## Council Meeting Agenda

**Date**  
Friday, July 19, 2019

**Time**  
9:30 a.m. (8:45 a.m. Photographer on site to take photos of new members for Council Bios)

**Chair**  
Carrie Ricker, President

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### 1. Introductory Matters/Call to Order

1.1 Introductory Remarks  
10 minutes  
C. Ricker

1.2 Guest Speaker  
Greetings from Ross Earnshaw, President of the Federation of Law Societies of Canada (FLSC) and Update on Federation activities  
30 minutes  
R. Earnshaw  
Update

### 2. Discussion of Big Issue (Strategic Plan)

2.1 Strategic Plan 2019-2022  
Council will review and, if appropriate, approve the 2019-2022 Strategic Plan  
60 minutes  
C. Ricker  
Discussion; Approval

### 3. Policies/Processes

3.1 Public Website Redevelopment Project  
Collette Deschenes, Communications Officer, will provide Council with an overview of our website revamp and preliminary thoughts as to how our communications strategy needs to align with our new Strategic Plan  
30 minutes  
C. Deschenes  
Discussion

3.2 Client ID Rules  
Council will review the memo prepared by Elaine Cumming and consider approval to distribute this information to the membership. Regulatory amendments required – Regulations 4.12, 4.13, 10.1.1, 10.2.9-10.2.10  
20 minutes  
E. Cumming  
Discussion; Decision

3.3 Education & Credentials Monitoring Report  
Jackie Mullenger, Director, Education and Credentials, will provide Council with an update on the work of the department  
15 minutes  
J. Mullenger  
Update

3.4 CPLED Proposal  
Council will discuss the CPLED proposal and provide direction  
30 minutes  
J. Mullenger  
C. Canning QC  
Introduction; Discussion
| 3.5 | Executive Director’s Report | 10 | T. Pillay QC | Discussion |
| 3.6 | **IN-CAMERA** Executive Director’s Proposed Performance Goals | 15 | T. Pillay QC | Discussion |

### 4. APPROVALS

| 4.1 | Lawyers’ Fund for Client Compensation Regulatory Amendments  
*Council will consider and, if appropriate, approve the LFCC Regulatory Amendments allowing staff to dismiss claims with no merit* | 20 | V. Rees  
E. Cumming | Discussion; Approval |
| 4.2 | Distinguished Service Award Recipient  
*Council will review the recommendation from the DSA Committee and, if in agreement, will approve the nominated candidate* | 10 | A Cromwell | Approval |
| 4.3 | Transfers from General Reserve to Lawyers’ Fund for Client Compensation  
*Council will consider and, if appropriate, approve the request for a reserve transfer from the General Fund to the Lawyers Fund for Client Compensation* | 10 | All | Approval |
| 4.4 | Trust Assurance and Monitoring Report Update | 10 | K. Shewan | Update; Approval |
| 4.5 | Trust Account Report - Proposed Regulation Amendments  
*Council will consider and, if appropriate, approve the request for regulation amendments changing the date of filing for the Trust Account Report* | 5 | K. Shewan | Discussion; Approval |

### 5. FOR INFORMATION

| 5.1 | 2019-2020 Council Calendar | Information |
| 5.2 | Activity Plan | Information |
| 5.3 | President’s Report | Information |

### 6. CONSENT AGENDA

The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Council members may seek clarification or ask questions without removing a matter from the consent agenda. Any Member may request that a consent agenda item be moved to the regular agenda by notifying the President or the Governance Officer (Anne Broughm) prior to the meeting.

| 6.1 | Minutes of June 15, 2019, meeting | 5 | C. Ricker | Approval of all |
| 6.2 | Appointment of Colin Clarke QC to the Professional Responsibility Policies & Procedure Committee | | | |
| 6.3 | Appointment of Cheryl Canning QC to the Executive Committee | | | |
6.4  | Resignations: Rebecca Maria Alleyne, Jennifer Kristine Badley, Allan Francis Fenske QC, Mario Alberto Garcia Chavez, Caroline Kenneth-Ogah, Jonathan Langlois-Sadubin, Jean-Claude Roy, Alison Wynne Scott, Juliet Kim and George P. Smith

7. **IN-CAMERA**

| 7.1 | LFCC Claims |
|     | There will be two LFCC Claims |
|     | 10 |
|     | V. Rees |
|     | Approval |

8. **WRAP UP**

9. **The Two-Minute Evaluation**
*Council members are asked to complete the evaluation*

10. **MEETINGS**

- September 27, 2019, at 9:00 a.m.
- November 22, 2019, at 9:00 a.m.
- January 24, 2020, at 9:00 a.m.
- March 27, 2020, at 9:00 a.m.
- April 24, 2020, at 9:00 a.m.
- May 22, 2020, at 9:00 a.m.
- June 12, 2020, at 1:00 p.m.
MEMORANDUM TO COUNCIL

From: Elaine Cumming, Professional Responsibility Counsel

Date: May 17, 2019

Subject: Client Identification/No Cash regulatory amendments

For: Approval X Introduction Information

Recommendation/Motion:

It is recommended that the Federation of Law Societies of Canada’s Model Rules for client identification and verification and limits on cash transactions be adopted for use in Nova Scotia.

Executive Summary:

While lawyers are subject to the Criminal Code, they are exempted from the federal legislative regime under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (“PCMLTFA”) due to constitutional principles that protect the rights of clients and the obligations of legal professionals within their confidential relationships (see Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401). As a result, the legal profession has adopted model rules for lawyers and notaries to follow that are designed to reflect the government’s legislative objectives under PCMLTFA, while protecting the rights of clients and the obligations of legal professionals. Following considerable consultation with the profession and with the regulators, the Federation of Law Societies’ AMLTF Working Group delivered a final report and recommendations to the Federation Council in October 2018 https://flsc.ca/wp-content/uploads/2018/10/Report-on-the-Model-Rules-1Oct2018.pdf.

The working group recommended amendments to the current rules relating to the receipt of cash and to client identification and verification and also proposed the adoption of a new model rule regarding the use that may be made of lawyers’ trust bank accounts.

At the Council meeting, every Canadian jurisdiction expressed support for the new and amended rules and the complete package of new model rules was adopted. The adoption and enforcement of consistent rules has been a critical part of the strategy of the Federation and the law societies to address the risks of money laundering and terrorism financing activities present in the practice of law.
While the next stage requires each law society to review the model rules and to determine whether to adopt the rules in whole or in part in their own jurisdictions, the Working Group notes the desirability of adopting a collective, cohesive and consistent approach and the importance of each law society adopting the package of rules, as drafted.

**Analysis:**

In drafting this final version of the Model Rules, the Working Group reviewed the law society rules and regulations based on the previous version of the Model Rules and related trust account rules. It also carefully reviewed the report of the FATF’s mutual evaluation of Canada, released in September 2016. This review led to the conclusion that amendments were required to ensure that the Model Rules remain as robust and effective as possible. Some of the specific amendments included in the Model Rules are as follows:

**Highlights of some of the amendments to the Model Rules:**

**“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

**Client ID rule:**
- amend definitions of the Client Identification Rule, reflecting changes to the corresponding definitions in the federal regulations
- amend definition of “financial institution” to incorporate changes in the federal regulations (referred to there as “financial entity”), including the addition of references to a “financial services cooperative” and a “credit union central”
- amend definitions of “funds”, “public body” and “securities dealer” to maintain consistency with the government regulations
- add specific reference to the obligation on a lawyer to “know your client” in reg. 4.13.3 (amended 4.13.2)
- delete the words “take reasonable steps to” from reg. 4.13.4 (amended 4.13.8) to match changes in the federal regulations
- amend the provisions of the Client Identification reg 4.13.7 (amended 4.13.13) to specify the documents and information that may be relied upon to verify an individual’s identity; these changes reflect extensive amendments to the federal regulation
- amend the rule to incorporate new provisions in the regulations on the verification of the identity of children (amended 4.13.13)
- create a requirement to obtain, rather than simply to make reasonable efforts to obtain, the names of all directors of an organization, and the names and addresses of the owners of the organization; tracking the changes to the federal regulations, the amended rule would also introduce a requirement to “take reasonable measures to confirm the accuracy of the information obtained (amended 4.13.14 and 4.13.15)
• amend reg 4.13.9 (amended 4.13.14) to require lawyers to obtain information on beneficial owners of an organization; this change addresses a specific criticism of the law society anti-money laundering and terrorist financing rules that has been raised by the government and the FATF
• reduce the allowed time to 30 days for verification, which is in keeping with the federal regulations; this addresses concerns that a transaction could be completed before the expiration of the 60-day deadline for verification, thus undermining the purpose of the requirement (amended 4.13.20)
• add a new provision requiring ongoing monitoring of clients; such a requirement is included in the revised federal regulations (amended 4.13.30)
• add a reference to ongoing monitoring to the provision requiring a lawyer 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 (amended 4.13.32)

The Working Group’s initial report was released in October 2017, and it asked that all Law Societies seek feedback from their membership on the proposed amendments. The report was circulated to the NSBS membership with a request for feedback via our website and social media, and feedback was sought directly from a number of stakeholders including lawyers and law firm CFOs. Telephone discussions were held with some of those stakeholders.

The responses we received were positive overall about the proposed amendments, but concerned about the possibility of increased time and cost that some of the client ID changes will likely require. Those we heard from understand the risks that these regulations are trying to address and the need to ensure that Law Societies retain the oversight for this part of the practice of law.

Those we heard from agreed that more fulsome guidance documents to assist lawyers and law firms in the application and interpretation of these rules would be appreciated. The hope was expressed that the adoption of any amendments will be done with enough lead time to allow firms to amend their internal policies and forms, and they would appreciate support from an educational perspective.

The Federation has now approved guidance materials for use by all Canadian law societies that describes the responsibilities of Canada’s legal professions to ensure they are not facilitating money laundering and terrorist financing (attached). It describes the context for money laundering and terrorist financing in Canada and the sources of responsibilities to avoid it. The detailed Guidance, including red flags and real-life examples, sets out the components of the legal professional’s duties as contained in updated Model Rules approved on October 19, 2018 by the Federation.

