2-27.1 (1) This rule applies to information collected in accordance with the Act and these rules about a lawyer, former lawyer, law firm, articled student, applicant, visiting lawyer or a person who has applied to be a member of a governing body.

(2) Subject to subrule (3), when it appears to the Executive Director to be appropriate in the public interest, the Executive Director may provide information to a governing body.

(3) The Executive Director must not provide confidential or privileged information to a governing body under subrule (2) unless the Executive Director is satisfied that the information

(a) is adequately protected against disclosure, and

(b) will not be used for any purpose other than the regulation of the legal profession in the jurisdiction of the governing body.

Practitioners of foreign law

Definitions

2-28 In Rules 2-28 to 2-34,

"business day" means any calendar day or part of a calendar day in which a practitioner of foreign law provides foreign legal services;

"permit" means a practitioner of foreign law permit issued under Rule 2-29 *[Practitioners of foreign law]*;

"resident" has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

Practitioners of foreign law

2-29 (1) A person who qualifies under section 17 *[Practitioners of foreign law]* may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering to the Executive Director

(a) a completed permit application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society, and

(b) the application fee specified in Schedule 1.

(2) The Executive Director may issue a permit to a person applying under subrule (1) if satisfied that the person

(a) is a member of the legal profession in one or more foreign jurisdictions,

(b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,

(c) is a person of good character and repute,

(d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to act as a practitioner of foreign law in British Columbia only under the direct supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years,

(e) carries professional liability insurance or a bond, indemnity or other security

(i) in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) *[Compulsory professional liability indemnification]*, and

(ii) that specifically extends to services rendered by the practitioner of foreign law while acting as such in British Columbia.

(3) Subject to subrule (4), the Executive Director may attach conditions or limitations to a permit issued or renewed under this rule.

(4) The Executive Director may only attach under subrule (3) conditions or limitations that are authorized by the Credentials Committee.

(5) A permit issued under subrule (2) is valid for one year from the issue date shown on it.

(6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law

(a) is suspended as a result of proceedings taken under Part 4 *[Discipline]*, or

(b) ceases to comply with any of the requirements of this Part.

Conditions and limitations

2-30 (1) Subject to Rule 2-31 *[Providing foreign legal services without a permit]*, no one may provide foreign legal services or market a foreign legal practice in British Columbia without a permit issued under Rule 2-29 (2) *[Practitioners of foreign law]*.

(2) A practitioner of foreign law who holds a current permit may provide foreign legal services in British Columbia respecting

(a) the law of a foreign jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and

(b) trans-jurisdictional or international legal transactions.

(3) A practitioner of foreign law must not

(a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or

(b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.

(4) The Act, these rules and the *Code of Professional Conduct* apply to and bind a practitioner of foreign law.

(5) A practitioner of foreign law must notify the Executive Director promptly if he or she

(a) is the subject of criminal or professional discipline proceedings in any jurisdiction,

(b) ceases to be a member in good standing of the legal profession in any jurisdiction, or

(c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

Providing foreign legal services without a permit

2-31 (1) Subject to the other requirements of this rule, a practitioner of foreign law may provide foreign legal services without a permit for a maximum of 30 business days in any calendar year.

(2) Subject to subrule (3), to qualify to provide foreign legal services without a permit, a practitioner of foreign law must at all times

(a) qualify for a permit under Rule 2-29 (2) *[Practitioners of foreign law]*,

(b) comply with Rules 2-30 (3) to (5) *[Conditions and limitations]*,

(c) not be subject to conditions of or restrictions on his or her membership in the governing body or his or her qualification to practise law in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,

(d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,

(e) have no criminal or disciplinary record in any jurisdiction, and

(f) not establish an economic nexus with British Columbia.

(3) A practitioner of foreign law who provides foreign legal services without a permit must, on request,

(a) provide evidence to the Executive Director that the practitioner of foreign law has complied with and continues to comply with this rule, and

(b) disclose to the Executive Director each governing body of which the practitioner of foreign law is a member.

(4) For the purposes of this rule, an economic nexus is established by actions inconsistent with a temporary basis for providing foreign legal services, including but not limited to doing any of the following in British Columbia:

(a) providing foreign legal services beyond 30 business days in a calendar year;

(b) opening an office from which foreign legal services are offered or provided to the public;

(c) becoming resident;

(d) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a practitioner of foreign law without a permit.

(5) A practitioner of foreign law who practises law in a law firm in his or her home jurisdiction and provides legal services in or from an office in British Columbia affiliated with that firm does not, for that reason alone, establish an economic nexus with British Columbia.

(6) A practitioner of foreign law who becomes disqualified under subrule (4) must cease providing foreign legal services forthwith, but may apply under Rule 2-29 *[Practitioners of foreign law]* for a permit.

(7) On application by a practitioner of foreign law, the Executive Director may allow the practitioner of foreign law to begin or continue to provide foreign legal services pending consideration of an application under Rule 2-29 *[Practitioners of foreign law]*.

Dual qualification

2-32 A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer maintains professional liability insurance that

(a) specifically extends to the lawyer's activities as a practitioner of foreign law in British Columbia, and

(b) is in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) *[Compulsory professional liability indemnification]*.

Marketing of legal services by practitioners of foreign law

2-33 A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Code of Professional Conduct*, section 4.2 *[Marketing]*:

(a) use the term "practitioner of foreign law";

(b) state the foreign jurisdiction in which he or she holds professional legal qualifications, and the professional title used in that jurisdiction;

(c) not use any designation or make any representation from which a recipient might reasonably conclude that the practitioner of foreign law is a member of the Society.

Renewal of permit

2-34 (1) In order to renew a practitioner of foreign law permit, a practitioner of foreign law must apply to the Executive Director for a renewal of the permit before his or her permit expires.

(2) A renewal application must include

(a) a completed permit renewal application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society,

(b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to comply with the requirements set out in Rule 2-29 (2) *[Practitioners of foreign law]*, and

(c) the renewal fee specified in Schedule 1.

(3) The Executive Director may renew the permit of a practitioner of foreign law who has complied with the Act and these rules.

(4) Subject to subrule (5), a permit renewed under subrule (3) is valid for one year.

(5) Rule 2-29 (6) *[Practitioners of foreign law]* applies to a permit renewed under subrule (3).

(6) A practitioner of foreign law who fails to pay when due the fee for renewal of a permit under subrule (2), including applicable taxes, or any part of it, must pay the late payment fee specified in Schedule 1.

Canadian legal advisors

Scope of practice

2-35 (1) A Canadian legal advisor may

(a) give legal advice on

(i) the law of Québec and matters involving the law of Québec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law, or

(b) where expressly permitted by federal statute or regulation

(i) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

(ii) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

(2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1).

Requirements

2-36 (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these rules and the *Code of Professional Conduct*.

(2) A Canadian legal advisor must

(a) be a member in good standing of the Chambre authorized to practise law in Québec,

(b) undertake to comply with Rule 2-35 *[Scope of practice]*, and

(c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practise law in Québec.

Non-resident partners

Inter-jurisdictional law firms

2-37 (1) A lawyer who practises law as a member of an inter-jurisdictional law firm must ensure that the firm does the following respecting the firm's practice of law in British Columbia:

(a) complies with the Part 3, Division 7 *[Trust Accounts and Other Client Property]*;

(b) makes its books, records and accounts, wherever they are located, available on demand by the Society or its designated agent.

(2) An inter-jurisdictional law firm is subject to discipline under Part 4 *[Discipline]* in the same way as a law corporation, except that the penalties that a panel may impose are the following:

(a) a reprimand of the firm;

(b) a fine in an amount not exceeding $100,000;

(c) an order prohibiting members of the firm who are not members of the Society from practising in British Columbia.

(3) On certification by a governing body that an inter-jurisdictional law firm has failed to pay, by the date on which it was due, a fine imposed under a provision similar to subrule (2), the Credentials Committee may make an order prohibiting lawyers from practising as members of the firm.

Multi-disciplinary practice

Definition and application

2-38 (1) In Rules 2-38 to 2-49,

"legal services" means services that constitute the practice of law as defined in section 1;

"member of an MDP" means a lawyer or non-lawyer who holds an ownership interest in the MDP.

(2) The responsibilities imposed under Rules 2-38 to 2-49 are not affected by the fact that a member of an MDP is carrying on the practice of a profession, trade or occupation or participating in the MDP as an employee, shareholder, officer, director or contractor of a professional corporation or on its behalf.

Conditions for MDP

2-39 (1) A lawyer must not practise law in an MDP unless

(a) the lawyer and all members of the MDP are in compliance with Rules 2-38 to 2-49 and the *Code of Professional Conduct*,

(b) all lawyers who are members of the MDP have obtained express permission under this division to practise law in the MDP,

(c) all non-lawyer members of the MDP are of good character and repute,

(d) all members of the MDP agree in writing

(i) that practising lawyers who are members of the MDP will have actual control over the delivery of legal services by the MDP,

(ii) that non-lawyer members of the MDP will not interfere, directly or indirectly with the lawyer's

(A) obligation to comply with the Act, these rules and the *Code of Professional Conduct*, and

(B) exercise of independent professional judgement,

(iii) to comply with the Act, these rules and the *Code of Professional Conduct*, and

(iv) to co-operate with and assist the Society or its agents in the conduct of a practice review, examination or investigation, and

(e) all members of the MDP who are governed by the regulatory body of another profession agree to report to the MDP any proceedings concerning their conduct or competence.

(2) For the purposes of this rule, a lawyer has actual control over the delivery of legal services of the MDP if, despite any partnership agreement or other contract, the lawyer is able, in all cases and without any further agreement of any member of the MDP, to

(a) exercise independent professional judgement, and

(b) take any action necessary to ensure that the lawyer complies with the Act, these rules and the *Code of Professional Conduct*.

Application to practise law in MDP

2-40 (1) Before a lawyer may practise law as a member of an MDP that has not been granted permission under Rule 2-41 *[Consideration of MDP application]*, the lawyer must submit the following to the Executive Director:

(a) an application in a form approved by the Credentials Committee;

(b) the application fee specified in Schedule 1;

(c) the investigation fee specified in Schedule 1 for each non-lawyer member of the proposed MDP;

(d) copies of all partnership agreements and other contracts that the lawyer proposes to enter into with other members of the proposed MDP.

(2) In addition to any other requirement determined by the Credentials Committee, in the form referred to in subrule (1), the lawyer must report full details of the arrangements that the lawyer has made to ensure that

(a) no non-lawyer member of the MDP provides services to the public, except

(i) those services that support or supplement the practice of law by the MDP, and

(ii) under the supervision of a practising lawyer,

(b) privileged and confidential information is protected under Rule 2-45 *[Privilege and confidentiality]*,

(c) all members of the MDP comply with the rules respecting conflicts of interest as required under Rule 2-46 *[Conflicts of interest]*,

(d) every member of the MDP obtains and maintains professional liability indemnity coverage as required under Rule 2-47 *[Liability indemnification]*,

(e) the lawyer and the MDP maintain trust accounts and trust accounting records in accordance with Rule 2-48 *[Trust funds]*, and

(f) all non-lawyer members of the MDP enter into the agreements required under Rule 2-39 *[Conditions for MDP]*.

(3) Any number of lawyers proposing to practise law together in an MDP may submit a joint application under this rule.

Consideration of MDP application

2-41 (1) On receipt of an application under Rule 2-40 *[Application to practise law in MDP]*, the Executive Director must

(a) grant permission to practise law in the MDP,

(b) if the requirements for permission to practise law in an MDP have not been met, refuse permission, or

(c) refer the application to the Credentials Committee.

(2) The Executive Director must not grant permission under subrule (1) unless satisfied of the following:

(a) all of the conditions set out in Rule 2-39 *[Conditions for MDP]* have been satisfied;

(b) the lawyer has made arrangements that will enable the lawyer and the MDP to comply with Rules 2-38 to 2-49.

(3) If the lawyer applying for permission under Rule 2-40 *[Application to practise law in MDP]* agrees, the Executive Director may impose conditions or limitations on permission granted under subrule (1).

(4) Within 30 days after being notified of the decision of the Executive Director under subrule (1) (b), the lawyer may, by written notice, request a review by the Credentials Committee.

(5) If the Executive Director refers an application to the Credentials Committee under subrule (1) (c) or a review is requested under subrule (4), the Credentials Committee must

(a) grant permission to practise law in an MDP, with or without conditions or limitations, or

(b) reject the application.

(6) If an application is rejected or if conditions or limitations are imposed, the Credentials Committee must, at the written request of the lawyer applying, give written reasons for the decision.

Changes in MDP

2-42 (1) A lawyer practising in an MDP must immediately notify the Executive Director when

(a) ceasing to practise law in the MDP for any reason,

(b) any new person proposes to become a member of the MDP,

(c) any member of the MDP ceases to be a member of the MDP or to be actively involved in the MDP's delivery of services to clients or in the management of the MDP, or

(d) there is any change in the terms of the partnership agreement or other contract affecting the conditions under which members of the MDP participate in the MDP.

(2) When a new non-lawyer proposes to become a member of an MDP, the lawyer practising in the MDP must do the following at least 60 days before the proposed membership takes effect:

(a) notify the Executive Director in a form approved by the Credentials Committee;

(b) pay the application fee specified in Schedule 1.

(3) Any number of lawyers practising law in an MDP may notify the Executive Director jointly under subrule (1) or (2).

Cancellation of MDP permit

2-43 (1) If, for any reason, the Executive Director, in his or her sole discretion, is not satisfied that a lawyer is complying and will continue to comply with Rules 2-38 to 2-49, the Executive Director must cancel the permission granted under Rule 2-41 *[Consideration of MDP application]*.

(2) A cancellation under subrule (1) takes effect

(a) after 30 days notice to all lawyers who are current members of the MDP affected by the cancellation, or

(b) without notice or on notice less than 30 days on the order of the Credentials Committee.

(3) A lawyer who is notified of a cancellation under this rule may apply within 30 days to the Credentials Committee for a review of the decision.

(4) When a lawyer applies for a review under subrule (3), the Credentials Committee must consider all the information available to the Executive Director, as well as submissions from or on behalf of the lawyer applying and the Executive Director and must

(a) confirm the decision,

(b) reinstate the permission, with or without conditions or limitations specified by the Credentials Committee, or

(c) order a hearing before a panel under Part 5 *[Hearings and Appeals]*.

(5) The lawyer applying under subrule (3) or the Executive Director may initiate a review by a review board on the record of a decision under subrule (4) by delivering to the President and the other party a notice of review.

(6) Rules 5-21 *[Notice of review]* and 5-23 to 5-28 apply to a review under this rule, insofar as they are applicable and with the necessary changes.

(7) A lawyer who has applied for a review under subrule (3) may apply to the President for a stay of the cancellation pending the decision of the Credentials Committee on the review.

(8) The person who applies for a review under subrule (5) may apply to the President for a stay of the cancellation pending the decision of the review board.

(9) When considering an application for a stay under subrule (8), the President must consider all the information available to the Executive Director, as well as submissions from or on behalf of the Executive Director and the lawyer concerned and must

(a) refuse the stay, or

(b) grant the stay, with or without conditions or limitations.

(10) On an application under subrule (7) or (8), the President may designate another Bencher to make a determination under subrule (9).

(11) When a lawyer's permission to practise law in an MDP is cancelled under this rule, the lawyer must immediately cease practising law in the MDP.

Lawyer's professional duties

2-44 (1) Except as provided in Rules 2-38 to 2-49, the Act, these rules and the *Code of Professional Conduct* apply to lawyers who practise in an MDP.

(2) A lawyer practising law in an MDP must take all steps reasonable in the circumstances to ensure that the non-lawyer members of the MDP

(a) practise their profession, trade or occupation with appropriate skill, judgement and competence,

(b) comply with the Act, these rules and the *Code of Professional Conduct*, and

(c) provide no services to the public except

(i) those services that support or supplement the practice of law by the MDP, and

(ii) under the supervision of a practising lawyer, as required the *Code of Professional Conduct*, section 6.1 *[Supervision]*.

(3) A lawyer practising in an MDP must not permit any member or employee of the MDP to direct or control the professional judgment of the lawyer or to cause the lawyer or other members of the MDP to compromise their duties under the Act, these rules or the *Code of Professional Conduct*.

Privilege and confidentiality

2-45 A lawyer practising law in an MDP must take all steps reasonable in the circumstances, including the implementation of screening measures if necessary, to ensure that no improper disclosure of privileged or confidential information is made to any person, including a person appointed by the regulatory body of another profession in relation to the practice of another member or employee of the MDP.

Conflicts of interest

2-46 (1) A lawyer practising law in an MDP must take all steps reasonable in the circumstances to ensure that the other members of the MDP will comply with the provisions of the Act, these rules and the *Code of Professional Conduct* respecting conflicts of interest as they apply to lawyers.

(2) This rule applies when the MDP has provided legal services to a client or when a potential client has sought legal services from the MDP.

Liability indemnification

2-47 (1) A lawyer practising law in an MDP must ensure that every non-lawyer member of the MDP providing services directly or indirectly to the public on behalf of the MDP

(a) maintains professional liability indemnity coverage

(i) on the terms and conditions offered by the Society through the Lawyers Indemnity Fund and pays the indemnity fee, and

(ii) in an amount equivalent to the total amount of coverage that the MDP maintains in excess of that required under Rule 3-39(1) *[Compulsory professional liability indemnification]*, and

(b) complies with the provisions of Part 3, Division 5 *[Indemnification]* as if the non-lawyer were a lawyer.

(2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable indemnity base assessment is the part-time indemnity fee specified in Schedule 1.

Trust funds

2-48 (1) A lawyer practising law in an MDP that accepts any funds in trust from any person must maintain a trust account and a trust accounting system that are

(a) in compliance with Part 3, Division 7 *[Trust Accounts and Other Client Property]*, and

(b) within the exclusive control of lawyers practising law in the MDP.

(2) A lawyer practising law in an MDP must ensure that all funds received by the MDP that would, if received by a lawyer, constitute trust funds, are handled through a trust account and accounting system that complies with these rules.

Notifying the Society

2-49 (1) Each lawyer who practises law in an MDP must report to the Executive Director in a form approved by the Credentials Committee concerning the following:

(a) non-lawyer members of the MDP providing services to the public;

(b) the reasonable steps taken to protect privileged and confidential information under Rule 2-45 *[Privilege and confidentiality]*;

(c) compliance with the rules respecting conflicts of interest;

(d) professional liability indemnity coverage maintained by non-lawyers under Rule 2-47 *[Liability indemnification]*,

(e) trust accounts and trust accounting records maintained under Rule 2-48 *[Trust funds]*;

(f) the agreements required under Rule 2-39 *[Conditions for MDP]* between the lawyer and all non-lawyer members of the MDP, and

(g) any other matter required by the Credentials Committee.

(2) The report required under this rule must be made annually on a date determined by the Executive Director, or more frequently as determined by the Credentials Committee.

Division 2 – Admission and Reinstatement

Credentials Committee

Credentials Committee

2-50 (1) For each calendar year, the President must appoint a Credentials Committee, including a chair and vice chair, both of whom must be Benchers.

(2) The President may remove any person appointed under subrule (1).

(3) At any time, the President may appoint a person to the Credentials Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

Referral to Credentials Committee

2-51 (1) The Executive Director may refer any matter for decision under this division to the Credentials Committee.

(2) At the written request of a lawyer, former lawyer, articled student or applicant affected by a decision made by the Executive Director under this division, the Executive Director must refer the matter to the Credentials Committee.

(3) When the Executive Director refers a matter to the Credentials Committee under this rule, the Committee may make any decision open to the Executive Director under this division and may substitute its decision for that of the Executive Director.

Powers of Credentials Committee

2-52 (1) The Credentials Committee may

(a) exercise the authority of the Benchers to call and admit barristers and solicitors,

(b) implement, administer and evaluate a training course and examinations, assignments and assessments for all articled students,

(c) establish standards for passing the training course and examinations, assignments and assessment,

(d) establish procedures to be applied by the Executive Director and faculty of the training course for

(i) the deferral, review or appeal of failed examinations, assignments and assessments, and

(ii) remedial work in the training course or examinations, assignments and assessments, and

(e) review, investigate and report to the Benchers on all aspects of legal education leading to call and admission.

(2) When the Credentials Committee is empowered to order a hearing under this division, it may do so even though the application has been withdrawn.

(3) The Credentials Committee may, with the consent of the person concerned, vary or remove practice conditions or limitations imposed by the Committee under this division.

Application for enrolment, admission or reinstatement

Disclosure of information

2-53 (1) When a person makes an application under this division, the Executive Director may

(a) disclose the fact that the application has been made and the status of the application, and

(b) provide information to a governing body under Rule 2-27.1 *[Sharing information with a governing body]*.

(2) For the purpose of subrule (1) (a), the status of an application is its stage of progress in processing the application, including, but not limited to the following:

(a) received and under review;

(b) granted, with or without conditions or limitations;

(c) referred to the Credentials Committee;

(d) hearing ordered, whether or not a hearing has been scheduled;

(e) withdrawn;

(f) refused.

(3) [rescinded]

(4) With the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

(5) The Executive Director may disclose the existence and nature of a condition or limitation imposed or agreed to under this division if the condition or limitation

(a) is ordered as a result of a hearing under this division,

(b) restricts or prohibits a lawyer's practice in one or more areas of law, or

(c) is imposed by Rule 2-78 *[Law school faculty]*, 2-80 *[In-house counsel]* or 2-87 *[Reinstatement of former judge or master]*.

(6) If the Executive Director discloses the existence of a condition or limitation under subrule (5) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(7) Subrule (6) does not apply to a decision of Benchers, a hearing panel or a review board.

Admission program

Enrolment in the admission program

2-54 (1) An applicant may apply for enrolment in the admission program at any time by delivering to the Executive Director the following:

(a) a completed application for enrolment in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society;

(b) proof of academic qualification under subrule (2);

(c) an articling agreement stating a proposed enrolment start date not less than 30 days from the date that the application is received by the Executive Director;

(d) other documents or information that the Credentials Committee may reasonably require;

(e) the application fee specified in Schedule 1.

(2) Each of the following constitutes academic qualification under this rule:

(a) successful completion of the requirements for a bachelor of laws or the equivalent degree from an approved common law faculty of law in a Canadian university;

(b) a Certificate of Qualification issued under the authority of the Federation of Law Societies of Canada;

(c) approval by the Credentials Committee of the qualifications of a full-time lecturer at the faculty of law of a university in British Columbia.

(3) For the purposes of this rule, a common law faculty of law is approved if it has been approved by the Federation of Law Societies of Canada unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.

(4) An official transcript of the applicant's grades at each approved faculty of law at which the applicant studied is proof of academic qualification under subrule (2) (a).

(5) The Credentials Committee may approve academic qualifications under subrule (2) (c) if the applicant

(a) has been a full-time lecturer at a common law faculty of law in a Canadian university for at least 5 of the last 8 years, and

(b) has been found by the Credentials Committee to have an adequate knowledge of the common law.

Re-enrolment

2-55 (1) This rule applies to a person

(a) whose application for enrolment has been rejected because he or she has not satisfied a panel that he or she is of good character and repute and fit to become a barrister and solicitor of the Supreme Court,

(b) whose enrolment has been set aside by a panel under section 38 (6) (d) *[Discipline hearings]*, or

(c) who has failed to complete the training course satisfactorily.

(2) A person referred to in subrule (1) (a) or (b) may not apply for enrolment until the earlier of

(a) the date set by a panel acting under subrule (1) (a) or (b), or

(b) 2 years after the date of the event referred to in subrule (1) (a) or (b).

(3) A person referred to in subrule (1) (c) may not apply for enrolment for 1 year after the later of

(a) the date on which the Executive Director issued the transcript of failed standing, or

(b) the failed standing is confirmed under Rule 2-74 (7) (a) *[Review by Credentials Committee]*.

Consideration of application for enrolment

2-56 (1) The Executive Director must consider an application for enrolment by a person meeting the academic qualifications established under Rule 2-54 *[Enrolment in the admission program]*, and may conduct or authorize any person to conduct an investigation concerning the application.

(2) On an application for enrolment as an articled student, the Executive Director may

(a) enrol the applicant without conditions or limitations effective the enrolment start date proposed in the application, or

(b) refer the application to the Credentials Committee.

(3) When the Executive Director refers an application to the Credentials Committee under subrule (2), the Committee may

(a) enrol the applicant effective on or after the proposed enrolment start date without conditions or limitations,

(b) enrol the applicant effective on or after the proposed enrolment start date with conditions or limitations on the activities of the applicant as an articled student, if the applicant consents in writing to those conditions or limitations, or

(c) order a hearing.

Principals

2-57 (1) A lawyer engaged in full-time practice may act as principal to no more than 2 articled students at one time.

(1.1) In this rule

"associated activities" includes practice management, administration and promotion and voluntary activities associated with the practice of law;

"full-time practice" means the practice of law and associated activities for an average of more than 25 hours per week;

"part-time practice" means the practice of law and associated activities for an average of not more than 25 hours per week.

(2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must have

(a) engaged in full-time practice in Canada for 5 of the 6 years immediately preceding the articling start date, and

(b) spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in

(i) British Columbia, or

(ii) Yukon while the lawyer was a member of the Society.

(2.1) When a lawyer engages in part-time practice

(a) any period in which the lawyer engages in part-time practice is counted at a rate of 50 per cent for the purposes of the full-time practice requirement in subrule (2), and

(b) the 6-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer is not engaged in the practice of law does not exceed 24 months in the entire period.

(3) In exceptional circumstances, the Credentials Committee may allow a lawyer

(a) who does not qualify under subrule (2) to act as principal to an articled student, or

(b) to act as principal to more than 2 articled students at one time, despite subrule (1).

(4) On the recommendation of the Discipline Committee or Practice Standards Committee, or on its own motion, the Credentials Committee may inquire into a lawyer's suitability to act or to continue to act as principal to an articled student and may do any of the following:

(a) conduct or authorize any person to conduct an investigation concerning the fitness of the lawyer to act as a principal;

(b) require the lawyer to appear before the Credentials Committee and to respond to questions of the Committee;

(c) order the lawyer to produce any documents, records or files that the Credentials Committee may reasonably require.

(5) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:

(a) permit the lawyer to act as a principal to an articled student;

(b) permit the lawyer to act as a principal to an articled student subject to conditions or limitations;

(c) order that the lawyer not act as a principal to an articled student.

(6) The onus is on the lawyer to show cause why an order should not be made under subrule (5) (b) or (c).

Hiring articled students

2-58 (1) This rule does not apply to temporary articles under Rule 2-70 *[Temporary articles]*.

(2) This rule applies to all lawyers practising in a firm that maintains an office in the city of Vancouver north of False Creek and west of Carrall Street.

(3) The Credentials Committee may designate an offer date in each calendar year.

(4) A lawyer must not offer articles to a student of any law school who has not begun the third year of studies unless the offer is to remain open at least until the offer date designated under subrule (3).

(5) As an exception to subrule (4), the Credentials Committee may allow a lawyer to withdraw an offer of articles before the offer date designated under subrule (3).

Articling term

2-59 (1) Unless the articling period is changed under Rules 2-59 to 2-65, an articled student must work in the office of his or her principal for a period of not less than 9 months.

(2) Unless otherwise permitted in this division, the articling term must be continuous, except that this period may be interrupted by

(a) attendance at the training course,

(b) annual vacation of up to 10 working days at the discretion of the principal, or

(c) a leave of absence as permitted under Rule 2-69 *[Leave during articles]*.

(3) Any time taken for matters referred to in subrule (2) must not be included in the calculation of the articling term.

(4) The articling term must not be reduced by more than 5 months under any other rule or the combined effect of any rules.

(5) The Credentials Committee may increase the articling term to not more than 2 years if

(a) the articled student's performance has been unsatisfactory,

(b) the articled student has not completed his or her obligations under the articling agreement, or

(c) other circumstances justify an increase.

(6) If it would result in the articled student qualifying for call and admission within 2 years of the student's first enrolment start date, a student enrolled for a second time is entitled to credit for

(a) successful completion of the training course, and

(b) time spent in articles.

(7) If an articled student is enrolled for a second or subsequent time, the Credentials Committee may grant credit for successful completion of the training course and some or all time spent in articles when the articled student was previously enrolled.

Legal services by articled students

2-60 (1) Subject to subrule (2) or any other prohibition in law, an articled student may provide all legal services that a lawyer is permitted to provide, but the student's principal or another practising lawyer supervising the student must ensure that the student is

(a) competent to provide the services offered,

(b) supervised to the extent necessary in the circumstances, and

(c) properly prepared before acting in any proceeding or other matter.

(2) An articled student must not

(a) appear as counsel without the student's principal or another practising lawyer in attendance and directly supervising the student in the following:

(i) an appeal in the Court of Appeal, the Federal Court of Appeal or the Supreme Court of Canada;

(ii) a civil or criminal jury trial;

(iii) a proceeding by way of indictment,

(b) give an undertaking unless the student's principal or another practising lawyer supervising the student has also signed the undertaking, or

(c) accept an undertaking unless the student's principal or another practising lawyer supervising the student also accepts the undertaking.

(3) Despite subrule (2) (a) (iii), an articled student may appear without the student's principal or another practising lawyer in attendance and directly supervising the student in a proceeding

(a) within the absolute jurisdiction of a provincial court judge, or

(b) by way of indictment with respect to

(i) an application for an adjournment,

(ii) setting a date for preliminary inquiry or trial,

(iii) an application for judicial interim release,

(iv) an application to vacate a release or detention order and to make a different order, or

(v) an election or entry of a plea of Not Guilty on a date before the trial date.

Mid-term report

2-61 (1) This rule does not apply to

(a) temporary articles under Rule 2-70 *[Temporary articles]*, or

(b) articles when the term is less than 6 months.

(2) Before the student has completed 60 per cent of his or her articling term, the principal and the student must deliver to the Executive Director a joint report on the student's progress to date in articles in a form approved by the Credentials Committee.

(3) A report under this rule must include a plan for completing the obligations of the principal and student under the articling agreement.

Part-time articles

2-62 (1) An applicant for enrolment may apply to complete some or all of his or her articles part-time by submitting the following to the Executive Director not less than 2 months before the enrolment start date:

(a) the documents and information required under Rule 2-54 (1) *[Enrolment in the admission program]*;

(b) the application fee specified in Schedule 1;

(c) an articling agreement that includes all of the following:

(i) the prospective principal's express approval of the part-time arrangements;

(ii) the type of experience to be provided to the applicant;

(iii) the hours per day to be worked by the applicant;

(iv) the length of the proposed articling term.

(2) An articled student may apply to change his or her articles to part-time articles by submitting to the Executive Director the articling agreement referred to in subrule (1) (c).

(3) The Executive Director may approve an application made under subrule (1) or (2) if

(a) the proposed articling term is a continuous period that would give work experience in the office of the principal equivalent to that required under Rule 2-59 (1) *[Articling term]*, and

(b) the student or applicant's articles will be completed within 2 years of the articling start date.

(4) The part-time equivalent of the articling period is calculated on the following basis:

(a) 8 hours of scheduled work equals one day of articles;

(b) no additional credit is allowed for more than 8 hours per day.

(5) If the Executive Director refers an application under this rule to the Credentials Committee, the Committee must consider the applicant's submissions and may

(a) approve the application without conditions or limitations,

(b) approve the application, subject to any conditions or limitations it considers appropriate, or

(c) reject the application.

Law clerks

2-63 (1) An articled student who has been employed as a law clerk for not less than 8 months may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to half of the time served as a law clerk.

(2) An articled student whose application under this rule is accepted must article to his or her principal for a period of time and according to a schedule approved by the Executive Director.

(3) An application under this rule must be accompanied by

(a) a written report on the student's character and competence from the judge to whom the articled student clerked, and

(b) other documents or information that the Credentials Committee may reasonably require.

Articles in another Canadian jurisdiction

2-64 An articled student or applicant for enrolment who has served a period of articles in another Canadian jurisdiction immediately before or after the student's period in articles in British Columbia, may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to the time served in articles in the other jurisdiction.

Practice experience in a common law jurisdiction outside Canada

2-65 (1) An articled student or applicant for enrolment who holds professional legal qualifications obtained in a common law jurisdiction outside Canada and has been in the active practice of law in that jurisdiction for at least one full year, may apply in writing to the Executive Director for a reduction in the articling term.

(2) The Executive Director may reduce an articling term under this rule by up to one month for each full year of active practice of law in another jurisdiction.

Secondment of articles

2-66 (1) A principal may permit his or her articled student to work in the office of another lawyer qualified to act as a principal, for not more than a total of 8 weeks of the student's articling period.

(2) The Executive Director may permit an articled student to work in the office of a lawyer qualified to act as a principal, other than the student's principal for a period or periods exceeding 8 weeks of the student's articling period.

(3) If the Executive Director grants permission under subrule (2), the Executive Director may set conditions or limitations as appropriate.

Assignment of articles

2-67 (1) An articled student may apply for permission to assign his or her articles to another lawyer qualified to act as a principal by filing with the Executive Director, not later than 7 days after commencing employment at the office of the new principal,

(a) an assignment of articles in a form approved by the Credentials Committee,

(b) a declaration of principal in a form approved by the Credentials Committee, and

(c) statements from the previous principal and from the articled student setting out the reasons for the assignment.

(2) If the articled student does not apply to the Executive Director within the time specified in subrule (1), the time between the date the student left the previous principal's office and the date the student filed the application for assignment is not part of the articling period, unless the Credentials Committee directs otherwise.

(3) If the previous principal does not execute one or more of the documents referred to in subrule (1), the Executive Director may dispense with the filing of those documents.

(4) If the proposed principal is qualified to act as principal to an articled student, the Executive Director may approve an application under this rule.

(5) If the Executive Director refers an application under this rule to the Credentials Committee, the Committee must consider the student's submissions, and may

(a) approve the application without conditions or limitations,

(b) approve the application, subject to any conditions or limitations it considers appropriate, or

(c) reject the application.

(6) An application under this rule must be approved effective on or after the date on which the articled student began employment at the office of a new principal.

Other employment

2-68 During the articling period and the training course, an articled student is not permitted to accept employment from any person other than the student's principal or the person to whom the student's articles are seconded under Rule 2-66 *[Secondment of articles]*, except with the approval of the Executive Director.

Leave during articles

2-69 (1) In the period from an articled student's enrolment start date until call and admission, the student may take a leave of absence from articles, provided

(a) the total time of leaves of absence, other than maternity and parental leaves, during the period does not exceed 22 working days,

(b) the leave of absence does not affect the student's attendance at the training course as required, and

(c) if any part of the leave is to take place when the student is required to work in the office of his or her principal, the principal consents to the leave in advance.

(2) Any time taken for a leave of absence under this rule is not part of the articling period.

(3) An articled student who becomes a natural or adoptive parent during or within 12 weeks before the articling period is entitled to 12 weeks or, if the student is the primary caregiver of the child, 16 weeks parental leave.

(4) An articled student is entitled to 18 weeks maternity leave during the period from 11 weeks before to 17 weeks after giving birth, in addition to her entitlement under subrule (3).

(5) If maternity or parental leave causes an articled student to fail to attend any part of the training course, the Credentials Committee may require the student to attend all or part of the course at a session held after the completion of the student's maternity or parental leave.

(6) An articled student who takes a leave of absence under subrule (1) must notify the Executive Director in writing in advance.

(7) An articled student who takes a leave of absence under subrule (3) or (4) must notify the Executive Director in writing as soon as possible.

(8) On the written application of an articled student, the Executive Director may allow the student to take a leave of absence that is not otherwise authorized by this rule, provided that the articled student will be eligible for call and admission within 2 years of his or her enrolment in the admission program.

(9) On the written application of an articled student, the Credentials Committee may allow the student to take a leave of absence that the Executive Director has not approved, including a leave that will result in the student not being eligible for call and admission within 2 years of his or her enrolment in the admission program.

Temporary articles

2-70 (1) A person may apply for enrolment in temporary articles by filing the following with the Executive Director, not less than 30 days before the enrolment start date:

(a) an application for enrolment in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society;

(b) an articling agreement in a form approved by the Credentials Committee;

(c) the application fee for temporary articles specified in Schedule 1.

(2) The Executive Director may enrol the following in temporary articles:

(a) a student at a common law faculty of law in a Canadian university;

(b) a person whose application for enrolment as an articled student has been approved, but whose articling term has not yet begun;

(c) a person who is qualified to practise law in a Commonwealth country and has actually practised law in that country for 2 years or more.

(3) Temporary articles granted under subrule (2) (a) are void if the student ceases to be a student at a common law faculty of law in Canada.

(4) The Executive Director may only grant temporary articles under subrule (2) (a) that are subject to a definite termination date.

(5) The Executive Director must not grant temporary articles under subrule (2) (b) effective more than 6 weeks before the beginning of the person's articling term.

(6) The Executive Director must not grant temporary articles under subrule (2) (c) for a period exceeding 3 months.

(7) Time spent in temporary articles is not part of the articling term.

(8) Except as otherwise specified in these rules, a person enrolled in temporary articles has the rights, privileges and responsibilities of an articled student.

(9) The Credentials Committee may revoke temporary articles at any time for any reason without giving notice to the temporary articled student and without holding a hearing.

Court and tribunal appearances by temporary articled students

2-71 (1) Despite Rule 2-60 *[Legal services by articled students]*, a person enrolled in temporary articles must not appear as counsel before a court or tribunal without the student's principal or another practising lawyer in attendance and directly supervising the student except

(a) in the Supreme Court of British Columbia in Chambers on any

(i) uncontested matter, or

(ii) contested application for

(A) time to plead,

(B) leave to amend pleadings, or

(C) discovery and production of documents, or

(iii) other procedural application relating to the conduct of a cause or matter,

(b) before a registrar or other officer exercising the power of a registrar of the Supreme Court of British Columbia or Court of Appeal for British Columbia,

(c) in the Provincial Court of British Columbia

(i) on any summary conviction proceeding,

(ii) on any matter that is within the absolute jurisdiction of a provincial court judge,

(iii) on any matter in the Family Division or the Small Claims Division, or

(iv) when the Crown is proceeding by indictment or under the *Youth Criminal Justice Act* (Canada) in respect of an indictable offence, only on

(A) an application for an adjournment,

(B) setting a date for preliminary inquiry or trial,

(C) an application for judicial interim release,

(D) an application to vacate a release or detention order and to make a different order, or

(E) an election or entry of a plea of Not Guilty on a date before the trial date,

(d) on an examination of a debtor,

(e) on an examination for discovery in aid of execution, or

(f) before an administrative tribunal.

(2) A person enrolled in temporary articles is not permitted under any circumstances to do any of the following in a Supreme Court proceeding:

(a) conduct an examination for discovery;

(b) represent a party who is being examined for discovery;

(c) represent a party at a case planning conference, trial management conference or settlement conference.

Training course

2-72 (1) The Executive Director may set the dates on which sessions of the training course will begin.

(2) The Credentials Committee may direct that an articled student be given priority in selection of the training course session that the student wishes to attend if the student is or will be

(a) articling outside the Lower Mainland,

(b) articling as the only student in a firm, or

(c) employed as a law clerk.

(3) Before registering in the training course, an articled student or applicant must make application for enrolment under Rule 2-54 (1) *[Enrolment in the admission program]*.

(4) To register in a training course session, an articled student or applicant must

(a) pay to the Society the fee for the training course specified in Schedule 1, and

(b) deliver to the Executive Director

(i) an application for registration, and

(ii) the principal's consent to the training course session chosen.

(5) The Executive Director must deliver to each student who was registered in a training course session and to each student's principal, a transcript stating whether the student passed or failed the training course.

(6) If a student fails part of the training course, the Executive Director may allow the student one further attempt to pass the examinations, assignments or assessments concerned.

(7) An articled student may apply in writing to the Credentials Committee for exemption from all or a portion of the training course, and the Committee may, in its discretion, grant all or part of the exemption applied for with or without conditions, if the student has

(a) successfully completed a bar admission course in another Canadian jurisdiction, or

(b) engaged in the active practice of law in a common law jurisdiction outside Canada for at least 5 full years.

Tutorial program

2-73 (1) The Executive Director may establish a tutorial program to assist students participating in the training course.

(2) Priority for access to tutorial assistance must be as follows:

(a) first priority to students of aboriginal heritage;

(b) second priority to all other students.

Review by Credentials Committee

2-74 (1) Subject to subrule (2), an articled student who has failed the training course may apply in writing to the Credentials Committee, not more than 21 days after the date on which the Executive Director issued the transcript, for a review of his or her failed standing.

(2) An articled student may not apply to the Credentials Committee under subrule (1) if the student has failed in 3 attempts to pass the training course, including any of the following:

(a) the original attempt;

(b) a further attempt to pass examinations, assignments or assessments under Rule 2-72 (6) *[Training course]*;

(c) any attempt to meet a requirement under subrule (7).

(3) The Credentials Committee may, in its discretion, consider an application for review received after the period specified in subrule (1).

(4) An articled student applying for a review under this rule must state the following in the application:

(a) any compassionate grounds, supported by medical or other evidence, that relate to the student's performance in the training course;

(b) any grounds, based on the student's past performance, that would justify the Credentials Committee granting opportunities for further remedial work;

(c) the relief that the student seeks under subrule (7).

(5) The Credentials Committee may

(a) deliver a copy of the student's application for review to the Executive Director,

(b) consider any written submission made by the Executive Director, the student, the principal or other person who, in the Committee's opinion, could provide information relevant to the grounds for review, or

(c) invite one or more of the student, the principal or the Executive Director, to make any further written submissions, or to meet informally with the Committee.

(6) Subject to the Act and these rules, the Credentials Committee may determine the practice and procedure to be followed at a review under this rule.

(7) After considering the submissions made under subrules (4) and (5), the Credentials Committee may do one or more of the following:

(a) confirm the standing, including any failed standing, stated in the transcript delivered by the Executive Director;

(b) grant the student an adjudicated pass in a training course examination, assignment or assessment, with or without conditions;

(c) require the student to complete further examinations, assignments or assessments, and to pass them at a standard set by the Committee;

(d) require the student to complete or repeat and pass all, or a portion of, the training course;

(e) require the student to complete a specified program of training at an educational institution or under the supervision of a practising lawyer, or both.

(8) A student who is required to do anything under subrule (7) must pay the fee for the training course, or for each examination, assignment or assessment as specified in Schedule 1.

(9) The Executive Director must deliver a transcript stating the student's standing and the extent to which any standards or conditions set by the Credentials Committee have been met to

(a) each student whom the Committee has required to do anything under subrule (7), and

(b) each such student's principal.

Termination of enrolment

2-75 (1) An articled student is no longer enrolled in the admission program if the principal or the student has terminated the student's articles for any reason and no assignment of the student's articles is approved within 30 days.

(2) The 30-day period referred to in subrule (1) does not run while the student is registered in and attending the training course.

(3) A person whose enrolment has ceased under subrule (1) may apply for enrolment under Rule 2-54 (1) *[Enrolment in the admission program]*.

Call and admission

Call and admission

2-76 (1) To qualify for call and admission, an articled student must complete the following satisfactorily:

(a) the articling term;

(b) the training course;

(b.1) the practice management course;

(c) any other requirements of the Act or these rules imposed by the Credentials Committee or the Benchers.

(2) Subrule (1) (b.1) applies to articled students enrolled in the admission program on or after January 1, 2018.

First call and admission

2-77 (1) An articled student who applies for call and admission must deliver to the Executive Director

(a) the following in the form approved by the Credentials Committee:

(i) a petition for call and admission;

(ii) a declaration of the principal;

(iii) a declaration of the applicant;

(iv) a joint report of the principal and the applicant certifying completion of their obligations under the articling agreement;

(v) a completed questionnaire;

(vi) written consent for the release of relevant information to the Society,

(b) a professional liability indemnity application or exemption form,

(c) the following fees:

(i) the call and admission fees specified in Schedule 1;

(ii) the prorated practice fee specified in Schedule 2;

(iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 *[Exemption from professional liability indemnification]*, and

(d) any other information and documents required by the Act or these rules that the Credentials Committee or the Benchers may request.

(2) An articled student may apply under this rule at any time.

(3) If an articled student fails to meet the requirements of this rule, including the delivery of all documents specified, the Executive Director must summarily

(a) reject the application for call and admission, and

(b) terminate the student's enrolment.

(4) When the Credentials Committee has initiated a review under Rule 5-19 *[Initiating a review]* of a hearing panel's decision to enrol an articled student, the articled student is not eligible for call and admission until the review board has issued a final decision on the review or the Committee withdraws the review.

Law school faculty

2-78 (1) A full-time lecturer in a faculty of law of a university in Canada who has the academic qualifications required under Rule 2-54 *[Enrolment in the admission program]* may apply for call and admission without completing the admission program.

(2) On an application under this rule, the Credentials Committee may approve the application subject to the condition specified in subrule (3).

(3) A lawyer called and admitted under this rule who ceases to be a full-time lecturer in a faculty of law of a university in Canada must complete the admission program unless the Credentials Committee otherwise orders.

(4) The Benchers may require a lawyer who fails to comply with subrule (3) to resign from the Society.

Transfer from another Canadian jurisdiction

2-79 (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:

(a) an application for call and admission on transfer in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;

(b) a certificate of character;

(c) a certificate of standing from each body regulating the legal profession in any jurisdiction in which the applicant is or has been a member of the legal profession;

(d) a professional liability indemnity application or exemption form;

(e) proof of academic qualification

(i) as required of applicants for enrolment under Rule 2-54 (2) *[Enrolment in the admission program]*, or;

(ii) for a member of the Barreau, proof that he or she has earned

(A) a bachelor's degree in civil law in Canada, or

(B) a foreign degree and a certificate of equivalency from the Barreau;

(f) the following fees:

(i) the application fee and call and admission fees specified in Schedule 1;

(ii) the prorated practice fee specified in Schedule 2;

(iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 *[Exemption from professional liability indemnification]*;

(g) any other information and documents required by the Act or these rules that are requested by the Credentials Committee or the Benchers.

(2) An applicant under this rule must not be called and admitted unless the Executive Director is satisfied that the lawyer is not prohibited from practising law under Rule 2-89 *[Returning to practice after an absence]*.

(3) Unless Rule 2-81 *[Transfer under National Mobility Agreement and Territorial Mobility Agreement]* applies, an applicant under this rule must pass an examination on jurisdiction-specific substantive law, practice and procedure set by the Executive Director.

(4) An applicant who does not satisfy the Executive Director that he or she has an adequate knowledge of the English language must satisfactorily complete the training required by the Credentials Committee.

(5) An applicant who is required to write an examination under this rule or Rule 2-89 *[Returning to practice after an absence]* must pass the required examination within 12 months after the Executive Director's decision to permit the applicant to write the examination.

(6) At least 30 days before writing the first examination, an applicant who is required to write an examination under this rule or Rule 2-89 *[Returning to practice after an absence]* must pay the fee specified in Schedule 1 for the examination.

(7) An applicant who fails the transfer or qualification examination

(a) is entitled to a formal re-read of the examination on application to the Executive Director in writing within 30 days of notification of his or her failure,

(b) may re-write the examination

(i) at any time, provided he or she has not failed the examination before, or

(ii) after a period of one year from the date of the failure if he or she has previously failed the examination, or

(c) may be permitted to write the examination for a third or subsequent time at any time despite paragraph (b) (ii) on application to the Credentials Committee in writing stating

(i) compassionate grounds, supported by medical or other evidence, or

(ii) other grounds based on the applicant's past performance.

In-house counsel

2-80 (1) An applicant under Rule 2-79 *[Transfer from another Canadian jurisdiction]* may apply to the Credentials Committee for call and admission as in-house counsel.

(2) On an application under this rule, the Credentials Committee may exempt an applicant from the requirements to write and pass the transfer examination or the qualification examination or complete the requirement under Rule 2-81 (3) *[Transfer under National Mobility Agreement and Territorial Mobility Agreement]*.

(3) A lawyer who is called and admitted as in-house counsel must practise law in British Columbia only on behalf of the lawyer's employer or one of its subsidiaries or affiliates.

(4) On application of a lawyer called and admitted as in-house counsel, the Credentials Committee may relieve the lawyer of the restriction under subrule (3), on the lawyer

(a) writing and passing the required examination under Rule 2-79 *[Transfer from another Canadian jurisdiction]*, or

(b) completing the requirements under Rule 2-81 (3) *[Transfer under National Mobility Agreement and Territorial Mobility Agreement]*, if the lawyer

(i) has practised law full-time in British Columbia for 2 years, or the equivalent in part-time practice, immediately preceding the application,

(ii) is entitled to practise law in the jurisdiction of a governing body of which the applicant is a member, or

(iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body of which the applicant was a member.

Transfer under National Mobility Agreement and Territorial Mobility Agreement

2-81 (1) This rule applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a governing body of which the applicant is a member.

(2) An applicant under this rule must fulfill all of the requirements in Rule 2-79 *[Transfer from another Canadian jurisdiction]* for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examination.

(3) To qualify for call and admission, an applicant under this rule must certify, in a prescribed form, that he or she has reviewed and understands all of the materials reasonably required by the Executive Director.

(4) A lawyer called and admitted under this rule has no greater rights as a member of the Society than

(a) the lawyer has as a member of the governing body of his or her home jurisdiction, or

(b) any other member of the Society in similar circumstances.

Transfer as Canadian legal advisor

2-82 (1) Subject to subrule (3), a member of the Chambre may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:

(a) a completed application for call and admission as a Canadian legal adviser in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;

(b) a certificate of character;

(c) a certificate of standing from the Chambre and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;

(d) a professional liability indemnity application or exemption form;

(e) the following fees:

(i) the application fee and call and admission fees specified in Schedule 1;

(ii) the prorated practice fee specified in Schedule 2;

(iii) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 *[Exemption from professional liability indemnification]*;

(f) any other information and documents required by the Act or these rules that are requested by the Credentials Committee or the Benchers.

(2) Subject to subrule (1), Rules 2-79 to 2-84 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal adviser.

(3) This rule does not apply to a member of the Chambre unless he or she has earned a bachelor’s degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Chambre.

Consideration of application for call and admission

2-83 (1) The Executive Director must consider an application for call and admission by a person meeting the requirements under this division, and may conduct or authorize any person to conduct an investigation concerning the application.

(2) On an application for call and admission, the Executive Director may

(a) authorize the call and admission of the applicant without conditions or limitations, or

(b) refer the application to the Credentials Committee.

(3) When the Executive Director refers an application to the Credentials Committee under subrule (2), the Committee may

(a) authorize the call and admission of the applicant without conditions or limitations,

(b) authorize the call and admission of the applicant with conditions or limitations on the applicant's practice, if the applicant consents in writing to those conditions or limitations, or

(c) order a hearing.

Barristers and solicitors' roll and oath

2-84 (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.

(2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,

(a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and

(b) be presented in open court before one or more of the judges of the Supreme Court.

(3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.

(4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2) (a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.

(5) The Executive Director must not renew a practising certificate or a Canadian legal advisor certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2) (b).

(6) As an exception to subrule (5), the Executive Director may renew a certificate issued under subrule (2) (b) within four months of its expiry date.

Reinstatement

Reinstatement of former lawyer

2-85 (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:

(a) an application for reinstatement in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;

(b) the appropriate application fee specified in Schedule 1.

(2) An applicant for reinstatement may apply for the following status on reinstatement:

(a) practising lawyer, only if the applicant has met the conditions for practising law under Rule 2-89 *[Returning to practice after an absence]*;

(b) non-practising member on compliance with Rule 2-3 *[Non-practising members]*;

(c) retired member if the lawyer is qualified under Rule 2-4 (1) *[Retired members]* and on compliance with Rule 2-4 (2) and (3).

(3) On an application under subrule (2) (c), the Executive Director may waive payment of all or part of the application fee on any conditions that the Executive Director considers appropriate.

(4) The Executive Director may issue a practising certificate to an applicant on reinstatement on payment of the following:

(a) the prorated practice fee specified in Schedule 2;

(b) the prorated annual indemnity fee specified in Schedule 2, unless exempt under Rule 3-43 *[Exemption from professional liability indemnification]*;

(c) any surcharge for which the lawyer is liable under Rule 3-44 (2) *[Deductible, surcharge and reimbursement]*.

(5) The Executive Director may issue a non-practising or retired member certificate to an applicant on reinstatement on payment of the appropriate prorated fee specified in Schedule 3.

(6) Subject to subrule (7), the Executive Director must consider an application for reinstatement of a former lawyer and may conduct or authorize any person to conduct an investigation concerning the application.

(7) The Executive Director must not consider an application for reinstatement of a former lawyer unless the former lawyer has

(a) submitted all trust reports required under Rules 3-79 *[Trust report]* and 3-84 (1) *[Former lawyers]*,

(b) paid all assessments accrued under Rule 3-80 *[Late filing of trust report]* before and after the former lawyer ceased to be a member of the Society unless the Executive Director waives all of the assessments under Rule 3-80 (3) and any conditions have been fulfilled, and

(c) paid all costs of trust reports ordered under Rule 3-81 (6) *[Failure to file trust report]*.

(8) If an applicant for reinstatement is a disbarred lawyer, the Executive Director must refer the application to the Credentials Committee.

(9) On an application for reinstatement to which subrules (7) and (8) do not apply, the Executive Director may

(a) reinstate the applicant without conditions or limitations, or

(b) refer the application to the Credentials Committee for consideration.

(10) Subject to subrule (11), when the Executive Director refers an application for reinstatement to the Credentials Committee under subrule (9), the Committee may

(a) reinstate the applicant without conditions or limitations,

(b) reinstate the applicant with conditions or limitations on the applicant's practice if the applicant consents in writing to those conditions or limitations, or

(c) order a hearing.

(11) The Credentials Committee must order a hearing in the following circumstances:

(a) section 19(3) applies;

(b) the Committee cannot reach another disposition of the matter under subrule (10);

(c) the Committee resolves to order a hearing.

(12) An applicant for reinstatement must give written notice of the application as directed by the Executive Director, and persons so notified may appear in person or by counsel at the hearing and be heard on the application.

Subsequent application for reinstatement

2-86 A person whose application for reinstatement is rejected under section 22 (3) *[Credentials hearings]* may not make a new application for reinstatement until the earlier of the following:

(a) 2 years after the date on which the application was rejected;

(b) the date set by the panel when the application was rejected or by the review board on a review under Part 5 *[Hearings and appeals]*.

Former judge or master

Former judge or master

2-87 (1) Subject to subrules (2) and (3), a lawyer who was a judge or a master must restrict his or her practice of law as follows:

(a) a former judge of a federally-appointed court must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;

(b) a former judge of a provincial or territorial court in Canada must not appear as counsel in the Provincial Court of British Columbia for 3 years after ceasing to be a judge;

(c) a former master of the Supreme Court of British Columbia must not appear as counsel before a master, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be a master.

(2) The Credentials Committee may impose conditions or limitations respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1) (a).

(3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions or limitations respecting the practice of the lawyer concerned.

(4) A lawyer who has served as a judge or master in any court must not use any judicial title or otherwise allude to the lawyer's former status in any marketing activity.

(5) Subrule (4) does not preclude a lawyer who has served as a judge or master from referring to the lawyer's former status in

(a) a public announcement that the lawyer has resumed the practice of law or joined a law firm,

(b) a public speaking engagement or publication that does not promote the lawyer's practice or firm,

(c) seeking employment, partnership or appointment other than the promotion of the lawyer's practice or firm, or

(d) informal conversation or correspondence.

(6) For the purpose of this rule, it is not the promotion of a lawyer's practice or firm to provide, on request, a curriculum vitae or other statement of experience that refers to the lawyer's former status as a judge or master.

(7) This rule applies to a lawyer who has served as a master or the equivalent officer of a superior court in Canada as it does to a former master of the Supreme Court of British Columbia.

Returning to practice

Definition and application

2-88 (1) In Rules 2-88 to 2-90, unless the context indicates otherwise, **"relevant period"** is the shortest of the following periods of time in the immediate past:

(a) 5 years;

(b) the time since the lawyer's first call and admission in any jurisdiction;

(c) the time since the lawyer last passed the qualification examination.

(2) For the purpose of paragraph (b) of the definition of "relevant period" in subrule (1), a lawyer is deemed to have been called and admitted as of the date that a practising certificate was issued under Rule 2-84 (4) *[Barristers and solicitors' roll and oath]*.

(3) Rules 2-88 to 2-90 apply to a former lawyer and an applicant.

Returning to practice after an absence

2-89 (1) If, for a total of 3 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first doing one of the following:

(a) passing the qualification examination;

(b) obtaining the permission of the Credentials Committee under subrule (3).

(2) Subrule (1) applies

(a) despite any other rule, and

(b) whether or not the lawyer holds or is entitled to hold a practising certificate.

(3) A lawyer may apply in writing to the Credentials Committee for permission to practise law without passing the qualification examination.

(4) On an application under subrule (3), the Credentials Committee may approve the application if, in its judgement

(a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or

(b) the public interest does not require the lawyer to pass the qualification examination.

(5) Before approving an application under subrule (4), the Credentials Committee may require the lawyer to enter into a written undertaking to do any of the things set out in Rule 2-90 (5) (b) *[Conditions on returning to practice]*.

(6) A lawyer who is required to write the qualification examination under subrule (1) must pay, at least 30 days before writing the first examination, the fee specified in Schedule 1.

Conditions on returning to practice

2-90 (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.

(2) Subrule (1) applies

(a) despite any other rule, and

(b) whether or not the lawyer holds or is entitled to hold a practising certificate.

(3) A lawyer or applicant must apply in writing to the Credentials Committee for permission to practise law under subrule (1).

(4) An application under subrule (3) may be combined with an application under Rule 2-89 (3) *[Returning to practice of law after an absence]*.

(5) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following:

(a) successful completion of all or part of one or more of the following:

(i) the admission program;

(ii) another course offered by the Society or a provider approved by the Society;

(b) a written undertaking to do any or all of the following:

(i) practise law in British Columbia immediately on being granted permission;

(ii) not practise law as a sole practitioner;

(iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;

(iv) successfully complete the training course or a part of the training course within a period set by the Committee, not exceeding one year from the date permission is granted;

(v) practise law only in specified areas;

(vi) not practise law in specified areas.

(6) Despite Rule 2-52 (3) *[Powers of Credentials Committee]*, the Credentials Committee may vary a condition under subrule (5) (a) without the consent of the lawyer concerned.

(7) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (5) (b).

Credentials hearings

Notice to applicant

2-91 (1) When a hearing is ordered under this division, the Executive Director must promptly notify the applicant in writing of

(a) the purpose of the hearing,

(b) [rescinded]

(c) the circumstances to be inquired into at the hearing, and

(d) the amount of security for costs set by the Credentials Committee under Rule 2-92 *[Security for costs]*.

(1.1) The date, time and place for the hearing to begin must be set

(a) by agreement between counsel for the Society and the applicant, or

(b) on the application of a party, by the President or by the Bencher presiding at a pre-hearing conference.

(1.2) When a date is set under subrule (1.1), the President must notify the parties in writing of the date, time and place of the hearing.

(2) The notice referred to in subrule (1) or (1.2) must be served

(a) in accordance with Rule 10-1 *[Service and notice]*, and

(b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

Security for costs

2-92 (1) When the Credentials Committee orders a hearing under this division, it must set an amount to be deposited by the applicant as security for costs.

(2) In setting the amount to be deposited as security for costs under this rule, the Credentials Committee may take into account the circumstances of the matter, including but not limited to, the applicant's

(a) ability to pay, and

(b) likelihood of success in the hearing.

(3) The amount to be deposited as security for costs cannot exceed an amount that approximates the amount that the panel may order to be paid under Rule 5-11 *[Costs of hearings]*.

(4) On application by the applicant or counsel for the Society, the Credentials Committee may vary the amount to be deposited as security for costs under this rule.

(5) If, 15 days before the date set for a hearing, the applicant has not deposited with the Executive Director the security for costs set under this rule, the hearing is adjourned.

(6) Before the time set for depositing security for costs under subrule (5), an applicant may apply to the Credentials Committee for an extension of time, and the Committee may, in its discretion, grant all or part of the extension applied for.

Law Society counsel

2-93 The Executive Director must appoint an employee of the Society or retain another lawyer to represent the Society when

(a) a hearing is ordered under this division,

(b) a review is initiated under section 47 *[Review on the record]*,

(c) an applicant appeals a decision to the Court of Appeal under section 48 *[Appeal]*, or

(d) the Society is a respondent in any other action involving an application relating to sections 19 to 22 or this division.

Preliminary questions

2-94 (1) Before a hearing begins, the applicant or counsel for the Society may apply for the determination of a question relevant to the hearing by delivering to the President, and to the other party, written notice setting out the substance of the application and the grounds for it.

(2) [rescinded]

(3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a pre-hearing conference;

(c) refer the question to the panel at the hearing of the application.

(4) The President may designate another Bencher to exercise the discretion under subrule (3).

(5) A panel appointed under subrule (3) (a) is not seized of the application or any question pertaining to the application other than that referred under that provision.

Compelling witnesses and production of documents

2-95 (1) Before a hearing begins, the applicant or counsel for the Society may apply for an order under section 44 (4) *[Witnesses]* by delivering written notice setting out the substance of the application and the grounds for it to the President and to the other party.

(2) [rescinded]

(3) When an application is made under subrule (1), after considering any submissions of counsel, the President must

(a) make the order requested or another order consistent with section 44 (4) *[Witnesses]*, or

(b) refuse the application.

(4) The President may designate another Bencher to make a decision under subrule (3).

(5) On the motion of the applicant or counsel for the Society, the President or another Bencher designated by the President may apply to the Supreme Court under section 44 (5) *[Witnesses]* to enforce an order made under subrule (3).

Pre-hearing conference

2-96 (1) At the request of the applicant or counsel for the Society, or on his or her own initiative, the President may order a pre-hearing conference at any time before a hearing ordered under this division commences.

(2) When a conference has been ordered under subrule (1), the President must

(a) set the date, time and place of the conference, and

(b) designate a Bencher to preside at the conference.

(3) Counsel for the Society, and the applicant or applicant's counsel or both, must be present at the conference.

(4) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of subrule (3).

(5) The conference must consider

(a) the possibility of agreement on facts in order to facilitate the hearing,

(b) the discovery and production of documents,

(c) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public, or that exhibits and other evidence be excluded from public access,

(d) setting a date for the hearing,

(e) any application by counsel for the Society to withhold the identity or locating particulars of a witness, and

(f) any other matters that may aid in the disposition of the application.

(6) The Bencher presiding at a pre-hearing conference may

(a) adjourn the conference generally or to a specified date, time and place,

(b) order discovery and production of documents,

(c) set a date for the hearing, and

(d) allow or dismiss an application under subrule (5) (f).

Appointment of panel

2-97 When a hearing is ordered under this division, the President must appoint a panel in accordance with Rule 5-2 *[Hearing panels]*.

Adjournment of hearing

2-98 (1) Before a hearing commences, the applicant or counsel for the Society may request that the hearing be adjourned by delivering written notice setting out the reasons for the request to the President and to the other party.

(2) [rescinded]

(3) Before a hearing commences, the President must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.

(4) The President may designate another Bencher to make a determination under subrule (3).

(5) After a hearing has commenced, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

Attendance at the hearing

2-99 Unless the chair of the panel otherwise orders, the applicant must personally attend the entire hearing.

Onus and burden of proof

2-100 (1) At a hearing under this division, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19 (1) and this division.

(2) A panel must reject an application for enrolment if it considers that the applicant's qualifications referred to in Rule 2-54 (2) *[Enrolment in the admission program]* are deficient.

Procedure

2-101 (1) Following completion of the evidence, the panel must invite the applicant and counsel for the Society to make submissions on the issues to be decided by the panel.

(2) If the circumstances of the applicant have changed so as to make the outcome of the hearing moot, after hearing submissions on behalf of the Society and the applicant, the panel may do one of the following:

(a) adjourn the hearing generally;

(b) reject the application;

(c) commence or continue with the hearing.

(3) After hearing submissions under subrule (1), the panel must determine the facts and decide whether to

(a) grant the application,

(b) grant the application subject to conditions or limitations that the panel considers appropriate, or

(c) reject the application.

(4) The panel must prepare written reasons for its findings.

(5) A copy of the panel's reasons prepared under subrule (4) must be delivered promptly to the applicant and counsel for the Society.

Inactive applications

2-102 (1) When the Credentials Committee has ordered a hearing under this division and the applicant has taken no steps for one year to bring the application to a hearing, the application is deemed abandoned.

(2) When an application is abandoned under this rule, counsel for the Society may apply for an order that some or all of the funds paid under Rule 2-92 *[Security for costs]* as security for costs be retained by the Society.

(3) An application under subrule (2) is made by written notification of the following:

(a) the applicant;

(b) the President.

(4) On an application under subrule (3), the President may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.

(5) The President may designate another Bencher to make a determination under subrule (4).

Publication of credentials decision

2-103 (1) When a hearing panel or review board issues a final or interlocutory decision on an application under this division, the Executive Director must

(a) publish and circulate to the profession a summary of the circumstances and decision of the hearing panel or review board,

(b) publish the full text of the decision on the Law Society website, and

(c) publish the final outcome of the hearing or review, including any conditions or limitations of practice or articles imposed or accepted.

(1.1) When a court issues a decision on a judicial review of or appeal from a credentials decision, the Executive Director must circulate to the profession a summary of the decision.

(2) and (3) [rescinded]

(4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Anonymous publication

2-104 (1) Except as required or allowed under this rule, a publication under Rule 2-103 (1) (a) or (b) *[Publication of credentials decision]* must not identify the applicant.

(2) A publication under Rule 2-103 (1) (a) or (b) may identify the applicant if

(a) the applicant consents in writing, or

(b) the subject matter of the application, including the identity of the applicant, is known to the public.

(3) to (7) [rescinded]

(8) A publication under Rule 2-103 (1) (a) or (b) must identify the applicant if the applicant is a disbarred lawyer applying for reinstatement.

(9) A summary circulated under Rule 2-103 (1.1) may identify an applicant who is identified by the court.

Division 3 – Fees and Assessments

Annual practising fees

2-105 (1) The annual practising fee and indemnity fee are payable in respect of each calendar year.

(2) The date for payment of the annual practising fee and first indemnity fee instalment is November 30 of the year preceding the year for which they are payable.

(3) The date for payment of the second indemnity fee instalment is prescribed under Rule 3-41 (1) *[Payment of annual indemnity fee by instalments]*.

Assessments

2-106 (1) The Benchers may, by resolution, set a special assessment of all

(a) practising lawyers,

(b) practising lawyers and applicants,

(c) members of the Society, or

(d) members of the Society and applicants.

(2) A resolution under subrule (1) must set a date by which the assessment must be paid.

Application fees

2-107 On application from a person who has paid an application fee under these rules, the Executive Director may refund all or part of the fee if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.

Late payment

2-108 (1) A lawyer who fails to pay fees by the date required under Rule 2-105 (2) *[Annual practising fees]* but pays all of those fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this rule, continues to be a member of the Society.

(2) The Executive Director may extend the time for a lawyer or class of lawyers to pay fees or a special assessment and, if the lawyer pays

(a) the annual practising fee or special assessment by the date to which the time is extended, and

(b) the late payment fee under this rule,

the lawyer is deemed to be a member of the Society in good standing and to have been in good standing during the period of time that the lawyer's fee or special assessment was unpaid.

(3) A lawyer, other than a retired or non-practising member, who has failed to pay the annual practising fee in accordance with Rule 2-105 (2) *[Annual practising fees]*, is required to pay the late payment fee for practising lawyers specified in Schedule 1.

(4) A retired member who has failed to pay the annual fee for retired members in accordance with Rule 2-4 *[Retired members]* is required to pay the late payment fee for retired members specified in Schedule 1.

(5) A non-practising member who has failed to pay the annual fee for non-practising members in accordance with Rule 2-3 *[Non-practising members]* is required to pay the late payment fee for non-practising members specified in Schedule 1.

(6) A lawyer who does not pay a special assessment by the date specified under Rule 2-106 (2) *[Assessments]* or extended under subrule (2) must pay a late payment fee of 20 per cent of the amount of the assessment.

(7) When there are special circumstances, the Executive Director may, in his or her discretion, waive or reduce a late payment fee payable under this rule.

Definition and application

2-109 (1) In Rules 2-109 to 2-113, **"client matter"** means any distinct matter on which a lawyer is retained to represent or advise a client, including but not limited to the following:

(a) a transaction of any kind;

(b) a claim or potential claim by or against the lawyer's client;

(c) a proceeding.

(2) Rules 2-109 to 2-113 apply to client matters in connection with which a lawyer receives trust funds on or after March 1, 2005.

Trust administration fee

2-110 (1) A lawyer must pay to the Society the trust administration fee specified in Schedule 1 for each client matter undertaken by the lawyer in connection with which the lawyer receives any money in trust, not including fees and retainers.

(2) Only one trust administration fee is payable in respect of a single client matter in which

(a) a lawyer represents joint clients, or

(b) more than one lawyer in a law firm acts.

(3) For each quarter year ending on the last day of March, June, September or December, a lawyer must remit the following to the Society within 30 days of the end of the quarter year to which they apply:

(a) trust administration fees that have become payable under subrule (1) during the quarter year;

(b) a completed trust administration report in a form approved by the Executive Committee.

Late payment of trust administration fee

2-111 A lawyer who fails to remit the trust administration fee and report by the time required under this rule must pay a late payment fee of 5 per cent of the amount due for each month or part of a month from the date the lawyer is required to remit the fee and report under Rule 2-110 (3) *[Trust administration fee]* until the fee, including the late payment fee, and the report are received by the Society.

Executive Director's discretion

2-112 The Executive Director may

(a) decide what constitutes a client matter under Rule 2-109 *[Definition and application]*, in individual cases, and

(b) extend or vary the time for remitting the trust administration fee and report under Rule 2-110 (3) *[Trust administration fee]*.

Referral to Executive Committee

2-113 (1) The Executive Director may refer any matter for decision under Rule 2-112 *[Executive Director's discretion]* to the Executive Committee, and the Committee may make any decision open to the Executive Director under that rule.

(2) At the written request of a lawyer affected by a decision made by the Executive Director under Rule 2-112 *[Executive Director's discretion]* the Executive Director must refer the matter to the Executive Committee, and the Committee may

(a) confirm the decision of the Executive Director, or

(b) substitute its decision for that of the Executive Director.

Taxes payable

2-114 Any fee or assessment on which any government tax is payable is not paid unless that tax is also paid.

Refund when lawyer does not practise law

2-115 (1) A lawyer who has paid the annual fee for a year but who satisfies the Executive Director that the lawyer has totally abstained from practice in British Columbia during that year through disability, other than a suspension, is entitled to a refund of

(a) the difference between the practising fee set by the Benchers under section 23 (1) (a) *[Annual fees and practising certificate]* and the non-practising member fee specified in Schedule 1, and

(b) a portion of the annual indemnity fee set under section 30 (3) (a) *[Indemnification]*, in an amount determined by the Executive Director.

(2) On payment of the refund under subrule (1), the lawyer

(a) immediately ceases to be qualified to practise law, and

(b) on compliance with Rule 2-3 *[Non-practising members]*, becomes a non-practising member.

(3) A lawyer who qualifies under Rule 2-4 *[Retired members]* to be a retired member and complies with that rule may elect to become a retired member, rather than a non-practising member under subrule (2) (b), and receive a refund of the difference between the non-practising member fee and the retired member fee specified in Schedule 1, in addition to the refund under subrule (1).

Refund on exemption during practice year

2-116 (1) A lawyer who has paid the annual indemnity fee for a year and ceases to practise for any reason other than suspension or who becomes exempt under Rule 3-43 *[Exemption from professional liability indemnification]* during that year, is entitled to a refund of a portion of the indemnity fee in an amount determined by the Executive Director.

(2) If a lawyer becomes a non-practising or retired member during a year for which the lawyer has paid the annual practising fee, the Executive Director must apply a prorated portion of the practising fee to the prorated non-practising or retired member fee and refund the difference, if any, to the lawyer.

(3) A lawyer who ceases practising law under any of the following circumstances is entitled to a refund of the unused portion of the annual practising fee, less the administration fee specified in Schedule 1:

(a) judicial appointment;

(b) death;

(c) total incapacity such that the lawyer is incapable of applying for non-practising status.

Failure to pay fine, costs or penalty

2-117 (1) The Executive Director must apply any money received from or on behalf of a lawyer or former lawyer to payment of the following due and owing by the lawyer or former lawyer before any fees or assessments:

(a) a fine;

(b) costs;

(c) a penalty;

(d) a deductible amount paid on behalf of the lawyer under the Society's indemnity policy;

(e) reimbursement for payment made on behalf of the lawyer or former lawyer under trust protection indemnity coverage.

(2) If a lawyer fails to pay, by the time that it is required to be paid, any of the amounts referred to in subrule (1), the Credentials Committee may suspend the lawyer until the amount is paid.

(3) The Executive Director may approve the form of certificate to be filed in the Supreme Court under section 27 *[Practice standards]*, 38 *[Discipline hearings]* or 46 *[Costs]*.

No refund on suspension

2-118 A lawyer who is suspended

(a) is not entitled to a refund of any part of the annual practising fee for the period of the suspension or any special assessment that the lawyer has paid, and

(b) must pay the annual practising fee or special assessment when it is due.

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 This division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

(a) a former lawyer;

(b) an articled student;

(c) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;

(d) a practitioner of foreign law;

(e) a law firm.

Complaints

3-2 Any person may deliver a written complaint against a lawyer or law firm to the Executive Director.

Confidentiality of complaints

3-3 (1) No one is permitted to disclose any information or records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.

(2) Despite subrule (1), the Executive Director may do any of the following:

(a) disclose information referred to in subrule (1), with the consent of the lawyer who is the subject of the complaint;

(b) if a complaint has become known to the public, disclose

(i) the existence of the complaint,

(ii) its subject matter,

(iii) its status, including, if the complaint is closed, the general basis on which it was closed; and

(iv) any additional information necessary to correct inaccurate information;

(c) if, in the course of the investigation of a complaint, a lawyer has given an undertaking to the Society that restricts, limits or prohibits the lawyer's practice of law, disclose the fact that the undertaking was given and its effect on the lawyer's practice;

(d) provide information to a governing body under Rule 2-27.1 *[Sharing information with a governing body]*.

(3) For the purpose of subrule (2) (b), the status of a complaint is its stage of progress through the complaints handling process, including, but not limited to the following:

(a) opened;

(b) under investigation;

(c) referred to a Committee;

(d) closed.

(4) If the Executive Director discloses the existence of an undertaking under subrule (2) (c) by means of the Society's website, the information must be removed from the website within a reasonable time after the undertaking ceases to be in force.

(4.1) Despite subrule (1), the Executive Director may disclose any information concerning a complaint to a designated representative of a law firm in which the lawyer who is the subject of the complaint engages in the practice of law.

(5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

(6) This division must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Consideration of complaints and other information

3-4 (1) The Executive Director must consider every complaint received under Rule 3-2 *[Complaints]*.

(2) Information received from any source that indicates that a lawyer's conduct may constitute a discipline violation must be treated as a complaint under these rules.

Investigation of complaints

3-5 (1) Subject to subrule (3), the Executive Director may, and on the instruction of the Discipline Committee must, investigate a complaint to determine its validity.

(2) For the purpose of conducting an investigation under this division and section 26 *[Complaints from the public]*, the Executive Director may designate an employee of the Society or appoint a practising lawyer or a person whose qualifications are satisfactory to the Executive Director.

(3) The Executive Director may decline to investigate a complaint if the Executive Director is satisfied that the complaint

(a) is outside the jurisdiction of the Society,

(b) is frivolous, vexatious or an abuse of process, or

(c) does not allege facts that, if proven, would constitute a discipline violation.

(4) The Executive Director must deliver to the lawyer who is the subject of a complaint a copy of the complaint or, if that is not practicable, a summary of it.

(5) Despite subrule (4), if the Executive Director considers it necessary for the effective investigation of the complaint, the Executive Director may delay notification of the lawyer.

(6) When acting under subrule (4), the Executive Director may decline to identify the complainant or the source of the complaint.

(7) A lawyer must co-operate fully in an investigation under this division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director

(a) to the complaint, and

(b) to all requests made by the Executive Director in the course of an investigation.

(8) When conducting an investigation of a complaint, the Executive Director may

(a) require production of files, documents and other records for examination or copying,

(b) require a lawyer to

(i) attend an interview,

(ii) answer questions and provide information relating to matters under investigation, or

(iii) cause an employee or agent of the lawyer to answer questions and provide information relating to the investigation,

(c) enter the business premises of a lawyer

(i) during business hours, or

(ii) at another time by agreement with the lawyer.

(9) Any written response under subrule (7) must be signed by

(a) the lawyer personally, or

(b) a representative of the law firm, if the complaint is about a law firm.

(10) The Executive Director may deliver to the complainant a copy or a summary of a response received from the lawyer, subject to solicitor and client privilege and confidentiality.

(11) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this rule must comply with the requirement

(a) even if the information or files, documents and other records are privileged or confidential, and

(b) as soon as practicable and, in any event, by the time and date set by the Executive Director.

Failure to produce records on complaint investigation

3-6 (1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 *[Investigation of complaints]* or 4-55 *[Investigation of books and accounts]* to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director.

(2) When there are special circumstances, the Discipline Committee may, in its discretion, order that

(a) a lawyer not be suspended under subrule (1), or

(b) a suspension under this rule be delayed for a specified period of time.

(3) At least 7 days before a suspension under this rule can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Resolution by informal means

3-7 The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

Action after investigation

3-8 (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint

(a) is not valid or its validity cannot be proven, or

(b) does not disclose conduct serious enough to warrant further action.

(2) The Executive Director may take no further action on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.

(3) Unless subrule (1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.

(4) Despite subrule (3), the Executive Director may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

Notifying the parties

3-9 (1) When a decision has been made under Rule 3-8 *[Action after investigation]*, the Executive Director must notify the complainant and the lawyer in writing of the disposition.

(2) When the Executive Director takes no further action on a complaint under Rule 3-8 (1) *[Action after investigation]*, notice to the complainant under subrule (1) must include

(a) the reason for the decision, and

(b) instructions on how to apply for a review of the decision under Rule 3-14 *[Review by Complainants' Review Committee]*.

Extraordinary action to protect public

3-10 (1) An order may be made under this rule with respect to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied, on reasonable grounds, that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) impose conditions or limitations on the practice of a lawyer or on the enrolment of an articled student, or

(b) suspend a lawyer or the enrolment of an articled student.

(3) An order made under subrule (2) or varied under Rule 3-12 *[Procedure]* is effective until the first of

(a) final disposition of any citation authorized under Part 4 *[Discipline]* arising from the investigation, or

(b) rescission, variation or further variation under Rule 3-12.

(4) Subject to an order under subrule (6), when a condition or limitation is imposed under this rule on the practice of a lawyer or the enrolment of an articled student, the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

(5) The Benchers who make an order under subrule (2) (a) must consider the extent to which disclosure of the existence and content of the order should be made public.

(6) Where, in the judgment of the Benchers who made an order under subrule (2) (a), there are extraordinary circumstances that outweigh the public interest in the disclosure of the order, those Benchers may order

(a) that the Executive Director not disclose all or part of the order, or

(b) placing limitations on the content, means or timing of disclosure.

(7) An order made under subrule (6) does not apply to disclosure of information for the purposes of

(a) enforcement of the order,

(b) investigation and consideration of a complaint under this part or Part 4 *[Discipline]* or a proceeding under Part 5 *[Hearings and appeals]*, or

(c) obtaining and executing an order under Part 6 *[Custodianships]*.

(8) The Benchers who make an order under subrule (6) must give written reasons for their decision.

(9) An order under subrule (6) may be made by a majority of the Benchers who made the order under subrule (2) (a).

(10) If the Executive Director discloses the existence of a condition or limitation under subrule (2) (a) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(11) Subrule (10) does not apply to a decision of a hearing panel or a review board.

Medical examination

3-11 (1) This rule applies to a lawyer or articled student who is the subject of

(a) an investigation or intended investigation under Rule 3-5 *[Investigation of complaints]*, or

(b) a citation under Part 4 *[Discipline]*.

(2) If they are of the opinion, on reasonable grounds, that the order is likely necessary to protect the public, 3 or more Benchers may make an order requiring a lawyer or articled student to

(a) submit to an examination by a medical practitioner specified by those Benchers, and

(b) instruct the medical practitioner to report to the Executive Director on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete his or her articles.

(3) The Executive Director may deliver a copy of the report of a medical practitioner under this rule to the Discipline Committee or the Practice Standards Committee.

(4) The report of a medical practitioner under this rule

(a) may be used for any purpose consistent with the Act and these rules, and

(b) is admissible in any hearing or proceeding under the Act and these rules.

Procedure

3-12 (1) The Benchers referred to in Rules 3-10 to 3-12 must not include a member of the Discipline Committee.

(2) Before Benchers take action under Rule 3-10 *[Extraordinary action to protect public]* or 3-11 *[Medical examination]*, there must be a proceeding at which 3 or more Benchers and discipline counsel are present.

(3) The proceeding referred to in subrule (2)

(a) must be initiated by one of the following:

(i) the Discipline Committee;

(ii) the Practice Standards Committee;

(iii) the Executive Director, and

(b) may take place without notice to the lawyer or articled student if the majority of Benchers present are satisfied, on reasonable grounds, that notice would not be in the public interest.

(4) The lawyer or articled student and his or her counsel may be present at a proceeding under this rule.

(5) All proceedings under this rule must be recorded by a court reporter.

[This page is intentionally left blank.]

(6) Subject to the Act and these rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.

(7) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(8) The lawyer or articled student or discipline counsel may request an adjournment of a proceeding conducted under this rule.

(9) Rule 4-40 *[Adjournment]* applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(10) Despite subrule (9), the Executive Director is not required to notify a complainant of a request made under subrule (8).

(11) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

(12) On the application of the lawyer or articled student or discipline counsel, the Benchers who made the order, or a majority of them, may rescind or vary an order made or previously varied under this rule.

(13) On an application under subrule (12) to vary or rescind an order,

(a) both the lawyer or articled student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.

(14) If, for any reason, any of the Benchers who made an order under this rule is unable to participate in the decision on an application under subrule (12), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

Appointment of Complainants' Review Committee

3-13 (1) For each calendar year, the President must appoint a Complainants' Review Committee.

(2) If one or more Benchers have been appointed under section 5 *[Appointed benchers]*, the President must appoint at least one of the appointed Benchers to the Complainants' Review Committee.

Review by Complainants' Review Committee

3-14 (1) A complainant may apply to the Complainants' Review Committee for a review of a decision by the Executive Director under Rule 3-8 *[Action after investigation]* to take no further action after investigating a complaint.

(2) To initiate a review under subrule (1), the complainant must apply to the Complainants' Review Committee within 30 days after the decision is communicated to the complainant.

(3) The chair of the Complainants' Review Committee may extend the time for applying for a review under subrule (2) in extraordinary circumstances beyond the control of the complainant.

(4) The Complainants' Review Committee must

(a) review the documents obtained, collected or produced by the Executive Director under Rules 3-4 to 3-9, and

(b) on the direction of an appointed Bencher member of the Committee, make enquiries of the complainant, the lawyer or any other person.

(5) After its review and enquiries, the Complainants' Review Committee must do one of the following:

(a) confirm the Executive Director's decision to take no further action;

(b) refer the complaint to the Practice Standards Committee or to the Discipline Committee with or without recommendation;

(c) direct the Executive Director to conduct further investigation of the complaint to determine its validity.

(6) The chair of the Complainants' Review Committee must notify the complainant, the lawyer and the Executive Director, in writing, of the Committee's decision under subrule (5) and the reasons for that decision.

(7) If the Complainants' Review Committee keeps minutes of its consideration of a complaint, the Executive Director may disclose all or part of the minutes to the complainant or the lawyer concerned.

Division 2 – Practice Standards

Practice Standards Committee

3-15 (1) For each calendar year, the President must appoint a Practice Standards Committee, including a chair and vice chair, both of whom must be Benchers

(2) The President may remove any person appointed under subrule (1).

(3) At any time, the President may appoint a person to the Practice Standards Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

Objectives

3-16 The objectives of the Practice Standards Committee are to

(a) recommend standards of practice for lawyers,

(b) develop programs that will assist all lawyers to practise law competently, and

(c) identify lawyers who do not meet accepted standards in the practice of law, and recommend remedial measures to assist them to improve their legal practices.

Consideration of complaints

3-17 (1) The Practice Standards Committee must consider any complaint referred to it by the Executive Director, the Complainants' Review Committee or any other Committee, and may instruct the Executive Director to make or authorize any further investigation that the Practice Standards Committee considers desirable.

(2) While considering a complaint, the Practice Standards Committee may also consider any other matter arising out of the lawyer's practice of law.

(3) When considering a complaint, the Practice Standards Committee may do one or more of the following:

(a) decide that no further action be taken on the complaint;

(b) make recommendations to the lawyer, if it considers that the carrying out of the recommendations will improve the lawyer's practice of law;

(c) require the lawyer to meet and discuss the circumstances of the complaint with a lawyer or Bencher designated by the Practice Standards Committee, who must then report to the Committee;

(d) find that there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner and order a practice review in respect of the lawyer's practice;

(e) refer the complaint to the Discipline Committee.

(4) Despite subrule (3) (e), the Practice Standards Committee may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

(5) The Practice Standards Committee is not precluded from taking any of the steps in subrule (3) or (4) because it has previously taken another of those steps in the same matter.

(6) At any time, including after taking an action under Rule 3-19, the Practice Standards Committee may

(a) direct the Executive Director to conduct further investigation of the complaint to determine its validity, or

(b) refer any information that indicates that a lawyer's conduct may constitute a discipline violation to the Executive Director to be treated as a complaint under Division 1.

Practice review

3-18 (1) The Practice Standards Committee may order a practice review of the practice of a lawyer under Rule 3-17 (3) (d) *[Consideration of complaints]* or if the lawyer consents to the review.

(2) When a practice review is ordered, the Executive Director must name one or more qualified persons to conduct the review.

(3) After consultation with the lawyer and the practice reviewers, the Executive Director must set a date, time and place for the practice review.

(4) A lawyer whose practice is being reviewed under subrule (1) must answer any inquiries and provide the practice reviewers with any information, files or records in the lawyer's possession or control as reasonably requested.

(5) After completing a practice review, the practice reviewers must deliver to the Practice Standards Committee and to the lawyer a written report of their findings and recommendations.

(6) A lawyer who is the subject of a practice review may not resign from membership in the Society without the consent of the Practice Standards Committee.

(7) The Practice Standards Committee may, by resolution, direct that a lawyer who is subject to a practice review and would otherwise cease to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to practise law.

(8) A direction under subrule (7) may be made to continue in effect until stated conditions are fulfilled.

(9) When a direction under subrule (7) expires on the fulfillment of all stated conditions or if the Practice Standards Committee rescinds the direction,

(a) the lawyer concerned ceases to be a member of the Society,

(b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.

Action by Practice Standards Committee

3-19 (1) After its consideration of a report received under Rule 3-17 (3) (c) *[Consideration of complaints]* or 3-18 (5) *[Practice review]*, the Practice Standards Committee must

(a) decide that no further action be taken, or

(b) recommend that the lawyer do one or more of the following:

(i) undertake not to practise in specified areas of law;

(ii) complete a remedial program to the satisfaction of the Committee;

(iii) complete, to the satisfaction of the Committee, an examination approved by the Committee or its designate;

(iv) obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;

(v) obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;

(vi) practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;

(vii) take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.

(2) When making recommendations under subrule (1) (b), the Practice Standards Committee may set one or more dates by which the lawyer is to complete the recommendations.

(3) On application by the lawyer or the Executive Director, the Practice Standards Committee may extend the date by which the lawyer is to complete a recommendation.

(4) The Executive Director must reduce the Practice Standards Committee's recommendations to writing and deliver a copy to the lawyer.

(5) The Practice Standards Committee is not precluded from making a recommendation under subrule (1) because it has previously made a recommendation with respect to the same matter.

Conditions or limitations on practice

3-20 (1) If a lawyer refuses or fails to comply with a recommendation under Rule 3-19 (1) (b) *[Action by Practice Standards Committee]* by the time set by the Practice Standards Committee under Rule 3-19 (2), the Committee may make an order imposing conditions and limitations on the lawyer's practice, including but not limited to the following:

(a) specifying areas of law in which the lawyer must not practise;

(b) requiring that the lawyer satisfactorily complete a remedial program;

(c) requiring that the lawyer satisfactorily complete an examination approved by the Committee or its designate;

(d) requiring that the lawyer obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;

(e) requiring that the lawyer obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;

(f) requiring that the lawyer practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;

(g) requiring that the lawyer take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.

(2) At least 30 days before the Practice Standards Committee is to make an order under subrule (1), the Executive Director must deliver to the lawyer notice of the following:

(a) the terms of the proposed order;

(b) the date on which the proposed order is to take effect;

(c) the reasons for the proposed order;

(d) the means by which the lawyer may make submissions to the Practice Standards Committee concerning the proposed order and the deadline for making such submissions before the order is to be considered by the Committee.

(3) A lawyer must comply with an order made under this rule.

(4) On the written application of the lawyer, the Practice Standards Committee may vary or rescind an order made under this rule.

Referral to Discipline Committee

3-21 (1) The Practice Standards Committee may, at any stage, refer to the Discipline Committee any of the following:

(a) all or any part of a practice review report delivered under Rule 3-18 (5) *[Practice review]*;

(b) a report on the manner in which the lawyer has carried out or followed any recommendations or has failed or refused to do so;

(c) an order made under Rule 3-20 *[Conditions or limitations on practice]*;

(d) a report on the failure to comply with an order made under Rule 3-20.

(2) Despite subrule (1), the Practice Standards Committee may refer a report to the chair of the Discipline Committee with respect to allegations that the lawyer has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

(3) The Practice Standards Committee is not precluded from making a referral under this rule because it has previously made a referral with respect to the same matter.

Remedial program

3-22 (1) A remedial program under this Division may include any program intended to improve the lawyer's knowledge and skill in the practice of law, including, but not limited to, one or more of the following:

(a) a continuing legal education course;

(b) a remedial course;

(c) a course offered by an educational institution;

(d) a program of mentoring or supervision by a practising lawyer approved by the Practice Standards Committee.

(2) To form part of a remedial program, a course or program must be approved by the Practice Standards Committee or its designate.

Confidentiality of Practice Standards Committee deliberations

3-23 (1) Subject to subrules (2) to (6) and Rule 3-24 *[Report to complainant]*, the following must be treated as confidential and must not be disclosed except for the purpose of complying with the objects of the Act:

(a) all of the information and documents that form part of the Practice Standards Committee's consideration of a complaint;

(b) any action taken or decision made by the Committee;

(c) any report prepared for or on behalf of the Committee.

(2) If a matter referred to or considered by the Practice Standards Committee has become known to the public, the Executive Director may disclose

(a) the fact that the matter is or has been before the Committee,

(b) the status of the matter, including, if the matter is concluded, the general basis on which it was concluded, and

(c) any additional information necessary to correct inaccurate information.

(2.1) The Executive Director may disclose information about Practice Standards Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.

(2.2) The Executive Director may disclose information about Practice Standards Committee deliberations to a governing body under Rule 2-27.1 *[Sharing information with a governing body]*.

(3) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

(4) With the consent of the lawyer concerned, the Executive Director may disclose the matters referred to in subrule (1) in responding to an enquiry made for the purpose of a potential judicial appointment.

(5) Subrules (6) and (7) apply to

(a) an undertaking under this division that restricts, limits or prohibits the lawyer's practice of law, and

(b) a condition or limitation of a lawyer's practice imposed under Rule 3-20 *[Conditions or limitations on practice]*.

(6) The Executive Director may disclose the fact that a lawyer has given an undertaking or that the Practice Standards Committee has imposed a condition or limitation and the effect on the lawyer's practice.

(7) If the Executive Director discloses the existence of an undertaking, condition or limitation under subrule (6) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time when the undertaking, condition or limitation is no longer in force.

Report to complainant

3-24 The Executive Director must notify the complainant in writing of the Practice Standards Committee's decision under Rule 3-17 *[Consideration of complaints]*, but must not deliver to the complainant a copy of any report or the Committee's recommendations about the lawyer's practice.

Costs

3-25 (1) The Practice Standards Committee may order that a lawyer pay to the Society the cost of a practice review, action or remedial program ordered or allowed under this Division, and may set and extend the date for payment.

(2) A lawyer who is ordered by the Practice Standards Committee, under subrule (1), to pay costs must pay those costs in full by the date set or extended by the Committee.

(3) If any part of the amount owing under subrule (1) remains unpaid by the date set in Rule 2-105 *[Annual practising fees]*, the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

Division 3 – Education

Definitions

3-26 In this division

"continuing education" means activities approved by the Executive Director for credit as professional development;

"credit as a mentor" means a credit of a specified maximum number of hours of continuing education for participation in a mentoring relationship under Rule 3-30 *[Mentoring]*;

"required professional development" means a minimum number of hours of continuing education determined by the Benchers under Rule 3-29 (1) *[Professional development]*;

"small firm" includes

(a) a firm in which not more than 4 lawyers practise law together, and

(b) a lawyer in an arrangement to share expenses with other lawyers who otherwise practises as an independent practitioner, except when the lawyer relies on a firm that is not a small firm to maintain trust accounting and other financial records on the lawyer's behalf,

but does not include

(c) a public body such as government or a Crown corporation, or

(d) a corporation other than a law corporation, or other private body.

Application

3-27 Rule 3-28 *[Practice management course]* applies to a lawyer when

(a) the lawyer begins practice in a small firm or, while practising in a small firm, becomes a signatory on a trust account, unless the lawyer has done both of the following in a Canadian jurisdiction for a total of 2 years or more in the preceding 5 years:

(i) engaged in the practice of law in a small firm;

(ii) been a signatory on a trust account, or

(b) the Practice Standards Committee, by resolution, so orders.

Practice management course

3-28 (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must

(a) successfully complete the practice management course, and

(b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has successfully completed the practice management course.

(2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Professional development

3-29 (1) The Benchers may determine by resolution the minimum number of hours of continuing education that is required of a practising lawyer in each calendar year.

(2) The Benchers may prescribe circumstances in which a class of practising lawyer may be excused from completing all or part of the required professional development.

(3) In each calendar year, a practising lawyer must

(a) complete the required professional development, and

(b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has completed the required professional development.

(4) Despite subrule (3), a practising lawyer need not complete the required professional development in a calendar year in which the lawyer has successfully completed the admission program or the equivalent in another Canadian jurisdiction.

(5) On written application by a practising lawyer who has refrained from the practice of law for a minimum of 60 consecutive days in a calendar year, the Executive Director may reduce the required professional development for that lawyer.

(6) The Executive Director must not reduce the amount of required professional development under subrule (5)

(a) by an amount greater than that proportionate to the part of the calendar year in which the lawyer refrained from the practice of law

(b) by any amount if the lawyer refrained from the practice of law as a result of suspension, disbarment or other disciplinary proceedings.

(7) A lawyer who ceases to be a practising lawyer without completing all required professional development must complete the uncompleted portion in the next calendar year in which the lawyer is a practising lawyer, in addition to the required professional development for that calendar year.

(8) A practising lawyer who is in breach of this Rule has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Mentoring

3-30 (1) The Benchers may allow credit as a mentor, subject to any conditions or limitations that the Benchers consider appropriate.

(2) To qualify to receive credit as a mentor, a lawyer must

(a) be qualified to act as a principal to an articled student under Rule 2-57 (2) and (2.1) *[Principals]*, and

(b) not be the subject of an order of the Credentials Committee under subrule (4) (c).

(3) On a referral by the Executive Director or on the recommendation of the Discipline Committee or the Practice Standards Committee, or on its own motion, the Credentials Committee may inquire into a lawyer's suitability to receive credit as a mentor and may do any of the following:

(a) conduct or authorize any person to conduct an investigation concerning the fitness of the lawyer to act as a mentor;

(b) require the lawyer to appear before the Credentials Committee and to respond to questions of the Committee;

(c) order the lawyer to produce any documents, records or files that the Credentials Committee may reasonably require.

(4) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:

(a) permit the lawyer to receive credit as a mentor;

(b) permit the lawyer to receive credit as a mentor subject to conditions or limitations;

(c) order that the lawyer not receive credit as a mentor.

(5) The onus is on the lawyer to show cause why an order should not be made under subrule (4) (b) or (c).

Late completion of professional development

3-31 (1) A practising lawyer who fails to comply with Rule 3-29 *[Professional development]* by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does all of the following before April 1 of the following year:

(a) completes the remainder of the required professional development;

(b) certifies the completion of the required professional development as required in Rule 3-29 (3) (b);

(c) pays the late completion fee specified in Schedule 1.

(2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.

(3) A practising lawyer who complies with Rule 3-29 (3) (a) *[Professional development]* by December 31 but fails to comply with Rule 3-29 (3) (b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:

(a) certifies the completion of the required professional development as required in Rule 3-29 (3) (b);

(b) pays the late reporting fee specified in Schedule 1.

Failure to complete professional development

3-32 (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-29 *[Professional development]* by April 1 of the following year is suspended until all required professional development is completed and completion is certified to the Executive Director as required by Rule 3-29.

(2) When there are special circumstances, the Practice Standards Committee may, in its discretion, order that

(a) the lawyer not be suspended under subrule (1), or

(b) a suspension under subrule (1) be delayed for a specified period of time.

(3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Practice Standards Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Division 4 – Specialization and Restricted Practice

Definitions

3-33 In this division

"course of study" means an educational program consisting of activities approved by the Executive Director for the purpose of qualifying as a family law mediator, arbitrator or parenting coordinator;

"professional development" means activities approved by the Executive Director for credit as professional development for family law mediators, arbitrators or parenting coordinators.

Advertising

3-34 A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Code of Professional Conduct*, section 4.3 *[Advertising nature of practice]*.

Family law mediators

3-35 (1) A lawyer may act as a family law mediator only if the lawyer

(a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a mediator in a fair and competent manner,

(b) has completed a course of study in family law mediation approved by the Credentials Committee, and

(c) is in compliance with Rule 3-38 (3) *[Professional development for family law neutrals]*.

(2) A lawyer who has been accredited by the Society as a family law mediator may so state in any marketing activity.

(3) The Credentials Committee may allow a lawyer previously accredited by the Society as a family law mediator time in which to comply with any changes to the requirements under subrule (1) (b).

Family law arbitrators

3-36 (1) A lawyer may act as a family law arbitrator only if the lawyer

(a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of an arbitrator in a fair and competent manner,

(b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge or master,

(c) has completed a course of study in family law arbitration approved by the Credentials Committee, and

(d) is in compliance with Rule 3-38 (3) *[Professional development for family law neutrals]*.

(2) A lawyer who has been accredited by the Society as a family law arbitrator may so state in any marketing activity.

(3) The Credentials Committee may allow a lawyer who has previously acted as a family law arbitrator time in which to comply with any changes to the requirements under subrule (1) (c).

Parenting coordinators

3-37 (1) A lawyer may act as a parenting coordinator only if the lawyer

(a) possesses sufficient knowledge, skills and experience relevant to family law to carry out the function of a parenting coordinator in a fair and competent manner,

(b) has, for a total of at least 10 years, engaged in the full-time practice of law or the equivalent in part-time practice or sat as a judge or master, including considerable family law experience dealing with high conflict families with children,

(c) has completed a course of study in parenting coordination approved by the Credentials Committee, and

(d) is in compliance with Rule 3-38 (3) *[Professional development for family law neutrals]*.

(2) A lawyer who has been accredited by the Society as a parenting coordinator may so state in any marketing activity.

(3) The Credentials Committee may allow a lawyer who has previously acted as a parenting coordinator time in which to comply with any changes to the requirements under subrule (1) (c).

Professional development for family law neutrals

3-38 (1) The Credentials Committee may determine the minimum number of hours of professional development that is required of a family law mediator, arbitrator or parenting coordinator in each calendar year.

(2) The requirements under subrule (1) may be different for each of family law mediators, arbitrators or parenting coordinators.

(3) In each calendar year, a family law mediator, arbitrator or parenting coordinator must

(a) complete the required professional development, and

(b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has completed the professional development required under this rule.

(4) Professional development completed under this rule may also be reported under Rule 3-29 *[Professional development]* if it meets the requirements of that rule.

(5) Despite subrule (3), a family law mediator, arbitrator or parenting coordinator need not complete the required professional development in a calendar year in which the lawyer has successfully completed the course of study required under Rules 3-35 to 3-37.

Division 5 – Indemnification

Compulsory professional liability indemnification

3-39 (1) A lawyer must maintain professional liability indemnity coverage on the terms and conditions offered by the Society through the Lawyers Indemnity Fund and pay the indemnity fee under Rule 3-40 *[Annual indemnity fee]*, unless the lawyer is exempt or ineligible under Rule 3-43 *[Exemption from professional liability indemnification]*.

(2) A lawyer is bound by and must comply with the terms and conditions of the professional liability indemnity policy maintained under subrule (1).

(3) As soon as practicable, the Executive Director must notify all governing bodies of any change to professional liability indemnification under this division that affects the limits of liability or scope of coverage.

Compulsory trust protection indemnification

3-39.1 (1) A lawyer must maintain trust protection indemnity coverage on the terms and conditions offered by the Society through the Lawyers Indemnity Fund and pay any fee for trust protection indemnity coverage set under Rule 3-40 *[Annual indemnity fee]*.

(2) A lawyer is bound by and must comply with the terms and conditions of trust protection indemnity coverage maintained under subrule (1).

Annual indemnity fee

3-40 (1) The indemnity fee to be paid under section 23 (1) (c) *[Annual fees and practising certificate]* is calculated as follows:

(a) the appropriate base assessment as specified in Schedule 1; plus

(b) any surcharge for which the lawyer is liable under Rule 3-44 *[Deductible, surcharge and reimbursement]*; minus

(c) any credit to which the lawyer is entitled under Rule 3-42 *[Indemnity fee credit]*.

(2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time indemnity fee specified in Schedule 1.

(3) Subject to subrule (6), a lawyer is not eligible to pay the part-time indemnity fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.

(4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time indemnity fee specified in Schedule 1.

(5) For the purpose of this rule,

(a) the average number of hours per week that a lawyer engages in the practice of law and associated activities is calculated over successive 6 months periods, beginning on the effective date of the undertaking referred to in subrule (2), and

(b) **"associated activities"** includes practice management, administration and promotion and voluntary activities associated with the practice of law.

(6) The Executive Director may, in the Executive Director's discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time indemnity fee or, in extraordinary circumstances, allow the lawyer to pay the part-time indemnity fee despite subrule (3).

Payment of annual indemnity fee by instalments

3-41 (1) A lawyer must pay the indemnity fee in two equal annual instalments as follows:

(a) the first instalment on or before November 30 of the year preceding the year for which it is paid;

(b) the second instalment on or before June 30 of the year for which it is paid or a later date specified by the Executive Director.

(2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) *[Indemnification]* and surrender to the Executive Director his or her practising certificate and any proof of professional liability indemnity coverage issued by the Society.

Indemnity fee credit

3-42 (1) The Benchers may approve an annual indemnity fee credit and set the conditions that a lawyer must meet to be entitled to the credit.

(2) When a lawyer is entitled to an annual indemnity fee credit, the first instalment of the indemnity fee payable by the lawyer is reduced by the amount of the credit.

Exemption from professional liability indemnification

3-43 (1) A lawyer is exempt from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is

(a) not engaged in the practice of law, other than pro bono legal services, anywhere in his or her capacity as a member of the Society, or

(b) employed by one of the following and is not engaged in the practice of law, other than pro bono legal services, except in the course of that employment:

(i) a government department;

(ii) a corporation other than a law corporation;

(iii) a society, trade union or a similar organization.

(2) A lawyer is not exempt under subrule (1) (b) if the lawyer engages in the practice of law, other than pro bono legal services, in any way other than as described in those provisions.

(3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a governing body of which the lawyer is a member.

(4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer

(a) is resident or is deemed resident under the National Mobility Agreement, and

(b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

(5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee.

(6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

Deductible, surcharge and reimbursement

3-44 (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's indemnification program on behalf of the lawyer:

(a) a deductible amount;

(b) any other amount that the lawyer is required to repay or reimburse the indemnity fund under professional liability indemnity policy.

(2) If indemnity has been paid under the Society's indemnification program, the lawyer on whose behalf it is paid must

(a) pay the indemnity surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the indemnity fee, and

(b) if the payment was made under trust protection indemnity coverage, reimburse the Society in full on demand, for all amounts paid.

(3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

Application for indemnity coverage

3-45 (1) A lawyer may apply for indemnity coverage by delivering to the Executive Director

(a) an application for indemnity coverage, and

(b) the prorated indemnity fee as specified in Schedule 2.

(2) A lawyer who is indemnified for part-time practice may apply for coverage for full-time practice by delivering to the Executive Director

(a) an application for full-time indemnity coverage, and

(b) the difference between the prorated full-time indemnity fee specified in Schedule 2 and any payment made for part-time indemnity coverage for the current year.

(3) The Executive Director must not grant the indemnity coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 *[Returning to practice after an absence]*.

Confidentiality of indemnity claims

3-46 (1) In this rule, **"claim"** means a claim or potential claim reported under the professional liability indemnity policy and trust protection indemnity coverage.

(2) Unless permitted by this rule, no one is permitted to disclose any information or records associated with a claim.

(3) The Executive Director may do any of the following:

(a) disclose information about a claim with the consent of the lawyer;

(b) if a claim has become known to the public, disclose

(i) the existence of the claim,

(ii) its subject matter,

(iii) its status, including, if the claim is closed, the general basis on which it was closed, and

(iv) any additional information necessary to correct inaccurate information.

(4) For the purpose of subrule (3) (b) (iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:

(a) opened;

(b) under investigation;

(c) the stage of any litigation commenced;

(d) closed.

(5) In the case of a claim under trust protection indemnity coverage, despite subrule (2), the Executive Director may do any of the following:

(a) publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 *[Discipline]* or 5 *[Hearings and Appeals]* or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;

(b) disclose the name of a lawyer or former lawyer and the circumstances of a claim when

(i) the lawyer's misappropriation is known to the public,

(ii) the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or

(iii) the facts are not disputed or are admitted by the lawyer or former lawyer;

(c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

(6) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Division 6 – Financial Responsibility

Definitions

3-47 In this Division:

"insolvent lawyer" means a lawyer who

(a) is the respondent to an application for a bankruptcy order under section 43,

(b) has made an assignment of all his or her property for the general benefit of the lawyer's creditors under section 49,

(c) has made a proposal under section 50 or 66.12,

(d) has filed a notice of intention to make a proposal under section 50.4, or

(e) has applied for a consolidation order under section 219

of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3;

"monetary judgment" includes

(a) an order nisi of foreclosure,

(b) any certificate, final order or other requirement under a statute that requires payment of money to any party,

(c) a garnishment order under the *Income Tax Act* (Canada) if a lawyer is the tax debtor, and

(d) a judgment of any kind against an MDP in which the lawyer has an ownership interest.

Application

3-48 This Division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

(a) a non-practising member;

(b) a retired member;

(c) an articled student;

(d) a practitioner of foreign law;

(e) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;

(f) a law corporation.

Standards of financial responsibility

3-49 Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:

(a) a monetary judgment is entered against a lawyer who does not satisfy the judgment within 7 days after the date of entry;

(b) a lawyer is an insolvent lawyer;

(c) a lawyer does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-85 (2) (b) *[Compliance audit of books, records and accounts]*;

(d) a lawyer does not deliver a trust report as required under Rule 3-79 *[Trust report]* or 3-82 (5) *[Accountant's report]*;

(e) a lawyer does not report and pay the trust administration fee to the Society as required under Rule 2-110 *[Trust administration fee]*;

(f) a lawyer does not produce electronic accounting records when required under the Act or these rules in a form required under Rule 10-3 (2) *[Records]*.

Failure to satisfy judgment

3-50 (1) A lawyer against whom a monetary judgment is entered and who does not satisfy the judgment within 7 days after the date of entry must immediately notify the Executive Director in writing of

(a) the circumstances of the judgment, including whether the judgment creditor is a client or former client of the lawyer, and

(b) his or her proposal for satisfying the judgment.

(2) Subrule (1) applies whether or not any party has commenced an appeal from the judgment.

(3) If a lawyer fails to deliver a proposal under subrule (1) (b) that is adequate in the discretion of the Executive Director, the Executive Director may refer the matter to the Discipline Committee or the chair of the Discipline Committee.

Insolvent lawyer

3-51 (1) A lawyer who becomes an insolvent lawyer must immediately

(a) notify the Executive Director in writing that he or she has become an insolvent lawyer, and

(b) deliver to the Executive Director

(i) a copy of all material filed in the proceedings referred to in the definition,

(ii) all information about any debts to a creditor who is or has been a client of the lawyer,

(iii) all information about any debt that arose from the lawyer's practice of law, and

(iv) any other information, including copies of any books, records, accounts and other documents and information in his or her possession that are relevant to the proceedings referred to in the definition that the Executive Director may request.

(2) An insolvent lawyer who becomes bankrupt has conducted himself or herself in a manner unbecoming the profession in either of the following circumstances:

(a) the lawyer's wilful neglect of creditors, financial irresponsibility or personal extravagance contributed to the bankruptcy;

(b) the lawyer fails or refuses to take reasonable steps to obtain a discharge from the bankruptcy within a reasonable time.

(3) An insolvent lawyer must not operate a trust account except with

(a) the permission of the Executive Director, and

(b) a second signatory who is a practising lawyer, not an insolvent lawyer and approved by the Executive Director.

(4) Any lawyer who becomes an undischarged bankrupt must resign any directorships in corporations, including law corporations.

Consideration by Discipline Committee

3-52 (1) After receiving the information and material required under Rule 3-51 (1) *[Insolvent lawyer]*, the Executive Director may refer an insolvent lawyer to the Discipline Committee.

(2) The Executive Director may refer any matter for decision under this Division to the Discipline Committee.

(3) When the Executive Director refers a matter to the Discipline Committee under this Division, the Committee may make or authorize any investigations it considers desirable.

(4) The Discipline Committee may suspend or impose conditions and limitations on the practice of a lawyer that it considers does not meet the standards of financial responsibility established under section 32 *[Financial responsibility]*.

(5) The Discipline Committee must not suspend a lawyer or impose conditions and limitations on the practice of a lawyer under subrule (4) until it has notified the lawyer of the reasons for the proposed action and given the lawyer a reasonable opportunity to make representations about those reasons.

(6) The Discipline Committee may rescind the suspension or vary or remove conditions and limitations imposed under subrule (4).

(7) When the Discipline Committee imposes conditions or limitations on the practice of a lawyer under subrule (4), the Executive Director may disclose the fact that the conditions or limitations apply and the nature of the conditions or limitations.

(8) If the Executive Director discloses the existence of conditions or limitations under subrule (7) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the conditions or limitations cease to be in force.

Division 7 – Trust Accounts and Other Client Property

Definitions

3-53 In this division,

"cash" means

(a) coins referred to in section 7 of the *Currency Act* (Canada),

(b) notes intended for circulation in Canada issued by the Bank of Canada under the *Bank of Canada Act*, and

(c) coins or bank notes of countries other than Canada;

"cash receipt book" means the book of duplicate receipts referred to in Rule 3-70 (1) *[Records of cash transactions]*;

"client" includes any beneficial owner of funds or valuables received by a lawyer in connection with the lawyer's practice;

"compliance audit" means an examination of a lawyer's books, records and accounts and the answering of questions by lawyers ordered under Rule 3-85 *[Compliance audit of books, records and accounts]*;

"disbursements" means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

"expenses" means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

"financial institution" means

(a) an authorized foreign bank within the meaning of section 2 *[Definitions]* of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,

(b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,

(c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),

(d) a financial services co-operative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, SQ 2000, c. 77, other than a caisse populaire,

(e) a company to which the *Trust and Loan Companies Act* (Canada) applies,

(f) a trust company or loan company regulated by a provincial or territorial Act,

(g) a ministry, department or agent of Her Majesty in right of Canada or of a province or territory where the ministry, department or agent accepts deposit liabilities in the course of providing financial services to the public, or

(h) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

"lawyer" includes a law firm;

"professional fees" means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm;

"public body" means

(a) a ministry, department or agent of Her Majesty in right of Canada or of a province or territory,

(b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory, or

(c) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

Personal responsibility

3-54 (1) A lawyer must account in writing to a client for all funds and valuables received on behalf of the client.

(2) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm.

(3) A lawyer is personally responsible to ensure that the duties and responsibilities under this division are carried out, including when the lawyer

(a) is authorized by the firm or lawyer through which the lawyer practises law to open, maintain, or deal with funds in a trust or general account, or

(b) delegates to another person any of the duties or responsibilities assigned to a lawyer under this division.

Fiduciary property

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.

Designated savings institutions

3-56 Subject to Rule 3-57 *[Removal of designation]*, a savings institution is a designated savings institution within the meaning of section 33 (3) (b) *[Trust accounts]* if it has an office in British Columbia accepting demand deposits and is insured by

(a) the Canada Deposit Insurance Corporation, or

(b) the Credit Union Deposit Insurance Corporation of British Columbia.

Removal of designation

3-57 (1) The Executive Committee may declare, by resolution, that a savings institution is not or ceases to be a designated savings institution within the meaning of section 33 (3) (b) *[Trust accounts]*.

(2) A lawyer who holds trust funds in a savings institution that is not or ceases to be a designated savings institution must immediately transfer those funds into a designated savings institution.

(3) Subrule (2) does not apply if the lawyer has written instructions from the client to the contrary.

Deposit of trust funds

3-58 (1) Subject to subrule (2) and Rule 3-62 *[Cheque endorsed over]*, a lawyer who receives trust funds must deposit the funds in a pooled trust account as soon as practicable.

(2) Despite subrule (1), a lawyer who receives trust funds with instructions to place the funds otherwise than in a pooled trust account may place the funds in a separate trust account in accordance with section 62 (5) *[Interest on trust accounts]* and Rule 3-61 *[Separate trust account]*.

(3) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.

(4) As soon as it is practicable, a lawyer who deposits into a trust account funds that belong partly to a client and partly to the lawyer or the lawyer's firm must withdraw the lawyer's or firm's funds from the trust account.

Trust account only for legal services

3-58.1 (1) 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.

(2) A lawyer or law firm must 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.

Cash transactions

3-59 (1) This rule 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;

(c) transferring funds or securities by any means.

(2) Despite subrule (1), this rule 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

(a) [rescinded]

(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.

(3) While engaged in an activity referred to in subrule (1), 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.

(4) Despite subrule (3), a lawyer or law firm may 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.

(5) A lawyer or law firm that receives or accepts cash in an aggregate amount greater than $7,500 under subrule (4) must make any refund out of such money in cash.

(6) A lawyer or law firm that receives cash, unless permitted under this rule to accept it, 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.

(7) For the purposes of this rule, a lawyer or law firm that receives or accepts cash in foreign currency is deemed to have received or accepted the cash converted into Canadian dollars based on

(a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Noon Rates in effect at the relevant time, or

(b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day.

Pooled trust account

3-60 (1) The following provisions apply to a pooled trust account:

(a) the account must be kept in a designated savings institution;

(b) the account must be readily available for the lawyer to draw on;

(c) the lawyer must periodically receive

(i) cancelled cheques, and

(ii) bank statements for the account covering all transactions on the account;

(d) the savings institution must agree with the lawyer to pay interest to the Foundation in accordance with subrule (3);

(e) the account must be kept in the name of

(i) the lawyer, or

(ii) the firm of which the lawyer is a partner, employee, member or voting shareholder;

(f) the account must be designated as a "trust" account on the records of the savings institution and of the lawyer.

(2) The cancelled cheques and bank statements referred to in subrule (1) (c) may be received or retained by the lawyer in an electronic form acceptable to the Executive Director.

(3) A lawyer who opens or maintains a pooled trust account must

(a) instruct the savings institution in writing to remit the net interest earned on the account to the Foundation at least quarterly, and

(b) if the lawyer opens or maintains the account at a bank or trust company, notify the institution in writing that the account is a trust account containing the funds of more than one client.

(4) Subject to subrule (5) and Rule 3-74 *[Trust shortage]*, a lawyer must not deposit to a pooled trust account any funds other than trust funds or funds that are fiduciary property.

(5) A lawyer may maintain in a pooled trust account up to $300 of the lawyer's own funds.

Separate trust account

3-61 (1) A separate trust account must be

(a) an interest-bearing trust account or a savings, deposit, investment or similar form of account in a savings institution in British Columbia, and

(b) designated as a "trust" account on the records of the savings institution and of the lawyer.

(2) An account referred to in subrule (1) must be

(a) in the name of

(i) the lawyer,

(ii) the firm of which the lawyer is a partner, employee, member or voting shareholder, or

(iii) the trust, or

(b) identified by a number that identifies the client on inspection of the lawyer's books and accounts.

(3) Subject to Rule 3-74 *[Trust shortage]*, a lawyer must not deposit to a separate trust account any funds other than trust funds or funds that are fiduciary property.

Cheque endorsed over

3-62 If a lawyer receives a cheque payable to the lawyer in trust and, in the ordinary course of business, pays the cheque to a client, or to a third party on behalf of the client, in the form in which it was received, the lawyer must keep a written record of the transaction and retain a copy of the cheque.

Trust account balance

3-63 A lawyer must at all times maintain sufficient funds on deposit in each pooled or separate trust account to meet the lawyer's obligations with respect to funds held in trust for clients.

Withdrawal from trust

3-64 (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are

(a) properly required for payment to or on behalf of a client or to satisfy a court order,

(b) the property of the lawyer,

(c) in the account as the result of a mistake,

(d) paid to the lawyer to pay a debt of that client to the lawyer,

(e) transferred between trust accounts,

(f) due to the Foundation under section 62 (2) (b) *[Interest on trust accounts]*, or

(g) unclaimed trust funds remitted to the Society under Division 8 *[Unclaimed Trust Money]*.

(2) The Executive Director may authorize a lawyer to withdraw trust funds for a purpose not specified in subrule (1).

(3) No payment from trust funds may be made unless

(a) trust accounting records are current, and

(b) there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.

(4) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except

(a) by cheque as permitted by subrule (5) or Rule 3-65 (1.1) (a) *[Payment of fees from trust]*,

(b) by electronic transfer as permitted by Rule 3-64.1 *[Electronic transfers from trust]*,

(c) by instruction to a savings institution as permitted by subrule (9), or

(d) in cash if required under Rule 3-59 (5) or (6) *[Cash transactions]*.

(5) A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must

(a) withdraw the funds with a cheque marked "Trust,"

(b) not make the cheque payable to "Cash" or "Bearer," and

(c) ensure that the cheque is signed by a practising lawyer.

(6) to (8) [rescinded]

(9) A lawyer may instruct a savings institution to pay to the Foundation under Rule 3-60 *[Pooled trust account]* the net interest earned on a pooled trust account.

(10) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

Electronic transfers from trust

3-64.1 (1) In this rule, **"requisition"** means an electronic transfer of trust funds requisition, in a form approved by the Discipline Committee.

(2) A lawyer may withdraw funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:

(a) the electronic funds transfer system used by the lawyer must not permit an electronic transfer of funds unless,

(i) a person other than the lawyer, using a password or access code, enters data into the electronic funds transfer system describing the details of the transfer, and

(ii) the lawyer, using another password or access code, enters data into the electronic funds transfer system authorizing the financial institution to carry out the transfer;

(b) the lawyer using an electronic funds transfer system to withdraw trust funds must not

(i) disclose the lawyer's password or access code associated with the electronic funds transfer system to another person, or

(ii) permit another person, including a non-lawyer employee, to use the lawyer's password or access code to gain such access;

(c) the electronic funds transfer system used by the lawyer must produce, no later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation in writing from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received;

(d) the confirmation required in paragraph (c) must contain all of the following:

(i) the name of the person authorizing the transfer;

(ii) the amount of the transfer;

(iii) the trust account name, trust account number and name of the financial institution from which the money is drawn;

(iv) the name, branch name and address of the financial institution where the account to which money is transferred is kept;

(v) the name of the person or entity in whose name the account to which money is transferred is kept;

(vi) the number of the account to which money is transferred;

(vii) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution;

(viii) the time and date that the confirmation in writing from the financial institution was sent to the lawyer authorizing the transfer;

(e) before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, the lawyer must complete and sign a requisition authorizing the transfer;

(f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the requisition;

(g) the lawyer must retain in the lawyer's records a copy of

(i) the requisition

(ii) the confirmation required in paragraph (c).

(3) Despite subrule (2) (a), a lawyer who practises law as the only lawyer in a law firm and who has no non-lawyer staff may transfer funds electronically if the lawyer personally uses

(a) one password or access code to enter data into the electronic funds transfer system describing the details of the transfer, and

(b) a different password or access code to enter data into the electronic funds transfer system authorizing the financial institution to carry out the transfer.

(4) No later than the close of the banking day immediately after the day on which the confirmation required in subsection (2) (c) is sent to a lawyer, the lawyer must

(a) produce a printed copy of the confirmation,

(b) compare the printed copy of the confirmation and the signed requisition relating to the transfer to verify that the money was drawn from the trust account as specified in the signed requisition,

(c) indicate on the printed copy of the confirmation

(i) the name of the client,

(ii) the subject matter of the file, and

(iii) any file number

in respect of which the money was drawn from the trust account, and

(d) after complying with paragraphs (a) to (c), sign, date and retain the printed copy of the confirmation.

(5) A transaction in which a lawyer personally uses an electronic funds transfer system to authorize a financial institution to carry out a transfer of trust funds is not exempted under Rule 3-101 (c) (ii) *[Exemptions]* from the client identification and verification requirements under Rules 3-102 to 3-106.

(6) Despite subrules (2) to (4), a lawyer may withdraw funds from a pooled or separate trust account by electronic transfer using the electronic filing system of the land title office for the purpose of the payment of property transfer tax on behalf of a client, provided that the lawyer

(a) retains in the lawyer's records a copy of

(i) all electronic payment authorization forms submitted to the electronic filing system,

(ii) the property transfer tax return, and

(iii) the transaction receipt provided by the electronic filing system,

(b) digitally signs the property transfer tax return in accordance with the requirements of the electronic filing system, and

(c) verifies that the money was drawn from the trust account as specified in the property transfer tax return.

Electronic deposits into trust

3-64.2 A lawyer must not receive money into a trust account by means of electronic transfer unless the following conditions are met:

(a) the lawyer must obtain a confirmation in writing providing details of the transfer from the financial institution or the remitter of the funds within 2 banking days of the deposit;

(b) the deposit must generate sufficient documentation to enable the lawyer to meet the record-keeping requirements under this division.

Payment of fees from trust

3-65 (1) In this rule, **"fees"** means fees for services performed by a lawyer or a non-lawyer member of the lawyer's MDP, charges, disbursements and taxes on those fees, charges and disbursements.

(1.1) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of the lawyer's fees must withdraw the funds

(a) with a cheque payable to the lawyer's general account, or

(b) by electronic transfer in accordance with Rule 3-64.1 *[Electronic transfers from trust]* to the lawyer's general account.

(2) A lawyer who withdraws or authorizes the withdrawal of trust funds under subrule (1.1) in payment for the lawyer's fees must first prepare a bill for those fees and immediately deliver the bill to the client.

(3) A bill or letter is delivered within the meaning of this rule if it is

(a) mailed to the client at the client's last known address,

(b) delivered personally to the client,

(c) transmitted by electronic facsimile to the client at the client's last known electronic facsimile number,

(d) transmitted by electronic mail to the client at the client's last known electronic mail address, or

(e) made available to the client by other means agreed to in writing by the client.

(4) As an exception to subrule (2), a lawyer need not deliver a bill if the client instructs the lawyer otherwise in writing.

(5) A lawyer must not take fees from trust funds when the lawyer knows that the client disputes the right of the lawyer to receive payment from trust funds, unless

(a) the client has agreed that the lawyer may take funds from trust to satisfy the lawyer's account and the client has acknowledged that agreement in writing or the lawyer has confirmed the client's agreement in a letter delivered to the client,

(b) a bill has been delivered under subrule (3), whether or not the client has directed otherwise under subrule (4),

(c) the lawyer has given the client written notice that the fees will be taken from trust unless, within one month, the client commences a fee review under section 70 *[Review of a lawyer's bill]* or an action disputing the lawyer's right to the funds, and

(d) the client has not commenced a fee review under section 70 or an action at least one month after written notice is given under paragraph (c).

(6) Despite subrule (5), if a lawyer knows that the client disputes a part of the lawyer's account, the lawyer may take from trust funds fees that are not disputed.

(7) A lawyer must not take fees from trust funds impressed with a specific purpose, if the object of the trust has not been fulfilled, without the express consent of the client or another person authorized to give direction on the application of the trust funds.

Withdrawal from separate trust account

3-66 (1) A lawyer who makes or authorizes the withdrawal of funds from a separate trust account in respect of which cancelled cheques and bank statements are not received from the savings institution monthly and kept in the lawyer's records must first transfer the funds into his or her pooled trust account.

(2) Rules 3-64 to 3-65 apply to funds that have been transferred into a pooled trust account in accordance with subrule (1).

(3) A lawyer who disburses trust funds received with instructions under Rule 3-58 (2) *[Deposit of trust funds]* must keep a written record of the transaction.

Accounting records

3-67 (1) In this rule, **"supporting document"** includes

(a) validated deposit receipts,

(b) periodic bank statements,

(c) passbooks,

(d) cancelled and voided cheques,

(e) bank vouchers and similar documents,

(f) vendor invoices, and

(g) bills for fees, charges and disbursements.

(2) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this division.

(3) A lawyer must maintain accounting records, including supporting documents, in

(a) legibly handwritten form, in ink or other duplicated or permanent form,

(b) printed form, or

(c) an electronic form in compliance with subrule (4).

(4) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that

(a) all records and documents are maintained in a way that will allow compliance with Rule 10-3 (2) *[Records]*,

(b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and

(c) there is a clear indication, with respect to each financial transaction, of

(i) the date of the transaction,

(ii) the individual who performed the transaction, and

(iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.

(5) A lawyer must record transactions in accounting records in chronological order and in an easily traceable form.

(6) A lawyer must retain all supporting documents for both trust and general accounts.

Trust account records

3-68 A lawyer must maintain at least the following trust account records:

(a) a book of entry or data source showing all trust transactions, including the following:

(i) the date and amount of receipt or disbursements of all funds;

(ii) the source and form of the funds received;

(iii) the identity of the client on whose behalf trust funds are received or disbursed;

(iv) the cheque or voucher number for each payment out of trust;

(v) the name of each recipient of money out of trust;

(b) a trust ledger, or other suitable system, showing separately for each client on whose behalf trust funds have been received, all trust funds received and disbursed, and the unexpended balance;

(c) records

(i) showing each transfer of funds between clients' trust ledgers, including the name and number of both the source file and the destination file,

(ii) containing an explanation of the purpose for which each transfer is made, and

(iii) containing the lawyer's written approval of the transfer;

(d) the monthly trust reconciliations required under Rule 3-73 *[Monthly trust reconciliation]*, and any documents prepared in support of the reconciliations;

(e) a current listing of all valuables held in trust for each client.

General account records

3-69 (1) A lawyer must maintain at least the following general account records:

(a) a book of original entry or data source showing

(i) the amount, date of receipt and the source of all general funds received, and

(ii) the cheque or voucher number, the amount, date and the name of each recipient of each disbursement;

(b) an accounts receivable ledger or other suitable system to record, for each client, showing all transactions including

(i) transfers from a trust account,

(ii) other receipts from or on behalf of the client, and

(iii) the balance owed by the client.

(2) As an exception to subrule (1) (b), a lawyer may enter the information required under that subrule on the trust ledger or other suitable system referred to in Rule 3-68 *[Trust account records]*, provided that the entry is clearly identified and distinct from trust account information.

Records of cash transactions

3-70 (1) A lawyer who receives any amount of cash for a client must maintain a cash receipt book of duplicate receipts and make a receipt in the cash receipt book for any amount of cash received.

(2) Each receipt in the cash receipt book must

(a) be signed by

(i) the lawyer who receives the cash or an individual authorized by that lawyer to sign the receipt on the lawyer's behalf, and

(ii) the person from whom the cash is received,

(b) identify each of the following:

(i) the date on which cash is received;

(ii) the person from whom cash is received;

(iii) the amount of cash received;

(iv) the client for whom cash is received;

(v) the number of the file in respect of which cash is received, and

(c) indicate all dates on which the receipt was created or modified.

(3) A lawyer who withdraws funds in cash from a pooled or separate trust account must make a record of the transaction signed by the person to whom the cash was paid and identifying:

(a) the date on which the cash was withdrawn,

(b) the amount of cash withdrawn,

(c) the name of the client in respect of whom the cash was withdrawn,

(d) the number of the file in respect of which the cash was withdrawn, and

(e) the name of the person to whom the cash was paid, and

(f) all dates on which the record was created or modified.

(4) The cash receipt book must be kept current at all times.

(5) A lawyer is not in breach of this rule if a receipt is not signed by the person from whom the cash is received if the lawyer makes reasonable efforts to obtain the signature of that person.

Billing records

3-71 (1) A lawyer must keep file copies of all bills delivered to clients or persons charged

(a) showing the amounts and the dates charges are made,

(b) indicating all dates on which the bill was created or modified,

(c) identifying the client or person charged, and

(d) filed in chronological, alphabetical or numerical order.

(2) For the purpose of subrule (1), a bill includes a receipt issued under Rule 3-72 (3) *[Recording transactions]*.

Recording transactions

3-72 (1) A lawyer must record each trust or general transaction promptly, and in any event not more than

(a) 7 days after a trust transaction, or

(b) 30 days after a general transaction.

(2) A lawyer must record in his or her general account records all funds

(a) received by the lawyer expressly on account of fees earned and billed or disbursements made by the day the funds are received,

(b) subject to a specific agreement with the client allowing the lawyer to treat them as his or her own funds, or

(c) that the lawyer is entitled to keep whether or not the lawyer renders any services to or makes any disbursements on behalf of that client.

(3) A lawyer who receives funds to which subrule (2) applies must immediately deliver a bill or issue to the client a receipt for the funds received, containing sufficient particulars to identify the services performed and disbursements incurred.

(4) As an exception to subrule (1), a lawyer must record the receipt of interest on a separate trust account within 30 days of payment or of notice that funds have been credited to the account.

Monthly trust reconciliation

3-73 (1) A lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total of balances held in the trust bank account or accounts, together with the reasons for any differences between the totals.

(2) The monthly trust reconciliation must be supported by

(a) a detailed monthly listing showing the unexpended balance of trust funds held for each client, and identifying each client for whom trust funds are held,

(b) a detailed monthly bank reconciliation for each pooled trust account,

(c) a listing of balances of each separate trust account or savings, deposit, investment or similar form of account, identifying the client for whom each is held,

(d) a listing of balances of all other trust funds received pursuant to Rule 3-58 (2) *[Deposit of trust funds]*, and

(e) a listing of valuables received and delivered and the undelivered portion of valuables held for each client.

(3) Each monthly trust reconciliation prepared under subrule (1) must include the date on which it was prepared.

(4) A lawyer must retain for at least 10 years

(a) each monthly trust reconciliation prepared under subrule (1), and

(b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.

(5) A lawyer must make the trust reconciliation required by this rule not more than 30 days after the effective date of the reconciliation.

Trust shortage

3-74 (1) A lawyer who discovers a trust shortage must immediately pay enough funds into the account to eliminate the shortage.

(2) A lawyer must immediately make a written report to the Executive Director, including all relevant facts and circumstances, if the lawyer

(a) discovers a trust shortage greater than $2,500, or

(b) is or will be unable to deliver up, when due, any trust funds held by the lawyer.

(3) A trust shortage referred to in this rule includes a shortage caused by service charges, credit card discounts and bank errors.

Retention of records

3-75 (1) In this rule, **"records"** means the records referred to in Rules 3-67 to 3-71.

(2) A lawyer must keep his or her records for as long as the records apply to money held as trust funds or to valuables held in trust for a client and for at least 10 years from the final accounting transaction or disposition of valuables.

(3) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for at least 3 years from the final accounting transaction or disposition of valuables.

Executive Director's modification

3-76 (1) Having regard to the accounting and storage systems employed by a specific lawyer, the Executive Director may modify the requirements of that lawyer under Rules 3-68 to 3-71 or 3-75 *[Retention of records]*.

(2) The Executive Director may, at any time, cancel or amend a modification under subrule (1).

(3) The Executive Director must make a modification under subrule (1) or a cancellation or amendment of a modification under subrule (2) in writing.

(4) A lawyer who receives a written modification from the Executive Director under subrule (1) must retain it and any amendment under subrule (2) for as long as

(a) the books, records and accounts to which it relates are retained, or

(b) the lawyer would have been required to retain the books, records and accounts to which it relates, but for the modification and any amendment.

Annual CDIC report

3-77 A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must file an annual report for each account maintained by the lawyer with that institution in accordance with section 3 (3) of the Schedule to the *Canada Deposit Insurance Corporation Act*, so that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.

Lawyer's right to claim funds

3-78 Nothing in this division deprives a lawyer of any recourse or right, whether by way of lien, set-off, counterclaim, charge or otherwise, against

(a) funds standing to the credit of a client in a trust account, or

(b) valuables held for a client.

Trust report

3-79 (1) Subject to subrules (4) and (6), a lawyer must deliver to the Executive Director completed trust reports for reporting periods of 12 months covering all the time that the lawyer is a member of the Society.

(2) The date on which a firm ceases to practise law is the end of a reporting period.

(3) A lawyer must deliver a completed trust report to the Executive Director within 3 months of the end of each reporting period.

(4) On a written request made before the due date of a trust report, the Executive Director may allow a lawyer to submit a trust report covering a time period other than 12 months.

(5) A trust report delivered to the Executive Director under this rule must

(a) be in a form approved by the Discipline Committee,

(b) be complete to the satisfaction of the Executive Director, and

(c) include all signatures required in the form.

(6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-43 *[Exemption from professional liability indemnification]* from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has

(a) not received any funds in trust,

(b) not withdrawn any funds held in trust, and

(c) complied with this division.

Late filing of trust report

3-80 (1) A lawyer who does not deliver a trust report as required under Rule 3-79 *[Trust report]* or 3-82 (5) *[Accountant's report]* is in breach of these rules.

(2) A lawyer who fails to deliver a trust report by the date required under Rule 3-79 *[Trust report]* or 3-82 (5) *[Accountant's report]* is deemed to have been in compliance with the rules during the period of time that the lawyer was late in delivering the report if the lawyer delivers the following to the Executive Director within 30 days of the due date:

(a) the required report;

(b) the late fee specified in Schedule 1.

(3) A lawyer who does not deliver a trust report for 30 days after it is required under Rule 3-79 *[Trust report]* or 3-82 (5) *[Accountant's report]* is liable to an assessment of $400 per month or part of a month until the report is delivered.

(4) When there are special circumstances, the Executive Director may, on application and in his or her discretion, waive payment of all or part of an assessment made under this rule unconditionally or on any conditions that the Executive Director considers appropriate.

Failure to file trust report

3-81 (1) Subject to subrules (3) and (4), a lawyer who does not deliver a trust report under Rule 3-79 *[Trust report]* or 3-82 (5) *[Accountant's report]* for 60 days after it is required, is suspended until the report is completed to the satisfaction of the Executive Director and delivered as required.

(2) A trust report is not delivered for the purposes of subrules (1) unless all explanations of exceptions required by the Executive Director are delivered to the Executive Director.

(3) When there are special circumstances, the Discipline Committee may, in its discretion, order that

(a) a lawyer not be suspended under subrule (1), or

(b) a suspension under subrule (1) be delayed for a specified period of time.

(4) At least 30 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (3) and the deadline for making such an application before the suspension is to take effect.

(5) If a lawyer has not delivered a trust report after it is required, the Executive Director may do either or both of the following:

(a) engage or assign a qualified CPA to complete the trust report;

(b) order an examination of the lawyer's books, records and accounts under Rule 3-85 *[Compliance audit of books, records and accounts]*.

(6) The Discipline Committee may order that a lawyer pay to the Society all or part of the costs associated with the trust report referred to in subrule (5) (a).

(7) A lawyer who is ordered by the Discipline Committee, under subrule (6), to pay costs must pay those costs in full by the date set or extended by the Committee.

(8) If any part of the amount owing under subrule (6) remains unpaid by the date set in Rule 2-105 *[Annual practising fee]*, the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

Accountant's report

3-82 (1) The Executive Director may require a lawyer who is required to deliver a trust report under Rule 3-79 *[Trust report]* or a lawyer or former lawyer who is required to deliver a trust report under Rule 3-84 *[Former lawyers]* to deliver as part of the report required under the relevant rule, an accountant's report completed and signed by a qualified CPA.

(2) The Executive Director must specify the matters to be included in the accountant's report referred to in subrule (1) and the time within which it must be delivered to the Executive Director.

(3) Despite subrule (1), an accountant's report must not be completed and signed by any person determined by the Executive Director to be ineligible to do so.

(4) Despite subrule (1), on application by the lawyer, the Executive Director may allow a person without the credentials referred to in subrule (1) to complete and sign an accountant's report if the Executive Director is satisfied that

(a) the person has adequate accounting credentials, and

(b) no person qualified under subrule (1) is reasonably available to the lawyer.

(5) The Executive Director may at any time require a lawyer to deliver a new accountant's report completed and signed by a person who has the qualifications specified by the Executive Director if the lawyer's accountant's report was completed and signed by a person

(a) without the credentials referred to in subrule (1), or

(b) ineligible under subrule (3).

(6) If the Executive Director requires a new accountant's report under subrule (5), the lawyer must deliver the report within 3 months of notice of the requirement being sent by the Executive Director.

Exceptions and qualifications

3-83 (1) The trust report of a lawyer who has not complied with this division must state the exceptions and qualifications, together with an explanation of the circumstances of and reasons for them.

(2) The Executive Director may, following a review of a trust report with exceptions and qualifications, accept the lawyer's explanation and reasons

(a) without condition, in which case the lawyer is deemed to have complied with Rule 3-79 *[Trust report]*, or

(b) subject to the lawyer fulfilling accounting conditions specified by the Executive Director, in which case, on fulfillment of those conditions, the lawyer is deemed to have complied with Rule 3-79.

Former lawyers

3-84 (1) A former lawyer must deliver a trust report as required under Rule 3-79 *[Trust report]* for any period during which the former lawyer was a member of the Society.

(2) If a former lawyer does not deliver a trust report as required under subrule (1), an assessment under Rule 3-80 *[Late filing of trust report]* applies.

Compliance audit of books, records and accounts

3-85 (1) The Executive Director may at any time order a compliance audit of the books, records and accounts of a lawyer for the purpose of determining whether the lawyer meets standards of financial responsibility established under this Part, including but not limited to maintaining books, records and accounts in accordance with this division.

(2) When an order is made under subrule (1),

(a) the Executive Director must designate one or more persons to conduct the compliance audit, and

(b) on notification of the order, the lawyer concerned must immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and must provide any explanations required by the person designated under paragraph (a) for the purpose of completing the compliance audit.

Failure to produce records on compliance audit

3-86 (1) Subject to subrules (2) and (3), a lawyer who does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-85 (2) (b) *[Compliance audit of books, records and accounts]* is suspended until the records are produced, copying is permitted and explanations are provided to the satisfaction of the Executive Director.

(2) When there are special circumstances, the Discipline Committee may, in its discretion, order that

(a) a lawyer not be suspended under subrule (1), or

(b) a suspension under this rule be delayed for a specified period of time.

(3) At least 7 days before a suspension under this rule can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Disposition of files, trust money and other documents and valuables

3-87 (1) Before leaving a firm in British Columbia, a lawyer must advise the Executive Director in writing of his or her intended disposition of all of the following that relate to the lawyer's practice in British Columbia and are in the lawyer's possession or control:

(a) open and closed files;

(b) wills and wills indices;

(c) titles and other important documents and records;

(d) other valuables;

(e) trust accounts and trust funds;

(f) fiduciary property.

(2) Within 30 days after withdrawing from the practice of law in British Columbia, a lawyer or former lawyer must confirm to the Executive Director in writing that

(a) the documents and property referred to in subrule (1) (a) to (d) have been disposed of, and any way in which the disposition differs from that reported under subrule (1),

(b) all trust accounts referred to in subrule (1) (e) have been closed and that

(i) all the balances have been

(A) remitted to the clients or other persons on whose behalf they were held,

(B) transferred to another lawyer with written instructions concerning the conditions attaching to them, or

(C) paid to the Society under Rule 3-89 *[Payment of unclaimed trust money to the Society]*, and

(ii) any net interest earned on a pooled trust account has been remitted to the Foundation in accordance with this division, and

(c) the lawyer or former lawyer has notified all clients and other persons for whom the lawyer is or potentially may become a personal representative, executor, trustee or other fiduciary regarding the lawyer or former lawyer's withdrawal from practice and any change in his or her membership status.

(3) A law corporation must confirm to the Executive Director as required under subrule (2) within 30 days of

(a) cancellation of its permit under Part 9 *[Incorporation and Limited Liability Partnerships]*, and

(b) ceasing to provide legal services.

(4) The Executive Director may, on application in writing by the lawyer, former lawyer or law corporation, extend the time limit referred to in subrule (1), (2) or (3) or, if in the opinion of the Executive Director it is in the public interest, relieve the lawyer, former lawyer or law corporation of any of the requirements of those subrules.

(5) On an enquiry, the Executive Director may disclose information collected under this rule if satisfied that

(a) the person enquiring has a bona fide reason to obtain the information, and

(b) disclosure of the information would not be an unreasonable invasion of anyone's privacy.

Division 8 – Unclaimed Trust Money

Definition

3-88 In this division:

"efforts to locate" means steps that are reasonable and adequate in all the circumstances, including the amount of money involved;

"lawyer" includes a law firm.

Payment of unclaimed trust money to the Society

3-89 (1) A lawyer who has held money in trust on behalf of a person whom the lawyer has been unable to locate for 2 years may apply to the Executive Director to pay those funds to the Society under section 34 *[Unclaimed trust money]*.

(2) A lawyer must make the application referred to in subrule (1) in writing containing all of the following information that is available to the lawyer:

(a) the full name and last known mailing address of each person on whose behalf the lawyer held the money;

(b) the exact amount to be paid to the Society in respect of each such person;

(c) the efforts made by the lawyer to locate each such person;

(d) any unfulfilled undertakings given by the lawyer in relation to the money;

(e) the details of the transaction in respect of which the money was deposited with the lawyer.

(3) A lawyer who cannot provide all the information described in subrule (2) must advise the Executive Director of the reasons why the lawyer does not have that information and deliver to the Executive Director copies of all records in the lawyer's power or possession that relate to the ownership and source of the money.

(4) If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the money, the Executive Director may accept the money under section 34 *[Unclaimed trust money]*.

(5) The Executive Director must account for money received by the Society under subrule (4) separately from the other funds of the Society.

Investigation of claims

3-90 (1) A person may make a claim under section 34 *[Unclaimed trust money]* in writing, in the form approved by the Executive Committee by delivering it to the Executive Director.

(2) A claimant must provide the Executive Director with information and documents that the Executive Director reasonably requires.

(3) In order to determine the validity of a claim, the Executive Director may make or authorize inquiries or further investigations that he or she considers desirable.

Adjudication of claims

3-91 (1) The Executive Director may

(a) approve a claim if satisfied that the claim is valid, or

(b) refer the claim to the Executive Committee.

(2) When the Executive Director refers a claim to the Executive Committee, the Committee may, in its discretion

(a) approve or reject a claim based on the information received under Rule 3-90 *[Investigation of claims]*, or

(b) order a hearing to determine the validity of a claim.

(3) If a hearing is ordered, the Executive Director must give the claimant reasonable notice in writing of the date, time and place of the hearing.

(4) The Executive Director must serve the notice referred to in subrule (3) in accordance with Rule 10-1 *[Service and notice]*.

(5) The Executive Committee must conduct every hearing under this rule in private unless the Committee determines, in the public interest, that a specific individual or the public generally may be present at part or all of the hearing.

(6) Subject to the Act and these rules, the Executive Committee may determine the practice and procedure to be followed at a hearing.

(7) The claimant or the Society may call a witness to testify, who

(a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and

(b) is subject to cross-examination.

(8) Following completion of the evidence, the Executive Committee must invite the claimant and the Society to make submissions on the issues to be decided by the Committee.

(9) Following the hearing of the evidence and submissions, the Executive Committee must determine whether the claimant is entitled to the money held in trust by the Society.

(10) If the claim is approved under subrule (1) (a) or (9), the Executive Director must

(a) calculate the exact amount owing to the claimant,

(b) calculate, in accordance with Rule 3-92 *[Calculation of interest]*, the interest owing to the claimant on that amount, and

(c) pay to the claimant the total of the amounts calculated under paragraphs (a) and (b).

Calculation of interest

3-92 (1) In calculating the interest owing to a claimant under Rule 3-91 *[Adjudication of claims]*, the Executive Committee must allow interest, for each 3-month period, at 2% below the prime lending rate of the Society's banker on March 31, June 30, September 30 and December 31 respectively, in each year, with interest to be compounded on June 30 and December 31 in each year.

(2) Interest calculated under subrule (1) is payable from the first day of the month following receipt of the unclaimed money by the Society, until the last day of the month before payment out by the Society.

Efforts to locate the owner of funds

3-93 From time to time, the Executive Director must conduct or authorize efforts to locate the owner of money held under this Part.

Payment to the Law Foundation

3-94 Before paying the principal amount received under Rule 3-89 *[Payment of unclaimed trust money to the Society]* to the Foundation under section 34 *[Unclaimed trust money]*, the Executive Director must be satisfied that the owner of the money cannot be located following efforts to locate the owner.

Division 9 – Real Estate Practice

Definitions

3-95 In this division,

"closing date" means the date upon which the documents to effect a transaction are filed as a pending application in the appropriate land title office;

"discharge of mortgage" means any discharge of mortgage that releases any portion of the land or interest in land charged by the mortgage;

"mortgage" means one of the following registered in a land title office in British Columbia:

(a) a mortgage of land or an interest in land;

(b) a debenture or trust deed containing a fixed charge on land or an interest in land;

"mortgagee" includes the holder of a fixed charge under a debenture or trust deed that is a mortgage;

"notary" means a member of the Society of Notaries Public of British Columbia.

Report of failure to cancel mortgage

3-96 A lawyer must deliver to the Executive Director within 5 business days a report in a form approved by the Executive Committee when

(a) the lawyer delivers funds to

(i) a mortgagee to obtain a registrable discharge of mortgage, or

(ii) another lawyer or a notary on the undertaking of the other lawyer or notary to obtain and register a discharge of mortgage, and

(b) 60 days after the closing date of the transaction giving rise to the delivery of such funds, the lawyer has not received

(i) a registrable discharge of mortgage from the mortgagee, or

(ii) satisfactory evidence of the filing of a registrable discharge of mortgage as a pending application in the appropriate land title office from the other lawyer or notary.

Electronic submission of documents

3-96.1 A lawyer authorized to access and use the electronic filing system of the land title office for the electronic submission or registration of documents must not

(a) disclose the lawyer's password associated with an electronic signature to another person, or

(b) permit another person, including a non-lawyer employee

(i) to use the lawyer's password to gain such access, or

(ii) to affix an electronic signature to any document or gain access to the electronic filing system unless otherwise authorized to do so.

Division 10 – Criminal Charges

Reporting criminal charges

3-97 (1) This rule applies to lawyers, articled students, practitioners of foreign law and applicants.

(2) Subject to subrule (4), a person who is charged with an offence under a federal or provincial statute, or an equivalent offence in another jurisdiction, must immediately provide to the Executive Director written notice of the charge.

(3) [rescinded]

(4) No notification is required under subrule (2) if a person is issued or served with a ticket as defined in the *Contraventions Act* (Canada) or a violation ticket as defined in the *Offence Act*.

Division 11 – Client Identification and Verification

Definitions

3-98 (1) In this division,

"client" includes

(a) another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and

(b) in Rules 3-102 to 3-105, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction;

"disbursements" has the same meaning as in Rule 3-53 *[Definitions]*;

"expenses" has the same meaning as in Rule 3-53;

"financial institution" has the same meaning as in Rule 3-53;

"financial transaction" means 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;

"interjurisdictional lawyer" means a member of a governing body who is authorized to practise law in another Canadian jurisdiction;

"money" includes cash, currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person's title or right to or interest in them, and electronic transfer of deposits at financial institutions;

"organization" means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

"professional fees" has the same meaning as in Rule 3-53;

"public body" has the same meaning as in Rule 3-53;

"reporting issuer" means an organization that is

(a) a reporting issuer within the meaning of the securities law of any province or territory of Canada,

(b) a corporation whose shares are traded on a stock exchange that is prescribed by the *Income Tax Act* (Canada) and operates in a country that is a member of the Financial Action Task Force on Money Laundering, or

(c) controlled by a reporting issuer;

"securities dealer" means an entity that is authorized under federal, provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than an entity that acts exclusively on behalf of an entity so authorized.

(2) In this division, a person controls an organization if the person, directly or indirectly, has the power to elect a majority of the directors or equivalent body of the organization by virtue of

(a) ownership or direction over voting securities of the organization,

(b) being or controlling the general partner of a limited partnership, or

(c) being a trustee of or occupying a similar position in the organization.

Application

3-99 (1) Subject to subrule (2), this division applies to a lawyer who is retained by a client to provide legal services.

(1.1) The requirements of this division are 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.

(2) Rules 3-100 to 3-108 and 3-110 do not apply when a lawyer provides legal services

(a) on behalf of his or her employer, or

(b) in the following circumstances if no financial transaction is involved:

(i) as part of a duty counsel program sponsored by a non-profit organization;

(ii) in the form of pro bono summary advice.

(2.1) A lawyer is not required to repeat compliance with Rules 3-100 to 3-106 when another lawyer or an interjurisdictional lawyer who has complied with those rules or the equivalent provisions of a governing body

(a) engages the lawyer to provide legal services to the client as an agent, or

(b) refers a matter to the lawyer for the provision of legal services.

(3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm wherever located.

Requirement to identify client

3-100 (1) A lawyer who is retained by a client to provide legal services must obtain and record, with the applicable date

(a) [rescinded]

(b) for individuals, all of the following information:

(i) the client's full name;

(ii) the client's home address, home telephone number and occupation;

(iii) the address and telephone number of the client's place of work or employment, where applicable, and

(c) for organizations, all of the following information:

(i) the client's full name, business address and business telephone number;

(ii) the name, position and contact information for individuals who give instructions with respect to the matter for which the lawyer is retained;

(iii) if the client is an organization other than a financial institution, public body or reporting issuer

(A) the general nature of the type of business or activity engaged in by the client, and

(B) the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number.

(2) When a lawyer has obtained and recorded the information concerning the identity of an individual client under subrule (1) (b), the lawyer is not required subsequently to obtain and record that information about the same individual unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

Exemptions

3-101 Rules 3-102 to 3-106 do not apply

(a) if the client is

(i) a financial institution,

(ii) a public body,

(iii) a reporting issuer, or

(iv) an individual who instructs the lawyer on behalf of a client described in subparagraphs (i) to (iii),

(b) when a lawyer

(i) pays money to or receives money from any of the following acting as a principal:

(A) a financial institution;

(B) a public body;

(C) a reporting issuer,

(ii) receives money paid from the trust account of another lawyer or an interjurisdictional lawyer,

(iii) receives money from a peace officer, law enforcement agency or other public official acting in an official capacity, or

(iv) pays or receives money

(A) [rescinded]

(B) to pay a fine, penalty or bail, or

(C) [rescinded]

(D) for professional fees, disbursements or expenses, or

(c) to a transaction in which all funds involved are transferred by electronic transmission, provided

(i) the transfer occurs between financial institutions or financial entities headquartered in and operating in countries that are members of the Financial Action Task Force,

(ii) neither the sending nor the receiving account holders handle or transfer the funds, and

(iii) the transmission record contains

(A) a reference number,

(B) the date,

(C) the transfer amount,

(D) the currency, and

(E) the names of the sending and receiving account holders and the sending and receiving entities.

Requirement to verify client identity

3-102 (1) When a lawyer provides legal services in respect of a financial transaction, the lawyer 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).

(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

(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.

(5) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of a parent or guardian of the individual.

(6) To verify the identity of an individual who is 12 years of age or over but less than 15 years of age, the lawyer may refer to information referred to in subrule (2) (a) (iii) (A) that contains the name and address of a parent or guardian of the individual and verifying that the address is that of the individual.

Requirement to identify directors, shareholders and owners

3-103 (1) When a lawyer provides legal services in respect of a financial transaction for a client that is an organization referred to in Rule 3-102 (2) (b) or (c) *[Requirement to verify client identity]*, the lawyer must

(a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer, and

(b) make reasonable efforts to obtain and, if obtained, record with the applicable date

(i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization,

(ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, and

(iii) information identifying the ownership, control and structure of the organization.

(2) A lawyer must take reasonable measures to confirm the accuracy of information obtained under this rule.

(3) A lawyer must keep a record, with the applicable dates, of the following:

(a) all efforts made under subrule (1) (b);

(b) all measures taken to confirm the accuracy of information obtained under this rule.

(4) If a lawyer is not able to obtain the information referred to in subrule (1) or to confirm the accuracy of that information in accordance with subrule (2), the lawyer must

(a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization,

(b) determine whether the following are consistent with the purpose of the retainer and the information obtained about the client as required by this rule:

(i) the client's information in respect of its activities;

(ii) the client's information in respect of the source of the money to be used in the financial transaction;

(iii) the client's instructions in respect of the transaction,

(c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct, and

(d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).

Use of an agent for client verification

3-104 (1) A lawyer may retain an agent to obtain the information required under Rule 3-102 *[Requirement to verify client identity]*, provided the lawyer and the agent have an agreement or arrangement in writing for this purpose in compliance with this rule.

(2) to (4) [rescinded 12/2019, effective 01/2020]

(5) A lawyer must retain an agent to obtain the information required under Rule 3-102 *[Requirement to verify client identity]* to verify the person's identity and must have an agreement or arrangement in writing with the agent for that purpose if the client

(a) is not present in Canada, and

(b) is not physically present before the lawyer.

(6) A lawyer must not rely on information obtained by an agent under this rule unless the lawyer

(a) obtains from the agent all of the information obtained by the agent under that agreement or arrangement, and

(b) is satisfied that the information is valid and current and that the agent verified identity in accordance with Rule 3-102 *[Requirement to verify client identity]*.

(7) A lawyer may rely on an agent's previous verification of an individual client if the agent was, at the time of the verification

(a) acting in the agent's own capacity, whether or not the agent was acting under this rule, or

(b) acting as an agent under an agreement or arrangement in writing entered into with another lawyer required under this division to verify the identity of a client.

Timing of verification for individuals

3-105 (1) At the time that a lawyer provides legal services in respect of a financial transaction, the lawyer must verify the identity of a client who is an individual.

(2) When a lawyer has verified the identity of an individual, the lawyer is not required subsequently to verify that same identity unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

Timing of verification for organizations

3-106 (1) A lawyer who provides legal services in respect of a financial transaction must verify the identity of a client that is an organization promptly and, in any event, within 30 days.

(2) When a lawyer has verified the identity of a client that is an organization and obtained and recorded information under Rule 3-103 *[Requirement to identify directors, shareholders and owners]*, the lawyer is not required subsequently to verify that identity or obtain and record that information, unless the lawyer has reason to believe that the information, or the accuracy of it, has changed.

Record keeping and retention

3-107 (1) A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of Rule 3-102 (1) *[Requirement to verify client identity]*.

(2) The documents referred to in subrule (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

(3) A lawyer must retain a record of the information, with applicable dates, and any documents obtained or produced for the purposes of

(a) Rule 3-100 *[Requirement to identify client]*,

(b) Rule 3-103 *[Requirement to identify directors, shareholders and owners]*,

(c) Rule 3-102 *[Requirement to verify client identity]*,

(d) Rule 3-104 *[Use of an agent for client verification]*, or

(e) Rule 3-110 *[Monitoring]*.

(4) The lawyer must retain information and documents referred to in subrule (3) for the longer of

(a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing services to the client, and

(b) a period of at least 6 years following completion of the work for which the lawyer was retained.

Existing matters

3-108 Rules 3-99 to 3-107 do not apply to matters for which a lawyer was retained before December 31, 2008, but they do apply to all matters for which he or she is retained after that time, regardless of whether the client is a new or existing client.

Criminal activity, duty to withdraw

3-109 (1) 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.

(2) This rule applies to all matters for which a lawyer is retained before or after this division comes into force.

Monitoring

3-110 (1) While retained by a client in respect of a financial transaction, a lawyer must monitor on a periodic basis the professional business relationship with the client for the purposes of

(a) determining whether the following are consistent with the purpose of the retainer and the information obtained about the client under this division:

(i) the client's information in respect of their activities;

(ii) the client's information in respect of the source of the money used in the financial transaction;

(iii) the client's instructions in respect of transactions, and

(b) assessing whether there is a risk that the lawyer may be assisting in or encouraging dishonesty, fraud, crime or other illegal conduct.

(2) A lawyer must keep a record, with the applicable date, of the measures taken and the information obtained under subrule (1) (a).

PART 4 – DISCIPLINE

Interpretation and application

4-1 (1) In this part,

"conduct meeting" means a meeting that a lawyer or a law firm is required to attend under Rule 4-4 (1) (c) *[Action on complaints]*;

"conduct review" means a meeting with a conduct review subcommittee that a lawyer or a law firm is required to attend under Rule 4-4 (1) (d).

(2) This part applies to a former lawyer, an articled student, a law firm, a visiting lawyer permitted to practise law under Rules 2-16 to 2-20 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable.

(3) This part must be interpreted in a manner consistent with standards of simplicity, fairness and expediency, and so as to provide maximum protection to the public and to lawyers.

(4) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

Discipline Committee

4-2 (1) For each calendar year, the President must appoint a Discipline Committee, including a chair and vice chair, both of whom must be Benchers.

(2) The President may remove any person appointed under subrule (1).

(3) At any time, the President may appoint a person to the Discipline Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

(4) Any function of the chair of the Discipline Committee under this part may be performed by the vice chair if the chair is not available for any reason, or by another Bencher member of the Committee designated by the President if neither the chair nor the vice-chair is available for any reason.

Consideration of complaints by Committee

4-3 (1) The Discipline Committee must consider any complaint referred to it under these rules and may instruct the Executive Director to make or authorize further investigation that the Discipline Committee considers desirable.

(2) If, in the view of the Executive Director and the chair of the Discipline Committee, there is a need to act before a meeting of the Committee can be arranged, the Executive Director may refer a complaint to the chair for consideration under Rule 4-5 *[Consideration of complaints by chair]*.

Action on complaints

4-4 (1) After its consideration under Rule 4-3 *[Consideration of complaints by Committee*, the Discipline Committee must

(a) decide that no further action be taken on the complaint,

(b) authorize the chair or other Bencher member of the Discipline Committee to send a letter to the lawyer concerning the lawyer's conduct,

(c) require the lawyer or law firm to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

(d) require the lawyer or law firm to appear before a Conduct Review Subcommittee, or

(e) direct that the Executive Director issue a citation against the lawyer under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]*.

(2) In addition to the determination made under subrule (1), the Discipline Committee may refer any matter or any lawyer to the Practice Standards Committee.

(3) In addition to any action taken under subrules (1) and (2), if a complaint discloses that there may be grounds for revoking a law corporation's permit under Rule 9-11 *[Revocation of permits]*, the Discipline Committee may order a hearing on the revocation of the law corporation's permit.

(4) At any time before the Discipline Committee makes a decision under Rule 4-13 (6) (a) to (c) *[Conduct Review Subcommittee report]*, the Committee may resolve to rescind a decision made under subrule (1) (d) to require a lawyer to appear before a Conduct Review Subcommittee and substitute another decision under subrule (1).

Consideration of complaints by chair

4-5 (1) The chair of the Discipline Committee must consider any complaint referred to him or her under these rules and may instruct the Executive Director to make or authorize further investigation that the chair considers desirable.

(2) After considering a complaint under subrule (1), the chair of the Discipline Committee must

(a) direct that the Executive Director issue a citation against the lawyer under Rule 4-17(1) *[Direction to issue, expand or rescind citation]*, or

(b) refer the complaint to the Discipline Committee.

Continuation of membership during investigation or disciplinary proceedings

4-6 (1) In this rule, **"lawyer under investigation"** means a lawyer who is the subject of

(a) an investigation under Part 3, Division 1, *[Complaints]* or

(b) a decision of the Discipline Committee under Rule 4-4 (1) (c) or (d) *[Action on complaints]*.

(2) A lawyer under investigation may not resign from membership in the Society without the consent of the Executive Director.

(3) A respondent may not resign from membership in the Society without the consent of the Discipline Committee.

(4) The Executive Director may direct that a lawyer under investigation who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.

(5) The Discipline Committee may, by resolution, direct that a respondent who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.

(6) A direction under subrule (4) or (5) may be made to continue in effect until stated conditions are fulfilled.

(7) When a direction under subrule (4) or (5) expires on the fulfillment of all stated conditions or is rescinded by the Executive Director or Discipline Committee,

(a) the lawyer concerned ceases to be a member of the Society,

(b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.

Notification

4-7 The Executive Director must notify the complainant and the lawyer or law firm in writing of the determination of the Discipline Committee under Rule 4-4 *[Action on complaints]* or the chair under Rule 4-5 *[Consideration of complaints by the chair]*.

Confidentiality of Discipline Committee deliberations

4-8 (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these rules:

(a) information and documents that form part of the consideration of a complaint under Rule 4-4 *[Action on complaints]* or 4-5 *[Consideration of complaints by chair]*;

(b) the result of a consideration under Rule 4-4.

(2) As an exception to subrule (1), the Executive Director may disclose information referred to in that subrule

(a) with the consent of the lawyer, in responding to an enquiry made for the purpose of a potential judicial appointment, or

(b) to a governing body under Rule 2-27.1 *[Sharing information with a governing body]*.

(3) No one is permitted to disclose a direction to issue a citation until the respondent is notified.

(4) Despite subrule (3), the Executive Director may disclose to the public a direction to issue a citation, its subject matter and its status before the respondent is notified if

(a) the identity of the respondent has already been disclosed to the public,

(b) the citation is in respect of an offence to which the respondent has pleaded guilty or of which the respondent has been found guilty, or

(c) the citation is based on a complaint that has become known to the public.

(4.1) Despite subrule (1), the Executive Director may disclose information about Discipline Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.

(5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.

(6) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Conduct letter from the chair

4-9 (1) When a letter authorized under Rule 4-4 (1) (b) *[Action on complaints]* is sent to the lawyer, the Executive Director must provide the complainant with

(a) a copy of the letter, or

(b) if directed by the Discipline Committee, a summary of the letter.

(2) A letter authorized under Rule 4-4 (1) (b) *[Action on complaints]*

(a) does not form part of the lawyer's professional conduct record, and

(b) is not admissible in the hearing of a citation under this part.

Conduct meeting

4-10 (1) A conduct meeting must be held in private.

(2) The Discipline Committee or the chair of the Discipline Committee may appoint one or more individuals who are Benchers, Life Benchers or lawyers to meet with a lawyer or a law firm required to attend a conduct meeting under Rule 4-4 (1) (c) *[Action on complaints]*.

(3) No record of an order under Rule 4-4 (1) (c) *[Action on complaints]* or of the conduct meeting forms part of the lawyer's professional conduct record.

(4) A Bencher or other lawyer who has participated in a conduct meeting is not permitted to testify in the hearing of a citation as to any statement made by the respondent during the conduct meeting, unless the respondent puts the matter in issue.

Conduct Review Subcommittee

4-11 (1) The Discipline Committee or the chair of the Discipline Committee must appoint a Conduct Review Subcommittee to consider the conduct of a lawyer referred to the Subcommittee under Rule 4-4 (1) (d) *[Action on complaints]*.

(2) A Conduct Review Subcommittee

(a) must include at least one lawyer,

(b) may include one or more appointed Benchers, and

(c) must be chaired by a Bencher or a Life Bencher.

Conduct review

4-12 (1) A conduct review is an informal proceeding at which the lawyer or law firm

(a) must appear personally, and

(b) may be represented by counsel.

(2) Subject to subrule (3), a conduct review must be conducted in private.

(3) The Conduct Review Subcommittee may, in its discretion, permit the complainant to be present at all or part of the meeting, with or without the right to speak at the meeting.

Conduct Review Subcommittee report

4-13 (1) The Conduct Review Subcommittee must

(a) prepare a written report of the factual background, the Subcommittee's conclusions and any recommendations, and

(b) deliver a copy of that report to the lawyer, together with written notice that the lawyer has 30 days from the date of the notice to notify the chair of the Subcommittee in writing of any dispute as to the contents of the report and the reasons he or she disputes the contents of the report.

(2) If the Subcommittee considers it necessary for the effective consideration of the lawyer's dispute, it may order a further meeting.

(3) If a further meeting is ordered under subrule (2), Rule 4-12 *[Conduct review]* applies.

(4) The Subcommittee must consider the lawyer's dispute and

(a) amend its report as it considers appropriate, or

(b) forward its report to the Discipline Committee without amendment.

(5) The Subcommittee must notify the lawyer in writing of its decision under subrule (4) and, if the report is amended, provide a copy of the amended report to

(a) the lawyer, and

(b) the Discipline Committee.

(6) After considering the Conduct Review Subcommittee's report, the Discipline Committee must do one or more of the following:

(a) decide to take no further action on the complaint;

(b) refer the lawyer to the Practice Standards Committee;

(c) direct that a citation be issued against the lawyer under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]*;

(d) rescind the decision under Rule 4-4 (1) (d) *[Action on complaints]* to require the lawyer or law firm to appear before the Conduct Review Subcommittee, and substitute another decision under Rule 4-4 (1).

(7) A member of the Discipline Committee who has participated in the Conduct Review Subcommittee is not, for that reason, precluded from participating in and voting on a decision under subrule (6).

(8) After making its decision under subrule (6), the Discipline Committee must

(a) notify the lawyer and the complainant of its decision, and

(b) subject to Rule 4-14 *[Privilege and confidentiality]*, deliver a copy or summary of the report to the complainant.

Privilege and confidentiality

4-14 In complying with Rule 4-13 *[Conduct Review Subcommittee report]*, the Discipline Committee and the Conduct Review Subcommittee must not disclose to the complainant information subject to the solicitor and client privilege of a client, other than the complainant, or other confidential information that the complainant is not entitled to receive.

Publication and disclosure

4-15 (1) The Executive Director may publish and circulate to the profession a summary of the circumstances of a matter that has been the subject of a conduct review.

(2) A summary published under subrule (1) must not identify the lawyer or complainant unless that person consents in writing to being identified.

(3) If a complaint giving rise to a conduct review is known to the public or if a conduct review is ordered in a matter that was the subject of a citation that has been rescinded, the Executive Director may disclose

(a) the fact that the lawyer or law firm is or has been required to appear before a Conduct Review Subcommittee, and

(b) the decision of the Discipline Committee under Rule 4-13 (6) *[Conduct Review Subcommittee report]*.

(4) Subject to subrule (5), the Executive Director may disclose the report of a Conduct Review Subcommittee that has been considered by a hearing panel as part of a lawyer's professional conduct record under Rule 4-44 (5) *[Disciplinary action]*.

(5) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Evidence of conduct review at the hearing of a citation

4-16 If a hearing is held on a citation issued following a conduct review concerning the same conduct referred to in the citation,

(a) the Conduct Review Subcommittee's written report is not admissible at the hearing, and

(b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the respondent during the conduct review, unless the respondent puts the matter in issue.

Direction to issue, expand or rescind citation

4-17 (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.

(2) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.

(3) At any time before a panel makes a determination under Rule 4-44 *[Disciplinary action]*, the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4 (1) *[Action on complaints]*.

Contents of citation

4-18 (1) A citation may contain one or more allegations.

(2) Each allegation in a citation must

(a) be clear and specific enough to give the respondent notice of the misconduct alleged, and

(b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven against the respondent and to identify the transaction referred to.

Notice of citation

4-19 The Executive Director must serve a citation on the respondent

(a) in accordance with Rule 10-1 *[Service and notice]*, and

(b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

Publication of citation

4-20 (1) When there has been a direction to issue a citation, the Executive Director must publish on the Society's website the fact of the direction to issue the citation, the content of the citation and the status of the citation.

(1.1) Publication under subrule (1) must not occur earlier than 7 clear days after the respondent has been notified of the direction to issue the citation.

(2) The Executive Director may publish the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.

(3) Publication under this rule may be made by means of the Society's website and any other means.

(4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

(5) Except as allowed under Rule 4-20.1 *[Anonymous publication of citation]*, a publication under this rule must identify the respondent.

Anonymous publication of citation

4-20.1 (1) A party or an individual affected may apply to the President for an order that publication under Rule 4-20 *[Publication of citation]* not identify the respondent.

(2) When an application is made under this rule before publication under Rule 4-20, the publication must not identify the respondent until a decision on the application is issued.

(3) On an application under this rule, where, in the judgment of the President, there are extraordinary circumstances that outweigh the public interest in the publication of the citation, the President may

(a) grant the order, or

(b) order limitations on the content, means or timing of the publication.

(4) The President may designate another Bencher to make a determination on an application under this rule.

(5) The President or other Bencher making a determination on an application under this rule must state in writing the specific reasons for that decision.

Amending an allegation in a citation

4-21 (1) Discipline counsel may amend an allegation contained in a citation

(a) before the hearing begins, by giving written notice to the respondent and the President, and

(b) after the hearing has begun, with the consent of the respondent.

(2) The panel may amend a citation after the hearing has begun

(a) on the application of a party, or

(b) on its own motion.

(3) The panel must not amend a citation under subrule (2) unless the respondent and discipline counsel have been given the opportunity to make submissions respecting the proposed amendment.

Severance and joinder

4-22 (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the President for an order that

(a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or

(b) two or more citations be determined in one hearing.

(2) An application under subrule (1) must

(a) be copied to the party not making the application, and

(b) state the grounds for the order sought.

(3) [rescinded]

(4) The President may

(a) allow the application with or without conditions,

(b) designate another Bencher to make a determination, or

(c) refer the application to a pre-hearing conference.

[This page is intentionally left blank.]

Interim suspension or practice conditions

4-23 (1) In Rules 4-23 to 4-25, **"proceeding"** means the proceeding required under subrule (4).

(2) If there has been a direction under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]* to issue a citation, 3 or more Benchers may do any of the following:

(a) in any case not referred to in paragraph (b), impose conditions or limitations on the practice of a respondent who is a lawyer or on the enrolment of a respondent who is an articled student;

(b) suspend a respondent who is a lawyer, if, on the balance of probabilities, the Benchers present consider that the continued practice of the respondent will be dangerous to the public or the respondent's clients;

(c) suspend the enrolment of a respondent who is an articled student if the Benchers present consider, on the balance of probabilities, that the continuation of the student's articles will be dangerous to the public or a lawyer's clients.

(3) The Benchers referred to in subrule (2) must not include a member of the Discipline Committee.

(4) Before Benchers take action under this rule, there must be a proceeding at which 3 or more Benchers and discipline counsel must be present.

(5) The proceeding referred to in subrule (4) may take place without notice to the respondent if the majority of Benchers present are satisfied that notice would not be in the public interest.

(6) The respondent and respondent's counsel may be present at a proceeding.

(7) All proceedings under this rule must be recorded by a court reporter.

(8) Subject to the Act and these rules, the Benchers present may determine the practice and procedure to be followed at a proceeding.

(9) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(10) The respondent or discipline counsel may request an adjournment of a proceeding.

(11) Rule 4-40 *[Adjournment]* applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(12) Despite subrule (11), the Executive Director is not required to notify a complainant of a request made under subrule (10).

(13) After a proceeding has begun, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.

(14) An order made under subrule (2) or varied under subrule (15) is effective until the first of

(a) final disposition of the citation,

(b) variation or further variation under subrule (15), or

(c) a contrary order under Rule 4-26 *[Review of interim suspension of practice conditions]*.

(15) An order made under subrule (2) may be varied by the Benchers who made it, or a majority of them, on the application of the respondent or discipline counsel.

(16) On an application to vary an order under subrule (15),

(a) both the respondent and discipline counsel must be given a reasonable opportunity to make submissions in writing,

(b) the Benchers considering an application under subrule (15) may allow oral submissions if, in their discretion, it is appropriate to do so.

(c) if, for any reason, a Bencher who participated in making the order is unable to participate in the decision, the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of the Bencher.

Notification of respondent

4-24 When an order is made under Rule 4-23 (2) *[Interim suspension or practice conditions]* without notice to the respondent, the Executive Director must immediately notify the respondent in writing, that

(a) the order has been made,

(b) the respondent is entitled, on request, to a transcript of the proceeding under Rule 4-23 (4), and

(c) the respondent may apply under Rule 4-26 *[Review of interim suspension or practice conditions]* to have the order rescinded or varied.

Disclosure

4-25 (1) Unless an order has been made under Rule 4-23 (2) *[Interim suspension or practice conditions]*, no one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these rules:

(a) the fact that a Committee or an individual has referred a matter for consideration by 3 or more Benchers under Rule 4-23;

(b) the scheduling of a proceeding under Rule 4-23;

(c) the fact that a proceeding has taken place.

(2) When an order has been made or refused under Rule 4-23 (2) *[Interim suspension or practice conditions]*, the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

Review of interim suspension or practice conditions

4-26 (1) If an order has been made under Rule 4-23 (2) *[Interim suspension or practice conditions]*, the respondent may apply in writing to the President at any time for rescission or variation of the order.

(2) An application under subrule (1) must be heard as soon as practicable and, if the respondent has been suspended without notice, not later than 7 days after the date on which it is received by the Society, unless the respondent consents to a longer time.

(3) When application is made under subrule (1), the President must appoint a new panel under Rule 4-39 *[Appointment of panel]*.

(4) A panel appointed under subrule (3) must not include a person who

(a) participated in the decision that authorized the issuance of the citation,

(b) was one of the Benchers who made the order under review, or

(c) is part of a panel assigned to hear the citation.

(5) A hearing under this rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.

(6) On application by anyone, the panel may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(7) All proceedings at a hearing under this rule must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript of any part of the hearing that he or she was entitled to attend.

(8) The respondent and discipline counsel may call witnesses to testify who

(a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and

(b) are subject to cross-examination.

(9) If the order under Rule 4-23 (2) *[Interim suspension or practice conditions]* took effect without notice to the respondent, witnesses called by discipline counsel must testify first, followed by witnesses called by the respondent.

(10) If subrule (9) does not apply, witnesses called by the respondent must testify first, followed by witnesses called by discipline counsel.

(11) The panel may

(a) accept an agreed statement of facts, and

(b) admit any other evidence it considers appropriate.

(12) Following completion of the evidence, the panel must

(a) invite the respondent and discipline counsel to make submissions on the issues to be decided by the panel,

(b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and

(c) make an order if required under subrule (13) or (14).

(13) If an order has been made under Rule 4-23 (2) *[Interim suspension or practice conditions]* with notice to the respondent, the panel must rescind or vary the order if cause is shown on the balance of probabilities by or on behalf of the respondent.

(14) If an order has been made under Rule 4-23 (2) *[Interim suspension or practice conditions]* without notice to the respondent, the panel must rescind or vary the order, unless discipline counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

Appointment of discipline counsel

4-27 The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

(a) a direction to issue a citation is made under Rule 4-17 *[Direction to issue, expand or rescind citation]*,

(b) a person initiates a review under section 47 *[Review on the record]*,

(c) a person appeals a decision to the Court of Appeal under section 48 *[Appeal]*, or

(d) the Society is a respondent in any other action involving the investigation of a complaint or the discipline of a lawyer.

