

## DUTIES OF LAW FIRMS

### DIVISION 1 CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS

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#### Definitions

118.1 In this Division,

- (a) "electronic funds transfer" means an electronic transmission of funds conducted by and received at a financial institution or a financial entity headquartered in and operating in a country that is a member of the Financial Action Task Force, where neither the sending nor the receiving account holders handle or transfer the funds, and where the transmission record contains a reference number, the date, transfer amount, currency and the names of the sending and receiving account holders and the conducting and receiving entities;
- (b) "financial institution" means:
  - (i) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which the *Bank Act* applies,
  - (ii) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,
  - (iii) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
  - (iv) a company to which the *Trust and Loan Companies Act* (Canada) applies,
  - (v) a trust company or loan company regulated by a provincial Act,
  - (vi) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public; or
  - (vii) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution;
- (c) "funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them;
- (d) "lawyer" means, in the Province of Quebec, an advocate or a notary and, in any other province, a barrister or solicitor;
- (e) "organization" means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;
- (f) "proceedings" means a legal action, application or other proceeding commenced before a court of any level, a statutory tribunal in Canada or an arbitration panel or arbitrator established pursuant to provincial, federal or foreign legislation and includes proceedings before foreign courts;
- (g) "public body" means:
  - (i) a department or agent of Her Majesty in right of Canada or of a province,
  - (ii) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them,

- (iii) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Government Act* or similar body incorporated under the law of another province or territory,
  - (iv) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization,
  - (v) a body incorporated by or under the law of an Act of a province or territory of Canada for a public purpose; or
  - (vi) a subsidiary of a public body whose financial statements are consolidated with those of the public body;
- (h) "reporting issuer" means:
- (i) a reporting issuer within the meaning of an Act of a province or territory of Canada in respect of the securities law of the province or territory;
  - (ii) a corporation whose shares are traded on a stock exchange designated under section 262 of the *Income Tax Act* (Canada) and that operates in a country that is a member of the Financial Action Task Force;
  - (iii) a subsidiary of an entity mentioned in clause (i) or (ii) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;
- (i) "securities dealer" means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services.

## Client Identity

- 118.2 (1)** Subject to subsection (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Division.
- (2)** A lawyer's responsibilities under this Division may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.
- (3)** Sections 118.3 through 118.9 do not apply to:
- (a) a lawyer when he or she provides legal services or engages in or gives instructions in respect of any of the activities described in section 118.4 on behalf of his or her employer, or
  - (b) a lawyer
    - (i) who is engaged as an agent by the lawyer for a client to provide legal services to the client, or
    - (ii) to whom a matter for the provision of legal services is referred by the lawyer for a client,when the client's lawyer has complied with sections 118.3 through 118.9, or
  - (c) a lawyer providing legal services as part of a duty counsel program sponsored by a non-profit organization, except where the lawyer engages in or gives instructions in respect of receiving, paying or transferring funds, other than an electronic funds transfer.

**118.3** A lawyer who is retained by a client as described in section 118.2(1) shall obtain and record the following information:

- (a) the client's full name,
- (b) the client's business address and business telephone number, if applicable,
- (c) if the client is an individual, the client's home address and home telephone number,
- (d) if the client is an organization, other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
- (e) if the client is an individual, the client's occupation or occupations,

- (f) if the client is an organization,
  - (i) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
  - (ii) the name, position and contact information for the individual(s) authorized to provide and giving instructions to the lawyer with respect to the matter for which the lawyer is retained,
- (g) if the client is acting for or representing a third party, information about the third party as set out in paragraphs (a) to (f) as applicable.

### **Client Identity and Verification**

**118.4** Subject to section 118.5, section 118.6 applies where a lawyer, who has been retained by a client to provide legal services, engages in or gives instructions in respect of the receiving, paying or transferring of funds, other than an electronic funds transfer.

### **Exemptions Re: Certain Funds**

- 118.5 (1)** Section 118.6 does not apply where the client is a financial institution, public body or reporting issuer.
- (2)** Section 118.6 does not apply in respect of funds,
- (a) paid by or to a financial institution, public body or a reporting issuer;
  - (b) received by a lawyer from the trust account of another lawyer;
  - (c) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
  - (d) paid or received pursuant to a court order or to pay a fine or penalty;
  - (e) paid or received as a settlement of any legal or administrative proceedings; or
  - (f) paid or received for professional fees, disbursements, expenses or bail.