Exhibits/Appendices:
Appendix A – draft amendments to Regulations 4.12 and 4.13
Appendix B - Guidance for the Legal Profession
### Existing Regulation

#### 4.12 Cash Transactions

**4.12.1** For the purposes of Regulation 4.12
(a) foreign currency is to be converted into Canadian dollars based on
(i) the official conversion rate of the Bank of Canada for that currency as published in the
Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time, or
(ii) if no official conversion rate is published as set out in subparagraph (a)(i), the conversion
rate that the client would use for that currency in the normal course of business at the relevant
time, and
(b) two or more transactions made within 24 consecutive hours constitute a single transaction
if the lawyer knows or ought to know that the transactions are conducted by, or on behalf of,
the same client.

**Application of regulation**

#### 4.12.2 Regulation 4.12 applies to a practising lawyer when engaged in any of the following
activities on behalf of a client, including giving instructions on behalf of a client in respect of
those activities:
(a) receiving or paying funds, other than those received or paid in respect of professional fees,
disbursements, expenses or bail;

### Proposed Regulation

#### 4.12 Cash Transactions

**Definitions**

**4.12.1 In Regulation 4.12**
(a) “cash” means coins referred to in section 7 of the Currency Act, notes issued by the Bank of
Canada pursuant to the Bank of Canada Act that are intended for circulation in Canada and coins
or bank notes of countries other than Canada;
(b) “disbursements” means amounts paid or required to be paid to a third party by the lawyer
or the lawyer’s firm on a client’s behalf in connection with the provision of legal services
to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;
(c) “expenses” means costs incurred by a lawyer or law firm in connection with the provision of
legal services to a client which will be reimbursed by the client including such items as
photocopying, travel, courier/postage, and paralegal costs;
(d) “financial institution” means
(i) a bank that is regulated by the Bank Act,
(ii) an authorized foreign bank within the meaning of section 2 of the Bank Act in respect
of its business in Canada,
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<td>(b) purchasing or selling securities, real property or business assets or entities; or (c) transferring funds or securities by any means.</td>
<td>(iii) cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act, (iv) an association that is regulated by the Cooperative Credit Associations Act (Canada), (v) a financial services cooperative, (vi) a credit union central, (vii) a company that is regulated by the Trust and Loan Companies Act (Canada), (viii) a trust company or loan company that is regulated by a provincial or territorial Act, (ix) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or (x) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.</td>
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<td><strong>Regulation does not apply</strong> 4.12.3 Regulation 4.12 does not apply to a practising lawyer when (a) engaged in activities referred to in subregulation 4.12 on behalf of their employer, or (b) receiving or accepting currency (i) from a peace officer, law enforcement agency or other agent of the Crown, (ii) pursuant to a court order, or (iii) in his or her capacity as executor of a will or administrator of an estate.</td>
<td>(e) “financial services cooperative” means a financial services cooperative that is regulated by An Act respecting financial services cooperatives, CQLR, c. C-67.3, or An Act respecting the Mouvement Desjardins, S.Q. 2000, c.77, other than a caisse populaire. (f) “funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or right to or interest in them; (g) “professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;</td>
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<td><strong>Limit on transaction</strong> 4.12.4 While engaged in an activity referred to in subregulation 4.12.2 a practising lawyer must not receive or accept an amount in currency of $7,500 or more in the course of a single transaction.</td>
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<td>(h) “money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.</td>
<td><strong>Limitation on cash</strong> <strong>4.12.2</strong> A lawyer must not receive or accept cash in an aggregate amount of greater than $7,500 Canadian in respect of any one client matter.</td>
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<td><strong>Foreign currency</strong></td>
<td><strong>4.12.3</strong> For the purposes of this Regulation, when a lawyer receives or accepts cash in a foreign currency the lawyer will be deemed to have received or accepted the cash converted into Canadian dollars at (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada’s Daily Noon Rates that is in effect at the time the lawyer receives or accepts the cash, or (b) if the day on which the lawyer receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the lawyer receives or accepts the cash.</td>
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<td><strong>Application</strong></td>
<td><strong>4.12.4</strong> Subregulation 4.12.2 applies when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities: (a) receiving or paying funds; (b) purchasing or selling securities, real properties or business assets or entities; (c) transferring funds by any means.</td>
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<td><strong>Exception</strong></td>
<td><strong>4.12.5</strong> Despite subregulation 4.12.4, subregulation 4.12.2 does not apply when the lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer’s firm (a) from a financial institution or public body, (b) from a peace officer, law enforcement agency or other agent of the Crown acting in his</td>
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<td>or her official capacity, (c) pursuant to pay a fine, penalty, or bail, or (d) for professional fees, disbursements, or expenses, provided that any refund out of such receipts is also made in cash.</td>
<td><strong>4.12.6</strong> Every lawyer, in addition to existing financial recordkeeping requirements to record all money and other property received and disbursed in connection with the lawyer’s practice, shall maintain (a) a book of original entry identifying the method by which money is received in trust for a client, and (b) a book of original entry showing the method by which money, other than money received in trust for a client, is received.</td>
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<td><strong>4.12.7</strong> Every lawyer who receives cash for a client shall maintain, in addition to existing financial recordkeeping requirements, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received, any file number in respect of which cash is received and containing the signature authorized by the lawyer who receives cash and of the person from whom cash is received.</td>
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<td><strong>4.12.8</strong> The financial records described in subregulations 4.12.6 and 4.12.7 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.</td>
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<td>4.12.9 The financial records described in subregulations 4.12.6 and 4.12.7 shall be entered and posted so as to be current at all times.</td>
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<td>4.12.10 A lawyer shall keep the financial records described in subregulations 4.12.6 and 4.12.7 for at least the six year period immediately preceding the lawyer’s most recent fiscal year end.</td>
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### 4.13 Client Identification

**Definitions**

**4.13.1** In Regulation 4.13

(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,

(b) “disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;

(c) “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
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<td>(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 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, or (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” mean cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them; (d) “organization” means a body corporate, partnership, fund, trust, cooperative or an unincorporated association; (e) deleted. (f) “proceedings” means a legal action, application or other proceeding commenced before a court of any level, 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.</td>
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<td>(d) “expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs; (e) “financial institution” means (i) a bank that is regulated by the Bank Act, (ii) an authorized foreign bank within the meaning of section 2 of the Bank Act in respect of its business in Canada, (iii) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act, (iv) an association that is regulated by the Cooperative Credit Associations Act (Canada), (v) a financial services cooperative, (vi) a credit union central, (vii) a company that is regulated by the Trust and Loan Companies Act (Canada), (viii) a trust company or loan company that is regulated by a provincial or territorial Act; (ix) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in</td>
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<td>a statutory tribunal in Canada or an arbitration panel or arbitrator established</td>
<td>the course of providing financial services to the public; or</td>
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<td>pursuant to provincial, federal or foreign legislation and includes proceedings</td>
<td>(x) a subsidiary of the financial institution whose financial statements are</td>
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<td>before foreign courts</td>
<td>consolidated with those of the financial institution.</td>
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<td>(g) “public body” means</td>
<td>(f) “financial services cooperative” means a financial services cooperative that is</td>
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<td>(i) a department or agent of Her Majesty in right of Canada or of a province,</td>
<td>regulated by An Act respecting financial services cooperatives, CQLR, c. C-67.3, or</td>
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<td>(ii) an incorporated city, town, village, metropolitan authority, township, district,</td>
<td>An Act respecting the Mouvement Desjardins, S.Q. 2000, c.77, other than a caisse</td>
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<td>county, rural municipality or other incorporated municipal body or an agent of any</td>
<td>populaire.</td>
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<td>of them, (iii) a municipality incorporated by or under an Act of a province or</td>
<td>(g) “funds” means cash, currency, securities and negotiable instruments or other</td>
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<td>territory of Canada including any body governed by the Municipal Government Act,</td>
<td>financial instruments that indicate the person’s title or right to or interest in</td>
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<td>SNS 1998, c.18</td>
<td>them;</td>
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<td>(iv) an organization that operates a public hospital and that is designated by the</td>
<td>(h) “lawyer” means, in the Province of Quebec, an advocate or a notary and, in any</td>
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<td>Minister of National Revenue as a hospital authority under the Excise Tax Act (Canada) or an agent of the organization;</td>
<td>other province or territory, a barrister or solicitor;</td>
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<td>(v) a body incorporated by or under the law of an Act of a province or territory of</td>
<td>(i) “organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;</td>
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<td>Canada for a public purpose; or (vi) a subsidiary of a public body whose financial</td>
<td>(j) “professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;</td>
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<td>statements are consolidated with those of the public body;</td>
<td>(k) “public body” means</td>
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<td>(i) a department or agent of Her Majesty in right of Canada or of a province or</td>
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<td>territory, (ii) an incorporated city, town, village, metropolitan authority,</td>
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<td>township, district,</td>
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<td>(h) “reporting issuer” means an organization that is a reporting issuer within the meaning of the securities laws of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange designated under the Income Tax Act (Canada) and operates in a country that is a member of the Financial Action Task Force, and includes a subsidiary of that organization or corporation whose financial statements are consolidated with those of the organization or corporation;</td>
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<td>(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</td>
<td>county, rural municipality or other incorporated municipal body in Canada or an agent in Canada 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 Act (Ontario) [or equivalent legislation] or similar body incorporated under the law of another province or territory, (iv) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act (Canada) or an agent of the organization, (v) a body incorporated by or under 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.</td>
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<td>(l) “reporting issuer” means an organization that is a reporting issuer within the meaning of the securities laws of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange that is designated under section 262 of the Income Tax Act (Canada) and operates in a country that is a member of the Financial Action Task Force, and includes a subsidiary of that organization or corporation whose financial statements are consolidated with those of the organization or corporation.</td>
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<td>(m) &quot;securities dealer&quot; means persons and entities authorized under provincial or territorial legislation to engage in the business of dealing</td>
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Client identity- exclusion from rule

4.13.2 Subregulations 4.13.3 – 4.13.16 do not apply to:
(a) a lawyer who provides legal services, or is engaged in or gives instructions in respect of any activities on behalf of his or her employer;
(b) a lawyer;
(i) who is engaged as agent by the lawyer for a client to provide legal services to that client, or
(ii) to whom a matter for the provision of legal services is referred by the lawyer for a client, or
(iii) 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 the receiving, paying or transferring of funds other than an electronic funds transfer.

Requirement to record client identification

4.13.3 Subject to subregulation 4.13.2, a lawyer who is retained by a client to provide legal services must comply with these regulations and 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;

in securities or any other financial instruments or to provide portfolio management or investment advising services, other than persons who act exclusively on behalf of such an authorized person or entity.