Notice to admit

4-28 (1) At any time, but not less than 45 days before a date set for the hearing of a citation, the respondent or discipline counsel may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

(2) A request made under subrule (1) must

(a) be made in writing in a document clearly marked "Notice to Admit" and served in accordance with Rule 10-1 *[Service and notice]*, and

(b) include a complete description of the fact, the truth of which is to be admitted, or attach a copy of the document, the authenticity of which is to be admitted.

(3) A party may make more than one request under subrule (1).

(4) A respondent or discipline counsel who receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 *[Service and notice]*.

(5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 4-36 *[Preliminary questions]* or 4-38 *[Pre-hearing conference]*.

(6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:

(a) an admission of the truth of the fact or the authenticity of the document attached to the request;

(b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

(8) If a party does not admit the truth of a fact or the authenticity of a document under this rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-11 *[Costs of hearings]*.

(9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this rule may withdraw the admission with the consent of the other party or with leave granted on an application

(a) before the hearing has begun, under Rule 4-36 *[Preliminary questions]* or 4-38 *[Pre-hearing conference]*, or

(b) after the hearing has begun, to the hearing panel.

Conditional admissions

4-29 (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation.

(2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).

(3) The Discipline Committee may, in its discretion,

(a) accept the conditional admission,

(b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or

(c) reject the conditional admission.

(4) If the Discipline Committee accepts a conditional admission tendered under this rule,

(a) those parts of the citation to which the conditional admission applies are resolved,

(b) the Executive Director must

(i) record the respondent's admission on the respondent's professional conduct record, and

(ii) notify the respondent and the complainant of the disposition, and

(c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.

(5) A respondent who undertakes under this rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15 (3) *[Authority to practise law]*.

Conditional admission and consent to disciplinary action

4-30 (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation and the respondent's consent to a specified disciplinary action.

(2) The chair of the Discipline Committee may waive the 14-day limit in subrule (1).

(3) The Discipline Committee may, in its discretion, accept or reject a conditional admission and proposed disciplinary action.

(4) If the Discipline Committee accepts the conditional admission and proposed disciplinary action, it must instruct discipline counsel to recommend its acceptance to the hearing panel.

(5) If the panel accepts the respondent's proposed disciplinary action it must

(a) instruct the Executive Director to record the lawyer's admission on the lawyer's professional conduct record,

(b) impose the disciplinary action that the respondent has proposed, and

(c) notify the respondent and the complainant of the disposition.

Rejection of admissions

4-31 (1) A conditional admission tendered under Rule 4-29 *[Conditional admissions]* must not be used against the respondent in any proceeding under this part or Part 5 *[Hearings and appeals]* unless the admission is accepted by the Discipline Committee.

(2) A conditional admission tendered under Rule 4-30 *[Conditional admission and consent to disciplinary action]* must not be used against the respondent in any proceeding under this part unless

(a) the admission is accepted by the Discipline Committee, and

(b) the admission and proposed disciplinary action is accepted by a hearing panel.

(3) If a panel rejects the respondent's proposed disciplinary action tendered in accordance with Rule 4-30 *[Conditional admission and consent to disciplinary action]*, it must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation.

(4) On receipt of a notification under subrule (3), the chair of the Discipline Committee must instruct discipline counsel to proceed to set a date for the hearing of the citation.

(5) When a panel rejects a proposed disciplinary action tendered in accordance with Rule 4-30 *[Conditional admission and consent to disciplinary action]*, no member of that panel is permitted to sit on the panel that subsequently hears the citation.

Notice of hearing

4-32 (1) The date, time and place for the hearing to begin must be set

(a) by agreement between discipline counsel and the respondent, or

(b) on the application of a party, by the President or by the Bencher presiding at a pre-hearing conference.

(2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.

(3) Written notification under subrule (2) may be made at the same time that the citation is served under Rule 4-19 *[Notice of citation]*, or at a later time.

Summary hearing

4-33 (1) This rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:

(a) breached a rule;

(b) breached an undertaking given to the Society;

(c) failed to respond to a communication from the Society;

(d) breached an order made under the Act or these rules.

(2) Unless the panel orders otherwise, the respondent and discipline counsel may adduce evidence by

(a) affidavit,

(b) an agreed statement of facts, or

(c) an admission made or deemed to be made under Rule 4-28 *[Notice to admit]*.

(3) Despite Rules 4-43 *[Submissions and determination]* and 4-44 *[Disciplinary action]*, the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

Demand for disclosure of evidence

4-34 (1) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that discipline counsel disclose the evidence that the Society intends to introduce at the hearing.

(2) On receipt of a demand for disclosure under subrule (1), discipline counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:

(a) a copy of every document that the Society intends to tender in evidence;

(b) a copy of any statement made by a person whom the Society intends to call as a witness;

(c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;

(d) a summary of any other relevant evidence in discipline counsel's possession or in a Society file available to discipline counsel, whether or not counsel intends to introduce that evidence at the hearing.

(3) Despite subrule (2), discipline counsel must not provide any information or documents about any discussion or other communication with the Ombudsperson in that capacity.

Application for details of the circumstances

4-35 (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by delivering to the President and discipline counsel written notice setting out the substance of the application and the grounds for it.

(2) [rescinded]

(3) If the President is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven and to identify the transaction referred to, the President must order discipline counsel to disclose further details of the circumstances.

(4) Details of the circumstances disclosed under subrule (3) must be

(a) in writing, and

(b) delivered to the respondent or respondent's counsel.

(5) The President may

(a) designate another Bencher to make a determination under subrule (3), or

(b) refer the application to a pre-hearing conference.

Preliminary questions

4-36 (1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the President and to the other party written notice setting out the substance of the application and the grounds for it.

(2) [rescinded]

(3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:

(a) appoint a panel to determine the question;

(b) refer the question to a pre-hearing conference;

(c) refer the question to the panel at the hearing of the citation.

(4) The President may designate another Bencher to exercise the discretion under subrule (3).

(5) A panel appointed under subrule (3) (a) is not seized of the citation or any question pertaining to the citation other than that referred under that provision.

Compelling witnesses and production of documents

4-37 (1) Before a hearing begins, the respondent or discipline counsel may apply for an order under section 44 (4) *[Witnesses]* by delivering to the President and to the other party written notice setting out the substance of the application and the grounds for it.

(2) [rescinded]

(3) When an application is made under subrule (1), after considering any submissions, the President must

(a) make the order requested or another order consistent with section 44 (4) *[Witnesses]*, or

(b) refuse the application.

(4) The President may designate another Bencher to make a decision under subrule (3).

(5) On the motion of the respondent or discipline counsel, the President or another Bencher designated by the President may apply to the Supreme Court under section 44 (5) *[Witnesses]* to enforce an order made under subrule (3).

Pre-hearing conference

4-38 (1) The President may order a pre-hearing conference at any time before the hearing of a citation begins, at the request of the respondent or discipline counsel, or on the President's own initiative.

(2) When the President orders a conference under subrule (1), the President must

(a) set the date, time and place of the conference, and notify the parties, and

(b) designate a Bencher to preside at the conference.

(3) [rescinded]

(4) Discipline counsel must be present at the conference.

(5) The respondent may attend the conference in person, through counsel or both.

(6) If the respondent fails to attend the conference, the Bencher presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the Bencher is satisfied that the respondent had notice of the conference.

(7) If the Bencher presiding at a pre-hearing conference considers it appropriate, he or she may allow any person to participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule.

(8) The conference may consider any matters that may aid in the fair and expeditious disposition of the citation, including but not limited to

(a) simplification of the issues,

(b) amendments to the citation,

(b.1) any matter for which the Bencher may make an order under subrule (10),

(b.2) conducting all or part of the hearing in written form,

(c) admissions or an agreed statement of facts,

(d) disclosure and production of documents,

(d.1) agreement for the hearing panel to receive and consider documents or evidence under Rule 4-41 (3) (e) *[Preliminary matters]*, and

(e) the possibility that privilege or confidentiality might require closure of all or part of the hearing to the public, or exclusion of exhibits and other evidence from public access.

(f) and (g) [rescinded]

(9) The respondent or discipline counsel may apply to the Bencher presiding at the conference for an order

(a) [rescinded]

(b) to withhold the identity or contact information of a witness,

(c) to adjourn the hearing of the citation,

(d) for severance of allegations or joinder of citations under Rule 4-22 *[Severance and joinder]*,

(e) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 4-35 *[Application for details of the circumstances]*,

(e.1) that the Bencher may make under subrule (10), or

(f) concerning any other matters that may aid in the fair and expeditious disposition of the citation.

(10) The Bencher presiding at a pre-hearing conference may, on the application of a party or on the Bencher's own motion, make an order that, in the judgment of the Bencher, will aid in the fair and expeditious disposition of the citation, including but not limited to orders

(a) adjourning the conference generally or to a specified date, time and place,

(b) setting a date for the hearing to begin,

(c) allowing or dismissing an application made under subrule (9) or referred to the conference under this part,

(d) specifying the number of days to be scheduled for the hearing,

(e) establishing a timeline for the proceeding including, but not limited to, setting deadlines for the completion of procedures and a plan for the conduct of the hearing,

(f) directing a party to provide a witness list and a summary of evidence that the party expects that any or all of the witnesses will give at the hearing,

(g) respecting expert witnesses, including but not limited to orders

(i) limiting the issues on which expert evidence may be admitted or the number of experts that may give evidence,

(ii) requiring the parties' experts to confer before service of their reports, or

(iii) setting a date by which an expert's report must be served on a party, or

(h) respecting the conduct of any application, including but not limited to allowing submissions in writing.

(11) If an order made under this rule affects the conduct of the hearing on the citation, the hearing panel may rescind or vary the order on the application of a party or on the hearing panel's own motion.

Appointment of panel

4-39 When a citation is issued under Rule 4-17 (1) *[Direction to issue, expand or rescind citation]*, the President must establish a panel to conduct a hearing, make a determination under Rule 4-43 *[Submissions and determination]* and take action, if appropriate, under Rule 4-44 *[Disciplinary action]*.

Adjournment

4-40 (1) Before a hearing begins, the respondent or discipline counsel may apply for an order that the hearing be adjourned by delivering to the President and the other party written notice setting out the grounds for the application.

(2) [rescinded]

(3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.

(4) The President may

(a) designate another Bencher to make a determination under subrule (3), or

(b) refer the application to a pre-hearing conference.

(5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

(6) [rescinded]

(7) Rule 4-32 *[Notice of hearing]* does not apply when a hearing is adjourned and re-set for another date.

Preliminary matters

4-41 (1) Before hearing any evidence on the allegations set out in the citation, the panel must determine whether

(a) the citation was served in accordance with Rule 4-19 *[Notice of citation]*, or

(b) the respondent waives any of the requirements of Rule 4-19.

(2) If the requirements of Rule 4-19 *[Notice of citation]* have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.

(3) Despite subrule (1), before the hearing begins, the panel may receive and consider.

(a) the citation,

(b) an agreed statement of facts,

(c) an admission made or deemed to be made under Rule 4-28 *[Notice to admit]*,

(d) a conditional admission and consent to a specified disciplinary action tendered by the respondent and accepted by the Discipline Committee under Rule 4-30 *[Consent to disciplinary action]*, and

(e) any other document or evidence by agreement of the parties.

Evidence of respondent

4-42 Discipline counsel must notify the respondent of an application for an order that the respondent give evidence at the hearing**.**

Submissions and determination

4-43 (1) Following completion of the evidence, the panel must invite submissions from discipline counsel and the respondent on each allegation in the citation.

(2) After submissions under subrule (1), the panel must

(a) find the facts and make a determination on each allegation, and

(b) prepare written reasons for its findings on each allegation.

(3) A copy of the panel's reasons prepared under subrule (2) (b) must be delivered promptly to each party.

Disciplinary action

4-44 (1) Following a determination under Rule 4-43 *[Submissions and determination]* adverse to the respondent, the panel must

(a) invite the respondent and discipline counsel to make submissions as to disciplinary action,

(b) take one or more of the actions referred to in section 38 (5) to (7) *[Discipline hearings]*,

[This page is intentionally left blank.]

(c) include in its decision under this rule

(i) any order, declaration or imposition of conditions under section 38(7), and

(ii) any order under Rule 5-11 *[Costs of hearings]* on the costs of the hearing, including any order respecting time to pay,

(d) prepare a written record, with reasons, of its action taken under subrule (b) and any action taken under subrule (c),

(e) if it imposes a fine, set the date by which payment to the Society must be completed, and

(f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.

(2) If a panel gives reasons orally for its decision under Rule 4-43 (2) (a) *[Submissions and determination]*, the panel may proceed under subrule (1) before written reasons are prepared under Rule 4-43 (2) (b).

(3) Despite subrule (1) (b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent an amount not exceeding $50,000;

(c) prohibit the respondent from practising law in British Columbia permanently or for a specified period of time;

(d) declare that, had the respondent been a member of the Society, the panel would have

(i) disbarred the respondent,

(ii) suspended the respondent, or

(iii) imposed conditions or limitations on the practice of the respondent.

(4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.

(5) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this rule.

(6) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.

(7) The panel must not take disciplinary action under subrule (6) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the hearing on disciplinary action.

(8) The panel may adjourn the hearing on disciplinary action to allow compliance with the notice period in subrule (7).

Discipline proceedings involving members of other governing bodies

4-45 (1) The Executive Director must send written notice of the action to every governing body of which the person concerned is known to be a member when

(a) a citation is authorized under Rule 4-17 *[Direction to issue, expand or rescind citation]*,

(b) a disciplinary action is imposed under Rule 4-44 *[Disciplinary action]*, or

(c) a conditional admission tendered under Rule 4-29 *[Conditional admissions]* is accepted by the Discipline Committee.

(2) When a citation is authorized against a lawyer who is a member of a governing body or when a governing body initiates disciplinary proceedings against a member of the Society, the Discipline Committee must consult with the governing body about the manner in which disciplinary proceedings are to be taken and the Society is bound by any agreement the Discipline Committee makes with the other governing body.

(3) The Discipline Committee may agree that the venue of disciplinary proceedings be changed to or from that of the Society, if it is in the public interest or if there is a substantial savings in cost or improvement in the convenience of any person without compromising the public interest.

(4) The Discipline Committee may take action under Rule 4-4 *[Action on complaints]* against a lawyer who

(a) has violated a prohibition against practice imposed by a governing body,

(b) is the subject of a declaration by a governing body under a provision similar to Rule 4-44 (3) (d) *[Disciplinary action]*, or

(c) has made an admission that is accepted under a provision similar to Rule 4-29 *[Conditional admission]*.

(5) The fact that a lawyer concerned is or has been the subject of disciplinary proceedings by a governing body does not preclude any disciplinary action for the same or related conduct under this part.

(6) In a proceeding under this part, the filing of a duly certified copy of the disciplinary decision of a governing body against a lawyer found guilty of misconduct is proof of the lawyer's guilt.

Discipline involving lawyers practising in other jurisdictions

4-46 (1) If it is alleged that a member of the Society has committed misconduct while practising temporarily in another Canadian jurisdiction under provisions equivalent to Rules 2-15 to 2-27 *[Inter-jurisdictional practice]*, the Discipline Committee will

(a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and

(b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings under this part.

(2) The Discipline Committee may agree to allow the governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including the expenses of the proceeding.

(3) In deciding whether to agree under subrule (2), the primary considerations will be the public interest, convenience and cost.

(4) To the extent that is reasonable in the circumstances, the Executive Director must do the following at the request of a governing body that is investigating the conduct of a member or former member of the Society or a visiting lawyer who has provided legal services:

(a) provide information to the governing body under Rule 2-27.1 *[Sharing information with a governing body]*;

(b) co-operate fully in the investigation and any citation and hearing.

(5) Subrule (4) applies when the Discipline Committee agrees with a governing body under subrule (2).

(6) When the Executive Director provides information or documentation to a governing body under subrule (4) or (5), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

Public notice of suspension or disbarment

4-47 (1) When a person is suspended under this part or Part 5 *[Hearings and Appeals]*, is disbarred or, as a result of disciplinary proceedings, resigns from membership in the Society or otherwise ceases to be a member of the Society as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

(a) publication of a notice in

(i) the British Columbia Gazette,

(ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-21 *[Regional election of Benchers]*, in which the person maintained a law office, and

(iii) the Society website, and

(b) notifying the following:

(i) the Registrar of the Supreme Court;

(ii) the Public Guardian and Trustee.

(2) When a person is suspended under Part 2 *[Membership and Authority to Practise Law]* or 3 *[Protection of the Public]*, the Executive Director may take any of the steps referred to in subrule (1).

(3) A lawyer who is suspended under this part or Part 5 *[Hearings and Appeals]* must inform all clients who reasonably expect the lawyer to attend to their affairs during the period of the suspension and clients or prospective clients who inquire about the availability of the lawyer's services during the suspension period of the following:

(a) the period during which the lawyer will not be practising;

(b) the arrangements the lawyer has put in place to protect the clients' interests while the lawyer will not be practising;

(c) the fact that the lawyer is not practising during the relevant period because of the suspension.

(4) A panel that suspends a lawyer may relieve the lawyer of any of the obligations set out in subrule (3) if the panel is satisfied that it is consistent with the public interest and that imposing the obligation would be unreasonable in the circumstances.

Publication of disciplinary action

4-48 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken

(a) at the conclusion of the facts and determination portion of a hearing of a citation,

(b) at the conclusion of the disciplinary action portion of a hearing of a citation,

(c) at the conclusion of a hearing of a citation under Rule 4-33 *[Summary hearing]*,

(d) at the conclusion of a hearing before a review board under section 47 *[Review on the record]*,

(e) at the conclusion of an appeal to the Court of Appeal under section 48 *[Appeal]*,

(f) when an order is made or refused under Rule 4-26 (13) or (14) *[Review of interim suspension or practice conditions]*,

(g) when a lawyer or former lawyer is suspended or disbarred under Rule 4-52 *[Conviction]*, or

(h) when an admission is accepted under Rule 4-29 *[Conditional admissions]* or 4-30 *[Conditional admission and consent to disciplinary action]*.

(2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than

(a) a decision not to accept a conditional admission under Rule 4-29 *[Conditional admissions]* or 4-30 *[Conditional admission and consent to disciplinary action]*, or

(b) any decision under Rule 4-23 (2) *[Interim suspension or practice conditions]*.

(3) When a publication is required under subrule (1) or permitted under subrule (2), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision, reasons and action taken,

(b) all or part of the written reasons for the decision, or

(c) in the case of a conditional admission that is accepted under Rule 4-29 *[Conditional admissions]*, all or part of an agreed statement of facts.

(4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Anonymous publication

4-49 (1) Except as allowed under this rule, a publication under Rule 4-48 *[Publication of disciplinary action]* must identify the respondent.

(2) If all allegations in the citation are dismissed by a panel, the publication must not identify the respondent unless the respondent consents in writing.

(3) An individual affected, other than the respondent, may apply to the panel for an order under subrule (4) before the written report on findings of fact and determination is issued or oral reasons are delivered.

(4) On an application under subrule (3) or on its own motion, the panel may order that publication not identify the respondent if

(a) the panel has imposed a disciplinary action that does not include a suspension or disbarment, and

(b) publication of the identity of the respondent could reasonably be expected to identify an individual, other than the respondent, and that individual would suffer serious prejudice as a result.

(5) If a panel orders that a respondent's identity not be disclosed under subrule (4), the panel must state in writing the specific reasons for that decision.

Disclosure of practice restrictions

4-50 (1) When, under this part or Part 4 *[Discipline]* of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.

(2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer's practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer's practice.

(3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

(4) Subrule (3) does not apply to a decision of Benchers, a hearing panel or a review board.

Disbarment

4-51 When a lawyer is disbarred, the Executive Director must strike the lawyer's name from the barristers and solicitors' roll.

Conviction

4-52 (1) In this rule, **"offence"** means

(a) an offence that was proceeded with by way of indictment, or

(b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.

(2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence, the Committee may refer the matter to the Benchers to consider taking action under subrule (3).

(3) Without following the procedure provided for in the Act or these rules, the Benchers may summarily suspend or disbar a lawyer or former lawyer on proof that the lawyer or former lawyer has been convicted of an offence.

Notice

4-53 (1) Before the Benchers proceed under Rule 4-52 *[Conviction]*, the Executive Director must notify the lawyer or former lawyer in writing that

(a) proceedings will be taken under that rule, and

(b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.

(2) The notice referred to in subrule (1) must be served in accordance with Rule 10-1 *[Service and notice]*.

(3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

Summary procedure

4-54 (1) This rule applies to summary proceedings before the Benchers under Rule 4-52 *[Conviction]*.

(2) The Benchers may, in their discretion, hear oral submissions from the lawyer or former lawyer.

(3) Subject to the Act and these rules, the Benchers may determine practice and procedure.

Investigation of books and accounts

4-55 (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that the Executive Director conduct an investigation of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.

(2) When electronic records have been produced or copied pursuant to an order under this rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.

(3) A request under subrule (2) must be made to the Executive Director in writing within 21 days after the lawyer concerned receives a copy of the order under this rule.

(3.1) In exceptional circumstances, the Executive Director may extend the time for making a request under subrule (2).

(4) An order under this rule that permits the production or copying of electronic records must provide for a method of evaluating and adjudicating exclusion requests made under subrule (2).

(5) A request under subrule (2) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

(6) When an order is made under subrule (1), the lawyer or former lawyer concerned must do the following as directed by the Executive Director:

(a) and (b) [rescinded]

(c) immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence regardless of the form in which they are kept;

(d) provide any explanations required for the purpose of the investigation;

(e) assist the Executive Director to access, in a comprehensible form, records in the lawyer's possession or control that may contain information related to the lawyer's practice by providing all information necessary for that purpose, including but not limited to

(i) passwords, and

(ii) encryption keys.

(7) When an order has been made under this rule, the lawyer concerned must not alter, delete, destroy, remove or otherwise interfere with any book, record or account within the scope of the investigation without the written consent of the Executive Director.

[This page is intentionally left blank.]

PART 5 – HEARINGS AND APPEALS

Application

5-1 (1) This part applies to

(a) a hearing on an application for enrolment, call and admission or reinstatement,

(b) a hearing on a citation, and

(c) unless the context indicates otherwise, a review by a review board of a hearing decision.

(2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

Hearing panels

5-2 (1) A panel must consist of an odd number of persons but, subject to subrule (2), must not consist of one person.

(2) A panel may consist of one Bencher who is a lawyer if

(a) no facts are in dispute,

(b) the hearing is to consider a conditional admission under Rule 4-30 *[Conditional admission and consent to disciplinary action]*,

(c) the hearing proceeds under Rule 4-33 *[Summary hearing]*,

(d) the hearing is to consider a preliminary question under Rule 4-36 *[Preliminary questions]*, or

(e) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time.

(3) A panel must

(a) be chaired by a lawyer, and

(b) include at least one Bencher or Life Bencher who is a lawyer.

(4) Panel members must be permanent residents of British Columbia over the age of majority.

(5) The chair of a panel who ceases to be a lawyer may, with the consent of the President, continue to chair the panel, and the panel may complete a hearing already scheduled or begun.

(5.1) If a member of a panel ceases to be a Bencher and does not become a Life Bencher, the panel may, with the consent of the President, complete a hearing already scheduled or begun.

(6) Two or more panels may proceed with separate matters at the same time.

(7) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

(8) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

Panel member unable to continue

5-3 (1) Despite Rule 5-2 *[Hearing panels]*, if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may order that the panel continue with the remaining members.

(2) If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel.

Disqualification

5-4 (1) The following persons must not participate in a panel hearing a citation:

(a) a person who participated in the decision that authorized issuing the citation;

(b) a Bencher who made an order under Rule 3-10 *[Extraordinary action to protect public]*, 3-11 *[Medical examination]* or 4-23 *[Interim suspension or practice conditions]* regarding a matter forming the basis of the citation;

(c) a member of a panel that heard an application under Rule 4-26 *[Review of interim suspension or practice conditions]* to rescind or vary an interim suspension or practice condition or limitation in respect of a matter forming the basis of the citation.

(2) A person who participated in the decision to order the hearing on an application for enrolment as an articled student, for call and admission or for reinstatement must not participate in the panel on that hearing.

(3) A person must not appear as counsel for any party for three years after

(a) serving as a Bencher, or

(b) the completion of a hearing in which the person was a member of the panel.

Compelling witnesses and production of documents

5-5 (1) In this rule **"respondent"** includes a shareholder, director, officer or representative of a respondent law firm.

(2) A panel may

(a) compel the applicant or respondent to give evidence under oath, and

(b) at any time before or during a hearing, order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised by the application or in the citation.

(3) A person who is the subject of an order under subrule (2) (a) may be cross-examined by counsel representing the Society.

(4) A party to a proceeding under the Act and these Rules may prepare and serve a summons requiring a person to attend an oral or electronic hearing to give evidence in the form prescribed in Schedule 5 *[Form of Summons]*.

Procedure

5-6 (1) Subject to the Act and these Rules, the panel may determine the practice and procedure to be followed at a hearing.

(2) Before a court reporter begins reporting the proceedings of a hearing, the chair of the panel must ensure that the reporter takes an oath or makes a solemn affirmation to faithfully and accurately report and transcribe the proceedings.

(3) The applicant, respondent or counsel for the Society may call witnesses to testify.

(4) All witnesses, including a respondent ordered to give evidence under section 41 (2) (a) *[Panels]*,

(a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and

(b) are subject to cross-examination.

(5) The panel may make inquiries of a witness as it considers desirable.

(6) The hearing panel may accept any of the following as evidence:

(a) an agreed statement of facts;

(b) oral evidence;

(c) affidavit evidence;

(d) evidence tendered in a form agreed to by the respondent or applicant and Society counsel;

(e) an admission made or deemed to be made under Rule 4-28 *[Notice to admit]*;

(f) any other evidence it considers appropriate.

Communication with Ombudsperson confidential

5-7 (1) This rule is to be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.

(3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.

(4) In a proceeding

(a) no one is permitted to give evidence about any discussion or other communication with the Ombudsperson in that capacity, and

(b) no record can be admitted in evidence or disclosed under Rule 4-34 *[Demand for disclosure of evidence]* or 4-35 *[Application for details of the circumstances]* if it was produced

(i) by or under the direction of the Ombudsperson in that capacity, or

(ii) by another person while receiving or seeking assistance from the Ombudsperson, unless the record would otherwise be admissible or subject to disclosure under Rule 4-34 *[Demand for disclosure of evidence]* or 4-35 *[Application for details of the circumstances]*.

Public hearing

5-8 (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public in any circumstances it considers appropriate.

(2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(3) Despite the exclusion of the public under subrule (1) in a hearing on a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.

(4) Except as required under Rule 5-9 *[Transcript and exhibits]*, when a hearing is in progress, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.

(5) When a panel or review board makes an order or declines to make an order under this rule, the panel or review board must give written reasons for its decision.

Transcript and exhibits

5-9 (1) All proceedings at a hearing must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript pertaining to any part of the hearing that he or she was entitled to attend.

(2) Subject to solicitor-client privilege or an order under Rule 5-8 (2) *[Public hearing]*, any person may obtain, at his or her own expense, a copy of an exhibit entered in evidence when a hearing is open to the public.

Decision

5-10 (1) A decision of a hearing panel is made by majority vote.

(2) On request, the Executive Director must disclose a panel's written reasons for its decision, subject to the protection of solicitor and client privilege and confidentiality.

(3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

Costs of hearings

5-11 (1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1 *[Application]*, and may set a time for payment.

(2) A review board may order that an applicant or respondent pay the costs of a review under section 47, and may set a time for payment.

(3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 *[Tariff for hearing and review costs]* to these Rules in calculating the costs payable by an applicant, a respondent or the Society.

(4) A panel or review board may order that the Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 *[Tariff for hearing and review costs]* if, in the judgment of the panel or review board, it is reasonable and appropriate to so order.

(5) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.

(6) In the tariff in Schedule 4 *[Tariff for hearing and review costs]*,

(a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and

(b) for a day that includes less than 2 and one-half hours of hearing, one-half the number of units or amount payable applies.

(7) If no adverse finding is made against the applicant, the panel or review board has the discretion to direct that the applicant be awarded costs.

(8) If the citation is dismissed or rescinded after the hearing has begun, the panel or review board has the discretion to direct that the respondent be awarded costs in accordance with subrules (3) to (6).

(9) Costs deposited under Rule 2-92 *[Security for costs]* must be applied to costs ordered under this Rule.

(10) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this Rule or the Act are paid in full.

(11) As an exception to subrule (10), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

Application to vary certain orders

5-12 (1) An applicant or respondent may apply in writing to the President for

(a) an extension of time

(i) to pay a fine or the amount owing under Rule 5-11 *[Costs of hearings]*, or

(ii) to fulfill a condition imposed under section 22 *[Credentials hearings]*, 38 *[Discipline hearings]*, or 47 *[Review on the record]*,

(b) a variation of a condition referred to in paragraph (a) (ii), or

(c) a change in the start date for a suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*.

(2) An application under subrule (1) (c) must be made at least 7 days before the start date set for the suspension.

(3) [rescinded]

(4) The President must refer an application under subrule (1) to one of the following, as may in the President's discretion appear appropriate:

(a) the same panel or review board that made the order;

(b) a new panel;

(c) the Discipline Committee;

(d) the Credentials Committee.

(5) The panel, review board or Committee that hears an application under subrule (1) must

(a) dismiss it,

(b) extend to a specified date the time for payment,

(c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or

(d) specify a new date for the start of a period of suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*.

(6) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (4) (c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (5).

(7) An application under this rule does not stay the order that the applicant seeks to vary.

Failure to pay costs or fulfill practice condition

5-13 (1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-12 *[Application to vary certain orders]*:

(a) pay in full a fine or the amount owing under Rule 5-11 *[Costs of hearings]*;

(b) fulfill a practice condition as imposed under section 21 *[Admission, reinstatement and requalification]*, 22 *[Credentials hearings]*, 27 *[Practice standards]*, 32 *[Financial responsibility*], 38 *[Discipline hearings*] or 47 *[Review on the record]*, as accepted under section 19 *[Applications for enrolment, call and admission, or reinstatement]*, or as varied under these Rules.

(2) If, on December 31, an applicant or respondent is in breach of subrule (1), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

Recovery of money owed to the Society

5-14 (1) A lawyer or former lawyer who is liable to pay the costs of an audit or investigation must pay to the Society the full amount owing by the date set by the Discipline Committee.

(1.1) A lawyer who is liable to pay an assessment under Rule 3-80 *[Late filing of trust report]* must pay to the Society the full amount owing by the date specified in that Rule or as set or extended by the Executive Director.

(2) A lawyer who has not paid the full amount owing under subrule (1) or (1.1) by the date set or extended is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

Reviews and appeals

Review by review board

5-15 (1) In Rules 5-15 to 5-28, **"review"** means a review of a hearing panel decision by a review board under section 47 *[Review on the record]*.

(2) Subject to the Act and these Rules, a review board may determine the practice and procedure to be followed at a review.

(3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

(4) If the review board finds that there are special circumstances and hears evidence under section 47 (4) *[Review on the record]*, the Rules that apply to the hearing of evidence before a hearing panel apply.

Review boards

5-16 (1) When a review is initiated under Rule 5-19 *[Initiating a review]*, the President must establish a review board consisting of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a Bencher who is a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a lawyer may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

(5) Two or more review boards may proceed with separate matters at the same time.

(6) The President may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.

(7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

Disqualification

5-17 The following must not participate in a review board reviewing the decision of a hearing panel:

(a) a member of the hearing panel;

(b) a person who was disqualified under Rule 5-4 *[Disqualification]* from participation in the hearing panel.

Review board member unable to continue

5-18 (1) Despite Rule 5-16 *[Review boards]*, if a member of a review board cannot, for any reason, complete a review that has begun, the President may order that the review board continue with the remaining members, whether or not the board consists of an odd number of persons.

(2) If the chair of a review board cannot, for any reason, complete a review that has begun, the President may appoint another member of the review board who is a lawyer as chair of the review board.

Initiating a review

5-19 (1) Within 30 days after being notified of the decision of the panel in a credentials hearing, the applicant may initiate a review by delivering a notice of review to the President and counsel representing the Society.

(2) Within 30 days after being notified of the decision of a panel under Rule 4-44 *[Disciplinary action]* or 5-11 *[Costs of hearings]*, the respondent may initiate a review by delivering a notice of review to the President and discipline counsel.

(3) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may initiate a review by resolution.

(4) Within 30 days after a decision of the panel in a hearing on a citation, the Discipline Committee may initiate a review by resolution.

(5) When a review is initiated under subrule (3) or (4), counsel acting for the Society or discipline counsel must promptly deliver a notice of review to the President and the respondent.

(6) Within 30 days after the order of the Practice Standards Committee under Rule 3-25 (1) *[Costs]*, the lawyer concerned may initiate a review by delivering a notice of review to the President.

Extension of time to initiate a review

5-19.1 (1) A party may apply to the President to extend the time within which a review may be initiated under Rule 5-19 *[Initiating a review]*.

(2) When an application is made under subrule (1), the President must

(a) refuse the extension of time, or

(b) grant the extension, with or without conditions or limitations.

(3) On an application under this rule, the President may designate another Bencher to make a determination under subrule (2).

Stay of order pending review

5-20 (1) When a review is initiated under Rule 5-19 *[Initiating a review]*, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

(2) When the Credentials Committee initiates a review under Rule 5-19 (3) *[Initiating a review]*, an order of the hearing panel to call and admit or reinstate the applicant is stayed.

(3) When a review has been initiated under Rule 5-19 *[Initiating a review]*, any party to the review may apply to the President for a stay of any order not referred to in subrule (1) or (2).

(4) The President may designate another Bencher to make a determination under subrule (3).

Notice of review

5-21 A notice of review must contain the following in summary form:

(a) a clear indication of the decision to be reviewed by the review board;

(b) the nature of the order sought;

(c) the issues to be considered on the review.

Record of credentials hearing

5-22 (1) Unless counsel for the applicant and for the Society agree otherwise, the record for a review of a credentials decision consists of the following:

(a) the application;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) any written arguments or submissions received by the panel;

(e) the panel's written reasons for any decision;

(f) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of discipline hearing

5-23 (1) Unless counsel for the respondent and for the Society agree otherwise, the record for a review of a discipline decision consists of the following:

(a) the citation;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(d) any written arguments or submissions received by the panel;

(e) the panel's written reasons for any decision;

(f) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of an order for costs by the Practice Standards Committee

5-24 (1) Unless counsel for the lawyer and for the Society agree otherwise, the record for a review of an order for costs under Rule 3-25 *[Costs]* consists of the following:

(a) the order;

(b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;

(c) the Committee's written reasons for any decision on costs;

(d) the notice of review.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Preparation and delivery of record

5-24.1 (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver

(a) 6 copies to the President, and

(b) 1 copy to the other party.

(2) The time for producing the record may be extended by agreement of the parties.

(3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).

(4) By delivering to the President and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for

(a) an extension of time to prepare and deliver the record, or

(b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.

(5) When an application is made under subrule (4), the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.

(6) The President may

(a) designate another Bencher to make a determination under subrule (5), or

(b) refer the application to a pre-review conference.

(7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 *[Costs of hearings]*.

Notice of review hearing

5-24.2 (1) The date, time and place for the hearing on a review to begin must be set

(a) by agreement between the parties, or

(b) on the application of a party, by the President or by the Bencher presiding at a pre-review conference.

(2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the parties agree to a shorter notice period.

Pre-review conference

5-25 (1) The President may order a pre-review conference at any time before the hearing on a review, at the request of the applicant, respondent or counsel for the Law Society, or on the President's own initiative.

(2) When a conference has been ordered under subrule (1), the President must

(a) set the date, time and place of the conference and notify the parties, and

(b) designate a Bencher to preside at the conference.

(3) Counsel representing the Society must be present at the conference.

(4) [rescinded]

(5) The applicant or the respondent, as the case may be, may attend the conference, in person, through counsel or both.

(6) If the applicant or the respondent, as the case may be, fails to attend the conference, the Bencher presiding may proceed with the conference in the absence of that party and may make any order under this Rule, if the Bencher is satisfied that the party had been notified of the conference.

(7) If the Bencher presiding at a pre-review conference considers it appropriate, he or she may allow any person to participate in the conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.

(8) The conference may consider

(a) the simplification of the issues,

(b) any issues concerning the record to be reviewed,

(c) the possibility of agreement on any issues in the review,

(d) the exchange of written arguments or outlines of argument and of authorities,

(e) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,

(f) setting a date for the review, and

(g) any other matters that may aid in the disposition of the review.

(9) The Bencher presiding at a pre-review conference may

(a) adjourn the conference or the hearing of the review generally or to a specified date, time and place,

(b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,

(c) set a date for the review, subject to Rule 5-24.1 (3) *[Preparation and delivery of record]*, and

(d) make any order or allow or dismiss any application consistent with this part.

Adjournment

5-26 (1) Before a hearing on a review commences, the applicant, respondent or counsel for the Society may apply for an order that the hearing be adjourned by delivering to the President and to the other party written notice setting out the grounds for the application.

(2) [rescinded]

(3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.

(4) The President may

(a) designate another Bencher to make a determination under subrule (3), or

(b) refer the application to a pre-review conference.

(5) After a hearing has commenced, the chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

Decision on review

5-27 (1) The decision of the review board on a review is made by majority vote.

(2) The review board must prepare written reasons for its decision on a review.

(3) When the review board gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

(4) A copy of the review board's written reasons prepared under subrule (2) must be delivered promptly to the applicant or respondent and counsel for the Society.

(5) On request, the Executive Director must disclose the review board's written reasons for its decision.

Inactive reviews

5-28 (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by delivering to the President and the other party a notice in writing that sets out the basis for the application.

(2) [rescinded]

(3) If it is in the public interest and not unfair to the respondent or applicant, the President may dismiss the review.

(4) The President may designate another Bencher to make a determination under subrule (3).

Appeal to Court of Appeal

5-29 (1) The Discipline Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 *[Appeal]* of a decision of a panel or review board in a discipline hearing.

(2) The Credentials Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 *[Appeal]* of a decision of a panel or review board in a credentials hearing.

(3) The Practice Standards Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 *[Appeal]* of a decision of a review board with respect to an order for costs under Rule 3-25 *[Costs]*.

PART 6 – CUSTODIANSHIPS

Co-operation in conduct of custodianship

6-1 A lawyer who is the subject of a custodianship order made under Part 6 of the Act must

(a) co-operate with the custodian in the conduct of the custodianship, and

(b) deliver to the custodian property, documents and information that may be reasonably necessary to facilitate the conduct of the custodianship.

Report of possible claim

6-2 Unless the lawyer has already done so, a custodian must report the following in writing to the Executive Director:

(a) any act or omission caused by the lawyer of which the custodian becomes aware that may render the lawyer, in the lawyer's professional capacity, liable to a client or other person;

(b) any circumstance that the custodian could reasonably expect to be the basis of a claim or suit against the lawyer.

Acting for lawyer's clients

6-3 The custodian of a lawyer's practice must not, until discharged as custodian, act for a client of the lawyer on any matter that the lawyer had acted on.

Acquiring lawyer's practice

6-4 A person who has at any time acted as custodian of a lawyer's practice must not bid on or acquire the lawyer's practice.

Notice of custodianship order

6-5 When a custodianship order is made, the Executive Director may publish to the profession and the public generally, in a form that appears appropriate to the Executive Director, the following information:

(a) the name of the lawyer who is the subject of a custodianship order;

(b) the name and contact information of the custodian;

(c) the reasons for the custodianship order.

PART 7 – LAW FOUNDATION

[no rules]

PART 8 – LAWYERS' FEES

Reasonable remuneration

8-1 (1) A lawyer who enters into a contingent fee agreement with a client must ensure that, under the circumstances existing at the time the agreement is entered into,

(a) the agreement is fair, and

(b) the lawyer's remuneration provided for in the agreement is reasonable.

(2) A lawyer who prepares a bill for fees earned under a contingent fee agreement must ensure that the total fee payable by the client

(a) does not exceed the remuneration provided for in the agreement, and

(b) is reasonable under the circumstances existing at the time the bill is prepared.

Maximum remuneration in personal injury actions

8-2 (1) Subject to the court's approval of higher remuneration under section 66 (7) *[Contingent fee agreement]*, the maximum remuneration to which a lawyer is entitled under a contingent fee agreement for representing a plaintiff up to and including all matters pertaining to the trial of an action is as follows:

(a) in a claim for personal injury or wrongful death arising out of the use or operation of a motor vehicle, 33 1/3% of the amount recovered;

(b) in any other claim for personal injury or wrongful death, 40% of the amount recovered.

(2) Despite subrule (1), a contingent fee agreement may provide that the lawyer may elect to forego any remuneration based on a proportion of the amount recovered and receive instead an amount equal to any costs awarded to the client by order of a court.

(3) This rule does not prevent a lawyer and client from making a separate agreement for payment beyond the amount specified in subrule (1) to compensate the lawyer for representing the client in an appeal from a trial judgment pronounced in the proceeding for which the lawyer was retained.

Form and content of contingent fee agreements

8-3 A contingent fee agreement must

(a) be in writing,

(b) state that the person who entered into the agreement with the lawyer may, within 3 months after the agreement was made or the retainer between the solicitor and client was terminated by either party, apply to a district registrar of the Supreme Court of British Columbia to have the agreement examined, even if the person has made payment to the lawyer under the agreement, and

(c) not include a provision that

(i) the lawyer is not liable for negligence or is relieved from any responsibility to which a lawyer would otherwise be subject,

(ii) the claim or cause of action that is the subject matter of the agreement cannot be abandoned, discontinued or settled without the consent of the lawyer, a law firm or a law corporation, or

(iii) the client may not change lawyers before the conclusion of the claim or cause of action that is the subject matter of the agreement.

Statement of rules in contingent fee agreements

8-4 (1) A contingent fee agreement between a lawyer and a plaintiff in a claim for personal injury or wrongful death arising out of the use or operation of a motor vehicle must include the following statement, prominently placed:

> Under the Rules of the Law Society of British Columbia, without court approval, a lawyer may charge a maximum of 33 1/3% of the total amount recovered in a claim for personal injury or wrongful death arising out of the use of a motor vehicle.
>
> The percentage limit applies to all matters related to the trial of a lawsuit, but does not include any appeal. A lawyer and a client may make a separate agreement for legal fees for an appeal.
>
> Fees charged by different lawyers vary.

(2) A contingent fee agreement between a lawyer and a plaintiff in a claim for personal injury or wrongful death not affected by subrule (1) must include the following statement, prominently placed:

> Under the Rules of the Law Society of British Columbia, without court approval, a lawyer may charge a maximum of 40% of the total amount recovered in a claim for personal injury or wrongful death.
>
> The percentage limit applies to all matters related to the trial of a lawsuit, but does not include any appeal. A lawyer and a client may make a separate agreement for legal fees for an appeal.
>
> Fees charged by different lawyers vary.

(3) If a contingent fee agreement includes a provision permitted under Rule 8-2 (2) *[Maximum remuneration in personal injury actions]*, the statement required under subrule (1) or (2) must include the following:

> The Law Society Rules allow a lawyer and client to agree that the lawyer may choose to charge the amount of costs awarded instead of a percentage of the amount recovered.

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Corporate name

9-1 A corporation must use a name

(a) under which no other corporation holds a valid law corporation permit under this division,

(b) that does not so nearly resembles the name of another corporation holding a valid law corporation permit under this division that it is likely to confuse or mislead the public,

(c) that complies with the *Code of Professional Conduct*, section 4.2 *[Marketing]*, and

(d) that includes one of the following phrases:

(i) "law corporation";

(ii) "law ULC";

(iii) "law unlimited liability company."

Corporate name certificate

9-2 (1) A lawyer may apply to the Executive Director, in a form approved by the Executive Committee, for a certificate that the Society does not object to the incorporation of a company as a law corporation under a proposed name.

(2) On receipt of an application under subrule (1), the Executive Director must either

(a) issue a certificate to the lawyer if the Executive Director is satisfied that the intended name complies with Rule 9-1 *[Corporate name]*, or

(b) reject the application.

(3) The Executive Director must notify the lawyer in writing of his or her decision under subrule (2).

Review of Executive Director's decision

9-3 (1) A lawyer whose application is rejected under Rule 9-2 *[Corporate name certificate]* may apply in writing to the Ethics Committee for a review.

(2) After considering any submissions received from the lawyer and from the Executive Director, the Ethics Committee must

(a) direct the Executive Director to issue a certificate to the lawyer if it is satisfied that the intended name complies with Rule 9-1 *[Corporate name]*, or

(b) reject the application.

(3) The Ethics Committee must notify the lawyer and the Executive Director in writing of its decision under this Rule.

Law corporation permit

9-4 A company may apply to the Executive Director for a law corporation permit by delivering to the Executive Director

(a) a completed permit application in a form approved by the Executive Committee,

(b) a true copy of the certificate of incorporation of the company and any other certificates that reflect a change in name or status, and

(c) the fee specified in Schedule 1.

Issuance of permit

9-5 (1) Subject to section 82 *[Law corporation permit]*, the Executive Director must issue a law corporation permit to a company that has complied with the Act and these rules.

(2) Subject to subrule (3), a law corporation permit issued under subrule (1) is valid from the effective date shown on it.

(3) A permit issued to a law corporation ceases to be valid if

(a) it is revoked under Rule 9-11 *[Revocation of permits]*,

(b) a practising lawyer who is a voting shareholder in the law corporation dies or otherwise ceases to be a practising lawyer, and no provision is made in the articles of the law corporation for the immediate and automatic disposition of that person's shares in that case,

(c) another law corporation that is a voting shareholder in the law corporation ceases to be registered as a company under the *Business Corporations Act* or ceases to hold a valid law corporation permit and no provision is made in the articles of the law corporation for the immediate and automatic disposition of the other law corporation's shares in that case, or

(d) the corporation surrenders the permit to the Executive Director.

Change of corporate name

9-6 (1) A law corporation may apply to the Executive Director in a form approved by the Executive Committee for a certificate that the Society does not object to a specific change of name for the law corporation.

(2) Rules 9-1 to 9-3 apply to an application under subrule (1), with the necessary changes and so far as they are applicable.

(3) A law corporation must not apply for a change of name under the *Business Corporations Act* unless it has been granted the certificate referred to in subrule (1).

(4) The Executive Director must issue a new permit to a law corporation that has

(a) obtained the certificate referred to in subrule (1),

(b) delivered to the Executive Director a true copy of the certificate of the Registrar of Companies showing the change of name and the date it is effective, and

(c) paid the fee specified in Schedule 1.

(5) Subject to Rule 9-5 (3) *[Issuance of permit]*, a law corporation permit issued under subrule (4) is valid until the date on which the permit that it replaces would have expired.

Public disclosure of corporate status

9-7 When a lawyer or law firm provides legal services to the public through a law corporation, all advertising for the lawyer or law firm must indicate that the law corporation provides the legal services.

Corporate information

9-8 A law corporation must deliver to the Executive Director copies of its Articles, Notice of Articles and amendments to its Articles or Notice of Articles

(a) when applying for a permit, and

(b) immediately on adoption of new or amended Articles or Notice of Articles.

Disclosure of corporate information

9-9 (1) All information and documents received by the Society under this division are confidential, and no person is permitted to disclose them to any person.

(2) As an exception to subrule (1), the Society may

(a) use information and documents for a purpose consistent with the Act and these rules,

(b) disclose information and documents to a governing body under Rule 2-27.1 *[Sharing information with a governing body]*, and

(c) disclose the following information, on request, to any person:

(i) the name of a corporation;

(ii) a corporation's place of business;

(iii) whether a company has a valid law corporation permit;

(iv) whether a specified lawyer is an employee or a voting shareholder of a corporation;

(v) whether a specified law corporation is a voting shareholder of a law corporation.

Notice of change in corporate information

9-10 The president of a company or his or her designate must promptly advise the Executive Director in writing of any change to the information contained in the permit application or renewal permit application most recently delivered to the Society.

Revocation of permits

9-11 (1) After a hearing, a panel may revoke a law corporation's permit if

(a) in the course of providing legal services the corporation does anything that, if done by a lawyer, would be professional misconduct or conduct unbecoming the profession,

(b) the corporation contravenes the Act or a rule, or

(c) the corporation ceases to comply with a condition of qualification referred to in section 81 *[Authorized and prohibited activities of law corporations]* or a condition under this division or section 82 *[Law corporation permit]*.

(2) Instead of revoking a law corporation permit under subrule (1), a panel may do one or more of the following:

(a) reprimand one or more of the voting shareholders of a law corporation;

(b) impose a fine on the law corporation in an amount not exceeding $50,000;

(c) impose conditions or limitations under which the law corporation may continue to provide legal services to the public.

(3) Any shareholder, director, officer or employee of or contractor to a law corporation may be

(a) compelled to give evidence at a proceeding under this division or under Part 5 *[Hearings and appeals]*, or

(b) required to produce any file or record in that person's possession or control that is relevant to matters raised in the proceeding.

(4) To the extent reasonably possible, Parts 4 *[Discipline]* and 5 *[Hearings and appeals]* apply to notice of a hearing on the revocation of a law corporation permit and to the hearing as they apply to a citation and the hearing of the citation.

(5) If a hearing has been ordered on the revocation of a law corporation permit and a citation has been directed to be issued against a shareholder, director, officer or employee of the corporation holding the permit, the Discipline Committee may direct that the citation and the question of the revocation of the law corporation permit be heard together.

(6) When the Discipline Committee has directed that a citation and the question of the revocation of a law corporation permit be heard together, the panel conducting the hearing may order that they be heard separately.

(7) When a panel imposes a condition or limitation under which a law corporation may continue to provide legal services to the public under subrule (2) (c), the Executive Director may disclose the fact that the condition or limitation applies and the nature of the condition or limitation.

(8) If the Executive Director discloses the existence of a condition or limitation under subrule (7) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.

(9) Subrule (8) does not apply to a decision of Benchers, a hearing panel or a review board.

Division 2 – Limited Liability Partnerships

Definition

9-12 In this division **"person applying"** means a person applying or proposing to apply on behalf of a partnership for registration as a limited liability partnership or extraprovincial limited liability partnership under Part 6 *[Limited Liability Partnerships]* of the *Partnership Act*.

Practice through a limited liability partnership

9-13 A lawyer or law corporation is authorized to carry on the practice of law through a limited liability partnership, provided that the lawyer or law corporation and the limited liability partnership comply with the *Partnership Act* and meet the prerequisites of this division.

LLP name

9-14 A limited liability partnership must not use a name contrary to the *Code of Professional Conduct*, section 4.2 *[Marketing]*.

Notice of application for registration

9-15 (1) Before an application to register a partnership or an extraprovincial limited liability partnership as a limited liability partnership is made on behalf of the partnership under Part 6 *[Limited Liability Partnerships]* of the *Partnership Act*, the person applying must

(a) submit to the Executive Director a copy of the registration statement that he or she intends to file under that Act,

(b) pay the LLP registration fee specified in Schedule 1, and

(c) receive a statement of approval of LLP registration from the Executive Director.

(2) On receipt of a submission under subrule (1), the Executive Director must issue a statement of approval of LLP registration if the Executive Director is satisfied that

(a) the intended name complies with Rule 9-14 *[LLP name]*, and

(b) membership in the partnership complies with subrules (3) and (5).

(3) Each partner in an LLP must be

(a) a member of the Society,

(b) a member of a recognized legal profession in another jurisdiction,

(c) a law corporation holding a valid permit under this part or the equivalent in the jurisdiction in which it provides legal services, or

(d) a non-lawyer participating in the partnership in another Canadian jurisdiction as permitted in that jurisdiction.

(4) Despite subrule (3), an LLP that is an MDP in which a lawyer has permission to practise law under Rules 2-38 to 2-49 may include non-lawyer members as permitted by those rules.

(5) At least one partner in an LLP must be a member of the Society or a law corporation holding a valid permit under this Part.

(6) If the Executive Director is not satisfied of the matters referred to in subrule (2), the Executive Director must decline to issue a statement of approval.

(7) The Executive Director must notify the person applying in writing of the Executive Director's decision under subrule (2).

Review of Executive Director's decision

9-16 (1) If the Executive Director declines to issue a statement of approval under Rule 9-15 *[Notice of application for registration]*, the person applying may apply in writing to the Ethics Committee for a review.

(2) After considering any submissions received from the partners and from the Executive Director, the Ethics Committee must

(a) direct the Executive Director to issue a statement of approval if it is satisfied that

(i) the intended name complies with Rule 9-14 *[LLP name]*, and

(ii) Rule 9-15 (3) *[Notice of application for registration]* has been satisfied, or

(b) reject the application.

(3) The Ethics Committee must notify the person applying and the Executive Director in writing of its decision under this rule.

Disclosure of LLP status

9-17 (1) When a firm provides legal services to the public through a limited liability partnership, all advertising for the firm must indicate that the limited liability partnership provides the legal services.

(2) When a firm is continued as a limited liability partnership, the firm must promptly take reasonable steps to notify in writing each existing client of the firm of the change and the effect of a limited liability partnership in respect of the liability of partners.

(3) The notice required under subrule (2) must include a statement to the following effect, prominently placed:

> The partners in a limited liability partnership are not personally liable for the negligent acts or omissions of another partner or an employee unless the partner knew of the negligent act or omission and did not take reasonable steps to prevent it. Each partner is personally liable for his or her own actions, and the partnership continues to be liable for the negligence of its partners, associates and employees. Accordingly, there is no reduction or limitation on the liability of the partnership.

(4) When a firm is registered as an extraprovincial limited liability partnership under Part 6 *[Limited Liability Partnerships]* of the *Partnership Act*, the firm must promptly take reasonable steps to notify in writing each existing client of the firm in British Columbia of the registration and any change, resulting from the registration, in the liability of the partners.

(5) Subrule (4) does not apply to a client outside of British Columbia if the firm provides legal services to the client primarily through lawyers outside of British Columbia.

(6) The notice required under subrule (2) or (4) may be

(a) mailed by regular or registered mail to the client at the client's last known address,

(b) delivered personally to the client,

(c) transmitted by electronic facsimile to the client at the client's last known electronic facsimile number,

(d) transmitted by electronic mail to the client at the client's last known electronic mail address, or

(e) published in a newspaper distributed in the area in which the client resides or carries on business.

Change in LLP information and annual reports

9-18 A limited liability partnership must deliver to the Executive Director copies of the following at the same time that they are filed under Part 6 *[Limited Liability Partnerships]* of the *Partnership Act*:

(a) an annual report;

(b) an amendment to the registration statement.

Disclosure of LLP information

9-19 (1) All information and documents received by the Society under this division are confidential, and no person is permitted to disclose them to any person.

(2) As an exception to subrule (1), the Society may

(a) use information and documents for a purpose consistent with the Act and these rules,

(b) disclose information and documents to a governing body under Rule 2-27.1 *[Sharing information with a governing body]*, and

(c) disclose to any person on request the name and place of business of a limited liability partnership.

Notification of non-compliance

9-20 With the consent of the Credentials Committee, the Executive Director may notify the Registrar of Companies if the Executive Director becomes aware of the failure of a limited liability partnership or one or more of its partners to maintain compliance with the requirements of Part 6 *[Limited Liability Partnerships]* of the *Partnership Act*.

PART 10 – GENERAL

Service and notice

10-1 (1) A lawyer, former lawyer, articled student or applicant may be served with a notice or other document personally, by leaving it at his or her place of business or by sending it by

(a) registered mail, ordinary mail or courier to his or her last known business or residential address,

(b) electronic facsimile to his or her last known electronic facsimile number,

(c) electronic mail to his or her last known electronic mail address, or

(d) any of the means referred to in paragraphs (a) to (c) to the place of business of his or her counsel or personal representative or to an address given to discipline counsel by a respondent for delivery of documents relating to a citation.

(2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), the President may order substituted service, whether or not there is evidence that

(a) the notice or other document will probably

(i) reach the intended recipient, or

(ii) come to the intended recipient's attention, or

(b) the intended recipient is evading service.

(3) The President may designate another Bencher to make a determination under subrule (2).

(4) A document may be served on the Society or on the Benchers by

(a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or

(b) personally serving it on an officer of the Society.

(4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

(5) A document sent by ordinary mail is deemed to be served 7 days after it is sent.

(6) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.

(7) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.

(8) Any person may be notified of any matter by ordinary mail, electronic facsimile or electronic mail to the person's last known address.

Duty not to disclose

10-2 A person performing any duty or fulfilling any function under the Act or these rules who receives or becomes privy to any confidential information, including privileged information,

(a) has the same duty that a lawyer has to a client not to disclose that information, and

(b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these rules or an order of a court.

Records

10-3 (1) In this rule, **"storage provider"** means any entity storing or processing records outside of a lawyer's office, whether or not for payment.

(2) When required under the Act or these rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:

(a) printed in a comprehensible format;

(b) accessed on a read-only basis;

(c) exported to an electronic format that allows access to the records in a comprehensible format.

(3) A lawyer who is required to produce records under the Act or these rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.

(4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer

(a) retains custody and control of the records,

(b) ensures that ownership of the records does not pass to another party,

(c) is capable of complying with a demand under the Act or these rules to produce the records and provide access to them,

(d) ensures that the storage provider maintains the records securely without

(i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,

(ii) allowing unauthorized access to or copying or acquisition of the records, or

(iii) failing to destroy the records completely and permanently on instructions from the lawyer, and

(e) enters into a written agreement with the storage provider that is consistent with the lawyer's obligations under the Act and these rules.

(5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this rule, no lawyer is permitted to maintain records of any kind with that entity.

Security of records

10-4 (1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.

(2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that

(a) he or she has lost custody or control of any of the lawyer's records for any reason,

(b) anyone has improperly accessed or copied any of the lawyer's records, or

(c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

[This page is intentionally left blank.]

SCHEDULE 1 – 2020 LAW SOCIETY FEES AND ASSESSMENTS

	$
A. Annual fee	
1. Practice fee (Rule 2-105 *[Annual practising fees]*)	2,289.12
2. Indemnity fee base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-40 (1) *[Annual indemnity fee]*):	
(a) full-time practice	1,800.00
(b) part-time practice	900.00
3. Indemnity surcharge (Rule 3-44 (2) *[Deductible, surcharge and reimbursement]*)	1,000.00
4. Late payment fee for practising lawyers (Rule 2-108 (3) *[Late payment]*)	150.00
5. Retired member fee (Rule 2-4 (3) *[Retired members]*)	125.00
6. Late payment fee for retired members (Rule 2-108 (4))	nil
7. Non-practising member fee (Rule 2-3 (2) *[Non-practising members]*)	325.00
8. Late payment fee for non-practising members (Rule 2-108 (5))	40.00
9. Administration fee (R. 2-116 (3) *[Refund on exemption during practice year]*)	70.00
B. Trust administration fee	
1. Each client matter subject to fee (Rule 2-110 (1) *[Trust administration fee]*)	15.00
C. Special assessments	
D. Articled student fees	
1. Application fee for enrolment in admission program (Rules 2-54 (1) (e) *[Enrolment in the admission program]* and 2-62 (1) (b) *[Part-time articles]*)	275.00
2. Application fee for temporary articles (R. 2-70 (1) (c) *[Temporary articles]*)	150.00
3. Application fee for temporary articles (legal clinic) (Rule 2-70 (1) (c))	50.00
4. Training course registration (Rule 2-72 (4) (a) *[Training course]*)	2,600.00
5. Remedial work (Rule 2-74 (8) *[Review by Credentials Committee]*):	
(a) for each piece of work	100.00
(b) for repeating the training course	4,000.00
E. Transfer fees	
1. Application fee for transfer from another Canadian province or territory – investigation fee (Rule 2-79 (1) (f) *[Transfer from another Canadian jurisdiction]*)	1,150.00
2. Transfer or qualification examination (Rules 2-79 (6) and 2-89 (6) *[Returning to practice after an absence]*)	325.00
F. Call and admission fees	
1. After enrolment in admission program (Rule 2-77 (1) (c) *[First call and admission]*)	250.00
2. After transfer from another Canadian province or territory (Rule 2-79 (1) (f) *[Transfer from another Canadian jurisdiction]*)	250.00

G. Reinstatement fees	$
1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-85 (1)(b) *[Reinstatement of former lawyer]*)	700.00
2 Application fee following 3 years or more as a former member (Rule 2-85 (1) (b))	550.00
3. Application fee in all other cases (Rule 2-85 (1) (b))	450.00

H. Change of status fees	
1. Application fee to become retired member (Rule 2-4 (2) (b) *[Retired members]*)	35.00
2. Application fee to become non-practising member (Rule 2-3 (1) (b) *[Non-practising members]*)	70.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-5 (1) (b)) *[Release from undertaking]*	70.00

I. Inter-jurisdictional practice fees	
1. Application fee (Rule 2-19 (3) (b) *[Inter-jurisdictional practice permit]*)	500.00
2. Renewal of permit (Rule 2-19 (3) (b))	100.00

J. Corporation and limited liability partnership fees	
1. Permit fee for law corporation (Rule 9-4 (c) *[Law corporation permit]*)	400.00
2. New permit on change of name fee (Rule 9-6 (4) (c) *[Change of corporate name]*)	100.00
3. LLP registration fee (Rule 9-15 (1) *[Notice of application for registration]*	400.00

K. Practitioners of foreign law	
1. Application fee for practitioners of foreign law (Rule 2-29 (1) (b) *[Practitioners of foreign law]*)	700.00
2. Permit renewal fee for practitioners of foreign law (Rules 2-29 (1) (b) and 2-34 (2) (c) *[Renewal of permit]*)	150.00
3. Late payment fee (Rule 2-34 (6))	100.00

L. Late fees	
1. Trust report late filing fee (Rule 3-80 (2) (b) *[Late filing of trust report]*)	200.00
2. Professional development late completion fee (Rule 3-31 (1) (c) *[Late completion of professional development]*)	500.00
3. Professional development late reporting fee (Rule 3-31 (3) (b))	200.00
4. Late registration delivery fee (Rule 2-12.4)	200.00
5. Late self-assessment delivery fee (Rule 2-12.4)	500.00

M. Multi-disciplinary practice fees	**$**
1. Application fee (Rule 2-40 (1) (b) *[Application to practise law in MDP]*).....	300.00
2. Application fee per proposed non-lawyer member of MDP (Rules 2-40 (1) (c) and 2-42 (2) *[Changes in MDP]*).....	1,125.00

Note: The federal goods and services tax applies to Law Society fees and assessments.

SCHEDULE 2 – 2020 PRORATED FEES AND ASSESSMENTS FOR PRACTISING LAWYERS

[Rules 2-77 (1) *[First call and admission]*, 2-79 (1) *[Transfer from another Canadian jurisdiction]*, 2-85 (4) *[Reinstatement of former lawyer]*, and 3-45 (1) and (2) *[Application for indemnity coverage]*]

	Law Society fee	**Indemnity fee assessment**	
		Payable prior to call	**Payable by June 30**
Full-time indemnification			
January	2,289.12	900.00	900.00
February	2,096.52	750.00	900.00
March	1,907.61	600.00	900.00
April	1,714.98	450.00	900.00
May	1,526.10	300.00	900.00
June	1,333.48	150.00	900.00
July	1,144.58	900.00	0.00
August	951.95	750.00	0.00
September	763.05	600.00	0.00
October	570.42	450.00	0.00
November	381.52	300.00	0.00
December	188.92	150.00	0.00
Part-time indemnification			
January	2,289.12	450.00	450.00
February	2,096.52	375.00	450.00
March	1,907.61	300.00	450.00
April	1,714.98	225.00	450.00
May	1,526.10	150.00	450.00
June	1,333.48	100.00	450.00
July	1,144.58	450.00	0.00
August	951.95	375.00	0.00
September	763.05	300.00	0.00
October	570.42	225.00	0.00
November	381.52	150.00	0.00
December	188.92	100.00	0.00

Note: The federal goods and services tax applies to Law Society fees and assessments.

SCHEDULE 3 – 2020 PRORATED FEES FOR NON-PRACTISING AND RETIRED MEMBERS

[Rules 2-3 (1) *[Non-practising members]*, 2-4 (2) *[Retired members]* and 2-85 (5) *[Reinstatement of former lawyer]*]

	Non-practising members fee	**Retired members fee**
January	325.00	125.00
February	296.06	112.78
March	270.83	104.17
April	241.90	91.94
May	216.67	83.33
June	187.73	71.11
July	162.50	62.51
August	133.56	50.27
September	108.33	41.67
October	79.40	29.44
November	54.17	20.84
December	25.23	8.60

Note: The federal goods and services tax applies to Law Society fees and assessments.

SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

[Rule 5-11 *[Costs of hearings]*]

Item no.	Description	Number of units
Citation hearing		
1.	Preparation/amendment of citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the citation to the completion of the discipline hearing, for which provision is not made elsewhere	Minimum 1 Maximum 10
2.	Proceeding under s. 26.01 *[Suspension during investigation]*, 26.02 *[Medical examination]* or 39 *[Suspension]* and any application to rescind or vary an order under the Rules, for each day of hearing	30
3.	Disclosure under Rule 4-34 *[Demand for disclosure of evidence]*	Minimum 5 Maximum 20
4.	Application for particulars/preparation of particulars under Rule 4-35 *[Application for details of the circumstances]*	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 4-40 *[Adjournment]* • if made more than 14 days prior to the scheduled hearing date • if made less than 14 days prior to the scheduled hearing date	 1 3
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts • if signed more than 21 days prior to hearing date • if signed less than 21 days prior to hearing date • delivered to Respondent and not signed	 Min. 5 to max. 15 Min. 10 to max. 20 Min. 10 to max. 20
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	Preparation of Notice to Admit	Minimum 5 Maximum 20
10.	Preparation of response to Notice to Admit	Minimum 5 Maximum 20
11.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
12.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
13.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
14.	Preparation for interlocutory or preliminary motion, per day of hearing	20

Item no.	Description	Number of units
15.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff	30
16.	Written submissions, where no oral hearing held	Minimum 5 Maximum 15
S. 47 review		
17.	Giving or receiving notice under Rule 5-21 *[Notice of review]*, correspondence, conferences, instructions, investigations or negotiations after review initiated, for which provision is not made elsewhere	Minimum 1 Maximum 3
18.	Preparation and settlement of hearing record under Rule 5-23 *[Record of discipline hearing]*	Minimum 5 Maximum 10
19.	Pre-review conference	Minimum 1 Maximum 5
20.	Application to adjourn under Rule 5-26 *[Adjournment]* • If made more than 14 days prior to the scheduled hearing date • If made less than 14 days prior to the scheduled hearing date	 1 3
21.	Procedural or preliminary issues, including an application to admit evidence under Rule 5-23 (2) *[Record of discipline hearing]*, per day of hearing	10
22.	Preparation and delivery of written submissions	Minimum 5 Maximum 15
23.	Attendance at hearing, per day of hearing, including preparation not otherwise provided for in the tariff	30
Summary hearings		
24.	Each day of hearing	$2,000
Hearings under Rule 4-30 *[Conditional admission and consent to disciplinary action]*		
25.	Complete hearing, based on the following factors: (a)complexity of matter; (b)number and nature of allegations; and (c)the time at which respondent elected to make conditional admission relative to scheduled hearing and amount of pre-hearing preparation required.	$1,000 to $3,500
Credentials hearings		
26.	Each day of hearing	$2,000

Value of units:

Scale A, for matters of ordinary difficulty:	$100 per unit
Scale B, for matters of more than ordinary difficulty:	$150 per unit

SCHEDULE 5 – FORM OF SUMMONS

[Rule 5-5 (4) *[Compelling witnesses and production of documents]*

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING CONCERNING

_____

(As the case may be: a member of the Law Society of British Columbia/ an articled student/an applicant for enrolment/call and admission/reinstatement)

SUMMONS

TO: _____

TAKE NOTICE that you are required to attend to testify as a witness at the time, date and place set out below.

Time: _____

Date: _____

Place: The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9 (or other venue)

Dated at _, _____ _____
Party/Counsel

this day of _____, 20___

Territorial Mobility Agreement

Federation of Law Societies of Canada
Constitution Square
1700 - 360 Albert Street
Ottawa, Ontario K1R 7X7
Tel.: (613) 236-7272
Fax : (613) 236-7233
www.flsc.ca

FEDERATION OF LAW SOCIETIES OF CANADA

May, 2006
Charlottetown, Prince Edward Island

Introduction

The purpose of this Agreement is to extend the scope of the National Mobility Agreement in facilitating permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this Agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this Agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,

- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil law jurisdictions, and

- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Background

In August, 2002, the Federation of Law Societies accepted the report of the National Mobility Task Force ("the Task Force") for the implementation of full mobility rights for Canadian lawyers.

The resolution that the Federation adopted included an acknowledgement that "the unique circumstances of the law societies of Yukon, the Northwest Territories and Nunavut necessitate special considerations that could not be undertaken within the time frame prescribed in the Task Force's terms of reference, but should be undertaken in the future."

Eight law societies signed the National Mobility Agreement ("NMA") on December 9, 2002. Since that time, seven law societies have fully implemented the NMA. None of the law societies of Yukon, the Northwest Territories and Nunavut were among the law societies signing or implementing the NMA.

Territorial Mobility Agreement

In 2005, an informal Territorial Mobility Group ("the Group") was formed with representatives of the Task Force, the law societies of the provinces in Western Canada and the law societies of the territories. The Group developed a proposal respecting territorial mobility to address the unique characteristics of the law societies of the territories, and the Task Force has approved the proposal. This Agreement is intended to give effect to the proposal of the Group as approved by the Task Force.

The purpose of this Agreement is to allow the law societies of the territories to participate in national mobility for lawyers to the extent possible for them at this time, given their current circumstances. Specifically, the signatories agree that the territorial law societies will participate in national mobility as reciprocating governing bodies with respect to permanent mobility, or transfer of lawyers from one jurisdiction to another, without a requirement that they participate in temporary mobility provisions.

The signatories agree that this arrangement may subsist for a period of up to five years. This period will allow the territorial law societies to evaluate their ability to become signatories to the NMA. On January 1, 2012 this Agreement will expire and the signatories will be under no further obligation and have no further rights under this Agreement.

During the subsistence of this Agreement, the Group will continue to assist in facilitating the implementation of this Agreement and consideration of full participation of the territorial law societies in the NMA.

The signatories to this Agreement who are not signatories to the NMA do not hereby subscribe to the provisions of the NMA, except as expressly stated in this Agreement and only for the period of time specified in this Agreement.

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

1. In this Agreement, unless the context indicates otherwise:

"governing body" means the Law Society or Barristers' Society in a Canadian common law jurisdiction, and the Barreau;

"home governing body" means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and **"home jurisdiction"** has a corresponding meaning;

"Inter-Jurisdictional Practice Protocol" means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

"lawyer" means a member of a signatory governing body;

"liability insurance" means compulsory professional liability errors and omissions insurance required by a governing body;

"National Mobility Agreement" or **"NMA"** means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

"permanent mobility provisions" means clauses 32 to 36, 39 and 40 of the National Mobility Agreement;

"practice of law" has the meaning with respect to each jurisdiction that applies in that jurisdiction;

"Registry" means the National Registry of Practising Lawyers established under clause 17 of the National Mobility Agreement;

General

2. The signatory governing bodies will

(a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;

(b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;

(c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and

(d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.

3. Signatory governing bodies will subscribe to this Agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this Agreement.

4. A signatory governing body will not, by reason of this Agreement alone,

(a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or

(b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

Permanent Mobility

6. The signatories that are signatories to the National Mobility Agreement agree to extend the application of the permanent mobility provisions of the National Mobility Agreement with respect to the territorial signatories to this Agreement.

7. The territorial signatories agree to adopt and be bound by the permanent mobility provisions of the National Mobility Agreement.

8. A signatory that has adopted regulatory provisions giving effect to the permanent mobility requirements of the National Mobility Agreement is a reciprocating governing body for the purposes of permanent mobility under this Agreement, whether or not the signatory has adopted or given effect to any other provisions of the National Mobility Agreement.

Transition Provisions

9. This Agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.

10. Provisions governing permanent mobility in effect at the time that a governing body becomes a signatory to this Agreement will continue in effect:
    (a) with respect to all Canadian lawyers until this agreement is implemented; and
    (b) with respect to members of Canadian law societies that are not signatories to this agreement.

Dispute Resolution

11. Signatory governing bodies adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

Termination and Withdrawal

12. This Agreement will terminate and cease to be effective at 12:01 a.m. Newfoundland Standard Time on January 1, 2012.

13. A signatory may cease to be bound by this Agreement by giving each other signatory written notice of at least one clear calendar year.

14. A signatory that gives notice under clause 13 will immediately notify its members in writing of the effective date of withdrawal.

Territorial Mobility Agreement

Signatures

LAW SOCIETY OF BRITISH COLUMBIA

Robert W. McDiarmid, Q.C., President

LAW SOCIETY OF ALBERTA

Mona T. Duckett, Q.C., President

LAW SOCIETY OF SASKATCHEWAN

Alma Wiebe, Q.C. President

LAW SOCIETY OF MANITOBA

Jon van der Krabben, President

LAW SOCIETY OF UPPER CANADA

Gavin MacKenzie, Treasurer

BARREAU DU QUÉBEC

Me Michel Doyon, Vice-président

LAW SOCIETY OF NEW BRUNSWICK

G. Robert Basque, Q.C., President

NOVA SCOTIA BARRISTERS' SOCIETY

Philip J. Star, Q.C., President

LAW SOCIETY OF PRINCE EDWARD ISLAND

M. Lynn Murray, Q.C. President

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Paul M. McDonald, President

LAW SOCIETY OF YUKON

Tracy-Anne McPhee, Past President

LAW SOCIETY OF THE NORTHWEST TERRITORIES

Sarah A.E. Kay, Past President

LAW SOCIETY OF NUNAVUT

Suzanne M. Boucher, Treasurer

DATED: November 3, 2006.

National Mobility Agreement

Federation of Law Societies of Canada /
Fédération des ordres professionnels de juristes du Canada
480 - 445, boulevard Saint-Laurent
Montreal, Quebec
H2Y 2Y7
Tel (514) 875-6350
Fax (514) 875-6115
http://www.flsc.ca
info@flsc.ca

Federation of Law Societies of Canada

August 16, 2002
Niagara-on-the-Lake, Ontario

The purpose of this agreement is to facilitate temporary and permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,

- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil law jurisdictions, and

- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Most of the signatories subscribed to the Interjurisdictional Practice Protocol of 1994, in which they agreed to certain measures to facilitate the temporary and permanent inter-jurisdictional practice of law and the enforcement of appropriate standards on lawyers practising law in host jurisdictions.

In August 2001, the Federation of Law Societies established a National Mobility Task Force to examine full mobility rights and conditions for lawyers to practise law in all Canadian jurisdictions.

In August, 2002, the Federation of Law Societies accepted the report of the National Mobility Task Force for the implementation of full mobility rights for Canadian lawyers.

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

1. In this agreement, unless the context indicates otherwise:

"Barreau" means le Barreau du Québec;

"day" means any calendar day or part of a calendar day in which a lawyer provides legal services;

"discipline" includes a finding by a governing body of any of the following:

(a) professional misconduct;

(b) incompetence;

(c) conduct unbecoming a lawyer;

(d) lack of physical or mental capacity to engage in the practice of law;

(e) any other breach of a lawyer's professional responsibilities;

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of discipline;

(b) disbarment;

(c) a lawyer's resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;

(d) restrictions or limits on a lawyer's entitlement to practise;

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.

"entitled to practise law" means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

"governing body" means the Law Society or Barristers' Society in a Canadian common law jurisdiction, and the Barreau;

"home governing body" means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and **"home jurisdiction"** has a corresponding meaning;

"host governing body" means a governing body of the legal profession in Canada in whose jurisdiction a lawyer practises law without being a member, and **"host jurisdiction"** has a corresponding meaning;

"Inter-Jurisdictional Practice Protocol" means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

"lawyer" means a member of a signatory governing body;

"liability insurance" means compulsory professional liability errors and omissions insurance required by a governing body;

"mobility permit" means a permit issued by a host governing body on application to a lawyer allowing the lawyer to provide legal services in the host jurisdiction on a temporary basis;

"practice of law" has the meaning with respect to each jurisdiction that applies in that jurisdiction;

"providing legal services" means engaging in the practice of law physically in a Canadian jurisdiction or with respect to the law of a Canadian jurisdiction;

"Registry" means the National Registry of Practising Lawyers established under clause **17** of this agreement;

"resident" has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

General

2. The signatory governing bodies will

(a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this agreement;

(b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this agreement;

(c) comply with the spirit and intent of this agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and

(d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.

3. Signatory governing bodies will subscribe to this agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this agreement.

4. A signatory governing body will not, by reason of this agreement alone,

(a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or

(b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

Temporary Mobility Among Common law Jurisdictions

6. Clauses **7** to **31** apply to temporary mobility of lawyers of common law jurisdictions in other common law jurisdictions.

Mobility without permit

7. A host governing body will allow a lawyer from another jurisdiction to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, without a mobility permit or notice to the host governing body, for a total of not more than 100 days in a calendar year, provided the lawyer:

(a) meets the criteria in clause **10**;.and

(b) has not established an economic nexus with the host jurisdiction as described in clause **16**.

8. The host governing body will have the discretion to extend the time limit for temporary mobility under clause **7** with respect to an individual lawyer.

9. It will be the responsibility of a lawyer to

(a) record and verify the number of days in which he or she provides legal services in a host jurisdiction(s) or with respect to each jurisdiction; and

(b) prove that he or she has complied with provisions implementing clause **7**.

10. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause **7**, a lawyer will be required to do each of the following at all times:

(a) be entitled to practise law in a home jurisdiction;

(b) carry liability insurance that:

(i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and

(ii) extends to the lawyer's practice in the host jurisdiction;

(c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;

(d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;

(e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and

(f) have no disciplinary record in any jurisdiction.

11. For the purposes of clause **7**:

(a) a lawyer practising law of federal jurisdiction in a host jurisdiction will be providing legal services in the host jurisdiction;

(b) as an exception to subclause (a), when appearing before the following tribunals in a host jurisdiction a lawyer will not be providing legal services in a host jurisdiction:

(i) the Supreme Court of Canada;

(ii) the Federal Court of Canada;

(iii) the Tax Court of Canada;

(iv) a federal administrative tribunal.

12. A host jurisdiction will allow a lawyer to accept funds in trust on deposit, provided the funds are deposited to a trust account:

(a) in the lawyer's home jurisdiction; or

(b) operated in the host jurisdiction by a member of the host governing body.

Mobility permit required

13. If a lawyer does not meet the criteria in clause **10** to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, a host governing body will issue a mobility permit to the lawyer:

(a) on application;

(b) if, in the complete discreton of the host governing body, it is consistent with the public interest to do so;

(c) for a total of not more than 100 days in a calendar year; and

(d) subject to any conditions and restrictions that the host governing body considers appropriate.

Temporary mobility not allowed

14. A host governing body will not allow a lawyer who has established an economic nexus with the host jurisdiction to provide legal services on a temporary basis under clause **7**, but will require the lawyer to do one of the following:

(a) cease providing legal services in the host jurisdiction forthwith;

(b) apply for and obtain membership in the host governing body; or

(c) apply for and obtain a mobility permit under clause **13**.

15. On application, the host governing body will have the discretion to allow a lawyer to continue to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction pending consideration of an application under clause **14(b) or (c).**

16. In clause **14**, an economic nexus is established by actions inconsistent with temporary mobility to the host jurisdiction, including but not limited to doing any of the following in the host jurisdiction:

(a) providing legal services beyond 100 days, or longer period allowed under clause **8**;

(b) opening an office from which legal services are offered or provided to the public;

(c) becoming resident;

(d) opening or operating a trust account, or accepting trust funds, except as permitted under clause **12**.

National Registry of Practising Lawyers

17. The signatory governing bodies will establish, maintain and operate a National Registry of Practising Lawyers containing the names of lawyers from each signatory governing body qualified under clause **10** to practise law interjurisdictionally without a mobility permit or notice to the host governing body.

18. Each signatory governing body will take all reasonable steps to ensure that all relevant information respecting its members is supplied to the Registry and is kept current and accurate.

Liability Insurance and Defalcation Compensation Funds

19. Each signatory governing body will ensure that the ongoing liability insurance in its jurisdiction

(a) extends to its members for the provision of legal services on a temporary basis in or with respect to the law of host signatory jurisdictions; and

(b) provides occurrence or claim limits of $1,000,000 and $2,000,000 annual per member aggregate.

20. In the event that a claim arises from a lawyer providing legal services on a temporary basis, and the closest and most real connection to the claim is with a host jurisdiction, the home governing body will provide at least the same scope of coverage as the liability insurance in the host jurisdiction. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of $1,000,000 and $2,000,000 annual per member aggregate.

21. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their liability insurance policies that affect the limits of liability or scope of coverage.

22. Signatory governing bodies will apply or continue to apply the provisions of the Interjurisdictional Practice Protocol respecting defalcation compensation, specifically clause 10 of the Protocol and Appendix 6 to the Protocol.

23. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their defalcation compensation fund programs that affect the limits of compensation available or the criteria for payment.

Enforcement

24. A host governing body that has reasonable grounds to believe that a member of another governing body has provided legal services in the host jurisdiction will be entitled to require that lawyer to:

(a) account for and verify the number of days spent providing legal services in the host jurisdiction; and

(b) verify that he or she has not done anything inconsistent with the provision of legal services on a temporary basis.

25. If a lawyer fails or refuses to comply with the provisions of clause **24**, a host governing body will be entitled to:

(a) prohibit the lawyer from providing legal services in the jurisdiction for any period of time; or

(b) require the lawyer to apply for membership in the host jurisdiction before providing further legal services in the jurisdiction.

26. When providing legal services in a host jurisdiction or with respect to the law of a host jurisdiction, all lawyers will be required to comply with the applicable legislation, regulations, rules and standards of professional conduct of the host jurisdiction.

27. In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:

(a) assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and

(b) consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.

28. If a signatory governing body investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each governing body in whose jurisdiction the lawyer has provided legal services on a temporary basis will provide all relevant information and documentation respecting the lawyer as is reasonable in the circumstances.

29. In determining the location of a hearing under clause **27**, the primary considerations will be the public interest, convenience and cost.

30. A governing body that initiates disciplinary proceedings against a lawyer under clause **27** will assume full responsibility for conduct of the proceedings, including costs, subject to a contrary agreement between governing bodies.

31. In any proceeding of a signatory governing body, a duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct will be proof of that lawyer's guilt.

Permanent Mobility Among Common Law Jurisdictions

32. A signatory governing body will require no further qualifications for a member of another governing body to be eligible for membership than the following:

(a) entitlement to practise law in the lawyer's home jurisdiction;

(b) good character and fitness to be a lawyer, on the standard ordinarily applied to applicants for membership; and

(c) any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction.

33. Before admitting as a member a lawyer qualified under clause **32**, a governing body will not require the lawyer to pass a transfer examination or other examination, but may require the lawyer to do all of the following:

(a) provide certificates of standing from all Canadian and foreign governing bodies of which the lawyer is or has been a member;

(b) disclose criminal and disciplinary records in any jurisdiction;

(c) consent to access by the governing body to the lawyer's regulatory files of all governing bodies of which the lawyer is a member, whether in Canada or elsewhere; and

(d) certify that he or she has reviewed all of the materials reasonably required by the governing body.

Public Information

34. A governing body will make available to the public information obtained under clause **33** in the same manner as similar records originating in its jurisdiction.

Liability Insurance

35. On application, a signatory governing body will exempt a lawyer from liability insurance requirements if the lawyer does the following in another signatory jurisdiction :

(a) is resident;

(b) is a member of the governing body; and

(c) maintains ongoing liability insurance required in that jurisdiction that provides occurrence or claim limits of $1,000,000 and $2,000,000 annual per member aggregate.

36. In the event that a claim arises from a lawyer providing legal services and the closest and most real connection to the claim is with a jurisdiction in which the lawyer has claimed an exemption under clause **35**, the insurance program of the governing body in the jurisdiction where the lawyer is insured will provide at least the same scope of coverage as the liability insurance in the jurisdiction in which the lawyer is exempt. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of $1,000,000 and $2,000,000 annual per member aggregate.

Temporary Mobility between Quebec and Common Law Jurisdictions

37. The Barreau will permit lawyers entitled to practise law in a home jurisdiction, on application under regulations that apply to the Barreau, to provide legal services in Quebec or with respect to the law of Quebec on a specific case or for a specific client for a period of up to one year, which may be extended on application to the Barreau.

38. A signatory governing body, other than the Barreau, will permit members of the Barreau to provide legal services in its jurisdiction or with respect to the law of its jurisdiction on one of the following bases:

(a) as provided in clauses **7** to **31**; or

(b) as permitted by the Barreau in respect of the members of the signatory governing body.

Permanent Mobility Between Quebec and Common Law Jurisdictions

39. While the signatory governing bodies recognize that the Barreau must comply with regulations that apply to all professions in Quebec, the Barreau agrees to consult with the other signatory governing bodies before changing regulations on the mobility of Canadian lawyers to Quebec.

40. A signatory governing body, other than the Barreau, will admit members of the Barreau as members on one of the following bases:

(a) as provided in clauses **32** to **36**; or

(b) as permitted by the Barreau in respect of the members of the signatory governing body.

Inter-Jurisdictional Practice Protocol

41. The signatory governing bodies agree that the Inter-Jurisdictional Practice Protocol will continue in effect,

(a) with respect to governing bodies that are signatories of that Protocol, but not this agreement;

(b) to the extent that it is not replaced by or inconsistent with legislation, regulation and programs adopted and implemented to give effect to this agreement.

42. Signatory governing bodies will apply or continue to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of defalcation compensation and arbitration of disputes, specifically, clause 10 of the Protocol and Appendices 5 and 6 to the Protocol.

Transition Provisions

43. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.

44. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect:

(a) with respect to all Canadian lawyers until this agreement is implemented; and

(b) with respect to members of Canadian law societies that are not signatories to this agreement.

Withdrawal

45. A signatory may cease to be bound by this agreement by giving each other signatory written notice of at least one clear calendar year.

46. A signatory that gives notice under clause **45** will:

(a) immediately notify its members in writing of the effective date of withdrawal; and

(b) require that its members who provide legal services in the jurisdiction of another signatory governing body ascertain from that governing body its requirements for inter-provincial mobility before providing legal services in that jurisdiction after the effective date of withdrawal.

SIGNED BY

The Law Society of **Alberta** _____
President

The Law Society of **British Columbia** _____
President

The Law Society of **Manitoba** _____
President

Law Society of **New Brunswick** _____
President

Law Society of **Newfoundland and Labrador** _____
President

Nova Scotia Barristers' Society _____
President

Law Society of the **Northwest Territories** _____
President

The Law Society of **Nunavut** _____
President

Law Society of **Upper Canada** _____
Treasurer

Law Society of **Prince Edward Island** _____
President

Barreau du **Québec** _____
Bâtonnier

Law Society of **Saskatchewan** _____
President

The Law Society of **Yukon** _____
President

DATED _____

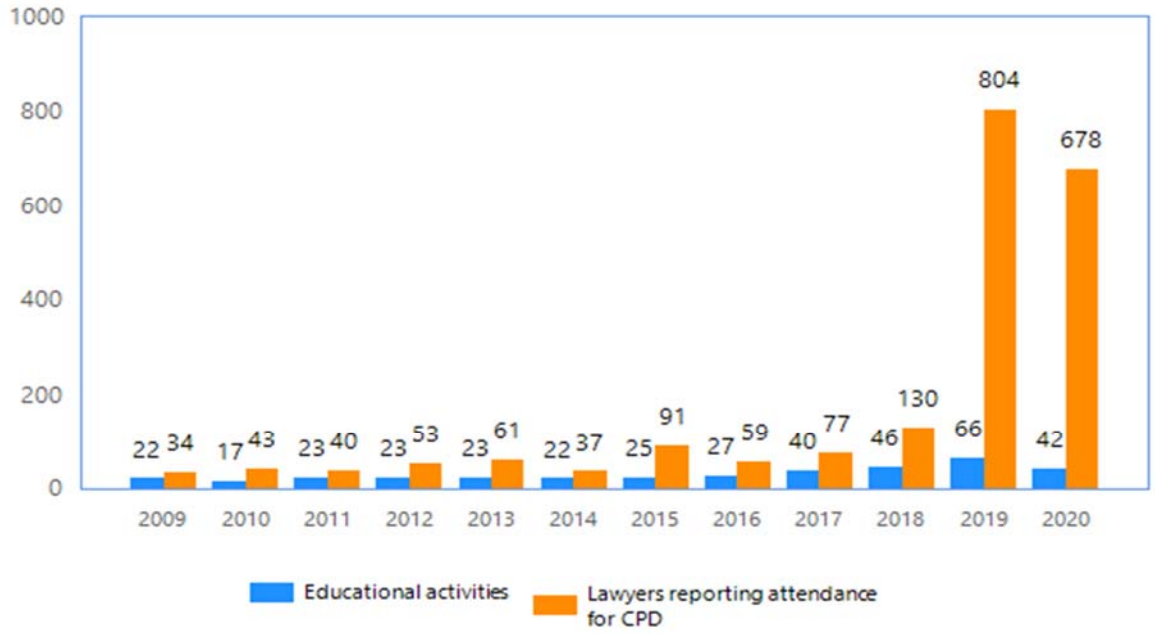
The Law Society of British Columbia

Briefing note

Prepared for: Cullen Commission of Inquiry into Money Laundering in British Columbia
Dated: October 7, 2020

Since the introduction of the continuing professional development (CPD) requirement in 2009, the Law Society has maintained a record of educational activities approved for CPD credit. Based on the descriptions of those educational activities recorded in the Law Society database, we have identified 376 courses, conferences, symposia, programs and other educational activities that have involved some degree of information or education about anti-money laundering.

The following chart illustrates the number of educational activities with an AML component that have been recorded for CPD since 2009, as well as the number of lawyers who have applied for and obtained CPD credit in relation to those activities. The 2020 figure is current to October 7, 2020. The actual number of lawyers and law firm staff in attendance may have been greater. A lawyer may choose not to report their attendance for CPD credit if they have already satisfied their CPD requirement for the year. For example, although only 126 lawyers have claimed CPD credit for attending the Law Society's Anti-Money Laundering Measures Webinar in 2020, this program has been viewed approximately 1,745 times online.



The AML-related course with the highest number of lawyers requesting CPD credit was the CLEBC Anti-Money Laundering - Client Identification and Verification Rules Program, for which 598 lawyers claimed CPD credit, followed by the CLEBC CLE-TV: Anti-Money Laundering for Lawyers and Law Firms Program with 161 lawyers requesting CPD credit.

The following appendix provides a list of these educational activities, excerpts from course descriptions, and the number of lawyers claiming CPD credit for each activity.

Year	Course	Course Description (Excerpt)	# Lawyers claiming CPD
2009	14th Annual International Tax & Trusts Training Course	TAX AND TRUST TRAINING COURSE 14th Annual International Tax & Trusts Training Course 27 & 28 August 2009 | Hong Kong Thursday, 27 August 2009 Sessions Speakers: 09:00 – 11:00 Recent Developments Affecting The Private Banking Industry In Key Jurisdictions With speakers from the various jurisdictions to update us on the latest and most interesting developments, this session will take us on a whirlwind tour of the world, stopping at Asian jurisdictions like Japan, China, Taiwan, Hong Kong, Thailand, Malaysia, Indonesia, Philippines, Australia, Singapore and India, and then sweeping over to the US, UK, Canada, Europe and the offshore centres. Chair: Michael Ole (Hong Kong) [...] 14:15 – 15:15 Breakout Sessions (Part I) Alternative A: Global Transparency – Is Secrecy Dead? The panel will explain recent trends in the erosion of secrecy and increases in compliance obligations, from both tax and money laundering aspects, both in Asia and elsewhere, and will analyse the implications for wealth managers and their clients. What do the recent announcements by tax havens in response to the OECD's demands really mean? What is likely to happen? The session will also explain the OECD standards for information exchange and how they will apply in practice. Chair: Philip Marcovici (Zurich) [...] Friday, 28 August 2009 Sessions Speakers: 09:00 – 10:00 Keynote Presentation: Understanding, Pricing And Managing Risk: Issues For Financial Institutions, Trust Companies And For The Individuals Involved Recent events have highlighted risks associated with wealth management that are not always well understood. These risks are associated with failures in investment performance and with being a "deep pocket" when third parties fail, whether due to fraud or otherwise. Other areas of risk include the offering of fiduciary services, such as trusts. Growing tax enforcement and exchange of information is highlighting yet another important area of risk, being the question of how the tax problems of clients can become problems of private banks and trust companies. A related risk is in respect of the cross-border distribution of financial products and services. This session will outline how, strategically, banks and trust companies can better understand, price and manage risk in these areas, and will also touch on the increasing number of global financial institutions reconsidering whether they should be in the business of offering trust services and, if so, under what	1

		conditions. Why trustees have a higher level of risk in the tax area will be discussed, with specific examples of some of the immediate danger areas for trustees. How risk issues affect the value of a financial institution and of assets under management or administration will also be discussed, as will the growing number of "toxic" private banking and trust franchises that can no longer find buyers. Also addressed will be the importance for individual employees in the wealth management industry to understand their personal risk, and how little an employer is really able to do to protect employees when problems develop. More and more, each individual is well advised to adopt a personal code of conduct to avoid having the problems of their employers or clients become their problems. The session will end with a suggested strategy for wealth managers seeking to address risk through a focus on compliance while using global developments to build business. Philip Marcovici (Zurich) Paul Stibbard (London) [...]	
2009	2009 Information Session on Anti-Money Laundering and Anti-Terrorist Financing	For several years, the Office of the Superintendent of Financial Institutions Canada has put on an Information Session dealing with anti-money laundering and anti-terrorist financing for federally regulated financial institutions. This year the Information Session is being held in Toronto and OSFI will not be providing satellite feeds outside Toronto. In their invitation to the Information Session, OSFI states that they will be focusing on the obligations of federally regulated financial institutions and the impact of OSFI's Guideline B-8.	2
2009	5th annual symposium on money laundering	Update on the law of money laundering and proceeds of crime	2
2009	Accounts and Accounting for Attorneys	The interactive course presentation was conducted by Ms. Pamela Greyson and held at the Bermuda Insurance Institute in the City of Hamilton. The course focused on the use and interpretation of accounts and financial statements, and included matters regarding anti-money laundering obligations, client identification requirements, and practice management and ethics.	1
2009	Anti money Laundering	New requirements designed to contribute to the fight against money laundering and terrorist financing are critical to managing clients and maintaining professional responsibility. Session discusses changes to firm precedents and procedures in respect of anti money laundering legislation.	1
2009	Anti Money Laundering Course FEV (I) 2008v2	The Firm has adopted global procedures to combat terrorist financing and money laundering and to comply with relevant laws including the Third EU Money Laundering Directive. These procedures must be followed by all attorneys and other employees of the Firm. Failure to do so may result in personal criminal liability and disciplinary action. One relevant requirement is that appropriate Shearman & Sterling personnel undertake anti-money laundering ("AML") training so that they are aware of the laws on anti-money laundering and are able to recognize and deal	1

		with transactions which may be related to money laundering.	
2009	Anti Money Laundering Fee Earner Online Training Course	The course discussed issues to look out for when taking on new clients/matters from an anti-money laundering point of view including the discussion of signs of anti-money laundering activities, how to identify them and how to report them.	1
2009	Anti-Money Laundering Course 3.0	This course, including tests at the end of each of the 5 sections, is aimed at familiarising lawyers with the anti-money laundering compliance obligations of solicitors under the SRA and FSA rules. It also deals with international anti-money laundering requirements, requirements for internal disclosure obligations, anti-tipping provisions and "know your client" obligations.	1
2009	CBA Canadian Legal Conference in Dublin: CCCA - GLOBAL ANTI-CORRUPTION COMPLIANCE	Companies that do business internationally face a complex set of rules and obligations with respect to anti-corruption compliance. One key area of anti-corruption compliance involves bribery, wherein specific requirements are set out in legislation such as the U.S. Foreign Corrupt Practices Act, the Canadian Corruption of Foreign Public Officials Act and other regional anti-corruption and anti-bribery laws. Another important element of any anti-corruption compliance program is how to respond to instances of money laundering, embezzlement and cross-border fraud, whether uncovered through financial controls and processes, audit committee reviews or in the course of an insolvency administration. In this panel session, you will examine cases of fraud where assets or the proceeds of asset liquidation have been removed from the country of origin, including insights into which jurisdictions are problematic to deal with, common transnational techniques used to defraud the legitimate claims of creditors, patterns of activity that are red flags for fraud or theft within an organization and the role of corporate counsel in the prevention of money laundering, fraud and other financial crimes – as well as practical tips for developing and implementing robust anti-corruption compliance programs. You will learn about developing clear and effective internal controls to protect your personnel abroad from running afoul of global and regional anti-bribery laws, including insights into harmonizing domestic and foreign anti-corruption compliance obligations and the challenges companies face in international and emerging markets.	6
2009	Client Care and Regulatory Compliance Training	A review of client care and practice management procedures including regulatory compliance (Solicitors Regulation Authority) and anti-money laundering procedures.	1
2009	Compliance	The course was an in-house course presentation by Mr. Brian Calhoun, Group Compliance Manager at Conyers Dill & Pearman. The course focused on the new framework of Bermuda's anti-money laundering and counter terrorist financing regime under the Proceeds of Crime (Anti-Money Laundering And Anti-Terrorist Financing) Regulations 2008 and the Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008.	1

2009	IFCs: recent financial regulation and the information exchange initiatives	Mr. Richard Hay, an international tax lawyer and the head of the London Private Capital Group of Stikeman Elliott, gave a lecture regarding financial regulation and the information exchange initiatives conducted by the OECD, EU, the Financial Action Task Force on Money Laundering and the IMF. Mr. Hay also discussed the International Financial Centres Forum, an organisation providing information about the changing role of International Financial Centres in the global economy and related legal issues.	1
2009	Investigations-recognizing fraud risks and conducting investigations	To assist participants to better understand fraud red flags, fraud risk management, how to handle related internal and external investigations and criminal aspects. Course outline : Current climate Fraud red flags and fraud risk management Conducting investigations - FCPA issues, false accounting, anti-money laundering Regulatory implications and legal professional privilege Criminal aspects - handling police and ICAC enquiries, dealing with search warrants	1
2009	Money Laundering & Proceeds of Crime in Hong Kong	Money Laundering & Proceeds of Crime in Hong Kong	1
2009	Money Laundering and Compliance issues.	A review of money laundering and compliance requirements domestically and internationally. [...]	1
2009	Money Laundering Training Program	Advanced training course for legal and compliance officers within HSBC companies worldwide. Course topics included definitions of money laundering and terrorist financing. Case studies of money laundering and terrorist financing activities. Understanding local and international sanctions. [...]	1
2009	Pushing the Brown Envelope	Lecture and group discussion session on anti-corruption issues and lawyers' responsibilities to report suspected money laundering activity to relevant authorities.	1
2009	Risk Management Education - Anti-Money Laundering	The course was highly participatory in approach, mixing lectures with case studies and practical excises to enable lawyers to have sufficient awareness of the international and the local anti-money laundering regulatory framework. It helped lawyers to ensure that they understand and comply with local laws and regulations. It also helped lawyers to prepare for future evolution as money laundering activities continue to become more sophisticated.	1
2009	Risk Management Education Programme Elective Course - Anti-Money Laundering	Course objective: Money laundering is currently the focus of global international cooperation between most national governments. There are several international conventions and agreements covering this area. Hong Kong is an active participant in international initiatives because, as a major international centre for financial business, it needs to participate and be seen to participate pro-actively in the international effort. The AML regulations and laws affect law firms in	2

		particular because they are specifically named in the FATF recommendations as being potential conduits by which criminals and terrorists might find routes to launder large sums of money. Module: Provides an overview to enable lawyers to have sufficient awareness of the International and Local AML Regulatory framework Will help firms ensure that they understand and comply with local laws and regulations Will help firms prepare for future evolution as money laundering activities continue to become more sophisticated Approach: The course is highly participatory in approach, mixing lectures with case studies and practical exercises to explore risk management in an interactive manner that will resonate with day-to-day practice.	
2009	Risk Management Elective Course - Anti-Money Laundering	This is a risk management elective course on anti-money laundering covering the OECD FATF forty recommendations, risk mitigation and control and a workgroup exercise on measures to deter, detect and report possible money laundering activity in the firm.	1
2009	The Independence of the Bar and if it Matters	The Independence of the Bar and if it Matters Security, terrorism, life, torture, liberty, the rule of law, the independence of the bar. Is the independence of the legal profession truly an indispensable society? Is the independence of the bar a self-serving myth of a monopolistic profession or is it genuinely at the heart of what justifies the profession's role in the administration of justice. Is the independence of the bar at risk of being lost and what difference, if any, would it make? The Chief Justice of Ontario's twelfth colloquium on the legal profession examines the reality of the independence of the bar and if it matters. Roy Millen's presentation was on Money Laundering Legislation, Securities Regulators, and Other Intrusions on the Independence of the Bar.	1
2009	Wills & Estates and Wealth Preservation - Study Group	Archived Webcasts: [...] - Liens and Holdbacks: Let's Talk Construction Law [...] - Offshore Trusts: Wills, Estates and Trusts Conference [...] - S.8: Search of Premises: Criminal Law and the Charter 2009 - Dirty Money in the Securities Industry: Money Laundering and Proceeds of Crime - Lawyers and Clients Part 2: Transactions: Money Laundering and Proceeds of Crime - Client Identification and Verification: How to Manage the Law Society of British Columbia's New Rules: Advanced Securities Law 2009	5
2010	2010 ACFE Canadian Fraud Conference	* Testifying as an Expert Witness in the Canadian Judicial System	1

		* Bikers and Big Bucks: Organized Financial Crime in Canada * Purchasing Fraud: Are You Furnishing a Fraudster's Home? * Electronic Evidence and Forensic Investigations * Managing the Business Risk of Fraud * Birds of a Feather: Ponzi, Brost and Sorenson * Preparing and Dealing with Investigation by Outside Authorities * How the Inability to Deal with White-Collar Crime Has Impacted the Financial Services Industry * Fraud and Money Laundering: What's the Connection? * International Venture Capital Fraud: Penny Stocks to Insider Trading * The $100-Million Piece of the Pie * No Ethical Borders	
2010	2010 Business Law Section Spring Meeting	This CLE program will cover recent case law and practitioner perspectives on how to limit sellers' contractual and extra-contractual liabilities in M&A transactions, including: how to protect the seller through the auction and negotiating processes, the intersection of fiduciary duties and deal protections and exclusive remedy and extra-contractual representation waiver provisions. [...] A panel will provide a comprehensive, practical examination of current trends in identity theft techniques, detection, and prevention. Panelists will address problems victims experience with financial institutions, financial institutions' best practices for fighting identity theft and assisting victims, and lessons learned from attorneys who provide direct services to victims. [...] The program will focus on the Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, which was developed by the ABA and other groups. Presenters also will provide an overview of international and U.S. AML laws, recent guidance on and proposed changes to federal AML regulations, and the federal government's enforcement of AML laws. [...]	4
2010	9th Annual Forum on Anti-Money Laundering	Combatting money laundering and terrorist financing is not only a regulatory responsibility. Increasingly, it is part and parcel of protecting your organization from fraud as well as reputational risk. Yet the costs can be high, particularly in the current economic climate. The Canadian Institute's Forum on Anti-Money Laundering has a strong record of delivering the practical, unbiased information you need in this challenging area. This year's program includes: * An update on the administrative monetary penalties that have been available to regulators since late December 2008 * A Q&A session following the regulators' panel	1

		* Valuable information about U.S. and global trends that may have an impact in Canada * Case studies in law enforcement * Tips on managing the difficult operational realities of risk-based assessment * A new session on compliance for insurers and investment companies * Practical advice on meeting your training obligations and much more!	
2010	Anti Money Laundering	Covered the firms and the England Wales law society anti money laundering legal and professional standards-tested course	1
2010	Anti-Money Laundering	Professionally produced on-line course on anti-money laundering, client identification and verification developed for the firm for all its offices and approved by the Solicitors Regulatory Authority in the UK.	1
2010	Anti-Money Laundering & Terrorist Financing for Securities Professionals	This course provides insight and understanding into money laundering and terrorist financing and steps that can be taken to detect and combat it. You'll gain an overview of relevant Canadian regulations, general laundering techniques and techniques of specific concern to the securities industry. You'll learn about preventative measures used to design and implement a compliance regime against money laundering and terrorist financing.	1
2010	Asia Regulatory Group Roundup 2010	A conference presented by a group of Clifford Chance lawyers on the EU AIFM Directive, US Administration Proposals, RMB Funds, Developments in capital markets infrastructure CCPs and dark pools, Securities and Futures Commission (Product Codes and Code of Conduct), Anti-Money Laundering, Professional investors, Enforcement round-up (Asia ex Hong Kong).	2
2010	Compliance: Recent changes to anti-money laundering legislation	The lecture was an in-house course presentation by Mr. Brian Calhoun, Group Compliance Manager at Conyers Dill & Pearman. The course focused on recent changes to Bermuda’s anti-money laundering and counter terrorist financing legislation.	1
2010	Consequences of Non-Compliance in the Securities Industry	With the myriad of applicable securities laws and regulations, the risk or potential for non-compliance can be high and the consequences of compliance failures can be significant. The provincial securities commissions and various SROs regulate the securities industry, but many other federal and provincial laws also apply (i.e., legislation regarding money laundering and terrorist financing and privacy). In addition, firms must have their own policies and procedures for operating and supervising their businesses because without clear policies, procedures and supervision IAs may be left to rely on their own judgment or interpretations, which may expose firms to significant risk. This course reviews potential IIROC disciplinary proceedings that may arise when a client files a complaint against an IA and looks at the primary sources of regulatory and compliance obligations and their Administrators, civil law	1

		obligations and criminal law obligations. It also provides a general overview of potential penalties that may arise from breaches of the rules with the focus on regulatory breaches by IAs.	
2010	Emerging Criminal Activity in Virtual Worlds	The Conference was led by Gareth Sansom, Director of Technology and Analysis of the Criminal Law Policy section of Justice Canada. He discussed the nature of virtual worlds, and the emerging use of them to perpetrate fraud, theft of intellectual property, money laundering, and other crimes. He also discussed the challenges that these new fora for crime pose to both domestic and international law.	1
2010	ICCA 2010 Congress in Rio, Brazil	Review of current issues in International Commercial Arbitration. [...] 26th May 2010: 9:00: Arbitration Advocacy and Constitutional law: Fundamental rights are playing an increasing role in international arbitration. Constitutional law has been the traditional means for enforcing such rights under domestic law, but on occasions these procedures are put to a use that has strategic motives rather than the genuine protection of rights. The challenge of arbitral awards on constitutional grounds or the abuse of habeas corpus are among the new issues that need to be examined in this light. The primacy of domestic law under the Calvo Clause has also on occasions been invoked in the context of constitutional developments. Norms concerning public policy, national and transnational, are beginning to appear more frequently in both commercial and investment arbitration. This session reviews these developments, and considers how issues of constitutional law and transnational public policy might be used effectively by advocates as sources of norms in international arbitration. a) Fundamental rights and international arbitration. Arbitral awards and constitutional law. b) The Calvo clause: rhetorical relic or timeless aspiration? c) The 'international' administrative contract and arbitration. d) Compliance with local legal requirements. e) The role of transnational public policy. Corruption and money laundering in commercial and investment relations.	1
2010	Interprovincial Forum on Organized Crime	2010 INTER-PROVINCIAL FORUM ON ORGANIZED CRIME [...] New Developments in Money Laundering	1

		3:00 p.m. to 4:00 p.m. Yves Paradis Chief Crown Prosecutor, Proceeds of Crime Erin McKey Senior Counsel, Criminal Law Policy Section Supt. Eric Mattson OIC Financial Crimes, R.C.M.P. “K” Division Sgt. Stephen Scott Calgary Integrated Proceeds of Crime, [...]	
2010	Know Your Client Rules	This session helps to prevent money laundering, terrorism, fraud and other illegal activities. This session is central to this and must be followed by every member of the frim. This course reviews the rules that must be complied with whenever a new client matter is opened. This is part of BLG 101 and is designed for all first-year associates and lateral hires.	2
2010	Money Laundering	Peter Roberts, head of our Litigation Group, will provide an overview of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.	19
2010	Protecting Against Money Laundering	Protecting Against Money Laundering	4
2010	Risk Management Education Programme - Elective Course (Anti-Money Laundering)	- provides an overview to enable lawyers to have sufficient awareness of the International and Local AML Regulatory framework - will help firms ensure that they understand and comply with local laws and regulations - will help firms prepare for future evolution as money laundering activities continue to become more sophisticated	1
2010	Winter Symposium	The course reviews recent developments in the Canadian regulatory structure applicable to brokerage firms and investment advisors. The sessions include the following topics: [...] IIROC Update - The industry regulator will provide an update on new and upcoming regulatory initiatives Anti Money Laundering - The compliance guidance issued by IIROC and the Industry Association will be discussed. In particular it will provide guidance on how brokerage firms should adjust their compliance programs to comply with the legislation based on their particular business models [...]	1
2011	10th Annual Forum on Anti-Money Laundering	Complying with anti-money laundering, anti-terrorist financing and sanctions regulations has never been more challenging, and the risks of failure – both monetary and reputational – continue to grow. The Canadian Institute’s Forum on Anti-Money Laundering has a strong record of delivering the practical, unbiased information you need in this ever-changing area.	1

		This year's program includes new sessions on: -Conducting inherent risk analysis -AML in trade finance -AML for mutual fund/portfolio managers and -Tax evasion as a new predicate offence We've also beefed up our coverage of sanctions compliance, in light of at least three fines or settlements in the $half-billion range levied against major financial institutions internationally over the past year. The outstanding faculty includes keynote speaker Jeanne Flemming, Director of FINTRAC; Special Agent Gregory Coleman of the FBI's New York office; Josée Nadeau, Senior Chief, Finance Canada, Financial Crimes – International; and many more. Back by popular demand is the introductory pre-conference workshop on the fundamentals of AML, listed separately on this web site.	
2011	7th Annual Symposium on Money Laundering	The crime of money laundering in its ever-changing forms continues to present challenges for those involved in combating it and those who defend the accused. Whether you're a Crown, defence counsel, judge, law enforcement officer, or otherwise involved in AML, you must be up-to-date on the latest case law and legislation, most recent enforcement policies, trends, techniques, as well as money laundering schemes. Osgoode Professional Development's 7th Annual Symposium on Money Laundering will provide you with the latest information you need delivered by an experienced, distinguished and international faculty on key topics such as: * Terrorist financing – trends and responses * Off-shore jurisdictions and anti-money laundering initiatives * Casinos, anti-money laundering risks and compliance * Money service businesses and FINTRAC compliance * New compliance requirements for financial institutions and how to meet them * Partial and full forfeiture – a practical look at the latest challenges * Ethics and legal obligations and how to comply * Review and debate of the most recent key court decisions by Crown and defence experts Don't miss this opportunity to ask questions of this experienced faculty. Keynote Speaker Antonio Nicaso, award winning journalist, best-selling author and internationally recognized expert on	1

		organized crime - “Follow the Money”. Chairs John J. Corelli, Deputy Director, Crown Law Office-Criminal Ministry of the Attorney General (Ontario) Sharon E. Lavine, Greenspan Humphrey Lavine	
2011	7th Annual Symposium on Money Laundering - Osgoode PD (webcast)	Originally broadcast April 8, 2011 Leading authorities from Canada and abroad will share best practises and provide practical and critical insights. Topics include: Terrorism and money laundering, areas of highest risk Bank secrecy in offshore jurisdictions Snapshot view of money laundering in casinos Money service business and prepaid cards Current forfeiture challenges for Crowns, Defence and law enforcement	2
2011	AML/ATF Guidelines	The lecture, presented by Cheryl-Ann Mapp, provided a summary of the regulations under the Anti-Money Laundering and Anti-Terrorist Financing regime, outlined the applicable regulatory framework and also provided best practice ”risk-based” procedures to be followed.	1
2011	annual corporate and regulatory update 2011	There were 4 sessions. Session 1 - update of recent developments on corporate governance, directors' duties and misconduct; and disclosure issues by the Hong Kong Securities and Futures Commission. Session 2 - some issues relating to directors and company secretaries in the Companies Ordinance Rewrite - update by the Hong Kong Companies Registry. Session 3 - an update on listing rules policy development, with relevant considerations including corporate governance - an update by the Hong Kong Stock Exchange. Session 4 - anti-money laundering and suspicious transaction reporting for all chartered secretaries - presented by the Hong Kong Monetary Authority	1
2011	Anti-Money Laundering - CLE Archived Webcast	Anti-Money Laundering - CLE Archived Webcast, followed by a group discussion. Ten Years Later: Reflections on the Anti-Terrorism Act Anti-Money Laundering and Lawyers: Legal and Ethical Obligations Financial Crime: Money Laundering and Organized Crime - Law Enforcement Perspective Reconciling Privacy Law Interests with Anti-Money Laundering Obligations - Crown Corporation Perspective Case Study: Key Strategies for FINTRAC Examinations - The Casino Experience	5

		Following the Money: Human Trafficking and Smuggling - Law Enforcement Perspectives from the U.S. Department of Homeland Security AML Compliance Regimes - Enhancing Effectiveness through Compliance Reviews and Technology Forfeiture of Proceeds of Crime and Offence - Related Property	
2011	Anti-Money Laundering Fee Earner Refresher Course 2011	About the Course: Familiarity with, and understanding of, the anti-money laundering and counter terrorist financing legislation has become an integral part of working in a law firm. Since the introduction of the anti-money laundering regime to the front line in March 2003, those working in law firms are required to retain a high level of awareness of the risks surrounding potential money laundering. They must carefully follow firm procedures and policies designed to ensure compliance with the stringent requirements of the relevant legislation. The legislation requires that those in the sector receive regular training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing. This course has been designed as a refresher for those who have already completed the Anti–Money Laundering Fee Earner Course. The aims of this course are to: act as a reminder on the most significant areas of the anti-money laundering requirements; and ensure you remain aware of the importance of compliance with the firm's anti-money laundering systems and procedures. This course consists of four modules: 1. Definitions and role of law firms within the anti-money laundering regime; 2. The relevant legislation; 3. Anti-money laundering compliance systems and procedures; and 4. Practical exercises. [...] Presenters Bio: This Anti-Money Laundering course is the definitive AML training programme written by the following 14 leading international law firms and designed and developed by VinciWorks: Allen & Overy, Ashurst, Bird & Bird, CMS Cameron McKenna, Freshfields Bruckhaus Deringer, Herbert Smith, Hogan Lovells, Linklaters, Macfarlanes, Mayer Brown, Norton Rose, SNR Denton, Travers Smith and Weil Gotshal & Manges. [...]	1

2011	Cayman & BVI as Domicile for Offshore Funds: Structural, Regulatory, & Documentation Issues	Many offshore funds choose Cayman Islands or the BVI as domiciles. This course will examine different structures of
		offshore funds being set up in these jurisdictions, and will also delve into various regulatory and documentation issues from an offshore lawyer's perspective.
		
		Highlights of the course include:
		
		- Introduction of Cayman and BVI as financial centres
		- Why domicile in Cayman or BVI?
		- Usual fund structures: corporate, unit trust & partnership, master/feeder, "umbrella" structures / segregated portfolio companies
		- Regulatory regimes – funds and managers
		- Anti-Money Laundering regulations and updates
		- Private Equity Funds – the Cayman and BVI issues
		- Documentation issues – an offshore perspective
		- BVI Update – Securities and Investment Business Act – Implications for BVI Funds
		  - Regulation of funds
		  - Regulation of investment managers
		  - Exemptions
		- Case Study & Quiz
			1

2011	CJB - Study Group - Prince George - Crown Counsel Workshop	Proceeds of crime Money laundering Organised crime Promoting decency of police Courts of BC, section 24 of charter Charter remedies, distinction with a difference	2
2011	CLE - Webcast #2011-6	1. Anti Money Laundering and Lawyers: Legal and Ethical Presented by: Barbara K Buchanan 41 mins 2. Tax Exemptions Presented by Christopher G. Speakman 55 mins followed by lengthy discussion amongst lawyers attending (5)	5
2011	Compliance 101 Conflicts Management	Review of conflict issues and money laundering issues at firm.	1
2011	IIROC Annual Compliance and Legal Seminar	On Tuesday, December 6th, 2011 the Compliance & Legal Section Education Sub-committee is hosting the annual one-day CLS Compliance Conference in Toronto. The program is designed specifically for the benefit of employees in the Compliance, Legal and related departments of IIROC Member Firms. The conference covers topics such as Anti Money Laundering legislation, insider trading laws and application, the IIROC Enforcement Rules, OTC Derivative Regulation, as well as IIROC upcoming Client Relationship regulation and regulation dealing with Dark Liquidity	4

2011	Laworld Conference	New Directions in International Law [...] 5. Petra Amrein, Julius Bar, Swiss Banking: Myths or Truth: Julius Bar is Switzerland's largest private Bank and Ms. Amrein is a partner. Her lecture covered the new regime in which Swiss banks are alleged to no longer provide the level of confidentiality that previously they were famous for. She went through current procedures, requirements, issues of money laundering, tax evasion, etc. Questions followed.	1
2011	Legal Professional Privilege	- Introduction: aims of the elective will focus on risk management issues, not just the law of professional privilege, understand the concept, and provide adequate RM techniques to ensure that the importance of LPP is recognised, guarded against and the potential for unwitting waiver is reduced. - What is privilege: the definition of privilege and confidentiality and the distinction and interaction) between privilege and confidentiality; the various subsets of privilege – legal professional privilege, privilege against self-incrimination, common interest privilege, and litigation privilege? - Legal Advice Privilege - “Legal Professional Privilege and The Three Rivers Litigation”: a discussion of the House of Lords’ decision in Three Rivers, together with a critique of the English Court of Appeal’s decision in Three Rivers No. 5 and Three Rivers No. 6. The problems encountered by the still narrow definition of corporate client and the practical difficulties encountered by large organisations, in-house counsel and the risk of unintended waiver. [...] - The fraud/ iniquity exception: Discussion of the fraud exception and the recent decision in Kuwait Airways [2005]. [...] - Legal Professional Privilege and the Anti Money Laundering Regime: discussion of how the legal profession has reacted to the AML regime on an international basis and the issue of lawyer/client privilege; the implications of the decision in Pang Yiu Hung Robert v Commissioner of Police [2002] and Bowman v Fels [2005] [...]	1
2011	Liability and Legal Development	Structural changes in the ways lawyers practise; The Defensive Practice; Movement to LLP structure; Law Society's Working Party on LLPs; Structure suggested by the working party; Impetus for capping liability; Law Society Practice Direction M (Anti-Money Laundering) Limiting Liability - Control of Exemption Clauses Ordinance; Tips for drafting a "liability cap"; What is the risk management "gain" here.	1

2011	Protecting against Money Laundering	A client retains the Firm on a matter and provides you with a cash retainer of $15,000. The Firm is asked to act in an oddly structured business deal. What now? This course reviews current legislation and firm policies that protect against money laundering. This is part of BLG 101 and is designed for all first-year associates and lateral hires.	1
2011	Protecting your Reputation in Emerging Market Deals	seminar relating to anti bribery and anti-money laundering laws in the UK and the US and how they affect best practices when dealing in Emerging Markets	1
2011	Review of CLE Archived Webcast	Review of "Advanced Securities 2011 - Capital Markets: Tips, Traps & Trends" and "Practice Management - Ethics - Anti-Money Laundering" webcast archive sessions on Friday, September 2, 2011	3
2011	Scams and Phishing	Karen Skiffington, of Cox Hallett Wilkinson Limited, a Bermuda law firm, addressed the present and dangerous state of the use of emails and other communications to fraudulently solicit business from lawyers. Ms. Skiffington demonstrated common formats used and provided tips to help lawyers avoid pitfalls and liability. Course also highlighted areas of potential violation for lawyers under various anti money laundering legislation.	1
2011	TAGLaw International Conference Geneva	M & A and Money Laundering and financing of terrorism present in M & A transactions, involves discussion of ethics and reporting requirements of legal profession. ISO 9000 and what it means for law firms and their clients. Discusses implementation of standards for firms. Tax. Interactive discussion regarding tax treatment with regard to wealth preservation in Switzerland and comparison to various global jurisdictions.	2
2011	The UK Bribery Act 2010 Part II: UK Enforcement Trends, Voluntary Disclosures, and Global Investigation Best Practices	The UK Bribery Act will come into force on 1 July 2011. Touted as one of the most revolutionary corporate compliance developments of recent times, it creates new general and foreign public official offences which focus on impropriety rather than corrupt intention. It also creates a new strict liability offence for a company that fails to prevent bribes being paid by associated third parties, which can only be met by a defence of having adequate procedures in place to prevent the payment of such bribes. Its advent is likely to present significant challenges to commercial organizations anywhere in the world with a UK connection, unless they are prepared for it. Baker & McKenzie is pleased to invite you to attend a two-part webinar on the UK Bribery Act to help you and your organization understand the key reforms, and the best way of preparing to meet the challenges it poses. As part of the first session, renowned corporate and compliance practitioners from around the globe will walk you through the new regime and the anticipated implications for your business in the Asia Pacific while the second session will cover enforcement trends in the UK, voluntary disclosures and their implications, and global investigation best practices.	2

		The webinars will take place on Wednesday 29 June and 6 July 2011 lasting no more than 90 minutes for each session. Please click on the "webinar topics" below for details on each of the webinar sessions. Part II - UK Enforcement Trends and Voluntary Disclosures · Disclosure Obligations in the Asia Pacific and Their Implications · Panel Discussion on Global Investigation Best Practices This panel session will discuss: Ø The enforcement trends in the UK. Ø The lack of a mandatory legal obligation to report; the SFO guidance of 2009 on the benefits of voluntary reporting; the questions raised by the Innospec case on the ability of the SFO to enter into a plea arrangement in bribery cases; the significance of mandatory money laundering reporting obligations in the UK and overseas for MNCs; and the importance of maximizing the protection of legal professional privilege. Ø Best practices to adopt in global investigations.	
2011	Trustees and corporate service providers - is everyone a money-launderer?	This seminar is about the recent money laundering trial in Hong Kong of a corporate service provider (CSP): HKSAR v Garth Hochung (DCCC 1035/2010) and explain how the prosecution alleged that the CSP's conduct constituted money laundering, and how trustees and CSP's in Hong Kong are at risk of being charged with money laundering	1
2011	Trustees and Corporate Services Providers: Is Everyone a Money-Launderer?	Recent Money Laundering trial in HK of a corporate service provider ("CSP"); How the prosecution alleged that the CSP's conduct constitute money laundering; how trustees and CSP's in Hong Kong are at risk of being charged with money laundering.	1
2012	(1) Undertakings and (2) Tips and Traps in Connection with Receiving Funds in Trust	Undertakings – presented by Don Sihota Don Sihota will discuss the role of undertakings in the practice of law. He will address whether there is a difference between undertakings and trust conditions, who can give undertakings, the importance of precise and exact language, what to do when you are placed on an undertaking and how to amend undertakings Tips and Traps in Connection with Receiving Funds in Trust presented by Doug Howard will cover the following: • clearing funds and ensuring that you are not caught up in a fraud • ensure that you are not involved in a fraudulent attempt to change the characteristic of the funds: - money laundering; - attempting to avoid creditors - tax considerations • should you ever receive funds in trust which are not required for the legal services you are asked to provide • avoiding becoming an escrow agent and thus	24

		avoiding a potential conflict of interest with an existing client • beware of receiving funds from an unrepresented party • importance of Chapter 4 Rule 2 of the Handbook • avoid allowing your client to trade on your good name (see Chapter 4 – Footnote 3)	
2012	11th Annual Forum on Anti-Money Laundering	In late 2011, AML circles were buzzing about the Department of Finance's public consultations on possible regulatory changes, including extended monitoring and record-keeping obligations, expanded obligations for identity verification and EDD for high-risk activities or business relationships, and other possible requirements. By spring, we should have a better idea about what will emerge from those consultations. AML professionals will also have reviewed the February 2012 changes to FATF's 40+9 Recommendations. To find out what these and other recent developments will mean to your organization, plan to join compliance officers from across Canada at The Canadian Institute's 11th Annual Forum on Anti-Money Laundering. This year's program includes: •A keynote address from Darlene Boileau, Acting Director of FINTRAC. Learn about FINTRAC's priorities and directions for the coming year •Presentations from the Department of Finance, OSFI, FINTRAC, and the Autorité des marchés financiers •New case studies and typology information from the RCMP, FINTRAC, FBI and DEA •An update on controls for today's emerging payment systems •A panel discussion on the vexing problem of cost-effective name screening •A follow-up to last year's well-received presentation from CRA •Information for dealers and their bankers on money laundering typologies in precious metals and gemstones	1
2012	23rd Annual ACFE Fraud Conference & Exhibition	Course #1 4G: Protecting Your Investigation from Target Reprisal David B. Debenham, CFE, CMA Partner, McMillan LLP Fraud examiners are no longer immune from being sued by the targets of their investigation. Learn the new best practices that you must adopt to proactively thwart these novel methods of attack so you can keep the court's focus where it belongs - on the fraudster. During the course of this session you will receive a checklist of "Black Ops" to inoculate yourself from the emerging claims being made against public and private sector fraud examiners in the twenty-first century.	1

		Course #2 Speaker: Senator Christopher J. Dodd U.S. Senator (1981-2011), Co-Author of the Dodd-Frank Act After the financial crisis of the late 2000s, consumers looked to Washington to improve regulation, accountability and transparency of the financial industry. U.S. Sen. Christopher Dodd responded to this challenge with vigor by co-authoring the Dodd-Frank Wall Street Reform and Consumer Protection Act with U.S. Rep. Barney Frank. The Dodd-Frank Act, passed into law June 2010, created new rules to rein in abusive and fraudulent practices used by banks and lenders, and prevent future tax-payer- funded bailouts of Wall Street firms. While the long-term effects of Dodd-Frank are unclear, the immediate implications for anti-fraud professionals are the act's robust whistleblower provisions: Corporate whistleblowers may be entitled to between 10 percent to 30 percent of any government recovery in excess of $1 million. This incentive alone could have far-reaching effects for anti-fraud professionals in all industries. With 30 years in the U.S. Senate and six years in the U.S. House of Representatives, Chris Dodd built a solid, commanding reputation for independence, vision and effectiveness that few in Washington can match. Dodd founded the first Senate Children's Caucus, as well as authored the Family Medical Leave Act (FMLA), the Help America Vote Act (HAVA), Troubled Asset Relief Program (TARP) legislation and credit card reform legislation. He represented the state of Connecticut in Congress for 36 years before retiring in 2010. Dodd currently serves as chairman and CEO of the Motion Picture Association of America. Course #3 9C: Lying, Cheating and Stealing: White-Collar Crimes Overview Doug Squires, J.D. Adjunct Professor of Law, OSU Moritz College of Law White-collar crimes are non-violent, often complex criminal offenses involving lying, cheating and stealing. This presentation focuses on the investigation, prosecution and defense of white-collar crimes. Topics covered will include fraud, corruption, money laundering, obstruction of justice and other crimes commonly litigated in federal courts, along with the latest laws and legal techniques. This session will also discuss cutting-edge issues specific to white-collar crime concerning criminal law and evidence. Course #4 10F: How to Identify & Manage Money-Laundering Risk	

		Robert Mazur Former Federal Undercover Agent President, Chase & Associates, Inc. Based on five years undercover within Colombian cartels as a money launderer, working directly with the world's most infamous dirty bankers and businessmen, this presentation exposes money laundering from every perspective and will empower you to identify the types of businesses, products and geographic areas that are havens for tainted funds. While learning the real meaning of "money laundering related risks" you'll be armed with insight about how to protect yourself and your company from the risks related to unwittingly dealing in tainted funds.	
2012	8th Annual Symposium on Money Laundering	The pervasive nature and innovative forms of the crime of money laundering present continuing challenges for those involved in detecting, prosecuting and combating it as well as for those defending the accused. Whether you're a lawyer, law enforcement officer, regulatory fraud investigator, financial institution officer, you must not only be up-to-date but ahead of the curve concerning the most recent trends, enforcement policies, techniques, money laundering schemes and penalties. Osgoode Professional Development's 8th Annual Symposium on Money Laundering has been developed to provide you with the key information, expert insights and practical knowledge you need to be effective in your work in this field. You'll hear from an international faculty of top government and law enforcement professionals, regulatory and financial experts and nationally recognized Crown and defence counsel, as well as leading lawyers in the area of international business and anti-corruption law. Topics include: Counterfeit goods and money laundering nexus Global anti-bribery and anti-corruption legislation; what you need to know about international transparency and compliance issues Most current case law update from trial and appellate courts; Crown and defence perspective Recovery of proceeds post-conviction; restitution or forfeiture? Impact of Bill C-21 on victim restitution and sentencing hearings Chairs John J. Corelli, Deputy Director, Crown Law Office - Criminal, Ministry of the Attorney General (Ontario) Sharon E. Lavine, Greenspan Humphrey Lavine OPD Program Lawyer Mary Park [...]	4
2012	Amendments to Bermuda's AML/ATF Regime	Barbara Padega, a lawyer at Conyers Dill & Pearman, presented a lecture highlighting new compliance requirements for lawyers under the Proceeds of Crime	1

		(Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 in relation to record keeping, "know-your-client" obligations and reporting of suspicious activities to applicable authorities. The lecture also included a summary of lawyers' obligations under the newly enacted Corporate Service Provider Business Act.	
2012	Anti-Bribery and Corruption Course	This course provides an overview of the UK anti-bribery and corruption legislation, including the Bribery Act 2010 and the Money Laundering Regulations. It covers the responsibilities of employees and employers under the relevant legislation. There is a testing element at the end of the course, which must be completed and passed in order to complete the course.	1
2012	Anti-Money Laundering	Money laundering is currently the focus of global international cooperation between most national governments. There are several international conventions and agreements covering this area. Hong Kong is an active participant in international initiatives because, as a major international centre for financial business, it needs to participate and be seen to participate pro-actively in the international effort. The AML regulations and laws affect law firms in particular because they are specifically named in the FAT-F recommendations as being potential conduits by which criminals and terrorists might find routes to launder large sums of money. This module : •Provides an overview to enable lawyers to have sufficient awareness of the International and Local AML Regulatory framework •Will help firms ensure that they understand and comply with local laws and regulations •Will help firms prepare for future evolution as money laundering activities continue to become more sophisticated The course is highly participatory in approach, mixing lectures with case studies and practical exercises to explore risk management in an interactive manner that will resonate with day-to-day practice.	1
2012	Anti-Money Laundering Fee Earner Course	Covers UK anti-money laundering laws and how it applies to legal practice	1
2012	Anti-money laundering fee earner course	The definitive anti-money laundering program for fee earners in leading UK and international law firms. This course fits in with our firm's anti-money laundering procedures and aims to: • help you understand what anti-money laundering is about and why it is relevant to you; • help you understand why you need to be aware of the issue of terrorist financing; • give you awareness of the law relating to money laundering and terrorist financing; • show how our firm's anti-money laundering procedures apply and help you recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing; and • test that you have understood the points covered.	1

		This course has been designed to teach you anti-money laundering best practices and procedures, as defined by 14 of the world's leading law firms and in line with (a) the Practice Note that has been drawn up by The Law Society of England and Wales and (b) applicable legislation in the UK and other jurisdictions. This includes: • knowing how to verify a client's identity and conduct client due diligence measures; • learning how to recognise and deal with transactions and other activities which may be related to money laundering by being alert to suspicious behaviour and reporting such activities in the right way; • understanding UK-specific requirements (where relevant); and • being clear on our firm's own internal policies and procedures. By completing this course you will have learnt how to comply with all critical statutory requirements and will be able to play your part in the fight against money laundering. Presenters Bio: This Anti-Money Laundering course is the definitive AML training programme written by the following 14 leading international law firms and designed and developed by VinciWorks: Allen & Overy, Ashurst, Bird & Bird, CMS Cameron McKenna, Freshfields Bruckhaus Deringer, Herbert Smith, Hogan Lovells, Linklaters, Macfarlanes, Mayer Brown, Norton Rose, SNR Denton, Travers Smith and Weil Gotshal & Manges	
2012	Anti-Money Laundering Fee Earner Course 2011/2012	On line course with multiple choice testing concerning anti-money laundering rules, know your client, reporting and privilege issues under English law which is very much on all fours with Canadian law on the issues.	1
2012	BLG 101/National CLE - Protecting against Money Laundering	A client wishes to or retains the Firm on a matter and provides you with a cash retainer of $15,000. The Firm is asked to act in an oddly structured business deal. What now? What are your obligations? This course reviews current rules of professional conduct, legislation and firm policies that protect against money laundering. This is part of BLG 101 and is designed for all first-year associates and lateral hires	1
2012	Bribery, Corruption and Sanctions - Hazards for UAE Corporates	*US and EU Corruption and Money Laundering laws *International Sanctions - Iran and Syria *Sanctions, Corruption & Money Laundering issues in the UAE	1
2012	CCH Annual CPD Fast-Track Conference	October 11 2012 [...] (2) Corporate Governance and Compliance - and the law firm legal practitioners ordinance fiduciary duty	1

		changes in the law - the Companies Ordinance 2012 issues for corporate governance the conduct of general meeting anti-money laundering and counter-terrorist financing (financial institutions) Ordinance 2011 post - Lehman Bros mini-bonds financial dispute resolution centre how does the listed companies comply with the legislation and non-statutory requirements in practice directors continuing obligations on listing [...]	
2012	CLE Archived Webcasts 2012	Lawyers viewed and discussed the following CLE Archived Webcasts: [...] The New Client ID Rules from the course Solo and Small Firm Conference 2009 Anti-Money Laundering and Lawyers: Legal and Ethical Obligations from the course Anti-Money Laundering Law (Ethics) [...]	1
2012	CLE Webcast #2012-6	1. Anti-Money Laundering Buchanan, Barbara - May 2011 Length: 41 mins [...]	1
2012	CLEBC Webcast Archive - Anti-Money Laundering Law (JAPAN GROUP)	In-house review and discussion of CLEBC Webcast Archive sessions "Anti-Money Laundering and Lawyers: Legal and Ethical Obligations".	2
2012	Elective Module: Anti-Money Laundering	The Academy assigned 4 CPD points for Hong Kong accreditation Lecture + participatory case study workshop. Chaired by three lawyers. An Elective Risk Management programme directed at the potential vulnerability of a law firm to anti-money laundering financing. Including et al the measures relevant to lawyers; unusual transactions; reporting of suspicious transactions; and doing business with non-compliance countries.	1
2012	Ethics training - how far should you go for your clients	Ethical guidelines that work around the anti-money laundering applicable to the Middle East.	1
2012	iGaming North America Conference 2012	[...] 10. Panel: How will US Online Gamblers Fund Their Accounts in the Regulated Environment? • Existing and expected challenges in payment processing. • Dealing with fraud and money laundering. • Consumer preferences. • Emerging payment alternatives. Moderator, Tony Fontaine, President, ProPick Racing John English, Senior Vice President, American Wagering Inc. Robert Holmes, President & CEO, RaceUWin.com Ted Teruo Kitada, Senior Company Counsel, Wells Fargo Bank, National Association Joel Leonoff, President & CEO, Optimal Payments	1

		PLC [...]	
2012	Money Laundering in Canada 2012	In 2012, the agenda includes 15 workshops and 4 plenary sessions. Scheduled topics include: • Current trends & typologies in money laundering & organized crime • Proposed changes to Canada's AML legislation • Money laundering & fraud • Enhancing KYC & due diligence requirements • Tax crimes & money laundering • Offshore financial centres • Managing high-risk clients • Law enforcement challenges in the AML/CTF arena • Human smuggling: links to money laundering	1
2012	Regulatory Compliance for Financial Institutions, 18th Annual	[...] With global stress testing and crisis management requirements at the forefront for regulatory authorities, it is more important than ever that you have the necessary tools to develop, implement and benchmark your risk management programs. Learn how to exceed the expectations of regulators, and insulate your organization against the negative business effects of a cyclical global economic climate. Attend The Canadian Institute's 18th Regulatory Compliance for Financial Institutions, to gain the most practical and current compliance information from industry leading stake-holders with the Big 5 banks, smaller institutions, credit unions and insurers, as well as future trends directly from the regulators to shape the way you conduct your business. Test the effectiveness of your compliance programs through NEW topics this year including: • Neutralizing risk with a fine-tuned crisis management plan • How to achieve optimum performance through effectiveness testing and robust ERM • Strategies to comply with the new FATF 40+9 anti-money laundering regulations • Data management: Leveraging advancing technologies to discharge privacy obligations and comply with revised OSFI B-10 outsourcing guidelines • Best practices in implementing B-6 liquidity principles under Basel III • Keeping pace with evolving IRS guidance on FATCA and Dodd-Frank Wall Street Reform • Understanding the implications of enhanced disclosure, penalties and insurance limits under the new mortgage rules [...]	4
2012	Regulatory Compliance for Financial Institutions, 18th Annual - Webinar	[...] With global stress testing and crisis management requirements at the forefront for regulatory authorities, it is more important than ever that you have the necessary tools to develop, implement and benchmark	1

		your risk management programs. Learn how to exceed the expectations of regulators, and insulate your organization against the negative business effects of a cyclical global economic climate. Attend The Canadian Institute's 18th Regulatory Compliance for Financial Institutions, to gain the most practical and current compliance information from industry leading stake-holders with the Big 5 banks, smaller institutions, credit unions and insurers, as well as future trends directly from the regulators to shape the way you conduct your business. Test the effectiveness of your compliance programs through NEW topics this year including: • Neutralizing risk with a fine-tuned crisis management plan • How to achieve optimum performance through effectiveness testing and robust ERM • Strategies to comply with the new FATF 40+9 anti-money laundering regulations • Data management: Leveraging advancing technologies to discharge privacy obligations and comply with revised OSFI B-10 outsourcing guidelines • Best practices in implementing B-6 liquidity principles under Basel III • Keeping pace with evolving IRS guidance on FATCA and Dodd-Frank Wall Street Reform • Understanding the implications of enhanced disclosure, penalties and insurance limits under the new mortgage rules [...]	
2012	Transcontinental Trusts Conference 2012	Regulation of Trustees in Switzerland/Status and SATC's proposal Certainty over Residence at last? A Statutory Residence Test for the UK Liechtenstein & The New World Order How Family Foundations are Developing Their Philanthropy The Bahamas Advantage: Introducing the Innovative Bahamas Executive Entity From Russia with Wealth – Which Structures and Why? Fund Structuring FATF and Anti Money Laundering. A success or an Ever-Increasing Burden on Wealth Management	1
2013	12th Annual Forum on Anti-Money Laundering	From provider: The past year in anti-money laundering has had two major themes: increases in the number and quantum of fines in worldwide enforcement, as typified by the news item above, and moves by the Canadian	3

		government to amend regulations and legislation to conform with FATF requirements. To find out what these and other recent developments could mean to your organization, plan to join compliance officers from across Canada at The Canadian Institute's 12th Annual Forum on Anti-Money Laundering. Hear from regulators, law enforcement, top financial institutions and leading lawyers on key topics including: •FINTRAC and OSFI: What are their current initiatives, priorities and expectations? •New case studies and typology information from the RCMP and DEA •An update on controls for today's emerging payment systems •The popular regulator panel and Q&A, featuring OSFI and FINTRAC •Insights into what foreign enforcement efforts will mean to Canadian reporting entities •New sessions on correspondent banking and demarketing •Valuable information from a senior official at the U.S. Dept. of the Treasury	
2013	16th Annual Transnational Crime Conference	• The use of private investigators, experts and forensic accountants in multi-jurisdictional criminal litigation • Offshore tax havens and the loss of secrecy in multinational tax fraud investigations and prosecutions • Money laundering and corruption investigations in South America and the Caribbean • Acting in high-profile, multi-jurisdictional cases and the impact of the media • Bilateral cooperation and the increase in multi-jurisdictional criminal investigations • LIBOR and the upswing in international financial services and securities fraud investigations and prosecutions As always, this key event in the international calendar will deliver high profile speakers and commentators who will discuss the latest developments, hot topics and trends in international criminal law today. Attendees will also benefit from a fantastic opportunity to network and discuss the day's topics at a conference dinner to be held at Joe's Stone Crab.	1
2013	2013 CLHIA Compliance and Consumer Complaints Annual Conference	[...] Wednesday, May 08, 2013 [...] Update from the Office of the Superintendent of Financial Institutions (OSFI) OSFI will provide an update on its Road Map, Compliance Framework, new Corporate Governance Guideline, the independent review of compliance functions, and other initiatives, and their implications for Governance, Risk and Compliance (GRC). Vlasios Melessanakis, Director Policy Development, Office of the Superintendent of Financial Institutions	2

		(OSFI) [...] Risk Management Gone Wrong When it comes to managing material risk, your legal and compliance groups need to be "in step" with each other. In this presentation, we will take a close look at the relationship between the legal and compliance aspects of material risk. Some of the questions to be considered are: - What are the types or phases of material risk? - How do legal and compliance work together in managing material risk? - What are the implications for reputation management when risk management goes wrong? - What can we learn from the mistakes of others? - Where do regulators fit in? - What material risk issues are on the horizon? Presenter: Stuart Carruthers, Partner, Stikeman Elliott [...] Governance - Foreign corrupt practices legislation and its impact in Canada Canada has stepped up enforcement of its anti-corruption laws and, by doing so, has underscored the importance for Canadian companies of ensuring that they have robust anti-corruption compliance programs in place. New legislative initiatives, tabled in the Senate in early February 2013, will further strengthen Canada's Corruption of Foreign Public Officials Act (CFPOA) and will bring Canadian law more closely in line with the US Foreign Corrupt Practices Act and UK Bribery Act. The proposed amendments to the CFPOA will also broaden its jurisdictional reach and remove a significant impediment to authorities' ability to prosecute CFPOA cases, likely leading to even further CFPOA prosecutions to come. Join this discussion of the impact of the CFPOA in Canada and the necessity for robust compliance regimes in companies conducting business in foreign countries. Presenters: Mark Morrison, Partner, Blake, Cassels and Graydon LLP David Neave, Partner, Blake, Cassels and Graydon LLP [...] Governance - Anti-Money Laundering and Anti-Terrorist Financing Our panel will discuss the new Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations other related issues, including: - Understanding money laundering and terrorist financing risk in our industry - Developing policies and procedures on the "Risk Based Approach" requirements contained in the PCMLTFA - Forthcoming amendments to FINTRAC guidelines - Recent updates to the Financial Action Task Force's	

		guidance document, Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion Panelists: Lori Achatz, Director, Regulatory Compliance, Sun Life Financial Richard Lee, President, Pendragon Consulting Additional panelist TBC [...]	
2013	3rd IAP North American and Caribbean Regional Conference	This two day conference will bring together criminal prosecutors from across North America and the Caribbean to learn about current issues in criminal law. Sessions will feature panellists from prosecution services in Canada, USA, Mexico as well as experts and police from around the world. The sessions will cover DNA, trafficking in persons, intellectual property theft, counterfeiting, cybercrime, search and seizure, money laundering and organized crime.	3
2013	AML/ATF Update	Ms. Kim Wilson, Supervisor for the AML/ATF Board for Attorneys and Accountants, provided a lecture on the current status of Bermuda's anti-money laundering and anti-terrorist financing regime under the Proceeds of Crime Act 1997 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, including providing information concerning the establishment of necessary guidelines required for law firms.	1
2013	Anti-Money Laundering	- Provides an overview to enable lawyers to have sufficient awareness of the International and Local AML Regulatory framework - Help firms ensure that they understand and comply with local laws and regulations - Help firms prepare for future evolution as money laundering activities continue to become more sophisticated	1
2013	Anti-Money Laundering Online Course - Hong Kong Fee Earner Course	The definitive anti money laundering program for fee earners in leading Hong Kong and international law firms. This course fits in with our firm's anti-money laundering procedures and aims to: 1. help you understand what anti-money laundering is about and why it is relevant to you; 2. help you understand why you need to be aware of the issue of terrorist financing; 3. give you an awareness of the law relating to money laundering and terrorist financing; 4. show how our firm's anti-money laundering procedures apply and help you recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing; and 5. test that you have understood the points covered. This course has been designed to teach you anti-money laundering best practices and procedures, as defined by 14 of the world's leading international law firms and 11 of Hong Kong's leading firms and in line with (a) Practice Direction P that has been drawn up by The Hong Kong Law Society and (b) applicable legislation in Hong Kong.	1

		This includes: 1. knowing how to verify a client's identity and conduct client due diligence measures; 2. learning how to recognise and deal with transactions and other activities which may be related to money laundering by being alert to suspicious behaviour and reporting such activities in the right way; 3. understanding Hong Kong-specific requirements; and 4. being clear on our firm's own internal policies and procedures. By completing this course you will have learnt how to comply with all critical statutory requirements and will be able to play your part in the fight against money laundering.	
2013	Asia Regulatory Offsite	This full day program includes sessions on "UK, US and Asia Pacific enforcement trends", "Regulation of OTC derivatives", "Asia Pacific anti-corruption update", "Developments in RMB", "Anti-money laundering investigations", "Update on sponsors and PSI regulations" and "The regulatory reform and the future shape of the markets".	1
2013	CJB - Lottery and Gaming Offence Investigations	Chris Graham, a Special Provincial Constable with the Gaming Policy and Enforcement Branch, will discuss the role and mandate of the Gaming Policy and Enforcement Branch (GPEB) as designated in the Gaming Control Act. He will explain how the GPEB works with other investigative agencies on cases involving offences associated to the gaming industry (Fraud, Identity theft, Money Laundering). This session will be very useful for all Crown counsel who may have a case involving lottery products or offences associated to the gaming industry.	18
2013	Doing Business in Emerging Markets	[...] 9.30am - 10.00am Keynote speech ?What do emerging and high-growth markets mean? ?What are their legal challenges? ?How do they impact different sectors? ?Key insights on where new accelerations in growth are coming from ?What are the emerging markets trying to do to get into developed countries? Edward Oakden, Managing Director, Strategic Trade, UK Trade & Investment [...] 11.50am - 12.30pm Managing your legal risk within high risk emerging markets The Foreign Corrupt Practices Act and the UK Bribery Act continue to highly influence companies' due diligence processes and integration focus. Practically, what does legal risk mean and who are you really dealing with? ?What are the biggest risks?	1

		?How do you mitigate the risks? ?Understanding the established local business practices among the countries where you plan to conduct business Don Hughes, Vice President and EMEA General Counsel, Hitachi Data Systems Adam Ramsay, Legal Director, Edwards [...] 2.15pm - 3.00pm Choose from one of workshop sessions below SESSION A: Safeguarding third-party relationships to minimise risk Supply chains have expanded as companies have sought to drive down costs and increase their operational capabilities. Third parties can also help a company gain access to a wider pool of skilled professionals with an understanding of the local market. However, companies often face significant legal and reputational risks if one of their third parties engages in corrupt activities. ?Carrying out preliminary and ongoing due diligence of existing business relationships ?Understanding the complexity of contractual agreements with suppliers and local business partners ?Liability, money laundering, reputational damage ?Getting buy-in from C-suite executives when overseeing the management of third-party relationships Tom Melbye Eide, Head of LEGAL Global Strategy and Business Development, Statoil Robert Dunk, Legal Director EMEA, CBRE Limited Emma Codd, Partner, Deloitte [...]	
2013	Enforcement Training 2013	Enforcement training was provided to Enforcement, Policy and General counsel (all lawyers), Investigators and Case Assessment Staff. It comprised a series of presentations directly related to my practice. Policy and Compliance Update - addressed NI 31-103, which I deal with in my practice. It is a new NI that Staff needs to learn; FSCO is a regulatory body that the MFDA works with and provided an overview of their enforcement procedures; Anti - Money Laundering Update - reviewed trends that the MFDA is seeing. My practice frequently deals with misappropriation of funds; W.H. Stuart - presented by MFDA Staff to update us on the investigation and litigation of the matter. This is a matter I had direct knowledge of as I reported to the Investright Summaries Enforcement Roundup webpage and this Member's alleged misconduct occured in jurisdictions I am responsible for; CCIR - presented by FICOM (BC) is an agency that the MFDA also has worked with and I presently have a file involving FICOM. This presentation was specific	2

		to policy initiatives regarding seg funds and suitability - both topics I come across in my practice frequently;	
2013	Financial Crime and Anti-Money Laundering Conference	This course was a two-day conference on financial crime, anti-money laundering and counter terrorist financing for lawyers, regulators, banks, compliance professionals and reporting entities pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.	1
2013	Foy Allison 201	One hour course on anti-corruption, money laundering, bribes and gifts.	2
2013	Fraud Awareness & Financial Literacy	Topics will include: • File opening procedures, including conflicts verification and Know Your Client compliance • Trust accounts and related risks • Anti-money laundering compliance • Ponzi schemes -- how to identify and avoid • Internal fraud awareness issues	10
2013	Half-Day Training Session	Topics were (1) digital video evidence, (2) relationships between fraud and money laundering, and (3) securities fraud investigations.	1
2013	HSBC Financial Crime and Sanctions conference	HSBC Group conference for legal and compliance professionals from offices around the world. Specific sessions included sanctions including UN and US (OFAC sanctions) as well as bribery including UK Anti Bribery Act and US Foreign Corrupt Practices Act. Other sections including Anti money laundering and Global regulatory developments.	2
2013	Legal Practice KYC	Neil Van Eijk, a lawyer and head of compliance at Conyers Dill & Pearman Limited, delivered a presentation introducing and explaining the new KYC ("know your client") requirements and procedures for lawyers practicing in Bermuda. Neil's presentation included a summary of the applicable anti-money laundering provisions and associated liabilities and fines applicable to lawyers for breaches of the KYC regime.	1
2013	Money Laundering in Canada	The Course addressed some of the requirements of the new FINTRAC legislation related to the Anti Money Laundering and Terrorism Financing Act and how it applied to reporting institutions such as Casinos, banks, and other businesses. As well the course addressed some methods that those covered by the legislation could develop guidelines for compliance. I attended most, but not all of the lectures so am only requesting 6 hours.	1
2013	Payment Cards & Systems	Recent developments in the regulation of payment cards and systems in Canada, including: • Recent Decision of the Competition Tribunal • Privacy: Evolving Best Practices • Dealing with Data Breaches • Risk Assessment Under the OSFI Corporate Governance Guideline • Responding to Regulatory Inquiries and Compliance Agreements	2

		• Anti-Money Laundering Compliance Issues • Code Compliance • Complaints Policies and Processes • FCAC Clear Language Review • Updates on Provincial and Federal Laws	
2013	Prepaid & Emerging Payments Webinar - an overview of regulatory issues	- Review of key Consumer Financial Protection Bureau activities for prepaid and payments including: - GPR ANPR/complaint gathering - Remittance regulations - Disclosures -New regulatory concerns and open issues for 2013 in Anti Money Laundering - FinCEN -Updates on AML cross-border regulations - An update on the "Durbin Amendment" including effective dates on routing restrictions. - 2012 Bank regulatory overview including: - Restrictions on 3rd party servicers - Animus against prepaid - Credit products - Privacy and Data Security: recent trends in social media, mobile products, E-Sign and PCI DSS CLE offered in the USA.	1
2013	Protecting Against Money Laundering	A client wishes to or retains the Firm on a matter and provides you with a cash retainer of $15,000. The Firm is asked to act in an oddly structured business deal. What now? What are your obligations? This course reviews current rules of professional conduct, legislation and firm policies that protect against money laundering. This is part of BLG 101 and is designed for all first-year associates and lateral hires	4
2013	Regulation Matters	Please join us on Tuesday, April 16, 2013 for our upcoming Regulation Matters webinar. This interactive webinar series is geared towards financial services professionals who are dealing with today's growing body of diverse and complex regulations. Your full participation in the webcast qualifies you to receive ONE Continuing Professional Development or CPD credit. Key discussion points: IFRS Summary of changes from the IASB's exposure draft on new loan loss accounting rules (IFRS 9 Impairment of Financial Assets) Anti-Money Laundering Update on new regulations amending Canadian Anti-Money Laundering legislation FATCA	1

		Update on FATCA regulatory landscape and managing compliance risk through an effective FATCA governance model and controls framework	
2013	Revolutionary Payment Solutions 2013 & Beyond: Legal & Regulatory Compliance Primer	[...] 1:15 - 2:00 MOBILE PAY MEN TS REGULA TION (CONTINUED) Lisa Abe-Oldenburg, Milos Barutciski • Consumer Protection Issues • Code of Conduct for the Debit and Credit Industry • Canadian NFC Mobile Payments Reference Model • Impact on “merchant specific” provisions • Impact of regulations on prepaid cards and other e-payment products such as money transfer services • Payment Card Industry Data Security Standard • PIN Security Requirements • Anti Money Laundering Regulations and Compliance • Competition Law Concerns [...]	1
2014	13th Annual Forum on Anti-Money Laundering	Join us again next year on April 2 and 3, 2014 for Canada’s leading AML event. This is your opportunity to gain clarity about the new regulations coming into force on Feb. 1, as well as coming changes to Guideline B-8, the intersection between AML and privacy, new typologies and much more. Back by popular demand are two workshops on April 1: Anti-Money Laundering 101 and The Examiners are Coming: Are You Ready? (Listed separately) Join your peers from large and small financial institutions. Take advantage of our special advanced notice offer today. [...]	2
2014	2014 FINRA Annual Conference-Washington DC	[...] 2:45 p.m. – 4:00 p.m. Concurrent Sessions I Suitability (Small Firm Focus) Panelists discuss how small firms are complying with suitability and know-your customer requirements. They share approaches for documenting and supervising hold recommendations and for capturing required customer-profile information. FINRA panelists highlight common suitability deficiencies found during recent examinations. Enforcement Developments This session provides an overview of new developments and trends in enforcement, including enforcement priorities, as well as policy changes and clarifications, particularly regarding information requests. Panelists highlight noteworthy decisions and settlements that illustrate FINRA priorities and provide guidance on regulatory and compliance practices. They also provide information and insights on navigating enforcement investigations and the disciplinary process. [...] Ethics and Professional Responsibility for Securities	1

		Attorneys This session focuses on ethical considerations and the significant competing interests that securities attorneys face. Practitioners discuss the roles of securities attorneys and the nature and scope of their ethical obligations in different situations. [...] 2:45 p.m. – 4:00 p.m. Concurrent Sessions IV Common Examination Findings and Compliance Practices (Small Firm Focus) FINRA staff members discuss the most common deficiencies noted during FINRA cycle examinations of small firms and issues that result in a cautionary letter. Industry practitioners discuss taking corrective action and updating compliance procedures and practices based on lessons learned from common exam deficiencies. Fraud Detection and Prevention This session focuses on noteworthy fraud cases. Panelists highlight recent insider trading cases, cyber hacking, and market manipulations that targeted investors and the financial services industry. Risk Management Practices Panelists discuss effective processes to identify, assess, mitigate and manage risk. They discuss how to determine the issues and areas of focus, what effective internal controls look like, and keeping policies and procedures up to date with regulatory developments and industry practices. They also discuss effective approaches to risk governance. [...] 4:15 p.m. – 5:30 p.m. Concurrent Sessions V [...] Anti-Money Laundering (Small Firm Focus) This session focuses on suspicious activity monitoring, independent testing and customer identification programs at small firms. FINRA panelists highlight commonly cited deficiencies in these AML areas. Industry practitioners share how their small firms monitor for suspicious activity, determine who should conduct an independent test, address deficiencies, and ensure proper collection and verification of customers' identifying information. [...] Global Regulatory Landscape Join us for a special session with leaders from the International Organization of Securities Commissions (IOSCO) and international securities regulatory agencies. Panelists discuss key issues shaping the global regulatory landscape, including how international regulators incorporate concepts like behavioral finance in their regulatory approach. They also discuss how issues such as shadow banking, corporate governance, bank capital and OTC derivative markets are defining regulators' actions. [...]	

		AML: Monitoring for Suspicious Activity (Medium & Large Firm Focus) Panelists from medium and large firms discuss their practices for monitoring suspicious activity. They highlight issues at bank-affiliated broker-dealers and the challenges of monitoring for suspicious activity in RVP/DVP, omnibus and master-sub accounts. They also discuss how obligations for suspicious activity monitoring intersect with a firm's responsibility to determine the registration status of shares under Section 5 of the Securities Act of 1933. [...]	
2014	Anti Money Laundering: Regulatory Updates and Best Practices	This year, new anti money laundering regulations have come in to force and more regulatory reforms are anticipated soon. Ensure you have the current knowledge and strategies to prevent money laundering, and to defend your clients who may be accused. Get cutting edge updates on the most recent trends, enforcement policies, schemes and penalties as well as best practices for complying with AML regulations directly from OSFI, FINTRAC and the Privacy Commissioner of Canada	1
2014	Anti-money laundering	Anti-money laundering overview and updates.	1
2014	Anti-Money Laundering	Money laundering is currently the focus of global international cooperation between most national governments. There are several international conventions and agreements covering this area. Hong Kong is an active participant in international initiatives because, as a major international centre for financial business, it needs to participate and be seen to participate pro-actively in the international effort. The AML regulations and laws affect law firms in particular because they are specifically named in the FAT-F recommendations as being potential conduits by which criminals and terrorists might find routes to launder large sums of money. This module : •Provides an overview to enable lawyers to have sufficient awareness of the International and Local AML Regulatory framework •Will help firms ensure that they understand and comply with local laws and regulations •Will help firms prepare for future evolution as money laundering activities continue to become more sophisticated The course is highly participatory in approach, mixing lectures with case studies and practical exercises to explore risk management in an interactive manner that will resonate with day-to-day practice.	1
2014	Anti-Money Laundering	Presentation on anti-money laundering to strengthen lawyers' ethics and professional conduct	1
2014	Anti-Money Laundering	Presented with case studies and relevant scenarios, the on-online Thomson Reuters AML course provide individuals with all the necessary rules and regulations to ensure they understand their role in combating money laundering and terrorist financing. The course outline includes: Background, Law and Regulation, Identification and KYC, Money Laundering Risks,	2

		Sanctions, Reporting Your Suspicions, And a course test.	
2014	Anti-Money Laundering & Terrorist Financing Training	This program will focus on Anti-Money Laundering and Terrorist Financing : risks and methodologies, legal and Law Society requirements, office policies and procedures and risk assessment, client vetting, engagement letters, file opening, record keeping, suspicious transaction recognition and reporting, annual confirmations, compliance officers, and consequences of failure.	1
2014	Anti-Money Laundering 101:Mastering the Fundamentals	Note: This workshop is available to people attending the associated anti-money-laundering conference (separately listed) and their designated colleagues. It is available by personal attendance only. Dan Ruch Vice President, Chief Compliance Officer Equitable Trust Company This comprehensive workshop has been designed to provide you with a good grasp of the basics, including the regulatory framework, the key elements and objectives of an AML/ATF compliance program and the role of the Chief Anti-Money Laundering Officer. Topics in this workshop will include: *Understanding the essential purpose and principles of an AML/ATF compliance program *Defining money laundering and terrorist financing *Protecting your organization from liability, fines/penalties and reputational risk *Establishing a compliance framework -- policies, procedures and controls *Understanding the regulatory framework *Key regulatory bodies: who does what? *Understanding the different regulatory regimes *The role of the FATF *Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) *The role of the Office of the Superintendent of Financial Institutions *Self-regulatory organizations and industry associations *An overview of key legislation and regulations -The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and regulations *The basic requirements applicable to all reporting entities *A roadmap to compliance -Overview of an effective compliance program -Designing a compliance program appropriate to your organization -The importance of comprehensive risk assessment -Roles of the board, committees and management -Audit/review obligations -Understanding industry best practices *Real-life examples of companies fined for non-compliance Dan Ruch has more than 20 years of experience in governance, risk and compliance consulting with	1

		financial institutions and other industries. He has developed and implemented complex organization-wide programs including legislative compliance management, anti-money laundering & anti-terrorist financing, and privacy & data protection. [...]	
2014	Anti-Money Laundering and Sanctions Awareness	On-line course on the general anti-money laundering legislation and practice tips on what we need to watch out in relation to anti-money laundering and sanctions.	1
2014	Anti-Money Laundering Hong Kong Fee Earner Course	The definitive anti money laundering program for fee earners in leading Hong Kong and international law firms. This course fits in with our firm's anti-money laundering procedures and aims to: 1. help you understand what anti-money laundering is about and why it is relevant to you; 2. help you understand why you need to be aware of the issue of terrorist financing; 3. give you an awareness of the law relating to money laundering and terrorist financing; 4. show how our firm's anti-money laundering procedures apply and help you recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing; and 5. test that you have understood the points covered. This course has been designed to teach you anti-money laundering best practices and procedures, as defined by 14 of the world's leading international law firms and 11 of Hong Kong's leading firms and in line with (a) Practice Direction P that has been drawn up by The Hong Kong Law Society and (b) applicable legislation in Hong Kong. This includes: 1. knowing how to verify a client's identity and conduct client due diligence measures; 2. learning how to recognise and deal with transactions and other activities which may be related to money laundering by being alert to suspicious behaviour and reporting such activities in the right way; 3. understanding Hong Kong-specific requirements; and 4. being clear on our firm's own internal policies and procedures. By completing this course you will have learnt how to comply with all critical statutory requirements and will be able to play your part in the fight against money laundering.	1
2014	Bermuda's Anti-Money Laundering Legislation: Update	The in-house course, presented by Neil Van Eijk of Conyers Dill & Pearman Limited, summarized the recent changes to Bermuda's anti-money laundering and anti-terrorist financing legislation. The course focused on the new regulations that apply to lawyers and law firms and included best practices for lawyers to follow in taking on new clients and instructions and the new policies and procedures that lawyers must comply with.	1

2014	BLG 101/National CLE - Protecting against Money Laundering	A client wishes to or retains the Firm on a matter and provides you with a cash retainer of $15,000. The Firm is asked to act in an oddly structured business deal. What now? What are your obligations? This course reviews current rules of professional conduct, legislation and firm policies that protect against money laundering. This is part of BLG 101 and is designed for all first-year associates and lateral hires	2
2014	Customer Due Diligence and Record-Keeping Requirements for Anti-Money Laundering and Counter-Terrorist Financing and Sanctions	On-line course on the customer due diligence and record-keeping requirements in relation to anti-money laundering and issues in relation to sanctions.	1
2014	Money Laundering Investigations	The course was delivered by Jerome Malysh CPA-CGA. It was aimed at lawyers doing Civil Forfeiture Act litigation for the Ministry of Justice - 8 lawyer from the civil forfeiture litigation unit attended. The focus was on how money laundering and remedies under the Civil Forfeiture Act intersect and how a civil litigator would put together a case with the investigations done by police. The course reviewed topics such as: The Whole Point of Forfeiture Laws Money Laundering Cash vs Business Transaction and the legal need to account Identifying illegal schemes Civil Forfeiture Act sections and definitions Bank Operations and FINTRAC records/obligations Case/File Development Process including presentation to the court	5
2014	Protecting Against Money Laundering (video version - recorded December 3, 2013)	A client wishes to or retains the Firm on a matter and provides you with a cash retainer of $15,000. The Firm is asked to act in an oddly structured business deal. What now? What are your obligations? This course reviews current rules of professional conduct, legislation and firm policies that protect against money laundering. This is part of BLG 101 and is designed for all first-year associates and lateral hires	1
2014	Regulatory Compliance for Financial Institutions	Learn how to develop a risk management framework to avoid costly consequences Discover how to prepare for compliance with the new anti-spam legislation Benefit from insights into the latest OSFI corporate governance guidelines Explore consumer protection developments impacting the financial services industry Find out how to navigate emerging challenges in privacy compliance Examine how to balance priorities under a Basel III framework Establish a proactive financial crisis action plan Learn about best practices for ensuring FATCA compliance	1

		Test the effectiveness of your anti-money laundering regime	
2014	Regulatory Hot Topics for the Financial Services Industry in 2014	With nearly 40 percent of the Dodd-Frank Act yet to be implemented, numerous new consumer protection requirements taking effect this year, and the continued strong focus on anti-money laundering and sanctions compliance, regulatory compliance will remain a major challenge for the financial services industry in 2014. Join Protiviti's Tim Long, Scott Jones, John Atkinson, Steven Stachowicz and Nicole Weber on Wednesday January 29, as they help compliance, risk and internal audit professionals identify some of the important regulatory issues and developments for 2014 that will need to be included in internal audit and compliance programs	2
2014	Risk Refresher 2013/01	Money laundering, the Clearance Centre, Gifts and Hospitality and Test.	1
2014	SAR Reporting	Henry Komansky, Chief Compliance Officer at Clarien Bank Limited, provided a lecture on Suspicious Activity Reporting (“SAR”) filing obligations to the Bermuda Financial Intelligence Agency where a person has knowledge or suspicion of another engaging in money laundering or terrorist financing. Mr. Komansky clarified what constitutes reportable suspicious transactions and summarized the obligations under internal and external SAR. The lecture also summarized the offences related to tipping-off and institutions’ obligations related to record keeping and staff training.	1
2014	Think twice quality and risk compliance training	This highly interactive 6 module e-learning communicates the joint responsibility and commitment everyone at Deloitte has to protect the reputation and integrity of our firm. Too often, organizations end up as headline news because of a lack of understanding or careless non-compliance in the areas of Privacy, Client Confidentiality, Insider Trading, Data Security, Corruption & Money Laundering and entering into Business Relationships. Think twice helps learners recognize that ultimately, accountability rests with each of us. The course challenges learners to first, stop and "Think twice" when confronted with risky situations in order to carefully make a wise decision. Second, to understand that mistakes can and will happen- rather than concealing them, recognize them and ask for help. Lastly, the course places emphasis on knowing where to go for help, and provides references to contacts, policies, additional courses and information at the end of each module.	5
2014	Vancouver Compliance Forum	Session 1 - Regulatory Update and Compliance Hot Topics Session 2 - CRM 2: Cost Disclosure and Performance Reporting - Preparing Now for 2016 Session 3 - Implications of FATCA for Canadian Portfolio Managers and Investment Fund Managers Session 4 - Know-Your-Client (KYC) and Suitability Obligations	4

		Session 5 - FINTRAC Update: Compliance with Anti-Money Laundering Requirements Session 6 - Compliance & Technology - Trends & Issues	
2015	2015 FINRA Annual Conference-Washington DC	May 27 - 29, 2015 FINRA's Annual Conference includes nearly 40 sessions designed to help you navigate toward a strong culture of compliance—whether you're new to your compliance role or a seasoned veteran. In response to attendee feedback, this year's Annual Conference builds upon important regulatory updates to provide compliance officers, legal professionals, branch managers and others with the tools to develop and maintain an effective compliance framework. WEDNESDAY MAY 27, 2015 Concurrent Sessions I: 1:45 p.m. - 3 p.m. Exploring Social Media, Technology Trends and Their Impacts Enforcement: Case Studies Small Firm Focus: Supervision from Procedures to Implementation Effective Approaches to Risk Management Concurrent Sessions II: 3:15 p.m. - 4:30 p.m. Current Key Regulatory Initiatives in the Fixed Income Markets Institutional Firm Hot Topics Detecting and Fighting Fraud: Present Day Stories Senior Investors: The Graying of America [...] THURSDAY, MAY 28 [...] Concurrent Sessions V: 11:15 a.m. - 12:15 p.m. Small Firm Focus: Nuts and Bolts of Tri-Part Arrangements Outside Business Activities: Key Requirements and Leading Practices Enhancing Anti-Money Laundering Procedures Investment Banking: Compliance and Regulatory Issues Preparing for Crowdfunding and the JOBS Act Concurrent Sessions VI: 3 p.m. - 4 p.m. Medium and Large Firm Focus: Common Examination Findings and Lessons Learned Top Technology Challenges (NO CLE) Market Regulation Priorities: Detecting and Preventing Misconduct Back to Compliance Basics Program: Suitability Qualification Exam Restructure and Web CE (NO CLE) Concurrent Sessions VII: 4:15 p.m. - 5:15 p.m.	1

		Understanding the Arbitration and Expungement Process Ethics and Professional Responsibility for Compliance and Legal Professionals (NO ETHICS CLE) Due Diligence: The Life Cycle of a Product Small Firm Focus: Common Examination Findings and Compliance Practices: What Works and What Doesn't Back to Basics Compliance Program: AML [...]	
2015	AML and Financial Crime Conference	The ACAMS conference is the largest faculty of financial crime and anti-money laundering industry experts offering the most extensive selection of educational tracks in these fields in North America. Sessions include sector-specific educational sessions as well as sessions on organized crime trends, AML advanced training and emerging technologies. Please see link below for further details and a complete list of the proceedings, sessions and faculty.	2
2015	AML/ATF Training	The law firm of Wakefield Quin Limited provided an in-house lecture on Bermuda's current Anti-Money Laundering and Anti-Terrorist Financing laws and regulations, including an overview of the Bermuda Monetary Authority's risked based approach, regulatory compliance matters, due diligence requirements applicable to different legal entities, reporting obligations for suspicious activities, and implications on attorney-client privilege. The lecture also focused on what activities typically constitute, and what activities do not typically constitute, money laundering and terrorist activities.	1
2015	Anti-Bribery and Corruption Breakfast presented by PwC and Dentons	Panel 1: A practical perspective on the current anti-corruption landscape Key elements of Canada's foreign and domestic corruption laws, the relevance of money laundering and proceeds of crime law and how to navigate high-risk situations. Panel 2: Hot topics and what's in the pipeline Latest developments in anti-bribery and corruption regime and internal investigations – do's and don'ts, practical approaches to investigations from receipt of a complaint through its resolution.	21
2015	Anti-money Laundering	Anti-money laundering legislation: overview, primary offences and disclosure obligations. Group work included defining 'knowledge and suspicion'. A second plenary session looked at risk-based compliance mechanisms and emerging typologies. The final group work involved a further case study embracing new typologies, recognition and anticipation. Course attendance broken into small groups of three.	1
2015	Anti-Money Laundering eTutorial	Under the Money Laundering Regulations 2007 (the "Regulations") the Firm is required to train all relevant staff in our Anti-money Laundering Procedures, the Regulations and the criminal offences under Part 7 of the Proceeds of Crime Act 2002 and the Terrorism Act 2000. We have developed a tailor-made e-tutorial to help you complete this compulsory training from your own PC. Please complete the e-tutorial as soon as	1

		possible and, in any event, not later than Friday 23 October. At the end of the eTutorial you will be asked to complete a short test. You should complete the quiz in one sitting otherwise the system may register your score as a "fail". On completion of the e-tutorial, qualified lawyers will be credited with CPD. Please note that in order to be registered as having completed the e-tutorial you will need to work through the course in its entirety.	
2015	Bitcoin Regulations	In this session, we will review 1) Introduction to Bitcoin; 2) The Economics of Bitcoin; 3) The Technology Behind Bitcoin; and 4) The Regulations Affecting Bitcoin, including: (a) Bill C-31, Amends Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 and (b) Tax Regulation.s	3
2015	Compliance with AML/ATF Regulations	Kim Wilson, Supervisor of the Barristers & Accountants AML/ATF Board, provided a lecture summarising the new regulations under Bermuda's anti money laundering and terrorist financing regime that lawyers should be aware of, including regulations regarding client due diligence, ongoing monitoring, internal controls and systems, suspicious activity reporting, reliance on third party information, training and record keeping. The lecture also included examples of common red flags lawyers should be aware of in the client intake process.	1
2015	Compliance with Bermuda's AML/ATF Regulations	Kim Wilson of the Barristers' AML/ATF Board provided a course update on Bermuda's revised AML/ATF Regulations that apply to all practising lawyers in Bermuda. Ms. Wilson provided a summary of the Regulation's risk based approach and examples of how lawyers can mitigate against money laundering and terrorist financing, including assessing geographic, client and service risk. The course also provided a summary of approved client intake procedures and monitoring obligations of continuing clients. The course concluded with recent examples of reported money laundering schemes in Bermuda and in North America and Europe.	1
2015	Hot Issues in Vancouver & AML Trends	In this session, speakers will discuss topical issues in anti-money laundering law (AML) and other issues in financial crime. Our speakers will include representatives from the RCMP, FINTRAC and the Association of Certified Anti-Money Laundering Specialists. Our speakers will explain the current status of AML, the trends that lawyers will see in practice and the future of financial crime and legal practice.	1
2015	IAP Annual Conference: White Collar Crime, Corruption and Money Laundering	The International Association of Prosecutors annual conference is a four full day conference with sessions relevant to the work of prosecutors around the world. This year's conference focussed on white collar crime, corruption and money laundering. The sessions on the first day focussed on proceeds of crime, international cooperation in prosecutions, expert evidence and cybercrime offences. Second day sessions focussed on terrorism offences, banking offences, fraud and tax evasion. Day three offered sessions for groups of	4

		prosecutors specializing in war crimes, environmental offences and Francophone prosecutions. The final day focussed on tax crimes, corruption and money laundering.	
2015	Industry Regulation & Taxation (IRT)	1. Ottawa Update 2. IRT Standing Committees – Discussion Items & Updates A. Pensions Consultations - Discussion • Harper Government Moves to Streamline Administration and Supervision of Pooled Registered Pension Plans http://www.fin.gc.ca/n15/15-068-eng.asp • Consultations on a Voluntary Supplement to the Canada Pension Plan http://www.fin.gc.ca/activty/consult/vscpp-svrpc-eng.asp • Ontario Retirement Pension Plan (ORPP) – Status and Next Steps • Quebec Proposes Pension Funding Reform for Private Sector Plans B. Securities Regulation Consultations - Discussion • Ontario Gov Consultation on Financial Planning • New amended regulations to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) • CSA Consultation on Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery C. Market Infrastructure Consultation – Discussion • CSA and IIROC Proposed Order Protection Rule D. Tax Standing Committee - Update • Trust Loss Restriction Rules Amended Relief • PMAC Submission to CRA on FATCA Reporting E. International & Other Regulatory Issues - Update • Systemic Risk Regulation -- IOSCO Backs Away from Designating Asset Managers as SIFIs, Acknowledges They Pose No Systemic Risk [...]	1
2015	Industry Regulation & Taxation Committee (IRT)	1. Ottawa Update 2. IRT Standing Committees – Discussion Items & Updates A. Pensions Consultations - Discussion • Harper Government Moves to Streamline Administration and Supervision of Pooled Registered Pension Plans http://www.fin.gc.ca/n15/15-068-eng.asp • Consultations on a Voluntary Supplement to the Canada Pension Plan http://www.fin.gc.ca/activty/consult/vscpp-svrpc-eng.asp • Ontario Retirement Pension Plan (ORPP) – Delayed	1

		Implementation and Definition of Comparable Plan Revised B. Securities Regulation Consultations - Discussion • CSA Proposed Amendments to Exempt Market Reporting • Proposed amended regulations to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) • CSA Consultation on Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery • Ontario Gov Consultation on Financial Planning C. Market Infrastructure D. Tax Standing Committee E. International & Other Regulatory Issues - Update • Ministry of Labour call for submissions re ESA reform 3. Other Updates	
2015	Industry Regulation & Taxation Committee (IRT)	TOPICS 1. Ottawa Update 2. IRT Standing Committees – Discussion Items & Updates A. Pensions Consultations – Recent Submissions • PMAC Submission on Proposal Streamline Administration and Supervision of Pooled Registered Pension Plans • PMAC Submission on Consultation on a Voluntary Supplement to the Canada Pension Plan B. Securities Regulation Consultations - Discussion • Ontario Gov Consultation on Financial Planning • CSA Proposed Amendments to Exempt Market Reporting • Cooperative Capital Markets Regulatory System – Revised Draft Legislation and Commentary • T+2 Settlement – Update Recent Submissions: • PMAC Submission on Proposed amended regulations to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) • PMAC Submission on Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery C. Market Infrastructure D. Tax Standing Committee E. International & Other Regulatory Issues - Update • Ministry of Labour call for submissions re ESA	1

		reform 3. Other • Cluster Munitions Investment Prohibitions	
2015	Legal Aspects of Doing Business With China	The course will examine the legal aspects of various forms of business interactions between China and Canada including foreign direct investment, real-estate investment, corporate transactions and financial transactions (including laws on anti-money laundering). The course will also examine the changing laws and regulations on business immigration with a focus on the BC PNP program, Canadian citizenship and the maintenance of Permanent Resident status. The course will include instruction on ethics and professional responsibility, including properly identifying clients and agents and professional ethics in advising businesses.	5
2015	McCarthy Tetrault Advance: Beyond Signatures and PINs - Developments in Authentication Methods	Beyond Signatures and PINs - Developments in Authentication Methods - October 15, 2015 The traditional use of signatures and PINs to authenticate payments is starting to be replaced by a range of options, from thumbprint login for Apple Pay, to the use of wearables, to tokenization. This session discusses the various legal issues raised by novel authentication methods, ranging from privacy and security concerns, issues relating to compliance with anti-money laundering requirements, to contractual requirements.	7
2015	Money Laundering	This session is an overview of money laundering and terrorist financing in Canada. This includes a review of the Process of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA), including specifics such as who is subject to the PCMLTFA, client identification and due diligence, reporting, record keeping and compliance. Also addressed is the requirements under the Criminal Code, United Nations Act regulations and Special Economics Measures Act regulations. A review of Canada (Attorney General) v. Federation of Law Societies of Canada will also be discussed. This presentation is worth .75 hour of credit towards your Continuing Professional Development ("CPD") requirement for 2015 (0.5 hour of which will involve aspects of professional responsibility and ethics, client care and relations)	1
2015	National CLE Program - Protecting Against Money Laundering	A client wishes to or retains the Firm on a matter and provides you with a cash retainer of $15,000. The Firm is asked to act in an oddly structured business deal. What now? What are your obligations? This course reviews current rules of professional conduct, legislation and firm policies that protect against money laundering.	12
2015	New & Lateral Lawyer Training	The topics covered in this seminar included the business of law, firm finances, risk management and	1

		policies, conflicts and firewalls, proceeds of crime and money laundering matters.	
2015	PMAC Compliance Officers' Network (CON)	COMPLIANCE OFFICERS' NETWORK AGENDA DATE CHANGE: Wednesday September 16th, 2015 2:30 – 4:30 PM EDT [...] Cathy Tuckwell, Chief Compliance Officer (PC), 1832 Asset Management L.P. [...] III. PRESENTATIONS A. An Overview of the Proposed Amendments to the AML Regulations – What's Ahead! Speaker: Rachel Manno, Associate, Financial Services, Osler [...] IV. MEMBERS QUESTION/ANSWERS DISCUSSION – ALL [...] V. REGULATORY UPDATE [...] • FINTRAC Releases: o Guidance: Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing o Report: Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada • Common Reporting Standard Implementation Handbook VI. UPCOMING COMPLIANCE DEADLINES [...]	1
2015	PPSC: 2015 ORO Annual National Prosecution Conference	Ontario PPSC Training Summary This 2-day training event which will be accessible to BC PPSC, delivered via webinar from our PPSC office in Ontario, covers a variety of criminal procedural and substantive law subject matters including: - Case management from the perspective of a judge. - A case study on money laundering and the legal implications of prosecuting a lawyer, including law office searches, restraint orders and gathering evidence from a foreign state. - The state of marihuana laws and the medicinal marihuana regulatory regime. - The law of informer privilege. - The law on co-actors exception to the hearsay rule. - Recent trends in Charter litigation including a discussion on reasonable expectation of privacy - A review of Bill C-13. - Prosecutorial discretion – an discussion on ethics, Crown independence and accountability* - Communicating with the media - Case study on a terrorism prosecution, including ethics, questions of national security privilege and appointment of amicus* - Review of law on white collar crime - The reasonable but vigorous prosecutor* - The law of entrapment - Appellate advocacy The presentation is being offered by several different legal professionals, including a judge and senior counsel and the Director of Public Prosecutions.	16

		* The subject matter will include a minimum 2 hours of ethics.	
2015	Risk Management Education Programme Elective Course - Anti-Money Laundering	This course provides an overview to enable lawyers to have sufficient awareness of the International and Local Anti-Money Laundering Legislation Regulatory framework; aims to help firms ensure that they understand and comply with local laws and regulations; and help firms prepare for future evolution as money; and laundering activities continue to become more sophisticated.	1
2015	Risk Management Training	1) Go through the Risk Management Handbook 2) Review procedures for compliance with Anti-Money Laundering laws 3) Review "Ethical Dilemmas and Client Management Issues" 4) Other issues	1
2015	Seminar for ACAMS-Vancouver Chapter: Anti-Money Laundering Monetary Appeals and Privacy Law Issues in the Investigation Context	This session reviewed recent jurisprudence relating to anti-money laundering, administrative monetary penalties, and strategies to minimize risk of penalties and to maximize prospects of a successful appeal. It also reviewed privacy laws and disclosure issues in respect of AML investigations and reporting detected illegal activity to authorities.	3
2015	STEP Asia Conference 2015	- Automatic Exchange of Information & its impact on legal practice - FATCA - Anti-money laundering (AML) regimes in Asia - Introduction of common reporting standard (CRS) - Succession & inheritance planning Under Sharia Law - Global AML & anti-corruption regimes - OECD's base erosion and profit shifting (BEPS) initiative - Insurance, partnership, company & trust planning - Philantropic gift planning - Facilitating family meetings & dispute resolution - Cross border family planning - Divorce: Shopping for a jurisdiction - Managing trustee risk - Private trust companies - International probate disputes - Mental capacity - Private trust companies & family offices	3
2016	(Fall16) Inside the Investigation: The Wolf of Wall Street	This presentation will take you inside the actual FBI investigation of Jordan Belfort, the self-proclaimed “Wolf of Wall Street.” Mr. Belfort’s rise to power and subsequent arrest and conviction were chronicled in the movie, “The Wolf of Wall Street.” The movie was directed by Martin Scorsese and starred Leonardo DiCaprio. Gregory Coleman, our presenter for this session, was portrayed by Kyle Chandler. You will hear intimate details of Mr. Belfort’s rise to prominence and how Mr. Coleman’s team at the FBI subsequently brought down one of America’s most notorious boiler-room stock fraudster. Mr. Coleman retired from the FBI with over 25 years of experience investigating financial crimes and money laundering. Mr. Coleman specialized in complex stock market manipulation and international money laundering investigations with a special	2

		emphasis on investigations where the proceeds of crime were laundered using offshore shell corporations and bank accounts. As the case agent in charge of those investigations, Mr. Coleman was responsible for the overall direction of all investigative activities, including the tracing of illicit funds, witness interviews, confidential source development, and document analysis. Now retired, Mr. Coleman has spoken to audiences in fourteen countries.	
2016	(RME)Risk Management: Money Laundering, the Hong Kong Solicitor and Practice Direction	Money laundering is an international concern, particularly for lawyers. Even with my small practice, I have been 'targeted' (to quote the RCMP officer to whom I reported this matter)by a duo working together from Kuala Lumpur, Malaysia and Kelowna. They emailed me in Vancouver. This course in particularly relevant and inter alia, analyzes Hong Kong's framework of anti-money laundering and anti-terrorist legislation for legal practitioners (I have a HK practice certificate). Definitions were outlined and discussed, together with concerns which we must be aware of for designated non-financial business and professions. As practical examples, specific cases (with their citations) were also analyzed, along with 'Suspicious Transactions Reports' and solicitor's legal obligations. The lecturer, Anne Carver, has practised and lectured in Hong Kong for many years and is currently an honorary lecturer with The Chinese University.	2
2016	2016 Fall International Conference, Washington D.C.	[...] CONFERENCE AGENDA [...] TUESDAY, OCTOBER 25 [...] 10:00 am – 11:00 am Inside the Investigation: The Wolf of Wall Street Presenter: Greg Coleman; Special Agent, (Retired) FBI This presentation will take you inside the actual FBI investigation of Jordan Belfort, the self-proclaimed "Wolf of Wall Street." Mr. Belfort’s rise to power and subsequent arrest and conviction were chronicled in the movie, “The Wolf of Wall Street.” The movie was directed by Martin Scorsese and starred Leonardo DiCaprio. Gregory Coleman, our presenter for this session, was portrayed by Kyle Chandler. You will hear intimate details of Mr. Belfort's rise to prominence and how Mr. Coleman’s team at the FBI subsequently brought down one of America’s most notorious boiler-room stock fraudster. Mr. Coleman retired from the FBI with over 25 years of experience investigating financial crimes and money laundering. Mr. Coleman specialized in complex stock market manipulation and international money laundering investigations with a special emphasis on investigations where the proceeds of crime were laundered using offshore shell corporations and bank accounts. As the case agent in charge of those investigations, Mr. Coleman was responsible for the overall direction of all investigative activities, including the tracing of illicit funds, witness interviews, confidential source development, and	2

		document analysis. Now retired, Mr. Coleman has spoken to audiences in fourteen countries. [...] 11:00 am – 11:30 am Networking Break 11:30 am – 12:30 pm Scandal Panel: Detecting, Catching and Investigating Global Fraud Moderator: Dan Ray; Hemming Morse LLP (San Francisco, California, USA – TIAG) Panelists: • Bill Bock; Kroger, Gardis & Regas, LLP (Indianapolis, Indiana, USA – TAGLaw) • Russell Brown; Lehman Brown (Beijing & Shanghai, China - TIAG) • Lenny Samuels; Berger Singerman LLP (Florida, USA – TAGLaw) Earlier in the morning we will have heard from a seasoned law enforcement officer who helped investigate a legendary fraudster. In this session, one of our TIAG members, also a former FBI agent, will moderate a session pulling together TAGLaw members who have represented parties affected by some of the most notorious scandals including the Bernie Madoff Ponzi scheme and the doping investigation of Tour de France champion Lance Armstrong. We will also hear from TIAG members who are involved in active Forensic practices and learn how they help their clients fight fraud on many fronts. We will discuss and analyze a number of topics including: • Inducing Cooperation without Subpoena Power • Ponzi Schemes • Corruption in Sports and Entertainment • Forensic Investigation • Enforcement 12:30 pm – 2:00 pm Lunch Networking Lunch Tables • Insolvency and Secured Transactions • International Arbitration • Scandal Panel (2) • TAG Tax 2:00 pm – 3:00 pm Afternoon "Menu" Sessions Choice 1: How Cyber Security Audits and Assurance Services Will Change Your Firm and the Professions Co-Presenters: • John Farley; Vice President and Cyber Risk Consulting Practice Leader; HUB International Risk Services Division ("Best" Friends of TAG) • William (Bill) Harrington; FGMK (Chicago, Illinois, USA - TIAG) At previous conferences we have analyzed the ever-changing topic of cyber security and how firms should be cognizant of the risks surrounding their data. While that perspective will never lose relevance, in this session we present another for consideration. Cyber security is changing the trajectory of your firm and the legal and accounting professions from a business development perspective.	

