



# Anti-Money Laundering Lawyer Obligations

June 9, 2021



# Overview

## Rules to prevent money laundering

- Why do we have these rules?
- What are lawyer's obligations?
- Resources to assist meeting obligations?



# Why – Lawyer Perspective

- Reporting under normal AML laws (FINTRAC) = breach of client confidentiality (SCC)
- New virtual world = increased Risk
- Balance systems with underlying ethical responsibilities



# Why – Regulator Perspective

- **Public Interest**
  - Human Trafficking and Prostitution
  - Child Pornography
  - Drug Trafficking
  - Illegal Arms Sales
  - Smuggling
  - Embezzlement
  - Insider Trading
  - Computer Fraud
  - Mortgage Fraud
  - Financing Terrorism

# Why – It's a real problem

- Not in my backyard?
  - 1850 Organized Crime Groups in Canada
  - 100 Canadian organized crime groups importing cocaine
  - Money laundering is key activity – Hundreds of Millions of dollars laundered through:
    - Casinos
    - Underground banking systems (private lending)
    - Illegal Gaming Houses
    - Shell Companies
    - Trade based laundering
    - Real estate Investments

# Why – It's a real problem

## Highest rate of police-reported incidents

Figures released last year indicated Halifax and Ottawa had the country's highest rate of police-reported incidents of human trafficking between 2009 and 2016.

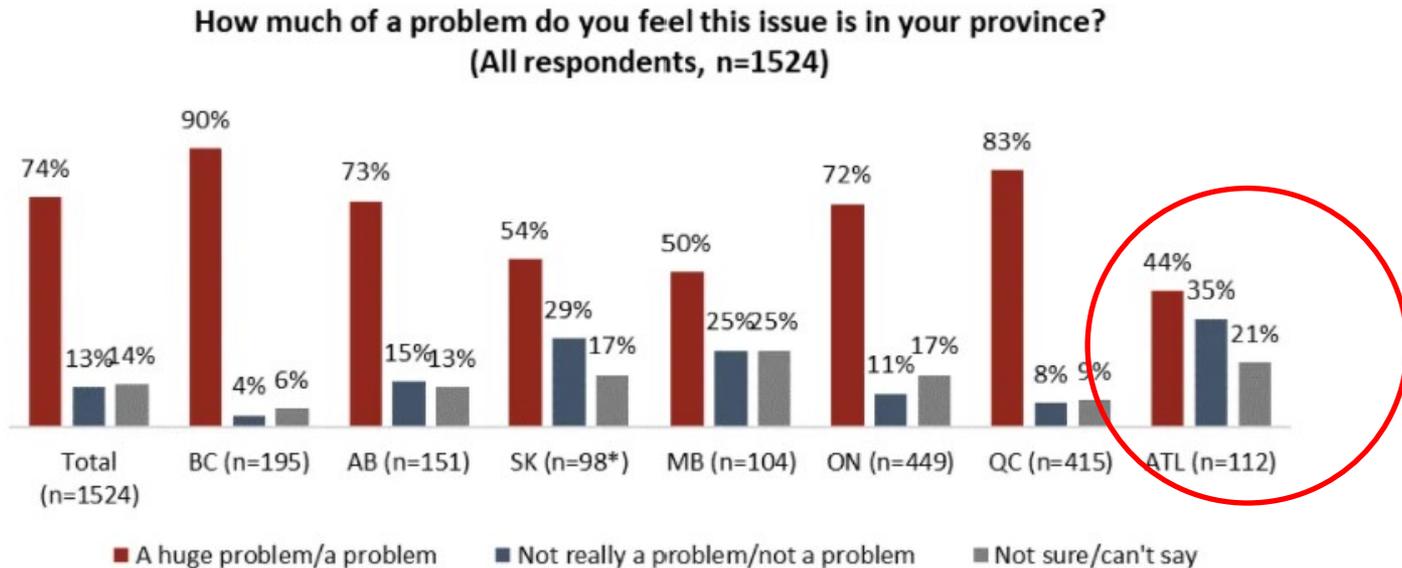
The Justice Department also said it had dealt with 42 cases of gang activity and organized crime over the last seven years. Furey said there are currently 27 independent organized crime groups operating in the province.