Requirement to Identify Client

4.13.2 Subject to subregulation 4.13.4, a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule in keeping with the lawyer’s obligation to know their client, understand the client’s financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

4.13.3 A lawyer's responsibilities under this Rule may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.

4.13.4 Subregulations 4.13.5 through 4.13.31 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 subregulation 4.13.6 on behalf of his or her employer;
(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 subregulations 4.13.5 through 4.13.31, or,
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<th>Existing Regulation</th>
<th>Proposed Regulation</th>
<th>Rationale</th>
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<td>(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 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 and position of 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.</td>
<td>(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 the receiving, paying or transferring of funds other than an electronic funds transfer.</td>
<td>4.13.5 A lawyer who is retained by a client as described in subregulation 4.13.2 must obtain and record, with the applicable date, the following information: (a) for individuals: (i) the client’s full name, (ii) the client’s home address and home telephone number, (iii) the client’s occupation or occupations, and (iv) the address and telephone number of the client’s place of work or employment, where applicable; (b) for organizations: (i) the client’s full name, business address and business telephone number, (ii) 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, (iii) 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</td>
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<td>considers to be reliable independent source documents, data or information.</td>
<td>(iv) the name and position of and contact information for the individual who is authorized to provide and gives instructions to the lawyer with respect to the matter for which the lawyer is retained,</td>
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<td><strong>4.13.5</strong> A lawyer's responsibilities under this Regulation may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.</td>
<td>(c) if the client is acting for or representing a third party, information about the third party as set out paragraphs (a) or (b) as applicable.</td>
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<td><strong>4.13.6</strong> The verification required under this subregulation must be carried out at the time the lawyer engages in or gives instructions regarding receiving, paying or transferring, funds.</td>
<td><strong>When Verification of Client Identity Required</strong></td>
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<td><strong>Independent source documents</strong></td>
<td><strong>4.13.6</strong> Subject to subregulation 4.13.7, subregulation 4.13.8 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.</td>
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<td><strong>4.13.7</strong> For purposes of subregulation 4.13.4, 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, 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 name of its directors and officers, 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</td>
<td><strong>Exemptions re: certain funds</strong></td>
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<td>(i) paid by or to a financial institution, public body or a reporting issuer; (ii) received by a lawyer from the trust account of another lawyer; (iii) received from a peace officer, law enforcement agency or other public official acting in their official capacity; (iv) paid or received to pay a fine, penalty, or bail; or (v) paid or received for professional fees, disbursements, or expenses;</td>
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<td>(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.</td>
<td>(c) to an electronic funds transfer.</td>
<td><strong>Requirement to Verify Client Identity</strong> 4.13.8 When a lawyer is engaged in or gives instructions in respect of any of the activities described in subregulation 4.13.6 the lawyer must (a) obtain from the client and record, with the applicable date, information about the source of funds described in subregulation 4.13.6, and (b) verify the identity of the client, including the individual(s) described in subregulation 4.13.5(b)(iv), and, where appropriate, the third party using the documents or information described in subregulation 4.13.13.</td>
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<td><strong>Exemptions re certain funds</strong> 4.13.8 Subregulation 4.13.4 does not apply where the client is a financial institution, public body, or reporting issuer, or in respect of funds: (a) paid by or to a financial institution, a public body, or a reporting issuer; (b) received by a lawyer from the trust account of a lawyer in Canada; (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, disbursement, expenses or bail.</td>
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<td><strong>Use of Agent</strong> 4.13.9 A lawyer may rely on an agent to obtain the information described in 4.13.13 to verify the identity of an individual client, third party or individual described in 4.13.5(b)(iv) provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in 4.13.11.</td>
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<td><strong>Verification of organizations</strong> 4.13.9 A lawyer who is engaged in or gives instructions on behalf of a client or third party, that is an organization referred to in 4.13.7(b) or (c), in respect of the receiving, paying or</td>
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<td>4.13.10 Notwithstanding subregulation 4.13.9, where an individual client, third party or individual described in 4.13.5(b)(iv) is not physically present in Canada, a lawyer must rely on an agent to obtain the information described in subregulation 4.13.11 to verify the person’s identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subregulation 4.13.11.</td>
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<td>transferring of funds, including non-face-to-face transactions, must (a) verify the identity of the individual or individuals authorized to provide and giving instructions on behalf of the organization with respect to the matter for which the lawyer is retained, upon engaging in or giving instructions; and (b) make reasonable efforts to obtain and if obtained, record, (i) the name and occupation of all directors of the organization, other than an organization that is a securities dealer; and (ii) 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.</td>
<td><strong>Agreement for Use of Agent</strong> 4.13.11 A lawyer who enters into an agreement or arrangement referred to in subregulations 4.13.9 or 4.13.10 must: (a) obtain from the agent the information obtained by the agent under that agreement or arrangement; and (b) satisfy themselves that the information is valid and current and that the agent verified identity in accordance with subregulation 4.13.13. 4.13.12 A lawyer may rely on the agent’s previous verification of an individual client, third party or an individual described in subregulation 4.13.5(b)(iv) if the agent was, at the time they verified the identity, (a) acting in their own capacity, whether or not they were required to verify identity under this Regulation, or (b) acting as an agent under an agreement or arrangement in writing, entered into with another lawyer who is required to verify identity under this Regulation, for the purpose of verifying identity under subregulation 4.13.13.</td>
<td><strong>Verify identity within sixty days</strong> 4.13.10 A lawyer must verify the identity of a client that is an organization within sixty days of engaging in or giving instructions in respect of the receiving, paying or transferring funds, other than an electronic funds transfer. <strong>Clients elsewhere in Canada</strong> 4.13.11 When a lawyer engages in or gives instructions in respect of the receiving, paying or transferring of funds, other than an electronic funds transfer, including non-face-to-face transactions, 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 must verify the client’s identity by <strong>Documents and information for verification</strong> 4.13.13 For the purposes of subregulation 4.13.8(b), the client’s identity must be verified by referring to the following documents, which must be valid, original and current, or the following information, which must be valid and</td>
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<td>obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subregulation 4.13.7(a).</td>
<td>current, and which must not include an electronic image of a document: (a) if the client or third party is an individual, (i) an identification document containing the individual’s name and photograph that is issued by the federal government, a provincial or territorial government or a foreign government, other than a municipal government, that is used in the presence of the individual to verify that the name and photograph are those of the individual; (ii) information that is in the individual’s credit file if that file is located in Canada and has been in existence for at least three years that is used to verify that the name, address and date of birth in the credit file are those of the individual; (iii) any two of the following with respect to the individual: (A) Information from a reliable source that contains the individual’s name and address that is used to verify that the name and address are of those of the individual; (B) Information from a reliable source that contains the individual’s name and date of birth that is used to verify that the name and date of birth are those of the individual, or (C) Information that contains the individual’s name and confirms that they have a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information.</td>
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4.13.12 When a lawyer, who engages in or gives instructions in respect of the receiving, paying or transferring of funds, other than an electronic funds transfer, including non-face-to-face transactions, for a client that is an organization, is instructed by an individual authorized to provide and giving instructions to the lawyer with respect to the matter for which the lawyer is retained, and who is not physically present before the lawyer, but is present elsewhere in Canada, the lawyer must verify the individual's identity by obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subregulation 4.13.7(a).

**Attestation by guarantor**

4.13.13 For purposes of subregulation 4.13.11, an attestation must be produced on a legible photocopy of the document and must 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.

**Guarantors**

Attestation by guarantor

4.13.13 For purposes of subregulation 4.13.11, an attestation must be produced on a legible photocopy of the document and must 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.
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<td><strong>4.13.14</strong> For purposes of subregulation 4.13.11, a guarantor must be a person employed in one of the following occupations: (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 who is a member of one of the following bodies: 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 who holds the designation of P. Eng in a province other than Quebec or Eng in Quebec; (m) veterinarian; (n) peace officer; (o) paralegal licensee in Ontario; (p) nurse; or (q) school principal.</td>
<td>the individual, lawyer and agent cannot be a source. (c) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of one of their parents or their guardian. (d) To verify the identity of an individual who is a least 12 years of age but not more than 15 years of age, the lawyer may refer to information under subregulation 4.13.13(a)(iii)(A) that contains the name and address of one of the individual’s parents or their guardian and verifying that the address is that of the individual. (e) 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 (f) 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</td>
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**Verification of independent source documents**

| **4.13.15** The verification of the identity of a client, third party, or individual authorized to provide and giving instructions to the lawyer on the matter may, and in the case of a non-face-to-face | **Rationale** |
| | | |
| Verification of independent source documents | **4.13.15** The verification of the identity of a client, third party, or individual authorized to provide and giving instructions to the lawyer on the matter may, and in the case of a non-face-to-face- | |
### Existing Regulation

face transaction involving a client who is not present in Canada, must be carried out by an agent on behalf of the lawyer provided that:

- the lawyer and the agent have an agreement in writing for that purpose; and
- the lawyer obtains from the agent the information obtained by the agent to verify the client’s identity.

### Proposed Regulation

any other similar record that confirms its existence as an organization.

### Rationale

**Requirement to Identify Directors, Shareholders and Owners**

4.13.14 When a lawyer is engaged in or gives instructions in respect of any of the activities in subregulation 4.13.6 for a client or third party that is an organization referred to in subregulation 4.13.13(e) or (f), the lawyer must:

- obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer; and
- make reasonable efforts to obtain, and if obtained, record with the applicable date,

  (i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization,
  (ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, and
  (iii) in all cases, information establishing the ownership, control and structure of the organization.

4.13.15 A lawyer must take reasonable measures to confirm the accuracy of the information obtained under subregulation 4.13.14.

4.13.16 A lawyer must keep a record, with the applicable date(s), that sets out the information obtained and the measures taken to confirm the accuracy of that information.

