

Q & As - Preventing money laundering

1. Why have these amendments been made to LSUC's By-laws and Rules of Professional Conduct?

Following the repeal of the provisions in the regulations under Part I of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* - which subjected lawyers to the client identification, recordkeeping, reporting and internal compliance requirements - the government has advised that it intends to implement a new regime for lawyers which would better reflect their duties. Recognizing that lawyers support efforts to eradicate money laundering, the Federation of Law Societies proposed that each law society in Canada adopt regulations that would assist in preventing money laundering. To that end, the Federation adopted a model rule. The By-law and Rule amendments implement the Federation's model rule.

2. Are lawyers exempt from the reporting and record keeping requirements of the money laundering legislation?

In March 2003, the federal government repealed the provisions in the regulations under Part I of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* that subjected lawyers to the client identification, recordkeeping, reporting and internal compliance requirements.

3. What has happened with the constitutional challenge relating to the money laundering legislation?

The hearing of the application has been adjourned sine die. Please see the Federation of Law Societies website for more information.

4. What is the definition of cash?

For the purposes of By-law 9, cash means

- current coin within the meaning of the *Currency Act*
- notes intended for circulation in Canada issued by the Bank of Canada pursuant to the *Bank of Canada Act*, and
- current coin or bank notes of countries other than Canada.

5. How much cash am I permitted to accept from my client?

You are permitted to accept less than \$7,500 Canadian in the aggregate from a person in respect of any one client file.

6. If I am acting for more than one client on a file, how much cash am I permitted to accept?

You are entitled to accept less than \$7,500 Canadian in the aggregate, as the receipt relates to one client file.

7. If my client provides me with \$15,000 Canadian in cash for three unrelated investments, am I permitted to accept the cash?

You are permitted to accept the cash as it is being paid for three separate client matters, so long as the amount of each investment does not itself exceed \$7,500 Canadian.

8. What are the restrictions on the receipt of foreign currency?

If you receive foreign currency, you will be deemed to have received it in amount as converted into Canadian funds in accordance with a formula set out in By-law 9, 4 (2).

If the amount of foreign currency as converted exceeds \$7,500 Canadian in the aggregate, you are prohibited from accepting it unless you fall into one of the exceptions set out in s. 5.6 of By-law 9 (see question 10 below for the exceptions).

9. To which types of transactions does the prohibition against accepting cash in excess of \$7,500 in the aggregate apply?

The prohibition applies when in respect of a client file a member engages in or gives instruction in respect of the following activities:

- the member receives or pays funds
- the member purchases or sells securities, real properties or business assets or entities
- the member transfers funds by any means

10. Are there any exceptions to the prohibition against accepting cash in excess of \$7,500 in the aggregate?

Yes. The prohibition does not apply when the member

- a. receives cash from a public body, 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, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act, an association that is regulated by the *Cooperative Credit Associations Act*, a company to which the *Trust and Loan Companies Act* applies, a trust company or loan company

regulated by a provincial Act or 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;

- b. receives cash from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;
- c. receives cash pursuant to an order of a tribunal;
- d. receives cash to pay a fine or penalty;
- e. receives cash for fees, disbursements, expenses or bail, provided that any refund out of such receipts is also made in cash.

11. How do I refund money to my client in cash?

The funds could be withdrawn in cash from your trust account (general account if refunding billed fees or paid disbursements) by way of a withdrawal slip. To create a better audit trail, however, you may wish to consider issuing a cheque payable to yourself, noting the client file number, and that it is a cash withdrawal. If you choose to use a withdrawal slip, in order to document the withdrawal, you should request a duplicate copy of the withdrawal slip for your records. In addition, when the cash is refunded to the client, you should obtain a receipt from the client and/or have a witness present to document the transfer of cash. Whichever method of withdrawal you choose, you should consider obtaining the client's written instructions prior to making the withdrawal.

12. What is the definition of a public body?

A public body means

- a. a department or agent of Her Majesty in right of Canada or of a province;
- b. an incorporated city, metropolitan authority, town, township, village, county, district, rural municipality or other incorporated municipal body or an agent of any of them;
- c. an organization that operates a public hospital that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act or an agent of the organization.

13. If I do accept cash in accordance with the By-laws, are there any additional record keeping or reporting requirements?

Yes. You will also be required to maintain a book of duplicate receipts with each of the receipts identifying the following:

- a. the date on which the cash is received
- b. the person from whom the cash is received

- c. the amount of cash received
- d. the client for whom the cash is received
- e. any file number in respect of which the cash is received.

The receipt must also contain the signature of the member or person authorized by the member to receive cash, and the signature of the person from whom the cash is received.

You should also note that you must now record the method of receipt of funds in both the trust and general receipts journal.

14. Is there a specific format for these additional records? Do you have a precedent?

There is no prescribed format or precedent for these additional records. Suggested guidelines and format examples for law firm books and records are available on line in the Bookkeeping Guide.

15. Do these additional record-keeping requirements apply to the receipt of any amount of cash?

These additional records are required any time a member receives cash in respect of a client matter, regardless of the amount.

16. How long must these additional records be maintained?

These additional records must be maintained for at least the six-year period immediately preceding the member's most recent fiscal year end.

17. What if the person from whom the cash is received refuses to sign the receipt as required by the By-law?

A. When a member receives cash in respect of a client matter he or she is obliged to make reasonable efforts to obtain the signature of the person from whom the cash is received. The inability of the lawyer to secure the signature after making reasonable efforts to obtain the signature is not a bar to accepting the cash.

18. What actions constitute reasonable efforts to obtain the signature of the person providing the cash?

The lawyer should consider explaining to the individual providing the cash:

- a. the lawyer's obligations under the By-law, and
- b. the rationale for the requirement.

If after that explanation the individual still refuses to sign, the lawyer has discharged his or her obligation under the By-law.

19. Can I refuse to accept cash from my client or others?

A. Neither the Rules of Professional Conduct nor the By-laws stipulate that a lawyer must accept cash from a client. This is a policy issue that should be decided by the firm and communicated to the client at the outset of the retainer. Lawyers may also wish to consider including as a term of their written retainer the form in which payment of retainers and fees will be accepted by them.

20. If I choose never to accept cash, are there any changes to my record keeping or reporting requirements?

Yes. The books of original entry for trust and general receipts must now include a notation as to the method by which money has been received (By-law 9, s. 18(1) and 18 (5)). The books of original entry for trust and general disbursements always contained a requirement to show the method by which money is disbursed (By-law 9, s. 18(2) and 18(6)).

21. If I have suspicions as to the legality of my client's transaction, what are my obligations?

Before accepting the retainer, or during the retainer, if a lawyer has suspicions or doubts as to whether he or she might be assisting the client in dishonesty, fraud, crime or illegal conduct, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer - including verifying who are the legal or beneficial owners of property and business entities, verifying who has control of the business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

22. What should I do if I am unable to obtain information necessary for me to satisfy myself as to the propriety of my client's transaction?

If you are unable to satisfy yourself as to the propriety of the client's transaction for which you have been retained, you should consider whether it would be appropriate to withdraw from your representation of the client. In making that decision, you should review your obligations under Rule 2.09 of the *Rules of Professional Conduct*.