



And who might you be?

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Model Rules

AML Model Rules Timeline:

- 2004-2008 – Adoption of Model Rules by Canadian Law Societies
- 2015 - *Canada (AG) v. Federation of Law Societies of Canada* – SCC
-*Proceeds of Crime (Money Laundering) and Terrorist Financing Act* – reporting obligations found to infringe solicitor-client privilege inconsistent with the Constitution
- 2016 – Financial Action Task Force Review
-Appointment of the FLSC's AML/ATF Working Group
- 2018 – AML/ATF Consultation in March
-Final report and proposed Model Rule amendments to FLSC Council in October
- 2019 – approval and adoption of Model Rules by Canadian Law Societies begins
-Amendments approved by NSBS on September 27, 2019; came into force January 1, 2020



CIV Amendments

Highlights of Amendments to Model Rule

- No cash model rule (definitions and exceptions)
- Identification and verification of individual and organizational clients (methods, definition, exemption, timing)
- Identifying beneficial ownership
- Use of an agent
- Source of funds
- Ongoing monitoring of clients
- Trust accounting model rule



CIV Amendments

No Cash Rule

- Specify that the exceptions to the cash limit apply only where the lawyer or law firm is providing legal services
- Delete the exemption for cash received “pursuant to a court order, or to pay a fine or penalty” because it was determined to be of limited value and may present a risk of money laundering and terrorist financing
- Add definitions of terms used in the rule: disbursements, expenses, financial institution, financial services cooperative and professional fees

CIV Amendments

Client Identification and Verification – CIV

Required Identification:

- Government issues photo ID; or
- Credit file; or
- Dual process – information from two different and reliable, independent sources





CIV Amendments

Information to Obtain and Retain – Individual

- client's full name
- client's home address and telephone number
- client's occupation(s)
- address and telephone number of client's place of work, where applicable



CIV Amendments

Information to Obtain and Retain – Organization

- Full name, business address and telephone number;
- Incorporation or business identification number and the place of issue;
- General nature of the type of business or activity engaged in by the client; and
- Name, position and contact information for the individual authorized to instruct the lawyer



CIV Amendments

Beneficial Ownership

- **Legal owner** – holds legal title to a property or asset in own name
- **Beneficial owner** – individual who possesses certain benefits of ownership over a property or asset irrespective of appearing on its legal title
- Actual person(s) who directly or indirectly owns or controls 25% or more of entities such as a corporation or trust
- Money launderers may obscure their identifies through beneficial ownership of an entity (ex shell corporation)
- Cannot be another corporation or entity; they must be a natural person



CIV Amendments

New rule requires that a lawyer make “reasonable efforts” to obtain and verify:

- Names and addresses of persons who own directly or indirectly 25% or more of an organization
- Names and addresses of all trustees and all known beneficiaries and settlors of the trust



CIV Amendments

If not able to obtain the information:

- Do not accept retainer; or
- Take reasonable measures to ascertain the identify of the most senior managing officer of the organization



CIV Amendments

Dual Process Method

You may verify an individual's identity by relying on any two of the following:

- information from a reliable source that contains the individual's name and address;
- information from a reliable source that contains the individual's name and date of birth; and
- information containing the individual's name that confirms they have a deposit account or credit card or other loan account with a financial institution.



CIV Amendments

*** The information you rely upon must be from two different sources.**

A “**reliable source**” is an originator or issuer of information that you trust. To be considered reliable, the source should be well known and considered reputable. The reliable source cannot be you, your agent, or the individual whose identity you are verifying. Federal, provincial, territorial and municipal levels of government, Crown corporations, financial entities and utility providers are examples of reliable sources.



CIV Amendments

Use of an Agent:

- The model rule does not specify who may act as an agent
- Ensure that the person engaged as an agent:
 - Reputable
 - Reliable
 - Able to carry out the required work to verify identify and
 - Able to provide the information they have obtained as required under the model rules



CIV Amendments

Source of Funds

- Obtain and records information about the source of funds relating to the legal services to be provided
- Refers to the origin of the funds which are the subject of the transaction (how the client got the money vs. where it is coming from)
- Requirement applies to both individual and organizational clients

CIV Amendments

Source of Funds – Checklist

- ✓ Name, Occupation, Contact information of Person paying
- ✓ Relationship to the Client (if third party)
- ✓ Economic activity or action that generated the funds
(e.g. loan, savings from salaried employment, settlement funds)
- ✓ Form of Funds
(e.g. Cheque, bank draft, wire transfer)
- ✓ Name and address of Financial Institution delivering funds
- ✓ Other relevant information
You can accept a client's explanation regarding the economic activity or action that the money without obtaining copies of the documents to support the client's explanation – UNLESS suspicious circumstances

CIV Amendments

If you have doubts about the source of funds:

- Obtain and evaluate more detailed information from the client:
 - Bank statements
 - Pay stubs
 - Tax returns
 - Gift letter
 - T5 showing investment income
 - Court-ordered agreement, loan agreement etc



Monitoring

Ongoing Monitoring

- Requires ongoing monitoring of clients and requirement to withdraw from representation of the client if, once retained, the lawyer becomes aware that they would be assisting the client in fraud or other illegal conduct

New trust rules

New trust accounting rules

- **10.2.9.1** A practising lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the practising lawyer or law firm is providing.
- **10.2.9.2** A practising lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.