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| face transaction involving a client who is not present in Canada, must be carried out by an agent on behalf of the lawyer provided that:
- the lawyer and the agent have an agreement in writing for that purpose; and
- the lawyer obtains from the agent the information obtained by the agent to verify the client’s identity. | any other similar record that confirms its existence as an organization. | Requirement to Identify Directors, Shareholders and Owners 4.13.14 When a lawyer is engaged in or gives instructions in respect of any of the activities in subregulation 4.13.6 for a client or third party that is an organization referred to in subregulation 4.13.13(e) or (f), the lawyer must:
- obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer; and
- make reasonable efforts to obtain, and if obtained, record with the applicable date,

  (i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization,
  (ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, and
  (iii) in all cases, information establishing the ownership, control and structure of the organization. | 4.13.15 A lawyer must take reasonable measures to confirm the accuracy of the information obtained under subregulation 4.13.14. 4.13.16 A lawyer must keep a record, with the applicable date(s), that sets out the information obtained and the measures taken to confirm the accuracy of that information. |
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<td>4.13.19 The documents referred to in subregulation 4.13.18 may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.</td>
<td>4.13.17 If a lawyer is not able to obtain the information referred to in subregulation 4.13.14 or to confirm the accuracy of that information in accordance with subregulation 4.13.15, the lawyer must (a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization; (b) determine whether (i) the client’s information in respect of their activities, (ii) the client’s information in respect of the source of the funds described in subregulation 4.13.6, and (iii) the client’s instructions in respect of the transaction are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule; (c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and (d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).</td>
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<td>4.13.20 A lawyer must retain a record of the information and any documents obtained for the purposes of subregulations 4.13.4 and 4.13.7 and copies of all documents received for the purposes of subregulation 4.13.9 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.</td>
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<td><strong>Application</strong></td>
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<td>4.13.21 Subregulations 4.13.3, 4.13.4, 4.13.9 and 4.13.11 do not apply to matters in respect of which a lawyer was retained before this regulation 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.</td>
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<td><strong>Criminal activity, duty to withdraw at time of taking information</strong></td>
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<td>4.13.22 In the course of obtaining information and taking the steps required by this regulation, a lawyer must act in accordance with the Code of Professional Conduct and if the lawyer withdraws from</td>
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<td><strong>Timing of Verification for Individuals</strong></td>
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<td>4.13.18 A lawyer must verify the identity of (a) a client who is an individual, and (b) 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,</td>
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<td>representing the client, they must record the reasons for doing so.</td>
<td>upon engaging in or giving instructions in respect of any of the activities described in subregulation 4.13.6.</td>
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<td><strong>4.13.23</strong> Subregulation 4.13.22 applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Regulation comes into force.</td>
<td><strong>4.13.19</strong> Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity unless the lawyer has reason to believe the information, or the accuracy of it, has changed.</td>
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<td><strong>Criminal activity, duty to withdraw after being retained</strong></td>
<td><strong>Timing of Verification for Organizations</strong></td>
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<td><strong>4.13.24</strong> While retained by a client, a lawyer must act in accordance with the Code of Professional Conduct and if the lawyer withdraws from representing the client, they must record the reasons for doing so.</td>
<td><strong>4.13.20</strong> A lawyer must verify the identity of a client that is an organization upon engaging in or giving instructions in respect of any of the activities described in subregulation 4.13.6, but in any event no later than 30 days thereafter.</td>
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<td><strong>Application</strong></td>
<td><strong>4.13.21</strong> Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subregulation 4.13.20, the lawyer is not required to subsequently verify that identity or obtain that information, unless the lawyer has reason to believe the information, or the accuracy of it, has changed.</td>
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<td><strong>4.13.25</strong> This Regulation applies to all matters for which a lawyer was retained before this Regulation comes into force and to all matters for which they are retained after that time.</td>
<td><strong>Timing of Verification for Organizations</strong></td>
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<td><strong>4.13.22</strong> A lawyer must verify the identity of a client that is an organization upon engaging in or giving instructions in respect of any of the activities described in subregulation 4.13.6, but in any event no later than 30 days thereafter.</td>
<td><strong>4.13.23</strong> Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subregulation 4.13.20, the lawyer is not required to subsequently verify that identity or obtain that information, unless the lawyer has reason to believe the information, or the accuracy of it, has changed.</td>
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<td>4.13.20, the lawyer is not required to subsequently verify that identity or obtain that information, unless the lawyer has reason to believe the information, or the accuracy of it, has changed.</td>
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<td><strong>Record keeping and retention</strong></td>
<td>4.13.24 A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of subregulation 4.13.8.</td>
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<td>4.13.25 The documents referred to in subregulation 4.13.24 may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.</td>
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<td>4.13.26 A lawyer must retain a record of the information, with the applicable date, and any documents obtained for the purposes of subregulation 4.13.5, 4.13.14 and 4.13.31(b) and copies of all documents received for the purposes of subregulation 4.13.8 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.</td>
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<tr>
<td><strong>Application</strong></td>
<td>4.13.27 Subregulations 4.13.2 through 4.13.26 do not apply to matters in respect of which a lawyer was retained before this Regulation</td>
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<td>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.</td>
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**Criminal activity, duty to withdraw at time of taking information**

4.13.28 If in the course of obtaining the information and taking the steps required in subregulation 4.13.5 and subregulations 4.13.8, 4.13.14 and 4.13.17, 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.

4.13.29 This section applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Regulation comes into force.

**Monitoring**

4.13.30 During a retainer with a client in which the lawyer is engaged in or gives instructions in respect of any of the activities described in subregulation 4.13.6, the lawyer must monitor on a periodic basis the professional business relationship with the client for the purposes of determining whether
(a) the client’s information in respect of their activities,
(b) the client’s information in respect of the source of the funds described in section 4, and
(c) transactions
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<td>are consistent with the purpose of the retainer and the information obtained about the client as required by this Regulation.</td>
<td>4.13.31 In addition to the requirements set out in subregulation 4.13.30, the lawyer must (a) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and (b) keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of subregulation 4.13.30.</td>
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<td><strong>Duty to withdraw</strong> 4.13.32 If while retained by a client, including when taking the steps required in subregulations 4.13.30 and 4.13.31, 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.</td>
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<td><strong>Application</strong> 4.13.33 This section applies to all matters for which a lawyer was retained before this Regulation comes into force and to all matters for which he or she is retained after that time.</td>
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### Existing Regulation

**PART 10 TRUST ACCOUNTS**

**10.1 Definitions**

10.1.1 In this Part

(a) “data source” means an electronic file which can be used to generate books of original entry, client ledger cards, and other source documents and which maintains an audit trail of changes;

(b) “financial institution” means a chartered Canadian Schedule I bank, credit union or Caisse Populaire legally entitled to carry on business in the Province;

(c) “general account” means a deposit account in a financial institution maintained by a practising lawyer or law firm in connection with the practice of law, other than a trust account;

(d) “general trust account” means a deposit account in a financial institution maintained by a practising lawyer or law firm and designated as a trust account into which the practising lawyer or law firm deposits trust money;

(e) “overdraft” means an amount below that which is required to meet the practising lawyer’s or law firm’s obligations, whether or not the trust account is overdrawn;

(f) “specific trust account” means a deposit account or instrument in a financial institution, maintained by a practising lawyer or law firm on behalf of a specific client, and designated as a trust account on behalf of that client, into which a practising lawyer deposits money received in trust;

### Proposed Regulation

**PART 10 TRUST ACCOUNTS**

**10.1 Definitions**

10.1.1 In this Part

(a) “data source” means an electronic file which can be used to generate books of original entry, client ledger cards, and other source documents and which maintains an audit trail of changes;

(b) “financial institution” means a chartered Canadian Schedule I bank, credit union or Caisse Populaire legally entitled to carry on business in the Province;

(c) “general account” means a deposit account in a financial institution maintained by a practising lawyer or law firm in connection with the practice of law, other than a trust account;

(d) “general trust account” means a deposit account in a financial institution maintained by a practising lawyer or law firm and designated as a trust account into which the practising lawyer or law firm deposits trust money;

(e) “money” includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders and electronic transfer of deposits at financial institutions;

(f) “overdraft” means an amount below that which is required to meet the practising lawyer’s or law firm’s obligations, whether or not the trust account is overdrawn;

(g) “specific trust account” means a deposit account or instrument in a financial institution, maintained by a practising lawyer or law firm on behalf of a specific client, and designated as a trust account on behalf of that client, into which
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| Requirement for Trust Relationship 10.2.9 A practising lawyer must not use a trust account where there is no trust relationship. | Requirement for Trust Relationship 10.2.9 A practising lawyer must not use a trust account where there is no trust relationship.  

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. | Proper Delegation Allowed 10.2.10 The tasks required to be performed by the practising lawyer or law firm pursuant to Regulations 10.2 may be performed by a person other than a lawyer if that person is working under the supervision of a lawyer in a manner authorised by the Code of Professional Conduct. | Proper Delegation Allowed 10.2.10 The tasks required to be performed by the practising lawyer or law firm pursuant to Regulations 10.2 may be performed by a person other than a lawyer if that person is working under the supervision of a lawyer in a manner authorised by the *Code of Professional Conduct*. |
Anti-Money Laundering and Terrorist Financing Working Group

Guidance for the Legal Profession

Your Professional Responsibility to Avoid Facilitating or Participating in Money Laundering and Terrorist Financing

February 19, 2019
Table of Contents
Chapter 1: About This Guidance ....................................................................................... 3
Chapter 2: Understanding the Problem ........................................................................... 5
What is Money Laundering? .............................................................................................. 5
What is Terrorist Financing? .............................................................................................. 6
Chapter 3: Identifying and Verifying the Identity of Clients ............................................. 8
Background to the Client Identification and Verification Rule ......................................... 8
Guidance to the Client Identification and Verification Rule .............................................. 9
Exemptions .......................................................................................................................... 9
Identification Requirements .............................................................................................. 10
Identifying Individuals ....................................................................................................... 10
Identifying Organizations ................................................................................................. 10
Clients Acting For, or Representing, Third Parties .......................................................... 10
Verifying Identity .............................................................................................................. 11
  Government-issued Documentation ............................................................................... 11
  Credit Files ....................................................................................................................... 11
  The Dual Process Method .............................................................................................. 12
  Verifying the Identity of Children ................................................................................. 13
Use of an Agent .................................................................................................................. 13
  Timing for Verifying the Identity of Individual Clients ............................................... 15
Organizations .................................................................................................................... 15
  Ascertaining the Beneficial Ownership of an Organization ........................................ 16
Timing for Verifying the Identity of Organizations .......................................................... 18
  Information on the Source of Client Funds .................................................................. 18
Monitoring the Relationship ............................................................................................. 19
Record-keeping and Retention .......................................................................................... 20
Duty to Withdraw Representation .................................................................................... 21
Chapter 4: Limitations on Accepting Cash from Clients or Third Parties ....................... 22
Backgrunder to the “No Cash” Rule ................................................................................. 22
The $7500 Threshold ........................................................................................................ 22
Foreign Currency .............................................................................................................. 23
Application of the Rule and Exceptions ......................................................................... 23
Suggestions for Implementing the Rule in Your Workplace .................................................. 24
Chapter 5: Proper Use of Your Trust Account ........................................................................ 25
Background to the New Trust Accounting Rule ..................................................................... 25
Features of the Model Trust Accounting Rule ....................................................................... 25
Appendix A: Examples of Acceptable Photo Identification Documents .............................. 27
Appendix B: Examples of Reliable Sources of Information Under the Dual Process Method to Identify an Individual ................................................................. 29
Appendix C: Additional Resources ......................................................................................... 32
  Canada ................................................................................................................................ 32
  United States ........................................................................................................................ 32
  International ......................................................................................................................... 32
Chapter 1: About This Guidance

Money laundering and terrorist financing, both offences under the Criminal Code, are on the rise in Canada. Because of the risks posed by money laundering and terrorist financing, Canada has adopted a comprehensive federal legislative regime to prevent these crimes through the Proceeds of Crime (Money Laundering) and Terrorist Financing Act ("PCMLTFA") requiring designated individuals and institutions to collect and report to a federal government agency\(^1\) information about financial transactions of their clients, including large cash and suspicious financial transactions. Money laundering and terrorist financing affect us all, and the Canadian government makes serious efforts to prevent and prosecute these criminal acts.