Money  
Laundering  
knows no borders



# Why – It's a real problem

- Not in Atlantic Canada?
- You are not alone





## Why – It's a real problem

- How Much Money Gets Laundered in Canada
  - 2015 estimate - \$41.2 Billion
  - Percentage in Atlantic Canada?
    - 7%
    - 11%
    - 17%
    - 21%

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# Why – It's a real problem

Figure G-1: Money laundering in Canada by region





# Money Laundering Terms

- Which of the following is NOT a money laundering term:
  - “Snow washing”
  - “Smurfing”
  - “Ringo”
  - “PEP”

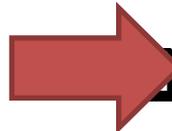


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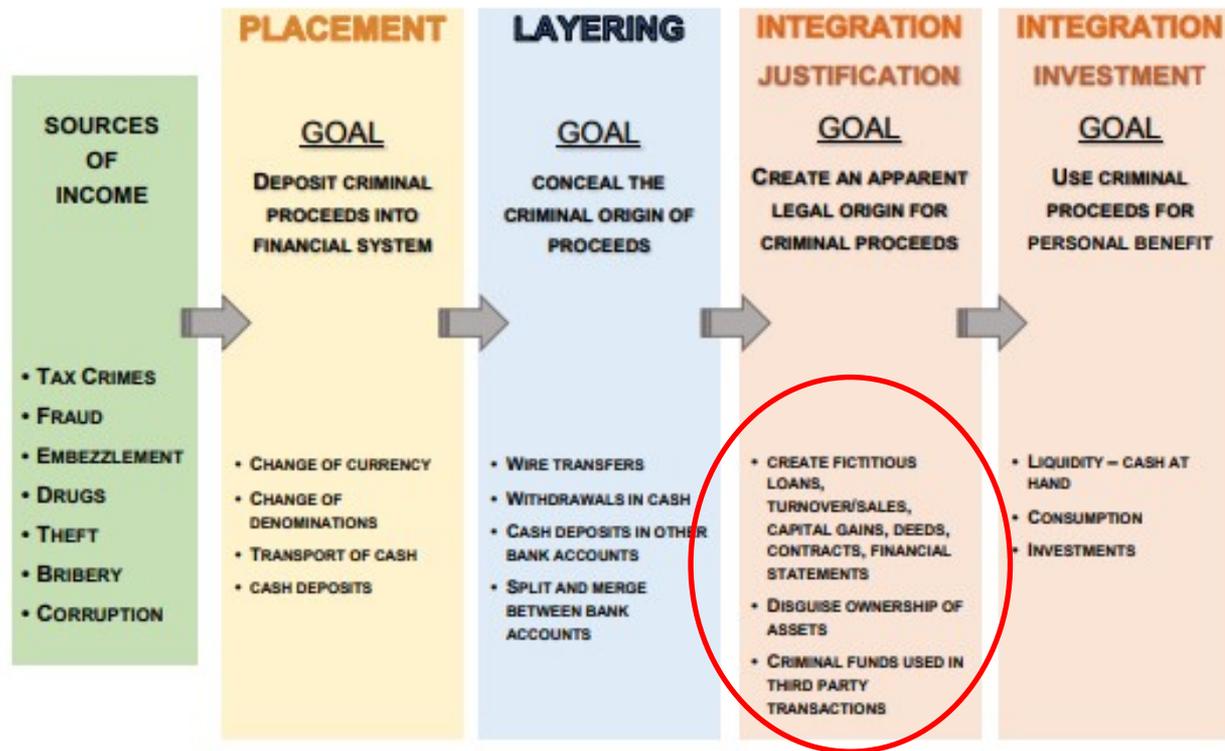
  “Ringo”

“PEP”

# Why – It's a real problem

## • How Money Gets Laundered

Figure 2: Overview of money laundering



Source: Organisation for Economic Co-operation and Development, *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors* (OECD, 2009), [www.oecd.org/tax/crime](http://www.oecd.org/tax/crime).



# Why – Criminal's need Professionals

- **Criminals use Lawyers:**
  - To provide an appearance of legitimacy to transactions
  - To create companies and trust
  - To facilitate purchase and sale of property
  - To facilitate litigation
  - To obtain solicitor-client privilege for transactions
  - To accept trust funds

# Umbrella Obligations

## Regulations

- Know your Client
- Understand Client's financial dealings
- Manage Risk
- Ongoing Monitoring