		Many firms already see this paradigm shift from traditional services and are expanding their practices to include various cyber securitycentric and risk management areas. Some of these areas include advisory services, cyber security audits, risk management, in-house training and even post-breach management and compliance. What investments in technology and human capital are needed to make this shift? How can you leverage your firm's experience, reputation and strategic partnerships? Finally, is this a path for all firms, is this more suitable for boutiques or is each firm a unique situation to be carefully analyzed? During this session we will also analyze and dissect the anatomy of a data breach allowing firms to understand any risks in their systems or those of their clients. Choice 2: Understanding Global Anti-Corruption Policies and Opportunities for Member Collaboration Co-Presenters: • John Hove; Scopelitis, Garvin, Light, Hanson & Feary (USA - TAGSP) • Eric McClafferty; Kelley Drye & Warren LLP (Washington D.C. - TAGLaw) Global corruption continues to be prevalent in spite of significantly expanded enforcement. The United States Foreign Corrupt Practices Act of 1977 (FCPA), the United Kingdom Bribery Act of 2010 (UKBA) and comparable legislation in many other countries attempt to cast a wide and powerful net to prevent corruption and bribery. Navigating these laws presents a number of issues for lawyers and accountants who advise their clients on compliance matters. The complexity of these issues grows exponentially when a client's activities have a multi-jurisdictional footprint. John Hove and Eric MClafferty, both TAG Alliances members who are experts in the anticorruption field, will discuss and analyze a number of critical issues related to anti-corruption compliance and enforcement. Additionally, this session will feature ways that TAG Alliances members can leverage the multidisciplinary strength of the organization to help solve client problems and create collaborative business opportunities between TAG Alliances members. Focus points of this session include: • Detecting and preventing bribery in various scenarios and settings; • Typical situations and possible responses; • Internal investigations • Emphasis on individual liability; • Ensuring adequate internal controls; • Ethical issues in anti-corruption investigation and reporting; and • Collaboration between TAG Alliances members in the anti-corruption space. [...]	
2016	2016 FINRA Annual Conference	2016 FINRA Annual Conference Session Descriptions and Times	1

		[...] 10:45 – 11:45am Evolving Role of a Compliance Professional The compliance role has become more demanding given increasing expectations from regulators, Congress and the public, and the challenges faced when having to balance these with the expectations of various internal stakeholders. Separation of the second and first lines of defense is becoming much more challenging. Join FINRA staff and industry practitioners as they discuss how firms are addressing the changes to the compliance function. Participant Level: Advanced [...] 2:30 – 3:30 pm Issues and Trends in AML Monitoring This program provides guidance on suspicious activity monitoring and other AML topics. Panelists address effective steps to combat money laundering, and present an overview of standards and issues, with an emphasis on recent developments and case law. Designed for firms of all sizes, the program covers frequently asked questions and concerns. The interactive session is designed to help attendees keep pace with regulatory priorities and expectations. Participant Level: Intermediate, Advanced [...] 8:45- 9:45 am Plenary: Ask FINRA Senior Staff FINRA senior staff provides an update on regulatory key issues, enforcement, market regulation programs, as well as other important topics facing the industry. Panelists address questions relating to the examination program, effective compliance practices, the implication of new and pending FINRA rules, and other important issues. Note: firm-specific questions can be discussed one-on-one with FINRA staff during conference Office Hours. Participant Level: All [...] 10:00 – 11:00 am Fraud Detection and Prevention: Practical Considerations This session focuses on recent or noteworthy fraud cases. FINRA staff and industry panelists highlight emerging trends in securities fraud, provide tips to identify potential “red flags,” and discuss who to contact if a fraudulent scheme is suspected. Participant Level: All [...] 1:45 – 2:45 pm Ethics in the Financial Industry High ethical standards are critical to maintaining the public's trust in financial markets and in the investment profession. This session is designed to educate attendees on the standards of ethical behavior specific to the financial services industry. Panelists provide examples and case studies of actions considered to be misconduct or illegal. Panelists also discuss how to establish effective practices with regard to maintaining ethical standards of conduct within your organization. Participant Level: All	

		[...] 4:15 – 5:15 pm Plenary: Compliance and Legal Trends Join us for a special session with senior leaders as they discuss key issues affecting the regulatory landscape. Panelists discuss trends, key focus areas and strategies that are shaping the industry. They share their thoughts on how these changes will affect compliance and how firms are evolving and responding to business, regulatory and technology issues. Participate Level: All [...] 10:00 – 11:00 am Regulatory Reporting Requirements This session focuses on regulatory requirements and firm practices related to reporting and disclosure. FINRA panelists highlight key reporting requirements, including requirements for maintaining Forms U4 and U5, customer complaint reporting obligations and FINRA Rule 4530 reporting obligations. Participant Level: Beginner, Intermediate [...]	
2016	AML & Fin Crime Conference Cda-Navigating a Highly Challenging Regulatory Landscape	The conference focused on navigating the highly challenging regulatory landscape of financial crime compliance in Canada specifically focusing on an "intense examination of Canadian-specific issues, told from the perspectives of Canada's top regulators, compliance officers and law enforcement investigators." A major component throughout was the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and its regulations, with particular emphasis on updates to the legislation and its application in relation to high risk areas such as human trafficking, cyber crime, real estate base money laundering.	1
2016	AML and Financial Crime Conference	The ACAMS conference held annually in Las Vegas is the largest and most exhaustive Financial and anti-money laundering conference held in North America. It covers US, Canadian and international AML, financial crime and proceeds of crime matters. Sessions cover some substantive legal requirements, but can be more focused on procedural matters. Sessions meeting CPD requirements include Aligning AML Programs to Regulatory Expectations, Crafting Auditing Processes to Strengthen Sanctions Oversight, Compliance Models to Mitigate Emerging FinTech Sector Risks, Addressing Compliance Challenges in Correspondent Banking and Cross Border Payment and others. See attached conference program and proceedings.	1
2016	Anti-corruption, Economic Sanctions and Anti-Terrorism Compliance for Osler Lawyers	Anti-corruption, Economic Sanctions and Anti-Terrorism rules apply to us in addition to our Anti-Money Laundering compliance obligations when we act for and accept retainers from clients. This session is part of the Firm's risk management curriculum for our lawyers. The objective is to provide a high-level summary of your professional obligations under the international trade statutes that apply to our clients and to Osler, by flagging certain types of clients that pose	4

		potential risk for Osler running afoul of Canadian laws and regulations and the types of activities which may constitute a violation of the applicable laws.	
2016	Anti-corruption, Economic Sanctions and Anti-Terrorism Compliance for Osler Lawyers - Corporate	Anti-corruption, Economic Sanctions and Anti-Terrorism Compliance for Osler Lawyers: Anti-corruption, Economic Sanctions and Anti-Terrorism rules apply to us in addition to our Anti-Money Laundering compliance obligations when we act for and accept retainers from clients. This session is part of the Firm's risk management curriculum for our lawyers. The objective is to provide a high-level summary of your professional obligations under the international trade statutes that apply to our clients and to Osler, by flagging certain types of clients that pose potential risk for Osler running afoul of Canadian laws and regulations and the types of activities which may constitute a violation of the applicable laws.	2
2016	Anti-Money Laundering	Anti-Money Laundering is an increasingly pertinent topic for the legal industry. This session will aim to provide Legal Consultants with an overview of how money laundering regulations impact their obligations, how it can be spotted and what controls you can use to report and prevent money laundering. Practical examples will be provided throughout the session. The course will cover the following: What is Money Laundering? Understand Basics of money laundering Appreciate the importance of having effective Anti-Money Laundering (AML) Controls Know Your Customer & Effective Customer Due Diligence Be in a better position to identify suspicious activity and know how to report Money Laundering Regulations / Acts What happens when you get it wrong?	1
2016	Anti-Money Laundering	There was a review of the anti-money laundering ("AML") requirements and procedures applicable to solicitors firms. The issues covered included the development of the local AML laws, key relevant provisions in the legislation and obligations of solicitors in AML context.	1
2016	Anti-Money Laundering (AML) Canada	This was an online course, with testing throughout and at the end, with materials relating to Canada's Anti-Money Laundering and Counter-Terrorist Financing legislation. Topics covered include: applicable legislation, client identification requirements, record keeping requirements, reporting of suspicious transactions, and sample cases.	1
2016	Anti-Money Laundering Advanced Course	This is the definitive anti-money laundering training for fee earners and support staff in leading UK law firms who regularly deal with financial transactions or matters with high money laundering risk. The course aims to help you understand: - what money laundering is and how to recognise suspicious transactions; - what terrorist financing is and why you need to be aware of it;	1

		- the UK legislation you need to be familiar with in regard to money laundering and terrorist financing, along with the relevant criminal offences; - how to conduct appropriate and risk-based client due diligence; and - how to apply the firm's anti-money laundering policies and procedures. The course includes engaging real-life scenarios and exercise questions to test understanding of key points. By completing this course you will have learnt how to comply with all critical statutory requirements and will be able to play your part in the fight against money laundering.	
2016	Anti-Money Laundering and Anti-Terrorist Financing Training	The course was provided by Wakefield Quin Limited's Group Compliance Officer and covered an in-depth overview of Bermuda's current anti-money laundering / anti-terrorist financing compliance and regulatory regime and the policies and procedures that law firms and lawyers must adhere to, including customer due diligence obligations (for a variety of corporate entities), reporting obligations (to compliance and reporting officers) and to Bermuda's Financial Intelligence Agency in relation to certain suspicious transactions. The course also included a discussion of current sanctions and the legal issues facing lawyers in relation to their compliance obligations under Bermuda's anti-money laundering / anti-terrorist financing regime.	1
2016	Anti-Money Laundering Training Session	Clyde and Co is legally obliged to ensure all appropriate staff, including those dealing with client money, receive anti-money laundering training. Falling foul of the Money Laundering Regulations will make you personally liable and can result in a two year prison sentence and/or a fine. This is irrespective of whether money laundering actually takes place. It is the Firm's policy that all lawyers and all personnel in certain identified business services sectors receive mandatory AML training. In conjunction with the Firm's AML & Compliance Manager, "Global Compliance" organises and oversees AML/CFT training for staff globally to ensure that the Firm complies with its regulatory obligations and procedures.	1
2016	Basics of Export Controls 2016 (Audio-only)	Basics of Export Controls 2016 [...] U.S. and multinational corporations, investors and even governments are increasingly affected by the range of U.S. laws and regulations governing international trade. The Commerce Department's Bureau of Industry and Security (BIS), the State Department's Directorate of Defense Trade Controls (DDTC), and the Treasury Department's Office of Foreign Assets Control (OFAC) and Financial Crimes Enforcement Network (FinCEN) each plays an important role in administering and enforcing the intricate web of restrictions governing trade in U.S. products and technologies, the trade-related activities of U.S. parties and the financial transactions that make them possible.	1

		Understanding the potential scope and applicability of these various regulatory programs to global business operations is increasingly important in an era of heightened agency enforcement and enhanced penalties. And a thorough understanding of these various regulatory regimes is an essential foundation for developing an effective global trade compliance program. Aaron R. Hutman of Pillsbury Winthrop Shaw Pittman LLP and Kim A. Strosnider of Covington & Burling LLP will discuss: • The basic elements of the export control regimes administered by BIS and DDTC • The various economic sanctions programs administered by OFAC • Key recent regulatory developments, including with respect to Cuba, Iran, Myanmar and Russia sanctions and U.S. export control reform • The overlap of sanctions and export control rules with anti-money laundering regulation and the role of financial institution "gatekeepers" • Enforcement trends This briefing is scheduled as a review of the fundamentals before PLI's more advanced Coping with U.S. Export Controls and Sanctions 2016 program, being held on December 15-16, 2016 in Washington, D.C. Register for the two-day program and receive this briefing free as part of your registration. Speaker(s) Aaron R. Hutman ~ Pillsbury Winthrop Shaw Pittman LLP Kimberly A. Strosnider ~ Covington & Burling LLP Program Attorney(s) Amy Taub ~ Practising Law Institute [...]	
2016	Changes To Bermuda's Anti-Money Laundering/Anti-Terrorist Financing Requirements	The lecture provided a summary of the material provisions of Bermuda's Proceeds of Crime Amendment Act 2015 (which amends Bermuda's anti money laundering and anti-terrorist financing laws), including the areas of client due diligence requirements, outsourcing of AML/ATF functions, and the consent provisions related to the filing of suspicious activity reports. The lecture also provided an overview of the new category of (and rules for) domestic politically exposed persons.	1
2016	CLEBC Advising BC Businesses (Editorial Advisory Board Meeting)	Editorial Advisory Board meeting to peer review revised content in all chapters of CLEBC publication Advising BC Businesses (print and online)for the 2017 update. Attendees: David Allard, David Jennings, William McFedridge and Terence Stewart. Meeting 10 am to 4 pm, December 6,2016. Topics included due diligence, Law Society Rules regarding money laundering, electronic money transfer and financing, use of trust cheques, certified cheques, and risks with financing transactions, etc. and Solicitors' Legal Opinions.	3

2016	Cybersecurity Awareness Seminar	Seminar presentation by Chris Mathers, former RCPM law enforcement officer, and expert on business crime, money laundering, compliance and information security. The presentation covered computer security risks, what criminals are targeting, and how to protect the firm and data of its clients.	2
2016	e-Learning course on The Act on the Prevention of Money Laundering and Financing of Terrorism (WWFT)	As of 1 September 2015, the new WWFT Unit will be carrying out all identification under the The Act on the Prevention of Money Laundering and Financing of Terrorism (WWFT). Lawyers have an obligation to be familiar with The Act on the Prevention of Money Laundering and Financing of Terrorism (WWFT) and need to be able to identify and assist the WWFT Unit on a go forward basis. As a result of these new regulations, you are required to follow this e-learning course, completing the 8 modules and the accompanying test. ?Once you start one of the 8 modules, you need to finish that module in one go. You're allowed three attempts. ?If you stop a module before finishing it, you will be graded unsatisfactory. ?If you fail a quiz, you'll need to retake that quiz. ?How long it takes you to complete a module is recorded. If you try to skip over or repetitively click any modules, you will be graded unsatisfactory. ?Most modules include annexes. Be sure to read the annexes carefully before starting the module. You will be quizzed on them. ?At the right side of this screen you'll find a progress bar. Once you pass a module the box will be green. ?After finishing all eight modules, please fill in the evaluation form.	1
2016	Ethical Business Regulation	Professor Chris Hodges has been speaking on Ethical Business Regulation at various conferences over the last few months. In early October, he spoke at the Regulatory Delivery International Conference in London. The conference was titled ‘Shaping Business Environments for Global Growth and Prosperity’ and was organised by the Department for Business, Energy and Industrial Strategy, together with Foreign and Commonwealth Office, World Bank Group, OECD, and Department for International Development. He then gave a talk at the Anti-Money Laundering Professionals’ 5th Annual Anti-Bribery & Corruption Conference in London. In early November he presented to the Irish Health Products Regulatory Agency in Dublin and at the Irish Law Reform Commission’s Annual Conference 2016 on Regulatory Powers and Corporate Offences, at Dublin Castle on 3 November. Christopher Hodges is Professor of Justice Systems, and head of the Swiss Re/CMS Research Programme on Civil Justice Systems, Centre for Socio-Legal Studies, University of Oxford. He is a Supernumerary Fellow of Wolfson College Oxford.	1

2016	Follow the Money: Corruption, Money Laundering & Organized Crime	This course includes 2 hours towards ethics/practice management The Conference will include presentations on reducing the risks of corruption, transnational money laundering, and organized crime in Canada with particular attention to large urban centers in British Columbia. The International Centre for Criminal Law Reform and Criminal Justice Policy brings together experts in law and law enforcement, provincial and municipal governance, academia, professional and private sector compliance, and investigative journalism. This 1-day conference will interest: • Judges, lawyers and notaries • Law enforcement officials • Professionals including engineers, architects, urban planners, and accountants • Elected and non-elected government and local government officials • Private sector risk managers and consultants • Developers • Academics and students including those in law, commerce, governance, public policy, and international law The Conference will also be available by webinar, incorporating a live video feed of the presenters and participants' questions. The webinar accommodates live questions and feedback through conference moderators and will be available to registrants after the event.	14
2016	Global Financial Crime Update	HSBC Global Legal Learning Lab: live webinar presented by an external law firm to HSBC Global Legal Function providing a global update on anti-money laundering, sanctions, anti-bribery and corruption. This update included changes to regulations, directives and laws as well as an update on cases/enforcement actions. Also global trends and developments in tax evasion.	3
2016	Half Day Professional Development Session - November 2016	Two presentations: Behavioural Ethics (2 hours) and anti-fraud training (1 hour) re anti-money laundering. PowerPoint presentations are attached.	3
2016	Nothing to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts"	Two years have passed since Canada along with other G20 nations committed to lift the veil of secrecy on the ownership of companies and trusts. Despite bold pledges to improve transparency, Canada has taken very few concrete steps to do so. Companies and trusts can be set up with full anonymity and are easily misused to commit crimes and conceal assets. More than 70% of money laundering cases in Canada involve the use of companies, according to government estimates, and they are widely used to evade taxes and commit fraud. Most cases go undetected, and few are prosecuted due to the difficulty of obtaining information.	5

		TI Canada's latest report – Nothing to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts – makes use of case studies and original research to demonstrate how lack of information on Canadian companies and trusts has left us vulnerable to exploitation by money launderers and other criminals. The report looks at the impact of this opacity on Vancouver's overheated real estate market, and how little is known about the owners of property and the origins of their capital. It makes a case for a public registry of beneficial ownership information, and recommends other concrete steps that the Government of Canada could take to rectify the current situation and uphold its international commitments.	
2016	Opportunities For Fintech & Emerging Payments in UK and the EU	Many deem the EU as a more favourable regulatory landscape for emerging payments than the US. If you're thinking of launching a payment product in the EU, this webinar will explain how it works, what are the opportunities and challenges, and how the EU differs from the US marketplace. While the webinar will focus on the UK landscape as a practical example, the scope of the webinar will include other EU jurisdictions as well. This webinar will take a look at: • What is the EU and what jurisdictions are covered? • Which emerging payment products are growing in the EU? • The structure of EU payments laws and the types of payment licences in the EU – and the powers they convey. • How basic requirements under Anti-Money laundering, Data Security, and Consumer Protection laws differ from the U.S. • The option and challenges of obtaining licenses directly vs partnering with other licensed entities. • How "passporting" works – for expanding to other EU jurisdictions.	1
2016	Regulatory Compliance for Financial Institutions	A high level overview of this year's developments and trends in Canadian financial services compliance. Major topics include banking and payments regulation, privacy, consumer protection, anti-money laundering	2
2016	The Rise of Finance Technology in Canada	[...] WHY FINTECH? • Why are we seeing a rise of Fintech? • What areas have we seen Fintech emerge and why? • Where is Fintech threatening traditional financial institutions? • What are the weaknesses of Fintech? • The culture of Fintech: how can traditional organizations take advantage of millennials' preference for mobile technologies? • The innovation challenge: changing the business model to accommodate Fintech • Reinventing financial products to suit today's market • Where are Fintechs headed? [...]	1

		1:00 - 2:30 P.M. REGULATORY OVERVIEW • Privacy • Anti-Money Laundering • Consumer Protection • Other Regulation (insurance, mortgage broker regulation, etc.) • Different regulatory hurdles for Fintech and traditional financial institutions • Will the government allow Fintechs to continue in as unregulated a fashion as they have to date? [...]	
2017	10th Annual Anti-Money Laundering Conference and Expo - Title 31, Suspicious Activity and Risk Assessment Conference	The conference provided an understanding of anti-money laundering regulations, suspicious activity reporting fundamentals, filing, auditing, training, etc. The courses were presented by Department of Justice, FBI and other law enforcement, legal counsel and experts in the criminal/money laundering and suspicious activity areas.	1
2017	11th National Symposium on Money Laundering and Financial Crimes	Now in its 11th year, this OsgoodePD National Forum on Money Laundering and Financial Crimes once again brings together an experienced international faculty to equip you with the knowledge and effective strategies you need to tackle the complex issues, including: - Bitcoin, Blockchain and other emerging technologies; threats and responses - Latest trends and legal counterattack involving cybercrime and money laundering - Net worth investigations drill-down - Leading recent case law and its implications - How to conduct effective cross-border investigations - Working within parallel criminal and civil prosecutions - Investigating, prosecuting and defending money market crimes	1
2017	2017 OBA Institute: Competitive Advantage: Current Issues in Secured Loan Transactions	In today's changing legal environment, staying informed of current trends and market practice will help lawyers gain a competitive advantage. Register now to stay on top of the latest trends and market practice including in the areas of syndicated loan transactions, legal opinions, cross border transactions and know your client, anti-money laundering considerations. A must for transactional lawyers!	1
2017	20th Annual Transnational Crime Conference	A conference presented by the IBA Criminal Law Committee and IBA Business Crime Committee, supported by the IBA Law Firm Management Committee, the IBA War Crimes Committee, the IBA Arbitration Committee, the IBA Anti-Money Laundering Forum, the IBA Mining Law Committee, the IBA African Regional Forum and the IBA North American Regional Forum	2
2017	7th Annual Hawaii ACTEC Fellows Planning Conference	The Program covered three areas and focused on professional responsibility in each. First, FATF (Financial Action Task Force) is focused on what legal practitioners must be aware of when handling domestic and international transactions which may involve money laundering and proceeds of crime	1

		disclosure rules. Second, the Digital Assets Management section focused on how estate planners must be cognizant of the modern trend to clients information being digitized and even their assets. That creates new challenges for estate planning practitioners. Third, was the section on international estate planning issues with special focus on Japan to USA and USA to Japan transactions and property holdings by reciprocal citizens and residents who may face multi-jurisdictional probate and tax issues.	
2017	AML & Financial Crime Conference	The annual ACAMS Anti-Money Laundering and Financial Crime Conference is the largest and most comprehensive anti-money laundering and financial crime symposium in North America. It is designed for certified AML and Fraud experts, lawyers and accountants. See attached Programme overview and certificate. This course and program have been approved by the Society in previous years.	1
2017	AML & Financial Crime Conference Canada	This is a course for individuals who work in anti-money laundering/anti-terrorist financing compliance.	2
2017	AML/ATF: Understanding Risk and Preparing a Risk Assessment	Kim Wilson, the AML/ATF Supervisor of Bermuda's Barristers and Accountants AML/ATF Board, delivered a lecture summarising the obligations of law firms in preparing their own risk assessment policies under Bermuda's AML/ATF Regulations. The lecture outlined the risk management systems and controls that law firms are required to have to minimize the businesses' exposure to money laundering and terrorist financing risk. The lecture also outlined new customer due diligence requirements under the AML/ATF Regulations and when enhanced due diligence is required.	1
2017	AML: A New Approach to Fight Complex Money Laundering Schemes	In this insightful session, Chris Swecker, former FBI Assistant Director and Brendan Brothers, Co-founder of Verafin, review the shortcomings of BSA/AML/CTF programs, which currently focus primarily on regulatory compliance and discuss a more effective means to investigate suspicious activity and the related flow of illicit proceeds. Learning Objectives •Gain an understanding of the challenges and inefficiencies of the current AML/CFT regime •Understand how a new approach to anti-money laundering efforts can generate stronger actionable information for law enforcement •Learn how financial institutions can adopt innovative technologies and practices to make a greater impact on fighting financial crime	1
2017	Anti-Money Laundering	A review of the current anti-money laundering procedures and legislation presented by Holman Fenwick Willan in conjunction with CLMS	1
2017	Anti-money Laundering & Terrorist Financing	Anti-money laundering legislations;-overview, primary offences and disclosure obligations; defining knowledge and suspicions; anti-money laundering and terrorist financing internal, risk based compliance; mechanisms and emerging typologies; new typologies - recognition and anticipation.	1

2017	Anti-Money Laundering and Anti-Terrorist Financing Training	Ashley Roberts, the Group Compliance Officer of Bermuda law firm Wakefield Quin Limited, gave a course summarising the new money laundering obligations under Bermuda's new regime, including lawyers' reporting regulations, client due diligence requirements, new sanctions, continuing monitoring requirements and applicable criminal and civil penalties for non-compliance. The course also highlighted current pitfalls seen in the industry.	1
2017	Anti-money Laundering Compliance for Law Firms	Anti-money Laundering Compliance for Law Firms 1) Key Reference Sources 2) Overview of the Legal Regime 3) The Basic AML/ CFT Tool Kit 4) Practical Aspects to Implementing a CDD program i) The Risk based Approach ii) Identifying Beneficial Owners iii) Politically Exposed Persons iv) Relying on Third Parties to conduct CDD 5) Interesting Cases 6) Summary and Closing Thoughts 7) Q&A	1
2017	Basics of Export Controls 2017	Basics of Export Controls 2017 [...] U.S. and multinational corporations, investors and even governments are increasingly affected by the range of U.S. laws and regulations governing international trade. The Commerce Department's Bureau of Industry and Security (BIS), the State Department's Directorate of Defense Trade Controls (DDTC), and the Treasury Department's Office of Foreign Assets Control (OFAC) and Financial Crimes Enforcement Network (FinCEN) each plays an important role in administering and enforcing the intricate web of restrictions governing trade in U.S. products and technologies, the trade-related activities of U.S. parties and the financial transactions that make them possible. Understanding the potential scope and applicability of these various regulatory programs to global business operations is increasingly important in an era of heightened agency enforcement and enhanced penalties. And a thorough understanding of these various regulatory regimes is an essential foundation for developing an effective global trade compliance program. Peter Lichtenbaum of Covington & Burling LLP and Aaron R. Hutman of Pillsbury Winthrop Shaw Pittman LLP will discuss: · The basic elements of the export control regimes administered by BIS and DDTC · The various economic sanctions programs administered by OFAC · The overlap of sanctions and export control rules with anti-money laundering regulation and the role of financial institution "gatekeepers" · Enforcement trends This Briefing is scheduled as a review of the fundamentals before PLI's more advanced Coping with U.S. Export Controls and Sanctions 2017 program, being held on December 14-15, 2017 in Washington, D.C. Register for the two-day program	1

		and receive this Briefing free as part of your registration. Speaker(s): Aaron R. Hutman~ Pillsbury Winthrop Shaw Pittman LLP	
2017	Blockchain, Cryptocurrencies and Smart Contracts - What Lawyers Need to Know	Blockchain, Cryptocurrencies and Smart Contracts – What Lawyers Need to Know #228904 October 24, 2017 1-2pm EST With over $1.5 billion raised, Initial Coin Offerings (ICO's) have gotten all the press, but they are just one use case of blockchain technology. This One-Hour Briefing will include an introduction to blockchain, cryptocurrencies and smart contracts. The speakers will then highlight the broad range of legal issues raised by various applications of this technology and the legal and regulatory responses to date. Please join Dror Futter of RIMÔN Law and Professor Aaron J. Wright from the Benjamin N. Cardozo School of Law as they address: • The Technology • Initial Coin Offerings • Jurisdiction, Choice of Law and Venue • KYC (Know Your Customer) and AML (Anti-Money Laundering) and the Blockchain • Smart Contracts • Blockchain as Evidence Speaker(s) Dror Futter ~ RIMÔN Law Aaron J. Wright ~ Benjamin N. Cardozo School of Law Program Attorney(s) Amy Taub ~ Practising Law Institute	1
2017	Client Risk Assessments	Ashley Roberts, the Group Compliance Officer of Wakefield Quin Limited, provided a lecture on the revised "client risk assessments" that lawyers will be required to undertake when onboarding clients which address the new obligations lawyers are subject to under the "Guidance Notes for the Prevention & Detection of Money Laundering and the Financing of Terrorism for the Legal Sector" issued by the Barristers and Accountants AML/ATF Board. The lecture also highlighted lawyers' record keeping obligations, the determination of client risk profiles and the specific client due diligence information required to be obtained for all in-scope AML/ATF matters.	1
2017	Commercial Legal Update 2017	Now in its 7th year of production, Commercial Legal Update continues to deliver the latest critical updates in legal and regulatory compliance, as well as best practice reminders for all commercial licensees in the province. For 2017, the Independent Advisory Group recommendations to the Real Estate Council will guide discussions—additional new content that emerges from the recommendations will be introduced through 2017 as it becomes public. The remainder of the course will challenge commercial licensees with new	1

		and recurring topics, supported through court cases, consent orders and tips for risk mitigation. Topics for 2017 include: • Independent Advisory Group Recommendations • Assignments – New Regulations • Licensees' Obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and Regulations • Licensees' Obligations to Discover, Decide and Disclose • Shortfall Sales • Due Diligence and Legal Title • Environmental Remediation • Strata Issues – Mixed-Use Developments • The Use of Drones in Real Estate Marketing • Conditions Precedent	
2017	Corporate Governance Update for Lundin Legal Group	1) Call to Order 2) Director Training Plans and Programs a. Update 3) Company Compliance Programs a. Anti-Bribery and Anti-Money Laundering/Sanctions Procedures 4) Corporate Criminal Liability a. New corporate criminal liability in the UK for "failure to prevent" tax evasion and other economic crimes: How will it affect Canadian businesses? 5) Company Governance a. Updates on Canadian corporate governance b. Update on Swedish Regulatory Requirements 6) Website Disclosure a. Disclosure of Historical Information b. Swedish Requirements	1
2017	DARREN KOZOL,IN HOUSE COUNSEL TO PEOPLES TRUST COMPANY, ON ANTI MONEY LAUNDERING	The topic will be Anti Money Laundering and will be presented by Darren Kozol, in house counsel to Peoples Trust Company. Darren joined Peoples Trust Company as General Counsel and Corporate Secretary in mid-2012. He was subsequently appointed Corporate Secretary for Peoples Card Services in early 2013. Darren is a corporate lawyer with substantial in-house experience advising boards and executive management. He has an extensive legal background encompassing technology, financial services, government relations and compliance. As General Counsel & Corporate Secretary, Darren is responsible for providing advice to the Peoples Trust Company on a variety of legal issues related to their businesses. He also fills the roles of Chief Compliance Officer, Chief Anti Money Laundering Officer, and Complaints & Privacy Officer. In addition to being educational, it will also serve as an opportunity to meet, face to face, their in house counsel.	16
2017	Dispute Resolution Summit 2017	[...] 13.25 Conducting regulatory investigations in the region •Regulatory updates in the Asia Pacific region	1

		•Taking regulatory action against multinationals: what are the biggest challenges you may face? •What are local regulators focusing on? What to expect when dealing with regulatory investigations in the region •Regulatory investigations and internal investigations in China: how foreign businesses can navigate the changing environment •Anti-corruption, anti-money laundering and bribery laws to be aware of in the region Shaun Ansell, head of international legal and compliance, GPB Financial Services (chair) Leo Seewald, head, Taiwan, Blackrock Thomas Ochensberger, chief compliance officer, HPS Partners Johnny Chan, head of legal, China Merchants Securities International [...]	
2017	Essential Issues on Trust Planning	Why do Estate Planning The current global environment - the Regulatory Landscape - the post 9/11 effect - anti-money laundering regulations + KYC - TIEAs and DTAs - the drive for exchange of information - FATCA & CRS + National reporting - France & Russia - the tendency to political views that "Trusts mean tax evasion" - Atlantic drift; Pacific tide Instructions and information required - factual information concerning the client's family - taxation information concerning the client's family - a statement of assets generically with estimated values - "his", "hers" and "joint" - when considering possible structures, what will all this mean for due diligence [...] Comparison between Trusts and Foundations - Creator (Settlor and Founder) - Reserved Powers and Rights - Legislation has to permit - To Settlor to others - Reservation is personal; powers and rights not assignable but delegable - To Founder: Powers and rights are assignable - can be extensive - Management and Control - Governing Document/Legal Entity - Registration - Beneficial Entitlement - Continuity - Ownership of Assets - Residence - Nature - Sham/Nominee Arrangement - Ultra Vires - Liability	1

		Comparison between SPIC and Foundation - Creator - Reserved powers and rights - Management and Control - Governing Document/Legal Entity - Registration - Beneficial Entitlement - Continuity - Ownership of Assets - Residence - Nature - Sham/Nominee Arrangement - Ultra Vires - Liability [...]	
2017	Ethics - Know Your Client (English Course) - Year 2	As a part of the Ethics curriculum, this Know Your Client online course has been designed to provide UAE lawyers with an introduction to anti-money laundering and terrorist financing for the purposes of helping you to create a robust client due diligence process. The client due diligence (CDD) section will be broken down into various key parts, covering the different types of CDD and the application across various legal services. This course will also cover the legal framework applicable in the UAE, highlighting the key regional laws and regulatory guidelines from the Dubai Financial Services Authority. This course intends to provide you with: an understanding of what is considered effective know your client procedures and controls what role you as lawyers and law firms must play to ensure that your legal services are not used to further a criminal purpose what the regional legal framework expect during your client onboarding process an understanding of how money laundering and terrorist financing are serious threats to our society to assist you, as licensed lawyers in the UAE, to meet your obligations under the anti-money laundering and counter-terrorist financing regime Upon completion of this course, you will understand the importance of adequate client due diligence processes and how these may be applied.	1
2017	Federal and State Tax Issues Related to Medical Marijuana	Review of the Conflicts between Federal Laws Prohibiting Marijuana ("MJ") and making any exchange of funds or revenues associated with the sale or distribution a crime and subject to 'money laundering rules. On the other hand the State laws legally permitting the use sale and distribution of MJ for medical purposes (widely defined"), as legal commerce, subject to taxation, reporting and general business laws. Complicating factors are that in the US banking is under federal jurisdiction so banks refuse to deal with the "proceeds of crime" under federal regulations. Second, the fact that lawyers advising clients on State MJ laws are subject to counseling crimes under federal legislation prohibiting MJ use, sale and distribution, which creates and ethical dilemma for Hawaii Attorneys advising clients.	1

2017	Financial Crime Update	Simon Orton, Ruby Hamid, John Warren & Kim Zelnick from Freshfields will be delivering the Global financial crime update. Jonathan Kahlberg will be the internal host. This session focused on latest legislative trends and enforcement developments globally relating to anti-bribery and corruption, sanctions and anti-money laundering.	2
2017	Focus on Canada: Reviewing Recent Regulatory Developments and Compliance Trends	FINTRAC's revised guidance related to verification of identity, and other updates to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, lessons from the FATF Mutual Evaluation of Canada debrief, and the latest regulatory developments are just some of the challenges facing Canadian compliance professionals. Join this panel for a fast-paced examination of compliance hurdles throughout Canada and practical strategies for overcoming them. Learning Objectives •Identifying key changes in the PCMLTFA and updates to regulatory guidance •Assessing emerging regulatory issues including feedback included in the FATF report and fintech regulatory developments •Formalizing effective strategies when reporting suspicious transaction reports (STRs) to FINTRAC	1
2017	Fraud Awareness & Financial Literacy (video version - original presentation February 5, 2013)	Topics will include: • File opening procedures, including conflicts verification and Know Your Client compliance • Trust accounts and related risks • Anti-money laundering compliance • Ponzi schemes -- how to identify and avoid • Internal fraud awareness issues	1
2017	Hong Kong 2017 In-House Legal Summit	[...] 4.15pm Panel: Strengthening Hong Kong's Anti-Money Laundering Regime (40mins) •New legislation introduction for greater corporate disclosure and financial transparency •Challenges faced in accessing corporate registries and company data for investigations into potential white collar crimes •Updates following the aftermath of the Panama Papers scandal •Addressing issues of intrusion into data privacy and rising information access costs •How do HK anti-money laundering laws affect SMEs Moderator: Vivian Chui, Regional AML and Sanctions Advisor, BNP Paribas Hong Kong Panelists: •Kevin Marr, Assistant General Counsel, Global Financial Crimes Legal, JPMorgan Chase •Maaike van Meer, Chief Legal & Compliance Officer, AXA Insurance Hong Kong •Simon Leung, Head of AML, China CITIC Bank	2

		International [...]	
2017	Les développements récents en droit bancaires	The topic of the course was : Recent development in Banking Law. There was 5 presentations wich talk about : - Conflict of Laws rules in Secured Transactions - Legal Issues related with the Fintech - Limitation of liability of Bank - Method of payment - Electronic payment - Money laundering	1
2017	Lundin Legal Group - Legal Meeting 2017	As provided in the agenda below, this program explored various current topics in corporate governance, legal compliance, and regulatory rules applicable to mining companies. Members of the group (lawyers and corporate secretaries) had the opportunity to present and discuss each agenda item. [...] Agenda: 1) Call to Order [...] 3) Company Compliance Programs a. Anti-Bribery and Anti-Money Laundering/Sanctions Procedures 4) Corporate Criminal Liability a. New corporate criminal liability in the UK for “failure to prevent” tax evasion and other economic crimes: How will it affect Canadian businesses? [...]	2
2017	Matter Opening Procedures	This course focuses on the issues of conflict of interest and anti-money laundering regulations which arise from opening new matters. Ethical conflicts of interest are defined and examples of the same are given. Lawyers' duties of loyalty to clients and definitions of adverse parties are also described. Business conflicts are also explained, as well as relevant procedures for how to resolve them when they arise. Anti-money laundering regulations are explained, as well as relevant procedures to ensure that clients are not laundering money. High risk situations are explained, as well as the need for ongoing vigilance. Considerations and required contents for engagement letters are also set out.	1
2017	McCarthy Tetrault Advance: RegTech - What It Does, What It Doesn't Do and What It Shouldn't Do	RegTech: What It Does, What It Doesn't Do and What It Shouldn't Do - November 1, 2017 Businesses are increasingly embracing RegTech, specialized technology applications used to assist businesses in meeting their regulatory compliance requirements, (such as anti-money laundering requirements, regulatory reporting requirements such as securities reporting, and fraud analysis). RegTech can help financial services providers comply with regulation in a much more cost-effective and less labour intensive way. RegTech may also potentially allow regulators themselves to have access to, analyze and process an increasing amount of data, often in a real-time basis.	6

2017	Money Laundering for Beginners: An Introduction to Anti-Money Laundering	In recent international reports on financial crime and combatting money laundering Hong Kong has been labelled a centre for money laundering. This 3-hour seminar will provide an introduction to the criminalising of money laundering internationally and in Hong Kong. The origins of the offence of money laundering will be considered and the measures that have been introduced to combat money laundering and terrorist funding. Money laundering is a relatively recent criminal offence in Hong Kong and the criticism of anti-money laundering (AML) and counter-terrorist funding (CTF also known as anti-terrorist funding (ATF)) practices in Hong Kong will be discussed. The seminar will conclude with discussion of possible changes to anti-money laundering legislation and regulation in Hong Kong.	1
2017	National CLE Program - Protecting Against Money Laundering	Law firms are often the target of money laundering, terrorist financing or other financial fraud-related schemes, and BLG is no exception. All BLG professionals must be constantly vigilant and follow all applicable procedures and policies. This program reviews current rules of professional conduct, legislation and firm policies that protect against money laundering, terrorist financing and sanctions violations and will also explain some of the more common money laundering schemes that can be encountered.	7
2017	Old Law, New Trends: The Evolution of Extradition and Mutual Assistance Law / Anciennes lois et nouvelles tendances: L'évolution des lois sur l'extradition et l'entraide juridique	[...] "Old Law, New Trends: The Evolution of Extradition and Mutual Assistance Law" [...] 10:30 – 11:45 Evolution of mutual legal assistance in the modern age • E-currency and its effects on money laundering investigations • The increasing amount of electronic data sought in MLAT requests • Section 9.3 of the MLACMA, "Direct enforcement of foreign orders for restraint" [...]	2
2017	Professional Conduct Update 2017	1. Admission of solicitors - statutory prohibition on solicitors firm employing a person as a trainee solicitor who has been convicted of a criminal offence involving dishonesty and Law Society may impose conditions on issued practising certificate. 2. Conduct of solicitors practice - conviction for the offence of money laundering; assisting client to commit a breach of client's fiduciary duty might also render the solicitor liable for giving dishonest assistance. 3. The retainer - solicitors authority to act; implied retainers and solicitors duty to avoid a conflict of interest; whether relationship of solicitor and client subsists where a solicitor, once retained, does intermittent or occasional legal work for client 4. The solicitors remuneration - may be recoverable on a quantum meruit basis; professional conduct - not to overcharge; costs against a third party; on a solicitor and own client taxation, fees for two senior solicitors not normally allowed; indemnity costs; taxation of	1

		government's costs. 5. Confidentiality and legal professional privilege - whether legal professional privilege extends to communications between a client and a solicitor without a practising certificate; common interest privilege; fraud exception in the matrimonial context; waiver of professional privilege by selective disclosure 6. Conflict of interest - representing co-accused in a criminal trial; jointly representing driver and passenger in personal injury action, borrower and lender; solicitor against former client; changing firms; should not act where own error or competence at issue in trial; breach of fiduciary duty 7. Negligence - making a will, checking testator's capacity; client on advice of solicitor entering into allegedly negligent settlement and the limitation period 8. The litigation solicitor - inhibiting access to witnesses; duty to disclose to court where non-expert witness receives remuneration 9. Solicitors and the disciplinary process - concerns about whom a complaint has been made; duty of prosecuting authority in the disciplinary process to make disclosure of all relevant material 10. Barristers: Admission to practice- the applicable guidelines upon which the court will act in determining to admit an overseas silk for one case restated; whether to admit and overseas silk for application for leave to appeal to the court of final appeal 11. Duty of counsel for the protection - duty of disclosure of police notebook; of unused material which might harm prosecution's case	
2017	Protecting against Money Laundering (video version -- original presentation November 26, 2015)	A client retains the Firm on a matter and provides you with a cash retainer of $15,000. The Firm is asked to act in an oddly structured business deal. What now? This course reviews current legislation and firm policies that protect against money laundering. This is part of BLG 101 and is designed for all first-year associates and lateral hires.	6
2017	Risk Management Education	Provides an overview to enable lawyers to have sufficient awareness of the International and Local AML Regulatory framework Will help firms ensure that they understand and comply with local laws and regulations Will help firms prepare for future evolution as money laundering activities continue to become more sophisticated	1
2017	Snow-washing: The role of Canadian companies and trusts in money laundering	The seminar was delivered by the author of a report No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts. This is a summary of the report's content taken from the website (link provided for the course link): "Canada is one of the world's most opaque jurisdictions when it comes to ownership of private companies and trusts, said a new report released today by Transparency International Canada (TI Canada). Rich in examples, analysis and recommendations, the report was produced by Adam Ross, TI Canada's lead	1

		researcher on beneficial ownership transparency with a team of five subject matter experts and oversight by TI Canada's board and legal committee. The report states that anonymous companies and trusts are the getaway cars of financial crime because they enable criminals to hide behind a veil of secrecy, while giving them access to bank accounts and the means to use their illegally obtained wealth in Canada's legal economy. Using specific case studies and original research into the luxury property sector in Vancouver, TI Canada's report demonstrates how little is known about who truly owns Canadian companies, trusts and the assets they control. The average price of a home in Canada has skyrocketed in recent years, with the largest increases in Toronto and Vancouver. An influx of overseas capital is one of the causes. Nevertheless, the extent and impact of foreign investment remains unknown since very little data is collected on property owners. "Individuals can use shell companies, trusts and nominees to hide their beneficial interest in Canadian real estate. This makes property attractive for money laundering, deprives the government of tax revenue, and hinders data collection, making it difficult to analyse the impacts these ownership structures have on the real estate market," said TI Canada Executive Director, Alesia Nahirny."	
2017	The Osgoode Certificate in Gaming Law	Topics covered include - The intersection between gaming law and the Criminal Code including the concept of "conduct and manage" - A thorough review of the governing legislation in Ontario including the Gaming Control Act and the Ontario Lottery and Gaming Corporation Act - Sports wagering: issues and growth potential - First Nations gaming and the significance of Kahnawake - How other jurisdictions operate in Canada and internationally - Compliance – understanding the relationship with gaming regulators - Testing equipment and software – how the technology has evolved and the legal issues that arise as a consequence - The emergence and immediate impact of skill-based games and social games - The latest on anti-money laundering - What the growing market integration of eSports and eGaming means for the gaming industry as a whole - Recognizing and implementing "responsible gaming" - Cross-border online gambling law - The near future of gaming in Ontario/Canada and potential legislative changes	1
2017	The Role of Compliance	In this program seasoned attorney and Chief Compliance Officer Charles A Christofilis provides	1

		attorneys with an overview of the laws and rules which govern the area of compliance, the many legal areas in which the compliance officer must operate, the "four pillars" of compliance, and numerous case examples in which inadequate compliance has resulted in major adverse consequences for companies. He addresses how to develop. Implement and test a Compliance Program in virtually and industry, and does a deep dive into the financial services and public company space. Specifically, the roles of the SEC and other agencies, the Investment Advisers Act, the Anti-Money Laundering provisions under the Patriot Act (with numerous examples), the FCPA and the necessity of internal audits and mock examinations. Finally, he concludes with how to manage regulatory examinations and investigations as opposed to more traditional civil or criminal litigation, and respond to compliance failures from a crises management perspective when they occur.	
2018	11th National Symposium on Money Laundering and Financial Crimes (On-Demand)	Now in its 11th year, this OsgoodePD National Forum on Money Laundering and Financial Crimes once again brings together an experienced international faculty to equip you with the knowledge and effective strategies you need to tackle the complex issues, including: - Bitcoin, Blockchain and other emerging technologies; threats and responses - Latest trends and legal counterattack involving cybercrime and money laundering - Net worth investigations drill-down - Leading recent case law and its implications - How to conduct effective cross-border investigations - Working within parallel criminal and civil prosecutions - Investigating, prosecuting and defending money market crimes	10
2018	2018 INTERLAW AMERICAS CONFERENCE - NEXTGEN	NextGen Topic: Anti-money laundering international regulation related to terrorism. External Speaker: Jorge Mascarenhas Lasmar PhD, Professor of International Relations at PUC Minas Chair: Edie Ryan Co-Chair: Délber Lage	1
2018	2018 NOBC Mid-Year Meeting	The program includes 4 days of programming which include Canadian perspective on lawyer wellness, issues facing lawyer regulators, lawyer involvement in anti-money laundering initiatives and anti-terrorism financing, adjudicators perspective in disciplinary matters, handling immigration matters, investigations under MRPC 8.4(c), current developments and a wide variety of concurrent and roundtable programs.	3
2018	20th Anniversary NY Conference on Foreign Corrupt Practices Act	Course covers topics related to the Foreign Corrupt Practices Act including Dept. of Justice updates on their new corporate enforcement policy, how to defend your anti-bribery program, how to screen third parties to avoid bribery risks, anti-corruption developments in Latin America, money laundering and sanctions laws.	1

2018	ACGC Fall Conference	The ACGC Conference happens twice a year. We covered Artificial Intelligence in Legal Applications, Block chain Technology, Legal and Ethical Issues in Use of AI, Legal Issues around Bitcoin, anti-money laundering, cyber security and application of securities law.	1
2018	AML & Financial Crime Conference	Comprehensive symposium on current and coming developments in anti-money laundering and anti-terrorist financing legal requirements, compliance practice, methodologies, regulator guidance and operations.	1
2018	AML Regulation for Cryptocurrency	Presented and attendee on impact on cryptocurrency of incoming regulatory changes to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and Regulations. Other panelists included accredited compliance professionals and lawyers.	1
2018	AML/CTF and Financial Crime in Canada A 2018 Update	The most recent international report on Canada's AML/CTF efforts (September, 2016) states that Canada faces important money laundering and, to a lesser extent, terrorist financing risks. While Canada has a strong regime to address these aspects of financial crime, further improvements are necessary. At this session, you will learn: a) The sectors that represent the biggest gaps in the Canadian AML/CTF regime b) Real-life examples of money laundering taking place in Canada c) How Canada ranks on their AML/CTF program and with respect to financial crime versus other countries d) What needs to be done going forward in Canada to strengthen the AML/CTF regime	1
2018	Annual Fall Conference	This seminar is about compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. I was an attendee and presenter at the conference. Other presenters were a mix of lawyers and other compliance professionals. Description The Canadian MSB Association (CMSBA) is proud to present our fall 2018 conference, taking place in the Appel Salon at the Toronto Reference Library on November 7, 2018. [...] The agenda is below: [...] 08:15 - 09:00 Canadian Payments Modernization Presenter: Robyn King (Payments Canada) 09:00 - 09:05 Vendor Spotlight Presenter: TBC 09:05 - 09:50 Dealers in Digital Currency Become MSBs Moderator: Amber Scott Panelists: Charlene Cieslik (Coinsquare) Stephen Seargent (Bitfinex) Jean Amiouny (ShakePay) Richa Vajpeyi (Aion/Mavennet) [...]	1

		10:15 - 11:45 FINTRAC Update Presenter: Alain Boudreault (FINTRAC/CANAFE) [...] 12:45 - 13:30 Cyber 101: Preventing Cyber Victimization Presenter: Stephanie Corvese (Grant Thornton) 13:30 - 13:45 Vendor Spotlight Presenter: TBC 13:45 - 14:30 Penalties & Appeals Update Presenter: Jason Beitchman (Rayman Beitchman LLP) [...] 14:45 - 16:00 Derisking & Recent Cases Moderator: Marc Lemieux Alan M. Stein (lawyer) Hossein Pourshafiey (former MSB owner) Pouyan Tabasi Nejad (community advocate) 16:00-16:15 Closing Remarks Presenter Carinta Manarelli (CMSBA)	
2018	Anti Money Laundering and Counter Terrorist Financing (AML/CTF) - Advanced	This training course is intended for staff with high exposure to Financial Security risk. It focuses on mastering, strengthening and adapting skills related to Anti Money Laundering and Counter Terrorist Financing (AML/CTF) for more effective application, and will enable enhanced skills on problem solving and concrete case analysis. The training outlines the main concepts related to AML/CTF, and presents key issues associated with : AML/CTF regulations governing financial institutions - The Risk-Based approach and its operational impacts, Key risk factors and the controls implemented to manage these risks, Suspicious activity detection and reporting	1
2018	Anti-Money Laundering (Canada)	Agenda •Introduction and Background •Laws and Regulations •Managing the Risks: Due Diligence •Managing the Risks: Financial Sanctions •Reporting Your Suspicions •Practice Exercise •Summary Objectives •Identify the methods that criminals use to launder money and finance terrorism •Explain the relevant anti-money laundering (AML) and counter-terrorist financing (CTF) laws and regulations •Apply risk-based due diligence procedures •Explain the sanctions regime and your responsibilities in relation to it •Identify examples of suspicious behaviour and know how to escalate any concerns	1
2018	Anti-Money Laundering Hong Kong Fee Earner Course	Exact date of completion: October 31 2018? The definitive anti money laundering program for fee earners in leading Hong Kong and international law firms. This course fits in with our firm’s anti-money laundering procedures and aims to:	1

		1. help you understand what anti-money laundering is about and why it is relevant to you; 2. help you understand why you need to be aware of the issue of terrorist financing; 3. give you an awareness of the law relating to money laundering and terrorist financing; 4. show how our firm's anti-money laundering procedures apply and help you recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing; and 5. test that you have understood the points covered. This course has been designed to teach you anti-money laundering best practices and procedures, as defined by 14 of the world's leading international law firms and 11 of Hong Kong's leading firms and in line with (a) Practice Direction P that has been drawn up by The Hong Kong Law Society and (b) applicable legislation in Hong Kong. This includes: 1. knowing how to verify a client's identity and conduct client due diligence measures; 2. learning how to recognise and deal with transactions and other activities which may be related to money laundering by being alert to suspicious behaviour and reporting such activities in the right way; 3. understanding Hong Kong-specific requirements; and 4. being clear on our firm's own internal policies and procedures. By completing this course you will have learnt how to comply with all critical statutory requirements and will be able to play your part in the fight against money laundering.	
2018	Anti-Money Laundering Hong Kong Refresher Course	Exact date of completion: October 31, 2018 Familiarity with, and understanding of, the anti-money laundering and counter terrorist financing legislation has become an integral part of working in a law firm. This course has been designed as a refresher for those who have already completed the Anti–Money Laundering Hong Kong Course. This course has been designed to teach anti-money laundering best practices and procedures, as defined by the world's leading international law firms and in line with (a) Practice Direction P that has been drawn up by The Hong Kong Law Society and (b) applicable legislation in HK. The aims of this course are to: act as a reminder on the most significant areas of the anti-money laundering requirements; and ensure you remain aware of the importance of compliance with the firm's anti-money laundering systems and procedures.	1

		The course consists of four modules: 1. Definitions and role of law firms within the anti-money laundering regime; 2. The relevant legislation; 3. Anti-money laundering compliance systems and procedures; and 4. Practical exercises. To complete the course, please note that you are required to: Review all the materials in all the modules; Complete all the mandatory exercises; and Complete the course feedback form.	
2018	Anti-Money Laundering in Financial Institutions	Outline: (1) Legislation Concerned With Money Laundering (2) Risk Factors (3) Compliance Officer and Money Laundering Reporting Officer (4) Customer Due Diligence and Record-keeping (5) Ongoing Monitoring Assessment and Documentation (6) Suspicious Transaction Report	1
2018	Anti-Money Laundering Training and Update	Course on awareness concerning the risks of money laundering in the context of corporate legal transactions.	1
2018	Anti-Money Laundering: A Practical Overview (Hong Kong)	Exact date of completion: October 31, 2018 All law firms have an obligation to provide ongoing anti-money laundering training to all relevant staff. This course, written specifically for Hong Kong, acts as a reminder of the most significant areas of anti-money laundering best practice, including a practical overview of: - What money laundering is; - The requirements under Practice Direction P for client due diligence and ongoing monitoring; - The relevant Hong Kong legislation, including DTRPO, UNATMO, OSCO and AMLO; - How to recognise suspicions and what to do if you have a suspicion; and - When, how and to whom to report. The course includes engaging video (with a text-only option), animation and interactive scenarios that help all staff get reacquainted with the importance of understanding and complying with their obligations. To complete the course, you are required to review all of the materials in each module and complete 10 multiple choice questions in the Final Assessment.	1
2018	Banking on Cannabis: The Impact of Legalization on the Banking Industry	Many Canadian banks operate internationally, with increasingly integrated operations. With the legalization of cannabis, they face an increasingly complex regulatory and legal web. As a legal professional, or someone involved in banking or the cannabis industry, you must get prepared to competently navigate the new legal and regulatory landscape given the impact to both	1

		domestic and foreign banking operations and transactions. A clear understanding of the intersecting regimes is essential to prevent violations and unintended foreign lawsuits. Join leading Canadian & US banking law experts in this 90-minute OsgoodePD online webinar for essential guidance and best practices to effectively deal with these compounded challenges and to protect your clients' – and your own – interests. You'll get an overview of the new regime, including a succinct overview of the ground rules and how to navigate the risky junctions of asymmetrical legal requirements, including: How does cannabis legalization affect Canadian banking? Banks as corporate citizens providing services for clients in the cannabis industry, from commercial to retail banking clients and everything in between Canadian anti-money laundering (AML) requirements, monitoring and reporting guidance Criminal/controlled substances prohibitions, includes both Canadian and US perspectives and the current state of conflict Criminal money laundering prohibitions, includes both Canadian and US perspectives and the solution of "ring fencing" Best practices for dealing with potentially problematic connections Troubleshooting, trends and issues to watch out for	
2018	Canadian Law & Blockchain Technology Event	This event serves as a comprehensive primer for lawyers and entrepreneurs who want to expand their practice into the exciting intersection of legal policy and blockchain business models. The discussions and presentations will also provide value for entrepreneurs who want to be aware of the pitfalls and opportunities present in a space which is still being defined. Our event will consist of a panel discussion with British Columbia's leading lawyers on the cutting edge of blockchain related issues ranging from securities, to taxes, anti-money laundering, ponzi schemes and tokenizing assets. In addition to our panel discussion there will also be a presentation on open-source software licenses and the legal issues that surround blockchain business models. We will also provide time for q&a from the audience.	3
2018	CLEBC CLE-TV: Anti-Money Laundering for Lawyers and Law Firms - REBROADCAST -160518	As lawyers, you receive and disburse large sums of money on a regular basis, leaving you and your firm vulnerable to money laundering attempts. Join us for a focused 90 minute session on how to protect your firm from unwittingly engaging in money laundering. You will leave this session understanding your obligations as a lawyer, and tools to ensure that you are compliant and prepared to handle situations that raise money laundering risks. Join us and be smart in an era of increasing money laundering scrutiny today!	8

		A minimum of 1.5 hours will involve aspects of professional responsibility and ethics, client care and relations, and/or practice management.	
2018	CLEBC CLE-TV: Anti-Money Laundering for Lawyers and Law Firms - REBROADCAST 160518	As lawyers, you receive and disburse large sums of money on a regular basis, leaving you and your firm vulnerable to money laundering attempts. Join us for a focused 90 minute session on how to protect your firm from unwittingly engaging in money laundering. You will leave this session understanding your obligations as a lawyer, and tools to ensure that you are compliant and prepared to handle situations that raise money laundering risks. A minimum of 1.5 hours will involve aspects of professional responsibility and ethics, client care and relations, and/or practice management.	8
2018	CLEBC CLE-TV: Anti-Money Laundering for Lawyers and Law Firms - 160518	Who should attend: All lawyers Learning level: All levels As lawyers, you receive and disburse large sums of money on a regular basis, leaving you and your firm vulnerable to money laundering attempts. Join us for a focused 90 minute session on how to protect your firm from unwittingly engaging in money laundering. You will leave this session understanding your obligations as a lawyer, and tools to ensure that you are compliant and prepared to handle situations that raise money laundering risks. Join us and be smart in an era of increasing money laundering scrutiny today! At this you course, you will: learn about the regulatory landscape of anti-money laundering get a refresher on the Law Society of BC's anti-money laundering rules and expectations acquire best practices for meeting and exceeding the Law Society rules to protect your practice get up to date on topical issues such as money laundering in real estate transactions and cross border payments Law Society of BC CPD Hours: 1.5 hours (a minimum of 1.5 hours will involve aspects of professional responsibility and ethics, client care and relations, and/or practice management) Course Instructors Scott Bartos — Chief Risk Officer, Borden Ladner Gervais LLP, Vancouver Barbara K. Buchanan, QC — Practice Advisor, Conduct & Ethics, Law Society of BC, Vancouver	18
2018	Compliance issues 2018	- Preventing harassment and violence in the workplace - Cyber security - protect our information - Protecting clients and employees personal information -Proceeds of Crime (Money laundering) and Terrorism financing (PCMLTF) - Internal Sanctions and Extraterritorial application of	1

		sanctions - What is corruption and how to combat corruption Each section was 45 minutes to 1 hour with test of knowledge at completion.	
2018	Compliance Officers' Network	(1) PREVIOUS MEETING SUMMARY (2) PRESENTATIONS -BLG lawyers: Rebecca Cowdery, Prema Thiele, Matt Williams and Laura Paglia, Scott McEvoy and Michael Taylor (3) MEMBER QUESTION/ANSWERS DISCUSSION -Fair Value Pricing, KYC (4) REGULATORY UPDATE -PMAC / IIAC Launch Portfolio Manager & IIROC Dealer Member Services Template Agreement -Proposed Anti-Money Laundering and Anti-Terrorist Financing amendments -Update on Alternative Funds Proposal and recent relief granted -CSA Staff Notice provides update on project to reduce the regulatory burden for investment fund issuers -CSA Staff Notice offering guidance on securities law implications for token offerings (5) RECENT/UPCOMING COMPLIANCE DEADLINES -PIPEDA security breach notification requirements	1
2018	Consultation on Regulations - Virtual Currencies	This involved a detailed review and discussion of the proposed new regulations to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) respecting virtual currencies as part of the Department of Finance and FINTRAC's consultation process.	2
2018	Dirty Money	The topic of the ACLP event will be a discussion of “Dirty Money’ the recently-issued report on money laundering in BC casinos. Leading the seminar discussion will be the Honourable David Eby, QC, Attorney General of British Columbia, and the author of the Report, Dr. Peter German. The two distinguished discussants will provide insights into the findings in the Report and the next steps to be taken to address illegal money laundering practices in BC.	2
2018	E-Learning Course: Act on the Prevention of Money laundering & Financial Terrorism	E-Learning course with testing: Update on the most recent developments on the Act on the Prevention of Money Laundering & Financial terrorism. Testing on the firm's Anti Money laundering Policy	1
2018	Ethics in Action	An ethics and practice management seminar put on by Christopher McPherson, Q.C., Martin Finch, Q.C., and Phil Riddell under the auspices of the Law Society, focusing on various ethics issues such as money laundering, discipline issues, etc.	1
2018	Ethics in Evolving Compliance Requirements	The constantly shifting landscape of laws aimed to prevent money laundering, terrorism and tax evasion creates numerous landmines for legal professionals.	1

		Violations can result in substantial fines and possibly cost uninformed attorneys their license. Learn the laws and governing agencies to watch, and the conflicts that can arise between statutory formation requirements and ethics guidelines. We'll cover the current lay of the land, discuss the potential impact of legislation now pending, and delve into the ABA Model Rules of Professional Conduct.	
2018	International Private / Corporate Law / Corporate Criminal Law	International Private / Corporate Law / Corporate Criminal Law Globalization and increased mobility allow private persons as well as enterprises to conclude more legal business outside of their home countries. As a result, international private business laws have taken on increasing importance. The module International Private Law / I and Corporate Law enables participants to stay abreast of these developments. A first area of focus deals with Swiss international private law, in relation to matters of conflicts of law, particularly choice of law and choice of jurisdiction. In addition, European business law will be dealt with. Applicable laws for public limited companies and for corporations will be presented. Further, international business law will be discussed in depth. Special attention will be given to directives of international organizations related to the conduct of multinational corporations as well as to international corporate tax law. Secondly, because of an ever-strengthening international economic network, criminal behavior in the realm of business may have international components. Insider trading, corruption and money laundering are an example of this. The part Corporate criminal Law serves as an introduction to Criminal Business Law and deals with practical cases. In addition the fundamentals of international criminal law cooperation will be discussed as well as the legal situation in the EU and the efforts of international organizations in the area of criminal law. Lectures International Private Law 16 Lectures Corporate Law 20 Lectures Corporate Criminal Law 12 Lectures Capital Markets Law 8 Lectures	1
2018	International Trust and Estate Planning 2018	•Planning for U.S. Clients Who Are Beneficiaries of Foreign Non-Grantor Trusts •Tax Transparency, Compliance, and Ethics: CRS and FATCA and related reporting •Developments in Anti-Money Laundering Rules, Transparency of Beneficial Ownership	1

		•Inbound Planning Issues for Individual Non-resident Aliens and Investors •Outbound Planning for U.S. Individuals and Investors	
2018	Kamloops Bar Association AGM Speakers: Miriam Kresivo, QC, and Michelle Stanford	For the Kamloops Bar Association's Annual General Meeting, current Law Society President Miriam Kresivo, QC, will speak about general developments and initiatives within the Law Society of British Columbia. Afterwards, Kamloops local bencher Michelle Stanford will speak with respect to fast-moving developments in ethics and practice management, including money laundering and the recent SCC decision in Groia v. Law Society of Upper Canada (2018 SCC 27) . This event is taking place at Frick'N'Frack Taphouse in Kamloops, BC at 5:00pm on Thursday, June 7, 2018. Members eligible to attend will need to be members of the Kamloops Bar Association in good standing with the KBA.	12
2018	Know Your Client Rules (video version - original presentation March 14, 2013)	This session helps to prevent money laundering, terrorism, fraud and other illegal activites. This course reviews the rules that must be complied with whenever a new client matter is opened. This is part of BLG 101 and is designed for all first-year associates and lateral hires.	1
2018	Learning from Fraud Detection: Segmenting AML to Fight Financial Crime	Learning from Fraud Detection: Segmenting AML to Fight Financial Crime Why do we think about AML as a single idea, when fraud is segmented specifically by customer, channel or loss type? In this insightful session, Jim Richards and Brendan Brothers discuss the limitations of the current one-size-fits-all approach to compliance and anti-money laundering. Learn why segmentation is effective at fighting fraud, and how these lessons can be applied to transform the AML industry. Learning Objectives • Review of the limitations of current AML approaches and technologies to effectively fight financial crime. • Understand how segmentation improves fraud detection and how these lessons can be applied to strengthen anti-money laundering efforts. • Learn how innovative technologies and customer segmentation will transform the AML industry	2
2018	London Full CCPG Training - Anti Money Laundering	Compliance with The Money Laundering, Terrorist Financing and Transfer of Funds (Information of the Payer) Regulations 2017	1
2018	McCarthy Tetrault Advance: Anti-Money Laundering De-risking in Financial Services	Anti-Money Laundering De-risking in Financial Services - March 1, 2018 The issue of “de-risking” as a result of anti-money laundering (AML) risk in financial services is gaining increasing prominence. On the one hand, increased regulatory scrutiny in the area of AML has led some financial institutions to seek to minimize their exposure to risk, and therefore to avoid doing business with clients in higher-risk areas. On the other hand, businesses in new and emerging industries (such as cryptocurrency or cannabis) can find gaining access to	17

		the traditional banking system to be a significant challenge.	
2018	Mega Case/Organized Crime Training Forum 2018: Technological Challenges and Solutions	Mega Case/Organized Crime Training Forum 2018: Technological Challenges and Solutions [...] Day 1: Monday January 29, 2018 [...] 3:15 – 5:00: Case Study: The Silk Road Tim Howard, Co-Chief of the Complex Frauds and Cybercrime Unit, U.S. Attorney's Office for the Southern District of New York Mega Case/Organized Crime Training Forum 2018: Technological Challenges and Solutions Location: Chestnut Residence & Conference Centre, 89 Chestnut St., Toronto Page 2 Day 2: Tuesday January 30, 2018 9:00 – 10:00: Canadian Organized Crime Overview: Street Gangs A/Detective Sergeant Steve Kerr, Toronto Police Service (Guns and Gangs) 10:00 – 10:45: Expert Evidence in Mega Cases – Independence and Impartiality Tom Lemon, Public Prosecution Service of Canada Scott Hutchison, Heinen Hutchison LLP L.S.O. Professionalism Hours: 0.25 hours 10:45 – 11:00: Break 11:00 – 11:45: Battling Encryption Sergeant Nicolas Bernier, Senior Cybercrime Instructor, Canadian Police College, R.C.M.P. 11:45 – 12:00: Quick Hit: Hacking Investigations Dave Cobey, Technical Case Management Program, Technical Investigation Services, R.C.M.P. 12:00 – 1:00: Lunch 1:00 – 2:30: The Collection and Use of Social Media Information in ITOs and Court Allison Dellandrea, Crown Counsel, Crown Law Office Criminal L.S.O. Professionalism Hours: 0.25 hours 2:30 – 2:45: Quick Hit: Three Dimensional Printing Vincent Paris, General Counsel, Guns and Gangs Initiative 2:45 – 3:00: Break 3:00 – 4:30: Presenting Digital Evidence in Court Andrew Sabbadini, Assistant Crown Attorney, Guns and Gangs Initiative Gerry McGeachy, Assistant Crown Attorney Detective Sergeant Matthew Hodges, Niagara Regional Police Service Sergeant Nicolas Bernier, Senior Cybercrime Instructor, Canadian Police College, R.C.M.P. L.S.O. Professionalism Hours: 0.25 hours Mega Case/Organized Crime Training Forum 2018: Technological Challenges and Solutions Location: Chestnut Residence & Conference Centre, 89 Chestnut St., Toronto Page 3 Day 3: Wednesday January 31, 2017 9:00 – 10:00: Canadian Organized Crime Overview: Traditional Organized Crime Shayla Gibbs, Strategic Intelligence Analyst, Criminal	1

		Intelligence Services of Ontario 10:00 – 10:15: Break 10:15 – 11:00: Leveraging Modern day Communications Data Robert Aboumitri, G.T.A. North Criminal Analysis Section Manager, Communications Data Analysis Team, R.C.M.P. 11:00 – 12:00: Mega Cases in the Jordan era Michael Bernstein, Senior Counsel (Organized Crime), Crown Law Office Criminal L.S.O. Professionalism Hours: 0.25 hours 12:00 – 1:00: Lunch 1:00 – 2:00: Canadian Organized Crime Overview: Outlaw Motorcycle Gangs Rich MacKinnon, Biker Enforcement Unit 2:00 – 2:15: Quick Hit: One Party Wires in Online Undercover Settings Allison Dellandrea, Crown Counsel, Crown Law Office Criminal 2:15 – 3:00: Canadian Organized Crime Overview: Human Trafficking Sue Orlando, Provincial Coordinator of Human Trafficking Prosecutions, M.A.G. L.S.O. Professionalism Hours: 0.25 hours 3:00 – 3:15: Break 3:15 – 4:15: Applications, Search Engines, and Evidence. Daniel Peel, Criminal Intelligence Analyst O-INSET CAS, R.C.M.P. Patrick Gallant, Criminal Intelligence Analyst O-INSET CAS, R.C.M.P. 4:15 – 5:00: Software Implantation Detective Sergeant Jennifer Spurrell, Ontario Provincial Police Detective Sergeant Jordan Whitesell, Ontario Provincial Police L.S.O. Professionalism Hours: 0.25 hours Mega Case/Organized Crime Training Forum 2018: Technological Challenges and Solutions Location: Chestnut Residence & Conference Centre, 89 Chestnut St., Toronto Page 4 Day 4: Thursday February 1, 2018 9:00 – 9:30: Canadian Organized Crime Overview: Jails and Prisons John Ilika, Field Intelligence Officer, M.C.S.C.S. 9:30 – 11:00: Darkweb Transactions Cst. Frank Dudas, R.C.M.P. Tim Howard, Co-Chief of the Complex Frauds and Cybercrime Unit, U.S. Attorney's Office for the Southern District of New York [...] 1:00 – 2:30: Blockchains, Cryptocurrencies, and Money Laundering Matthew McGuire, the AML Shop Luc Major, Manager, Strategic Intelligence and Data Exploitation Lab (SIDEL), Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) Gerry McGeachy, Assistant Crown Attorney L.S.O. Professionalism Hours: 0.25 hours 2:30 – 3:15: Witnesses and Social Media Michael Callaghan, Assistant Crown Attorney,	

		Toronto Dawne Way, Barrister and Solicitor, Toronto L.S.O. Professionalism Hours: 0.25 hours 3:15 – 3:30: Break 3:30 – 4:30: Future Challenges Matt Asma, Crown Counsel, Crown Law Office Criminal Mabel Lai, Crown Counsel, Crown Law Office Criminal Andrew Sabbadini, Crown Counsel, Guns and Gangs Initiative L.S.O. Professionalism Hours: 0.25 hours Mega Case/Organized Crime Training Forum 2018: Technological Challenges and Solutions Location: Chestnut Residence & Conference Centre, 89 Chestnut St., Toronto Page 5 4:30 – 4:45: Closing Comments and Evaluation Total Substantive Hours (L.S.U.C.): 19 hours Total Professionalism Hours (L.S.U.C.): 3.5 hours	
2018	Miller Thomson - Real Estate Fraud	This presentation was intended to provide one hour of practice management / ethics related to real estate. Specifically it covered the details & examples of the below listed frauds along with providing flags and tips to help lawyers identify and avoid them: - Mortgage Application Fraud / Oklahoma Flips - Title Fraud / Gill v. Bucholtz - Theft / Lin v. CIBC Mortgages Inc - Money Laundering	1
2018	National CLE Program - Protecting Against Money Laundering (November 24, 2017) (Video Version)	Law firms are often the target of money laundering, terrorist financing or other financial fraud-related schemes, and BLG is no exception. All BLG professionals must be constantly vigilant and follow all applicable procedures and policies. This program reviews current rules of professional conduct, legislation and firm policies that protect against money laundering, terrorist financing and sanctions violations and will also explain some of the more common money laundering schemes that can be encountered.	4
2018	Politically Exposed Persons (PEPs) - Exposing the Facts	According to Anti-Money Laundering (AML) and Anti-Corruption regulations, financial institutions must take reasonable measures to determine whether an individual is a Politically Exposed Person (PEP). By placing PEPs into a higher risk model for Enhanced Due Diligence, organizations can protect themselves from being used by money launderers and other harmful activities. At the same time, not all PEPs present the same level of risk. This will vary depending on numerous factors (including the PEP's country of jurisdiction, industry or sector). Learning Objectives: •How regulations are changing – both domestic and foreign •Factors contributing to PEP risk – which PEPs may be riskier than others •Best practices for optimizing screening and monitoring – including cost-savings and efficiencies	1
2018	Practice Direction - money laundering update	Discussions on Money Laundering practices and methods; discussions on The Law Society Practice Direction on identifying and reporting of money	2

		laundering incidence; Hong Kong legislation governing money laundering offences; record keeping and back ground check on clients.	
2018	Private Equity Overview	1.Private Equity Fund Investing – A Primer – This presentation provides a "101" introduction to private equity fund investing, focused on North American funds. The presentation starts with a description of structuring options, fund documentation and investment process. This is followed by a summary of the key terms in limited partnership agreements that govern funds – e.g., investment period, subsequent closings, fund term, investment restrictions, fees and expenses, distribution waterfall, conflicts of interest and limited partner remedies. (30 minutes) 2.Fund Investing – Recent Trends – An advanced-level presentation describing current trends in the market (e.g., focus on fee and expense transparency, market rates for management fees and carry and SEC enforcement actions). This presentation covers off private equity funds, but we can expanded to cover differences in other industries such as infrastructure, real estate and venture capital. (30 minutes) 3.Passive Co-Investing – A Primer – This presentation looks at different co-investment structures, walks through the co-investment process from start to finish, examines the key terms of a co-investment (i.e., fees and expenses, affiliate transactions, pre-emptive rights, alignment on liquidity, syndication, amendment protection and information rights) and discusses helpful side letter provisions (i.e., MFN, transfer right, limitation and anti-money laundering, tax, etc.) (30 minutes) 4.Private M&A – Recent Trends – In this presentation we would lead a deep-dive discussion into key private M&A terms in Canada and the US (i.e., purchase price adjustments, escrows, survival periods, indemnity limitations, sandbag provisions, etc.) referencing both our internal data and ABA studies. (30 minutes)	1
2018	Recent Developments in Company Law	-significant controllers register - Companies Ordinance Pt 12 Div 2A - background papers - companies registry guidance:guideline on the keeping of significant controllers registers by companies (1 March 2018) -obligation on "applicable companies" , registrable persons and registrable legal entities as defined in s. 653A - keeping of SCR, required particulars: name, ID number, company registration number, correspondence address, registered office and nature of control; time for entry of particular and place for keeping of registers -ascertaining significant controllers - company must take reasonable steps to identify its significant controllers - keeping SCR up to date - offences by company; by person knowingly or recklessly making false or misleading statements in	1

		SCR:s 895 -access to SCR - licensing of trust and company service providers - anti-money laundering and counter terrorist financing ordinance cap 615 - persons carrying on trust or company service business must be licensed with company registry - offence - carrying on such business without license s.53F - definition of trust or company service business -with respect to companies, the specified services include: forming corporations, acting or arranging for another person to act as director or secretary of a corporation, providing a registered officer nominee shareholder -exemption from licensing requirements -application for licence with registrar of companies -customer due diligence and record keeping requirements -open-ended fund companies - securities and futures ordinance cap 571 -securities and futures ordinance cap 571 -securities and futures (open-ended fund companies) rules cap 571AQ -background papers: financial services and treasury bureau, open-ended fund companies - consultation paper March 2014 and consultation conclusions January 2016 - directors' duties -directors' duty to exercise powers for proper purposes: Eclair Group Ltd v JKX Oil & gas plc [2016] BCC 79 -misappropriation of corporate assets: Karla Otto Ltd v Bulent Eren Bayram [2017] 2 HKLRD 124 -disqualification: SFC v Li Hejun [2017] 4 HKLRD 785 -Members' remedies : Shih-Hua Investment Co LTd v Zhang Aidong [2017] 3 HKC 393 -members' rights ; inspection of register of members -appointment of directors and irregularity principle -authority of directors to act for company -reduction of capital and solvency statement: BTI 2014 LLC v Sequana SA [2017] 1 BCLC 453 (Rose J, Ch D) -financial assistance for acquisition of shares -scheme of arrangement -corporate rescue and provisional liquidators -winding up	
2018	Responding to Non-Compliance With Laws and Regulations (NOCLAR) For Client Service Professionals Performing Non-Audit Services (DPM 1553) (ID: CA-SC688)	Course description : Mandatory eLearning course for member firm professionals performing non-audit services for clients to enhance awareness of the requirements for responding to Non-Compliance With Laws and Regulations (NOCLAR) in accordance with IESBA Standards. (DPM 1553). The course provides information about the course of action to take if one comes across non-compliance or suspected non-compliance with laws and regulations (NOCLAR) in the course of a client service engagement other than an	1

		audit, as outlined in Deloitte Policy Manual (DPM) Section 1553. It is relevant to such matters as dealing with suspected money laundering, anti-money laundering requirements and whistle-blowing policies.	
2018	TI Canada Discussion Group Seminar	Discussing the topic of money laundering in BC and the Peter German Report commissioned by Attorney General David Eby	1
2018	Trust Accounting Essentials	A full day of trust accounting to both educate and refresh participants on the Law Society's trust accounting requirements. There will be many practical examples that will be useful to both new and established firms, lawyers, and staff members. This course covers topics such as: • opening and operating a trust account, • understanding trust reconciliations and the importance of timely and accurate preparation, • hands-on example of completing a trust reconciliation, • common compliance audit rule exceptions and misconceptions, • when to communicate with the Law Society, and include • anti-money laundering content. This course was held prior at the Law Courts Center. We have refreshed the course and included new content. However, there will be similar content as present prior in the Trust Accounting 101 course. Location: Law Society 2nd Floor – room 220 Instructors: Justin Wright, Senior Trust Auditor Angela Porco, Trust Auditor Registration Fee: $100.00, plus GST, per person.	7
2018	UK Compliance - Annual Compliance Essentials	This course provides an overview regarding your responsibilities in relation to all the key aspects of Compliance. Topics covered include: anti-money laundering and counter-terrorist financing legislation, Know your Client processes and high sensitivity operations, global sanctions and embargoes	1
2019	10th Annual Law of Policing Conference (Vancouver)	Policing is happening on street corners, on digital devices, and in boardrooms across the world. Organized crime, drug trafficking, money laundering and technology are all evolving while the powers and authorities governing police services are sprinting to keep pace. And while police departments are mandated to protect the public, professional standards teams are protecting police officers. Is your department prepared? Program Highlights: - Panel: Enforcing Amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act - Evolving Privacy and Ethical Concerns in the Tech World - Initiating the Inadmissible Patrons Program (Bar Watch) - Top 15 Operational Issues in Policing	12

		- The Police Officer's Guide to Independent - Police Oversight, Roles and Reports - Cross-Country Comparison on Information Checks - Judges' Panel: Advice from the Bench on - Common Legal and Policing Errors Join the Canadian Institute's 10th Annual Law of Policing Conference for balanced, current presentations on the most pressing issues facing police services, police associations, police boards, independent police oversight agencies, and their counsel.	
2019	2019 ACC Annual Meeting	[...] Monday, October 28 4:30 PM - 6:00 PM 406 - Know Your Customer: How to Mitigate the Risk of Bad Actors Presented by the ACC Compliance & Ethics Network Curricula: Compliance, Cross-border/Global, Government Regulation Speakers: Steve Ganis, Member, Mintz Laura Martino, Associate General Counsel, Global Jet Capital Avi Spira, Chief Compliance, Risk & Privacy Officer, FUJIFILM Holdings America Corporation Jennafer Watson, Director of Ethics & Compliance, Managing Counsel, Occidental Petroleum Corporation In-house counsel and their clients continue to face increased reputational and enforcement risks as the penalties for non-compliance reach record highs. These forces have 'awakened' many companies to expand their due diligence process to all counterparties in a commercial transaction. This includes vendors, sellers, customers and everything in between. This panel will discuss the full range of risks your company may face, including doing business with blacklisted or restricted persons, engaging third party intermediaries, and accepting funds from illicit sources. Panelists who have spent years in the trenches to mitigate 'bad actor' problems will discuss anti-corruption, anti-money laundering and sanctions risks in the wake of increased enforcement by OFAC, FinCEN, and SEC, offering practical insights and best practices to help companies lower their risk profile. [...] Tuesday, October 29 11:00 AM - 12:30 PM 604 - Managing Anticorruption and Bribery Risks in the Oil and Gas Industry Presented by the ACC Compliance & Ethics and Energy Networks Curricula: Compliance, Cross-border/Global, Environment & Energy Speakers: Brent Benoit, Chief Compliance Officer, National Oilwell Varco Josh Kaplan, Lead Counsel, Equinor US Holdings Inc.	19

		Catherine Krupka, Partner, Eversheds Sutherland Sarah Paul, Partner, Eversheds Sutherland Amber Shushan, Senior Legal Counsel, PetroChina International (America), Inc. The breadth and scale of the oil and gas industry, business activities in emerging markets, and the complex commercial relationships between oil and gas companies, governments, venture partners, suppliers, and other participants make the oil and gas industry at high risk for corruption and bribery. Drawing on lessons from recent oil and gas corruption investigations, this session will cover the areas of the supply chain that are most vulnerable; key steps for building an effective anti-corruption compliance program; and managing an internal investigation, enforcement inquiries, and remediation issues. [...] Tuesday, October 29 2:30 PM - 4:00 PM 702 - When the Authorities Come Knocking: A Roundtable on Best Practices and Challenges in Avoiding and Dealing with Anti-Bribery Investigations Presented by the ACC Compliance & Ethics Network Curricula: Compliance, Government Regulation Advanced Speakers: Chad Boudreaux, VP Litigation & Chief Compliance and Privacy Officer, Huntington Ingalls Industries, Inc. Catherine Hanaway, Partner, Husch Blackwell Randy Jones, Member, Mintz John Wood, General Counsel, U.S. Chamber of Commerce Every compliance practitioner dreads it: the call from an investigatory authority alleging that their company committed corruption or bribery. What can you do to prevent it? What do you do if it happens? At this roundtable discussion, attendees will be grouped by industry to work through a hypothetical scenario: what to do when the government comes knocking and how they could have prevented it in the first place. Attendees will have the opportunity to learn from facilitators, and each other, about potential challenges and best practices. [...] Tuesday, October 29 2:30 PM - 4:00 PM 704 - Staying Onside: The Nexus of Regulatory Risk and Business Growth Presented in cooperation with Blake, Cassels & Graydon LLP Curricula: Business & Leadership, Compliance, Corporate Governance, Government Regulation Gold Sponsor Interactive Speakers: Kathleen Keilty, Partner, Blake, Cassels & Graydon LLP Michael Pass, Deputy Chief Compliance Officer, Freeport-McMoRan Inc.	

		Dara Redler, General Counsel and Corporate Secretary, Tilray Lisa Skakun, General Counsel & Chief Corporate Development Officer, Coast Capital Savings Federal Credit Union A robust regulatory compliance program means developing, enabling, and managing a framework that promotes an ethical culture, legal compliance, regulatory compliance, and the infrastructure for preventing, detecting, and reporting wrongdoing. Alongside the effective management of compliance risks are operational, financial, and strategic expectations. The role of in-house counsel sits at this nexus and faces the challenge of ensuring regulatory compliance while also being viewed as a proponent of the business and an advocate for business growth. Our international panel will explore this challenge and focus on structuring an effective compliance program; communicating the benefits of compliance policies; and partnering with the board, management, and business units to assess risk, create thresholds, and incorporate regulatory compliance into business growth objectives. Part two of our program will be a roundtable breakout where participants will discuss the integration of their roles within the business to implement compliance programs that align with business objectives. [...] Tuesday, October 29 4:30 PM - 6:00 PM 812 - US National Security Law Update: What the Headlines Mean for Busy In-House Counsel Presented in cooperation with Morrison & Foerster LLP Curricula: Compliance, Cross-border/Global, Data Privacy & Security, Government Regulation Gold Sponsor Speakers: Michael Bosworth, Deputy General Counsel, MacAndrews & Forbes Heather Childs, Deputy Chief Compliance and Ethics Officer, Uber Caroline Krass, Senior Vice President & General Counsel, General Insurance & Deputy General Counsel, American International Group, Inc. David Newman, Partner, Morrison & Foerster LLP Hear an experienced panel’s take on what some of the biggest developments in national security over the past year mean for busy in-house counsel. Topics include high-profile indictments of China- and Russia-linked hackers, major changes in US sanctions policy, and important legislative reforms to US national security reviews of foreign investment (Committee on Foreign Investment in the United States (CFIUS) and Foreign Investment Risk Review Modernization Act (FIRRMA)) and the rules governing law enforcement requests for foreign-stored data (the Claryfing Lawful Overseas Use of Data (CLOUD) Act). This wide-ranging discussion will get beyond the headlines and focus on trends and the implications that bear close	

		watching by in-house counsel. Moderated by a former White House and US Department of Justice National Security official, the panel will bring together diverse perspectives of outside and in-house counsel who have been working on the front lines in these areas. [...]	
2019	21st Annual FCPA Conference in New York City	Please see attached agenda. The course covered legal topics related to anti-corruption including FCPA prosecution trends, conduct of internal investigations, recent cases and policy on FCPA enforcement, anti-corruption programs, cross-border prosecution issues, anti-money laundering and sanctions developments, third party data management to combat bribery, adequate internal controls, corruption red flags, function of Commodity Futures Trading Commission, data privacy/GDPR.	1
2019	3rd Annual Malta Workshop: Looking Ahead- The Future of Residency and Investment	Professionalism, licencing and ethics, Future of Residency and Citizenship by Investment, Future of Investment Migration, Maltese programs and investments, country benefits of programs, Brexit and immigration, due diligence, money laundering, cryptocurrency	1
2019	ACFE May 2019 Training Session	Themes for the 21st century anti-fraud professional (topics included anti money laundering and lawyers' trust accounts, deception detection, cybercrime strategies and report writing)	3
2019	ACTEC 2019 Summer Seminar	This one-day program will cover cross border considerations in estate planning. Topics to be discussed include the ethical obligations of lawyers in the fight against money laundering and terrorist financing, estate planning across the US-Canadian border; and how to plan for clients who travel and live internationally.	2
2019	AML Record-Keeping & Retention	Ashley Roberts, Group Compliance Office of Wakefield Quin, gave a lecture on the new obligations for lawyers and law firms in relation to anti-money laundering record-keeping, retention, and account closing requirements. The lecture provided a summary of the revised record-keeping requirements under the Companies Act 1981, including the internal closing procedures and retention requirements that must be followed for client documentation and the applicable penalties and fines that can be levied by the regulator.	1
2019	AML/ATF Training 2019	Ashley Roberts, Group Compliance Officer of Bermuda law firm Wakefield Quin Limited, gave a lecture summarising recent changes to Bermuda's anti-money laundering and anti-terrorism financing regulations, which included providing examples of common money laundering schemes and how lawyers can best identify and safeguard against such schemes. The lecture also highlighted lawyers' obligations under the Bermuda Bar (Barristers and Accountants AML/ATF Board) Rules 2018 and Corporate Service Provider Business Act 2012 and the internal controls to comply with and client due diligence documentation to obtain to properly identify and verify the identity of firm clients.	1

2019	Anti Money Laundering and Counter Terrorist Financing - Key Principles - 2019	Objectives - Introduction and definitions - The notions of Anti Money Laundering / Counter Terrorist Financig (AML/CTF) applicable to Financial Institutions - The importance for Financial Institutions to comply with AML/CTFregulations - The important role you play and what you can do to ensure compliance with AML/CTF policies / procedures put in place in Financial Institutions. Description 1. The learners will first have to go through a 10-question positioning quiz to assess their knowledge on AML / CTF key principles. 2. If they achieve a score of 90% or higher the learners will be informed right away that they don't have to continue the training on key principles. 3. If the learners do not reach 90% at the positioning quiz, they will be informed that they have to continue the training on key principles, followed by a final validation quiz. A minimum score of 80% is required to pass the quiz and receive completion for the training.	1
2019	Anti-money Laundering	Overall review of the anti-money laundering legislation in Canada, impact on the legal profession and the compliance requirements.	1
2019	Anti-Money Laundering - Changes to Client Identification and Verification Rules Effective January 1, 2020 - December 10, 2019	Anti-Money Laundering - Changes to Client Identification and Verification Rules Effective January 1, 2020	21
2019	Anti-Money Laundering - Changes to Client Identification and Verification Rules Effective January 1, 2020 - December 18, 2019	Anti-Money Laundering - Changes to Client Identification and Verification Rules Effective January 1, 2020 - December 18, 2019	10
2019	Anti-Money Laundering - Changes to Client Identification and Verification Rules Effective January 1, 2020 - November 27, 2019	Anti-Money Laundering - Changes to Client Identification and Verification Rules Effective January 1, 2020	12
2019	Anti-Money Laundering 2019: Risks, Due Diligence and Compliance in an Evolving Legal and Technological World (Live Webcast)	Money laundering is a fast-growing problem in today's global economy. New financial technologies including online and peer-to-peer payment systems, prepaid access, cybercurrency, and crowdfunding have joined well-established methods of laundering the proceeds of criminal activity and have served as platforms for terrorist finance. As new financial products and services are developed, regulators have proposed or implemented regulations to prevent their misuse including requiring providers to implement compliance programs. In addition, there has been a growing focus on the use of shell companies, offshore entities, trusts, and other legal entities to conceal the source or control of funds used to purchase assets and make investments. And, because so many white collar	1

		offenses are money laundering predicate offenses, including tax violations, securities fraud, bank fraud, and other offenses, companies and professionals outside the financial sector need to be aware of anti-money laundering and counter terrorist finance (AML/CFT) laws and regulations.	
2019	Anti-Money Laundering 2019: Risks, Due Diligence and Compliance in an Evolving Legal and Technological World (On-Demand)	Money laundering is a fast-growing problem in today's global economy. New financial technologies including online and peer-to-peer payment systems, prepaid access, cybercurrency, and crowdfunding have joined well-established methods of laundering the proceeds of criminal activity and have served as platforms for terrorist finance. As new financial products and services are developed, regulators have proposed or implemented regulations to prevent their misuse including requiring providers to implement compliance programs. In addition, there has been a growing focus on the use of shell companies, offshore entities, trusts, and other legal entities to conceal the source or control of funds used to purchase assets and make investments. And, because so many white collar offenses are money laundering predicate offenses, including tax violations, securities fraud, bank fraud, and other offenses, companies and professionals outside the financial sector need to be aware of anti-money laundering and counter terrorist finance (AML/CFT) laws and regulations.	2
2019	Anti-Money Laundering and Anti-Terrorist Financing Amendments Q&A Webinar	Chioma Ufodike, Manager, Trust Safety and Nancy Carruthers, Senior Manager, Policy and Ethics hosted a webinar on Sept. 19, focusing on the most frequently asked questions regarding the upcoming changes to the Anti-Money Laundering and Terrorist Financing Model Rules, effective Sept. 30, 2019. In the webinar, Chioma and Nancy discussed amendments to client identification and verification rules, as well as accounting rules governing the receipt of cash and the permitted use of lawyers' trust accounts.	1
2019	Anti-Money Laundering and Anti-terrorist Financing Rule Amendments	Three lawyers from Miller Thomson LLP will conduct an overview of anti-money laundering and anti-terrorist financing rule amendments. This will review all amendments that will take effect on September 30, 2019 for all law societies that are part of the federation of law societies of Canada.	1
2019	Anti-Money Laundering Client Identification & Verification	CLE Web Broadcast to learn about the Changes to Client Identification and Verification Rules related to Anti-Money Laundering Effective January 1, 2020	3
2019	Anti-Money Laundering E-Learning Course	On-line course for updated compulsory anti-money laundering regulations and guidelines with testing at the conclusion	1
2019	Anti-Money Laundering for Lawyers and Law Firms (CLEBC)	Pre-recorded CLEBC presentation by Barb Buchanan and Scott Bartos on how to protect your firm from unwittingly engaging in money laundering.	7
2019	Anti-Money Laundering Legislation Update	This course covers recent developments arising from Anti-Money Laundering and Countering Financing of Terrorism Act. Topics include the 2020 assessment to be undertaken by the Financial Action Task Force and	1

		lessons learned arising from the recent events in Christchurch.	
2019	Basics of Export Controls 2019	In an age of fast-evolving geopolitical relations, security challenges and sanctions policies, the rules of international trade are affecting U.S. and multinational corporations, financial institutions, investors and even governments as never before. The Commerce Department's Bureau of Industry and Security (BIS), the State Department's Directorate of Defense Trade Controls (DDTC), and the Treasury Department's Office of Foreign Assets Control (OFAC), Financial Crimes Enforcement Network (FinCEN) and now the Committee on Foreign Investment in the United States (CFIUS) each plays an important role in administering and enforcing the intricate web of restrictions governing trade in U.S. products and technologies, the trade-related activities of U.S. parties and the financial transactions that make them possible. Understanding the potential scope and applicability of these various regulatory programs to global business operations is increasingly important in an era of heightened agency enforcement and enhanced penalties. And a thorough understanding of these various regulatory regimes is an essential foundation for developing an effective global trade compliance program. Aaron R. Hutman of Pillsbury Winthrop Shaw Pittman LLP and Joshua N. Williams of Covington & Burling LLP will discuss: • The basic elements of the export control regimes administered by BIS and DDTC • The various economic sanctions programs administered by OFAC • The overlap of sanctions and export control rules with anti-money laundering regulation and the role of financial institution “gatekeepers” • The new role of CFIUS under its recently-announced Pilot Program • Enforcement trends This Briefing is scheduled as a review of the fundamentals before PLI’s more advanced Coping with U.S. Export Controls and Sanctions 2019 program, being held on December 12-13, 2019 in Washington, D.C. Please register for the two-day program and receive this Briefing free as part of your registration.	1
2019	Both Sides of the (Bit)Coin	This event is hosted by the International Centre for Criminal Law Reform and Criminal Justice Policy with generous support from TRACE and will be followed by TRACE’s inaugural Bribery and Economic Crime Summit: Promoting Transparency on June 26-27, 2019. 1:00 - 2:15pm The Possibilities of Blockchain Moderator: Dr. Gerry Ferguson (University of Victoria) Panel Speakers:	1

		Dr. Chris Rowell (Postdoctoral Research and Teaching Fellow at the University of British Columbia): Blockchain 101. What is blockchain and how can blockchain help to bring trust to records and transactions, and prevent corruption? Cap. Aaron Gilkes (RCMP, Integrated Technological Crime Unit): Investigators' views on cryptocurrency use in money laundering and other offence. Kris Constable (Canadian Institute for Information and Privacy Studies Society): Privacy and cybersecurity, possibilities for using blockchain to protect privacy and prevent cybercrimes. 2:30 - 3:30pm The Revenue Canada Agency Scam: Tracing Illicit Bitcoin Transactions Speaker: Dr. Richard Frank (International Cybercrime Research Centre)	
2019	Bribery and Economic Crime Summit: Promoting Transparency	This event will explore the world of corruption and related financial crime and what can be done to detect, prevent and reduce bribery, money laundering, and fraud and to foster collaboration among key stakeholders. Speakers and participants will include high profile prosecutors, business leaders and global experts. Discussions will involve all participants and aim to produce actionable takeaways. Participation is limited to senior representatives of the private sector, academia, and government.	2
2019	CFM Study Group - Lawyer Ethics and Professionalism: Current Issues	This session will cover current ethical challenges facing lawyers and the profession. It will be presented in 3 sections: 1. Top 5 conduct and practice issues the Law Society of BC is dealing with 2. Other professional issues 3. Ethical scenarios The session will address: • the importance of the role of lawyers as gatekeepers in preventing money laundering • the Law Society of BC’s complaints and discipline processes • issues encountered by litigators and specifically those practicing in the areas of tort and class action • crossing the US border • civility and the Supreme Court of Canada decision in Groia v. Law Society of Upper Canada • the Law Society of BC’s Law Firm Regulation initiative	6
2019	CLEBC Anti-Money Laundering for Lawyers and Law Firms - REBROADCAST 161819	Wondering how money laundering impacts your clients? Get up to date on Canada’s anti-money laundering (“AML”) legislation, which affects tens of thousands of Canadian companies. This course will also cover developments in prosecuting and defending proceeds of crime cases, civil forfeiture, and a lawyer’s professional obligations related to AML. You will leave this course with knowledge to protect and advise your clients, at a time when money laundering is nearly a daily news item in BC. Speakers will	31

		include the Attorney General of BC along with specialists in the AML field. A minimum of 1 hour pertaining to professional responsibility and ethics, client care and relations, and/or practice management.	
2019	CLEBC Anti-Money Laundering for Lawyers and Law Firms -161819	Wondering how money laundering impacts your clients? Get up to date on Canada's anti-money laundering ("AML") legislation, which affects tens of thousands of Canadian companies. This course will also cover developments in prosecuting and defending proceeds of crime cases, civil forfeiture, and a lawyer's professional obligations related to AML. You will leave this course with knowledge to protect and advise your clients, at a time when money laundering is nearly a daily news item in BC. Speakers will include the Attorney General of BC along with specialists in the AML field. A minimum of 1 hour pertaining to professional responsibility and ethics, client care and relations, and/or practice management.	85
2019	CLEBC CLE-TV: Anti-Money Laundering - Client Identification and Verification Rules -168319	Law Society Rules 3-98 to 3-109 require lawyers to follow client identification and verification procedures when retained by a client to provide legal services. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Lawyers who do not comply with the rules may be subject to discipline. Learn about Law Society requirements and new developments. This course will involve a minimum of 1 hour pertaining to professional responsibility and ethics, client care and relations, and/or practice management.	186
2019	CLEBC CLE-TV: Anti-Money Laundering - Client Identification and Verification Rules REBROADCAST -168319	Law Society Rules 3-98 to 3-109 require lawyers to follow client identification and verification procedures when retained by a client to provide legal services. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Lawyers who do not comply with the rules may be subject to discipline. Learn about Law Society requirements and new developments. This course will involve a minimum of 1 hour pertaining to professional responsibility and ethics, client care and relations, and/or practice management.	107
2019	CLEBC CLE-TV: Anti-Money Laundering for Lawyers and Law Firms - REBROADCAST -160518	As lawyers, you receive and disburse large sums of money on a regular basis, leaving you and your firm vulnerable to money laundering attempts. Join us for a focused 90 minute session on how to protect your firm from unwittingly engaging in money laundering. You will leave this session understanding your obligations as a lawyer, and tools to ensure that you are compliant and prepared to handle situations that raise money laundering risks.	5

		Join us and be smart in an era of increasing money laundering scrutiny today! A minimum of 1.5 hours will involve aspects of professional responsibility and ethics, client care and relations, and/or practice management.	
2019	Client Risk Assessments	Ashley Roberts, Group Compliance Officer of Bermuda law firm Wakefield Quin Limited, gave a lecture summarizing recent rules regarding anti-money laundering obligations to follow when entering into new engagements with clients and specifically how to properly risk assess potential clients and complete and file client risk assessments for new clients as well as "re-risking" existing clients. The lecture also summarized how the Bermuda Monitory Authority will monitor and evaluate compliance with these AML requirements.	1
2019	Compliance with the Proceeds of Crime Money Laundering and Terrorist Financing Act	The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) will be conducting a seminar. This seminar is designed to address the implementation and maintenance of a compliance program as well as client identification, record keeping and reporting obligations in accordance with the Proceeds of Crime Money Laundering and Terrorist Financing Act (PCMLTFA). FINTRAC will address this by providing an overview of: - Securities dealers' PCMLTFA obligations, the examination process and assessment approach with a focus on a compliance program's overall effectiveness; - Common deficiencies observed in examinations conducted in this sector and best practices; and - The role and importance of Securities dealers in submitting suspicious transaction reports.	2
2019	Complying with Canada's Amended Anti-Money Laundering and Anti-Terrorist Financing Legislation	Recent amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act may have implications for your accounting practice. Discover what your obligations are under this updated Act, and how to make sure your organization follows the new rules, with our informative webinar, Compliance with Canada's Amended Anti-Money Laundering and Anti-Terrorist Financing Legislation. This webinar will also explain the role of the Financial Transactions and Reports Analysis Centre of Canada in ensuring adherence to the legislation. You will learn about: the features of Canada's AML program changes to accountants' AML obligations how to update your organization's compliance program	2
2019	Conference Day	Common Practice Review Deficiencies; The Power of Trusts in Wealth Management; 5 Steps to Converting Facebook Ads; Money Laundering; The Mortgage Investment Corp (MIC) - RRSP Rules and Impact of Prohibited Investment Rules; Informal Tax Court, how to represent your clients; Managing Workplace Stress: Signs and Strategies; I have a Claim... or do I?; Artificial Intelligence	1
2019	Customer Screening	Ashley Roberts, Group Compliance Officer of Wakefield Quin, gave a lecture on law firms' customer screening requirements as set out in Bermuda's	1

		various anti-money laundering and anti-terrorist financing regulations. The lecture included a summary and analysis of the rationale behind the Bermuda Monetary Authority's recent fines levied against corporate service providers, and identified the types of client documentation that should be obtained for different categories of clients and what verification techniques lawyers can use to satisfy AML/ATF requirements.	
2019	Cyber Security - The Invisible War	Our presenter, Chris Mathers, will speak about Cyber Security awareness and prevention solutions. Chris is a former undercover law enforcement officer, expert on fraud, cyber-crime, money laundering, compliance and security. The presentation will include discussions of the following: • Who are the threat actors? • How to identify typical IT threats to law firms • Password management • Availability of stolen credentials on the internet and how law firms are vulnerable • IT security while traveling • The latest trends in internet crime • IT threats to you and your family We will offer this session twice throughout the day: from 9:00 to 10:00 and from 12:00 to 1:00.	6
2019	Disrupting Money Laundering	DISRUPTING MONEY LAUNDERING 9:00 am – 12:00 pm Reports commissioned by the Ministry of Finance and the Attorney General have cast a light on the societal harm resulting from money laundering. Not only does money laundering play a critical role in sustaining the criminal economy, but it is also a significant contributor to the escalation of housing costs in B.C.'s communities. This policy session will draw upon a range of experts from the fields of criminal law, investigation, enforcement, and regulation to explore the effects of money laundering on BC communities. This session will also explore investigative and prosecutorial and regulatory changes needed at all levels of government to build a more effective anti-money laundering regime, with a particular focus on disrupting the illegal activity of money laundering in BC real estate.	3
2019	Ethics in Evolving Compliance Requirements	The constantly shifting landscape of laws aimed to prevent money laundering, terrorism and tax evasion creates numerous landmines for legal professionals. Violations can result in substantial fines and possibly cost uninformed attorneys their license. Learn the laws and governing agencies to watch, and the conflicts that can arise between statutory formation requirements and ethics guidelines. We'll cover the current lay of the land, discuss the potential impact of legislation now pending, and delve into the ABA Model Rules of Professional Conduct.	1
2019	Facing the Future Together, Creating Synergies and Achieving Global Reach	Business law conference for global and international lawyers on various topics, such as: (1) FINTECH and cybersecurity; (2) Money Laundering and Digital Economic Crimes; (3) Digitization of Mortgage	1

		Market; (4) Family Governance for International Family Businesses; (5) Secure e-mail communications for lawyers; (6) Working with in-house counsel; (7) Current Global Market Conditions.	
2019	FINTRAC Overview	Counsel and an investigator working with FINTRAC outlined the work of FINTRAC and conducted an overview of the Proceeds of Crime (Money Laundering) and Terrorist Finance Act. The legislative obligations on counsel and other professions was reviewed and the presenters provided case scenarios to prompt discussion about the application of the Act.	3
2019	Harris In-house Webinar: CLEBC Anti-Money Laundering – Client Identification and Verification Rules	Law Society Rules 3-98 to 3-109 require lawyers to follow client identification and verification procedures when retained by a client to provide legal services. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Lawyers who do not comply with the rules may be subject to discipline.	9
2019	In-House Counsel Professional Development Series 2019 - Session 3	BUSINESS CRIME & INVESTIGATIONS This session featured a key note address from former RCMP Deputy Commissioner Peter German on Money Laundering in Canada. Additional topics discussed included: • Investigations – Why Words Matter • Anti-Money Laundering and Economic Sanctions – Update on Recent Developments • Corruption & Procurement Fraud • Panel Discussion: What can we do about it?	86
2019	Jenkins Marzban Logan - In House Seminar - Anti-Money Laundering - Client Identification and Verification Rules	CLE-TV: Anti-Money Laundering - Client Identification and Verification Rules	2
2019	Know your Client / Anti-Money Laundering Webinar	Course Description by provider: "There are changes coming which impact our firm's Know Your Client / Anti-Money Laundering process effective January 1, 2020 and we want to make sure that everyone is informed and up to speed. Many of you may have already heard from your Province's Law Society directly about these changes and may have attended a session. While the changes need to be understood by everyone, they are not considered to be drastic. We will be taking this opportunity to unify our forms and processes across the firm."	1
2019	Law Firm Accountants Summer 2019 Conference	Keynote address by Professor Maureen Maloney with respect to her recent report about money laundering, Combatting Money Laundering in BC Real Estate.	1
2019	Lawyers and Money Laundering	David McCartney (Investigator with the Law Society of BC) and John N Ahern (National Special Advisor, RCMP Federal Policing) provided a presentation to staff at the Office of the Superintendent of Real Estate (OSRE). (Several OSRE staff are lawyers.) The presentation was titled "Lawyers and Money Laundering" and discussed LSBC discipline decisions involving potential money laundering activities, case law related to attempts to include lawyers in	1

		PCMLTFA reporting obligations, solicitor client privilege, and relevant Law Society Rules (i.e. Rule 3.2-7). The presentation included ethical and other regulatory concepts.	
2019	Money Laundering & Terrorist Financing: The Life Insurance Focus	"Money Laundering & Terrorist Financing: The Life Insurance Focus" was a seminar that was provided by ABC Solutions Inc. at the Insurance Council of BC's offices on September 30, 2019. The seminar provided information on Canadian anti-money laundering laws, how to detect potential money laundering, and what the legislated reporting obligations are for life insurance companies, brokers, and agents.	1
2019	Money Laundering in Canada 2019	ABCsolutions' annual conference promises to be informative and pragmatic, looking at trending crimes, risks, compliance practices, and regulatory change. For 2019, we have consulted various experts to identify compliance management topics that create challenges in their interpretation and/or application. Others will speak to money laundering topics and trends they are currently examining, identifying associated threats and red flags that can be used by reporting entities and regulators alike to manage the risks. Common compliance program practices will be compared to regulatory standards to identify application limitations that could result in a deficiency ruling during an effectiveness examination	1
2019	Money Laundering in the BC Real Estate and Luxury Vehicle Markets	The ACLP event to be held on June 11, 2019 will feature a discussion of two recent independent review reports released a few weeks ago on the subjects of Money Laundering in the BC Real Estate and Luxury Car Markets.	6
2019	Money Laundering Introduction and Typologies for Legal Profession	Presentation from RCMP Financial Integrity, Team Lead, on money laundering: (1) Introduction to what constitutes money laundering under the Criminal Code and recent amendment (2) Discussion of offences that generate proceeds of crime (3) Fintrac's role and identifying proceeds of crime (4) Typologies of money laundering	12
2019	National CLE Program - Protecting Against Money Laundering (November 24, 2017) (Video Version)	Law firms are often the target of money laundering, terrorist financing or other financial fraud-related schemes, and BLG is no exception. All BLG professionals must be constantly vigilant and follow all applicable procedures and policies. This program reviews current rules of professional conduct, legislation and firm policies that protect against money laundering, terrorist financing and sanctions violations and will also explain some of the more common money laundering schemes that can be encountered.	5
2019	New AML Regulations	The long-expected amendments to regulations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) have been published in the July 10, 2019 edition of the Canada Gazette, Part II. Released in draft form in mid-2018, the proposals were subject to several rounds of consultations involving all reporting entity (RE) sectors, including	1

		credit unions. The final version of the new regulations are outlined in SOR/2019-240, and cover changes to a wide range of issues, including Suspicious Transaction Reporting (STR), Electronic Funds Transfers (EFT), and Beneficial Ownership. The revisions also modify and/or now expressly regulate, Money Services Businesses, Virtual Currency and Prepaid Payment Products. While these amendments will no doubt require substantive changes to current credit union policies and procedures, most will come into effect June 1, 2020 or June 1, 2021. The one notable—and favourable—exception to this are changes to the methods that can be used to identify an individual, which came into effect June 22, 2019. To assist credit union understanding of the amendments, CCUA is hosting a free webinar with Jackie Shinfield, AML regulation expert and Partner in the Financial Services Group at Blake, Cassels & Graydon LLP, to be held on Wednesday, July 24 from 1:00 – 3:00 p.m. ET. Click here to register.	
2019	NextGen AML monitoring: Advanced analytics and machine learning	Financial institutions are exploring more sophisticated anti-money laundering (AML) transaction monitoring approaches that use advanced analytics and artificial intelligence. The transition from traditional monitoring systems to next-generation approaches requires careful planning and execution. We'll discuss: •Why organizations are considering next-generation models. •Hurdles organizations must overcome and key steps for planning the transition. •How organizations can effectively execute their plan and drive toward business as usual. Participants will learn how a phased approach can help them successfully transition to a next-generation AML solution that can efficiently and effectively combat money laundering and terrorist financing.	1
2019	Overview of Hong Kong Financial Crime Laws and Regulations	Course objective: Overview of Hong Kong's Financial Crime Laws & Regulations Course outline: The course will cover the following areas • Anti-Money Laundering and Counter-Terrorist Financing • Sanctions • Bribery & Corruption • Case studies (including international cases)	1
2019	PJH ATTENDING GROUP STUDY - MIRADOR LAW CORP.	Thursday, November 28 (9:00 am - 3:00 pm) • Cannabis Roundtable (1.5 hours + 30 minute discussion) (2 hours total) • Film – Puncture (1 hour and 40 minutes + 20 minute discussion) *Ethics and Professionalism Credits* (2 hours ethics) • Revamping Canada's Anti-Money Laundering Rules: What's New, What's Changed and What It Means for Business (1 hour) • Commercial Lending Presentation by Pat Haberl (1 hour)	1

2019	PMAC Full Day Regulatory & Compliance Forum	This program covers issues ranging from securities regulatory developments, privacy and cyber, anti-money laundering and anti-terrorist financing and regulatory audit practices and findings. Please refer to the agenda, below:	4
2019	Preventing Money Laundering and Terrorist Financing	This course sets out how to identify money laundering and terrorist financing in the corporate world, and the appropriate legal steps to take when spotted	1
2019	Property Deception and Anti Money Laundering	Property deception cases involving clients and employees discussed ;management issues to avoid and spot deceptive practices ; Anti-money Laundering laws in Hong Kong ; office management procedures to monitor AML practices.	1
2019	Revamping Canada's Anti-Money Laundering Rules: What's New, What's Changed and What It Means for Business	The wait is now over - Since the proposed amendments to the regulations to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act one year ago, regulated entities have been awaiting for the final regulations to be released. After numerous rounds of consultations with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), the regulations were released on June 22, 2019.	18
2019	The Dangerous Client and the Dangerous Solicitor? and RME elective for legal practitioners on risk management strategies and systems for the avoidance of bribery and corruption	Discussion of effective risk management strategies and systems within law firms - who is most dangerous for risk assessment, partner, solicitor or the junior employee in the law firm? - is the problem of identifying the dangerous junior employee more difficult than identifying the dangerous solicitor or partner? - are all 3 acting as "agents" of the law firm? - available risk management tools for law firms - the two partner rule - the opinions committee - formal audit program to check compliance - appointment of designated partner in charge of risk management issues - embedded culture of billable hours in law firms - a solution for avoidance of bribery and corruption? - the billing system in law firms creates a risk management problem of rewards - can law firms have an alternative system of rewards? - analogies with obligations of solicitor imposed in context of anti-money laundering due diligence - risk assessment and 5 types of client risk for bribery and corruption - country; sectorial, transaction; business opportunity and business partnership risks - Mercer's typologies of the dangerous lawyer - the source of law regulating a HK solicitor's conduct and the solicitor's duty to report misconduct - the law society's guide to professional conduct; solicitors' Practice Rule 5D - the dangerous client meets the dangerous solicitor in criminal litigation - risk management tools for rule 5D - options - the views of the partners? whistleblowing - better late than never? - discussion of Phillip KH Wong Kennedy YH Wong	1

		& Co (a firm of solicitors) & Another v the commissioner of the ICAC [2009] HKCU 483 - the ICAC Ordinance Cap 204 - powers to search - section 10B - claim of legal professional privilege? - risk communication and risk management	
2019	The Downstream Impact on Real Estate of the Focus on Money Laundering	On behalf of the Anti-Corruption Law Program (ACLP), which is a joint program under a collaborative working partnership of the Peter A. Allard School of Law at UBC, the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) and Transparency International Canada (TI Canada), we are pleased to invite you to attend our 19th ACLP education event. This event, which is presented as a TI Canada Vancouver Discussion Group seminar, will feature a discussion of the downstream impact of emerging government interventions in the real estate market that have resulted from allegations of real estate - related money laundering. The Metro Vancouver housing market is in the midst of an undeniable downturn. New regulatory measures including the BC Foreign Buyers Tax and the Speculation and Vacancy Tax have proven effective in curbing foreign investment appetite. Despite these successes, recent revelations on the pervasiveness of financial crime and money laundering in Vancouver's real estate market has placed increased scrutiny on the region's housing affordability crisis. In light of this changing landscape, governments at all levels are expected to take urgent action, especially following commitments made during the 2019 federal election campaign. Join us on Thursday, November 7 for a panel discussion on the downstream impact of emerging government interventions and changing regulatory framework on Vancouver's real estate market and housing affordability. Leading the seminar discussion will be a panel of experts consisting of: Mr. Sean Boyle, Partner, Blake Cassels & Graydon LLP – Moderator Mr. Ryan Lang, Director, Deloitte LLP - Panelist Dr. Tsur Somerville, Associate Professor, Sauder School of Business at UBC – Panelist Mr. Michael Noseworthy, Superintendent of Real Estate, Government of BC - Panelist	11
2019	Trust Accounting Course	Full day of trust accounting to both educate and refresh participants on the Law Society's trust accounting requirements. There will be many practical examples that will be useful to both new and established firms, lawyers, and staff members. An additional course will be offered in November. Date to be determined. This course covers topics such as: • opening and operating a trust account,	22

		• understanding trust reconciliations and the importance of timely and accurate preparation, • hands-on example of completing a trust reconciliation, • common compliance audit rule exceptions and misconceptions, • when to communicate with the Law Society, and include • anti-money laundering content. Location: Law Society 2nd Floor – room 204 Instructors: Krista Adamek, Audit Team Leader David Cho, Trust Auditor Registration Fee: Free	
2019	Trust Accounting Course (full)	Full day of trust accounting to both educate and refresh participants on the Law Society's trust accounting requirements. There will be many practical examples that will be useful to both new and established firms, lawyers, and staff members. An additional course will be offered in November. Date to be determined. This course covers topics such as: • opening and operating a trust account, • understanding trust reconciliations and the importance of timely and accurate preparation, • hands-on example of completing a trust reconciliation, • common compliance audit rule exceptions and misconceptions, • when to communicate with the Law Society, and include • anti-money laundering content. Location: Law Society 2nd Floor – room 204 Instructors: Krista Adamek, Audit Team Leader David Cho, Trust Auditor Registration Fee: Free	45
2019	Trust Accounting Essentials	A full day of trust accounting information to both educate and refresh participants on the Law Society's trust accounting requirements. This course covers topics such as: • opening and operating a trust account, • understanding trust reconciliations and the importance of timely and accurate preparation, • hands-on example of completing a trust reconciliation, • common compliance audit rule exceptions and misconceptions, • when to communicate with the Law Society, and include • anti-money laundering content.	13
2019	Trust Accounting Essentials	A full day of trust accounting to both educate and refresh participants on the Law Society's trust accounting requirements. There will be many practical examples that will be useful to both new and	9

		established firms, lawyers, and staff members. This course covers topics such as: • opening and operating a trust account, • understanding trust reconciliations and the importance of timely and accurate preparation, • hands-on example of completing a trust reconciliation, • common compliance audit rule exceptions and misconceptions, • when to communicate with the Law Society, and include • anti-money laundering content. Location: Law Society 2nd Floor – room 220 Instructors: Justin Wright, Senior Trust Auditor Angela Porco, Trust Auditor Registration Fee: $100.00, plus GST, per person. ***please note, attendance to this course will provide you with 2 hours of ethics and professional responsibility component for your BC Law Society reporting.***	
2019	What Was That? - An Introduction to Cryptocurrency	The intense mania of 2017-2018 has receded but cryptocurrencies continue to pose interesting questions for Canadian lawyers, such as: What are cryptocurrencies? Where do they come from? How are they regulated? Why might cryptocurrencies present money laundering issues? What's the difference between securities tokens and tokens treated as securities? This session will give an accessible introduction to these questions.	3
2020	A New Reality In Real Estate: Non-Resident Clients, Money Laundering and Client Identification Requirements	Real estate practitioners from coast to coast to coast are confronted with increased governmental attention to non-resident investment in Canadian real estate. This program will explore the legal and regulatory issues real estate lawyers must confront, including non-resident withholding tax issues that can arise when representing a landlord or vendor, as well as collateral issues that have arisen when purchasing from an enforcing mortgage lender. Concerns about non-resident money laundering in the real estate industry and avoidance strategies, including the importance of client identification, will be addressed. Topics will include: Dealing with non-resident vendors: s. 116, of the ITA Residency and mortgage enforcement Non-resident money laundering: concerns, the reality, and warning signs Client identification Non-resident buyers and beneficial ownership	10
2020	A New Reality In Real Estate: Non-Resident Clients, Money Laundering and Client Identification Requirements (RECORDING)	Real estate practitioners from coast to coast to coast are confronted with increased governmental attention to non-resident investment in Canadian real estate. This program will explore the legal and regulatory issues real estate lawyers must confront, including non-resident withholding tax issues that can arise	2

		when representing a landlord or vendor, as well as collateral issues that have arisen when purchasing from an enforcing mortgage lender. Concerns about non-resident money laundering in the real estate industry and avoidance strategies, including the importance of client identification, will be addressed. Topics will include: Dealing with non-resident vendors: s. 116, of the ITA Residency and mortgage enforcement Non-resident money laundering: concerns, the reality, and warning signs Client identification Non-resident buyers and beneficial ownership	
2020	A Threats and Safeguards Approach to Ethical Decision Making	Regardless of your specific role as a CPA, your employer and/or clients have high expectations of your ability to address ethical challenges, such as those that are driven by: * changing social norms * complexity of the work environment * technology and misinformation * inherent bias and the impact on objectivity * pressure from clients and employers * inducements, including bribery and corruption * climate change * money laundering risks In this session, you will be guided through a systematic process to: * collaboratively explore the issue, * evaluate the situation in the context of the Fundamental Principles, and * use the CPA Code to plan how to manage and address challenges through appropriate safeguards	1
2020	AML for Directors 2020	The course reviews Canadian anti money laundering laws and the obligations upon Credit Unions to comply. I am required to take the course in connection with my role as a director of a credit union. The course deals with governance issues regarding implementation, compliance, testing and adequacy of AML policies and procedures. The course has a test at its completion, which I completed and scored 100%.	1
2020	AML Regulations …..Yet More Amendments	On February 15, 2020, the Department of Finance published further proposed amendments to the regulations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. These amendments are proposed to come into force on June 1, 2021. Please join our webcast as we provide an overview of: • Changes to the Business Relationship and Ongoing Monitoring Standards • Politically Exposed Persons • Beneficial Ownership • MSBs • Casinos • Risk Assessments	5
2020	AML Session-Lawyers as Gatekeepers	This session was for IME lawyers and Discipline counsel to discuss AML obligations and strategies for conducting these investigations. Course agenda:	15

		(1) Introduction to money laundering (2) Lawyers' obligations as gatekeepers (a) use of trust account in absence of legal services and considerations when investigating this concern (b) duty to make inquiries and when it is triggered including discussion of suspicious circumstances (3) Strategies for conducting AML/misuse of trust account investigations (4) Lessons learned from conducting hearings	
2020	Anti Money Laundering Global Course	Five modules to recognize money laundering, terrorist funding, steps, responsibility in regard to know your client, what to do if concerns, examples, tests.	2
2020	Anti Money Laundering in B: Reflections for Regulators and Associations	Anti Money Laundering Presentation hosted by the Real Estate Council at the Fairmont Hotel on proposed amendments to the regulations under the federal Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)	1
2020	Anti-Money Laundering - Changes to Client Identification and Verification Rules Effective January 1, 2020 - November 27, 2019 (recording)	Anti-Money Laundering - Changes to Client Identification and Verification Rules Effective January 1, 2020	21
2020	Anti-Money Laundering - Client Identification and Verification Rules	CLE Rebroadcast from November 27, 2019 Effective January 1, 2020, amendments to the client identification and verification rules introduce more stringent requirements to verify a client's identity, provide more options for how to confirm a client's identity, and require lawyers in financial transactions to obtain additional information about a client's source of funds, as well as periodic monitoring and recording professional business relationships with clients. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Lawyers who do not comply with the rules may be subject to discipline. Learn about Law Society requirements and new developments.	4
2020	Anti-Money Laundering and Client Due Diligence	Money laundering and terrorist financing could pose significant compliance and reputational risks for corporates. While every member of the firm should stay vigilant about the associated risks, Financial institutions and designated non financial businesses and professions are under a statutory duty to perform client due diligence ("CDD") checks in Hong Kong. CDD is the cornerstone of an effective AML/CTF program. In this one hour session, we will walk through the different CDD requirements for different types of clients. Different examples will be used to highlight a risk-based approach to CDD.	1
2020	Anti-Money Laundering and Client Identification/Verification	This webinar will address the purpose and practice implications of proposed amendments to Division 16 and 17 of the Law Society of Yukon rules for anti-money laundering and client identification and verification.	6

2020	Anti-money Laundering for Fee Earners in International Law Firms	Description This course is for those who work in international law firms. It looks at your obligations under UK anti-money laundering requirements. Objectives By the end of this course you will be able to: Understand what AML regulations are trying to achieve Explain the obligations the law puts on you Identify when ML regulations apply Apply the steps to perform Customer Due Diligence on individuals Identify PEPs Apply the steps to perform Customer Due Diligence on entities/beneficial owners including PSC registers, trusts and Know Your Transactions Understand what happens after you make a money laundering report Identify when you should make a money laundering report Distinguish what you can tell a client after a report has been made	1
2020	Anti-Money Laundering in BC – Updates and Best Practices (BC20SOL11W)	1.00 Hours of Approved Continuing Professional Development in BC. This webinar is accredited for Practice Management. Dr. Peter German QC PhD, Peter German & Associates Inc., Joanne Stark, and Brett Horton will examine the problem of money laundering in BC with an emphasis on what lawyers can do to help prevent it. Topics will include: 1. The current status of the Cullen Commission; 2. 2019 Independent Review of Money Laundering in B.C. Real Estate; and 3. Best practices.	31
2020	Anti-Money Laundering in Real Estate Course	Developed in collaboration with anti-money laundering experts, the course will be made available through the Real Estate Division at UBC. It is a mandatory continuing education course for all licensed real estate professionals in BC. We thank FINTRAC for their support in this project. Module 1 – Introduction and Money Laundering Basics Module 2 – Background on the Anti-Money Laundering Regime Module 3 – Real Estate and Money Laundering Module 4 – Overview of Compliance Obligations Module 5 – Suspicious Transactions Module 6 – Emerging Issues The course includes videos and knowledge check questions within each module. You will have three days from the start date you select in order to complete the course. You must complete all course modules AND obtain a passing grade of at least 70% on the final assessment.	10

		Once you have passed the final assessment, you will receive a course completion letter.	
2020	Anti-Money Laundering Measures	The Law Society of BC is offering a free two-hour program provided by Practice Advisor Barbara Buchanan QC and Audit Team Leader Tina Kaminski to help lawyers comply with the Law Society's anti-money laundering rules. The program includes information on money laundering, cash, client identification and verification, red flags and risk management. The program is eligible for two hours of CPD credit. To view the program, go to [https://youtu.be/d5yO_iI58BM]. Location: Webinar Instructors: Barbara Buchanan, QC, Practice Advisor Tina Kaminski, Audit Team Leader Registration Fee: Free	126
2020	Anti-Money Laundering Overview	Training and overview of anti-money laundering law in New Zealand, specifically related to the banking and finance practice area, presented by Ling Yan Pang (senior associate at Russell McVeagh) and delivered to national banking and finance practice group.	1
2020	Beware! Whistleblowers, Wolves, and Lambs - Navigating Ethical Landmines in Global Investigations	Course focused on allegations of wrongdoing that come to a company's attention through many avenues, including both publicly and internally. In the extractive industries, issues may arise regarding compliance by the company, its employees, agents, consultants, and business partners with environmental and resource protection laws, as well as anti-corruption, sanctions, and anti-money laundering laws and regulations. This presentation addressed the steps companies should take once they become aware of such allegations, including the pitfalls they may encounter when there is a whistleblower involved, the relevance of the U.S. Model Rules of Professional Conduct to the conduct of the investigation, and the role of executives, the Audit Committee, and the Board in overseeing any internal investigation and interactions with the government, including whether or not to make a voluntary self-disclosure.	1
2020	BNU Ethics	Anti-Money laundering and client identification and verification rules	4
2020	Clark Wilson - CW Practice - Anti-Money Laundering: Client Identification and Verification Rules (CLE-TV Rebroadcast)	This is an in house re-broadcast of an important CLEBC presentation by Barbara K. Buchanan, QC (Practice Advisor, Conduct & Ethics, Law Society of BC) from November 2019 about the amendments to the CI&V rules that took effect on January 1, 2020. The amendments introduce more stringent requirements to verify a client's identity, provide more options for how to confirm a client's identity, and require lawyers in financial transactions to obtain additional information about a client's source of funds, as well as periodic monitoring and recording professional business relationships with clients. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Lawyers who do not comply with the rules may be subject to discipline.	20

		This is an in house re-broadcast of an important CLEBC presentation by Barbara K. Buchanan, QC (Practice Advisor, Conduct & Ethics, Law Society of BC) from November 2019 about the amendments to the CI&V rules that took effect on January 1, 2020. The amendments introduce more stringent requirements to verify a client's identity, provide more options for how to confirm a client's identity, and require lawyers in financial transactions to obtain additional information about a client's source of funds, as well as periodic monitoring and recording professional business relationships with clients. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Lawyers who do not comply with the rules may be subject to discipline.	
2020	Clark Wilson - CW Practice - Banking, Insolvency & Restructuring Practice Group - Deemed Trusts, Anti-Money Laundering & KYC Due Diligence	Deemed Trusts, Anti-Money Laundering & KYC Due Diligence presented by Kevin MacDonald, Rosemary John and Ryan Klassen	3
2020	CLEBC Anti-Money Laundering for Lawyers and Law Firms - REBROADCAST 161819	Wondering how money laundering impacts your clients? Get up to date on Canada's anti-money laundering ("AML") legislation, which affects tens of thousands of Canadian companies. This course will also cover developments in prosecuting and defending proceeds of crime cases, civil forfeiture, and a lawyer's professional obligations related to AML. You will leave this course with knowledge to protect and advise your clients, at a time when money laundering is nearly a daily news item in BC. Speakers will include the Attorney General of BC along with specialists in the AML field. A minimum of 1 hour pertaining to professional responsibility and ethics, client care and relations, and/or practice management.	6
2020	CLEBC CLE-TV: Anti-Money Laundering - Client Identification and Verification Rules REBROADCAST -168319	Effective January 1, 2020, amendments to the client identification and verification rules introduce more stringent requirements to verify a client's identity, provide more options for how to confirm a client's identity, and require lawyers in financial transactions to obtain additional information about a client's source of funds, as well as periodic monitoring and recording professional business relationships with clients. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Lawyers who do not comply with the rules may be subject to discipline. Learn about Law Society requirements and new developments. This course will involve a minimum of 1 hour pertaining to professional responsibility and ethics, client care and relations, and/or practice management.	259
2020	CLEBC CLE-TV: Anti-Money Laundering - Client	Law Society Rules 3-98 to 3-109 require lawyers to follow client identification and verification procedures	51

	Identification and Verification Rules REBROADCAST -168319	when retained by a client to provide legal services. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Lawyers who do not comply with the rules may be subject to discipline. Learn about Law Society requirements and new developments. This course will involve a minimum of 1 hour pertaining to professional responsibility and ethics, client care and relations, and/or practice management.	
2020	Conflicts, Anti-Money Laundering and Anti-Bribery Training	Firm-wide risk training from in-house counsel and risk team on conflicts, anti-money laundering and anti-bribery and our professional ethics	1
2020	COVID-19 Financial Crime Risks: Are You Prepared for the New Era?	Part 1 of the 'Risk Revealed Webinar Series' and gain insights into the measures financial institutions need to take to address COVID-19 financial crime risks: • New and emerging risk issues for financial crime linked to the COVID-19 pandemic • Technology's role in increasing efficiency & virtual collaboration in AML and transaction monitoring protocols • The importance of cross-border and domestic information sharing and public/private sector cooperation to combat illicit financial flows • How regulators are responding to new threats and COVID-19 related fraud Speakers Kevin Bogdanov, Performance Director, Americas - Refinitiv Matthew Ekberg, Senior Policy Advisor for Regulatory Affairs - IIF Andrew Simpson, Chief Operating Officer - CaseWare RCM Meet our speakers Kevin Bogdanov Performance Director, Americas - Refinitiv Kevin Bogdanov is responsible for Refinitiv's regional Americas 'Financial Crime and Third Party Risk Management' revenue performance. He oversees a center of excellence around how Refinitiv sells, markets, partners and engages with industry participants. By keeping a pulse on key regulatory, policy, industry, customer and technology trends, he introduces the voice of the customer into Refinitiv's product and business strategy to ensure Refinitiv is correctly positioned to support its clients. This includes Refinitiv's flagship World-Check set of products. He also regularly represents Refinitiv in Industry forums including ACAMS, Compliance Week, OCEG, as well as Refinitiv's Industry and Regulatory Summits. He has spent 12 years leading international teams and programs in the Enterprise Information Services, Technology, Finance, Risk and Compliance sectors. He is actively tracking how data, technology, automation and AI are disrupting and redefining the	1

		practice of KYC and third party risk compliance. Matthew Ekberg Senior Policy Advisor for Regulatory Affairs - IIF Matthew L. Ekberg serves as Senior Policy Advisor for Regulatory Affairs at the Institute of International Finance (IIF). Mr. Ekberg is responsible for leading regulatory engagement on matters concerning standards of the Basel Committee on Banking Supervision (BCBS), the Financial Stability Board (FSB) and the Financial Action Task Force (FATF) in the policy areas of banking capital, liquidity, conduct/culture and financial crime. He led the IIF's London Office from 2017 to 2020. Mr. Ekberg previously served as Vice President for International Policy at the Bankers Association for Finance and Trade (BAFT), the international affiliate of the American Bankers Association, where he led the government advocacy initiatives of the organization globally. He has also worked on trade, investment and corporate finance matters for an international law and consulting firm in London and served in the Majority Leader's Office in the US House of Representatives and with the Office of the US Trade Representative (USTR) in Washington, DC. Mr. Ekberg holds degrees from The George Washington University and The George Washington University Law School. He is an Advisory Board member for the Future of Financial Intelligence Sharing (FFIS) Project, organized through the Royal United Services Institute (RUSI) Centre for Financial Crime and Security Studies and is Deputy to the B20 Finance and Infrastructure Taskforce. Andrew Simpson Chief Operating Officer - CaseWare RCM Andrew Simpson is Chief Operating Officer at CaseWare RCM with more than 20 years experience building businesses in the fields of information systems audit and security, data analytics, anti-money laundering and forensics. He is a regular thought-leader and contributor to conferences. Andrew was the Founder and CEO of SymSure Ltd. and is the Founder and Chairman of Symptai Consulting, an IT security and consulting firm.	
2020	Division 7 Rule Changes	Professional responsibility to Avoid Facilitation or Participation in Money Laundering and Terrorist Financing	8
2020	Ethics - Know Your Client	Course Details Ethics – Know Your Client (ENGLISH LANGUAGE) 5CREDITS BOOK NOW Course	1

		Mandatory Points 2 As a part of the Ethics curriculum, this Know Your Client online course has been designed to provide UAE lawyers with an introduction to anti-money laundering and terrorist financing for the purposes of helping you to create a robust client due diligence process. The client due diligence (CDD) section will be broken down into various key parts, covering the different types of CDD and the application across various legal services. This course will also cover the legal framework applicable in the UAE, highlighting the key regional laws and regulatory guidelines from the Dubai Financial Services Authority. This course intends to provide you with: an understanding of what is considered effective know your client procedures and controls what role you as lawyers and law firms must play to ensure that your legal services are not used to further a criminal purpose what the regional legal framework expect during your client onboarding process an understanding of how money laundering and terrorist financing are serious threats to our society to assist you, as licensed lawyers in the UAE, to meet your obligations under the anti-money laundering and counter-terrorist financing regime Upon completion of this course, you will understand the importance of adequate client due diligence processes and how these may be applied. NOTE: Once you have booked a course, you can access the preparatory e-learning or e-learning mandatory course in the learning management system by clicking here.	
2020	FINTRAC and the FCAC - New regulatory requirements and responses to COVID	COVID-19 pandemic or not, recent changes have been made to the FCAC Act as well as to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). In the case of the FCAC, these changes have expanded regulatory powers. For FINTRAC regulated entities, there are new reporting timelines and compliance obligations including the publication on new guidance in respect of suspicious transaction reporting. In addition to these changes, both FINTRAC and the FCAC have been vocal on expectations in light of the COVID-19 pandemic.	2
2020	HR 2513 has passed the US House of Representatives, and S.2563 the ILLICIT CASH Act	The Section's International Anti-Money Laundering Committee is inviting you to their Committee Call next Wednesday April 8th (11-1145 am ET). Two guest speakers will brief us on legislation moving through the US Congress that would require disclosure of beneficial ownership. HR 2513 has passed the US House of Representatives, and S 2563 the ILLICIT CASH Act is picking up sponsors in the US Senate.	1

		If passed, the new legislation will significantly revise US legal requirements, mandating that entities disclose their ultimate beneficial owners to a central federal database. The presentation will address the following issues: >> Likelihood of the legislation passing in this Congress -- including whether COVID-19 changes the picture -- and what the legislation would mean for practitioners and their clients. >> Discussions within the ABA on Resolution 119 and the ABA's historical opposition to such beneficial ownership legislation. Speakers: Gary Kalman, US Director for Transparency International Clark Gascoigne, Interim Director, FACT Coalition Moderator: John Regis Coogan, John Regis Coogan Law Office, PLLC	
2020	In-House Session (Client ID Verification, Anti-Money Laundering)	In-house session regarding the new Law Society of BC Client ID verification rules effective January 1, 2020, and Anti-Money Laundering rules and advisories. Presented by associate lawyers Power Chen and Mandy Javahery, and group discussion among attendees.	4
2020	Industry Regulation & Taxation Committee (IRT)	1. Ottawa Update: General Update 2. Securities Regulation: a) Open Discussion: Member questions and concerns arising out of COVID-19 and/or resulting market turbulence o Market structure o Liquidity issues (eg. money market fund/bonds/US circuit breaker) o Client matters including onboarding and opening accounts by attorneys under a POA o Corporate cheque deposits o Deadlines and filings, etc. o Other b) Recap of Client Focused Reforms CSA & PMAC Implementation Committee Working Group meetings c) OSC Consultation – Proposed Ontario Securities Commission Rule 81-502 – Restrictions on the Use of the Deferred Sales Charge Option for Mutual Funds d) CSA Consultation - Proposed amendments to NI 31-103 – trusted contact persons and placing temporary holds 3. Tax: a) Ontario provincial fiscal and economic update highlights & update federal budget timing b) Update on timing - CRA: FATCA & CRS Draft Guidance 4. International & Other Regulatory Issues a) FYI: Anti-Money Laundering and Anti-Terrorist Financing & Federal Beneficial Ownership Consultations b) SEC – Coronavirus response	1
2020	Industry, Regulation & Tax - PT 1	Securities Regulation ? Open Discussion: Member questions and concerns arising out of COVID-19 and/or resulting market	1

		turbulence ? Recap of Client Focused Reforms CSA & PMAC Implementation Committee Working Group meetings ? OSC Consultation – Proposed Ontario Securities Commission Rule 81-502 – Restrictions on the Use of the Deferred Sales Charge Option for Mutual Funds ? CSA Consultation - Proposed amendments to NI 31-103 – trusted contact persons and placing temporary holds Tax ? Ontario provincial fiscal and economic update highlights & update federal budget timing ? Update on timing - CRA: FATCA & CRS Draft Guidance International & Other Regulatory Issues ? FYI: Anti-Money Laundering and Anti-Terrorist Financing & Federal Beneficial Ownership Consultations ? SEC – Coronavirus response	
2020	International Assistance Group Learning Day 2020: Shifting Paradigms: Addressing Changes in Workplace Inclusion, Public Safety and Law Enforcement	** a minimum of 1.0 hour will involve aspects of professional responsibility and ethics, and/or practice management ** The 2020 edition of the International Assistance Group's Learning Day focuses on evolving conceptions of diversity, inclusion, mental health and cybercrime in the contemporary landscapes of law enforcement, prosecution, and international cooperation. The Keynote Address will be delivered by Superintendent Isobel Granger of the Ottawa Police Service's newly formed Respect, Values and Inclusion Directorate. Supt. Granger is one of the first black female police officers in Ottawa and she has over 30 years of law enforcement experience in Zimbabwe and Canada. She is also an investigator on the Justice Rapid Response roster for the United Nations Women's Initiative, one of only a handful of experts qualified to investigate war crimes involving sexual and gender-based violence. A panel of speakers will address contemporary issues in financial crime, with a focus on cryptocurrencies and other recent developments in the cyber sphere. Superintendent Peter Payne has 32 years of service with the Royal Canadian Mounted Police, where he is currently the Director of Financial Crime. Stéphane Sirard is the Manager of the Anti-Money Laundering Unit, Financial Transactions and Reports Analysis Centre of Canada. Croft Michaelson, previously an expert senior prosecutor with the Public Prosecution Service of Canada, is Vice President, Chief Legal Officer and Head of Global Investigations at BMO Financial Group A second panel of speakers will address contemporary and sometimes contested conceptions of mental health, addictions, diversity and inclusion for Indigenous, racialized and minority professionals. Myrna McCallum is a Métis-Cree lawyer working in the areas of criminal law, human rights, and workplace investigations. Ms. McCallum speaks widely about trauma-informed practice and she hosts The Trauma-	1

		Informed Lawyer podcast in partnership with the Canadian Bar Association. Dr. Araba Chintoh is a psychiatrist based at the Center for Addiction and Mental Health. Her practice areas include psychopharmacology, metabolic dysfunction and chronic brain illnesses. Anita Szigeti is an experienced private lawyer based in Toronto, working in the areas of mental health and criminal law. She has appeared often before the Supreme Court of Canada and has participated in dozens of inquiries into deaths involving police use of force and/or mental health. Other speakers include Virginia McRae, former Assistance Deputy Minister at Justice Canada. Ms. McRae is currently a Sessional Professor at the University of Ottawa Faculty of Law where she continues her decades-long engagement with teaching legal writing. Counsel from the International Assistance Group will also provide an update on the latest jurisprudence concerning criminal law, international cooperation, extraditions and mutual legal assistance. ** a minimum of 1.0 hour will involve aspects of professional responsibility and ethics, and/or practice management **	
2020	Legal Ethics KYC AML	DLAD Government course for 2 hours CLPD ethics and KYC as well as updated Anti-Money Laundering and Terrorist Financing training	1
2020	Legal Insights: AML in Financial Crime	Webinar organized HSBC global Legal and presented by lawyers from panel firm Freshfields based in London. Looked at the risks posed to banks in light of recent global money laundering schemes and considers particular challenges faced in and lessons learned from AML investigations. Topic: LEGAL INSIGHTS: AML in Financial Crime Date: Tuesday, 4 February 2020 Time: 16:00, GMT Time (London, GMT)	2
2020	LSBC Rules Regarding Anti-Money Laundering	A colleague provided a presentation regarding the Law Society's new anti-money laundering rules to ensure all in attendance were informed and aware of same.	1
2020	National CLE Program - Protecting Against Money Laundering (November 24, 2017) (Video Version)	Law firms are often the target of money laundering, terrorist financing or other financial fraud-related schemes, and BLG is no exception. All BLG professionals must be constantly vigilant and follow all applicable procedures and policies. This program reviews current rules of professional conduct, legislation and firm policies that protect against money laundering, terrorist financing and sanctions violations and will also explain some of the more common money laundering schemes that can be encountered.	1
2020	Real Property Practice Group Meeting - March 2, 2020	Real Property Practice Group Meeting - March 2, 2020 1. Land Owner Transparency Act – obligation re: notice to clients who may be unaware; safety/privacy 2. LSBC rule amendments re client identification and verification and source of funds 3. Anti-money laundering policies All of which pertains to professional responsibility and ethics, client care and relations and/or practice management.	6

2020	Retainer Letters: Pitfalls /Things to look out for	Content: 1. Understand your role – your role is to give legal advice/ be objective (Matthews v. Stikeman Elliott, 2020 BCSC 581) 2. Identify the scope of the mandate. 3. Identify the team members and what positions they play. Look out for hangers-on. 4. Client Identification & Verification – how to avoid becoming involved in a money laundering scheme. 5. COVID 19 and verifying a client remotely. 6. The solicitor –client relationship. It is contractual as well as fiduciary. 7. What is important in every retainer agreement? a. Scope b. Fees c. Disbursements d. How often will you bill? e. When client must make payment f. Interest on unpaid accounts g. Initial and ongoing retainers and when you can apply retainer funds h. When the lawyer may withdraw i. Joint retainers- including what happens if a conflict of interest emerges 8. The "entire contract" doctrine. 9. Walk the client through the retainer agreement. 10. Establishing a billing and payment cycle. 11. What does it look like when it goes badly? a. Fee Reviews under the Legal Profession Act b. The factors a Registrar/Master will look at Presented by Rebecca Morse/Mike Wagner Includes 1 hour of Practice Management	6
2020	RISK REVEALED WEBINAR #2 - Future State of Digital Banking: Implications for Financial Crime Threat Post COVID-19	Future State of Digital Banking: Implications for Financial Crime Threat Post COVID-19 June 25, 2:00 PM EST The rapid outbreak of COVID-19 presents an alarming health crisis the world is grappling with. In addition to the human impact, there is significant commercial and banking impact being felt globally, and the uncertainty may lead to further abuse of financial systems. However, it may also present business opportunities and an acceleration in banks' digital transformation programs to help reduce financial risk post-pandemic. Attend this webinar to gain insights into challenges, strategies and recommendations for digital banking post COVID-19 crisis. Risk Revealed Webinar Series Our new, 6-part Risk Revealed webinar series brings together risk and compliance experts from across financial markets and corporates. Join us to learn how data and technology solutions can help you identify and mitigate risk exposure across your business—and how innovation can help turn the tide against financial	1

		crime. In this session, our expert panel will discuss: • Regulatory implications • Market drivers: changing consumer behavior and fastest growing type of financial crime (i.e. cyber-crime, synthetic identity fraud, dark web) • Market challenges: how COVID-19 is changing the organized crime threat (rise in fraud, paper contamination, etc.) • Banks' opportunity to realize value, review banks systems & controls while accelerating digital transformation (i.e. move away from manual KYC to digital) post pandemic crises • What strategies can banks adopt to mitigate AML/fraud risk? • Meet our speakers • Holly Sais Phillippi • Market Development Director, Refinitiv • Holly has over 19 years of experience in data/regulatory compliance and risk management. She is focused on building strong Customer and Third Party Risk communities within the corporate environment, regulatory and financial communities to ensure Refinitiv is putting the clients' needs first in product build and design. • She is also responsible for strategic project planning, building an education strategy around Customer and Third Party Risk and assisting clients with large-scale Rollout & Adoption projects around Customer and Third Party Risk solutions. She has personally managed several top banks around the globe and engaged directly with their Anti-Money Laundering (AML) compliance teams and the heads of AML compliance. • Holly's focus has always been to ensure clients have the data and systems necessary to meet their regulatory guidelines as well as corporate responsibility expectations. • Ben Arber • Head of Financial Crime Compliance, Commercial Banking, HSBC • Ben has been with HSBC for 23 years, working in seven countries covering roles in commercial banking, trade finance, cash management, technology and credit risk as well as compliance. Ben joined HSBC in 1997 and moved to the UAE to run corporate banking and trade finance for HSBC Ras Al Khaimah. • For much of the next ten years Ben worked in cash management and trade finance in Asia, including as Head of the Global Liquidity and Cash Management in Korea from 2005-2008, before moving to Canada as Head of Global Trade and Receivables Finance in 2011. After concluding an extensive business de-	

		risking, in parallel with a re-structure and pivot to growth with a doubling of the revenue stream, customers voted HSBC Canada the best bank for trade finance in the 2015 Euromoney survey. • Ben has been in the US for six years, where he was initially responsible for trade finance governance, operations, financial crime controls and client service across North America, before moving into his current role at the end of 2017. Ben lives in Connecticut and works out of the HSBC New York office, when possible. • James Mirfin • Global Head of Digital Identity and Financial Crime Propositions, Refinitiv • James leads the global portfolio of financial crime propositions for Refinitiv, including World-Check and Digital Identity. • He is leading the strategic conversations with financial institutions, regulators and industry partners around the world as they battle to identify "who's there" when they onboard and transact with their customers. • James started his career in the UK and spent 16 years in Asia in senior leadership roles with American Express, PayPal and Thomson Reuters, living and working in Singapore, Thailand, India and Hong Kong, before relocating to New York early in 2018. • Jeremy Kuester • Counsel, White & Case • Jeremy Kuester is a counsel in the Washington, DC office of White & Case LLP, as a member of the Global Financial Institutions Advisory practice. He has extensive experience with Bank Secrecy Act (BSA) regulations, legislation, compliance, and policy. His practice includes matters involving the laws and regulations involving anti-money laundering (AML) and financial intelligence, including AML information-sharing and de-risking. • Before joining White & Case, Jeremy was the Deputy Associate Director for the Policy Division at the Financial Crimes Enforcement Network (FinCEN), a bureau of the Treasury Department that serves as the administrator and lead regulator of the Bank Secrecy Act (BSA). During his tenure there, he oversaw the publication of numerous anti-money laundering advisories to the financial sector, the promulgation of guidance on such areas as the May 2016 Customer Due Diligence Rule, and grants of exceptive relief from BSA regulations. He oversaw projects regarding de-risking of respondent banks in high-risk jurisdictions and the use of Section 314b for sharing of cyber indicators related to possible money laundering. He also drove efforts to be more responsive to how	

		technological advancements impact the conduct of BSA/AML compliance.	
2020	Trust Accounting Course #2 (Basics of Anti-Money Laundering)	The previous 7-hour in-person Trust Accounting course is now offered online through three webinar sessions. The second of the three webinars will focus on combatting money laundering and other illegal activity. Lawyer's trust accounts are protected by solicitor-client privilege and lawyers must not use that privilege to facilitate suspicious transactions. This course is beneficial for new or established lawyers, and staff members who are looking to gain an understanding of the role lawyers play in money laundering. This course covers topics such as: • the three phases of money laundering, • how criminals can use a lawyer's trust account to launder money, • red flags for money laundering, • Law Society's anti-money laundering initiatives, • how to handle cash transactions, and • an overview of the client identification and verification rules. The Law Society of BC is collecting your personal information pursuant to section 26(c) of the Freedom of Information and Protection of Privacy Act for the purpose of administering the Trust Accounting course. If you have any questions about the collection, use or disclosure of your personal information, please contact the Senior Coordinator, Trust Assurance [...] Instructors: Tina Kaminski, Audit Team Leader David Cho, Trust Auditor Registration Fee: Free	52

Our Mandate

The Law Society was created by the *Legal Profession Act*, which gives it the authority to determine the qualifications required to practise law in BC, to establish rules and a code of conduct for lawyers, and to enforce those rules. But most importantly, the opening lines of the Act specify that all of these responsibilities fall under a broader mandate "to uphold and protect the public interest in the administration of justice." Beyond its core mandate of setting standards and enforcing rules, the Law Society speaks out on behalf of the public on issues affecting the justice system in BC and the delivery of legal services in this province.

The Law Society of British Columbia

Photo by David Clode on Unsplash

President's Message

2019 marked the midway point of the Law Society's 2018-2020 Strategic Plan. It was a year in which we made considerable progress toward the plan's goals and initiatives. This year's annual report tells the story of the milestones and achievements in 2019, on key priorities the Benchers set for the regulator to serve the public interests of British Columbians in an honourable legal profession.

Significant progress was made on the Law Society's commitment to see improvements to our province's legal aid system. Since publishing *A Vision for Publicly Funded Legal Aid* in 2017, the Law Society has been engaging with the provincial government, justice sector stakeholders, lawyers and other community organizations about the difficulties vulnerable and marginalized British Columbians face in accessing legal assistance. In March 2019, the Benchers approved spearheading a coalition to raise public awareness about the impact of inadequate legal aid funding. In June, the Law Society made submissions to a legislative committee consulting on the next provincial budget. In October, the Law Society took part in an announcement by the Province of BC, the newly-formed Association of Legal Aid Lawyers and the Legal Services Society on agreements to address funding for the legal aid tariff and to review eligibility criteria and scope of coverage. The Law Society will ensure its voice is included in these discussions as it continues to advocate for further improvements in access to justice.

Throughout 2019, the Law Society adopted and implemented rules to prevent lawyers' trust accounts from being used for money laundering. Early in the year, the rules were amended to state explicitly that lawyers may not move funds into or out of trust accounts unless the funds are directly related to legal services provided. In July, the Benchers approved further rule amendments, including more stringent requirements regarding verification of a client's identity and more options for confirming a client's identity. The amendments also require lawyers in financial transactions to obtain additional information about a client's source of funds, and to periodically monitor and record professional business relationships with clients. Before the year's end, the Benchers established an Anti-Money Laundering Working Group to monitor and propose strategies and initiatives for future developments.

continued...

President's Message *...continued*

The Law Society hosted its third annual Rule of Law lecture in June 2019. The lecture featured former Chief Justice of Canada, the Right Honourable Beverley McLachlin, and Richard Peck, QC, who spoke about privacy, technology and the rule of law. Technology was also the focus of the Benchers annual retreat. The need to consider and understand how technology and change may affect the legal market also led to the Benchers establishing a Futures Task Force.

The Law Society took great strides toward addressing mental health in the legal profession. Ensuring the public is served by a competent legal profession means removing barriers to open dialogue about mental health and enhancing assistance to those lawyers who may need it. After establishing a Mental Health Task Force a year earlier, 2019 saw the Benchers agree to remove stigmatizing language from the *Code*. To encourage individuals to access the assistance they need, the amendment eliminates a requirement for a lawyer serving in the capacity of counsellor in peer assistance programs to report information about another lawyer, if that information is acquired in the course of providing peer assistance.

Pursuing innovative approaches to regulation ensures that the public continues to be served effectively. After a successful pilot in 2018, the Benchers agreed to implement a self-assessment program for all firms across the province. Starting in 2021, all firms, including sole practitioners, will be required to assess their own practice management systems, policies and procedures, with the goal of identifying problems before they affect clients or lead to complaints. In other jurisdictions this proactive approach has reduced reliance on prescriptive rules and reactive disciplinary measures.

Reconciliation with Indigenous peoples is one of the most critical obligations facing the country and the legal system. Before the end of last year, the Benchers took a critical step forward, determining that lawyer competency requires Indigenous intercultural competency. The decision to require all practising lawyers to learn about the history of Aboriginal-Crown relations, legislation regarding Indigenous peoples, and the legacy of residential schools responds to the Truth and Reconciliation Commission's Call to Action 27. The Benchers approved the development of an online course that will be provided to lawyers free of charge beginning in 2021.

While much was achieved on the strategic plan in 2019, there continues to be more to do in 2020. That work will be led by incoming president Craig Ferris, QC, who will be supported by First Vice-President Dean Lawton, QC, Second Vice-President Lisa Hamilton, QC, and Don Avison, QC, our executive director and chief executive officer. I want to thank Don and the rest of the management team and staff at the Law Society for their work throughout the past year. And finally, I'd like to thank my fellow Benchers for their support, and their commitment to improving our profession. It has been an honour to serve with you.

Nancy Merrill, QC
President

CEO's Message

Our plan to release this annual report at the end of March was disrupted by the COVID-19 pandemic. Since the declaration of a state of emergency on March 18th, there has been an extraordinary level of activity within the justice sector and by the legal profession to respond to the crisis and keep things running. The use of videoconferencing and other technologies has enabled people to set up remote offices, commission affidavits and witness other legal documents, and even to hold court hearings. I expect that in next year's annual report we will have much more to say about this remarkable time, when people have stepped up to the challenges of balancing public health with the continued need for legal services.

The Law Society had a productive year in 2019, with operational plans in place to advance implementation of most of the strategic plan goals set by the Benchers. We are now two years into Strategic Plan 2018-2020, and nearly all initiatives in the plan are substantially completed or well underway. In the pages that follow, you will find data and information that demonstrates the progress that the Law Society staff and Benchers have made on the plan, and toward providing effective, efficient and transparent regulation of lawyers in the public interest.

Some of the highlights include a number of rule changes that are aimed at reducing the likelihood of money laundering through the use of lawyers' trust accounts; concluding a successful law firm self-assessment pilot; a record audience for the third annual Rule of Law Lecture delivered by the Right Honourable Beverley McLachlin and Richard Peck, QC; a breakthrough in our effort to secure additional funding support for legal aid; rule changes that improved our annual general meeting; and approval for the development of course modules that will train lawyers on the history and legacy of Indigenous-Crown relations and prepare the profession to inform and respond to changes in law that are expected to come as the provincial and federal Crown implement the UN Declaration on the Rights of Indigenous Persons. Several of these decisions set the stage for the work in the year ahead and for the next strategic plan.

continued...

CEO's Message *...continued*

At the same time as we were making progress on these initiatives, the Law Society continued to fulfill its core regulatory role and function. Enrolment in our professional training course surpassed the record that was set last year. Lawyers accessed our practice advisors for guidance and information on a broad range of professional questions and issues. The 675 trust audits conducted in 2019 amounts to a 46% increase over the previous year. The sixty-three Law Society tribunal hearings in 2019 is nearly double the number of hearings conducted the previous year. As the financials demonstrate, the Law Society managed to achieve these increases in activity while still working within the resources provided to us.

The story told by the data and information in these pages is that the Law Society is meeting or exceeding almost all of its targets as we fulfill our public interest mandate.

We could not do any of this without the significant contribution of volunteers who serve as members of committees, task forces or working groups, guest instructors or authors of our course materials, fee mediators, and event panellists and advisors on special projects. I am equally indebted to the approximately 225 staff who are dedicated to serving the public interest and assist me with implementing our plans. We are grateful for the direction and guidance that is provided by the Benchers. I would like to thank our outgoing president, Nancy Merrill, QC, for her commitment to advancing Reconciliation and work toward improving legal aid resources. As we look to 2020, I am delighted to welcome Craig Ferris, QC as president and look forward to making further progress on key priorities in the year ahead.

Don Avison
Chief Executive Officer and Executive Director

Strategic Plan Progress 2019

The Law Society is governed by the *Legal Profession Act*, which requires it:

- protect the rights and freedoms of all persons
- ensure the independence, integrity, honour and competence of lawyers
- establish standards and programs for the education, professional responsibility and competence of lawyers
- regulate the practice of law, and
- support lawyers in fulfilling their duties in the practice of law.

Strategic Plan 2018-2020 identifies areas within this mandate that require particular attention, sets out goals, and outlines initiatives aimed at achieving those goals. In 2019, the Law Society reached the following milestones in regard to those goals.

MORE INFORMATION

2018-2020 Law Society Strategic Plan

GOAL: Ensuring the public has better access to justice

The Law Society engaged the provincial government, including several cabinet ministers and members of the legislative assembly, to raise awareness of the difficulties marginalized and vulnerable British Columbians face accessing legal services without adequate funding for legal aid. By mid-year, the Attorney General and the Legal Services Society established an interim agreement with the newly formed Association of Legal Aid Lawyers that eventually led to an agreement in October that addresses long-standing issues with funding levels for service providers.

The province of BC announced on October 15, 2019 that it had concluded an agreement with the Association of Legal Aid Lawyers and the Legal Services Society, marking the first significant progress in decades toward sustainable legal aid funding. The increased funding addresses a long-standing issue regarding the legal aid tariff, which will help attract and retain more lawyers to deliver legal aid services to those who need them.

GOAL: Encourage all lawyers in BC to be educated and trained in Indigenous intercultural competency

In December, the Benchers approved a requirement for all practising lawyers to complete Indigenous intercultural competency training through a course that will be developed and available beginning in January 2021. The course will be responsive to the Truth and Reconciliation Commission's calls to action and provide lawyers with baseline information and education of Indigenous-Crown relations, the history and legacy of residential schools, and law and policies directed specifically at Indigenous peoples, as well as preparing lawyers who will inform and respond to changes in law as a result of the implementation of the UN Declaration on the Rights of Indigenous Peoples.

Truth and Reconciliation

In 2018, the Benchers adopted a Truth and Reconciliation Action Plan that proposes more than 50 actions and initiatives that the Law Society can take to advance reconciliation. By the end of 2019, action on almost all of the plan was underway, with over 35 initiatives fully or substantially implemented.

GOAL: Ensure that appropriate standards are maintained for ethical and professionally responsible practice of law

Throughout 2019, the Law Society continued to examine its rules and the BC Code of Professional Conduct in order to improve regulatory oversight that is intended to reduce the risk of lawyers, either intentionally or unwittingly, facilitating the laundering of money. Changes adopted over the course of the year include improvements to client identification and verification rules, source of money and cash transaction rules, as well as a rule clarifying that a lawyer's trust account may only be used where the funds deposited into it are directly related to the provision of legal services.

In addition to rule changes, the Law Society has allocated significant resources to investigation and enforcement of rules to prevent illicit money passing through lawyers' trust accounts. In 2019, these resources include a team of 15 auditors, four forensic accountants, two forensic analysts, a former RCMP senior investigator who is a certified fraud examiner and has experience in criminal proceeds of crime investigations, as well as lawyers in investigations, monitoring and enforcement who have experience with money laundering matters.

GOAL: Mitigate risk, prevent misconduct and improve regulatory outcomes

Building on the feedback gathered from a law firm self-assessment pilot, in October the Benchers approved a plan to phase in profession-wide law firm self-assessment starting in 2021. Self-assessment is a pivotal part of a framework to help law firms manage and address certain concerns directly, without involving the Law Society beyond the model policies and resources that it develops to support the firms.

Practice Advisors of the Law Society responded to over 4,800 inquiries from members of the legal profession who contacted them to clarify their professional obligations and avoid risk. Professional conduct and ethics, Law Society Rules, conflicts, confidentiality, and client identification and verification were the leading areas for inquiries.

In 2020, the Law Society will make modifications to improve the law firm self-assessment based on feedback obtained during the pilot. One-third of law firms will be contacted to complete self-assessment in 2021, with another one-third contacted in 2022 and the final one-third in 2023. Firms will be required to complete self-assessment on this rolling basis once every three years.

GOAL: Improve the mental health of the legal profession

In 2019, the Law Society has focused on reducing stigma of mental health and substance use issues, in order to encourage lawyers to seek assistance, and on reviewing the Law Society's admission and discipline processes as they relate to mental health and substance use issues that may be affecting applicants and lawyers. Progress was made on improving awareness and understanding among Law Society staff dealing with lawyers affected by these issues, and significant communications and outreach initiatives helped facilitate dialogue and improve awareness about these issues and the support and resources that are available to members of the legal profession.

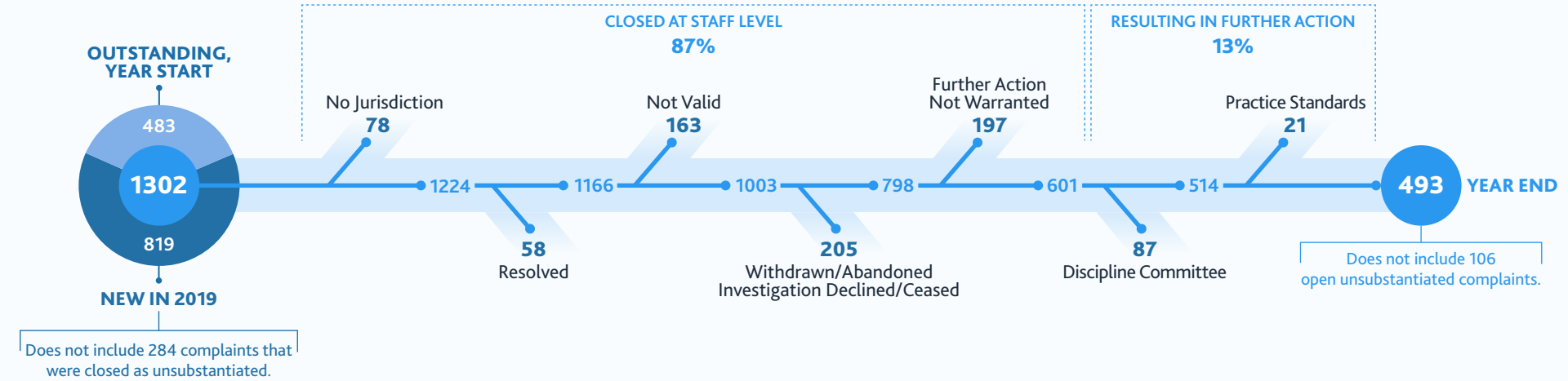
In December, the Benchers approved amendments to the BC Code of Professional Conduct that remove potentially stigmatizing language to the "duty to report" rule and related commentary. These amendments remove barriers faced by lawyers who are avoiding seeking help to address their mental health issues.

Key Performance Indicators

PROFESSIONAL CONDUCT AND DISCIPLINE

Key performance indicators provide a statistical snapshot of outcomes in key areas relating to the Law Society's regulatory mandate.