Like all people in Canada, legal professionals\(^2\) are subject to the Criminal Code, but they are exempted from the federal legislative regime under the PCMLTFA due to constitutional principles that protect the rights of clients and the obligations of legal professionals within their confidential relationships. The PCMLTFA was originally applicable to lawyers and Quebec notaries; this led to litigation launched by the Federation of Law Societies of Canada (the "Federation") and the Law Society of British Columbia, supported by the Canadian Bar Association, challenging the constitutionality of the legislation. The Supreme Court of Canada subsequently recognized that the provisions in the legislation requiring legal counsel to collect and retain information about their clients and their financial transactions and provide that information to government on demand, with expansive government powers to search law offices, provided inadequate protection for solicitor-client privilege and violated the Canadian Charter of Rights and Freedoms.\(^3\) However, the legal profession must comply with significant, corresponding obligations to ensure they are not facilitating money-laundering and terrorist financing. These obligations are imposed on legal professionals through the regulatory regimes of Canadian law societies.

Lawyers, Quebec notaries, and paralegals in Ontario are obligated, amongst other duties, to identify and verify the identity of clients, to comply with limits on the amount of cash they may accept, to ensure that trust accounts are used only for the direct purpose of providing legal services, and to withdraw from representing a client if they know, or ought to know, that they would be assisting in criminal activity if they continue the representation. In this sense, the responsibilities of legal professionals go beyond the reporting and other duties of other professions and institutions in Canada under the PCMLTFA.

This Guidance, prepared by the Federation on behalf of all Canadian law societies, describes the responsibilities of Canada’s legal professions to ensure they are not facilitating money laundering and terrorist financing. It describes the context for money laundering and terrorist financing in Canada and the sources of the responsibilities to avoid it. The detailed Guidance, which includes red flags and real-life examples, sets

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\(^1\) The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

\(^2\) In this Guidance, the term “legal professionals” includes lawyers, Quebec notaries and licensed paralegals in Ontario.

out the components of the legal professional’s duties as contained in updated Model Rules approved on October 19, 2018 by the Federation, for adoption by all Canadian law societies. Additional resources appear at the end of the Guidance, and it is anticipated that over time, more will be added to this section for the benefit of legal professionals.

Avoiding participation in money laundering and terrorist financing is rooted in knowing your client: their identity, their financial dealings in relation to your retainer, and any risks arising from your professional business relationship with them. When working with corporate clients, knowing your client means taking additional steps to ascertain ownership and control of the corporation, and routinely assessing the accuracy of your knowledge about them. Not facilitating money laundering and terrorist financing also means refusing to accept, except in limited circumstances, more than $7,500 in cash from clients or prospective clients. Finally, the fight against money laundering and terrorist financing requires you to be vigilant and exercise judgment about the use of your trust accounts, pursuant to established parameters.

Law societies take their mandate to regulate the legal profession in the public interest seriously. The rules and regulations implemented by provincial and territorial law societies, based on the Federation’s Model Rules, exist to address the conduct of legal professionals, and to prevent them from unwitting involvement in money laundering or terrorist financing. Legal professionals are also required to abide by comprehensive rules of professional conduct that include provisions prohibiting them from knowingly assisting in or encouraging any unlawful conduct. Measures to ensure that legal professionals maintain appropriate practice management systems and comply with law society regulations include annual reporting obligations, practice reviews and financial audits. Law societies also have extensive investigatory and disciplinary powers that include the ability to impose penalties up to and including disbarment when members fail to abide by law society rules and regulations. Lawyers, Ontario paralegals, and Quebec notaries who wittingly participate in criminal activity are, of course, subject to criminal charges and sanctions.

While this Guidance discusses the legal profession’s vulnerabilities related to money laundering and terrorist financing, these same vulnerabilities could lead to the profession’s unwitting participation in other types of fraud or crime. It is important to understand that the duties and responsibilities contained in the Model Rules reflect the unique position of legal professionals in helping the public with their legal needs and in ensuring compliance with the law. By adhering to these fundamental principles, the legal profession helps to prevent all crime, and to maintain public trust in the justice system. Similarly, the Model Rules protect the right of citizens to independent legal counsel, and ensure that counsel can continue to protect the client’s privilege.
Chapter 2: Understanding the Problem

Money laundering and the financing of terrorist activities affect us all. When criminals launder their illicit funds through the purchase and sale of properties, it can inflate the selling prices, making it unaffordable for community members to purchase homes. When criminals launder their dirty funds through front companies and sell products at significantly lower prices, legitimate businesses may be unable to compete. When large amounts of criminal proceeds are invested into our economy, currency exchange and interest rates can become volatile. The consequences of money laundering and terrorist financing are vast and significant – it is incumbent on each of us to prevent these criminal offences.

Legal professionals are perceived as “gatekeepers” within money laundering and terrorist financing systems because of our unique role in facilitating financial transactions. Specifically, legal professionals may be used to:

- give an appearance of legitimacy to a criminal transaction;
- facilitate money laundering through the creation of a company or trust, and/or the purchase and sale of property; and
- eliminate the trail of funds back to a criminal through the use of a professional trust account.  

Because of the role they play in facilitating transactions, and the fact that communications for the purpose of obtaining legal advice are protected by solicitor-client privilege, legal professionals may be targeted by criminals. Legal professionals should thus be able to determine the potential money laundering or terrorist financing risks posed by a client, as well as the risks presented by the context of their services. Without such risk-based awareness, legal professionals may find themselves participating in criminal activity, whether knowingly, recklessly, or unintentionally.

What is Money Laundering?

The Financial Action Task Force (“FATF”), an international, intra-governmental body combatting money laundering and terrorist financing, defines money laundering as the processing of criminal proceeds to disguise their illegal origin. The Criminal Code similarly defines money laundering as the transfer, use, or delivery of property or

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proceeds with the intent to conceal or convert the property or proceeds, knowing that they were derived from criminal activity.\(^6\)

Criminal proceeds are typically laundered through a three-stage process: placement, layering, and integration. In the placement stage, the launderer introduces the illegal profits into the financial system (for example, by depositing cash with financial institutions changing currency at currency exchanges, or depositing funds into lawyers trust accounts). In the layering stage, the launderer engages in a series of transactions to distance the funds from their source (for example, by creating trusts or shell companies, buying securities, or buying real estate). Finally, in the integration stage, the launderer integrates the funds into the legitimate economy, i.e. by investment into real estate or business ventures.\(^7\) Money launderers may try to involve lawyers at any of these stages.

The FATF notes that money-laundering proceeds can be generated through a wide range of illegal activity, including illegal arms sales, smuggling, embezzlement, insider trading, and computer fraud schemes.\(^8\) In the Canadian context, a 2015 Department of Finance report identified 21 profit-oriented crimes associated with money-laundering.\(^9\) Those identified as posing a very high threat of money laundering include capital markets fraud, drug trafficking, mortgage fraud, and tobacco smuggling and trafficking. A high threat rating was given to such crimes as currency counterfeiting, human trafficking, illegal gambling, and robbery and theft. Experts have noted that those involved in such crimes range from the “unsophisticated, criminally inclined individuals, including petty criminals and street gang members, to criminalized professionals and organized crime groups.”\(^10\)

What is Terrorist Financing?

The FATF does not specifically define the term “terrorist financing.” Instead, they urge states to adopt the United Nations International Convention for the Suppression of the Financing of Terrorism (1999), which prohibits any person from providing or collecting funds in order to carry out an offence as defined in related United Nations treaties, or any other act intended to cause death or serious bodily injury, or to any other person not taking any active part in the hostilities in a situation of armed conflict, when the purpose of such act is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing an act.\(^11\)

Sections 83.02-83.04 of the Criminal Code define the terrorism financing offences. Collectively they prohibit the provision, collection and use of property to facilitate or carry

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\(^7\) What is Money Laundering? supra note 2.
\(^8\) Ibid.
\(^10\) Ibid, at p. 18.
out any terrorist activity. In a 2015 report, the Department of Finance indicated that terrorist financing activities in Canada may include the payment of travel expenses, the procurement of goods, transferring funds to international locations through banks and other financial entities and the smuggling of bulk cash across borders.

The FATF notes that terrorist financing can be challenging to detect for legal professionals without guidance on relevant typologies or unless acting on specific intelligence provided by the relevant authorities. Because of this, legal professionals should consider consulting the reports regularly published by Canada’s Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) on terrorist financing trends and typologies.

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12 Section 83.01(1) (“definition of terrorist activity”), Criminal Code, R.S.C. 1985, c. C-46.
13 Supra note 5 at p. 27.
15 FINTRAC Typologies and Trends Reports, available online: http://www.fintrac-canada.gc.ca/publications/typologies/1-eng.asp
Chapter 3: Identifying and Verifying the Identity of Clients

Background to the Client Identification and Verification Rule

When retained to provide legal services, you must acquire basic knowledge about your clients and their financial dealings. The Model Rule requirements may be fulfilled by you, or any partner, associate or employee at your firm.

Legal professionals must identify each client, with limited exemptions. Identification is the process of obtaining and recording basic information about the client. Identification requirements differ slightly depending on whether your client is an individual or an organization. If your client is acting for or representing a third party, identifying information about that third party also must be obtained.