*Reg. 4.13.2 and 4.13.28*

## Code of Conduct

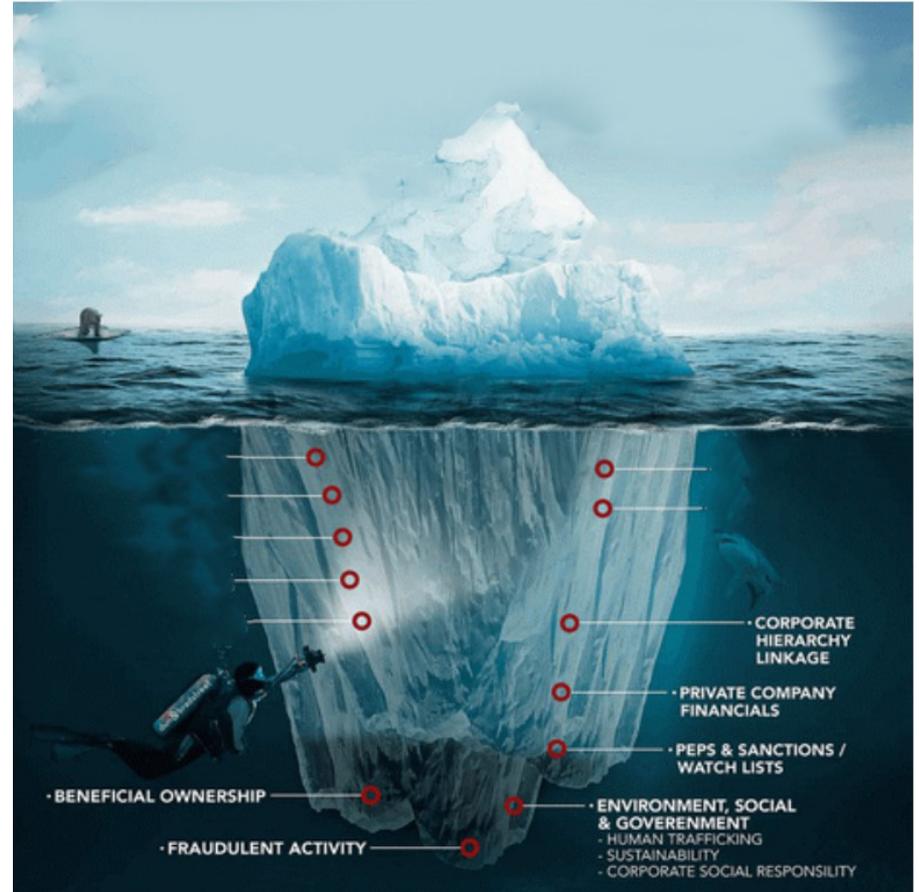
- Must not
  - knowingly assist in fraud, crime, or illegal conduct
  - Do or omit to do anything ought to know assists in fraud, crime, or illegal conduct

*Chapter 3.2-7; 3.2-8 and  
**Commentary***

# Umbrella Obligations

## Risk Assessment

- Using Professional Judgment to assess risk
- Fact driven exercise
- Document, Document, Document





# Risk Categories



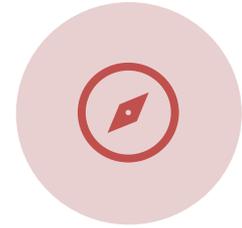
NATURE OF THE  
RETAINER/  
TRANSACTION



CLIENTS



SOURCE OF FUNDS



GEOLOCATION OF  
CLIENT/FUNDS



[ADVISORIES TO ADDRESS RISK AND RISK ASSESSMENT CASE STUDIES](#)



# General Obligations

- **Identify Client**
- **Verify Client** – if funds are being received, paid, or transferred and no exception
- **Source of Funds** – if funds are being received, paid, or transferred and no exception
- **Maintain and Retain Records**
- **Withdraw** if you know or ought to know assisting with fraud
- **No Cash Rule** with exceptions
- **Use of Trust Account** for legal services only



# Identification

## Activity

Retained  
to  
Provide  
Legal  
Services

Exception?  
- Inhouse  
- Agent for  
another  
lawyer\*

- Referred  
by another  
lawyer\*  
- Duty  
Counsel

\* Who has already identified

- obtain and record basic information about:
  - Individual Client
  - Individual Third Party directing or providing instructions to Client
  - Individuals authorized to give instructions on behalf of an organization
  - The organization

[Summary Chart](#)



# Verification & Source of Funds

## Activity - Funds flowing – Potential for washing



Paying



Receiving

lawyer who (1) has been retained by a client to provide legal services (2) engages in or gives instructions in respect of the receiving, paying or transferring of funds

# Verification & Source of Funds

## Exceptions - retainer involves:

- Client who is “financial institution”, “public body”, or “reporting issuer”
- Transfer of funds using “electronic funds transfer”
  - EFT conducted by and received by a financial institution and account holders have not handled funds

[Geographic Risk Guidance](#)





# Verification & Source of Funds

## Exceptions (cont'd)

- Funds
  - paid by or to a financial institution, public body or a reporting issuer
  - received by a lawyer from the trust account of another lawyer
  - received from a peace officer, law enforcement agency or other public official acting in their official capacity
  - paid or received ~~pursuant to a court order or~~ to pay a fine, penalty, or bail
  - ~~Paid or received as a settlement of any legal or administrative proceedings~~
  - paid or received for professional fees, disbursements, or expenses;

# Verification - Individuals

## Who?

- Individual Client
- Individual third-party person directing or instructing the client
- The person authorized to instruct in the matter on behalf of an organization