2019 COMPLAINTS RESULTS

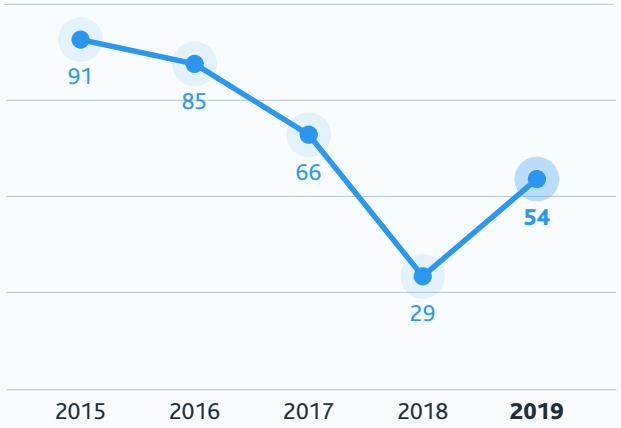


MORE INFORMATION
Complaints and discipline process

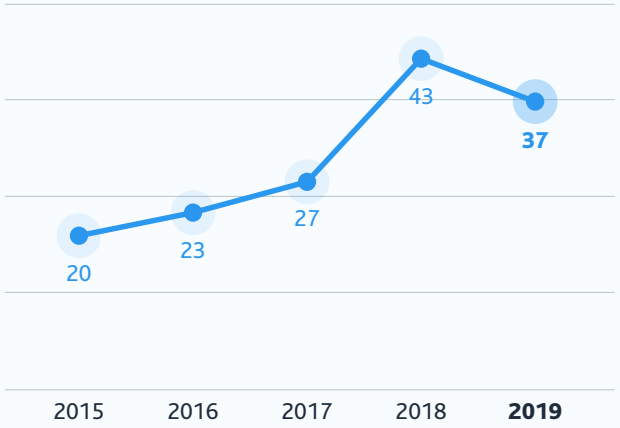
Key Performance Indicators

PROFESSIONAL CONDUCT AND DISCIPLINE

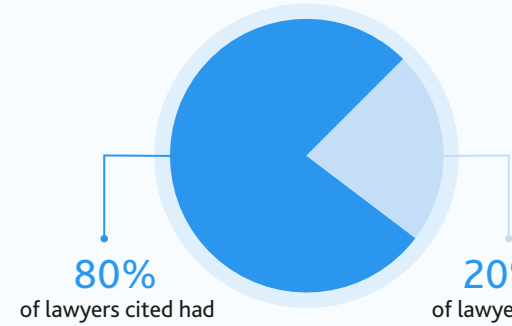
OPEN COMPLAINTS OLDER THAN ONE YEAR



CITATIONS AUTHORIZED



PRIOR REGULATORY INVOLVEMENT*



80% of lawyers cited had previously been involved with regulatory proceedings

20% of lawyers cited had no prior regulatory involvement

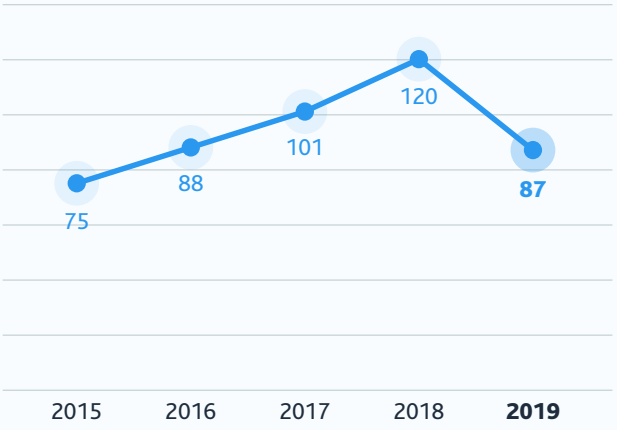
*prior regulatory involvement includes: interim proceedings, administrative suspensions, Custodianship involvement, Credentials involvement, referrals to Practice Standards, and referrals to the Discipline Committee. Also included are interim undertakings given during the course of an investigation

MORE INFORMATION
Complaints and discipline process

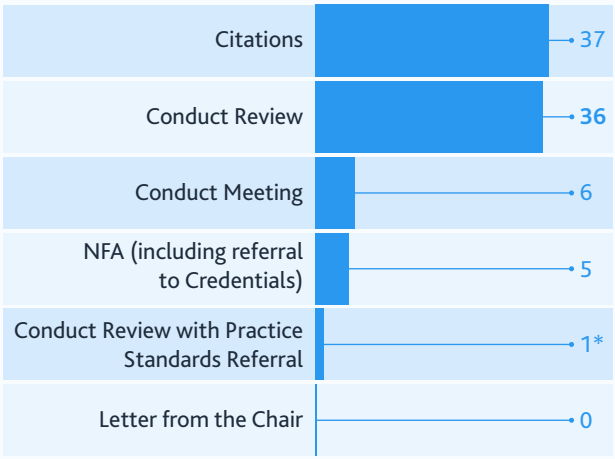
Key Performance Indicators

PROFESSIONAL CONDUCT AND DISCIPLINE

REFERALS TO DISCIPLINE COMMITTEE

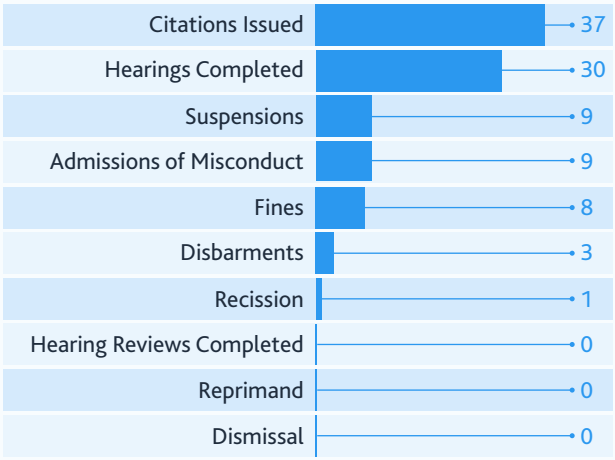


DISCIPLINE COMMITTEE RESULTS



* There was also one referral to Practice Standards on its own and three further referrals to Practice Standards from Conduct Review subcommittees arising out of 93 files referred to the Discipline Committee

HEARING OUTCOMES



MORE INFORMATION
Complaints and discipline process

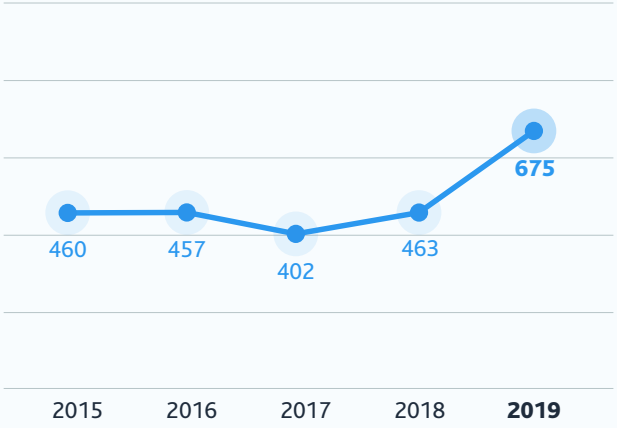
Key Performance Indicators

TRUST ASSURANCE

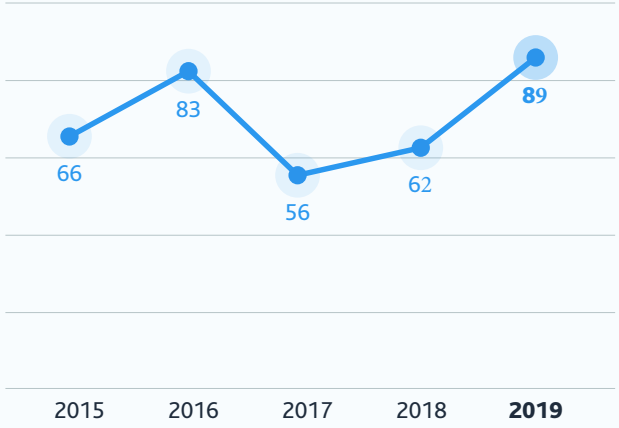
All law firms are subject to accounting and reporting standards set out in the Law Society Rules. Every firm must file an annual trust report and is subject to compliance audits.

Every law firm that handles trust funds is audited at least once every six years. In 2019 the Law Society will increase the audit cycle to every four years for areas of practice considered to be at elevated risk.

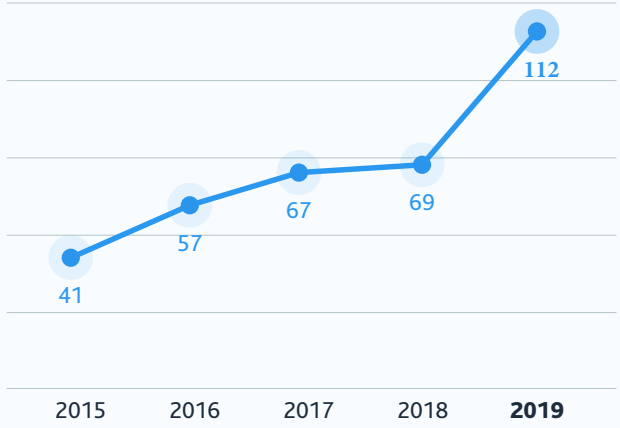
TRUST COMPLIANCE AUDITS CONDUCTED



AUDITS REQUIRING FOLLOW-UP*



TRUST REPORTS AND AUDITS REFERRED FOR PROFESSIONAL CONDUCT INVESTIGATION



* As the result of an audit, further action may be required, including a request for further documentation, a visit to the firm, or a requirement to complete an accountant's report.

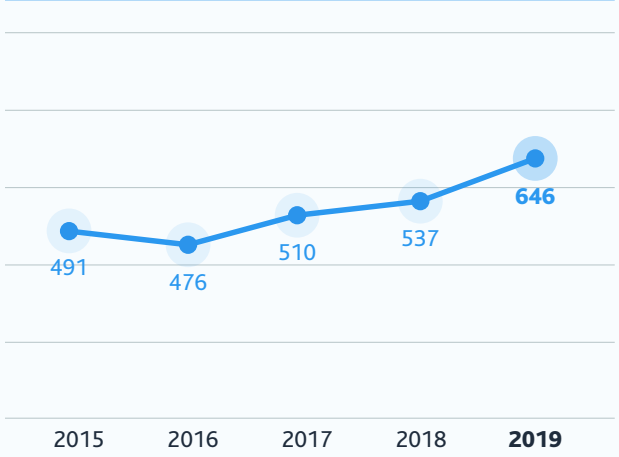
MORE INFORMATION
Trust Assurance Program

Key Performance Indicators

PROFESSIONAL LEGAL TRAINING COURSE

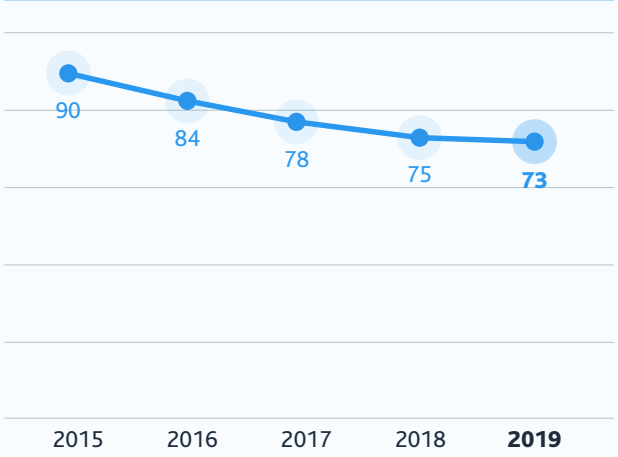
All new lawyers in BC must pass the Professional Legal Training Course, a full-time, ten-week program aimed at helping new lawyers bridge the gap between law school and practice.

NUMBER OF PLTC STUDENTS



The number of students has been rising due to an increase in referrals from the National Committee on Accreditation and graduation of the first cohort of Thompson Rivers University law students in 2014.

PLTC FIRST-TIME PASS RATE



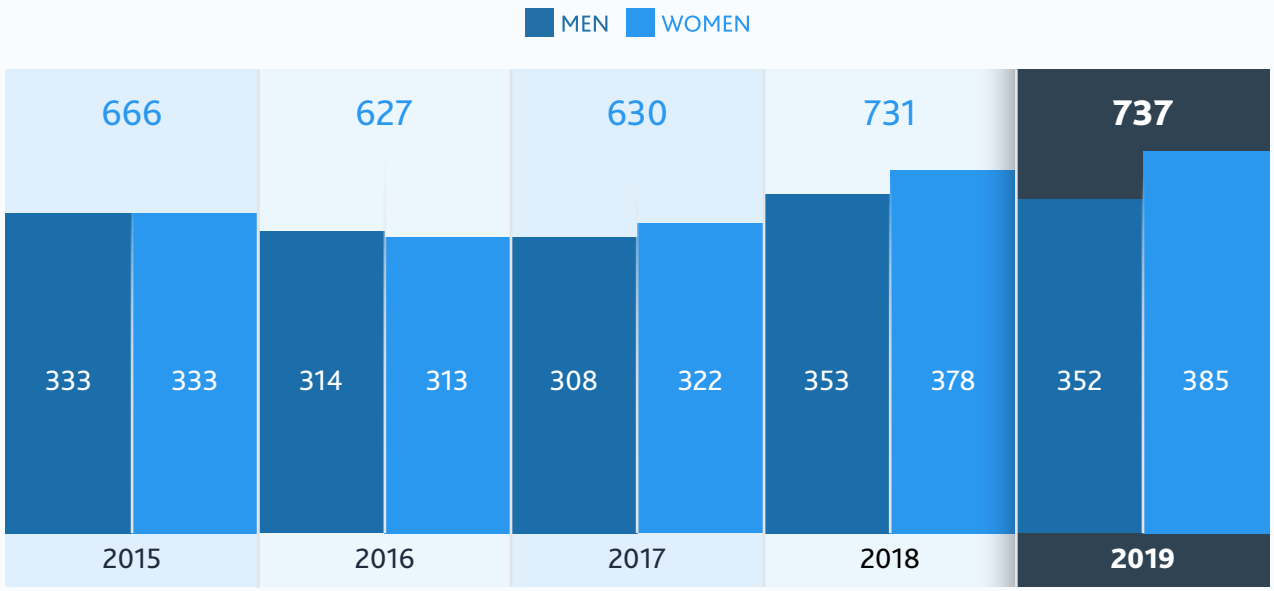
PLTC has tightened its pass criteria in recent years.

MORE INFORMATION
Professional Legal Training Course

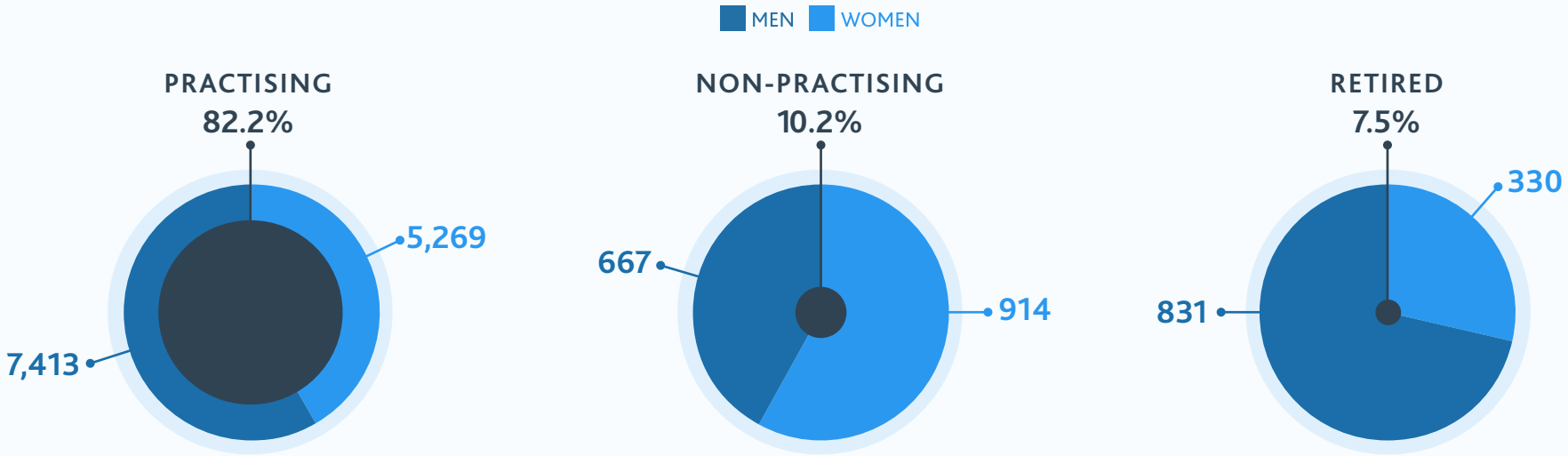
Legal Profession in BC

Our statistics show trends that may influence the delivery of legal services by BC lawyers in the future. The Justicia program was initiated by the Law Society and is designed to address disparities related to gender.

NEW BC LAWYERS

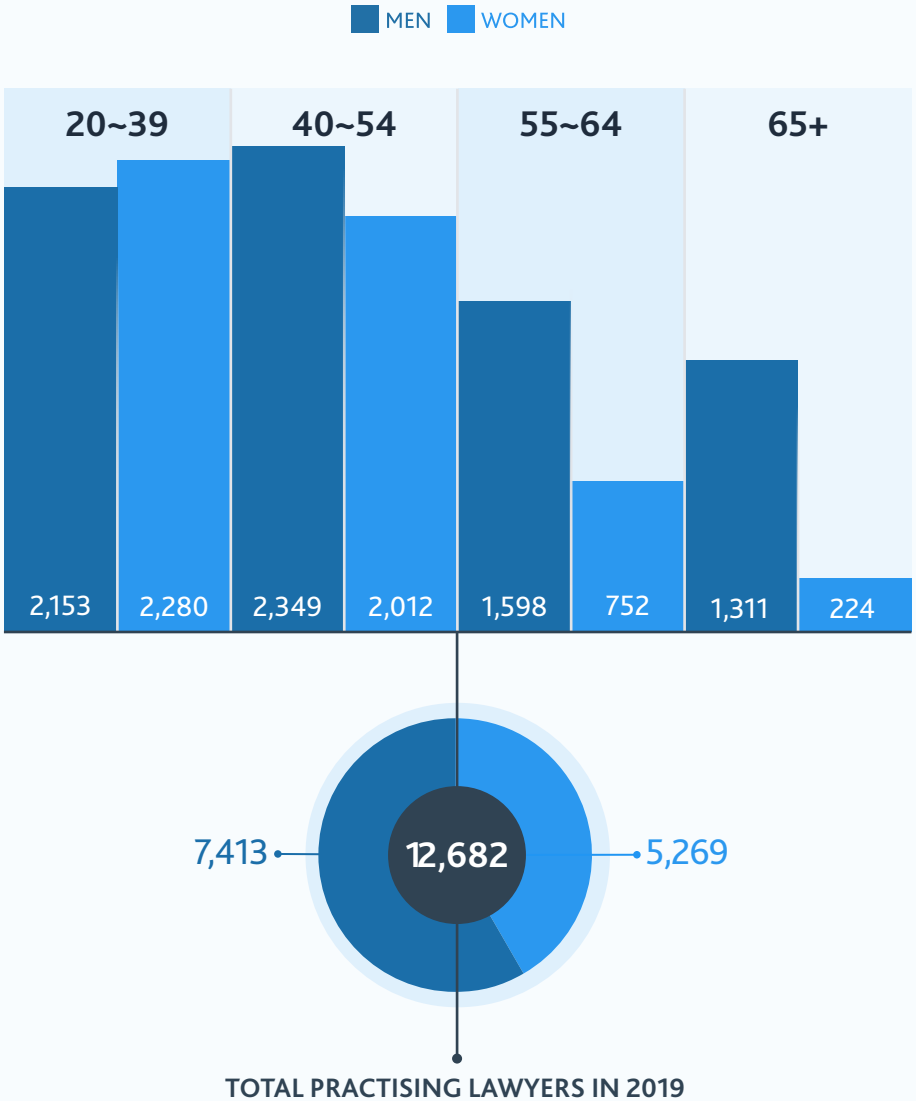


STATUS OF LAWYERS REGISTERED WITH THE LAW SOCIETY

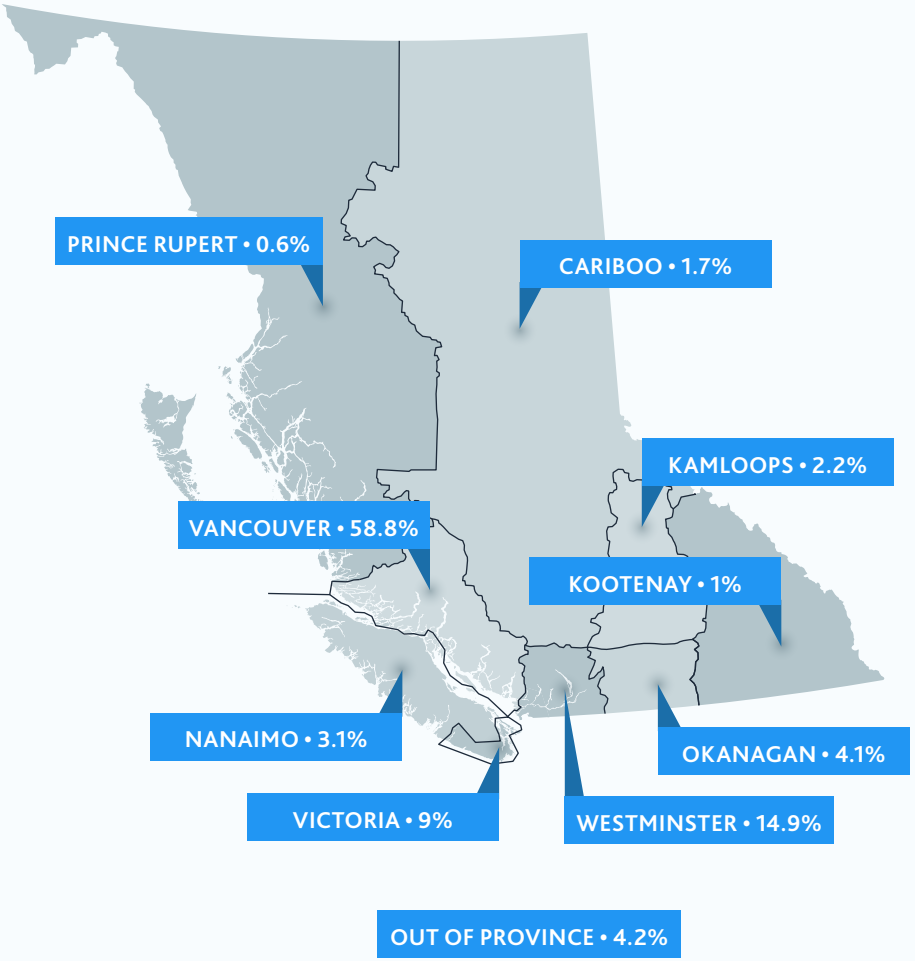


Legal Profession in BC *...continued*

AGE DEMOGRAPHIC OF PRACTISING BC LAWYERS

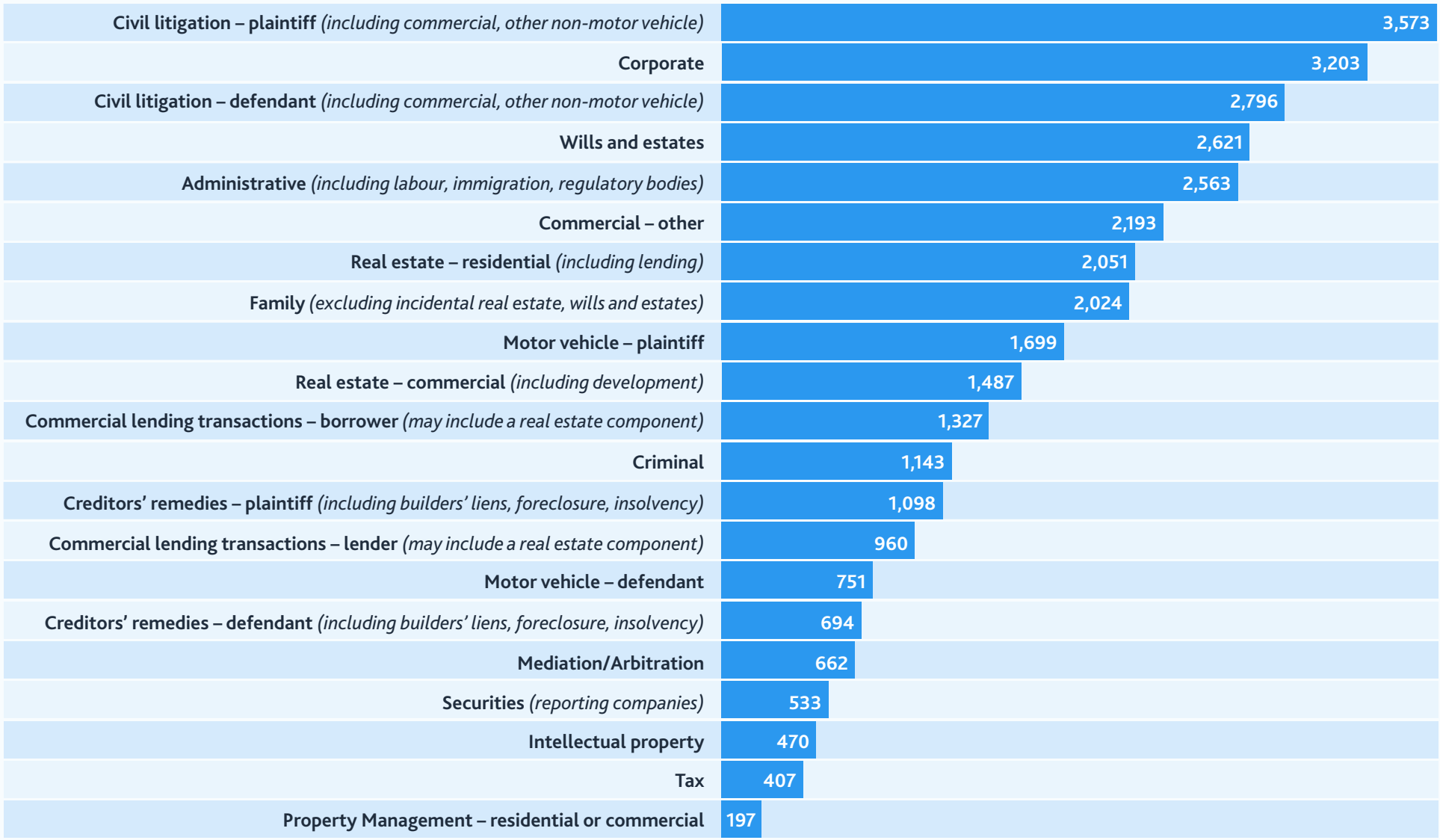


PRACTISING LAWYERS BY ELECTORAL DISTRICT



Legal Profession in BC *...continued*

AREAS OF LEGAL PRACTICE IN BC: Number of lawyers who reported performing any work in the following areas



Benchers

The members of the Law Society's governing board are called Benchers. The Benchers are responsible for the Law Society Rules, the *Code of Professional Conduct for British Columbia*, and governance policies for the administration of the Society. Twenty-five Benchers are elected by members of the legal profession and six are members of the public who are appointed by the provincial government. The president of the Law Society is a Bencher and serves a one-year term.

Front Row, Left To Right:

Jennifer Chow, QC
(Vancouver County)

Anita Dalakoti
(Appointed Bencher)

Jeevyn Dhaliwal, QC
(Vancouver County)

Lisa Hamilton, QC
(Vancouver County)

FIRST VICE-PRESIDENT
Craig A.B. Ferris, QC
(Vancouver County)

PRESIDENT
Nancy G. Merrill, QC
(Nanaimo County)

SECOND VICE-PRESIDENT
Dean P.J. Lawton, QC
(Victoria County)

CHIEF EXECUTIVE OFFICER AND EXECUTIVE DIRECTOR
Don Avison, QC

Barbara Cromarty
(Kootenay County)

Elizabeth J. Rowbotham
(Vancouver County)

Heidi Zetzsche
(Cariboo County)

Second Row, Left To Right:

Roland Krueger, CD
(Appointed Bencher)

Claire Marshall
(Appointed Bencher)

Michelle D. Stanford, QC
(Kamloops County)

Brook Greenberg
(Vancouver County)

Jasmin Z. Ahmad
(Vancouver County)

Tony Wilson, QC
(Vancouver County)

Geoffrey McDonald
(Cariboo County)

Pinder K. Cheema, QC
(Victoria County)

Jeff Campbell, QC
(Vancouver County)

Third Row, Left To Right:

Michael F. Welsh, QC
(Okanagan District)

Christopher McPherson, QC
(Westminster County)

Carolynn Ryan
(Appointed Bencher)

Guangbin Yan
(Appointed Bencher)

Karen Snowshoe
(Vancouver County)

Sarah Westwood
(Prince Rupert County)

Back Row, Left To Right:

Mark Rushton
(Appointed Bencher)

Jamie Maclaren, QC
(Vancouver County)

Steve McKoen, QC
(Vancouver County)

Philip A. Riddell, QC
(Westminster County)

Martin Finch, QC
(Westminster County)

Jacqui McQueen
(Vancouver County)

Committees, Task Forces and Working Groups

Law Society committees have specialized roles that carry out many of the regulatory functions of the Law Society and assist with policy development. Committees and task forces are comprised of Benchers and lawyers from all over BC, all of whom volunteer their time to the Law Society.

COMMITTEES

Act and Rules Committee

Recommends to Benchers amendments to the *Legal Profession Act* and Law Society Rules.

Jeevyn Dhaliwal, QC *(Chair)*
Elizabeth Rowbotham *(Vice-Chair)*
Geoffrey McDonald
Michael Welsh, QC

STAFF CONTACT
Jeff Hoskins, QC

Complainants' Review Committee

Upon complainants' request, reviews complaint files closed by staff lawyers to determine if the decision to close the file was appropriate in the circumstances.

Geoffrey McDonald *(Co-Chair)*
Mark Rushton *(Co-Chair)*
Nicole Bresser
Pinder Cheema, QC
Anita Dalakoti
Lisa Hamilton, QC
Jamie Maclaren, QC
Daniele Poulin
Puneet Sandhar
Guangbin Yan

STAFF CONTACT
Karen Mok

Credentials Committee

Oversees the enrolment, education, examination and call to the bar of articled students, the transfer of lawyers to BC and the reinstatement of former lawyers.

Michelle Stanford, QC *(Chair)*
Mark Rushton *(Vice-Chair)*
Anita Dalakoti
Jeevyn Dhaliwal, QC
Geoffrey McDonald
Michael McDonald, QC
Philip Riddell, QC
Elizabeth Rowbotham
Tony Wilson, QC

STAFF CONTACT
Lesley Small

Discipline Committee

Reviews opinions concerning lawyers or articled students which are referred by Law Society staff, the Complainants' Review Committee or the Practice Standards Committee and determines appropriate disciplinary outcomes, if any.

Christopher McPherson, QC *(Chair)*
Jasmin Ahmad, QC (Vice-Chair)
Barbara Cromarty
Mike Feder, QC
Roland Krueger, CD
Claire Marshall
Iain McIver
Heidi Zetzsche

STAFF CONTACT
Natasha Dookie

Ethics Committee

Identifies current professional responsibility issues and makes recommendations on changes to the *Code of Professional Conduct for British Columbia* for consideration by the Benchers.

Pinder Cheema, QC *(Chair)*
Martin Finch, QC *(Vice-Chair)*
Nicole Cederberg
Jennifer Chow, QC
Greg DelBigio, QC
Brook Greenberg
Lisa Hamilton, QC
Dean Lawton, QC
Jamie Maclaren, QC
Steven McKoen, QC

STAFF CONTACT
Lance Cooke

Executive Committee

Provides direction and oversight for the strategic and operational planning of the Law Society and develops agendas for Bencher meetings to ensure that the Benchers exercise their oversight, regulatory and policy development responsibilities.

Nancy Merrill, QC *(Chair)*
Craig Ferris, QC *(Vice-Chair)*
Lisa Hamilton, QC
Roland Krueger, CD
Dean Lawton, QC
Steven McKoen, QC
Michelle Stanford, QC

STAFF CONTACT
Kerryn Holt

Finance and Audit Committee

Provides oversight over the financial affairs of the Law Society, makes recommendations on annual fees, reviews annual budgets and periodically reviews financial and investment results. Oversees the external audit process and provides oversight over the internal controls and enterprise risk management of the Law Society.

Craig Ferris, QC *(Chair)*
Steven McKoen, QC *(Vice-Chair)*
Roland Krueger, CD
Dean Lawton, QC
William Maclagan, QC
Nancy Merrill, QC
Guangbin Yan

STAFF CONTACTS
Jeanette McPhee
Andrea Langille

Governance Committee

Assesses the Law Society's current governance structure and practices to identify any areas for improvement.

Steven McKoen, QC *(Chair)*
Pinder Cheema, QC *(Vice-Chair)*)
Jasmin Ahmad, QC
Craig Ferris, QC
Claire Marshall
Linda Parsons, QC
Philip Riddell, QC

STAFF CONTACTS
Adam Whitcombe, QC
Kerryn Holt

Practice Standards Committee

Recommends standards of practice, develops programs to help lawyers practise competently and recommends remedial measures for lawyers who do not meet accepted standards.

Sarah Westwood *(Chair)*
Jeff Campbell, QC *(Vice-Chair)*
Christine Elliott
Jacqui McQueen
Carolynn Ryan
Karen Snowshoe
Michael Welsh, QC
Chelsea Wilson
Guangbin Yan

STAFF CONTACT
Alan Treleaven

Unauthorized Practice Committee

Considers and makes policy decisions with respect to the unauthorized practice of law and the relevant provisions of the *Legal Profession Act*.

Barbara Cromarty *(Chair)*
Carolynn Ryan *(Vice-Chair)*
Anita Dalakoti
Jamie Maclaren, QC
Jacqui McQueen

STAFF CONTACT
Gavin Hoekstra

Committees, Task Forces and Working Groups *...continued*

SUBCOMMITTEES

Insurance Subcommittee

Reviews actuarial reports, claims data, fee recommendations, changes to scope of coverage, and other insurance matters as required, and provides recommendations to the Finance and Audit Committee.

Craig Ferris, QC *(Chair)*
Steve McKoen, QC *(Vice-Chair)*
Peter Kelly
Dean Lawton, QC

STAFF CONTACTS
Su Forbes, QC
Jeanette McPhee

Litigation Subcommittee

Provides guidance to staff on litigation matters and determines which matters should come before the Executive Committee.

Nancy Merrill, QC *(Chair)*
Craig Ferris, QC
Dean Lawton, QC

STAFF CONTACTS
Tara McPhail

ADVISORY COMMITTEES

Access to Legal Services Advisory Committee

Monitors and advises the Benchers on access to justice and legal services issues in BC and other jurisdictions.

Michelle Stanford, QC *(Chair)*
Claire Hunter, QC *(Vice-Chair)*
Jeff Campbell, QC
The Honourable Thomas Cromwell
Lisa Hamilton, QC
Jacqui McQueen
Karen Snowshoe

STAFF CONTACT
Doug Munro

Equity, Diversity and Inclusion Advisory Committee

Reports to the Benchers on issues affecting equity and diversity in the legal profession and the justice system and assists Benchers with priority planning.

Jasmin Ahmad, QC *(Chair)*
Jennifer Chow, QC *(Vice-Chair)*
Beatriz Contreras
Jeevyn Dhaliwal, QC
Tina Dion, QC
Brook Greenberg
Jamie Maclaren, QC
Elizabeth Rowbotham

STAFF CONTACT
Andrea Hilland

Lawyer Education Advisory Committee

Monitors developments on issues affecting lawyer education in BC, and advises the Benchers on priority planning with respect to the education of lawyers in BC.

Tony Wilson, QC *(Chair)*
Sarah Westwood *(Vice-Chair)*
Barbara Cromarty
Celeste Haldane, QC
Rolf Warburton
Michael Welsh, QC
Heidi Zetzsche

STAFF CONTACTS
Alan Treleaven
Alison Luke

Legal Aid Advisory Committee

Monitors and advises the Benchers on key matters relating to the state of legal aid in British Columbia.

Nancy Merrill, QC *(Chair)*
Richard Peck, QC *(Vice-Chair)*
Gary Bass
Odette Dempsey-Caputo
Richard Fowler, QC
Christopher McPherson, QC
Philip Riddell, QC
Sarah Westwood

STAFF CONTACTS
Michael Lucas, QC
Doug Munro

Rule of Law and Lawyer Independence Advisory Committee

Monitors issues and legislation affecting the rule of law and the independence and self-governance of the legal profession and reports on those matters to the Benchers.

Jeff Campbell, QC *(Chair)*
Christopher McPherson, QC *(Vice-Chair)*
Jennifer Chow, QC
Jon Festinger, QC
Martin Finch, QC
Patrick Kelly
The Honourable Marshall Rothstein, QC
Mark Rushton

STAFF CONTACT
Michael Lucas, QC

Truth and Reconciliation Advisory Committee

Provides guidance to the Law Society on legal issues affecting Indigenous people in the province; advises the Benchers on priority planning and develops related recommendations and initiatives.

Dean Lawton, QC *(Co-Chair)*
Michael McDonald, QC *(Co-Chair)*
Martin Finch, QC
Katrina Harry
Claire Marshall
Karen Snowshoe
Ardith Walkem, QC
Rosalie Yazzie

STAFF CONTACT
Andrea Hilland

Committees, Task Forces and Working Groups *...continued*

TASK FORCES

Futures Task Force

Identifies the anticipated changes in the legal profession assesses the impact on the delivery of legal services and on future regulation, and reports its findings to the Benchers.

Craig Ferris, QC *(Chair)*
Jeevyn Dhaliwal, QC *(Vice-Chair)*
Lawrence Alexander
Lynne Charbonneau
Dr. Cristie Ford
Steven McKoen, QC
Dr. Katie Sykes
Tony Wilson, QC

STAFF CONTACT
Adam Whitcombe, QC

Law Firm Regulation Task Force

Recommends to the Benchers a framework for the regulation of law firms resulting from a 2012 amendment to the *Legal Profession Act* giving the Law Society authority to regulate law firms in addition to regulating individual lawyers.

Steven McKoen, QC *(Chair)*
Jasmin Ahmad, QC *(Vice-Chair)*
Martin Finch, QC
William Maclagan, QC
Angela Westmacott, QC
Henry Wood, QC

STAFF CONTACT
Michael Lucas, QC

Licensed Paralegal Task Force

Explores the areas of unmet legal need and the potential role for licensed paralegals to address that need, operating under a professional regulatory structure created and overseen by the Law Society.

Trudi Brown, QC *(Chair)*
Michael Welsh, QC *(Vice-Chair)*
John-Paul Boyd, QC
Nancy Carter
Didi Dufresne
David Dundee
Joanna Cranmer Recalma
Michele Ross
Ashley Silcock

STAFF CONTACT
Michael Lucas, QC

Mental Health Task Force

Helps the Law Society identify ways to reduce the stigma of mental health and substance use issues within the profession and review related regulatory approaches to discipline and admissions.

Brook Greenberg *(Chair)*
Michelle Stanford, QC *(Vice-Chair)*
Phil Dwyer
The Honourable Chief Judge Melissa Gillespie
The Honourable Madam Justice Nitya Iyer
Derek LaCroix, QC
Christopher McPherson, QC
Kendra Milne

STAFF CONTACTS
Michael Lucas, QC
Alison Luke

WORKING GROUPS

Annual Fee Review Working Group

Investigates charging different practice and insurance fees to different categories of lawyers.

Dean Lawton, QC (Chair)
Jeff Campbell, QC
Barbara Cromarty
Roland Krueger, CD
Philip Riddell, QC

STAFF CONTACT
Lance Cooke

Hearing Panel Pools

The hearing panel pools demonstrate the Law Society's commitment to maintaining public confidence and transparency.

Lawyers and members of the public from around the province volunteer to be part of the Law Society's hearing panel pools. Panel members are selected, based on established criteria, from a public (non-lawyer) pool and a lawyer (non-Bencher) pool to help adjudicate all discipline and credentials hearings.

Members of the Public

Donald Amos
E. Nanette (Nan) Bennett
Clarence Bolt
Paula Cayley
Carol Gibson
Dan Goodleaf
Darlene Hammell
John Lane
Brendan Matthews
Linda Michaluk
Laura Nashman
Lance Ollenberger
Paul Ruffell
Thelma Siglos
Robert Smith

Non-Bencher Lawyers

Ralston Alexander, QC
Gillian Dougans
Eric Gottardi
Carol W. Hickman, QC
Dennis K. Hori, QC
Gavin Hume, QC
David Layton, QC
Lindsay R. LeBlanc
Bruce LeRose, QC
Shona Moore, QC
H. Nina Purewal
Carol Roberts
Shannon N. Salter
John Waddell, QC
Sandra Weafer

Life Benchers

Benchers who have volunteered for four terms or have served as president of the Law Society are recognized with the title Life Bencher.

The Honourable Mary F. Southin, QC	*(1971-1980)*
H. Allan Hope, QC	*(1974-1982)*
The Honourable Thomas R. Braidwood, QC	*(1973-1975; 1979-1985)*
The Honourable Bruce I. Cohen, QC	*(1978-1986)*
Marvin R.V. Storrow, QC	*(1980-1987)*
R. Paul Beckmann, QC	*(1980-1989)*
Robert M. Dick, QC	*(1983-1991)*
The Honourable Peter Leask, QC	*(1984-1992)*
John M. Hogg, QC	*(1984-1993)*
P. Michael Bolton, QC	*(1985-1993)*
The Honourable Mr. Justice Robert T.C. Johnston	*(1986-1994)*
The Honourable Grant D. Burnyeat, QC	*(1988-1995)*
Donald A. Silversides, QC	*(1984-1995)*
James M. MacIntyre, QC	*(1986-1995)*
Alan E. Vanderburgh, QC	*(1989-1995)*
Karen F. Nordlinger, QC	*(1988-1996)*
Richard C.C. Peck, QC	*(1988-1997)*
Leonard T. Doust, QC	*(1990-1997)*
William M. Trotter, QC	*(1990-1997)*
Trudi L. Brown, QC	*(1992-1998)*
Warren T. Wilson, QC	*(1991-1999)*
The Honourable Ujjal Dosanjh, QC	*(1995-2000)*
Karl F. Warner, QC	*(1994-2000)*
Richard S. Margetts, QC	*(1995-2001)*
Gerald J. Lecovin, QC	*(1994-2001)*
Emily M. Reid, QC	*(1994-2001)*
Jane S. Shackell, QC	*(1994-2001)*
Ann Howard	*(1992-2002)*
Richard C. Gibbs, QC	*(1996-2002)*
Howard R. Berge, QC	*(1992-2003)*
Russell S. Tretiak, QC	*(1992-2003)*
Robert D. Diebolt, QC	*(1996-2003)*
G. Ronald Toews, QC	*(1996-2003)*
Gerald J. Kambeitz, QC	*(1996-2003)*
William J. Sullivan, QC	*(1997-2003)*
Master Peter J. Keighley	*(1996-2004)*
William M. Everett, QC	*(1998-2004)*
Ralston S. Alexander, QC	*(1999-2005)*
Patricia L. Schmit, QC	*(1998-2005)*
Robert W. McDiarmid, QC	*(1998-2006)*
Anna K. Fung, QC	*(1998-2007)*
Ian Donaldson, QC	*(2000-2007)*
June Preston, MSW	*(2001-2008)*
The Honourable Mr. Justice John J.L. Hunter	*(2002-2008)*
Gordon Turriff, QC	*(2002-2009)*
Terence E. La Liberté, QC	*(2000-2001, 2004-2009)*
James D. Vilvang, QC	*(2002-2009)*
David A. Zacks, QC	*(2002-2009)*
The Honourable Judge William F.M. Jackson	*(2003-2009)*
Patrick Kelly	*(2002-2010)*
Dr. Maelor Vallance	*(2002-2010)*
G. Glen Ridgway, QC	*(2002-2010)*
Gavin Hume, QC	*(2004-2011)*
Joost Blom, QC	*(2004-2011)*
Carol W. Hickman, QC	*(2004-2011)*
Bruce A. LeRose, QC	*(2004-2012)*
Art Vertlieb, QC	*(2004-2013)*
Rita C. Andreone, QC	*(2006-2013)*
Kathryn Berge, QC	*(2006-2013)*
Leon Getz, QC	*(2006-2013)*
Thelma O'Grady	*(2006-2013)*
David Renwick, QC	*(2006-2013)*
Richard Stewart, QC	*(2006-2013)*
Jan Lindsay, QC	*(2006-2014)*
Kenneth M. Walker, QC	*(2007-2015)*
Peter B. Lloyd, FCPA, FCA	*(2008-2015)*
David W. Mossop, QC	*(2008-2015)*
Haydn Acheson	*(2008-2015)*
The Honourable Mr. Justice E. David Crossin	*(2010-2016)*
Herman Van Ommen, QC	*(2009-2017)*
C.E. Lee Ongman, QC	*(2010-2017)*
Thomas P. Fellhauer	*(2010-2017)*
Gregory A. Petrisor	*(2010-2017)*
Satwinder Bains	*(2010-2018)*
Claude H. Richmond	*(2010-2018)*
Miriam Kresivo, QC	*(2012-2018)*
Nancy G. Merrill, QC	*(2011-2019)*
Tony Wilson, QC	*(2011-2019)*
Philip Riddell, QC	*(2011-2019)*

The dates in parentheses represent years of service as a Bencher.

2017 LSBC 15
Decision issued: May 18, 2017
Citation issued: May 9, 2016

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act,* SBC 1998, c. 9

and a hearing concerning

DONALD FRANKLIN GURNEY

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	November 29, 30, and December 1, 2016 January 20, 2017
Panel:	Phil Riddell, Chair Glenys Blackadder, Public Representative[1] Gillian Dougans, Lawyer
Discipline Counsel:	J. Kenneth McEwan, QC and Trevor Bant
Counsel for the Respondent:	Paul E. Jaffe

INTRODUCTION

1 Donald Franklin Gurney (the "Respondent") is a practising member of the Law Society of British Columbia (the "Law Society"). The citation was authorized on May 5, 2016 and issued on May 9, 2016. The citation states:

[1] Ms. Blackadder did not participate in the preparation of these reasons, and was not a member of the panel of January 20, 2017.

Between May 2013 and November 2013, you [the Respondent] used your trust account to receive and disburse a total of $25,845,489.87[2] on behalf of your client, C Inc. without making reasonable inquiries about the circumstances, including the subject matter and objectives of your retainer, and without providing any substantial legal services in connection with the trust matters. In particular, you did one or more of the following:

(a) in May 2013, you received and disbursed $5,849,970 in connection with your client's matter with G Capital;

(b) between July 2013 and August 2013, you received and disbursed $6,361,121.67 in connection with your client's matter with I Ltd.;

(c) in July 2013, you received and disbursed $7,439,445 in connection with your client's matter with A LLC or in the alternative with D Inc.;

(d) in November 2013, you received and disbursed $6,239,953.20 in connection with your client's matter with Q Group.

This conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

2 The Law Society case was entered by way of a Notice to Admit, and the Respondent's case was entered by way of a Notice to Admit and the *viva voce* evidence of the Respondent.

3 The authorization and service of the citation were admitted by the Respondent.

4 The Respondent made a preliminary application to have the citation quashed on the basis of vagueness and abuse of process. That application was dismissed and our reasons follow.

COMPOSITION OF THE HEARING PANEL

5 Ms. Blackadder was a member of the hearing panel for the first three days of the hearing, but had to withdraw not only from this hearing panel, but also from the hearing panel pool as a result of health issues. On January 5, 2017 the President of the Law Society made an order pursuant to Rule 5-3(1) that the hearing continue

[2] All references to specific amounts of money are in Canadian funds unless otherwise indicated.

with the remaining panel members. Ms. Blackadder did not participate in this decision.

RULING ON APPLICATION TO QUASH CITATION

6 When the matter came on for hearing before us, the Respondent advised that he was making a preliminary motion to quash the citation.

7 Counsel for the Respondent advised that notice of this application was not required, but in fact he had advised counsel for the Law Society that he was bringing this application. Both parties were prepared to argue it on the first day of the hearing.

8 The hearing of the application to quash occupied the first day of the hearing.

9 On the second day of the hearing we dismissed the application to quash the citation with reasons to follow. These are the reasons for dismissing the application to quash the citation.

10 The Respondent sought to have the citation quashed on the basis of vagueness and abuse of process and violation of the Respondent's rights under section 7 of the *Canadian Charter of Rights and Freedoms*.

11 In respect of the *Charter* argument, the Panel determined that the Respondent was required to give notice to the Attorney General pursuant to the *Constitutional Question Act*, RSBC 1996, c. 68, section 8(2), which states:

> If in a cause, matter or other proceeding
>
> (a) the constitutional validity or constitutional applicability of any law is challenged, or
>
> (b) *an application is made for a constitutional remedy*,
>
> the law must not be held to be invalid or inapplicable *and the remedy must not be granted* until after notice of the challenge or application has been served on the Attorney General of Canada and the Attorney General of British Columbia in accordance with this section.
>
> (emphasis added)

12 The Respondent advised the Panel that he would not proceed with the *Charter* argument at that time. We ruled that the Respondent could raise the *Charter*

argument at some later point in the hearing, if he elected to, but he did not and so the *Charter* argument was not made.

Submissions of the Respondent

13 Counsel for the Respondent posed several questions: What is the Respondent obliged to defend What is the evil What is the underlying social protection What did he do wrong

14 The Respondent argued that the purpose of this hearing should be to make a legal determination of professional misconduct based on specific criteria and not a policy debate.

15 The Respondent quoted the test for professional misconduct from *Law Society of BC v. Martin*,[3] as set out in *Law Society of BC v. Derksen*[4] at para. 13:

> What constitutes professional misconduct is not defined in the Act or the Rules or described in the *Code of Professional Conduct*. Since the decision by the hearing panel in *Law Society of BC v. Martin*, the vast majority of panels have adopted as a test for professional misconduct whether the conduct of the lawyer in question exhibited a marked departure from the standard of conduct the Law Society expects of lawyers. This is a subjective test that must be applied after taking into account *decisions of other hearing panels, publications by the Law Society*, *the accepted standards for practice* currently accepted by the members of the legal profession in British Columbia and what, at the relevant time, is required for *protection of the public interest*.
>
> emphasis added

16 The Respondent submits that, without any parameters for the test in *Martin* the hearing will be a standardless sweep. The Respondent says money laundering was suggested by the Law Society, but the citation does not allege money laundering or any particular misuse of the trust account.

17 The Respondent argued that the standard of conduct must not be the subjective view of what the Panel members personally think is a best practice and they must exercise their authority within a legal framework. Put another way, the Panel must not legislate standards for practice after the fact but must adjudicate using standards that are known or ascertainable in advance.

---

[3] 2005 LSBC 16
[4] 2015 LSBC 24

18 The Respondent says there are three problems with the citation:

(a) First, the wording of the citation does not specify the specific acts and/or omissions constituting the alleged misconduct. The specific phrases in the citation that are at issue are "without making reasonable inquiries" and "without providing any substantial legal services." No specific misconduct is alleged and none is evident from the wording of the citation.

(b) Second, it is not clear if the citation alleges one or two offences – i.e. is the word "and" conjunctive or disjunctive – and

(c) Third, the citation is void of any context in which to understand the charge and does not refer to a breach of a particular rule. The term "professional misconduct" is not defined in Rule 38(4).

19 The Respondent argues that the citation is an abuse of process if the alleged evil is money laundering or terrorist financing activity. The Respondent says that issue was decided in the *Federation of Law Societies*[5] case in which the Supreme Court of Canada decided that the rules enacted by the law societies across Canada reflected an effective standard of practice in response to the risk of money laundering and/or terrorist activity financing. The Respondent claims it is an abuse of process to revisit the findings in the *Federation of Law Societies* case.

20 The Respondent argues that he does not know the case he faces and that is a violation of procedural fairness. The Respondent says he is unable to make a full answer and defence.

The decision of the President's designate on an application for the disclosure of the circumstances

21 On September 30, 2016 the Respondent made an application for disclosure of details of the misconduct alleged in the citation pursuant to Rule 4-35. That application was dismissed on November 3, 2016 with reasons issued on November 23, 2016 by the President's Designate. Those reasons set out the following:

(a) The Respondent made a request for particulars on June 29, 2016 and, by letter of the same date, counsel for the Law Society referred counsel for the Respondent to the disclosure of the Law Society's case and provided

[5] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 SCR 401

examples to support the allegation that the Respondent provided no substantial legal services in connection with the subject transactions.

(b) On July 20, 2016 the Law Society served a Notice to Admit on the Respondent, and the Respondent provided his Response on August 8, 2016.

(c) The President's Designate found that further particulars had been delivered by the Law Society, both in the letter to counsel for the Respondent of June 29, 2016 and in the extensive Notice to Admit dated July 20, 2016.

(d) There is no requirement to allege that a respondent has contravened a specific provision of the *Act*, Rules or *Handbook* and that professional misconduct may be found in conduct outside the scope of any specific provision of the *Act*, Rules or *Handbook* as set out in *Law Society of BC v. Christie*.[6]

(e) The Respondent's application for particulars was dismissed and the President's Designate found that the allegations contained in the citation, together with the letter of June 29, 2016 and the Notice to Admit dated July 20, 2016 provided the Respondent with sufficient details of the circumstances of the alleged misconduct and reasonable information about the act or omission to be proven.

Submissions of the Law Society

22. The Law Society's position on this preliminary application is that the President's Delegate has already found the citation to be valid, that the citation and the correspondence between counsel has provided the Respondent with sufficient details of the alleged misconduct, and that whether the Respondent's conduct amounts to professional misconduct is a question of law that depends on whether it represents a "marked departure from that conduct the Law Society expects of its members": *Martin*.

23. The Law Society's letter of June 29, 2016 advised the Respondent of the following:

(a) That the Respondent had already been provided with disclosure of the Law Society's case including the four complete client files and the transcript of Mr. Gurney's interview with Mr. Wedel, which together

[6] 2006 LSBC 38

provided a complete picture of the services rendered by the Respondent in connection with the four transactions set out in the citation□

(b) That the allegation of □no substantive legal services□was based on the Respondent□s services that consisted solely of receiving and immediately disbursing □26 million in offshore funds by converting the funds into bank drafts. In particular:

(i) That the Respondent made only pro forma inquiries about the transactions,

(ii) That the Respondent knew little about the borrower, its business, its principal, the purpose of the loans, the relationship between the borrower and B House, the lenders, their businesses, their principals, their relationship to B House or C Inc.□

(c) That the above services were done in circumstances that should have raised the Respondent□s concerns about the transactions for the following reasons, which would form the basis for □reasonable inquiries□:

(i) newly incorporated borrower,

(ii) substantial offshore funds,

(iii) unknown lenders,

(iv) lack of security,

(v) mistakes in the line of credit agreements,

(vi) loans arranged through a former lawyer involved with past securities fraudsters,

(vii) short turn-around time, and

(viii) the legal fee was based on a percentage of the money flowing through the Respondent□s trust account□

(d) That the Respondent made only pro forma inquiries about the transactions. □In other words, anything to explain why companies in Nevis/Marshall Islands/Belize would lend a total of □26 million to a newly incorporated BC company with, as far as he knew, no assets and no plans.□

24 The Law Society's Notice to Admit dated July 20, 2016 set out the evidence on which the Law Society would rely to prove the citation. This provided the Respondent with further particulars of the case he would have to meet. Forty-three documents and 184 facts that included hypothetical inquiries the Law Society would allege the Respondent could have made as "reasonable inquiries" paras. 85 to 95, 99,101, 140, 141, 149, 157 and 158.

25 The Respondent's counsel, Mr. Jaffe, wrote to the Law Society on August 8, 2016. In that letter Mr. Jaffe rejected the Law Society's letter of June 29, 2016 as argument and repeated his complaint that the citation did not refer to any specific rule(s) that the Respondent allegedly broke and asked if the use of the word "and" in the citation was disjunctive (meaning that there were two separate charges in the citation "use of the trust account without providing substantial legal services and a failure to make reasonable inquiries). The Law Society responded in a letter dated September 6, 2016, referring Mr. Jaffe to the Commentary to rule 3.2-7 and making clear that the Respondent was alleged to have done one thing wrong "he allowed his trust account to be used without making reasonable inquiries and without rendering any substantial legal services.

26 In response to the argument that this hearing would be an abuse of process as a re-litigation of the *Federation of Law Societies* case, counsel for the Law Society said that it would be an astounding proposition if the Respondent was saying that he only needs to meet the no-cash and client ID requirements for the use of his trust account.

27 The Law Society's case is that the Respondent failed to exercise his role as a gatekeeper for his trust account. The Law Society does not have to prove that any particular use was made of the Respondent's trust account.[7]

28 The Respondent's preliminary application to quash the citation is essentially the same complaint as the demand for particulars except that he asks that the citation be set aside as a nullity.

29 The Panel is not bound by the decision of the President's Delegate, nor was the Panel was asked to review the decision. We were free to come to our own decision.

30 Rule 4-18 of the Law Society Rules provides as follows:

Contents of citation

4-18 (1) A citation may contain one or more allegations.

[7] *Elias v. Law Society of British Columbia* (1996), 26 BCLR (3d) 359, 1996 CanLII 1359 (CA)

(2) Each allegation in a citation must

(a) be clear and specific enough to give the respondent notice of the misconduct alleged, and

(b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven against the respondent and to identify the transaction referred to.

[31] The Respondent was previously advised that the use of the word "and" in the citation was conjunctive and therefore the citation referred to one act of misconduct – that of using his trust account to receive and disburse a total of $25,845,489.87 on behalf of one client without making reasonable inquiries about the circumstances and without providing any substantial legal services.

[32] The Respondent was given several hypothetical examples of "reasonable inquiries".

[33] The case the Respondent must meet is clear. In respect of the four transactions listed, the Law Society must prove that he failed to make reasonable inquiries, which will depend on the Respondent's evidence of what he did or did not do – and that he did not provide any substantial legal services, which, again, will depend on the Respondent's evidence of what he did or did not do. After that, it is a legal issue as to the sufficiency of the inquiries and the substance of the legal services provided and whether the Respondent's conduct represents a "marked departure from that conduct the Law Society expects of its members."

[34] We reject the argument that this hearing would be an abuse of process as a re-litigation of the issues decided in the *Federation of Law Societies* case. That case examined the right of the federal government to enact legislation requiring lawyers to report on trust account activity involving their clients and the issues were solicitor client privilege and section 7 rights under the *Charter*. This hearing is to decide if the Respondent committed professional misconduct in respect to four transactions involving his trust account.

[35] In the *Federation of Law Societies* case, the Supreme Court of Canada specifically decided that the FINTRAC rules did not apply to lawyers or law firms (and their trust accounts) because the legal profession has developed practice standards relating to the subject of the federal legislation that are evidence of a strong consensus in the profession as to what ethical practices are required. The trial judge stated, "Given the law societies' ongoing mandate and commitment to regulate their members in the public interest, including through specific measures

to combat money laundering and terrorist financing, further intrusion has not been demonstrated to be necessary or appropriate.[8]

36 It is clear from the decisions in the *Federation of Law Societies* case[9] that the ability of a law society to regulate lawyers use of trust accounts has been preserved and not limited to the no-cash and client identification rules.

37 We find that the citation, together with the disclosure made by the Law Society, meets both parts of the test in Rule 4-18. The citation is clear and specific enough to give the Respondent notice of the misconduct alleged, which is that he used his trust account to receive and disburse a sum of money without making reasonable inquiries about the circumstances including the subject matter and objectives of his retainer, and that he did so without providing any substantial legal services in connection with the trust matters.

38 The Respondent has been given enough further detail of the circumstances of the alleged misconduct so as to have reasonable information about the act or omission to be proved and the citation sets out the four particular trust transactions in issue.

39 The Respondent s application to quash the citation is dismissed.

FACTS

40 The case for the Law Society was put in by way a Notice to Admit the Respondent also filed a Notice to Admit. The findings of fact are divided into facts from the Notices to Admit and the facts found from the *viva voce* evidence. The findings of fact based upon the Notices to Admit are set out below.

41 The Respondent was called and admitted as a member of the Law Society of British Columbia on May 15, 1968.

42 The Respondent practised with a lawyer, EF, from 1982 to 1989 at the law firm of GH. EF left the law firm of GH in 1989. In 1995 EF was suspended from the practice of law for one year after being found to have committed professional misconduct. In 1999 the Respondent acted for EF with regard to his application for reinstatement and wrote a letter of recommendation to the Law Society Credentials Committee dated February 17, 1999 stating that he had known EF for 18 years, that he had known him to be a person of good character and that he displayed a good grasp of legal matters referred to the Respondent over the four years since EF

[8] *Federation of Law Societies of Canada v. Canada (Attorney General)*, 2011 BCSC 1270, at para. 209
[9] See also *Federation of Law Societies of Canada v. Canada (Attorney General)*, 2013 BCCA 147

ceased to be a member of the Law Society.[10] EF's application for reinstatement was subsequently withdrawn.

43 EF is currently the sole director of B House. Since EF's suspension, EF had instructed the Respondent with regard to a number of legal matters involving businesses in which EF was involved.

44 B House is an entity that provides private banking services and some managerial advisory services. Private banking was understood by the Respondent to mean offshore banking that is having "corporations set up offshore that hold assets, money belonging to individuals rather than holding that money with your financial institutions in the country."

45 The Respondent has no background in securities law or offshore banking. The Respondent's practice experience is in commercial real estate, business law, conveyancing and a "smattering" of foreclosures. He has currently an active commercial lending practice acting for mortgagors and mortgagees and acting for three mortgage investment corporations. The mortgage investment corporations are winding up, having had $30 to $35 million to loan out to the private sector at their peak.

46 C Inc. is a British Columbia company that was incorporated in December, 2012 and whose sole shareholder as of May 1, 2013 is IJ.

47 The transactions that form the basis of the citation can be summarized as the Respondent acting for C Inc. to receive funds through his trust account in regard to four line of credit agreements in which C Inc. was the borrower. The line of credit agreements were all unsecured, and the agreements were executed by all contracting parties when received by the Respondent. The agreements were all one page in length and were remarkably similar, except for the parties, the loan value and the choice of forum in the jurisdictional clause. The total amount received and disbursed by the Respondent was $25,845,489.87 as a result of the four line of credit agreements.

May 2013 Client File [number] re: G Capital

48 On May 15, 2013 the Respondent received an email, purportedly from IJ, seeking to retain him to prepare a demand loan in the amount $850,000 between B House and K Equity as the lender to receive and disburse the loan proceeds. The domain name from which the email was sent is one known to the Respondent as being used

[10] Exhibit 2 Law Society Notice to Admit, Tab 9

by EF, his brother and a number of people at B House. The Respondent did not know if the email came from IJ or EF, and it did not matter to the Respondent as he assumed EF was giving instructions on behalf of C Inc. Later on that date the Respondent received a telephone call from EF about the loan between C Inc. and K Equity. The Respondent advised that his fees would be 0.1 per cent of the net funds received and disbursed through his trust account. The Respondent understood that EF had arranged the loan for C Inc. The Respondent advised EF that the lender (K Equity) would be preparing the loan documentation.

49 On May 16, 2013 the Respondent received an email from C Inc. attaching an executed line of credit agreement in the amount of 9 million between C Inc. and K Equity with an execution date of May 15, 2013, and copies of C Inc.s certificate of incorporation, register of directors, register of shareholders, directors resolutions and IJs drivers licence. The line of credit agreement was a one-page document that showed that K Equity was based in Nevis, it was an unsecured demand loan, C Inc. could borrow up to 9 million, interest was payable at 5 per cent per annum, and the court of Nevis would have jurisdiction over any legal action. On May 24, 2013 the Respondent received an email from C Inc. attaching a new line of credit agreement in the amount of 9 million between C Inc. and G Capital. This agreement had an execution date of May 15, 2013 and was identical in terms to the previous agreement, but for the parties.

50 On May 28, 2013 the Respondent received a wire transfer in the amount of 5,849,970 into his trust account on behalf of C Inc. The ordering customer was G Capital. The Respondent then purchased a bank draft in the amount of 5,843,418 payable to C Inc., from the funds held on behalf of C Inc. in his trust account.

51 On May 29, 2013 the Respondent met with EF and IJ at the offices of B House, which are also the registered office of C Inc. Prior to attending at the meeting, the Respondent had reviewed the executed line of credit agreement between C Inc. and G Capital. The Respondent reviewed the minute book of C Inc., viewed IJs drivers licence, obtained a business card and confirmed his contact information. The Respondent was told that the source of the loan monies was stocks and that there was no illegal purpose. The Respondent had IJ sign, in his personal capacity and in his capacity as a signatory of C Inc., an indemnity agreement indemnifying the Respondent in the event the wire transfer of the loan proceeds was reversed. The Respondent then delivered the bank draft in the amount of 5,843,418 to IJ with his statement of account in the amount of 6,552.

52 Prior to the Respondent meeting IJ on May 29, 2013, he had met IJ at a few Christmas parties held at the offices of B House, and had not done any prior work

for him. The Respondent knew that IJ operated a printing business but "basically knew nothing about him." He did not know anything about the printing business or any of IJ's other business ventures.

53 It was not until the meeting of May 29, 2013 that the Respondent considered C Inc. to be his client. C Inc. was not the Respondent's client prior to that date.

June - August 2013 Client File [number] re: I Ltd.

54 On June 27 or 28, 2013 the Respondent received a telephone call from EF in relation to a line of credit agreement between C Inc. and I Ltd., a Belize company. The Respondent then opened a file in relation to the matter. On either June 27 or 28, 2013 the Respondent met with EF and IJ at the offices of B House. At that meeting IJ told the Respondent that the line of credit was for "corporate business purposes including investments and the making of loan," "startup loans debt financing to startup companies in the oil and gas and resource industry," and for "no illegal purpose." EF told the Respondent that the loan was arranged by him, and that he provided "banking services to the lender and he was aware of the source of proceeds of the loan, where the money came from and he indicated that it came from stocks and he confirmed that there was no illegal purpose involved in connection with it." The Respondent asked EF and IJ if the funds had anything to do with money laundering or were the proceeds of crime, and was advised that they did not and were not. The Respondent made no other inquiries about I Ltd. such as who the principals or owners were, the status of its incorporation, the identity of the authorized signatories, the source of funds or the existence of additional agreement or guarantees associated with the line of credit agreement.

55 On June 29, 2013 the Respondent received an email from C Inc. attaching a one-page executed line of credit agreement with an execution date of May 15, 2013 between C Inc. and I Ltd. in the principal amount of 7.6 million. The email advised that the Respondent would be receiving 1,750,000 USD to the Respondent's trust account on July 2, 2013. The Respondent was asked to deliver a bank draft to C Inc. at the offices of B House, less his fees. On July 2, 2013 the Respondent prepared a statement of account in the amount of 2,049.60. On July 3, 2013 the Respondent received a wire transfer in the amount of 1,831,359.30 in his trust account for the benefit of C Inc. On July 3, 2013 the Respondent issued a trust cheque and used it to purchase a bank draft payable to C Inc. in the amount of 1,829,309.70. On that day the Respondent delivered the bank draft and his account to C Inc. care of B House. On July 4, 2013 the Respondent issued a trust cheque to pay his account.

56 On July 19, 2013 the Respondent received an email from C Inc. stating that he would receive 1.5 million USD to the benefit of C Inc. in his trust account. These funds were to be advanced by I Ltd. on July 22, 2013. On July 22, 2013 C Inc. advised the Respondent by email that the advance would be increased to 1.6 million USD. On July 22, 2013 the Respondent received a wire transfer of 1,637,584.65 into his trust account. On that date the Respondent issued a trust cheque in the amount on 1,635,736.65 to C Inc., which he used on July 23, 2013 to purchase a bank draft payable to C Inc. The Respondent prepared his statement of account in the amount of 1,848 on July 23, 2013. The Respondent delivered the bank draft to C Inc. care of B House and issued a trust cheque to pay his account on July 23, 2013.

57 On August 5, 2013 the Respondent received an email from C Inc. advising that there would be a further advance in the amount of 1.75 million USD to C Inc. from I Ltd. The funds were advanced on August 6, 2013. On August 7, 2013 the Respondent received a wire transfer into his trust account in the amount of 1,799,859.57 to the benefit of C Inc. The Respondent then prepared his account in the amount of 2,016. On August 7, 2013 the Respondent prepared two trust cheques, one to satisfy his account and one in the amount of 1,797,843.57 payable to C Inc., which he immediately converted into a bank draft. On August 7, 2013 the Respondent delivered the bank draft and his account to C Inc. care of B House.

58 On August 20, 2013 the Respondent received an email from C Inc. advising that there would be a further advance in the amount of 1.01 million USD to C Inc. from I Ltd. on August 21, 2013. On August 21, 2013 the Respondent received a wire transfer to his trust account in the amount of 1,047,318.15 to the benefit of C Inc. On that date the Respondent prepared his account to C Inc. in the amount of 1,176, issued a trust cheque to satisfy his account, and a trust cheque in the amount of 1,046,142.15 payable to C Inc., which he immediately converted to a bank draft payable to C Inc. On August 22, 2013 the Respondent delivered to C Inc. care of B House his account and the bank draft payable to C Inc.

July 2013 Client File [number] re: A LLC

59 On July 25, 2013 the Respondent received an email from B House attaching a one-page line of credit agreement in the amount of 8.9 million between C Inc. and A LLC of Nevis, and advising that 7.29 million USD would be wired to his trust account on July 26, 2013. On July 25, 2013 the Respondent spoke to IJ and EF about the A LLC transaction. The Respondent made no inquiries regarding the source of funds or inquiries regarding A LLC. The Respondent opened a file regarding A LLC on this date. On July 29, 2013 the Respondent received a wire

transfer in the amount of $7,439,445 in his trust account to the credit of C Inc. On July 29, 2013 the Respondent issued his account in the amount of $8,344 to C Inc. On July 30, 2013 the Respondent issued three trust cheques: one to pay his account, one in the amount of $6,441,101 payable to C Inc., which he immediately converted to a bank draft payable to C Inc. and one in the amount of $990,000 payable to C Inc., which he immediately converted to a bank draft payable to C Inc. Later on that date he delivered the two bank drafts payable to C Inc. and his account to C Inc. care of B House.

November 2013 Client File [number] re: Q Group

60 On November 13, 2013 the Respondent received an email from C Inc. attaching a one-page line of credit agreement between C Inc. and Q Group of Nevis, executed on November 8, 2013, in the amount of $6.4 million. $6 million USD would be wire-transferred to the Respondent's trust account on November 14, 2013. The proceeds were to be disbursed to pay the Respondent's fees and the balance to be issued in two cheques/bank drafts payable to C Inc., divided one-third, two-thirds and delivered to C Inc. care of B House. The Respondent spoke to IJ and EF on the phone regarding the transaction. The Respondent made no inquiries regarding the source or use of the funds. The Respondent opened a file on November 13, 2013.

61 On November 15, 2013 $6,239,953.20 was received by wire transfer into the Respondent's trust account to the benefit of C Inc. On the same date the Respondent prepared an account in the amount of $7,056 to C Inc. The Respondent then issued three trust cheques: a cheque in the amount of $7,056 to satisfy his account, a cheque in the amount of $2,077,632.40 payable to C Inc., which he immediately converted to a bank draft payable to C Inc., and a cheque in the amount of $4,155,264.80 payable to C Inc., which he immediately converted to a bank draft payable to C Inc. On November 15, 2013 the Respondent delivered his account and the two bank drafts to C Inc. care of B House.

62 The fee arrangement that was in place for each of these transactions was 0.1 per cent of the value of funds passing through the Respondent's trust account. The Respondent justified this fee based upon the amount involved and the risk involved.

63 On a review of the Notices to Admit of the Law Society and of the Respondent, there is no dispute as to the mechanics of the transactions that are subject to the citation in that there is no issue as to when emails were received, when meetings took place, the nature of the documents exchanged, and the amounts involved in and the timing of the financial transactions. The matter at issue is the nature of the

inquiries conducted by the Respondent regarding the parties to the transaction, and the sources and uses of the funds that flowed through his trust account. As mentioned in these reasons, the Respondent gave *viva voce* evidence at the hearing, and he was also interviewed as a part of the Law Society investigation on July 11, 2014 (the "Interview"). The Interview was tendered as an admission against interest by the Law Society.

64 A review of the Interview reveals the following:

(a) The Respondent met IJ a few times at the B House Christmas party eight to ten years previously and had seen him at the party over the years.

(b) The Respondent knew nothing about IJ's business except that he owned a printing company.

(c) The Respondent had no dealings with IJ outside of his dealings with B House and those dealings began in May 2013.

(d) A month prior to the Interview the Respondent was advised by EF that B House had made loans in the oil and gas industry.

(e) The Respondent did not "follow up with what they've [B House] done with the money (the loan proceeds). I [the Respondent] had no personal knowledge of that."[11]

(f) The Respondent has known EF for approximately 30 years. When EF was a lawyer, they had practised together for five to six years at the firm of GH. The Respondent knew that EF had been suspended by the Law Society for breach of an undertaking in 1995, and was aware EF was no longer a lawyer.

(g) The Respondent described his relationship with EF as being "a friend, at least more of an acquaintance, we don't get together socially."[12]

(h) The Respondent understood that B House "provides private banking services and also I understand also it provides some managerial advisory services to various companies and individuals. Other than that I can't tell you in detail ..."[13]

[11] Interview, p. 10
[12] Interview p. 19
[13] Interview p. 19

(i) The Respondent understood EF to be a principal of B House, but he was unaware of the involvement of others, if any, in the entity;

(j) The Respondent claimed that neither B House nor EF had ever been his client;

(k) The Respondent understood B House to provide "private banking" services, which he understood to mean "I'm referring to offshore banking, have corporations set up offshore that hold the assets, the money belonging to individuals rather than holding that money with your financial institution in the country";[14]

(l) The Respondent could not provide examples of the services he understood B House to provide. He had not been involved in offshore banking, and had no training or practice experience in the area of securities law;

(m) C Inc. was the Respondent's client at all material times;

(n) EF advised the Respondent that I Ltd. was "an investment company and that its assets are liquid are basically the result of dealings in the stock market and that EF is aware of the nature of those proceeds and where they come from by reason that he provides banking services to I Ltd.";[15] He did not know who the principals or owners of I Ltd. were or its place of operation. The Respondent was not aware of the corporate business purpose apart from making loans that caused C Inc. to enter into the line of credit agreement.

(o) The Respondent's role in the four files that are subject of the citation involved the following:

(i) He did what he "was requested to do," which was to "receive funds and disburse them primarily,";[16]

(ii) He did not recall providing any specific legal advice, but he would have provided legal advice if asked to;

[14] Interview p. 22
[15] Interview p. 27
[16] Interview p. 31

(iii) He described his role as facilitating the receipt and disbursement of loan advances, and converting the funds from US dollars to Canadian dollars□

(iv) In response to questions as to whether there needed to be a lawyer involved in the transactions, the Respondent stated: □From my point of view, it could have been structured in a different way where a lawyer did not need to be involved, different clients, but that client so desired□□[17]

(v) The Respondent wondered why he was involved in the transactions. He was not necessarily suspicious of the transactions, but he thought that he had to ask a few questions. This was due to the fact that the transactions were offshore transactions and to their size. He was not uncomfortable about acting after his □due diligence,□which consisted of the in-person meetings with EF and IJ and the questions he asked□

(vi) The Respondent□s □due diligence□captured in his file notes and consisted of obtaining client verification documents, asking about beneficial ownership and asking if there were any illegal purposes. Specifically he asked IJ and EF if the money was proceeds of crime or from any illegal activity. Both replied that it was not. When asked where the money come from, EF said it was from stocks, and the Respondent did not ask for any further details.

(p) The Respondent acknowledged that the loan transactions were □not a conventional type of loan transaction,□but he thought about it and □if the parties agreed to it, private parties, there was not much I was going to say about it□□[18]

(q) The Respondent purchased bank drafts from the net loan proceeds from each transaction to avoid the eventuality that the bank might reverse the wire transfer. The purchasing of the bank draft removed the funds from his trust account, so if the wire transfer were reversed the funds were no longer in his trust account□

(r) The Respondent had not been involved in files similar to the transaction involving B House previously in his legal career.[19]

[17] Interview p. 33
[18] Interview p. 48
[19] Interview p. 61

65 In addition to the Notices to Admit filed by the Law Society and the Respondent, the Respondent gave *viva voce* evidence, and based upon that evidence we make these additional findings of fact.

66 The Respondent in his *viva voce* evidence stated:

(a) "If you were dealing in offshore money, you would obviously ... have a concern too that money isn't tainted by illegality"[20]

(b) Through the years a number of people who have used the services of EF have become the Respondent's clients.

(c) Prior to 2013 the Respondent had not been involved in any dealings with EF involving offshore money.

(d) In 2013 the Respondent was involved in a couple of real estate transactions involving offshore money. He assumed that EF was involved in the transactions.

(e) Due to his knowledge of EF through the years, the Respondent understood that EF was involved in placing money earned offshore in offshore financial institutions based in countries where there are minimal tax implications.

(f) The Respondent had no concerns regarding the money coming from offshore in that EF was involved. He had known EF for years, all the dealings were positive and there had been no problem. He had no reason to disbelieve EF.

(g) Through the years EF would phone the Respondent with regard to various issues. There would be the occasional lunch.

(h) In 1999, EF had had the Respondent assist him in his dealings with the Law Society, after EF's suspension in 1995. The Respondent dealt with the possible reinstatement of EF, and the possible unauthorized practice of law. This is the evidence that he gave in his evidence in chief, and that should be contrasted against his evidence in cross-examination where his recollection of his dealings with EF and his recollection of his representation of EF was much less precise and the Respondent appeared reluctant to repeat the evidence he had given in chief on this point.

[20] Transcript Day 1, p. 9

(i) The Respondent in his Notice to Admit included an article from a magazine that showed IJ receiving an award on November 25, 2013 which post-dates the last transaction that is the subject of the citation. The Respondent was not aware of the article until he saw it as part of the Law Society disclosure in this proceeding. The article was irrelevant to the Respondent's knowledge of IJ at the time of the subject matter of the citation.

(j) The Respondent stated that C Inc. did not ask to use his trust account for any of these transactions. As was pointed out in cross-examination, since the Respondent was being asked to receive and disburse funds on behalf of C Inc., then the only way that he could do that and comply with the accounting rules was to do so through his trust account. The Respondent was also directed to various emails in which he was asking how much would be deposited to his trust account and when those deposits would be made. The position of the Respondent on this point reflects adversely on his credibility. The Respondent also resisted suggestions that his fees were based upon the amount of funds that passed through his trust account. He acknowledged the fee was based upon the amount of money that he received and disbursed. The only way in which he could deal with the funds he received was via his trust account. Despite the Respondent's resistance, we find that the fee structure was based on one tenth of one per cent of the funds passing through his trust account – it is clear that this was the basis of his fee. We find the Respondent's resistance to the proposition adversely affects his credibility. The Respondent continually emphasized in his evidence that he complied with the Law Society client verification rules. It should be noted that the Law Society did not take a contrary position on this issue.

(k) The Respondent's stated concerns about the transactions was the "issue of large sums of money coming from offshore by wire transfer," a concern that there would be no suspicious activity, and to ensure the money would arrive and the transaction would not be reversed. He was concerned about the risk he was taking with regard to the amount of the transaction being in excess of his insurance. He had not stated that he knew the parties and was satisfied of the circumstances involving the transaction.

(l) The Respondent carried out what he repeatedly called his "due diligence" in an essentially identical manner with regard to all four transactions, which included obtaining copies of various portions of

minute books of C Inc., obtaining client identification and verification information from IJ, recording EF's phone number and obtaining the following information:

(i) That there were no illegal purposes or activity involved in transactions;

(ii) EF advised the source of the funds were "stocks" without any specifics; and

(iii) IJ at one point advised the funds were going to be used for investment in the petroleum industry.

(m) The Respondent made no inquiries into the principals behind the various lenders. He did not know the state of C Inc.'s assets on May 24, 2013. He did not know when various documents were drawn. He did not know anything of IJ's printing business other than it was "successful", or of his other business activities;

(n) The Respondent acknowledged that the transactions that are the subject of the citation were "unconventional";

(o) The Respondent was confident that EF would tell him if there was anything wrong or tainted with the transactions. He relied upon IJ, whom he had only met three or four times at Christmas parties prior to the first transaction, to reply to him accurately when he asked if there was anything "illegal" involved in the transaction;

(p) The Respondent refused to acknowledge an obvious proposition that, once he issued a trust cheque to purchase a bank draft, the funds had left his trust account. He continually took the position that he could reverse the bank draft and the funds would be returned to his trust account. His own evidence acknowledges implicitly that the funds had left his trust account when he purchased a bank draft with them. Otherwise, why would he have to reverse the purchase of the bank draft to return the funds to his trust account? The failure to acknowledge this obvious proposition we find adversely affects the Respondent's credibility;

(q) The Respondent did not participate in the negotiation of any of the transactions, but he said "I knew EF on the one side, and I knew that IJ on the other side, and that's the bargain that was struck".[21]

[21] Transcript Day 2, pp. 162-63

(r) The Respondent placed reliance upon EF and his previous dealings with EF. In his examination in chief he stated that, other than the disciplinary action with the Law Society, he knows of no other discreditable conduct on the part of EF. He was examined regarding the lawsuit that named the law firm in which he and EF were partners, and took the position that the lawsuit was not a concern of his or the firm given that the insurer was dealing with it. He said he would have been concerned with the firm's reputation. He said that he paid no attention to the lawsuit, which revolved around EF's breach of undertaking. This is the same breach of undertaking that led to EF's one-year suspension from the practice of law. Given that the law firm had a relatively small partnership we find it difficult to accept that, in that environment, a partner would not take an interest in a lawsuit involving one of his partners for a breach of undertaking, even to the extent that such a lawsuit could adversely impact the reputation of the firm. EF resigned from the partnership in 1989 and subsequently applied to re-enter the partnership. The partners did not allow this to occur. We do not find the position taken by the Respondent to be reasonable in light of the size of the firm, and the nature of the allegations against EF. In light of these facts we do not accept the evidence of the Respondent that he had little or no knowledge of EF's actions as they dealt with the lawsuit and his subsequent suspension.

(s) The Respondent was vague with regard to his representation of EF in his attempts to obtain reinstatement to the Law Society after EF's suspension. He was evasive in cross-examination with regard to the nature of the activities of EF that were of interest to the Law Society at the time.

67. We find that Respondent was not credible in his evidence to the Panel, in particular when it deal with issues of:

(a) His knowledge of EF's previous misconduct, and the fact that EF's previous misconduct did not make the Respondent suspicious of offshore dealings involving EF. We question how a partner in a small law firm that is being sued for the misconduct (the breach of an undertaking) of another partner would not take any interest in the litigation, leaving it in the hands of the insurer. This strains credibility, and we rely upon *Faryna v. Chorny*[22] and the comments of O'Hallaran, JA who stated:

[22] [1952] 2 DLR 354, 1951 CanLII 252 (BCCA)

> the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. The Respondent's evidence on this issue is not in harmony with the preponderance of probabilities

(b) We find that the Respondent was evasive in his evidence with regard to calculation of his fees based upon the amount of money flowing through his trust account

(c) We note that, throughout portions of his evidence, particularly under cross-examination, he was evasive in that he would not answer questions put to him and was self-serving with regard to his knowledge of the Law Society accounting rules.

[68] Regardless of our findings on credibility the issue to now be decided is whether the Law Society has proved its case.

SERVICE OF CITATION

[69] Rule 4-19 requires the Law Society to serve the Respondent with the citation. This was done on May 11, 2016.

PRINCIPLES

[70] The Law Society bears the onus of proof on the balance of probabilities: *Law Society of BC v. Ben-Oliel*.[23]

[71] In determining if the Respondent's conduct constitutes professional misconduct the test was set out in *Martin*:

> The real question to be determined is essentially whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.

[23] 2016 LSBC 31, at para. 7

ANALYSIS

72 The Respondent has argued that the citation issued in this matter deals with an issue of policy versus standards. He has relied upon the decision of the Newfoundland Court of Appeal in *Council for Licensed Practical Nurses v. Walsh*[24] to support this stated proposition that "the applicable standard of conduct is not to be invented in response to the circumstances of any given case."[25] The difficulty with this argument is that the courts have confirmed that the legislature has delegated to the Law Society the power to determine whether a lawyer is guilty of professional misconduct or of conduct unbecoming.[26] There are provisions in the *Code of Professional Conduct for British Columbia* (the "*Code*") and case law that pre-existed the issuance of the citation that deal with the obligation on a lawyer regarding the use of trust accounts.

73 Counsel for the Law Society set out the relevant provisions of the *Code* in his final submission, and we set out those sections below:

> 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.
>
> **Commentary**
>
> 2 Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.
>
> 3.2-7 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.
>
> **Commentary**
>
> 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.

[24] 2010 NLCA 11, para. 43 to 45
[25] Respondent's Final Submissions at para. 35
[26] *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869 at p. 889 and 890; *Elias v. Foo v. Law Society of British Columbia,* 2017 BCCA 151.

> 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 ...
>
> 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 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 ...

74 The position of the Law Society regarding the duties of a lawyer regarding the use of his trust account was set out as follows:

(a) Trust accounts must only be used for the legitimate commercial purpose for which they are established, namely to aid in the completion of a transaction in which the lawyer or law firm plays a role as a legal advisor and facilitator. The Respondent had no such role he was merely a convenient and apparently legitimate conduit for funds [27]

(b) Where the circumstances of a proposed transaction are such that a lawyer should reasonably be suspicious that there are illegal activities involved under Canadian law or laws of other jurisdictions, it is professional misconduct to become involved until such time as inquiries have been made to satisfy the lawyer on an objective test that the transaction is legitimate [28]

[27] *Law Society of BC v. Skogstad*, 2008 LSBC 19 at para. 61
[28] *Elias*, at para. 9, quoting the Bencher review decision

(c) A finding of professional misconduct can be established in the absence of a finding that the source of funds came from an illegitimate source. It is the objectively suspicious nature of the transaction that gives rise to the duty to carry out inquiries. A lawyer cannot delegate the duty to enquire to someone else.[29]

(d) A lawyer's duty of loyalty to his client requires him to take appropriate steps to ensure his services are not being used for "improper ends".[30]

(e) Solicitor-client privilege is available to foster open and candid communication between solicitor and client. The solicitor is bound by the privilege. It is said to be the only "absolute" privilege. This creates a situation in which transactions flowing through a solicitor's trust account are cloaked in solicitor-client privilege.[31]

75 The position taken by the Respondent in his submissions on the issues that have not been already discussed deal with the following issues, and we use the headings used by the Respondent in his final submission:

The Irrational Charge

(a) There has to be a causal connection between the use of a trust account and some kind of wrongdoing.

(b) The use of the trust account must facilitate the wrongdoing.

(c) How the funds being in the Respondent's trust account could possibly have enabled fraudulent or dishonest purpose remains a mystery.[32]

(d) There is no evidence the use of the Respondent's trust account could have facilitated wrongdoing.

(e) The use of the Respondent's trust account to receive and disburse funds could not obscure the use of funds.

(f) FINTRAC would have recorded the deposit of funds into the Respondent's trust account.

---

[29] *Law Society of BC v. McCandless*, 2010 LSBC 03 para. 43, 51. *Law Society of Upper Canada v. Di Francesco*, 2003 LSDD 44 para. 25-27. *Holy v. Law Society*, 2006 EWHC 1034 para. 23, 24, 35
[30] *Federation of Law Societies* (SCC), para. 93
[31] *R. v. McClure*, 2001 SCC 14, 2001 1 SCR 445, para. 31-33. *Andrews v. Law Society of BC*, 1989 1 SCR 143, at pp. 187-188.
[32] Respondent's final submission para. 39.

(g) The Respondent kept the accounting documents required by the Law Society trust accounting rule.

The FLS (Federation of Law Societies) Litigation

(a) The Respondent agrees with the Law Society that: "It would be perverse if the *Federation* cases, which affirmed the importance and effectiveness of robust self-regulation by the Law Society, had the effect of limiting the Law Society's power to regulate the legal profession in the public interest".

(b) The Law Society has acknowledged that the same rules that were in effect at the time the Supreme Court of Canada dealt with the FLS Litigation are in effect now.

(c) Both directly and by adopting the FLS's position, the Law Society successfully asserted that the rules that it has enacted (which it admits the Respondent complied with) effectively ensured that lawyers are not a gateway for money laundering.[33]

(d) This is an abuse of process because the Law Society is now taking a position that, although the Respondent complied with the rules that were at issue in the FLS litigation, he has now professionally misconducted himself.

Other Law Society Publications

(a) Reference is made to a variety of Law Society publications that set out the effectiveness of the client identification and verification "scheme".

(b) A publication that states: "Our rules also specify that a lawyer can only accept electronic transfers from banks in countries that have adopted similar anti-money laundering measures." This publication must mean the source of funds in this case had already been subject to regulatory scrutiny before arriving in Canada.[34]

[33] Respondent's final submission para. 59
[34] Respondent's final submissions para. 68 and 69.

“Suspicious” and “Use of your trust account”

(a) The submissions dealing with these two headings which we have incorporated into one deal with an analysis of the evidence.

Substantive legal services

(a) The Respondent gave evidence that he used his trust account in conjunction with providing legal services□

(b) There is no definition of □legal services□in any British Columbia enactment or case law.

Culpability principle

(a) Does the Respondent□s conduct display the degree of culpability that can be the basis for a finding of professional misconduct□

□76□ The Respondent has repeatedly raised the effect of the decisions for the various courts in the *Federation of Law Societies* and has tried to use the argument of the decisions as they deal with the client identification and verification rules and the □no-cash□rule to argue that compliance with those rules in conjunction with the Law Society trust accounting rules are the full scope of a lawyer□s obligation with respect to the use of his trust account. The underlying difficulty with this argument is that these rules (client identification and verification and the □no-cash□rule) were found □to augment long-standing law society rules prohibiting lawyers from engaging in illegal activity by preventing lawyers from being unwittingly involved in money laundering and terrorist financing, while maintaining the long-standing principles underlying the solicitor-client relationship.□[35] Gerow J. then went on to say: □Given the law societies□ongoing mandate and commitment to regulate their members in the public interest, including through specific measures to combat money laundering and terrorist financing, further intrusion has not been demonstrated to be necessary or appropriate.□[36]

□77□ The *Federation of Law Societies* decision does not limit the ability of the Law Society to govern lawyers□professional conduct, in particular with regard to the use of a lawyer□s trust account.

[35] At para. 23
[36] Para. 209. Quoted with approval by BCCA at para. 145

78 We find that lawyers have a number of duties to fulfill before allowing their trust accounts to be used. We accept the submissions of the Law Society with regard to these duties. The Respondent's submissions with regard to these duties have been dealt with above, and we find that those submissions on the law limiting lawyers' duties to compliance with the client identification and verification, "no-cash" and trust accounting rules were not supported by the authorities cited in those submissions.

79 We find lawyers' duties with regard to the use of their trust accounts are contained in the *Code* provisions that were set out above as part of the Law Society submission, and more particularly encompass the case law cited by the Law Society in its submissions. They are:

(a) A lawyer's trust accounts are to be used for 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.[37] Even where other authorities, such as FINTRAC, may be aware of the source of the funds entering an account, the effect of solicitor-client privilege is that the parties to whom the funds are disbursed and the purpose for which the funds are disbursed are shielded by the privilege. It is for this reason that a lawyer's trust account cannot be used only for the purpose of facilitating the completion of a transaction, but the lawyer must also play a role as a legal advisor with regard to the transaction. This is the requirement to provide legal services.

(b) The Court of Appeal in *Elias*, quoted the Bencher review decision at para. 9: "where the circumstances of a proposed transaction are such that a member should reasonably be suspicious that there are illegal activities involved under Canadian law or laws of other jurisdictions, it is professional misconduct to become involved until such time as inquiries have been made to satisfy the member on an *objective* test that the transaction is legitimate." (emphasis added) It is clear that the duty to make inquiries is triggered prior to the lawyer becoming involved in the transaction, and the lawyer must be satisfied on an objective basis that the transaction is legitimate.

(c) The lawyer's duty to investigate arises when, on an objective basis, he becomes suspicious that the transaction is illegitimate. Professional misconduct can be found even if the underlying transaction cannot be

[37] *Skogstad*, at para. 61 "*Code* 3.2-7

> proved to be illegitimate. A lawyer cannot delegate the duty to inquire to a third party such as a client and rely upon the client's assurance as to the legitimacy of the transaction.[38]

80 A lawyer has a gatekeeper function with regard to trust accounts. This function arises, in part, from the fact that transactions that occur through a lawyer's trust account are protected by solicitor-client privilege. The privilege means that, while the authorities may be aware of the source of funds entering into the trust account, the facts regarding to whom funds are disbursed, the amounts and the purposes are shielded from the authorities by the privilege. The purpose of the privilege is to allow open and candid communications between a lawyer and client. The purpose of the privilege is not to facilitate suspicious transactions. The gatekeeper function requires a lawyer to use trust accounts for legitimate commercial purposes for which the lawyer is a legal advisor and facilitator. Prior to the lawyer becoming involved in a transaction, if there is a reasonable suspicion that the transaction may involve illegal activities in Canada or abroad the lawyer has a duty to make reasonable inquires. An objective test is applied to the lawyer's conduct. In order for professional misconduct to be found, illegal activities do not have to be proved.

81 We find that, in the case of the Respondent, there were a number of factors that gave rise to the series of transactions being objectively suspicious, including:

(a) The Respondent had no previous professional dealings with IJ or C Inc.

(b) The Respondent's practice did not involve unsecured commercial lending

(c) The Respondent's understanding of "private banking" was that monies were invested in jurisdictions with a more favourable tax rate than in Canada. The Respondent at no point turned his mind to the tax consequences of these funds coming into Canada

(d) All of the transactions dealt with offshore lenders to a new client

(e) The Respondent's fee was based upon a percentage of the funds received and disbursed through his trust account

(f) All of the transactions involved the Respondent receiving executed, one-page line of credit agreements no security

[38] *McCandless*, 2010 LSBC 3, at paras. 43 *Di Francesco*, at paras. 25-27 *Holy*, at paras. 23, 35

(g) The transactions involved millions of dollars and did not require the use of a lawyer's trust account to complete;

(h) The lenders, in the case of some of the transactions, changed from one entity to another;

(i) The executed line of credit agreements did not identify the signatories;

(j) No legal advice was sought from the Respondent. The Respondent did testify that he reviewed the agreements and would have advised C Inc. if he had any concerns; and

(k) The first transaction involving G Capital was a transaction in which the funds were deposited to the Respondent's trust account, and the Respondent had issued a statement of account, purchased a bank draft payable to C Inc., issued a trust cheque to himself to satisfy his account before he was retained by C Inc.

[82] These are illustrations of some of the flags that were present when the Respondent became involved in these transactions. On a review of all of the evidence we are satisfied that there was an objective basis to suspect the transactions set out in the citation were suspicious.

[83] The next issue to address is did the Respondent made reasonable inquiries to satisfy himself that he was not becoming involved in some form of illegal transaction. On a review of the evidence we find that he did not. The basis for this conclusion includes:

(a) On the transaction involving G Capital, funds were deposited into and disbursed from the Respondent's trust account before he considered himself retained. Prior to his first meeting with his client, the Respondent obtained by facsimile a copy of documents from the minute book of C Inc. and a copy of IJ's driver's licence. Not only did the Respondent know nothing of his client's business prior to entering into this transaction, but he also knew nothing of the source of the lender's funds. His inquiry upon meeting this client was to ask if the funds came from an "illegal source", to ask as to the ownership of his client and the use the client was going to make of the money, and to deal with client verification information. He asked EF about the lender's source of funds and was told that the funds came from "stocks".

(b) On the other three transactions particularized in the citation, the Respondent obtained client verification information and engaged in the same questioning regarding whether the funds would be used for "illegal purposes". The questioning embarked upon by the Respondent in no way could be considered probing and was no more than superficial. The questioning was described by counsel for the Law Society as "pro forma", and that is an apt description.

(c) The Respondent relies on his inquiries of EF to say that he made reasonable inquiries. This is fraught with difficulties in that it depends upon EF being a reliable and credible source of information and on EF having made the reasonable inquiry. We do not have to deal with the character and reliability of EF because the law is clear that the Respondent cannot delegate his duty to make reasonable inquiries to a third party.

[84] This is a case in which the nature of the transactions raises a reasonable suspicion that the transactions may involve illegality. A review of the facts causes an objective observer to be suspicious. This is one of those circumstances in which one would have to ignore the sea of red flags that were raised by these transactions.

[85] In assessing if a reasonable inquiry has been made, the first step to be taken is an examination of the Respondent's file and the notes contained in that file. The notes for all four transactions are remarkably similar and include client verification and identification information and the answers to the pro forma questions, including who is the beneficial owner of the client and are funds for an illegal purpose. No inquiry regarding who the principals of the lender are, the source of their funds, and the use of the funds by the client are made and recorded. The Respondent failed to make reasonable inquiries.

[86] The Respondent provided no substantial legal services.

[87] It is not a defence for the Respondent to argue that the Law Society has not proved the existence of an illegal purpose. The Law Society is not required to prove this to prove professional misconduct.

[88] The test to determine if a lawyer has committed professional misconduct is found in *Martin*: "The real question to be determined is essentially whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer." For a lawyer to ignore the flags that raise a reasonable suspicion and to make minimal inquiries beyond dealing with client verification and the asking of

"pro forma" questions in the circumstances of this case leads to the inexorable conclusion that the Respondent has committed professional misconduct. This is a case in which the Respondent has shown a gross culpable neglect to his duties to make reasonable inquiries, and we also find that the Respondent used his trust account in the absence of providing legal services.

[89] We find that the Law Society has proved on a balance of probabilities that the Respondent committed professional misconduct in the manner set out in the citation.

2017 LSBC 32
Decision issued: September 1, 2017
Citation issued: May 9, 2016

CORRECTED DECISION: PARAGRAPH [65](1) OF THE DECISION WAS AMENDED ON SEPTEMBER 6, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act,* SBC 1998, c. 9

and a hearing concerning

DONALD FRANKLIN GURNEY

RESPONDENT

DECISION OF THE HEARING PANEL ON DISCIPLINARY ACTION

Hearing date:	July 11, 2017
Written Submissions received:	July 27, 2017
Panel:	Phil Riddell, Chair Gillian M. Dougans, Lawyer
Discipline Counsel:	J. Kenneth McEwan, QC Trevor Bant
Counsel for the Respondent	Paul E. Jaffe

INTRODUCTION

1 The Respondent was found to have committed professional misconduct in the following manner:

> Between May 2013 and November 2013, you [the Respondent] used your trust account to receive and disburse a total of $25,845,489.87 on behalf of your client C Inc. without making reasonable inquiries about the circumstances, including the subject matter and objectives of your retainer, and without providing any

substantial legal services in connection with the trust matters. In particular, you did one or more of the following:

(a) in May 2013, you received and disbursed $5,849,970 in connection with your client's matter with G Capital;

(b) between July 2013 and August 2013, you received and disbursed $6,361,121.67 in connection with your client's matter with I Ltd.;

(c) in July 2013, you received and disbursed $7,439,445 in connection with your client's matter with A LLC or in the alternative with D Inc.;

(d) in November 2013, you received and disbursed $6,239,953.20 in connection with your client's matter with Q Group.

2 The reasons of the Panel dealing with Facts and Determination, 2017 LSBC 15 ("F&D"), set out the basis for the factual background and the manner in which the Respondent committed professional misconduct.

POSITION OF THE LAW SOCIETY AND THE RESPONDENT WITH REGARD TO THE APPROPRIATE DISCIPLINARY ACTION.

3 The Law Society submits that the appropriate disciplinary action is:

(a) a six-month suspension;

(b) disgorgement of $25,845, representing the fees earned by the Respondent, payable to the Law Society; and

(c) imposition of conditions on the use of a trust account.

4 The Respondent submits that the appropriate disciplinary action is the imposition of the conditions sought by the Law Society with regard to the operation of the Respondent's trust account and no further sanction. The Respondent further submits that he has suffered from adverse publicity since the Panel's decision on F&D and that his reputation has been destroyed because the media have referred to this as a money laundering case. Money laundering was not proved, but the Respondent is now being viewed in that context by the public.

PRINCIPLES

5 The purpose of disciplinary action was set out in *Law Society of BC v. Hill*, 2011 LSBC 16, where the panel stated at paragraph 3:

It is neither our function nor our purpose to punish anyone. The primary object of proceedings such as these is to discharge the Law Society's statutory obligation, set out in section 3 of the *Legal Profession Act*, to uphold and protect the public interest in the administration of justice. Our task is to decide upon a sanction or sanctions that, in our opinion, is best calculated to protect the public, maintain high professional standards and preserve public confidence in the legal profession.

6 Section 38 of the *Legal Profession Act* sets out the powers of a panel to impose sanctions and states:

> (5) If an adverse determination is made against a respondent other than an articled student, under subsection (4), the panel must do one or more of the following:
>
> (a) reprimand the respondent;
>
> (b) fine the respondent an amount not exceeding $50 000;
>
> (c) impose conditions or limitations on the respondent's practice;
>
> (d) suspend the respondent from the practice of law or from practice in one or more fields of law
>
> (i) for a specified period of time,
>
> (ii) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,
>
> (iii) from a specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or
>
> (iv) for a specific minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection;
>
> (e) disbar the respondent;
>
> (f) require the respondent to do one or more of the following:
>
> (i) complete a remedial program to the satisfaction of the practice standards committee;
>
> (ii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent is competent to practise law or to practise in one or more fields of law;
>
> (iii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the

respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;

(iv) practise law only as a partner, employee or associate of one or more other lawyers;

(g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under section 16 (2) (a) or 17 (1) (a) from practising law in British Columbia indefinitely or for a specified period of time.

...

(7) *In addition to its powers under subsections (5) and (6), a panel may make any other orders and declarations and impose any conditions it considers appropriate.*

[emphasis added]

7 The leading case in dealing with the principles to be upheld in applying sanctions is *Law Society of BC v. Ogilvie*, 1999 LSBC 17, [1999] LSDD No. 45. The panel in that case set out a list of factors to be considered in imposing sanctions. The list is neither exhaustive, nor are all the factors applicable in each case. The factors in *Ogilvie* are set out in paragraph 10:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact on the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

RESPONDENT'S BACKGROUND

[8] The Respondent was called to the Bar in BC in 1969. He is a sole practitioner who has a solicitor's practice. He is 74 years of age. He has no prior discipline record.

[9] The Panel asked counsel for the Respondent if he wished to provide any additional information about the Respondent other than what had come out in the evidence at the F&D stage of the hearing, and counsel declined.

ANALYSIS OF THE *OGILVIE* FACTORS

Nature and Gravity of the Conduct Proved

[10] The Respondent was found to have breached his duty as a gatekeeper of his trust account. Given the fact that a lawyer's trust account is subject to solicitor-client privilege, a lawyer has a positive obligation to ensure that it is not misused. The Respondent failed in his duty to make reasonable inquiries with regard to the source of the excess of $25 million in Canadian funds deposited into his trust account. This is in conjunction with the fact that the Respondent did not provide any substantial legal services.

[11] The Law Society takes the position that the failure on the part of the Respondent in his duty posed a serious risk to the public interest.

[12] The Respondent takes the position that, while the Respondent is the gatekeeper of his trust account, and must be on guard to ensure he is not a dupe, the Respondent did not breach any written rules of the Law Society. Furthermore, the Respondent argues that all he did was fail to make reasonable inquiries.

[13] The Respondent's conduct is serious in that it involved the breach of one the fundamental obligations of a lawyer in the operation of his trust account, and that is to make reasonable inquiries as to the source of the funds being deposited into his trust account. A lawyer's trust account is impressed with solicitor-client privilege, and the failure of the Respondent in his duty to act as a gatekeeper of his trust account creates serious risk to the public interest. The Respondent's breach of his professional obligations is serious.

Age and Experience of the Respondent

[14] The Respondent was called to the bar in 1968. During the hearing of F&D there was evidence that the Respondent had practised in small to medium firm settings, and latterly as a sole practitioner. He was an experienced solicitor, and had an active solicitor's practice at the time of the incidents that led to the citation.

15 The Respondent argued that schemes such as money laundering were relatively new and had not been a risk during much of his career and so his age and experience would lead him to be less suspicious. The Panel rejects this reasoning. The Respondent's experience at the bar, in particular the fact that he was an experienced solicitor, is an aggravating factor because those years of experience should have given him an appropriate appreciation of the importance of maintaining a trust account with integrity. To put it simply, with his experience at the Bar the Respondent should have known better.

Previous Character

16 The Respondent has no professional conduct history. This is a mitigating factor.

Impact Upon the Victim

17 There is no defined victim, as one would generally find in the case of professional misconduct, in that there is not an aggrieved party. In this case the conduct of the Respondent exposed the public to the risk of the misuse of a lawyer's trust account.

18 The schemes that could give rise to the misuse of a lawyer's trust account may not involve an obvious victim if both the sender and receiver of funds are involved in the scheme. That is why the gatekeeper role is so important, and it is so even in the absence of a complaint from a victim.

Number of Times the Offending Conduct Occurred

19 There were four transactions between May and November 2013 involving seven deposits to the Respondent's trust account. A total of 25,845.489.87 flowed through the Respondent's trust account in these transactions.

20 There was no evidence that the Respondent was becoming concerned about the similarity of the transactions and the fact that he was never asked to perform any substantial legal services.

21 The Respondent submits that he only made one mistake on the first transaction, which was repeated in the next and that, since it is the same mistake with the same parties, then it is not a case of a systematic breach of the rules. We do not accept that argument.

22 The frequency of the transactions and amount of money involved is an aggravating factor.

Acknowledgement of Misconduct and Steps to Disclose and Redress the Wrong and Other Mitigating Factors

[23] At all times during the F&D hearing and this disciplinary action hearing, the Respondent maintained that he had done nothing wrong and characterized the Law Society's case as unfair, abusive, a violation of the principles of natural justice and procedural fairness as well as a vendetta and a "protracted effort to smear EF."

[24] The Law Society tendered Exhibits 1 and 2, which were two affidavits. The substance of Exhibit 1 was a press release prepared on behalf of the Respondent and distributed after the decision on F&D. Exhibit 2 was a press report that referred to the press release set out in Exhibit 1.

[25] The Respondent tendered Exhibit 3, an affidavit of the Respondent (pages 1 to 3 of Exhibit A of the affidavit were found to be inadmissible). Exhibit C of the affidavit contained 14 press reports, of which three dealt with the Respondent by name.

[26] The Law Society argued that the press release of the Respondent is "worthy of rebuke" and shows that the Respondent fails to understand his gatekeeper function. The Respondent stated that the press report shows that the Respondent was trying to manage the adverse media reporting caused by the Panel's decision on F&D. We accept that the press release issued by the Respondent is not an aggravating factor. In the circumstances of the Respondent, we accept that the press release was an attempt at image management.

[27] We do not accept the position of the Respondent that the press reports set out in Exhibit C of the Respondent's affidavit are representative of the public interest. The legislature has delegated to the Benchers of the Law Society the jurisdiction to decide what amounts to conduct in the public interest.[1]

[28] In the course of submissions made on behalf of the Respondent, several submissions were made that raised a concern that the Respondent did not understand the severity of his conduct:

(a) The lack of a connection between the breach of the Respondent's gatekeeper function and the $25,845 earned as "fees". This displayed a lack of understanding that his professional misconduct made it possible for him to earn the "fee".

(b) The failure to understand the effect of solicitor-client privilege with regard to a lawyer's trust account. The Respondent, through his counsel, took the position with each of the transactions that are the subject of the citation that the banking documents associated with the electronic transfer of funds showed the source of

[1] *Elias v. Law Society of BC*, 26 BCLR (3d) 359, 1996 CanLII 1359 (CA), at para. 10.

the funds and the "client" to whom the funds were to be credited to. There was a failure to understand that, upon funds being deposited, the effect of solicitor-client privilege is that the privilege creates a veil of secrecy over to whom the funds are paid out.

(c) There was continued reference to the fact that the Law Society had not shown the existence of illegal activity. This is concerning in that the Respondent's professional misconduct was his failure to fulfill his gatekeeper function – it was not participation in illegal activity either knowingly or as a dupe.

(d) The Respondent is not required to acknowledge his misconduct. That requirement would lead to a situation in which a respondent might be required to prejudice potential appeals in order to mitigate the disciplinary action imposed. The failure of the Respondent to acknowledge his wrongdoing is not an aggravating factor, it is neutral. If the Respondent had acknowledged his misconduct that would be considered a mitigating factor.

(e) The Respondent has presented no evidence of other mitigating factors, or any information with regard to changes in his practice regarding the way in which he deals with making inquiries regarding the sources of funds deposited to his trust account or what would constitute substantial legal services.

Remediation or Rehabilitation

[29] The Law Society states the prospect of rehabilitation is unlikely given the Respondent's denial of wrongdoing. The Respondent states that the conditions on the Respondent's trust account jointly proposed by the parties deals with remediation and rehabilitation.

[30] The Panel is concerned not by the Respondent's denial of wrongdoing, but with the Respondent's lack of understanding of his obligation to make reasonable inquiries. The Respondent, through his counsel, repeatedly took the position that the Respondent breached no written rule.

[31] There is merit to the position that the imposition of the conditions under which the Respondent may operate his trust account will have some remedial effect.

Impact on the Respondent of Criminal or other Sanctions or Penalties

[32] There are no other sanctions or penalties visited upon the Respondent. The Respondent argued that the media attention, including inaccurate reporting, should be considered, but there was no evidence of any effect on the Respondent's practice or reputation. Inaccuracies in any media reports should be dealt with directly by the Respondent. It is not the Panel's responsibility to monitor the media.

Impact of the Proposed Penalty on the Respondent

33 As referred to earlier, the Respondent chose not to provide us with any information as to his personal circumstances. Accordingly, we do not know the Respondent's ability to pay the disgorgement of $25,835 proposed by the Law Society, or the economic effect of the six-month suspension sought by the Law Society, or his ability to return to practice upon the end of any suspension.

34 In considering the impact of a suspension, the fact that a lawyer may find it difficult or impossible to restart his practice after the suspension is irrelevant.

> "It can never be an objection to an order of suspension in any appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."[2]

Specific and General Deterrence

35 The Law Society takes the position that, given the comments of the Respondent after the release of the decision, specific deterrence is required. The panel is of the view that, while the Respondent has expressed a view that he disagrees with the decision, a view that he is entitled to hold, we are satisfied that the Respondent in the future will comply with his obligations with regard to the operation of his trust account. This is particularly so given the conditions that he has consented to with regard to the operation of his trust account.

36 Given the fact that lawyers have been constitutionally exempted from the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and Regulation (the "Proceeds of Crime Regime") as a result of the *Federation of Law Societies of Canada* decision,[3] the legal profession has the responsibility for policing itself with regard to the use of lawyers' trust accounts. This means that there is a need for lawyers to understand the importance of their role in acting as gatekeepers to their trust accounts and to ensure that they make the necessary inquiries with regard to transactions that reasonably appear to be suspicious prior to their allowing funds to be deposited into their trust accounts. General deterrence requires the profession to understand that the breach of that professional duty will be treated as a serious breach.

---

[2] *Law Society of BC v. Sas*, 2017 LSBC 8 at para. 109, quoting *Bolton v. The Law Society*, [1994] 2 All ER 486 (England and Wales CA).
[3] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 SCR 401.

The Public's Confidence in the Integrity of the Profession

[37] For the reasons set out above dealing with the need for general deterrence, the fact that lawyers are constitutionally exempt from the Proceeds of Crime Regime requires breaches of the gatekeeper function with regard to lawyers' trust accounts be taken seriously to preserve the public confidence in the integrity of the profession.

[38] In order to preserve the public confidence, the Respondent's professional misconduct must be considered a serious breach.

Range of Penalties Imposed in Similar Cases

[39] The Law Society provided a number of cases showing a range of penalty from reprimand to a 12-month suspension. Those cases are:

(a) *Law Society of BC v. Bohun*, 2003 LSBC 8, [2003] LSDD No. 6

Twelve-month suspension for misconduct for permitting his trust account to be used to pool $148,000 from various lenders and recklessly making statements about the repayment of the loans. The lawyer made a conditional admission under Rule 4-22 consenting to a 12-month suspension. "Here the Respondent was a dupe who gained nothing other than the fees he charged for the work he stupidly did."

(b) *Law Society of BC v. Nielsen*, 2009 LSBC 08

Six-month suspension for misconduct for participating in a fraudulent scheme in which mortgage funds were obtained and dispersed under false pretenses, acting in a conflict of interest and failing to comply with various trust accounting rules. The lawyer made a conditional admission under Rule 4-22 consenting to a six-month suspension and an undertaking not to practise real estate law. The Respondent received some benefit from his misconduct in the form of higher than normal fees, which he justified on the short turnaround time on the conveyances; a $3,000 bonus was described as compensation for a transaction that did not proceed.

(c) *Law Society of BC v. Rai*, 2011 LSBC 02

Three-month suspension for failing to make reasonable inquiries about mortgage transactions that turned out to be fraudulent. The lawyer made a conditional admission consenting to a three-month suspension. The panel found this to be the lower end of the appropriate range. "The misconduct was not motivated by

greed or personal gain and did not result in any financial benefit to the Respondent beyond the modest fees billed for the work performed.

(d) *Law Society of BC v. Skogstad*, 2009 LSBC 16

Three-month suspension for permitting his trust account to be used to pool $1 million of investment monies in what turned out to be a Ponzi scheme and failing to advise the investors that he was not protecting their interests. The lawyer made a conditional admission consenting to the three-month suspension. "What distinguishes this case from other cases is that the Respondent was not a participant in the fraudulent schemes and did not personally profit from the investors' money."

(e) *Law Society of BC v. Elias* (1996), 26 BCLR (3d) 359 (CA)

A reprimand for a lawyer who asked a corporate client if it would be interested in acquiring the cash proceeds of a brothel business in the Philippines. The transaction did not go beyond this, but the Panel found that the lawyer should have made inquiries about the lawfulness to operate such a business and export $10 million in cash before even contacting a client and offering to assist.

(f) *Yungwirth v. Law Society of Upper Canada*, 2004 ONLSAP 1, "2004" LSDD No. 11

Twelve-month suspension for being an unknowing participant in a real estate fraud and for making misrepresentations to and misleading clients, failing to follow instructions and swearing false affidavits. The lawyer admitted professional misconduct.

(g) *Law Society of Upper Canada v. Tucciarone*, 2005 ONLSHP 20, "2005" LSDD No. 55

Six-month suspension for unknowing participation in 16 real estate transactions in which mortgage funds were fraudulently obtained. The Panel was convinced there would be no repetition of the conduct.

(h) *Law Society of Upper Canada v. Senjule*, 2008 ONLSHP 22, "2008" LSDD No. 15

Five-month suspension for carelessness that fell short of misconduct as a result of being a dupe. The lawyer was found to have acted in a conflict of interest, failing to disclose material facts, failing to follow instructions, failing to obtain informed consent, and failing to make reasonable inquiries. It is noted by the panel that Ms.

Senjule did not profit or benefit in any way beyond modest fees with respect to the transactions that were the subject of the hearing. The panel noted the misconduct was entirely out of character, largely explained by inexperience and the lack of a mentor. The panel also noted her tremendous remorse, which was genuine and heartfelt.

(i) *Law Society of Upper Canada v. Peddle*, 2001 LSDD No. 64

Three-month suspension and a fine of 5,000 for misconduct in becoming the tool or dupe of a client while acting as escrow agent for a group of investors. The lawyer pleaded guilty to misconduct and admitted that he ignored red flags and failed to take independent steps to confirm that the investment venture existed and functioned as represented to him and that investor interests were protected. He admitted that he failed to exercise due diligence and allowed himself to become a dupe. He had paid himself a fair legal fee out of the funds and disbursed 180,000 to his girlfriend (now wife) as a return on her investment before learning of the scheme. The lawyer made substantial efforts to obtain the return of the monies invested with the result that 950,500 of the 1.18 million invested was recouped.

(j) *Law Society of Upper Canada v. Di Francesco*, 2003 LSDD 44

One-month suspension for misconduct in becoming a dupe of an unscrupulous client and allowing funds to pass through his trust account without due diligence. The lawyer did not profit from his client s fraud, and the panel found that the payment of fees and debts did not constitute a profit. The lawyer facilitated the laundering of 340,000. One month was considered the low end of the range.

40 In addition to these, the Respondent relied upon:

(a) *Law Society of BC v. Ben-Oliel*, 2016 LSBC 35

The respondent was found guilty of misconduct for failing to comply with an order to provide complete and substantive responses to enquiries in Law Society letters.

> The breach of an order of a hearing panel requires a penalty that not only specifically deters the Respondent, but also provides a general deterrence to the profession as a whole. We find the Respondent s impugned conduct a grave case of professional misconduct.

A further two-month suspension was added to an existing four-month suspension, and the suspension was to continue after that until the respondent complied with the previous order of the hearing panel.

At paragraph 23 the panel stated:

> The purpose of the discipline process is not to punish or exact retribution it is to discharge the law Society s statutory obligation as set out in s. 3 of the Legal Profession Act to protect the public interests in the administration of justice: *Hill*.

(b) *Law Society of BC v. Jensen*, 2015 LSBC 10

Although not referred to by counsel, this decision was overturned on a review under s. 47. That decision is indexed at 2016 LSBC 37. Counsel relied upon the decision of the hearing panel.

The respondent was found to have committed professional misconduct for failing to advise two unrepresented parties that he was not protecting their interests in a share transaction. The respondent was an exemplary lawyer who erred there was no need for specific deterrence. The respondent did not financially gain and was motivated to help his friends. A reprimand and payment of a fine of 2000 plus costs of 30,000.

> The Respondent has consistently believed he made no error and what occurred did not amount to not sic professional misconduct. He is entitled to such belief. We came to a different conclusion. Although Mr. Jensen was obdurate and single minded, it was his belief. In these circumstances we do not consider this an aggravating factor. Sometimes there is a need for a hearing. In other words, the case was no sic so clear that the lawyer should be sanctioned for defending the citation.

41 The Law Society relies upon *Bohun*, *Nielsen* and *Tucciarone* to support a suspension of six months. In doing so it says that, while in those three cases there were fraudulent schemes involved, no significance should be given to this factor because in the case of the Respondent there were four highly suspicious transactions of unknown legality. The Respondent s delict was the failure to make reasonable inquiries in circumstances that were reasonably suspicious, and it did not matter whether the underlying transactions were legal or not.

42 The Respondent takes the position that no sanction should be imposed in addition to the conditions on the operation of his trust account that the Respondent has agreed to.

[43] Of the cases provided *Elias* is the only case where the sanction imposed was not a suspension and was in fact a reprimand. *Elias* is not a case in which the lawyer had put money into his trust account. It is a case in which the lawyer contacted a client to determine if the client would be interested in acquiring an interest in $10 million acquired from a brothel business in the Philippines. The lawyer should have been reasonably suspicious that the funds came from illegal activities. Monies were not transferred, and the lawyer had not profited from the transaction.

DECISION

[44] Section 38(5) of the *Legal Profession Act* sets out the sanctions that may be imposed after an adverse determination at a disciplinary hearing.

[45] We accept the joint position of the Law Society and the Respondent that an order should be made under s. 38(5)(c) to impose the following limitation on the Respondent's practice:

(a) the Respondent must report to the Senior Forensic Accountant of the Trust Regulation Department within five business days after becoming aware of any trust transaction involving a remitter, remitting institution, beneficiary or receiving financial institution not located in Canada; and

(b) on request by the Law Society, the Respondent must immediately produce and permit the Law Society to copy all files, vouchers, records, accounts, books and any other evidence and must provide any explanations required by the person requesting on behalf of the Law Society for the purpose of reviewing the Respondent's trust transactions.

[46] Given an analysis of the applicable *Ogilvie* factors, we find that the public interest is served by the Respondent being suspended from the practice of law for six months with the suspension to begin no sooner than on the last day of the month following the month in which these reasons are released, or on some earlier date as agreed to by the Law Society and the Respondent.

[47] The professional misconduct of the Respondent constituted a serious breach of his professional obligation. It was a breach in which he ignored the fundamental obligations of a lawyer to act as the gatekeeper of his trust account. The fact that lawyers are constitutionally excluded from the Proceeds of Crime Regime means that the profession must ensure that all of its members comply with their duty to make reasonable inquiries in objectively suspicious circumstances.

DISGORGEMENT OF FEES

48 The Respondent allowed approximately 25 million Canadian to flow through his trust account when not only did he provide no substantial legal services, but he also failed to make reasonable inquiries as to the source of the funds in objectively suspicious circumstances. He profited from this by charging one tenth of one per cent of the value of all funds that passed through his trust account as a fee. In the particular circumstances of this case the amount received has been described as a fee, but it should not be characterized as a fee for legal services, since no substantial legal services were provided. It was a fee for the use of the Respondent s trust account.

49 The Law Society has sought disgorgement of the 25,845 (the fee charged less applicable taxes) to the Law Society. There is no specific authority in s. 38(5) of the *Legal Profession Act* that deals with disgorgement. The Law Society says the power to order disgorgement arises as a result of s. 35(7), which states: In addition to its powers under subsections (5) and (6), a panel may make any other orders and declarations and impose any conditions it considers appropriate.

50 The Respondent argues that there is no causal connection between the misconduct and the fees that there is no evidence the receipt of the fees was based on a failure to make reasonable inquiries and no evidence that, had the Respondent gone the distance of making reasonable inquiries, he would not have earned those fees.

51 The Respondent argues that disgorgement is really a fine, which should not be made in addition to a suspension and should not be made where there is no loss to a client that results in the enrichment of a lawyer.

52 There are no cases in BC in which disgorgement has been ordered in a case of this sort in fact it would appear that it has never been considered as a sanction before.

53 There have been cases in which hearing panels have ordered restitution.[4] A panel can order a suspension and a monetary penalty (be it a fine or restitution). However, imposing both types of penalty in a single case should be limited to instances where doing so can reasonably be seen as necessary to further the principles underlying the discipline process.[5]

54 In *Abrametz* (currently under appeal) a lawyer was required to pay to the Law Society the amount of profit he made on a real estate transaction for remittance to his client when he acted in a conflict of interest. The hearing committee found that the lawyer was guilty of

---

[4] *Law Society of Saskatchewan v. Abrametz,* 2017 SKLSS 4 *Law Society of BC v. Coutlee,* 1997 LSDD 196 *Law Society of BC v. Thomson,* 1998 LSDD 129 *Law Society of Manitoba v. Carroll,* 2008 MBLS 11.
[5] *Nguyen v. Law Society of BC*, 2016 LSBC 21 (review board) at para. 46.

conduct unbecoming for taking advantage of a vulnerable client by purchasing her home at a low price and selling it for a profit of $17,000. The lawyer offered to pay back to his client the sum of $14,000 being the profit less $3,000 tax paid. The hearing committee ordered, at paragraph 141, restitution to the Law Society for remittance to the client in the amount of $14,000. The payment was ordered to be made to the Law Society in order to be sure that the client received it.

55 In *Abrametz* there was no discussion of disgorgement, and the amount being remitted to the client was not actually lost by the client, so it was not a case of true restitution. The amount did represent the profit the lawyer made from acting in a conflict of interest.

56 The hearing committee relied on section 55(2)(c) of the *Legal Profession Act, 1990*, SS c L-10.1, as it existed at the time of the conduct in question, which gave it authority to make "any other order that the committee considers appropriate." This section was similar to section 38(7) of our *Legal Profession Act*, which states that a panel may make "any other orders and declarations and impose any conditions it considers appropriate." Six other provinces have an open-ended provision empowering hearing panels to craft orders that are appropriate in the circumstances: Ontario, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island.

57 It is worth noting that Law Society hearing committees in Saskatchewan can fine a respondent "in any amount that the committee may specify," per section 53(3)(a)(iv) of the *Legal Profession Act, 1990*.

58 Section 38(7) of the *Legal Profession Act* has been commented upon lately in decisions in British Columbia to encourage the use of this subsection creatively and to further the purpose of disciplinary action "to protect the public, maintain high professional standards and preserve public confidence in the legal profession."[6]

59 In British Columbia, a panel cannot impose a fine of more than $50,000. To simply fine a lawyer in the amount of fees received for the improper use of his trust account creates a situation where a lawyer paid more than $50,000 would be entitled to keep the excess. That would not uphold and protect the public interest in the administration of justice or preserve public confidence in the legal profession. A fine is not the best remedy in these circumstances.

60 Restitution requires a party to return the money to a victim. That will not be possible when, as here, there is no victim complaining about the lawyer's conduct. Restitution is not the best remedy in these circumstances.

---

[6] *Hill* at para. 3

[61] Compensation also requires that a party who has suffered damages be made whole. Here it is the public in general who suffers when lawyers do not discharge their gatekeeper function. Compensation is not an available remedy in these circumstances.

[62] Disgorgement is not about punishment—it is about deterrence. It is about not allowing a lawyer to gain from his or her misconduct. We are satisfied that s. 38(7) of the *Legal Profession Act* allows us to order disgorgement of the funds received by the Respondent as a result of his professional misconduct. The amount to be disgorged should be the gross amount received without reduction for taxes or other expenses.

[63] The $25,845 received by the Respondent as a "fee" arose directly from his professional misconduct. His failure to make the reasonable inquiries in circumstances in which he should have been objectively suspicious and in a case in which the "fee" was earned without the provision of any substantial legal services leads to a conclusion that the Respondent's professional misconduct led to his "fee" being paid. The nature of the transactions the Respondent became involved in did not require his skills as a lawyer or the use of his trust account. The use of his trust account was a convenience for his "clients". The "fee" received by the Respondent was nothing more than a service charge to use his trust account. Counsel for the Law Society described this as the Respondent renting his trust account, which is an apt description.

[64] The Respondent should not be allowed to benefit financially from his misconduct. His client is not owed restitution as a result of the misconduct. This is an appropriate case for the Respondent to be ordered to disgorge the $25,845 received as his "fee" to the Law Society of British Columbia. Since we have not been provided any information regarding the Respondent's personal circumstances, that payment must be made within 60 days of the release of this decision.

ORDER

[65] We order that:

1. The Respondent be suspended from the practice of law for a period of six months to commence November 1, 2017 or on some earlier date as agreed to by the Law Society and the Respondent.

2. Following the Respondent's suspension he will be subject to the following conditions:

    (a) The Respondent must report to the Senior Forensic Accountant of the Trust Regulation Department within five business days after becoming

aware of any trust transaction involving a remitter, remitting institution, beneficiary or receiving financial institution not located in Canada□and,

(b) On request by the Law Society, the Respondent must immediately produce and permit the Law Society to copy all files, vouchers, records, accounts, books and any other evidence and must provide any explanations required by the person requesting on behalf of the Law Society for the purpose of reviewing the Respondent□s trust transactions.

3. The Respondent pay to the Law Society the amount of □25,845, representing the disgorgement of the □fee□paid as a result of his professional misconduct, within 60 days of the release of this decision.

COSTS

□66□ The parties have indicated that they wish to make submissions with regard to costs. Unless there is some reason that submissions on costs cannot be in writing, delivery of submissions will be on the following schedule:

(a) submissions of the Law Society on costs 30 days after the release of this decision□

(b) submissions of the Respondent on costs 21 days after the delivery of the Law Society submissions□and

(c) reply of the Law Society within 10 days of the delivery of the Respondent□s submissions.

□67□ Either party may make application to have an oral hearing on costs.

CLIENT IDENTIFICATION AND VERIFICATION CHECKLIST

The Law Society Rules in Part 3 – Division 11 Client Identification and Verification (Rules 3-98 to 3-110) require lawyers to follow identification and verification procedures when retained by a client to provide legal services. Lawyers are obligated to know their clients, understand their client's financial dealings in relation to the retainer, and manage any risks arising from the professional business relationship (Rule 3-99(1.1)). This checklist may be used to record information – however, refer to the rules themselves to determine the information necessary. The rules are a key part of the Law Society's efforts to combat money laundering and terrorist financing. Failure to comply with the rules can have significant disciplinary, insurance, and financial consequences. Availability of trust shortage liability insurance coverage for reliance on fraudulent certified cheques or misrepresentations (Part C of the compulsory policy) is contingent on compliance with the rules. See "Trust Shortage Liability Insurance for Reliance on Fraudulent Certified Cheques or Misrepresentations (Part C)" on the Society's website.

Identification and verification are separate but related concepts. Client *identification* requires lawyers to obtain and record, with the applicable date, specific identity information. Additionally, client *verification* and obtaining source of money information are required when a lawyer receives, pays, or transfers money on behalf of a client, *or gives instructions on behalf of a client* in respect of the receipt, payment, or transfer of money (a "financial transaction"). Source of money FAQs are on the Society's Client ID & Verification resources webpage. Note that verification and source of money obligations may be triggered in situations that do not involve the use of a trust account.

If there is a "financial transaction", a lawyer must: (1) obtain and record, with the applicable date, information from the "client" about the source of "money" for the transaction, and (2) verify the client's identity to confirm that they are who they say they are. The rules provide for three main methods to verify an individual's identity: (1) the government-issued photo ID method (requires a physical meeting, not a virtual meeting), (2) the credit file method (no physical meeting required), and (3) the dual process method (no physical meeting required). A lawyer may retain an agent to verify a client's identity provided the lawyer and the agent have an agreement or arrangement in writing for this. *A lawyer must use an agent if the individual whose identity is to be verified is outside of Canada and the lawyer (or an employee or member of the lawyer's firm) cannot physically meet with the client*. See Appendix 1 of this checklist for a sample agreement with an agent. Special rules apply for organization clients (e.g., trusts, corporations), including requirements to obtain beneficial ownership information.

While retained in respect of a "financial transaction", a lawyer must monitor on a periodic basis the professional business relationship with the client (Rule 3-110). Lawyers must keep a record, with the applicable date, of the monitoring measures taken and the information obtained. Lawyers should engage in enhanced due diligence if there are red flags or suspicious circumstances when onboarding the client or at any time while retained (see Rule 3-103(4), Rules 3-109 to 3-110, *BC Code* rules 3.2-7 to 3.2-8, Discipline Advisories, Risk Advisories, Red Flags Quick Reference Guide in the Risk Assessment Case Studies, Global Affairs Canada's listed persons webpage, and Public Safety Canada's information on listed terrorist entities). If a lawyer knows or ought to know the lawyer would be assisting a client in fraud or other illegal conduct, or a client persists in instructing the lawyer to act contrary to professional ethics, the lawyer must withdraw (Rule 3-109, *BC Code* rule 3.7-7).

Terms defined in Rule 3-98 appear in boldface type in this checklist: "**client**", "**disbursements**", **"expenses"**, "**financial institution**", "**financial transaction**", "**interjurisdictional lawyer**", "**money**", "**organization**", **"professional fees"**, **"public body"** , "**reporting issuer**", and "**securities dealer**". Pay close attention to the definitions, as they may not be consistent with common use. Note that **"financial transaction"**, **"money",** and "**client"** are widely defined. A "**client**" includes another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining the legal services from the lawyer (e.g., a beneficial owner), and in Rules 3-102 to 3-105, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction. Identification and verification requirements vary according to the type of transaction and entity.

Currency of checklist and new developments. This checklist is current to **September 1**, **2020**. Changes to Part 3 – Division 11 took effect on January 1, 2020 and in April 2020. See the Client ID & Verification resources webpage for more information on the rule changes, including the free *Anti-Money Laundering Measures* webinar (eligible for two hours of CPD ethics credits), *Benchers' Bulletin* practice advice articles (e.g.. Summer 2020, Spring 2020, Winter 2019, and Fall 2019), and FAQs on the source of **money**, use of agents, and monitoring. This checklist does not include temporary measures for the COVID-19 pandemic (see "Knowing your client – Guidance and rules during COVID-19", Summer 2020 *Benchers' Bulletin*, pp. 18-21).

Contact Barbara Buchanan, QC, Practice Advisor, Conduct and Ethics (604.697.5816 or bbuchanan@lsbc.org) for questions about this checklist and the rules.

PART 3 – DIVISION 11 – GENERAL EXEMPTIONS FROM IDENTIFICATION AND VERIFICATION

The general exemptions section of this checklist may be used to record required information however, refer to the rules themselves to determine rule requirements. Terms defined in Rule 3-98 appear in boldface type in this checklist: **client**, **disbursements**, **"expenses"**, **financial institution**, **financial transaction**, **interjurisdictional lawyer**, **money**, **organization**, **"professional fees"**, **"public body"**, **reporting issuer**, and **securities dealer** Pay close attention to the definitions. *Note the wide definition of "**client**", and ensure that you have identified and verified all applicable individuals and organizations (e.g., including beneficial owners*). Note that if the instructing individual of an **organization** changes, you must identify the new individual.

For red flags and suspicious circumstances, consider Rule 3-103(4), Rules 3-109 to 3-110, *BC Code* rules 3.2-7 to 3.2-8 and 3.7-7, Discipline Advisories, Risk Advisories, Red Flags Quick Reference Guide in the Risk Assessment Case Studies, Global Affairs Canada s listed persons webpage, Public Safety Canada s information on listed terrorist entities, and the many publications on the Client ID & Verification resources webpage.

Are you being retained by this **client** to provide legal services

- ❑ No Division 11 does not apply (Rule 3-99(1))

Were you retained in respect of this specific matter before December 31, 2008

- ❑ es identification and verification not required (Rule 3-108) (Note: Rule 3-110 (Monitoring) applies)

Are you in-house counsel providing legal services on behalf of your employer

- ❑ es identification and verification not required (Rule 3-99(2)(a))

Will you provide legal services that do not involve a **financial transaction** as part of a duty counsel program sponsored by a non-profit organization

- ❑ es identification and verification not required (Rule 3-99(2)(b))

Will you provide legal services in the form of pro bono summary advice that does not involve a **financial transaction**

- ❑ es identification and verification not required (Rule 3-99(2)(b))

Has this **client** already been identified, and the identity verified and information and documentation retained, by another B.C. lawyer or **interjurisdictional lawyer** who has complied with Rules 3-100 to 3-106 or the equivalent provisions of another Canadian jurisdiction, and who has engaged you to act as an agent to provide legal services to the **client**

- ❑ es repeat identification and verification not required unless you have reason to believe that the information, or its accuracy, has changed (Rules 3-99(2.1)(a), 3-100(2), 3-105(2), 3-106(2)) (Note: Rule 3-110 (Monitoring) applies)

  Date confirmed: _____

- ❑ Copy/copies obtained (Rule 3-107)

  Date copy/copies obtained: _____

Has this **client** already been identified, and the identity verified and information and documentation retained, by another B.C. lawyer or **interjurisdictional lawyer** who has complied with Rules 3-100 to 3-106 or the equivalent provisions of another Canadian jurisdiction, and who has referred the **client** to you for the provision of legal services

❑ □es □repeat identification and verification not required unless you have reason to believe that the information, or its accuracy, has changed (Rules 3-99(2.1)(b), 3-100(2), 3-105(2), 3-106(2)) (Note: Rule 3-110 (Monitoring) applies)

Date confirmed: _____

❑ Copy/copies obtained (Rule 3-107)

Date copy/copies obtained: _____

Has this **client** already been identified, and the identity verified and information and documentation retained, by another member or employee of your firm, wherever located, that would fulfill your identification and verification responsibilities□

❑ □es □repeat identification and verification not required unless you have reason to believe that the information, or its accuracy, has changed (Rules 3-99(3), 3-100(2), 3-105(2), 3-106(2), 3-110) (Note: Rule 3-110 (Monitoring) applies)

Date confirmed: _____

❑ Copy/copies obtained (Rule 3-107)

Date copy/copies obtained: _____

IDENTIFICATION CHECKLIST

This identification section of this checklist may be used to record required information however, refer to the rules themselves to determine the rule requirements. Terms defined in Rule 3-98 appear in boldface type in this checklist: **client**, **disbursements**, **"expenses"**, **financial institution**, **financial transaction**, **interjurisdictional lawyer**, **money**, **organization**, **"professional fees"**, **"public body"**, **reporting issuer**, and **securities dealer**. Pay close attention to the definitions. *Note the wide definition of "**client**", and ensure that you identify all applicable individuals and organizations.* Note that if the instructing individual of an **organization** changes, you must identify the new individual.

Unless an exemption applies, you must obtain and record the required identification information with the applicable date (Rules 3-100 and 3-107). You are not required to obtain and copy documents for compliance with Rule 3-100; however, it may be prudent to do so depending on the circumstances (Rules 3-99(1.1) and 3-109 and *BC Code* rules 3.2-7 and 3.2-8). You must retain copies of any documents obtained or produced (Rule 3-107).

Your firm, including members or employees, may fulfill your Division 11 responsibilities (Rule 3-99(3)).

This checklist assumes that there are no red flags or suspicious circumstances. For red flags and suspicious circumstances, consider Rules 3-109 to 3-110, *BC Code* rules 3.2-7 to 3.2-8 and 3.7-7, Discipline Advisories, Risk Advisories, Red Flags Quick Reference Guide in the Risk Assessment Case Studies, Global Affairs Canada's listed persons webpage, Public Safety Canada's information on listed terrorist entities and the many publications on the Client ID & Verification resources webpage.

Lawyers have a professional responsibility to safeguard the confidentiality of client information (*BC Code*, s. 3.3 and Law Society Rule 10-4). Lawyers must also comply with applicable privacy legislation affecting their collection, use and retention of personal information (*Personal Information Protection Act*, S.B.C. 2003, c. 63 and other relevant legislation).

Identification Exemption

Have you previously identified this **client** and retained a record with the applicable date, without having reason to believe the information, or the accuracy of it, has changed

❑ Yes repeat identification not required (Rules 3-100 and 3-107)

Date confirmed: _____

Identification Information

❑ **Client** is an individual:

- Full name _____
- Business address _____
- Business telephone _____
- Home address _____
- Home telephone _____
- Occupation(s) _____

Date identified: _____

❑ **Client** is a **financial institution**, **public body**, or **reporting issuer**:

- Full name _____
- Business address _____
- Business telephone _____

- Name, position, and business contact information for individuals who give instructions with respect to the matter for which the lawyer is retained

_____

_____

_____

Date identified: _____

☐ **Client** is another type of **organization** (e.g., trust, partnership, association, company, society, cooperative):

- Full name _____
- Business address _____
- Business telephone _____
- Incorporation number or business identification number and place of issue of number _____
- General nature of business or activity _____
- Name, position, and business contact information for individuals who give instructions with respect to the matter for which the lawyer is retained

_____

_____

_____

Date identified: _____

VERIFICATION CHECKLIST

This verification section of this checklist may be used to record information, however, refer to the rules themselves to determine the information and documents necessary to verify client identity. Terms defined in Rule 3-98 appear in boldface type in this checklist: "**client**", "**disbursements**", **"expenses"**, "**financial institution**", "**financial transaction**", "**interjurisdictional lawyer**", "**money**", "**organization**", **"professional fees"**, **"public body"**, "**reporting issuer**", and "**securities dealer**". Pay close attention to the definitions. *Note the wide definition of "**client**" and the Rule 3-103 requirements to ensure that you consider all applicable individuals and organizations (e.g., including beneficial owners, the actual individuals who are the trustees and known beneficiaries and settlors of a trust, or those who directly or indirectly own or control 25% or more of a corporation or society or other organization such as a partnership).* Note that if the instructing individual of an **organization** changes, you must verify the new individual's identity.

"our firm, including members or employees, may fulfill your responsibilities (Rule 3-99(3)).

For red flags and suspicious circumstances, consider Rule 3-103(4), Rules 3-109 to 3-110, *BC Code* rules 3.2-7 to 3.2-8 and 3.7-7, Discipline Advisories, Risk Advisories, Red Flags Quick Reference Guide in the Risk Assessment Case Studies, Global Affairs Canada's listed persons webpage, Public Safety Canada's information on listed terrorist entities, and the many publications on the Client ID & Verification resources webpage.

Lawyers have a professional responsibility to safeguard the confidentiality of client information (*BC Code*, s. 3.3 and Law Society Rule 10-4). Lawyers should also be aware of their legal responsibilities under the *Personal Information Protection Act*, S.B.C. 2003, c. 63 and other relevant legislation.

Verification Exemptions

Will you provide legal services in respect of a **financial transaction**?

- ❑ No – verification not required (Rules 3-99(2) and 3-102)

Have you previously verified this **client's** identity, and the identity of instructing individuals if the **client** is an **organization**? Have you retained a record of the information, and the copies of the documents obtained or produced with the applicable date? In the case of an individual, do you recognize the individual whose identity you previously verified? (Note that if the instructing individual of an **organization** changes, you must verify the identity of the new individual.)

- ❑ Yes – repeat verification not required assuming you have no reason to believe the information, or the accuracy of it has changed (Rules 3-105 to 3-106) (Note: Monitoring is not exempted (Rule 3-110))

  Date confirmed: _____

If you provide legal services with respect to a **financial transaction**:

Is the **client**:

- ❑ A **financial institution**, **public body**, or **reporting issuer**?
- ❑ An individual instructing you on behalf of a **financial institution**, **public body**, or **reporting issuer**?

  - ❑ If yes to any of the above, verification not required (Rule 3-101(a)) (Note: Monitoring is not exempted (Rule 3-110))

    Date confirmed: _____

Will you:

- ❑ Pay **money** to or receive **money** from a **financial institution**, **public body**, or **reporting issuer** acting as a principal?
- ❑ Receive **money** paid from the trust account of another B.C. lawyer or **interjurisdictional lawyer**?

- ❑ Receive **money** from a peace officer, law enforcement agency, or other public official acting in an official capacity
- ❑ Pay or receive **money** to pay a fine, penalty, or bail
- ❑ Pay or receive **money** for **professional fees, disbursements,** or **expenses**

    - ❑ If yes to any of the above, verification not required for the applicable **financial transaction** (Rule 3-101(b)). (Note that if there is another **financial transaction**, verification is required unless an exemption applies). (Note: Monitoring is not exempted (Rule 3-110)).

        Date confirmed: _____

If *all* funds involved are being transferred by electronic transmission, and *neither the sending nor the receiving account holders handle or transfer the funds:*

- ❑ Is the transfer occurring between **financial institutions** or financial entities headquartered and operating in countries that are members of the Financial Action Task Force
- ❑ Does the transmission record contain a reference number, date, transfer amount, type of currency, the names of the sending and receiving account holders, and the names of the sending and receiving entities

    - ❑ If yes to all of the above, verification not required (Rule 3-101). (Note: Monitoring is not exempted (Rule 3-110)). (Note: Part 3 Division 7 trust rule compliance is also required: e.g., see Rules 3-64(4), 3-64.1, and 3-64.2).

        Date confirmed: _____

Verification Information and Documents

If the verification exemptions above do not apply, you must verify **client** identity by means of the documents and information set out in Rule 3-102 and retain and record it with the applicable date (Rule 3-107). Additional requirements for **organization** clients are in Rule 3-103.

Documents used to verify identity must be valid, original, and current, and information must be valid and current. An electronic image of a document is not a document or information for the purposes of verification, with the limited exception of government registry searches for organizations and directors' names (Rule 3-102)(3) and (3.1).

Ensure that you verify all applicable individuals and organizations, noting the definition of **client.** If the instructing individual of an **organization** changes, you must identify and verify the new individual's identity. Note the requirements regarding *identification* of directors, shareholders, ownership, control, and structure of an **organization** and the trustees and beneficiaries and settlors of a trust (Rule 3-103). Note that the ultimate owner is not another **organization**—it must be the actual individuals who own or control the **organization**.

If a director is the instructing individual, you must verify the director's identity (Rules 3-98 and 3-102) and, in addition, comply with Rule 3-103 with respect to that director. If you are not able to obtain the information referred to in Rule 3-103 or to confirm its accuracy, see Rule 3-103(4). Also consider Rules 3-109 to 3-110 and *BC Code* rules 3.2-7 to 3.2-8.

For individuals, including an individual instructing you on behalf of an **organization**, the three main verification methods are: (a) the government-issued photo ID method (requires a physical meeting, not a virtual meeting), (b) the credit file method (no physical meeting required) and (c) the dual process method (no physical meeting required). You may retain an agent to verify an individual's identity, however, *you must retain an agent if the individual is not present in Canada and is not physically present before you* (Rule 3-104). You (or a member or employee of your firm) may physically meet with the individual outside of Canada and verify the client's identity in that location instead of retaining an agent.

Individuals

❑ **Client** is an individual (includes the instructing individual of an **organization**)

A. Government-issued photo ID method (requires a physical meeting, not a virtual meeting)

Use valid, original, and current photo ID such as:

- ❑ Driver's licence
- ❑ BC Services Card
- ❑ Canadian Permanent Resident Card
- ❑ Passport
- ❑ Secure Certificate of Indian Status
- ❑ NEXUS Card
- ❑ Other, similar record (other than an ID issued by a municipal government) _____

  Lawyer/law firm employee who verified ID: _____

  Date verified: _____

  (must verify at time legal services are provided in respect of the **financial transaction**: Rule 3-105)
- ❑ Copy/copies (front and back) are attached that include the name, photo, type of document, ID number, jurisdiction and country of issuance, and, if available, the expiry date

B. Credit file method (physical meeting not required)

The identity verification information (not a credit rating) must be obtained directly from a Canadian credit bureau or a third-party vendor authorized by the credit bureau. You cannot rely on a copy of credit file information provided by the individual whose identity you need to verify. Information from a foreign credit bureau is not acceptable.

- ❑ **Client** has a credit file located in Canada that has been in existence for at least three years
- ❑ **Client** has consented to a search of the client's Canadian credit file for identity verification
- o The name, address and date of birth in the client's credit file match the information the **client** provided

  Credit bureau's name: _____

  Reference number: _____

  Lawyer/law firm employee who conducted search: _____

  Date verified: _____

  (The credit file search must be conducted at the time legal services are provided in respect of the **financial transaction**: Rule 3-105**)**

- ❑ Copy of credit file verification document attached

C. Dual process method (physical meeting not required)

Use information from a reliable source (not the lawyer, the individual, or an agent) from any two of the three categories below. The information must be from two different sources. A reliable source would be a source that is well known and considered reputable (e.g., federal, territorial, and municipal levels of government, Crown corporations, financial institutions, and utility providers). Examples of reliable source documents are a bank statement, letter from bank, credit card statement, utility bill, insurance document (home, car, life), mortgage statement, municipal property tax assessment, provincial or territorial vehicle registration, investment account statement (RRSP, TFSA, RRIF), Canada Pension Plan statement, Canada Revenue Agency notice of assessment, or birth certificate. Documents must be valid, original, and current, and information must be valid and current. An electronic image of a document is not a document or information for the purposes of verification (Rule 3-102).

- ❑ Individual's name and address

  Name of source: _____

  Type of information: _____

  Account or reference number: _____

- ❑ Individual's name and date of birth

  Name of source: _____

  Type of information: _____

  Account or reference number: _____

- ❑ Individual's name and confirmation of deposit account or credit card or other loan amount with a **financial institution**

  Name of source: _____

  Type of information: _____

Account or reference number:

Name of lawyer/law firm employee who verified ID: ____________________

Date verified: ____________________

(must verify at time legal services are provided in respect of the **financial transaction**: Rule 3-105)

- ❑ Copies of source information and documents attached

D. Using an agent

A lawyer may retain an agent to verify a client's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose. A lawyer must use an agent if the individual whose identity is to be verified is outside of Canada and the lawyer (or an employee or member of the lawyer's firm) cannot physically meet with the client.

See Appendix 1 of this checklist for a sample agreement with an agent.

- ❑ Lawyer and agent have agreement or arrangement in writing to verify client's identity
- ❑ Copy of agreement or arrangement attached
- ❑ Copy of agent's attestation attached

Date of verification: ____________________

(must verify at time legal services are provided in respect of the **financial transaction**: Rule 3-105)

Organizations

❑ **Client** is an **organization**

- ❑ **Client** is created or registered pursuant to legislative authority (e.g., company, society, cooperative, limited partnership, LLP). Obtain written confirmation from a government registry as to client's existence, its name and address, including the names of directors, where applicable, such as: a certificate of corporate status issued by a public body, a copy of annual filings required under applicable legislation, or a similar record (Rule 3-102)

Lawyer/law firm employee: ____________________

Date verified: ____________________

(must verify within 30 days of engaging in a **financial transaction**: Rule 3-106)

- ❑ Copy/copies attached

OR

- ❑ **Client** is not registered in a government registry (e.g., trust, partnership): copy of constating documents such as a trust or partnership agreement, articles of association, or similar record confirming its existence as an **organization** (Rule 3-102)

Lawyer/law firm employee: ____________________

Date verified: ____________________

(must verify **organization** within 30 days of engaging in a **financial transaction** (Rule 3-106). The timing for verifying the instructing individual is the same as for any individual **client** (Rule 3-105).

- ❑ Copy/copies attached

Requirement to identify directors, shareholders, and owners of organization

- Obtain and record the names of all directors if the **organization** is not a securities dealer (Rule 3-103(1)). Record all efforts made to obtain the information and also record all reasonable measures taken to confirm the accuracy of the information, with the applicable dates (e.g., government registry search). One document may satisfy two steps—i.e., to obtain information and to confirm its accuracy. If efforts were unsuccessful, explain why and refer to Rule 3-103(4), treating the **client** as high risk. Also consider Rule 3-109 and BC Code rules 3.2-7 to 3.2-8 and 3.7-7.

  _____

  _____

  Lawyer/law firm employee: _____

  Date obtained: _____

- Copy/copies attached (if applicable)

AND

- Make reasonable efforts to obtain and, if obtained, record the names and addresses of all persons who own, directly or indirectly, 25% or more of the **organization** or its shares. Identify the actual individuals. Do not stop at the corporation level. Record all efforts made to obtain the information (e.g., official documentation supplied by client, verbal information from client that you record in writing, client fills out a form and provides it to you). Also record all reasonable measures taken to confirm the accuracy of the information (e.g., client signs a document confirming the information, shareholder agreement, partnership agreement, directors' meeting records of decisions, shareholders register), with the applicable dates. One document may satisfy two steps—i.e., to obtain information and confirm its accuracy. If efforts were unsuccessful, explain why and refer to Rule 3-103(4), treating the client as high risk. Also consider Rule 3-109 and BC Code rules 3.2-7 to 3.2-8 and 3.7-7.

  _____

  _____

  Lawyer/law firm employee: _____

  Date(s): _____

- ☐ Copy/copies attached (if applicable)

AND

- ☐ Make reasonable efforts to obtain and, if obtained, record the names and addresses of all known beneficiaries and settlors of a **client** that is a trust. Identify actual individuals. Record all efforts made to obtain the information (e.g., official documentation supplied by client, verbal information from client that you record in writing, client fills out a form and provides it to you), and record all reasonable measures taken to confirm the accuracy of the information (e.g., review the trust deed—ask the client to provide supporting official documentation), with the applicable dates. One document may satisfy two steps—i.e., to obtain information and confirm its accuracy. If efforts were unsuccessful, explain why and refer to Rule 3-103(4), treating the **client** as high risk. Also consider Rule 3-109 and *BC Code* rules 3.2-7 to 3.2-8 and 3.7-7.

  _____

  _____

Lawyer/law firm employee: _____

Date(s): _____

o Copy/copies attached (if applicable)

AND

❑ Make reasonable efforts to obtain and, if obtained, record, information identifying the ownership, control, and structure of the **organization**. Identify actual individuals. Do not stop at the corporation level. Record all efforts made to obtain the information (e.g., official documentation supplied by client, verbal information from client that you record in writing, client fills out a form and provides it to you). Record all efforts made to obtain the information and all reasonable measures taken to confirm the accuracy of the information (e.g., shareholder agreements, partnership agreements, directors' meeting minutes), with the applicable dates. One document may satisfy two steps—i.e., to obtain information and confirm its accuracy. If efforts were unsuccessful, explain why and refer to Rule 3-103(4), treating the **client** as high risk. Also consider Rule 3-109 and *BC Code* rules 3.2-7 to 3.2-8 and 3.7-7.

_____

_____

Lawyer/law firm employee: _____

1. Date(s): _____

MONITORING CHECKLIST

While retained by a client in respect of a **financial transaction**, a lawyer must monitor on a periodic basis the professional business relationship with a **client**. The monitoring section of this checklist may be used to record information required by Rule 3-110.

For red flags and suspicious circumstances, consider Rules 3-109 to 3-110, *BC Code* rules 3.2-7 to 3.2-8 and 3.7-7, Discipline Advisories, Risk Advisories, Red Flags Quick Reference Guide in the Risk Assessment Case Studies, Global Affairs Canada's listed persons webpage, Public Safety Canada's information on listed terrorist entities, and the many publications on the Client ID & Verification resources webpage.

- ❑ **Client's** information in respect of their activities, source of **money** used in the **financial transaction**, and instructions in respect of the transactions are consistent with the retainer's purpose and the information obtained about the **client**

  Measures taken and information obtained:

  Lawyer/law firm employee:

  Date:

- ❑ Assess whether there is a risk that you may be assisting in or encouraging dishonesty, fraud, crime, or other illegal conduct

  Measures taken and information obtained:

  Lawyer/law firm employee:

  Date:

SOURCE OF MONEY CHECKLIST

When a lawyer provides legal services in respect of a **financial transaction**, the lawyer must obtain from the **client** and record, with the applicable date, information about the source of **money**. See the source of **money** FAQs on the Client ID & Verification resources webpage. Also consider accounting requirements in Part 3 – Division 7 – Trust Accounts and Other Client Property.

Be cautious about a client who is evasive about the source of **money** for a **financial transaction**. For red flags and suspicious circumstances, consider the source of **money** FAQs, Rules 3-109 to 3-110, *BC Code* rules 3.2-7 to 3.2-8 and 3.7-7, Discipline Advisories, Risk Advisories, Red Flags Quick Reference Guide in the Risk Assessment Case Studies, Global Affairs Canada's listed persons webpage, Public Safety Canada's information on listed terrorist entities, and the many publications on the Client ID & Verification resources webpage.

Purpose of **financial transaction (**e.g.**,** deposit for commercial lease)

_____

_____

_____

Amount of **money**

_____

_____

_____

Obtain the following information with respect to the **financial transaction**:

- ❑ Payer's full name, occupation, and contact information

  _____

  _____

  _____

- ❑ Relationship of the payer to the client (the payer may be the client)

  _____

- ❑ Date on which the money was received by the lawyer from the payer

  _____

- ❑ Economic activity or action that generated the money (e.g., bank loan, savings from salary, settlement funds)

  _____

- ❑ Form in which the money was received by the lawyer (e.g., cheque, bank draft)

- ❑ Full name and address of all financial institutions or other entities through which the payer processed or transmitted the money to the lawyer

- ❑ Any other information relevant to determining the source of money

Lawyer/law firm employee: _____

Date(s): _____

- ❑ Copy/copies attached (if applicable)

APPENDIX I - SAMPLE AGREEMENT WITH AGENT FOR VERIFICATION OF CLIENT IDENTITY

Government-issued photo ID verification method (individual inside or outside of Canada)

Lawyers may use an agent to verify the identity of a "client" (widely defined in Rule 3-98). Rule 3-104 requires that the lawyer and agent have an agreement or arrangement in writing for this purpose. The Law Society recommends that lawyers use this sample agreement when retaining an agent to verify the identity of an individual client where the agent will physically meet with the client and review the client's original government-issued identification document. The agreement will need to be amended if the agent will use other permitted methods of verifying identity. Lawyers who have relied on an agent to verify a client's identity but failed to have an agency agreement in place have been disciplined.

Rule 3-104 does not require that the agent be a lawyer or notary. Lawyers must use their judgment to choose a reputable person who understands what is expected and who will carry out the required work. Lawyers should keep in mind that the agent is the lawyer's agent, not the client's agent. Accordingly, the lawyer rather than the client should select the agent and follow up to ensure that the agent actually carried out the work. In some cases, potential new clients have chosen the agent to the lawyer's detriment. The agent was not who they purported to be and was simply part of an arrangement to set up a scam on the lawyer.

BETWEEN:

"*Name of the lawyer and business address*"

the "Lawyer"

AND:

"*Agent's full name, occupation and business address*"

the "Agent"

RE:

"*Client's full name, occupation and address*"

the "Client"

AS A RESULT OF THE FOLLOWING:

The Client has retained the Lawyer to provide legal services in Canada;

The Lawyer is required by the Law Society of British Columbia to verify the Client's identity; and

The Agent has agreed to meet with the Client and examine, in the Client's presence, the Client's identification document or documents for the purpose of verifying the Client's identity on the Lawyer's behalf;

THE PARTIES AGREE THAT, in exchange for "*sum of money*", sufficiency of which is acknowledged:

1. The Agent will physically meet with the Client and examine, in the Client's presence, a valid, original, and current identification document issued by the government of Canada, a province or territory, or a foreign government, other than a municipal government, that contains the client's name and photograph, to verify that the name and photograph are those of the Client (the "Document").
2. The Agent will make a legible photocopy of the Document that the Agent examined.

3. The Agent will attest, on a photocopy of the Document and in a form similar to that attached as an Appendix to this agreement, that the Agent has examined the Document in the Client's presence to verify that the name and photograph are those of the Client.

4. The Agent will provide the original signed attestation, on which the Agent has placed the information required under paragraph 3 above, to the Lawyer no later than *[date]*.

5. This agreement may be signed in counterparts, and will be read with any changes of gender and number as may be required by context, and

6. This agreement will be governed and interpreted according to the laws of the Province of British Columbia and the laws of Canada, as applicable.

Dated this *[specify]* day of *[month]*, *20__* at *[place and country]*.

[name of law firm]

[name of the Lawyer]

_____

Lawyer's signature

[name of the Agent's firm or business, if applicable]

[name of the Agent and occupation]

_____

Agent's signature

Appendix to Agent Agreement: Sample Attestation Form

[THE FOLLOWING MUST BE PLACED ON THE PHOTOCOP[
OF THE IDENTIFICATION DOCUMENT[

I attest that:

1. I am a [*agent status or occupation*[in [*location*[with a place of business at [*business address and telephone number*[.

2. I met with [*name of lawyer's client*[on the [*specify*[day of [*month*[, [*20__*[and examined, in the Client[s presence, the Client[s original [*type of government-issued identification document*[, issued by [*name of government authority*[on [*date of issue*[and bearing document number [*number*[(the [Document[).

3. The photograph in the Document was a true likeness of [*name of lawyer's Client*[.

4. To the best of my knowledge and belief, the Document was valid, original, and current and the information in it was valid and current.

5. This copy is a true copy of the Document, the original of which I examined.

Signed by me on the [*specify*[day of [*month*[, [*20__*[at [*place*[.

_____

Agent[s signature

FATF

APG

Anti-money laundering and counter-terrorist financing measures

Canada

Mutual Evaluation Report

September 2016

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

For more information about the FATF, please visit the website: **www.fatf-gafi.org**

The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation, whose members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism, in particular the FATF Recommendations.

For more information about the APG, please visit the website: **www.apgml.org**

This document and/or any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

This assessment was conducted under the responsibility of the International Monetary Fund, adopted by the FATF at its June 2016 Plenary meeting.

Citing reference:

FATF (2016), *Anti-money laundering and counter-terrorist financing measures - Canada,* Fourth Round Mutual Evaluation Report, FATF, Paris
www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html

CONTENTS

Executive Summary

This report provides a summary of the anti-money laundering and combating the financing of terrorism (AML/CFT) measures in place in Canada as at the date of the on-site visit (3-20 November 2015). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Canada's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

1. The Canadian authorities have a good understanding of most of Canada's money laundering and terrorist financing (ML/TF) risks. The 2015 Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada (the NRA) is of good quality. AML/CFT cooperation and coordination are generally good at the policy and operational levels.

2. All high-risk areas are covered by AML/CFT measures, except legal counsels, legal firms and Quebec notaries. This constitutes a significant loophole in Canada's AML/CFT framework.

3. Financial intelligence and other relevant information are accessed by Canada's financial intelligence unit, FINTRAC, to some extent and by law enforcement agencies (LEAs) to a greater extent but through a much lengthier process. They are used to some extent to investigate predicate crimes and TF activities, and, to a much more limited extent, to pursue ML.

4. FINTRAC receives a wide range of information, which it uses adequately, but some factors, in particular the fact that it is not authorized to request additional information from any reporting entity (RE), limit the scope and depth of the analysis that it is authorized to conduct.

5. Law enforcement results are not commensurate with the ML risk and asset recovery is low.

6. Canada accords priority to pursing TF activities. TF-related targeted financial sanctions (TFS) are adequately implemented by financial institutions (FIs) but not by designated non-financial business and professions (DNFBPs). Charities (i.e. registered NPOs) are monitored on a risk basis.

7. Canada's Iran and Democratic People's Republic of Korea (DPRK) sanction regime is comprehensive, and some success has been achieved in freezing funds of designated individuals, there is no mechanism to monitor compliance with proliferation financing (PF)- related TFS.

8. FIs, including the six domestic systemically important banks, have a good understanding of their risks and obligations, and generally apply adequate mitigating measures. The same is not true for DNFBPs. REs have gradually increased their reporting of suspicious transactions, but reporting by DNFBPs other than casinos is very low.

9. FIs and DNFBPs are generally subject to appropriate risk-sensitive AML/CFT supervision, but supervision of the real estate and dealers in precious metals and stones (DPMS) sectors is not entirely commensurate to the risks in those sectors. A range of supervisory tools are used effectively especially in the financial sector. There is some duplication of effort between FINTRAC and the Office of the Superintendent of Financial Institutions (OSFI) in the supervisory coverage of federally regulated financial institutions (FRFIs) and a need to coordinate resources and expertise more effectively.

10. Legal persons and arrangements are at a high risk of misuse, and that risk is not mitigated.

11. Canada generally provides useful mutual legal assistance and extradition. The authorities solicit other countries' assistance to fight TF and, to a somewhat lesser extent, ML. Informal cooperation is generally effective and frequently used.

Risks and General Situation

12. Canada has a strong framework to fight ML and TF, which relies on a comprehensive set of laws and regulations, as well as a range of competent authorities.

13. It faces an important domestic and foreign ML threat, and lower TF threat. As acknowledged in the public version of the authorities' 2015 assessment of Canada's inherent ML and TF risks (the NRA), the main domestic sources of proceeds of crime (POC) are fraud, corruption and bribery, counterfeiting and piracy, illicit drug trafficking, tobacco smuggling and trafficking, as well as (to a slightly higher level than assess) tax evasion. Canada's open and stable economy and accessible financial system also make it vulnerable to significant foreign ML threats, especially originating from the neighbouring United States of America (US), but also from other jurisdictions. The main channels to launder the POC appear to be the financial institutions (FIs), in particular the six domestic systemically important banks (D-SIBs) due to their size and exposure, as well as money service businesses (MSBs). While not insignificant, the TF threat to Canada appears lower than the ML threat. A number of TF methods have been used in Canada and have involved both financial and material support to terrorism, including the payment of travel expenses of individuals and the procurement of goods.

Overall Level of Effectiveness and Technical Compliance

14. Since its 2007 evaluation, Canada has made significant progress in bringing its AML/CFT legal and institutional framework in line with the standard, but the fact that AML/CFT obligations are inoperative for legal counsels, legal firms and Quebec notaries is a significant concern. In terms of effectiveness, Canada achieves substantial results with respect to five of the Immediate Outcomes (IO), moderate results with respect to five IOs, and low results with respect to one IO.

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

15. The authorities have a generally good level of understanding of Canada's main ML/TF risks. The public version of the 2015 NRA is of good quality. It is based on dependable evidence and sound judgment, and supported by a convincing rationale. In many respects, the NRA confirmed the authorities' overall understanding of the sectors, activities, services and products exposed to ML/TF risk. While the NRA's findings did not contain major unexpected revelations, the process was useful in clarifying the magnitude of the threat, in particular the threat affecting the real estate sector and emanating from third-party money launderers. The authorities nevertheless may be underestimating the magnitude of some key risks, such as the risk emanating from tax crimes and foreign corruption.

16. All high-risk areas are covered by the AML/CFT regime, with the notable exception of the legal professions other than British Columbia (BC) notaries, which is a significant loophole in Canada's AML/CFT framework, and online casinos, open loop prepaid cards, and white label ATMs.

17. While supervisory measures are generally in line with the main ML/TF risks, more intensive supervisory measures should be applied in some higher risk areas such as the real estate and DPMS.

18. AML/CFT cooperation and coordination appear effective at the policy level, but in some provinces, greater dialogue between LEAs and the Public Prosecution Service of Canada (PPSC) would prove useful.

19. While FIs generally appear adequately aware of their ML/TF risks, the same does not apply in some DNFBP sectors, in particular the real estate sector.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

20. Financial intelligence and other relevant information is collected and used to some extent only by competent authorities to carry out investigations into the predicate crimes and TF activities, and, to a more limited extent, to pursue ML. FINTRAC receives a range of information from REs and LEAs, which it adequately analyses. Some factors nevertheless hamper its ability to produce more comprehensive intelligence products, in particular, the fact that FINTRAC is not authorized to obtain from any RE additional information related to suspicions of ML/TF. FINTRAC's analysis and disclosures are mainly prepared in response to the requests made by LEAs in Voluntary Information Records (VIRs). LEAs use these disclosures mainly to investigate the predicate offense, rather than to carry out ML investigations. FINTRAC also produces strategic reports that address the LEAs' operational priorities and advise them on new ML/TF trends and typologies. Information resulting from cross-border transportation of cash and other bearer negotiable instruments is not exploited to its full extent. The FIU and the LEAs cooperate effectively and exchange information and financial intelligence on a regular basis and in a secure way.

21. LEAs have adequate powers and cooperation mechanisms to undertake large and complex financial investigations. This has notably resulted in some high-profile successes in neutralizing ML

networks and syndicates. However, current efforts are mainly aimed at the predicate offenses, with inadequate focus on the main ML risks other than those emanating from drug offenses, i.e. standalone ML, third-party ML and laundering of proceeds generated abroad. Some provinces, such as Quebec, appear more effective in this respect. LEAs' prioritization processes are not fully in line with the findings of the NRA, and LEAs generally suffer from insufficient resources and expertise to pursue complex ML cases. In addition, legal persons are not effectively pursued and sanctioned for ML, despite their misuse having been identified in the NRA as a common ML typology. Criminal sanctions applied are not sufficiently dissuasive. The majority of natural persons convicted for ML are sentenced in the lower range of one month to two years of imprisonment, even in cases involving professional money launderers.

22. Overall, asset recovery appears low. Some provinces, such as Quebec, appear more effective in recovering assets linked to crime. Falsely and undeclared cross-border movements of currency and other bearer negotiable instruments are rarely analysed by the FIU or investigated by the RCMP. As a result, the majority of the cash seized by the Canada Border Services Agency (CBSA) is returned to the traveller at the border.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9- 11; R.5-8)

23. The authorities display a good understanding of Canada's TF risk and cooperate effectively in CFT efforts. The intelligence services, LEAs and FINTRAC regularly exchange information, which notably contributes to support prioritization of TF investigations. Canada accords priority to investigations and prosecutions of terrorism and TF. There are a number of TF investigations, which resulted in two TF convictions. Canada also makes regular use of other disruption measures.

24. Implementation of TF-related targeted financial sanctions (TFS) is generally good but uneven. Large FIs implement sanctions without delay, but DNFBPs do not seem to have a good understanding of their obligations and are not required to conduct a full search of their customer databases on a regular basis. In practice, few assets have been frozen in connection with TF-related TFS, which does not seem unreasonable in the Canadian context.

25. Charities (i.e. registered NPOs) are monitored by the Canada Revenue Agency (CRA) on a risk basis, but the number of inspections conducted over the last few years does not reflect those TF risks. The NRA found the risk of misuse of charities as high, but only a small percentage of charities have been inspected. Nevertheless, to limit this risk, the CRA's charities division has developed an enhanced outreach plan which reflects the best practices put forward by the FATF.

26. Canada's framework to implement the relevant UN counter-proliferation financing sanctions is strong and, in some respect, goes beyond the standard, but does not apply to all types of assets listed in the standard. The current lists of designated persons are available on the OSFI websites, and changes to those lists are promptly brought to the attention of the FRFIs (i.e. banks, insurance companies, trust and loan companies, private pension plans, cooperative credit associations, and fraternal benefit societies). There is a good level of policy and operational cooperation between the relevant authorities including those involved in export control, border control, law enforcement and AML/CFT supervision. Some success has been achieved in freezing

funds of designated persons. None of the Canadian authorities has an explicit mandate to monitor FIs' and DNFBPs' implementation of their counter-PF obligations but, in practice, OSFI has examined implementation by FRFIs of TFS for both TF and PF, and has also identified shortcomings and requested improvements.

Preventive Measures (Chapter 5 - IO4; R.9-23)

27. AML/CFT requirements are inoperative towards legal counsels, legal firms and Quebec notaries. These requirements were found to breach the constitutional right to attorney-client privilege by the Supreme Court of Canada on 13 February 2015. In light of these professionals' key gatekeeper role, in particular in high-risk sectors and activities such as real-estate transactions and the formation of corporations and trusts, this constitutes a serious impediment to Canada's efforts to fight ML.

28. FRFIs, including the six domestic banks that dominate the financial sector, have a good understanding of their risks and AML/CFT obligations. Supervisory findings on the implementation of the risk-based approach (RBA) are also generally positive. The large FRFIs conducted comprehensive group-wide risk assessments and took corresponding mitigating measures. In an effort to mitigate some of the higher risks, a number of FRFIs have gone beyond the Canadian requirements (e.g. by collecting information on the quality of AML/CFT supervision in the respondent bank's country).

29. Nevertheless, some deficiencies in the AML/CFT obligations undermine the effective detection of very high-risk threats identified in the NRA, such as corruption. This is notably the case of the current requirements related to politically exposed persons (PEPs). The identification of beneficial ownership also raises important concerns. Although the legal requirements have recently been strengthened, little is done by FIs to verify the accuracy of beneficial ownership information. DNFBPs are not required to identify the beneficial ownership nor to take specific measures with respect to foreign PEPs.

30. Most DNFBPs are not sufficiently aware of their AML/CFT obligations. This is in particular the case of real estate agents. Extensive work has been conducted by FINTRAC with relevant DPMS trade associations, to increase the DNFBPs' awareness, which is leading to some improvement in compliance. REs have gradually increased the number of STRs and other threshold-based reports filed with FINTRAC but reporting remains very low. The fact that no STRs have been filed by accountants and BC notaries, and the low number of STRs received from the real estate sector raise concern.

Supervision (Chapter 6 - IO3; R.26-28, R. 34-.35)

31. FINTRAC and OSFI supervise FIs and DNFBPs on a risk-sensitive basis. FINTRAC should, however, apply more intensive supervisory measures to DNFBPs. There is good supervisory coverage of FRFIs, but FINTRAC and OSFI need to improve their coordination to share expertise, maximize the use of the supervisory resources available and avoid duplication of efforts. FINTRAC has increased its supervisory capacity in recent years. It adopted an effective RBA in its compliance

and enforcement program, but needs to further develop its sector-specific expertise and increase the intensity of supervision of DNFBPs, particularly in the real estate sector and with respect to DPMS, commensurate with the risks identified in the NRA.

32. There are good market entry controls in place to prevent criminals and their associates from owning or controlling FIs and most DNFBPs. There are, however, no controls for DPMS, and fitness and probity controls at the provincial level are not conducted on an ongoing basis (i.e. including after-market entry).

33. Supervisors appear generally effective. Remedial actions are effectively used and have been extensively applied by supervisors but the sanctioning regime for breaches of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the PCMLTFA) has not been applied in a proportionate and/or sufficiently dissuasive manner. Supervisors have demonstrated that their actions have largely had a positive effect on compliance by FIs and some categories of DNFBPs. They have increased guidance and feedback to REs in recent years but further efforts are necessary, particularly with regard to the DNFBP sector. The exclusion of most of the legal professions (legal counsels, legal firms and Quebec notaries) from AML/CFT supervision has a negative impact on the effectiveness of the supervisory regime as a whole.

Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

34. Canadian legal entities and legal arrangements are at a high risk of misuse for ML/TF purposes and that risk is not mitigated. This is notably the case with respect to nominee shareholding arrangements, which are commonly used across Canada and pose real obstacles for LEAs.

35. Basic information on legal persons is publicly available, but beneficial ownership information is more difficult to obtain. Some information is collected by FIs and to a limited extent DNFBPs, the tax authorities and legal entities themselves, but is neither verified nor comprehensive in all cases. LEAs have the necessary powers to obtain that information, but the process is lengthy. Information exchange between LEAs and the CRA is also limited by stringent legal requirements.

36. The authorities have insufficient access to information related to trusts. Some information is collected by the CRA as well as by FIs providing financial services, but that information is not verified, does not always pertain to the beneficial owner, and is even more difficult to obtain than in the case of legal entities.

37. LEAs have successfully identified the beneficial owners in limited instances only. Despite corporate vehicles and trusts posing a major ML and TF risk in Canada, LEAs do not investigate many cases in which legal entities or trusts played a prominent role or that involved complex corporate elements or foreign ownership or control aspects.

International Cooperation (Chapter 8 - IO2; R. 36-40)

38. range of mutual legal assistance (MLA) provided by Canada is generally broad, and countries provided—through the FATF—largely positive feedback regarding the responsiveness and

quality of the assistance provided. Canada solicits other countries' assistance in relatively few instances in pursuit of domestic ML, associated predicate offenses and TF cases with transnational elements. Some concerns were nevertheless raised by some Canadian LEAs about delays in the processing of incoming and outgoing requests. The extradition framework is adequately implemented. Informal cooperation is effective. Cooperation between LEAs, FINTRAC, the CBSA and OSFI and their respective foreign counterparts is more fluid, and more frequently used than MLA. Nevertheless, some weaknesses in Canada's framework (e.g. the impossibility for FINTRAC to obtain additional information from REs, and the low quantity of STRs from DNFBPs) negatively affects the authorities' ability to assist their foreign counterparts.

Priority Actions

- Ensure that legal counsels, legal firms, and Quebec notaries engaged in the activities listed in the standard are subject to AML/CFT obligations and supervision. Bring all remaining FIs and DNFBPs in the AML/CFT regime.
- Increase timeliness of access by competent authorities to accurate and up-to-date beneficial ownership information - Consider additional measures to supplement the current framework.
- Increase timely access to financial intelligence – authorize FINTRAC to request and obtain from any RE further information related to suspicions of ML, predicate offenses and TF.
- Use financial intelligence to a greater extent to investigate ML and traces assets.
- Increase efforts to detect, pursue and bring before the courts cases of ML related to all high-risk predicate offenses, third party ML, self-laundering, laundering of POC of foreign predicate and the misuse of legal persons and trusts in ML activities.
- Ensure that asset recovery is pursued as a policy objective throughout the territory.
- Ensure compliance by all FIs with the requirement to confirm the accuracy of beneficial ownership in relation to all customers.
- Require DNFBPs to identify and verify the identity of beneficial owners and PEPs.
- Coordinate more effectively supervision of FRFIs by OSFI and FINTRAC to maximize the use of resource and expertise, and review implementation of the current approach.
- Ensure that FINTRAC develops sector-specific expertise, and applies more intensive supervisory measures to the real estate and the DPMS sectors.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Substantial	**Substantial**	**Substantial**	**Moderate**	**Low**	**Moderate**

IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions
Moderate	**Moderate**	**Substantial**	**Substantial**	**Moderate**

Technical Compliance Ratings

R.1 - assessing risk & applying risk-based approach	R.2 - national cooperation and coordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions – terrorism & terrorist financing
LC	**C**	**C**	**LC**	**LC**	**LC**
R.7- targeted financial sanctions - proliferation	**R.8** -non-profit organisations	**R.9** – financial institution secrecy laws	**R.10** – Customer due diligence	**R.11** – Record keeping	**R.12** – Politically exposed persons
LC	**C**	**C**	**LC**	**LC**	**NC**
R.13 – Correspondent banking	**R.14** – Money or value transfer services	**R.15** –New technologies	**R.16** –Wire transfers	**R.17** – Reliance on third parties	**R.18** – Internal controls and foreign branches and subsidiaries
LC	**C**	**NC**	**PC**	**PC**	**LC**
R.19 – Higher-risk countries	**R.20** – Reporting of suspicious transactions	**R.21** – Tipping-off and confidentiality	**R.22** - DNFBPs: Customer due diligence	**R.23** – DNFBPs: Other measures	**R.24** – Transparency & BO of legal persons
C	**PC**	**LC**	**NC**	**NC**	**PC**
R.25 - Transparency & BO of legal arrangements	**R.26** – Regulation and supervision of financial institutions	**R.27** – Powers of supervision	**R.28** – Regulation and supervision of DNFBPs	**R.29** – Financial intelligence units	**R.30** – Responsibilities of law enforcement and investigative authorities
NC	**LC**	**C**	**PC**	**PC**	**C**
R.31 – Powers of law enforcement and investigative authorities	**R.32** – Cash couriers	**R.33** – Statistics	**R.34** – Guidance and feedback	**R.35** – Sanctions	**R.36** – International instruments
LC	**LC**	**C**	**LC**	**LC**	**C**
R.37 – Mutual legal assistance	**R.38** – Mutual legal assistance: freezing and confiscation	**R.39** – Extradition	**R.40** – Other forms of international cooperation		
LC	**LC**	**C**	**LC**		

C = Compliant
LC = Largely compliant
PC = Partially compliant
NC = Non-compliant

MUTUAL EVALUATION REPORT

Preface

This report provides a summary of the anti-money laundering and combating the financing of terrorism (AML/CFT) measures in Canada as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Canada's AML/CFT system, and provides recommendations on how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology as updated at the time of the on-site. The evaluation was based on information provided by Canada, and information obtained by the evaluation team during its on-site visit to Canada from 3-20 November 2015.