Risk Scenario #1

- Individual in their late 20's
- Occupation – Construction Labourer
- Purchasing two side by side duplexes
- Negotiated good price for properties by purchasing both properties
- Source of Funds - previous real estate sales
- Shortly after the purchases, the client instructed another lawyer to re-sell the same properties at a higher price. The purchasers were also in their late 20s with low-paying jobs and took out mortgage to pay for the properties.

Risk Scenario #1

Red Flags

- Funds at the client's disposal appear large relative to the client's income.
- Client and other parties appear to be young for high value transactions given their income.
- Properties are paid for without financing.
- Client engaged in back to back property transactions, out of sync with normal market dynamics.
- Reason for the transactions is unclear.
- Purported value of the properties rapidly increases with each subsequent transaction despite the short period of time in between transactions.
- Client changes legal advisor in a short time period for no apparent reason



Risk Scenario #1

What can you do?

- A client with a low to modest income and no other apparent source of wealth proposes to buy property with no financing, additional information is required.
- Conduct enhanced due diligence on the source of funds including obtaining supporting documentation for the “previous real estate sales”
- Before acting you must be satisfied that the explanation provides a reasonable basis for concluding that the transactions are legitimate.
- The second lawyer should also inquire about the reasons for the client retaining new legal representation and ask questions about the apparent increase in value - ie, flipping can be mortgage fraud.



Risk Scenario #2

- A sole practitioner, with 18 years of litigation and estates law practice
- Longstanding client asks for help in selling his cottage.
- Lawyer only did real estate on occasion, but wanted to help client
- She relied on her longstanding relationship with the client and did not take steps to verify the client's identity or otherwise try to learn anything more about the client.
- Client wanted quick sale and listed it at 2/3 potential value.
- Explained that needed funds to keep up payments on house
- Rumours about involvement in drug dealing, but lawyer has nothing concrete.
- Client subsequently convicted of drug trafficking and sold the cottage in a hurry as he feared it might be confiscated.

Risk Scenario #2

Red Flags

- Client asked the lawyer to perform work outside her usual scope of practice.
- The instructions to sell the house below value were unusual and could result in a loss to the client.
- Client may be involved in the illegal drug trade.



Risk Scenario #2

What can you do?

- Make inquiries if you have information or hear “rumours” indicating the transaction may pose a risk for illegal activity, even with long-standing clients.
- Monitor your clients on an ongoing basis to ensure the information and instructions given are consistent with the purpose of the retainer.
- The client’s possible criminal activity and their instructions to proceed with an expedited sale of property below market value were indicators that the lawyer **might** be facilitating criminal activity. In such circumstances, it would not be reasonable to proceed with the transaction.



Risk Scenario #3

- An elderly couple and their adult son meet to about home purchase
- Son says he is there as support for parents
- The parents agree and present valid identification.
- Son does most of the talking.
- Parents' income is modest, and they live in trailer home and they are purchasing new place as rental and eventually to give to their son.
- About half of the purchase price for the new home came from a bank account in the parents' name, which the son helped to set up.
- Balance was financed through a private mortgage taken by the parents.



Risk Scenario #3

- The lawyer assisted the couple in purchasing the property speaking mainly with the son and, as instructed, registered title in the parents' names.
- The mortgage, which was over \$300,000, was paid off immediately.
- The son returned to the legal advisor's office soon after and inquired about new wills for his parents.
- The son turned out to be a career criminal using his parents to launder proceeds of crime from drug trafficking, fraud, and auto theft.



Risk Scenario #3

Red Flags

- Third party, rather than the clients, appears to be directing decision making.
- Disproportionate amount of private funding or availability of cash, which is inconsistent with the known legitimate income of the clients.
- Uncertainty about the real beneficiary or owner

Risk Scenario #3

What can you do?

- Although it is not uncommon for family members to assist in legal matters, carefully consider who you are really acting for and whether there may be capacity issues.
- Additional steps may be necessary to confirm who is giving the instructions and to ascertain who are the true beneficiaries of the transactions.
- Enhanced verification of the source of funds is also warranted when the client's income is modest, they have no other apparent source of wealth and they are financing only a portion of the purchase price.



Further Guidance

<https://nsbs.org/legal-profession/your-practice/responsibilities-requirements/client-id/>

- [Sample Agent Agreement](#)
- [Client ID Overview Chart](#)
- [General Guidance to Avoid Money Laundering](#)
- [Advisories to Address the Risks](#)
- [Risk Assessment Case Studies](#)
- [Guidance on Monitoring Obligations](#)
- [Guidance on Using an Agent](#)



QUESTIONS?