## When?

- Upon engaging in or giving instructions in respect of receiving, paying or transferring of funds

# Verification

## How?

- Valid Government issued **photo ID**
- **Credit file**
- **Dual process**
- Use of an Agent





# Verification - Individuals

## Valid Government ID

- **Photo ID**
- Valid – not expired
- Unique Identifier number
- Physically Present
- Federal, Provincial, Territorial Government or Foreign equivalents – Not Municipal ([See examples](#))

# Verification - Individuals

## Credit File Method

- File must be in existence for at least 3 years
- Name address and DOB matches identity information provided by individual
- Not a “credit check”
- Must obtain information directly from a Canadian Credit Bureau or vendor authorized by Bureau at the time you are verifying
- Individual does not need to be physically present

# Verification - Individuals

## Dual Process Method

**Original** documents from any two of the following sources:

- “Reliable source” with name and address
- “Reliable source” with name and date of birth
- Name and confirmation of deposit account or credit card or other loan account with a financial institution.

See [examples](#) of “Reliable Source”

# Verification - Individuals

## Use of an Agent

- Optional in Canada
- Required when outside Canada
- Agreement directly between Agent and Lawyer
- Reputable and Reliable
- Use of prior verification by an Agent

[Guide to Using an Agent](#)





# Verification - Individuals

## Which of these statements is true:

- A lawyer should routinely verify the identity of all clients
- Verification can be completed by obtaining the client's credit report
- Verification is exempt for children under 2
- When using an agent, lawyers must retain a copy of the agent's agreement with the client
- All of the above
- None of the above

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# Verification - Organizations

## Obtain Documents to confirm existence:

- government registration document for registered entities
- constating documents for unregistered entities

## Obtain, record, date, and make reasonable efforts to *confirm the accuracy of*:

- names and addresses of all directors
- names and addresses of beneficial owners, **if possible, through reasonable efforts**
- information establishing ownership, control, and structure of the organization, **if possible, through reasonable efforts**

# Organizations – Ownership Information

## Who?

- Natural persons who directly **or indirectly** control 25% or more of the organization
- Trustee(s) and all known beneficiaries and settlors of the trust

## How?

- Organization can provide it verbally or in writing; e.g.
  - Official documentation
  - Verbally and lawyer records
  - Client fills out a **form** or statutory declaration

# Organizations – Ownership Information

## Confirming Accuracy

- Official Documents or records
- Statutory Declaration confirming veracity
  - Include ownership, control, and structure information
  - Satisfies both obtain and confirm
- Other reasonable measures
  - Client provides supporting official documents
  - Open-source searches
  - Using a database of public registry

# Organizations – Ownership Information

## Can be a Challenge

- No registry with one stop shop information
- Virtually no government verification of registry information
- Ongoing monitoring requires periodic updates
- Complex structures can frustrate the process

## Stay hopeful

- “Reasonable Efforts”
- Legislative Reform - CBCA and BC



# Organizations – Ownership Information

## If unable to obtain information?

- Take reasonable measures to ascertain the identity of the most senior managing officer of the organization

OR

- Use professional judgement to determine if you should decline the retainer – based on the circumstances



# Source of Funds

- Obtain and record information
- Economic activity or action generating the funds
- Form of Funds – e.g. cheque, bank draft
- Verbal Interview or clients can fill out [form](#)
- Requirement applies to both individual and organizational clients
- Analyze Information
- Determine if you need to need more information/documentation



# Source of Funds

## **If you have doubts about the source of funds:**

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



# No Cash Rule

## Rule

- Must not **receive or accept** cash in an aggregate amount of greater than \$7,500 Canadian in respect of **any one client matter.**
- Duty to maintain certain records for 6 years
- (Reg. [4.12.6 to 4.12.10](#))



# No Cash Rule

## Exception

- for professional fees, disbursements, or expenses
- any refund out of such receipts is also made in cash.
- can accept retainer greater than \$7,500, but any refund needs to be in cash



# No Cash Rule

**Client provide \$20,000 retainer – half in cash and half by bank draft. \$11,000 fees etc. How can you refund the \$9,000?**

- \$9,000 via cash
- \$9,000 via trust cheque
- \$4,500 via cash and \$4,500 via trust cheque
- \$9,000 via trust cheque or cash



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# New Trust Accounting Rule

**Trust Account  
used only for  
Legal Services**



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.

**Pay out as soon as  
practicable upon  
completion of the  
legal services**



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.

[Reg 10.2.9](#)



# Further Guidance





# QUESTIONS?



## Upcoming Sessions:

- ✓ Succession Planning
- ✓ File Retention & Destruction
- ✓ Old Trust Balances