The evaluation was conducted by an assessment team consisting of:

- Nadim Kyriakos-Saad (team leader),
- Nadine Schwarz (deputy team leader),
- Antonio Hyman-Bouchereau (legal expert, IMF),
- Katia Bucaioni (financial sector expert, *Unità di Informazione Finanziaria*, Italy),
- Anthony Cahalan (financial sector expert, Central Bank of Ireland),
- Carla De Carli (legal expert, Regional Circuit Prosecution, Brazil),
- Gabriele Dunker (IMF consultant),
- John Ellis (IMF consultant),
- Sylvie Jaubert (law enforcement expert, Directorate of Intelligence and Customs Investigations, France),
- Amy Lam (law enforcement expert, Hong Kong Police).
- The report was reviewed by Emery Kobor (US), Erin Lubowicz (New Zealand), Peter Smit (South Africa), Richard Berkhout (FATF Secretariat) and Lindsay Chan (Asia Pacific Group on Money Laundering—APG secretariat).

Canada previously underwent a FATF mutual evaluation in 2007, conducted according to the 2004 FATF Methodology. That evaluation concluded that Canada was compliant with 7 Recommendations; largely compliant with 23; partially compliant with 8; and non-compliant with 11. Canada was rated compliant or largely compliant with 13 of the 16 Core and Key Recommendations. Canada was placed in the regular follow-up process, and reported back to the FATF in February 2009, February 2011, October 2011, October 2012, and February 2013. The FATF February 2014 follow-up report found that overall, while some minor deficiencies remained, Canada had made sufficient progress with respect to the Core and Key Recommendations. Canada was therefore removed from the follow-up process in February 2014.

The 2008 mutual evaluation report (MER) and February 2014 follow-up report have been published and are available at www.fatf-gafi.org/countries/#Canada.

CHAPTER 1. ML/TF RISKS AND CONTEXT

39. Canada extends from the Atlantic to the Pacific and northward into the Arctic Ocean, covering 9.98 million square kilometres (3.85 million square miles) in total, making it the world's second-largest country by total area (i.e. the sum of land and water areas) and the fourth-largest country by land area. Canada is a developed country and the world's eleventh-largest economy as of 2015 (approximately USD1.573 trillion). As of 2015, the population of Canada is estimated to be 35 851 774. The foreign-born population of Canada represented 20.6% of the total population in 2011, the highest proportion among the G7 countries.[1]

40. Canada is a federation of ten provinces and three territories[2] in the northern part of North America. Ottawa, in the province of Ontario, is the national capital. Canada is a federal parliamentary democracy and a constitutional monarchy, with her Majesty Queen Elizabeth II being the Head of State. The Governor General of Canada carries out most of the federal royal duties in Canada as representative of the Canadian crown.

41. Canada's Constitution consists of unwritten and written acts, customs, judicial decisions, and traditions dating from 1763. The composition of the Constitution of Canada is defined in subsection 52(2) of the Constitution Act, 1982 as consisting of the Canada Act 1982 (including the Constitution Act, 1982), all acts and orders referred to in the schedule (including the Constitution Act, 1867 and the Charter of Rights and Freedoms), and any amendments to these documents.

42. All provinces and territories within Canada follow the common law legal tradition, except Quebec, which follows the civil law tradition. In addition, all federal laws also follow the common law legal tradition and are applicable in every province and territory (Quebec's civil tradition only applies to provincial laws).

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

43. Canada faces important ML risks generated both domestically and abroad. Estimates of the total amount of POC generated and/or laundered in Canada vary: the Criminal Intelligence Service Canada (CISC) estimated in 2007 that POC generated annually by predicate crimes committed in Canada represent approximately 3-5% of Canada's nominal gross domestic product (GDP), or approximately USD47 billion. The RCMP estimated in 2011 that the amount of money laundered annually in Canada to be somewhere between USD 5 billion and USD 15 billion. The NRA indicates that profit-generating criminal activity generates billions of dollars in POC that might be laundered.

[1] Statistics Canada (2011), Immigration and Ethnocultural Diversity in Canada – National Household Survey, 2011, www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-010-x/99-010-x2011001-eng.cfm.

[2] The 10 provinces are Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan. The three territories are Northwest Territories, Nunavut, and Yukon.

1

44. Organized Criminal Groups (OCGs) pose the greatest domestic ML risk, as they are involved in multiple criminal activities generating large amounts of POC. There are over 650 OCGs operating in Canada. The public version of the NRA does not include a detailed analysis of the risks associated with the methods and financial channels used to raise, collect or transfer funds for TF, due to reasons of national security. The classified version of the NRA includes specific ratings for the TF risks represented by each of the terrorist groups. However, this could not be shared and therefore not assessed by the assessors due to national security concerns.

45. Canada appears to be moderately exposed to PF risks, due primarily to the size of the Canadian financial sector. Canada produces a range of controlled military and dual-use goods, and while no estimates were provided regarding the value and volume of goods exported, they are understood to be relatively large. In addition, Canada appears vulnerable to being used as a transshipment or transit point for military controlled and dual-use goods produced in the US. There are no estimates of the financial flows between Canada and either Iran or the DPRK, but, due to the number of restrictions in place (see R.7 and IO.11), are understood to be low.

ML/TF Threats

46. POCs in Canada are mainly generated from: human smuggling, payment card fraud, tobacco smuggling and trafficking, mass marketing fraud, mortgage fraud, capital markets fraud, illicit drug trafficking, counterfeiting and piracy, corruption and bribery, and commercial trade fraud. Canada is exposed to very high ML threats of both local and foreign origin: (i) Fraud, including capital markets fraud, trade fraud, mass marketing fraud, and mortgage fraud, is a major source of POC in Canada.(ii) The proceeds of drug trafficking laundered in Canada are also significant, and derive predominantly from domestic activity controlled by OCGs. (iii) Third-party ML has started to pose a significant threat in recent years. The NRA found, and discussions on-site confirmed that large-scale and sophisticated ML operations in Canada, notably those connected to transnational OCGs, frequently involve professional money launderers[3] (i.e. individuals specialized in the ML of POC who offer their services for a fee), nominees or money mules. It also found that, of the three, professional money launderers pose the greatest threat both in terms of laundering domestically generated POC as well as laundering, through Canada, of POC generated abroad.[4]

47. The threat emanating from other countries is significant but less easily definable. While some countries have been identified as being the main source of POC laundered in Canada, the authorities' assessment of the foreign ML threat is less detailed and comprehensive than their analysis of the domestic threat.

48. The TF threat was assessed in relation to the terrorist organizations and associated individuals that have financing or support networks in Canada. In particular, the TF threat posed by the actors associated with the following ten terrorist groups and foreign fighters was

[3] It is suspected that criminally-inclined real estate professionals, notably real estate lawyers, are used to facilitate ML. OCGs involved in mortgage fraud appear to launder funds through banks, MSBs, legitimate businesses and trust accounts.

[4] Public version of the NRA, Department of Finance Canada (2015), Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, p.22, www.fin.gc.ca/pub/mltf-rpcfat/index-eng.asp

assessed: Al Qaeda in the Arabian Peninsula; Al Qaeda Core; Al Qaeda in the Islamic Maghreb; Al Shabaab; Hamas; Foreign Fighters/Extremist Travellers; Hizballah; Islamic State of Iraq and Syria; Jabhat Al-Nusra; Khalistani Extremist Groups; and Remnants of the Liberation Tigers of Tamil Eelam. Using rating criteria and currently available intelligence, the terrorist groups were assessed as posing a low, medium or high TF threat in Canada. The sectors and products exposed to very high TF risks are corporations, domestic banks, national full-service MSBs, small family-owned MSBs and express trusts. The NRA indicates the possible existence of TF networks in Canada suspected of raising, collecting and transmitting funds abroad to various terrorist groups.[5] The only domestically listed terrorist organizations that pose a TF threat to Canada are those that have financing or support networks in Canada.[6] Terrorism and TF have been increasing in the last two years and more resources were therefore shifted by the authorities to address these threats. As resources remain limited, these issues are putting additional pressures on the AML/CFT regime, and in particular LEAs. Additional funding for AML/CFT activities was authorized in Budget 2015, but these new resources have yet to be fully deployed.

Vulnerabilities

49. Canadian banks offer a number of inherently vulnerable products and services to a very large client base, which includes a significant amount of high-risk clients and businesses. In addition, banks are exposed to high-risk jurisdictions that have weak AML/CFT regimes and significant ML/TF threats. The main channels to launder the POC appear to be the FIs, in particular the D-SIBs due to their size and exposure, as well as MSBs. Terrorist financiers mostly use international and domestic wire transfers to move funds within Canada and/or abroad.

50. The legal profession in Canada is especially vulnerable to misuse for ML/TF risks, notably due to its involvement in activities exposed to a high ML/TF risk (e.g. real estate transactions, creating legal persons and arrangements, or operation of trust accounts on behalf of clients).[7] Following a 13 February 2015 Supreme Court of Canada ruling legal counsels, legal firms and Quebec notaries are not required to implement AML/CFT measures,[8] which, in light of the risks, raises serious concerns.

51. Businesses that handle high volumes of cash are highly vulnerable to ML/TF as they are attractive to launderers of drug proceeds. These include brick and mortar casinos, convenience

[5] The TF methods that have been used in Canada include both financial and material support for terrorism, such as the payment of travel expenses and the procurement of goods. The transfer of suspected terrorist funds to foreign locations has been conducted through a number of methods including the use of MSBs, banks and NPOs as well as smuggling bulk cash across borders.

[6] Organizations posing a terrorist threat to Canada do not necessarily pose a TF threat to Canada. In such cases, the level of threat may not be the same.

[7] The use of trust accounts by lawyers has been recognized by the Department of Finance as a high vulnerability. See: Standing Senate Committee on Banking, Trade and Commerce (2013), Follow the Money: Is Canada Making Progress in Combatting Money Laundering and Terrorist Financing? Not really, p. A-26- Lawyers and legal firms, www.parl.gc.ca/Content/SEN/Committee/411/BANC/rep/rep10mar13-e.pdf.

[8] See Judgements of the Supreme Court of Canada (2015), Canada (Attorney General) v. Federation of law societies of Canada, 2015 SCC 7, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14639/index.do.

1

stores, gas stations, bars, restaurants, food-related wholesalers and retailers, and DPMS (notably in the diamonds sector).[9]

52. The real estate sector is highly vulnerable to ML, including international ML activities, and the risk is not fully mitigated, notably because legal counsels, legal firms and Quebec notaries (who provide services in related financial transactions) are not required to implement AML. The sector provides products and services that are vulnerable to ML and TF, including the development of land, the construction of new buildings and their subsequent sale. Also, the real estate business is exposed to high risk clients, including PEPs, notably from Asia[10] and foreign investors (including from locations of concern).

53. Other activities, such as the mining of diamonds, dealing in high value goods, virtual currencies and open loop prepaid cards, are subject to higher ML/TF vulnerability.[11][12] The NRA classifies the virtual currency sector as having high vulnerability, in particular convertible virtual currencies due to the increased anonymity that they can provide as well as their ease of access and high degree of transferability. White-label automated teller machine (ATM) operators are vulnerable to ML/TF. According to the RCMP, OCGs use white-label ATMs to launder POC in Canada. The money withdrawn has previously been deposed into a bank accounts controlled by OCGs through third parties.

54. Legal persons and legal arrangements are inherently vulnerable to misuse for ML/TF purposes to a high degree. There is no legal requirement for legal persons and entities to record and maintain beneficial ownership information. Accordingly, companies and trusts can be structured to conceal the beneficial owner and can be used to disguise and convert illicit proceeds. Privately-held corporate entities can also be established relatively anonymously in Canada. Express trusts have global reach; Canadians and non-residents can establish Canadian trusts in Canada or abroad.

55. Full-service MSBs are vulnerable to ML/TF as they are widely accessible and exposed to clients in vulnerable businesses or occupations, and clients conducting activities in locations of concern. Drug traffickers are particularly frequent users of MSBs.[13]

---

[9] Ibid. p. 63.

[10] For example, there are cases of Chinese officials laundering the PoC through the real estate sector, particularly in Vancouver, and the Chinese government has listed Canada as a country that it wishes to target for recovering the proceeds of Chinese corruption. Canada may be particularly vulnerable to such laundering, as there is no extradition treaty with China.

[11] See FATF (2013), ML and TF through Trade in Diamonds, pp. 30 and 41, www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf.

[12] See "Developing a ML/TF Risk Assessment Framework for Canada," updated by the Public-Private Sector Advisory Committee (PPSAC) in May 2014. In this regard, AML/CFT requirements have not been extended to the other sectors (i.e. luxury goods, automobile, antiquities) when they engage in any cash transaction with a customer equal to or above a designated threshold.

[13] APG (2013), Yearly Typologies Report, www.apgml.org/includes/handlers/get-document.ashx?d=e92a27b8-42d8-4f8e-bea0-6289dcb30b9b .

International Dimension of ML/TF Vulnerabilities

56. Some of Canada's key attributes (e.g. political and economic stability, well-developed international trade networks, cultural environment, and highly developed financial system and regulatory environment)[14] also make it attractive to those seeking to launder money or finance terrorism. Canada's appeal as an investment setting also makes it an attractive destination for foreign POC.

57. Canada and the US share the longest international border in the world, at over 8 800 kilometers. Some passages are unguarded and provide opportunity for criminals to move easily between both countries. OCGs in Canada and the US actively exploit the border for criminal gain. Both countries endeavour to tackle this vulnerability through close cooperation and careful monitoring of threats.

58. Outflows of POC generated within Canada appear to be moderate in comparison with the inflows of POC. Illicit proceeds from cocaine sales in Canada are often smuggled into the US. Canadian individuals and corporations use tax havens and offshore financial centres to evade taxes, in particular those located in the Caribbean, Europe and Asia.

59. Canada's multiethnic and multicultural character also leaves the country vulnerable to exploitation by OCGs seeking to launder POC or terrorist organizations looking to conceal themselves within law-abiding diaspora communities to finance and promote terrorist activities. Some terrorist groups have also been known to use extortion to gain power over individuals to further their objectives, including by extorting funds from diaspora communities in Canada.[15] Moreover, informal diaspora remittances are open to criminal interference because they circumvent exchange controls and can therefore facilitate ML.

Country's risk assessment & Scoping of Higher Risk Issues

60. The Canadian authorities recently undertook a comprehensive ML/TF NRA. They prepared a classified, restricted NRA report that was shared within the government, as well as a shorter, public version that was published in July 2015.

61. The NRA weighs ML/TF threats against the inherent vulnerabilities of sectors (i.e. to assess the likelihood of ML/TF) and then maps those inherent potential risk scenarios using ratings (i.e. very high, high, medium, low) of individual threat and vulnerability profiles. The threats analysed included some related to sectors that are not currently subject to the PCMLTFA (e.g. check cashing businesses, closed-loop pre-paid access, financing and leasing companies). Ratings serve to illustrate the relative importance of various factors/elements/components relevant to ML/TF.

[14] In response to such threats, Canada created the Illicit Financing Advisory Committee (IFAC) in September 2010. IFAC is responsible for advising the Department of Finance and its Minister about high-risk jurisdictions, and provides a formal mechanism to share information among Canadian government departments and AML/CFT agencies in order to identify and assess the ML/TF threats posed by foreign jurisdictions and entities to Canada.

[15] Department of Finance Canada (2015), Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada (NRA), p. 26, www.fin.gc.ca/pub/mltf-rpcfat/index-eng.asp.

1

Metrics were based on judgments and were heavily reliant on subject-matter experts' input and readily available information. Based on this approach, all assessed sectors and products were found to be potentially exposed to inherent ML risks while a more limited number of them were found to be exposed to inherent TF risks.

62. While the NRA findings did not contain major unexpected revelations regarding inherent ML or TF threats, the authorities reported that the exercise revealed the magnitude of the threat affecting the real estate sectors and arising from third-party money launderers.

a) Scoping of Higher Risk Issues

63. The assessment team gave increased attention to the following issues which it considered posed the highest ML/TF risk in Canada or warranted more thorough discussions:

- Third-party money launderers (e.g. professional money launderers): The NRA found that large-scale and sophisticated ML operations in Canada, notably those connected to transnational OCGs, frequently involve professional money launderers;
- Exposure of the Canadian economy to international ML/TF activities (i.e. deposit taking sector, real estate sector, and illicit outflows from Canada to so-called tax haven jurisdictions): A number of sectors are highly vulnerable to ML/TF linked to foreign countries, notably due to the openness of the Canadian economy, the volume of international migrants and visitors, a large and accessible financial system, and a well-developed international trading system;
- Inflows and outflows of POC (including with respect to fraud, corruption, OCG and tax evasion): A better understanding of the nature and magnitude of the inflows and outflows of POC was sought to analyse how Canadian regulators and banks are mitigating the risks of the banking system and to evaluate the effectiveness of international cooperation efforts;
- Sanctioning of ML activities (i.e. all ML offenses) and confiscation of POC: The team gathered information on the number and nature of investigations, prosecutions, sanctions imposed and confiscations related to ML and the main predicate offenses in order to analyse trends since the 2008 mutual evaluation report (MER).; and
- Transparency of legal persons and trusts: The high level of vulnerability of Canadian legal persons and arrangements is reflected by the high level of threat of third-party ML, the inoperativeness of AML/CFT requirements to legal counsels, legal firms and Quebec notaries, and the frequent use of front companies by OCGs.

Materiality

64. Canada has a large and diversified economy, with assets totalling about 500% of GDP.[16] In 2014, 70% of the economy was devoted to services, while manufacturing and primary sectors accounted for the remaining 30%.[17] International trade represents more than 60% of Canada's GDP. Most of Canada's trade is with the US (74% of export and 64% of import) followed by China and Mexico.[18]

65. Canada's financial system plays a key role in the Canadian economy and the global financial system. Canadian FIs provide substantial services to non-residents. The financial system is dominated by banks that total 42% of the financial sector assets, and by a handful of players in most sectors. The D-SIBs hold 93% of bank assets. The IMF's 2014 Financial Sector Assessment Program (FSAP) found that Canada's regulatory and supervisory framework demonstrates strong compliance with prudential international standards. Responsibility for supervision of FIs and markets is divided among federal and provincial authorities. The majority of the prudential supervision of the financial sector is regulated at the federal level by OSFI, though a significant segment is subject to provincial regulation.[19] In regard to prudential and business conduct, financial supervision is generally well coordinated across the federal oversight bodies.

Financial Sector and DNFBPs

66. There are approximately 30 000 REs subject to the PCMLTFA.

Table 1. **Entities by Sector (as of November 2015)**

Sector	Number of Entities	Subject to PCMLTFA (Y/N)
Domestic Systemically Important Banks (D-SIBs)	6	Y
Domestic Banks (other than D-SIBs)	22	Y
Foreign Bank Subsidiaries	24	Y
Foreign Bank Branches	29	Y
White-Label ATM Operators (Non-bank or financial institution)	43 100 (est.)	N
Mortgage Lenders	Not available	N
Leasing Companies	Over 200 (est.)	N
Life Insurance Companies	73 federal and 18 provincially-regulated	Y
Independent Life Insurance Agents And Brokers[1]	154 000 agents and 45 000 brokers (est.)	N

[16] Canada is one of the 29 jurisdictions whose financial sectors are considered by the IMF to be systematically important: *Press Release NO 14/08* of 13 January 2014.

[17] See Canada's National Risk Assessment, p.27.

[18] CIA World Factbook, 2015.

[19] For more information on the financial sector, see IMF 2014 Financial Sector Stability Assessment of Canada (www.imf.org/external/pubs/ft/scr/2014/cr1429.pdf). Canada's NRA states that the banking sector is highly concentrated and holds over 60% of the financial system's assets.

Sector	Number of Entities	Subject to PCMLTFA (Y/N)
Trust and Loan Companies	63 federally-regulated trust companies and loan companies and 14 provincially-regulated	Y
Securities Dealers	3 487 (The D-SIBs own six of the securities dealers, accounting for 75% of the sector's transaction volume)	Y
Credit Unions and *Caisses Populaires* (CU/CPs)	696 CU/CPs9 that are provincially-regulated; 6 Cooperative Credit Associations and 1 Cooperative Retail Association that are federally-regulated	Y
Money Services Businesses (MSBs)	850 registered MSBs	Y
Check cashing businesses	Not available	N
Provincially-Regulated Casinos	39	Y
Ship-based casinos	0	N
Real Estate Agents & Developers	20 784	Y
Dealers in Precious Metals and Stones	642	Y
British Columbia Notaries	336	Y
Accountants	3 829	Y
Legal Professionals	104 938 lawyers, 36 685 paralegals and 3 576 civil law notaries	N (to legal counsels, legal firms and Quebec notaries)
Trust & Company Services Providers	8	N
Registered Charities	86 000 federally registered charities	N

1. While independent insurance agents and brokers are not directly covered under the PCMLTFA, life insurance companies may use agents or brokers to ascertain the identity of clients on the basis of a written agreement or arrangement, which must conform to the requirements of PCMLTFR, s.64.1.

67. The broader deposit taking sector includes trust and loan companies. Canada's largest trust and loan companies are subsidiaries of major banks. Some trusts have provincial charters and are regulated at that level of government. Credit unions and *caisses populaires* are provincially incorporated and may not operate outside provincial borders. Relative to banks, these entities are minor participants in the deposit-taking sector. However, *caisses populaires* represent a large portion of the deposit-taking sector in the province of Quebec.

68. The insurance industry is an important player in the financial services sector, providing almost one-fifth of all financing to Canadian companies. Canadian-owned insurers take in more than 70% of total Canadian premium income. Canadian companies are also active abroad, especially in south-east Asia, generating more than half of their premium income from foreign operations.

Structural Elements

69. The key structural elements for effective AML/CFT controls are present in Canada. Canada is generally considered to be a very stable democracy. Political and institutional stability,

accountability, the rule of law and an independent judiciary are all well established. There also appears to be a high-level political commitment to improve the effectiveness of Canada's AML/CFT regime, as evidenced by the Economic Action Plans 2014 and 2015.[20-21] However, LEAs' resources are generally insufficient to pursue complex ML cases.

70. Canada has an independent, efficient, and transparent Justice System. The judicial process is widely trusted and effective, as well as relatively quick.

71. Canada has a comprehensive legal framework that governs the protection of personal information of individuals in both the public and private sectors. The primary source of constitutionally enforced privacy rights is Section 8 of the Canadian Charter of Rights and Freedoms. The Office of the Privacy Commissioner (OPC) oversees compliance with both federal privacy laws (see Box 1 below). Every province has its own privacy law and the relevant provincial act applies to provincial government agencies instead of the federal legislation. The Canadian regime is implemented while seeking an appropriate balanced between privacy and security considerations. In that regard, in 2012 the OPC issued guidance for REs regarding reporting suspicions to FINTRAC, in light of their customers' privacy rights.[22]

[20] Budget 2014 announced the Government's intention to take action to address the need to enhance the AML/CFT framework. As a result, the Government introduced in 2015 legislative amendments and regulations aiming to strengthen Canada's AML/CFT regime and improve Canada's compliance with international standards. This reform was based on the five-year review of the PCMLTFA undertaken by the Standing Senate Committee on Banking, Trade and Commerce in 2013. Economic Action Plan 2015 (Budget 2015) provides updates on these measures. The Government proposed to provide FINTRAC up to CAD 10.5 million over five years and up to CAD 2.2 million per year subsequently. The Government also proposed to provide up to CAD 12 million on a cash basis over five years to improve FINTRAC's analytics system. This allocation intends to better meet the needs of Canadian law enforcement and other regime partners. See Budget 2014, www.budget.gc.ca/2014/docs/plan/pdf/budget2014-eng.pdf

[21] Includes additional allocation of CAD 292.6 million over five years in intelligence and law enforcement agencies for additional investigative resources to counter terrorism. See www.budget.gc.ca/2015/docs/plan/budget2015-eng.pdf.

[22] Office of the Privacy Commissioner of Canada (2012), Privacy and PCMLTFA: How to balance your customers' privacy rights and your organization's anti-money laundering and anti-terrorist financing reporting requirements, www.priv.gc.ca/information/pub/faqs_pcmltfa_02_e.asp.

1

Box 1. **Legal Framework for Information and Data Protection in Canada**

The primary source of privacy rights is Section 8 of the Canadian Charter of Rights and Freedoms, which provides protection against unreasonable search and seizure by authorities. This means, generally, that in situations where the person concerned has a reasonable expectation of privacy in relation to an object or document, in order for the state (i.e. government authorities such as LEAs) to have access to these items, prior judicial authorization will need to be obtained. Where such access is sought for the purposes of a criminal investigation, LEAs will generally seek to obtain a search warrant or a production order from a Canadian court. The latter is typically used for access to financial information held by a third party, such as a FI. "Reasonable grounds to believe" that an offense has been committed is the legal standard of proof in Canadian Law for the court to issue the appropriate order. In addition, it is necessary to demonstrate that evidence of the offense is to be found in the place to be searched. In certain cases, such as in relation to certain types of financial information, a lower legal standard of "reasonable grounds to suspect" applies.

At the federal level, Canada has two different privacy acts which are enforced by the Office of the Privacy Commissioner of Canada. The Privacy Act regulates the handling of personal information by federal government departments and agencies. The Personal Information Protection and Electronic Documents Act (PIPEDA) applies to the commercial transactions of organizations that operate in Canada's private sector. PIPEDA applies to all private sector entities in Canada, except in provinces that have enacted substantially similar legislation. Every Canadian province and territory has its own privacy law and the relevant provincial act applies to provincial government agencies instead of the federal legislation.

The Privacy Act lists13 uses and disclosures that might be permissible without the consent of the individual (e.g. national security, law enforcement, public interest). Canadian law provides for lawful access to law enforcement and national security agencies to legally intercept private communications and the lawful search and seizure of information, including computer data, without the consent of either the sender or receiver to investigate serious crimes, including ML and threats to national security, such as terrorism. Lawful access is provided for in the CC, the CSIS Act, the Competition Act and other acts.

The Anti-Terrorism Act (ATA) provides law enforcement and national security agencies powers to obtain electronic search warrants. The ATA also allows Canadian intelligence agencies to intercept communications of Canadians in Canada, and allows the Attorney General to prevent the disclosure of information on the grounds of national security.

Under the PCMLTFA, FINTRAC receives detailed personal information through reports from REs, which can then be provided to the CRA (in cases which include tax matters), CSIS, CBSA, Citizenship and Immigration Canada (in cases which include immigration matters) or to LEAs (e.g. when the information is relevant to the investigation and prosecution of ML or TF offenses).

Background and other Contextual Factors

72. Canada ranks among the highest in international measurements of government transparency, civil liberties, quality of life, economic freedom, and education. It enjoys a high rate of financial inclusion, with 96% of the population having an account with a formal FI. Canadian banks and other FIs operate an extensive network of more than 6 000 branches, and around 60 000 ATMs of which about 16 900 are bank-owned (the rest are white-label ATMs).[23]

73. The authorities have identified corruption as a high-risk issue for ML. Recent assessments of Canada's implementation of international anti-corruption conventions indicate a rather moderate range of positive outcomes in identifying and sanctioning cases of corruption and implementing structures and systems to prevent corruption.[24] Nevertheless, corruption does not appear to hinder the implementation of the AML/CFT regime. Canada is ranked as 9 out of 168 countries in Transparency International's 2015 Corruption Perception Index (with a score of 83/100).[25]

Overview of AML/CFT strategy

74. As formulated in Budget 2014, the Government's priority in regards to AML/CFT is to improve the ability to trace and detect criminal funds in Canada. Besides law enforcement goals, this priority also aims to protect the tax base by supporting the Government's efforts to ensure tax compliance. Addressing this priority requires improving corporate transparency.

75. Canada does not have formal 'stand-alone' AML, CFT or PF strategies. There is, however, a set of relevant policies and strategies: the National Identity Crime Strategy (RCMP 2011); National Border Risk Assessment 2013–2015 (CBSA); 2014–16 Border Risk Management Plan (CBSA); Enhanced Risk Assessment Model and Sector profiles (FINTRAC); AMLC Division AML and CFT Methodology and Assessment Processes (OSFI); Risk Ranking Criteria (OSFI); RBA to identify registered charities and organizations seeking registration that are at risk of potential abuse by terrorist entities and/or associated individuals (CRA) and CRA- RAD Audit Selection process. The RCMP recently developed its National Strategy to Combat ML.[26] These AML strategies and policies are linked to the *Canadian Law Enforcement Strategy on Organized Crime* adopted by senior police officials across Canada in 2011.

---

[23] In Canada, "white label" or "no name" ATMs are those run by independent operators and not by major financial institutions. They are usually located in local small establishment retailers such as gas stations, bars/pubs, and restaurants and do not display labels from financial institutions on the machine.
[24] See 2014 review of the implementation by Canada of the Inter-American Convention against Corruption; 2013 Phase 3 report on implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.
[25]Transparency International (2015), 2015 Corruption Perception Index, www.transparency.org/cpi2015.
[26] Royal Canadian Mounted Police (nd), Royal Canadian Mounted Police 2015–16 Report on Plans and Priorities, www.rcmp-grc.gc.ca/en/royal-canadian-mounted-police-2015-16-report-plans-and-priorities, this strategy was finalized in 2016.

1

76. The Government's other main AML/CFT concerns are reflected in Finance Canada's Annual Report on Plans and Priorities,[27] which describes the AML/CFT regime's spending plans, priorities and expected results. Canada's CFT strategy policy guidance is derived from its 2012 Counter-terrorism Strategy.[28] This comprehensive Strategy guides more than 20 federal departments and agencies to better align them to address terrorist threats, including in regard to CFT activity and initiatives. The Minister of Public Safety and Emergency Preparedness, in consultation with the Minister of Foreign Affairs, is responsible for the Strategy's implementation. Similarly, the country's PF strategy forms part of the broader strategy to counter the proliferation of chemical, biological, radiological and nuclear weapons.

Overview of the legal & institutional framework

77. Canada's AML/CFT regime is organized as a horizontal federal program comprised of a large number of federal departments and agencies. Finance Canada is the domestic and international policy lead for the regime, and is responsible for its overall coordination, including guiding and informing strategic implementation of the RBA. It chairs the four main governing bodies of Canada's AML/CFT regime, namely:

- The interdepartmental Assistant Deputy Minister (ADM) Level Steering Committee, which was established to direct and coordinate the government's efforts to combat ML and TF activities. The ADM Committee and its working group consists of representatives of all partners;[29]
- The Interdepartmental Coordinating Committee (ICC), which provides a forum for government working-level stakeholders[30] to assess the operational efficiency and effectiveness of the regime;
- The National ML/TF Risk Assessment Committee (NRAC) provides a forum for regime and *ad hoc* partners to exchange information on risks and discuss about ML/TF risks in Canada and their mitigation; and
- The Public Private Sector Advisory Committee (PPSAC) which is a discussion and advisory committee, with membership from (federal public sector) regime partners and private sector REs, as well as provincial law enforcement.[31]

[27] Department of Finance Canada (2014), Report on Plans and Priorities 2014–15, www.fin.gc.ca/pub/rpp/2014-2015/index-eng.asp.
[28] Public Safety (2012), Building Resilience Against Terrorism – Canada's Counter-Terrorism Strategy, www.publicsafety.gc.ca/cnt/rsrcs/pblctns/rslnc-gnst-trrrsm/index-eng.aspx.
[29] The ADM Committee is composed of the following agencies: Finance Canada; Justice Canada; PPSC; Public Safety Canada; CRA; FINTRAC; RCMP; CBSA; OSFI; and CSIS.
[30] The ICC is composed of the following agencies: Finance Canada; PPSC; Public Safety Canada; CRA; FINTRAC; RCMP; CBSA; CSIS; OSFI; Privy Council Office (PCO); and Global Affairs Canada.
[31] This Committee consist of approximately 30 members, with more than half of the members coming from the private sector. The public sector participants generally consist of members who already participate in the Interdepartmental Steering Committee on this topic. The private sector participants will consist of participants from sectors covered by the PCMLTFA. This includes financial entities, life insurance companies, securities

78. The AML/CFT regime operates on the basis of three interdependent pillars: (i) policy and coordination; (ii) prevention and detection; and (iii) investigation and disruption. On this basis, the following are the primary ministries, agencies, and authorities responsible for formulating and implementing Canada's AML/CFT policies (i.e. the regime partners):

Policy and Coordination:

- **Finance Canada** is the lead agency of the regime, responsible for developing AML/CFT policy related to domestic and international commitments.
- **Department of Justice Canada (DOJ)** is responsible for the drafting and amending of statutory provisions dealing with criminal law and procedure, and to negotiate and administer mutual legal assistance (MLA) and extradition treaties.
- **Global Affairs Canada (GAC)**[32] is responsible for the designation of entities and individuals in Canada associated with terrorist activities listed by the United Nations 1267 Sanctions Committee or under Resolution 1373 of the United Nations Security Council. GAC also chairs the Counter-Proliferation Operations Committee, coordinating responses to threats within Canada.
- **Public Safety Canada (PSC, previously known as Public Safety and Emergency Preparedness)** chairs the Threat Resourcing Working Group and ensures coordination across all federal departments and agencies responsible for national security and the safety of Canadians, including on terrorist financing matters. It is responsible for the listing of terrorist entities under the Criminal Code and co-chairs the Interdepartmental Coordinating Committee on Terrorist Listings.

Prevention and Detection:

- **Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)** is Canada's financial intelligence unit. It is also responsible for supervising and monitoring all REs' compliance with the PCMLTFA.
- **Office of the Superintendent of Financial Institutions Canada (OSFI)** prudentially supervises FRFIs.
- **Innovation, Science and Economic Development Canada (ISED, former Industry Canada)** collects information about business corporations, including the business name and address, and information about the directors.

---

dealers, money service businesses, accountants, the notarial profession, the real estate sector, casinos, dealers in precious metals and stones, and home builders.

[32] Global Affairs Canada's Anti-Crime and Counter-Terrorism Capacity Building programs (ACCBP and CTCBP) funding has been used to support the Regime's AML and CFT projects in a number of regions.

- **Office of the Privacy Commissioner of Canada (OPC)** ensures that the necessary safeguards protecting privacy are upheld. The Privacy Commissioner has the ability to audit the public (e.g. FINTRAC) and private sector to ensure privacy laws are respected. The OPC is required to conduct a privacy audit of FINTRAC every two years.

Investigation and Disruption:

- **Royal Canadian Mounted Police (RCMP)** is Canada's main law enforcement agency (LEA) responsible for investigating predicate offenses, ML and TF.
- **Public Prosecution Service of Canada (PPSC)** is responsible for prosecuting criminal offenses under federal jurisdiction. It also provides legal advice to the RCMP and other LEAs over the course of their investigations, and for undertaking any subsequent prosecutions.
- **Canada Revenue Agency (CRA)**—the CRA's Criminal Investigations Directorate (CID) investigates cases of suspected tax evasion/tax fraud and seeks prosecution through the PPSC where warranted. The CRA also has responsibility for administering the registration system for charities under the Income Tax Act through its Charities Directorate.
- **Canada Border Services Agency (CBSA**) enforces the physical cross-border reporting obligation.
- **Canadian Security Intelligence Service (CSIS)** collects, analyses and reports to the Government of Canada information and intelligence concerning threats to Canada's national security.
- **Public Services and Procurement Canada (PSPC, previously Public Works and Government Services Canada)**, under the Seized Property Management Directorate (SPMD), is responsible for managing assets seized or restrained by law enforcement in connection with criminal offenses and for disposing and sharing the proceeds upon court declared forfeitures.

79. The AML/CFT regime is also supported by a number of other partners including: provincial, territorial and municipal LEAs, provincial and territorial financial sector regulators, and self-regulatory organizations.

80. Canada's AML/CFT framework is established in the PCMLTFA, supported by other key statutes, including the Criminal Code (CC). The Parliament of Canada undertakes a comprehensive review of the PCMLTFA every five years. The Government announced a series of measures to enhance the AML/CFT regime in Budget 2014, which received Royal Assent in June 2014. Accordingly, amended Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (PCMLTFR) were released in draft form for consultation by the Government on 4 July 2015.

Proliferation Financing

81. The principal legislation governing Canada's export control system is the Export and Import Control Permits Act (EIPA), which provides for the requirements for exporters to report goods to the Government of Canada and for the enforcement of national control lists. The Customs Act and Canada Border Services Agency Act provide the CBSA with the authority to enforce Canada's export legislation. The country's efforts to combat the proliferation of weapons of mass destruction and, to some extent, its financing, are carried out by the following agencies: PSC (coordination of counter-proliferation policy and main operational partner); Global Affairs Canada (lead on international engagement on non-proliferation and disarmament and chairs the Counter-Proliferation Operations Committee); CBSA (law enforcement regarding the illicit export and proliferation of strategic goods and technology); Canadian Nuclear Safety Commission (licensing of nuclear-related activities); PWGSC (administers the Controlled Goods Program); FINTRAC (discloses financial intelligence that can assist in investigations and prosecutions); RCMP (enforces the counter-proliferation regime, investigates related criminal offenses, collects and analyses evidence to support prosecutions in court); the Public Health Agency of Canada (national authority on biosafety and biosecurity for human pathogens and toxins); and Finance (responsible for safeguarding Canada's financial system from illegitimate use, through the PCMLTFA and associated regulations, and the overall coordination of Canada's AML/CFT regime domestically and internationally).

Overview of preventive measures

82. The legal framework relevant to the preventive measures includes the PCMLTFA, the OSFI Act and the FRFIs' governing legislation (i.e. the Bank Act, Trust and Loan Companies Act, the Cooperative Credit Associations Act and the Insurance Companies Act). The PCMLTFA is applicable to most of the financial activities and DNFBPs.

Overview of legal persons and arrangements

83. Canada's company law consists of federal, provincial and territorial frameworks. Legal entities may be established at the federal level under the Canada Business Corporation Act (CBCA); the Canada Not-for-Profit Corporations Act (NFP Act), or the Canada Cooperatives Act (CCA). A federally incorporated entity is entitled to operate throughout Canada. However, provincial and territorial law requires federal entities to register with the province or territory in which the entity is carrying out business. Incorporation on the federal level is carried out by Innovation, Science and Economic Development Canada (ISED, formerly Industry Canada) is responsible for the incorporation of federal corporate entities, while each province has its own system for incorporating and administering legal entities.

84. There are over 2.6 million corporations incorporated in Canada, including almost 4 000 publicly-traded companies. About 91% of corporations are incorporated at the provincial or territorial levels and the remaining 9% at the federal level. Bearer shares are permitted in most provinces and at the federal level, but seem to be rarely used. There is also a relatively small market for stock warrants. All companies are obliged to file tax returns with the CRA on an annual basis.

1

Provincial legal entities incorporated in Alberta and Quebec must also file tax returns with the provincial tax authorities.

85. Partnerships are created under provincial law only and, other than limited partnerships, are created under the rules of the common law although subject to laws that codify and regulate certain aspects of the partnership. In contrast, limited partnerships are created under statute and subject to ongoing registration requirements.

86. The only form of legal arrangement that exists in Canada is the trust in form of testamentary or *inter vivos* trust. There is no general requirement for trusts to be registered, but Canadian resident trusts and certain foreign-resident trusts are subject to obligations to file information under the income tax laws. Specific-purpose trusts such as unit or mutual fund trusts are also subject to the securities laws of the relevant province. Trusts created under the laws of Quebec are required to register in some instances. According to the NRA, the total number of Canadian trusts is estimated in the millions. As of 2007, only 210 000 trusts filed tax returns with the CRA.

International Context for Legal Persons and Arrangements

87. According to the UNCTAD 2014 World Investment Report, Canada ranks amongst the top ten countries both with respect to inflowing and outflowing foreign direct investment, with much of the activity taking place in the manufacturing and oil and gas sectors. Canada received over USD 53 billion of foreign direct investment in 2014 coming mostly from the EU, the US, and China. On the outflow, Canada invested approximately USD 52 billion abroad in 2014, mostly in the EU and the US. While detailed figures are not available with respect to foreign ownership of Canadian companies, the statistics provided by the UNCTAD leads to the conclusion that foreign ownership of Canadian legal entities is significant. Canada is not perceived as an international centre for the creation or administration of legal persons or arrangements.

Overview of supervisory arrangements

88. Financial regulation is shared by a number of government bodies in Canada. The Bank of Canada has overall responsibility for financial stability, as well as for the conduct of monetary policy and the issuance of currency. As mentioned above, OSFI supervises and regulates FRFIs (banks and insurance companies, trust and loan companies, cooperative credit associations, fraternal benefit societies, and private pension plans). All banks, including branch operations of foreign banks, are regulated solely at the federal level. The securities sector including in respect of mutual funds, is currently regulated on a province by province basis with connections between the provinces through the Canadian Securities Administrators Association. Markets for securities and collective investments are overseen by provincial securities commissions, which co-ordinate their activities through the Canadian Securities Administrators.[33]

[33] Canada is currently developing a Cooperative Capital Markets Regulatory System (CCMRS), a new joint federal and provincial initiative. Under this system, the provinces and the federal government would delegate

89. In March 2013, FINTRAC and OSFI entered into an agreement to conduct concurrent examinations to improve the effectiveness and cohesion of supervision and allocation of resources, and to reduce the regulatory burden on FRFIs. FINTRAC and OSFI thus concurrently assess FRFIs' AML/CFT compliance and risk management regimes using a RBA. FINTRAC and OSFI mutually share information under a Memorandum of Understanding (MOU) was signed in 2004 with respect to FRFIs. At the provincial level, FINTRAC conducts AML/CFT supervision on non-FRFIs with the cooperation of other national and provincial supervisors under various MOUs.

their regulatory functions to the CCMR, which may be useful in regard to the identification of systemic risk and criminal enforcement.

1

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

The Canadian authorities have a good understanding of the country's main ML/TF risks and have an array of mitigating measures at their disposal. Canada's NRA is comprehensive, and also takes into account some activities not currently subject to the AML/CFT measures.

All high-risk areas are covered by AML/CFT measures, except activities listed in the standard performed by legal counsels, legal firms and Quebec notaries, which is a significant loophole in Canada's AML/CFT framework, and online casinos, open loop prepaid cards, and white label ATMs.

FIs and casinos have a good understanding of the risks. Other DNFBPs, and in particular those active in the real estate sector, do not have a similarly good understanding.

Law enforcement action focus is not entirely commensurate with the ML risk emanating from high-risk offenses identified in the NRA.

Cooperation and coordination are good at both the policy and operational levels, except, in some provinces, in the context of the dialogue between LEAs and the PPSC.

Communication of the NRA findings to the private sector was delayed, but is in progress.

Recommended Actions

Canada should:

- Mitigate the risk emanating from legal counsels, legal firms, and Quebec notaries in their performance of the activities listed in the standard.
- Strengthen policies and strategies to address emerging ML risks (in particular white label ATMs and online casinos).
- Review LEAs' priorities in light of the findings of the NRA.
- In the context of the update of the NRA, examine more closely ML linked to tax evasion, corruption, legal persons and arrangements, third-party ML and foreign sources of POC and use results to implement mitigating actions.

The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

90. As indicated in Chapter 1 above, Canada completed in 2015 a national assessment of the inherent ML/TF risks that it faces. The process and main findings of the NRA are described above.

Country's understanding of its ML/TF risks

91. The authorities' understanding of ML/TF risks has been forged through the development of several national threat and risks assessments undertaken by different governmental agencies over the past decade on related matters (see Criterion 2.1). The Parliament's Standing Senate Committee on Banking, Trade and Commerce undertakes a comprehensive review of the PCMLTFA every five years. As a result of the most recent review (completed in 2013),[34] the Government introduced legislative amendments in 2014 to address the Committee's recommendations (e.g. including measures to strengthen customer due diligence (CDD) requirements, improve compliance, monitoring and enforcement and enhance information sharing). The authorities demonstrated a sound understanding of the issues highlighted in Chapter 1, including a good understanding of the linkages between the threats and inherent vulnerabilities of the different sectors and the domestic and foreign offenses that are a source of most of the ML/TF[35] in the country. The NRA process has also contributed to a deeper understanding of the powers, resources and operational needs of all regime partners. NRAC ensures that all regime partners generally have a similar level of understanding of the ML/TF risks.

92. Following the publication of the NRA in July 2015, the NRAC concluded a gap analysis in September 2015 to categorize the residual risks (i.e. the risk remaining after the mitigation of the identified threats and inherent vulnerabilities) and identify and prioritize the actions required to mitigate the risk. The review and updating of the NRA is expected to be finalized by the fall of 2016. The authorities indicated that as new, improved controls are put in place, the residual risk will be an indicator of the areas that remain pending to be addressed. As of the date of the on-site visit, it was not possible to establish if the publication of the NRA has led to improvements of the RE's level of compliance with AML/CFT requirements.

National policies to address identified ML/TF risks

93. The adjustment of the national policies and strategies related to the identified ML/TF risks is in its early stages and no updates have been completed. The authorities have been addressing the inherent risks identified in different ways including through ongoing policy coordination through NRAC, the discussion of draft amendments to the PCMLTF Regulations, adjusted supervisory priorities, more focused police investigations, and amendments to the law regarding the seizure of illicit assets, among others.

---

[34] Standing Senate Committee on Banking Trade and Commerce (2013), Follow The Money: Is Canada Making Progress In Combatting Money Laundering And Terrorist Financing? Not Really, www.parl.gc.ca/Content/SEN/Committee/411/banc/rep/rep10mar13-e.pdf.

[35] As elaborated in Chapter 1, the classified version of the NRA, which was not shared with the assessment team, ranks in greater detail the TF risks associated with terrorist groups.

94. On the basis of the NRA, a package of regulatory amendments was issued in July 2015 for public comment. The government is now moving forward with final publication and the Regulations will come into force one year after registration of the regulations. Canada is preparing a second package of regulatory amendments based on the NRA, including measures to cover pre-paid payment products (e.g. prepaid cards), virtual currency as well as money service businesses without a physical presence in Canada in the AML/CFT Regime. The authorities are also revisiting the PCMLTFA provisions relating to legal counsels, legal firms and Quebec notaries, in order to bring forward new provisions for the legal professional that would be constitutionally compliant. Furthermore, also informed by the NRA results, FINTRAC and OSFI are reviewing their RBA to supervision, the RCMP developed its Money Laundering Strategy, and the CBSA is reviewing its Cross-Border Currency Reporting program.

95. As discussed in Chapter 1, Canada's CFT strategy policy guidance is derived from its 2012 Counter-Terrorism Strategy. The PS coordinates Canada's counter-proliferation policy approach across the government, which includes PF.

Exemptions, enhanced and simplified measures

96. Canada's AML/CFT framework does not provide for simplified CDD measures, but the PCMLTFR provide a small number of exceptions to REs based on the risk circumstances and products (see Criterion 10.18). These exemptions correspond to lower-risk scenarios that are consistent with the NRA findings in regard to FIs (i.e. in regard to life insurance companies, brokers, or agents).

Objectives and activities of competent authorities

97. FINTRAC and OSFI objectives and activities are largely consistent with the ML and TF risks in Canada, as detailed in the NRA. With the exception of the legal professions (other than BC notaries), the supervisory coverage is adequate.

98. Law enforcement action is focused on LEAs current priorities, which include drug-related offenses and OCGs, but is not commensurate with the ML risk emanating from these and other types of offenses.

99. In terms of the resources required, the Government's Economic Action Plans for 2014 and 2015 included a commitment to ensuring that law enforcement and security agencies have the investigative resources and tools to address the threats presented by OGCs, ML and terrorism and to further their understanding of Canada's ML/TF risks. Nevertheless, the authorities advised the assessors that all regime partners are under significant pressures at the working level given the increased terrorist threats and combined with the increased threat of professional ML with transnational organized crimes and the number competing priorities.

National coordination and cooperation

100. AML/CFT policy cooperation and coordination to address Canada's ML/TF risks is adequate—with the exception of the dialogue between LEAs and the PPS in some provinces, which is currently insufficient- and constitutes an essential strength of the Canadian AML/CFT framework, as evidenced by the organization and process of the NRA. Canada has wide-ranging arrangements in place for AML/CFT coordination and cooperation at both the policy and operational levels, including with respect to strategic and tactical information sharing (See R.2). Coordination and cooperation at the policy design platform is exceptional.

101. The NRA has allowed the identification and inclusion of new partners for AML/CFT (e.g. Defence Research and Development Canada and Environment Canada), and to reconsider the roles and responsibilities of traditional partners that gained a more prominent role in the fight of ML/TF over the years given enhanced understanding of ML/TF risks (e.g. Industry Canada). Overall, the public version of the NRA is of good quality and is drafted in an accessible language. Moreover, the assessment process has yielded reasonable findings that broadly reflect the country's ML/TF context and risk environment.

Private sector's awareness of risks

102. The public version of the NRA had not been circulated widely at the time of the on-site visit, due to a broader prohibition on the federal public service undertaking consultations with private sector stakeholders during the August to October 2015 federal election campaign. However, the public NRA has been made available on Finance Canada's, OSFI's and FINTRAC's website since July 2015.[36] The report was also shared with the PPSAC. As of the dates of the on-site visit, the authorities had not formally presented the results of the communication strategy for the broader private sector, but were in the process of reaching out to selected FIs. FINTRAC also provides access to guidelines, Interpretation Notices reports on current and emerging trends and typologies in ML and TF on its website to assist FIs and DNFBPs.

Overall Conclusions on Immediate Outcome 1

103. **Canada has achieved a substantial level of effectiveness for IO.1.**

[36] The NRA has since been made available on several websites (e.g. OSFI, Investment Industry Organization of Canada, among others).

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

IO.6

Financial intelligence and other relevant information are accessed by FINTRAC to some extent, and by LEAs to a greater extent but through a much lengthier process.

They are then used by LEAs to some extent to investigate predicate crimes and TF, and, to a more limited extent, to investigate ML and trace assets.

FINTRAC receives a wide range of information, which it uses adequately to produce intelligence. This intelligence is mainly prepared in response to Voluntary Information Records (VIRs; i.e. LEAs' requests) and used to enrich ongoing investigations into the predicate offenses. FINTRAC also makes proactive disclosures to LEAs, some of which have prompted new investigations.

Several factors significantly curtail the scope of the FIU's analysis—and consequently the intelligence disclosed to LEAs—in particular: the impossibility for FINTRAC to request from any RE additional information related to suspicions of ML/TF or predicate offense, the absence of reports from some key gatekeepers (i.e. legal counsels, legal firms, and Quebec notaries), and the inability for FINTRAC to access to information detained by the tax administration. This is compensated by LEAs in their investigations to some extent only due to challenges in the identification of the person or entity who may hold relevant information.

FINTRAC also produces a significant quantity of strategic reports that usefully advise LEAs, intelligence agencies, policy makers, REs, international partners, and the public, on new ML/TF trends and typologies.

FINTRAC and the LEAs cooperate effectively and exchange information and financial intelligence in a secure way.

IO.7

Canada identifies and investigates ML to some extent only. While a number of PPOC cases are pursued, overall, the results obtained so far are not commensurate with Canada's ML risks.

LEAs have the necessary tools to obtain information, including beneficial ownership information, but the process is lengthy.

In some provinces, such as Quebec, federal, provincial, and municipal authorities are relatively more effective in pursuing ML.

Nevertheless, overall, as a result of inadequate alignment of current law enforcement priorities with the findings of the NRA and of resource constraints, LEAs' efforts are aimed mainly at drug offenses and fraud, with insufficient focus on the other main ML risks (corruption, tobacco smuggling, standalone ML, third-party ML, ML of foreign predicate offenses). In addition, investigations generally do not focus on legal entities and trusts (despite the high risk of misuse), especially when

more complex corporate structures are involved.

There is a high percentage of withdrawals and stays of proceedings in prosecution.

Sanctions imposed in ML cases are not sufficiently dissuasive.

IO.8

Canada has made some progress since its last evaluation in terms of asset recovery, but the fact that assets of equivalent value cannot be recovered hampers Canada's recovery of POC.

Confiscation results do not adequately reflect Canada's main ML risks, neither by nature nor by scale.

Results are unequal, with some provinces, such as Quebec, being significantly more effective, and achieving good results with adequately coordinated action (both at the provincial level and with the RCMP) and units specialized in asset recovery.

Administrative efforts to recover evaded taxes appear more effective.

Sanctions are not dissuasive in instances of failure to properly declare cross-border movements of currency and bearer negotiable instruments.

Recommended Actions

Canada should:

IO.6

- Increase timely access to financial intelligence. Authorize FINTRAC to request and obtain from any RE further information related to suspicions of ML, predicate offenses and TF in order to enhance its analysis capacity.
- Use financial intelligence to a greater extent to investigate ML and trace assets.
- Analyse and, where necessary, investigate further information resulting from undeclared or falsely declared cross-border transportation of cash and bearer negotiable instruments.
- Ensure that LEAs and FINTRAC can identify accounts and access records held by FIs/DNFBPs in a timely fashion.
- Consider granting FINTRAC access to information collected by the CRA for the purposes of its analysis of STRs.

IO.7

- Increase efforts to detect, pursue, and bring before the courts cases of ML related to high-risk predicate offenses other than drugs and fraud (i.e. corruption and tobacco smuggling), as well as third-party ML, self-laundering, laundering of POC of foreign predicate offenses, and the misuse of legal persons and trusts in ML activities.
- Ensure that LEAs have adequate resources (in terms of number and expertise) for ML

investigations.

- Engage prosecutors at an earlier stage for securing relevant evidence for ML/PPOC prosecutions in order to limit instances where charges are dropped at the judicial process and minimize waste of resources in ML investigations.
- Ensure that effective, proportionate, and dissuasive sanctions for ML are applied.

IO.8

- Ensure that asset recovery is pursued as a policy objective throughout the territory.
- Make a greater use of the available tools to seize and restraint POC other than drug-related instrumentalities and cash (i.e. including other assets, e.g. accounts, businesses, and companies, property or money located abroad), especially proceeds of corruption, including foreign corruption, and other major asset generating crimes.
- Amend the legal framework to allow for the confiscation of property of equivalent value.
- Consider increasing the sanctions and seizures related to falsely declared or undeclared cross-border movements of currency and bearer negotiable instruments.

The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

104. Financial intelligence derives from a wide range of information collected by LEAs and received by FINTRAC. Both processes are closely linked. FINTRAC's main financial intelligence product takes the form of disclosures made in response to LEAs' requests (i.e. voluntary information records, VIRs). FINTRAC also disseminates information to LEAs spontaneously (i.e. through "proactive disclosures").

105. LEAs request and obtain financial information held by the private sector either through a court warrant or a production order, when they can establish (as per the CC) that assets are POC. To obtain this judicial authorization, LEAs must identify the FI/DNFBP or entity that holds the information (i.e. account or assets owned or controlled, financial transactions or operation). Various methods are available (see TCA criterion 24.10) and used in practice, such as "grid searches," VIRs to FINTRAC, and consultation of other sources of information as well as use of a range of investigative activities. In Ontario (where the major D-SIBs have their headquarters), "grid searches" are frequently conducted: LEAs send a request to the six D-SIBs (as they dominate about 80% of the deposit-taking market) inquiring whether a particular person is amongst their customers. If there is indication that this person is in business relationships with another FI or with a DNFBP, a request will be sent to that RE as well. Once a D-SIB (or other RE) confirms that a specific person is its

customer, the LEAs apply for a court order requiring the D-SIB to produce the relevant account and beneficial ownership information, as well as transaction records. If necessary, the production is staged to expedite the procedure (i.e. the specific information stated in the order is produced first, and the remainder of the information is provided at a later stage). Nevertheless, the D-SIBs typically take up to several weeks to provide basic and beneficial ownership information to the LEA. As result of the time required at the initial stage (i.e. identification of the relevant RE that may hold the information), as well as the time imparted to implement the production order, it frequently takes 45-90 days before LEAs can obtain the initial transaction records of potential POCs. If the culprit uses numerous layering techniques before integration, it takes LEAs several months or even years to trace POCs. The outlined process is useful only if the persons under investigation bank with the D-SIBs or one of the other large FIs. In cases where a targeted person or entity is in a business relationship with a smaller FI or a DNFBP, the tracing of assets is far more burdensome; given the size of Canada and its financial and non-financial sectors, it is not possible for LEAs to check with each FI and DNFBP individually whether it holds relevant information. In these instances, the identification of the relevant FI or DNFBPs relies on other potentially lengthier methods (e.g. surveillance).

106. LEAs frequently obtain financial information and intelligence from FINTRAC, with or without prior judicial authorization. Most often, they request the information by sending VIRs (which do not require prior judicial authorization). This provides LEAs with a quicker access to the information they need to obtain the judicial authorization (but timeliness of production of requested information remains a challenge). The number of VIRs has increased steadily over the years.[37] This indicates a greater appetite for and appreciation of FINTRAC's reports.[38] Most LEAs expressed their satisfaction with the richness of FINTRAC's responses to VIRs and mentioned that these responses adequately supplement their ongoing investigations.[39] In 2011, the Canadian Association of Chiefs of Police also recognized the contribution of financial intelligence, and called on all Canadian LEAs to include financial intelligence in their investigations and share their targets with FINTRAC.[40]

107. FINTRAC also provides information to LEAs on a spontaneous basis, through proactive disclosures, both in instances linked to ongoing investigation and in cases that identify new potential targets. Between 1 January 2010 and 31 November 2015, the RCMP received 2 497 FINTRAC

[37] Number of VIRs received: 2010–2011: 1 186; 2011–2012: 1 034; 2012–2013: 1 082; 2013–2014: 1 320; 2014–2015: 1 380.

[38] The Canadian authorities were not able to provide additional information regarding the proportion of predicate offense investigations that lead to a VIR.

[39] The Canadian authorities provided examples of written testimonies of some agencies' satisfaction with FINTRAC's response to their VIRs. E.g. "*The disclosure was very impressive in its detail and scope. Shortly after receiving it, our General Investigation Service Unit generated a file resulting in a large seizure of drugs. The individuals mentioned in the disclosure were identified as involved*" (RCMP 'G' Division Federal Investigations Unit); "*The information obtained led us to start a new investigation focused on the money trail—namely the illegal means used by the accused to launder the money they obtained in this case*"(*Sûreté du Québec*); "*Quick turnaround time was appreciated. The disclosures provided new information of potential interest along with account numbers not previously known. The Service was further able to identify additional relationships, which assisted our national security investigation. The information in the electronic funds transfers was found to provide valuable intelligence*" (Canadian Security Intelligence Service).

[40] Canadian Association of Chiefs Police (Resolution #06-2011).

disclosures, 867 of which were proactive.[41] Of these proactive disclosures, the authorities indicated that 599 generated a new investigation.[42] Very few resulted in ML charges (see IO.6.3 and IO.7). The cases communicated to and discussed with the assessors highlighted that FINTRAC information (in response to VIRs and/or shared proactively) is used by LEAs mainly as a basis for securing search warrants, aiding in the selection of investigational avenues (including the identification of targets, associates, and victims) and providing clarification of relevant domestic and international bank accounts and cash flows.

108. Additional relevant information is used to varying degrees: (i) The RCMP and other LEAs receive relevant information from provincial Securities Commissions and recognize the value of such information in combating ML/TF in the context where corporations are identified as very highly vulnerable to be abused for ML/TF. In Toronto and Montreal, the RCMP now includes personnel from the Securities Commission (Joint Securities Intelligence Unit—SIU) to facilitate intelligence gathering, analysis, and dissemination functions. The Canadian authorities provided examples of the use of information communicated to LEAs by the "*Autorité des marches financiers*" (AMF) (including Project Carrefour detailed below, as well as projects Convexe, Jongleur, Incitateur, and Ilot). In these cases, the financial intelligence was used to develop the financial part of the investigation into the predicate offense, not to investigate potential ML activities. (ii) The CRA-CID also uses financial intelligence to identify potential tax evasion. (iii) The CBSA forwards to FINTRAC and to the RCMP all Cross-Border Currency reports (CBCRs) submitted by importers or exporters. It also forwards seizure reports to FINTRAC. It seems that both FINTRAC and the RCMP use the CBSA information to supplement ongoing analysis and investigations[43] and that they analyse or, in the case of LEAs, investigate the CBSA information to a very limited extent, namely only when it has no link to existing cases (see IO.7). Two cases originating from this intelligence have been communicated to the assessors, including project Chun (see Box 4 in IO.7).

[41] FINTRAC also makes disclosures to other LEAs.

[42] According to the authorities, 297 completed feedback forms indicated that FINTRAC proactive disclosures prompted a new investigation in 53 cases between 1 January 2008 and 31 November 2015. In 92 cases a proactive disclosure provided the names of, or leads on, previously unknown persons or businesses/entities, 90 provided new information regarding persons or businesses of interest, 53 triggered a new investigation and 17 provided intelligence that may generate a future investigation. Only one of the 53 new investigations prompted following a proactive disclosure was shared with the assessors.

[43] RCMP indicated that of all ML, PPOC and TF investigations, cross-border currency reporting have been used in 331 cases.

Box 2. **Project Carrefour**

In December 2008, the Montreal Integrated Market Teams (IMET) Program[44] initiated an investigation based on an AMF referral. The AMF is mandated by the government of Quebec to regulate the province's financial markets and provide assistance to consumers of financial products and services. The referral indicated that individuals' Registered Retirement Savings Plans (RRSPs) and other types of retirement savings accounts were being emptied using methods that avoided attention from regulatory and fiscal authorities. The scheme consisted of attracting the attention of investors, through classified ads, with RRSPs and/or other types of retirement savings accounts looking for financial aid. In order for the investors to receive that aid, they had to give up full control of their accounts. The operators of the schemes would then empty those accounts to use the funds to transact on a variety of publicly traded companies under their control, hence engaging in market manipulation. On 15 February 2011, eleven Montréal and Toronto residents were charged with various fraud related offenses committed against 120 investors. They were also charged with fraudulent manipulation of stock exchange transactions estimated at USD 3 million.

109. In sum, financial intelligence is used to some extent to develop evidence and trace criminal proceeds. While a great deal of information provided by REs and others (i.e. in STRs and CBCRs) is used by FINTRAC for tactical analysis, strategic analysis, and to take supervisory action, a large part of this information is not further used by its partners for tactical cases, until it appears relevant for an ongoing investigation. Moreover, a relatively small portion of the intelligence is used for the specific purpose of pursuing ML activities.

110. Financial intelligence and other relevant information are, however, more frequently used to pursue TF. FINTRAC, in consultation with some of the other competent authorities, published advisories that assisted the FIs in their efforts to identify potential ISIL and TF-related activities and funding. Financial intelligence is accessed and used in TF investigation (see below and IO.9), and the on-site discussions as well as the authorities' submissions indicate that FINTRAC's proactive disclosures and responses to VIRs are appreciated by LEAs in their TF efforts.[45]

STRs received and requested by competent authorities

111. FINTRAC receives a significant quantity of information in various reports (see table below), which it uses to develop its financial intelligence.

[44] The objective of the IMET program is to effectively enforce the law against serious criminal capital market fraud offenses in Canada. The authorities involved in the program are the RCMP, ODPP, DOJ, and Finance Canada.

[45] "*FINTRAC is considered a key partner and has provided valuable financial intelligence on an ongoing basis that contributed to "terrorist financing investigations." FINTRAC through their disclosures identified new linkages/nexus between entities and/or individuals through financial transactions which surfaced new avenues of investigation. FINTRAC has always responded in a timely fashion to our priority VIRs*" (RCMP Anti-Terrorist Financing Team, National Security Criminal Operations, Headquarters, Ottawa. FINTRAC 2012 Annual Report, pg. 11, Document 102).

Table 2. **Types of Reports Received by FINTRAC (excluding terrorist property reports)**

	2010–2011	2011–2012	2012–2013	2013–2014	2014–2015
Large Cash Transaction Reports	7 184 831	8 062 689	8 523 416	8 313 098	8 445 431
Electronic Funds Transfer Reports	11 878 508	10 251 643	10 993 457	11 182 829	12 348 360
STRs	58 722	70 392	79 294	81 735	92 531
Cross-Border Currency Reports / Cross-Border Seizure Reports	40 856	35 026	31 826	42 650	47 228
Casino Disbursement Reports	102 438	109 172	116 930	130 141	155 185
Total	**19 265 355**	**18 528 922**	**19 744 923**	**19 750 453**	**21 088 735**

112. With respect to STRs, the authorities indicated that the quality of reporting has improved over the years—notably as a result of FINTRAC's efforts to reach out to REs—and that the information filed is particularly useful for the analysis of individual behaviours and transactional activity. Half of the STRs are sent by MSBs. Banks and credit unions and *caisses populaires* have submitted more STRs to the FIU in the last two years, but the number of STRs filed by DNFBPs other than casinos, while it has increased as a result of FINTRAC's outreach efforts, remains very low (278 in 2014–2015), including those filed by the real estate sector despite the very high ML risk that it faces.[46]

113. The wide range of systematic reports of transactions above CAD 10 000 that FINTRAC receives constitutes an important source of information which has allowed FINTRAC to detect unusual transactions, make links between suspected persons and/or detect bank accounts and other assets held by these persons.

114. Despite the important amount of information received, several factors limit the scope and depth of the analysis that the FIU can do, namely: (i) the fact that some REs listed in the standard are not required to file STRs (in particular legal counsels, legal firms and Quebec notaries) – as a result, FINTRAC does not receive information from key gatekeepers which would otherwise prove useful to its analysis and/or highlight additional cases of potential ML; (ii) the fact that some REs, such as those active in the real estate sector, file few STRs – as a result, information on some areas of high risks is limited; (iii) delays in reporting (FINTRAC supervisory findings seem to confirm that STRs are not filed promptly but within 30 days); and (iv) the fact that FINTRAC is not authorized to

[46] Regarding the real estate sector, the authorities indicated that an important part of STRs received from banks and credit unions and *caisses populaires* over the last three years related to suspicions of ML activities in real estate transactions. This compensates partially but not fully the lack of reporting from legal professionals—other than BC notaries (who, although subject to AML/CFT reporting requirements had not filed STRs at the time of the assessment)- who are directly involved in these transactions. Real estate brokers, sales representatives, and developers (when carrying out certain activities) have filed STRs but in very small numbers.

request additional information related to suspicions of ML, predicate offenses or TF from any REs – as a result, FINTRAC is largely dependent on what is reported. These factors entail that it is challenging for FINTRAC to follow the flows of potential POC in certain cases. For example, when an STR indicates that suspicious funds have been transferred to another FI, FINTRAC can only follow the trail of particular activities or transactions if other intermediaries and/or the final FI have also filed an STR or another report above the required threshold. This is particularly acute when the funds transferred are divided into multiple transfers below CAD 10 000. Enabling FINTRAC to request additional information from REs would considerably facilitate and strengthen the analysis and development of financial intelligence.

Operational needs supported by FIU analysis and dissemination

115. FINTRAC nevertheless provides a significant amount of financial intelligence to LEAs. Over the years, it has increased the number of disclosures sent to regime partners, both in response to VIRs and proactively. In 2014–15, the FIU sent 2 001 disclosures to partners including the RCMP, CBSA, CRA, CSIS, municipal and provincial police, as well as foreign FIUs. Of these, 923 were associated to ML, while 228 dealt with cases of TF and other threats to the security of Canada. 109 disclosures had associations with all three. Additional statistics provided showed that FINTRAC's disseminations of financial information are appropriately spread between the different provinces.

Table 3. **FINTRAC Disclosures to Regime Partners** [1]

Year	Municipal Police	Provincial Police	CRA	CSIS	CBSA	CSEC	RCMP	Total
2012–13	182	144	149	164	96	32	580	**1 347**
2013–14	207	135	153	243	139	33	703	**1 613**
2014–15	331	214	173	312	169	23	779	**2 001**

1. A number of disclosures may have been sent to more than one regime partner.

116. The main predicate offenses highlighted in the disclosures are drugs-related offenses (27% of the cases disseminated), frauds (30%), and tax evasion (11%). Between FY 2010–2011 and 2013–2014, the type of predicates was stable.[47] In FY 2014–2015, FINTRAC also provided information pertaining to potential other predicate offenses to ML (namely crimes against persons, child exploitation, prostitution, weapons and arms trafficking, cybercrimes, and illegal gambling).[48] These predicate offenses are in line with the main domestic sources of POC identified in the NRA, except corruption and bribery, counterfeiting and piracy and tobacco smuggling and trafficking. FINTRAC's disclosures have assisted LEAs in their ongoing investigations in a number of instances, such as in the case of project Kromite described below.

[47] The range of predicate offenses related to the cases disclosed were: drugs, fraud, "unknown," i.e. unspecified, tax evasion, corruption, customs/excise violations, theft, human smuggling/trafficking.
[48] The percentages were the following: crimes against persons, 4%; child exploitation, 1%; prostitution/bawdy houses, 1%; weapons/arms trafficking, 1%; cybercrimes, 0.3%; illegal gambling, 0.3%.

Box 3. **Project Kromite**

In May 2013, the RCMP participated in an international investigation which focused on significant amounts of heroin being imported from source countries (Afghanistan, Pakistan and Iran) to Tanzania and South Africa. The investigation determined that the heroin was transported through various methods to destinations in Europe, South America, the Far East, Australia, the United States, and Canada. Profits from the distribution and sale of illicit drugs were being collected in Canada and disbursed back to the criminal organization in South Africa and Tanzania.

The RCMP sent VIRs to, and received financial disclosures from FINTRAC. The disclosures were able to identify accounts, businesses owned by the subjects and transactions which led to the identification of relevant banking information and, ultimately, to the identification of targets. The financial intelligence was used by the RCMP to collaborate with the DOJ and the PPSC to draft and issue judicial authorizations. Authorizations took various forms including four MLATs, which were issued to three foreign jurisdictions to provide a formal release of information, and Production Orders and Search Warrants that were used to trace and seize POC, both assets and funds. Formal drug-related charges under the Canada's Controlled Drugs Substances Act were laid. The ML-related component of the investigation has been concluded and potential ML/PPOC-related charges were being prepared at the time of the assessment, but no charges had been laid.

117. FINTRAC tailors its analysis to the LEAs' operational priorities. It focuses mainly on answering the VIRs and also discloses intelligence related to LEAs' priorities. Regular operational meetings[49] and discussions are conducted with disclosure recipients to discuss investigative priorities, analytical processes, the development of indicators, and to provide assistance regarding the use of FINTRAC intelligence. The CSIS Financial Intelligence Center (FIC), which is in charge of all financial Intelligence related to national security investigations and linked notably to terrorism and proliferation, also interacts with FINTRAC on a regular basis.

118. FINTRAC's financial intelligence products include its analysis of all relevant information collected: the information contained in STRs, EFTRs, LCTRs, other reports and other information received or accessed by the FIU are all an integral part for developing case disseminations. As mentioned above, LEAs generally consider that FINTRAC's disclosures provide useful supplements to their investigations and generally meet their operational needs. FINTRAC also uses the information gathered in the exercise of its AML/CFT supervisory function, as well as information from a fair range of law enforcement and administrative databases maintained by—or on behalf of—other authorities, and information from open and public sources. While this broad range of information is undeniably useful, it does not necessarily provide FINTRAC with sufficient information about the suspected person's financial environment. In this context, it would prove particularly useful to ensure that FINTRAC has adequate access, for the purposes of the analysis of STRs, to information collected by the CRA, as this would assist FINTRAC with information that could

[49] Seventy-six meetings have been laid in 2014–2015 between FINTRAC and different LEAs agencies, including municipal, provincial and federal agencies, as intelligence services.

strengthen its analysis further, such as information about a person's or entity's income and assets, as well as information on trust assets and trustees (see IO.5).

119. In addition to disclosures in response to VIRs and proactive disclosures, FINTRAC produced from FY 2010/11 to 2014/15, 62 strategic intelligence and research products, which identify ML/TF methods and techniques used by listed terrorist groups and criminal networks, emerging technologies, as well as vulnerabilities in different sectors. These reports support the operational needs of competent authorities and many of them are developed in collaboration with the Canadian and international security, intelligence and law enforcement communities. FINTRAC's classified strategic financial intelligence assessments address the nature and extent of ML/TF activities inside and outside of Canada. Canadian authorities provided testimonies of some partners' satisfaction with FINTRAC's strategic intelligence reports.[50]

120. FINTRAC provides a significant amount of disclosures on TF to a variety of LEAs. FINTRAC sent 234 disclosures related to TF and other threats to the security of Canada in 2013-14, and 228 disclosures in 2014-15. These disclosures were communicated to a variety of partner agencies, including CBSA, CRA, CSIS, CSE and RCMP, as well as to municipal and provincial police, and other FIUs, and generated 40 new RCMP TF investigations in 2014 and 126 in 2015.. FINTRAC has increased its disclosures regarding TF to 161 for the first six months of FY 2015-2016, of which 82 were proactive disclosures. This increase in the number of disclosure shows the involvement of the FIU in analysing and disseminating information regarding TF.

Cooperation and exchange of information/financial intelligence

121. Most agencies adequately cooperate and exchange information including financial intelligence. FINTRAC meets with partners on a regular basis, as seen above, and the FIU focuses on priority investigations to support the LEAs' operational needs. In particular, VIRs constitute an important channel for cooperation and information sharing between FINTRAC and LEAs, as well as between LEAs. FINTRAC may send a single disclosure to multiples agencies simultaneously, which informs LEAs that another agency is working on a case. A LEA can further disseminate a disclosure that was based on another agency's VIR, provided that it obtains the permission from the source agency to further disseminate to the requester. In 2014-2015, FINTRAC was authorized by the source agency to disseminate further its disclosures to another LEA in some 41% of cases.

---

[50] FINTRAC's report, Mass Marketing Fraud: "*Money Laundering Methods and Techniques, is helpful to Canadian law enforcement and government agencies in understanding the complexity and international scope of mass marketing fraud impacting Canada. The CAFC has been able to leverage this report to provide insight into the prominent money laundering techniques used by criminal organizations engaged in mass marketing fraud*" (Canadian Anti-Fraud Centre); "*FINTRAC's report (on terrorism financing risks related to a particular group) … have contributed to AUSTRAC's understanding of the topic … FINTRAC and AUSTRAC have been able to collaborate on analytical products, supporting a multilateral approach to information sharing*" (Australian Transaction Reports and Analysis Centre) ; "*Public Safety Canada benefits from strategic financial intelligence reports on ML and TF provided by FINTRAC to inform the overall analysis of national security and organized crime issues. Strategic financial intelligence helps Public Safety to identify the nature and extent of money laundering and terrorism* financing and its potential links to *Canada, international conflicts, crimes, sectors and/or organizations, and the growing links between transnational organized crime and terrorism*" (Public Safety Canada).

122. In addition, FINTRAC has direct and indirect access to LEAs and Security (i.e. intelligence services) databases. The authorities indicated that FINTRAC regularly queries LEA databases in the course of its normal work. FINTRAC and LEAs have established privacy and security frameworks to protect and ensure the confidentiality of all information under FINTRAC's control (including information collected, used, stored and disseminated). In October 2013, FINTRAC strengthened its compliance policies and procedures to increase further the protection of the confidentiality of the information it maintains.

123. Where necessary, LEAs also share information indirectly via FINTRAC by highlighting the disclosures that should be disclosed to other agencies: In this respect, the RCMP has, in specific cases, flagged some files with cross border features to the FINTRAC for disclosure to the CBSA where cross border elements. Similarly, the CBSA has advised FINTRAC to disclose the results of certain VIRs to another regime partner where it determined that further investigations should be carried out.

124. Additionally, the CRA—Charities shares information with other government departments, including RCMP, CSIS and FINTRAC, when there are reasonable grounds to suspect the information would be relevant to an investigation of a terrorism offense or a threat to the security of Canada. Similarly, CSIS shares information on security issues with a range of domestic partners, including FINTRAC, on a regular basis. The sharing of intelligence includes financial intelligence.

Overall Conclusions on Immediate Outcome 6

125. **Canada has achieved a moderate level of effectiveness for IO.6.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

126. ML cases are primarily identified from investigations of predicate offenses, human sources (e.g. informants, victims, suspects, informers, etc.), intelligence (including FINTRAC responses to VIRs), coercive powers, and, in fewer instances, FINTRAC's proactive disclosures, as well as referrals from other government departments without ML investigative powers. LEAs mentioned that they examine all cases with a financial component and assess whether a concurrent financial investigation is warranted. The decisions on whether to investigate a case and how much resources should be devoted to a specific investigation are guided by the LEAs' prioritization processes.[51] As a result, LEAs principally investigate the financial aspects of ML[52] or PPOC[53] occurrences in serious

[51] In the case of the RCMP: The Prioritization Process is designed to aid the judgment of RCMP management in the application of its investigative resources against the most important (priority) criminal threats and activities facing the country. It takes into consideration a series of variables designed to gauge the overall profile of the investigation (or project), its targets, the expected impact against those targets, as well as the expected cost in terms of investigative resources and the length of time they will be dedicated to the project. Prioritization criteria include: economic, political and social integrity of Canada, strategic relevance to RCMP, links to other GoC and partner priorities, etc. Investigations are scored in three tiers (Tier 1 being the highest priority). Highest priority files afforded resources as required to successfully conduct the investigations.
[52] ML encompasses the CC: ss. 462.31(1) and (2) for laundering property and proceeds of property.

and organized crime cases, and in less serious investigations pursue PPOC charges if proceeds are seized through the predicate investigation.

Table 4. **ML and PPOC-Related "Occurrences**[1]
(numbers extracted from all police services' records management systems across Canada)

	2010	2011	2012	2013	2014	Total
ML-Related Occurrences	684	716	596	593	608	3 197
PPOC-related Occurrences	42 261	38 796	38 638	37 521	36 012	193 228
Total	**42 945**	**39 512**	**39 234**	**38 114**	**36 620**	**196 425**

1. The basic unit of this data capture system is an "incident", which is defined as the suspected occurrence of one or more criminal offense(s) during one single, distinct event. During the on-site visit, authorities explained that the ML/PPOC related occurrences are classified when the offenses or incidents fall into the definitions of PPOC/ML under the CC. E.g. a simple theft case can be regarded as a PPOC incident; and if the thief further transfers the stolen good, it will be a ML occurrence.

Source: Statistics Canada's Uniform Crime Reporting Survey (2015)

Table 5. **ML/PPOC Occurrences Handled by the RCMP**

	2010	2011	2012	2013	2014	Total
ML-Related Occurrences	945	844	692	619	664	3 764
PPOC-Related Occurrences	12 753	11 408	11 573	12 299	14 177	62 210
Total	**13 698**	**12 252**	**12 265**	**12 918**	**14 841**	**65 974**

Source: RCMP

127. The ML/PPOC occurrences handled by RCMP (unlike the numbers provided in the table for all police forces) include 1 599 ML- and 13 179 PPOC-related "assistance files," i.e. cases where the RCMP rendered assistance to foreign agencies. In practice, requests from foreign counterparts are used to a limited extent to identify potential ML cases in Canada. In particular, requests from foreign countries seeking information regarding Canadian bank accounts suspected of receiving or transferring POC are generally only acceded to and a ML investigation initiated when the account holder(s) is/are subject to ongoing investigation(s) in Canada, or there is clear indication of a predicate offense having been committed in Canada. Although Canada has identified third-party ML as one of the very high ML threat, it does not focus sufficiently on foreign requests that may reveal the presence, in Canada, of third-party launderers.

128. As mentioned in IO.6, FINTRAC provides a significant amount of information to LEAs. FINTRAC responses to VIRs (which constitute the majority of FINTRAC's disclosures) and proactive disclosures that have a link with an existing file and/or target are adequately used by LEAs. LEAs mentioned that due to time and resources considerations, in line with their prioritization process, fewer investigations are initiated on the basis of a proactive disclosure which has no link to an ongoing investigation. Between 2010 and 2014, FINTRAC made 867 proactive disclosures to the RCMP, of which 599 led to new ML/PPOC related occurrences for further investigations.

[53] PPOC includes CC s. 354 possession of property of proceeds obtained by crime.

129. While the CBSA may investigate fiscal crimes, it does not have the powers to investigate related ML/PPOC cases, and in instances where it considers that there are reasonable grounds to suspect that a person is or has been engaging in ML activities, it reports the case to the RCMP. The latter recorded that between 2010 and 2014 there were 444 ML/PPOC occurrences related to cross border currency reporting. The authorities provided one case ("Project Chun," described in the Box below) of a successful ML investigation started in 2002 on the basis of a CBSA referral. Whilst the assessment team was also shown several ML cases involving parallel investigations arising from CBSA's enquiries into smuggling or customs related offenses, no other cases arising from CBSA's cross-border declaration/seizure reports were provided. It therefore appears that, in practice, information collected at the border is analysed or investigated with a view to pursuing ML activities to a very limited extent only. The cross-border declaration system is not adequately used to identify potential ML activities.

Box 4. **Case study: Project Chun**

In October 2002, a male was intercepted at the Montreal International Airport with USD 600,000 cash in his hand luggage. In the absence of a valid explanation, the money was seized and the case was referred to RCMP which initiated an investigation to determine the source and destination of the money. Extensive enquiries unveiled that the male and his wife owned two currency exchange companies in Canada and in 2000 they made an agreement with a drug trafficker to assist the latter in laundering proceeds deriving from drug trafficking activities. The laundering included use of various financial services and an elaborate scheme for the transfer of money to a bank in Cambodia that was owned and controlled by the couple. The precise amounts involved in these activities are estimated at more than CAD 100 million. Information received from FINTRAC indicated that the couple dealt in large sums of cash and that their bank account activities did not fit their economic profiles. Travel records of one of the accomplice money launderers were received from Cuba through MLAT requests. The accomplice, who was detained in custody in the US, was later transferred from the US to Canada to provide testimony for the prosecution. Canadian investigators had travelled to Israel and Cambodia for tracing after and restraining the crime proceeds. The couple applied delaying tactics during the prosecution and the Canadian authorities eventually convicted the couple with six counts of Money Laundering and seven counts of tax offenses. In March 2015, the couple was each sentenced to eight years of imprisonment and ordered to pay fines of CAD 9 million. Two real properties, USD 600 000 and the shares of a bank in Cambodia were forfeited.

130. Canada's main law enforcement policy objective is to prevent, detect and disrupt crimes, including ML, but in practice, most of the attention is focused on securing evidence in relation to the predicate offense and little attention is given to ML, as evidenced by the discussions held as well as by the case studies provided. LEAs focus on criminal actions undertaken by OCGs (i.e. mainly drug-related offenses and fraud). Cases studies and figures provided by LEAs demonstrated that they also investigate other high-risk offenses (e.g. corruption and tobacco smuggling), but to a limited extent only. Insufficient efforts are deployed in pursuing the ML element of predicate offenses and pursuing

ML without a direct link to the predicate offense (e.g. third-party/professional money launderers). Since 2010, when tax evasion became a predicate offense to ML, none of the tax evasion cases finalized by the CRA have included sanctions for ML. There are, however, ongoing investigations that contemplate the ML activities.

131. The various LEAs adequately coordinate their efforts, both at the strategic level and at the operational and intelligence levels, through working groups and meetings. Within the RCMP, a centralized database is used to minimize the risk of duplicative investigative efforts against the same groups or persons. Direct exchanges regularly occur during relevant LEAs meetings, as well as through specific joint projects: in particular, the CRA-CID and the RCMP have entered into special projects (i.e. Joint Forces Operations, JFOs) for a specific duration, to identify targets of potential criminal charges including ITA/ETA offenses. Between 2010 and 2015, 10 JFOs were conducted. In these cases, the JFO agreements do not supersede or override the confidentiality provisions of the ITA/ETA, but they, nevertheless, enable the CRA to provide tax information to the RCMP if this is reasonably regarded as necessary for the purposes of the administration and enforcement of the Acts.

132. LEAs regularly seek the production of a court order to obtain banking (or other relevant) information for the purposes of their investigations. However, as detailed in R 31.3 and IO6, the length of the process leading to the identification of relevant accounts considerably delays the tracing of POC in ML/PPOC investigations.

133. The LEAs also access tax information (outside JFOs) with prior judicial authorization. During the period 1 April 2013 to 31 December 2015, the CRA CID received in excess of 2 500 LEA requests for taxpayer information. One RCMP unit indicated that this information is obtained in all significant cases by way of letter under S241 of ITA when charges are laid or by CC authorization of Tax order. The RCMP sent 91 tax letters from 2010 to 2016.

134. LEAs also regularly consult public registries of land and companies, but the paucity of accurate basic and beneficial ownership information in these registries limit the usefulness of the information obtained. Investigations in Canada typically do not focus on complex ML cases involving corporate structures (and/or involving transnational activities). LEAs stated that, in the few cases where legal entities were under investigation, the beneficial ownership information was typically obtained from FIs, in particularly the D-SIBs. Investigators are aware of the risk of misuse of corporate entities in ML schemes, but, in some provinces, do not investigate such cases to the extent that they should mainly because of a shortage of adequate resources and expertise. As a result, some targets are not pursued or bank accounts investigated (e.g. in instances where multiple targets and accounts are involved), and LEA efforts are focused on easier targets where the chances of the investigations being cost effective are greater.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

135. According to the NRA, fraud, corruption, counterfeiting, drug trafficking, tobacco smuggling, and (although a recent phenomenon) third-party ML pose very high ML threats in Canada. The LEAs generally agreed with the NRA findings and have prioritized their resources on OCGs, which are

mostly involved in drug and fraud related offenses (see table below). As described above, LEAs, in particular the RCMP, have a prioritization process, which is continually evolving to address the current threats, taking into account a number of factors. At the time of the assessment, that process did not take the NRA's findings sufficiently into account.

Prosecuted ML-Related Cases	2010	2011	2012	2013	2014	Total	%
Money Laundering (CC s462.31)	88	86	130	108	114	526	51.2%
Fraud	12	27	57	61	53	210	20.4%
Drug Offenses	14	18	9	14	14	69	6.7%
Others	27	52	45	51	47	222	21.6%
Total	**141**	**183**	**241**	**234**	**228**	**1027**	**100.0%**

Source: Statistics Canada's Uniform Crime Reporting Survey (UCR) – all police services' records

Prosecuted ML-Related Cases	2010	2011	2012	2013	2014	Total	%
PPOC (CC 354, 355)	11930	11955	11179	10904	10292	56260	37.7%
Drug Offenses	4260	4351	4504	4020	3889	21024	14.1%
Fraud	3013	2690	2467	2352	2144	12666	8.5%
Others	13144	12602	12079	11656	9638	59119	39.7%
Total	**32347**	**31598**	**30229**	**28932**	**25963**	**149069**	**100%**

Source: Statistics Canada's Uniform Crime Reporting Survey (UCR) – all police services' records

136. The authorities provided in the above tables the number of prosecution cases, broken down by the most serious offense (MSO) of the case, in which at least one ML or PPOC charge was laid in 2010 to 2014. [54] This information does not distinguish third-party ML from self-laundering. These statistics show that high-threat predicate offenses, i.e. drug trafficking and fraud, account for 27.1% of ML or 22.6% of PPOC prosecutions only, which does not match the ML threats and risks identified in the NRA (which suggest that a higher percentage would be necessary to mitigate the risks). The figures provided do not show related prosecutions in the context of corruption, counterfeiting, and tobacco smuggling cases, but these cases could be embedded in the "others", "ML" or "PPOC" categories, when they were not the MSO. Canada provided further information to show that there were 68 counterfeiting related ML/PPOC cases, examples of tobacco smuggling related ML cases and one case (Project LAUREAT highlighted below) of a successful prosecution of corruption-related ML cases[55].

[54] RCMP also provided that between 2010 and 2014, it laid 130 630 PPOC charges against 35 600 persons and 1 904 ML charges against 503 persons.

[55] Two other corruption related ML cases, Project Ascendant and Project Assistance, were provided but both cases were under court proceedings.

Box 5. **Case study: Project LAUREAT**

In 2010, in order to obtain the CAD 1.3 billion contract of modernization of a Health Centre ("HC"), the president ("P") and vice-president ("VP") of an engineer company ("EC") had bribed the top officials, "Y" and "Z," of the HC to get the award. Upon the announcement of the award to EC, the VP transferred a total of CAD 22.5 million to the shell companies in foreign countries owned by Y and Z. Y further transferred the crime proceeds to the accounts of his wife's (Y's wife) shell companies. Numerous MLAT requests were executed and bank accounts in nine other countries, worth more than CAD 8.5 million, were blocked. Y, Z, P, VP were also extradited from other countries. The syndicate was charged with corruption, fraud, ML along with other offenses. For Y's wife, who has only been involved in laundering the CAD 22.5 million, was sentenced to 33 months of imprisonment.[1] Upon her conviction, seven buildings (value at CAD 5.5 million) were confiscated.

1. The sentence of Y's wife expires in December 2016, but she was granted full parole in September 2015.

137. While Project LAUREAT was relatively successful, overall, on the face of the statistics and cases provided as well as of the discussions held on-site, it was not established that Canada adequately pursues ML related to all very high-risk predicate offenses identified in the NRA.

138. As indicated in the statistics on standalone ML / PPOC prosecutions below, there were 35 (3.4%) and 14 271 (9.6%) standalone ML and PPOC concluded respectively in the last five years. As professional money launderers are mostly involved in ML (rather than PPOC) cases, the fact that Canada only led 35 prosecutions and obtained 12 convictions of single-charge ML cases in the last five years is a concern. It is possible and, according to the authorities, very likely that a professional money launderer would also be charged with another charge such as conspiracy, fraud, or organized crime in addition to ML, but the numbers nevertheless appear too low in light of the risk.

Table 6. **Results of Single Charge ML Cases**

	2010	2011	2012	2013	2014	Total	%
Guilty	2	2	4	3	1	12	34.3%
Acquitted	0	0	0	0	1	1	2.9%
Stayed	0	1	3	1	0	5	14.3%
Withdrawn	2	4	4	2	2	14	40.0%
Other decisions	0	0	1	0	2	3	8.6%
Total	**4**	**7**	**12**	**6**	**6**	**35**	**100%**

Source: Statistics Canada's Integrated Criminal Court Survey (ICCS)

Table 7. **Results of Single Charge PPOC Cases**

	2010	2011	2012	2013	2014	Total	%
Guilty	1332	1199	1108	1017	947	5603	39.3%
Acquitted	115	84	76	127	98	500	3.5%
Stayed	589	642	640	611	581	3063	21.5%
Withdrawn	1158	1077	1022	904	806	4967	34.8%
Other decisions	53	23	24	23	15	138	1.0%
Total	**3247**	**3025**	**2870**	**2682**	**2447**	**14271**	**100%**

Source: Statistics Canada's Integrated Criminal Court Survey (ICCS)

139. Canada's NRA also identified very high ML vulnerabilities in the use of trusts and corporations. LEAs confirmed that corporate vehicles and trusts are misused to a relatively large extent for ML purposes. As the case study Dorade (below) indicates, the authorities have been successful in identifying the legal persons and arrangements involved in the ML schemes and in confiscating their assets in some instances. However, overall, it was clear from the discussions held with police forces and prosecutors that legal persons are hardly ever prosecuted for ML offenses, mainly because of a shortage of adequate resources and expertise. Investigators are nevertheless aware of the risk of misuse of corporate entities in ML schemes and that more focus should be placed on this risk.

Box 6. **Case study: DORADE**

During the investigation of a fraud syndicate, it was revealed that the director of a loan company had set up, with the assistance of various professional accomplices, foreign shell companies located in tax havens for receiving the crime proceeds and lending the sum back to loan company for its legitimate loan business, thereby facilitating the director to evade tax payment and recycle crime proceeds. It was estimated, between 1997 and 2010, a total of CAD 13 million of tax was evaded. With the assistance of MLAT requests, the syndicate members were identified and the proceeds, whether domestic or abroad, were restrained and eventually confiscated. The director and the professionals were convicted of fraud and ML and sentenced to 36–84 months of imprisonment. However, all the ML charges attracted an imprisonment term of less than 18 months and to be served concurrently with the Fraud sentence.

140. Overall, while there are exceptions, law enforcement efforts are not entirely in line with Canada's NRA risk profiles. As previously noted, LEAs' prioritization processes place strong attention to National Security investigations, OCGs, and, to a lesser extent, more recently third-party ML in an international context. Other instances of high threat predicate offenses, especially fraud, corruption, counterfeiting, tobacco smuggling, and related ML, as well as laundering activities in Canada of the proceeds of foreign predicate offenses, third-party ML and ML schemes involving corporate structures are not adequately ranked in the prioritization process and, consequently, are not pursued to the extent that they should.

Types of ML cases pursued

141. Different types of ML and PPOC cases are prosecuted, but there is insufficient focus on the types of ML that are more significant in Canada's context, i.e. ML related to high-risk predicate offenses. In addition, prosecutions of ML-related cases focus on the predicate offenses, with the ML charge(s) often withdrawn or stayed after plea bargaining and re-packaging of charges. The number of standalone ML cases is comparatively low, indicating few investigations and hence prosecutions of third-party ML and foreign predicate offenses despite their high ranking in the NRA. According to the authorities, as far as third-party ML is concerned, the low number of investigations and prosecutions is that the magnitude of the threat has only recently reached a high level. Finally, legal persons are frequently misused for ML purposes, but not often pursued for ML offenses. The tables below show the results of ML cases brought before the courts and the charges laid in these cases.

Table 8. **Results of ML-Related Cases**

	2010	2011	2012	2013	2014	Total	%
Guilty	82	108	140	136	146	612	59.6%
Acquitted	2	0	0	4	7	13	1.3%
Stayed	8	12	15	26	18	79	7.7%
Withdrawn	49	63	74	64	53	303	29.5%
Other Decisions	0	0	12	4	4	20	1.9%
Total	**141**	**183**	**241**	**234**	**228**	**1027**	**100%**

Source: Statistics Canada's Integrated Criminal Court Survey (ICCS)

Table 9. **Results of ML-Charges**

	2010	2011	2012	2013	2014	Total	%
Guilty	38	21	35	31	44	169	9.4%
Acquitted	5	1	8	6	9	29	1.6%
Stayed	17	26	144	45	31	263	14.6%
Withdrawn	132	190	366	327	294	1309	72.7%
Other Decisions	2	2	14	7	5	30	1.7%
Total	**194**	**240**	**567**	**416**	**383**	**1800**	**100%**

Source: Statistics Canada's Integrated Criminal Court Survey (ICCS)

142. Between 2010 and 2014, a total of 1,800 ML charges were concluded in 1,027 cases. Although about 60% of these cases were led to convictions, only 169 ML charges (i.e. some 9%) resulted in a conviction. Some 87% of the ML charges were either withdrawn or stayed. The reasons provided for the withdrawal of the ML charges included insufficient evidence, the lack of public interest in the pursuit of the charges, the avoidance of overcharging, as well as repackaging of charges and plea bargaining (as the ML/PPOC charge will not normally add any additional sentence to the defendant and it is easier for the defendant to accept the guilty plea of the predicate offenses in order to contribute to a fair and efficient criminal justice system). The consultation with prosecutors at an earlier stage of the ML cases is clearly useful in securing the necessary evidence

and avoiding a waste of investigative efforts. The length of criminal proceedings in ML cases is also a concern. Proceedings may take a number of years during which the subjects of the investigation and prosecution may continue their unlawful businesses and dispose of the POCs (as was the case in Project Chun for example).

143. Over the last years, although 68.4% of PPOC cases resulted in convictions, 74.6% of the PPOC charges were withdrawn / stayed or dealt with by other means, and the defendants were only charged with and convicted of the predicate offenses.

Table 10. **Results of PPOC-Related Cases**

	2010	2011	2012	2013	2014	Total	%
Guilty	22 974	21 728	20 525	19 611	17 191	102 029	68.4%
Acquitted	388	349	339	404	391	1 871	1.3%
Stayed	2 769	3 193	3 157	3 148	2 857	15 124	10.1%
Withdrawn	5 961	6 140	6 021	5 606	5 380	29 108	19.5%
Other Decisions	255	188	187	163	144	937	0.6%
Total	**32 347**	**31 598**	**30 229**	**28 932**	**25 963**	**149 069**	**100%**

Source: Statistics Canada's Integrated Criminal Court Survey (ICCS)

Table 11. **Results of PPOC-Related Charges**

	2010	2011	2012	2013	2014	Total	%
Guilty	13 493	12 782	11 178	10 996	10 072	58 521	23.6%
Acquitted	736	715	1 716	674	817	4 658	1.9%
Stayed	9 178	9 715	9 183	9 132	6 894	44 102	17.8%
Withdrawn	28 776	28 388	27 402	27 375	25 130	137 071	55.2%
Other decisions	1 120	912	883	753	416	4 084	1.6%
Total	**53 303**	**52 512**	**50 362**	**48 930**	**43 329**	**248 436**	**100%**

Source: Statistics Canada's Integrated Criminal Court Survey (ICCS)

144. Overall, of the 1 027 ML-related cases and 102 029 PPOC-related cases that entered the court system, over 60% resulted in convictions, though most of the defendants were convicted of the predicate offenses rather than the ML or PPOC charges. This indicates that Canada is able to investigate and prosecute predicate offenses in ML/PPOC-related cases and disrupt some of the ML/PPOC activities. One hundred sixty-nine ML charges were led to a conviction in the past five years (i.e. 33.8 charges on average annually), which appears very low in light of the magnitude of the ML risks identified. Canada does not pursue the ML charges sufficiently.

Effectiveness, proportionality and dissuasiveness of sanctions

145. The totality principle[56] always applies in the sentencing, and a ML/PPOC sentence is usually ordered to be run concurrently with the predicate offenses. The statistics below indicate the sanctions imposed for ML in instances where the ML charges were the most serious offenses (MSO). The vast majority of natural persons (i.e. 89%) convicted for ML have been sentenced in the lower range of one month to two years of imprisonment or awarded non-custodial sentences.[57] This is proportionate with the type of ML activities most frequently pursued in Canada. However, although this is not made evident in the statistics provided, it is apparent from the case examples provided, and in Projects Dorade and Laurent mentioned above, that many sanctions imposed on money launderers are low even in the (relatively few) cases of complex ML schemes and/or of professional launderers brought before the courts. None of the PPOC convictions attracted a sentence of more than two years. In these circumstances, the sanctions applied do not appear to be of a level dissuasive enough to deter criminals from ML activities.

Table 12. **Sanctions in ML Cases Where ML was the Most Serious Offense, from 2010 to 2014**[1]

	Number	Percentage
Custodial Sentence	**80**	**55.2%**
• Less than 12 months	47	32.4%
• 12 to 24 months	17	11.7%
• More than 24 months	16	11.0%
Conditional sentence, probation, fine, restitution	**65**	**44.8%**
Total	**145**	**100.0%**

1. There are other undisclosed cases where the ML offense runs concurrently with another MSO.

Extent to Which Criminal Justice Measures are Applied Where Conviction is Not Applicable

146. Information provided under IO.8 reveals that non-conviction based forfeiture amounted to 17% of the total forfeiture. Whilst it is not encouraged to drop the criminal charges during the judicial process, Canada's use of civil confiscation is not to be discounted. Plea bargaining and repackaging of charges have also been used in the prosecution stage for shortening the length of court proceedings.

Overall Conclusions of Immediate Outcome 7

147. **Canada has achieved a moderate level of effectiveness for IO.7**.

[56] Totality principle is a common law principle, which applies when a court imposes multiple sentences of imprisonment. Section 718.2(c) of the CC stipulates that when a court that imposes a sentence shall take into consideration of, amongst others, where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.
[57] A breakdown of sanctions for third-party ML cases and against legal persons is not available.

Immediate Outcome 8 (Confiscation)

148. Since its last assessment, Canada improved its ability to collect information on seizures and confiscations and produce related statistics. It uses both criminal and civil (non-criminal based) proceedings to confiscate proceeds and property related to an unlawful activity. At the Federal level, there is an agency to manage seized and confiscated assets (SPMD). At the provincial level, the management of these assets rests with the prosecution services. Canada also confiscates with no terms of release any undeclared currency and monetary instruments from travellers entering and exiting the country when there is reasonable grounds to suspect they are from illicit origin or that the funds are intended for use in the financing of terrorist activities. It shares confiscated assets with countries with which it has a sharing agreement.

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

149. While confiscation of criminal proceeds and instrumentalities is a policy objective, that objective is pursued to some extent only. Canada is not able to confiscate property of equivalent value; instead, it imposes fines in lieu. As a result of the deficiencies described in IO.7 confiscation relate mainly to proceeds of criminal activities and offence related property conducted by OCGs, in particular drug offenses, fraud, theft, and to the proceeds of tax evasion.

150. Canada's Integrated Proceeds of Crime (IPOC) Initiative aims at the disruption, dismantling, and incapacitation of OCGs by targeting their illicit proceeds and assets. It brings together the CBSA, CRA, PPSC, Public Safety Canada, PSPC (more specifically, its Forensic Accounting Management Group, and the Seized Property Management Directorate), and the RCMP, which cooperate and share information to facilitate investigations. According to the authorities, the IPOC is a distinct program and a corner stone of the AML/CFT regime as a whole as modified in 2000. However, it is not identified as one of the key goals of the latest articulation of the AML/CFT program.

151. The RCMP's Federal Policing Serious and Organized Crime/Financial Crime Teams (which investigate ML cases) target the proceeds of organized crime for seizure. The return of frozen or seized POC and instrumentalities to the defendant is avoided in the context of a plea bargain; in line with the PPSC policy, both POC and instrumentalities must be sought.[58] According to the authorities, the accused normally agree with the confiscation request when they plead guilty. At the provincial level, measures aimed at tracing and seizing assets in view of confiscation are in some cases conducted jointly by the RCMP and the provincial LEA. In the province of Quebec, for instance, the cooperation between the RCMP and the relevant provincial police, i.e. the *Sûreté du Québec*, has shown a number of cases of successful recovery of assets. At the municipal level, the Service de Police of the City of Montreal has a unit specialized in the recovery of POC and in the investigation of ML (*Unité des produits de la criminalité*—Programme UPC-ACCEF). The priority of the investigations in Quebec and in Montreal in particular is clearly to identify assets for confiscation, especially in

[58] According to the PPSC Deskbook, Guideline issued by the Director under Section 3(3)(c) of the Director of Public Prosecutions Act, Chapter 5.3 Proceeds of Crime, in the context of ORP, "partial forfeiture is not a negotiation tool. If the facts justify and application for total forfeiture, Crown counsel may not, as part of negotiations, suggest partial forfeiture."

cases involving OCGs. These clear priorities and effective specialized units have resulted in greater recovery of POC and instrumentalities by criminal law means both in scope and in type of assets, including in more complex ML cases. Other provinces rely more on non-conviction based forfeiture, where roughly CAD 100 million have been confiscated, nationally, during the relevant period.

152. As a general rule, however, LEAs in other provinces and at the federal level do not seem to adopt a "follow the money" approach in practice, nor to initiate a parallel financial investigation, notably because of resource constraints. Overall, as a result of the shortcomings explained under IO.6 and IO.7, asset recovery is pursued to a limited extent only.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

153. The total amounts recovered yearly have increased significantly since the previous assessment,[59] but, nevertheless, appear to be low in the Canadian context (see table below). This is likely to be due to the lack of focus on asset recovery mentioned above and the shortcomings mentioned in IO.6 and IO.7, as well as the length of time needed to bring cases to closure: The delays encountered (especially at the tracing stage) are likely to encourage and facilitate the flight of assets.

Table 13. **Amounts Forfeited in Canada**[1]
(in Canadian Dollars)

	Criminal Federal Forfeiture	Federal Fines in Lieu	CBSA Cash Forfeitures	Civil Forfeiture Results (Nationally)	Québec Criminal Provincial Forfeiture	Total
2009/10	46 368 327	101 600	5 277 676	7 600 000	---	59 347 604
2010/11	58 872 881	71 650	4 698 404	12 400 000	9 070 456	85 113 392
2011/12	77 698 566	31 700	1 960 038	18 900 000	10 905 959	109 496 264
2012/13	83 935 230	105 939	3 468 888	41 700 000	11 498 811	140 708 870
2013/14	75 997 602	312 178	4 054 089	18 900 000	12 453 244	111 717 114
2014/15	72 869 240	314 217	4 076 586	---	---	77 260 044
Total In CAD	415 741 848	937 285	23 535 683	99 500 000	43 928 471	583 643 289

The table is a consolidation of statistics maintained by different authorities, using different criteria and does not include forfeitures undertaken by federal departments that do not involve or are not reported to the SPMD. At the provincial level, figures were provided for Quebec only (federal criminal results for Quebec appear in the first column). They do not differentiate domestic from foreign predicate offenses (though IO.2 shows that there have been forfeitures based on the direct enforcement of foreign orders) and proceeds which have moved to other countries. According to the authorities, the link between seized and forfeited assets cannot easily be made, as these actions occur over multiple years.

154. Different types of assets are seized or restrained in federal criminal proceedings (see table below) but, overall, Canada does not restrain businesses, company shares—despite the high risk of misuse of legal entities—or property rights. [60] In general, Canadian authorities seem to be managing

[59] An average of Can$ 27 million a year were forfeited from 2000 to 2007 (2008 MER, page 62).
[60] The only exception appears to be a golf course seized on behalf of another country.

effectively the seized and confiscated assets on both federal and provincial levels. Assets are generally not sold before the conclusion of the criminal proceeding to maintain their value or reduce the costs of management of the property, unless they are rapidly depreciating or perishable, or the accused authorizes their disposal.

Table 14. **Federally Seized/Restrained Assets by Appraisal Value**
(in Canadian Dollars)

Asset Type	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015
Aircraft	108 000	-	15 000	-	250 000	0
Cash	20 878 443	21 456 803	22 665 264	28 833 075	18 036 703	21 680 932
Financial Instruments	365 247	961 557	5 938 052	732 443	26 924 056	723 834
Hydroponics	6 291	2 748	808	1 240	259	12
Other Property (incl. jewellery)	138 410	684 780	605 054	274 601	203 956	269 866
Real Estate	52 785 401	54 220 901	37 336 935	25 445 169	26 532 406	16 758 250
Vehicle	5 940 355	5 947 937	6 256 389	4 839 410	4 479 067	4 433 720
Vessel	311 200	156 101	79 296	121 661	39 700	518 000
Grand Total	**80 533 349**	**83 430 829**	**72 896 801**	**60 247 601**	**76 466 149**	**44 384 616**

155. Revenue agencies, both at the federal and provincial level, have been successful in recovering evaded taxes, including in instances where the monies were held offshore. In FY 2013/2014, Revenue Quebec alone recuperated over CAD 3.5 billion of evaded taxes, both by criminal sanctions and civil compliance actions. During the same period, FY 2013/2014 the CRA recuperated CAD 10.6 billion in its criminal and civil actions. As a result of the CRA's investigations into suspected cases of tax evasion, fraud and other serious violations of tax laws, and recommendations to the PPSC, Canada secured convictions for tax crimes for CAD 162.3 million and levied a total of CAD 70.7 million in criminal fines. However, it should be noted that these figures do not solely represent confiscations related to the proceeds of crime, and that the Canadian authorities were unable to provide such separate figures.

156. Between 2008 and 2015, in an effort to recover proceeds that have been moved to other countries, Canada sent 135 requests for tracing assets (bank or real estate records) to other countries 43 requests for restraint of funds or assets and 4 requests for forfeiture. Discussions with the authorities and the cases provided nevertheless established that the authorities pursue assets abroad to some extent only, notably because such actions require resources that are currently dedicated to other priorities. The fact that LEAs seem to have little expertise in pursuing complex international ML schemes or in the investigation of professional money launderers also explain the relatively low level of effort in seeking the recovery of assets abroad. Considering that there is no possibility for the authorities to seize property of equivalent value, when POC cannot be forfeited, fines in lieu are ordered, in addition to the custodial sentence. The total fines collected by the federal Crown are CAD 937 285.95 for 2009-2015. The authorities share parts of the confiscated assets with

their foreign counterparts, both in criminal and civil actions, when the property is in Canada, the foreign country assisted Canada in the case and there is a signed sharing agreement. This would be the case when the offense was committed partly or entirely abroad and laundered in Canada.[61] The major part of the sharing occurred with the US, which appears justified in the Canadian context, and property was also shared with Cuba and the UK.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

157. CBSA agents seize monies when there is a suspicion that the latter are POC or funds intended to be used to fund terrorism. As indicated in the table below, between 2009 and 2015, Canada seized about CAD 263 million at the border, of which less than 9% were confiscated and more than 91% were returned to the travellers. In the latter cases, according to the authorities, there was no suspicion of ML, TF, or other illicit activities; therefore, the monies were returned to the traveller and an administrative fixed fine (of CAD 250, CAD 2 500, or CAD 5 000) levied. In practice, however, falsely or undeclared cross-border movements of currency and other bearer negotiable instruments are analysed by the FIU, or investigated by the RCMP to a very limited extent, namely only when they pertain to an ongoing analysis or investigation (See IO.6). Moreover, the level of the sanctions for noncompliance with the obligation of disclosure of cross-border movements and the frequency which it is applied does not seem effective, proportionate nor dissuasive.

(in Canadian Dollars)

FY	Seized Amount	Returned at Seizure by CBSA	Final Penalty Amount Forfeited	Cash Seizures Forfeited	Amount Returned by SPMD[1]
2009/2010	99 430 742	94 448 985	2 150 500	5 277 676	731 782
2010/2011	12 447 605	6 277 108	223 000	4 698.404	1 458 233
2011/2012	4 361 463	1 871 650	50 750	1 960 038	522 035
2012/2013	28 273 318	23 949 256	545 500	3 468 888	853 173
2013/2014	52 508 920	47 564 857	1 340 000	4 054 089	873 782
2014/2015	65 989 388	61 808 579	1 732 000	4 076 586	1 328 046
Total	263 011 436	235 920 435	6 041 750	23 535 681	5 767 054

1. This column contains only the amounts for closed cases where an appeal or other legal means of challenging are no longer available to the travellers.

[61] Canada shared the following amounts: 2007/2008: CAD 199 390; 2008/2009: CAD 75 620; 2009/2010: CAD 357 844; 2010/2011: CAD 0; 2011/2012: CAD 93 013; 2012/2013: CAD 237 577; 2013/2014: CAD 244 846.

Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.

158. Law enforcement actions, including asset recovery efforts focus mostly on illicit drug trafficking, fraud, and theft.[62] While drug-related offense and fraud are identified as very high ML threats in Canada's NRA, theft is not. In addition, the recovery of proceeds of other very high threats identified in the NRA is pursued, but not to the same extent (this is notably the case for proceeds of corruption and bribery, third-party ML, and tobacco smuggling, although some success was achieved in a case of tax evasion perpetrated from 1991 to 1996 in relation to a large scale tobacco smuggling operation[63]).[64] As a result, Canada's confiscation results are not entirely consistent with ML/TF risks or national AML/CFT policy.

Overall Conclusions on Immediate Outcome 8

159. **Canada has achieved a moderate level of effectiveness in Immediate Outcome 8.**

[62] As stated in the Research Brief-Review of Money Laundering Court Cases provided by FINTRAC, p. 1 and the Authorities Submissions to IO.7, p. 12 and 13. This is consistent with the assessor's findings after the interviews with Canadian authorities during the on-site.
[63] Project Oiler, where charges of tax fraud (through smuggling) and the possession of proceeds of crime were laid in 2003 and ultimately a plea of guilty accepted for violations of the Excise Tax Act in 2008 and 2010. This case resulted in the imposition of criminal fines and penalties totalling CAD 1.7 billion.
[64] The authorities provided the assessment team with a table showing the seizures in relation to the offenses (Seizures by Act), from 2009 until 2015. The higher values are related to the Controlled Drug and Substance Act, followed by the offense of Possession of property obtained by crime, laundering of proceeds, PCMLTFA, tax offenses and conspiracy. The values seized in relation to bribery of officers are insignificant (except in one case where some CAD 4 million were confiscated). It is not possible to identify third-party ML in the statistics provided. Seizures for possession of tobacco appear only in fiscal years 2012/2013 and 2013/2014, and seizure for bribery of officers appear only in FY 2010/2011, 2011/2012 and 2013/2014. In FY 2009/2010, 2012/2013 and 2014/2015 the value of seizures in relation to bribery is zero.

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

IO.9

The authorities display a good understanding of TF risks and close cooperation in CFT efforts. The intelligence services, LEAs and FINTRAC regularly exchange information, which notably contributes to support prioritization of TF investigations.

Canada accords priority to pursuing terrorism and TF, with TF investigation being one of the key components of its counter-terrorism strategy.

The RCMP duly investigates the financial components of all terrorism-related incidents, considers prosecution in all cases and the prosecution services proceed with charges when there is sufficient evidence and it serves the public interest. Two TF convictions were secured since 2009. Sanctions imposed were proportionate and dissuasive.

Canada also makes frequent use of other measures to disrupt TF.

IO.10

Implementation of TF-related targeted financial sanctions (TFS) is quite effective for FIs but not for DNFBPs.

Canada takes a RBA to mitigate the misuse of NPOs (i.e. charities). A specialized division within CRA-Charities focuses specifically on concerns of misuse of organizations identified as being at greatest risk. In addition, CRA-Charities has developed an enhanced outreach plan, which reflects the best practices put forward by the FATF.

In practice, few assets have been frozen in connection with TF-related TFS.

IO.11

Canada's Iran and DPRK sanction regimes are very comprehensive and in some respects go beyond the UN designations.

Cooperation between relevant agencies is effective and some success has been achieved in identifying and freezing the funds and other assets belonging to designated individuals.

Large FIs have a good understanding of their TFS obligations and implement adequate screening measures but some limit their screening to customers only. DNFBPs, however, are not sufficiently aware of their obligations and have not implemented TFS.

There is no formal monitoring mechanism in place; while some monitoring does occur in practice, it is limited to FRFIs and is not accompanied by sanctioning powers in cases of non-compliance.

4

Recommended Actions

Canada should:

IO.9

- Pursue more and different types of TF prosecutions.

IO.10

- Require DNFBPs to conduct a full search of their customer databases on a regular basis.
- Consider increasing the instances of proactive notification of changes to the lists to REs other than FRFIs.
- Consider enhancing the number of seizures and confiscations related to TF offenses.

IO.11

- Monitor and ensure FIs' and DNFBPs' compliance with PF-related obligations.
- Conduct greater outreach. This should include information on the PF-risk that can be published without compromising Canada's security, as well as more detailed guidance on the implementation of TFS and indicators of potential PF activity.

The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

160. The RCMP investigates all occurrences of TF. This includes investigations into a wide range of TF activities, such as the collection of funds and their movement and use by individual, entities or wider organizations. The RCMP lays TF charges when approved by PPSC based on sufficient evidence and when the prosecution would best serve the public interest. Between 2010 and 2015, charges were laid against one individual, resulting in a conviction for TF in 2010 (see Box 7 below). Charges were also laid in another case, but subsequently withdrawn for tactical and operational enforcement reasons.

Box 7. **R v. THAMBITHURAI 2008**

It came to the knowledge of the RCMP's Integrated Security Enforcement Team (INSET) that a man was in the process of collecting funds from his place of residence and businesses for the Liberation Tigers of Tamil Eelam (LTTE), a listed terrorist entity in Canada. The person was arrested in Vancouver. INSET found various materials in his possession, including donation forms for the LTTE which were used for a CAD 600 donation and a CAD 300 pledge. The accused was charged with four counts of "Providing or making available property for a terrorist organization" under CC 83.03, three of which were later withdrawn. He pled guilty in 2010 and was sentenced to six months of imprisonment.

161. LEAs actively pursue the threat of individuals radicalized to violence, and in particular, those seeking to travel abroad for terrorist purposes. The RCMP's priority is to pursue charges that are in the best interest of public safety, and to mitigate the possible threat of terrorist activity as efficiently as possible. TF charges are not always determined to be the most appropriate means to mitigate threat. In these instances, alternative measures are used. The below case showed that while a boy obtained funds by robbery for travel abroad to join a terrorist organization, RCMP had pursued terrorism and criminal charges instead of TF charges.

Box 8. **Young Foreign Terrorist Fighter**

In 2014, a 15-year-old boy who had become radicalized to violence became determined to travel abroad to join a terrorist organization. He had previously tried unsuccessfully to purchase an airline ticket for Syria with his father's credit card. In October 2014, the father discovered CAD 870, a knife, and a balaclava in the boy's backpack. Feeling suspicious of money might have been stolen, the father made a report to police. Investigation revealed that the boy had committed an armed robbery in order to purchase ticket for Syria. The boy was charged and convicted of armed robbery. Additional national security investigation by C-INSET resulted in the youth being convicted of attempting to leave Canada to participate in the activity of a terrorist group (CC 83.131) and commission of an offense for a terrorist group (83.2). He was sentenced to 24 months in youth custody plus one-year probation, consecutive to the sentence of armed robbery.

162. This and other cases discussed establish the authorities' ability to pursue TF activities. However the results obtained so far are not entirely commensurate with Canada's risk profile, which, as assessed in the NRA, points to more frequent and diverse TF occurrences. As a result, Canada has demonstrated to some extent that it pursues the different types of TF activities that it faces.

TF identification and investigation

163. The RCMP investigates the financial component of all terrorism-related incidents. It employs various avenues to identify and investigate potential TF activities including human source

or intelligence, referrals from international or domestic partners (e.g. the US Federal Bureau of Investigations (FBI), FINTRAC, CRA, and CSIS, direct reporting from Canadian FIs), and national security investigations.

164. FINTRAC regularly provides proactive disclosures and responses to VIRs on TF cases, which supports the prioritization of TF investigations. It mostly disseminates disclosures related to TF to CSIS, but also to the RCMP, CBSA, CRA, municipal and provincial police, and foreign FIUs. According to FINTRAC, roughly half of TF disclosures were proactive, and half in response to VIRs. The authorities do not keep figures on the results of TF investigations arising from proactive disclosures.

Table 15. **TF-Related VIRs and FINTRAC Disclosures (from and to RCMP only)**

	2010-11	2011-12	2012-13	2013-14	2014-15	Total
Number of TF Disclosures	100	110	125	188	206	729
Number of TF-Related VIRs	26	65	78	84	61	314

165. LEAs and FINTRAC accord priority to TF investigations, although there are exceptions where priority would be accorded to other terrorism files, as highlighted in the Project Investigation below. In urgent cases, FINTRAC provides TF-related financial intelligence to the RCMP within hours. In normal circumstances, it may take days or weeks to respond to the VIRs. In one of the cases provided, which dated back more than 10 years, timely intelligence from FINTRAC was instrumental in identifying domestic and foreign accounts, as well as in establishing the foundations for the necessary judicial authorization applications.[65] The CBSA also assists in the identification of an investigation into TF activities.

166. For example in the case of Project Investigation, a person was intercepted by the CBSA at a Canadian airport for carrying undeclared currency in excess of CAD 10 000. CBSA notified the RCMP, which assumed control of the investigation because of the nexus to TF. The investigation revealed that funds destined to a foreign country to support an organization listed by Canada as a terrorist entity had been collected across Canada by multiple individuals. Information received from FINTRAC resulted in the identification of the funding networks of the entity and of its key members. Due to operational and resource constraints imposed by higher priority national security investigations, the RCMP was unable to proceed further with the file. A different approach was therefore adopted: the suspect was charged under PCMLTFA for not reporting the importation or exportation of currency

[65] The case in question was the Project Saluki: In 2002, the RCMP conducted a TF investigation to determine whether monies were being raised in Canada by a front organization, the World Tamil Movement (WTM), for the LTTE in Sri Lanka. Financial Intelligence provided by FINTRAC and banking records from FIs obtained by a court order indicated that funds were being sent from a bank account in Canada to a bank account in a foreign country registered to a legal entity. With the assistance of the foreign country, the RCMP gathered the bank documents of the foreign account and identified the holders and the persons associated with or who maintained control over the account, which involved a private deed of trust as well as a list of the appointed trustees. RCMP officers went to the foreign country, interviewed the trustees and signatories of the foreign bank account and determined details of their involvement and position with the legal entity. No person was charged upon the conclusion of the investigation. The PPSC applied for civil forfeiture and in 2010 the Court ordered forfeiture of the WTM building in Montreal and other property under terrorism legislation.

or monetary instruments. He pleaded guilty and was fined CAD 5 000, and the funds previously seized were forfeited to the Crown.

167. All TF investigations are conducted by the RCMP's INSET field units. These units are located in Vancouver, Edmonton, Calgary, Toronto, Ottawa, and Montreal, and are comprised of officers deployed from other partners (including municipal and provincial LEAs and the CSIS) in numbers that fluctuate depending on operational needs. They are tasked by FPCO, which it is responsible for the prioritization of investigations. TF activities are investigated in proportion with their scope and complexity. As investigations become more complex and require more resources, the RCMP uses a management tool to ensure that investigations align with national security priorities. Between 2009 and 2013, it identified five investigations as major TF cases, which led to two charges being laid (see previous core issue).

Table 16. **TF Investigations**

	2010	2011	2012	2013	2014	Total
Assistance Files[1]	235	162	117	201	179	**894**
Participate/Contribute to Terrorist Group Activity	40	29	33	45	52	**199**
Provide/Collect Property for Terrorist Activity	31	26	17	21	9	**104**
Information Files[2]	30	31	15	25	34	**135**
Crime Prevention3	0	2	1	2	79	**84**
Facilitate Terrorist Activity	15	3	6	10	15	**49**
Make Available Property/Service for Terrorist Act	10	15	8	5	8	**46**
Suspicious Person/Vehicle/Property	0	1	6	9	2	**18**
Use/Possess Property for Terrorist Activity	4	1	2	1	0	**8**
National Security Survey Codes[4]	1	1	0	4	0	**6**
Instruct/Commit Act for Terrorist Group	2	3	0	1	3	**9**
Others (Criminal Intelligence, Fraud, etc.)	5	3	6	5	4	**23**
Total	**373**	**277**	**211**	**329**	**385**	**1 575**

1. An Assistance file is created when assisting domestic or foreign non-PROS/SPROS units or agencies.
2. Information File is information received, it is not a call for service, or the person or agency supplying the information does not expect police action.
3. Crime Prevention are activities directed toward the tangible objective of preventing a specific type of crime, e.g. breaking and entry, approved or accepted community-based policing program such as Drug Abuse Resistance Education (DARE).
4. National Security Survey Codes are the combined collection of two different survey types: Threat Assessments and VIP/Major Events.

TF investigation integrated with -and supportive of- national strategies

168. CFT is an integral part of Canada's strategy to combat terrorism. The RCMP confirms that it assesses the existence of a TF component in every national security investigation. Cases provided (including IRFAN-CANADA described in IO.10) showed that the authorities use TF investigations to identify the structures, key persons, and activities of terrorist organizations. TF investigations are integrated with, and used to support, national counter-terrorism strategies and investigations.

Effectiveness, proportionality and dissuasiveness of sanctions

169. Canada successfully pursued and convicted two individuals on TF charges. The first case (*R v. THAMBITHURAI* described above) only attracted a six-month imprisonment despite PPSC appealing against the sentence. In the second case (*R v. KHAWAJA*, see Box 9 below), the Court sentenced the defendant to two years imprisonment for TF and to life imprisonment for "developing a device to activate a detonator."

Box 9. **R v. KHAWAJA**

In 2004, Canada initiated an investigation into a Canadian citizen linked to a terrorist group under investigation in the United Kingdom (UK) for planning a fertilizer bomb attack targeting pubs, nightclubs, trains and utility (gas, water and electric) supply stations in the UK. The evidence collected indicated that the Canadian subject attended a training camp in Pakistan in July 2003 and transferred on three occasions a total of about CAD 6 800 to his associates in the UK with the help of a young woman to avoid suspicion of link. His parents were persuaded to evict tenants from their residence in Pakistan so that the subject may make the facility available for use by the group's members. He also planned 30 devices to strap explosives onto model airplanes with remote triggers. He was arrested by the RCMP in 2004, detained, and charged in 2008 with seven counts of offenses under the CC, including one count of TF under 83.03(a). MLA requests were sent to the US authorities for the subject's Internet Service Provider and payment records as well as the testimony of a US witness. In December 2010, upon the appeal by the PPSC, the subject was sentenced to life imprisonment for "developing a device to activate a detonator" and 24 years of imprisonment for the other offenses, including two years' imprisonment for TF.

170. While low, the number of instances prosecuted appears in line with Canada's threat profile and considering the alternative mitigating measures taken (see below). Sanctions applied appear to be proportionate with the amounts involved and dissuasive. No legal person has been convicted of TF offenses. No designations were made to the relevant UN bodies but Canada has been co-sponsor to a number of designations.

Alternative measures used where TF conviction is not possible (e.g. disruption)

171. Canada's primary goal in counter terrorism efforts is to maintain public safety, and Canada places a strong focus on disrupting terrorist organizations and terrorist acts before they occur. The RCMP defines disruption in national security matters as the interruption, suspension or elimination, through law enforcement actions of the ability of a group(s) and/or individual(s) to carry out terrorist or other criminal activity that may pose a threat to national security, in Canada or abroad. It includes disruption of TF activities

172. During national security investigations, activities of participants and peripheral participants may be tactically disrupted for a variety of reasons, including triggering reactions or behavioural changes of the main targets. TF investigations therefore do not always result in TF

charges, if other charges for terrorism or other offenses are being laid and the evidence is most cogent and appropriate or would best serve the public interest. The authorities shared several cases (including Project Smooth below) where despite clear evidence to substantiate a TF charge, other means were preferable to ensure the public interest.

Box 10. **Project SMOOTH**

In August 2012, CSIS reported to RCMP that a male ("CE") residing in Montreal had met another male ("RJ") in Toronto. RJ was known to the RCMP for recently distributing pro Al-Qaeda propaganda. Investigation, including the use of an undercover US FBI agent who had gained the trust of CE and RJ, revealed that the two men had plotted to cut a hole in a railway bridge to derail the Canadian Via Rail passenger train between Toronto and New York. The FBI agent had surreptitiously recorded their conversations, which made up the bulk of the case's evidence, including CE's description on the hierarchical structure and mode of communication of a terrorist group and that CE was receiving orders from Al Qaeda through a middleman. It was also unveiled during the investigation that CE had or intended to finance a total of CAD 4 200 to the terrorist group. In 2013, CE and RJ were arrested. CE and RJ were both charged with four offenses: conspiring to damage transportation property with intent to endanger safety for a terrorist organization, conspiring to commit murder for a terrorist group, plus two counts of participating or contributing to a terrorist. CE was found guilty of all four charges plus another he faced alone for participating in a terrorist group. RJ was convicted of all charges except that of "conspiring to damage transportation property with intent to endanger safety for a terrorist organization." In March 2015, both men were sentenced to life imprisonment.

173. In other cases, TF prosecutions were not possible, especially in cases based largely on intelligence that may fall short of the evidentiary threshold required by criminal courts. In instances where prosecution is not deemed to be the best avenue to protect the public or human sources, or is not possible, a wide-range of disruption techniques is employed. Such techniques typically include: arrests; search-and-seizure raids; "intrusive surveillance" (in which police make it obvious to the suspects that they are being watched); civil forfeiture; inclusion of specific persons in Canada's no fly list (which is particularly relevant considering the growing threat of foreign fighters); revocation of the charitable status of NPOs identified as having been used for TF purposes; listing of terrorist entity under the CC, barring of individuals who pose a threat to the security of Canada and prohibition from entering or obtaining status in Canada or from obtaining access to sensitive sites, government assets or information; and extradition. Canada frequently uses other criminal justice and administrative measures to disrupt TF activities when a prosecution for TF is not practicable.

Overall Conclusions on Immediate Outcome 9

174. **Canada has achieved a substantial level of effectiveness for IO.9**.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

175. Canada implements UNSCR 1267 and UNSCR 1373 (and their successor resolutions) through three separate domestic listing mechanisms: the United Nations Al-Qaeda and Taliban Regulations (UNAQTR); the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST); and the CC. Canada plays an active role in co-sponsoring the listing of new terrorist entities, as appropriate, and delisting defunct entities. The lists of entities whose assets are to be frozen under UNSCR 1267 and its successor resolutions are automatically incorporated into Canadian law by reference through UNAQTR. Accordingly, UNSC decisions to list or delist an individual are given immediate effect in Canada; no additional action by Canadian authorities is needed to give legal effect to a designation. These decisions are rapidly brought to the attention of FRFIs, but not of other REs.

176. The CC is Canada's primary listing mechanism, and allows it to satisfy the obligations under UNSCR 1373. While the RIUNRST also satisfies UNSCR 1373, no listings have been added to the RIUNRST since 2006. In practice, this CC process entails a criminal intelligence report prepared by the RCMP or a security intelligence report prepared by the CSIS, which is subjected to a legal review by independent counsel to ensure that it meets the CC listing threshold (i.e. reasonable grounds to believe), as well as interdepartmental consultations. The authorities can list an entity to Canada's domestic list (under the CC) in an expedited manner if necessary.[66] The Canadian authorities provided a concrete example (IRFAN Canada, below) of the domestic listing of a NPO.

Box 11. **IRFAN-Canada**

In 2010, CRA-Charities suspended the receipting privileges of IRFAN-Canada. The suspension was based on the organization's failure to provide and maintain records, which interfered with CRA-Charities' ability to carry out the audit that began in 2009. CRA-Charities continued with the audit during the period of suspension and ultimately revoked IRFAN-Canada's charitable registration in 2011. It shared information regarding IRFAN-Canada's possible association with the listed organization, Hamas, with partner organizations, including the RCMP. A CRA-Charities analyst seconded to the RCMP was able to provide expertise to facilitate the sharing of information, as authorized by legislation. The RCMP collaborated with and received financial intelligence from FINTRAC.

In 2014, the RCMP officially opened the investigation, which resulted in an RCMP recommendation to PS Canada to have IRFAN-Canada listed as a terrorist organization. The financial intelligence provided by FINTRAC also served to inform deliberations on the listing of IRFAN. The RCMP, PS Canada, and the DOJ worked together to prepare the documentation required for the Government to make a decision as to the listing. In April 2014, IRFAN-Canada was listed as a terrorist entity by the Government of Canada. Following the listing, criminal investigations were initiated by the RCMP's INSETs in Ontario and Quebec, and were still ongoing at the time the assessment.

[66] Several factors may be considered, as for example: operational imperative to list more quickly to freeze known assets; nexus to Canada; national security concerns; allied concerns, etc.

177. Third-party requests from foreign jurisdictions are considered under the CC framework. Canada has received numerous requests from foreign jurisdictions since the establishment of the regime and has given effect to both formal and informal requests, though it does not keep records on the number of third-party requests for listing under the CC. The authorities also indicated that they were able to list an entity on an expedited manner when necessary, following third-party requests.

178. As of 7 April 2015, 54 entities were listed pursuant to the CC and 36 terrorist entities under the RIUNRST. Once an entity has been listed, PS issues a news release advising of the new listing and provides a notification on its sanctions website, and the listings are published in the Canada Gazette, approximately two weeks after listing. To assist FIs search their list of customers against these listed terrorist names, OSFI maintains on its website a database of all terrorist names (and known identifiers) subject to Canadian laws, and notifies FIs without delay by posting instantly a notification to its website and by notifying all its e-mail subscribers each time a new terrorist name is listed under Canadian law, or there are changes to existing information. FRFIs are also required to report to OSFI monthly that they have conducted the name screening and report any terrorist property that they have identified and frozen. FINTRAC also provides a link to OSFI's website on its own website, as well as guidance to REs on the reporting requirements related to terrorist property. Other than in the case of OSFI, the mechanism for informing the private sector about listed entities appears to be rather passive, as it relies on REs consulting the Official Gazette and the websites of the competent authorities and/or, when they are aware of this possibility, subscribing to RSS feeds (or the UN notification system).

179. The FRFIs met during the on-site had a good understanding of their screening obligation regarding targeted financial sanctions (TFS) and implemented sanctions without delay. DNFBPs, however, do not have a good understanding of their obligations (see IO.4). Furthermore, while they are required to check the listings at the beginning of a business relationship, they are not required to conduct a full search of their customer databases on a regular basis, which is a major limitation to an effective implementation of TFS.

180. Persons listed in Canada may apply for revocation of the designation under the framework detailed in R.6.[67] Examples of delisting were shared with the assessors. One entity was delisted in December 2012.

181. Canada has not proposed a designation to the UN Sanctions Committees, but acted as co-sponsor on several occasions.

Targeted approach, outreach and oversight of at-risk non-profit organisations

182. The Canadian NRA concluded that registered charities present a high risk of TF, due to the fact that a large number of the financial transactions that charities conduct may be performed via delivery channels with a high degree of anonymity and some level of complexity (i.e. multiple

[67] Under the Criminal Code regime, there are several ways an entity could be delisted. The Minister of Public Safety and Emergency Preparedness can recommend to the Governor in Council that an entity be delisted at any time, the entity could be recommended for delisting as part of the two-year review, or an entity can apply for delisting as per the process outlined under section 83.05(2).

intermediaries are involved). The NRA also highlights that the significant use of cash may make it difficult for the authorities to establish the original source of funds, and that it may be difficult to know how the funds or resources will be used once transferred to partner organizations or third parties.

183. Canada has implemented a targeted approach regarding the NPO sector vulnerability to TF. In 2015, the CRA, which regulates charities under the Income Tax Act, conducted a review in addition to the NRA, to examine the size, scope and composition of the NPO sector in Canada and to determine which organizations, by virtue of their activities and characteristics, were at greater risk of being abused for terrorist support purposes. The CRA found that, in Canada, the organizations at greatest risk of terrorist abuse because of the nature of their activities and characteristics are charities. As a result, the authorities concluded that, in the Canadian context, NPOs that fall within the FATF definition are charities. Four reports had previously been published regarding the sector, notably a "Non-profit Organisation Risk identification project" in 2009. Canada has a large NPO sector, comprising of approximately 180 000 organizations. The sector can be divided into two groups: charities and NPOs, depending on their legal structures. While both are exempt from paying taxes, federally registered charities (of which there are approximately 86 000) receive additional fiscal privileges and submit annual information returns, which include notably the names of the directors or trustee, a description of its activity and financial information, including sources of funding. Non-charity NPOs (of which there are approximately 94 000) having assets in excess of CAD 200 000 or annual investment income exceeding CAD 10 000 are not required to register, but must file an annual NPO Information Return with the CRA.[68] In addition, non-charity NPOs incorporated provincially or federally would be required to file certain information with the provincial or federal governments on an annual basis depending on the statute under which the organization is formed. This typically includes information related to address, directors, and the date of the last general meeting. In certain cases, organizations may have to provide detailed financial information depending on value of assets or fund received.

184. CRA-Charities reviews all applications for charitable registration and conducts audits of registered charities. From 2008–2014, CRA-Charities completed approximately 5 000 audits in total; 16 these audits comprised a national security concern, eight of which resulted in revocation of registration.[69] If an applicant charity does not meet the requirements of registration, e.g. due to terrorism concerns, the CRA denies its application.[70] Through its work, CRA-Charities may take administrative action to disrupt an organization's activities where it has identified a risk of terrorist abuse, and/or relay the information to LEAs. If a registered charity no longer complies with the requirements of registration, for any reason including connections to terrorism, the division can

[68] The annual NPO Information Return includes information about their activities, assets and liabilities.
[69] Two led to penalties totalling CAD 440 000; four led to compliance agreements with the charity involved and two resulted in education letters.
[70] The Income Tax Act requires that charities devote their resources to charitable purposes and activities. An organization that supports terrorism would be denied registration for carrying on activities contrary to public policy, which would not qualify as charitable. Additionally, the Charities Registration (Security Information) Act provides a prudent reserve power to deny or revoke registration when terrorist connections are suspected.

apply a range of regulatory interventions and, in the most the serious cases, may revoke the registration.

185. CRA-Charities conducts outreach to advise charities of their legislative requirements and how to protect themselves from terrorist abuse. This includes general guidance on topics related to sound internal governance, accountability procedures, and transparent reporting, as well as specific tools such as a checklist on avoiding terrorism abuse and a web page on operating in the international context. CRA-Charities will build on this existing outreach through its enhanced outreach plan. CRA-Charities has begun consultations with the sector to educate them on the risk of terrorist abuse and to gain a better understanding of their needs in terms of outreach and guidance.

186. National coordination has been enhanced. The CRA shares information with relevant partners where there are concerns that a charity is engaged in providing support to terrorism. If the division encounters information that is relevant to a terrorism investigation when carrying out its regulatory duties, it shares that information with national security partners and LEAs. The division shared information with domestic national security partners in support of their mandate in 47 cases. Similarly, the division received information from partners in 51 cases to assist with its analysis, in 2014/2015. In addition, to facilitate the sharing of information, a secondment program between the CRA and its partners has been instituted: CRA employees are seconded to the partner agencies and employees from the partner agencies are seconded to the CRA.

187. According to the CRA's NPO Sector Review of 2015 the 86 000 registered charities represent 68% of all revenues of the NPO sector and nearly 96% of all donations (see R.8). CRA registered charities also account for a substantial share of the sector's foreign activities as about 75% of internationally operating NPOs are registered as charities. In addition, as detailed above, all registered charities, regardless of the value of their assets, and all NPOs with assets in excess of CAD 200 000 or annual investment income exceeding CAD 10 000 must file an annual information return with the CRA, which includes the provision of financial information. In addition, registered charities with revenue in excess of CAD 100 000, and/or property used for charitable activities over CAD 25 000, and/or that have sought permission to accumulate funds, must provide more detailed financial information. The authorities identify charities as being the organizations falling under the FATF definition of NPOs and reviewed the NPO's sector (see Box 12).

Box 12. **Canadian NPO's Sector Review**

The national regulator of registered charities, i.e. the CRA, conducted a domestic review of the entire NPO sector in Canada in order to identify which organizations, by virtue of their activities and characteristics, were at greater risk of being abused for terrorist support purposes. The review aimed to ensure that Canada (i) is not taking an overly broad interpretation of the FATF definition of NPO, (ii) focuses on those organizations that are at greatest risk, and (iii) does not burden organizations that not at risk with onerous reporting requirements for TF purposes.

The CRA reviewed existing publications and research by governmental, academic, and non-profit organizations related to the non-profit sector, including reports by Statistics Canada on non-profit institutes, consultations on regulations affecting the sector, and studies on trends in charitable

giving and volunteering. In addition, it looked at existing laws and reporting requirements affecting NPOs. To determine where there is risk, NPOs were categorized based on shared characteristics such as purpose, activities, size and location of operation. The CRA compared those characteristics with the elements of the FATF definition of NPO. It also took into consideration the findings of the FATF typologies report Risk of Terrorist Abuse in NPOs to identify features that put organizations a greater risk.

The CRA found that, in Canada, the organizations at greatest risk of terrorist abuse are charities. As a result, the authorities concluded that, in the Canadian context, only charities fall within the FATF definition of NPO. While organizations at greatest risk are charities, not all charities are at risk. The insight obtained from the sector review allowed Canada to focus on charities as the starting point for its NRA.

Source: FATF (2015), Best practices paper on combating the abuse of NPOs—October 2015.

188. The registered charity met during the assessment is large and has a number of international connections. It has a good understanding of its vulnerability to TF and has implemented adequate measures to mitigate that risk, without disrupting legitimate NPO activities.

Deprivation of TF assets and instrumentalities

189. As of February 2015, the total amount of frozen assets belonging to designated entities is CAD 131 235 in 12 bank accounts, CAD 29 200 in six life insurance policies, nine house insurance policies, and one automobile insurance policy, totalling CAD 3 248 612 frozen. The number of entities that had their assets frozen was not provided.

190. Despite the high number of TF occurrences (see IO.9), no assets and instrumentalities related to TF were seized or confiscated in circumstances other than designations. There are several reasonable explanations for this. LEAs indicated that, in several cases, no assets or instrumentalities were found. In others cases, the lack of confiscation can be due to the fact that TF investigations do not always result in TF charges and other means of disruption (see IO 9). The authorities also provided cases of TF investigations unrelated to the UN designations where the RCMP seized some assets and instrumentalities,[71] but did not proceed to seek their confiscation.

Consistency of measures with overall TF risk profile

191. While the terrorist threat has grown in the recent years, in particular in light of an increased number of Canadian nationals who have joined terrorist groups abroad,[72] not all terrorist entities identified have financing or support in Canada. In October 2014, Canada was victim of two

[71] The assets seized included over CAD 10 000 in cash, in one case, and tractor trailers in another.
[72] As stated by the Director of CSIS following his appearance at the Senate Committee on National Security and Defence, as of the end of 2015, the Government was aware of approximately 180 individuals with Canadian a nexus who were abroad and suspected of engaging in terrorism related activities. The Government was also aware of a further 60 extremist travellers who had returned to Canada.

terrorist attacks in Saint-Jean-sur-Richelieu and Ottawa, perpetrated by two Canadian citizens who intended to travel abroad for extremist purposes, but had been prevented from doing so. The TF investigation related to these events was still ongoing at the time of the assessment. In other instances, the authorities detected the transfer of suspected terrorist funds to international locations. These transfers had been conducted through a number of methods, including the use of MSBs, banks, and NPOs, as well as smuggling bulk cash across borders.

192. Canada has demonstrated to some extent only that it pursues the TF threat that it faces (see IO.9). The system suffers from inadequate implementation of UNSCRs by DNFBPs. Nevertheless, it must also be noted that, in some respect, Canada goes beyond the standard—this in particular the case with respect to the CC terrorist list, which Canada reviews every two years to ensure that the legal threshold for listing continues to be met for each entity listed.

Overall Conclusions on Immediate Outcome 10

193. **Canada has achieved a substantial level of effectiveness for IO.10.**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

194. Canada's framework to implement the relevant UN CFP sanctions relies on three main components: (i) a prohibition to conduct financial transactions to Iran and the DPRK, with a few regulated exceptions, (ii) an obligation to freeze assets of designated persons; and (iii) an obligation to notify the competent authorities of any frozen assets.

195. Canada implemented the UNSCR 1737 and 1718 obligations, including part of the freezing obligations, by issuing within the UN-requested timeline two regulations dealing with Iran and the DPRK respectively. Both regulations impose freezing obligations that are generally comprehensive (see R.7). The lead agency for their implementation is GAC. Canada also went beyond the standard by imposing additional unilateral sanctions under the Special Economic Measures Act (SEMA). As a result of its Controlled Engagement Policy towards both countries, the Canadian Government does not engage in active trade promotion with Iran and the DPRK, and, with almost all commercial financial transactions between Canada and Iran prohibited, the volume of existing bilateral trade with both countries has dropped considerably. Canada also ensured that the exceptions to the general prohibition of conducting financial transactions[73] do not apply with respect to designated persons and entities.

196. Decisions taken by the UNSC under 1737 and 1718 take immediate effect in Canada. The current lists of designated persons and entities are published on the OSFI website. To facilitate the

[73] Examples of these exceptions include: non-commercial remittances to the DPRK; financial banking transactions of CAD 40 000 and under between family members in Canada and family members in Iran; and other transactions permitted on a case-by-case basis, at the discretion of the Minister of Global Affairs. In practice, exceptions have been granted mainly in the case of prospective Iranian immigrants for the purposes of immigration fees and related transactions.

implementation of the TFS, guidance is provided on the GAC and OSFI website.[74] In addition, OSFI notifies the FRFIs of any changes to the lists on the same day as the changes occur, or on the day that follows the receipt of the note verbale. It also reminds FRFIs on a monthly basis of their screening and freezing obligations, either per web post or per email. Its guidance requires FRFIs to search their records for designated names in two ways: (i) by screening new customers' names against the official lists at the time such customers are accepted; and (ii) by conducting a full search of all customers' databases "continuously," which the guidance defines as "weekly at a minimum." No other authorities provide notifications to other REs of changes made to the lists. As a result, while the legal obligations to implement PF-related TFS are the same across the range of REs, swift action is actively facilitated in the case of FRFIs only. REs may nevertheless subscribe to the RSS feeds on the GAC website, or to the UN notification system, in order to be notified of changes to the Iran and DPRK regulations.

Identification of assets and funds held by designated persons/entities and prohibitions

197. Canada has had some success in identifying funds and other assets of designated persons, and preventing these funds from being used, as indicated in the table below. Two of the larger banks, as well as one provincial FI and two life insurers have identified assets of designated persons, frozen those assets (where available), and reported the case to the RCMP, OSFI, and FINTRAC. The assets were detected through timely screening of the FIs' customers' (but not other parties such as the beneficial owner, despite OSFI's guidance in this respect) against the UN lists. While the freezing are occurrences are low, they nevertheless indicate that FIs and in particular D-SIBs are taking measures to prevent their potential misuse for PF activities. No information was provided on the timing of the freezing measures.

Table 17. **Assets Reported Under the Regulations Implementing the United Nations Resolutions on both Iran and the DPRK, as of September 2015**

Reporting Entity	Number of Accounts/Contracts	Assets Frozen		Assets Reported but Not Frozen (no cash surrender value) in CAD
		CAD equivalent of amounts in foreign currencies	Amounts in CAD	
Bank X (DTI)	1		78 838	
Bank Y (DTI)	2	591.2	845	
Provincial FI	4		30 647	
Total re. Accounts	**7**	**591.2**	**110 330**	
Federal Life Insurer X	6			29 200
Life Insurer Y	10			3 248 612
Total re. Insurance Contracts	**16**			**3 277 812**

[74] See Global Affairs Canada (nd), Canadian Sanctions Related to Iran, www.international.gc.ca/sanctions/countries-pays/iran.aspx?lang=eng; Canadian Sanctions Related to North Korea, www.international.gc.ca/sanctions/countries-pays/korea-coree.aspx?lang=eng.

198. Canada went beyond the UN listings by investigating the financial components of proliferation activities detected on their territory. The authorities successfully prosecuted one individual for the export of prohibited dual-use goods. The enforcement function is shared between the RCMP and the CBSA, with the former taking the lead in instances that include a potential nexus with national security or OCGs, and the CBSA taking the lead in other instances. So far, the investigations revealed no need for freezing measures: the individuals had little assets, most of which had been used to purchase unauthorized dual use goods.

199. Through the analysis of STRs and other information, FINTRAC has detected potential violations of the SEMA and import-export legislation which it disclosed to the CBSA and CSIS.[75] The analysis of STRs notably pointed to some instances of potential wire stripping and sanctions evasion. No figures were provided as the system does not keep track of STRs that also mention suspicion of PF. According to the authorities, in most instances, the REs may not specifically refer to suspicions of PF, but simply highlight that the transactions does not make economic sense. FINTRAC has discussed some of these cases with its partner agencies in the operation meetings of the Counter-Proliferation Operations Committee.

FIs and DNFPBs' understanding of and compliance with obligations

200. Large FIs, and in particular the D-SIBs, have a good understanding of their freezing obligations, including with respect to PF. They generally have staff dedicated to the implementation of TFS that regularly check the UN lists. They are also aware of the risk of wire stripping and have reported instances of potential wire stripping to FINTRAC. Smaller FRFIs have a relatively good understanding of their obligations, although several do not distinguish the PF-related from the TF-related sanctions. DNFBPs, however, are far less aware of their PF-related obligations, so far, none of them have frozen assets belonging to designated persons.

201. Some outreach has been conducted, notably by the RCMP, with a view to increase the general public's awareness of the proliferation risk. Although some of the outreach activities include information on red flags for potentially suspicious PF activities, these efforts have, so far, mainly focused on proliferation activities rather than the implementation of related TFS.

Competent authorities ensuring and monitoring compliance

202. There is no formal mechanism for monitoring and ensuring compliance by FIs and DNFBPs with PF-related obligations. Nevertheless, some monitoring does take place in practice with respect to FRFIs: OSFI, in the exercise of its general functions, has examined the systems put in place by FRFIs to implement the sanctions regimes for both TF and PF. It has also identified shortcomings (in particular the lack of screening of persons other than the customer) and requested improvements in the screening processes. As a result of a sanction recently imposed by the US regulator on a foreign bank with subsidiary operations in Canada and the US for violations of the PF-related sanctions, OSFI

[75] While FINTRAC does not have an explicit mandate to receive reports of suspicions of PF, it is required by law to disclose financial intelligence to assist in investigations and prosecutions for ML, TF and other threats to the security of Canada, which could include PF.

increased its dialogue with and monitoring of that specific bank. Ultimately, it was satisfied that the activities conducted in Canada were different than those conducted in the US and that the risk was limited in Canada. OSFI is not, however, habilitated to sanction any potential breach of PF-related obligations.

203. While this ad hoc monitoring by the OSFI is proving helpful with respect to FRFIs and useful in identifying shortcoming in their implementation of TFS, it does not entirely compensate the lack of a more comprehensive monitoring system.

4

Overall Conclusions on Immediate Outcome 11

204. **Canada has achieved a moderate level of effectiveness with IO.11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

Several, but not all REs listed in the standard are subject to Canada's AML/CFT framework:

- AML/CFT requirements were found to breach the constitutional right to attorney-client privilege by the Supreme Court of Canada, and, as a result, are inoperative with respect to legal counsels, legal firms, and Quebec notaries. The exclusion of these professions is not line with the standard and raises serious concerns (e.g. in light of these professionals' key gatekeeper role in high-risk activities such as real-estate transactions and formation of corporations and trusts).
- TCSPs (other than trust companies), non FI providers of open loop pre-paid card, factoring companies, leasing and financing companies, check cashing business and unregulated mortgage lenders, online gambling, and virtual currencies do not fall under the AML/CFT regime, but legislative steps have been taken with respect to online gambling, open-loop pre-paid cards and virtual currencies.

FIs including the D-SIBs have a good understanding of the ML/TF risks and of their AML/CFT obligations. While a number of FIs have gone beyond existing requirements (e.g. in correspondent banking), technical deficiencies in some of the CDD requirements (e.g. related to PEPs) undermine the effective detection of some very high-risk threats, such as corruption.

Requirements—on FIs only—pertaining to beneficial ownership were strengthened in 2014 but there is an undue reliance on customers' self-declaration for the purpose of confirming beneficial ownership.

Although REs have gradually increased the number of STRs and threshold-based reports filed, the number of STRs filed by DNFBPs other than casinos remains very low.

With the exception of casinos and BC notaries, DNFBPs—and real estate agents in particular—are not adequately aware of their AML/CFT obligations.

Recommended Actions

Canada should:

- Ensure that legal counsels, legal firms, and Quebec notaries are subject to AML/CFT obligations when engaged in the financial transactions listed in the standard.
- Ensure that TCSPs (other than trust companies) open loop pre-paid cards, including non FI providers, virtual currency and on line gambling to AML/CFT requirements.
- Require DNFBPs to identify and verify the identity of beneficial owners and PEP in line with the standard.

- Require FIs to implement preventive measures with respect to PEPs, and wire transfers in line with the FATF standards, and monitor (e.g. through targeted inspections) and ensure compliance by all FIs of their obligation to confirm the accuracy of beneficial ownership in relation to all customers.
- Enhance the dialogue with DNFBPs other than casinos to increase their understanding of their respective ML/TF vulnerabilities and AML/CFT obligations, in particular with real estate agents, dealers in precious metals and stones (DPMS) (with greater involvement of the provincial regulators and the relevant trade and professional associations). Update ML/TF typologies and specific red flags addressed to the different categories of DNFBPs to assist in the detection of suspicious transactions.
- Consider introducing a licensing or registration regime, or other controls for DPMS.
- Monitor and ensure DNFBPs' and small retail MSBs' compliance with TFS obligations.
- Issue further guidance, especially to non-FRFIs, on the new requirements related to domestic PEPs.
- Strengthen feedback to small banks and the insurance sector on the use of STRs.
- Issue guidance for all REs to facilitate the detection of the possible misuse of open loop prepaid cards in ML and TF schemes.

The relevant Immediate Outcome considered and assessed in this chapter is I04. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF Risks and the Application of Mitigating Measures

205. The level of understanding of ML/TF risks and AML/CFT obligations, as well as the application of mitigating measures vary greatly amongst the various REs.

206. FIs are aware of the main threats and high-risk sectors identified in the NRA, as well as of the level of ML/TF vulnerabilities associated to their activities. Recent trends in the FIs' understanding of risks and AML/CFT obligations is not immediately apparent in the supervisory data (because the latter aggregates as "partial deficiencies" both minor and more severe failures), but, according to the authorities, have been positive. The major banks have developed comprehensive group-wide risk assessments and implement mitigating measures derived from detailed consideration of all relevant risk factors (including lines of business, products, services, delivery channels, customer profiles). Several other FIs stated that their risk assessment and mitigating measures are already in line with the findings of the NRA. Specific attention is paid to cash (including potentially associated to tax evasion) and to the geographic risk (which, especially in the case of large banks, takes into account the index of corruption developed by relevant international organization and includes offshore financial centres). Some FIs also consider trust accounts held by lawyers and other legal professions as presenting a higher risk and, as a result, conduct enhanced

monitoring of these accounts. Specific products associated to real estate transactions, such as mortgage loans, are also considered as high-risk products. Over the last three fiscal years, a total of 9 556 STRs were filed with FINTRAC regarding suspected ML/TF activities in relation to real estate, which represents 3,8% of the overall amount of STRs received, with most STRs coming from banks, credit unions, *caisses populaires*, and trust and loan companies. The main typologies identified in this respect range from the use of nominees by criminals to purchase real estate or structuring of cash deposits to more sophisticated schemes where, for example, loan and mortgage schemes are used in conjunction with the use of lawyer's trust account.

207. In some instances, however, the regulator's on-site inspections revealed issues with the quality and scope of the risk assessments, especially in relation to the elements taken into account as inherent risk of individuals, and to the consistency among business-lines. Smaller FRFIs display a weaker understanding of ML/TF risks, and tend to regard AML/CFT obligations as a burden.

208. The life insurance sector appears to underestimate the level of risk that it faces. According to FINTRAC supervisory findings, life insurance companies and trust and loan companies that are non-FRFIs show the highest level of deficiency in their risk assessment, as well as the weakest understanding of their AML/CFT obligations. Non-federally regulated life insurance companies have a weak understanding of their ML/TF risks than federally regulated companies, and appear particularly refractory to improving AML/CFT compliance.

209. The representatives of the securities sector recognized the high risk rating of their activities, but also noted that the higher level of risk lie mainly in smaller security firms and individuals. Firms not involved in cross-border activities seem to underestimate their vulnerability to ML risk, having a limited notion of geographic risk, as mainly referred to offshore countries. Overall, securities dealers have a good understanding of their AML/CFT obligations, although supervisory findings highlight that the level of understanding is weaker in more simplified structures and that internal controls are a recurring area of weakness.

210. MSBs' level of awareness of AML/CFT obligations is consistent with their size and level of sophistication of their business model. MSBs that operate globally as part of larger networks are aware of the specific ML/TF risks that they face (i.e. risks emanating mainly from the fact their activity is essentially cash-based). They have developed specific criteria to evaluate certain risk (e.g. the risks posed by their agents) to enable them to determine the appropriate level of controls. While the assessment team did not have an opportunity to meet with representative from the smaller independent MSBs,[76] representatives from other private sector entities as well as FINTRAC confirm that smaller MSBs are far less aware of their AML/CFT obligations and their vulnerabilities to ML/TF. According to FINTRAC, community-specific MSBs are reluctant to apply enhanced due diligence to higher risk customers. To assist mainly small MSBs in the development of a RBA, on 1 September 2015 FINTRAC developed an RBA workbook for MSBs.

[76] Under the glossary of the NRA the said category has been defined as these MSBs are focused on retail transactions, and have stand-alone computer systems and street-level retail outlets across Canada. Of these, one sub-group offers currency exchanges only, typically in small values, and is often found in border towns (e.g. duty-free shops), while the other sub-group offers currency exchanges, but may also offer money orders and EFTs, typically as an agent of a national full-service MSB.

211. Casinos vary greatly in size, complexity, and business models. All the relevant gaming activities are subject to AML/CFT requirements where (on the basis of the model in place) the province or the Crown corporation is responsible for their compliance. Representatives from casinos demonstrated a good understanding of their AML/CFT obligations and of the most frequent ML typologies in their sector. Nevertheless, their implementation of CDD measures seems to follow a tick-box approach rather than be based on an articulated risk-assessment. Moreover, casinos seem to be essentially focused on cash, and appear to underestimate to some extent the risk posed by funds received from accounts with FIs.

212. DPMS are highlighted as a high-risk in the NRA. Compliance examinations conducted between 2012 and 2014 revealed industry-wide non-compliance. FINTRAC has worked with two DPMS associations (namely the Canadian Jewelers Association, CJA, and the Jewelers Vigilance Canada, JVC, which, together, represent about one quarter of the Canadian DPMS) to strengthen compliance of this sector. This has led to an increase in these DPMS' understanding of their AML/CFT obligations, as shown in subsequent examinations. Nevertheless, the absence of licensing or registration system or other forms of controls applicable to the sector in its entirety creates major practical obstacles for FINTRAC to properly establish the precise range of subjects that it should reach out to.

213. The real estate agents met, despite being aware of the results of NRA, consider that they face a low risk because physical cash is not generally used in real estate transactions. As the normal practice is to accept bank drafts—agents consider banks have mitigated the ML/TF risk. In the province of Quebec, notaries trust accounts are used to deposit the funds involved in real estate transactions—real estate agents therefore consider that notaries are in a better position to detect possible ML activities, but Quebec notaries are not currently covered by the AML/CFT regime. Real estate agents are overly confident on the low risk posed by "local customer," as well as non-resident customer originating from countries with high levels of corruption.

214. The accountants' level of awareness of AML/CFT obligations is quite low. The competent professional association underlined that, in the absence of guidance and outreach efforts, accountants are often unclear as to when they are subject to the AML/CFT regime.

215. BC notaries provide a wide range of services related to residential and commercial real estate transfers. They are, however, not fully aware of the risk and their gatekeeper role in relation to real estate transactions. Like real estate agents, they consider that all risks have been mitigated by the bank whose account the funds originated from.

216. In May 2015, FINTRAC issued guidance to assist REs in the implementation of their RBA. Most representatives of DNFBPs considered this helpful, but also expressed the need for further initiatives focused on their respective activities.

217. AML/CFT obligations are inoperative towards legal counsels, legal firms and Quebec notaries involved in the activities listed in the standard. In February 2015, the Supreme Court of Canada declared that a portion of Canada's AML/CFT legislation is unconstitutional as to attorneys, because it violates the solicitor-client privilege. Representatives from the private sector and the Canadian authorities confirmed that lawyers in Canada are frequently involved in financial transactions, often related to high-risk sectors, such as real estate, as well as in the formation of trust

and companies. In the context of real estate transactions, in particular, lawyers and Quebec notaries provide not only legal advice, but also trading services,[77] and receive sums from clients for the purchase of a property or a business, deposited and held temporarily in their trust accounts. Representatives of the Federation of Law Societies, although aware of the findings of the NRA, did not demonstrate a proper understanding of ML/TF risks of the legal profession. In particular, they appeared overly confident that the mitigation measures adopted by provincial and territorial law societies (i.e. the prohibition of conducting large cash transactions[78] and the identification and record-keeping requirements for certain financial transactions performed on behalf of the clients)[79] mitigate the risks. While monitoring measures are applied by the provincial and territorial law societies, they are limited in scope and vary from one province to the other. The on-site visit interviews suggested that the fact that AML/CFT requirements do not extend to legal counsels, legal firms and Quebec notaries also undermines, to some extent, the commitment of REs performing related functions (i.e. real estate agents and accountants).

CDD and Record-Keeping

218. CDD obligations, and especially those dealing with beneficial ownership, politically exposed foreign persons (PEFPs) and, for FIs, wire transfers, are not fully in line with FATF standards. In addition, some DNFBPs are not subject to AML/CFT requirements and monitoring (see TCA for more details).

219. Since February 2014, FIs are required to obtain, take reasonable measures to confirm, and keep records of the information about an entity's beneficial ownership. In practice, FIs seem to interpret this new provision as requiring mostly a declaration of confirmation by the customer that the information provided is accurate, to be followed, in some cases, by an open source search. Only a few of the FIs interviewed stated that they would spend time to check the information received and verify the information through further documents and information, which raises concerns. The undue reliance on a customer's self-declaration (as a way to replace the duty to confirm the accuracy of the information provided) appears to be a significant deficiency in the implementation of preventive measures and OSFI has issued findings to FRFIs requiring that more robust beneficial ownerships confirmation measures be undertaken. Moreover, REs have limited methods to confirm the accuracy of beneficial ownership information (see IO.5). Several FIs are in the process of implementing the new requirement by reviewing the information gathered for their existing customers, but most of the FIs interviewed were unable to establish the current stage of this review.

220. Due to the recent entry in force of the new beneficial ownership requirements, there is limited information on how well FRFIs are complying with the new obligations. Recent supervisory findings—albeit limited in numbers- suggest that serious deficiencies remain.

---

[77] This is notably confirmed by the exemption from the requirement to be licensed as real estate agent granted under the relevant provincial legislation (for example in British Columbia, Real Estate Service Act, Section 3, (3) lett. f, and, for Quebec Notaries, Quebec Notary Act, Art.18).

[78] Model Rule on Cash Transactions adopted by the Council of the Federation of Law Societies of Canada on July 2004.

[79] Model Rule on Client Identification and Verification Requirements, adopted by the Council of the Federation of Law Societies of Canada on 20 March 2008 and modified on 12 December 2008.

221. Discussions with DNFBPs, in particular those with real estate representatives, highlighted that even basic CDD requirements are not properly understood and that the implementation of the "third-party determination rule" seems to be mainly limited to asking the customer whether he/she is acting under the instructions of other subjects, without further enquiry.

222. Measures to prevent and mitigate the risks emanating from corruption and bribery (classified as very high threats in the NRA) are insufficient, because of shortcomings in the legal framework (see TCA) and weak implementation of existing requirements. REs' capacity to properly detect these criminal activities is significantly undermined. This is in particular the case with DNFBPs considering that they are not required to take specific measures when dealing with PEPs. In order to determine whether they are in a business relationship with foreign PEPs (i.e. PEFPs) or their family members, FIs combine the information gathered through the client identification forms and the screening process (realized mainly through commercial databases). Most FIs interviewed limited their search to the customer and did not seem to establish whether they were dealing with "close associates" of PEFPs. Furthermore, the range of information required by FIs is limited to the source of funds, and does not always include the source of wealth. Most FIs appear to be over-reliant on the self-declaration of the customer to determine the source of funds, and do not perform further verification of the accuracy of the information provided. The approval of senior management can be obtained "within 14 days" from the day on which the account is activated, which will be extended to 30 days when the new provisions on domestic PEPs enter into force. Some FIs confirmed that, during that timeframe, the PEPs can operate the account—the business relationship can therefore be conducted without adequate controls having taken place. According to OSFI's supervisory findings, in some cases, the involvement of senior management occurs even beyond the prescribed timeframe.

223. There are nevertheless some encouraging signs: over the last four fiscal years, FINTRAC assessed non-FRFIs' determination of PEFPs[80] in the context of 2 508 examinations in four different sectors (credit unions and *caisses populaires*, trust and loan companies, MSB and securities dealers), and identified shortcomings were identified in only 4% of the cases.

224. Several FRFIs, including the D-SIBs,[81] interviewed, apply an onboarding procedure for all customers who include the same determination in relation to "domestic PEPs" and the same enhanced due diligence measures; in order to determine whether a customer is a "domestic PEP," the large banks rely mainly on the information contained in commercial databases. The notion of "domestic PEP" that they apply varies greatly from one institution to the other, and focuses on customers only, i.e. without taking the beneficial owners into account. Some non-FRFIs expressed the need for timely guidance to clarify and facilitate the implementation of the new requirement regarding domestic PEPs and their close associates.

[80] The said determination is considered in relation to the following cases: the opening of new accounts (financial entities and securities), when an EFT over CAD 10 000 is sent or received (financial entities and MSBs) or a lump sum payment of CAD 100 000 or more in respect to an annuity or life insurance policy.

[81] In this respect, OSFI Guidelines B-8, Deterring and detecting ML/TF, explain that FRFIs are not (currently) under any legal obligation to identify domestic PEPs *per se*, nevertheless, where a FRFI is aware that a client is a domestic PEP, the FRFI should assess what effect this may have on the overall assessed risk of the client. If the assessed risk is elevated, the FRFI should apply such enhanced due diligence measures as it considers appropriate.

225. DNFBPs, however, are not required to determine whether they are dealing with foreign PEPs. The interviews conducted confirmed that the political role of customers is not an element that DNFBPs take into account in practice to determine whether further mitigation measures are necessary.

226. While FRFIs have adequate record-keeping measures in place, the smaller credit unions, retail money services business and DNFBPs active mainly in the real estate sector implement weaker measures, which are mainly paper based or based on a combination of paper and manual procedures. FINTRAC identified several deficiencies in record-keeping procedures of BC notaries as well, especially with respect to the conveyancing of real estate.

227. Correspondent banking services are mostly offered by D-SIBs. The D-SIBs have a centralized global management and monitoring of correspondent banking relationships. In some cases, they go above and beyond the current requirements: for example, when reviewing correspondent bank relationships, they also take the quality of AML/CFT supervision into account. Controls on correspondent banking seem to be also reviewed through visits on site and testing procedures by the internal audit. According to OSFI supervisory findings, FRFIs properly assess these services as a higher risk activity, taking necessary mitigation measures.

228. Before introducing new technologies and products, banks typically conduct an assessment of the potential ML/TF risks (and, in doing so, go beyond the requirements of Canadian law). Some banks indicated the lack of information from the authorities regarding typologies on possible exploitation of emerging products that would be helpful in their risk assessment. Among the new products it is worth noting that pre-paid cards are used in Canada but are not currently subject to AML/CFT requirements.[82] Nevertheless, OSFI has alerted FRFIs in the context of its inspections to the need to consider that reloadable prepaid cards operate similarly to deposit accounts, and therefore require equivalent mitigation measures. OSFI supervisory findings reveals that in two cases, FIs had failed to integrate their risk assessment regarding prepaid cards into their overall risk assessment methodology as well as to establish effective controls over their agents. Following OSFI's supervisory interventions, the two institutions are now implementing prepaid access controls in reloadable card programs similar to controls over deposit accounts. Regulatory amendments to include prepaid cards in the regulations are being developed. Other new products currently used—albeit to a very limited extent—include virtual currencies,[83] which fall outside the current framework but which the government has proposed to regulate for AML/CFT purposes.[84]

[82] Global open loop prepaid card transaction volumes have grown by more than 20% over the past four years and were expected to reach 16.9 billion annually in 2014. Despite pre-paid open loop access (thus meaning any financial product that allows customers to load funds to a product that can then be used for purchases and, in some cases, access to cash or person-to-person transfers) has been considered under the NRA of high vulnerability rating, pre-paid cards are not currently subject to AML/CFT requirements.

[83] According to the Canadian Payments Association, as of 10 April 2014, there were between 1 000 and 2 000 daily transactions in Canada involving bitcoin, which represent 1/100 of 1% of the total volume of Canada's daily payments transactions. See Senate Canada, Digital Currency: you can't flip this coin!, June 2015, p. 23.

[84] The legislation to include dealing in virtual currencies among MSBs has been passed, and the associated enabling regulations are being developed.

229. Some of the larger FIs and money transfer companies go beyond current requirements for wire transfers and the filing of EFTRs by applying stricter measures: they notably monitor such transfers on a continuous basis through sample checks of wires received on behalf of customers in order to verify whether they contain adequate originator information, and, if not, take up the matter with the originating banks.

230. FIs have a good understanding of their obligations with respect to TFS (see IO.10). MSBs belonging to large networks, although they are not required to screen on a continuous basis their customer base against the sanctions lists, in practice do so. On-site supervisory inspections revealed, however, deficiencies in the timeliness of the name-screening processes, as well as in their scope (because they do not always extend the screening to the beneficial owners and authorized signers of corporate entities). According to industry representatives and FINTRAC, this is not the case in smaller independent MSBs, where less sophisticated procedures of record-keeping and monitoring are in place.

231. DNFBPs, in particular in the real estate sector, acknowledged that they do not fully understand the requirements related to TFS. They also recognized that their implementation of these requirements is weak, largely because their procedures are mainly paper-based.

Reporting Obligations and Tipping Off

232. With the exception of casinos, reporting by the DNFBPs sectors is very low, including in high-risk sectors identified in the NRA.

Table 18. **Number of STRs Filed by FIs and DNFBPs**

	2011–2012	2012–2013	2013–2014	2014–2015
FIs				
Banks	16 739	17 449	16 084	21 325
Credit Unions/*Caisses populaires*	11 473	12 217	12 522	16 576
Trust and Loan Company	617	757	702	729
Life Insurance	379	379	453	427
MSB	35 785	42 246	46 158	47 377
Securities dealers	811	1 284	2 087	1 825
DNFBPs				
Accountants	-	1	-	-
BC Notaries	1	-	-	1
Casinos	4 506	4 810	3 472	3 994
DPMS	66	129	235	243
Real Estate	15	22	22	34
Total	**70 392**	**79 294**	**81 735**	**92 531**

233. Nevertheless, FINTRAC is of the view that the quality of STRs is generally good and improving. The 1 256 examinations conducted in this respect from 2011/12 to 2014/15, revealed

that 82% of REs examined complied with their obligation. In particular, the REs' write-up for Part G of the reporting form (which relates to the reason for the suspicions) has evolved over the years from a basic summary to a very thorough and complex analysis of the facts. FINTRAC also noted that the percentage of STRs submitted with errors has significantly decreased, namely from 84% (in July 2011) to 17% (in July 2015). Most FIs interviewed rely on both front line staff and automated monitoring systems to detect suspicions. At the end of their internal evaluation process, if the STR is not filed, a record is kept with the rationale for the lack of reporting. STRs are generally filed within 30 days.

234. Awareness and implementation of reporting obligations vary greatly amongst the various sections. In particular: casinos are adequately aware of their reporting obligations. The larger casinos detect suspicious transactions not only through front-line staff, but also through analytical monitoring tools developed at the corporate level on the transaction performed and on the basis of video-investigation in order to identify possible unusual behaviours (such as passing chips). They also report to FINTRAC suspicious transactions that were merely attempted. The real estate sector, however, appears generally unaware of the need to report suspicious transactions that have not been executed. In brokerage firms, the detection of suspicious transactions is mainly left to the "feeling" of the individual agents, rather than the result of a structured process assisted by specific red flags. MSBs, securities dealers and DPMS have significantly increased the number of STRs filed, mainly in response to the outreach, awareness raising and monitoring activities performed by FINTRAC. The *caisses populaires* have also increased their reporting as a result of the centralized system of detection of suspicious transactions developed by the *Fédération des Caisses Desjardins du Quebec*.

235. The larger REs interviewed had good communication channels with FINTRAC and receive adequate feedback on an annual basis on the quality of their STRs and on the number of convictions related to FINTRAC's disclosure. In particular, a Major Reporter Group was established in FINTRAC to foster dialogue. In this context, FINTRAC hosted, in May 2014, a first forum for D-SIBs to enhance compliance with STRs obligations and targeted feedback sessions, and another, in 2015, for casinos. D-SIBs and casinos met considered these forums particularly helpful. Small banks and most categories of DNFBPs do not to receive the same kind of feedback.

236. Tipping off does not appear to be a significant problem in Canada. REs have included in their internal policies, controls and training initiatives some provisions that address the prohibition of tipping off. The measures are considered effective by FINTRAC. So far, no charges have been laid as regards tipping off.

Internal Controls and Legal/Regulatory Requirements Impending Implementation

237. OSFI supervisory findings conducted in the last three years confirm that FRFIs apply sufficient internal controls to ensure compliance with AML/CFT requirements with the five core

elements of the compliance regime.[85] A key OSFI finding is the scope of the two-year review, which is frequently more limited to the existence of controls rather than to their effectiveness.

238. REs with cross-border operations include their overseas branches in their AML/CFT program and extend their internal controls to their foreign subsidiaries. They also adopt the more stringent of Canadian or host jurisdiction rules in their group-wide AML/CFT framework on areas where host country requirements are stricter or more in line with FATF standards. The larger banks reported that they had sharing information mechanisms at group level and, in cases where the local jurisdiction had created obstacles to the information sharing, the local branches were closed.

239. Three of the D-SIBs have branches in Caribbean countries: the two REs interviewed took specific risk mitigating measures by adopting an enterprise-wide management to the highest level. As a result, every high-risk client in the Caribbean must be pre-approved both by senior management in the business and the compliance officer.

240. The data provided by FINTRAC indicates an uneven level of compliance among non-FRFIs. Credit unions and *caisses populaires* have good internal controls in place, which is not the case for trust and loan companies, securities dealers, insurance sector and MSBs: several deficiencies have been identified, including incomplete or not updated policies and procedures, the limited scope of controls, a lack of comprehensive assessment of effectiveness, and no communication to senior management.

241. DNFBPs other than casino and BC notaries have either no or weak internal controls. The discussions with real estate sector representatives also revealed some concerns about the effective control of the proper implementation of AML/CFT requirements by their agents. Some DNFBPs professional associations are working with their members to assist them in increasing their level of compliance and in increasing their awareness with their obligations. In this context, the associations felt that further engagement with FINTRAC would be useful.

Overall Conclusions on Immediate Outcome 4

242. **Canada has achieved a moderate level of effectiveness for IO.4**.

[85] Under PCMLTFR s. 71 (1), the five elements of the compliance regime are the following: appointment of a compliance officer, development and application of written compliance policies and procedures, assessment and documentation of ML/TF risks and of mitigating measures, written ongoing training program, a review of the compliance policies and procedures to test their effectiveness. The review has to be done every two years. Failure to implement any of these five elements is considered serious violation under AMPR and shall lead to an administrative monetary penalty of up to CAD 100 000 for each one (ss 4 and 5).

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

FINTRAC and OSFI have a good understanding of ML and TF risks; and FIs and DNFBPs are generally subject to appropriate risk-sensitive AML/CFT supervision, but supervision of the real estate and DPMS sectors is not entirely commensurate to the risks in those sectors.

The PCMLTFA is not operative in respect of legal counsels, legal firms, and Quebec notaries—as a result, these professions are not supervised for AML/CFT purposes which represents a major loophole in Canada's regime.

A few providers of financial activities and other services fall outside the scope of Canada's supervisory framework (namely TCSPs other than trust companies, and those dealing with open loop pre-paid card, including non FI providers on line gambling and virtual currency, factoring companies, leasing and financing companies, check cashing business, and unregulated mortgage lenders), but legislative steps have been taken with respect to online gambling, open-loop pre-paid cards and virtual currencies.

Supervisory coverage of FRFIs is good, but the current supervisory model generates some unnecessary duplication of effort between OSFI and FINTRAC.

FINTRAC has increased its supervisory capacity to an adequate level but its sector-specific expertise is still somewhat limited. OSFI conducts effective AML/CFT supervision with limited resources.

Market entry controls are good and fitness and probity checks on directors and senior managers of FRFIs robust. There are, however, no controls for DPMS, and insufficient fit-and-proper monitoring of some REs at the provincial level.

Remedial actions are effectively used but administrative sanctions for breaches of the PCMLTFA are not applied in a proportionate and/or sufficiently dissuasive manner.

Supervisory actions have had a largely positive effect on compliance by REs. Increased guidance and feedback has enhanced awareness and understanding of risks and compliance obligations in the financial sector and to a lesser extent in the DNFBP sector.

Recommended Actions

Canada should:

- Ensure that all legal professions active in the areas listed in the standard are subject to AML/CFT supervision.
- Coordinate more effectively supervision of FRFIs by OSFI and FINTRAC to maximize the use of resources and expertise and review implementation of Canada's supervisory approach to FRFIs.
- Ensure that FINTRAC develops sector-specific expertise, continues to have a RBA in its

examinations, and applies more intensive supervisory measures to the real estate and DPMS sectors.