Identification and verification are two separate but related concepts. When you engage in or give instructions in respect of receiving, paying or transferring funds on behalf of a client you must also verify your client’s identity. Verification is the process of obtaining information to confirm that the client is who or what they say they are. This involves reviewing independent source document(s) or information and comparing it to the actual client. The identity of a third party on whose behalf the client is acting must also be verified. You must also determine the source of the funds being dealt with.

For clients that are corporations, societies, or unregistered organizations, you are required to verify the identity of the person who instructs you on behalf of the organization. You are also required to make reasonable efforts to obtain information about beneficial owners – persons who own, directly or indirectly, 25% or more of the organization. In the event you are unable to do so, the Model Rule asks you to exercise diligence in determining and assessing potential risks associated with those clients.

Overall, the client identification and verification requirements, as stated in section 2 of the Model Rule, are part of your obligation to know your client, and ensure that you understand the intent and purpose of the legal services for which you have been retained. Reference should be made to Model Code of Professional Conduct Rules 3.1-2 (Competence), 3.2-1 (Quality of Service), 3.2-7 (Dishonesty, Fraud by Client or Others), and 3.2-8 (Dishonesty, Fraud when Client an Organization) including their respective commentaries, which elaborate on the standards expected of legal professionals in relationships with clients. The competent legal professional, as defined in Rule 3.1-1 is one who, amongst other things, investigates facts, identifies issues, ascertains client objectives, considers possible options, and develops and advises the client on appropriate courses of action. A legal professional’s obligation to provide the requisite quality of service mirrors competent service - this includes communicating effectively with the client and ensuring, where appropriate, that all instructions are in writing or confirmed in writing.
Model Code Rule 3.2-7 and section 11(1) of the Client Identification and Verification Model Rule prohibit legal professionals from knowingly assisting in any illegal conduct or doing or omitting to do anything the legal professional knows or ought to know will assist with a crime. The prohibition means being vigilant when engaged in services involving financial transactions. When suspicions or doubts arise about whether the activities of a legal professional might be assisting in crime or fraud, the obligation is to make reasonable inquiries to obtain information about the subject matter and objectives of the retainer and record it, and to consider whether withdrawal is required. By complying with the Model Rule and the Model Code, you will provide the appropriate services to clients, managing both their expectations and your duties, in a responsible and professional way.16

Guidance to the Client Identification and Verification Rule

Exemptions
Not all client relationships are captured by the Model Rule. For example, if you only provide legal services to your employer as in-house or corporate counsel, you are exempt from the requirements to identify the client and to verify the client’s identity. Similarly, if you provide legal services through a duty counsel program you are exempted from the verification requirements, except when engaging in, or giving instructions in respect of, the receiving, paying, or transferring of funds. You also are exempted if you are engaged to act as an agent by another legal professional, or when another legal professional has referred a matter to you, provided the other legal professional has complied with the identification and verification requirements.

Other exemptions apply when the funds are from certain sources. The Model Rule does not apply to funds received by a legal professional when those funds are:

- from the trust account of another legal professional;
- paid or received to pay a fine, penalty or bail or for professional fees; disbursements and expenses;
- paid by or to a financial institution, public body, or reporting issuer; or
- an electronic transfer of funds (EFT).

The Model Rule’s definition of “electronic funds transfer” specifies that only EFTs conducted by and received at financial institutions headquartered and operating in a country that is a member of the FATF is covered by the exemption. Further, neither the sending nor receiving account holders may handle or transfer the funds. The Model Rule requires that the EFT transmission records contain a reference number, the date, transfer amount, currency, and the names of the sending and receiving account holders and the financial institutions conducting and receiving the EFT. This exemption will likely

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16 This portion of the Guidance is informed by guidance published by FINTRAC, found at: http://www.fintrac-canafe.gc.ca/guidance-directives/1-eng.asp
be subject to future review, as current developments or changes in the financial landscape may warrant a change in this approach.

The previous version of the Model Rule had exemptions for funds paid pursuant to a court order and paid or received pursuant to the settlement of any legal or administrative proceedings. Those exemptions have been removed. In the common situation, the funds in these circumstances are paid from one party to another and to the extent the funds flow through the legal professional’s trust account, there is a risk that these types of payments could be in aid of schemes to launder money. To the extent that funds are paid into court as seized funds under forfeiture legislation and then released by the court pursuant to judicial order, it is suggested that these funds would fall under the exemption relating to a law enforcement agency or other public official acting in their official capacity.

Identification Requirements
You must identify all clients regardless of the nature of the legal services you are providing, subject to limited exemptions. You are not required to identify your client when providing services to your employer as in-house counsel, when acting as an agent for another legal professional, or when providing legal services to a client referred by another legal professional who has already identified the client. The identification requirements also do not apply when you are acting ad duty counsel.

Identifying Individuals
When retained by an individual, you must identify the client and record the client’s full name, home address and home telephone number, occupation(s), and the address and telephone number of the client’s place of work or employment.

Identifying Organizations
When retained by an organization, you must identify it by recording its name, business address and business telephone number, incorporation or business incorporation number, the general nature of its type of business or, and the name, position, and contact information of the individual who is authorized to give you instructions on behalf of the organization with respect to the matter for which you are retained.

Clients Acting For, or Representing, Third Parties
In some circumstances, you may be retained by a client who is acting for, or representing, a third party. In such cases, you must identify the third party, whether it is an individual or an organization.

A third party is a person or organization who instructs another person or organization to conduct an activity or financial transaction on their behalf. When determining whether a third party is giving instructions, it is not about who owns or benefits from the funds, or who is carrying out the transaction or activity, but rather about who gives the instructions to handle the funds or conduct a transaction or particular activity. Ask questions to find out if someone other than your client is pulling the strings. If you determine that the individual or organization who engages you is acting on someone else’s instructions, that
someone else is the third party. Determine the relationship between the client and the third party.

**Verifying Identity**

**Individuals**
The following sections describe the options available to you when you are required to verify the identity of individual clients or third parties. Verification of identity is required when in the course of providing legal services, you engage in or give instructions in respect of the receiving, paying or transferring of “funds”. Note that “funds” is widely defined and would include the transfer of securities. While much of this section describes how to verify a client in a face-to-face situation, you may choose instead to use an agent as described later in this section.

**Government-issued Documentation**
You may rely on a valid, original and current federal, provincial or territorial government-issued document containing the individual’s name and photograph. See Appendix A for examples of acceptable government-issued documents. A foreign government issued photo identification document is acceptable if it is equivalent to a Canadian issued photo identification document listed in Appendix A. Note, however, that photo identification documents issued by any municipal government, whether Canadian or foreign, are not acceptable.

You or your agent must view the original document in the presence of the individual in order to compare them with their photo. The photo identification document must show the individual’s name, include a photo of the individual, and have a unique identifier number. It is not acceptable to view photo identification online, through a video conference or through any virtual type of application; nor is a copy or a digitally scanned image of the photo identification acceptable.

**Credit Files**
Alternatively, you can verify an individual’s identity by relying on information that is in their credit file if that file is located in Canada and has been in existence for at least three years. The information in the credit file must match the name, date of birth and address provided by the individual. If any of the information does not match, you must use another method to verify the individual’s identity.

Note that a credit assessment is not needed to identify an individual through a credit file. Equifax Canada and TransUnion Canada are Canadian credit bureaus that provide credit file information for identification purposes.

To verify an individual’s identity using information in their credit file, you must obtain the information directly from a Canadian credit bureau or a third-party vendor authorized by a Canadian credit bureau to provide Canadian credit information. You cannot rely on a copy of the credit file if provided by the individual. It is acceptable, however, to use an automated system to match the individual’s information with the credit file information.
To rely on a credit file search, the search must be conducted at the time of verifying the individual’s identity. An historical credit file is not acceptable. To be acceptable as a single source for verification of identity, the credit file must match the name, address, and date of birth that the individual provided, be from Canada, and have been existence for at least three years.

The individual does not need to be physically present at the time you verify their identity through a credit file.

**The Dual Process Method**

You can also use the dual process method to verify a client’s identity, by relying on any two of:

- 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/or,
- information containing the individual’s name that confirms they have a deposit account or credit card or other loan amount with a financial institution.

If using the dual process method, the information referred to must be from different sources. Neither the client (or individual instructing on behalf of the client), nor the legal professional (or the professional’s agent) may be a source. The information may be found in documents from these sources or may be information that these sources are able to provide. Information refers to facts provided or learned about an individual and can come from various places, in contrast to a document, which refers to an official record that is either written, printed or electronic that provides evidence or facts.

If a document is used, you or your agent must view a valid, original and current document. Original documents do not include those that have been photocopied, faxed or digitally scanned. If information is used, it must be valid and current. Information found through social media is not acceptable.

The individual does not need to be physically present at the time you verify their identity through the dual process method.

A reliable source is an originator or issuer of information that you trust to verify the identity of the client. To be considered reliable under the Model Rule, the source should be well known and considered reputable. The source providing the information cannot be you, your client, or the individual who is being identified; the source must be independent. For example, reliable sources can be the federal, provincial, territorial and municipal levels of government, Crown corporations, financial entities or utility providers.

If a document is used as part of the dual process method, you must ensure that you see the original paper or electronic document, and not a copy. The original document is the one that the individual received or obtained from the issuer either through posted mail or electronically. For example, an original paper document can be a utility statement mailed to an individual by the utility provider, and it can also be a document that the individual received through email or by downloading it directly from the issuer’s website.
The document must appear to be valid and unaltered in order to be acceptable; if any information has been redacted, it is not acceptable.

An individual can email you the original electronic document they received or downloaded, show you the document on their electronic device (for example, a smartphone, tablet, or laptop), print the electronic document received or downloaded from the issuer, or show it to you in the original format such as .pdf (Adobe) or .xps (Microsoft viewer). In practical terms, this means that an individual can:

- show you their original paper utility statement in person or by posted mail;
- email or show you on their electronic device an electronic utility statement downloaded directly from the issuer’s website;
- print and show you the statement they downloaded from the issuer; or
- email or show you on their electronic device a mortgage statement received by email from the issuer.

See Appendix B for examples of information and documents that can be used for the dual process method of verifying identity.

Verifying the Identity of Children

The Model Rule requires you to take different steps to verify the identity of an individual who is a child.

If verifying the identity of an individual who is under 12 years of age, you must verify the identity of one of the child’s parents or guardians.

