



And who might you be?

RELANS October 2020 Webinar Series

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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



No Cash Rule

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 rules

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





Individual

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



Organization

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



Beneficial Ownership

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



Reasonable efforts

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



Alternatives?

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



Dual Process

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.



Reliable Source

*** 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.



Use of an Agent

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



Source of Funds

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



Doubts?

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.



QUESTIONS?