- Ensure that there is a shared understanding between FINTRAC and provincial supervisors of ML/TF risks faced by individual REs and ensure adequate controls are in place after market entry at the provincial level to prevent criminals or their associates from owning or controlling FIs and DNFBPs.
- Ensure that the administrative sanctions regime is applied to FRFIs and that AMPs are applied in a proportionate and dissuasive manner including to single or small numbers of serious violations and repeat offenders. Ensure that OSFI's guidelines relating to AML/CFT compliance and fitness and probity measures are subject to the administrative sanctions regime for non-compliance.
- Provide more focused and sector-specific guidance and typologies for the financial sector and further tailored guidance for DNFBPs, particularly with respect to the reporting of suspicious transactions.

The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

Licensing, registration and controls preventing criminals and associates from entering the market

243. Market entry controls are applied at federal and provincial level. After market entry, there are effective measures in place at the federal level to ensure that when changes in ownership and senior management occur, FRFIs conduct appropriate fitness and probity (F&P) checks. The federal prudential regulator, OSFI, applies robust controls when licensing a federally regulated financial institution (FRFI). Due diligence measures, including criminal background checks on individuals, are carried out at the market entry stage and OSFI has refused or delayed applications when issues arise. OSFI provided an example where it became aware of misconduct by a small domestic bank's former CEO and ultimately undertook a suitability review of the person. OSFI concluded that he was not suitable to be an officer of the bank and recommended that he not be a member of the board. The bank removed the officer and as a result, OSFI's supervisory oversight strategy of the bank was downgraded. After market entry, FRFIs are responsible for implementing controls around the appointment of senior managers and directors of FRFIs under OSFI Guidelines. OSFI supervises FRFIs for compliance around conducting background checks but this control is not as robust as it is the responsibility of FRFIs to apply fit and proper controls after market entry stage rather than OSFI's in the approval of the appointment of senior managers in FRFIs. Provincial regulators apply market entry controls for non-FRFIs (e.g. securities dealers, credit unions, and *caisses populaires*). These controls include criminal checks to verify the integrity of applicants and to ensure that RE's

implement fit and proper controls. The controls are usually conducted by the RE but are subject to oversight by the provincial regulators. These market entry controls differ between provinces and sectors but, overall, the market entry controls being applied by provincial regulators are robust.

244. Since its last MER, Canada has implemented a money service business (MSB) registration system under the supervision of FINTRAC. One exception to the federal system of registration is in Quebec, where MSBs register with the *Autorité des marchés financiers* (AMF) and FINTRAC. Applicants for registration undergo criminal record checks and fitness and probity checks by FINTRAC and AMF. Individuals convicted of certain criminal offenses are ineligible to own or control an MSB. FINTRAC monitors the control of MSBs as they are required to submit updated information on owning or controlling individuals or entities when changes occur and again when the MSB applies for renewal of its registration every two years. FINTRAC has refused to register applicants and has revoked registration when the applicant was convicted for a criminal offense. An example was given where FINTRAC revoked the registration of two MSBs after the conviction of two individuals that owned both MSBs. Another example was provided where an MSB terminated its relationship with an agent due to fitness and probity concerns about the agent as part of follow-up activity conducted after an examination by FINTRAC. When an MSB registration is denied, revoked, expired, or pending, FINTRAC follows-up appropriately, for example by conducting an offsite review or on-site visit to the MSBs' last known address to ensure that the entity is not operating illegally.

245. There are market entry controls for most DNFBPs in Canada that require them to be licensed or registered by provincial regulators or by self-regulatory bodies (SRBs). Criminal checks are applied by supervisors and SRBs to casinos, BC notaries, accountants, and real estate brokers and agents during the licensing or registration process. The only exception to this is in the DPMS sector where there is no requirement to be registered or licensed or to be subjected to other forms of controls to operate in Canada. All casinos are provincially owned and apply thorough fit and proper procedures for employees.

246. After market entry, provincial regulators conduct some ongoing monitoring of non-FRFIs and DNFBPs and withdraw licenses or registration for criminal violations. The assessment team was provided with examples of restrictions or cancellations of investment dealers' registration by the Investment industry Regulatory Organization of Canada (IIROC) due to misconduct or a violation of the law. However, FINTRAC does not have responsibility for the licensing or registration of FIs or DNFBPs (apart from MSBs) and non-federal supervisors do not appear to implement the same level of controls to monitor of non-FRFIs and DNFBPs to ensure that they are not controlled or owned by criminals or their associates after the licensing or registration stage.

Supervisors' understanding and identification of ML/TF risks

247. Supervisors in Canada participated in the NRA process and understand the inherent ML/TF risks in the country. FINTRAC and OSFI have a good understanding of ML/TF risks in the financial and DNFBP sectors.

248. FINTRAC is the primary AML/CFT supervisor for all REs in Canada and is relied upon by provincial regulators to understand ML/TF risks within their population and to carry out AML/CFT

specific supervision. Provincial supervisors integrate ML/TF risk into their wider risk assessment models and leverage off FINTRAC for their assessment of ML/TF risks as FINTRAC has responsibility for AML/CFT compliance supervision in Canada.

249. OSFI is the prudential regulator for FRFIs and conducts an ML/TF specific risk assessment that applies an inherent risk rating to entities on a group-wide basis rather than an individual basis. It is also able to leverage off its prudential supervisors to better understand the vulnerabilities of individual FRFIs complementing the results of the NRA. OSFI demonstrated that it understands the FRFIs' ML/TF risks through its risk assessment model that appropriately identifies the vulnerabilities in the different sectors and REs under its supervision. It also collaborates well with FINTRAC and other supervisors on their understanding of ML/TF risk. This is very important strength of Canada's system because FRFIs account for over 80% of the financial sector's assets in the country. The sector is dominated by a relatively small number of FRFIs: the six D-SIBs control the banking market and hold a significant portion of the trust and loan company and securities markets in Canada. The largest life insurance companies in Canada are also federally regulated. OSFI has identified 34 FRFIs as high-risk, 32 as medium-risk, and 66 as low-risk. The D-SIBS are all rated as high-risk, given their size, transaction volumes and presence in a range of markets. OSFI updates its risk category for an FRFI or FRFI group on an ongoing basis following on-site assessments, ongoing monitoring and follow-up work. The outcomes from OSFI's risk assessment are effective.

250. FINTRAC has recently developed a sophisticated risk assessment model that assigns risk ratings to sectors and individual REs: the model was reviewed in detail by the assessment team and was compared against the data being collected and analysed in FINTRAC's case management tool. The model is a comprehensive ML/TF analytical tool that considers various factors to predict the likelihood and consequence of non-compliance by a RE. On the basis of its analysis, it rates reporting sectors and entities and the rating is then used to inform its supervisory strategy. FINTRAC's risk assessment has rated all 31 000 REs under the PCMLTFA and identified banks, credit unions, *caisses populaires*, securities dealers, MSBs and casinos as high-risk. FINTRAC has incorporated the findings of the NRA into the model to take account of the inherent risk ratings identified in the real estate and DPMS sectors.

251. Other supervisors, notably AMF and IIROC, integrate ML/TF risk into wider operational risk assessment models of entities that they supervise. They rely on FINTRAC to understand the ML/TF risks among all REs and to disseminate this information to prudential or conduct supervisors, given FINTRAC's role as primary supervisor for AML/CFT compliance in Canada. This appears to be happening in cases where AML/CFT issues arise in the course of prudential or conduct supervision. However, FINTRAC does not share with other supervisors its understanding of ML/TF risks in particular sectors on a regular basis. Provincial supervisors are therefore not aware of the ML/TF risks faced in their respective sectors, particularly around vulnerabilities relevant to ownership and management controls in the non-FRFI and DNFBP sectors. Similarly, FINTRAC and OSFI do not sufficiently share their understanding of detailed risks in FRFIs, e.g. through sharing of existing tools to carry out an integrated risk assessment of all FRFIs. As a result, they do not adequately leverage off their respective knowledge of the different business models and compliance measures in place.

Risk-based supervision of compliance with AML/CTF requirements

252. The regulatory regime involves both federal and provincial supervisors. FINTRAC is responsible for supervising all FIs and DNFBPs for compliance with their AML/CFT obligations under the PCMLTFA. Other supervisors may incorporate AML/CFT aspects within their wider supervisory responsibilities although the assessment team found that in instances where an AML/CFT issue arose, the primary regulator would refer the issue to FINTRAC. Given the primary responsibility held by FINTRAC for all REs and the federal and provincial division of powers for financial supervision other than in the areas of AML/CFT, combined with the geographical spread of the Canadian regulatory regime, the assessment team focused primarily on FINTRAC and OSFI's supervisory regime, but also met with provincial supervisors (e.g. AMF in Quebec) and other supervisors (e.g. IIROC for investment dealers).

253. FINTRAC has increased its resources and the level of sophistication of its compliance and enforcement program ("supervisory program") in recent years. In 2014/2015, there was 79 full-time staff employed in FINTRAC's supervisory program. Of this, 57 staff members were involved in direct enforcement activities including outreach and engagement (10), reports monitoring (5), examinations (37), and AMPs/NCDs (5). It has also developed, and continues to develop, its supervisory capabilities on a RBA. Its understanding of the different sectors and business models and of how AML/CFT obligations apply taking into account materiality and context is somewhat limited. This was communicated to the assessors by REs in the banking and real estate sectors during the on-site visit. FINTRAC has nevertheless increased its understanding of its different reporting sectors which is a challenge given the large number and diverse range of entities it supervises.

254. A range of supervisory tools is used by FINTRAC to discharge its supervisory responsibilities and, for the most part, those tools are applied consistently with the risks identified. A case management tool determines the level and extent of supervision to be applied to sectors and individual REs scoping specific areas for examinations, recording supervisory findings and managing follow-up activities. High-risk sectors are subject to on-site and desk examinations (details of which are contained in this report). Less intensive supervisory tools are used for lower-risk sectors. These tools include self-assessment questionnaires (Compliance Assessment Reports or CARs); observation letters (setting out deficiencies that require action); Voluntary Self Declarations of Non-Compliance (VSDONC); and policy interpretations on specific issues that require clarification. The use of observation letters was piloted with the *caisses populaires* sector in 2013/2014. FINTRAC had identified that *caisses populaires* were reporting large cash transactions of more than CAD 10 000 through automated teller machines which was not possible given the low limit on transactions through such machines. Observation letters were used to correct a misinterpretation of reporting obligations and clarify the correct way to report these types of transactions. FINTRAC also uses outreach tools for lower-risk sectors assistance and awareness building tools among smaller REs with limited resources, compliance experience and works with industry representatives. While supervisory measures are generally in line with the main ML/TF risks, more intensive supervisory measures should be applied in higher risk areas such as the real estate and DPMS sectors. FINTRAC

has updated its risk assessment to identify those sectors as high-risk, in line with the findings of the NRA.

255. OSFI applies a close touch approach to AML/CFT supervision of FRFIs. It engages with FRFIs through its prudential supervisors on an ongoing basis and is well placed to supervise higher-risk entities from an AML/CFT perspective given its knowledge of RE's business models OSFI has a particular focus on the large banking groups (D-SIBs) and insurance companies that dominate the financial market in Canada. These are identified as not only high-risk for prudential purposes but also for ML/TF as identified by OSFI and in the NRA. There is a specialist AML compliance (AMLC) division solely responsible for AML/CFT and sanctions supervision in OSFI and allocates its resources on a risk sensitive basis to supervise FRFIs. OSFI's "AML and ATF (i.e. CFT) Methodology and Assessment Processes" assesses the adequacy of FRFIs' risk management measures through its program of controls and assesses FRFIs' compliance with legislative requirements and OSFI guidelines. The AMLC division has expertise in the sectors it supervises and is covering the principal FRFIs leveraging off prudential supervision. OSFI has a good understanding of its sector, its staff has a high degree of expertise and it is adequately supervising FRFIs for AML/CFT compliance (in conjunction with FINTRAC). The number of OSFI AML/CFT supervisors (i.e. currently 10 supervisors including senior management) is, however, too low given the size of supervisory population and the market share and importance of FRFIs in the Canadian context.

256. FINTRAC and OSFI provided comprehensive statistics, case studies, and sample files relating to examinations of FIs and DNFBPs. There were a greater number of examinations of FIs than DNFBPs; in line with Canada's understanding of ML/TF risk and there were more desk-based than on-site examinations. Between April 2010 and March 2015, 3 431 examinations (1 949 desk-based and 1 482 on-site) of FIs were conducted. During the same period, there were 1 300 examinations (895 desk-based and 405 on-site) of DNFBPs.

Table 19. **AML/CFT Examinations Conducted by FINTRAC/OSFI in Canada 2009–2015**

Sector	Activity Sector	Number of ERs (primary population)	FINTRAC/OSFI Examinations						
Financial Institutions (FIs)			**2009/10**	**2010/11**	**2011/12**	**2012/13**	**2013/14**	**2014/15**	**Total**
Financial Entities	Banks	81	11	10	15	10	19	16	81
	Trusts and Loans	75	6	6	13	7	6	7	45
	Credit Unions /*Caisse Populaire*	699	173	205	432	301	170	165	1 446
Life Insurance	Life Insurance	89	70	54	8	13	123	61	329
Money Service Businesses	Money Service Businesses	850	210	201	426	222	161	143	1 363
Securities Dealers	Securities Dealers	3 829	83	120	136	129	167	85	720
Total FI – Desk Exam			270	260	668	389	409	223	2 219
Total FI – On-site Exam			283	336	362	293	237	254	1 765
Total FIs			553	596	1 030	682	646	477	3 984

Sector	Activity Sector	Number of ERs (primary population)	FINTRAC/OSFI Examinations						
DNFBPs			**2009/10**	**2010/11**	**2011/12**	**2012/13**	**2013/14**	**2014/15**	**Total**
Accountants	Accountants	3 829	48	20	0	25	11	10	114
BC Notaries	BC Notaries	336	0	0	0	16	1	6	23
Casinos	Casinos	39	12	12	5	10	1	6	46
Dealers of Precious Metals and Stones	Dealers of Precious Metals and Stones	642	0	0	10	166	276	2	454
Real Estate	Real Estate	20 784	90	70	40	270	203	140	813
Total DNFBP – Desk Exams			83	41	27	322	391	114	978
Total DNFBP – On-site Exams			67	61	28	165	101	50	472
Total DNFBPs			150	102	55	487	492	164	1 450
Total FIs and DNFBPs – Desk Exams			353	301	695	711	800	337	3 197
Total FIs and DNFBPs – On-site Exams			350	397	390	458	338	304	2 237
Total FIs and DNFBPs			**703**	**698**	**1 085**	**1 169**	**1 138**	**641**	**5 434**

257. Both FINTRAC and OSFI demonstrated that they apply scoping mechanisms within their examination strategies. Factors used by FINTRAC to prioritize examinations include: its follow-up strategy; concurrent assessments (with OSFI); market share; cycles; risk score; theme-based; regional selections and compliance coverage (used for lower risk where the preceding factors may not apply). OSFI primarily relies on its risk rating of FRFIs to inform its examination strategy and supervises on a cyclical basis with high-risk entities supervised on a three-year cycle, medium risk on a four-year cycle and low risk on a five-year cycle. It does, however, also supervise on a reactive basis arising out of information received from FRFIs, prudential supervisors or FINTRAC. An average on-site examination conducted by FINTRAC lasts between 2-3 days typically involving 2-3 supervisors, whereas on-site examinations of FRFIs typically last between 1 and 3 weeks and involves 10 or more supervisors from both OSFI and FINTRAC.

Supervision of FRFIs

258. Since 2013, FRFIs have been supervised by OSFI and FINTRAC concurrently. This involved examinations of high and medium risk FRFIs by each agency concurrently but with OSFI taking a top down (i.e. group wide) approach and FINTRAC taking a bottom up (i.e. individual entities/sector) approach with the two agencies coordinating their approaches during examinations but issuing separate supervisory letters setting out their respective findings. At the time of the on-site, it was planned to move to a more coordinated approach through joint examinations. Between 2009 and 2015, OSFI and FINTRAC conducted 126 assessments of FRFIs (OSFI carried out 78, FINTRAC carried out 48, and 22 were concurrent). During that period, OSFI and FINTRAC assessed all 6 D-SIBs (18 assessments in total) that hold a significant share of the Canadian financial market. OSFI issued 373 findings, including 97 requirements relating to lack of processes to comply with AML/CFT obligations and 276 recommendations relating to broader prudential AML/CFT risk management findings. The largest number of findings reflected changes that were required to correct or enhance

policies or procedures and the failure to ensure that risk assessment processed included prescribed criteria, and weaknesses in applying these criteria.

259. There is good supervisory coverage of FRFIs in Canada, which is being applied on a risk-sensitive basis. The level and intensity of the supervision of FRFIs was detailed to the assessment team by FINTRAC and OSFI, sample files were reviewed and feedback was also received from individual FRFIs during the on-site. OSFI provided examples of examinations and its follow-up activity including an AML/CFT examination of a major bank (D-SIB). A 2010 assessment of the bank found its AML/CFT program to be basic or rudimentary and there were 27 major findings ranging from instances of non-compliance with the PCMLTFA and weak risk management processes and policies. OSFI conducted an extensive follow-up program in tandem with the host regulators. When OSFI determined that the action plan to remedy deficiencies was not progressing satisfactorily it met with senior management in the bank. Enhanced monitoring by OSFI was implemented up until 2013 when the bank had adequately addressed the deficiencies to OSFI's satisfaction. Another example was provided involving a bank, which was a small subsidiary of a foreign bank and identified significant issues in its AML/CFT program, OSFI conducted quarterly monitoring of the bank which resulted in all recommendations being addressed by the bank. OSFI and FINTRAC provided examples where they have leveraged off each-others' supervisory findings including where a conglomerate life insurance company had issues with the process for submitting electronic fund transfer reports to FINTRAC that was subsequently reported to OSFI by FINTRAC that led to a prudential finding by OSFI. FINTRAC has also used OSFI's observations of compliance regime gaps to expand its standard scope of that RE to include a review of the compliance regime.

260. OSFI is taking measures to ensure that FRFIs heighten monitoring around overseas investment in Canada to mitigate any risk of illicit flows of funds entering the financial system. OSFI is also monitoring overseas branches of FRFIs as part of its group wide supervisory approach. There are three D-SIBs with branches in the Caribbean and South America. OSFI supervises FRFI on a group wide basis and FRFIs apply group wide policies and procedures and oversee controls (including ongoing monitoring of transactions) applied in overseas branches in Canada. From the discussions held and the material submitted it was found that OSFI exercises rigorous oversight of parent banks' group-wide controls in this key area.

261. Despite there being good supervisory coverage of FRFIs, the split of AML/CFT supervision generates some duplicative efforts. There are currently two agencies supervising FRFIs for AML/CFT compliance, which may be desirable given the size and importance of FRFIs, but suffers to some extent from insufficient coordination between the two agencies and duplication of supervisory resources. OSFI has a good understanding of its sectors and is implementing an effective supervisory regime with limited resources. FINTRAC has more resources but has a very wide population to supervise for AML/CFT compliance that may hinder a full appreciation of FRFIs' business models.

Supervision of non-FRFIs and DNFBPs

262. FINTRAC is applying its supervisory program to non-FRFIs and DNFBPs on an RBA. It is conducting more examinations in higher-risk sectors and using assistance, outreach, and compliance questionnaires to a large extent in sectors that it sees as lower-risk.

263. FINTRAC has shown that it is focusing mostly on high-risk non-FRFIs, securities, MSBs, and credit unions/*caisses populaires* for on-site examinations. It is, however, also conducting on-site examinations in lower-risk sectors, although it is conducting more desk exams in those sectors. FINTRAC also uses other supervisory tools for lower risk REs in the financial sector. On-site examinations have been undertaken by FINTRAC of non-FRFIs including securities dealers, credit unions and *caisses populaires*. The market share of credit unions is concentrated in a relatively small number of credit unions that are being supervised by FINTRAC and credit unions in Canada do not have cross-border operations. Another priority area for FINTRAC is the supervision of MSBs given the high-risk assigned to the sector. It has conducted a high number of examinations of MSBs relative to the size of the primary population figures provided to the assessment team. There appears to be ongoing cooperation between primary regulators and FINTRAC concerning the supervision of non-FRFIs based on details of referrals from other supervisors under MOU arrangements that were provided to the team. FINTRAC is adopting an adequate RBA to supervision of the non-FRFI sector.

264. FINTRAC applies intensive supervisory measures to casinos in line with the risks identified in the sector. This involves in-depth on-site examinations that are conducted on a cyclical basis that ranges from a two to five year cycle based on key factors such as size, risk level and market share. The three largest casinos (that represent 80% of the sector's market share) are examined on a two-year cycle. For other sectors, it has been relying on less intensive activities such as assistance and outreach to DNFBPs to build awareness of compliance obligations. FINTRAC identified the real estate sector and DPMS as medium-risk and accordingly is applying less intensive supervisory tools to those sectors. In the NRA, however, both sectors have been identified as high-risk. FINTRAC is therefore updating its risk assessment of these two sectors in line with the findings of the NRA with a view to applying more intensive measures in the future (including on-site examinations). FINTRAC is relying on the risk model (amongst other factors) of real estate agents to decide on examination selections to cover the sector. It also does not appear to identify adequately DPMS businesses in Canada that fall within the definition of the PCMLTFA.

265. FINTRAC utilizes lower intensity activities to good effect for lower-risk REs. Between 2011 and 2013, close to 10 000 compliance questionnaires (CARs) were issued to mainly sectors identified as lower or medium ML/TF risk. The questionnaire results were used to initiate close to 250 "themed-CAR" risk-informed examinations based principally on the significant non-compliance identified in the CAR. Observation letters are also used to highlight repeated non-compliance or reporting anomalies and remedial action is taken if the entity fails to respond or does not resolve the issues.

266. The legal profession is not currently subject to AML/CFT supervision due to a successful constitutional challenge that makes the PCMLTFA inoperative in respect of legal counsels, legal firms, and Quebec notaries. There is therefore no incentive for the profession to apply AML/CFT measures and participate in the detection of potential ML/TF activities. The exclusion of the legal profession from AML/CFT supervision is a significant concern considering the high-risk rating of the sector and its involvement in other high-risk areas such as the real estate transactions as well as company and trust formation. This exclusion also has a negative impact on the effectiveness of the supervisory regime as a whole because it creates an imbalance amongst the various sectors, especially for REs that perform similar functions to lawyers.

Remedial actions and effective, proportionate, and dissuasive sanctions

267. Supervisors in Canada take a range of remedial actions. There is also an administrative monetary penalties (AMPs) regime in place that is the responsibility of FINTRAC to apply under the PCMLTFA. OSFI and FINTRAC require REs to remediate any deficiencies identified during the assessment process. OSFI has implemented a graduated approach to applying corrective measures or sanctions for FRFIs. Both OSFI and FINTRAC issue supervisory letters to entities subject to AML/CFT assessment that contain supervisory findings and REs are required to take appropriate remedial action. OSFI has provided examples of follow-up action it has taken when FRFI fails to take remedial action.

268. OSFI and FINTRAC have thorough ongoing monitoring and follow-up processes to ensure remediation and have provided examples of steps taken to ensure that deficiencies have been addressed in the FRFI sector, MSBs and a large FI. Measures taken by supervisors include follow-up meetings, further examinations, action plans, and sanctions. OSFI may "stage" FRFIs, which is an enhanced monitoring tool involving four stages where severe AML/CFT deficiencies remain unaddressed. Staging is an effective tool to improve compliance as demonstrated by the Canadian authorities in case studies. There were examples provided where a small bank had not applied AML/CFT obligations correctly and where a staged RE underwent follow-up examinations demonstrated the process increased compliance. FINTRAC also provided examples of monitoring activities of non-FRFIs and DNFBPs where follow-up meetings and re-examinations of MSBs and large FIs resulted in significant improvements in compliance. Remedial actions have also been applied when REs failed to respond to mandatory CARs in the real estate sector. Follow-up activities on all non-responders found that of 55 non-responders, 37 were inactive REs, 1 was a late responder, 10 had inaccurate addresses, and 7 were true non-responders (i.e. increasing RE's risk profile). Where low levels of reporting have been identified, FINTRAC has conducted examinations and put in place remedial actions to increase reporting. This appears to have had an effect on reporting in the institutions concerned, but does not address the wider issue of general low levels of reporting. Supervisors have demonstrated that effective steps have been taken to a large extent to ensure that remediation measures are in place to address AML/CFT deficiencies.

269. FINTRAC can apply sanctions on all REs (including FRFIs) under the AMP regime. AMPs have been imposed and non-compliance disclosures (NCD) have been made to LEAs by supervisors for serious AML/CFT breaches and failure to address significant deficiencies. A notice of violation (NOV) is issued to the RE outlining the violation and penalty prior to an AMP being imposed. The most common violations cited in a NOV were for compliance regime deficiencies and reporting violations. AMPs are not always made public but can be published in egregious cases. AMPs have been imposed in the credit unions and *caisses populaires*, securities, MSBs, casinos, and real estate sectors but at the time of the on-site an AMP had not been applied to a FRFI. The imposition of AMPs in the MSB and casino sector was reported to have had a significant dissuasive effect in those sectors and FINTRAC confirmed that compliance had improved in those sectors as a result. However, the level of AMPs being applied is low relative to the reporting population and the size of the Canadian market. AMPs had not been applied to FRFIs at the time of the on-site is an issue that needs to be addressed. The non-sanctioning of FRFIs, the low number of AMPs applied to other FIs and the low

level of fines imposed to date is unlikely to have a dissuasive effect on FRFIs/larger FIs given their market share and the resources available to them. FINTRAC provided the assessors with current statistics at the time of the on-site (see table below) and with figures for NOVs, which included, among others, the FRFI sector, but for which proceedings were not concluded. OSFI has published guidelines for FRFIs on AML/CFT compliance, and while these guidelines cannot result in a financial penalty under OSFI's regulatory enforcement regime they are subject to measures such as staging.

Table 20. **Administrative Monetary Penalties for AML/CFT Breaches Between 1 April 2010 and 31 March 2015**

Sector	NOV Issued	Reporting Entity Size				Total Value of NOVs Issued (in CAD)	Publicly Named
		Micro	Small	Medium	Larger		
Casino	4	0	0	0	4	2 435 500	0
Financial Entities	15	0	6	9	0	897 705	3
MSB	28	22	5	1	0	768 375	16
Real Estate	7	6	1	0	0	197 310	2
Securities	5	0	3	2	0	587 510	4
Total	**59**	**28**	**15**	**12**	**4**	**4 886 400**	**25**

270. FINTRAC can submit an NCD to LEAs for failure to comply with the PCMLTFA, but this is only done in the most serious cases. Between 2010/2011 and 2014/2015, FINTRAC submitted seven NCDs (all from the MSB sector). These resulted in five investigations being commenced with two cases leading to criminal charges and one conviction (two individuals and one RE).

271. There are proportionate remedial actions being taken by supervisors, in particular extensive follow-up activities by supervisors (e.g. staging by OSFI) that demonstrated their dissuasive effect on the RE involved in the process as it exposes the RE being "staged" to costly remedial activities over a long period of time and ancillary costs such as higher deposit insurance premiums. While remedial actions, as opposed to AMPs, appear effective with respect to the individual RE they apply to, their wider dissuasive impact on other entities is limited, notably because they are not made public. More importantly, the lack of AMPs being applied to FRFIs and the relatively low level of fines imposed negatively impact the effectiveness of the enforcement regime as it affects its dissuasiveness. The non-application of the AMP regime to OSFI guidelines also affects the effectiveness of the Canadian supervisory regime.

Impact of supervisory actions on compliance

272. FINTRAC and OSFI provided examples where their actions have had an effect on compliance through the use of action plans, follow-up activities and findings from subsequent examinations. Feedback from the private sector indicates that supervisors' actions have led to increased compliance in the financial sector. There were examples given of increased compliance in

the FRFI, MSB and insurance sectors arising out of examinations and follow-up activities conducted by supervisors. It was reported by the private sector that the "close touch" nature of OSFI's supervision has enhanced compliance by FRFIs with their AML/CFT obligations. There has been an increase in compliance by REs as FINTRAC's compliance activities increased in recent years, e.g. MSB and casinos, and with the publication of additional information about PCMLTFA obligations.

273. FINTRAC and OSFI have provided written examples of examination findings and follow-up outcomes that demonstrate their effect on compliance by specific FIs and DNFBPs. There has been an increase in compliance among FRFIs and non-FRFIs (casinos) that are subject to cyclical examinations. The more intensive focus on higher risk areas in examination selection strategies has increased compliance in sectors such as FRFIs, MSBs, securities dealers and credit unions.

274. OSFI and FINTRAC supervisory measures to ensure compliance and their remedial actions are having a clear effect on the level of compliance of the individual RE that they apply to. OSFI has a robust follow-up system to monitor the remediation of deficiencies identified. OSFI requires FRFIs provide documentary evidence supporting progress on a continuous basis and requires validation prior to closure of every finding. Quarterly monitoring meetings are conducted with every D-SIB, and meetings with other FRFIs are frequently conducted at the request of OSFI or the FI when there are significant concerns or outstanding issues. Significant remedial steps have been taken by FRFIs based on findings by supervisors and OSFI has demonstrated that it has comprehensive supervisory measures to ensure compliance including the use of more intensive supervision (staging). FINTRAC's follow-up activities have been shown to have a positive effect on compliance by non-FRFIs and DNFBPs. It conducted 515 subsequent examinations across non-FRFIs and DNFBPs over a three-year period and by comparing previous performance indicators with the follow-up indicators revealed that the average deficiency rate had reduced by 13% due to increased compliance. AMPs, when applied, have also had a positive effect on the compliance of REs as demonstrated in follow-up examinations.

275. FINTRAC uses a supervisory tool that assigns "deficiency rates" to REs that are examined. It rates the levels of non-compliance on each specific area of the examination that leads to an overall deficiency rating being assigned to the RE. The overall rating is high, medium, or low and the RE's rating is used to tailor appropriate remedial measures to be put in place. Once remediation has occurred, a follow-up rating is applied and this is compared with the previous rating to identify whether compliance improvements have been made by the RE. The use of deficiency rates at RE and sector level is a useful tool to measure the effect the examination and follow-up process has on compliance by REs. Overall, supervisory measures taken in Canada are having an effect on compliance with improvements demonstrated –albeit to varying degrees- both in the financial and DNFBP sectors. Information provided indicates that compliance has improved in the financial sector, but less so in DNFBPs particularly in the real estate and DPMS sectors.

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

276. There is a good relationship and open dialogue between OSFI and FRFIs. The private sector reports that OSFI has a good understanding of the compliance challenges faced by FRFIs and provides constructive feedback. OSFI has published compliance guidelines and raises awareness

through participation in outreach activities. FINTRAC has published a substantial amount of guidance on its website and increased its level of feedback and guidance to both the financial and, albeit to a lesser extent, the DNFBP sectors. FINTRAC deals with general enquiries through a dedicated call line and has published query specific policy interpretations, both of which are reported by the private sector to be good guidance tools. FINTRAC has dealt with a substantial amount of queries and it has a "Major Reporters" team that provides guidance directly to the largest reporters (mostly financial sector and casinos). It has also taken good steps to raise awareness amongst the MSB sector around the requirement to register and to explain AML/CFT obligations. However, more focused and sector-specific guidance and typologies is required for the financial sector as well as further tailored guidance for DNFBPs to enhance their understanding of the ML/TF risks that they face and of their AML/CFT obligations, particularly with respect to the reporting of suspicious transactions.

277. Supervisors have increased AML/CFT awareness through the use of presentations, seminars, public-private sector forums, establishment of OSFI supervisory colleges, and meetings with the industry. FINTRAC has engaged with non-FRFIs and DNFBPs conducting 300 presentations between 2009 and 2015. It has also hosted events to raise awareness on compliance obligations including a Major Reporters Forum in the financial sector in 2014 and a Casino Forum in 2015.

278. Overall, in light of supervisors' efforts and ML/TF risks in Canada, FINTRAC provides good quality general guidance to REs, but not enough sector-specific compliance guidance and typologies especially in the real estate and DPMS sectors.

Overall Conclusions on Immediate Outcome 3

279. **Canada has achieved a substantial level of effectiveness with IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

Canadian legal entities and arrangements are at a high risk of misuse for ML/TF and mitigating measures are insufficient both in terms of scope and effectiveness.

Some basic information on legal persons is publicly available. However, nominee shareholder arrangements and, in limited circumstances bearer shares, pose challenges in ensuring accurate, basic shareholder information.

Most TCSPs, including those operated by lawyers, are outside the scope of the AML/CFT obligations and DNFBPs are not required to collect beneficial ownership information. These pose significant loopholes in the regime (both in terms of prevention and access by the authorities to information).

FIs do not verify beneficial ownership information in a consistent manner.

The authorities rely mostly on LEAs' extensive powers to access information collected by REs. However, there are still many legal entities in Canada for which beneficial ownership information is not collected and is therefore not accessible to the authorities.

Access to beneficial ownership is not timely in all cases and beneficial ownership information is not sufficiently used.

For the majority of trusts in Canada, beneficial ownership information is not collected.

LEAs do not pay adequate attention to the potential misuse of legal entities or trusts, in particular in cases of complex structures.

Recommended Actions

Canada should:

- As a matter of priority, increase timeliness of access by for competent authorities to accurate and up-to-date beneficial ownership information - consider additional measures to supplement the current framework.
- Take the necessary steps to make the AML/CFT requirements operative with regards to all legal professions providing company or trust-related services.
- Ensure that FIs and DNFBPs identify and take reasonable measures to verify the identity of beneficial owners based on official and reliable documents.
- Take appropriate measures to prevent the misuse of nominee shareholding and director arrangements and bearer shares.
- Ensure that basic information indicated in provincial and federal company registers is accurate and up-to-date.
- Apply proportionate and dissuasive sanctions for failure by companies to keep records; to file

information with the relevant registry; or to update registered information within the required 15-day period.

- Determine and enhance the awareness of the ML and TF risks from an operational perspective and the means through which legal persons and trusts are abused in Canada, taking into account ML schemes investigated in Canada as well as international typologies involving legal entities and legal arrangements.

The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.

7

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

280. Innovation, Science and Economic Development Canada (ISED, formerly Industry Canada) provides a comprehensive overview and comparison on its internet homepage of the various types, forms, and basic features of federal corporations under CBCA, and gives detailed guidance on the incorporation process.[86] Similar information and services are provided through the homepages of all provincial governments except that of New Brunswick. The relevant web links are easy to find through ISEDC's homepage and provide public access to the relevant provincial laws that describe the various legal entities available; the name and contact information for the relevant authority competent for registration; and the procedures to be followed to establish a legal entity. In addition, the Canada Business Network, a collaborative arrangement among federal departments and agencies, provincial and territorial governments, and not-for-profit entities aimed at encouraging entrepreneurship and innovation also provides comprehensive information on the various types of legal entities as well as various forms of partnerships available at the federal and provincial/territorial levels.[87] For legal arrangements, the CRA provides on its homepage comprehensive information on the various trusts structures available under Canadian law.[88]

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

281. Both legal entities and legal arrangements in Canada are at a high risk of being abused for ML/TF purposes. The NRA indicates that organized crime and third-party ML schemes pose a very high ML threat in Canada. Some of FINTRAC's statistics reflected in the NRA suggest that well over 70% of all ML cases and slightly more than 50% of TF cases involved legal entities. Canadian legal entities play a role in the context of channelling foreign POC into or through Canada, as well as in the

[86] See www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04843.html#articles.

[87] See Canada Business Network (nd), Sole proprietorship, partnership, corporation or co-operative?, www.canadabusiness.ca/eng/page/2853/#toc- corporations.

[88] See Canada Revenue Agency (nd), Types of trusts, www.cra-arc.gc.ca/tx/trsts/typs-eng.html.

laundering of domestically generated proceeds.[89] Typologies identified include: foreign PEPs creating legal entities in Canada to facilitate the purchase, of real estate and other assets with the proceeds of corruption; laundering criminal proceeds through shell companies in Canada and wiring the funds to offshore jurisdictions; and utilization of Canadian front companies to layer and legitimize unexplained sources of income and to commingle them with or mask them as profits from legitimate businesses.[90]

282. LEAs generally concurred with the NRA's findings, and have observed a high number of companies being established without carrying out any business activities, and the use of corporate entities and trusts in Canada to facilitate foreign investment. LEAs also stated that they encounter difficulties in identifying beneficial owners of Canadian companies owned by entities established abroad, particularly in the Caribbean, Middle East, and Asia. While the legal powers available to LEAs are comprehensive and sufficient, the instances in which LEAs were able to identify the beneficial owners of Canadian legal entities and legal arrangements appear to have been very limited and investigations do not sufficiently focus on international and complex ML cases involving corporate elements. Some LEAs are therefore less familiar with ML typologies involving corporate structures. Also, in a number of cases that have been investigated and where Canadian companies were owned by foreign entities or foreign trusts, it was not possible for LEAs to identify the beneficial owners.

Mitigating measures to prevent the misuse of legal persons and arrangements

283. Canada has a range of measures available to collect information on the control and ownership structures of legal entities as outlined below, and comprehensive investigation powers to locate and obtain such information if and as needed (see also R. 24). (i) In cases where a legal entity enters into a business relationship with a Canada FI, that FI must collect and keep beneficial ownership information. (ii) The federal register or the provincial register where the legal entity is incorporated must collect information; and the CRA collects information on legal entities as part of the tax return. (iii) The legal entities themselves are required to keep records of their activities, shareholders and directors. For public companies listed on the stock exchange disclosure requirements exist for shareholders with direct or indirect control over more than 10% of the company's voting rights. Only measure (iii) —maintenance of records by the companies— apply to all legal entities created in Canada.

284. Legal entities in a business relationship with a Canadian FI must provide basic and beneficial ownership information to the FI which has an obligation under the PCMLTFA to maintain this information and confirm its accuracy as needed (see R.10). Many of the FIs that the assessors met confirmed that beneficial ownership would generally be obtained through self-disclosure by the customer, and, in some instances, be followed by an open data search to confirm the accuracy of the information provided. Most FIs stated that they would not require the customer to provide official

[89] FINTRAC Research Brief: Review of Money Laundering Court Case between 2000 and 2014 determines that one of the most frequently used vehicles for ML (in a sample of 40 Canadian Court Cases reviewed) were companies acting as shells for or allowing for a commingling of illicit proceeds with regular business transactions.
[90] Ibid. as well as Project Loupe and Project Chun.

documents to establish the identity of the beneficial owners, nor carry out any independent verification measures other than the open data search. Of the 2.5 million registered legal entities in Canada and customers of a Canada FI, only a fraction had accuracy checks performed with respect to beneficial ownership. In addition, the mitigation of risks is limited by the fact that TCSPs, including those operated by lawyers, are outside the scope of the AML/CFT obligations and DNFBPs are not required to collect beneficial ownership information.

285. Federal and provincial registers record basic information on Canada companies and their directors, as well as on partnerships with businesses in Canada, but do not require the collection of beneficial ownership information. Alberta and Quebec have slightly more comprehensive registration mechanisms, which also cover shareholder information. All information maintained in the federal and provincial registers is publicly available. Updating requirements exist and violations thereof can be sanctioned criminally, but no sanction has been imposed in practice. The reliability of the information recorded raises concerns because there is no obligation on registrars to confirm the accuracy of the basic company information provided at the time of incorporation. Once the incorporation has been completed, companies are obliged to update their records held by the government registrar when there is a material change (e.g. a change in directors) and on an annual basis, and may do so electronically. The same situation applies to partnerships that register for a business permit. The updating process of registered information involves the company reviewing the information indicated in the register and confirming that the information is still correct. There is no need to submit any supporting documents. Despite the absence of verification process at the company registration stage, LEAs stated that basic company information would generally be reliable and comprehensive both on the provincial and federal levels, but they also raised concerns with respect to the accuracy and completeness of shareholder information in the registers of Quebec and Alberta. The CRA, as part of its tax revenue collection obligation, also obtains information on legal entities. However, such information does not include beneficial ownership information.

286. All legal entities, whether incorporated or registered at the federal or provincial level, are subject to record-keeping obligations. All statutes require the keeping of share registers, basic company information, accounting records, director meeting minutes, shareholder meeting minutes and the company bylaws and related amendments. While the relevant obligations are relatively comprehensive, their implementation raises serious concerns. ISEDC and provincial company registries indicated that they would consider company laws to be "self-enforcing" by shareholders, interested parties and the courts, and that they would have no mandate to enforce the implementation of the relevant provisions. While the Director of Corporations Canada has statutory powers to inspect company records, this power has been used only in the context of a shareholder's complaint and not to verify whether a company complies with its record-keeping obligations or to assist the RCMP in obtaining relevant information. So far, no company has been sanctioned criminally for failure to keep accurate and comprehensive company records. The LEAs expressed concern over the accuracy and completeness of companies' records, and stated that it would often be difficult to establish the true shareholder of a company as shareholder registers would often be either outdated or imprecise as they would not indicate whether the registered shareholder is the actual beneficial owner of the share or a proxy for another person.

287. Disclosure obligations for publicly listed companies are comprehensive and include beneficial ownership information.

288. Both bearer shares and nominee shareholders and directors are permitted in Canada. According to the authorities, bearer shares are rarely issued, but nominee shareholder arrangements are a frequent occurrence, and typically involve the issuance of shares in the name of a lawyer, who holds the shares on behalf of the beneficial owner. While companies are generally obliged to keep share registers, there is no obligation on nominees to disclose their status and information on the identity of their nominator, nor to indicate when changes occur in the beneficial ownership of the share.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

289. For information that is not publicly available, Canada has a wide range of law enforcement powers available to obtain beneficial ownership information as discussed in R.24. While the legal powers available to LEAs are comprehensive and sufficient, the instances in which LEAs were able to identify the beneficial owners of Canadian legal entities or legal arrangements appear to have been very limited and investigations do not sufficiently focus on international and complex ML cases involving corporate elements. In a number of cases that have been investigated and where Canadian companies were owned by foreign entities or foreign trusts, it was not possible for LEAs to identify the beneficial owners. This was due mainly to foreign jurisdictions not responding to requests by the Canadian authorities for beneficial ownership information.

290. As indicated in IO 6, other important practical limitations hamper the effectiveness of investigations relating to legal entities and legal arrangements. Despite the adequacy of their powers, it is often difficult for LEAs to obtain beneficial ownership information. As a result, their access to that information is not timely. The relevant Director under each corporate statute has the power to request company records but in practice this power has never been used to assist the RCMP in obtaining beneficial ownership information on a specific legal entity. Equally, at the time of the on-site visit the CRA had not made use of its newly acquired power to refer information to the RCMP in case of a suspicion of a listed serious offense.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

291. The level of transparency of legal arrangements is even lower than in the case of legal entities. There are two mechanisms in place to collect information on trusts: (i) the CRA, as part of the tax collection process, requires the provision of information on the trust assets and the trustee; and (ii) FIs are required to obtain information in relation to customers that are or represent a trust. These two measures suffer from significant shortcomings, both in terms of their scope and effective implementation, for the same reasons as in the context of legal persons, and only a small fraction of Canadian trusts file annual tax returns. There is also a fiduciary duty under common law principles of trustees vis-a-vis those who have an interest in the trust. While this makes it necessary for the

trustee to know who the beneficiaries are, it does not necessarily mean that trustees keep records or obtain information on the beneficial ownership of the trust in practice.

292. The information collected by FIs about legal arrangements raise the same concerns of reliability as outlined for legal entities because FIs rely mostly on the customer to declare the relevant information, they do not require official documentation to establish the identity of the beneficial owners, and do not conduct an independent verification of the information provided. Furthermore, there is no obligation on trustees to declare their status to the FI. As a result, in many cases, the FI may not know that the customer is acting as a trustee. It is unclear how many of the millions of trusts estimated to exist under Canadian law are linked with a Canadian FI.

Effectiveness, proportionality and dissuasiveness of sanctions

293. Proportionate and dissuasive criminal sanctions are available under the PCMLTFA, the CBCA and provincial laws for failure by any person to comply with the record-keeping obligations or registration or updating requirements under the law (see write up for R.24 for more details), but none have been imposed between 2009 and 2014.

294. So far, there seems to have been few instances in which administrative measures were applied for a failure by FIs to identify the beneficial owner or confirm the accuracy of the information received. Similarly, no legal entity in Canada has been struck off the company registry based on in its involvement in illicit conduct. In sum, sanctions have not been applied in an effective and proportionate manner.

Overall Conclusions on Immediate Outcome 5

295. **Canada has achieved a low level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

International cooperation is important given Canada's context, and Canada has the main tools necessary to cooperate effectively, including a central authority supported by provincial prosecution services and federal counsel in regional offices.

The authorities undertake a range of activities on behalf of other countries and feedback from delegations on the timeliness and quality of the assistance provided is largely positive. Assistance with timely access to accurate beneficial ownership information is, however, challenging, and some concerns were raised by some Canadian LEAs about delays in the processing of some requests.

The extradition framework is adequately implemented.

Canada also solicits other countries' assistance to fight TF and, to a somewhat lesser extent, ML.

Informal cooperation appears effective amongst all relevant authorities, more fluid and more frequently used than formal cooperation, but the impossibility for FINTRAC to obtain additional information from REs, and the low quantity of STRs filed by DNFBPs limit the range of assistance it can provide.

Recommended Actions

Canada should:

- Ensure that, where informal cooperation is not sufficient, LEAs make greater use of MLA to trace and seize/restraint POC and other assets laundered abroad.
- Ensure that good practices, such as consultation with prosecution services are applied across police services with a view to improve the use of MLA to identify and pursue ML, associated predicate offenses and TF cases with transnational elements.
- Assess and mitigate the causes for the delays in the processing of incoming and outgoing MLA requests.
- Consider amending the MLACMA to include the interception of private communications (either by telephone, email, messaging, or other new technologies) as a measure that can be taken by the authorities in response of a foreign country's MLA request without the need to open a Canadian investigation.

The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

296. Since its previous assessment, Canada has greatly improved its statistics on MLA, and is now able to show several different aspects of MLA related to ML and TF. Canada receives a large number of MLA requests each year. From 2008 to 2015, it received a total of 4,087 MLA requests across all offenses, including 383 for ML investigations and 34 related to TF investigations.

297. The IAG[91] prioritizes the requests (in terms of urgency, court date or other deadline, seriousness of the offense, whether the offense is ongoing, danger of loss of evidence, etc.); it contacts the foreign authorities to obtain further information if the request is incomplete or unclear; and forwards it to the Canadian police for execution (if no court order is needed), or to the IAG's provincial counterparts, or to a counsel within federal DOJ Litigation Branch, if a court order is required.

298. Canada generally provides the requested assistance, both in the context of ML and TF cases:

Table 21. **Outcome of Incoming MLA Requests for ML**

FISCAL YEAR	EXECUTED	WITHDRAWN	ABANDONED	REFUSED
2008–2009	24	0	4	2
2009–2010	23	1	1	0
2010–2011	21	1	5	1
2011–2012	42	5	4	0
2012–2013	39	1	8	3
2013–2014	56	5	8	0
2014–2015	48	4	6	1
TOTAL	253	17	36	7

Table 22. **Outcome of Incoming MLA Requests for TF**

FISCAL YEAR	EXECUTED	WITHDRAWN	ABANDONED	REFUSED
2008–2009	10	0	0	0
2009–2010	2	1	2	0
2010–2011	6	0	0	0
2011–2012	3	1	1	0
2012–2013	5	0	0	0
2013–2014	0	1	0	0
2014–2015	8	0	0	0
TOTAL	34	3	3	0

[91] The IAG is part of the Litigation Branch of the federal DOJ, and which assists the Minister of Justice as central authority for Canada.

299. The assistance provided is of good quality, as was confirmed by the feedback received from 46 countries. There have been numerous good cases of assistance, especially with the US, including covert operations, joint investigations and extraditions. This is an important positive output of the Canadian framework in light of the risk context (e.g. the extensive border with the US, the size of the US economy, and the opportunities it offers to criminal activity).

300. Canada undertakes a range of activities on behalf of other countries. It is, however, limited in its ability to provide in a timely manner accurate beneficial ownership information of legal persons and arrangements established in Canada, for the reasons detailed in IO.5 and IO.7. The fact that Canada cannot intercept, upon request, private communications (either telephone or messaging) in the absence of a Canadian investigation can also hamper foreign investigations, especially those pertaining to OCGs from or with links to Canada or international ML. While this measure is not specifically required by the standard, it is particularly relevant in the Canadian context given the high risk emanating from OCGs, including those with ties to other countries. The scope of this practical shortcoming is, however, limited by the fact that, in most instances, a domestic investigation is likely to be initiated, thus enabling the Canadian authorities to share evidence collected from wiretaps.

301. To facilitate MLA, Canada entered into 17 administrative arrangements with non-treaty partners over the past two years. It also executed over 300 non-treaty requests, mostly to interview witnesses and to provide publicly available documents.

302. Measures were also taken to expedite MLA. The IAG may now send the information requested by a foreign country directly, without the need for a second judicial order. The evidence shared includes, for example, transmission data for an electronic or telephonic message, which help identify the party communicating, tracking data that identify the location of a person or an object, information about a bank account and the account holder. In addition, LEAs that have obtained evidence lawfully for the purposes of their own investigation, may share this information with foreign counterparts without the need for a judicial order authorizing this sharing. For example, evidence obtained through wiretapping by Canadian police may be shared with foreign counterparts in this manner, as confirmed by case law.[92]

303. According to the feedback from delegations, the average time for Canada to respond to their requests varies between 4 and 10 months. The majority of delegations stated that assistance was timely, or did not comment on timeliness, with only one country commenting that the process was slow. Some Canadian LEAs also expressed concerns with the length of time taken to process some of the incoming and outgoing requests. The IAG explains that some of the factors that contribute to lengthening the process include: (i) missing information in the request and the requesting state's slow response to requests for clarification or additional information; (ii) litigation (i.e. when a party affected by the request contests the validity of the court order required, particularly in instances the litigation continues into appellate courts; (iii) because the fact that Canada is awaiting the fulfilment of a condition by the foreign authorities (e.g. in cases where Canada has restrained assets, a final judgment of forfeiture issued by the relevant foreign court may be pending); and (iv) the complexity of the file (e.g. cases involving multiple bank accounts, many witnesses, several Canadian provinces and successive supplemental requests). According to the Auditor General Report 2014, the DOJ processes formal requests for extradition and obtains evidence from abroad appropriately, but does not monitor the reasons

[92] See Supreme Court's decision in *Wakeling v. United States of America* 2014 SCC 72.

for delays in the process.[93] The report found that only 15% of the overall time needed to process MLA requests are within Justice Canada's control, and 30% of the overall time to process extradition requests are within its control. Justice Canada can only take actions to mitigate the delays when it develops insight about the reasons for the delays. In response to the comments by the Auditor General of Canada and after consultations with its international partners and closer research of its files in more recent years, there has been a significant reduction in the delays associated with executing MLA requests made to Canada.

304. Canada extradites its nationals. Pursuant to the Supreme Court of Canada's decision in *U.S. v. Cotroni*, where the extradition of a Canadian citizen is sought based on facts that might form the basis for a prosecution in Canada, certain consultations and an assessment of evidence and circumstances must take place before a decision can be made as to whether to prosecute or extradite. In 99% of such cases, the circumstances favour extradition. Between 2008 and 2015, Canada received 92 extradition requests based on a charge for ML. From the 92 requests, 77 came from the US. As a result of these requests, a total of 48 persons were extradited, while 13 were subject to other measures such as deportation, discharge, voluntary return, or were not located or the means of the return not listed. In the seven cases where the request was refused, the grounds were related either to insufficient evidence to show knowledge of ML, concerns with human rights record or prison conditions in the requesting state, or the defendant was not located. Between 2008 and 2015, five persons were extradited for TF.

305. More than half (52%) of the extradition requests take from 18 months to five years to be completed; from which 28% take from three to five years to be completed. An approximate of 4% take more than five years to be completed. Most of the delegations mentioned having successful extradition requests with Canada, although some mentioned having experienced delayed responses from the Canadian authorities regarding those requests.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

306. From 2008 to 2015, Canada sent more than 700 MLA requests, including 124 (i.e. around 17%) on the grounds of ML charges. Some requests were made, e.g. in the context of real estate or to obtain bank records, as well as to freeze and confiscate funds or assets abroad.[94] Most of these requests were made on the basis of investigations conducted in the province of Quebec (which is in line with the findings in IO.7 and IO.8). Between 2008 and 2015, Canada also made 24 requests in the context of TF investigations, 11 of which during fiscal year 2014/2015 in light of increased concern about "foreign fighters."

307. The number of request for assistance on ML cases has increased over the years, but still appears relatively low in light of Canada's risk profile. The authorities explained that they frequently have recourse to informal means of cooperation (see core issue 2.3 below) in lieu of MLA because it is quicker. However, while informal means do simplify and expedite the process

[93] Office of the Auditor General of Canada (2014), Report of the Auditor General of Canada—Fall 2014, p. 11, www.oag-bvg.gc.ca/internet/docs/parl_oag_201411_02_e.pdf. The assessors reviewed 50 extradition and MLA files from between 2011 and 2013, which included incoming and outgoing requests, and both ongoing and closed files.

[94] From 2008 to 2005, Canada sent 113 requests with respect to tracing (bank or real estate records) and 33 requests with respect to freezing/restraint (funds or assets).

of assistance, they cannot substitute formal MLA in all cases (e.g. when there is a need for the tracing or the freezing of assets abroad). The relatively small number of outgoing requests may also be explained by the fact that Canada is not pursuing complex and transnational ML schemes to the extent that it should (see IO.7). Although the outflows of POC generated in Canada appear to be moderate in comparison to the inflows of POC generated abroad, data suggests that Canadian citizens and corporations use tax havens and offshore financial centres to evade taxes, in particular those located in the Caribbean, Europe and Asia- cooperation with the relevant countries in these regions would therefore prove helpful to Canada. Some domestic provincial LEAs mentioned concerns about the delay in the sending of requests to foreign countries. In response to that point, the IAG assures that the same case management prioritization measures are in place for outgoing requests as for incoming requests.

Seeking other forms of international cooperation for AML/CTF purposes

308. Canadian agencies regularly seek and provide other forms of international cooperation to exchange financial intelligence and other information with foreign counterparts for AML/CFT purposes. In particular, the cases studies provided as well as the discussions held on-site indicate a regular use by LEAs of foreign experts, missions abroad to secure evidence and assets, and joint investigations. Canada does not separate the information according to the function (i.e. seeker or provider of assistance), and the information provided therefore combines the objects of core issues 2.3 and 2.4.

309. FINTRAC is both a FIU and a regulator/supervisor:

- As Canada's FIU: FINTRAC is a member of the Egmont Group and shares information only on the basis of MOUs with counterparts. FINTRAC is open to sign a MOU with any FIU, and the process can be concluded very quickly, but sometimes this does not happen due to the absence of interest of the foreign FIU. At the time of the on-site there were 92 MOUs with foreign FIUs. In the absence of an MOU, they cannot share information. According to the feedback provided by other delegations, the information provided by FINTRAC is of good quality. Nevertheless, some limitations have a negative impact on the type of information that FINTRAC can share: more specifically, the fact that (i) FINTRAC is not habilitated to request and obtain further information from any REs; (ii) there are no STRs from lawyers. Canada receives far more requests for assistance than it sends to support Canadian investigations and prosecutions. Although there were fewer queries sent to its foreign counterparts a few years ago, FINTRAC has recently increased the number of requests sent. The queries received and sent to the US (which, as mentioned above, is a major Canadian partner in international cooperation) are generally comparable. In addition to requests sent, the significant increase of FINTRAC's numbers of proactive disclosures sent to its counterparts (2012-2013:52; 2013-2014:93; 2014-2015:190) highlights the Canadian FIU's willingness to share the relevant information it holds with its foreign partners.

- As a supervisor, FINTRAC regularly shares information with foreign supervisors and consults with international partners. In addition to general information, it also exchanges, on an on-going basis, since 2009, compliance information on operational processes with AUSTRAC. After several bilateral meetings, FINTRAC and AUSTRAC are working together in compliance actions on an MSB that operates both in Canada and in Australia. FINTRAC's public MSB registry was also provided to Australia and other jurisdictions, because the comparison of MSB lists is useful during the criminal record check of MSBs, who may operate in more than one country. FINTRAC has also an MOU with FINCEN.

310. The RCMP regularly exchanges information with its foreign counterparts. Cooperation is developed through police channels (Interpol, Europol, Five Eyes Law Enforcement Group), through the Camden Asset Recovery Informal Network (CARIN) and through several MOUs, including one with The People's Republic of China. The existence of this MOU with China is important in light of the risks of inward flow of illicit money generated in China; however, no assistance with this country was reported in the province of British Columbia, despite the fact that it appears to be at greater risk of seeing its real estate sector misused to launder POC generated in China. The RCMP uses a well-established and effective network of liaisons officers (42 officers and 10 intelligence analysts in 26 countries) to seek and provide assistance and other types of information, in ML and TF investigations. It shares intelligence information, carries out investigations on behalf of foreign counterparts, and participates in joint investigations, as demonstrated in several cases studies provided by the authorities. From 2008 to 2013, it sent 98 requests for assistance on PPOC and ML/TF-related occurrences to the US, 94 to Europe and 60 to Asia. The RCMP and other police forces are also the ones who execute incoming requests of assistance, when there is no need for a judicial order, and the information or documentation is publicly available or can be obtained on a voluntary basis.

311. OSFI concluded 30 MOUs with various international prudential supervisors. No statistical information was provided in this respect but the authorities mentioned that OSFI regularly exchanges information regarding FRFIs with its foreign counterparts. In 2012, OSFI hosted an AML/CFT Supervisory College on five conglomerate banks with 19 foreign regulators in attendance. The College provided an opportunity for the foreign regulators to provide information on AML/CFT supervision in the host jurisdictions, and also for the banks themselves to provide an overview of their AML/CFT programs. The OSFI Relationship Management Team also hosts Supervisory Colleges of a general prudential nature, where foreign regulators attend. When OSFI conducts assessments at foreign operations of FRFIs, it seeks cooperation of the host regulator, who usually participates on the on-site with OSFI. The Colleges are an important and effective way for the sharing of information with OSFI's foreign counterparts.

312. The CBSA cooperates on a regular basis with US Immigration and Custom Enforcement (ICE) and US Custom Border Protection for the Sharing of Currency Seizure Information, including in AML/CFT matters. This cooperation is very important due to the extensive border shared by Canada and the US Cases provided by the authorities demonstrated the CBSA's participation in joint operations. CBSA also receives information from the US Department of Homeland Security, which helps the detection of suspected POC and leads to the seizure of the currency. Its participation in the Homeland's Security BEST Program resulted in the CBSA

initiating 103 criminal investigations related to the smuggling of narcotics, smuggling of currency and firearms and illegal immigration. The CBSA also receives international cooperation from foreign governments or law enforcement and maintains strong collaboration with the 5-Eyes Community. It shares FINTRAC results with partner agencies in the US on files that indicate ML activities that cross the Canada/US border (Mexican Mennonites, outlaw motorcycle gangs, Persian organized crime). Nevertheless, the authorities also mentioned that financial information and information on import and export files declared in Canada are difficult to obtain by their counterparts, due to Canada's strong privacy framework.

313. The CRA has 92 Tax treaties and 22 Tax Information Exchange Agreements (TIEA) with international partners. However, CRA and CBSA do not cooperate under the Customs Mutual Assistance Agreement with the US. As is common for Canadian authorities, they would always require and MLAT to share the information regarding trading operations (where there is an important risk of trade-based ML, especially considering that more than 60% of Canada's GDP consists of international trade). Between 2009 and 2015, the CRA sent 72 requests and received 11 requests for exchange of information to foreign counterparts, in the context of criminal investigations.

314. The CSIS regularly receives from and shares financial information with FINTRAC in support of both organizations' mandates. In relation to high-risk travellers, it uses financial intelligence to determine how ready an individual may be to travel by determining whether they have purchased equipment, or if they have saved up money that could be used to support themselves while they are abroad. Due to confidentiality issues and matters of national security, CSIS did not provide the assessors any statistical data.

315. Feedback from the countries on Canada's assistance through other forms of cooperation is generally good. Most of the delegations indicated that the information received from FINTRAC in response to their requests was useful, of good content and of high quality. The limitation to request further information from any REs and bank information was, however, also reported. FINTRAC's average time to respond to request from its counterparts is 35 days (which is in line with the Egmont Group standards).The feedback from the US FIU is very positive. FINTRAC and FINCEN have had a strong working relationship for years, both as FIUs and as AML/CFT supervisory/regulatory agencies, which is very important in light notably of the extensive border between the two countries, the illicit flows of criminal money, as well as the linkages between OCGs active in both countries. The US, which is Canada's main partner in cooperation, also reported and outstanding cooperation exchange with CRA. They indicated that the CRA responds to American requests for records in a very timely manner and has provided assistance in the location and coordination of witness interviews.

International exchange of basic and beneficial ownership information of legal persons and arrangements

316. While the authorities recognize the risk of misuse of Canadian legal persons and arrangements, they do not appear to have identified, assessed and understood with sufficient granularity the extent to which Canadian legal persons and legal arrangements are misused for ML or TF in the international context. In addition, there are serious concerns about the timeliness access to relevant information by competent authorities as well as with respect to the

quality of the information collected by REs. As a result, cooperation in relation to foreign requests regarding BO of legal persons and arrangements cannot be fully effective.

317. Canada, and FINTRAC in particular, regularly receives requests for corporate records and information on beneficial ownership of both corporations and trusts (which points to the relevance of Canadian legal entities and trusts in international ML operations). FINTRAC provides the requested information as long as it already has it (i.e. it has received a STR or other report including VIRs regarding the relevant corporation or trust), it can access it (e.g. information from the corporate registries of Alberta and Quebec, or from the MSB registry, when the ownership is 25% or more, or from any other public source). The IAG also receives requests for basic and beneficial ownership information which it forwards to LEAs for execution. Between 2008 and 2015, it received 222 for corporate or business records, including 78 related to ML and 1 to TF investigations. Most of these requests have been executed.

Overall Conclusions on Immediate Outcome 2

318. **Canada has achieved a substantial level of effectiveness for IO.2**.

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations of Canada in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation (R.). It should be read in conjunction with the Detailed Assessment Report (DAR).

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2008. The report for that assessment or evaluation is available from the FATF website.[95]

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

The requirements of R.1 were added to the FATF standard in 2012 and were, therefore, not assessed during the previous mutual evaluation of Canada.

Obligations and Decisions for Countries

Risk Assessment

Criterion 1.1— The Government of Canada has developed a risk assessment framework to support the identification, assessment and mitigation of ML/TF risks and includes a process to update and enhance this assessment over time. ML and TF threats were documented separately. Canada completed its first National Risk Assessment (NRA), the "Assessment of Inherent Money Laundering and Terrorist Financing Risks in Canada," in December 2014. In April 2015, the senior officials of participating federal departments and agencies endorsed the internal and draft public versions of the report. In July 2015, the Minister of Finance, on behalf of the government, released the public version of the NRA.[96] Canada's ML/TF Inherent RA is supported by a documented NRA Methodology with defined concepts on ML/TF risks and rating criteria. The report, which reflects the situation in Canada up to 31 December 2014, provides an overview of the ML/TF threats, vulnerabilities and risks in Canada before the application of mitigation measures.

The NRA consists of an assessment of the inherent (i.e. before the application of any mitigation measures) ML/TF threats and inherent ML/TF vulnerabilities of key economic sectors and financial products, while considering the contextual vulnerabilities of Canada, such as geography, economy, financial system and demographics.

Pursuant to the Interpretative Note to R.1, if countries determine through their risk assessments that there are types of institutions, activities, businesses or professions that are at risk of abuse from ML and TF, and which do not fall under the definition of financial institution or DNFBP, they should

[95] See FATF (2008), Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism, www.fatf-gafi.org/countries/a-c/canada/documents/mutualevaluationofcanada.html
[96] See Department of Finance Canada (2015), Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, www.fin.gc.ca/pub/mltf-rpcfat/index-eng.asp

consider applying AML/CFT requirements to such sectors. In that regard, the 2008 MER discussed whether Canada had considered extending AML requirements to white-label ATMs (see paragraphs 1357 to 1364). In a 2007 FINTRAC report highlighted the vulnerability of white-label ATMs to ML, and various press articles highlight the risk of misuse of white-label ATMs. The authorities are considering mechanisms to address this risk.

Criterion 1.2— The Department of Finance Canada (Finance Canada) is the designated authority for coordinating the work associated with the ongoing assessment of ML/TF risks. In Canada government responsibilities in regard to AML/CFT are divided between the federal government and the ten provinces (the three territorial governments exercise powers delegated by the federal parliament). In that regard, the execution of AML/CFT actions involves collaboration and coordination across all levels of government.

The terms of reference for (i) the Interdepartmental Working Group on Assessing ML and TF Risks in Canada and (ii) the permanent National Risk Assessment Committee (NRAC; the senior-level AML/CFT Committee) establish Finance Canada as the designated authority for the initiative. The Minister of Finance is the Minister responsible for the PCMLTFA. Therefore, as decided by the Cabinet, the responsibility for coordinating the AML/CFT regime and the NRA falls also to Finance Canada.

Criterion 1.3— Canada's risk assessment framework contemplates a process to update and enhance this assessment over time. In accordance with the document "Proposed Governance Framework for Canada's ML/TF Risk Assessment Framework" (endorsed on 13 November 2014), the NRA update is now coordinated through the NRAC, the successor body to the Working Group that developed the NRA. The Terms of Reference of NRAC were approved at the senior-level AML/CFT Committee in April 2015. NRAC is composed of representatives of the federal departments and agencies that comprise Canada's AML/CFT (and may invite other public and private sector partners to participate), which facilitates sharing findings across the organizations represented to help them understand the evolving risks and ML/TF environment, as well as discuss and propose mitigations. Finance Canada is the permanent co-chair of the NRAC; the other co-chair position rotates every two years among other federal departments or agencies. NRAC is required to prepare a formal update every two years on the results of the risk assessment and an informal update on an annual basis. The reports are addressed to the senior level AML/CFT Committee. As Canada completed its NRA in December 2014, it is relatively up to date. Furthermore, the Committee will meet every six months or more frequently if needed, to review emerging threats and new developments and will report to the senior-level Committee on an annual basis with updates.

Criterion 1.4—Information on the results of the NRA is provided to competent authorities, self-regulatory bodies, FIs and DNFBPs through different working groups, committees and outreach activities. The NRA was released publicly on 31 July 2015 (and is available on the websites of Finance, FINTRAC, and OSFI). The NRA methodology and results were also shared and discussed beforehand by Finance

Risk Mitigation

Criterion 1.5— The risk mitigation is implemented through various thematic national strategies, to wit: National Identity Crime Strategy (2011), Canada's Counter-terrorism Strategy (2013); National Border Risk Assessment 2013–2015; 2014–2016 Border Risk Management Plan; Enhanced Risk Assessment Model and Sector profiles; OSFI's AMLC Division AML and CFT Methodologies and Assessment Processes; OSFI-Risk Ranking Criteria; and the CRA's techniques to identify registered charities and organizations seeking registration that are at risk of potential abuse by terrorist entities and/or associated individuals.

Criterion 1.6— Financial activities are subject to AML/CFT preventive measures as required in the FATF Recommendations, except when these activities are conducted by the sectors that are not subject to AML/CFT obligations under the PCMLTFA. These sectors include check-cashing businesses, factoring companies, and leasing companies, finance companies, and unregulated mortgage lenders, among others. The NRA assessed the ML/TF vulnerabilities of factoring, finance and financial leasing companies as medium risk, while pointing out that these entities were very small players as a proportion of Canada's financial sector. However, the ML/TF risks for these sectors has not been proven to be low and the non-application of AML/CFT measures is not based on a risk assessment. .

Except for the legal profession, all DNFBP sectors are required to apply AML/CFT preventive measures. Lawyers are covered as obliged AML/CFT entities, pursuant to PCMLTR, Section (s.) 33.3; however, the AML/CFT provisions are inoperative in relation to lawyers and Quebec notaries (who provide legal advice and are, therefore, considered legal counsel, PCMLTFA s. 2) as a result of a 2015 Supreme Court of Canada ruling.

Supervision and Monitoring of Risk

Criterion 1.7— REs are required to implement enhanced or additional measures in high-risk situations pursuant to PCMLTFA, ss.9.6(2) and 9.6(3) and PCMLTFR, §71(c) and 71.1(a) and (b) (see discussion on R.10 for additional information on enhanced CDD measures). The REs are expected to integrate the NRA results in their own risks assessments.

PCMLTFA, s.9.6(2) provides that REs develop and apply policies and procedures to address ML and TF risks. PCMLTFA, s.9.6(3) and PCMLTFR, s.71.1(a) and (b) require REs to apply "prescribed special measures" to update client identification and beneficial ownership information, and to monitor business relationships when higher risks are identified through the entity's risk assessment.

Nevertheless, the provisions discussed in the paragraphs above do not apply to the sectors that are not subject to reporting obligations under the PCMLTFA. These include sectors such as the legal counsels, legal firms and Quebec notaries, factoring companies, financing and leasing companies, among others. Of these sectors, the legal counsels, legal firms and Quebec notaries are exposed to ample ML opportunities and are exposed to higher risks. Therefore, as the legal profession is not required to take enhanced measures regarding higher ML risks (or any ML risks, for that matter) the risks associated with this sector are not being effectively mitigated.

Exemptions

Criterion 1.8— PCMLTFR ss.9, 62 and 63 provide for exemptions from the customer identification and record-keeping requirements in certain specific circumstances assessed as low risk by the authorities (for details about the exemption regime, see discussion on R.10 below). OSFI and FINTRAC continuously assess the risks associated with their supervised sectors and the current assessment of low risks appear to be consistent with the findings of the NRA.

Criterion 1.9— PCMLTFA, s.40(e) requires FINTRAC to ensure compliance with PCMLTFA provisions. PCMLTFA, s.9.6(1)-(3) requires REs Act to implement measures to assess ML and TF risks, and monitor transactions in respect of the activities that pose high ML/TF risks. OSFI and FINTRAC apply a risk-based approach to the supervision of their supervised sectors. As discussed previously, the legal profession is not subject to AML/CFT obligations and is, therefore, not monitored by FINTRAC. However, some high-risk DNFBPs are not subject to AML/CFT obligations and are thus not supervised in relation to their obligations under R.1.

Obligations and Decisions for Financial Institutions and DNFBPs

Risk Assessment

Criterion 1.10— PCMLTFA, s.9.6(2) and PCMLTFR, §71(c) requires REs to conduct risk assessments and consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied. PCMLTFR, s.71(e) provides that the REs shall keep their risk assessments up to date. All supervised entities and those subject to examination by FINTRAC are obligated under their sector legislation or PCMLTFA, s.62 to provide any material that FINTRAC or sector regulators may require. FINTRAC Guideline 4 (Implementation of a Compliance Regime, February 2014) provides a checklist of products or services that should be considered high-risk. OSFI Guideline B-8 (Deterring and Detecting Money Laundering and Terrorist Financing) provides instruction on the FRFIs risk assessment policies and procedures. As mentioned above, none of the AML/CFT requirements are applicable to lawyers, legal firms, and Quebec notaries.

Risk Mitigation

Criterion 1.11— *a)* Under PCMLTFA s 9.6(1) and PCMLTFR, s.71, REs are required to develop written AML/CFT compliance policies and procedures, which are approved by a senior officer of the RE in accordance with PCMLFTR s.71(1)(b).

b) These policies and procedures, the risk assessment and training program are required to be reviewed at least every two years (PCMLFTR, ss.71(1)(e) and 71(2)). The REs must also assess and document ML and TF risks (PCMLTFA, s.9.6(2) and PCMLFTR, s.71(1)(c)).

c) There are several different provisions that require REs to implement enhanced or additional measures in high-risk situations: Under PCMLTFA, ss.9.6(2) and 9.6(3), REs are required to assess ML and TF risks and enhanced due diligence, record keeping and monitoring of financial transactions that pose a high risk of ML or TF. The PCMLTFR requires REs to apply enhanced measures when high risks are identified in their activities as a result of ongoing monitoring. The

sectors covered by the PCMLTFR are banks and other deposit-taking institutions (s.54.4); life insurance (s.56.4); securities (s.57.3); MSBs (s.59.02); accountants (s.59.12); real estate (s.59.22); British Columbia Notaries (s.59.32); real estate developers (s.59.52), casinos (s.60.2); and Departments and agents of the Queen in rights of Canada or a Province for the sale or redemption of money orders for the general public (s.61.2). The provisions addressing the legal profession are not applicable to legal counsels, legal firms and Quebec notaries for the reasons stated earlier. FINTRAC, Guideline 4 and OSFI Guideline B-8 provide additional guidance.

Criterion 1.12— The Canadian AML/CFT legislation does not provide for simplified measures.

Weighting and Conclusion:

The main inherent ML and TF risks were identified and assessed for the implementation of appropriate mitigation.

Canada is largely compliant with R.1.

Recommendation 2 - National Cooperation and Coordination

Canada was rated LC in the 2008 MER with former FATF R.31; the cooperation between the FIU and LEAs was not considered to be fully effective.

Criterion 2.1— Several national strategies and policies are in place to inform AML/CFT policies and operations. The main AML policies and strategies are the *National Identity Crime Strategy* (RCMP 2011); *National Border Risk Assessment 2013–2015* (CBSA); *2014–16 Border Risk Management Plan* (CBSA); *Enhanced Risk Assessment Model and Sector profiles* (FINTRAC); *AMLC Division AML and CFT Methodology and Assessment Processes* (OSFI); *Risk Ranking Criteria* (OSFI); *Risk-Based Approach to identify registered charities and organizations seeking registration that are at risk of potential abuse by terrorist entities and/or associated individuals* (CRA) and CRA-RAD Audit Selection process. The RCMP is currently developing their National Strategy to Combat Money Laundering. These AML strategies and policies are linked to the 2011 *Canadian Law Enforcement Strategy on Organized Crime*. In addition, the Government's other main AML/CFT concerns are reflected in Finance Canada's Report on Plans and Priorities,[97] which outlines the AML/CFT regime's spending plans, priorities and expected results. Canada's CFT strategy forms part of the broader Counter-terrorism Strategy.[98] Similarly, the country's PF strategy forms part of the broader strategy to counter the proliferation of chemical, biological, radiological and nuclear weapons.[99]

The TRWG is an interdepartmental body that serves as a forum to enhance dialogue, coordination, analysis and collaboration, among PS Portfolio members and government departments with an intelligence mandate, on issues related to threat resourcing, including ML, TF and proliferation

[97] Department of Finance Canada (2015), Report on Plans and Priorities 2015–16, p. 29, www.fin.gc.ca/pub/rpp/2015-2016/index-eng.asp
[98] Public Safety Canada (2013), Building Resilience Against Terrorism: Canada's Counter-terrorism Strategy, www.publicsafety.gc.ca/cnt/rsrcs/pblctns/rslnc-gnst-trrrsm/index-en.aspx
[99] Public Safety and Emergency Preparedness Canada (2005), The Chemical, Biological, Radiological and Nuclear Strategy of the Government of Canada, www.publicsafety.gc.ca/cnt/rsrcs/pblctns/rslnc-strtg-rchvd/index-en.aspx

activities, organized crime and other means through which threat actors resource their activities. It also highlights the security and intelligence components of files associated with Canada's AML/ATF Regime.

Criterion 2.2— Finance Canada is the domestic and International policy lead for the whole AML/CFT regime, and is responsible for its overall coordination, including AML/CFT policy development and guiding and informing strategic operationalization of the NRA framework.

Criterion 2.3— The Canadian regime is also supported by various interdepartmental formal and informal working-level bilateral and multilateral working groups and committees, depending on the nature of the issues to be addressed including: NRAC; NCC; IPOC ; IFAC; TRWG, and the ICC.

To combat ML, Canada also coordinates domestic policy on the federal criminal forfeiture regime under the IPOC. IPOC's interdepartmental Director General-level Senior Governance Committee led by Public Safety Canada includes: CBSA, CRA, PPSC, PS, PWGSC and the RCMP. The Committee is mandated to provide policy direction, promote interdepartmental policy coordination, promote accountability, and to support the Initiative.

The NCC is the primary forum that reviews progress of the National Agenda to Combat Organized Crime. NCC's 5 Regional Coordinating Committees communicate operational and enforcement needs and concerns to the NCC, acting as a bridge between enforcement agencies and officials and public policy makers. Canada coordinates domestic AML policy on the federal criminal forfeiture regime under the IPOC Advisory Committee and the IPOC Senior Governance Committee.

The IFAC is an interdepartmental consultative body that has the responsibility for the sharing, analysis and monitoring of information related to ML/TF threats posed to Canada by foreign jurisdictions or entities. The ICC assists the Minister of Public Safety and Emergency Preparedness by providing the requisite analysis and considerations to inform the recommendations to the Governor in Council regarding listing of entities.

OSFI and FINTRAC coordinate their activities through a common approach for supervision of FRFIs, starting in 2013, by conducting simultaneous AML/CFT examinations. FINTRAC informs its compliance enforcement strategies with findings provided by other federal and provincial regulators in order to monitor and enforce AML/CFT compliance by REs. FINTRAC has established 17 Memoranda of Understanding (MOU) with federal and provincial regulators for the purpose of sharing information related to compliance with Part 1 of the PCMLTFA. The RCMP leads the Integrated National Security Enforcement Teams (INSETs) in major centers throughout the country). INSETs are made up of representatives of the RCMP, federal partners and agencies such as CBSA, CSIS, and provincial and municipal police services.

Criterion 2.4— Counter-proliferation (CP) efforts, including proliferation financing, are coordinated via a formalized CP Framework created in 2013. PS chairs the Counter-Proliferation Policy Committee, at which CP partners identify, assess and address policy and programming gaps that may undermine Canada's CP capacity. Global Affairs Canada chairs the Counter-Proliferation Operations Committee, through which CP partners work together to address specific proliferation threats with a

Canadian nexus. FINTRAC is a member of the Operations Committee, and as per PCMLTFA s.55.1(1)(a), is able to disclose designated financial information to the Canadian Security Intelligence Service (CSIS) when it has reasons to suspect that it would be relevant to investigations of threats to the security of Canada, which includes proliferation activities. FINTRAC can also disclose information on threats related to proliferation to the appropriate police force and the CBSA if separate statutory thresholds are met.

Weighting and Conclusion:

Canada has a number of standing committees, task forces and other mechanisms in place to coordinate domestically on AML/CTF policies and operational activities.

Canada is compliant with R.2.

Recommendation 3 - Money laundering offense

Canada was rated LC with former R.1 and 2 based on a number of shortcomings. The range of predicate offenses was slightly too narrow and for one part of the ML offense the *mens rea* requirement was not in line with the FATF standard. Since 2008, the range of predicate offenses for ML was expanded to include tax evasion, tax fraud, and copyright offenses.

***Criterion* 3.1**— ML activities are criminalized through Criminal Code (CC), ss.354 (possession of proceeds), 355.2 (trafficking in proceeds), and 462.31 (laundering proceeds). *Conversion or Transfer:* CC, s.462.31 criminalizes the use, transfer, sending or delivery, transportation, transmission, altering, disposal of or otherwise dealing with property with the intent to conceal or convert the proceeds and knowing or believing that all or part of that property or proceeds was obtained or derived directly or indirectly as a result of a predicate offense. S.462.31 falls somewhat short of the FATF standard due mainly because the perpetrator must intend to conceal or convert the property itself rather than the illicit origin thereof. Additionally, no alternative purpose element of "helping any person who is involved in the commission of a predicate offense to evade the legal consequences of his or her action" is provided for. S.355.2 criminalizes many of the same acts as s.462.31 but without setting out any specific intent requirement. However, the Supreme Court in *Canada in R. v. Daoust, 2004, 1 SCR 217, 2004 SCC 6 (CanLII)* held that "the intention of parliament was to forbid the conversion pure and simple, of property the perpetrator knows or believes is proceeds of crime, whether or not he tries to conceal it or profit from it." *Acquisition, possession or use:* Ss.354 and 355.2. criminalize the sole or joint possession of or control over (s.354) and the selling, giving, transferring, transporting, exporting or importing, sending, delivering or dealing with in any way (s.355.2) of property or things that the person knows were obtained or derived directly or indirectly from an indictable offense. Neither provision explicitly refers to the "acquisition or use," but such acts would be covered by "control over proceeds" in s.354 and the various material elements under s.355.2. *Concealment or disguise:* Under CC, s.354 it is an offense to conceal or disguise property that the perpetrator has possession of or control over, in which case liability is invoked for "possession and trafficking of proceeds." Additionally, the concealment or disguise is covered under s.355.2 and liability is for "trafficking in proceeds."

Criterion 3.2— Ss.354 and 355.2 cover acts relating to proceeds of an "indictable offense;" and s 462.31 to proceeds of a "designated offense." "Designated offense" is defined as "any offense that may be prosecuted as an indictable offense other than those prescribed by regulation". Canada's ML provisions apply to all serious offenses under Canadian law and cover a range of offenses in each FATF designated categories of predicate offenses, including tax evasion.

Criterion 3.3— All serious offenses under Canadian law, defined as offenses with a statutory sanction of imprisonment for more than six months, constitute a predicate offense for ML. As indicated in the 2008 MER, federal laws criminalize a range of serious offenses under each FATF designated categories of predicate offenses.

Criterion 3.4— Ss.354, 355.2, and 462.31 apply to any property or proceeds of property obtained or derived, directly or indirectly, from the commission of an indictable offense. No value threshold applies. "Property" is defined under s.2 of the CC to include real and personal property of every kind and deeds and instruments relating to or evidencing the title or right to property, or giving a right to recover or receive money or goods, including converted or exchanged property. The definition covers material and immaterial, tangible and intangible, and corporeal and incorporeal property as well as interest in such property.

Criterion 3.5— The legal provisions do not require a conviction for a predicate offense to establish the illicit source of property. Case law further confirmed this principle. [100]

Criterion 3.6— The text of ss.354, 355.2 and 462.31 apply the relevant offenses to indictable offenses committed in Canada and to any act or omission committed abroad that would have constituted an indictable offense had it occurred in Canada.

Criterion 3.7— Nothing in the relevant provisions prevent their application to the person who committed the predicate offense. Canadian case law supports the notion that the ML provisions can also be applied to the person who committed the predicate offense.[101]

Criterion 3.8— As a general rule, Canada allows for the intentional element of criminal offenses to be inferred from objective factual circumstances and based on credible, admissible and relevant circumstantial evidence. This principle has been confirmed through case law in multiple instances, as indicated in the 2008 MER.[102]

Criterion 3.9— Offenses pursuant to s.354 are punishable with imprisonment for up to ten years (if the value of the property exceeds CAD 5 000) or for up to two years (if the value of the property is less than CAD 5 000). S.355.5 applies the same value thresholds but set out slightly stricter sanctions of imprisonment for up to 14 years or up to five years, respectively. S.462.31 provides for a statutory

[100] United States of America and the honorable Allan Honourable Allan Rock, Minister of Justice for Canada v. Dynar, 1997, 2 SCR 462, 1997, CanLII 359 (SCC); R.c.Chun, 2015 QCCQ 2029 (CanLII); and R.c. Lavoie, 1999 CanLII 6126 (QCCQ).

[101] R. v. Tortine, 1998, 2 SCR 972, 1993 CanLII 57 (SCC); and R. v. Trac at R. v. Trac, 2013 ONCA 246 (CanLII).

[102] Manitoba Court of Appeal in R. v. Jenner (2005), 195 CCC (3d) 364 at para 20; and Ontario Court of Appeal in R. v. Aiello (1978), 38 CCC (2d) 485 affirmed 46 CCC (2d) 128n SCC at page 488.

sanction of imprisonment for up to ten years, regardless of the amounts involved. The statutory sanctions may be increased or reduced pursuant to CC, s.718.2 based on aggravating or mitigating circumstances. CC, s.718.1 requires that the sanction in all cases be proportionate to the gravity of the offense and the degree of responsibility of the offender. The statutory sanctions are considered to be both dissuasive and proportionate.

Criterion 3.10— Legal entities may be subject to criminal liability and be held criminally responsible for ML. Pursuant to CC, s.735 (1) a legal entity, partnership, trade union, municipality or association convicted of an indictable offense is liable to a fine with the relevant amount being determined by the court. In determining the relevant sanction, s.718.21 stipulates that factors such as the advantage realized, the degree of planning involved in carrying out the offense, whether the organization has attempted to conceal its assets or convert them to avoid restitution; and any regulatory penalty imposed shall be taken into account. CC, s.718.1 requires that a sentence must in all cases be proportionate to the gravity of the offense and the degree of responsibility of the offender. Given the wide discretion the court has in determining the sanction, the statutory sanctions are considered to be dissuasive and proportionate. Parallel civil or administrative sanctions may be applied in addition to the criminal process.

Criterion 3.11— Ancillary offenses are criminalized in the general provisions of the CC (s.24— Attempt; s.21 (1)—aiding and abetting; s.21 (2)—conspiracy to commit; s.22— counselling, procuring, soliciting or inciting to commit; s.23—accessory after the fact).

Weighting and Conclusion:

Canada is compliant with R.3.

Recommendation 4 - Confiscation and provisional measures

Canada was rated LC with former R.3.

Criterion 4.1— CC, s.462.37 (1) provides for the permanent forfeiture of proceeds of crime based on a conviction for a designated offense. CC, s.490.1 (for all crimes) and Controlled Drugs and Substances Act (CDSA), ss.16 and 17 set out similar forfeiture provisions in relation to property used or intended to be used for the commission of an indictable offense. In all cases, the court will consider forfeiture based on the application by the Attorney General. In the context of convictions for participation in a criminal organization or offenses under the CDSA, extended forfeiture orders may be granted for material benefits received within 10 years before commencement of the proceedings and income from sources that cannot be reasonably accounted for. In a standalone ML case, CC, s.462.37(1) allows for the confiscation of the proceeds of the laundering activity as well as the property laundered, although for the latter a stricter standard of proof would apply. CC, ss.462.37 (1) and 490.1 allow for forfeiture of property from a third party. In cases where the accused has died or absconded, forfeiture *in rem* is available under ss.462.38 and 490.2.

Equivalent value confiscation is not permitted. CC, s.462.37(3) provides for the issuance of a fine in lieu of forfeiture in cases where the court determined that a forfeiture order under CC, s.462.37 cannot be made in respect of any property. While the issuance of a fine may result in the same outcome as an equivalent value confiscation, from a legal point of view the concept of a fine cannot substitute equivalent value confiscation.

Criterion 4.2— The CC and CDSA set out a wide range of measures including search and seize warrants pursuant to CC, ss.487, 462.32 and 462.35 and CDSA, s.11; production orders pursuant to CC, s.487.018 regarding the existence of bank accounts; production orders pursuant to CC, ss.487.014 and 487.015; warrants for transmission of data including computer and telecommunication program recordings under CC, s.492.2; general information warrants under CC, s.487.01 and tax information orders under CC, s.462.48. The power under CC, s.487.01 to "use any device, investigation technique or procedure or do anything described in the warrant" is sufficiently broad to also cover account monitoring, In addition, PCMLTFA, s.23 allows for the seizure and forfeiture of cash or bearer-negotiable instruments for violations of the cross border declaration obligation. Seizing and restraint warrants to secure property or instrumentalities for forfeiture are available under CC, ss.462.33 and 490.8 and CDSA, s.14. Seizing and restraint orders may be issued based on reasonable grounds to believe that a forfeiture order will be made in regards to the relevant property. In both cases, the judge may opt to apply provisional measures ex parte and without prior notice. CC, ss.490.3 and 462.4 permit the judge to void any conveyances of transfers unless the transfer was for valuable consideration to a bona fide third party. Prior to the issuance of a seizing or restraint order, the holder of such property may become subject to criminal liability under CC, s.354(1) provided he acted knowingly. A specific forfeiture provision for property owned or controlled by a terrorist group or property that has been or will be used to carry out a terrorist activity is set out in CC, s.83.14.

Criterion 4.3— Rights of bona fide third parties are protected through CC, ss.462.42, 462.34 (b), 490.4 (3) and 490.5 (4), which allow for exclusion of certain property from a restraining, seizing, or forfeiture order.

Criterion 4.4— The Seized Property Management Act regulates the management of seized or restrained property and the disposal and sharing of forfeited property. Under the Act, the Minister of Public Works and Government Service is competent to take into custody all such property and may take any measures he deems appropriate for the effective management thereof. Forfeited property is to be disposed of and the proceeds to be paid into the Seized Property Proceeds Account. Fines paid in lieu of forfeited property and amounts received from foreign governments under asset-sharing agreements are to be credited to the Proceeds Account as well. Excessive amounts in the Account are to be credited to accounts of Canada as prescribed by the Governor in Council.

Weighting and Conclusion:

The confiscation framework has some shortcomings.

Canada is largely compliant with R.4.

Recommendation 5 - Terrorist financing offence

Canada was rated LC with former SR. II.

Criterion 5.1— TF is criminalized through CC, ss.83.02 to 83.04: S. 83.02 criminalizes the direct or indirect, wilful and unlawful collection or provision of property with the intent that the property is to be used or knowing that the property will be used to carry out a terrorist activity. CC, s.83.04 criminalizes the use of property for the purpose of facilitating or carrying out a terrorist activity, and the possession of property intending that it be used or knowing that it will be used to facilitate or carry out a terrorist activity. CC, s.83.01 defines "terrorist activity" to cover all acts which (1) constitute an offense as defined in one of the conventions and protocols listed in the Annex to the TF Convention, all of which are criminalized in Canada; and (2) any other act or omission carried out with terrorist intent.

Criterion 5.2— CC, s.83.03(a) criminalizes the direct or indirect collection or provision of property with the intent that such property is to be used or knowing that such property will be used to benefit any person who is facilitating or carrying out a terrorist activity. The offense applies also where the property is used by the financed person for a legitimate purpose. CC s.83.03(b) covers the direct or indirect collection or provision of property, knowing that such property, in whole or in part, will benefit a terrorist group. "Terrorist group" includes a person, group, trust, partnership, or fund or unincorporated associations or organizations that has as one of its purposes or activities the facilitating or carrying out of any terrorist activity. The mental element required under subsection (b) is slightly stricter than under subsection (a) as the offense only applies where the perpetrator knows that property will be used for the benefit of a terrorist group, but not where he merely intends for this to be the case. For both CC, ss. 83.03 (a) and (b) the courts have interpreted the term "facilitates" broadly to cover "any behaviour/activity taken to make it easier for another to commit a crime."[103] The term thus includes the "organizing or directing of others" to commit a terrorist activity, or the "contributing to the commission of a terrorist activity by a group of persons acting with a common purpose."

Criterion 5.3— "Property" is defined under CC, s.2 to include real and personal property of every kind and deeds and instruments relating to or evidencing the title or right to property or giving a right to recover or receive money or goods, including converted or exchanged property. CC, ss.83.01 to 83.03 are not limited in scope to financing activities involving illicit property. The source of the property used for the financing activity is irrelevant.

Criterion 5.4— CC, s.83.02 implies that the financing offense can also be applied in cases where a person collects or provides property merely with the intention to finance a specific terrorist activity. Thus, it is neither required that the financed activity has been attempted or committed, nor that the money collected or provided is linked to a specific terrorist activity. CC, s.83.03(b) extends to the collection or provision of funds for the benefit of a terrorist group, regardless of the purpose for which the funds are eventually used, but does not cover financing merely with the intent to benefit

[103] R. v. Nuttall, 2015 BCSC 943 CanLII.

an individual terrorist or terrorist organization. For financing of individual terrorists, CC, s.83.03(a) applies where the financed person is facilitating or carrying out a terrorist activity at the time the financing activity takes place and CC, s.83.03(b) covers situations where the property collected or provided is known to be used by or benefit a terrorist.

Criterion 5.5— Canada allows for the intentional element of criminal offenses to be inferred from objective factual circumstances and based on credible, admissible and relevant circumstantial evidence. This principle has been confirmed through case law in multiple instances, as indicated in the 2008 MER.[104]

Criterion 5.6— The statutory sanctions for a natural person is imprisonment for up to ten years with the possibility of an increased or reduced sentence pursuant to CC, ss.718.2 and 718.21 based on aggravating or mitigating circumstances. The statutory sanctions are considered to be both dissuasive and proportionate.

Criterion 5.7— Legal entities may be held criminally responsible for terrorism financing. Pursuant to CC, s.735 (1) of the CC, a legal entity, partnership, trade union, municipality, or association may fine in an amount that is in the direction of the court. CC, s.718.21 stipulates that factors such as the advantage realized, the degree of planning involved in carrying out the offense, whether the organization has attempted to conceal its assets or convert them to avoid restitution; and any regulatory penalty imposed shall be taken into account by the court. CC, s.718.1. CC further requires that the sentence be proportionate to the gravity of the offense and the degree of responsibility of the offender. Given the wide discretion by court in determining the sanction, the statutory sanctions are dissuasive and proportionate. Parallel civil or administrative sanctions may be applied.

Criterion 5.8— Ancillary offenses are criminalized in the general provisions of the CC (s.24—Attempt; s.21 (1)—aiding and abetting; s.21 (2)—conspiracy to commit; s.22—counselling, procuring, soliciting or inciting to commit; s.23—accessory after the fact). s.83.03 criminalizes inviting another person to provide or make available property for TF and ss.83.21 and 83.22 to knowingly instruct, directly or indirectly, any person to carry out an activity for the benefit of, at the direction of or in association with a terrorist group for the purpose of enhancing the ability of that group to facilitate or carry out a terrorist activity.

Criterion 5.9— Canada takes an all crimes approach to defining predicate offenses for ML. TF is, thus, a predicate offense for ML.

[104] Manitoba Court of Appeal in R. v. Jenner (2005), 195 CCC (3d) 364 at para. 20; and Ontario Court of Appeal in R. v. Aiello (1978), 38 CCC (2d) 485 affirmed 46 CCC (2d) 128n SCC at page 488.

Criterion 5.10— CC, ss.83.02 and 83.03 apply regardless of whether the underlying terrorist activity is committed inside or outside Canada, or whether the terrorist group or financed person is located inside or outside Canada.

Weighting and Conclusion

TF is set out as a separate criminal offense that covers all aspects of the offense set out in the Terrorism Financing Convention, with minor shortcomings.

Canada is largely compliant with R.5.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

Canada was rated LC with former SR. III. For certain FIs and other persons or entities that may hold targeted funds the assessors found that the names of designated persons and entities were not effectively communicated, the guidance issued was not sufficient and the implementation of the relevant legal provisions was not effectively monitored. The framework for the implementation of the TF-related targeted financial sanctions remains substantially unchanged. A new Security of Canada Information Sharing Act was adopted in 2015 to facilitate the sharing of information between Canadian government agencies with regards to any activity that undermines the security of Canada, including terrorism.

Identifying and Designating

Under United Nations Act, s.2, the Governor in Council may issue regulations to give effect to decisions and implement measures decided by the UNSC pursuant to Article 41, Chapter VII of the UN Charter. Two Regulations were issued on this basis—the *United Nations Al-Qaida and Taliban Regulations* (UNAQTR) and the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* (RIUNRST). In 2001, Canada enacted an additional domestic terrorist listing procedure under CC, ss.83.05 to 83.12 in addition to the RIUNRST. Over time, the listing mechanism under the CC has become the primary domestic listing regime and consequently no listings have been added to the RIUNRST since 2006. The Security of Canada Information Sharing Act facilitates implementation of the mechanisms by allowing for the exchange of information between government agencies with regards to terrorism, either spontaneously or upon request.

Criterion 6.1— *Sub-criterion 6.1a*—Department of Foreign Affairs, Trade and Development Act, s.10(2)(b) assigns responsibility to the Minister of Foreign Affairs for all communications between Canada and international organizations, including for proposing designations under UNSCR 1267/1989 or 1988 to the relevant UN Sanctions Committees.

Sub-criterion 6.1b—Based on the above mentioned s.10(2)(b), the Minister of Foreign Affairs identifies, reviews and proposes individuals or entities for designation, in consultation with an interdepartmental committee of security and intelligence officials. The interdepartmental committee on average meets once a month to discuss all listing regimes.

Sub-criterion 6.1c—The authorities stated that the identification process outlined above is based on a standard of "reasonable grounds to believe" and that a criminal conviction was not necessary for proposing the designation of an entity or individual to the UN. In the absence of any written procedures on this point, the assessors were not in a position to verify the authorities' view.

Sub-criterion 6.1d—Canada supports co-designation and co-sponsorship and its experience in proposing designations was so far limited to cosponsoring proposals for designations. To propose designations, Canada would use the UN standard forms and follow the procedures outlined under UNSCR's 2160 and 2161 (2014) and the relevant Sanctions Committee Guidelines.

Sub-criterion 6.1e—The authorities stated that Canada would provide as much relevant information to support a proposal for designation as possible, including identifying information and a statement of case.

Criterion 6.2— *Sub-criterion 6.2a*—Canada implements UNSCR 1373 through two distinct mechanisms: (i) for terrorist groups, CC, s.83.05 grants the Governor in Council the authority to list, on the basis of a recommendation by the Ministry of Public Safety Canada, a person, group, trust, partnership or fund or unincorporated association or organization. Requests for designation from another country can also be considered under the CC process; (ii) the RIUNRST designates the Governor in Council as responsible for making designations on the basis of a recommendation by the Minister of Foreign Affairs (Article 2 RIUNRST). The Minister may recommend a designation under the RIUNRST also based on a request from another country. In practice the mechanisms under the CC is the main one and no listings have been added to the RIUNRST since 2006.

Sub-criterion 6.2b—The CC and RIUNRST include mechanisms for identifying targets for designation and to decide upon designations based on clearly stipulated criteria in line with the designation criteria under UNSCR 1373.

Sub-criterion 6.2c—Foreign requests for designations are processed the same way as domestic designations. As a first step, authorities ensure that a request for listing is supported by verified facts that meet the legal threshold. Verification includes both factual and legal scrutiny. After verification is completed, the proposed listing is presented to the Cabinet and the relevant Minister recommends to the Governor in Council that the foreign request be granted. Authorities stated that the process takes on average six months but can be expedited, if necessary.

Sub-criterion 6.2d—The Governor in Council takes the decision to designate based on "reasonable grounds to believe" that a person meets the designation criteria in CC or the RIUNRST, independently from any criminal proceedings.

Sub-criterion 6.2e—The authorities stated that when making 1373 request to other countries, as much identifying information as possible would be provided to the requesting country to allow for a determination that the reasonable basis test is met Canada stated that it is in regular contact with its allies to discuss potential listings and notifies G7 partners prior to any domestic listing.

Criterion 6.3— The Canadian Security Intelligence Service Act s. 12 grants the CSIS the power to collect and analyse information on activities that may threaten Canada's security and to report and advise the government of any such activities. The Security of Canada Information Sharing Act, s.5 further allows government agencies to share such information. In the context of a criminal suspicion or the designation procedure under CC, s.83.05 the authorities may also collect information under criminal procedures. The outlined measures may in all cases be applied *ex parte* to avoid tipping off.

Freezing

Criterion 6.4— The UNAQTR, CC and RIUNRST set out a wide range of prohibitions to deal with property of or provide financial services to designated persons. The prohibitions apply as soon as any person is designated by the competent UN Sanctions Committee (for UNSCR 1267/1989 or 1988) or is added to the Regulations Establishing a List of Entities pursuant to the CC or is included in Schedule 2 to the RIUNRST (for UNSCR 1373). The prohibitions apply without delays, as soon as a person has been designated by the UN (for UNSCR 1267 and 1988) or was added to the domestic list. The term "person" covers both natural and legal persons.

Criterion 6.5— No authority has been designated for monitoring compliance by FIs and DNFBPs with the provisions of the UNAQTR, CC, and RIUNRST. Sanctions for violations of the Regulations are available but have never been applied in practice.

Sub-criterion 6.5a—The UNAQTR, CC and RIUNRST prohibit that any person or entity in Canada or any Canadian outside Canada knowingly deals with; provides financial or other services to; or enters into or facilitates any financial transaction involving funds or property of a designated person. The prohibition applies as soon as a person is listed and covers all aspects of the freezing obligation, thus also without prior notice.

Sub-criterion 6.5b—The UNAQTR, RIUNRST, and CC target funds or property owned or controlled, directly or indirectly, by any designated person or by any person acting on behalf or at the direction of a designated person. In the case of the UNAQTR but not the CC, does the prohibition extend also to funds derived or generated from such property. The concepts of "ownership and control" also cover property owned and controlled jointly. The obligations under all three procedures apply to property of every kind, including any funds, financial assets or economic resources.

Sub-criterion 6.5c—The UNAQTR, the CC, and RIUNRST prohibit Canadians and any persons in Canada from making property or financial or other services available, directly or indirectly, for the benefit of a designated person (Articles 4 RIUNRST; CC, ss.83.08 and UNAQTR s.4 and 4.1. CC, s.83.03 further criminalizes the provision of property or services to a listed entity, but the prohibition does not extend the provision of services to entities owned or controlled by a designated person or persons acting on behalf or at the discretion of a designated person.

Sub-criterion 6.5.d—Canada makes public all designations under all three listing regimes on government websites and through notification services. FRFIs have the option of signing up to receive information notices regarding list changes from OSFI and/or directly from the 1267 Al-Qaida

Sanctions Committee and the 1988 Taliban Sanctions Committee. OSFI receives a note verbale from the 1267 Al-Qaida Sanctions Committee and the 1988 Taliban Sanctions Committee in advance of a formal press release (i.e. before the Committees lists the entities publically). OSFI sends out email alerts to those entities that subscribe to its email notifications of any changes to the lists the same day or subsequent day from receiving the note verbale. However, if there are extensive changes to the lists, this process can be delayed by two weeks. The UN 1267 Al-Qaida Committee and 1988 Taliban Sanctions Committee also notify all email subscribers, which can include FIs or any persons, of new listings and de-listings the same day or the next UN business day. REs are informed without delay of any entities listed under the CC and RIUNRST. When an entity becomes listed pursuant to the CC, a notice is published in the *Canada Gazette*, which constitutes official public notice of the listing. These changes are also included in OSFI's email notifications. Public Safety also issues a news release for all new listings and de-listings, and both Public Safety and OSFI include information on its websites.

Sub-criterion 6.5.e—Banks, cooperative credit societies, savings and credit unions, and insurance companies are required to determine, on a continuous basis, whether they are in possession of targeted funds or property and must regularly report this and any associated information to the competent supervisory authority (OSFI or FINTRAC depending on whether it is a FRFI or not). A more general obligation applies to any person in Canada and any Canadian outside Canada to report to the RCMP or the CSIS transactions or property believed to involve targeted funds.

Sub-criterion 6.5.f—The CC and the RIUNRST both prohibit persons from "knowingly" dealing with listed entities. Third parties acting in good faith are thus protected in that they would not be covered under these obligations. The CC further clarifies that any person who "acts reasonably in taking, or omitting to take, measures to comply" with the relevant obligations shall not be liable in any civil action if they took all reasonable steps to satisfy themselves that the relevant property was owned or controlled by or on behalf of a terrorist group. The procedures under the UNAQTR, the RIUNRST and the CC for delisting and access to frozen funds also apply to protect bona fide third parties.

De-Listing, Unfreezing and Providing Access to Frozen Funds or other Assets

Criterion 6.6— The UNAQTR, CC and RIUNRST set out mechanisms for the delisting of persons or entities that do not meet the designation criteria (respectively in UNAQTR, ss.5.3. and 5.4.; CC, ss.83.05(5) and 2.1., and RIUNRST, s.2.2). Both Regulations and the CC are published in the official Gazette and the relevant procedures are thus "publicly known." CC, s.85.05(9) requires the Minister of Public Safety and Emergency Preparedness to review the list of entities every two years to determine whether there are still reasonable grounds for the entities to remain listed. The Minister can recommend to the Governor in Council at any time that an entity be delisted, either as part of the review process or upon application by the listed entity. Information on delisting processes is also set out at www.international.gc.ca/sanctions/countries-pays/terrorists-terroristes.aspx?lang=eng.

Sub-criterion 6.6.a—Under the UNAQTR, the Minister based on written receipt of a motion to delist under s 5.3 decides whether to forward a petition for delisting to the UN. The Minister's submission must be in accordance with guidance issued by the relevant UN Sanctions Committee. The possibility

of a judicial review of the Minister's decision is provided for under s.5.4. Procedures to unfreeze funds of de-listed entities are not available but the obligations under the UNAQTR automatically cease to apply once a person is removed from the UN's list.

Sub-criterion 6.6.b—The delisting procedures under the CC and RIUNRST are similar to those under the UNAQTR insofar as a listed entity may apply in writing to the relevant Minister to request to be removed from the list. Upon receipt of a written application for delisting from the relevant Minister, it has 60 days to determine whether there are reasonable grounds to recommend a delisting to the Governor in Council. The applicant can seek a judicial review of this decision.

Sub-criterion 6.6.c—Judicial review of the listing decision is available upon receipt of a motion to delist.

Sub-criterion 6.6d and 6.6e—UNAQTR, s.5.3 provides Canadians and any residents of Canada the option to apply to the Minister to be delisted from the 1988 or 1267 sanctions lists in accordance with the Guidelines of the 1988 and 1267 Sanctions Committees.

Sub-criterion *6.6f*—Pursuant to UNAQTR, s.10 and RIUNRST, s.10 a person claiming not to be a listed entity may apply to the Minister of Foreign Affairs for a certificate stating that the person is not a listed entity. The Minister then has a specific period of time to issue the certificate if it is established that the individual is not a listed entity. CC, s.83.07 allows an entity claiming not to be a listed entity to apply to the Minister of Public Safety and Emergency Preparedness for a certificate stating that it is not a listed entity.

Sub-criterion 6.6.g—Any changes to designations under the UNAQTR, CC or RIUNRST result in the publication of an updated Schedule to the relevant Regulation. For changes to the 1267/1988 lists, FIs and DNFBPs can subscribe to an automatic notification system. OSFI also notifies those entities that have subscribed to its email list of any changes to any of the three listing regimes.

Criterion 6.7— The Minister of Foreign Affairs or the Minister of Public Safety and Emergency Preparedness (for the CC) may grant a person access to frozen funds to cover basic or extraordinary expenses pursuant to UNAQTR, s.10.1, CC, s.83.09 or RIUNRST, s.5.7. Under the UNAQTR, the Minister must notify (for basic expenses) or obtain authorization from (for extraordinary expenses) the relevant UN Sanctions Committee before he/she may grant a motion for access to frozen funds. Once granted, the Minister issues a certification exempting the relevant property or funds from the scope of the Regulations. Under UNAQTR the procedures applied by the Minister have to be in line with the requirements under UNSCR 1452 (2002).

Weighting and Conclusion

There are some shortcomings in regard to the requirements of UN Resolutions 1267, 1988, and 1373.

Canada is largely compliant with R.6.

Recommendation 7 – Targeted financial sanctions related to proliferation

R.7 includes new requirements that were not part of the previous assessment.

Criterion 7.1— Two regulations implementing targeted financial sanctions (TFS) relating to Iran and North Korea were issued under Canada's *United Nations Act*—the *Regulations Implementing the United Nations Resolutions on Iran (RIUNRI)* and the *Regulations Implementing United Nations Resolutions on the Democratic People's Republic of Korea (RIUNRDPRK)*. Both require any person in Canada and any Canadian outside Canada to implement TFS in relation to individuals or companies that have been designated by the UN under paragraph 8(d) of UNSCR 1718 (ss.7, 8, and 9 RIUNRDPRK for North Korea) or paragraphs 10 or 12 of UNSCR 1737 (ss.5, 6, 9 and 9.1 RIUNRI for Iran). Under both regulations, it is clear that the relevant prohibition applies only from the date the relevant UNSCR came into force and not retroactively. Neither regulation specifies that sanctions must be applied "without delay" but the relevant obligations and prohibitions apply as soon as a person or entity is included in the UN's list of designated persons, and the communication procedures described under criterion 7.2(d) are sufficient that new listings are brought to the attention of the public. The Security of Canada Information Sharing Act facilitates the implementation of the two regulations by allowing for the exchange of information between government agencies with regards to proliferation of nuclear, chemical, radiological, or biological weapons, either spontaneously or upon request.

Criterion 7.2— Under UN Act, s.2 the Governor in Council issues regulations to give effect to decisions and implement measures decided by the UN Security Council (UNSC) pursuant to Article 41, Chapter VII of the UN Charter. Section 9 of the RIUNRDPRK and RIUNRI impose freezing obligations by prohibiting any person in Canada and any Canadian outside Canada from dealing with; or entering into or facilitating any financial transaction relating to; or providing financial or other related services in relation to property owned or controlled directly or indirectly by a designated person or by a person acting on behalf or at the direction of a designated person.

Sub-criterion 7.2.a—The legal prohibitions are triggered without delay as soon as a person is designated by the UN.

Sub-criterion 7.2b—The above-mentioned prohibitions apply to property owned or controlled by a designated person, including those owned or controlled jointly, or by a person acting on behalf or at the direction of a designated person.

Sub-criterion 7.2c—Under both regulations it is an offense to make property or any financial or other related services available, directly or indirectly, for the benefit of a designated person. Article 3 of the UN Act prescribes sanctions of a fine of up to CAD 100 000 or imprisonment for not more than two years or both (upon summary conviction); or to imprisonment for a term of not more than 10 years (upon conviction on indictment).

Sub-criterion 7.2d—The communication procedures described in criterion 6.5d are also applicable in the context of the RIUNRI and RIUNRDPRK. Canada publishes new designations in the public Canada

Gazette as well as on government websites and through notification services. The Ministry of Foreign Affairs has issued guidance for both sanction regimes.[105]

Sub-criterion 7.2e—All FRFIs and casualty insurance companies, savings and credit unions, and other provincially regulated FIs are required to determine, on a continuous basis, whether they are in possession of targeted funds or property and must freeze such property and regularly report this and any associated information to the competent supervisory authority (ss.11 RIUNRI and RIUNRDPRK). More general obligations apply to any person in Canada and any Canadian outside Canada to report to the RCMP or the CSIS transactions or property believed to involve targeted funds.

Sub-criterion 7.2f—The RIUNRI and RIUNRDPRK prohibitions apply only in cases where a person acts "knowingly." Bona fide third parties acting in good faith are, therefore, protected.

Criterion 7.3— Apart from the notification system outlined, under criterion 7.2.e, Canada does not have a mechanism in place for monitoring compliance by FIs and DNFBPs with the provisions of the RIUNRI and RIUNRDPRK. Sanctions for violations of the Regulations are available, but have never been applied in practice.

Criterion 7.4— Global Affairs Canada provides guidance on its homepage on the procedures and content of the RIUNRI and RIUNRDPRK.[106] While the homepage provides information that needs to be submitted as part of an application to the Minister for delisting, it does not give information on the procedures applied by the Minister to submit delisting requests to the UN on behalf of a designated person or entity.

Sub-criterion 7.4.a—Neither the Regulations nor the Global Affairs' homepage provide information on the availability of the UN Focal Point as a direct or indirect way to effect a delisting.

Sub-criterion 7.4.b—Claims of false positives can be filed with and granted by the Minister under RIUNRDPRK, s.14 and RIUNRI, s.16. *Sub-criterion 7.4.c*—RIUNRDPRK, s.15 and RIUNRI, s.17 further provide for the possibility for the Minister to grant access to frozen funds subject to the conditions and procedures set out in UNSCR 1718 and 1737.

Sub-criterion 7.4.d—FIs and DNFBPs can subscribe to the UNs automatic notification system found on its website. OSFI also notifies those entities that have subscribed to its email list of any changes to any of the three listing regimes. Detailed guidance on the provisions of the RIUNRI and RIUNRDPRK is provided on the Global Affairs' homepage.

Criterion 7.5— Neither Regulation allows for additions to frozen accounts but the Minister may permit such additions on the basis of a one-off exemption. Payments from frozen accounts are

[105] Global Affairs Canada (nd), Canadian Sanctions Related to Iran, www.international.gc.ca/sanctions/countries-pays/iran.aspx?lang=eng; Canadian Sanctions Related to North Korea, www.international.gc.ca/sanctions/countries-pays/korea-coree.aspx?lang=eng.
[106] See footnote 16.

permitted under the circumstances set out in relevant UNSCRs based on RIUNRI, s.19 and RIUNDPRK, s.15.

Weighting and Conclusion

There are minor shortcomings in regard to the implementation of the RIUNRI and RIUNRDPRK.

Canada is largely compliant with R.7.

Recommendation 8 – Non-profit organisations

Canada was rated LC with former SR. VIII, with only one deficiency having been identified regarding coordination amongst competent domestic authorities.

Criterion 8.1— *Sub-criterion 8.1.a*—The adequacy of laws and regulations relating to NPOs is reviewed on an ongoing basis and has recently resulted in amendments of various laws and regulations.

Sub-criterion 8.1.b—Canada has carried out a risk assessment of its NPO sector and determined that registered charities pose the greatest risk of TF in Canada and, thus, shall fall within the functional definition of "non-profit organization" as defined under the FATF standard. Canada's risk mitigation efforts are primarily focused on registered charities.

The NRA, which focuses on inherent risk, indicates that both for domestically and internationally operating charities, it may be difficult in practice to determine the origin or ultimate use of funds. In addition to the NRA, the CRA in 2015 conducted a comprehensive review of the entire NPO sector. Other relevant studies and reviews include the Canadian Non-Profit and Voluntary Sector in Comparative Perspective in March 2005; the Canada Survey on Giving, Volunteering and Participating in 2010; and the CRA's Non-Profit Organization Risk Identification Project, all of which provide insight into the way NPOs are organized and operate in Canada. All registered charities, regardless of the value of their assets, as well as non-charitable NPOs with assets in excess of CAD 200 000 or annual investment income exceeding CAD 10 000, must file an annual Information Return with the CRA, which includes information about their activities, assets and liabilities, and the amount of money received during the fiscal period in question. Incorporated NPOs are subject to additional filing obligations pursuant to the relevant statutes. NPOs must indicate whether they carry out activities outside of Canada (and specify where) and disclose the physical location of their books and records. Through information provided in these returns, the CRA has the capacity to obtain timely information on the activities, size and relevant features of the NPO sector and to identify those NPOs that are particularly at risk of abuse by virtue of their activities or characteristics.

Sub-criterion 8.1.c—The efforts described under the previous sub-criteria are ongoing and continuously integrate new information on the sector's potential vulnerabilities.

Criterion 8.2— Awareness raising events are focused on registered charities as those are the organizations that fall within the FATF definition of NPOs. The CRA is undertaking efforts to increase awareness amongst registered charities of terrorism financing risks and vulnerabilities, including on international best practices for mitigating terrorism financing risks in the charities sector, sound governance, accountability procedures, transparency reporting, as well as consultative processes and presentations by senior management. The CRA also maintains a grants program to motivate and reward the development and application of innovative compliance programs amongst charities. Many of these activities include a TF component.

Criterion 8.3— Canada imposes comprehensive registration and regulatory requirements on charities under the Income Tax Act (ITA). Other NPOs may operate without being subject to any registration requirements, but are subject to record-keeping obligations on their stated purpose, administration, and management pursuant to the federal or provincial legislation under which they were established. In addition, all registered charities, regardless of the value of their assets, and all NPOs with assets in excess of CAD 200 000 or annual investment income exceeding CAD 10 000 must file an annual information return with the CRA. Based on the information provided by the authorities, it is estimated that as of December 2014, a total of 180 000 NPOs existed in Canada of which 86 000 or about 50%, were registered under the ITA. Under the ITA, a failure by a registered charity to comply with the registration requirements, including links to terrorism, may result in denial or revocation of registration. Under the Charities Registration (Security Information) Act the CRA may utilize all information available to determine the existence of terrorism links for new applications or existing registrations, including security or criminal intelligence and otherwise confidential information. Once registered, charities are required to file annual information returns and financial statements, including information on the directors and trustees, the location of activities, the charity's affiliation and the organization's name. Much of the information is made publicly accessible on the CRA's homepage. Donations, spending and record keeping are regulated under the ITA. The CRA is granted wide powers under Part XV of the ITA to administer and enforce the provisions of the law. The CRA is responsible for ensuring compliance by registered charities with the requirements under the ITA and to sanction non-compliance. In addition, law enforcement and intelligence authorities monitor NPOs and investigate those suspected of having links to terrorism.

Criterion 8.4— Based on the information provided by the authorities, it is estimated that as of December 2014 a total of 180 000 NPOs existed in Canada of which 86 000 or about 50%, were registered under the ITA. According to the CRA's NPO Sector Review of 2015, the 86 000 registered charities represent 68% of all revenues of the NPO sector and nearly 96% of all donations. CRA registered charities also account for a substantial share of the sector's foreign activities as about 75% of internationally operating NPOs are registered as charities.

Sub-criteria 8.4.a and b—Charities registered under the ITA have comprehensive annual filing obligations, including on their directors and trustees, and financial statements including balance sheets and income statements. All this information is publicly available at the CRA's webpage.

Sub-criterion 8.4.c—All registered charities, regardless of their assets, and all other types of NPOs with revenue in excess of CAD 200 000, and/or annual investment income exceeding CAD 10 000, must file an annual information return with the CRA, including financial information. In addition, registered charities with revenue in excess of CAD 100 000 and/or property used for charitable activities over CAD 25 000 and/or that have sought permission to accumulate funds, must provide financial information. CRA-Charities must ensure that charities' funds are fully accounted for by reviewing and conducting analysis of information submitted in the annual information return. Where there are irregularities or concerns CRA-Charities may conduct an audit to review charity's finances and activities in detail.

Sub-criterion 8.4.d—Registration with the CRA is optional, not mandatory.

Sub-criterion 8.4.e—ITA registered charities are required to know intermediaries that provide services on its behalf, and to ensure that charity funds are used only for charitable activities. As such, there is an obligation to know enough about beneficiaries to meet this obligation. NPOs can be held liable for acts by associated NPOs if the court finds that there is an agency relationship between the two, which provides an additional incentive for NPOs to know associate NPOs. Records of registered charities must be sufficient for the CRA to verify that the charity's resources have been used in accordance with its activities.

Sub-criterion 8.4.f—Comprehensive record-keeping obligations apply both for ITA registered charities and other types of NPOs based on the provisions of provincial or federal legislation.

Criterion 8.5— As part of their annual information return charities must provide a breakdown of financial information related to revenue and expenditures. This includes information on the total expenditures for charitable activities, management and administration, and gift to qualified donees. Charities must also report ongoing and new charitable programs. Where audits reveal financial irregularities, the CRA may apply a range of sanctions set out in the ITA. The CRA is granted a wide range of powers to monitor registered charities for compliance with the filing obligations under the ITA and to apply sanctions, including financial penalties and suspensions, or revocation of registration.

Criterion 8.6— *Sub-criterion 8.6.a*—For registered charities, the registration system under the ITA is supported by the Charities Registration (Security Information) Act which allows the Minister of Public Safety and Emergency Preparedness to take into account criminal and security intelligence reports on registered charities or those applying for registration. The CSIS and also the RCMP and CBSA contribute information to these criminal and security intelligence report. The CRA has entered into MOUs with the CSIS and RCMP to facilitate the process. Any suspicion that a specific charity is linked to terrorism may result in registration being denied or revoked.

Sub-criterion 8.6.b—For ITA registered charities, the CRA may share certain information about registered charities with the public, including foreign counterparts, online through the CRA's website, or upon request. Information that is publicly accessible, includes governing documents, the name of directors or trustees, annual information returns and financial statements.

Sub-criterion 8.6.c—For non-publicly available information, the ITA allows but does not oblige the CRA to disclose to FINTRAC as well as the RCMP and CSIS information about charities suspected of being involved in FT. Equally, the Security of Canada Information Sharing Act (SCISA) permits the CRA to share any taxpayer information relevant to a terrorism offense (under part II of the CC) or threats to the security of Canada (under the CSIS Act) with competent authorities, including any information that the CRA may have on the broader sector of NPOs. FINTRAC is required under the PCMLTFA to disclose information to the CRA with regards to registered charities. Additional information sharing powers are available under the Security of Canada Information Sharing Act whenever there is a threat to Canada's national security. For NPOs other than registered charities regular investigative and information-gathering powers under the criminal procedure code are available to obtain records and information, they are required to maintain under provincial or federal NPO legislation.

Criterion 8.7— The CRA may share certain information about registered charities with foreign counterparts, including governing documents, the names of directors or trustees, annual information returns, and financial statements. Additional information may be shared by the CRA with foreign tax authorities. If required, information on registered charities or NPOs may also be shared by FINTRAC and the RCMP as described under R.40 or based on formal MLA. In sum, Canada is found to have appropriate points of contact and procedures in place to respond to international request for information sharing regarding particular NPOs.

Weighting and Conclusion:

Canada is compliant with R.8.

Recommendation 9 – Financial institution secrecy laws

In its 2008 MER, Canada was rated C with R.4, and neither the relevant laws nor the applicable FATF R. have subsequently changed. The MER assessors' only concern was that data protection law implementation was subject to excessively strict interpretations that might prevent LEAs accessing information in the course of investigations.

Criterion 9.1— Various constitutional and legal provisions impose confidentiality obligations over personal information and individuals' privacy. In particular, s.8 of the Canadian Charter of Rights and Freedoms (which forms part of Canada's Constitution) provides that everyone has the right to be secure against unreasonable search and seizure. According to the Supreme Court of Canada, the purpose of s.8 is to protect a reasonable expectation of privacy. Accordingly, those who act on behalf of a government, including LEAs and supervisors, must carry out their duties in a fair and reasonable way. Canada also has two privacy laws: the Privacy Act covers the personal information-handling practices of federal government departments and agencies; and the PIPEDA is the main federal private-sector privacy law.

PIPEDA, s.5 notably contains specific obligations concerning organizations' collection, dissemination and use of customers' personal information. Every province and territory has its own public-sector

legislation and the relevant provincial act applies to provincial government agencies (in lieu of the Privacy Act). Some provinces also have private-sector privacy legislation. Alberta, British Columbia and Québec notably have legislation that have been declared "substantially similar" to the PIPEDA and apply to private-sector businesses that collect, use and disclose personal information while carrying out business within these provinces. Finally, several federal and provincial sector-specific laws also include provisions dealing with the protection of personal information: The federal Bank Act, in particular, contains provisions regulating the use and disclosure of personal financial information by FRFIs (ss.606 and 636 (1)); and most provinces also have laws governing credit unions that require the confidentiality of information related to members' transactions.

Various provisions also govern the authorities' access to information: of the PIPEDA, s.7(3)(d), in particular, provides that an organization may, without the individual's knowledge or consent or judicial authorization, disclose personal information that it has reasonable grounds to believe could be useful in the investigation of a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed and the information is used for the purpose of investigating that contravention. The "substantially similar" laws in Alberta, British Columbia and Quebec contain broadly equivalent provisions. The PCMLTFA also contains a number of provisions that enable FINTRAC to access information (ss.62-63) and the Bank Act (ss.643-644) and equivalent provisions governing other FRFIs gives OSFI powers to access all records of FRFIs.

As regards sharing of information between competent authorities, implementation of the Privacy Act, which obliges federal government departments and agencies to respect privacy rights, does not seem to have caused AML/CFT problems. The PCMLTFA (ss.55, 55.1, 56 and 65(1) and (2)) empowers FINTRAC to disclose information to a range of law enforcement and other competent authorities within Canada in specified circumstances. Similarly, the PCMLTFA, s.65.1(1)(a) allows FINTRAC to make agreements with foreign counterparts to exchange compliance information. The Bank Act, s 636(2) also enables OSFI to disclose information to other governmental agencies.

Weighting and Conclusion:

Canada is compliant with R.9.

Recommendation 10 – Customer due diligence

In the 2008 MER, Canada was rated NC with R.5. There were numerous deficiencies, and also the CDD requirement did not cover all FIs as defined by the FATF. Subsequently, both the PCMLTFA and PCMLTFR were amended to include measures covering the circumstances in which CDD must take place. Further PCMLTFR amendments, effective from February 2014, addressed most of the remaining deficiencies.

The 2008 MER noted that the requirement to conduct CDD excluded financial leasing, factoring and finance companies. The Sixth FUR (2014) concluded that the set of sectors not covered by the AML/CFT regime and not yet properly risk assessed was not a major deficiency. Since then, Canada's NIRA assessed the ML/TF vulnerabilities of factoring, finance and financial leasing companies as medium risk, while pointing out that these entities were very small players. Sectors not covered by

the AML/CFT regime are continually evaluated to identify trends indicating a higher ML/TF risk rating. Their current exclusion from the scope of the AML/CTF regime is an ongoing minor deficiency.

Criterion 10.1— In its 2008 MER, Canada explained that, while there was no explicit prohibition on opening anonymous accounts, the basic CDD requirements on all new account holders effectively prohibited anonymous accounts. This also applied to accounts in obviously fictitious names. The legal position remains unchanged: The PCMLTFA, s.6.1, requires REs to verify identity in prescribed circumstances and s.64 of the PCMLTFR sets out the measures to be taken for ascertaining identity. However, the 2008 assessors were concerned about the absence of detailed rules or guidance for FIs' use of numbered accounts, including compliance officers having access to related CDD information. Subsequently, OSFI Guideline B-8 addressed this latter point, covering the provision of account numbering or coding services that effectively shield the identity of the client for legitimate business reasons. Thus, FRFIs should ensure that they had appropriately ascertained the identity of the client and that the firm's Chief AML Officer could access this information. Consequently, this deficiency has been partially addressed through an adequate control mechanism, for FRFIs only, albeit not by enforceable means. This is a relatively minor matter.

When CDD is Required

Criterion 10.2— PCMLTFR ss.54, 54.1, 55, 56, 57, 59(1), 59(2) and 59(3) of the require FIs to ascertain the identity of their clients when establishing business relations. Similarly, all REs must ascertain the identity of every client with whom they conduct an occasional large cash transaction of CAD 10 000 or more. Two or more such transactions that total over CAD 10 000, conducted within a period of 24 hours, are deemed a single transaction. CDD is required for both cross-border and domestic wire transfers exceeding CAD 1 000.

Pursuant to PCMLTFR s.53.1(1) FIs must) take reasonable measures to verify the identity of every natural person or entity who conducts, or attempts to conduct, a transaction that should be reported to FINTRAC (i.e. where there is suspicion of ML or TF). This obligation applies (s.62(5)) even when it would not otherwise have been necessary to verify identity. Also, FIs must reconfirm (s.63 (1.1) of the PCMLTFR) the client's identity where doubts have arisen about the information collected. However, this measure applies only to natural persons, not to legal persons or arrangements.

The limited application of this last measure remains a deficiency under 10.2(e).

Required CDD Measures for all Customers

Criterion 10.3— PCMLTFA, s.6.1 of the requires REs to verify the identity of a person or entity in prescribed circumstances and in accordance with the Regulations. PCMLTFR ss.64 to 66 detail the measures that REs must take to ascertain the identity of a prescribed individual, corporation and "entity other than a corporation.[107]" For individuals, acceptable identification documents include a

[107] This is not defined in the Regulations, but would include any kind of unincorporated business or legal arrangement.

birth certificate, driver's license, passport, or other similar document. For corporations, the corporation's existence is confirmed, and the names and addresses of its directors ascertained, by reference to its certificate of corporate status. However, other methods are acceptable, e.g. a record that it is required to file annually under applicable provincial securities legislation, or any other record that validates its existence as a corporation. The existence of an entity other than a corporation must be confirmed by reference to a partnership agreement, articles of association, or other similar record that ascertains its existence. These legal provisions meet the FATF standard.

Criterion 10.4— The "Third Party Determination" provisions of the PCMLTFR require FIs to determine whether their customers are acting on behalf of another person or entity. Where an account is to be used by or on behalf of a third party, the FI must collect CDD information on that third party and establish the nature of the relationship between third party and account holder.

Criterion 10.5— PCMLTFR s.11.1(1) requires FIs, at the time the entity's existence is confirmed, to obtain the following information:

For corporations, the name of all directors of the corporation and the name and address of all persons who own or control, directly or indirectly, 25% or more of the shares of the corporation;

For trusts, the names and addresses of all trustees and all known beneficiaries and settlors of the trust;

For entities other than corporations or trusts (typically, a partnership fund or unincorporated association or organization), the name and address of all persons who own, directly or indirectly, 25% or more of the shares of the entity; and

In all cases, information establishing the ownership, control, and structure of the entity.

Under the PCMLTFR, s.11.1(2), REs further need to "take reasonable measures to confirm the accuracy of the information obtained" on beneficial ownership. This requirement implies the need to use reliable sources to obtain the requisite information and the FATF standard[108] allows identification data to be obtained "from a public register, from the customer, or from other reliable sources." Also, OSFI Guideline B-8 usefully indicates that "reasonable measures" to identify ultimate beneficial owners could include not only requesting relevant information from the entity concerned, but also consulting a credible public or other database or a combination of both. This Guideline also makes clear that the measures applied should be "commensurate with the level of assessed risk."

No specific legal provisions cover beneficial ownership of personal accounts. However, the PCMLTFR, in effect, establish beneficial ownership of personal accounts: in particular, s.9 requires REs to determine whether personal accounts are being used on behalf of a third party and, for personal accounts in joint names, all authorized signatories are subject to CDD measures.

[108] FATF (2013), Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems, p. 147, www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf

Criterion 10.6— PCMLTFR, s.52.1, requires every person or entity that forms a business relationship under the Regulations to keep a record of the purpose and intended nature of that business relationship. OSFI Guideline B-8 amplifies this requirement, requiring a FRFI to be satisfied that the information collected demonstrates that it knows the client.

Criterion 10.7— PCMLTFR ss.54.3 (financial entities), 56.3 (life insurance sector), 57.2 (securities dealers), 59.01 (MSBs), and 61.1 (departments or agencies of the government or provinces that sell or redeem money orders) require all covered REs to conduct ongoing monitoring of their business relationships. Section 1(2) defines this to mean monitoring on a periodic basis, according to assessed risk, by a person or entity of their business relationships with clients for the purpose of (i) detecting transactions that must be reported to FINTRAC; (ii) keeping client identification information up to date; (iii) reassessing levels of risk associated with clients' transactions and activities; and (iv) determining whether transactions or activities are consistent with the information.

Where higher risks are identified, PCMLTFR, ss.71.1(a)-(c)) require "prescribed special measures" to be taken, which include enhanced measures to keep client identification and beneficial ownership information up to date and also to monitor business relationships in order to detect suspicious transactions. The Regulations do not explicitly cover scrutiny of the source of funds.

Specific CDD Measures Required for Legal Persons and Legal Arrangements

Criterion 10.8— The PCMLTFR requirements for FIs to understand the nature of the customer's business and its ownership and control structure cover legal persons or legal arrangements.

Criterion 10.9— See c.10.3 above, which covers identification and verification of legal persons and arrangements. The PCMLTFR (ss.14(b), 14.1(b), 15(1)(c), 20, 23(1)(b), 30(b) and 49(b)) require the collection of information on power to bind the legal person or arrangement in relation to an account or transaction. However, the Regulations do not cover gathering the names of relevant persons having a senior management position in the legal person or arrangement. Where an RE is unable to obtain information about the ownership, control and structure of a trust or other legal arrangement, the PCMLTFR (s.11.1(4)(a)) require reasonable measures to be taken to ascertain the identity of the most senior managing officer of the entity concerned.

The Regulations (s.65(1)) require confirmation of a corporation's existence, and its name and address, by reference to its certificate of corporate status or other acceptable official record. The existence of an entity other than a corporation must be confirmed by referring to a partnership agreement, articles of association or other similar record. There is no specific requirement, in this case, to obtain the address of the registered office or principal place of business, if different. Consequently, for non-corporate legal persons and for legal arrangements such as trusts, the standard is only partially met. Partnership agreements, etc., are unlikely to confirm details of address and principal place of business. Similarly, while trust documents usually contain sufficient information to satisfy the account-holding FI as to name, legal form, and proof of existence; such documents usually do not provide additional information about the registered address or principal business of the trust.

In addition, trust companies are required when acting as trustee of a trust (ss.55 (a)-(c)) to (i) of the PCMLTFR) to ascertain the identity of every person who is the settlor of an inter vivos trust: (ii) confirm the existence of, and ascertain the name and address of, every corporation that is the settlor of an institutional trust; and (iii) confirm the existence of every entity, other than a corporation, that is the settlor of an institutional trust. Under the Regulations (s.55 (d)), where an entity is authorized to act as a co-trustee of any trust, the trust company must (i) confirm the existence of the entity and ascertain its name and address; and (ii) ascertain the identity of all persons—up to three—who are authorized to give instructions with respect to the entity's activities as co-trustee. Finally, under the Regulations (s.55 (e)), trust companies must ascertain the identity of each person who is authorized to act as co-trustee of any trust. However, as natural persons who are trustees are not REs under the PCMLTFA, they are not subject to CDD obligations.

PCMLTFR ss 11 (a)-(b) require trust companies, for inter vivos trusts, to (i) keep a record that sets out the name and address of each of the beneficiaries that are known at the time that the trust company becomes a trustee for the trust; (ii) if the beneficiary is a natural person, record their date of birth and the nature of their principal business or their occupation; and (iii) if the beneficiary is an entity, the nature of their principal business.

Criterion 10.10— The legal requirements for obtaining information on beneficial owners of customers that are legal persons are set out under c.10.5 above.

REs must confirm the existence of a corporation or non-corporate legal entity at the opening of an account or when conducting certain transactions. At the same time, they must obtain information about the entity's beneficial ownership and confirm its accuracy. Beneficial ownership refers to the identity of the individuals who ultimately control the corporation or entity, which extends beyond another corporation or another entity. The PCMLTFR requirements for corporations and other entities refer to "persons." PCMLTFA, s.2 defines "person" to mean an individual, which therefore requires the natural person to be identified. If the RE has doubts about whether the person with the controlling ownership interest is the beneficial owner, then it is deemed to have been unable to obtain the information referred to under PCMLTFR, s.11.1(1) or to have been unable to confirm that information in accordance with PCMLTFR, s.11.1(2). In this case, the RE is required, under PCMLTFR s.11.1(4), to: take reasonable measures to ascertain the identity of the most senior managing officer of the entity; treat that entity as high risk for the purpose of PCMLTFA, s.9.6(3) and apply the prescribed special measures set out in PMCLTFR, s.71.1. Where no individual ultimately owns or controls 25% or more of an entity, directly or indirectly, REs must nevertheless record the measures they took, and the information they obtained, in order to reach that conclusion. Also, REs must comply with PCMLTFR, s.11.1(1)(d), which requires that information "establishing the ownership, control and structure of the entity" be obtained.

Criterion 10.11— The legal requirements for collecting information on the identity of beneficial owners of customers that are legal arrangements are set out under c.10.5 and 10.9 above. It is unclear, in the case of trusts, what identification requirements apply to protectors. Beneficiaries of trusts are covered by the ongoing monitoring provisions of s. 1(2) of the Regulations, which require that client identification information and information be kept up to date.

CDD for Beneficiaries of Life Insurance Policies

Criterion 10.12— All provincial *Insurance Acts* require life insurance companies to conduct CDD on (and keep a record of) the beneficiaries of life insurance policies, so this requirement applies to insurance companies nationally. There is no specific requirement to verify the identity of the beneficiary at the time of pay-out.

Criterion 10.13— As life insurance companies are covered under the PCMLTFA, they must risk assess all their clients and business relationships, products and services, and any other relevant risk factors (which include the beneficiary of a life insurance policy). In cases of high risk, life insurance companies must apply enhanced measures (prescribed special measures—s.71.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*).

Timing of Verification

Criterion 10.14— PCMLTFR, ss.64(2), 65(2) and 66(2)) specify the timeframe for verifying the identity of individuals, corporate and non-corporate entities. With certain exceptions, the legal obligation is to verify identity either at the time of the transaction or before any transaction other than an initial deposit is carried out. There are two main exceptions: (i) in relation to trust company activities, identity may be verified within 15 days of the trust company becoming the trustee; (ii) in relation to life insurance transactions and government or provincial departments or agencies handling money orders, identity may be verified within 30 days of the client information record being created. These exceptions are not justified according to what is reasonably practicable or necessary to facilitate the normal conduct of business, nor is there any condition about managing the ML/TF risks of delaying identity verification.

Criterion 10.15— PCMLTFR, s.1(2) defines "business relationship" to commence on account opening or when a client conducts specified transactions that would require their identity to be ascertained. Consequently, it is not possible for a customer to utilize a business relationship prior to verification.

Existing Customers

Criterion 10.16— see c.10.7. These ongoing monitoring obligations apply to all clients, whether or not they were clients at the date of new CDD obligations coming into force. Consequently, the ongoing monitoring process covers clients whose identity had not previously been ascertained. REs are required to take a risk-based approach to keeping information on client identification, beneficial ownership and purpose and nature of intended business relationship up to date.

Risk-Based Approach

Criterion 10.17— PCMLTFR, s.71.1 details the "prescribed special measures" to be taken in cases of high risk. This includes, for example, cases where beneficial ownership information cannot be obtained or confirmed. These special measures comprise taking enhanced measures to (i) ascertain the identity of a person or confirm the existence of an entity; (ii) keep client identification

information up to date (including beneficial ownership information); (iii) monitor business relationships for the purpose of detecting suspicious transactions; and (iv) determining whether transactions or activities are consistent with the information. In addition, Appendix 1 to FINTRAC Guideline 4 provides a checklist of products or services that should be considered high-risk.

Criterion 10.18— No reduced or simplified CDD measures are in place. Instead, the PCMLTFR gives exemptions from the client identification and record-keeping requirements in specific circumstances assessed as low risk by the authorities. These exemptions are mainly contained in s. 9 (accounts used by, or on behalf of, a third party) and s.62 (mainly concerning life insurance business). Furthermore, PCMLTFR, ss.19 and 56 create a form of exemption by requiring that life insurers only conduct CDD in relation to the purchase of an immediate or deferred annuity or a life insurance policy for which the client may pay CAD 10 000 or more over the duration of the annuity or policy. However, these exemptions do not apply where there is a suspicion of ML or TF.

Failure to Satisfactorily Complete CDD

Criterion 10.19— The PCMLTFA, s.9.2, provides that no RE shall open an account for a client if it cannot establish the identity of the client in accordance with the prescribed measures. Consequently, an FI that failed to conduct CDD, when obliged to do so, would be in breach of the Act and could be fined. There is no explicit prohibition on REs commencing a business relationship or performing a transaction when they are unable to comply with CDD measures if the identity of an individual cannot be ascertained or the existence of an entity confirmed when they open an account, the FI cannot open the account. This also means that no transaction, other than an initial deposit, can be carried out. Also, if the RE suspects that the transaction is related to a ML or TF offense, it must file an STR with FINTRAC. Under PCMLTFA, s.7, if the RE has reasonable grounds to suspect that the client conducts or attempts to conduct a transaction that is related to the commission or the attempted commission of an ML or TF offense, even if the client cannot be identified or his/her identity cannot be properly verified, the RE must file a STR. This requirement is amplified in FINTRAC guidance.

CDD and Tipping Off

Criterion 10.20— PCMLTFR, s.53.1 (2) specifies that the identity verification obligation does not apply where the RE believes that complying with that obligation would inform the customer that the transaction is being reported as suspicious. PCMLTFA s. 7 requires an STR to be filed in these circumstances.

Weighting and Conclusion

A number of relatively minor deficiencies have been identified.

Canada is largely compliant with R.10.

Recommendation 11 – Record-keeping

In the 2008 MER, Canada was rated LC with R.10. Two deficiencies were noted. First, the record-keeping requirement did not cover all FIs as defined by the FATF (notably financial leasing, factoring and finance companies). Second, FIs must ensure that all records required to be kept under the PCMLTFA could be provided within 30 days, which did not meet the requirement to make CDD records available on a timely basis. The FATF standard has not since changed, the requirement being to make records available "swiftly".

Criteria 11.1 and 11.2— The PCMLTFRs.69 detail the obligation to keep records for a period of at least five years following completion of the transaction or termination of the business relationship.

The PCMLTFR outlines, for each type of covered entity, detailed record-keeping rules for CDD, account files and business correspondence. The Regulations do not specifically require retention of any internal analysis of client business that might lead to an STR. However, covered entities would need to keep this information to substantiate that they were not in contravention of PIPEDA and that the disclosure without consent would have been warranted. The Privacy Commissioner could request this type of information under PIPEDA, s.18 as part of a compliance audit. In addition, OSFI requires FRFIs to keep such information.

Criterion 11.3— There is no clear legal obligation that transaction records be sufficient to permit reconstruction of individual transactions. However, the Regulations do specify in detail the contents of each piece of information that must be held in various records.

Criterion 11.4— The PCMLTFR s.70 requires REs to provide records upon request of FINTRAC within 30 days. This does not meet the "swiftly" standard.

Weighting and Conclusion

The deficiencies noted in the 2008 MER remain.

Canada is largely compliant with R.11.

Recommendation 12 – Politically exposed persons

In the 2008 MER, Canada was rated NC with R.6. There were no relevant legislative or other enforceable requirements in place.

Significant changes have been introduced since then. Requirements for FIs in relation to Politically Exposed Foreign Persons (PEFPs) were introduced in June 2008 through amendments to the PCMLTFA and PCMLTFR, specifying the enhanced customer identification and due-diligence requirements for such clients.

Subsequently, as part of a package of amendments to the PCMLTFA introduced in 2014, the coverage of the Act was extended to include Politically Exposed Domestic Persons (PEDP) and heads of international organizations. The bill was enacted on 19 June 2014; however, implementing

regulations are required before the PEP provisions will come into force. These regulations, announced on 4 July 2015, will come into force one year after registration of the regulations. They will require REs to determine, under prescribed circumstances, whether a client is a PEFP, a PEDP, a head of an international organization, or a close associate or prescribed family member of any such person.

Criterion 12.1— The PCMLTFR ss.54.2, 56.1, 57.1, 59(5) require REs to take reasonable measures to determine a person's status as a PEFP. FINTRAC Guidance 6G explains the PEP determination and OSFI Guideline B-8 is also relevant.

FINTRAC Guidance (s.8.1) makes clear that reasonable measures must be taken in relation to both new and existing accounts, as well as certain electronic funds transfers (EFT). Also, those measures include asking the client or consulting a credible commercially and/or publicly available database. OSFI Guideline B-8 also details what would constitute reasonable measures to make a PEFP determination.

PCMLTFA s. 9.3.2 requires REs, when dealing with a PEFP, to obtain the approval of senior management in the prescribed circumstances and take prescribed measures. For existing accounts, PCMLTFR, s. 67.1 (b) requires FIs and securities dealers to obtain the approval of senior management to keep a PEFP account open. FINTRAC Guidance 6G explains when to obtain the approval of senior management.

The Regulations (s. 67.2) also require REs to take reasonable measures to establish the PEFP's source of funds. FINTRAC Guidance 6G explains that reasonable measures include asking the client and OSFI Guideline B-8 gives a number of examples of acceptable sources of funds. Source of wealth is not mentioned in the Regulations; however, Guideline B-8 states that FRFIs should satisfy themselves that the amount of clients' accumulated funds or wealth appears consistent with the information provided.

The Regulations (s. 67.1 (1)(c)) require FIs and securities dealers to conduct enhanced ongoing transaction monitoring of PEFP and their family members' accounts. However, no similar legal requirement applies to other REs in relation to PEFPs, although FINTRAC Guidance 6G does specify enhanced ongoing monitoring of PEFP account activities. OSFI Guideline B-8 states that enhanced ongoing transaction monitoring may involve manual or automated processes, or a combination, depending on resources and needs and gives some examples of what this could comprise.

Criterion 12.2— OSFI Guideline B-8 explains that FRFIs are not (currently) under any legal obligation to identify domestic PEPs *per se*, whether by screening or flagging large transactions or in any other way. Further, even if FRFIs know they are dealing with a domestic PEP, until new regulations come into effect, they have no legal obligation to apply enhanced measures to PEDPs as they do to PEFP accounts.

Nevertheless, this OSFI guidance states that, where a FRFI is aware that a client is a domestic PEP, it should assess any effect on the overall assessed risk of the client. If that risk is elevated, the FRFI should apply appropriate enhanced due-diligence measures.

Criterion 12.3— Currently, PCMLTFA, s.9.3 includes family members of PEFPs and PCMLTFR, (s.1.1) states that the prescribed family members of a PEFP are included in the definition of a PEFP. Until the necessary implementing regulations take effect, close associates of any kind of PEP are not covered in law or regulations.

Criterion 12.4— No provisions in law or regulations relate to beneficiaries of life insurance policies who may be PEPs.

Weighting and Conclusion

Canada is non-compliant with R.12.

Recommendation 13 – Correspondent banking

In the 2008 MER, Canada was rated PC with R.7. Deficiencies were noted in relation to: assessment of a respondent institution's AML/CFT controls; assessment of the quality of supervision of respondent institutions; and inadequate CDD for payable-through accounts.

Criterion 13.1— The PCMLTFR (s.15.1 (2)) cover correspondent banking relationships, requiring FIs to collect a variety of information and documents on the respondent institution. That information includes: the primary business line of the respondent institution; the anticipated correspondent banking account activity of the foreign FI, including the products or services to be used; and the measures taken to ascertain whether there are any civil or criminal penalties that have been imposed on the respondent institution in respect of AML/CFT requirements and the results of those measures. The Regulations contain no specific requirements about determining either the reputation of the respondent institution or the quality of supervision to which it is subject. The PCMLTFR (s.15.1(3)) require the taking of reasonable measures to ascertain whether the respondent institution has in place AML/CFT policies and procedures, including procedures for approval for the opening of new accounts. There is, however, no requirement to assess the quality of a respondent institution's AML/CFT controls. PCMLTFA s. 9.4 (1) requires senior management approval to be obtained for establishing new correspondent relationships. The Regulations (s.15.1(2)(f)) specify the collection of a copy of the correspondent banking agreement or arrangement, or product agreements, defining the respective responsibilities of each entity.

Criterion 13.2— The PCMLTFR (s. 55.2) stipulate that where the customer of the respondent institution has direct access to the services provided under the correspondent banking relationship (the 'payable-through account' scenario), the FI shall take reasonable measures to ascertain whether (i) the respondent institution has met the customer identification requirements of the Regulations; and (ii) the respondent institution has agreed to provide relevant customer identification data upon request.

Criterion 13.3— PCMLTFA, s.9.4 (2) prohibits correspondent banking relationships with a shell bank. In addition, the PCMLTFR (s. 15.1 (2) (h) require FIs to obtain a statement from the

respondent institution that it does not have, directly or indirectly, correspondent banking relationships with shell banks.

Weighting and Conclusion

Deficiencies remain under c. 13.1.

Canada is largely compliant with R.13.

Recommendation 14 – Money or value transfer services

In its 2008 MER, Canada was rated NC with SR VI. The main deficiencies were: lack of a registration regime for money services businesses (MSBs); no requirement for MSBs to maintain a list of their agents; and the sanction regime available to FINTRAC and applicable to MSBs was deemed not effective, proportionate and dissuasive. Subsequently, Canada has made significant progress, and the FATF standard has been strengthened to require countries to take action to identify unlicensed or unregistered MSBs and apply proportionate and dissuasive sanctions to them.

Criterion 14.1— PCMLTFA, s.11.1 stipulates that any entity or person covered by s.5(h) of the Act, (persons and entities engaged in the business of foreign exchange dealing, of remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network, or of issuing or redeeming money orders, traveller's checks or other similar negotiable instruments) and those referred to in s.5(l) of the Act (those that sell money orders to the public), must be registered with FINTRAC.

Criterion 14.2— Under its mandate (PCMLTFA, s. 40(e)) to ensure compliance with part 1 of the Act, FINTRAC has a process for identifying MSBs that carry out activities without registration. This includes searching advertisements and other open sources as well as through on-site visits. Additionally, MVTS whose registration status is revoked are still tracked to ensure that they are not conducting business illegally.

The PCMLTF Administrative Monetary Penalties (AMP) Regulations describe the classification of different offenses under the PCMLTFA and the Regulations. Failure to register is classified as a serious violation. These Regulations classify violations as minor, serious, and very serious, each with a varying range of monetary penalties, up to CAD 500 000. In addition to criminal sanctions and monetary penalties for non-compliance, FINTRAC uses other means to encourage compliance. Monetary penalties are only considered after giving an entity or person a chance to correct deficiencies. If a very serious violation has been committed, a fine is greater than CAD 250 000, or if there is repeat significant non-compliance, FINTRAC considers publicly naming that entity or person, using its powers under s.73.22 of the PCMLTFA.

Criterion 14.3— PCMLTFA s. 40 (e) gives FINTRAC the mandate to ensure compliance with the Act. FINTRAC uses its powers under the PCMLTFA (ss. 62, 63 and 63.1) to examine records and inquire into the business and affairs of REs to monitor MVTS providers for AML/CFT compliance.

Criterion 14.4— PCMLTFA, ss.11.12(1) and (2) require that a list of agents, mandataries or branches engaged in MSB services on behalf of the applicant be submitted upon registration of the MSB with FINTRAC. S. 11.13 of the Act stipulates that a registered MVTS must notify FINTRAC of any change to the information provided in the application or of any newly obtained information within 30 days of the MVTS becoming aware of the change or obtaining the new information. This includes information about the MVTS's agents.

This criterion is also met through the legal obligation described under c. 14.1 above.

Criterion 14.5— The PCMLTFR (s.71(1)(d)) require MVTS, who have agents or other persons authorized to act on their behalf, to develop and maintain a written ongoing compliance training program for those agents or persons. S. 71(1)(e) also requires MVTS to institute and document a review of their agents' policies and procedures, risk assessment and the training program for the purpose of testing effectiveness. Such reviews must be carried out every two years.

Weighting and Conclusion

Canada is compliant with R.14.

Recommendation 15 – New technologies

In the 2008 MER, Canada was rated NC with former R.8 due to the lack of legislative or other enforceable obligations addressing the risks of new technological developments. Since then, some 40 legislative amendments to the PCMLTFA were tabled in Parliament (e.g. measures to subject new types of entities to the PCMLTFA, including online casinos, foreign MSBs and businesses that deal in virtual currencies such as Bitcoin). Canada is currently developing regulatory amendments to cover pre-paid payment products (e.g. prepaid cards) in the AML/CTF regime. The NRA examined the ML/TF vulnerabilities of 27 economic sectors and financial products, including new and emerging technologies, both in terms of products (e.g. virtual currency and pre-paid access), and sectors (e.g. telephone and online services in the banking and securities sectors).

Criterion 15.1— REs must conduct a risk assessment that includes client and business relationships, products and delivery channels, and geographic location of activities of the RE and the client(s), and any other relevant factors (PCMLTFR. s.71(1)(c)). While the requirements capture the need to assess ML/TF risks related to products and delivery mechanisms, there is no explicit legal or regulatory obligation to similarly risk assess the development of new products and business practices, nor is there any such obligation relating to the use of new or developing technologies for new and pre-existing products. However, Canada issued regulatory amendments for public comment in July 2015 clarifying that REs must consider, in their risk assessment, any new developments in, or the impact of new technologies on, the RE's clients, business relationships, products or delivery channels or the geographic location of their activities. A risk assessment review must be conducted every two years by an internal or external auditor, or by the entity (s.71(1)(e) of the Regulations). This ensures that risk assessments are regularly evaluated to capture risks, which may include new technologies. FINTRAC Guideline 4 specifies that new technology developments (e.g. electronic cash,

stored value, payroll cards, electronic banking, etc.) must be included in a company's risk assessment.

Criterion 15.2— While there is a regulatory expectation in FINTRAC's risk-based approach guidance[109] which states that REs should reassess their risk if there are changes due to new technologies or other developments, there are no explicit requirements in law or regulation that FIs undertake risk assessments prior to the launch or use of such products, practices and technologies.

Weighting and Conclusion:

Canada is non-compliant with R.15.

Recommendation 16 – Wire transfers

In the 2008 MER, Canada was rated NC with SR VII, which had simply not been implemented. Canada made some progress since then. The requirements have also been very substantially expanded in R.16 (i.e. inclusion of beneficiary information in wire transfers and additional obligations on intermediary and beneficiary FIs and MSBs).

Ordering Financial Institutions

Criterion 16.1— PCMLTFA, s.9.5 requires FIs to include with the transfer, when sending an international EFT, the name, address, and account number or other reference number, if any, of the client who requested it. The Act has no equivalent provision about including beneficiary name, account number or unique transaction reference number in this 'ordering FI' scenario. However, Schedule 2, Part K, of the PCMLTFR, which covers outgoing SWIFT payment instructions report information, does stipulate that, for single transactions of CAD 10 000 or more, the beneficiary client's name, address and account number (if applicable) should be included. There are no enforceable provisions requiring FIs to include beneficiary information in EFTs below CAD 10 000 (either as a single transaction, or multiple transactions within a 24-hour period).

Criterion 16.2— PCMLTFA, s.9.5 is not limited to single transfers—it, therefore, also applies in cases where numerous individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries.

Criterion 16.3— There is no 'de minimis' threshold for the requirements of c.16.1.

Criterion 16.4— Originator information would be verified through CDD obligations (see R.10). In addition, s. 53.1 of the Regulations states that the identity of every person that conducts a suspicious transaction must be ascertained, unless it was previously ascertained, or unless the FI believes that doing so would inform the individual an STR was being submitted.

Criterion 16.5— The Act's s.9.5 requirements cover both domestic and international EFTs.

[109] FINTRAC (2015), Guidance on the Risk-Based Approach to Combatting Money Laundering and Terrorist Financing, www.fintrac-canafe.gc.ca/publications/rba/rba-eng.pdf.

Criterion 16.6— Canada does not permit simplified originator information to be provided.

Criterion 16.7— The PCMLTFR (ss. 14 (m) and 30 (e)) require FIs and MSBs to keep a record of the name, address and account number, or transaction reference of the ordering client for all EFTs of CAD 1 000 or more. In addition, a record must be kept of the name and account number of the recipient of the EFT, as well as the amount and currency of the transaction.

Criterion 16.8— There is no explicit prohibition on executing wire transfers where CC, ss.16.1 to 16.7 above cannot be met. However, if an RE is unable to comply with the relevant legal requirements, it cannot proceed with a wire transfer without breaking the law and being subject to AMPs.

Intermediary Financial Institutions

Criteria 16.9 to 16.12— The PCMLTFA and regulations use the terms "send/transfer" and "receive" to apply obligations to intermediaries, which are, therefore, subject to the same requirements that apply to ordering and beneficiary institutions. Thus, the implications of possible data loss and of straight-through processing are not captured, as they should be to meet the standard.

Beneficiary Financial Institutions

Criterion 16.13— PCMLTFA, s.9.5(b) requires FIs to take reasonable measures to ensure that any transfer received by a client includes information on the name, address, and account number or other reference number, if any, of the client who requested the transfer. These requirements apply equally to all EFTs, regardless of where they are situated in the payment chain. Where an FI is transmitting a transfer received from another FI, it is, therefore, required to ensure that complete originator information is included. There are no legal requirements relating to beneficiary information.

OSFI Guideline B-8 states that FRFIs that act as intermediary banks should develop and implement reasonable policies and procedures for monitoring payment message data subsequent to processing. Such measures should facilitate the detection of instances where required message fields are completed but the information is unclear, or where there is meaningless data in message fields. The Guideline cites a few examples of reasonable measures that could be taken.

Criteria 16.14 and 16.15— There are no specific obligations on beneficiary FIs involved in cross-border EFTs.

Money or Value Transfer Service Operators

Criterion 16.16— All obligations identified in CC, ss.16.1–16.9 above apply to MSBs and their agents.

Criterion 16.17— There are no specific legal requirements for MTVS providers either to review ordering and beneficiary information to decide whether to file an STR or to ensure that an STR is filed in any country affected and transaction information made available to the FIU.

Implementation of Targeted Financial Sanctions

Criterion 16.18— See the assessment of R.6 and R.7. The processing of EFTs, in terms of FIs taking freezing action and complying with prohibitions from conducting transactions with designated persons and entities, is adequately covered in law.

Weighting and Conclusion

The legal obligations applicable to ordering FIs and MSBs are broadly satisfactory, but there remain some weaknesses.

Canada is partially compliant with R.16.

Recommendation 17 – Reliance on third parties

In the 2008 MER, Canada was rated NC with R.9. In the only two scenarios where reliance on a third party or introduced business was legally allowed without an agreement or arrangement, the measures in place were insufficient to meet the FATF standard. In addition to the two reliance on third parties/introduced business scenarios contemplated by the Regulations, the financial sector used introduced business mechanisms as a business practice. However, no specific requirements, as set out in R.9, applied to these scenarios. Only minor changes have subsequently been introduced.

Criterion 17.1— The PCMLTFR (ss. 64(1)(b)(A)(I) and (II)) allow FIs, other than MSBs, and also foreign entities that conduct similar activities, to rely on affiliated third parties, or those in the same association, for the purpose of ascertaining the identity of a person.

More specific legal provisions apply to both the life insurance industry and securities dealers. A life insurance company, broker, or agent is not required to ascertain the identity of a person where that person's identity has previously been ascertained by another life insurance company, broker, or agent in connection with the same transaction or series of transactions that includes the original transaction. Similarly, a securities dealer, when opening an account for the sale of mutual funds, is not required to ascertain identity where another securities dealer has already done so in respect of the sale of mutual funds for which the account has been opened. The PCMLTFR (s.56(2) and s.62(1)(b)) refer.

Apart from the specific situations set out above, all requirements under the PCMLTFR continue to apply to the FI that has the relationship with the customer.

The PCMLTFR (s.64.1) state that, when REs use an agent or a mandatary to meet their client identification obligations, they must enter into a written agreement or arrangement with the agent or mandatary. In addition, the RE must obtain from the agent or mandatary the customer information that was obtained under the agreement or arrangement. The agent or mandatary can be any individual or entity, provided these two conditions regarding written agreement and obtaining customer information are met. Where the client is not physically present at the opening of an account, establishment of a trust or conducting of a transaction, the agent or mandatary has the same

two options, outlined in ss.64(1) and 64(1.1), that an RE does when dealing with a client who is not physically present.

In the first option, the agent or mandatary must obtain the individual's name, address, and date of birth. Then, they must confirm that one of the following has ascertained the identity of the individual by referring to an original identification document:

- a financial entity, life insurance company, or securities dealer affiliated with them;
- an entity affiliated with them and whose activities outside Canada are similar to those of a financial entity, life insurance company, or securities dealer; or
- another financial entity that is a member of their financial services cooperative association or credit union central association of which they also are a member.

To use this option, the agent or mandatary must verify that the individual's name, address and date of birth correspond with the information kept in the records of that other entity. The second option requires the use of a combination of two of the identification methods set out in Part A of Schedule 7 of the PCMLTFR.

Where agents or mandataries with written agreements are concerned, the relying entity must obtain customer information supplied under the agreement. However, life insurance companies/brokers/agents or securities dealers are not required to obtain from the relied-upon institution the necessary CDD information.

Similarly, life insurance companies/brokers/agents or securities dealers are not required to satisfy themselves that copies of CDD information will be made available to them by the third party on request without delay.

There is no explicit obligation, either for relying entities with agents and mandataries or for life insurance companies/brokers/agents or securities dealers, to satisfy themselves that the FI relied on is regulated and supervised or monitored for compliance with CDD and record-keeping obligations in line with R.10 and R.11.

Criterion 17.2— The PCMLTFA and PCMLTFR do not require life insurance companies/brokers/agents or securities dealers to assess which countries are high risk for third party reliance. The authorities state that reliance may only be placed on life insurance companies/brokers/agents or on securities dealers that are subject to the PCLMTFA, and FINTRAC's oversight. If so, the scenario outlined in Criterion 17.2 would not arise.

While ss.56(2) and 62(1) (b) of the PCMLTFR do not actually preclude the possibility of reliance being placed on third parties outside Canada, with no account taken of the level of country risk, an RE can only rely on third parties outside Canada if they are affiliated with them. Canada issued

regulatory amendments for public comment in July 2015 that included an amendment with respect to Group-Wide Compliance Programs that would require REs to take into consideration as part of their compliance programs the risks resulting from the activities of their affiliates.

Criterion 17.3— The PCMLTFR (ss.64(1)(b)(A)(I) and (II)) allow FIs, other than MSBs, and also foreign entities that conduct similar activities to rely on affiliated third parties, or those in the same association, for the purpose of ascertaining the identity of a person. PCMLTFA, ss9.7 and 9.8 require foreign branches and subsidiaries, subject to there being no conflict with local laws, to develop and apply policies to keep records, verify identity, have a compliance program, and exchange information for the purpose of detecting or deterring an ML or TF offense or of assessing the risk of such an offense. Thus, group-wide ML/TF standards should apply, providing appropriate safeguards.

Where there is a conflict with, or prohibition by, local laws, the RE must keep a record of that fact, with reasons, and notify both FINTRAC and its principal federal or provincial regulator within a reasonable time (PCMLTFA, s.9.7(4)).

Weighting and Conclusion

A number of deficiencies remain, even though that reliance on third parties appears to be of limited practical application.

Canada is partially compliant with R.17.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In the 2008 MER, Canada was rated LC with R.15 due to minor deficiencies and NC with R.22 due to the lack of legal obligation to ensure that foreign branches and subsidiaries applied AML/CFT measures consistent with home country standards, and obligation to pay particular attention to branches and subsidiaries in countries, which did not, or insufficiently, applied the FATF Recommendations. The current FATF standards are broadly unchanged, although R.18 specifies in more detail what should be done to manage ML/TF risk where host country requirements are less strict than those of the home country. Significant changes came into force in Canada in June 2015.

Criterion 18.1— PCMLTFA s. 9.6 requires FIs to establish and implement a compliance program to ensure compliance with the Act. The program must include the development and application of policies and procedures for the FI to assess, in the course of their activities, the risk of an ML or TF offense. The PCMLTFR (ss. 71 (1)(a) and (b)) specify that: a person must be appointed to be responsible for implementation of the program; and the program must include developing and applying written compliance policies and procedures that are kept up-to-date and approved by a senior officer.

OSFI Guideline B-8 stipulates that FRFIs must have a Chief Anti-Money Laundering officer (CAMLO) responsible for implementation of the enterprise AML/ATF program, who should be one person positioned centrally at an appropriate senior corporate level of the FRFI. Separately, OSFI Guideline E-13 requires that FRFIs must have a Chief Compliance officer with a clearly defined and

documented mandate, unfettered access and, for functional purposes, a direct reporting line to the Board.

Neither the PCMLTFA nor PCMLTFR contain any specific obligations regarding FIs' screening procedures when hiring employees. Similarly, there are no measures in place in sector legislation at the federal or provincial level. OSFI Guideline E-17 details OSFI's expectations in respect of screening new directors and senior officers of FRFIs at the time of hiring. However, this applies only to a defined set of "Responsible Persons," not to all employees.

The PCMLTFR (s. 71(1)(d)) require REs that have employees, agents or other persons authorized to act on their behalf to develop and maintain a written ongoing training program for those individuals. In addition, OSFI Guideline B-8 advises FRFIs to ensure that written AML/ATF training programs are developed and maintained. Appropriate training should be considered for the Board, Senior Management, employees, agents and any other persons who may be responsible for control activity, outcomes or oversight, or who are authorized to act on the Company's behalf, pursuant to the PCMLTFR.

The PCMLTFR (s.71 (1) (e)) oblige all REs to institute and document a review of their policies and procedures, the risk assessment and the training program for the purpose of testing effectiveness. That review must be carried out every two years by an internal or external auditor of the RE, or by the RE itself, if it has no auditor. OSFI Guideline B-8 amplifies the requirement in a number of ways and also sets out an expected standard of self-assessment of controls applicable to FRFIs.

Criterion 18.2— Measures which came into effect in June 2015 expanded section 9.7 of the PCMLTFA to cover foreign branches as well as subsidiaries. The effect was to require FIs, securities dealers and life insurance companies to implement policies and procedures for CDD, record-keeping and compliance programs that are consistent with Canadian requirements and apply across a financial group.

A new s.9.8(1) of the Act introduced requirements for REs to have policies and procedures in place for how they will share information with affiliates for the purpose of detecting or deterring an ML or TF offense or of assessing the risk of such an offense. This provision is sufficiently widely drawn to cover the kind of customer, account and transaction information stipulated in the FATF standard. There are no prohibitions in either the PCMLTFA or PIPEDA on sharing of information, including STRs, within financial groups, domestically or cross-border.

The new law did not cover safeguards on the confidentiality and use of information exchanged. However, the necessary safeguards already exist under PIPEDA (s.5 and Schedule 1), which apply equally to client information received from a branch or subsidiary under the PCMLTFA.

Criterion 18.3— Under newly amended s.9.7(4) of the PCMLTFA, when local laws would prohibit a foreign branch or foreign subsidiary from implementing policies that are consistent with Canadian AML/ATF requirements, the RE must advise FINTRAC and their principal regulator. (In the case of FRFIs, this is OSFI; for provincially regulated FIs, the relevant provincial supervisor).

Weighting and Conclusion

There is a remaining deficiency regarding the internal controls aspect of R.18.

Canada is largely compliant with R.18.

Recommendation 19 – Higher-risk countries

In the 2008 MER, Canada was rated PC with R.21, because there were no general enforceable requirement for FIs to give special attention to transactions or business relationships connected with persons from higher-risk countries, no measures advising of other countries with AML/CFT weaknesses, and no requirement to examine the background and purpose of transactions and to document findings. The FATF standard remains broadly the same, but there have been major changes in Canada since 2008.

Criterion 19.1 and 19.2— Part 1.1 of the PCMLTFA, which entered into force in June 2014, introduced two new authorities for the Minister of Finance: (i) the authority to issue directives requiring REs to apply necessary measures to safeguard the integrity of Canada's financial system in respect of transactions with designated foreign jurisdictions and entities. The measures contemplated included CDD, monitoring and reporting of any financial transaction to FINTRAC; (ii) the authority to recommend that the Governor-in-Council issue regulations limiting or prohibiting REs from entering into financial transactions with designated foreign jurisdictions and entities. These authorities enable Canada to take targeted, legally enforceable, graduated and proportionate financial countermeasures against jurisdictions or foreign entities with insufficient or ineffective AML/ATF controls. These measures can be taken in response to a call by an international organization, such as the FATF, or unilaterally. The Minister has not issued any countermeasures under Part 1.1; however, OSFI and FINTRAC have regularly drawn the attention of FRFIs and REs to the FATF calls on members, and have issued regular guidance in Notices and Advisories following each FATF meeting. OSFI has issued prudential supervisory measures against FRFIs it believes have not implemented FATF expectations (PCMLTA (s.11.42) and PCMLTFR (s.71.1)).

Criterion 19.3— Risk assessments on jurisdictions with AML/ATF weaknesses are conducted through the IFAC Under s.11.42(3) of the Act, the Minister's decision to issue a Directive may require the Director of FINTRAC to inform all REs. Additional guidance is provided through FINTRAC advisories and OSFI notices, available online, encouraging enhanced CDD with respect to clients and beneficiaries involved in transactions with high-risk jurisdictions.

Weighting and Conclusion:

Canada is compliant with R.19.

Recommendation 20 – Reporting of suspicious transaction

In the 2008 MER, Canada was rated LC with R.13 and SR. IV because some FIs (e.g. financial leasing, factoring and finance companies) were not covered by the obligation to report and there was no requirement to report attempted transactions. Some improvements have been made since then.

Criterion 20.1— PCMLTFA, s.7 requires REs to report to FINTRAC every financial transaction that occurs, or that is attempted, in the course of their activities and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission or attempted commission of an ML or TF offense. The scope of the PCMLTFA still excludes certain sectors (financial leasing, finance and factoring companies), but this represents an ongoing minor deficiency. ML is defined by reference to CC, s.462.31(1), which, in turn, is defined in CC, s.462.31(1) to mean any offense that may be prosecuted as an indictable offense under this or any other Act of Parliament, other than an indictable offense prescribed by regulation. As described under c.3.2, ML now applies to a range of offenses in each FATF designated category of predicate offenses, including tax evasion.

Suspicious transactions must be reported "within 30 days" of detection of a fact that constitutes reasonable grounds to suspect that the transaction or attempted transaction is related to the commission of an ML offense or a TF offense. (PCMLTF Suspicious Transaction Reporting Regulations, s.9(2)).This does not meet the standard of reporting "promptly."

Criterion 20.2— Attempted transactions are now covered by the reporting requirement.

Weighting and Conclusion

The reporting requirement covers several, but not all elements, of the standard.

Canada is partially compliant with R.20.

Recommendation 21 – Tipping-off and confidentiality

In the 2008 MER, Canada was rated C with R.14.

Criterion 21.1— The PCMLTFA (s.10) states that no criminal or civil proceedings lie against a person or an entity for making an STR in good faith or for providing FINTRAC with information about suspicions of ML or TF activities. However, the requirement does not explicitly extend to reporting related to ML predicate offenses.

Criterion 21.2— PCMLTFA s.8 specifies that no person or entity can disclose that they have made an STR, or disclose the contents of a report, with the intent to prejudice a criminal investigation, whether or not a criminal investigation has begun. The law does not, however, cover a situation where a person or entity is in the process of filing a STR but has not yet done so. Neither does the legal obligation explicitly extend to reporting related to ML predicate offenses.

Weighting and Conclusion

The tipping off and confidentiality requirements do not explicitly extend to the reporting of suspicions related to ML predicate offenses.

Canada is largely compliant with R.21.

Designated Non-Financial Businesses and Professions (DNFBPs)

Since the 2008 MER, Canada has extended the AML/CFT requirements to BC Notaries and DPMS. The following DNFBPs are now subject to AML/CFT obligations: land-based casinos, accountants (defined as chartered accountant, certified general accountant, certified management accountant)[110] and accounting firms, British Columbia Notaries Public and Notary Corporations (hereinafter referred to as BC Notaries), real estate brokers or sales representatives, dealers in precious metals and stones (hereinafter DPMS) and certain trust companies, which fall under PCMLTFA, s.5 (e). Legal counsel and legal firms are covered as obliged AML/CFT entities, pursuant to PCMLTR, s.33.3, but, on 13 February 2015,[111] the Supreme Court of Canada concluded that the AML/CFT provisions are inoperative, as they are unconstitutional, for lawyers and law firms in Canada. Canada extended the AML/CFT regime to real estate developers when, under certain conditions, they sell to the public real estate (PCMLTFR, s.39.5). Notaries in provinces other than Québec and British Columbia are restricted to certifying affidavits under oath, and document certification. These notaries do not conduct any financial transactions and the transfer of property is done exclusively through lawyers in these provinces (see 2008 MER, para. 150). TCSPs are not a distinct category under the PCMLTFA and PCMLTFR. The definition of casino (PCMLTFR, s.1(1)), which excludes registered charities authorized to perform business temporarily, provides an unclear exemption.[112]

All gambling is illegal,[113] unless specifically exempted under CC, s.207. Several provinces (British Columbia, Quebec, Manitoba Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland) have introduced online gambling through an extensive interpretation of the notion of "lottery scheme" allowed to them under CC, s.207(4)(c), which includes games operated through a computer. When these provinces introduced internet gambling, FINTRAC sent them a letter to inform them that

[110] PCMLTFR, Section 1. (2).

[111] The Supreme Court of Canada on 13 February 2015 has concluded that the search provisions of the Act infringe Section 8 of the Canadian Charter of Rights and Freedoms, while the information gathering and retention provisions, in combination with the search provisions, infringe Section 7 of the Charter Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7.

[112] There is no definition of "charitable purposes" and the notion of "temporary" business, does not give an exact timeframe, making unclear the reference to "not more than two consecutive days at a time," without fixing any further limit per week or per year. The exemption involving registered charities is to avoid duplication in the AML/CFT regime, as the Provincial Authority or its designate are RE of FINTRAC. Nevertheless, taking into account the possible operational models of casinos operating in Canada, the current definition of casino and the resulting AML/CFT requirements lack clarity in addressing the respective AML/CFT responsibilities of the different persons or entities that could be simultaneously involved in the business of the same casino (Crown corporations or regulators branches involved in the conduct and management of lotteries schemes, charitable organizations, First Nation organizations, casino's service providers).

[113] CC, Section 206 (1).

they were considered subject to AML/CFT obligations. Subsequently, these casinos started sending to FINTRAC Casino Disbursement Reports (for example, FINTRAC has received 988 such reports in the last 24 months). Nevertheless, the amendment to the definition of casinos that makes reference to online gambling operators is not yet entered into force.[114]

There are also land-based gaming and on line gambling[115] sites actually operating within Quebec, whose legal status is unclear which are not supervised by the province and which are not subject to AML/CFT obligations. These activities are authorized by the Kahnawake Gaming Commission operating on the basis of an asserted jurisdiction by the Mohawks over their territory. They are considered illegal by the authorities. Offshore gambling sites are deemed to be illegal as each casino must be licensed by a Canadian province. The authorities clarified that these activities are a matter for law enforcement to oversee.

Cruise ships that offer gambling facilities in Canadian waters are not obliged entities for AML/CFT purposes. (See 2008 MER, para. 1186-1187). Lottery schemes cannot be operated within five nautical miles of a Canadian port at which the ship calls (s.207.1 of the CC). Of note, there are no Canadian cruise ships. The exemption of cruise ship casinos is based on a proven low risk.

Trust and company services are provided by trust companies, legal counsels, legal firms and accountants—the PCMLTFA therefore does not identify TCSPs separately. Twenty-two trust companies (covered by a provincial Act, falling under of PCMLTFA, s.5(e)) are subject to AML/CFT obligations, but lawyers and accountants are not, despite the high vulnerability rating highlighted in the NRA.[116]

Recommendation 22 – DNFBPs: Customer due diligence

In the 2008 MER, Canada was rated NC with these requirements due to deficiencies in the scope of DNFBPs covered and in CDD and record-keeping requirements. Since then, Canada has extended the scope of the AML/CFT requirements to BC Notaries and DPMS and addressed some deficiencies in CDD requirements applicable to DNFBPs.[117]

Criterion 22.1— Scope issue: Internet casinos, TCSPs are not covered and the relevant provisions are inoperative with respect to legal counsels, legal firms and Quebec notaries (PCMLTFR, ss.33.3,

[114] Steps are being taken in this respect. Bill C-31 introduced legislative amendments to PCMLTFA s.5 k 1, which will come into force once the regulations are finalized, aimed at establishing AML/CFT obligations for online gambling conducted and managed by the provinces and covering those lottery schemes other than bingo and the sale of lottery tickets that are conducted and managed by provinces in accordance with CC, s.207(1)(a). These amendments will also extend the notion of relevant business to include other electronic devices similar to slot machines (such as video lottery terminals, currently excluded from the AML/CFT regime) but establishing a relevant threshold of "more than 50 machines per establishment" (PCMLTFA, s.5(k)(ii)).

[115] Online gaming operators that are licensed by the Commission must be hosted at Mohawk Internet Technologies, a data centre, located within the Mohawk Territory of Kahnawake.

[116] NRA, p.32.

[117] In particular, introducing the obligation to collect information on the purpose and intended nature of the business relationship and ongoing due diligence, extending the circumstances in which CDD is required, providing for enhanced measures in higher risk scenarios, excluding the exemption regime in case of suspicion.

33.4, 33.5, 59.4, 59.41, 59.4). As regards accountants and BC notaries, not all the relevant activities under the criterion are taken into account.