If verifying the identity of an individual client who is at least 12 years of age but not more than 15 years of age, you can rely on any two of:

- information from a reliable source that contains the individual’s parent or guardian’s name and address;
- information from a reliable source that contains the individual’s parent or guardian’s name and date of birth; and/or,
- information containing the individual’s parent or guardian’s name that confirms the parent or guardian has a deposit account, credit card, or other loan amount with a financial institution.

If that is not possible, you can rely on information from a reliable source that contains the name and address of the child’s parent or guardian and a second reliable source that contains the child’s name and date of birth. For example, if the child has a passport, that can be used to ascertain their identity directly; if not, you can rely on the parent’s driver’s license to verify their common address, and use the child’s birth certificate to verify the child’s name and date of birth.

Use of an Agent

You may rely on an agent to verify the identity of an individual, including in circumstances where the individual is not physically present in Canada.
An agent can be utilized at any time. You may choose to use an agent if the client or third party is elsewhere in Canada and the method of verification is the use of a federal, provincial or territorial government-issued document containing the client’s name and photograph, which must be provided in the client’s presence. Other methods, as indicated above, do not require the individual’s physical presence and as such an agent may not be necessary. If the client or third party is not physically present in Canada, an agent must be relied upon to verify the individual’s identity.

The Model Rule requires that you and your agent have an express agreement or arrangement in writing for such purpose. The agreement need not be in any particular form, and it is up to you to decide on the level of formality required. It may take the form of a letter or email, for example. The agreement should set out in sufficient detail the purpose of the agreement and the expectations of the agent. As the responsibility to verify identity is yours, you – not the client or third party – must choose and retain the agent.

The identity verification information provided by the agent should include the information that you would have obtained and documented had you verified identity through one of the methods described above. As such, when using an agent, your records should include, through the agreement itself and the report from the agent:

- the full name of the agent who verified the individual’s identity;
- the agent’s status or occupation and business address;
- the client identification method the agent used;
- copies of the information and documents obtained by the agent to verify the individual’s identity; and,
- the date on which the agent verified the individual’s identity.

You should also note the date you received the verification information from the agent, as this relates to the currency of the identification information that you use and the time within which the verification must occur under the Model Rule.

The information on the client’s identity that you obtain from the agent must match what the individual has provided to you when you obtained their basic identification information. You must satisfy yourself that the information is valid (authentic and unaltered) and current (not expired) and that your agent verified the individual client’s identity through the methods prescribed by the Model Rule. You may also rely on an agent’s previous verification of an individual client if the agent was, at the time that they verified the identity, acting in their own capacity or acting as an agent under an agreement or arrangement in writing with another legal professional who is similarly required to verify identity under the Model Rule.

The Model Rule does not specify who may act as an agent. However, given the responsibilities of the agent, you should ensure that the person engaged is reputable, can be relied upon to understand what is required, can capably carry out the required work to verify identity and will provide the information they have obtained as required under the Model Rule.
Timing for Verifying the Identity of Individual Clients
You are required to verify the identity of an individual (client or third party) upon being retained to engage in, or give instructions in respect of, receiving, paying or transferring funds other than an electronic funds transfer. You are not subsequently required to verify that individual’s identity unless you have reason to believe the information, or the accuracy of it, has changed.

Organizations
When retained by an organization to engage in, or give instructions in respect of, receiving, paying or transferring funds other than an electronic funds transfer, you must take certain specified steps to verify the client’s identity. These additional requirements apply to all organizations with the exception of “financial institutions”, “public bodies”, and “reporting issuers”, as defined in the Model Rule. The requirements to verify the identity of an organization include the requirement to verify the identity of the individual(s) authorized to give instructions on behalf of the organization for the matter for which you are retained.

If retained by a client who is acting for, or representing, a third party that is an organization, you are required to obtain information about that organization, and if applicable, verify the third party’s identity, pursuant to your obligation to verify information about clients that are organizations.

In verifying an organization’s identity, you have a few options available to you as outlined in the Model Rule. If the organization is created or registered pursuant to legislative authority, you may rely on written confirmation from a government registry as to the existence, name and address of the organization. Documents that you can rely on to confirm the existence of a corporation are: the corporation’s certificate of corporate status; a record filed annually under provincial securities legislation; or any other record that confirms the corporation’s existence, such as the corporation’s published annual report signed by an independent audit firm, or a letter or notice of assessment for the corporation from a municipal, provincial, territorial or federal government. If the organization is not registered in any government registry, you may rely on documents that establish or create the organization; you can rely on a partnership agreement, articles of association, or any other similar record that confirms the entity’s existence. You cannot rely on an agent to verify the identity of an organization.

If an electronic version of a record is used to verify the existence of an organization, you must keep a record of the:

- corporation’s registration number or the organization’s registration number;
- type of record referred to; and
- source of the electronic version of the record.

For example, a corporation’s name and address and the names of its directors can be obtained from a provincial or federal database such as the Corporations Canada database, which is accessible from Innovation, Science and Economic Development Canada website. This information may also be accessed through a subscription to a corporation searching and registration service.
Ascertaining the Beneficial Ownership of an Organization

Except in the case of an organization that is a securities dealer, you must obtain and record, with the applicable date, the names of all directors of the organization. You are also required to make reasonable efforts to obtain information about the beneficial owners of the organization and about the control and structure of the organization. Identifying beneficial ownership is important in order to remove anonymity and identify the actual individuals behind a transaction. The concealment of the beneficial ownership information of accounts, businesses and transactions (i.e. the persons who own 25% or more) is a technique used in money laundering and terrorist activity financing schemes. Collection and confirmation of beneficial ownership information is an important step in knowing the client and ensuring that the lawyer’s work on the transaction is not in aid of money laundering and terrorist financing activity.

Beneficial owners are the actual individuals who are the trustees or known beneficiaries and settlors of a trust, or those who directly or indirectly own or control 25% or more of an organization, such as a corporation, trust or partnership. Another organization cannot be considered the ultimate beneficial owner; the information you must try to obtain is the identity of the actual individuals who are the owners or controllers of the other organization. The purpose of this requirement is for you to obtain sufficient information about the organization’s structure so that you know who effectively owns and controls the organization.

The Rule asks you to meet the standard of reasonable efforts to obtain the information. This means applying sound, sensible judgment. Reasonable efforts include searching through as many levels of information as necessary to identify those individuals. In making reasonable efforts to ascertain beneficial ownership, it is important to understand that the names found on legal documentation may not represent the actual owners of an organization. You must exercise judgment in discerning the reasonable efforts that are appropriate for each distinct situation to confirm the accuracy of information obtained, while also considering the risk associated with each situation.

For example, consider the situation where a corporation is governed by a board of directors: you must ascertain both ownership and control of the corporation. You will need to obtain information on the shareholders who own 25% or more of the organization, as they must be recorded as beneficial owners. However, you must also obtain information about the board of directors, who has control of the organization. Once you have obtained information about both shareholders and corporate directors, the Rule also requires you make reasonable efforts to confirm the accuracy of the information pertaining to both ownership and control of the organization.

You may obtain information establishing beneficial ownership, as well as the required control and structure information, from the organization, either verbally or in writing. For example, the organization can:

- provide you with official documentation;
- advise you on the beneficial ownership information, which you can then document for record-keeping purposes; or
- fill out a document that provides the information.
Where the identity of those who own and those who control an organization is not the same, you must consider the ownership and control exercised by both. It is not sufficient to identify only the owners of an organization or those who control it; you must make reasonable efforts to identify both. Remember that you are required to obtain the names and addresses of only those persons who own or control 25% or more of the organization.

If referring to documents or records, the accuracy of the beneficial ownership, as well as ownership, control and structure information related to the organization, may be confirmed by referring to records, such as the:

- Minute book;
- Securities register;
- Shareholders register;
- Articles of incorporation;
- Annual returns;
- Certificate of corporate status;
- Shareholder agreements;
- Partnership agreements; or
- Board of directors’ meeting records of decisions.

It is possible for one of these documents to be used to satisfy the two distinct steps, namely to obtain the information and to confirm the accuracy of it. You can also conduct an open-source search, or consult commercially available information. In the case of a trust, the accuracy of the information can be confirmed by reviewing the trust deed, which will provide information on the ownership, control and structure of the trust.

Legal professionals should use their judgment to assess whether the documentation is appropriate. Where possible, official documents, such as a share certificate, should be used to confirm the beneficial ownership information obtained. If no official document exists to confirm accuracy, a signed attestation would be acceptable.

It may not always be possible for you to determine full information totaling 100% of beneficial ownership. For example, a corporation may have several hundred or thousands of shareholders. In these cases, your best efforts might be obtaining general information about the ownership of an organization, which may or may not include the names of the owners with a breakdown of percentages owned.

You must set out the information obtained in a dated record, along with the measures taken to try to confirm the accuracy of that information is required.

If despite your best efforts you are unable to obtain information about the directors, shareholders, and owners of the organization, you must then take reasonable measures to ascertain the identity of the most senior managing officer of the organization, and assess the organizational client’s activities in the context of any risks that the transaction(s) may be part of fraudulent or illegal activity. These obligations are responsive to concerns that arise when information cannot be obtained. If the organization’s structure is more opaque than transparent, this may be a warning that the organization could be facilitating criminal or other illegal activity.
In ascertaining the identity of the senior managing officer of an organization, you should be aware that this may include, but is not limited to, a director, chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief accountant, chief auditor or chief actuary, or an individual who performs any of those functions. It may also include any other individual who reports directly to the organization’s board of directors, chief executive officer or chief operating officer. In the case of a partnership, the most senior managing officer can be one of the partners. In the case of a trust, the senior managing officer of a trust is the trustee, that is, the person who is authorized to administer or execute on that trust.

The reasonable measures standard ultimately requires you to exercise judgment about the potential risks associated with acting for an organizational client whose ownership, control or structure may not be entirely known to you. Because of this, along with ascertaining the identity of the most senior managing officer, you are also required to determine whether the client’s information in respect of their activities, the client’s information in respect of the source of funds, and the client’s instructions in respect of the transaction are consistent with the purpose of their retainer and the information you have obtained about them. You must assess whether there is a risk that you are assisting in, or encouraging, dishonesty, fraud, crime or illegal conduct. Finally, you are obligated to keep a record, with the applicable date, of the results of these assessments.

**Timing for Verifying the Identity of Organizations**

The Model Rule requires you to verify the identity of an organization upon being retained to engage in, or give instructions in respect of, receiving, paying or transferring funds other than an electronic funds transfer. In no case may the verification occur more than 30 days after you have been retained. You are not subsequently required to verify that same identity unless you have reason to believe the information, or the accuracy of it, has changed.