### **Client Identity and Verification**

- 118.6 (1)** When a lawyer is engaged in or gives instructions in respect of any of the activities described in section 118.4, including non-face-to-face transactions, the lawyer shall take reasonable steps to verify the identity of the client, including the individual(s) described in section 118.3(f)(ii), and, where appropriate, the third party, using what the lawyer reasonably considers to be reliable, independent source documents, data or information.
- (2)** For the purposes of subsection (1), independent source documents may include:
- (a) if the client or third party is an individual, valid original government issued identification, including a driver's licence, birth certificate, provincial or territorial health insurance card [if such use of the card is not prohibited by the applicable provincial or territorial law], passport or similar record;
  - (b) if the client or third party 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; and
  - (c) if the client or third party is an organization, other than a corporation or society, 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) When a lawyer is engaged in or gives instructions in respect of any of the activities in section 118.4 for a client or third party that is an organization referred to in subsection (2)(b) or (c), the lawyer shall make reasonable efforts to obtain, and if obtained, record,
- (a) the name and occupation of all directors of the organization, other than an organization that is a securities dealer, and
  - (b) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.
- (4) (a) When a lawyer engages in or gives instructions in respect of any of the activities in section 118.4 for a client or third party who is an individual who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the client's identity by obtaining an attestation from a commissioner for oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subsection (2)(a):
- (b) When a lawyer, who engages in or gives instructions in respect of any of the activities in section 118.4 for a client that is an organization, is instructed by an individual described in section 118.3(f)(ii) who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the individual's identity by obtaining an attestation from a commissioner for oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subsection (2)(a).
- (5) For the purpose of subsection (4), an attestation shall be produced on a legible photocopy of the document and shall include
- (a) the name, profession and address of the person providing the attestation;
  - (b) the signature of the person providing the attestation; and
  - (c) the type and number of the identifying document provided by the client, third party or instructing individual(s).
- (6) For the purpose of subsection (4), a guarantor must be a person employed in one of the following occupations in Canada:
- (a) dentist;
  - (b) medical doctor;
  - (c) chiropractor;
  - (d) judge;
  - (e) magistrate;
  - (f) lawyer;
  - (g) notary (in Quebec);
  - (h) notary public;
  - (i) optometrist;
  - (j) pharmacist;
  - (k) professional accountant (APA [Accredited Public Accountant], CA [Chartered Accountant], CGA [Certified General Accountant], CMA [Certified Management Accountant], PA [Public Accountant] or RPA [Registered Public Accountant]);
  - (l) professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec] or Eng. [Engineer, in Quebec]);
  - (m) veterinarian;
  - (n) peace officer;
  - (o) paralegal licensee in Ontario;

- (p) nurse; or
- (q) school principal.
- (7) A lawyer may, and where an individual client, third party or individual described in section 118.3(f)(ii) is not physically present and is outside of Canada shall, rely on an agent to obtain the information described in subsection (2) to verify the person's identity, which may include, where applicable, an attestation described in this section, provided the lawyer and the agent have an agreement or arrangement in writing for this purpose.
- (8) A lawyer who enters into an agreement or arrangement referred to in subsection (7) shall obtain from the agent the information obtained by the agent under that agreement or arrangement.
- (9) A lawyer shall verify the identity of an individual, and the individual(s) authorized to provide and giving instructions on behalf of an organization with respect to the matter for which the lawyer is retained, upon engaging in or giving instructions in respect of any of the activities described in section 118.4.
- (10) Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity if the lawyer recognizes that person.
- (11) A lawyer shall verify the identity of a client that is an organization within 60 days of engaging in or giving instructions in respect of any of the activities described in section 118.4.
- (12) Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to section 118.6(3), the lawyer is not required to subsequently verify that identity or obtain that information.

### **Record Keeping and Retention**

- 118.7 (1) A lawyer shall obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of section 118.6(1).
- (2) The documents referred to in subsection (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.
- (3) A lawyer shall retain a record of the information and any documents obtained for the purposes of sections 118.3 and 118.6(3) and copies of all documents received for the purposes of section 118.6(1) 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 service to the client, and
  - (b) a period of at least six years following completion of the work for which the lawyer was retained.

### **Application**

- 118.8 Sections 118.2 through 118.7 of this Division do not apply to matters in respect of which a lawyer was retained before this Division comes into force 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 and Duty to Withdraw**

- 118.9 (1) If in the course of obtaining the information and taking the steps required in sections 118.3 and 118.6(1) or (3), 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 section applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Division comes into force.
- 118.10(1) If while retained by a client, a lawyer knows or ought to know that he or she is or would be assisting the client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.
- (2) This section applies to all matters for which a lawyer was retained before this Division comes into force and to all matters for which he or she is retained after that time.