DNFBPs[118] are not required to obtain, take reasonable measures to confirm, and keep records of the information about the beneficial ownership of legal persons and legal arrangements, nor as to understand the ownership and control structure of the latter. DNFBPs are only required to confirm the existence of and ascertain the name and address of every corporation or other entity on whose behalf a transaction is being undertaken, and in the case of a corporation the names of its directors.[119] The rule of "third party determination" (PCMLTFR, s.8) is limited to individuals and is not applied to all relevant circumstances when CDD is required under the criterion. DNFBPs are not explicitly required to establish that the person purporting to act on behalf of the customer is so authorized. There are additional deficiencies for each relevant category. Casinos can perform a large variety of financial services, including wire transfers (see 2008 MER, para. 138). The following measures for ascertaining identity are carried out in line with the following threshold: on account opening (no threshold), when dealing with EFTs (CAD 1 000) and, dealing with foreign exchange or extension of credit (CAD 3 000).[120] The CAD 10 000 thresholds for ascertaining identity for cash financial transactions and casinos disbursement[121] are higher than the FATF standard. Not all the range of non-cash occasional transactions are covered: in particular, the purchase of chips through checks, credit, and debit cards, as well as prepaid cards are not captured. The redemption of "tickets" under PCMLTFR, s.42(1)(a) is not included, even if some kind of tickets (TITO tickets)[122] have been detected by FINTRAC in typologies of ML. There are no enforceable provisions requiring casinos to include beneficiary information in wire transfers, and no obligation for all REs to ascertain the identity of authorized signers (PCMLTFR, ss.54(1)(a) and 62(1)(a)). As regards, accountants and BC Notaries, not all the relevant activities under the criterion are included. In particular, no requirement is provided in relation to activities related to organization of contributions for the creation, operation and management of companies, legal persons and arrangements, and the scope of "purchasing or selling" securities, properties and assets is more limited than the notion of "management" included under the criterion. The definition of accountant (PCMLTFR, s.1(1) does not include "Chartered Professional Accountant."[123] In a real estate transaction, when the purchaser and the vendor are represented by a different real estate broker, each party to the transaction is identified by their own real estate broker. Real estate agents, in case of unrepresented party are required to take reasonable measures only to ascertain the identity of the party (PCMLTFR, s.59.2 (2, 3, and 4)), rather than applying reasonable risk-based CDD measures to the party that is not their client. DPMS are covered as required by the standards when they engage in the purchase or sale of

[118] With the exception of legal counsel and legal firms for which however the provisions are inoperative (Section 11.1 (1) of the PCMLTFR.
[119] PMCLTFR 59.1(b) & (c), 59.2(1)(b) &(c), 59.3 (b) & (c), 59.5 (b) & (c), 60 (e) &(f)
[120] PCMLTFR, Sections 60(a), 60(b)(iv), 60(b)(iii), 60(b)(ii)
[121] PCMLTFR, Sections 53 and 60(b)(i).
[122] Ticket In Ticket Out (TITO) "tickets" are also an increasingly popular casino value instrument used in many Canadian casinos (FINTRAC, ML Typologies and Trends in Canadian Casino, Nov. 2009, p.8).
[123] The unified new professional designation replaces the former three (Chartered Accountants, Certified General Accountants and Certified Management Accountants), and it is currently completed in several provinces (Quebec, New Brunswick, Saskatchewan, Newfoundland and Labrador). Further work is underway and expected to be included in forthcoming regulatory amendments.

precious metals, precious stones or jewellery in an amount of CAD 10 000 or more in a single transaction, other than those pertaining to manufacturing jewellery, extracting precious metals or precious stones from a mine, or cutting, or polishing precious stones..

Criterion 22.2— Scope issue: see 22.1. The circumstances under which relevant DNFBPs have to keep records do not fully match the list of activities required under R.10 (see 22.1). Furthermore, a non-account business relationship is established when transactions are performed in respect of which obliged entities are required to ascertain the identity of the person, rather than being based on a mere element of duration. The said definition entails that, apart from the case of suspicion, the record keeping requirements on a business relationship arise only when the prescribed thresholds for the transactions are reached. The deficiencies identified in R.11 apply also to DNFBPs.

Criteria 22.3, 22.4 and 22.5— There are no requirements for DNFBPs to comply with specific provisions covering PEPs, new technologies and reliance on third parties.

Weighting and Conclusion:

Canada is non-compliant with R.22.

Recommendation 23 – DNFBPs: Other measures

In its 2008 MER, Canada was rated NC with these requirements, due to the limited scope of DNFBPs included as well as to deficiencies with the underlying recommendations and to concern about the effectiveness of the STR regime in these sectors. Canada has since extended the scope of DNFBPs to some extent (See R.22), included attempted transactions in the STR regime and empowered the Department of Finance to take financial countermeasures with respect to higher-risk countries.

Criterion 23.1— PCMLTFA, s.7 (transaction where reasonable grounds to suspect) does not apply to all relevant categories of DNFBPs, nor to all relevant activities of accountants and BC Notaries as described under R.22.[124] The analysis in relation to R.20 above equally applies to reporting DNFPBs. There are no key substantive differences between the reporting regime for FIs and DNFBPs. FINTRAC Guidelines no. 2 (Suspicious Transactions) includes industry-specific indicators.

Criterion 23.2— Scope issue: see 23.1. Accountants, accounting firms, legal counsels and legal firms, BC Notaries, real estate agents and developers, land-based casinos, DPMS are all required to establish and implement a compliance program (PCMLTFA, s.9.6 (1); PCMLTFR, s.71(1)). While compliance procedures must be approved by a senior officer, PCMLTFA, ss.9.6 and PCMLTFR, s.71(1)(a) do not stipulate that the designation of the compliance officer shall be at the management level. DNFBPs, other than land-based casinos, are not required to have adequate screening procedures to ensure high standards when hiring employees. Also, there is no specific requirement that review of the compliance regime be performed by an independent audit function, as it can also be carried out through a procedure of self-assessment (PCMLTFR, s.71(1)(e)).

[124] Under PCMLTA, Section 5, Part 1 of the Act (including the STRs obligations) applies while carrying out the activities described under the regulations.

Criterion 23.3— Scope issue: see 23.1. See R.19 for a description of this requirement.

Criterion 23.4— Scope issue: see 23.1. The requirements for DNFBPs are the same as those applied to FIs under R.21.

Weighting and Conclusion:

Canada is non-compliant with R.23.

Recommendation 24 – Transparency and beneficial ownership of legal persons

Canada was rated NC with former R.33 based on concerns over a lack of transparency for legal entities, the availability of bearer shares without adequate safeguards against misuse, and a lack of powers by the authorities to ensure the existence of adequate, accurate and timely beneficial ownership information for legal entities. Since 2008, the obligations for FIs to obtain information on the identity of beneficial owners and the CRA's ability to disseminate information on legal entities to the RCMP have been strengthened.

Canada's corporate legal framework consists of federal, provincial and territorial laws: (i) Legal entities may be established at the federal level under the Canada Business Corporation Act (CBCA); the Canada Not-for-Profit Corporations Act (NFP Act), or the Canada Cooperatives Act (CCA). Federally incorporated entities are entitled to operate throughout Canada but in addition to registration at the federal level, are also subject to registration with the province or territory in which they carry out business. (ii) Each of the thirteen territories and provinces regulates the types of legal entities that can be established at the local level. Eight provinces and territories have enacted specific laws that provide for the establishment of corporations and NPOs. Prince Edward Island, Newfoundland and Labrador, Alberta, Manitoba, Quebec, and New Brunswick do not have specific NPO legislation in place but regulate NPOs through the relevant provincial company law.

Legal entities incorporated at the provincial or territorial level enjoy business name protection only in the province or territory where they are incorporated. To operate in another province in Canada, they have to register with that province but there is no guarantee that they will be able to use their corporate name (e.g. a business entity with the same name may already be operating in that province). Federal, provincial and territorial corporate entities may carry out business internationally if the foreign country recognizes the type of corporate entity.

In addition to legal entities, all provinces provide for the establishment of general and limited partnerships pursuant to common law rules; and all provinces, but Yukon, Prince Edward Island and Nunavut have passed statutes to provide for the establishment of limited liability partnerships. Partnerships are not subject to registration as part of the establishment process, but most provinces and territories require registration of businesses before a partnership may operate there. Business registration obligations under provincial and territorial laws also apply to foreign entities wishing to carry out business in Canada.

Criterion 24.1— *Federal legal persons:* Innovation, Science and Economic Development Canada (ISED), formerly Industry Canada, provides a comprehensive overview and comparison on its internet homepage of the various legal entities available and their forms and basic features. All legal entities established at the federal level are subject to registration. Given that corporations are by far the most utilized type of legal entity in Canada, particular emphasis is put on information pertaining to federal corporations under CBCA and their incorporation and registration process, which can be initiated online or by sending all required documents to the competent registrar via email, fax, or mail. [125] ISED also offers a search tool, which makes some basic information of federal companies publicly available. The search function also indicates the legislation the corporation is incorporated under, which in turn clarifies basic regulating powers. *Provincial legal persons:* Similar information and services are provided through the homepages of all provincial governments except that of New Brunswick. The relevant web links are easy to find through ISED's homepage and provide public access to the relevant provincial laws that describe the various legal entities available; the name and contact information for the relevant authority competent for registration; and the procedures to be followed to establish a legal entity or to register a corporation. *Partnerships and foreign entities:* Partnerships and foreign entities operating in any of Canada's provinces or territories are subject to registration at the provincial level. The Canada Business Network maintains a homepage that provides links to the various provincial and territorial business registries.

Criterion 24.2— The NRA identified privately held corporations as being highly vulnerable to misuse for ML/TF purposes. The conclusion was reached based on the understanding that such corporations can easily be established and be used to conceal beneficial ownership. The risk assessment determines the inherent risks involved with legal persons based on factors such as the products and services offered by legal entities, the types of persons that may establish or control a legal person, the possible geographic reach of a Canadian legal entity, and taking into account FINTRAC statistics on typologies involving legal entities in Canada.

Basic Information

Criterion 24.3— Both federal and provincial corporations, NPOs with legal personality and cooperatives are established through incorporation by the relevant incorporating department or agency. *Federal legal persons:* On the federal level, ISED, as part of the incorporation and annual filing process, collects and publishes information comprising the corporation's name, type, status, corporation number, registered office address in Canada, name and address of all directors, and governing legislation. The regulating powers for federal corporations are set out in the legislation or in the corporation's articles, which are approved by the Director appointed under the relevant Act. *Provincial legal persons:* Company information including the corporate name, type, status, registered office in Canada, and name and address of directors is collected through the same process as on the federal level, which is through annual filing procedures. *Partnerships and foreign entities:* Business registration requirements vary between the different provinces and territories, but usually require the provision of the name, registered office, mailing address, place of business in the province/territory, the date and jurisdiction of incorporation (for extraterritorial companies) or type

[125] www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04843.html#articles.

of partnership, the name and address of directors or partners and a copy of the partnership contract or the incorporation certificate or other proof of existence. Partnerships not carrying out any business in Canada are not required to register as part of the establishment process.

Criterion 24.4— Record-keeping obligations extend to the corporation's articles and by-laws and any amendments thereof, of minutes of shareholder meetings and resolutions, share registers, accounting records, and minutes of director meetings and resolutions. Pursuant to CBCA, s.50, companies must also keep a share register that indicates the names and address of each shareholder, the number and class of shares held, as well as the date and particulars of issuance and transfer for each share. Similar provisions are set out in provincial legislation. Federal as well as provincial companies are required to keep records of basic information either in a location in Canada or at a place outside Canada, provided the records are available for inspection by means of computer technology at the registered office or another place in Canada and the corporation provides the technical assistance needed to inspect such records (CBCA, s.20). There is no legal requirement to inform the incorporating department or agency, or where applicable, the company register of the location at which such records are being kept.

Criterion 24.5— Under CBCA, s.19 (4) federal corporations are required to inform the Director appointed under the CBCA within 15 days of any change of address of the registered office. Changes in legal form, name or status as well as amendments to the articles of incorporation take effect only after they have been filed with the Director. More or less the same updating requirements are especially provided for under provincial legislation, except in Quebec and Nova Scotia.[126] In Nova Scotia, the updating requirement applies but changes to the registered office have to be filed within 28 days and there is only a general obligation to notify the Registrar "from time to time" of any changes among its directors, officers, or managers. Directors, shareholders and creditors have access to these documents and are permitted at all times to check their accuracy. However, no formal mechanism is in place to ensure that shareholder registers are accurate. For partnerships and extraterritorial corporations, some provinces and territories impose an annual filing obligation, others require renewal of the license and updating of relevant information on a multi-year basis.

Beneficial Ownership Information

Criterion 24.6— Canada uses existing information to determine a legal entity's beneficial ownership, if and as needed, including as follows:

(i) FIs providing financial services to legal entities, partnerships or foreign companies. Since 2014, obligations under the PCMLTFA for FIs to obtain ownership information of customers or beneficiaries that are legal entities have been strengthened. Prior to 2014 FIs identified beneficial owners of legal entities mostly based on a declaration of the customer. For those companies established prior to 2014, it is, thus, questionable whether this measure did indeed result in the availability of accurate and updated beneficial ownership information. Ongoing CDD obligation under the PCMLTFA have resulted in BO information becoming available for a number of companies that opened bank accounts in Canada prior to 2014, but most FIs interviewed by the assessors

[126] For example Section 2 Ontario Corporations Information Act; Article 20 Alberta Business Corporation Act; Article 19 Nova Scotia Companies Act.

indicated that the ongoing CDD process has not yet been completed for all legal entities. For some DNFBPs as outlined in R.22, certain limited CDD obligations apply as discussed under R.22 but those do not amount to a comprehensive requirement to identify and take reasonable measures to verify beneficial ownership information and the obligations also are inoperative with regards to lawyers.

(ii) The federal and provincial company registries record some basic information as discussed above, but do not generally collect information on beneficial owners. Verification mechanisms for registered information are not in place. The CRA as part of its general obligations, collects information on legal entities that file tax returns. As indicated in the 2008 MER, however, this information generally does not comprise beneficial ownership information. Furthermore, not all legal entities in Canada file tax returns with the CRA; and

(iii) Legal entities themselves are required to collect certain information on holders of shares but no mechanisms are in place to ensure that the registered information is accurate.

(iv) For public companies listed on the stock exchange, disclosure requirements exist for shareholders with direct or indirect control over more than 10% of the company's voting rights.

As outlined under R.9 and 31, LEAs have adequate powers to obtain information from FIs, DNFBPs and any other types of companies and the CRA. However, the process of linking a specific FI with a legal entity or partnership subject to the investigation and accessing beneficial ownership information may not be timely in all cases. In sum, while some of the information collection mechanisms have been strengthened since 2008, deficiencies with regards to the collection and availability of full and updated beneficial ownership information remain and timely access by law enforcement authorities to such information is not guaranteed in all cases.

Criterion 24.7— As indicated under criterion 24.6, FIs are required to collect and update beneficial ownership information. The registries, the CRA and legal entities themselves are not required to ensure that accurate and updated beneficial ownership information is collected.

Criterion 24.8— Companies on both federal and provincial levels are obliged to grant the Director under the relevant Act access to certain information, including in relation to company share registers (Article 21 CBCA). There is no legal obligation on corporations or partnerships to authorize one or more natural person resident in Canada to provide to competent authorities all basic information and available beneficial ownership information; or for authorizing a DNFBP in Canada to provide such information to the authorities.

Criterion 24.9— Legal entities are required to maintain accounting records for six years, but not from the date of dissolution, but of the financial year to which they relate. In addition, pursuant to s.69 of the PCMLFTR FIs/some DNFBPs holding information on legal entities must keep that information for five years from termination of the business relationship or completion of the transaction. The Director retains corporate records submitted under the CBCA for a period of six years, except for articles and certificates which are kept indefinitely. In addition, s.225 of the CBCA requires a person who has been granted custody of the documents or records of a dissolved corporation to produce those records for six years following the date of its dissolution or such

shorter period as ordered by a court. Non-financial documents or records must be kept by the corporation until the corporation is dissolved; and then for another six years or less period as ordered by a court. The CRA, in partnership with the National Archivist of Canada, retains documents obtained or created by the CRA for various periods of time depending on the nature of the information. In relation to questions of beneficial ownership, the relevant retention periods are five to ten years, in some instances indefinitely.

Other Requirements

Criterion 24.10— Some basic company information is publicly available on various federal and provincial government websites and is therefore available to the authorities in a timely fashion. For information that is not publicly available, a wide range of law enforcement powers are available to obtain beneficial ownership information, including search warrants, using informants, surveillance techniques, wiretaps and production orders, and public sources (e.g.: law enforcement databases, city databases, corporate companies, civil proceedings, bankruptcy records, divorce records, civil judgments, land titles and purchase, building permits, credit bureau, insurance companies, liquor and gambling licenses, death records, inheritance, shipping registers, federal aviation, trash searches, automobile dealerships) and private source information searches. To be able to compel an FI to produce records pertaining to the control or ownership structure of a legal entity or legal arrangement, LEAs must first establish the link between a legal entity and a specific FI. Several tools are available to this effect (e.g.: grid search request to all D-SIBs to establish if they count the target person amongst their customers, VIRs to FINTRAC, requests to Equifax, mortgage and loan checks , consultations of NEPS to obtain an economic profile of an individual or private or public company). Investigative techniques may also be used (e.g. informants, witnesses, wiretaps). The RCMP may also request information from the CRA once charges have been laid in a criminal case, and on the basis of a judicial authorization. Prior to the prosecution stage, a tax order under the CC can be obtained for the RCMP to receive tax information from the CRA on a specific entity. Since 2014, the CRA may also share information with the RCMP on its own motion in cases where the CRA considers that there are reasonable grounds to believe that the information in its possession would provide evidence of listed serious offenses, including ML, bribery, drug trafficking and TF. In relation to tax crimes, the CRA CID may also obtain information. The relevant Director under each corporate statute—in the case of the CBCA the Director of Corporations Canada— also has the authority to inspect a corporation's records. Once it is established that a specific RE maintains a business relationship with a legal entity, LEAs may obtain a court order and deploy the measures available under criminal procedures to obtain, compel the production of, or seize relevant information—including beneficial ownership information—from any person, as discussed under R.31.

Criterion 24.11— Bearer shares are permitted both under the CBCA and several provincial company laws (for companies limited by shares).[127] While the CBCA generally requires the issuance of shares to be in registered form, the CBCA also makes provision for the issuance of certain types of shares in bearer form. In the absence of an express prohibition, the CBCA, therefore, still leaves some

[127] Quebec, Prince Edward Island, North-Western Territories and Nunavut allow for the issuance of registered shares only.

room for the issuance of bearer shares and no safeguards are in place to ensure that such shares are not being misused for ML or TF purposes.

Criterion 24.12— The CBCA requires corporations to keep shareholder registers in relation to registered shares, whereby the term "holder" of a security is defined as "a person in possession of a security issued or endorsed to that person." Under Part XIII of the CBCA, the holder of a share is permitted to vote at a meeting using someone else to represent them. The CBCA permits a registered shareholder to authorize another person to vote on their behalf. The proxy form itself lists the registered shareholder and the name of the "proxyholder" or person acting on their behalf. The proxy is recorded at the shareholder meeting, which provides transparency in respect of the identity of these individuals. However, the outlined arrangement still allows for nominee shareholding arrangements if the relevant shares are not voted. CBCA, s.147 permits, for example, securities brokers, FIs, trustees, or any nominees of such persons or entities to hold securities on behalf of another person who is not the registered holder but beneficial owner of that security. Similar provisions are found in provincial legislation such as, for example, Alberta Business Corporations Act, s.153 and Quebec's Business Corporations Act, s.2. Corporate directors are not permitted under the CBCA and provincial statutes. Nominee director arrangements in form of one natural person formally acting as director on behalf of another person may, however, still exist. Nominees (whether shareholders or directors) are not required to be licensed, or disclose their status, or to maintain information on or disclose the identity of their nominator. However, under the PCMLFTR, legal entities when opening a bank account, are required to provide details on the natural person that owns or controls a legal entity, which would include the nominating shareholder or director. For publicly listed companies, the risk of abuse of nominee shares is properly mitigated based on rigid reporting obligations for change of shares in excess of 10%. In sum, for companies other than those listed on the stock exchange, there are insufficient mechanisms in place to ensure that nominee shareholders are not misused for ML or TF purposes.

Criterion 24.13— Under the CBCA and provincial company laws violation of a company's disclosure, filing or record-keeping obligations may be fined with up to CAD 5 000 and/or imprisonment for up to six months in case of a violation by a natural person acting on behalf of the company. FIs and those DNFBPs covered under the law are subject to criminal (imprisonment for up to six months and/or a fine of up to CAD 50 000) as well as administrative sanctions if they fail to comply with their identification obligations with regards to legal entities (PCMLTFA, ss.73.1 and 74). In addition, officers, directors and employees of FIs and DNFBPs may be subject to sanctions regardless of whether the FI or DNFBP itself was prosecuted or convicted, as discussed under R.35. In summary, the statutory sanctions available are proportionate and dissuasive.

Criterion 24.14— Some basic information in the federal and provincial company registers is publicly available and can be directly accessed by foreign authorities. For other information, the powers and mechanisms described under criteria 37.1 and 40.9, 40.11, and 40.17 to 40.19 apply.

Criterion 24.15— Information on the quality of assistance received from other countries in the context of MLA and in response to ownership information requests is kept by the International Assistance Group (IAG) at the Department of Justice. The IAG maintains a copy of the requests made,

the follow-up that takes place with regards to each request, and keeps copies of all documents and information provided in response to the request. When forwarding the relevant information to the requesting agency, the IAG inquires with that agency, whether the request should be considered fulfilled. The authorities stated that the information collected by IAG suggests that the assistance received is generally adequate, although the result vary according to the particular component of basic/beneficial ownership sought.

Weighting and Conclusion

Serious gaps remain under criterion 6 with respect to the availability of beneficial ownership information for legal entities and partnerships.

Canada is partially compliant with R.24.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

Canada was rated PC with former R.34 as the obligations to obtain, verify, and retain beneficial ownership information was considered to be inadequate. Since then, changes have been introduced to the PCMLTFR to strengthen FI obligations with regards to the identification and verification of beneficial ownership information for legal arrangements (whether created in Canada or elsewhere). In addition, the CRA's power to disseminate tax information to LEAs have been enhanced, taxpayer information can be shared at the discretion of the CRA if the CRA has reasonable grounds to believe that the information will afford evidence of certain designated offenses, including ML under CC s. 462.31. However, it is not clear for how many of the millions of trusts estimated to exist under Canadian law beneficial ownership information is available and access to such information is in any case difficult to obtain as there is no requirement for trustees to be licensed or registered.

Canada allows for the establishment of common law trusts as well as civil law fiducie (in Quebec). There is no general registration requirement for trusts, and trustees may but do not have to be licensed individuals or entities under the PCMLTFA. No specific statutes regulate the operation of foreign trusts in Canada, or require the registration of such foreign trusts.

Criterion 25.1— In the case of professional trustees, the customer due-diligence obligations vary depending on the trustee's profession: TCSPs are not subject to the general identification and verification obligations under the PCMLTFA as outlined under R.22. The CDD obligations applied to accountants have limitations as discussed in R.22. The requirements for lawyers are inoperative as a result of a Supreme Court decision. Trustees other than professional trustees are not subject to any statutory customer due diligence or record-keeping obligations.

Criterion 25.2— TCSPs are not covered under the scope of the PCMLFTR. Accountants are subject to basic ongoing CDD measures that do not amount to a comprehensive obligation to obtain and take reasonable measure to verify the identity of beneficial owners. Other trustees are not subject to comprehensive CDD or record-keeping requirements, as indicated under criterion 1.

Criterion 25.3— There is no obligation on trustees to disclose their status without being prompted, but under the PCMLFTR, FIs are required to determine whether a customer is acting on behalf of someone else, to establish the control and ownership structure of legal entities they are providing services to, and to obtain the names and addresses of all trustees, known beneficiaries and settlors.

Criterion 25.4— There is no prohibition under Canadian law for trustees to provide trust-related information to competent authorities, except in the case of lawyers where legal privilege may prevent authorities from accessing such information.

Criterion 25.5— Where there are suspicions of a crime, LEAs may deploy a wide range of investigative measures to obtain, compel the production of, or seize relevant information from any trustee, whether subject to the PCMLFTR or not. The extent to which the information available would include beneficial ownership information and information on the trust assets is unclear, as apart from the PCMLFTR, no legal requirements to maintain such information exist. Furthermore, linking a specific FI or DNFBP with a legal entity or partnership subject to the investigation and accessing beneficial ownership information may not be timely in all cases. With regards to FIs and accountants and trust companies acting as trustees, LEAs may also obtain information available to FINTRAC in its capacity as FIU through a request for voluntary information records. FINTRACs powers to access such information are, however, limited as outlined under criterion 29.2. In situations where a trust owes taxes and is required to file income tax returns, the CRA also has access to certain trust information, including the name and type of the trust and certain financial information on the trust. Information available to the CRA typically includes beneficiary, but not beneficial ownership information. The CRA may share taxpayer information upon request by LEAs either based on a court order or after criminal charges have been laid; or upon its own initiative if the CRA has reasonable grounds to believe that the information will afford evidence of certain designated offenses, including ML under CC, s462.31.

Criterion 25.6— The authorities may exchange information on trusts with foreign counterparts based on the procedures outlined under criteria 37.1 and 40.9, 40.11, and 40.17 to 40.19 and 11. LEAs have wide powers to exchange information with foreign counterpart. FINTRAC as well as the CRA may also share information with foreign counterparts as part of their respective functions. Investigative measures to obtain beneficial ownership can be taken upon foreign request.

Criterion 25.7— Under the PCMLFTR, failure to comply with the identification, verification or record-keeping requirements is subject to a range of criminal and administrative sanctions (see write-up under R.35 for more details). Trustees other than accountants are not subject to the AML/CFT framework. Violations of the principles of a trustees' breach of fiduciary duties may give rise to claims by the beneficiary and legal liability of the trustee based on these claims. However, in the absence of a specific obligation to collect and maintain beneficial ownership or general trust information there are also no sanctions available to authorities for a failure of the trustee to do so.

Criterion 25.8— For accountants, a the PCMLFTR sanctions may be applied by supervisory authorities as discussed under criterion 27.4. For other trustees, however, no sanctions are in place in the case of a failure to grant competent authorities timely access to trust related information.

Weighting and Conclusion:

Canada is non-compliant with R.25.

Recommendation 26 – Regulation and supervision of financial institutions

In the 2008 MER, Canada was rated PC with former R.23 due to the exclusion from the AML/CFT regime of certain sectors without proper risk assessments, an unequal level of supervision of AML/CFT compliance, lack of a registration regime for MSBs and concerns around fit and proper screening requirements. Canada made significant progress since then.

Criterion 26.1— FINTRAC is the AML/CFT supervisor for all REs subject to the PCMLTFA. It is assisted in the regulation and supervision of FIs by other federal and provincial regulators that are responsible for prudential and conduct supervision. However, ultimate responsibility for supervision and sanctioning under the PCMLTFA remains with FINTRAC. It is estimated that 80% of Canada's financial sector market is controlled by FRFIs. FRFIs are under the supervision of OSFI and include six large conglomerates (DSIBs) that hold a substantial share of the financial sector and other financial entities such as banks, insurance companies, cooperative credit and retail associations, trust companies and loan companies. OSFI's powers are mandated under the OSFI Act and governing legislation for the various financial sectors such as the *Bank Act*, *Trust and Loan Companies Act, Insurance Companies Act* and *Cooperative Credit Associations Act*. Non-FRFIs (e.g. credit unions) are regulated and supervised by provincial regulators under provincial statute.

AML/CFT supervisory functions are concentrated in FINTRAC and have not been delegated to primary regulators in Canada. At the federal level, OSFI and FINTRAC concurrently assess FRFI's for compliance with AML/CFT compliance obligations and are moving to a joint examination process (see further details below). At the provincial level, FINTRAC conducts AML/CFT supervision on non-FRFIs with the cooperation of other supervisors and has signed 17 MOUs with supervisors in relation to non-FRFIs. FINTRAC is authorized to share information with primary regulators at national and provincial levels relating to AML/CFT to monitor compliance with the PCMLTFA, and such regulators are also authorized to share information with FINTRAC.

Market Entry

Criterion 26.2— Federal and provincial authorities are the primary regulators of FIs with responsibility for prudential and conduct supervision including the licensing and registration of market entrants. FINTRAC is responsible for the registration and supervision of MSBs (along with AMF for MSBs operating in Quebec).

Market entry rules for FRFIs are set out in the relevant federal governing legislation and the process is entirely under the control and direction of OSFI. The Minister of Finance is responsible for approving Letters Patent creating domestic FRFIs, and for authorizing foreign banks and life insurance companies to operate branches in Canada by means of Ministerial Orders. OSFI is responsible for managing the process leading up to Ministerial actions. Authorized banking is

regulated both at the federal and provincial levels and it is not possible for the process to permit the creation or authorization of shell banks.

The following table sets out the licensing or registration requirements in Canada.

Reporting Entities	Primary Regulator	Licensed/Registered	Legislation
Banks	Federal-OSFI	Licensed. Domestic banks are created by the Minister pursuant to an incorporation process discussed below. Authorized foreign banks receive certificates to operate by one or more branches in Canada.	Bank Act
Cooperative Credit and Retail Associations [128]	Federal-OSFI for Cooperative Retail Associations; Provincial-Cooperative Credit Associations	Same as domestic banks	Cooperative Credit Associations Act
Credit Unions and *caisses populaires*	Provincial authorities	Registration	Legislation includes Credit Unions Act; Financial Institutions Act; Credit Union Incorporation Act; Credit Unions and *Caisses Populaires* Act; Deposit Insurance Act; An act respecting financial services cooperatives; An Act respecting the Mouvement Desjardins
Life Insurance Companies	Federal-OSFI Provincial authorities	Licensed [129] Either licensed or registered	Insurance Companies Act Legislation includes Insurance Act; Financial Institutions Act; Insurance Companies Act; Life Insurance Act; Registered Insurance Brokers Act; An Act respecting insurance (Quebec); An Act respecting the distribution of financial products and services(Quebec); Saskatchewan Insurance Act

[128] OSFI's oversight of Cooperative Credit Associations, commonly referred to as credit union centrals, is limited and quite different from its oversight of banks and other FRFIs. Cooperative Credit Associations are organized and operated based on cooperative principles. With the exception of the Credit Union Central of Canada ('CUCC'), the Cooperative Credit Associations are provincially incorporated, and regulated and supervised at the provincial level. The CUCC, which is federally incorporated, functions as the national trade association for the Canadian credit union system and does not provide any financial services. Cooperative Retail Associations are federally incorporated and supervised by OSFI in the same way as for banks and other FRFIs.

[129] Domestic life insurance companies under OSFI's jurisdiction are created by the Minister pursuant to an incorporation process discussed below. Authorized foreign life insurance companies only operation under the federal legislation and receive Ministerial Orders permitting one or more branches in Canada.

Reporting Entities	Primary Regulator	Licensed/Registered	Legislation
Life Insurance Brokers and Agents	Provincial authorities	Licensed or registered	Legislation includes Insurance Act; Financial Institutions Act; Insurance Companies Act; Life Insurance Act; Registered Insurance Brokers Act; Saskatchewan Insurance Act; An Act respecting insurance (Quebec); An Act respecting the distribution of financial products and services (Quebec)
Trust and Loan Companies	Federal-OSFI Provincial authorities	Licensed Licensed or registered	Trust and Loan Companies Act Legislation includes Loan and Trust Corporations Act; Financial Institutions Act; Corporations Act; Trust and Loan Companies Act; Trust and Loan Companies Act; Deposit Insurance Act; An act respecting trust companies and savings companies (Quebec)
Investment Dealers	IIROC Provincial authorities	Registration Licensed (Northwest Territories) or registered	IIROC Dealer Member Rules Legislation includes Securities Act; Commodity Futures Act; An Act pertaining to financial products and services (Quebec); Derivatives Act;
Mutual Fund Dealers	Mutual Funds Dealers Association Provincial authorities	Registered Licensed (Northwest Territories) or registered	MFDA Rules Legislation includes Securities Act; Commodity Futures Act; An Act pertaining to financial products and services (Quebec); Derivatives Act;
Investment Counsel and Portfolio Management Firms	Provincial authorities	Licensed (Northwest Territories) or registered	Legislation includes Securities Act; Commodity Futures Act; An Act pertaining to financial products and services (Quebec); Derivatives Act;
Other securities firms	Provincial authorities	Licensed (Northwest Territories) or registered	Legislation includes Securities Act; Commodity Futures Act; An Act pertaining to financial products and services (Quebec); Derivatives Act;
Money Service Businesses	FINTRAC *Autorité des marchés financiers* (Québec)	Registration Licensed	PCMLTFA and PCMLTF Registration Regulations Money-Services Business Act

Criterion 26.3— Federal and provincial regulators are responsible for carrying out fit-and-proper tests on persons concerned in the management or ownership of FIs in Canada. The measures are used to prevent criminals or their associates from holding a significant or controlling interest in an FI in Canada.

OSFI conducts fit-and-proper tests on FRFIs at the application stage to assess the fit-and-proper status of applicants, their principals (beneficial owners), senior management and Boards of Directors. Fit-and-proper tests are conducted under the Bank Act (ss.27, 526 and 675), Trust and Loan Companies Act (s.26), Cooperative Credit Associations Act (s.27) and Insurance Companies Act (ss.27 and 712). OSFI requires that applicants provide details of whether applicants have been the subject of any criminal proceedings or administrative sanction and it conducts security screening.

OSFI has the authority to apply fit-and-proper tests during the lifetime of a FRFI but only applies this authority directly to changes of ownership and/or shareholding. To address changes in directors or senior managers, OSFI has issued Guideline E-17 "Background Checks on Directors and Senior Managers of Federally Regulated Entities" in that regard. These requirements are applied throughout the life of FRFIs. After an FRFI is licensed, fit-and-proper testing on new senior officers and Directors is conducted by the FRFI rather than by the regulator. However, OSFI continues to apply fit-and-proper checks on new shareholders. OSFI assesses FRFIs' compliance with the Guideline and has issued prudential findings on background checks conducted by FRFIs on responsible persons. Since 2014, FRFIs are required to notify OSFI of plans to appoint or replace senior managers or directors.[130]

Persons and entities operating and controlling MSBs are required to register with FINTRAC under the PCMLTF Registration Regulations. FINTRAC conducts criminal record checks when assessing applications for registration as MSBs and it can refuse or revoke registrations where a person has been convicted of certain criminal offenses.

Provincial regulators apply fit-and-proper controls to assess the suitability of persons who control, own or are beneficial owners of provincially regulated FIs. General fit-and-proper requirements apply in the securities and insurance sectors. For example, the Investment Industry Regulatory Organization of Canada (IIROC) evaluates whether an individual appears to be "fit and proper" for approval/registration and /or whether the individual's approval is otherwise not in the public interest. Included in the criteria are the evaluation of an individual's integrity and criminal record. Provincial securities regulators apply similar criteria. In addition, MSBs located in Quebec are subjected to a "fit-and-proper" test by the *Autorité des marches financiers* (AMF) under the *Money Services Business Act* (Quebec).

Provincial regulators have not adopted fitness and probity requirements for persons owning or controlling financial entities after market entry to the same extent as what is achieved at federal level.

Risk-Based Approach to Supervision and Monitoring

Criterion 26.4— OSFI and provincial regulators are responsible for prudential and conduct supervision of Core Principle institutions in Canada under the OSFI Act, provincial legislation and other governing legislation. OSFI applies an AML/CFT assessment program as part of the Core Principles-based prudential supervision of FRFIs. All FRFIs are supervised by OSFI on a consolidated

[130] OSFI issued an Advisory on Changes to the Membership of the Board or Senior Management.

or group basis, as required by the Core Principles. Canada underwent an IMF FSAP in 2013 and OSFI was found to comply with the implementation of the Core Principles in the banking and insurance sectors and was rated LC.

FINTRAC is responsible for the supervision of all REs for AML/CFT compliance under the PCMLTFA, including Core Principles institutions supervised by OSFI and provincial prudential regulators. OSFI and FINTRAC have a coordinated approach to supervision of Core Principles institutions that are FRFIs. FINTRAC consults and coordinates with other federal and provincial prudential supervisors and has signed 17 MOUs with regulators to exchange compliance related information.

Both OSFI and provincial regulators adopt a risk-based approach to identify firms that have a higher risk of AML/CFT activities. In 2013, OSFI and FINTRAC adopted a concurrent approach to conduct AML/CFT examinations in the FRFI sector. Non-Core Principles institutions are supervised by FINTRAC for compliance with the PCMLTFA. FINTRAC also receives information from provincial regulators arising from their prudential/conduct supervisory activities that may be relevant to AML/CFT compliance. MSBs are registered and supervised by FINTRAC (and AMF in Quebec) for compliance with the PCMLTFA.

Criterion 26.5— AML/CFT supervision is conducted in Canada on a risk-sensitive basis. A shorter version of the NRA identifying the inherent ML/TF risks in Canada has recently been published and the findings are being incorporated into supervisors' compliance activities. Supervisors have their own operational risk assessment models and they use a range of programs, activities and tools to supervise and monitor compliance with AML/CFT requirements. There has been an increase in the frequency and intensity of on-site and offsite supervision of FIs in recent years. There has also been an increase in resources at FINTRAC to carry out compliance activities since the last MER.

FINTRAC has developed an AML/CFT Supervisory Program that is risk-based to ensure that REs are complying with their obligations under the PCMLTFA. It uses an enhanced risk-assessment model to assign risk ratings to REs that allows the allocation of resources according to higher-risk areas. Its risk model relies on information such as media information, ML/TF intelligence, financial transaction reporting behaviour, information received from law enforcement and regulatory partners that have MOUs with FINTRAC. It is updated regularly using information it collects through intelligence and examinations and is adjusted following on-site and off-site examinations. The risk assessment carried out on FRFIs is done in collaboration with OSFI.

FINTRAC's Supervisory Program is influenced and guided by a number of factors including the risk rating of the RE using the enhanced risk-assessment model and using other tools such as the examination selection strategy. FINTRAC focuses its supervisory activities on a risk-based approach using higher-intensity activities for higher-risk REs and using other lower-intensity activities for medium- and lower-risk entities. FINTRAC's primary tool to supervise for AML/CFT compliance is its examinations strategy that is well developed. The examination strategy developed by FINTRAC prioritized activities aimed at REs that have been found to be non-compliant previously and those with high-risk ratings. It also focuses on key industry players with large market shares, which are examined regularly, given the inherent risks that are associated with their size and respective

business models and the consequences of non-compliance. FINTRAC also has a range of offsite mechanisms to conduct supervision of FIs including compliance assessment reports (CAR), desk-based reviews, monitoring of financial transactions, observation letters, compliance enforcement meetings, IT tools, voluntary self-disclosures of non-compliance and other awareness/assistance tools. CARs are used to segment REs within a sector, with results being used to initiate desk and on-site exams.

OSFI applies a risk-based approach to AML/CFT supervision. It has an AML/CFT risk assessment separate from its prudential risk assessment model for FRFIs and directs its assessment program at Canada's largest banks and insurance companies and other FRFIs considered at highest risk of ML and TF. OSFI's risk assessment methodology focuses on the vulnerabilities of FRFIs to ML and TF, looking at factors such as size, geographical spread, products, services and distribution channels and quality of risk management generally. It assigns a risk profile on each institution considering the risk factors and the quality of its risk management. OSFI's risk assessment results in a classification of FRFIs into categories of high, medium and low risk based on a combination of inherent risk, coupled with broader prudential views on the quality of risk management. OSFI supervises FRFIs on a group-wide basis and it conducts examinations of FRFI's on a cyclical basis depending on an FRFI's risk ratings and when information is received from prudential supervisors and other regulators including FINTRAC. OSFI also monitors major events or developments impacting the management or operations of FRFIs that informs both the content of AML/CFT assessments and also the assessment planning cycle.

FINTRAC and OSFI have agreed a concurrent approach to AML/CFT supervision of FRFIs allowing for concurrent examinations in addition to individual examinations that both supervisors can conduct of FRFIs. Both OSFI and FINTRAC exchange information that is relevant to FRFI's compliance with AML/CFT obligations. FINTRAC and provincial regulators also exchange information and FINTRAC can conduct AML/CFT follow-up activities with provincially regulated REs when AML/CFT issues are reported to it. Other supervisors also adopt risk assessments and supervision that are related to AML/CFT. For example, IIROC uses a risk assessment model for IIROC-regulated firms to determine priority focus and can apply an AML examination module by IIROC that is judged to present an AML/CFT risk. The primary responsibility for AML/CFT supervision remains with FINTRAC and any supervisory activity conducted by other supervisors' supplements, but does not replace, FINTRAC's responsibility to ensure compliance with the PCMLTFA and Regulations made thereunder.

Criterion 26.6— FINTRAC reviews its risk model on an ongoing basis and recently reviewed its sectoral analysis. FINTRAC also reviews its understanding of ML/TF risks for individual REs through reviewing the institution's compliance history, reporting behaviour and risk factors. In its ongoing review of the risk assessment, FINTRAC regularly monitors and assesses actionable intelligence, ML/TF risks and trigger events. OSFI reviews its AML/CFT risk profiles of FRFIs periodically. Risk assessments are applied to DSIBs on a continuous basis, reflecting their dominance of the FRFI sector and their very high-risk level. On-site assessments of DSIBs are conducted on a regular basis and DSIBs may be subject to more intensive supervision (staging) where deficiencies have been identified. The review of the risk profiling of other high-risk FRFIs is updated at less frequent

intervals, due to their less complex risk profiles. Provincial regulators are also kept apprised of ML/TF risks by FINTRAC and through the recently published NRA.

Weighting and Conclusion

Further fitness and probity controls are required.

Canada is largely compliant with R.26.

Recommendation 27 – Powers of supervisors

In the 2008 MER, Canada was rated LC with these requirements, notably because FINTRAC had no power to impose AMPs on REs. This has been remedied in December 2008.

Criterion 27.1— FINTRAC has authority to ensure compliance by all REs with parts 1 and 1.1 of the PCMLTFA (s.40). OSFI and provincial supervisors also have supervisory powers over REs under their own supervisory remit under federal and provincial legislation: e.g. the OSFI Act indicates the Superintendent's powers and duties in relation to the Bank Act, Trust and Loan Companies Act, the Cooperative Credit Associations Act and the Insurance Companies Act and the supervisory powers of the Superintendent are uniform under these Acts.

Criterion 27.2— FINTRAC has the authority to conduct inspections of FIs under the PCMLTFA. It can carry out on-site examinations of REs under PCMLTFA, s.62(1). Such examinations can be routine (with notice) but FINTRAC also has the authority to conduct unannounced examinations of REs under the PCMLTFA. OSFI has no mandate under PCMLTFA, but it supervises FRFIs under the OSFI Act and FRFIs' governing legislation (e.g. Bank Act) to determine whether they are in sound financial condition, are managed safely and are complying with their governing statute law. IIROC and provincial regulators conduct audits of registered firms to ensure compliance with Canadian securities laws.

Criterion 27.3— FINTRAC is authorized under the PCMLTFA to compel production of any information relevant to monitoring compliance with AML/ATF requirements. It can enter any premises (except a dwelling house) to access any document, computer system and to reproduce any document "at any reasonable time" (PCMLTFA, ss.62(1) and (2)). FINTRAC also has the authority to require REs to provide any information that FINTRAC needs for compliance purposes (s.62). There is a 30-day period given to deliver the information (PCMLTFR, s.70). OSFI has general powers to compel information from REs under OSFI Act, s.6 and federal governing legislation. While not mandated under the PCMLTFA, other regulators have the power to compel information under provincial or governing legislation to protect the public and market integrity. FINTRAC can exchange information on compliance with Parts 1 and 1.1 of the PCMLTFA with federal and provincial agencies that regulate entities.

Criterion 27.4— FINTRAC and OSFI have a range of supervisory tools to sanction REs for non-compliance. These tools include supervisory letters, action plans for FRFIs, staging by OSFI, compliance agreements, revocation of registration of MSBs by FINTRAC, revocation of FRFIs'

licenses by the AG of Canada[131] and criminal penalties. The PCMLTFA AMP Regulations provide FINTRAC with the power to apply AMPs to any FI and DNFBPs subject to the AML/CTF regime for non-compliance with the PCMLTFA. Provincial regulators, IIROC and MFDA have the power under their own governing legislation to conduct investigations and undertake enforcement action where necessary to protect the public and market integrity. They have the power to restrict, suspend and cancel registration. Further information is provided under the analysis of R.35.

Weighting and Conclusion:

Canada is compliant with R.27.

Recommendation 28 – Regulation and supervision of DNFBPs

In the 2008 MER, Canada was rated NC with these requirements (pages 229–243) notably because of deficiencies in the scope of the DNFBPs covered and not subject to FINTRAC supervision, and the sanction regime and resources available to FINTRAC were considered inadequate. Since then, the scope of DNFBPs under the supervision of FINTRAC has been extended to BC Notaries and DPMS, and FINTRAC was granted the power to impose sanctions under the PCMLTF AMP Regulations.

Casinos

Criterion 28.1— *a)* Gambling activities are illegal in Canada, except if conducted and managed by the province or pursuant to a license issued by the province on the basis of CC, ss.207(1)(a) to (g), and three different models are in place (charity, commercial casinos, First Nation casinos, as described in the 2008 MER pages 214–215). Internet gambling are not subject to AML/CFT obligations, as the amendment to the definition of casino under PCMLTFA[132] is not yet into force, as well as ship-based casinos (the latter is a very minor issue, considering that, according to the authorities, no Canadian cruise ship are currently being operated, and lottery schemes cannot be operated within 5 nautical miles of the Canadian shore). Several provinces have introduced internet gambling (British Columbia, Quebec, Manitoba, Nova Scotia, Prince Edward Island, New Brunswick, and Newfoundland). Under the provincial legislation, also lottery schemes performed through Internet are required to be licensed.

b) All provinces and territories have regulation on terms and conditions for obtaining the license and a regulatory authority empowered to administer the relevant provincial legislation. Due-diligence requirements of the applicants (casino operator, key persons associated with the applicants and executive members) are part of the licensing process, where financial, business information, information referring to criminal proceedings, and reputational elements are required and subject to a review conducted by the competent provincial regulatory authorities. The licensing provisions make reference to due-diligence procedure related to an extensive notion of "associates" of the applicant, and when the applicant is a company or a partnership controls are extended to partners, directors, as well as to any subject who directly or indirectly control the applicant or has a beneficial

[131] This authority is subject to a number of conditions as set out in federal governing legislation.
[132] In particular, PCMLTFA, Section 5, k, (i).

interest in the applicant. Notice of changes in directors, officers, associated of the registrants are submitted to the approval of the competent regulatory authority. Notification of charges and convictions of the licensee, as well as of its officers, shareholders, owners are required. In respect of charities that require a license to conduct casino events eligibility requirements must be met both where a charitable model has been adopted[133] and where a corporation model is in place.[134] Charitable events may be licensed also by First Nations Authority under the agreement with the relevant provincial legislator (Manitoba, Saskatchewan),[135] where the authority to issue license to charitable gaming has been delegated by the competent provincial authorities in favour of First Nations commissions. Under the Agreements (Part 10.1) the parties agree that the terms and conditions that apply to licenses off and on reserve are essentially the same. Audits are performed in order to ensure that the operators comply with the terms and conditions of the license.

Under the relevant provincial legislation, the same provisions apply also to lottery schemes performed through Internet.

The table below summarizes the list of casino's regulators identified under the provincial gaming legislation and the relevant legislation. Licensing authorities do not have express AML/CFT responsibility to qualify as competent authorities.

Province	Regulator	Provincial Legislation
Alberta	Alberta Gaming &Liquor Commission	Gaming and Liquor Act
British Columbia	Gaming Policy and Enforcement Branch	Gaming Control Act
Manitoba	Liquor and Gaming Authority of Manitoba First Nations Gaming Commissions at reserve charitable gaming within the municipality or on reserve	Liquor and Gaming Control Act
New Brunswick	Gaming Control Branch-Department of Public Safety	Gaming Control Act
Nova Scotia	Nova Scotia Alcohol and Gaming Division	Gaming Control Act

[133] Pursuant to Section 20.(1) of the Gaming and Liquor Regulation in Alberta charitable or religious organisation in order to qualify for the license must satisfy the board that the proceeds generated from the gaming activities must be used for charitable and religious activities. In this context, the volunteers of charities are allowed to work in key positions at the casino events only if licensed, thus being subject to criminal record checks. The Commission must ensure that the licensed organisation comply with the relevant legislation.

[134] Where Lottery Corporations are empowered to conduct and manage gaming on behalf of the provincial government, group or organization can be licensed to hold a gaming event by the competent regulator. In British Columbia background investigations may be conducted also in respect of the eligible organisation, its directors, officers employees or associated (Section 80 (1) (g) (vi) of the Gaming Control Act. Audit of the licensee are performed conducted by the Charitable Gaming Audit Team of the Gaming Policy and Enforcement Branch.

[135] In Saskatchewan the Provincial regulatory authority, SLGA, owns and manage the slot machines at six casinos operated by the Saskatchewan Indian Gaming Authority, a non-profit corporation licensed by SLGA, while the Indigenous Gaming Regulator has a delegated authority under 207 (1) (b) of the CC to issue charitable gaming licenses on designated reserves.

Province	Regulator	Provincial Legislation
Ontario	Alcohol and Gaming Commission of Ontario	Gaming Control Act Alcohol and Gaming Regulation and Public Protection Act
Quebec	*Régie des alcools des courses et des jeux*	Act Respecting Lotteries, Publicity Contest and Amusement Machines An Act respecting the *Société des lotteries du Québec.*
Saskatchewan	Saskatchewan Liquor and Gaming Authority IGR responsible for licensing and regulating charitable gaming on First Nations, operating through a Licensing Agreement with SLGA (2007).	The Alcohol and Gaming Regulation Act
Yukon	Professional Licensing & Regulatory Affairs Branch	Lottery Licensing Act Sec 2 (Eligibility) and Sec 10 (Regulations) of the Lottery Licensing Act
Newfoundland and Labrador	Department of Government Services and Lands, Trades Practices and Licensing Division (no specific provisions)	Lottery schemes-General rules
Prince Edward Island	PEI Lotteries Commission /Department of Community and Cultural Affairs for casinos charities	Lotteries Commission Act
Northwest territories	Consumer Affairs, Department of Municipal and Community Affairs	Lotteries Act Lottery Regulations
Nunavut	Department of Community and Government Services	The Lotteries Act and Regulations

c) FINTRAC is the only competent supervisory authority for compliance of casinos with AML/CFT requirements. It has signed the MOUs with the following regulators: Alcohol and Gaming Commission of Ontario (AGCO); British Columbia Gaming Policy Enforcement Branch (GPEB); Alcohol and Gaming Division of Service Nova Scotia; Saskatchewan Liquor and Gaming Authority (SLGA). Online gambling is not covered by the definition of casino currently into force under PCMLTFA.

DNFBPs Other than Casinos

Criterion 28.2— FINTRAC is the designated competent authority under PCMLTFA and PCMLTFR for the AML/CFT supervision of all DNFBPs. FINTRAC supervises 26,000 DNFBPs in total, including casinos (discussed under 28.1), trust and loan companies, accountants, dealers in precious metals and stones, BC Notaries, and real estate agents and developers. As described under R.22 lawyers and Quebec notaries, trust and company service providers that are not included among the trust and loan companies are not monitored for AML/CFT purposes.

Criterion 28.3— All the categories of DNFBPs that fall into the scope of AML/CFT regime are monitored by FINTRAC for compliance with AML/CFT requirements. Apart from real estate dealers under certain condition, the AML requirements have not been extended to other categories in addition to those provided for in the FATF standards.

Criterion 28.4— *a)* FINTRAC powers to monitor and ensure compliance are the same for FIs and DNFBPs (PCMLTFA s. 62). For details, see R.27.

b) The powers to prevent criminals or their associates from being accredited, or from owning, controlling or managing a DNFBPs other than casinos are more limited. No specific measure is in place for DPMS. Referring to accountants the current process of creating a unified new professional designation, the Chartered Professional Accountant, replacing the former three (Chartered Accountants, Certified General Accountants and Certified Management Accountants), is at different stages in the various provinces. The provincial associations are in charge of ensuring high professional standards also through investigation of complaints and enforcement actions. In the admission to membership disclosure of investigations and disciplinary proceedings is required and consent must be provided permitting the Registrar to access the relevant information.[136] Members are also required to promptly inform CPA after having being convicted of criminal offenses.[137] Allegations for a wide set of crimes, included ML, financial frauds, TF, entail a rebuttable presumption of failing to maintain good reputation of the profession.[138] Accounting firms (partnerships, limited liability partnerships and professional corporations) are required to disclose investigations involving any partners[139] or shareholders and consent shall be provided permitting the Registrar to access information regarding such investigation. Any change in partners, shareholder must be notified and failure to provide such disclosure are considered breach of memberships obligations. Regarding BC Notaries, under the Notaries Act of BC, the Society of Notaries Public of BC is empowered to maintain standards of professional conduct. The procedure for the enrolment include screening procedure conducted by the Credentials Committee of the Society, where consent for disclosure of criminal records information in favour of the RCMP must be provided. Under the Notary Act also Notary Corporation (Notary Act, ss.57 and 58(f) of) are subject to a permit and the procedure imply controls on the voting shares members (that must be members of the Society in good standing, thus having passed the screening procedures described above related to disclosure of criminal records) as well as the non-voting members (who can be only members of the Society or relatives). The Society is empowered to impose fines, as well as take disciplinary action and revoke the permits (Notary Act, s.35). In respect of real estate agents, as shown in the attached each province has suitability requirements for licensee that apply as individual,[140] which in most cases entail the provision of Certified Criminal Records Checks. Nevertheless, in some cases the relevant provisions make reference both as a condition of refusal to issuing and to suspending or cancelling a license to the notion of "public interest,"[141] which, despite the authorities, consider broad to include a large number of factors, seems to be too vague and left to the discretion of the competent regulatory authorities. The integrity requirements in respect of

[136] Section 2 of Reg. 4-1 of CPA Ontario.
[137] Rule 102. 1 of the Rules of professional conduct CPA Ontario.
[138] Rule 201.2 of 1 of the Rules of professional conduct CPA Ontario.
[139] Regulations 4-6, Section 11, CPA Ontario.
[140] No specific integrity requirement under the Real Estate Agents Licensing Act. The convictions of offenses against the CC shall be related to qualifications, functions or duties of the agent/sales persons (Section 18, (k) and are cause for suspension or cancellation of license.
[141] Manitoba, Section 11(1) of the Real Estate Brokers Act, New Brunswick, Section 10 (2) of the Real Estate Act; Prince Edward Islands, Section 4 (3) of the Real Estate Trading Act.

corporations and partnerships are not always expressly extended to partners, directors, officers.[142] Not always changes in the directors, officers, shareholders, partners must be notified to the competent provincial Authority.[143] Furthermore, the relevant legislation is essentially orientated in a perspective of consumer's protection so that in some cases the condition for refusal of the license are previous convictions of indictable offense "broker-related,"[144] as well as the notification of licensee makes reference to convictions involving a limited set of offenses.[145] Moreover, as the presence of criminal records is not necessarily a bar to registration, a case-by-case approach is taken by the regulatory authority. Provincial legislation establishes an express exemption regime in favour of lawyers, trust companies[146] and in some cases accountants from the requirement for license in respect of real estate services provided in the course of their practice.

DNFBPS Category	Designated Competent Authority	Relevant Legislation	Market Entry Safeguards
Real Estate	**Regulatory Authority**	**Provincial Legislation**	
Alberta	Real Estate Council of Alberta	Real Estate Act, in particular Part 2, s. 17, Real estate Act Rules (20 (1) for individuals, ss 30 and 34 for real estate brokerage. s. 10.3 of Real Estate Regulations	All the provinces have suitability requirements for licensee that apply as individual. The integrity requirements in respect of corporations and partnerships are not always expressly extended to partners, directors, officers. Not always changes in the directors, officers, shareholders, partners must be notified to the competent provincial Authority
British Columbia	Real Estate Council of British Columbia	Real Estate Services Act ss 3 (1) and 10	
New Brunswick	New Brunswick Financial and Consumer Services Commission Division	New Brunswick Real Estate Act ss 3 and 4.2	
Newfoundland and Labrador	The Financial Service Regulation Division	Real Estate Trading Act, s. 7	
Manitoba	Manitoba Securities Commission for licensing	The Real Estate Brokers Act and The Mortgage Brokers Act	
Nova Scotia	Nova Scotia Real Estate Commission	Real Estate Trading Act ss.4, 12	
Ontario	Real Estate Council of Ontario	Real Estate and Business Brokers Act s. 9.1, 10 (19)	

[142] In Saskatchewan, for example, under Section 26.1 (b) of the Real Estate Act the integrity requirements are limited to officers and directors. The same requirement is established in Nova Scotia under 12 (1) (b) of the Real Estate Trading Act.
[143] Only change in officials and partners in New Brunswick, Section 15 (1) (b) and (c) of Real Estate Act partners in Prince Edward Island Section 14 of Real Estate Trading Act.
[144] Quebec, Section 37 of the Real Estate Brokerage Act.
[145] New Brunswick, Section 15 (2) of the Real Estate Act (frauds, theft or misrepresentation).
[146] See, for example in British Columbia, Real Estate Service Act, Section 3, (3) lett. e) and f) the exemption regime in favour of FI that has a trust business authorization under the Financial Institutions Act and practicing lawyers.

DNFBPS Category	Designated Competent Authority	Relevant Legislation	Market Entry Safeguards
Prince Edward Island	Office of the Attorney General, Consumer and Corporate and Insurance Services	Real Estate Trading Act, ss.4 (3), 8 (2) b); 14	
Quebec	*Organisme d'autoréglementation du courtage immobilier du Québec*	*Loi sur le courtage immobilier* ss.4, 6, 37	
Saskatchewan	Real Estate Commission	The Real Estate Act s. 18 (1) and 26 (1)	
Yukon Territories	Professional Licensing and Regulatory Affairs	Real Estate Agents Act, ss.6, 7	
Northwest Territories	Municipal and Community Affairs-Superintendent of Real Estate	Real Estate Agents Licensing Act, ss.2, 1; 8 (1); 18	
Nunavut	Consumer Affairs	Real Estate Agents Licensing Act	
Accountants and Accounting Firms	Chartered Professional Accountant, the Certified Management Accountant, the Certified General Accountant and provincial associations	conducts (as),	As regards admission to Membership see, for example, Certified Management Accountants of Ontario (Regulation 4-1); CMA Regulations of Alberta (s. 2 (2), where it is stated that each applicant for registration shall provide evidence on conviction of a criminal offense.
DPMS	**No designated competent authority**	-	**No measure in place**
BC Notaries	The Society of Notaries Public	the Notary Act	The procedure for the enrolment include screening procedure conducted by the Credentials Committee of the Society, where consent for disclosure of criminal records information in favour of the RCMP. Notary Corporation (ss 57 and 58 f the Notary Act) are subject to a permit and the procedure imply controls on the voting shares members (that must be in good standing) as well as the non-voting members (who can be only members of the Society or relatives)

c) There are civil and criminal sanctions[147] available for failure to comply with AML/CFT obligations for DNFBPs as described under R.35, as well as the public notice of AMPs imposed. The AMP regime allows administrative sanctions to be applied to REs although the maximum threshold raises doubts about the dissuasiveness and/or proportionality of sanctions for serious violations or repeat offenders. However, there is a range of measures available to supervisors to ensure compliance that are both proportionate and dissuasive.

All DNFBPs

Criterion 28.5— FINTRAC has further developed its risk model that lead to a risk classification (low, medium, high) of activity sectors and entities and the frequency and intensity of supervision is a function of FINTRAC's risk assessment. FINTRAC has started to integrate the results of inherent NRA for 2015/2016. The risk model takes into account numerous sources of information in order to assess the risk factor of specific REs. Further details on how the risk profile affects the scope and frequency of controls are provided under IO.3.

Weighting and Conclusion

AML/CFT obligations are inoperative for legal counsels, legal firms and Quebec notaries. Online gambling, ship-based casinos, trust and company service providers that are not included among the trust and loan companies are not subject to AML/CFT obligations and not monitored for AML/CFT purposes. The entry standards and fit-and-proper requirements are absent in DPMS and TCSPs, while for the real estate brokerage they are not in line with the standards. Taking into account the deficiencies identified in the scope of DNFBPs and subsequent coverage of AML/CFT supervision and in the fit-and-proper requirements for DPMS, TCSPs and for the real estate brokerage

Canada is partially compliant with R.28.

Recommendation 29 - Financial intelligence units

In its third MER, Canada was rated PC with former R.26 (see paragraphs 364–418) notably due to the fact that the FIU (i) had insufficient access to intelligence information from administrative and other authorities, and (ii) was not allowed to gather additional information from REs. The first deficiency has since been addressed. The FATF standard was strengthened by new requirements which focus on the FIU's strategic and operational analysis functions, and the FIU's powers to disseminate information upon request and request additional information from REs.

Criterion 29.1— In 2000, Canada established an administrative FIU—Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), which is a national centre for receiving, analysing and disseminating information in order to assist in the detection, prevention, and deterrence of ML, associated predicate offenses and TF activities: PCMLTFA, s.40. The definition of an ML offense

[147] Sections 73.1 to 73.24 of PCMLTFA.

under the PCMLTFA is based on the definition of the offenses established in the CC, which includes information related to associated predicate offense.[148]

Criterion 29.2— FINTRAC serves as a national agency authorized to receive STRs and other systematic reporting required by the PCMLTFA or the PCMLTF regulations, including Terrorist Property Reports, Large Cash Transaction Reports (of CAD 10 000 or more), SWIFT and Non-SWIFT Electronic Funds Transfer Reports (of CAD 10 000 or more), Casino Disbursement Reports (of CAD 10 000 or more), physical cross-border currency or monetary instruments reports and seizures reports and any financial transaction, or any financial transaction specified in PCMLTFA. In addition, FINTRAC is authorized to receive voluntary information records (VIRs), i.e. information provided voluntarily by LEAs[149] or government institutions or agencies, any foreign agency that has powers and duties similar to those of the Centre (i.e. FINTRAC), or by the public about suspicions of ML or TF activities.[150]

Criterion 29.3— *a)* FINTRAC may request the person or entity that filed a STR to correct or complete its report when there are quality issues such as errors or missing information, but not in other instances where this would be needed to perform its functions properly. According to the authorities, Canada's constitutional framework prohibits FINTRAC from requesting additional information from REs. This deficiency was highlighted in Canada's Third MER, and Canada's Sixth Follow-up Report concluded that, despite the information-sharing mechanism put in place by FINTRAC since its last evaluation, the deficiency has not been adequately addressed.

b) PCMLTFA, ss.54 (1) (a) to (c), states that FINTRAC may collect information stored in a database maintained, for purposes related to law enforcement or national security, by the federal government, a provincial government, the government of a foreign state or an international organization, if an agreement to collect such information has been concluded. FINTRAC has direct or indirect access to a wide range of law enforcement information, as the Canadian Police Information Centre (CPIC), the Public Safety Portal (PSP), CBSA's cross-border currency reports and seizure reports databases, RCMP's National Security systems and *Sûreté du Québec*'s criminal information and the Canada Anti-fraud Centre of the RCMP databases, as well as to the CSIS database. However, FINTRAC still has insufficient access to the information collected and/or maintained by–or on behalf of–administrative and other authorities, such as CRA databases.

Criterion 29.4— *a)* FINTRAC must analyse and assess the reports and information received and/or collected under PCMLTFA, ss.54(1)(a) and (b), namely, STRs, Large Cash Transaction Reports, Electronic Funds Transfer Reports, Casino Disbursement Reports, physical cross-border currency or monetary instruments reports and seizures reports, information provided voluntarily by LEAs and

[148] See subsection 462.31(1) of the criminal code where "designated offence" means "a primary designated offence or a secondary designated offence" under section 487.04 of the CC.
[149] FINTRAC receives information provided voluntarily by CSIS, CBSA, CRA–Criminal Investigation Directorate–and the RCMP, as well as provincial and municipal police.
[150] VIRs are the mechanism used by LEAs and other partners of FINTRAC to send information to and advise FINTRAC of investigative priorities without creating an obligation on FINTRAC to respond so as to respect the principle of independence of the FIU. The majority of VIRs that FINTRAC receives focus on priority investigations. VIRs are often the starting point of FINTRAC's analysis (however, FINTRAC always maintains its ability to proactively develop cases).

other regime partners (i.e. the VIRs), queries from, foreign FIUs, as well as information collected from several databases or open source information (s. 54(1) (c) PCMLTFA).

b) FINTRAC is also required to conduct research into trends and developments in the area of ML and TF activities and to undertake strategic analysis (s. 58(1)(b) PCMLTFA). It does so by leveraging a range of open and classified sources of information. It publishes Typologies and Trends Reports[151] on a broad array of issues. From 2010 to 2015, it produced 62 strategic intelligence and research products, which identify ML/TF methods and techniques used by listed terrorist groups and criminal networks, emerging technologies, as well as vulnerabilities in different sectors (both covered and non-covered by the PCMLTFA). These reports provide feedback to REs, respond to Canada's intelligence priorities and build the evidence base for new policy development. FINTRAC has also participated to the working out of Canada's first formal NRA.

Criterion 29.5— FINTRAC is able to disseminate "designated information,"[152] either spontaneously or in response to a VIR, to the appropriate police force,[153] the CRA, CBSA, Communications Security Establishment, Provincial Securities Regulators (as of 23 June 2015) and CSIS, through secure and protected channels (ss.55(3)(a) to (g) and 55.1(1)(a) to (d) PCMLTA). It is also able to disseminate information upon request to LEAs with a court order issued in the course of court proceedings in respect of an ML, TF, or another offense (PCMLTFA, s.59(1). This process has not been used in recent years, as LEAs obtain sufficient information from FINTRAC in response to their VIRs. FINTRAC's AML/CFT supervisory unit and FIU unit are able to exchange information in the exercise of their respective functions. As indicated under R.30, some competent authorities, such as Environment Canada or Competition Bureau, cannot request information from the FIU.

Criterion 29.6— Information held by FINTRAC is securely protected and is disseminated in accordance with the PCMLTFA (s.40(c)). FINTRAC has internal procedures (FINTRAC's Privacy framework) governing the security and confidentiality of information, the respect of the confidentiality and security rules by its staff members and limiting access to information, including access to the IT system, to those who have a need to know in order to effectively perform their duties.

Criterion 29.7— FINTRAC was established as an independent agency that acts at arm's length and is independent from LEAs and other entities to which it is authorized to disclose information under ss.55(3), 55.1(1) or 56.1(1) or (2) (PCMLTFA, s.40(a)).

[151] Mass Marketing Fraud: Money Laundering Methods and Techniques (January 2015), Money laundering trends and typologies in the Canadian securities sector (April 2013), Money Laundering and Terrorist Financing Trends in FINTRAC Cases Disclosed Between 2007 and 2011 (April 2012), Trends in Canadian Suspicious Transaction Reporting (STR) (April and October 2011), Money Laundering and Terrorist Financing (ML/TF) Typologies and Trends for Canadian Money Services Businesses (July 2010), Money Laundering Typologies and Trends in Canadian Casinos (November 2009), Money Laundering and Terrorist Financing Typologies and Trends in Canadian Banking (May 2009).
[152] The terms "designated information" cover a range of information, including the name and criminal records of a person or entity involved in the reported transaction, the amounts involved, etc.
[153] The appropriate police force means the police force that has jurisdiction in relation to the ML offense. This includes federal, provincial and municipal police forces, as they receive their power from the province.

a) The Director of FINTRAC is appointed by the Governor in Council for a reappointed term of no more than five year with a maximum term of ten years, and has supervision over and direction of the Centre regarding the fulfilment of its mission (internal organization, decisions taken, etc.) and in administrative matters (staff and budget).

b) FINTRAC is able to make arrangements or engage independently with other domestic competent authorities. Agreements or arrangements with foreign counterparts on the exchange of information are entered either into by the Minister or by the Centre with the approval of the Minister (PCMLTFA, s.56 (2)).

c) FINTRAC is not located within an existing structure of another authority: the FIU is an independent agency under the responsibility of the Minister with legally established and distinct core functions (PCMLTFA, ss.42 and 54).

d) The Minister is responsible for FINTRAC (PCMLTFA, s.42(1)) and the director of FINTRAC is the chief executive officer of the Centre, has supervision over and direction of its work and employees and may exercise any power and perform any duty or function of the Centre (PCMLTFA, s.45(1)).

Criterion 29.8— FINTRAC has been a member of the Egmont Group since 2002.

Weighting and Conclusion

FINTRAC has limited access to some information.

Canada is partially compliant with R.29.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

In its 2008 MER, Canada was rated LC with former R.27 due to an effectiveness issue. Minor changes have since been made. There are also significant changes in the standard.

Criterion 30.1— LEAs are designated with the responsibility for investigating ML, predicate offenses and TF. There is one national police force (the RCMP) and two provincial LEAs (respectively, in Ontario and Quebec). The RCMP is a federal, provincial, and municipal policing body. All Canadian police forces are potential recipients of FINTRAC disclosures under the PCMLTFA and can investigate ML/TF offenses.

Most predicate offenses are investigated by provincial and municipal police forces, including the RCMP when they are acting as provincial police (except Ontario and Quebec). Serious or proceeds-generating crime investigations can be done by the RCMP either exclusively or in parallel with provincial or municipal forces.

The RCMP has the primary law enforcement responsibility to investigate both terrorism and TF. The Terrorist Financing Team of the RCMP's Federal Policing Criminal Operations (FPCO) is responsible for, inter alia, monitoring and coordinating major ongoing investigational projects related to

terrorist organizations on financial and procurement infrastructures.

Criterion 30.2— All national, provincial and municipal police forces are authorized, under the CC, as "peace officers" to conduct parallel financial investigations related to their criminal investigations. They may refer the ML/TF case to other police units for investigation, regardless of where the predicate offense occurred.

Criterion 30.3— All police forces are empowered to identify, trace, seize, and restrain property that is, or may subject to forfeiture, or is suspected of being proceeds of crime. They are empowered with a wide range of measures under the CC (see Criterion 4.2).

Criterion 30.4— Other agencies, including the CRA (Income Tax Act), Competition Bureau (Competition Act, ss.11-21) and Environment Canada (Environmental Protection Act 1999), have the authority to conduct financial investigations related to the predicate offenses that they respectively specialize in. In addition, law enforcement agencies in Canada have the authority under Common Law to investigate crime and criminal offenses such as ML. They may seek judicial authority to seize and freeze assets. For the CBSA, although it does not have the responsibility for pursuing financial investigations of predicate offenses included in the Immigration Refugee Protection Act (IRPA), the Customs Act and border related legislations, a referral mechanism is in place for RCMP to follow up on the financial investigations. PCMLTFA, s.18 authorizes the seizure and forfeiture of cash by CBSA. Section 36 of the same Act also authorizes the disclosure of the information to the RCMP for criminal investigations into ML or TF.

Criterion 30.5— All police forces are responsible for investigating corruption offenses (CC, ss.119-121 and Corruption of Foreign Public Officials Act, s.3). As mentioned in R.4 and above, they have the powers to identify, trace, and initiate the freezing and seizing of assets.

Weighting and Conclusion:

Canada is compliant with the R.30.

Recommendation 31 - Powers of law enforcement and investigative authorities

In its 2008 MER, Canada was rated C with former R.28. Minor changes have since been implemented in the Canadian legal framework as well as in the standard.

Criterion 31.1— *a)* CC, ss.487.014 (production order) and 487.018 (production order for financial and commercial information) empower a justice or judge to order a person other than a person under investigation to produce specified documents or data within the time to any peace or public officer. S.487.018 production order for financial data is also available to compel a particular person or entity to disclose the identity of the account holder of a given account number.

b) Search warrant under CC, s.487 is available for peace and public officers to search any prescribed places for available information.

c) Law enforcement officers are authorized to take statements from voluntary witnesses under the powers conferred by the Common Law and in accordance with the Charter of Rights and Freedoms and the Canada Evidence Act. However, a witness cannot be compelled to provide a statement to police in an investigation of ML or its associated predicate offenses. For TF investigations, witnesses are bound to provide a statement in an investigative hearing under Part II.1 of the CC (Terrorism).

d) Search warrants under CC, s.487 (search and seizure of evidence) and 462.32 (search and seizure of proceeds of crime) empower investigators to search and seize evidence. The General Warrant under CC, s.487.01 further authorizes the use of any device or means to collect evidence.

Criterion 31.2— *a)* RCMP can mount undercover operations to infiltrate crime syndicates and collect evidence for prosecution. Based on the principles in common law, the police are deemed to have common law powers where such powers are reasonably necessary in order for them to execute the mandate of investigating the commission of serious offenses, and undercover operations fall into this category.

b) Law enforcement can intercept communications pursuant to an Order made under CC, s.186 without the consent of the targeted person. It applies to organized crime offenses or an offense committed for the benefit of, at the direction of, or in association with a criminal organization; or a terrorism offense. It applies to both ML and TF offenses.

c) Computer systems can only be accessed with the consent of the owner or by a search warrant / General Warrant under the CC, but the courts[154] have found that particular considerations apply to computers and the stored content therein, which may require authorities to obtain specific prior judicial authorization to search computers found within a place for which a search warrant has been issued.

d) Similar to (a) above, Canadian Police are conferred with the power to conduct controlled delivery and is subject to stringent RCMP's internal policy.

Criterion 31.3— *a)* CC, s.487.018 (production order for financial and commercial information) empower a justice or judge to order a FI or DNFBP other than a lawyer to produce specified data within the time to any peace or public officer. The s. 487.018 production order for financial data is also available to compel a particular person or entity to disclose the identity of the account holder of a given account number. Search warrant under the provision of CC, s.487 is also available for peace and public officers to search any prescribed places for available information. However, the mechanism used to identify whether legal or natural persons hold or control accounts is not timely and deficient. In identifying whether a subject holds or controls accounts, law enforcement agencies will apply for a court order and serve it to the FI/DNFBP they reasonably suspect of holding such information and wait for the FI/DNFBP to respond. Each order can only be served to one specified FI/DNFBP. In urgent cases, the order can be drafted to obtain an initial response within days or otherwise it will take a longer time. The time required for such identification is considered not timely enough and the mechanism is not exhaustive to identify all accounts held with FIs/DNFBPs.

[154] (R. v. Vu, 2013 SCC 60 (CanLII))— www.canlii.org/en/ca/scc/doc/2013/2013scc60/2013scc60.html. .

LEAs may also use other informal processes, such as surveillance or FINTRAC disclosures, to identify the FIs/DNFBPs. These informal processes are sometimes lengthier and again not exhaustive to identify accounts held by the subject.

b) Warrants and production orders are normally obtained on an ex-parte basis. If the order is directed to a third party, a condition may be added specifically to prohibit the third party from revealing the fact of the warrant to the account holders. Assistance Order, under CC, s.487.02, can also be applied by the law enforcement agencies to seek assistance from a person and request that he/she refrain from disclosing the information to the suspect.

Criterion 31.4— Most law enforcement agencies can ask for information from FINTRAC by submitting VIRs. FINTRAC is able, under PCMLTA, ss.55(3)(a) to (q) and 55.1(1)(a), to disseminate "designated information" by responding to these VIRs. However, these provisions do not allow other competent authorities such as Environment Canada or Competition Bureau conducting investigations of ML and associated predicate offenses to ask for information held by the FINTRAC.

Weighting and Conclusion

LEAs generally have the powers that they need to investigate ML/TF but there are some shortcomings.

Canada is largely compliant with R.31

Recommendation 32 – Cash Couriers

In its 2008 MER, Canada was rated C for former SR IX (para 559–607).

Criterion 32.1— Canada has implemented a declaration system[155] for both incoming and outgoing physical cross-border transportation of currency and bearer negotiable instrument. A declaration is required for all physical cross-border transportation, whether by travellers or through mail, courier and rail or by any other means of transportation. The declaration obligation applies to both natural and legal persons acting on their own and behalf of a third party, and applies to the full range of currency and BNI, as defined in the Glossary to the FATF Recommendations.

Criterion 32.2— The reporting of currency and bearer-negotiable instrument of an amount of CAD 10 000 or more must be made in writing on the appropriate form and must be signed and submitted to a CBSA officer.[156] The reporting requirements of the PCMLTFA are met once the completed report is reviewed and accepted.

Criterion 32.3— This criterion is not applicable in the context of Canada, as it only applies to disclosure systems.

[155] Part 2 of the *PCMLTFA.*

[156] The PCMLTFA Sec. 12(3) outlines who must report; this applies to conveyances regardless of mode (air; marine; rail; land or postal).

Criterion 32.4— Upon discovery of a false declaration of currency or BNIs, or a failure to declare, CBSA officers have the authority to request and obtain further information from the carrier with regard to the origin of the money and its intended use, as to ask for the documents supporting the legitimacy of the source of funds (Customs Act s. 11).

Criterion 32.5— Under PCMLTFA, s.18, when persons make a false declaration or fail to make a declaration, CBSA officers have the power to seize as forfeit the currency or monetary instruments and to impose an administrative fine. The officer shall, on payment of a penalty in the prescribed amount (CAD 250, CAD 2 500, or CAD 5 000, depending of the circumstances, including the particular facts and circumstances of any previous seizure(s) the individual has had under the PCMLTFA), return the seized currency or monetary instruments to the individual from whom they were seized or to the lawful owner. If the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of CC, s.462.3(1) or funds for use in TF activities, there are no terms of release and the funds are forfeited. Overall, the administrative sanctions could appear to be nor proportionate and nor dissuasive for undeclared or falsely declared cross-border transportation of cash over the threshold.

Criterion 32.6— CBSA forwards all Cross-border Reports submitted by importers or exporters as well as seizure reports to FINTRAC electronically. If the currency or monetary instruments have been seized under PCMLTFA, s.18, the report is sent without delay to FINTRAC, in order to undertake an analysis on seizure information.

Criterion 32.7— CBSA officers undertake customs as well as immigration matters. Under PCMLTFA s. 36, CBSA is allowed to communicate information to FINTRAC, to the appropriate police force and to the CRA. Reports and seizure reports are systematically sent to the FIU and reports are communicated to the RCMP. The RCMP has a formal MOU with CBSA and a Joint Border Strategy which stipulates the roles and responsibilities of each partner and how they will cooperate.

Criterion 32.8— When persons make a false declaration or fail to make a declaration, CBSA officers have the power to seize as forfeit the currency or bearer negotiable instrument. No terms of release are offered on funds that are suspected to be proceeds of crime within the meaning of CC, s.462.3(1) or TF (PCMLTFA, s.18(2)). When an individual fully complies with the requirement to report on currency above the threshold, but there are reasonable grounds to believe the funds are related to ML/TF or predicate offenses, the CBSA contacts the RCMP who may carry out a seizure under the CC. The CBSA is empowered to restrain currency or BNIs for a reasonable time in order to allow the RCMP to ascertain whether evidence of ML/TF may be found, but there is no clear process is in place to engage any authority in ascertaining these evidences following false declaration or undeclared cross-border transportation of cash, nor where there is a suspicion of ML/TF or predicate offenses.

Criterion 32.9— False declaration leading to seizures of currency and bearer negotiable instruments are entered and maintained into the Integrated Customs Enforcement System. These information are also sent by CBSA to FINTRAC, which incorporates them into its database. These

reports include information that must be provided in the mandatory reports.[157] Under PCMLTFA, ss.38 and 38.1, within an agreement or arrangement signed by the Minister, cross-border seizure reports where ML/TF is suspected are provided to foreign counterparts if the CBSA has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a ML or a TF offense, or within Custom Act s. 107 in accordance with an agreement. Declaration which exceeds the prescribed threshold are not retained by CBSA, but are forwarded to FINTRAC that should be in position to disclose CBCRs to its foreign counterparts, what may complicate international cooperation between customs regarding cash couriers.

Criterion 32.10— The information collected pursuant to the declaration obligation is subject to confidentiality.[158] There are no restrictions on the amount of money that can be imported into or exported from Canada; however, once the amount has reached or exceeded the threshold it must be reported.

Criterion 32.11— When there is reasonable grounds to believe the funds are related to ML/TF or predicate offenses, the CBSA contacts the RCMP who may carry out subsequent criminal investigation and laying of charges under the CC. If the suspicion is confirmed, seizure and confiscation measures may be decided by the judicial authority under the conditions described in R.4.

Weighting and Conclusion

There are some minor deficiencies.

Canada is largely compliant with R.32.

Recommendation 33 – Statistics

In its 2008 MER, Canada was assessed as LC with former R.32 because the absence of statistical information on ML investigations and sentencing, confiscation, response times for extradition and mutual legal assistance (MLA) requests, response times for requests to OSFI by its counterparts. Some changes were introduced in the standard as well as in Canada.

Criterion 33.1— The compilation of AML/CFT related statistics are coordinated by Finance Canada and provided by all regime partners including FINTRAC, the RCMP, the PPSC and Statistics Canada at the federal and provincial level. The authorities maintain a comprehensive set of statistics that appears suitable to assist in the evaluation of the effectiveness of its AML/CTF framework. As a consequence of the NRA process, the authorities have improved the usefulness of existing data sets and developed new ones. The authorities intend to maintain the AML/CFT related statistics with a focus on periodically measuring the effectiveness of the AML/CFT regime.

[157] Including amount and type of currency or BNI, identifying information on the person transporting, mailing or shipping the currency or monetary instruments, as well as information on the person or entity on behalf of which the importation or exportation is made.
[158] PCMLTFA, article 36 and followings.

Sub-criterion 33.1 a: FINTRAC keeps statistics of STRs received and disseminated. Statistics on STRs received by regions is also available. Regarding the statistics provided on the dissemination of information by FINTRAC, it is unclear whether these disclosures derive from STRs, as required by the FCFT standard statistics related to the FIU.

Sub-criterion 33.1 b: Canada maintains acceptable statistics regarding ML/TF investigations, prosecutions and convictions. Statistical data on ML, proceeds of crime and TF investigations and prosecutions is generated at the national, federal and provincial levels. It is generated from various sources, such as Statistics Canada's Uniform Crime Reporting Survey (UCR), the RCMP Occurrence Data (a records management system), the Public Prosecution Service's iCase, its case management and timekeeping system. The RCMP has employed its Business Intelligence program to provide statistical information on ML/TF investigations that is more detailed than UCR. This information is derived from the RCMP's various Operational Record Management Systems.

Sub-criterion 33.1 c: Canada maintains statistics on assets seized, forfeited and confiscated as proceeds of crime and offense-related property (the equivalent of "instruments" or "instrumentalities" in other countries). However, there is no legal requirement for the AG to keep statistics on seizures.

Sub-criterion 33.1 d: Statistics on made and received mutual legal assistance or other international requests for cooperation are maintained by the Department of Justice Canada. These statistics are used by Justice Canada to track the timeliness of response and the nature of underlying predicate crime.

Weighting and Conclusion

Canada is compliant with R.33.

Recommendation 34 – Guidance and feedback

In its 2008 MER, Canada was rated LC with these requirements due to the lack of specific guidelines intended for sectors such as life insurance companies and intermediaries, and insufficient general feedback given outside the large FIs sector. There has been a substantial increase in guidance and feedback by Canadian authorities since the last MER.

Criterion 34.1— Canada provides guidance to industry on AML/CFT principally through regulators. FINTRAC provides guidance to both FIs and DNFBPs that is accessible on its website. A range of guidance has been published in the form of guidelines, trends and typologies reports, frequently asked questions, interpretation notices, sector specific pamphlets, brochures and information sheets on general topics such as the examination process. Guidance information is tailored to the different reporting sectors and deals with reporting, record-keeping, customer due diligence, general compliance information and questionnaires. Issues such as suspicious transaction reporting, terrorist property reporting, record-keeping, client identification, and implementing compliance

regime to comply with AML/CFT obligations. Global Affairs Canada has issued guidance for countering proliferation (CP) sanctions regimes.

OSFI has a dedicated section of its website for AML/CFT and sanctions issues and it has issued prudential guidance that includes guidance on AML/CFT. A number of other guidelines issued by OSFI are either directly or indirectly applicable to AML/CFT requirements of the FRFI sector. In addition, OSFI's Instruction Guide Designated Persons Listings and Sanction Laws sets out OSFI's expectations for FRFIs when implementing searching and freezing CP and sanctions reporting obligations under the Criminal Code, UN Regulations and other sanctions laws. Other regulators such as IIROC have issued AML guidance to IIROC Dealer members in 2010. OSFI's guidance for FRFIs focuses on prudent risk management and internal controls to address the risk of ML and TF. It includes guidance on deterring and detecting ML and TF, background checks on directors and senior management, oversight of outsourced AML/CFT functions, corporate governance and screening of designated persons under the CC and UN Regulations. While FINTRAC is the main authority responsible for issuing AML/CFT guidance, other regulators also provide guidance on AML issues[159] and consult FINTRAC for policy interpretations.

Feedback is given by FINTRAC to industry through an outreach and assistance program for REs. This includes participating in conferences, seminars, presentations and other events providing feedback on compliance with AML/CFT legislation. REs can liaise with FINTRAC and OSFI by email or an enquiries telephone line. Each RE has a designated FINTRAC Compliance Officer to contact with any queries. FINTRAC's guidance and feedback to REs, in particular MSBs, is also reported as having increased significantly. The RCMP provides guidance through lectures to various businesses throughout Canada on recognizing and reporting suspicious transactions and has given conferences and seminars on identifying, reporting, and investigating ML and materials produced by it on AML related issues.

Since 2008, Canada has provided guidance to the life insurance sector that is very similar to what is provided to other sectors. The guidance on AML/CFT provided by OSFI is applicable to all FRFIs subject to the PCMLTFA including life insurance companies. The guidance provided by FINTRAC is relevant to FIs and DNFBPs and there is sector specific guidance for the financial sector including life insurance companies and brokers and MSBs.

Weighting and Conclusion

There is more specific guidance needed in certain sectors.

Canada is largely compliant with R.34.

[159] Quebec: AMF published a notice on AML/CFT requirements of their regulated entities; Nova Scotia Credit Union Deposit Insurance Corporation, Financial Institutions Commission of British Columbia, British Columbia Gaming Policy Enforcement Branch, Deposit Insurance Corporation Ontario, Prince Edward Island Credit Union Deposit Insurance Corporation have all published guidance on their websites.

Recommendation 35 – Sanctions

In its 2008 MER, Canada was rated PC because: administrative sanctions were not available to FINTRAC; OFI used a limited range of sanctions; and effective sanctions had not been used in cases of major deficiencies. Several changes occurred since then, e.g. FINTRAC was granted the power to apply AMPs for non-compliance with the PCMLTFA.

Criterion 35.1— Civil and criminal sanctions are available in addition to remedial actions. FINTRAC is responsible for imposing AMPs for non-compliance with the PCMLTFA and its regulations.

The PCMLTFA and related legislation provide for penalties for non-compliance with AML/CFT measures. Part V of the PCMLTFA sets out penalties for non-compliance with the Act. The United Nations Act provides that, when the United Nations Security Council passes a resolution imposing sanctions, such measures automatically become part of domestic law, and sets out penalties for non-compliance with its provisions.

The PCMLTFA covers a range of criminal offenses and a series of sanctions for contraventions of the provisions of the Act. Criminal penalties for non-compliance can lead up to CAD 2 million in fines and up to five years in prison. The criminal sanctions regime applies to most of the law and regulations provisions in the PCMLTFA. LEAs can conduct investigations and lay criminal charges in cases of non-compliance with the PCMLTFA.

The PCMLTF AMP Regulations govern the imposition of administrative sanctions for non-compliance with the PCMLTFA and related regulations. They provide for penalties, classifying violations as minor, serious or very serious. The maximum penalty for a violation by a person is set at CAD 100 000 and for a RE it is CAD 500 000. The imposition of a penalty is on a per violation basis: therefore, where there are multiple violations, an entity is potentially exposed to the maximum penalty for each individual violation. The maximum AMP thresholds for serious violations raises doubts whether it is proportionate or dissuasive (notwithstanding it relates to each instance of violation), given that there may be circumstances where a single egregious breach (or a few) may occur and the cumulative threshold might not be either a proportionate or dissuasive sanction. The threshold may also not be dissuasive in circumstances of repeat offending.

There are also other non-monetary methods used by FINTRAC, in addition to the AMP procedure, to apply corrective measures or sanction REs, including issuing deficiency letters, action plans for FRFIs, compliance meetings and enquiries, public naming, revocation of registration of MSBs and non-compliance case disclosures to LEAs.

OSFI has a range of powers as set out in OSFI Act, s.6. OSFI can apply written interventions, staging (more intense/frequent supervision), put in place compliance agreements and directions of compliance, place terms and conditions on a FRFI's business operations and direct independent auditors to extend the scope of their audit and guidance, which are enforceable. The staging process, involving more intensive supervision of an FRFI, does have a dissuasive affect, as it attracts an increase in the deposit insurance premiums paid by the FRFI concerned. OSFI can also remove

directors and/or officers from office, and/or take control of an FRFI in extreme cases of non-compliance with federal legislation, including the PCMLTFA. While OSFI does have the power to impose monetary penalties for non-compliance with general prudential provisions under an FRFI's governing legislation, violations of the PCMLTFA are dealt with by FINTRAC through the AMP procedure. OSFI has regulatory guidelines for AML compliance and background checks of directors and senior managers. OSFI cannot apply AMPs for non-compliance with the PCMLTFA.

Other regulators, such as securities regulators, can impose sanctions under securities legislation in circumstances where a market intermediary fails to meet legal requirements. The measures that can be taken include terminating the intermediary's license and imposing terms and conditions that restrict the intermediary's business. Sanctions can also be imposed on members for contraventions of self-regulatory organizations' requirements, including AML and supervision requirements.

Criterion 35.2— PCMLTFA, s.78 provides that sanctions are applicable to any officer, director, or agent of the person or entity that directed, assented to, acquiesced in, or participated in its commission.

Weighting and Conclusion

The dissuasiveness and/or proportionality of some of the sanctions is unclear.

Canada is largely compliant with R.35.

Recommendation 36 – International instruments

Canada was rated LC with former R.35 and SR I in the 2008 MER, because the ML offense did not cover all designated categories of predicate offenses and contained a purposive element that was not broad enough to meet the requirements of the Conventions, and because of inadequate measures to ascertain the identity of beneficial owners.

Criterion 36.1— Canada is party to the conventions listed in the standard.[160]

Criterion 36.2— Bill C-48 amended to the CC to meet the requirements of the Merida Convention, especially by providing for the forfeiture of property used in the commission of an act of corruption and to clarify that it may be direct or indirect, and that it is not necessary that the person who commits the corrupt act receive the benefit derived from the act. Canada also addressed the deficiencies identified in 2008 (see R. 3 and 10).

Weighting and Conclusion:

Canada is compliant with R.36.

[160] Canada ratified the Vienna Convention on 5 July 1990, the Palermo Convention on 13 May 2002, and the Merida Convention on 2 October 2007, the Convention on the Suppression of Terrorist Financing Convention on 19 February 2002, and the Inter-American Convention against Terrorism. It has also signed the Council of Europe Convention on Cybercrime (2001), on 23 November 2001.

Recommendation 37 - Mutual legal assistance

In its third MER, Canada was rated LC with former R.36 and SR. V due to concerns about Canada's ability to handle MLA requests in a timely and effective manner and about the lack of adequate data that would establish effective implementation. Canada's legal framework for MLA was supplemented by Canada's new Protecting Canadians from Online Crime Act (PCOCA, in force 9 March 2015). The requirements of the (new) R.37 are more detailed.

Criterion 37.1— Canada has a sound legal framework for international cooperation. The main instruments used are the Mutual Legal Assistance in Criminal Matters Act (MLACMA); the relevant international conventions, the Extradition Act; 57 bilateral treaties on MLA in criminal matters, extradition and asset sharing; and MOUs for the other forms of assistance to exchange financial intelligence, supervisory, law enforcement or other information with counterparts. These instruments allow the country to provide rapid and wide MLA. In the absence of a treaty, Canada is able to assist in simpler measures (interviewing witnesses or providing publicly available documents), or, based in the MLACMA, to enter in specific administrative arrangements, that would provide the framework for the assistance.

Criterion 37.2— Canada uses a central authority (the Minister of Justice, assisted by the International Assistance Group—IAG) for the transmission and execution of requests. There are clear processes for the prioritization and execution of mutual legal assistance requests, and a system called "iCase" is used to manage the cases and monitor progress on requests.

Criterion 37.3— MLA is not prohibited or made subject to unduly restrictive conditions. Canada provides MLA with or without a treaty, although MLA without a treaty is less comprehensive. Requests must meet generally the "reasonable grounds to believe standard, in relation for example to MLACMA ss 12 (search warrant) and 18 (production orders). However, certain warrants (financial information, CC, s.487.018, tracing communications, and new s.487.015) may be obtained on the lower standard of "reasonable ground to suspect."

Criterion 37.4— Canada does not impose a restriction on MLA on the grounds that the offense is also considered to involve fiscal matters, nor on the grounds of secrecy or confidentiality requirements on FIs or DNFBPs.

Criterion 37.5— MLACMA, s.22.02 (2) states that the competent authority must apply *ex parte* for a production order that was requested in behalf of a state of entity. In addition to that, the international Conventions signed, ratified and implemented by Canada include specific clauses requiring the confidentiality of MLA requests be maintained.

Criterion 37.6— Canada does not require dual criminality to execute MLA requests for non-coercive actions.

Criterion 37.7— Dual criminality is required for the enforcement of foreign orders for restraint, seizure and forfeiture or property situated in Canada. MLACMA, ss.9.3 (3) (a) and (b) and 9.4 (1) (3) (5) (a) (b) and (c) allow the Attorney General of Canada to file the order so that it can be entered as a

judgment that can be executed anywhere in Canada if the person has been charged with an offense within the jurisdiction of the requesting state, and the offense would be an indictable offense if it were committed in Canada. This applies regardless of the denomination and the category of offenses used.

Criterion 37.8— Most, but not all of the powers and investigative techniques that are at the Canadian LEAs' disposal are made available for use in response to requests for MLA. The relevant powers listed in core issue 37.1 are available to foreign authorities via an MLA request, including the compulsory taking of a witness statement (according to MLACMA, s.18). Search warrants are not possible to obtain via letters rogatory. However, the Minister may approve a request of a state or entity to have a search or a seizure, or to use any device of investigative technique (MLACMA, s.11). The competent authority who is provided with the documents of information shall apply *ex parte* for the warrant to a judge of the province in which the competent authority believes evidence may be found. Regarding the investigative techniques under core issue 37.2, undercover operations and controlled delivery are possible through direct assistance between LEAs from the foreign country and Canada. Production orders to trace specified communication, transmission data, tracking data and financial data are possible by approval of the Minister in response to a foreign request. The authorities will not grant interception of communications (either telephone, emails or messaging) solely on the basis of a foreign request (this special investigative technique is not provided for in the MLACMA and will not be provided for in bilateral agreements. According to MLACMA, s.8.1, requests made under an agreement may only relate to the measures provided for in the bilateral agreement). The only possibility to intercept communications is within a Canadian investigation in the case of organized crime, or a terrorism offense, which would require that the criminal conduct occurred, at least in part, in Canadian territory (including a conspiracy to commit an offense abroad). Foreign orders for restraint, seizure and confiscation can be directly enforced by the Attorney General before a superior court, as if it were a Canadian judicial order.

Weighting and Conclusion

The range of investigative measures available is insufficient.

Canada is largely compliant with R.37.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

Canada was rated LC with R.38 in the 2008 MER due to the limited evidence of effective confiscation assistance, the rare occurrence of sharing of assets and the fact that Canada executed requests to enforce corresponding value judgments as fines. The framework remains the same.

Criterion 38.1— Canada has the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscate laundered property and proceeds from crime (MLACMA, ss.9.3, 9.4 and CC, ss.462.32, 462.33), and instrumentalities used in or intended for use in ML, predicate offenses or TF. There is, however, no legal basis for the confiscation of property of corresponding value. As was the case during its previous assessment, Canada still treats value-based

forfeiture judgement as fines, which has limitations and cannot be executed against the property. If the fine is not paid, it can be converted into a prison sentence. Regarding the identification of financial assets new CC, s.487.018 allows the production of financial registration data in response to requests from foreign states.

Criterion 38.2— In Canada, MLA is based on the federal power in relation to criminal law. Therefore, the enforcement of some foreign non-conviction based confiscation orders is not possible under the MLACMA because they were not issued by a "court of criminal jurisdiction." However, in cases where the accused has died or absconded before the end of the foreign criminal proceedings, the MLACMA applies because the matter would still be criminal in nature. Due to Canada's constitutional division of powers, the Government of Canada cannot respond to a request for civil forfeiture as such requests fall within the jurisdiction of Canada's provinces. However, most of the Canadian provinces have already adopted legislation on a civil confiscation regime. Even if Canada is not able to provide assistance to requests for cooperation based on NCB proceedings, non-conviction based confiscation is possible under Canadian law. Should a foreign state seek to recover assets from Canada though NCB asset forfeiture, it must hire private counsel to act on its behalf in the province where the property or asset is located.

Criterion 38.3— *a)* No particular legal basis is required in Canada for the coordination of seizure and confiscation actions. It is a matter primarily for national and foreign police authorities at the stage of seizure. Thus, via direct police-to-police contact, arrangements are made in relation to any relevant case.

b) The Seized Property Management Act sets out the mechanisms for the management and, when necessary, the disposition of property restrained, seized and forfeited. The Minister of Public Works and Government Services is responsible for the custody and management of all property seized at the federal level. The Minister may make an interlocutory sale of the property that is perishable or rapidly depreciating, or destroy property that has little or no value. Property seized in the provincial level is managed by the provincial prosecution services.

Criterion 38.4— Canada shares confiscated property on a mutual agreement basis, under the Seized Property Management Act, s.11. Canada has 19 bilateral treaties regarding the sharing and transfer of forfeited or confiscated assets and equivalent funds.

Weighting and Conclusion

The seizure and confiscation regime has a deficiency, which is the impossibility of confiscation of equivalent value.

Canada is largely compliant with R.38.

Recommendation 39 – Extradition

Canada was rated LC with R.39 in the 2008 MER, mostly because of the difficulties in establishing the delay element, due to insufficient statistical data. The legal framework remains unchanged.

Criterion 39.1— Canada is able to execute extradition requests in relation to ML/TF without undue delay. Statistics provided to this assessment have shown that at least 40% of the requests are executed on a timely basis, what shows that the existing legal framework allows for extraditions without delay.

a) Both ML and TF are extraditable offenses (Extradition Act, ss.3(1) (a) and (b) of the combined with CC, ss.83.02, 83.03, 83.04 and 462.31).

b) Canada has a case management system (iCase) and clear processes in place for timely execution of extradition including prioritization of urgent cases. The Extradition Act sets out timelines for specific steps to ensure minimal delays, and requires judges to set an early date for the extradition hearing when the person has been provisionally arrested (s.21(1)(b)(3).

c) Canada does not place unreasonable or unduly conditions on the execution of extradition requests.

Criterion 39.2— Nationality does not constitute grounds for refusal to extradite under the Extradition Act, ss.44, 46, and 47 of the, but the Charter of Fundamental Rights and Freedoms gives Canadian citizens the right to remain in Canada. The Supreme Court decided in *U.S. v. Cotroni* that extradition is a reasonable limitation of the right to remain in Canada, and the decision whether to prosecute or not in Canada and allow the authorities in another country to seek extradition is made following consultations between the appropriate authorities in the two countries when various factors, including nationality, are considered in weighing the interests of the two countries in the prosecution. Historically, the result of most of these assessments has been to favour extradition, but when it is not, the Canadian citizen can be prosecuted in Canada.

Criterion 39.3— Dual criminality is required for extradition. It is not relevant whether the extraditable conduct is named, defined or characterized by the extradition partner in the same way as it is in Canada (Extradition Act, s.3(2)).

Criterion 39.4— Direct transmission of an extradition request to Canada's IAG or via Interpol is possible unless a treaty provides otherwise. Requests for provisional arrest may be made via Interpol by virtually all of Canada's extradition partners. The extradition process is simplified when the person consents to commit and surrender. Canada does not grant extradition based solely on a foreign warrant for arrest, such as in an Interpol Red Notice, or a foreign judgment, or in the absence of a treaty, based on reciprocity. There must be an assessment of the evidence, which takes place in the course of the judicial phase, which is followed by the Ministerial phase of the extradition proceedings.

Weighting and Conclusion:

Canada is compliant with R.39.

Recommendation 40 – Other forms of international cooperation

In the 2008 MER, Canada was rated LC with these requirements (para. 1551–1612). The main deficiency raised was related to FINTRAC as a supervisory authority.[161]

General Principles

Criterion 40.1— Canada's competent authorities can broadly provide international cooperation spontaneously or upon request related to ML/TF[162]. Referring to FINTRAC as FIU, PCMLTFA allows the Centre to disclose information to a foreign FIU spontaneously and makes reference to a disclosure of designated information "*in response to a request*."

Criterion 40.2— *a)* Competent authorities have the legal basis to provide international cooperation (see criterion 40.1).

b) Nothing prevents competent authorities from using the most efficient means to cooperate.

c) FINTRAC as a FIU and as a supervisor, OSFI, CBSA, and RCMP use clear and secure gateways, mechanism or channels for the transmission and execution of requests.

d) FINTRAC as an FIU has put in place processes for prioritizing and executing requests and answers in five business days if the Centre has transaction information in its database and FINTRAC as a supervisory authority processes the request and provides a response in a matter of days. In regard to TF, RCMP prioritize, assign and respond to such requests in the most efficient and effective manner on a National Level. It has not been established that LEA and supervisor authorities have clear procedures for the prioritization and timely execution of bilateral requests.

e) Competent authorities have clear processes for safeguarding the information received. FINTRAC policies and procedures for the safeguard of information apply to both the FIU and the supervisory side of FINTRAC. All supervisory information received by OSFI is subject to the same standard of confidentiality as domestic information (OSFI Act, s.22). RCMP has policies for handling requests and sharing or exchanging criminal intelligence and information with foreign partners and agencies (RCMP Operational manual Chapter 44.1s).

Criterion 40.3— Under the Privacy Act, competent authorities need bilateral or multilateral arrangements to cooperate with foreign counterparts where a disclosure of personal information about an individual is involved. FINTRAC as a FIU, RCMP and CBSA have signed a comprehensive network of MOUs and letters of agreement with foreign counterparts, but FINTRAC as a supervisory authority has entered into two MOUs so far. The Canadian authorities indicated that these bilateral agreements were signed mostly in a timely way. Examples of MOUs signed promptly have been

[161] *FINTRAC* as a supervisory authority had the legal capacity to exchange information with foreign counterparts but had not put the arrangements and agreements in place.
[162] FINTRAC as a FIU: *PCMLTFA*, section56; FINTRAC as a supervisory authority: *PCMLTFA*, section.65.1; RCMP: *Privacy Act and Memoranda of understanding or Letters of agreements*; CBSA: *PCMLTFA*, art.38 and 38.1 and *Custom Act*; OSFI: OSFI Act, section 22.

provided to the assessors. The OSFI Act does not require that the Superintendent enter into a MOU with a foreign counterpart in order to be able to cooperate.

Criterion 40.4— FINTRAC provides feedback upon requests to its foreign counterparts on the use and usefulness of the information obtained (PCMLTFA, ss.56.2 and 65.1(3)). Canadian authorities indicated that FINTRAC generally provides feedback to its foreign counterparts on the usefulness of the information obtained within five to seven days. There is no restriction on OSFI's ability to provide feedback. There is no general impediments, which prevents Canada's LEAs from providing feedback regarding assistance received.

Criterion 40.5— Competent authorities do not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance on any of the four grounds listed in this criterion.

Criterion 40.6— Competent authorities have controls and safeguards to ensure that information exchanged is used for the intended purpose for, and by the authorities, for whom the information was provided.[163]

Criterion 40.7— Competent authorities are required to maintain appropriate confidentiality for any request for cooperation and the information exchanged, consistent with data protection obligations

Criterion 40.8— FINTRAC as an FIU, may conduct inquiries on behalf of foreign counterparts, by accessing its databases (all report types, federal and provincial databases maintained for purposes related to law enforcement information or national security, and publicly available information), under PCMLTFA, s.56.1(2.1). FINTRAC as a supervisory authority can conduct inquiries on behalf of foreign counterparts with which it has an MOU under PCMLTFA, ss.65.1(1)(a) and 65.1(2), but only two MOUs have been signed so far. The RCMP can use a number of criminal intelligence and police databases to conduct inquiries on behalf of foreign counterparts, under sharing protocols that aim at protecting the right to privacy of the individuals mentioned in the databases.

Exchange of Information Between FIUs

Criterion 40.9— FINTRAC exchanges information with foreign FIUs in accordance with the Egmont Group principles or under the terms of the relevant MOU, regardless of the type of its counterpart FIU. The legal basis for providing cooperation is in PCMLTFA, s.56(1), which stipulates that the Centre exchanges information if it has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a ML or TF offense, or an offense that is "*substantially similar to either offense.*"

Criterion 40.10— FINTRAC provides feedback on the usefulness of information obtained, when feedback is specifically requested by foreign FIUs (PCMLTFA, s.56), and whenever possible as well as on the outcome of the analysis conducted, based on the information provided.

[163] *Privacy Act*—FINTRAC as a FIU: PCMLTFA, para 56 (3) and MOUs template; FINTRAC as a supervisory authority: PCMLTFA, s.65.1 (1) (b) and MOUs template; RCMP: Operational manual on information sharing; OSFI: OSFI Act, s.22.

Criterion 40.11— FINTRAC have the power to exchange:

a) The information held in its database (c. 40.8), which does not cover the scope of the information required to be accessible or obtainable directly or indirectly under R.29, as it does not include additional information from REs.

b) The information FINTRAC has the power to obtain or access directly or indirectly at the domestic level (c. 40.8), subject to the principle of reciprocity.

Exchange of Information Between Financial Supervisors

Criterion 40.12— PCMLTFA, allows FINTRAC to enter into information sharing arrangements or agreements under new s.65(2) with any agency in a foreign state that has responsibility for verifying AML/CFT. OSFI has broad authority to share supervisory information with domestic and foreign regulators or supervisors of FIs, including SROs.

Criterion 40.13— FINTRAC, as the AML/CTF supervisor for entities covered by the PCMLTFA, has the authority to share with foreign supervisors compliance-related information that FINTRAC has in its direct possession about the compliance of persons and entities. The information that FINTRAC may exchange with foreign supervisors is defined by "FINTRAC supervisory MOU Template." Canadian authorities indicated that FINTRAC can exchange information domestically available, including information held by FIs. As regards OSFI, under the OSFI Act a broad exemption is provided under s.22(2) in favour of the exchange of supervisory information with any government agency or body that regulates or supervises FIs.

Criterion 40.14— *a)* FINTRAC and OSFI do not require legislation to exchange regulatory information, and that they currently exchange such information. Examples were given by FINTRAC of cross-border cooperation with other regulators.

b) OSFI, under OSFI Act, s.22 can exchange supervisory information with foreign government agency or body that regulates or supervises FIs which meets this Criterion.

c) PCMLTFA, subsection 65.1 enables FINTRAC to exchange supervisory information with other supervisors about the compliance of persons and entities, record-keeping and reports. Through its supervisory examinations and compliance assessment reports, FINTRAC normally obtains information on REs' internal AML/CFT procedures and policies, CDD, customer files and sample accounts and transaction information. FINTRAC is able to exchange this information with other supervisors. However, this possibility is limited to exchanges with counterparts who are MOU partners.

Criterion 40.15— FINTRAC can conduct inquiries on behalf of foreign counterparts with which it has an MOU under PCMLTFA, ss.65.1(1)(a) and 65.1(2).

Criterion 40.16— FINTRAC can enter into agreements or arrangement with other supervisors to exchange information pursuant to the PCMLTF.[164] Under such agreements or arrangements, there is an obligation to keep such information confidential and not further disclose the information. FINTRAC's tactical MOU sets out the requirements for use and release and confidentiality of information exchanged between financial supervisors. It is provided in the tactical MOU that information that has been exchanged will not be disclosed without the express consent of the requested authority. It is also provided that if an authority has a legal obligation to disclose information, it will notify and seek the consent of the other authority. OSFI can exchange information with other supervisors on the basis that such information satisfies the requirements of the Act and will be kept confidential.

Exchange of Information Between Law Enforcement Authorities (LEAs)

Criterion 40.17— Under article 44.1 of the RCMP Operational Manual on "Sharing of information with Foreign Law Enforcement," RCMP and other Canadian LEAs are able to exchange domestically available information with foreign counterparts for intelligence or investigative purposes relating to ML, associated predicate offenses or TF, including the identification and the tracing of proceeds and instrumentalities of crime. Nevertheless, CBSA does not retain CBCRs, which have to be obtained through international cooperation between FIUs, what could complicate their access by CBSA's foreign counterparts. PS works with other countries on national security, border strategies and countering crime, including ML and TF. PS also participates in a number of fora and initiatives to foster its international cooperation, including violent extremism and foreign fighters.

Criterion 40.18— Canadian LEAs can use the legislative powers available under the CC[165] and other Acts[166] including investigative techniques available in accordance with domestic law, to conduct inquiries and obtain information on behalf of foreign counterparts. However, it appears than the range of powers and investigative techniques that can be used by LEA to conduct enquiries and obtain information on behalf of foreign counterparts are very limited.[167] Both the PPOC and ML offense definitions allow that the offense need not to have occurred in Canada "so long as the act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence." Canada extensively cooperates with foreign law enforcement counterparts based on multilateral agreements in the context of Interpol and on bilateral MOUs.

Criterion 40.19— Canadian LEAs are able to form joint investigative teams to conduct cooperative investigations, and, when necessary, establish bilateral or multilateral arrangement to enable such joint investigations on the basis of RCMP Act (and the RCMP Operational policy Chapter 15 provides guidance on joint forces operation). Joint Forces Operations (JFO) involve one or more

[164] PCMLTFA, s.40 (c). PCMLTFA, s.65.1 (1) (b) also provides a limit on how the information can be used by both parties to a supervisory MOU. MOU Supervisory Template, Section 6 on Permitted Uses and Release of Exchanged Information, and Section 7 on Confidentiality are also relevant.
[165] CC, s.462.31 allows police to perform reverse sting operations to obtain information on ML cases and CC, s.462.32 to seize POC.
[166] Mutual Legal Assistance in Criminal Matters Act, RCMP Act and Canada Evidence Act.
[167] The only provisions which can be used allows police to perform reverse sting operations to obtain information on ML cases and to seize POC (CC, ss.462.31 and 462.32).

police/enforcement agencies working with the RCMP on a continuing basis over a definite period. A JFO should be considered in major multi-jurisdictional cases that are in support of national priorities and must be consistent with the mandated responsibility of the particular resource.

Exchange of Information Between Non-Counterparts

Criterion 40.20— Under PCMLTFA, FINTRAC as a FIU and a supervisor may enter into an agreement or arrangement, in writing, with an institution or agency of a foreign state that "*has powers and duties, similar to those of the Centre,*" which seems to exclude diagonal cooperation. Nevertheless, Canadian authorities indicate than when FINTRAC receives a request from a non-counterpart, the Centre address it either through its domestic partners or through the foreign FIU or supervisor. RCMP operational manual 44.1 outlines that sharing information will be managed on a case-by-case basis and there is no element that prevents RCMP to exchange information indirectly. OSFI has a broad ability to share information diagonally based on the wording of the OSFI Act, s.22. The "any government agency that regulates or supervises FIs" wording does not seem to limit disclosure to prudential regulators. However, OSFI would have to determine on a case-by-case basis whether such agency "regulates or supervises FIs." OSFI has shared information with foreign FIUs where they are also AML/CFT supervisors.

Weighting and Conclusion

There is room for improvement in regard to non-MLA international cooperation.

Canada is largely compliant with R.40.

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
1. Assessing risks & applying a risk-based approach	LC	• Lawyers, legal firms and Quebec notaries are not legally required to take enhanced measures to manage and mitigate risks identified in the NRA.
2. National cooperation and coordination	C	• The Recommendation is fully met.
3. Money laundering offence	C	• The Recommendation is fully met.
4. Confiscation and provisional measures	LC	• The legal provisions do not allow for the confiscation of property equivalent in value to POC.
5. Terrorist financing offence	LC	• CC, s. 83.03 does not criminalize the collection or provision of funds with the intention to finance an individual terrorist or terrorist organization.
6. Targeted financial sanctions related to terrorism & TF	LC	• Persons in Canada are not prohibited from providing financial services to entities owned or controlled by a designated person or persons acting on behalf or at the discretion of a designated person. • No authority has been designated for monitoring compliance by FIs and DNFBPs with the provisions of the UNAQTR, CC and RIUNRST.
7. Targeted financial sanctions related to proliferation	LC	• No mechanisms for monitoring and ensuring compliance by FIs and DNFBPs with the provisions of the RIUNRI and RIUNRDPRK. • Little information provided to the public on the procedures applied by the Minister to submit delisting requests to the UN on behalf of a designated person or entity.
8. Non-profit organisations	C	• The Recommendation is fully met .
9. Financial institution secrecy laws	C	• The Recommendation is fully met.
10. Customer due diligence	LC	• Exclusion of financial leasing, factoring and finance companies from scope of AML/CTF regime. • Minor deficiency of existence of numbered accounts whose use is governed only by regulatory guidance. • Minor deficiency of limited application, to natural persons only, of requirements to reconfirm identity where doubts arise about the information collected. • No explicit legal requirements to check source of funds. • No requirement to identify the beneficiary of a life insurance payout. • Minor deficiency of exceptions to the timing requirements for verifying identity are not clearly justified in terms of what is reasonably practicable or necessary to facilitate the normal

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		conduct of business. • Minor deficiency of the lack of a requirement to obtain the address and principal place of business of non-corporate legal persons and legal arrangements such as trusts.
11. Record keeping	LC	• The legal obligation requiring REs to provide records to FINTRAC within 30 days does not constitute "swiftly", as the standard specifies.
12. Politically exposed persons	NC	• Only one element of the FATF standard is currently largely met, although new legislation covering domestic PEPs will come into force in July 2016.
13. Correspondent banking	LC	• No requirement for a FI to assess the quality of AML/CFT supervision to which its respondent institutions are subject.
14. Money or value transfer services	C	• The Recommendation is fully met.
15. New technologies	NC	• No explicit legal or regulatory obligation to risk assess new products, technologies and business practices, before or after their launch.
16. Wire transfers	PC	• No specific requirements for intermediary and beneficiary FIs to identify cross-border EFTs that contain inadequate originator information, and take appropriate follow-up action. These are significant deficiencies.
17. Reliance on third parties	PC	• No explicit requirements on life insurance entities and securities dealers in relation to either necessary CDD information to be provided by the relied-upon entity or supervision of that entity's compliance with CDD and record-keeping obligations. • No requirements on life insurance entities or securities dealers to assess which countries are high risk for third party reliance.
18. Internal controls and foreign branches and subsidiaries	LC	• No specific legal requirements in relation to screening procedures when hiring employees.
19. Higher-risk countries	C	• The Recommendation is fully met.
20. Reporting of suspicious transaction	PC	• Minor deficiency that financial leasing, finance and factoring companies are not required to report suspicious activity to FINTRAC. • Lack of a prompt timeframe for making reports.
21. Tipping off and confidentiality	LC	• The tipping off and confidentiality requirements do not explicitly extend to the reporting of suspicions related to ML predicate offenses.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
22. DNFBPs: Customer due diligence	NC	• AML/CFT obligations are inoperative for legal counsels, legal firms and Quebec notaries. • On line gambling, TCSPs that are not trust companies are not obliged entities. • No requirement on beneficial owner, PEP, new technologies, reliance on third parties. With the exception of a limited set of transactions the fixed threshold (CAD 10,000) of cash financial transactions and casinos disbursement exceeds that provided in the Recommendation. • The circumstances in which accountants and BC notaries are required to perform CDD are not in line with the FATF requirement.
23. DNFBPs: Other measures	NC	• AML/CFT obligations are inoperative for legal counsels, legal firms and Quebec notaries. • TSCPs that are not trust and loan companies and on line gambling are not subject to the AML/CFT obligations; the circumstances under which accountants and BC notaries are required to comply with STRs are too limitative. • Further deficiencies identified under R.20 for DNFBPs that are subject to the requirements.
24. Transparency and beneficial ownership of legal persons	PC	• No appropriate mechanism to ensure that updated and accurate beneficial ownership information is collected for all legal entities in Canada, whether established under provincial or federal legislation. • Timely access by competent authorities to all beneficial ownership information is not warranted, in particular in cases where such information is held by a smaller or provincial FI, or a DNFBP. • Insufficient risk mitigating measures in place to address the ML/TF risk posed by bearer shares and nominee shareholder arrangements. • No obligation for legal entities to notify the registry of the location at which company records are held. • In some provinces, there is no legal obligation to update registered information within a designated timeframe. • No legal obligation on legal entities to authorize one or more natural person resident in Canada to provide to competent authorities all basic information and available beneficial ownership information; or to authorize a DNFBP in Canada to provide such information to the authorities.
25. Transparency and beneficial ownership of legal arrangements	NC	• No obligation for trustees to obtain and hold adequate, accurate and current beneficial ownership information for all legal arrangements in Canada, whether established under provincial or federal legislation, or basic information on other regulated agents or and service providers to the trust. • Professional trustees, including lawyers, are not required to maintain beneficial ownership information for at least five

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		years. • Insufficient mechanism in place to facilitate timely access by competent authorities to all beneficial ownership information and any trust assets held or managed by the FI or DNFBP. • No requirement for trustees to proactively disclose their status to FIs and DNFBPs when forming a business relationship or carrying out a financial transaction for the trust. • Proportionate and dissuasive sanctions for a failure by the trustee to perform his duties are not available in most cases.
26. Regulation and supervision of financial institutions	LC	• There are further fitness and probity controls needed for persons owning or controlling financial entities after market entry at provincial level.
27. Powers of supervisors	C	• The Recommendation is fully met.
28. Regulation and supervision of DNFBPs	PC	• AML/CFT obligations are inoperative for legal counsels, legal firms and Quebec notaries. • Online gambling, cruise ship casinos, TSCPs not included among trust and loan companies are not subject to AML/CFT obligations and thus not monitored for AML/CFT purposes. • The entry standards and fit and proper requirements are absent in DPMS and TCSPs than trust companies, and they are not in line with the standards for real estate brokerage.
29. Financial intelligence units	PC	• FINTRAC is not empowered to request further information to REs. • FINTRAC has a limited or incomplete access to some administrative information (e.g. fiscal information), • FINTRAC is not able to disseminate upon request information to some authorities (e.g. Environment Canada, Competition Bureau)
30. Responsibilities of law enforcement and investigative authorities	C	• The Recommendation is fully met.
31. Powers of law enforcement and investigative authorities	LC	• No mechanism in place to timely identify whether a natural or legal person holds / controls accounts • No power to compel a witness to give statement in ML investigation • Only LEAs can ask for designated information from FINTRAC
32. Cash couriers	LC	• Administrative sanctions are not proportionate, nor dissuasive. • It has not been established that a clear process was in place to analyse or investigate cross-border seizures. • Cross-border currency reports are not retained by CBSA and can only be exchanged with foreign Customs authorities through FIUs' international cooperation.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
33. Statistics	C	• The Recommendation is fully met.
34. Guidance and feedback	LC	• There is more specific guidance needed in certain sectors such as DNFBPs to ensure that they are aware of their AML/CFT obligations, the risks of ML/TF and ways to mitigate those risks. There is also further feedback required arising out of the submitting of STRs.
35. Sanctions	LC	• The maximum threshold of administrative sanctions raises doubts about the dissuasiveness of sanctions for serious violations or repeat offenders.
36. International instruments	C	• This Recommendation is fully met.
37. Mutual legal assistance	LC	• The MLACMA does not allow for the interception of communications (either telephone or messaging) based solely on a foreign request, what hampers foreign investigations.
38. Mutual legal assistance: freezing and confiscation	LC	• Canada cannot respond to requests for the seizure and confiscation of property of corresponding value.
39. Extradition	C	• The Recommendation is fully met.
40. Other forms of international cooperation	LC	• The impediments raised in R.29 for FINTRAC, notably the fact that the FIU is not empowered to request further information from REs and the fact that some RE are not requested to fulfil STRs, impacts negatively the international cooperation with its counterparts. • LEAs are not able to use a large range of powers and investigative techniques to conduct inquiries and obtain information on behalf of foreign counterparts.

TABLE OF ACRONYMS

AMF	*Autorité des Marchés Financiers*
AML/CFT	Anti-money laundering and combating the financing of terrorism
APG	Asia/Pacific Group on Money Laundering
BC	British Columbia
CBCR	Cross-border currency report
CBSA	Canada Border Services Agency
CDR	Casino Disbursement Report
CDSA	Controlled Drugs and Substances Act
CRA	Canada Revenue Agency
CRA-CID	Canada Revenue Agency—Criminal Investigations Directorate
CSIS	Canadian Security Intelligence Service
DAR	Detailed Assessment Report
DOJ	Department of Justice
DPMS	Dealers in precious metals and stones
DPRK	Democratic People's Republic of Korea
DNFBP	Designated Non-Financial Businesses and Professions
D-SIB	Domestic Systematically Important Bank
EFTR	Electronic Funds Transfer Report
FATF	Financial Action Task Force
FI	Financial institution
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FIU	Financial intelligence unit
FRFI	Federally Regulated Financial Institution
GAC	Global Affairs Canada
IAG	International Assistance Group
ICC	Interdepartmental Coordinating Committee on Listings
IMF	International Monetary Fund
IO	Immediate Outcome
IPOC	Integrated Proceeds of Crime Initiative

ISEDC	Innovation, Science and Economic Development Canada (former Industry Canada)
LCTR	Large Cash Transaction Report
LEA	Law Enforcement Agency
MER	Mutual Evaluation Report
MSB	Money service business
ML	Money laundering
MLA	Mutual legal assistance
NPO	Non-profit organisation
NRA	National risk assessment
OCG	Organised criminal group
OPC	Office of the Privacy Commissioner
OSFI	Office of the Superintendent of Financial Institutions
PCMLTFA	Proceeds of Crime (Money Laundering) and Terrorist Financing Act
PCMLTFR	Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations
PEFP	Politically exposed foreign persons
PEP	Politically exposed person
PF	Proliferation financing
PIPEDA	Personal Information Protection and Electronic Documents Act
POC	Proceeds of crime
PPSC	Public Prosecution Service of Canada
PS	Public Safety Canada (former Public Safety and Emergency Preparedness)
PSPC	Public Services and Procurement Canada (former Public Works and Government Services Canada)
RBA	Risk-based approach
RCMP	Royal Canadian Mounted Police
RE	Reporting entity
RIUNRST	Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism
STR	Suspicious transaction report
TCSP	Trust and company service provider
TF	Terrorist financing
TFS	Targeted financial sanction

UNSCR	United Nations Security Council Resolution
UNAQTR	United Nations Al-Qaida and Taliban Regulation
US	United States of America
VIR	Voluntary Information Record

www.fatf-gafi.org | www.apgml.org

September 2016

Anti-money laundering and counter-terrorist financing measures - Canada
Fourth Round Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Canada as at the time of the on-site visit on 3-20 November 2015. The report analyses the level of effectiveness of Canada's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.

ASSESSMENT OF INHERENT RISKS OF MONEY LAUNDERING AND TERRORIST FINANCING IN CANADA

2015

Department of Finance Canada
Ministère des Finances Canada

Canada

Table of Contents

Foreword by the Minister of Finance

Our Government is deeply committed to keeping Canadians safe and our country secure and prosperous.

That is why we are committed to helping ensure the safety and security of all Canadians by giving law enforcement and security agencies the tools they need to protect Canadians from the ever-evolving threat of terrorism and organized crime.

To this end, in Economic Action Plan 2015, our Government provided additional investigative resources to our law enforcement and national security agencies to allow them to keep pace with the evolving threat of organized crime and terrorism, including addressing the issues of terrorist financing and money laundering.

Canada's existing anti-money laundering and anti-terrorist financing regime is strong and comprehensive, comprising 11 federal departments and agencies, eight of which are receiving dedicated funding of approximately $70 million annually.

It's a regime that is constantly adapting in both scope and ability, as it must in an uncertain world, subjected to the highest standards of scrutiny and review both domestically and by international peers. It balances the need for public safety with preserving the core principles of the civil liberties that make Canada a beacon of liberal democracy.

It supports the work of law enforcement and intelligence agencies, and is a key part of Canada's efforts to counter terrorism and transnational organized crime.

And it extends to the approximately 31,000 reporting entities—from money services businesses and casinos right up to life insurance companies and banks.

However, we know that we are now on the front lines of a real, urgent and dangerous conflict.

That is why we continue to work through the Financial Action Task Force (FATF)—a body Canada helped create nearly 30 years ago that sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering and terrorist financing, to develop common international standards that help us stay ahead of criminals on a global scale while making our own regime even stronger.

In the fight to counter terrorist financing and money laundering, we can only secure our nation's security and the integrity of our financial system by taking the fight beyond our borders, and we are only as strong as our weakest link. Our leadership on the international stage reflects our commitment to strengthen that global chain.

And we continue to strengthen our own link within it.

That is why the Department of Finance, consistent with international standards outlined by the FATF, has led a whole-of-government initiative to develop the *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada* report to better identify, assess and understand inherent money laundering and terrorist financing risks in Canada on an ongoing basis.

This work is an important initial assessment of our existing risk framework that helps us to better understand and identify money laundering and terrorist financing activities in Canada.

This work will be a valuable tool for our regime partners, for reporting entities, and for all Canadians who want to equip themselves with a greater awareness of trends and challenges.

It will inform ongoing and future action at a policy level, and provide critical risk information to industry so that we can effectively tackle the challenges we face together in protecting Canadians and our country.

We know that working with regime partners, reporting entities and the private sector more broadly is essential to maintaining the strength of the regime.

And we know that our partners need the benefit of our insights to undertake their own risk analysis, and introduce the operational changes required to make a strong system even stronger.

Canadians expect our Government to take these terrorist threats very seriously. We will not allow terrorism to undermine our way of life or that of others around the world. Canadians reject the use of terrorist violence, no matter where it takes place.

And that is why we will continue to remain vigilant in our battle against money laundering and terrorist financing to protect our communities, and the lives of Canadians.

The Honourable Joe Oliver, P.C., M.P.
Minister of Finance
Ottawa, July 2015

Executive Summary

Canada has a robust and comprehensive anti-money laundering and anti-terrorist financing (AML/ATF) regime, which promotes the integrity of the financial system and the safety and security of Canadians. It supports combating transnational organized crime and is a key element of Canada's counter-terrorism strategy.

The Government of Canada has conducted an assessment to identify inherent money laundering and terrorist financing (ML/TF) risks in Canada. This report also includes a process to update this assessment over time. The report provides an overview of the risks of money laundering and terrorist financing before the application of any mitigation measures. Those measures include a range of legislative, regulatory and operational actions that prevent, detect and disrupt money laundering and terrorist financing.

Canada has a comprehensive AML/ATF regime that provides a coordinated approach to mitigating the inherent risks identified in this assessment and combating money laundering and terrorist financing more broadly. The AML/ATF regime is operated by 11 federal regime partners, eight of which receive dedicated funding totalling approximately $70 million annually.[1] The inherent risks identified are being addressed through a strong regime that focuses on policy coordination, both domestically and internationally; the prevention and detection of money laundering and terrorist financing in Canada; disruption activities, including investigation, prosecution and the seizure of illicit assets; and the implementation of measures to ensure the ongoing improvement of the AML/ATF regime.

This report is meant to provide critical risk information to the public and, in particular, to the approximately 31,000 entities that have reporting obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), whose understanding of inherent, foundational risks is vital in applying the preventive measures and controls required to effectively mitigate these risks. The Government of Canada encourages these entities to use the findings in this report to inform their efforts in assessing and mitigating risks. Understanding Canada's risk context and the main characteristics that expose sectors and products to inherent ML/TF risks in Canada is important in being able to apply measures to effectively mitigate them.

This report also responds to the revised Financial Action Task Force's (FATF) global AML/ATF standards calling on all members to undergo an assessment of ML/TF risks. This report will be considered as part of the upcoming FATF Mutual Evaluation of Canada, which will assess Canada against these global standards.

The inherent risk assessment consists of an assessment of the ML/TF threats and inherent ML/TF vulnerabilities of Canada as a whole (e.g., economy, geography, demographics) and its key economic sectors and financial products, while taking into account the consequences of money laundering and terrorist financing. The overall inherent ML/TF risks were assessed by matching the threats with the inherently vulnerable sectors and products through the ML/TF methods and techniques that are used by money launderers, terrorist financiers and their facilitators to exploit these sectors and products. By establishing a relationship between the threats and vulnerabilities, a series of inherent risk scenarios were constructed, allowing one to identify the sectors and products that are exposed to the highest ML/TF risks.

[1] The eight funded partners are the Canada Border Services Agency, the Canada Revenue Agency, the Canadian Security Intelligence Service, the Department of Finance Canada, the Department of Justice Canada, the Financial Transactions and Reports Analysis Centre of Canada, the Public Prosecution Service of Canada and the Royal Canadian Mounted Police. Foreign Affairs, Trade and Development Canada, Industry Canada, the Office of the Superintendent of Financial Institutions, Public Safety Canada and Public Works and Government Services Canada make important contributions to the regime.

The ML threat assessment examined 21 criminal activities in Canada that are most associated with generating proceeds of crime that may be laundered. It also examined the ML threat emanating from third-party money laundering, which includes money mules, nominees and professional money launderers. The ML threat was rated very high for corruption and bribery, counterfeiting and piracy, certain types of fraud, illicit drug trafficking, illicit tobacco smuggling and trafficking, and third-party money laundering. Transnational organized crime groups (OCGs) and professional money launderers are the key ML threat actors in the Canadian context. Many of these threats are similar to those faced by several other developed and developing countries.

The TF threat was assessed for the groups and actors that are of greatest concern to Canada. The assessment indicates that there are networks operating in Canada that are suspected of raising, collecting and transmitting funds abroad to various terrorist groups. Despite these activities, the TF threat in Canada is not as pronounced as in other regions of the world, where weaker ATF regimes can be found and where terrorist groups have established a foothold, both in terms of operations and financing their activities.

The inherent ML/TF vulnerabilities are presented for 27 economic sectors and financial products. The assessment indicates that there are many sectors and products that are highly vulnerable to money laundering and terrorist financing. Of the assessed areas, domestic banks, corporations (especially private for-profit corporations), certain types of money services businesses and express trusts were rated the most vulnerable, or very high. The vulnerability was rated high for 16 sectors and products, medium for five sectors and products and low for one sector. Many of the sectors and products are highly accessible to individuals in Canada and internationally and are associated with a high volume, velocity and frequency of transactions. Many conduct a significant amount of transactional business with high-risk clients and are exposed to high-risk jurisdictions that have weak AML/ATF regimes and significant ML/TF threats. There are also opportunities in many sectors to undertake transactions with varying degrees of anonymity and to structure transactions in a complex manner.

By connecting the threats with the inherently vulnerable sectors or products, the assessment revealed that a variety of them are exposed to very high inherent ML risks involving threat actors (e.g., OCGs and third-party money launderers) laundering illicit proceeds generated from 10 main types of profit-oriented crimes. The assessment also identified five very high inherent TF risk scenarios that involve five different sectors that have been assessed to be very highly vulnerable to terrorist financing, combined with one high TF threat group of actors.

This risk assessment is an analysis of Canada's current situation and represents a key step forward in providing the basis for the AML/ATF regime to promote a greater shared understanding of inherent ML/TF risks in Canada on an ongoing basis. The assessment will help to continue to enhance Canada's AML/ATF regime, further strengthening the comprehensive approach it already takes to risk mitigation and control domestically, including with the private sector and with international partners.

Introduction

Money laundering and terrorist financing (ML/TF) compromise the integrity of the financial system and are a threat to global safety and security. Money laundering is the process used by criminals to conceal or disguise the origin of criminal proceeds to make them appear as if they originated from legitimate sources. Money laundering frequently benefits the most successful and profitable domestic and international criminals and OCGs. Terrorist financing, in contrast, is the collection and provision of funds from legitimate or illegitimate sources for terrorist activity. It supports and sustains the activities of domestic and international terrorists that can result in terrorist attacks in Canada or abroad causing loss of life and destruction.

The Government of Canada is committed to combating money laundering and terrorist financing, while respecting the Constitutional division of powers, the *Canadian Charter of Rights and Freedoms* and the privacy rights of Canadians. The Government of Canada has put in place a robust and comprehensive anti-money laundering and anti-terrorist financing (AML/ATF) regime. The regime is operated by 11 federal departments and agencies, each responsible for certain elements of it, as well as other departments and agencies that support the regime's efforts, coordinated by the Department of Finance Canada.[2] Provincial and municipal law enforcement bodies and provincial financial sector and other regulators are also involved in combating these illicit activities. Within the private sector, there are almost 31,000 Canadian financial institutions and designated non-financial businesses and professions (DNFBPs)[3] with reporting obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), known as reporting entities, that play a critical frontline role in efforts to prevent and detect money laundering and terrorist financing.

The regime's understanding of ML/TF risks plays a key role in its ability to effectively combat these illicit activities. That understanding helps to support the policy-making process to more effectively address vulnerabilities and other potential gaps in the regime. It helps to inform operational decisions about priority setting and resource allocation to combat threats and to focus on those that have the greatest economic, social and political consequences. It also plays a central role in how the private sector applies its risk-based approaches and mitigates its risks. Overall, the regime's understanding of risks helps to ensure that it is focused on adequately mitigating the risks of greatest concern to Canada.

[2] The 11 federal AML/ATF regime partners are: the Canada Border Services Agency, the Canada Revenue Agency, the Canadian Security Intelligence Service, the Department of Finance Canada, the Financial Transactions and Reports Analysis Centre of Canada, Foreign Affairs, Trade and Development Canada, the Department of Justice Canada, the Office of the Superintendent of Financial Institutions, the Public Prosecution Service of Canada, Public Safety Canada and the Royal Canadian Mounted Police. Industry Canada and Public Works and Government Services Canada also support the work of the regime.

[3] Financial Transactions and Reports Analysis Centre of Canada. *Results Through Financial Intelligence*. Annual Report 2013. Ottawa, 2013.

Given the central role that the understanding of risk plays in the regime, the Government of Canada has built on existing practices to develop a more comprehensive assessment to identify and assess ML/TF risks in Canada.[4] This assessment consists of a foundational risk assessment and a process to periodically update the results. This report presents the results of the assessment of inherent ML/TF risks in Canada. These are the fundamental risks in Canada, which the AML/ATF regime seeks to control and mitigate. The report specifically examines these risks in relation to key economic sectors and financial products in Canada and it assesses the extent to which key features make Canada vulnerable to being exploited by threat actors to launder funds and to finance terrorism. It is meant to raise awareness about Canada's risk context and the main characteristics that expose these sectors and products to ML/TF risks in Canada. Properly understanding these inherent risks is critical in being able to identify and apply measures to effectively mitigate them. In this regard, the Government expects that this report will be used by financial institutions and other reporting entities to better understand how and where they may be most vulnerable and exposed to inherent ML/TF risks and to ensure that these risks are being effectively mitigated. It will also be used by policy makers and operational agencies to set priorities and assess the effectiveness of measures to address ML/TF risks.

The first chapter describes Canada's AML/ATF regime and the comprehensive approach taken to mitigate the inherent ML/TF risks that are the subject of this assessment. The second chapter provides a general description of the methodology used to assess the inherent ML/TF risks in Canada, while the subsequent three chapters present the results of the assessment of the ML/TF threats and inherent ML/TF vulnerabilities. These components of risk are then combined in the final chapter to provide an assessment of the inherent ML/TF risks in Canada, including setting out a number of inherent risk scenarios.

The content of the report reflects what was available and deemed pertinent up to December 31, 2014, and it excludes some information, intelligence and analysis for reasons of national security.

[4] In addition to the 11 federal regime partners, the Bank of Canada, Defence Research and Development Canada (an agency of the Department of National Defence), Environment Canada, Industry Canada, the Ontario Provincial Police and the Sûreté du Québec contributed to the risk assessment.

Chapter 1: Risk Mitigation

Canada has a comprehensive AML/ATF regime that provides a coordinated approach to mitigating the inherent ML/TF risks identified in this assessment and combating money laundering and terrorist financing more broadly. This chapter briefly reviews the framework that exists in Canada to prevent, detect and disrupt money laundering and terrorist financing. The regime also complements the work of law enforcement and intelligence agencies engaged in fighting domestic and transnational organized crime as well as terrorism, notably as part of Canada's Counter-Terrorism Strategy.

The AML/ATF regime is operated by 11 federal regime partners, eight of which receive dedicated funding totalling approximately $70 million annually. The eight funded partners are the Canada Border Services Agency (CBSA), the Canada Revenue Agency (CRA), the Canadian Security Intelligence Service (CSIS), the Department of Finance Canada, the Department of Justice Canada, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), the Public Prosecution Service of Canada (PPSC) and the Royal Canadian Mounted Police (RCMP). Although not receiving dedicated funding, Foreign Affairs, Trade and Development Canada (DFATD), the Office of the Superintendent of Financial Institutions (OSFI) and Public Safety Canada make important contributions to the regime.

The regime is also supported by other federal departments, such as Industry Canada and Public Works and Government Services Canada (PWGSC), as well as provincial financial sector and other regulators and provincial and municipal law enforcement agencies. Within the private sector, there are almost 31,000 Canadian financial institutions and DNFBPs with reporting obligations under the PCMLTFA playing a critical frontline role in efforts to combat money laundering and terrorist financing.

The AML/ATF regime operates on the basis of three interdependent pillars: (i) policy and coordination; (ii) prevention and detection; and (iii) disruption.

(i) Policy and Coordination

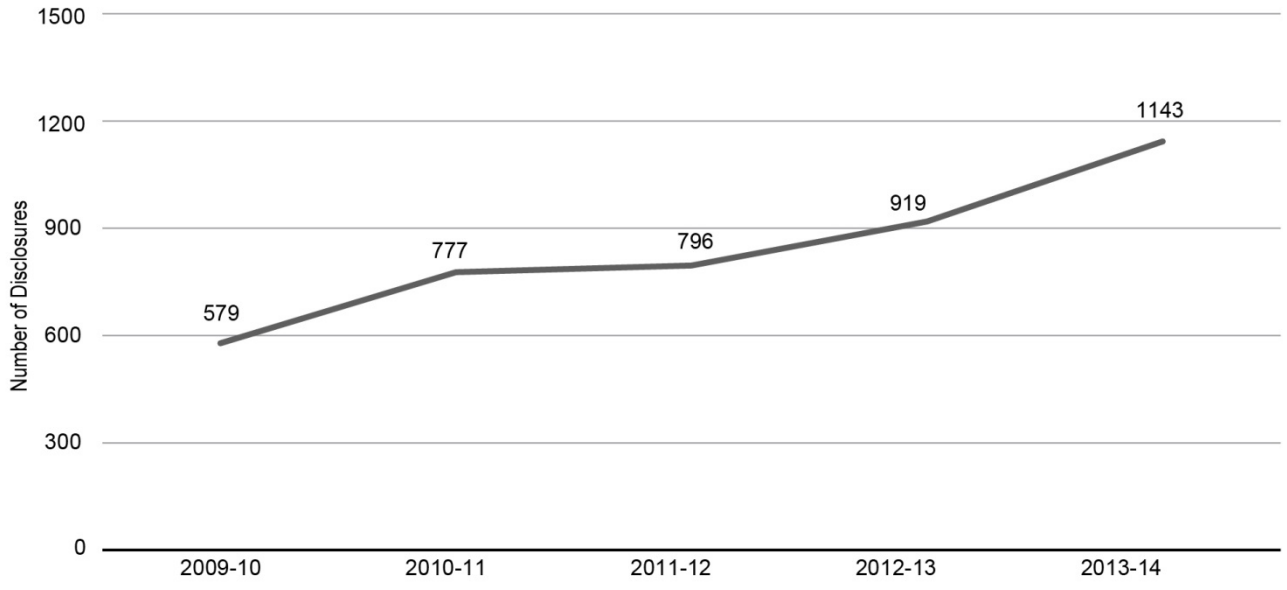
The first pillar consists of the regime's policy and legislative framework as well as its domestic and international coordination, which is led by the Department of Finance Canada. The PCMLTFA is the legislation that establishes Canada's AML/ATF framework, supported by other key statutes, including the *Criminal Code*.

The PCMLTFA requires prescribed financial institutions and DNFBPs, known as reporting entities, to identify their clients, keep records and establish and administer an internal AML/ATF compliance program. The PCMLTFA creates a mandatory reporting system for suspicious financial transactions, large cross-border currency transfers and other prescribed transactions. It also creates obligations for the reporting entities to identify ML/TF risks and to put in place measures to mitigate those risks, including through ongoing monitoring of transactions and enhanced customer due diligence measures.

The PCMLTFA also establishes an information sharing regime where, under prescribed conditions respecting individuals' privacy, information submitted by the reporting entities is analyzed by FINTRAC and the results disseminated to regime partners and the general public. The information disseminated under the PCMLTFA can be intelligence used to support domestic and international partners in the investigation and prosecution of ML/TF related offences. The information can also be in the form of trend and typology reports used to educate the public, including the reporting entities, on ML/TF issues.

Chart 1 below provides the annual number of cases disclosed by FINTRAC to regime partners from 2009–10 to 2013–14. For example, in 2013–14, FINTRAC made 1,143 disclosures to regime partners. Of these, 845 were associated with money laundering, while 234 dealt with cases of terrorist activity financing and other threats to the security of Canada. Sixty-four disclosures dealt with all three areas.

Chart 1
FINTRAC Case Disclosures from 2009–10 to 2013–14[5]



Given the number of regime participants and the complexity of the issues, the effective regime-wide coordination of strategic, policy and operational matters is important. In addition, given that many serious forms of money laundering and terrorist financing often have international dimensions, Canada's cooperation internationally is also a key component. International cooperation is a core practice of the regime, and for many partners it is conducted on a routine basis, in particular in supporting investigations and prosecutions of money laundering and terrorist financing, including through formal mutual legal assistance led by the Department of Justice Canada.

[5] Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). *Deter and Detect Money Laundering and Terrorist Financing*. FINTRAC Annual Report 2014. Ottawa, 2014.

Canada recognizes that protecting the integrity of the international financial system from money laundering and terrorist financing requires playing a strong international role to broadly increase legal, institutional and operational capacity globally. Canada's international AML/ATF initiatives are advanced through the leadership role that it plays in the Financial Action Task Force (FATF), the G-7, the G-20, the Egmont Group of Financial Intelligence Units and, most recently, the counter-financing work stream of the Anti-Islamic State of Iraq and the Levant (ISIL) Coalition.[6]

Canada is a founding member of the FATF and an active participant. The FATF develops international AML/ATF standards, and monitors their effective implementation among the 36 FATF members and the more than 180 countries in the global FATF network through peer reviews and public reporting. The FATF also leads international efforts related to policy development and risk analysis, and identifies and reports on emerging ML/TF trends and methods. This work helps to ensure that countries have the appropriate tools in place to address ML/TF risks. Canada also provides expertise and funding to increase AML/ATF capacity in countries with weaker regimes, including through the Counter-Terrorism Capacity Building Program and the Anti-Crime Capacity Building Program, which are led by DFATD.

(ii) Prevention and Detection

The second pillar provides strong measures to prevent individuals from placing illicit proceeds or terrorist-related funds into the financial system, while having correspondingly strong measures to detect the placement and movement of such funds. At the centre of this prevention and detection approach are the reporting entities, specifically the financial institutions and DNFBPs, that are the gatekeepers of the financial system in implementing the various measures under the PCMLTFA, and the regulators, principally FINTRAC and OSFI, which supervise them.

The transparency of corporations and trusts contributes to preventing and detecting money laundering and terrorist financing, including the requirements for financial institutions to identify the beneficial owners of the corporations and trusts with whom they do business. Provincial and federal corporate laws and registries and securities regulation also contribute to preventing and detecting money laundering and terrorist financing in Canada.

(iii) Disruption

The final pillar deals with the disruption of money laundering and terrorist financing. Regime partners, such as CSIS, the CBSA and the RCMP, supported by FINTRAC's intelligence gathering and analysis activities, undertake financial investigations in relation to money laundering, terrorist financing and other profit-oriented crimes. The CRA also plays an important role in investigating tax evasion and its associated money laundering, and in detecting charities that are at risk and ensuring that they are not being abused to finance terrorism. The PPSC ensures that crimes are prosecuted to the fullest extent of the law.

The restraint and confiscation of proceeds of crime is also an important law enforcement component of the regime. PWGSC manages all seized and restrained property for criminal cases prosecuted by the Government of Canada. The CBSA enforces the Cross-Border Currency Reporting Program, and transmits information from reports and seizures to FINTRAC.

[6] The Anti-ISIL (ISIS) Coalition consists of 60 countries that are working together to counter the threat of ISIS, including its financing.

The regime also has a robust terrorist listing process to freeze terrorist assets, pursuant to the *Criminal Code* and the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*, which is led by Public Safety Canada and DFATD, respectively. Canada currently has 90 terrorist-related listings under this process.[7]

Oversight and Enhancements

Canada's AML/ATF regime is reviewed on a regular basis by a variety of bodies to ensure that it operates effectively and is in keeping with its legislative mandate, while respecting the Constitutional division of powers, the *Canadian Charter of Rights and Freedoms* and the privacy rights of Canadians.

The Parliament of Canada undertakes a comprehensive review of the PCMLTFA every five years and the Office of the Privacy Commissioner of Canada is required to conduct a privacy audit of FINTRAC every two years. Among other periodic reports,[8] reviews and audits, the regime's performance is statutorily mandated to be reviewed every five years. Internationally, Canada's regime is assessed by the FATF against its global AML/ATF standards and is subject to the FATF's follow-up process.

The Government announced a series of measures to enhance the AML/ATF regime in its 2014 *Economic Action Plan* (the budget), which received Royal Assent in June 2014. These legislative and regulatory changes will strengthen customer due diligence requirements, improve compliance, monitoring and enforcement, strengthen information sharing and disclosure, and authorize the Minister of Finance to issue countermeasures against jurisdictions and foreign entities that have weak ML/TF controls. To strengthen Canada's targeted financial sanctions regime, enhancements will also be made to reduce the burden imposed on the private sector to implement financial sanctions.

Canada is committed and engaged, both domestically and internationally, in the fight against money laundering and terrorist financing. The risks are present and evolving. Canada has a strong regime and it is committed to take appropriate action to mitigate the ML/TF risks identified in this assessment and to continue to assess risks on an ongoing basis.

Implementation

The Government of Canada expects that this report will be used by financial institutions and other reporting entities to contribute to their understanding of how and where they may be most vulnerable and exposed to inherent ML/TF risks. FINTRAC and OSFI will include relevant information related to inherent risks in their respective guidance documentation to assist financial institutions and other reporting entities in integrating such information in their own risk assessment methodology and processes so that they can effectively implement controls to mitigate ML/TF risks. Members of the oversight of the regime will also use the results of the risk assessment to inform policy and operations as part of the ongoing efforts to combat money laundering and terrorist financing.

---

[7] As of December 31, 2014.

[8] See, for example, the Department of Finance Canada's 2014–15 *Report on Plans and Priorities*, which explains the AML/ATF regime's spending plans, priorities and expected results, available at http://www.fin.gc.ca/pub/rpp/2014-2015/st-ts-04-eng.asp#st4, as well as its *Departmental Performance Report*, available for 2013–14, at http://www.fin.gc.ca/pub/rpp/2014-2015/st-ts-04-eng.asp#st4.

Chapter 2: Overview of the Methodology to Assess Inherent Money Laundering and Terrorist Financing Risks in Canada

Overview

The Government of Canada has developed an assessment to identify and understand inherent ML/TF risks in Canada, and their relative importance, through a rigorous and systematic analysis of qualitative and quantitative data and expert opinion about money laundering and terrorist financing. The assessment provides the basis to think critically and systematically about ML/TF risks on an ongoing basis, and to promote a common understanding of these risks. This chapter provides an overview of the risk assessment methodology.

Scope of the Methodology

The methodology assesses the inherent ML/TF risks, which are the fundamental risks in Canada that are the subject of the broad suite of government and private sector controls and activities to effectively mitigate those risks. Understanding Canada's risk context and the main characteristics that expose sectors and products to inherent ML/TF risks in Canada is important in being able to identify and apply measures to effectively mitigate them.

The basis of the risk assessment is that risk is a function of three components: threats, inherent vulnerabilities and consequences. Furthermore, risk is viewed as a function of the likelihood of threat actors exploiting inherent vulnerabilities to launder illicit proceeds or fund terrorism and the consequences should this occur.

Key Definitions

ML/TF threat: a person or group who has the intention, or may be used as a witting or unwitting facilitator, to launder proceeds of crime or to fund terrorism.

Inherent ML/TF vulnerabilities: the properties in a sector, product, service, distribution channel, customer base, institution, system, structure or jurisdiction that threat actors can exploit to launder proceeds of crime or to fund terrorism.

Consequences of ML/TF: the negative impact that money laundering and terrorist financing has on a society, economy and government.

Likelihood of ML/TF: the likelihood of ML/TF threat actors exploiting inherent vulnerabilities.

The ML threat was assessed separately from the TF threat. Although there is some overlap, the nature of these criminal activities is different, warranting separate assessments. In contrast, the assessment of the ML/TF vulnerabilities did not require such separation since ML/TF threats seek to exploit the same set of vulnerable features and characteristics of products and services offered by sectors to launder proceeds of crime or to fund terrorism.

As a first step, the core components of the ML/TF threats and inherent vulnerabilities were identified and categorized. For these categories, criteria were developed to rate the extent of the ML/TF threats and the inherent ML/TF vulnerabilities. These ratings were then used to assess the likelihood of money laundering and terrorist financing, which involved matching the threats with the inherent vulnerabilities, while considering the consequences of money laundering and terrorist financing, which then resulted in the assessment of inherent ML/TF risks. The important types of economic, social and political consequences of money laundering and terrorist financing are identified in the annex.

Assessing the ML/TF Threats and Inherent Vulnerabilities

During a series of workshops, experts from Canada's AML/ATF regime used their expertise and knowledge to assess the ML/TF threats and inherent vulnerabilities of sectors and products using the rating criteria set out in the methodology. In addition, the experts harnessed the regime's store of information, data and analysis to rate each threat and vulnerability. Experts provided ratings of low, medium, high or very high using the defined rating criteria to assess the range of threats and inherent vulnerabilities. The individual ratings were then aggregated to arrive at an overall rating.

The ML threat in Canada was assessed for 21 criminal activities that are most associated with generating proceeds of crime in Canada as well as the threat from third-party money laundering. The ML threat was rated for each criminal activity against four rating criteria: the extent of the threat actors' knowledge, skills and expertise to conduct money laundering; the extent of the threat actors' network, resources and overall capability to conduct money laundering; the scope and complexity of the ML activity; and the magnitude of the proceeds of crime being generated annually from the criminal activity. The ML threat rating results are presented in Chapter 3.

The TF threat in Canada was assessed for 10 terrorist groups as well as for foreign fighters, defined as those who travel abroad to support and fight alongside terrorist groups. The TF threat of these groups was assessed against six rating criteria: the extent of the threat actors' knowledge, skills and expertise to conduct terrorist financing; the extent of the threat actors' network, resources and overall capability to perform TF operations; the scope and global reach of their TF operations; the estimated value of their fundraising activities annually in Canada; the extent of the diversification of their methods to collect, aggregate, transfer and use funds; and the extent to which the funds may be used against Canadian domestic and international interests. The TF threat rating results are presented in Chapter 4.

The assessment considered the inherent features of Canada that may be exploited by threat actors for illicit purposes (e.g., geography, economy, demographics). Against this, the inherent ML/TF vulnerabilities were assessed for 27 economic sectors and products. The areas were assessed against five rating criteria: the inherent characteristics of the assessed areas (size, complexity, accessibility and integration); the nature and extent of the vulnerable products and services; the business relationship with its clients; geographic reach (extent of activity with high-risk jurisdictions and locations of concern); and the degree of anonymity and complexity afforded by the delivery channels. Canada's inherent features and sector and product vulnerability assessment results are presented in Chapter 5.

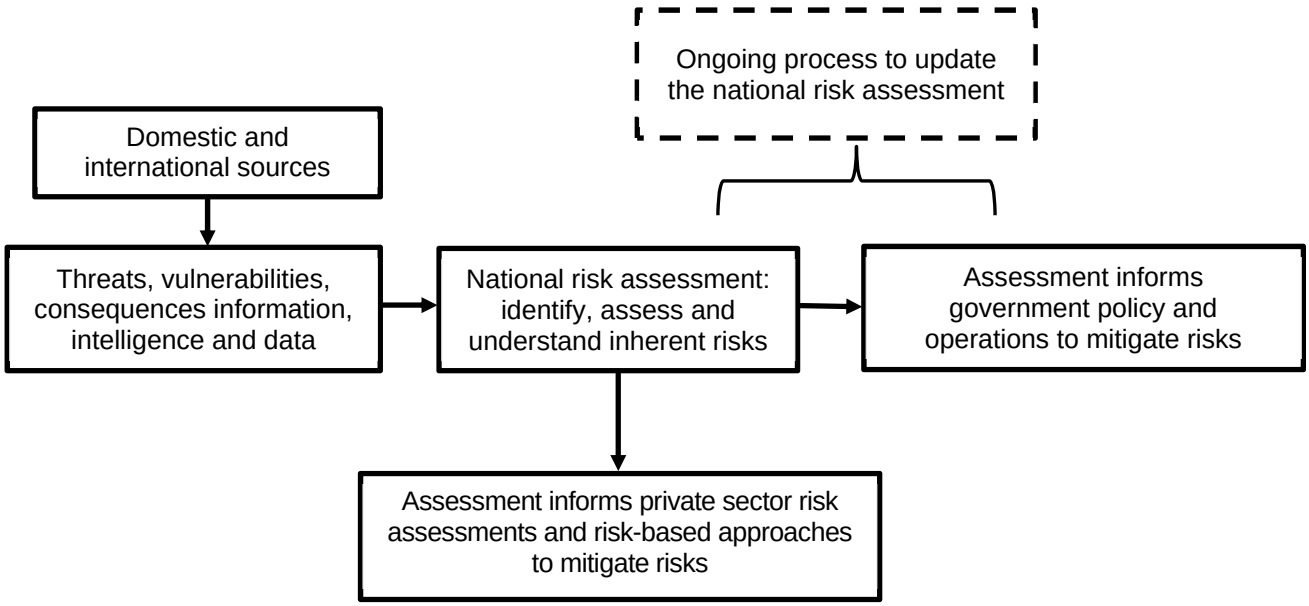
Assessing the Inherent ML/TF Risks

The inherent ML/TF risks were assessed based on the likelihood of money laundering or terrorist financing occurring while considering the consequences of such events. The likelihood of the money laundering or terrorist financing was assessed by matching the ML/TF threats with the inherently vulnerable sectors and products through the ML/TF methods and techniques that are used by threat actors to exploit these sectors and products. Inherent ML/TF risk scenarios were created from these judgements and used to plot the inherent risk results by sector, product or service in a number of illustrative charts. This presentation allows one to compare the different levels of exposure of various sectors and products to inherent ML/TF risks in Canada.[9] The results are presented in Chapter 6.

Risk Assessment and Mitigation Framework

The inherent risk assessment and its methodology should be viewed as one core element of a larger framework to support an ongoing process to identify, assess and mitigate ML/TF risks in Canada. This framework is summarized below in Chart 2.

Chart 2
Canada's ML/TF Risk Assessment Framework



[9] In interpreting the results, one should note that threat actors can abuse multiple sectors and products as part of the same scheme.

Chapter 3: Assessment of Money Laundering Threats

Overview

The ML threat assessment indicates that there is a broad range of profit-oriented crime conducted by a variety of threat actors in Canada. This criminal activity generates billions of dollars in proceeds of crime annually that might be laundered.

Threat actors who perpetrate profit-oriented crime in Canada range from unsophisticated, criminally inclined individuals, including petty criminals and street gang members, to criminalized professionals[10] and organized crime groups (OCGs).[11] According to the Criminal Intelligence Service Canada, there are over 650 OCGs operating in Canada. Of these threat actors, transnational OCGs are the most threatening both in terms of generating the most proceeds of crime and in the intensity of efforts to launder the proceeds. The most powerful transnational OCGs in Canada, consisting of factions with ties to Italy and Asia, and certain Outlaw Motorcycle Gangs, are involved in multiple lines of profit-oriented crime and have the infrastructure and network to launder large amounts of proceeds of crime on an ongoing basis through multiple sectors using a diverse set of methods to avoid detection and disruption. These OCGs have strong networks and strategic relationships with other criminal organizations domestically and internationally (e.g., Mexican and Columbian drug cartels).

Transnational OCGs appear to frequently rely on professional money launderers to establish and administer schemes to launder the proceeds emanating from their criminal activities. Large-scale, sophisticated ML operations rarely take place in Canada without the employ of professional money launderers. The nexus between transnational OCGs and professional money launderers is a key ML threat in Canada. In addition to professional money launderers, unwitting and witting facilitators appear to play a key role in supporting the perpetration of profit-oriented crime and the laundering of criminal proceeds. The corruption of individuals and the infiltration of private and public institutions is also a notable concern as it establishes the conditions to foster money laundering and other criminal activity.

[10] An individual who holds or purports to hold a professional designation and title in an area dealing with financial matters who uses their professional knowledge and expertise to commit or wittingly facilitate a profit-oriented criminal activity. Criminalized professionals would include lawyers, accountants, notaries, investment and financial advisors, stock brokers and mortgage brokers.

[11] The majority of OCGs operate and concentrate their activities in the British Columbia lower mainland, Southern Ontario and the greater Montreal region, or, more specifically within these regions, in Canada's three largest cities: Vancouver, Toronto and Montreal.

The conduct of larger-scale profit-oriented crime often has a significant international dimension and tends to be supported by transnational distribution networks. These networks exhibit a high level of sophistication and capability in moving illicit goods into (destination), out of (source) or through (transit) Canada, including stolen goods, counterfeit products, illicit drugs, illicit firearms, wildlife and people. Mapped against this sophisticated illicit global supply chain appears to be a correspondingly sophisticated flow of illicit funds and a network to launder these funds. Some threat actors appear to have the sophistication and capability to exploit the global trade and financial systems to clandestinely deal in the transnational trafficking of illicit goods and launder the illicit proceeds. This capability includes having criminal associates in legitimate positions of employment in ports of entry, or controlling employees using methods like bribery, blackmail or extortion, in order to have insiders to facilitate the movement of illicit goods and proceeds into and out of Canada. These threat actors also appear to have the ability to exploit the AML/ATF weaknesses of foreign countries or situations of unrest or conflicts occurring in foreign countries to facilitate money laundering and other criminal activities.

Discussion of the Money Laundering Threat Assessment Results

Experts assessed the ML threat for 21 profit-oriented crimes and third-party money laundering using the following criteria:

1) *Sophistication:* the extent to which the threat actors have the knowledge, skills and expertise to launder criminal proceeds and avoid detection by authorities.
2) *Capability:* the extent to which the threat actors have the resources and network to launder criminal proceeds (e.g., access to facilitators, links to organized crime).
3) *Scope:* the extent to which threat actors are using financial institutions, DNFBPs and other sectors to launder criminal proceeds.
4) *Proceeds of Crime:* the magnitude of the estimated dollar value of the proceeds of crime being generated annually from the profit-oriented crime.

As presented in Table 1, eight profit-oriented crimes and third-party money laundering were rated as a very high ML threat, eight were rated high, four were rated medium and one was rated low.

Table 1
Overall Money Laundering Threat Rating Results

Very High Threat Rating	
Capital Markets Fraud	Mass Marketing Fraud
Commercial (Trade) Fraud	Mortgage Fraud
Corruption and Bribery	Third-Party Money Laundering
Counterfeiting and Piracy	Tobacco Smuggling and Trafficking
Illicit Drug Trafficking	
High Threat Rating	
Currency Counterfeiting	Illegal Gambling
Human Smuggling	Payment Card Fraud
Human Trafficking	Pollution Crime
Identity Theft and Fraud	Robbery and Theft
Medium Threat Rating	
Firearms Smuggling and Trafficking	Loan Sharking
Extortion	Tax Evasion/Tax Fraud
Low Threat Rating	
Wildlife Crime	

Very High Money Laundering Threats

ML Threat from Capital Markets Fraud: Securities fraud, including investment misrepresentation and other forms of capital markets fraud-related misconduct, such as illegal insider trading and market manipulation, occurs in Canada. Over one-quarter of Canadians believe that they have been approached with a possible fraudulent investment opportunity.[12] Although it is challenging to be definitive on the actual amount of reported losses, capital markets fraud is a rich source of proceeds of crime. For instance, in 2009, two Canadians were arrested and charged with fraud, theft and money laundering for orchestrating a Ponzi-style investment fraud that resulted in defrauding about 2,000 investors of between $100 million and $200 million. Most of the large-scale securities frauds in Canada have been perpetrated by criminalized professionals, who have (or purport to have) professional credentials and financial expertise. Perpetrating capital markets fraud, especially the larger, more elaborate national and international schemes (such as Ponzi schemes), requires significant knowledge and expertise and, often, access to a network of witting or unwitting facilitators to help orchestrate and perpetrate the fraud. Alongside the sophisticated fraudulent schemes, there are sophisticated ML schemes designed to integrate and legitimize the fraud-related proceeds into the financial system. ML schemes in this context would involve a range of sectors and methods, including shell or front companies, electronic funds transfers (EFTs), structuring and/or smurfing deposits[13] and nominees[14].

ML Threat from Commercial (Trade) Fraud: The transnational OCGs and the terrorist actors and networks that generate the most illicit proceeds from commercial fraud are very sophisticated and capable, with the knowledge, expertise and international relationships to manipulate multiple trade chains and trade financing vehicles, often operating under the cover of front and/or legitimate companies. The sophistication and capability in terms of conducting the commercial fraud also extends to laundering its proceeds. The threat actors in this space appear to use multiple sectors in Canada and internationally to launder the proceeds. Actors are also suspected to use domestic and foreign front and shell companies, to commingle illicit funds within legitimate businesses (both cash and non-cash intensive businesses), and to use third-party money launderers, including professional money launderers. In one Canadian case, border agents detected a scheme that appeared to involve trade fraud and trade-based money laundering. Under this scheme, a criminal organization allegedly manipulated shipping documents and engaged in fraudulent transactions to overbill (invoice) a colluding foreign importer for a commodity. Once imported, the foreign importer would pay the exporter the inflated amount, consisting of the legitimate proceeds from the sale of the commodity and illicit proceeds.

---

[12] Canadian Securities Administrators (CSA). *2012 CSA Investor Index*. October 16, 2012.

[13] Structuring is a money laundering technique whereby criminal proceeds (i.e., cash or monetary instruments) are deposited at various institutions by individuals in amounts less than what these institutions would normally be required to report to the authorities under AML/ATF legislation. After the cash has been deposited, the funds are then transferred to a central account. Smurfing is a money laundering technique involving the use of smurfs (i.e., multiple individuals) to conduct structuring activity at the same time or within a very short period of time.

[14] Nominees are individuals with familial or business ties to the threat actors who may be used periodically by criminals to knowingly assist in money laundering. Nominees are essentially directed by the criminals on how to launder the funds. The methods used tend to be fairly basic and can be used to launder smaller amounts of proceeds of crime.

ML Threat from Corruption and Bribery: Corruption and bribery in Canada comes in many different forms, ranging from small-scale bribe-paying activity to obtain an advantage or benefit to large-scale schemes aimed at illegally obtaining lucrative public contracts. The ML threat from corruption and bribery is rated very high principally due to the size of the public procurement sector and the opportunities that this presents to illegally obtain high-value contracts. In addition to corrupt activities carried out domestically, some Canadian companies have also been implicated in the paying of bribes to foreign officials to advance their company's business interests. OCGs that have the ability to infiltrate the public procurement process have the sophistication and capability to launder large amounts of illicit funds, using a variety of ML sectors and methods, including banks, money services businesses (MSBs), high-end goods, investments and front companies. Lawyers, accountants, professional money launderers and public officials may also be used to facilitate the laundering of corruption-related proceeds.

ML Threat from Counterfeiting and Piracy: The prevalence of counterfeit and pirated products in Canada has grown significantly over the past decade, in terms of both the amount and the selection of products available for sale. China is the primary source of counterfeit products imported into Canada. Toronto, Montreal and Vancouver are the key entry points for these products. OCGs appear to have established links and have tapped into global illicit distribution channels, allowing them to bring increasingly more counterfeit products into Canada. Given the sophistication and capability needed for counterfeiting operations, actors involved in these operations appear to be highly sophisticated and capable in terms of laundering the proceeds from counterfeit goods. Having the sophistication and capability to transfer funds in a clandestine way domestically and internationally would appear to be fundamental to the sustainability of the operations given the large numbers of individuals that expect payment throughout the supply chain. All indications suggest that the counterfeit and pirated goods market is substantial and continues to grow rapidly in Canada.

ML Threat from Illicit Drug Trafficking: The illicit drug market is the largest criminal market in Canada, with cannabis, cocaine, amphetamine-type stimulants and heroin comprising a significant share of this market. Although numerous threat actors engage in drug trafficking, transnational OCGs are the most threatening and are the most powerful actor in this market. Transnational OCGs exhibit a very high level of sophistication, capability and scope in their ML activities. They are often connected to other OCGs, and multiple organized networks at both the domestic and international levels, to launder drug-related proceeds. OCGs also have access to professional money launderers and facilitators (such as money mules[15] and nominees), and often have control over a number of companies (front and/or legitimate) as part of their ML operations. OCGs use a large number of ML methods, including the use of multiple sectors, commingling of illicit funds within legitimate businesses, domestic and foreign front and shell companies, bulk cash smuggling, trade-based money laundering, virtual currencies and prepaid cards.

[15] Money mules are those who facilitate fraud and ML schemes, often unknowingly (e.g., moving money through international EFTs on behalf of criminals). They are often located in different jurisdictions from where the crimes are committed and they tend to exhibit very low levels of sophistication and capability and are essentially directed to undertake certain actions to launder the funds.

ML Threat from Mass Marketing Fraud (MMF): MMF is very prevalent in Canada and the scams associated with MMF have been growing in frequency and sophistication over time. Toronto, Montreal, Vancouver, Calgary and Edmonton are considered to be main bases of operation for MMF schemes. Common types of scams in Canada include service scams, prize scams and extortion scams. In March 2014, law enforcement arrested 23 individuals in Montreal in connection with allegedly orchestrating a telemarketing scheme. The scheme defrauded thousands of victims, mostly senior citizens, of at least $16 million. The majority of MMF connected to Canada is carried out by OCGs, which use a range of ML methods and sectors, including smurfing, structuring, the use of nominees and money mules, shell companies, MSBs, the informal banking system and front companies. Although reported losses averaged about $60 million annually from 2009 to 2013 and totalled $73 million in 2014,[16] the actual losses are viewed as being much higher, in the hundreds of millions of dollars annually, given that MMF is generally under-reported by victims.

ML Threat from Mortgage Fraud: Mortgage fraud occurs across Canada, but it is most prevalent in large urban areas in Quebec, Ontario, Alberta and British Columbia. Mortgage fraud schemes are often undertaken to facilitate another criminal activity (e.g., illicit drug production and distribution, money laundering) or directly for profit. OCGs conduct the vast majority of mortgage fraud in Canada. To carry out this crime, OCGs are believed to rely on the assistance of witting or unwitting professionals in the real estate sector, including agents, brokers, appraisers and lawyers. OCGs frequently use straw buyers to orchestrate the mortgage fraud. OCGs conducting mortgage fraud schemes are, for the most part, suspected to be highly sophisticated and capable in terms of the associated ML activity. Professional money launderers have been used to launder mortgage fraud-related proceeds. It is suspected that criminally inclined real estate professionals, notably real estate lawyers, are used to facilitate money laundering. OCGs involved in mortgage fraud appear to launder funds through banks, MSBs, legitimate businesses and trust accounts. Victims of mortgage fraud, which can include Canadian homeowners and lending institutions, can incur significant financial losses.

ML Threat from Third-Party Money Laundering: Large-scale and sophisticated ML operations in Canada, notably those connected to transnational OCGs, frequently involve third-party money launderers, namely professional money launderers, nominees or money mules. Of the three, professional money launderers pose the greatest threat both in terms of laundering domestically generated proceeds of crime as well as laundering foreign-generated proceeds through Canada (and through its financial institutions). Professional money launderers specialize in laundering proceeds of crime and generally offer their services to criminals for a fee. These individuals are in the business of laundering large sums of money and by their very nature have the sophistication and capability to support complex, sustainable and long-term ML operations. As a group, they use many different methods and techniques, sometimes within the same scheme, to launder money that is challenging to detect. The professional money launderers are of principal concern since they are often the masterminds behind large-scale ML schemes and are frequently used by the most powerful transnational OCGs in Canada. Nominees and money mules are less of a threat, but nonetheless important because they may be critical in carrying out or facilitating ML schemes, both large and small.

[16] Compiled from the annual statistical reports of the Canadian Anti-Fraud Centre.

ML Threat from Tobacco Smuggling and Trafficking: The largest quantity of illicit tobacco found in Canada originates from the manufacturing operations based on Aboriginal reserves that straddle Quebec, Ontario and New York State. Given the profitable nature of the illicit tobacco trade, there is significant organized crime involvement in the smuggling and trafficking of illicit tobacco across the Canada-U.S. border. The OCGs involved in the illicit tobacco trade are some of the most sophisticated and threatening in Canada. These OCGs have the sophistication and capability to use a variety of sectors and methods (e.g., commingling, structuring, smurfing and refining) to launder the large amount of cash proceeds that are generated from the illicit tobacco smuggling and trafficking. In addition to the proceeds of crime generated from the reserve-manufactured illicit tobacco trade, proceeds of crime are generated from counterfeit cigarettes imported from overseas (primarily from China); cigarettes produced legally in Canada, the United States or abroad, and sold tax-free; and "fine cut" tobacco imported illegally, mostly by Canadian-based manufacturers.

High Money Laundering Threats

ML Threat from Currency Counterfeiting: The large-scale production of Canadian counterfeit currency is primarily undertaken by OCGs. OCGs generally conduct currency counterfeiting alongside other profit-oriented criminal activities. OCGs that produce and distribute high-quality counterfeit currency are suspected to exhibit a high level of sophistication and capability in terms of the methods used to launder the proceeds arising from currency counterfeiting. They appear to have the network and infrastructure in place to successfully launder, through a number of sectors, predominantly cash proceeds arising not only from currency counterfeiting but also from their other criminal activities.

ML Threat from Human Smuggling: Canada is a target for increasingly sophisticated global human smuggling networks. Human smuggling is believed to be carried out primarily by a small number of OCGs that are well-established, having developed the sophistication and capability to smuggle humans for profit across multiple borders, which requires a high-degree of organization, planning and international connections. OCGs in this space are suspected to be very sophisticated and capable in terms of laundering the proceeds of crime arising from human smuggling. A review of suspected ML cases largely related to human smuggling indicates that OCGs may use a variety of sectors and methods to launder the proceeds, including front companies, legitimate businesses, banks, MSBs and casinos.

ML Threat from Human Trafficking: Canada is primarily a destination country for human trafficking, and domestic human trafficking for sexual exploitation is the most common form of human trafficking in Canada.[17] Sex trafficking is largely perpetrated by criminally inclined individuals, who recruit and traffic domestically and, to a lesser extent, OCGs, some of which only recruit and traffic domestically, while others recruit and traffic domestically and internationally. Criminally inclined individuals are not believed to exhibit any real levels of sophistication or capability in terms of laundering their sex trafficking-related proceeds. It is suspected that most of their activity would centre on laundering mostly cash proceeds for immediate personal use, leveraging a very limited or non-existent network, and using a limited number of sectors and methods. The OCGs that conduct sex trafficking and generate significant proceeds are suspected to use established ML infrastructure to launder the proceeds. Some OCGs, although less sophisticated in terms of money laundering, are nonetheless more capable because they may have access to venues to facilitate money laundering (e.g., strip clubs and massage parlors) as well as victims that can be used as nominees for deposits and wire transfers.

[17] Although less common, there have been cases of labour trafficking, notably in the construction sector and in housekeeping services. There have been no confirmed cases of organ trafficking in Canada.

ML Threat from Identity Theft and Fraud ("Identity Crime"): Identity crime is prevalent in Canada and it is a concern given that stolen identities are often used to support the conduct of other criminal activities. The OCGs conducting identity crime are well-established and resilient, and have well-developed domestic and international networks. They are also associated with drug trafficking, human smuggling and counterfeiting currency. It is suspected that these OCGs use multiple methods and sectors to launder the funds. Identity crime itself can support money laundering by providing individuals with fake credentials to subvert customer due diligence safeguards. In 2014, Canadians reported over $10 million in losses to identity crime.[18] It is important to note that identity crime also facilitates the conduct of other criminal activities that generate significant proceeds of crime.

ML Threat from Illegal Gambling: Illegal gambling in Canada consists of private betting or gaming houses, unregulated video gaming and lottery machines, and unregulated online gambling. Organized crime is the major provider of illegal gambling opportunities in Canada, although there are some smaller operators. The illegal gambling market appears to be small in terms of the numbers of threat actors involved, but it is suspected to be highly profitable for those involved in it. OCGs conduct these activities in a sophisticated manner. For traditional bookmaking betting activities, OCGs use pyramid-style schemes to protect more senior members of the pyramid. Bookmakers will only accept cash to benefit from its anonymity. For online gambling, OCGs have based the network servers to run illegal gambling sites in jurisdictions where online gambling is legal. It is assumed that the OCGs operating in this space have the capability to use a variety of sectors and methods to launder the proceeds of crime. The main forms of illegal gambling proceeds are cash and possibly high value goods (in instances where gamblers may have run out of cash).

ML Threat from Payment Card Fraud: In Canada, credit card fraud has increased significantly over the last five years while debit card fraud has decreased significantly over that period. "Card not present" fraud comprises the largest value of all categories of credit card fraud in Canada followed by credit card counterfeiting.[19] As with other frauds, OCGs are heavily involved in payment card fraud. Organized crime involvement in payment card fraud can involve card thefts, fraudulent card applications, fake deposits, skimming or card-not-present fraud. Most OCGs in this space are sophisticated and have specialized technological knowledge. OCGs that operate payment card theft networks are suspected to, in large part, exhibit very high levels of sophistication and capability in terms of laundering the payment card fraud-related proceeds. Multiple sectors are suspected to be used to launder payment card-related proceeds, including financial institutions, MSBs and casinos, as well as multiple methods, including structuring bank deposits, smurfing, front companies and the use of nominees and money mules. In 2013, Canadians reported close to $500 million in payment card fraud-related losses.[20]

[18] Canadian Anti-Fraud Centre. *Monthly Summary Report—December 2014*.

[19] Card-not-present fraud is the unauthorized use of a credit (or debit) card number, the security code printed on the card (if required by the merchant) and the cardholder's address details to purchase products or services in a non-face-to-face setting (e.g., online, telephone). In many cases, the victims maintain possession of their card and are unaware of the unauthorized activity until notified by a merchant or they review their monthly statements.

[20] Canadian Bankers Association. *Credit Card Fraud and Interac Debit Card Statistics—Canadian Issued Cards*.

ML Threat from Pollution Crime: Pollution crime in Canada comes in a variety of forms and is principally undertaken by OCGs, companies and individuals. Of the forms taken, there is particular concern that OCGs have infiltrated the waste management sector, as owning waste management companies can be an effective vehicle to generate illicit profits, by dumping waste illegally, and to launder proceeds from other criminal activities. OCGs may also be involved in the trafficking of electronic waste and in the importation of counterfeit products that do not meet Canada's environmental standards (e.g., counterfeit engines). Finally, some private and public companies may be using deceptive practices to undermine emissions schemes and may be dumping or using third parties to dump waste illegally. Given the sophisticated nature of activities and operations, it is assumed that there is a great degree of sophistication, capability and scope in terms of being able to launder the proceeds arising from pollution-related crime. In the case of waste management, the OCGs appear to demonstrate a very high degree of sophistication and capability to operate waste management businesses in a manner that generates illegal profit and is used for money laundering.

ML Threat from Robbery and Theft: Smaller-scale thefts and robberies are most frequently carried out by opportunistic individuals and petty thieves, while larger-scale thefts and robberies are more frequently associated with OCGs, which are heavily involved in motor vehicle, heavy equipment and cargo theft. The most sophisticated and capable tend to be the OCGs that have well-established auto theft networks in Canada, which are used to supply foreign markets with stolen Canadian vehicles. The OCGs that have established auto theft networks in Canada are also suspected to be highly sophisticated and capable from a ML perspective. It is believed that these OCGs use a range of trade-based fraud and related ML techniques to disguise the illicit origin of the automobiles as well as a range of methods to move the proceeds back into Canada, including bulk cash smuggling and EFTs. Front companies, shell companies and nominees may be used to obscure the flow of funds back to Canada arising from the illicit sales in other countries. Professional money launderers may be utilized to mastermind ML schemes given the large amounts of proceeds generated by these networks and the challenges of laundering proceeds that are generated across multiple jurisdictions.

Medium Money Laundering Threats

ML Threat from Firearms Smuggling and Trafficking: The illicit firearms market in Canada appears to be dominated by unsophisticated, criminally inclined individuals and OCGs (primarily street gangs operating in metropolitan areas) as well as a small number of sophisticated OCGs. Very few OCGs are involved in the trafficking or smuggling of firearms for the purpose of achieving large profits. Instead, OCGs mainly use firearms to strengthen their position within other criminal markets, such as the illicit drugs market. While the majority of guns recovered in crime in Canada are believed to be domestically sourced, a majority of successfully traced handguns are smuggled into Canada from abroad, mostly from the United States. OCGs may sell illicit firearms to other OCGs and criminally inclined individuals, although it is unclear how important these OCGs are in terms of acting as a general supply hub for illicit firearms in Canada. These OCGs may use their established ML infrastructure to launder the proceeds arising from their firearms trafficking activities, which generally focus on exploiting a number of different sectors using a variety of methods.

ML Threat from Extortion: Over 2,000 incidents of extortion in Canada were reported to police in 2013.[21] Extortion is often conducted in conjunction with or in furtherance of other crimes, such as drug trafficking, illegal gambling and human trafficking. Some OCGs systematically use extortion as a tool to obtain money and property in exchange for the protection of certain businesses; to control the distribution of illicit drugs; to force the payment of illegal gambling debts; or to gain access to ports of entry. Some terrorist groups have been known to use extortion to gain power over individuals to further their objectives, including by extorting funds from diaspora communities in Canada. The OCGs and terrorist groups in this space vary in their levels of sophistication, capability and scope for laundering extortion-related proceeds or raising funds to support terrorism. Structuring and smurfing, the commingling of illicit funds and casino refining activities may be used to launder proceeds of extortion.

ML Threat from Loan Sharking: Loan sharks in Canada appear to target low-income individuals, problem gamblers, illicit drug seekers and cash-strapped entrepreneurs. Conducting loan sharking activities requires working capital, financial aptitude and a capacity to enforce debt collection. As this is a unique skill set, loan sharking activity appears to be undertaken by a small number of the more sophisticated OCGs in Canada as well as by a small number of independent operators. OCGs and independent operators conducting this criminal activity are suspected to exhibit a relatively high level of sophistication and capability in terms of being able to launder the proceeds emanating from illicit loans. Some cases indicate that loan sharks use a variety of ML methods to launder their proceeds, including through casinos and financial institutions as well as through the real estate and construction sectors.

ML Threat from Tax Evasion / Tax Fraud (hereafter referred to as tax evasion): Tax evasion is carried out in many different forms in Canada, with the ultimate objective of underpaying or evading the payment of taxes owing or to unlawfully claim refunds or credits. Tax evasion is frequently carried out by opportunistic individuals, commonly using relatively unsophisticated techniques to evade taxes, such as falsifying or fabricating documentation to misrepresent their tax situation. To facilitate tax evasion, unscrupulous tax preparers have been known to provide counsel on how to evade taxes or obtain fraudulent refunds using a variety of different techniques. Tax evasion is also conducted by professional criminals, including OCGs, who may orchestrate tax evasion schemes (e.g., duty or tax refund fraud). Since tax evasion generally involves ordinary individuals using tax evasion techniques of low sophistication, the ensuing money laundering is also believed to be unsophisticated. In cases of large (or multiple) refunds that have been generated by sophisticated tax evasion schemes, more sophisticated ML techniques may be observed.

Low Money Laundering Threats

ML Threat from Wildlife Crime: There is an established illicit market for certain types of Canadian species, including narwhal tusks, polar bear hides, peregrine falcon eggs and wild ginseng. Black market prices for certain Canadian species are high and have risen significantly over the last five years. Wildlife crime in Canada appears to be largely conducted by opportunistic, criminally inclined individuals. Individuals conducting wildlife crime are suspected to exhibit low levels of sophistication, capability and scope in terms of laundering wildlife crime-related proceeds. The proceeds tend to be fairly modest (with some exceptions) and the laundering activity appears to be focused on immediately placing or integrating the proceeds for personal use, and limited to one sector.

[21] Statistics Canada. "Police-Reported Crime Statistics in Canada, 2013." *Juristat* article. July 2014.

Chapter 4: Assessment of Terrorist Financing Threats

Overview

Terrorism is the leading threat to Canada's national security.[22] Countering terrorism, including its financing, at home and abroad is a key priority for the Government of Canada.

Canada has listed 54 terrorist entities under its *Criminal Code* and 36 terrorist entities under the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism.* [23] The majority of these entities are based in foreign countries, mainly in Africa, Asia and the Middle East.[24] Members or supporters/sympathizers of some of these listed entities have been present in Canada at one point or another. Their activities have often focused on providing financial or material support to terrorist entities based in foreign countries. Although their focus has been more on terrorist financing and less on conducting terrorist attacks in Canada, Canada is not immune to such attacks and, over the years, a few attacks have been carried out while others have been thwarted. Canadian interests[25] have also been affected by terrorism-related incidents that have occurred abroad.

Not all 90 listed terrorist entities pose a TF threat to Canada since not all of these entities have financing or support networks in Canada. Consequently, an entity posing a terrorist threat to Canada does not necessarily pose a TF threat to Canada, or if so, the level of threat may not be the same. On the one hand, some terrorist groups and associated individuals pose a significant terrorist attack threat to Canada at home and abroad, while the TF threat in Canada is lower. On the other hand, some entities pose a very high or high TF threat but a lower terrorist attack threat to Canada.[26]

A number of TF methods have been used in Canada and have involved both financial and material support for terrorism, including the payment of travel expenses and the procurement of goods.[27] The transfer of suspected terrorist funds to international locations has been conducted through a number of methods including the use of MSBs, banks and non-profit organizations (NPOs) as well as smuggling bulk cash across borders. Based on open source and other available reporting on the potential for Canadians to send money or goods abroad to fund terrorism, the following countries were assessed to be the most likely locations where such funds or goods would be received: Afghanistan, Egypt, India, Lebanon, Pakistan, Palestinian Territories, Somalia, Sri Lanka, Syria, Turkey, United Arab Emirates and Yemen.

---

22 Public Safety Canada. *2014 Public Report on the Terrorist Threat to Canada*.

23 As at December 31, 2014.

24 Examples of terrorist entities in these three regions include: 1) Africa—Al Shabaab, Boko Haram, Al Qaida in the Islamic Maghreb; 2) Asia—Taliban, Haqqani Network, Al Qaida, Liberation Tigers of Tamil Eelam; and 3) Middle East—Hizballah, Hamas, Islamic State of Iraq and Syria (formerly Al Qaida in Iraq).

25 Throughout this report, Canadian interests refer to Canadian citizens and permanent residents that are in Canada or overseas, Canadian-owned physical assets in Canada or overseas, as well as Canada's economic and political interests.

26 It should be noted, however, that this assessment only focused on TF threats and not terrorist attack threats.

27 In the Canadian context, terrorist financing is often addressed as a broader "resourcing" issue, that is, terrorist resourcing has been used to describe all methods and means—from both licit and illicit origins—used by terrorist organizations to support their operations and infrastructure. While money or its equivalents are most often part of the process, these methods need not involve financial instruments or transactions at all, and could include the theft or smuggling of end-use goods, aggregations of donations, or the direct provision of equipment to terrorist cells, or even individuals themselves conducting acts of violence, such as in the case of lone wolves or foreign fighters.

Discussion of the Terrorist Financing Threat Assessment Results

After a thorough review of publicly available and classified information related to terrorist groups with a Canadian nexus, the TF threat posed by actors associated with 10 terrorist groups and foreign fighters was assessed (see Table 2 below).

Table 2
Terrorist Financing Threat Groups of Actors

Al Qaeda in the Arabian Peninsula	Hizballah
Al Qaeda Core	Islamic State of Iraq and Syria
Al Qaeda in the Islamic Maghreb	Jabhat Al-Nusra
Al Shabaab	Khalistani Extremist Groups
Foreign Fighters/Extremist Travellers	Remnants of the Liberation Tigers of Tamil Eelam
Hamas	

Experts used the following six rating criteria to assess the TF threat posed by the actors associated with these groups and operating in Canada:

1) *Sophistication*: the extent of the threat actors' knowledge, skills and expertise to conduct sustainable, long-term and large-scale TF operations in Canada without being detected by authorities.
2) *Capability*: the extent of the threat actors' network, resources and overall capability to conduct TF operations in Canada.
3) *Scope of Terrorist Financing*: the extent to which the threat actors have a network of supporters and sympathizers within Canada and globally.
4) *Estimated Fundraising*: the estimated value of their TF activities in Canada.
5) *Diversification of Methods*: the diversity and complexity of TF methods related to the collection, aggregation, transfer and use of funds in Canada.
6) *Suspected Use of Funds:* the extent to which funds raised in Canada or overseas by terrorist actors are suspected to be used against Canadian interests in Canada or overseas.

Using these rating criteria and currently available intelligence, the terrorist groups listed in Table 2 were assessed as posing a low, medium or high TF threat in Canada. Further information on some of these groups and their financing networks in Canada is provided below.

Al Qaeda Core and Affiliated Groups

Most of the global fundraising networks of Al Qaeda Core and affiliated groups such as Al Qaeda in the Arabian Peninsula (AQAP), Al Qaeda in the Islamic Maghreb (AQIM), Islamic State of Iraq and Syria (ISIS) (formerly Al Qaeda in Iraq) and Jabhat Al-Nusra (an AQIM splinter group) mainly operate in the Middle East. For example, ISIS[28] has been reported to use a range of methods to finance its activities that have been conducted in the territory it occupies in the Middle East. Consequently, fundraising activity by Al Qaeda and affiliated groups in Canada is usually conducted by a handful of individuals using legitimate and illegitimate means, and the TF methods are usually simple and limited.

Al Shabaab

Al Shabaab is a Sunni militant Islamist group aiming to create an Islamist state in Somalia, expel all foreign forces, overthrow the federal government of Somalia and purge the country of any practices it considers un-Islamic. The group also subscribes to the ideology of transnational jihad espoused by Al Qaeda. Al Shabaab has a diversified global fundraising network, although most of its funds come from the area it controls. For example, in East Africa and particularly in Somalia, it exhibits a certain level of sophistication and capability to raise funds, and a significant amount of funding comes from leveraging the area that is under its control and influence. In addition, Al Shabaab has some financing networks in Canada, and fundraising techniques observed in the United States and some Scandinavian countries have also been used in Canada.

Foreign Fighters/Extremist Travellers

More attention has been given in recent years by Canada and other countries to individuals referred to as "foreign fighters" or "extremist travellers" who have travelled to other countries to participate in terrorism-related activities. As of early 2014, the Government of Canada was aware of more than 130 individuals with Canadian connections who were abroad and who were suspected of terrorism-related activities, which included involvement in training, fundraising, promoting radical views and planning terrorist violence. These foreign fighters are frequently self-funded or have raised funds from friends and family, and have participated or currently participate in conflicts such as those in Afghanistan, Iraq, Somalia and Syria. Foreign fighters may deplete and close bank accounts and max out credit cards prior to travelling abroad. A number of those individuals remain abroad, some have returned to Canada and others are presumed dead.[29] Foreign fighters returning to Canada[30] may encourage and recruit aspiring violent extremists in Canada, may engage in fundraising activities, or may even plan and carry out terrorist attacks in Canada.

[28] Various news articles and reports, for example the FATF report *Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL)*, published in February 2015, have discussed the breadth of TF methods used to date by ISIL (ISIS).

[29] Public Safety Canada. *2014 Public Report on the Terrorist Threat to Canada*.

[30] The Canadian Government is aware of about 80 individuals who have returned to Canada after travel abroad for a variety of suspected terrorism-related purposes. Source: Public Safety Canada. *2014 Public Report on the Terrorist Threat to Canada*.

Hamas

Hamas, which is an abbreviation of Harakat al-Muqawama al-Islamiyya (Islamic Resistance Movement), is a militant Sunni Islamist organization that emerged from the Palestinian branch of the Muslim Brotherhood in late 1987. Hamas operates predominantly in the Gaza and the West Bank and manages a broad, mostly Gaza-based network of "Dawa" or ministry activities that includes charities, schools, clinics, youth camps, fundraising and political activities.

Globally, Hamas is a complex and highly organized group that is well-funded, utilizing a number of financing strategies. Hamas's global network of support is largely based outside of Canada, but there are small groups of Hamas supporters across Canada.

Hizballah

Hizballah, a populist Lebanon-based terrorist organization seeking to represent the Shi'a people and Shi'a Islamism, is highly disciplined and sophisticated, with extensive paramilitary, terrorist and criminal fundraising capabilities. It has a global network of support that spans the Americas, Europe, the Middle East and Africa. Hizballah has an established fundraising network in Canada.

Khalistani Extremist Groups

Khalistani extremist groups, such as Babbar Khalsa International and the International Sikh Youth Federation, are suspected of raising funds for the Khalistan cause in a number of countries, particularly in countries that have large Sikh diaspora populations. There appears to be a global network but it is unclear how strong it is and the motivations surrounding the support. These groups used to have an extensive fundraising network in Canada, but it now appears to be fractured and diffuse.

Chapter 5: Assessment of Inherent Money Laundering and Terrorist Financing Vulnerabilities

Overview

Geopolitical, socio-economic, governance and legal framework features of a country are important components of a nation's identity and position in the world. Internationally, Canada is recognized as a multicultural and multiethnic country with a stable economy and strong democratic institutions. Although these features of Canada are positive, some can be subject to criminal exploitation. Criminals, including money launderers and terrorist financiers, can be attracted to Canada as a result of inherent vulnerabilities associated with Canada's geography, demographics, stable open economy, accessible financial system, proximity to the United States and well-developed international trading system. It is important to underscore that this assessment examines the inherent vulnerabilities of various economic sectors and financial products and does not account for the significant mitigation measures that are in place to address these risks.

While being mindful of the contextual vulnerabilities of Canada, experts assessed the inherent ML/TF vulnerabilities of 27 economic sectors and financial products, using the following five rating criteria:

1) *Inherent Characteristics:* the extent of the sector's economic significance, complexity of operating structure, integration with other sectors and scope and accessibility of operations.

2) *Nature of Products and Services:* the nature and extent of the vulnerable products and services and the volume, velocity and frequency of client transactions associated with these products and services.

3) *Nature of the Business Relationships:* the extent of transactional versus ongoing business, direct versus indirect business relationships and exposure to high-risk clients and businesses.

4) *Geographic Reach*: the exposure to high-risk jurisdictions and locations of concern.

5) *Nature of the Delivery Channels*: the extent to which the delivery of products and services can be conducted with anonymity (face-to-face, non-face-to-face, use of third parties) and complexity (e.g., multiple intermediaries with few immediate controls).

The assessment indicates that there are a significant number of economic sectors and financial products that are inherently vulnerable to money laundering and terrorist financing. Of the 27 rated areas, the overall ML/TF vulnerability was rated "very high" for five sectors and products, "high" for 16 sectors and products, "medium" for five sectors and products and "low" for one sector (see Table 3). Inherent vulnerabilities and risks are, however, the subject of mitigation and control measures provided by the AML/ATF regime, including through preventive measures and effective supervision.

Although the vulnerabilities assessment examined sectors and products individually, it is important to note that the six designated domestic systemically important banks (D-SIBs) are financial conglomerates that dominate Canada's financial sector, and are deeply involved in multiple business lines, including banking, insurance, securities and trust services. The inherent vulnerability of the D-SIBs was explicitly assessed as part of the category of domestic banks and rated very high, while their presence in other sectors was included in the assessment of those sectors. Given their size, scope and reach, and if assessed on a consolidated basis, the inherent vulnerability of the D-SIBS would naturally be very high.

Corporations (and company services providers), express trusts, lawyers[31] and NPOs, although not subject to reporting obligations under the PCMLTFA, were formally included as part of this assessment since it was determined to be necessary to assess their ML/TF vulnerabilities given their importance and widespread use within Canada. Other sectors and products that are not currently covered under the PCMLTFA will continue to be assessed for ML/TF risks. These include, but are not limited to, cheque cashing businesses, closed-loop pre-paid access,[32] factoring companies,[33] financing and leasing companies, ship-based casinos, unregulated mortgage lenders and white-label automated teller machine providers.

Table 3
Overall Inherent Money Laundering/Terrorist Financing Vulnerability Rating Results

Very High Vulnerability Rating	
Corporations[1]	National Full-Service MSBs[3]
Domestic Banks	Small Independent MSBs
Express Trusts[1]	
High Vulnerability Rating	
Brick and Mortar Casinos	Life Insurance Companies
Company Services Providers	Registered Charities
Credit Unions and Caisses Populaires	Open-Loop Prepaid Access
Dealers in Precious Metals and Stones	Real Estate Agents and Developers
Foreign Bank Branches	Securities Dealers
Foreign Bank Subsidiaries	Smaller Retail MSBs
Internet-Based MSBs	Trust and Loan Companies
Legal Professionals	Virtual Currencies
Medium Vulnerability Rating	
Accountants	Provincial Online Casinos
British Columbia Notaries	Wholesale and Corporate MSBs
Independent Life Insurance Agents and Brokers	
Low Vulnerability Rating	
Life Insurance Intermediary Entities and Agencies[2]	

1 The vulnerability relates to the ability of these entities to be used to conceal beneficial ownership, therefore facilitating the disguise and conversion of illicit proceeds.

2 These entities provide administrative support to insurance agents and brokers and allow for the pooling of commissions and access to insurance company products.

3 The definition of each of type of assessed MSB is provided in the glossary.

31 The provisions of the PCMLTFA that apply to the legal profession are effectively inoperative as a result of court decisions and related injunctions. Following a February 13, 2015 Supreme Court of Canada ruling, the Government of Canada is revisiting these provisions and intends to bring forward new provisions for the legal profession that would be constitutionally compliant.

32 Closed-loop pre-paid access is defined as prepaid access to funds or the value of funds that can be used only for goods and services in transactions involving a defined merchant or location (or set of locations). The definition includes gift cards that provide access to a specific retailer, affiliated retailers or a retail chain, or alternatively to a designated locale such as a public transit system.

33 Factoring is a form of asset-based financing whereby credit is extended to a borrowing company on the value of its accounts receivable (the latter are sold at a discount price in exchange for money upfront). The factoring company then receives amounts owing directly from customers of the borrower (the debtor). Factoring companies are primarily used to raise capital in the short term.

Inherent Vulnerabilities of Canada

This section provides an overview of the features of Canada that may be vulnerable to being exploited by criminals.

Governance/Legal Framework

Canada is a federal state governed by a constitution and has a democratic system that provides substantial autonomy to its 13 provinces and territories. The federal government has legislative jurisdiction over criminal law and procedure, while the provinces are responsible for the administration of the courts of criminal jurisdiction including federal courts constituted under section 96 of the Constitution. Canada is also governed by the common law, or rule of precedent, and by a civil law system in the province of Quebec.

Canada is a free and open democratic society and its citizens are guaranteed certain rights and freedoms under Canadian law. To protect these freedoms, Canada has strong public institutions and a comprehensive system of justice. Although these laws and institutions play a key role in combating crime, the freedoms afforded to Canadians and the legal and procedural safeguards that are in place to protect accused individuals can be exploited by criminals, including money launderers and terrorist financiers.

Geography

Canada is the second-largest country[34] in the world with a land area of 9.9 million square kilometres. Canada has a total of over 200,000 kilometres of coastlines spanning the Pacific Ocean to the west, the Arctic Ocean to the north and the Atlantic Ocean to the east. Canada shares the longest international border in the world, at over 8,800 kilometres, with the United States to the south and northwest (Alaska). This makes Canada vulnerable to criminal activities conducted across Canada, as well as by land, air or marine modes of transportation through its borders. Detection of criminal activities may be challenging in light of the geographic expanse of Canada.

Economy and Financial System

Canada was the 15th largest economy in the world at the end of 2013 (based upon a ranking of real gross domestic product (GDP), with a value of 1,518.4 billion current international dollars).[35] In the same year, 70 per cent of the economy was devoted to services, while manufacturing and primary sectors accounted for the remaining 30 per cent.[36]

[34] Financial Action Task Force (FATF). *Third Mutual Evaluation on Anti-Money Laundering and Combating the Financing of Terrorism—Canada* (Paris: FATF/OECD, 2008); and Central Intelligence Agency. *The World Factbook.* Website content on Canada.

[35] International Monetary Fund. *World Economic Outlook: Legacies, Clouds, Uncertainties*. October 2014.

[36] Statistics Canada. Gross domestic product at basic prices, by industry. CANSIM Table 379-0031.

International trade represents more than 60 per cent of Canada's GDP.[37] Canada's economy is closely linked to that of the United States. In 2013, over 74 per cent of Canada's exports went to and through the United States, and over 64 per cent of Canada's imports came from the United States.[38] The two other main export destinations for Canada are China and the United Kingdom.[39] China and Mexico are the two other main sources of Canadian imports behind the United States.[40]

Since 2006, the size of Canada's underground economy (i.e., economic activity that is not reported for tax purposes) expressed as a percentage of GDP is estimated to have dropped to 2.3 per cent[41] from 2.9 per cent in 1992. A recent Organisation for Economic Co-operation and Development (OECD) study provides an international perspective on relative adjustments for the non-observed economy (NOE) across countries, and suggests that Canada has one of the smaller NOE adjustments, below a number of European Union economies.[42]

Canada's financial system is mature, sophisticated and well diversified, and plays a key role in the Canadian economy. The financial system, with assets totalling about 500 per cent of GDP,[43] contributes to 6.7 per cent of Canada's GDP.[44] Canada's banks and other financial institutions operate an extensive network of more than 6,200 branches, and about 60,000 automated teller machines (ATMs) of which about 16,900 are bank-owned.[45] In 2012, approximately 842 million transactions were logged at bank-owned ATMs.[46]

The Internet is now the main means of conducting banking transactions for nearly 50 per cent of Canadians, and the use of the Internet as the primary banking choice is increasing among all age groups.[47] Banks also operate through agents or mandataries, mostly in remote areas. Canada also enjoys a relatively high rate of financial inclusion, with 96 per cent of the population having an account with a formal financial institution.[48]

While the banking sector in Canada is diverse and includes many service providers, it is relatively highly concentrated and holds over 60 per cent of the financial system's assets.[49] The banking sector is dominated by six domestic banks that, in the aggregate, hold 93 per cent of bank assets.[50] These six banks are the parents of large conglomerate financial groups and have been designated as D-SIBs by OSFI, Canada's prudential supervisor. Provincially regulated financial institutions, including pension funds, mutual funds and credit unions, amount to almost 30 per cent of the financial system. There are also some large provincially chartered and supervised deposit-taking financial institutions with aggregate financial sector assets equivalent to five per cent of banking sector assets.[51]

---

37 Foreign Affairs, Trade and Development Canada. *Global Markets Action Plan: The Blueprint for Creating Jobs and Opportunities for Canadians Through Trade*. 2014.

38 Statistics Canada. Imports, exports and trade balance of goods on a balance-of-payments basis, by country or country grouping. CANSIM Table 228-0069.

39 Ibid.

40 Ibid.

41 Canada Revenue Agency. *Reducing Participation in the Underground Economy—Canada Revenue Agency 2014–2015 to 2017–2018*. November 2014.

42 György Gyomai and Peter van de Ven. "The Non-Observed Economy in the System of National Accounts." OECD Statistics Brief. June 2014.

43 International Monetary Fund. *Canada: Financial Sector Stability Assessment*. IMF Country Report No. 14/29. February 2014.

44 Statistics Canada. Monthly gross domestic product by industry at basic prices in chained (2007) dollars—Seasonally adjusted. August 2013.

45 Canadian Bankers Association. *Fast Facts About the Canadian Banking System*. Toronto: November 2014.

46 Ibid.

47 Ibid.

48 World Bank. Financial Inclusion Data (Canada). 2011.

49 International Monetary Fund. *Canada: Financial Sector Stability Assessment*. IMF Country Report No.14/29. February 2014.

50 Ibid.

51 Ibid.

There are approximately 31,000 financial institutions and DNFBPs (e.g., casinos, MSBs, securities dealers, real estate agents and developers) that are subject to the PCMLTFA, offering products and services that involve financial transactions that can be vulnerable to illicit activity. Table 4 provides an appreciation of the relative size of the various assessed sectors and products.[52]

Canada's open and stable economy, a financial system accessible to the majority of Canadians and the high level of global trade involving Canada are factors that can be exploited by criminals, money launderers and terrorist financiers that are active domestically and internationally. They use a number of methods and schemes to hide their illicit financial transactions to make them look legitimate so they can avoid detection by authorities.

Table 4
Statistics on Assessed Sectors and Products

Sector or Product	Number of Known Entities	Notes
Domestic Systemically Important Banks	6	Banks hold over 60 per cent of the financial sector's assets; the six largest domestic banks, the D-SIBs, hold 93 per cent of these assets.
Other Domestic Banks[53]	22	
Foreign Bank Subsidiaries[54]	24	
Foreign Bank Branches[55]	29 (26 full service and 3 lending)	
Life Insurance Companies	73 federal and 18 provincially regulated[56]	Assets held on behalf of Canadian policyholders and annuitants totalled over $646 billion (end of 2013).
Independent Life Insurance Agents and Brokers	154,000 agents and 45,000 brokers (est.)	
Trust and Loan Companies	63 federally regulated trust companies and loan companies and 14 provincially regulated[57]	Trust and loan companies account for four per cent of the financial sector's assets, or over $320 billion (mid-2013). The six largest Canadian banks own 95 per cent of these trust and loan companies.[58]
Securities Dealers	3,487[59]	The D-SIBs own six of the securities dealers, accounting for 75 per cent of the sector's transaction volume. This sector also includes financial advisors and investment counsellors.
Credit Unions and Caisses Populaires (CUCPs)	696 CUCPs,[60] six Cooperative Credit Associations and one Cooperative Retail Association that are federally regulated	CUCPs hold over $320 billion in assets (November 2014).
Money Services Businesses (MSBs)	850 registered MSBs[61]	The MSB sector handles billions of dollars in transactions each year. It is estimated that MSBs registered with FINTRAC handle approximately $39 billion a year.

[52] Chapter 6 provides additional information on the measures currently in place to mitigate risks.

[53] Office of the Superintendent of Financial Institutions. *Who We Regulate*. October 2014.

[54] Ibid.

[55] Ibid.

[56] Ibid and Financial Consumer Agency of Canada. *Federal Oversight Bodies and Other Regulators*. October 2014.

[57] Ibid.

[58] Statistics Canada. Trust and mortgage loan companies excluding bank trust and mortgage subsidiaries: quarterly statement of assets and liabilities, end of period. CANSIM Table 176-0028. 2014.

[59] Based on information obtained from the Canadian Securities Administrators (December 9, 2014) and Ontario Securities Commission (as of October 1, 2014) and compiled by FINTRAC.

[60] Credit Union Central of Canada. *System Results*. November 27, 2014.

[61] FINTRAC. Money Services Businesses. Website content. March 31, 2014. It should be noted that the total number of registered MSBs does not include the number of MSB agents. In the Canadian regime, MSB agents are often covered through the MSB which engages/contracts with the agents (depending on the other activities of the MSB agents).

Sector or Product	Number of Known Entities	Notes
Provincially Regulated Casinos[62]	39 reporting entities with 110 locations[63]	The Canadian casino sector generates over $15 billion in revenue annually.
Real Estate Agents and Developers	20,784[64]	
Dealers in Precious Metals and Stones	642[65]	
British Columbia Notaries	Over 336[66]	
Accountants	3,829[67]	
Legal Professionals	104,938 lawyers, 36,685 paralegals and 3,576 civil law notaries[68]	
Express Trusts[69]	Millions (210,000 trusts filed tax returns in 2011 as a result of being liable for tax payable).[70]	
Corporations	Over 2.6 million for-profit corporations, including almost 4,000 publicly traded companies,[71] and approximately over 180,000 not-for-profit[72] organizations[73]	
Company Services Providers	8[74]	
Registered Charities	86,000 federally registered charities[75]	
Prepaid Access (Open-Loop)	N/A	Global open-loop prepaid card transaction volumes have grown by more than 20 per cent over the past four years and were expected to reach 16.9 billion annually in 2014.
Virtual Currencies	Over 480 convertible virtual currencies worldwide accounting for US$5.5 billion in worldwide market capitalization[76]	

[62] Casinos or gambling activities that are not provincially regulated have not been included in these statistics and the vulnerability assessment of the casino sector. Gambling operations and activities not regulated by a province or territory are illegal under Canada's *Criminal Code* and are therefore generating criminal proceeds and have been taken into account during the assessment of ML threats, in particular under "illegal gambling".

[63] As of November 2014 and provided by FINTRAC.

[64] As of January 2013 and provided by FINTRAC.

[65] As of January 30, 2013 and reported by FINTRAC.

[66] As of October 31, 2014 and provided by FINTRAC.

[67] As of January 2013 and provided by FINTRAC.

[68] Based on Canada's *Response to the FATF Survey ML/TF Vulnerabilities of Legal Professionals—2012*.

[69] Express trusts are offered by trust companies that are subject to the PCMLTFA and therefore are partially covered by AML/ATF measures.

[70] See Table 1 in http://www.cra-arc.gc.ca/gncy/stts/t3/2007-2011/table01-eng.pdf

[71] Source: Statistics Canada, Canadian Business Patterns Database, December 2013. The information on publicly traded companies is drawn from www.tsx.com.

[72] This statistic includes not-for-profit organizations that are not incorporated.

[73] As of December 2014 and provided by the Canada Revenue Agency—Charities Directorate.

[74] Based on internal research.

[75] As of December 2014 and provided by the Canada Revenue Agency—Charities Directorate.

[76] As of November 9, 2014. Retrieved from http://coinmarketcap.com/currencies/views/all/.

Demographics

Approximately 86 per cent of Canada's 35.5 million people (July 2014 estimate) live in the country's four largest provinces: Ontario (38 per cent), Quebec (23 per cent), British Columbia (13 per cent) and Alberta (12 per cent).[77] The three largest Canadian cities, in terms of population, are Toronto, Montreal and Vancouver. Data from the 2011 National Household Survey (NHS) conducted by Statistics Canada indicates that Canada, that year, was home to about 6.8 million foreign-born individuals who represented 20.6 per cent of the total population. More than 200 ethnic origins were reported by respondents to the 2011 NHS.

Canada is a multiethnic and multicultural country. This results in a very rich and diversified Canadian society. However, this can also become a vulnerability in certain circumstances or situations that criminals can exploit. Certain diaspora have been and are still, in some instances, exploited for criminal or terrorism support purposes. Many individuals have immigrated to Canada because of conflicts and poor living situations in their native countries and are therefore concerned about the safety and well-being of family members left behind. Consequently, they often send money and goods back home to help when they can and do that through various means and for different reasons or causes.

All Canadian citizens and permanent residents can, however, be vulnerable in situations where they want to help people in need in foreign countries. For example, they can be extorted while family or friends in those foreign countries are threatened. Others can also be radicalized through propaganda (online or other media) or by charismatic leaders, and become supportive of causes or ideologies of extremist or terrorist groups fighting in conflict zones. Certain individuals may even adopt extremist and terrorist group ideologies and wish to support those groups financially and/or materially, or even travel to overseas to become foreign fighters.

Discussion of the Results of the Inherent Vulnerabilities Assessment

ML/TF Vulnerabilities of Deposit-Taking Institutions (High to Very High): Of the assessed deposit-taking institutions, the domestic banks were rated the most vulnerable (very high), primarily driven by the size of the six designated D-SIBs. The D-SIBs are very significant in terms of their transaction volumes, asset holdings and scope of operations, both domestically and internationally, and, on a consolidated basis, are not only involved in banking but also encompass trust and loan companies, life insurance companies and securities dealers. They offer a large number of vulnerable products and services to a very large client base, which is comprised of a significant amount of high-risk clients and businesses. Banking services are provided through face-to-face and non-face-to-face delivery channels that vary in terms of the degree of anonymity and complexity. There are opportunities to use third parties and gatekeepers (e.g., lawyers and accountants) to undertake banking transactions.

The vulnerability of credit unions and caisses populaires (CUCPs), foreign bank branches and subsidiaries, and trust and loan companies were rated high. These institutions are significant in terms of their size and scope and are accessible to a broad range of clients. Foreign bank branches are believed to be less accessible to retail clients, with a larger proportion of their business focused on corporate clients (given the $150,000 minimum deposit threshold). All of these institutions offer a range of vulnerable products and services and undertake a mix of transactional, ongoing and third-party business. These vulnerable products and services are available to a client base of which a significant amount consists of high-risk clients. Foreign bank subsidiaries often target specific diaspora communities in Canada as well as foreign individuals, which may make them more vulnerable to foreign politically exposed persons (PEPs) and clients with connections to high-risk jurisdictions. CUCPs operate in more remote Canadian locations that, in

[77] Statistics Canada. Population by year, by province and territory. July 2014.

some instances,[78] may attract high crime and corruption activities as well as transient workers sending remittances back to their home countries, which may be at high risk of ML/TF. Finally, most of these institutions provide services through face-to-face and non-face-to-face delivery channels, provided online or over the telephone, which lend themselves to varying degrees of anonymity. There are, however, some foreign subsidiaries that offer banking services exclusively in a non-face-to-face environment. In contrast, CUCPs tend to focus more on fostering face-to-face interactions through branch locations, which makes the business relationship less anonymous.

ML/TF Vulnerabilities of the Money Services Businesses Sector (Medium to Very High): Although the MSB sector is broadly vulnerable, the degree of vulnerability is not uniform largely because of the variation in terms of size and business models found among the MSBs across the sector. Of those assessed, there are two types of MSBs that are most vulnerable. The first consists of the national full-service MSBs that have the most dominant presence in Canada. These MSBs conduct a large amount of transactional business of products and services (i.e., wire transfers, currency exchange and monetary instruments) that have been found to be vulnerable to money laundering and terrorist financing. These products and services are widely accessible and it is assessed that PEPs, clientele in vulnerable businesses or occupations, and clientele whose activities are conducted in locations of concern comprise a significant portion of the clientele profile. The second type of highly vulnerable MSB consists of the small, predominantly family-owned MSBs located across Canada that provide wire transfer services largely through informal networks. These MSBs are vulnerable because they can allow high-risk clients to wire funds to high-risk jurisdictions through their informal networks. In addition, because they tend to be small, low-profile businesses, they may be vulnerable to being exploited for illicit purposes.

ML/TF Vulnerabilities of Corporations (Very High) and Company Services Providers (High): Of the types of corporations that were assessed, privately held corporate entities were considered to be of greatest concern. Although these entities are widespread and play an important and legitimate role in Canada's economy, they also exhibit certain characteristics that can be exploited to conduct money laundering and terrorist financing. These entities can be structured to conceal the beneficial owner and can be used to disguise and convert illicit proceeds. Company services providers can make it exceptionally easy to establish corporations expeditiously that can be used as part of an illicit scheme.

[78] For example, areas where extensive oil extraction or mining operations are conducted will often involve transient workers who are frequently well-remunerated in cash. These areas are also known to attract organized crime activities such as drug trafficking.

ML/TF Vulnerability of Express Trusts (Very High): The express trust is a widely used legal arrangement in Canada, and the assets held in and the volume of transactions generated from these trusts are believed to be very significant. The critical vulnerability of the express trust is that it can be structured to make it difficult to ascertain the identity of the parties to the trust and it can be difficult to freeze and seize assets held in the trust since the trust separates legal ownership (control) from beneficial ownership. The client profile of express trusts would include high net worth clients (i.e., wealth, estate and tax planning) and clients who may be attracted to the trust vehicle given the anonymity and asset shield that it can provide (e.g., protection from civil litigation, regulatory and criminal action, divorce and bankruptcy proceedings). Express trusts have global reach; Canadians can establish Canadian trusts in Canada or abroad using domestic or foreign-based trustees, and non-residents can do the same in Canada. Settlors, trustees and beneficiaries may be located in different countries, potentially exposing these trusts to high-risk jurisdictions. Canadian express trusts are predominantly established through trust companies, lawyers and accountants. The delivery channel is frequently face-to-face but there is potential to use multiple intermediaries in more complex arrangements. Although trusts can be established expeditiously through these professionals, there do not appear to be Canadian-based online trust service providers offering to establish trusts in Canada or abroad for a fee, as is seen for corporate entities.

TF Vulnerabilities of Registered Charities (High):[79] The registered charities of greatest concern are those engaged in "service" activities that operate in close proximity to an active terrorist threat. This encompasses registered charities that operate both in high-risk jurisdictions, including in areas of conflict with an active terrorist threat, as well those that operate domestically, but within a population that is actively targeted by a terrorist movement for support and cover. The assessment indicates that these service-oriented organizations offer a number of vulnerable products and services, including funds, gifts-in-kind, and educational and social services. They may be involved in transactional and indirect relationships. A large number of the financial transactions conducted by registered charities may be performed via delivery channels involving a high degree of anonymity and involving some level of complexity, such as when multiple intermediaries are involved. Individuals may make anonymous donations to registered charities. While the transfer of funds from one organization to another is not likely to be anonymous, the significant use of cash may make the original source of funds difficult to determine. It may also be difficult to know how the funds or resources will be used once transferred to partner organizations or third parties, including agents.

ML/TF Vulnerabilities of Brick and Mortar Casinos (High): Brick and mortar casinos conduct a large amount of business across Canada, most of which is highly transactional and cash-intensive. Casinos provide a limited number of vulnerable products and services, but the volume of transactions that is undertaken with these products and services is viewed as important. The casino's business relationship with clientele is mostly transactional but there are some ongoing relationships. The casino's clientele would include PEPs and non-residents (e.g., tourists) and clientele in vulnerable businesses and professions. Some casinos offer clients the ability to transfer funds electronically, meaning that funds could be sent to high-risk jurisdictions. Clients can conduct gaming activity in casinos relatively anonymously, although casinos are monitored and some activities require face-to-face interaction with casino staff. Despite this monitoring, there is no customer identification or verification of the source of funds.

ML/TF Vulnerabilities of Provincially Regulated Online Casinos (Medium): British Columbia, Quebec, Manitoba and the Atlantic provinces operate online casinos. Although the (legitimate) online casino sector is small, it is poised for growth in other provinces. Online casinos provide a limited number of vulnerable products and services, which constitute the majority of the sector's business operations. Online casinos would have transactional and ongoing client relationships. The client profile of online casinos may include clients in vulnerable occupations and businesses.

[79] The vulnerabilities assessment for NPOs for terrorist financing is presented here while the assessment for ML is included as part of the section on corporations.

The geographic reach of these online casinos is very limited, confined to users based in the province offering the service. All transactions are conducted online through non-face-to-face interactions and can involve intermediaries. Non-face-to-face users must register to use the site and must provide a method of payment (e.g., credit or debit card). Although this reduces the anonymity of the accountholder, it still makes it difficult to determine who is in control of the account.

ML/TF Vulnerabilities of the Legal (High) and Accounting (Medium) Sectors: The legal and accounting sectors both have a large number of practitioners across Canada who have specialized knowledge and expertise that may be vulnerable to being exploited wittingly or unwittingly for illicit purposes. In the legal domain, this expertise encompasses establishing trust accounts, forming corporations and legal trusts, and carrying out real estate and securities-related transactions, while in accounting this expertise predominantly encompasses financial and tax advice and company and trust formation. Both professions offer vulnerable services to a range of individuals and businesses and frequently act as third parties in transactions. The client profile of the legal sector is believed to include a combination of PEPs, clients in vulnerable businesses and professions, and clients whose activities are conducted in locations of concern. The client profile of accountants would include high net worth clients, PEPs and vulnerable businesses (e.g., cash-intensive ones). It is believed that accountants have little exposure to high-risk jurisdictions, given that they are mostly domestically focused. Both professions mainly interact directly and in face-to-face setting with their clients, minimizing anonymity. In contrast to accounting services, the provision of legal counsel is protected by solicitor-client privilege, which can make the business relationship more opaque to competent authorities.

ML/TF Vulnerabilities of the Life Insurance Sector (Low to High): The life insurance sector in Canada is very large and generates a large volume of policy-related transactions. Life insurance companies offer a variety of vulnerable products and services, including wealth management and estate planning. Life insurance companies have ongoing, direct relationships with their clients. It is suspected that there is some interaction with PEPs and other high-risk clients. Within the sector, there are three conglomerates that have operations in foreign countries so they may do business with high-risk foreign clients and jurisdictions. Life insurance companies rely on third parties and independent brokers to sell their products. Although transactions are frequently conducted face-to-face, the use of independent agents (i.e., use of an intermediary) adds complexity to the delivery channel.

ML/TF Vulnerabilities of the Securities Sector (High): The securities sector is significant in Canada and accepts large volumes of funds for investment purposes, usually through wire transfers from bank accounts. The securities sector offers a range of products and services that are vulnerable, including brokerage accounts, a variety of investment products and wire transfers, constituting a significant portion of the sector's operations. Clients include individuals, corporate entities, pension funds and institutional accounts, both domestic and foreign. The sector has a combination of transactional and ongoing account relationships. The client profile includes non-residents, high-net-worth clients, and PEPs in Canada and abroad. Operations are not restricted to domestic transactions; the sector has international reach and involves business with high-risk jurisdictions on an ongoing basis. Most of the securities transactions involve face-to-face interactions; however, online brokerages, whose presence has been growing, are providing the opportunity for greater anonymity in this area. The nature of the delivery channels can be complex, as it can involve representation by third parties, including lawyers.

ML/TF Vulnerabilities of the Real Estate Sector (High): The real estate sector is very significant in terms of its size and scope and generates a large number of high-value financial transactions on an ongoing basis. The real estate sector is integrated with a range of other sectors, and the purchase and sale of real estate involves a variety of facilitators, including real estate agents, lawyers, accountants, mortgage providers and appraisers. The sector provides products and services that are vulnerable to money laundering and terrorist financing, including the development of land, the construction of new buildings and their subsequent sale. The real estate business consists of a combination of transactional as well as ongoing client relationships and is exposed to high-risk clients, including PEPs, foreign investors (including from locations of concern) and individuals in vulnerable occupations and businesses. Although real estate transactions are typically done face-to-face, third parties can be used to conduct the transactions and there is opportunity to put in place complex ownership structures to obscure the beneficial owner and the source of funds used for the purchase.

ML/TF Vulnerabilities of Dealers in Precious Metals and Stones (DPMS) (High): There are a large number of DPMS located across Canada, from very large to very small dealers, that are highly accessible to domestic clients and, in some cases, international clients (e.g., through online sales). DPMS conduct a large volume of business in high-value commodities that are vulnerable to money laundering and terrorist financing. DPMS have largely transactional relationships with their clients and there are opportunities for clients to conduct cash transactions with a high degree of anonymity. It is also believed that the client profile includes high-risk clients, notably those in vulnerable businesses or professions. The DPMS is a highly accessible sector where there are high-risk clients who can purchase high-value commodities for cash relatively anonymously.

ML/TF Vulnerabilities of Virtual Currencies (High): The virtual currency sector is significant in terms of assets and volume of transactions and it employs a variety of complex business/delivery models, involving a range of participants, some of which are evolving rapidly. The sector provides one type of vulnerable product—virtual currency—but it provides a number of different forms of virtual currency, each of which exhibit varying degrees of vulnerability. Convertible virtual currencies, which constitute an important part of the sector, are the most vulnerable, largely because of the increased anonymity that they can provide as well as their ease of access and high degree of transferability. Virtual currency providers appear to have largely transactional relationships with their clients in addition to some more ongoing relationships. Given some recent cases, criminal elements would appear to be attracted to the level of anonymity provided by convertible virtual currencies. Virtual currencies, notably convertible decentralized virtual currencies, can provide a high degree of anonymity and complexity. They can be traded on the internet and some virtual currencies may permit anonymous funding (funding using cash, prepaid cards, or third-party funding through virtual exchangers that do not properly identify the funding source). The anonymity and complexity can pose significant challenges for law enforcement to determine the beneficial ownership of the virtual currency involved in criminal activities.

ML/TF Vulnerabilities of Open-Loop Prepaid Access (High): The use of prepaid access is prevalent in Canada but it represents a small portion of the payment methods used domestically. Open-loop products, which are offered across Canada, can be loaded with cash and can be used as a payment method almost anywhere credit and debit cards are accepted. These products can be used to withdraw cash and to undertake person-to-person transfers in Canada and abroad. The business relationship with clients is transactional and cards are issued to individuals physically present in Canada. Given the nature of the product, clients can be high-risk, including those in vulnerable occupations and businesses. Some open-loop cards can be purchased and loaded relatively anonymously while others that are reloadable and have higher loading limits require proof of identification. In some cases, however, the verification may be done online, in a non-face-to-face setting.

Chapter 6: Results of the Assessment of Inherent Money Laundering and Terrorist Financing Risks

All assessed economic sectors[80] and financial products were found to be potentially exposed to inherent ML risks while a more limited number were found to be exposed to inherent TF risks. This chapter presents the results of the assessment of inherent ML/TF risks by sector and by product, which are represented in a number of charts to allow for comparisons between the level (i.e., very high, high, medium or low rating) of inherent ML or TF risks for each of them. Examples of inherent ML/TF risk scenarios[81] are provided to further demonstrate how threat actors have exploited or could exploit particular sectors and products.

Inherent Money Laundering Risks

By matching the ML threats with the vulnerable sectors or products, the assessment revealed that 14 sectors and products[82] are exposed to very high inherent ML risks involving threat actors (e.g., OCGs and third-party money launderers) laundering illicit proceeds generated from 10 main types[83] of profit-oriented crime.

As stated earlier in this report, transnational OCGs operating in Canada pose the greatest ML threat and, therefore, the greatest ML risk, as they are involved in multiple criminal activities, listed below in Table 5, that generate large amounts of illicit proceeds. The majority of these groups use professional money launderers in an effort to avoid detection by authorities. This is because these launderers are generally not involved in the actual predicate offences and have the expertise to develop schemes that make use of multiple ML methods and techniques that often involve varied sectors, products and services.

Bulk cash smuggling or the use of cash couriers, within Canada and across the Canadian border, is a ML method that is frequently used, including by professional money launderers, as the first step in the ML process and does not involve any sector, product or service. Trade-based money laundering[84] is another technique used by professional money launderers and OCGs that poses many detection and investigative challenges since it often involves many players and sectors including different types of corporations, deposit-taking financial institutions, MSBs and brokers that are generally located in various jurisdictions.

Charts 3 to 9 provide a graphic representation of all inherent ML risk scenarios involving the exploitation by ML threat actors of various sectors and products or services, and Table 5 lists all the types of criminal offences that generate illicit proceeds that can then be laundered. The numbers 1 to 9 on the horizontal axis of Charts 3 to 9 should be cross-referenced with Table 5.

---

[80] It should be noted that the vulnerability and risk to money laundering in regards to NPOs was taken into account as part of the assessment of the ML vulnerability and risk for corporations, while a separate and more specific TF vulnerability assessment of the NPO sector was conducted.

[81] ML or TF risk scenarios presented in this chapter are based on ML/TF expert knowledge and sometimes draw from actual cases or are a composite of multiple cases.

[82] These sectors and products (from highly to very highly vulnerable) are: Brick and Mortar Casinos, Credit Unions and Caisses Populaires, Trust and Loan Companies, Internet-Based MSBs, Virtual Currencies, Legal Professionals, Foreign Bank Subsidiaries, Smaller Retail MSBs, Securities Dealers, Corporations (including NPOs), Domestic Banks, National Full-Service MSBs, Small Independent MSBs and Express Trusts.

[83] The 10 profit-oriented crimes generating the most proceeds and posing a high to very high threat are: human smuggling, payment card fraud, tobacco smuggling and trafficking, mass marketing fraud, mortgage fraud, capital markets fraud, illicit drug trafficking, counterfeiting and piracy, corruption and bribery, and commercial trade fraud.

[84] Trade-based money laundering is defined by the FATF as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illicit origins.

Table 5
Types of ML Threats (from Low to Very High) Used in Charts 3 to 9

Number on horizontal axis	Types of ML Threats
1	Wildlife Crime
2	Firearms Smuggling and Trafficking
3	Extortion; Loan Sharking; Tax Evasion/Tax Fraud
4	Human Trafficking; Currency Counterfeiting
5	Pollution Crime
6	Robbery and Theft; Identity Fraud; Illegal Gambling
7	Human Smuggling; Payment Card Fraud
8	Tobacco Smuggling and Trafficking; Mass Marketing Fraud; Mortgage Fraud; Capital Markets Fraud
9	Illicit Drug Trafficking; Counterfeiting and Piracy; Corruption and Bribery; Commercial (Trade) Fraud; Third-Party Money Laundering

The overall inherent ML risk rating for each sector or product was assigned a normalized numerical value of 0 to 1 and is represented on the vertical axis of Charts 3 to 9. The results in the charts are based on the following colour code and numerical values.[85]

Rating Colour Code	Normalized Risk Rating Value
Very High	>0.875
High	0.626-0.875
Medium	0.375-0.625
Low	<0.375

It should be noted that some areas have the same ML risk rating value and therefore share the same series of points in the charts (e.g., foreign bank subsidiaries and securities dealers in Chart 3 below) and are therefore combined in the legend.[86]

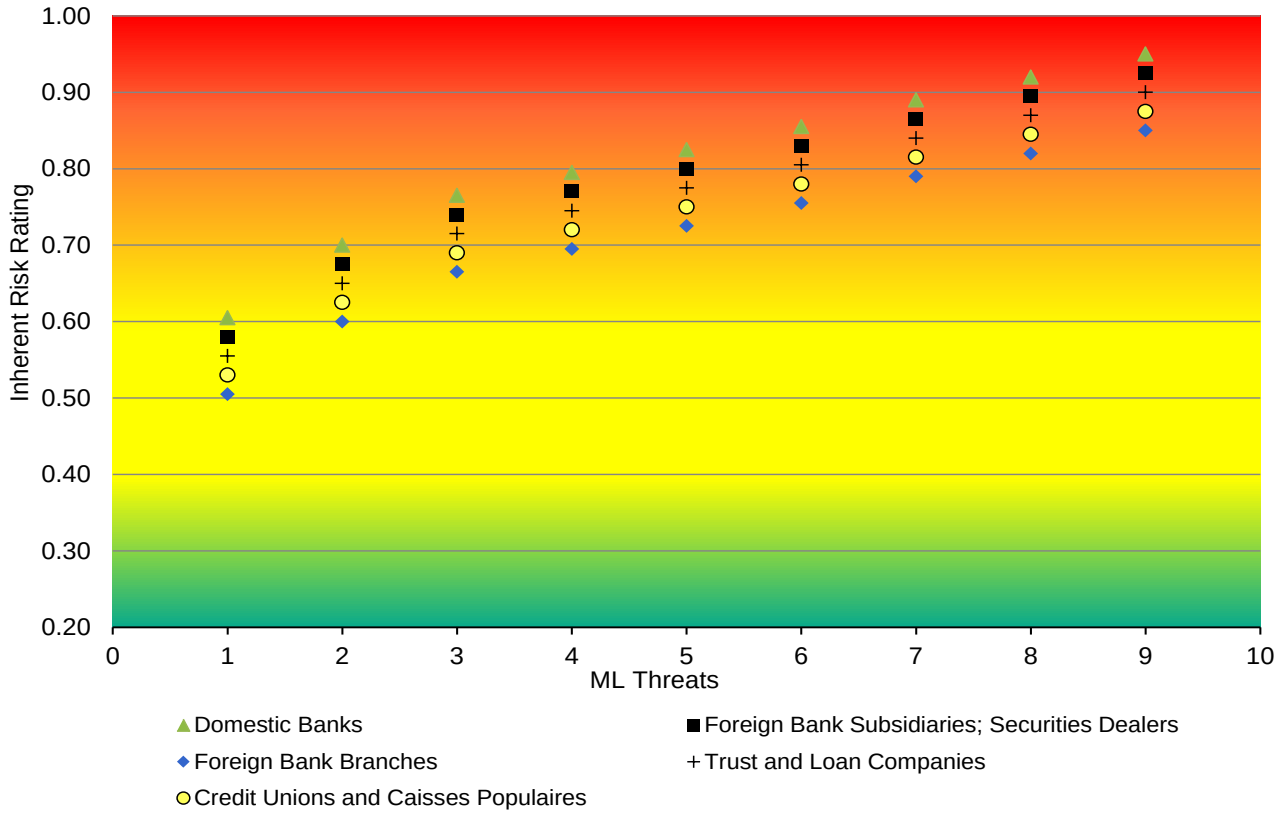
Deposit-Taking Financial Institutions

As illustrated in Chart 3, the majority of ML risk scenarios involving the banking sector, securities dealers, trust and loan companies as well as credit unions and caisses populaires are rated high with a few in the medium or very high range.

[85] The same applies to the TF risk charts provided later in this chapter.
[86] The same applies to the TF risk charts provided later in this chapter.

Chart 3

Inherent ML Risks in Deposit-Taking Financial Institutions and Securities Dealers by Type of ML Threats



Deposit-taking financial institutions are well known to be used for the placement and layering stages of money laundering, for example, through the use of personal and business deposit accounts; domestic wire transfers and international EFTs; currency exchanges; and monetary instruments such as bank drafts, money orders and cheques (i.e., personal and travellers). The main ML methods and techniques used to exploit these products and services include the following:

- Structuring of cash deposits or withdrawals and smurfing (multiple deposits of cash by various individuals and low-value monetary instruments purchased from various banks and MSBs);
- Rapid movement of funds between personal and/or business deposit accounts within the same financial institution or across multiple financial institutions;
- Use of nominees (individuals and businesses);
- Large deposits of cash and monetary instruments followed by the purchase of bank drafts or EFTs to foreign individuals;
- Exchanges of foreign currencies for Canadian currency and vice versa;
- Refining (i.e., converting large cash amounts from smaller to larger bills); and
- Non-face-to-face deposits (i.e., night deposits, armoured cars).

Typical Inherent ML Risk Scenario Involving Deposit-Taking Financial Institutions

Members of an OCG involved in drug trafficking, counterfeiting, tobacco smuggling and human trafficking generate, on a weekly basis, large amounts of cash and also receive international EFTs for some of their criminal activities. Given the large amount of illicit proceeds they generate, they have hired a professional money launderer who is coordinating a number of ML activities with the assistance of nominees and smurfs. Money pick-ups are organized and sometimes involve foreign travel; hence the illicit cash is often smuggled into Canada. The same individuals or others are instructed to, over a number of days, deposit cash, using ATMs (during the day or at night), under the $10,000 reporting threshold into various personal and business accounts held at multiple deposit-taking financial institutions. Some are then instructed to purchase bank drafts or issue cheques in the name of identified nominees who then deposit them into other accounts. Funds are then transferred to other individuals or businesses through domestic wire transfers or international EFTs, the latter in instances when individuals or businesses located in foreign countries are part of the ML schemes. At the direction of the professional money launderer, some individuals are also responsible for conducting currency exchanges and refining activities before depositing cash into personal or business accounts, or just handing over the resulting cash to the professional money launderer or other identified individual(s).

Trust and loan companies offer additional services that can be mainly used in the layering stage of money laundering. For example, trust and lending accounts can be used to conceal the sources and uses of illicit funds, as well as the identity of the beneficial and legal owners. Criminals who are customers or account beneficiaries usually want to remain anonymous in order to move illicit funds or avoid scrutiny. Therefore, they may seek a certain level of anonymity by creating private investment companies, offshore trusts or other investment entities that hide the true ownership or beneficial interest of the trust. Typically, when offshore trusts are used in ML schemes, the back and forth movement of funds will be observed between various accounts in Canada and other countries.

Securities Dealers

Products and services offered by the securities sector have been mainly used in the layering stage of money laundering. The following methods and techniques have been observed in the securities sector:

- Deposits of physical certificates (little information is available to the broker to confirm the source of the funds used to purchase the shares or how the client obtained them);
- Securities traded over the counter are exchanged directly between entities rather than through an organized stock exchange such as the Toronto Stock Exchange;
- Early redemption of securities;
- Requesting proceeds of securities sale in the form of negotiable instruments;
- Transfers of funds between accounts held at multiple institutions;
- Frequent changes of ownership; and
- Use of off-book transactions, registered representatives, offshore accounts and nominees.

Inherent ML Risk Scenario Involving Stock Manipulation

In a stock manipulation case (i.e., capital markets fraud), after the share price was artificially increased, the perpetrators of the fraud used nominees to deposit physical certificates of that company into brokerage accounts. It is suspected that the physical certificates were given to the nominees in an off-market transaction. The shares were sold on the open market shortly after the deposits. The funds were quickly removed from the brokerage accounts and wired offshore to individuals suspected to be responsible for the stock manipulation scheme.

Inherent ML Risk Scenario Involving Over-the-Counter Securities

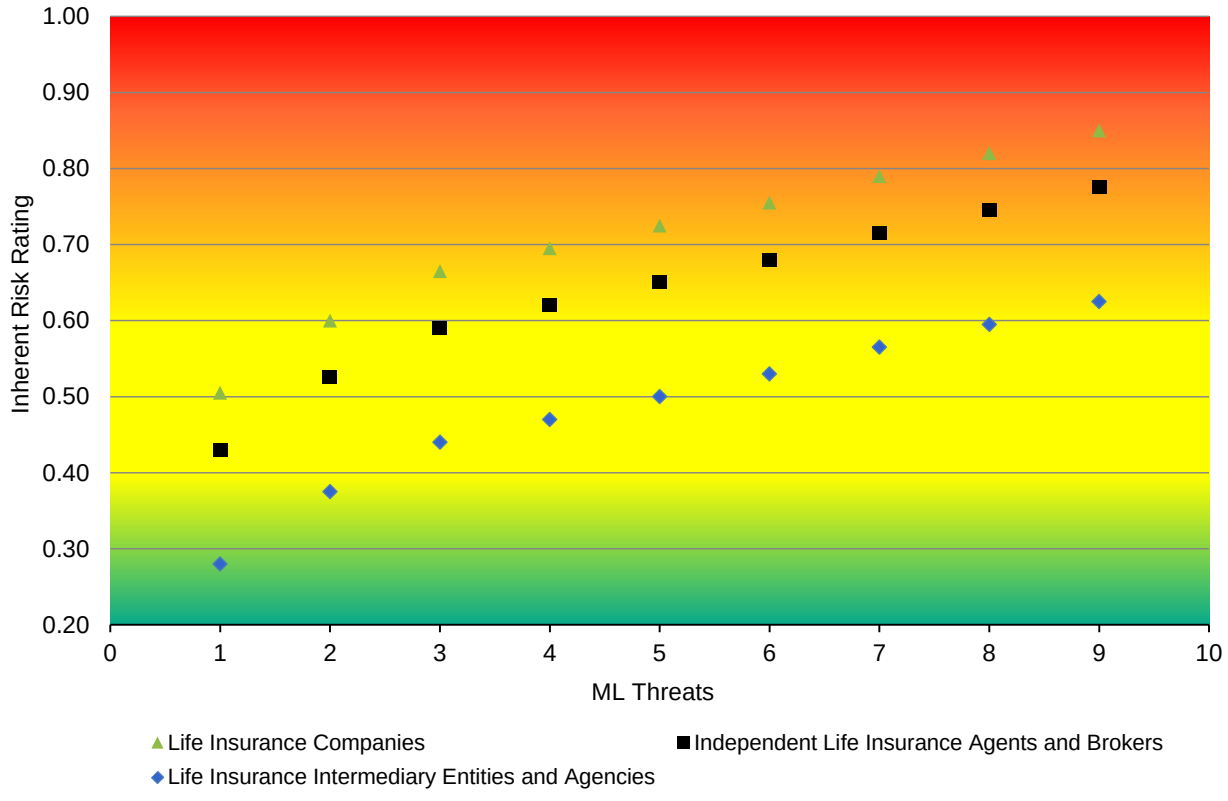
A subject of an investigation purchased over one million shares in a company traded over the counter in an off-market transaction for less than a third of the market price. An investment company sold the shares through an integrated firm (i.e., a major financial institution) on behalf of the investigative subject. The terms of the sale of these shares were suspected to be predetermined by the investigative subject and the purchasing party, in order to transfer the criminal proceeds. The shares were sold the next day at market price, which enabled the share purchaser to receive a 300 per cent return on their investment in one day, and provided a seemingly legitimate explanation for the source of the criminal proceeds.

Life Insurance

As illustrated on Chart 4, ML risk scenarios involving life insurance companies and/or individual agents/brokers are rated medium to high. Given that life insurance intermediary entities and agencies mainly provide administrative support to advisors and allow commission pooling opportunities and access to insurance company products, and do not generally deal directly with clients, they are exposed to low to medium inherent money laundering risk scenarios.

Chart 4

Inherent ML Risks in the Life Insurance Sector by Type of ML Threats



The following ML methods and techniques have been identified in this sector and mainly involve life insurance companies and/or individual agents/brokers:

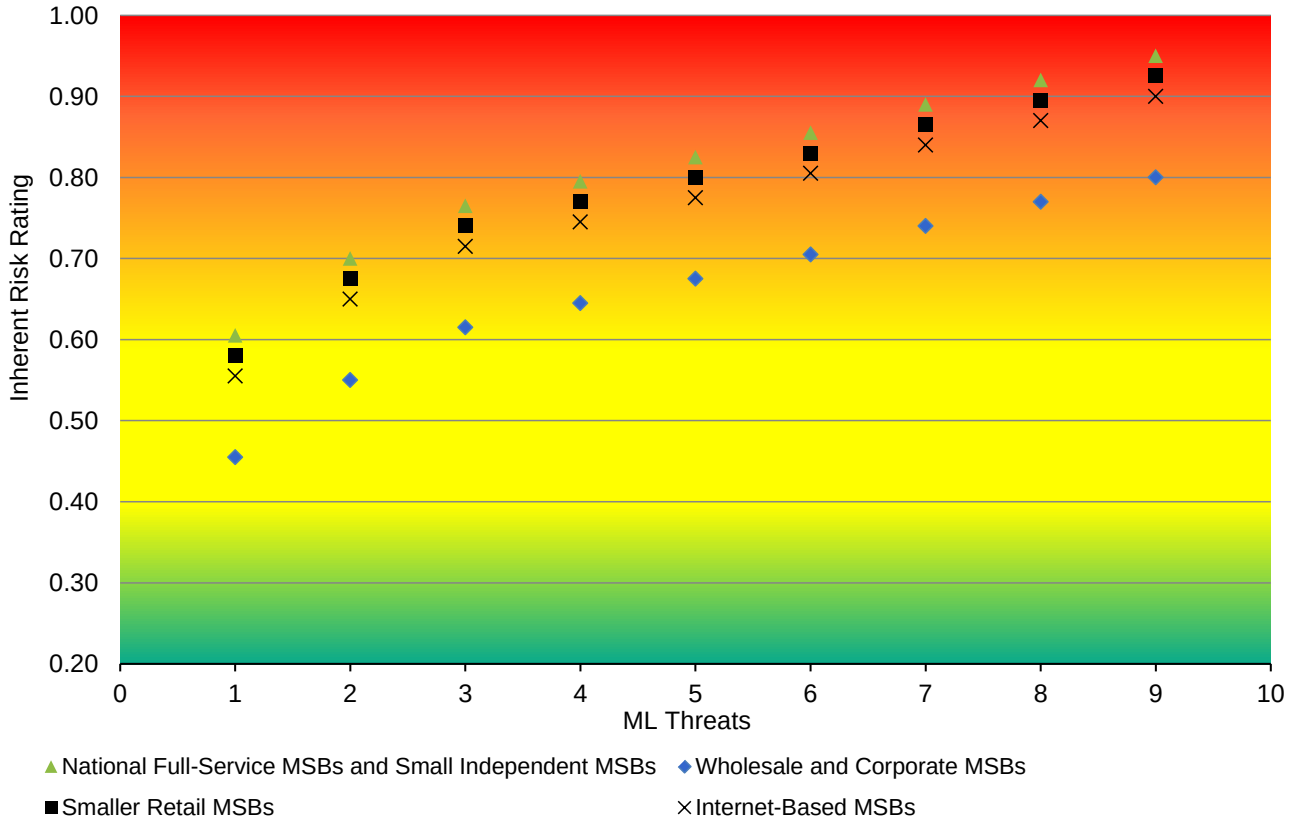
- Early redemption/surrendering of life insurance products with single premium payments and/or high cash values;
- Premium payments made by third parties;
- Use of offshore policies and professional advisors;
- Direct co-option of life insurance industry representatives by criminal elements (e.g., through infiltration, corruption);
- Anonymous account ownership/beneficiary;
- Repeated/rapid changes to account ownership/beneficiaries;
- Multi-party/source financial transactions;
- Large cash transactions—although this sector allows for very few cash transactions;
- Rapid deposit/payment and withdrawal/redemption; and
- Multiple below-threshold (structured) transactions—mainly in relation to the ML layering stage once proceeds have been placed in other sectors, with the exception of life insurance fraud proceeds that may be directly placed in this sector.

Money Services Businesses

The majority of ML risk scenarios illustrated in Chart 5 and involving all types of MSBs, with the exception of wholesale and corporate MSBs, are rated high to very high. Inherent risk scenarios associated with wholesale and corporate MSBs mainly fall into the medium to high range, since they offer a more limited number of products and services, predominantly EFTs and bank drafts, to a smaller clientele segment (i.e., corporations).

Chart 5

Inherent ML Risks in the Money Services Businesses Sector by Type of ML Threats



MSB products and services that are the most often used for money laundering and terrorist financing are international EFTs, currency exchanges and negotiable instruments (e.g., money orders). Cash transactions in this sector are very common and can therefore be used in the ML placement stage. Other products and services such as EFTs, money orders and travellers cheques can also be used in the layering stage of money laundering. Five main ML methods/techniques have been identified for the MSB sector and are further described in the following ML risk scenarios:

- Structuring or attempting to circumvent MSB record-keeping requirements;
- Attempting to circumvent MSB client identification requirements;
- Smurfing, using nominees and/or other proxies;
- Exploiting negotiable instruments; and
- Refining.

Inherent ML Risk Scenario Involving Monetary Instruments and Structuring

In one suspected drug trafficking case, an individual made several dozen separate money order purchases, seemingly to structure them below record-keeping thresholds. These money orders were made payable to an MSB and were negotiated in a variety of cities across North America.

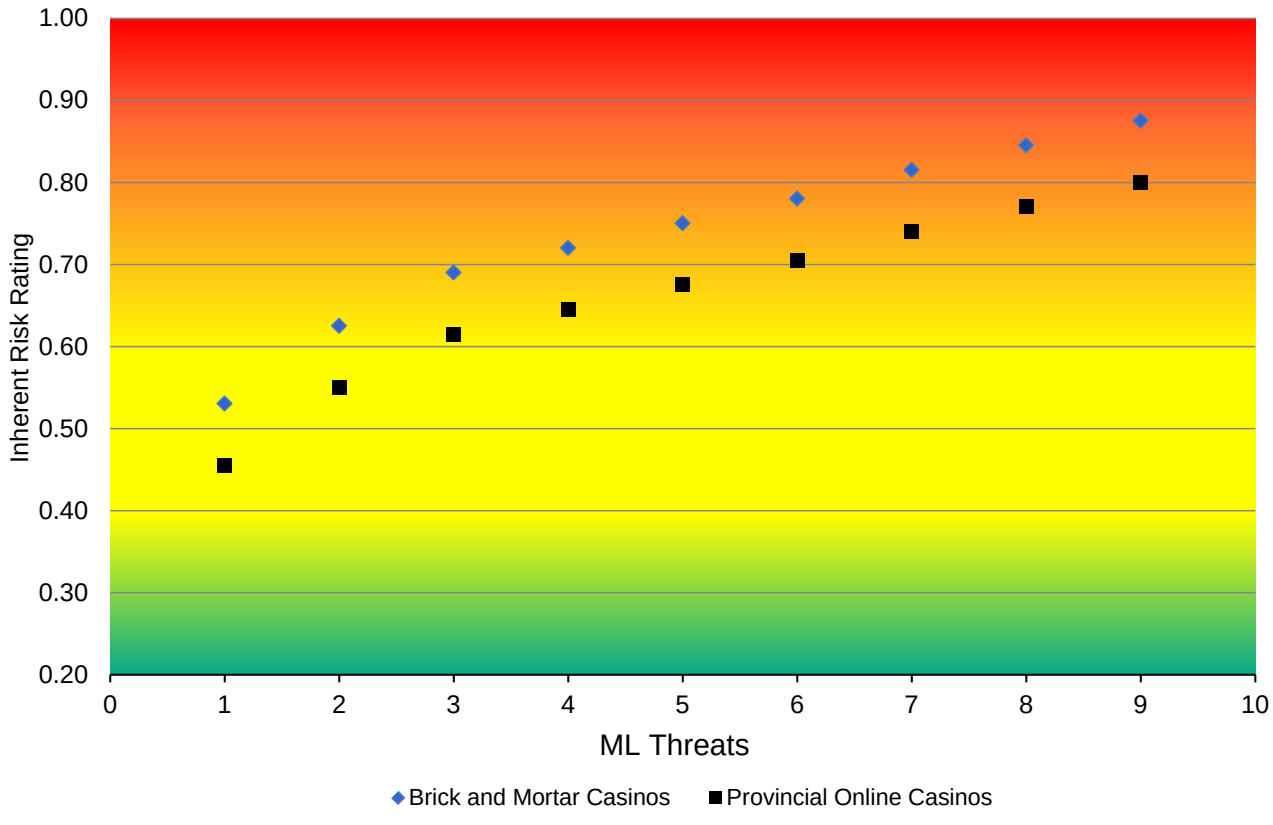
Inherent ML Risk Scenario Involving Monetary Instruments and an Attempt to Circumvent Client Identification Requirements

In one case, an individual purchased dozens of money orders valued in the tens of thousands, in less than a year. Each transaction was structured below record-keeping thresholds, with most of these funds being sent to individuals outside of Canada. The individual provided inaccurate job title information and misleading address information, possibly to add apparent legitimacy to transactions which were not commensurate with the individual's actual employment and income.

Casinos

Chart 6 illustrates the different level of ML risk scenarios involving brick and mortar and provincially regulated online casinos. Given the larger number of products and services offered to clients such as cash purchases of chips, slot machines accepting cash, currency exchanges, self-service ticket redemption machines and so on, brick and mortar casinos are exposed to higher inherent ML risk scenarios than provincially regulated online casinos.

Chart 6
Inherent ML Risks Related to Casinos by Type of ML Threats



Brick and Mortar Casinos

The most often observed stages of money laundering in brick and mortar casinos are placement and layering and the most common techniques for money laundering are structuring and smurfing. The following ML methods and techniques have been used in brick and mortar casinos:

- Use of casino chips;
- Refining (i.e., exchange of small denomination for larger denomination bills);
- Currency exchange;
- Structuring;
- Use of front money account; and
- Use of credit cards.

Typical Inherent ML Risk Scenario Involving Brick and Mortar Casinos

Members of an OCG involved in multiple criminal activities, such as drug trafficking, loan sharking and different types of fraud, regularly visit casinos located in one Canadian province and conduct a number of suspected ML activities which include the following:

- Exchanges of small denomination bills for larger denomination bills at the cashier window in amounts under the reporting threshold;
- Exchanges of a large amount of small denomination bills for casino tickets, and later for large denomination bills;
- Frequent or repeated exchanges at the cashier window of a large amount of foreign currency (most often US dollars) for Canadian currency, with minimal or no gaming activity;
- Cash purchases of casino chips in amounts below the reporting threshold;
- Use of multiple cashiers to cash out casino chips in amounts below the reporting threshold;
- Passing of cash, casino chips or other casino value instrument between related OCG members prior to entering the casino, either on the casino floor, at the gaming table or prior to cashing out;
- Deposits of cash, cheque/bank draft to a front money account, followed by the purchase of casino chips, then redemption of the chips for a casino cheque, or withdrawal of all or part of the funds, with minimal or no gaming observed;
- Deposits of small denomination bills to a front money account, followed by withdrawals of the funds in higher denomination bills;
- Cash deposits by a third party to a customer's front money account;
- Credit card purchases of casino chips with minimal or no gaming and then by cash out with a casino cheque, while illicit cash was used to pay the credit card balance; and
- Casino chip purchases, using illicit cash/bank draft, payable to customers engaged in minimal or no game play and then redemption of the chips for a casino cheque.

Provincially Regulated Online Casinos

Provincially regulated online casinos can be mainly used in the layering stage of money laundering and can involve ML methods and techniques described in the following ML risk scenarios:

Inherent ML Risk Scenario Involving Funding of Account Through Prepaid Credit Card and Minimal Gaming Activity

Criminals, or nominees acting on their behalf, use online casinos to launder illicit proceeds and regularly use credit cards (for which accounts are later paid with illicit funds) or prepaid open-loop cards to fund multiple casino online accounts, after having loaded the prepaid open-loop card with illicit proceeds. When setting up the online accounts, they select the option for having the winnings under a certain threshold and other payouts paid by cheque or deposited directly to their bank accounts. Payouts of funds drawn on a credit card, if under a certain threshold, are refunded to the credit card.

The same individuals are also depositing illicit cash into bank accounts, using those funds to load their online gaming account, and requesting a payout following minimal gaming activity using any of the aforementioned methods, or following cancellation or termination of the account. In other instances, they make multiple transfers of funds, each time going over the online casino operator's account limit, to get casino cheques mailed to them.

Inherent ML Risk Scenario Involving Third-Party Funding

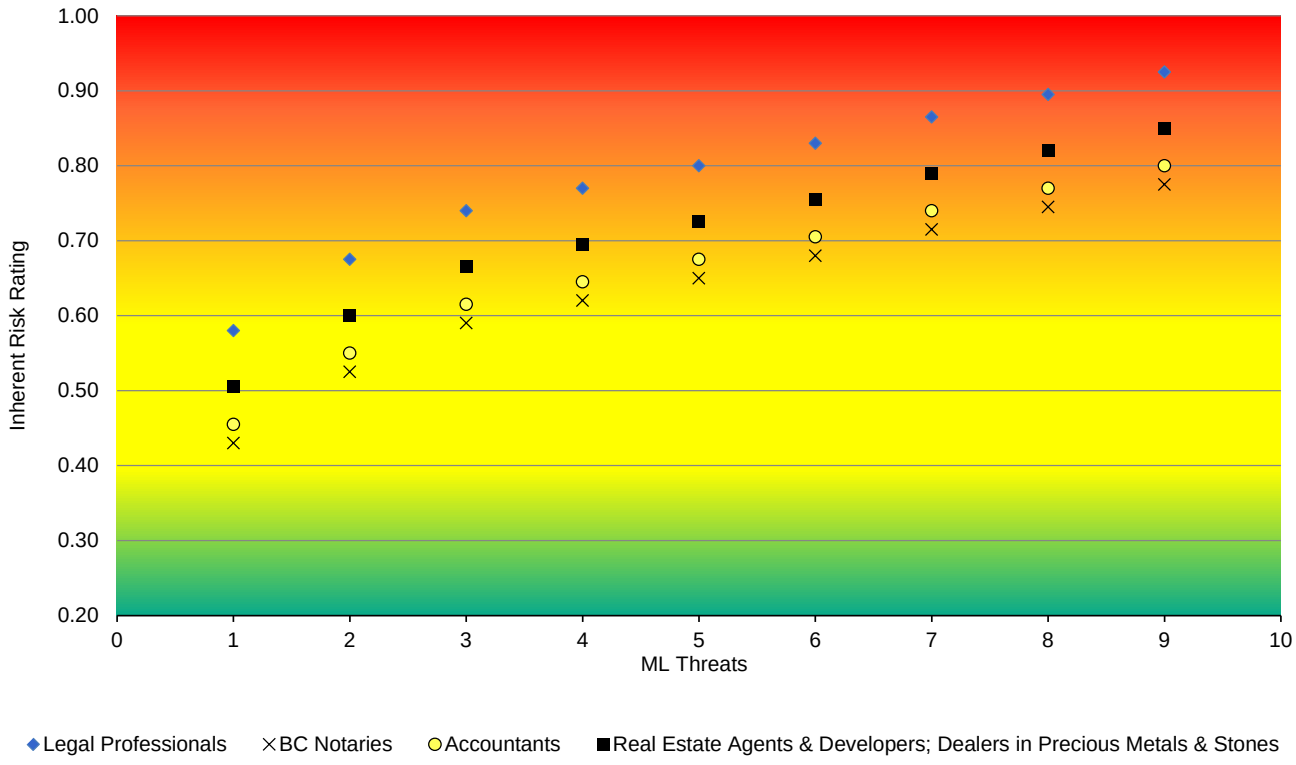
Similarly, the option of wire transfers directly from bank accounts can also be used to facilitate third-party funding of one online casino account. Criminal associates or smurfs hired by a professional money launderer can use the web banking "bill payment" option and select the appropriate online casino operator as a payee. These associates or smurfs may then deposit illicit cash into a bank account and, consequently, transfer funds to the money launderer's online gaming account. The money launderer can then request the payout of funds by way of casino cheque, or could allow the funds deposited to put the account over its limit, generating an automatic payment as described in the first scenario.

Non-Financial Businesses and Professions

The majority of the non-financial businesses and professions represented in Chart 7 are exposed to high ML risk scenarios, although a few fall into the medium or very high category.

Chart 7

Inherent ML Risks Related to Non-Financial Businesses and Professions by Type of ML Threats



Legal Professionals and BC Notaries

Given the nature of the products and services (e.g., formation and management of corporations and trusts) offered by legal professionals to their clients, they are exposed to high to very high inherent ML risk scenarios. Although BC notaries offer similar services, their activities are mainly limited to British Columbia and therefore money laundering opportunities are more limited and they are exposed to lower risks (i.e., medium to high).

Legal professionals and BC notaries may be used as intermediaries to put distance between criminal activities and the proceeds generated by those activities, and therefore to hide the source and true beneficial owners of such funds, often through complex corporate or trust structures formed with the assistance of legal professionals. This assistance also adds a veil of legitimacy to the movement of funds and other business operations.

Real Estate Sector

The products and services offered by real estate agents and developers provide opportunities to criminals and money launderers. The following four basic ML methods and associated techniques are commonly employed by criminal entities to launder the proceeds of crime through real estate transactions:

- Purchase or sale of property;
- Accessing financial institutions through gatekeepers (e.g., lawyers, mortgage brokers);
- Assisting the purchase or sale of property; and
- Mortgage and loan schemes.

The associated ML techniques most often observed are as follows:

- Hiding or obscuring the funds' source or the buyer's identity;
- Buying or selling using a nominee, corporation or trust;
- Involving a realtor or a non-financial professional as the means for accessing the financial system; and
- Two main ML-specific schemes can involve value tampering and/or purchase-renege-refund.[87]

Real estate transactions can include entities outside of the real estate sector (i.e., third parties relative to a real estate reporting entity and its client). For example, mortgage transactions are conducted within the financial sector; real estate investment trusts operate within the securities dealer sector. In other words, the end-to-end process of applying funds to real estate transactions can involve multiple sectors. Real estate transactions usually involve lawyers and their trust accounts. These lawyers can knowingly or unknowingly provide legitimacy and/or obscure the source of illegally sourced funds. In addition, mortgage brokers, realtors and real estate appraisers can be complicit in laundering proceeds of crime through the purchase of real estate or mortgage fraud. Consequently, mortgage and loan schemes to conduct money laundering usually involve multiple sectors.

Other ML methods and techniques that allow illicit cash into the financial system include cash purchases or large cash down payments, and cash payments especially in the construction, renovation and upgrading of real estate assets. Finally, illicit foreign funds can also be used to purchase Canadian real estate properties.[88]

[87] This refers to the activity involving individuals who commit to purchase a property, make a payment towards it, but then ultimately receive their funds back for not following through on the purchase.

[88] If these funds are sent through an EFT from abroad, the EFT would be reported to FINTRAC if greater than $10,000, and any amount could also be reported in a suspicious transaction report if money laundering or terrorist financing were suspected.

Dealers in Precious Metals and Stones

Precious metals and stones are valuable commodities which can be easily concealed, exchanged and transported. Proceeds of crime can be placed, layered and integrated into the financial system through the purchase and sale of precious metals and stones. However, an individual who purchases precious metals and stones for subsequent resale is ultimately left with cash or other monetary instruments that could require additional transactions through another regulated sector.

That said, precious metals, precious stones and jewels are easily transportable, highly liquid and a highly concentrated bearer form of wealth. They serve as international mediums of exchange and can be converted into cash anywhere in the world. In addition, precious metals, especially gold, silver and platinum, have a readily and actively traded market, and can be melted into various forms, thereby obliterating refinery marks and leaving them virtually untraceable.

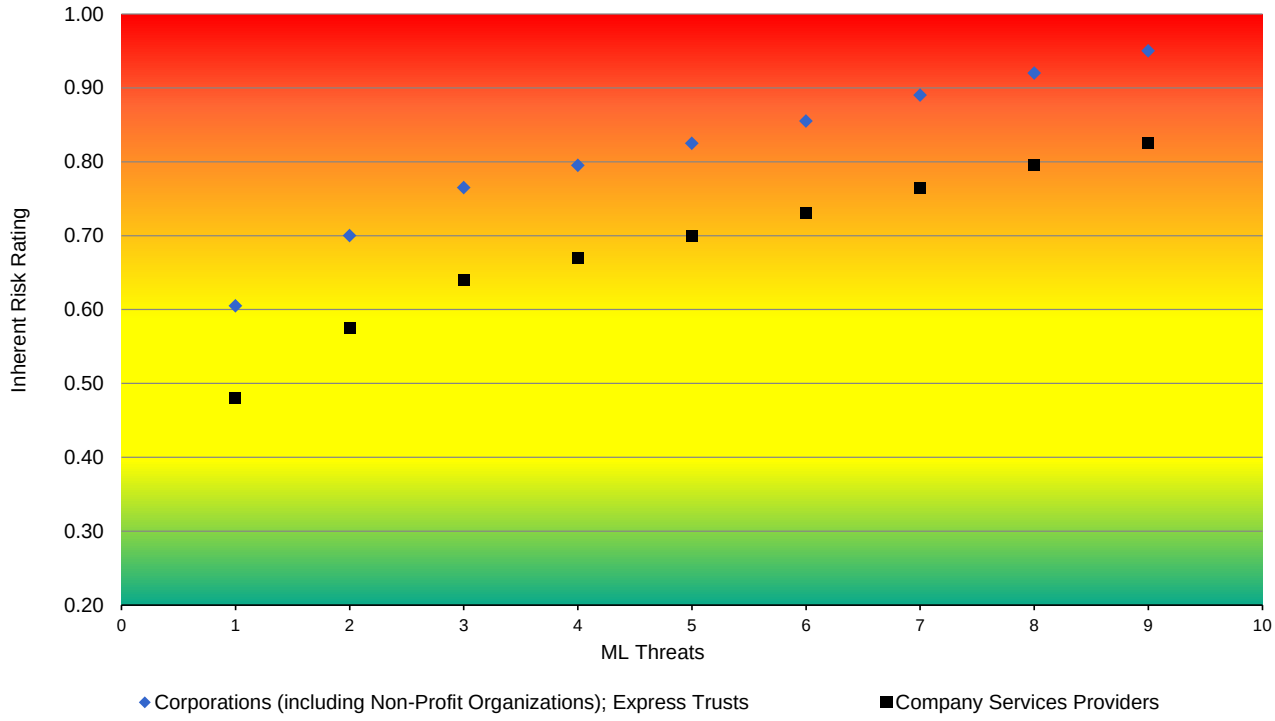
The main ML methods identified are as follows:

- Purchase of precious metals and jewellery with the proceeds of crime and subsequent sale;
- Use of DPMS sector businesses as fronts to launder proceeds of crime;
- Use of accounts held with precious metal dealers for laundering the proceeds of crime;
- Assisting the purchase or anonymizing the purchase or sale of precious metals and jewellery;
- Use of international jurisdictions and entities to purchase and sell precious metals and jewellery acquired with the proceeds of crime; and
- Use of precious metals to purchase illicit goods (e.g., drugs).

Corporations, Express Trusts and Company Services Providers

As illustrated in Chart 8, the majority of ML risk scenarios involving corporations and express trusts are rated high to very high since they are often used to hide the beneficial owners of illicitly generated funds through very complex structures that often involve multiple jurisdictions and intermediaries. Private corporations pose the higher inherent ML risk and over 60 per cent of ML cases disclosed to law enforcement by FINTRAC during a five-year period have involved at least one business.[89] Moreover, the commingling of legitimate business revenue with criminal proceeds is a common ML method observed, in particular in drug-related cases. Corporations can also be used as fronts where numerous business bank accounts are used to conduct various transfers of funds between them.

Chart 8
Inherent ML Risks Related to Corporations, Express Trusts and Company Services Providers by Type of ML Threats



[89] This refers to businesses incorporated in both Canada and internationally.

The most commonly documented ML technique is the use of shell companies. A shell company is a legal entity that possesses no significant assets and does not perform any significant operations. To launder money, the shell company can purport to perform some service that would reasonably require its customers to often pay with cash and then create fake invoices to account for the cash. The company can then deposit the cash, make withdrawals, and thus "integrate" the proceeds of crime into the legitimate economy.

Legal entities (i.e., corporations and trusts), chains of ownership of legal entities, and nominees, in conjunction with other tools and methods (e.g., use of offshore services), can then be used to conceal the true owner of the corporation or the trust. Legal entities are therefore used to effectively conceal or at least deter authorities from uncovering the identity of their beneficial owners.

As indicated above, setting up an offshore corporation through gatekeepers such as a law firm can also be an effective method to conceal a corporation's true beneficial ownership. Offshore corporations can be quickly established and managed by a local company services provider (CSP). Moreover, because it may be difficult to differentiate between legitimate and illegitimate financial activity, offshore corporations can be effective tools in the layering or integration stages of money laundering.

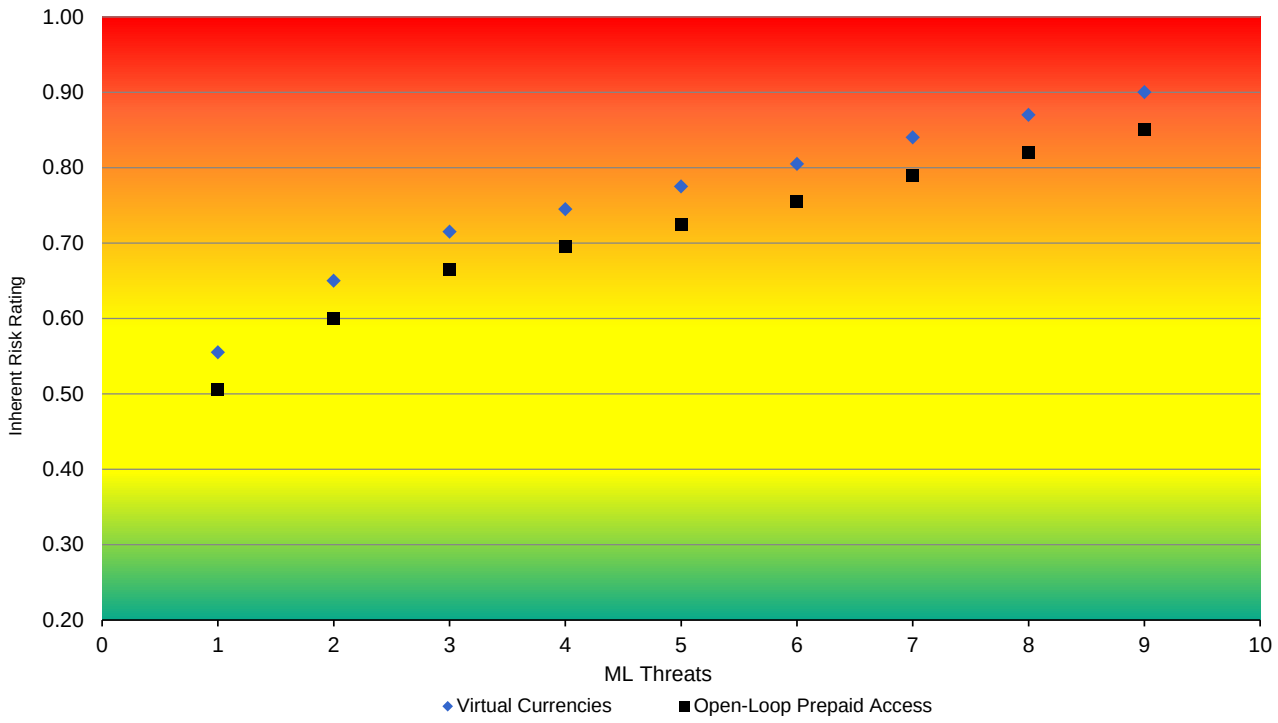
There are only a few CSPs in Canada but they are also exposed to high inherent ML risks, in particular when they are involved in managing corporations for their clients. The limited number of CSPs in Canada is likely due to the fact that provincial or federal incorporation can be done online through provincial/federal service websites, is straightforward and inexpensive, can be done very quickly and does not necessarily require the services of a professional (e.g., a lawyer or a notary). However, legal professionals may be sought to assist in establishing more complex corporate structures.

Canadian criminals can use domestic and offshore corporations and trusts in their ML scheme, but foreign criminals can also use Canadian corporations and trusts to conduct money laundering.

Selected Products Holding Monetary Value

Chart 9 illustrates the level of ML risks associated with virtual currencies and open-loop prepaid access products and services. Virtual currencies, in particular convertible ones, are mostly used in high to very high ML risk scenarios and can be used in all three stages of money laundering. Open-loop prepaid access products are also mainly used in high ML risk scenarios.

Chart 9
Inherent ML Risks Related to Selected Products Holding Monetary Value by Type of ML Threats



Virtual Currencies

Virtual currency exchanges can be controlled or used by money launderers because of their cash-intensive nature and anonymous services. Criminals can launder their proceeds by buying digital currency and doing several subsequent layering activities:

- Purchasing goods and services directly with the virtual currency;
- Exchanging the currency again for real money, obtaining a wire transfer from the exchange company; and
- Exchanging one virtual currency for another several times using different exchange companies, before converting it back to real money.

Some virtual currencies, although not criminally controlled, can be adopted by a criminal network as the form of payment. For example, Bitcoin became the exclusive currency of Silk Road, a website used for many crimes including money laundering, after the Liberty Reserve virtual currency was shut down. In another scenario, a criminal could place illicit cash in the Bitcoin automated machine to purchase Bitcoins and then sell them to another buyer. That way, the illicit funds would be placed and layered.

Prepaid Access Products

Because they can be reloaded with cash and can be used in the same places that regular credit cards are accepted, open-loop prepaid access products can be used for money laundering, particularly in instances when the allowed loading limit is high. There have been specific incidents where prepaid access products, mainly open-loop ones, were suspected of being used in ML schemes in Canada:

- In 2009, law enforcement officials investigated a case which involved over 40 suspects believed to have loaded prepaid cards in another country and then used them to withdraw approximately $350,000 from ATMs in Canada.
- A Canadian Internet payment services provider and its foreign subsidiaries were suspected of laundering the proceeds of fraud. Three open-loop prepaid card providers in Canada and the U.S. were used. Funds were sent from foreign countries to the Canadian Internet payment services provider's bank accounts. The money was then loaded onto prepaid cards for layering in other countries.
- In addition, the U.S. Secret Service has observed significant cross-border movement of the proceeds of white-collar crimes and drug crimes from the United States into Western Canada through prepaid cards.

Inherent Terrorist Financing Risks

Depending on the nature and extent of TF activities in Canada conducted by individuals associated with the different assessed terrorist groups (see Table 6 below and the discussion in Chapter 4), the breadth of TF collection/acquisition (i.e., fundraising) and aggregation/transmission methods vary and can involve a limited or extended number of sectors and products/services.

Table 6
Terrorist Financing Threat Groups of Actors

Al Qaeda in the Arabian Peninsula	Hizballah
Al Qaeda Core	Islamic State of Iraq and Syria
Al Qaeda in the Islamic Maghreb	Jabhat Al-Nusra
Al Shabaab	Khalistani Extremist Groups
Foreign Fighters/Extremist Travellers	Remnants of the Liberation Tigers of Tamil Eelam
Hamas	

The assessment of TF risks resulted in the identification of five very high TF risk scenarios that involve five different sectors (i.e., corporations, domestic banks, national full-service MSBs, small and predominantly family-owned MSBs and express trusts) that have been assessed to be very highly vulnerable to terrorist financing, combined with one high TF threat group of actors.

On the other hand, a total of 93 high TF risk scenarios were identified that involve, to varying degrees, all 19 sectors and products represented in Charts 10 to 13, and that were assessed to have a medium to very high vulnerability to terrorist financing. Seven different groups of TF threat actors rated low, medium and high have or could exploit all or some of those sectors, as further explained in the following pages.

The majority of the TF risk scenarios included in Charts 10 to 13 were rated lower than for money laundering, and with the exception of the risk scenarios referred to above and rated high or very high, most of them were rated medium.

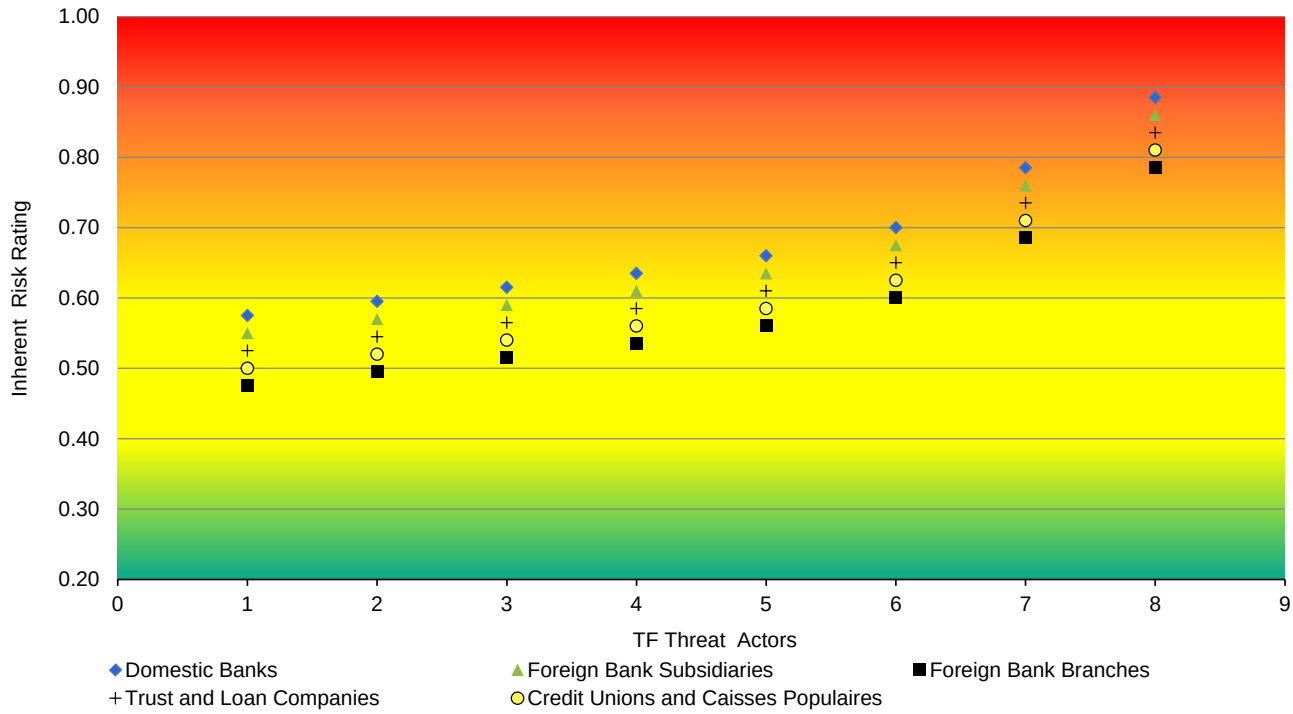
Each number (i.e., 1-8) on the horizontal axis of Charts 10 to 13 represents one group of TF threat actors associated with the different assessed terrorist groups.

Deposit-Taking Financial Institutions

Deposit-taking financial institutions included in Chart 10 are mainly used in the transmission, as well as sometimes in the aggregation, of funds suspected to be ultimately destined for terrorist groups or individuals, the majority of which are active in foreign countries. As for money laundering, but to support different goals, TF risk scenarios described below and rated medium to very high, generally involve the use of domestic wire transfers, international EFTs, monetary instruments such as bank drafts, money orders and cheques (e.g., personal, travellers), personal and business accounts, currency exchanges, trust accounts as well as loan/mortgage and credit card services.

Chart 10

Inherent TF Risks Related to Deposit-Taking Financial Institutions by TF Threat Actors



Inherent TF Risk Scenarios Involving Deposit-Taking Financial Institutions

The majority of TF actors associated with the assessed terrorist groups are suspected of using international EFTs as one TF transmission method to send funds overseas,[90] often in high-risk jurisdictions. Individuals associated with some of those groups may also use domestic wire transfers to move funds within Canada and/or aggregate collected funds (e.g., cash or web-based[91] donations) into one or a few bank accounts (personal or business) before sending the funds overseas. This also means that cash deposits, sometimes conducted by third parties or nominees, may occur when cash donations are obtained through door-to-door solicitation or the use of donation boxes. Cash withdrawals may also occur when, for example, they need funds to pay for their airplane tickets and/or for their terrorist-related expenses. Other TF methods involve the use of monetary instruments and commingling of illicit funds[92] with legitimate business revenue in Canada.

Other inherent TF risk scenarios may involve the use of fraudulent loans to raise funds, while email money transfers may be used for the transmission of funds. Credit card fraud, including bust-out schemes[93] and card skimming, have been used by some TF actors. Business accounts and, in some instances, trust accounts, are also suspected of being used to hide the true source or beneficial owner of funds destined for terrorist activity. Finally, some TF risk scenarios may involve trade-based schemes or the use of businesses as fronts, and therefore would involve the domestic or international movement of funds into and out of business accounts.

Money Services Businesses

As for deposit-taking financial institutions, the products and services offered by MSBs such as currency exchanges, domestic wire transfers, international EFTs and money orders are often used in TF risk scenarios (rated medium to very high) involving the majority of TF actors associated with the assessed terrorist groups. Although all types of MSBs illustrated in Chart 11 can be exploited for TF activities, it is suspected that national full-service, small independent and smaller retail MSBs are most often used. This is mainly due to the fact that national full-service MSBs operate globally and offer money transfer services to multiple foreign jurisdictions, while smaller retail MSBs offering currency exchanges, domestic wire transfers and international EFT services are typically agents of national full-service MSBs. Operators of small independent MSBs may have ethno-cultural or familial links to some foreign jurisdictions and possibly links to informal money value transfer operators (e.g., hawalas). Some of the jurisdictions where funds are sent to or received from may be considered high-risk due to ongoing conflicts and/or the presence of terrorist organizations or other factors.

TF actors using web-based donations through social media or crowd funding methods may receive online payments or transfers conducted through internet-based MSBs.

---

[90] The other main method used by many TF actors to move funds overseas is the use of cash couriers travelling overseas; they sometimes travel overseas themselves.

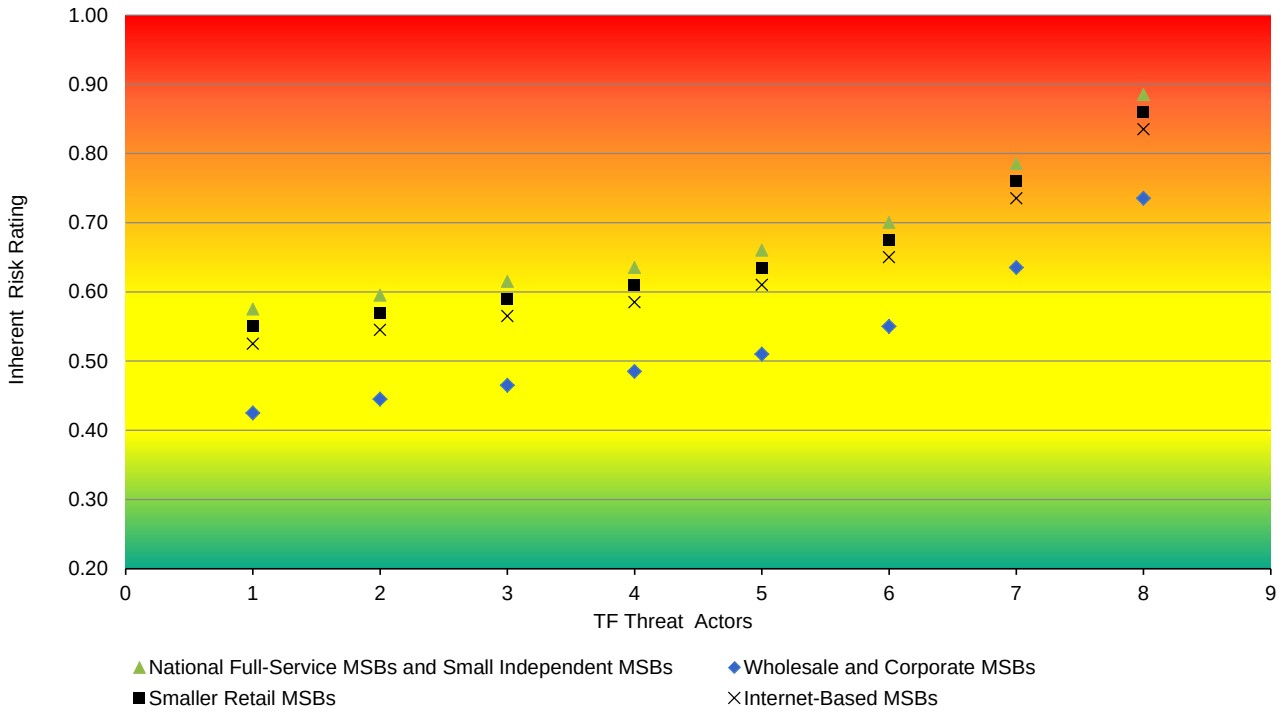
[91] Some TF actors are suspected of having used or are still using websites or social media tools (e.g., Facebook, Twitter) to raise funds, and such activity sometimes involves crowd funding (i.e., multiple donors contributing funds for the same cause or the same individual). Mobile payment systems have also been used.

[92] Some TF actors are known to be involved in criminal activities, mainly thefts (e.g., car theft) and fraud (e.g., credit card, welfare, student loan and visa/passport), generating illicit profits that can then be commingled with the revenue of legitimate businesses they control.

[93] A bust-out scheme involves an individual acquiring credit from a financial institution or business offering credit cards. The credit levels are maintained until the creditor attains a certain level of comfort and increases the credit limit. The available credit is then exhausted by large cash advances and purchases, then bogus payments (i.e., using non-sufficient funds cheques) are made to "pay off" the debt in full. The credit limit is then restored by the creditor and the fraudster again takes advantage and exhausts the available credit a second time before the financial institution or business realizes that the payments made were bogus. No further payments are made to the account and the debtor declares bankruptcy. Another variation of this scheme is often the use of stolen or fake identity to obtain credit in the first place.

Chart 11

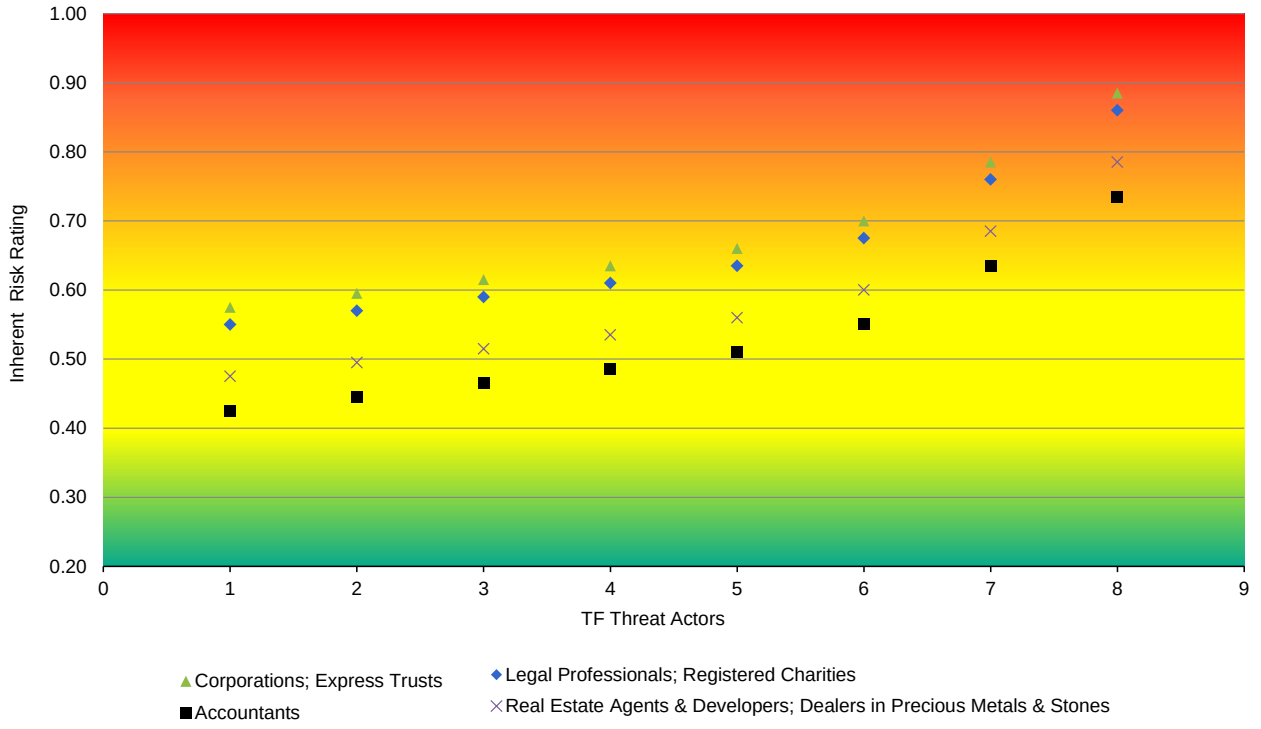
Inherent TF Risks in the Money Services Businesses Sector by TF Threat Actors



Express Trusts and Non-Financial Businesses and Professions

As illustrated in Chart 12, the majority of TF scenarios involving corporations, express trusts, legal professionals and NPOs were rated medium to very high. TF risk scenarios involving accountants, real estate agents and developers, as well as dealers in precious metals and stones were rated medium to high.

Chart 12
Inherent TF Risks Related to Express Trusts and Non-Financial Businesses and Professions by TF Threat Actors



Corporations

Corporations, particularly private ones, are used in TF risk scenarios as fronts to move funds destined for terrorist groups or individuals, or to commingle illicit funds with legitimate business revenue or to use in trade-based schemes. Generally, corporations involved in TF schemes have been from the food, import/export, shipping/freight, automobile, general contracting/labour, real estate, travel, telecommunications, textile and trading industries. In addition, in the broader context of terrorist resourcing, the procurement of goods is also considered a form of terrorist financing and could involve various types of corporations. Most TF actors associated with the assessed terrorist groups use businesses in some TF schemes.

Legal Professionals and Accountants

Trust accounts, in particular those that are set up by legal professionals, are known to have been used in TF risk scenarios. There have also been some instances where accountants facilitated fraudulent schemes generating funds to support suspected terrorist activities.

Registered Charities

In the context of terrorism and terrorist financing in Canada, the registered charities at higher TF risk are the ones operating in close proximity to an active terrorist threat. Those operating overseas are most vulnerable, as funds or goods may be abused at the point of distribution by the charity or partner organizations. Registered charities that operate domestically, within a population that is actively targeted by a terrorist movement for support and cover, are also exposed to TF risks, as resources generated in Canada may be transferred internationally to support terrorism if the organization does not exercise direction and control over the end-use of its resources. The majority of the TF actors associated with the assessed terrorist groups have used registered charities.

Inherent TF Risk Scenarios Involving Charities

The TF methods used in the majority of TF risk scenarios involving Canadian and foreign charities (referred to as organizations below) can be summarized as follows:

- Diversion of funds—an organization, or an individual acting on behalf of an organization, diverts funds to a known or suspected terrorist entity;
- Affiliation with terrorist entity—an organization, or an individual acting on behalf of an organization, maintains operational affiliation with a terrorist organization or supporter of terrorism, putting it at risk of abuse for purposes including general logistical support to the terrorist entity;
- Abuse of programming—organization-funded programs meant to support legitimate humanitarian purposes are manipulated at the point of delivery to support terrorism;
- Support of recruitment—organization-funded programs or facilities are used to create an environment which supports and/or promotes terrorism recruitment-related activities; and
- False representation and sham organizations—under the guise of charitable activity, an organization or individual raises funds, promotes causes and/or carries out other activities in support of terrorism.

The most commonly observed TF method relates to the abuse of organizations to support terrorism by the diversion of funds. In this method, funds raised by organizations for humanitarian programs (e.g., disaster relief, humanitarian relief, cultural centres, relief of poverty, advancement of education, advancement of religion) are diverted to support terrorism at some point through the organization's business process. Essentially, the diversion of funds occurs when funds raised for charitable purposes are redirected to a terrorist entity.

The diversion of funds method can be divided into cases where the diversion was carried out by actors internal to the organization as well as external to the organization. Internal actors are named individuals of the organization, such as directing officials and staff. External actors, however, are merely associated with the organization as third parties, such as fundraisers and foreign partners.

Dealers in Precious Metals and Stones

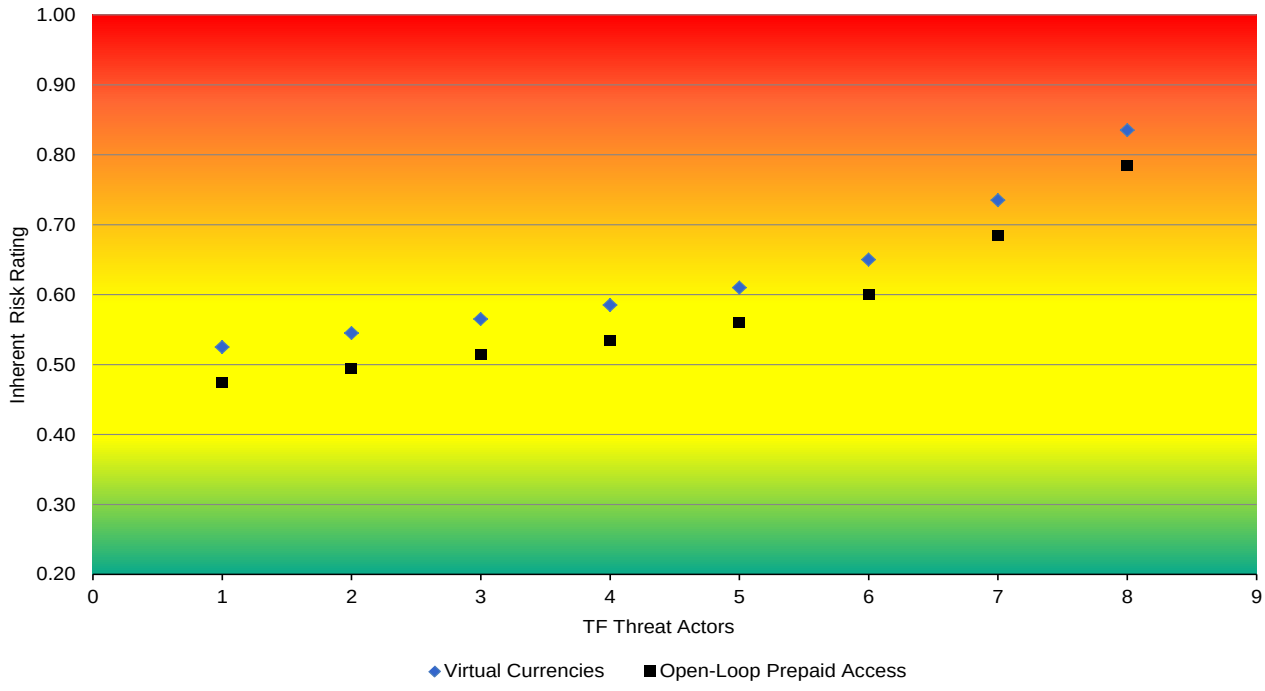
TF actors have purchased precious metals and stones to transfer value without being detected by authorities. Another method to avoid detection is to use precious metals and stones entities as front companies to move funds between different jurisdictions.

Virtual Currencies and Open-Loop Pre-Paid Access

TF risk scenarios involving virtual currencies and prepaid access products have been rated medium to high, as shown in Chart 13. Some TF actors have been reported to use Bitcoins as part of their TF activities and may use other virtual currencies. Although only a few TF cases in Canada have involved the use of open-loop prepaid access products, other jurisdictions have also reported such use.

Chart 13

Inherent TF Risks Related to Products Holding Monetary Value by TF Threat Actors



Next Steps

This risk assessment is an analysis of Canada's current situation and represents a key step forward in providing the basis for the AML/ATF regime to promote a greater shared understanding of inherent ML/TF risks in Canada. The assessment will help to continue to enhance Canada's AML/ATF regime, further strengthening the comprehensive approach it already takes to risk mitigation and control domestically, including with the private sector and with international partners.

The Government of Canada expects that this report will also be used by financial institutions and other reporting entities to contribute to their understanding of how and where they may be most vulnerable and exposed to inherent ML/TF risks. FINTRAC and OSFI will include relevant information related to inherent risks in their respective guidance documentation to assist financial institutions and other reporting entities in integrating such information in their own risk assessment methodology and processes so that they can effectively implement controls to mitigate ML/TF risks. Members of the oversight of the regime will also use the results of the risk assessment to inform policy and operations as part of the ongoing efforts to combat money laundering and terrorist financing.

Annex: Key Consequences of Money Laundering and Terrorist Financing

Social Consequences

- Increased criminal activity writ large
- Increased social and economic power to criminals
- Increased victimization, from emotional trauma to physical violence
- Increased rates of incarceration
- Reduced confidence in private and public sector institutions

Economic Consequences

- Increased economic distortions (consumption, saving and investment) that affect economic growth
- Reduced domestic and international investment
- Higher illicit capital inflows and higher legitimate capital outflows
- Unfair private sector competition
- Distorted market prices
- Increased bank liquidity and solvency issues, which may affect the integrity of the financial system
- Reputational damage relating to the economy and the sectors at issue (particularly the financial sector)

Political Consequences

- Eroding of public institutions and the rule of law
- Greater perceived attractiveness for illicit ML/TF activities ("safe haven")
- Loss of credibility and influence internationally
- Lower government revenues
- Negative public perception in the government's ability to deal with ML/TF activity (weak on crime)

Glossary

beneficial owner: the natural person who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes persons who exercise ultimate effective control over a legal person or arrangement.

closed-loop pre-paid access: prepaid access to funds or the value of funds that can be used only for goods and services in transactions involving a defined merchant or location (or set of locations). The definition includes gift cards that provide access to a specific retailer, affiliated retailers or a retail chain, or alternatively to a designated locale such as a public transit system.

consequences of ML/TF: the negative impact that money laundering and terrorist financing has on a society, economy and government.

criminalized professionals (or white collar criminals): individuals who hold or purport to hold a professional designation and title in an area dealing with financial matters and who use their professional knowledge and expertise to commit or wittingly facilitate a profit-oriented criminal activity. Criminal professionals would include lawyers, accountants, notaries, investment and financial advisors, stock brokers and mortgage brokers.

designated non-financial businesses and professions: casinos, real estate agents, dealers in precious metals, dealers in precious stones, lawyers, notaries, other independent legal professionals and accountants and trust and company services providers.

domestic banks: Canadian banks that are authorized under the *Bank Act* to accept deposits, which may be eligible for deposit insurance provided by the Canada Deposit Insurance Corporation.

express trusts (legal arrangements): legal arrangements refer to express trusts where the settlor intentionally places assets under the control of a trustee for the benefit of a beneficiary or for a specified purpose. There are two general types of express trusts: (1) testamentary trusts that are created on the day the settlor passes away, in order to transfer the settlor's estate to beneficiaries; and, (2) inter vivos trusts that are created during the lifetime of the settlor, where the assets of the trust are distributed during the settlor's lifetime. In the context of ML/TF, the express inter vivos trust is the most relevant.

factoring company: factoring is a form of asset-based financing whereby credit is extended to a borrowing company on the value of its accounts receivable (the latter are sold at a discount price in exchange for money upfront). The factoring company then receives amounts owing directly from customers of the borrower (the debtor). Factoring companies are primarily used to raise capital in the short term.

foreign bank branches: foreign institutions that have been authorized under the *Bank Act* to establish branches to carry on banking business in Canada.

foreign bank subsidiaries: foreign institutions that have been authorized under the *Bank Act* to accept deposits. Foreign bank subsidiaries are controlled by eligible foreign institutions.

foreign fighters: individuals who travel abroad to fight with and show allegiance to a terrorist group. They operate in countries which are not their own, and their principal motivation is ideological rather than material reward.

independent life insurance agents and brokers: individuals who are licensed to sell life insurance products. Some agents and brokers deal directly with some insurance companies, while others work through intermediary entities and agencies to access insurance products.

inherent ML/TF risk: the ML/TF risk that is present in the absence of any controls to mitigate that risk.

inherent ML/TF vulnerabilities: the properties in a sector, product, service, distribution channel, customer base, institution, system, structure or jurisdiction that threat actors can exploit to launder proceeds of crime or to fund terrorism.

internet-based MSBs: these businesses offer money services and related products online, primarily payment and money transfer services. The number of such entities is smaller in comparison to the other assessed categories of MSBs, but they are a growing segment of the MSB business.

life insurance companies: foreign and domestic entities that have been authorized to conduct life insurance business in Canada.

life insurance intermediary entities and agencies: entities that provide administrative support to insurance advisors and allow for the pooling of commissions and access to insurance company products.

ML/TF threat: a person or group of people that have the intention, or may be used as witting or unwitting facilitators, to launder proceeds of crime or to fund terrorism.

money mules: individuals who facilitate fraud and money schemes, often unknowingly (e.g., moving money through international EFTs on behalf of criminals). They tend to exhibit very low levels of sophistication and capability and are essentially directed to undertake certain actions to launder the funds.

national full-service MSBs: the largest and most sophisticated MSBs that have a national presence, offering a full range of products and services at the retail and wholesale levels.

nominees: individuals with ties to the threat actors who may be used periodically by criminals to assist in money laundering. Nominees are essentially directed by the criminals on how to launder the funds. The methods used tend to be fairly basic and can be used to launder smaller amounts of proceeds of crime.

organized crime group: a structured group of three or more persons acting in concert with the aim of committing criminal activities, in order to obtain, directly or indirectly, a financial or other material benefit.

small independent MSBs: MSBs that operate through informal networks, although a few may have formal banking arrangements in order to conduct EFTs. These are small, predominantly family-owned operations, whose technical capabilities tend to involve smaller, stand-alone systems.

smaller retail MSBs: these MSBs are focused on retail transactions, and have stand-alone computer systems and street-level retail outlets across Canada. Of these, one sub-group offers currency exchanges only, typically in small values, and is often found in border towns (e.g., duty-free shops), while the other sub-group offers currency exchanges, but may also offer money orders and EFTs, typically as an agent of a national full-service MSB.

structuring and smurfing: a money laundering technique whereby criminal proceeds (i.e., cash or monetary instruments) are deposited at various institutions by individuals in amounts less than what these institutions would normally be required to report to the authorities under AML/ATF legislation. After the cash has been deposited, the funds are then transferred to a central account. Smurfing is a money laundering technique involving the use of smurfs (i.e., multiple individuals) to conduct structuring activity at the same time or within a very short period of time.

wholesale and corporate MSBs: these MSBs provide money services and related products, predominantly electronic funds transfers and bank drafts, primarily to corporations, on a wholesale basis.

List of Key Acronyms and Abbreviations

AML/ATF	anti-money laundering and anti-terrorist financing
CSP	company services provider
CUCP	credit union and caisses populaires
DNFBP	designated non-financial businesses and profession
DPMS	dealers in precious metals and stones
D-SIB	domestic systemically important bank
EFT	electronic funds transfer
FATF	Financial Action Task Force
GDP	gross domestic product
ML/TF	money laundering and terrorist financing
MMF	mass marketing fraud
MSB	money services business
NPO	non-profit organization
OCG	organized crime group
PCMLTFA	*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*
PEP	politically exposed person

Terrorist Groups

AQ	Al Qaeda
AQAP	Al Qaeda in the Arabian Peninsula
AQIM	Al Qaeda in the Islamic Maghreb
AS	Al Shabaab
Hamas	Harakat al-Muqawama al-Islamiyya
ISIS	Islamic State in Iraq and Syria
LTTE	Liberation Tigers of Tamil Eelam
JN	Jabhat Al-Nusra

RESEARCH BRIEF: REVIEW OF MONEY LAUNDERING COURT CASES

Executive Summary

This report contains an analysis of money laundering (ML) charges and convictions under s. 462.31 of the *Criminal Code of Canada* between 2000 and 2014. FINTRAC has identified and selected a sample of 40 cases to conduct further analysis for this project. These cases included 62 individuals charged with money laundering, resulting in 43 convictions in Canada.

Key Findings

- British Columbia, Ontario and Quebec courts prosecuted the majority of cases in our sample.
- The total value of funds laundered in cases where there was a successful money laundering conviction was $423,708,285.57. This is a conservative value given that some cases did not provide an explicit number for amounts laundered.
- Large ML operations appear to be the most commonly prosecuted. Only two cases in our sample included money laundering valued at less than $100,000. The median amount laundered was $561,235.
- The average ML offender was 48 years old, which is substantially older than the *Criminal Code* offence average.
- Male ML offenders made up 87.5 per cent of the sample. This is in line with *Criminal Code* proportions for gender involvement in criminal activity.
- Individuals convicted were most commonly identified as entrepreneurs and typically use their businesses to facilitate laundering money. Lawyers, truck drivers, and unemployed individuals made up the other sizable occupations.
- Out of 43 individuals convicted for laundering proceeds of crime, twelve were either professional money launderers or individuals providing a money laundering service for the criminal operation to which they were linked.
- In the cases reviewed, the sources of proceeds of crime were almost entirely generated by either drug-related offences or fraud offences.
- In the case of drug offences, the substances were mostly marijuana or cocaine. In the case of fraud offences, there was a wide variety of schemes used to generate proceeds such as loan-back schemes, investment fraud, etc.
- The most frequently used vehicles or financial instruments for ML were: companies (to act as shells or for comingling), foreign exchange transactions, and electronic funds transfers. The use of cheques and bank drafts were also commonly used.
- Electronic transfers were used in more than half of the ML cases related to fraud. Funds were also commonly wired offshore, particularly to locations in the Caribbean.
- The average sentence for individuals convicted of ML was 4.6 years, or 7.7 years if they were subjects of an undercover law enforcement operation.
- [redacted] s.21(1)(a)

Introduction

As part of its mandate to increase awareness of money laundering and terrorist financing, FINTRAC has undertaken an in-depth review of money laundering cases prosecuted under s. 462.31 of the *Criminal Code of Canada* (CCC) between 2000 and 2014. The objective of this research brief is to share some of the key characteristics relevant to understanding the nature of money laundering offences in Canada in circumstances where they have been examined having regard to the applicable law and evidentiary standards. To that end, this report will review the demographics of convicted individuals, elaborate on enabling factors that contributed to their involvement in money laundering, identify various methods used to launder proceeds of crime, and highlight some of the challenges of convicting an individual for money laundering in Canada.

In total, 40 cases were analyzed in detail for the purpose of this brief. Those cases are comprised of 62 individuals charged with laundering the proceeds of crime, 43 of which were convicted in Canada for that offence. Information on these cases was collected from court documentation made available through the Canadian Legal Information Institute (CanLII). A detailed annex summarizing each case is also provided at the end to supplement the references throughout this report. To ensure that this report is accessible to a broader audience, no classified or protected information was used. A second report, focused on merging the findings in this research data brief with a greater FINTRAC data perspective, will be forthcoming and will elaborate more on some of the implications for the Canadian AML/CFT regime.

By the Numbers: A Broad Overview of the Case Sample

Sample Reviewed	
Total court cases reviewed	40
Total court cases with at least one individual convicted	33
Total individuals charged with ML[1]	62
Total upheld ML convictions	43
Total not guilty verdicts or acquittals	15
Total unknown or pending verdicts	4

Please note that this is not an exhaustive collection of all Canadian court cases with a money laundering component.[2] While every effort was taken to identify a substantial list of cases for analysis, not all court

[1] Twenty three of the 62 individuals were charged *only* for laundering proceeds of crime.

[2] One point of reference from the Public Prosecution Service of Canada shows that 63 files involving ML charges were opened between 2009-10 and 2013-14.
A second point of reference, Statistic Canada's Integrated Criminal Courts Survey finds that across Canada, between 2008-09 and 2011-12, there were a total of 1160 ML charges, 146 or 1% of which resulted in a guilty finding (guilty of the charged offence, of an included offence, of an attempt of the charged offence, or of an attempt of an included offence). These numbers do not account for cases from superior courts in Prince Edward Island, Quebec, Ontario, Manitoba and Saskatchewan, as well as municipal courts in Quebec (where information could not be extracted due to the nature of the electronic reporting systems).

documents are accessible through legal databases or public repositories such as CanLII. Similarly, cases without adequate details were excluded from the sample.

Amounts

The average amount of money laundered in cases where one or more individuals were convicted is $16.29 million. However, the average is not a good indicator of the typical amounts laundered as it was greatly skewed by three cases in particular. The median of $561,235 is a more accurate measure.

Most of the court cases in the sample containing a conviction for money laundering were valued at over $100,000. Exceptions include the case of R. v. Lefebvre (2007), which involved a businessman laundering $46,000 for a drug trafficking organization, and the case of R. v. Hallé (2012), which involved a businessman creating fake insurance contracts in order to collect premiums, subsequently laundering $77,000.

Provincial Distribution

The numbers below represent the dollar amounts attached to the 33 cases containing money laundering charges that resulted in a guilty outcome within various provincial jurisdictions.[3] They should not be interpreted as volume of money laundering in each province given that proceeds did not necessarily originate or stay within provincial boundaries, based on the facts outlined in the court documentation.

Province	Funds Laundered	Number of Cases
Alberta	$561,235.29	1
British Columbia	$201,042,438.28	5
Newfoundland and Labrador	Unknown	1
New Brunswick	Unknown	1
Ontario	$15,589,617	13
Quebec	$206,309,995	11
Yukon	$200,000.00	1
Total	$423,708,285.57	33

It should be noted that some provincial totals are heavily skewed by individual cases. For example, Frank Tran (R. v. Tran 2004) laundered more than $200 million, which represents the bulk of British Columbia's $201 million total.

> **R. v. Tran (2004):** Frank Tran and his wife, Kim Phan, laundered over $200 million through their currency exchange in British Columbia, as well as through several legitimate currency exchanges in their region. The proceeds of crime were derived from a large-scale cross-border marijuana and cocaine trafficking operation. Tran is believed to be the largest money-launderer in recent Canadian history. He pled guilty in exchange for the charges to be dropped against his wife, and was sentenced to 10 years in prison.

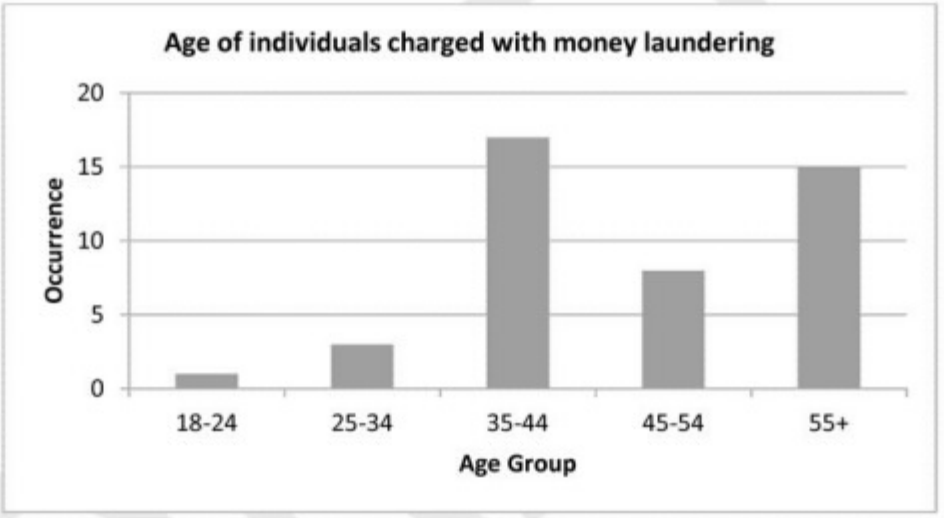
[3] The totals do not account for seven cases where the volume of money laundered was not explicitly provided in public court documentation. The totals in the chart should not be interpreted as definitive, but rather as a conservative point of reference. Where cases involved USD, the totals were converted to $0.85 USD to $1.00 CAD.

Similar circumstances are observed in Quebec, where the Vincent Lacroix (R. v. Lacroix 2007) and Chun (R. v. Chun 2014) cases account for $95 million and $100 million, respectively.

Demographics

Age

The average known age of individuals in the sample is 48, which is significantly higher than the average for CCC offences. The great majority of these individuals (over 90%) were above the age of 35 years. In comparison, the highest concentration of CCC offenders is between 18 years and 24 years of age. The youngest individual in the sample charged under 462.31 was 22 years of age, while the oldest was 77 years of age. Only 3 individuals were below the age of 35, suggesting that money laundering is a crime more commonly committed by mature individuals.



Gender

There is a significantly larger portion of males than females charged with money laundering. This is a common trend across most violations of the CCC. In our sample, males represented 87.5 per cent of the individuals charged with money laundering. This is slightly greater than the Criminal Code gender proportions, where 83.9 per cent of convicted individuals in Canada are male.

Occupation

A significant demographical feature in understanding how people launder funds is an individual's occupation. For example, approximately one third of the individuals charged are classified as entrepreneurs or business owners. These individuals typically used their company in some capacity to aid in laundering funds, as will be discussed in the section on methods and techniques below.

The second largest profession in the sample are lawyers, representing 15 per cent of the individuals charged in our case sample. Based on court documentation, lawyers convicted of money laundering were willing to exploit reporting exemptions in order to launder funds. An example is the case of R. v.

Rosenfeld (2005), where wiretaps confirmed Simon Rosenfeld's use of solicitor-client privilege to enhance his money laundering services. Legal professionals in Canada are exempt from Part 1 of PC(ML)TFA regulations and are not required to adhere to reporting requirements.

R. v. Rosenfeld (2005)
Simon Rosenfeld was the subject of an undercover RCMP operation. An undercover officer indicated interest in laundering funds purported to be derived from a Colombian cocaine operation. Rosenfeld encouraged the officer to conduct his laundering in Canada, as "there was little police oversight," (R. v. Rosenfeld, 2009 ONCA 307 pp. 4) and agreed to launder the funds for an 8% commission fee. Solicitor-client privilege was assured when Rosenfeld received a token one dollar bill from the officer. To avoid detection, Rosenfeld conducted his money laundering activity using the accounts of corporate shell companies in various jurisdictions, finally delivering the funds to an account in Florida that was purported to belong to the Colombian drug cartel. Rosenfeld was convicted for laundering $250,000 CAD and $190,000 USD. He was sentenced to 3 years in prison.

The other two notable occupations are truck drivers and unemployed individual, which each account for 13 per cent of the sample. The unemployed individuals, in almost all cases, derived all of their income from illegal activities such as fraud or drug trafficking.

The remaining individuals held various occupations including bank teller, police officer, teacher, and waitress. In most of these instances, no direct connection between the occupation and the act of money laundering was observed. Rather, individuals that continued to work were commonly used as nominees by larger operations, and the illicit funds earned by acting as a nominee or money laundering service provider supplemented their legitimate income. The exception would be in the case of the bank teller, who facilitated a bank robbery and was later involved in structuring the cash proceeds as to avoid triggering suspicion.

Origins of Proceeds of Crime in ML Cases

Of the 40 cases reviewed in our sample, 33 involved the conviction of one or more individuals for money laundering activity. The proceeds of crime from these cases were generated from three types of criminal activity:

Origin of Proceeds of Crime	Number of Cases
Drug Related	21
Fraud	10
Theft	2

Drug Offences

Marijuana and cocaine were the most commonly occurring drugs that generated proceeds of crime in money laundering cases were. Manufacturing and/or distribution of ecstasy appeared in two cases, while ephedrine appeared in one case. Fifteen of the 21 convicted drug related cases involved schemes with an international aspect. In most of these cases, the schemes involved the crossing of international borders, with 11 cases involving movement between Canada and the U.S. This is a factor that can complicate the prosecution process as the two or more countries in which the offence occurred must coordinate over who will prosecute, keeping in mind jurisdictional boundaries.

Fraud Offences

No two fraud schemes in the sample were the same. Schemes ranged from cashing in/depositing fraudulent cheques to more complex measures like setting up shell companies in order to claim fraudulent GST returns. There was no significant difference in the average dollar amounts involved between fraud and drug related cases, nor was there a significant difference in the average sentence of individuals convicted in either type of case.

R. v. Drakes (2006)

Anthony Drakes and Richard Brewster were the masterminds behind an advance-fee payment scam. The fraudsters sent unsolicited messages to individuals claiming to be Nigerian civil servants, government officials, or businessmen with access to a large sum of money from an over-invoiced government contract. They offered some of that money to individuals on the condition that victims paid a service fee first. They then claimed that additional service fees were required, requiring victims to continually pay for unforeseen expenses. Some victims lost tens of thousands of dollars before realizing they were being tricked. Drakes and Brewster laundered the profits of their fraud scheme through accounts in Antigua. Brewster received 4 years in prison, while Drakes received 5 years.

Other

For the two remaining cases, proceeds were derived from theft, specifically a bank robbery and the theft of Canadian bonds.

Co-Occurring Offences and Previous Convictions

As discussed, the money laundering offences in the sample resulted from a need to move, convert or legitimize proceeds derived from drug trafficking, fraud or theft. The following offers a more detailed breakdown of co-occurring offences that featured alongside money laundering charges:

Top 10 Most Common Co-Occurring Offences with ML Charge	
Possession of proceeds of crime	16
Fraud over $5,000	13
Possession for the purpose of trafficking	9
Conspiracy to commit fraud	7

Conspiracy to traffic	7
Possession of property obtained by commission of a crime	7
Commission of criminal acts for the benefit of a criminal organization	6
Attempted fraud over $5,000	4
Being a member of a criminal organization	3
Filing a false or misleading income tax statement	3

In all but one instance not reflected in the chart above, the co-occurring charges are non-violent offences. This is likely a factor that contributed to shorter sentences received by the individuals in the money laundering trials reviewed. It is also worth noting that over 30 per cent of individuals who were convicted for ML in our sample had a history of previous convictions.

Identified Money Laundering Methods and Techniques

Use of wire transfers

Wire transfers were a central instrument used in over 38 per cent of cases where one or more individuals were convicted. Cash and transfers were often used in conjunction, with large cash deposits immediately followed by a wire transfer or a wire transfer followed by a cash withdrawal. Other uses included making online payments through services like PayPal, sending money to relatives acting as nominees, and wiring offshore.

Wiring Offshore

Wiring offshore in this context refers to the transferring of funds anywhere outside of Canada. Over 33 per cent of the cases involved wiring funds offshore for purposes of concealment, often in tax havens. A further case may potentially belong in that category, R. v. Lacroix (2007). However, given that Lacroix entered a guilty plea to avoid having to admit where the money he embezzled was held, the exact location is not specified in the court judgement.

Each of the ML operations belonging to this category involved at least one participant with a "white collar" career. The same trend was observed amongst those providing money laundering as a service to traffickers and fraudsters.

Case	Subject Occupation	Wiring Destination
R v. Grmovsek (Ontario)	Lawyer	Bahamas & Cayman Islands
R. c. Chicoine (Quebec)	Entrepreneur, owner of Societe Speedo	Unspecified tax havens
R. c. Chun (Quebec)	Owner of MSB	Cambodia
R. v. Boivin[4] (Quebec)	Lawyer	Bahamas

[4] Boivin set up multiple shell corporations in the Bahamas to launder the proceeds from various criminal operations, including the fraud scheme orchestrated by Ronald Chicoine (R. v. Chicoine 2012)

R. v. Drakes (Ontario)	Co-accused,Brewster, was a lawyer	Antigua
R. v. Feuerwerker (Ontario)	Co-accused,Pouliot, was a retired teacher	Europe
R. v. Lefebvre (Quebec)	Businessman	Algeria
R. v. Rosenfeld (Ontario)	Lawyer	Unspecified jurisdictions
R. v. Shoniker[5] (Ontario)	Lawyer	United States
R. v. Tran (British Columbia)	Owner of MSB	United States

Shell or front companies

The primary purpose of shell companies in money laundering schemes is to facilitate layering of funds and legitimizing unexplained sources of income by masking them as profits from legitimate business. While it is possible for shell companies to have a legitimate purposes, those in our sample were funded nearly exclusively by the proceeds of crime. The types of entities widely varied, as did their locations.

Case	Company Details
R. v. Black (2009)	Hydroponics Supply Store and Lounge that did not operate during regular business hours. When it was open there was very little traffic (Canada)
R. v. Rosenfeld (2005)	Funnelled money through offshore shell corporations (unspecified jurisdictions and types of companies)
R. c. Halle (2012)	Issued fake insurance contracts from a sham insurance company (Canada)
R. v. Feuerwerker (2011)	Issued fraudulent invoices on behalf of a sham practitioner management company (Canada)
R. v. Dastani (2013)	Funnelled money through various corporate shells (unspecified jurisdictions)
R. v. Drakes (2006)	Had fraud victims make payments to several fake financial service and foreign exchange companies (Antigua and Canada)
R. v. Boivin (2008)	Set up shell companies through which money was funnelled (Bahamas)

Comingling

In addition to the use of shell companies, 6 cases featured the use of businesses to comingle proceeds of crime with profits from legitimate activity:

Name of Case	Type of Businesses Comingling Funds
R. v. Tran (2004) – British Columbia[6]	Currency exchange – according to media reports, Tran claimed to do $300,000 worth of business daily, only $2,000 of which was

[5] Shoniker was the subject of an undercover operation and was instructed to wire the funds to an account in Florida by covert law enforcement.
[6] Vancouver Sun. "Canada's money-laundering king." (May 21, 2006)

	legitimate.
R. v. Chicoine (2012) - Quebec	Financial service – provided loans to legitimate clients with money derived from the drug trade; also perpetrated fraud of over $12 million using his company Speedo Ltée.
R. v. Lefebvre (2007) – Quebec	Tobacco Exporting Company – used a loan made up of proceeds of the drug trade to set up his company. Operated legitimately while also trading proceeds of crime against stocks of the company.
R. v. Rathor (2011) – British Columbia	Currency Exchange – laundered proceeds that he believed to be derived from the drug trade, but were actually supplied by an undercover LE agent.
R. v. Kanagarajah et al (2012) - Ontario	Gas station – the property was held in the name of the wife of one of the individuals convicted of money laundering. The property was purchased with proceeds of crime and served to launder funds associated to the group's a large-scale fraud operation.
R. v. Dastani (2013) – Ontario	Online Nutritional Supplements – illegally sold and exported ephedrine alongside nutritional supplements, claiming proceeds were from the sale of legitimate medicinal products.

The Lefebvre case is unique amongst this group in that Lefebvre did not know that he was dealing with the proceeds of crime when he received an initial loan to set up his tobacco exportation business. However, he continued to accept money from drug trafficker Alain Thibault and Marc-Andre Cusson once he became aware of their origin, which led to his conviction.

Foreign Exchange Transactions (FOREX)

Foreign currency exchange is often used to further distance the proceeds of crime from their illicit source or to help remit proceeds from the drug trade when the operation involves multiple countries. Approximately 28 per cent of the cases in our sample used currency exchange as a central mechanism in their operation.[7] Within the percentage that used FOREX, three subgroups can be derived:

Function of FOREX	Number of Cases
Providing FOREX as a service	5
Transportation of foreign currencies in cash	5
Using FOREX as a service	1

Of the five cases of individuals providing FOREX as a service to drug traffickers, three were individuals who owned or operated MSBs. The other two, Rosenfeld and Gingras, were both subjects of undercover

[7] See R. v. Chun (2014), R. v. Tran (2004), R. v. Gingras (2012), R. c. Borris (2013), R. v. Rathor (2011), R. v. Rosenfeld (2005), R. v. Bui (2004), and R. v. Butler (2011)

law enforcement operations and were asked to convert USD to CAD and deliver it to a specific location. One case, that of R. c. Chun (2014), was counted in both the first and second categories as the individuals provided both services for the late drug trafficker Daniel Muir.

> **R. v. Chun (2014)**
> Spouses Sy Veng Chun and Leng Ky Lech's principal client was the organized crime figure and international drug trafficker Daniel Muir, who was murdered in Montreal in 2004. The couple laundered money through their currency exchange in Montreal, as well as through another exchange they owned in Phonm Penh, Cambodia. The two are believed to have laundered over $100,000,000 in their operation. Chun and Lech were each sentenced to 8 years in prison in March 2015.

Each of these cases was drug related or was purported to involve proceeds of drug trafficking. Additionally, all of these cases involved the exchange between USD to CAD, or vice versa. A final observation is that four of the individuals physically moving currencies were arrested at or in close proximity to the U.S.-Canada border.

Nominees

Nominees are used in an attempt to mask the proceeds of crime by registering profits, large purchases or real estate under friends or family members' names. In the majority of the 17 cases where nominees played a pivotal role, immediate family members were used.

Of interest is the fact that only one individual who acted as a nominee, 77-year-old Josephine Black in R. v. Black (2009), was charged under 462.31 CCC. She was charged on the basis of being wilfully blind to her son's marijuana cultivating operation. Ms. Black's other children expressed concerns over her coherence due to her advanced age. In contrast, Battista of R. v. Battista (2010) used his sisters as nominees for large portions of his proceeds of crime, and Halle of R. v. Halle (2012) hid all of his proceeds under his father's name and yet none of those secondary individuals seem to have faced charges.

High value purchases

Kanegarajah and Neshan of R. v. Kanagarajah et al (2012) are a good example of money launderers who use big ticket cash purchases. Their purchases included Land Rovers, luxury watches, televisions, cellphones, and other expensive commodities.

A similar case is that of Grmovsek (R. v. Grmovsek 2009), who had been unemployed since 1997 and is said to have lived entirely off the earnings of his insider stock market trading. Court documents also show that Rosenfeld (R. v. Rosenfeld 2005) bragged frequently of the luxuries he purchased by evading taxes and laundering proceeds of crime, however the specific items were not identified in court documentation on CanLII. A further 5 cases involved high value purchases as a means of laundering the proceeds of crime. These purchase items included vehicles, precious stones, jewellery, and boats, among others.

Real Estate

Real estate purchases directly linked to proceeds of crime were explicitly mentioned in eight cases. Peloso of R. v. Battista (2010) purchased real estate in the name of his co-accused's sister and other family members. Individuals in R. v. Kanagarajah (2012) purchased a gas station and condos, the subject in R. v. Goulet (2008) purchased a building, Grmovsek of R. v. Grmovsek (2009) purchased his matrimonial home, while in R. v. Black (2009), the purchase was a hydroponics store and a house. In R.v. Lacroix (2009), Vincent Lacroix used funds embezzled through Norbourg Financial Services to finance acquisitions of both movable and immovable property. In R. v. Chun, the accused acted as nominees for a large-scale drug trafficker, including during the purchase of property in Quebec.

Structuring

The purpose of this common method of ML is to divide the proceeds of crime so they may be deposited or transported in increments below reporting requirements. Only one of the 36 convicted cases in the sample provided a clear example of structuring. In R. v. Dawson-Jarvis (2013), 3 individuals organized a staged bank robbery. One of the co-accused was a teller at the bank that was to be robbed by the other 2 co-accused. After the robbery, each took an equal portion of the proceeds and conducted a series of transfers and deposits over a period of seven months in an attempt to avoid triggering suspicion.

Casinos

Casinos were not frequently mentioned in the collection of cases. In the case of Grmovsek (2009), media reports and proceedings from the Investment Industry Regulatory Organization of Canada claimed the lawyer used gambling and casinos in Las Vegas and in the Bahamas to launder his proceeds. The only other mention of casinos was in R. v. Hoang (2006), where Hoang and his two co-accused were stopped at the U.S.-Canada border with large amounts of cash they tried to claim were winnings from casino gaming without providing any evidence of such. This explanation was rejected, and all three were charged under 462.31.

Professional or Opportunistic Money Laundering Service Providers (MLSP)

Twelve subjects within the 43 individuals convicted of money laundering were not directly involved in the schemes that generated the proceeds of crime. Instead, this subset of individuals can be considered as having provided a money laundering service for the criminal operation to which they were linked. The sample included individuals fitting the characteristics of professional launderers who have limited prior connections to their client and are sought for their financial expertise or connections. However, the majority were more opportunistic in their involvement, being drawn into providing a money laundering service based on their personal relationships with individuals engaged in the criminal operations.[8]

The majority of MLSPs in the sample have some level of post-secondary education and/or a separate career that contributes to the facilitation of money laundering:

Occupation of MLSPs	
MSB Owner	4
Lawyer	3

[8] See Malm and Bichler in Trends in Organized Crime (2013) 16:365–381 for a more detailed description of the differences between professional and opportunistic money laundering.

Entrepreneur	2
Police Officer	1
Teacher (also business owner)	1
Truck Driver	1

In return for their expertise MLSPs usually charge a commission, which can vary: Pierre Goulet took a 2 per cent profit which amounted to $70,000, Simon Rosenfeld claimed an 8 per cent service fee, Robin Rathor was paid $16,000 for his role, and Peter Shoniker retained $55,000 for his laundering services.[9]

The average sentence of these MLSPs, 3.2 years, was lighter than the average sentencing overall for money launderers, 4.6 years, who also participated in drug trafficking or fraud schemes. The most common sentence handed down to MLSPs was 2 years unless there was a significant aggravating factor requiring more severe punishment. For example, Pierre Goulet of the Service de Police de la Ville de Montreal received a sentence of 3.5 years because he took advantage of his position as a police officer to evade close inspection at the border.

Organized Crime

Money laundering is a crime that facilitates and is facilitated by other unlawful activity, and as such, typically involves more than one individual. Of the 40 sample cases reviewed, 21 were deemed by the courts to have elements of organized criminal activity.

Under s. 467.1 of the *Criminal Code,* a criminal organization is a group of three or more individuals with a main purpose of facilitating crime for the benefit of the group. While our case sample contained many instances of individuals meeting this legal definition, most were not explicitly associated to well-known organized crime groups. In fact, only 5 of the 40 sample cases were linked to notable organized crime groups such as the Hells Angels, Italian organized Crime, South American organized crime, and one group currently listed as a terrorist entity in Canada. The remaining 16 cases fell under the legal definition of three or more individuals.

In instances where individuals were not deemed to be involved in organized criminal activity, they still typically relied on multiple individuals to generate or launder funds. An example of this can be seen in R. v. Black (2009) where Josephine Black would launder funds through the purchase of non-financial assets such as property and cars, while her son, David Black, generated illicit funds through a marijuana grow operation. Only in very rare cases would an individual act independently to generate and launder illicit funds.

[9] R. v. Goulet (2008), R. v. Rosenfeld (2005), R. v. Rathor (2011), and R. v. Shoniker (2006)

Sentencing

The average total sentence of the convicted money launderers in the sample was 4.6 years served in prison.[10] The heaviest sentence was 12 years less one day given to Vincent Lacroix (R. v. Lacroix 2007) who masterminded the Norbourg scandal that defrauded thousands of Canadians out of their life savings. However, this initial sentence was reduced to 5 years less one day upon appeal in August 2009. The lightest sentence was 1 year of house arrest given to Josephine Black (R. v. Black 2009). Josephine Black's lenient sentence is based in her advanced age of 77 years and the fact that her role in her son's marijuana grow operation was limited to acting with willful blindness.

R. v. LaCroix (2007)
Vincent LaCroix is the former CEO of le Groupe Norbourg, which defrauded 9,200 victims out of $115,268,233.76. At least $95,000,000 of this fraud was laundered by LaCroix. LaCroix embezzled client funds into several personal accounts while issuing false invoices to hide the money's absence. The Norbourg scandal is the biggest financial crime in Quebec's history, and one of the biggest in Canadian history. Lacroix was released into a halfway house in 2011 after serving one-sixth of his sentence, and was released on parole in February 2014.

Sentences under 462.31 tend to be served concurrently with those received for other charges related to the same events. There were 3 convicted individuals who were allowed to serve their sentences on house arrest due to significant mitigating factors including age, level of involvement, public shame already endured, community involvement, and already having spent time in prison for different charges linked to the same event.

Examining the sentence for individuals charged only with a 462.31 offence is also useful. Out of 43 convicted individuals, 23 were charged only with laundering the proceeds of crime. The average sentence on the 462.31 charge alone is 2.05 years in prison, which is two years less than the average for the overall sample. This finding is also consistent with the sentence of 2 years commonly handed to opportunistic or professional money laundering service providers with few or no aggravating factors.

Finally, money laundering cases that included law enforcement undercover operations had a vastly higher average sentence of 7.67 years in prison than the general sentencing average. [redacted] s.21(1)(a)

[10] Missing from the sentence average calculations are Benoit Lacroix (R. v. Cleroux 2012), Daniel Barna (R. v. Barna 2014), Van Phat Hoang (R. v. Hoang 2006), and The Phan (R. v. Hoang 2006) whose sentences were unavailable

[redacted] s.21(1)(a)

Mandatory Elements

One of the elements of utmost importance if a money laundering conviction is to be reached is establishing that the individual dealt with, in any manner and by any means, property or proceeds derived from crime. It is not enough to establish that an individual is in possession of an amount of money significantly exceeding reported income or other legitimate sources. For example, failure to prove this element, as well as silence on the defendants' part when asked to justify the source of $24,000,000 in unexplained funds, let the individuals in R. v. Nguyen et al. (2012) walk free despite what seemed like incriminating facts. The same situation occurred in R. v. Bath (2011), where two men were acquitted of money laundering charges in relation to a large GST fraud scheme because the exact sources of funds in of an account they were known to be associated with could not be definitively proven.

Another critical factor in money laundering prosecutions is the question of proving intent. The nature of the money laundering offence involves the intent to conceal or convert property or proceeds of property obtained by the commission of an offence; and knowledge or belief that the proceeds were derived from a designated offence. Even in cases where the court is satisfied that proceeds are derived from illegitimate activity and that the defendants were aware of such, a decision of "not guilty" can still be attributed. Such was the case in *R. v. Toozhy,* where the court remained unconvinced that the perpetrator of a false invoicing scheme intended to "hide or transform" his proceeds as opposed to distributing them to "enrich himself and or others".

Willful blindness versus actual ignorance

In R. v. Sansregret (1985), 1985 CanLII 79 (SCC), the Supreme Court upheld the definition of willful blindness as follows:

> "... the rule is that if a party has his suspicions aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge."

Actual ignorance is used as a defence to have clients acquitted of money laundering charges on the basis that they did not know the money or property they were dealing with were proceeds of crime. There was only one case in which this defense was accepted in our sample, namely that of Hariharan Nesarajah implicated in the R. v. Kanagarajah et al. case (2012). Nesarajah was acquitted of all charges in the credit card fraud operation led by his brother-in-law and brother-in-law's friend. The rest who pled ignorance were declared to be acting in willful blindness, which equates to actual knowledge and therefore proof of intention.

Alleged Charter Violations

In many cases that did not include a guilty plea, defense counsel argued for the omission of key pieces of evidence based on violation of s. 8 of the Charter protections against unlawful search and seizure. Of interest is the R. v. Nguyen et al (2012) case in which a police officer was able to justify stopping a vehicle and detaining an individual based on his knowledge of money laundering practices. The subject

was observed walking into a foreign exchange with a bulky and weighted bag, and approximately 30 minutes later, she re-emerged from the foreign exchange with a significantly lighter bag. The officer deduced that the subject may have used the foreign exchange to ensure anonymity and avoid reporting requirements, and as such, stopped and detained the subject. Previous money laundering investigations, FINTRAC disclosures, and anecdotal information attained from employees and owners of other currency exchanges were all factors considered by the judge in determining that the officer had requisite grounds to stop and detain the subject without breaching her rights.

Entrapment in Undercover Law Enforcement Operations

Entrapment was pressed in R. v. Gingras (2012) and R. v. Rosenfeld (2005). Both accused claimed to have been unfairly investigated by law enforcement because there was no proof that they had previously engaged in criminal activity. As a result, their counsel claimed that law enforcement was guilty of entrapping their clients into committing acts that they would not normally commit. This argument was rejected and both individuals were convicted.

Conclusion

This report has provided an overview of the characteristics of a sample of money laundering cases prosecuted under s.462.31 of the *Criminal Code of Canada*. The results from this study suggest that money laundering charges and convictions in Canada are primarily associated with older males linked to large-scale drug trafficking and fraud operations. In almost half of the cases, individuals convicted for money laundering were entrepreneurs, business owners or lawyers. While most profit-generating forms of crime would also have elements of money laundering, charges seem to be most commonly pursued in instances where $100,000 or more was suspected to be laundered. Finally, some challenges in achieving a conviction pursuant to s. 462.31 of the *Criminal Code of Canada* include the need to prove intent to launder, defend against entrapment allegations, and prove that Charter rights were not violated.

This study is intended to help develop a better understanding of the actors and activities related to money laundering activity in Canada. While a great degree of insight is routinely obtained by FINTRAC from intelligence and investigative documents, this study has focused on a review of public court material in order to deal with facts that have met rigorous evidentiary standards. It captures only a portion of the money laundering activity in Canada, but it is an important piece to consider in refining the AML/CFT regime. Given the sample size of 40 cases, results discussed herein are not necessarily generalizable to all money laundering prosecutions in Canada, although they do seem consistent with what we know to date about this offence. Further analysis and collaboration with regime partners is needed to ensure that the key actors within the Canadian Anti-Money Laundering community have the necessary knowledge and tools to continue pursuing this form of crime in the future.

APPENDIX – CASES REVIEWED[11]

Case	Convicted under 462.31	Sentence	Value of Money Laundered	Summary
R. v. Chun (2014) Quebec	Chun: Yes Lech: Yes	Chun: 8 years Lech: 8 years	$100,000,000+	Spouses Chun and Lech laundered the proceeds of crime that Daniel Muir acquired from international drug trafficking. Muir was killed in Montreal in 2004 before charges could be laid against him. Chun and Lech took in over $100,000,000 of Muir's proceeds into their currency exchanges, transferring it to Cambodia and/or other offshore accounts. The couple also acted as nominees for Muir.
R. v. Parent (2014) Quebec	Parent: Yes Couturier: Yes	Parent: 4.5 years Couturier: 3 years	$175,000 USD	Proceeds gained from exporting ecstasy by boat to Maine through Quebec and New Brunswick, and smuggling the cash back into Canada. Parent also conspired to export large quantities of marijuana along the same route. The two were caught in the same undercover operation as Borris of R. v. Borris (2013). Both pled guilty to charges.
R. v. Barna (2014) Ontario	Barna: Yes Vettese: Unknown	Unspecified	Unspecified	Subjects deposited three fraudulent cheques (valued at approximately $1,500,000) at various financial institutions. The funds were then immediately withdrawn and distributed between Barna and his associate, Vettese. The outcome of Vettese's charge is unclear.
R. v. Breton (2014) Ontario	Yes	9 years	$1,327,220	Proceeds of crime gained from the sale of marijuana, ecstasy and cocaine. Police found more than $1 million in cash under Breton's garage floor. Breton also used his mother and friend as nominees and purchased large ticket items such as ATVs, a seadoo and a boat.
R. v. Borris (2013) Quebec	Yes	10.5 years	$250,000 USD	Obtained proceeds of crime by smuggling various types of contraband, including drugs, by boat into Maine via Quebec and New Brunswick. Borris also conspired to import cocaine from Colombia into Canada, through the U.S. This case is linked to R. v. Parent (2014).
R. v. Dastani (2013)	Yes	2 years less a day	$8,900,000+	Dastani ran an e-commerce business purporting to sell health supplements when in reality he was trafficking in ephedrine. Ephedrine

[11] Please note: Cases with unknown/pending outcomes or where the ML charges were dropped were not included in the final sample analyzed, even though they may still feature in the appendix of cases reviewed.

Ontario				tablets were repackaged, relabeled and shipped internationally. Dastani created several enterprises, as well as opened 3 bank accounts, through which money was laundered. The accused was allegedly helped by Kenneth James (See R. v. James 2013, outcome still pending). Dastani pled guilty to all charges.
R. v. Dawson-Jarvis (2013) Ontario	Yes	3.5 years	$126,000	The subject organized a staged robbery with two accomplices, attempted extortion (phony bomb-threat), and conducted fraud with a third accomplice on a single branch of a bank, which was his employer at the time. The stolen funds were divided amongst the subject and his accomplices, and then deposited into financial institutions over a period of seven months. Whether other accomplices faced ML charges as well is unavailable in court documents.
R. v. James (2013) Ontario	James: Unknown Cremer: Unknown	Unspecified	Unspecified	James was charged in 2012 with fraud, possession of property obtained by crime and money laundering (approximately CA$3 million) in relation to an operation exporting ephedrine linked to Afshin Dastani. Mr. Dastani owned and operated an online nutrition supplement business that sold and unlawfully exported the drug. It is alleged that Mr. Dastani provided James with a number of bank drafts which were then deposited into various bank accounts held by or associated to James. The funds were then distributed, in cash to Mr. Dastani, or to third parties by cheque at Mr. Dastani's direction. This case is still in front of the courts at time of writing.
R. v. Toozhy and Siddiqi (2013) Ontario	Siddiqi : No	N/A	$0	As part of the scheme, Mr. Toozhy would request a $250,000 loan through a Federal government program intended for small businesses that could not obtain financing. Following receipt of a bank draft, funds were transferred to a company under the ownership of Mr. Siddiqi. Funds were then dispersed to a bank in Iran and to numerous other individuals. In some instances, Siddiqi would over-invoice Toozhy by selling equipment valued at $500 to $600 for $250,000 to $400,000. Siddiqi was found not guilty of ML charges because the judge believed that transferring the funds to Iran was not an attempt to conceal the funds, but rather to enrich himself and others. Toozhy was not charged with money laundering.
R. v. Chicoine	Yes	7 years	~ $8,000,000	Chicoine used his company, Societe Speedo Lte, to evade taxes, commit

(2012) Quebec				fraud and launder the proceeds of crime. Chicoine would lend what he knew to be drug money to unsuspecting legitimate companies, as well as filter funds through several offshore companies in tax havens. With the help of professionals (lawyers, notaries and accountants), Chicoine set up his scheme in 1996. He was the perpetrator of the fraud, its main beneficiary and launderer of its proceeds.
R. v. Hallé (2012) Quebec	Yes	18 months house arrest	$77,000+	Hallé was accused of fraud, creating fake insurance contracts and ML. He created fake life insurance policies and collected premiums on these from 54 "customers" totaling $144,918.07. He hid all of his assets under his father's name to conceal the proceeds of crime.
R. v. Dixon & Westover (2012) Ontario	Dixon: Yes Westover: No	6 years	Unknown	Dixon and Westover were accused of laundering proceeds of a cocaine importation network, and conspiring to traffic illicit substances. One plan involved the use of a Medivac plane to import cocaine from Colombia to Canada. The second plan was for Dixon to broker the sale of cocaine in Madrid to someone in the Netherlands. Dixon entered into an agreement to launder the money gained from the second plan for a 15% fee. Both plans fell through. Dixon was convicted on the basis of intent to launder, despite there being no evidence that ML progressed beyond conspiracy stage. Westover was convicted on trafficking charges but found not to be involved in the ML scheme.
R. v. Gingras (2012) British Columbia	Yes	10 years	$125,000 USD	Gingras' involvement in a cocaine trafficking ring was uncovered in a reverse sting operation. He was instructed by an undercover officer on two separate occasions to launder large amounts of US currency believed to be from drug trafficking. The cash was returned to the officer, exchanged into CAD.
R. v. Kanagarajah et al (2012) Ontario	Kenegarajah : Yes Neshan : Yes Kanagarajah : No Neeranjen :	Kenegarajah : 6 years Neshan : 5.5 years	Unspecified	A longstanding operation of "bust out" credit card fraud was carried out between 1997 and 2010, principally by Neshan and Kenegarajah but also involved extended family members. The scheme that spanned Vancouver to the Durham region in Ontario saw fraudulently accrued funds laundered through the purchase of luxury items, five properties in the GTA and of a gas station in Oshawa. The individuals were deemed to be operating as a criminal organization between 2005-2010 The money laundering scheme spanned a 13 year period. Nesarajah was acquitted of all charges, while Neeranjen and Kanagarajah were

	No Nesarajah : No			acquitted of ML charges but found guilty of fraud related charges.
R. v. Nguyen et al (2012) British Columbia	H. Nguyen : No B. Nguyen : No T. Nguyen : No	N/A	$0	Subjects were allegedly responsible for exchanging approximately $18,000,000USD into $24,104,021CAD from July 16, 2003, to May 17, 2005 through 178 Calforex transactions. These funds were allegedly the proceeds of a large-scale marijuana growing operation. The subjects were found not guilty of ML charges because the evidence presented did not convince the judge that the money was actually proceeds of crime.
R. v. Zanolli (2012) Yukon	Yes	10 years	~$200,000	Zanolli acted as a drug mule for a criminal organization trafficking cocaine in Canada. He also collected and transported cash resulting from the sale of narcotics from British Columbia to Newfoundland. The proceeds of crime were vacuum sealed, duct taped and glued to a secret compartment in a suitcase. The charges laid included possession of a firearm, assault, drug trafficking and money laundering.
R. v. Cleroux (2012) Quebec	Lacroix : Yes Cleroux : No Derainville : No Lesage : No	Unspecified	Unspecified	Lacroix was in possession of over 600 Canadian bonds (worth at least $9,000) that were stolen in November 2001, and which he wanted to sell. He was contacted by an undercover agent. Lacroix and the undercover agent arranged to use a Belgian banker who would transfer the funds to Ireland, and then to Turks and Caicos. It was alleged that Cléroux, Derainville and Lessage were co-conspiring with Lacroix to launder the proceeds gained from the stolen bonds but the co-accused were acquitted of all charges, including ML. Lacroix pled guilty to ML.
R. v. Feuerwerker (2011) Ontario	Feuerwerker: Yes Pouliot: Yes	Feuerwerker: 7 years Pouliot: 4 years	$620,867.61+	Spouses Feuerwerker and Pouliot jointly defrauded the Public Service Health Care Plan by filing approximately 109 false or vastly exaggerated claims between August 2002 and September 2005. The pair then proceeded to launder hundreds of thousands through wire transfers to shell companies in Canada and outgoing wire transfers to Europe. Feuerwerker disappeared before the trial and was sentenced in absentia.
R. v. Rathor (2011) British	Yes	2 years less one day house arrest	$560,000 USD	Rathor operated a money exchange business in B.C. when he was approached by undercover agents impersonating drug dealers. He agreed to help the agents exchange large amounts of US currency,

Columbia				believed to be proceeds of crime, into Canadian currency. After two months, the subject was charged and immediately pled guilty. Rathor's light sentence is attributable to his otherwise outstanding reputation as a productive member of the community.
R. v. Butler (2011) Alberta	Yes	2 years	$477,050 USD	Butler was transporting large amounts of cash on behalf of a criminal organization while returning to Canada from the United States. He knew the proceeds were the result of drug trafficking in the U.S. When he was arrested at the Coutts border crossing in Alberta, the proceeds were hidden in a secret compartment in the truck he was driving, which was not registered under his name.
R. v. Bath (2011) British Columbia	Bath: No Khangura: No	N/A	$0	The case involved proceeds of crime derived from the accused's alleged role in setting up 13 shell companies to defraud the GST system by falsified claims of exporting services to the US. Both subjects were convicted of fraud, but the accused were acquitted of the ML charges because the Crown was not able to prove beyond a reasonable doubt that the two individuals were connected to the account they allegedly used for the purpose of money laundering.
R. v. Battista (2010) Ontario	Battista: Yes Peloso: Yes	Battista: 2.5 years Peloso: 2 years less a day	$500,000	Peloso and Battista were accused of laundering proceeds of crime between January 2006 and 2007, which were obtained from drug trafficking. Peloso was the launderer, passing hundreds of thousands of dollars back to Battista. He used certified checks, four accounts at several banks in Canada, and put down payments on properties in the name of Battista's relatives.
R. v. Thompson (2010) Ontario	No	N/A	N/A	Thompson successfully appealed his 2010 conviction on methamphetamine-related charges and one money laundering charge. The money laundering charge was overturned based on a lack of evidence (judge stated that the offence would be "possession of property obtained by crime" at best).
R. v. Rosenfeld (2009) Ontario	Yes	3 years	$250,000 CAD $190,000 USD	The subject met in Florida with an undercover agent who was portrayed as the front man for a cocaine trafficking organization. The subject agreed to help the organization launder funds through Canada using financial reporting exemptions resulting from his profession as a lawyer as well as a series of shell companies. In return, Rosenfeld negotiated to receive an 8% share of the proceeds.

Canada c. Plata (2009) Quebec	No (was to face the ML charges in the United States)	N/A	N/A	Plata headed the Canadian portion of a large marijuana trafficking operation bringing hundreds of pounds of marijuana from Canada to the US between 2007 and 2008. He was charged and pled guilty in 2009 to conspiracy to traffic marijuana, possession for the purpose of trafficking and exporting. Two days after the Canadian sentencing, officials in the US issued an arrest warrant against Plata and asked for his extradition to face multiple charges in relation to drug trafficking, possession of property obtained by crime and conspiracy to launder money. Plata filed an appeal on grounds of being prosecuted twice for the same offences in separate jurisdictions. His application was dismissed by the Quebec Court of Appeal in 2011.
R. v. Grmovsek (2009) Ontario	Yes	39 months	$2,700,000	Grmovsek, a Toronto-based lawyer, was convicted on charges of fraud, insider trading and laundering profits of trading with fellow lawyer Gill Cornblum (who committed suicide before sentencing). Grmovsek used insider knowledge to buy or sell shares in a large number of cases where a merger or acquisition or other event that had not yet been made public. The combined proceeds of illegal trading exceeded $8 mil USD and $1 mil CAD gained from 46 inside transactions. Proceeds were laundered through corporate brokerage accounts in the Bahamas and the Cayman Islands. Grmovsek was disbarred by the Law Society of Upper Canada after he was convicted.
R. v. Black (2009) New Brunswick	D. Black: Yes J. Black :Yes	D. Black: 4.5 years J. Black: 1 year house arrest	Unspecified	RCMP discovered a hydroponic marijuana grow operation in multiple rental properties in New Brunswick, managed by David Black. Black enlisted the help of his elderly mother Josephine to launder the profits by paying cash for large purchases and real estate, and registering assets under his mother's name (cars, houses, etc.) Josephine was found to be acting with wilful blindness regarding the sources of her son's income, which resulted in her conviction. Black's operation functioned from 1995 until 2005.
R. v. Goulet (2008) Quebec	Yes	2.5 years	$1,000,000+	Between February 2000 and February 2002, Goulet transported over one million dollars in proceeds from cocaine trafficking from Montreal to Miami, Florida. He received approximately 2% in commission for his services. Goulet became progressively involved in laundering the proceeds of his childhood friend Mondou's drug operation, beginning

				with allowing the storage of large amounts of cash in his house. Mondou was part of a scheme involving Daniel Muir, who appears in R. v. Chun. Goulet also acted as a nominee for the purchase of a house for Mondou and used his father's information when purchasing a cottage for Mondou. Goulet was a police officer when the offences were committed.
R. v. Boivin (2008) Quebec	Yes	3.5 years	$624,700 USD $297,000 CAD	The subject used his position as a lawyer specializing in fiscal law to launder money resulting from marijuana trafficking from Jamaica to Canada. He set up offshore accounts and had third-parties submit payments using drug money, while creating fake invoices to justify the transactions.
R. v. Lacroix (2007) Quebec	Yes	Initial sentence of 12 years less one day, reduced to 5 years less one day	$95, 000,000	Vincent Lacroix, as the CEO of Norbourg Financial Group, orchestrated one of the largest financial crimes in Canadian history. LaCroix funnelled funds embezzled from 9,200 clients into several personal accounts while issuing false invoices to hide the money's absence. He laundered some funds through purchases of real estate and bonuses to favoured employees. Lacroix pled guilty to the charges, avoiding trial and having to disclose where all of the money was hidden. After serving one sixth of his sentence, Lacroix was released from prison in 2014.
R. v. Lefebvre (2007) Quebec	Yes	2 years less one day	$46,000	Lefebvre wanted to set up a company that exported cigarettes to Algeria but was lacking adequate funding. After being introduced to Marc-André Cusson (who also appears in R. v. Larche), Lefebvre traded 50% of his company stocks in exchange for $67 000. At the time of the initial transaction, Lefebvre was unaware that the money came from Cusson's marijuana trafficking operation. Once the source of the funds came to light, Lefebvre nonetheless continued accepting the money for a period of five months. The funds were passed to Lefebvre in small denomination bills for a total sum of approximately $85, 000. The disbursements consisted of multiple smaller payments, generally ranging between $2,000 and $6,000. He was convicted and sentenced to 2 years less a day in addition to a fine of $46 000. .
R. v. Martin (2007)	Yes	2.5 years	$119,695.93 CAD	The subject, along with his family and a close associate, were transporting marijuana across uncontrolled border crossings into the

British Columbia			$10,000 USD	US. The subject was responsible for assembling the marijuana in Canada, while the rest of his family was either responsible for providing contacts or for transporting the drugs. He was charged and convicted in Canada, and was to be extradited to the US.
R. v. Larche (2006) Quebec	No (was to face the ML charges in the United States)	N/A	N/A	Larche was part of an operation that exported marijuana from Canada to Vermont, USA. The proceeds were then repatriated back to Canada on behalf of the criminal organization headed by Marc-André Cusson. In total, Larche brought back between US$500,000 and US$600,000 to Canada. He was arrested and faced charges in Canada related to drug trafficking and possession of proceeds of crime, while also being indicated in the United States under charges of having attempted to launder the proceeds of crime. In 2007, Larche applied for his extradition to the US to be halted on the grounds that the charges he faced in the US were the same as the ones he had already pled guilty to in Canada. The request was rejected by the Quebec's Court of Appeal, but it remains unclear whether or not he was convicted in the US for money laundering.
R. v. Hoang (2006) Ontario	Hoang: Yes Nguyen: Unknown Phan: Yes	Unspecified	$192,000+	The men traveling in a two vehicle convoy were flagged at the US-Canada border. Immediately upon crossing into the US, they proceeded to U-turn and return back to Canada. The cars were found to contain approximately $200,000 in cash and equipment to set up a grow op. Hoang and Phan were both convicted of ML. Nguyen's case was put aside and a new trial ordered because it was unclear whether he knew if the funds were proceeds of crime.
R. v. Drakes (2006) Ontario	Drakes : Yes Brewster : Yes	Drakes : 5 years Brewster : 4 years	Unspecified	The subjects operated a Nigerian advanced-fee payment scam. They sent unsolicited messages claiming to be Nigerian civil servants, government officials, or businessmen with access to a large sum of money from an over-invoiced government contract. They offered some of that money to individuals on the condition that victims paid a service fee first. They then claimed that additional service fees were needed, requiring victims to continually pay for unforeseen expenses. Some victims lost tens of thousands of dollars before realizing they were being tricked. Drakes and Brewster laundered the profits of their fraud scheme through accounts in Antigua.

R. v. Sharpe (2006) Newfoundland & Labrador	Yes	14 months house arrest	Unspecified	In 1998, Sharpe was investigated and later convicted for conspiring to traffic marijuana, and possessing marijuana for the purposes of trafficking. Following the convictions, Sharpe was charged with four counts of money laundering, which was reduced to one count of money laundering as a result of an agreed upon plea bargain. The money laundering charges were laid in 2004, a plea bargain was agreed upon in 2006, and a sentence was imposed in 2010.
R. v. Shoniker (2006) Ontario	Yes	15 months	$750,000	The former crown prosecutor was caught in an undercover RCMP operation and laundered $750,000, money he believed to be proceeds skimmed out of a union pension. Shoniker transferred the funds to an account in NYC covertly controlled by the RCMP. Alcoholism, prescription pill abuse and chronic sleep deprivation were used as a defense of impaired judgement.
R. v. Bui (2004) British Columbia	Bui: Yes Vu: Yes	Bui: 18 months Vu: 18 months	$96,860 CAD $7,000 USD	Subjects landed in Vancouver with a suitcase that smelled strongly of marijuana. It was also discovered that Muoi Thi Vu had $83,500.00 CAD and $7,000.00 USD on her person, while Duc Ngoc Bui had $13,360.00 CAD that they had not reported. It is suspected that the individuals may be acting as nominees for a larger organization, though this was never proven. Both were convicted for money laundering.
R. v. Tran (2004) British Columbia	Tran: Yes Phan: No	Tran: 10 years	$200,000,000+	The couple was investigated during Project Exchange Rate. The proceeds were believed to be drug related funds belonging to Silva Rivas and another individual by the name of Piotr Sperka. Cocaine was sold in Canada, and the Canadian funds were then exchanged into American dollars to buy cocaine in the US. The amount laundered exceeds $200,000,000. Tran agreed to plead guilty if the charges were dropped against his wife so she could care for their children.
R. v. Demers (2000) Quebec	Demers : Yes Laporte : Yes	Demers : 2 years less a day Laporte : 3 years	$859,000	Demers and Laporte co-owned an art gallery and carried out a fraud scheme that involved selling one painting to multiple individuals. They would tell Individual A that a traveling exhibit wanted to feature the painting, which was just purchased. When Individual A agreed, Demers and Laporte would repossess the painting and sell it to others, repeating the scheme. The two laundered funds simply by claiming the extra money to be the profits from the sale of art.