**Information on the Source of Client Funds**

In addition to verifying clients’ identities when engaging in, or giving instructions in respect of, receiving, paying or transferring funds on behalf of a client, legal professionals are also required to obtain information about the source of the funds relating to the retainer. This requirement applies to both individual and organizational clients.

The rule requires you to inquire about the expected source and origins of the funds related to the legal services to be provided. This may be apparent from the information obtained from the client for the retainer. In general, you should make sufficient inquiries to assess whether there is anything that suggests the proposed transaction is inconsistent with the client’s apparent means, and the circumstances of the transaction.

In making this assessment, depending on the circumstances, you may wish to consider questions such as:

- Is someone other than the client providing information about the source of funds?
- Is the disclosed source consistent with the knowledge about the client’s profile and activity?
Is there anything unusual about the source of the funds in the context of the transaction?

For record-keeping purposes, you should also retain supporting documents that relate to how you determined the source of funds.

**Consider these red flags about the source of funds:**

- Funds are from, or are sent to, countries with high levels of secrecy;
- The client is not located near you and is asking for types of services that are not common for you to provide, or outside your area(s) of law entirely;
- The client expresses a sense of great urgency and asks you to cut corners;
- The funds received are inconsistent with the client’s occupation or socio-economic profile.

**Monitoring the Relationship**

The Model Rule requires you to exercise vigilance about client relationships that involve the receipt, transfer, or payment of funds. As such, when retained by an individual or organizational client to engage in, or give instructions in respect of, receiving, paying or transferring funds other than an electronic funds transfer, you must monitor the professional business relationship on a periodic basis. This means that during the retainer you must periodically assess whether the client’s information in respect of their activities and the source of their funds are consistent with the purpose of the retainer and the information about the client that you have obtained under the rule. You also need to assess whether there is a risk that you might be assisting in fraud or other illegal conduct. The Model Rule requires that you keep a dated record of your client monitoring measures, which may include the steps taken and any information obtained.

It may be useful to conceive of your monitoring requirement as a periodic check-in with a client with whom you have an established, long-term relationship. In other circumstances, the monitoring requirement may be triggered when your client provides you with new facts about their activities or source of funds, or when you are faced with unexpected client behavior.

You should use your discretion in defining the frequency of the monitoring. It will depend on the client, the nature of the work, the anticipated duration of the retainer and the services provided. The frequency of monitoring activities may be determined by any risks you believe arise from the retainer with the client in the context of the requirements of the Model Rule. The responsibilities are similar to those outlined in commentary to
Model Code of Professional Conduct Rule 3.2-7, which set out your obligations not to engage, or to assist a client in engaging, in criminal activity.\footnote{17}

On occasion, ongoing monitoring may require taking additional, enhanced measures. This might include:

- obtaining additional information about your client (e.g. occupation, assets, information available through public databases, Internet, etc.);
- obtaining information on the source of funds or source of wealth of your client;
- obtaining information on the reasons for intended or conducted transactions;
- gathering additional documents, data or information; or taking additional steps to verify the documents obtained;
- flagging certain activities that appear to deviate from expectations; or
- reviewing transactions against the usual processes and procedures for such transactions relevant to the legal work for which you are retained.

**Record-keeping and Retention**

As noted above, the Model Rule requires you to create and maintain certain records and to date those records. This includes a record of information that identifies each client. Where the retainer with the client involves the receipt, payment or transfer of funds, you must also keep records that contain:

- Information that identifies the source of funds;
- Copies in either paper or electronic format of every document used to verify the identity of the client and any third party;
- Information and any related documents on the directors, owners, beneficial owners and trustees, as the case may be, of an organizational client;
- Information and any related documents on the ownership, control and structure of an organizational client;

\footnote{17}{A legal professional should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.}

\footnote{2}{A legal professional should be alert to and avoid unwittingly becoming involved with a client or others engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these and other criminal activities may be transactions for which legal professionals commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.}

\footnote{3}{If a legal professional has suspicions or doubts about whether he or she might be assisting a client or others in dishonesty, fraud, crime or illegal conduct, the legal professional should make reasonable inquiries to obtain information about the client or others and, in the case of the client, about the subject matter and objectives of the retainer. These should include verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The legal professional should make a record of the results of these inquiries.}
• Information and any related documents that confirm the accuracy of the information on directors, owners, beneficial owners and trustees and the ownership, control and structure of an organizational client; and,
• Measures taken and information obtained respecting your monitoring of the professional business relationship with the client.

Client identification and verification of identity records, as well as your records of having taken reasonable measures to obtain beneficial ownership of an organizational client and of your monitoring responsibilities, must be kept for the duration of the client relationship, or for a period of at least six years following the completion of the work for which you were retained, whichever is longer.

Duty to Withdraw Representation
At the core of the Model Rule is the professional responsibility not to participate in, or facilitate, money laundering or terrorist financing.

You must withdraw from representation of a client if, in the course of verifying that client’s identity, or monitoring your professional business relationship, you know or ought to know that you are, or would be, assisting a client in fraud or illegal conduct.
Chapter 4: Limitations on Accepting Cash from Clients or Third Parties

Backgrounder to the “No Cash” Rule
There have been limits on amount of cash you may receive from a client since the Model Rule on Cash Transactions (known as the “No Cash” rule) was adopted in 2004. Recent amendments have been made to clarify the $7,500 threshold for accepting cash and the exceptions to the rule. There is also a more robust definition section, explaining terms used in the rule.

The $7500 Threshold
The rule prohibits you from accepting more than $7,500 in cash in respect of one client matter under all circumstances, with limited exception as discussed below. The $7500 threshold applies whether you receive the money in one payment or through aggregate or instalment payments. It also applies whether the cash is received from the client or a third party providing it on behalf of the client.

Consider the following example: A legal professional is acting for a personal representative of an estate who has discovered cash amongst the deceased’s possessions and wants the legal professional to deposit the funds in her trust account (the legal professional under the retainer is controlling the estate funds). If the client finds $2,000 in a safety deposit box, that may be deposited in the trust account. If the client finds an additional $8,000, that entire amount cannot be deposited as it would be an aggregate of $10,000. In such a circumstance it would be appropriate to advise the client to:

- open an estate account and deposit the cash into that account; or
- suggest that the client use the cash to get a bank draft payable to the legal professional’s firm in trust.

Under the rule, legal professionals:

- cannot accept more than $7,500 cash on a client matter even if there is more than one client on the file. The limit applies with respect to the client matter despite the number of clients.

- cannot accept more than $7,500 from a client if the cash is tendered incrementally for a matter. It is, therefore, important to track receipt of cash to ensure the total received on the client matter does not exceed $7500.
can accept greater than $7,500 cash from a client for three unrelated matters but only if the amount of cash provided for each individual matter is $7,500 or less.

‘Cash’ is defined in the rule and includes Canadian coins or banknotes and those of other countries. Note that bank drafts, money orders, electronic or wire transfers of funds are not considered cash for the purposes of the rule.

**Foreign Currency**
If you are accepting cash in a foreign currency, be aware that under Section 2 of the rule the currency is deemed to be the equivalent of Canadian dollars at the official conversion rate of the Bank of Canada for the foreign currency in effect that day, or on the most recent business day preceding the day on which you receive or accept the cash if the day it is received or accepted is a holiday.

If the amount of foreign currency as converted is greater than $7,500 you are prohibited from accepting it unless one of the exceptions applies.

As more fully discussed below, you should ensure that you and your staff are familiar with the rule, including the treatment of foreign currency.

**Application of the Rule and Exceptions**
It is important to understand that the rule applies not only to receiving cash from clients, but to the circumstances in which you receive cash on behalf of clients. This means that the rule applies when, on behalf of a client, you engage in or give instructions about receiving or paying funds, purchasing or selling securities, real properties or business assets or entities and transferring funds by any means. ‘Funds’ are defined in the rule as cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or right to or interest in them.

There are limited exceptions to the rule limiting the cash you may receive in relation to a client matter. You may receive more than $7,500 in cash in connection with the provision of legal services:

- from a financial institution or public body,
- from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
- to pay a fine, penalty, or bail, or
- for professional fees, disbursements, or expenses, provided that any refund out of such receipts is also made in cash.

Note that the requirement to refund in cash received for fees, disbursements or expenses applies only when you have received more than $7,500 in cash. Again, ‘financial institution’, ‘public body’, ‘professional fees’, ‘disbursements’ and ‘expenses’ are all defined terms in the rule.
The rule covers a broad range of activities. Careful consideration is required before determining that an exception applies. When accepting cash for professional fees, disbursements, expenses or bail, it would be prudent for you to:

- consider the purpose for which cash is received, and document the circumstances and any client instructions;
- ensure that the amount received for a retainer is commensurate with the services to be provided (i.e. do not accept a $50,000 retainer for a $5,000 matter);
- ensure that you keep appropriate records so that, if cash in excess of the limit is received for a retainer but the client later retains new counsel or the first retainer is otherwise terminated, any refund is paid in cash; and
- ensure that appropriate accounting systems are in place to document and track the cash transactions, in particular when making a deposit of mixed cash and non-cash funds into trust; this could lead to difficulty in monitoring use.

Suggestions for Implementing the Rule in Your Workplace
The following are suggested procedures to assist in implementing the rule in your legal practice:

- Inform staff about the rule and what to do if a client unexpectedly shows up at the office with cash;
- Ensure that file opening procedures include a requirement to comply with the rule, in particular by requiring that you or your colleagues confirm each cash deposit in the trust accounts;
- Ensure that trust accounting procedures require confirmation of rule compliance before paying money out of trust;
- Appoint someone in the firm to ensure that professional and support staff keep up to date with any rule changes;
- Record any exemption from the “No Cash” rule; and
- Provide information about the rule to new and existing clients in retainer letters, on the firm website, and in mail inserts.

The rule also specifies record keeping requirements for cash transactions. Fully complying with these requirements prevents issues arising in the treatment of cash transactions in your practice.
Chapter 5: Proper Use of Your Trust Account

Background to the New Trust Accounting Rule
A new Model Rule now restricts the use of trust accounts to transactions or matters for which the legal professional or the legal professional’s firm is providing legal services. This new model rule is a significant control that will help prevent the misuse of trust accounts, as it prohibits the use of your trust account for purposes unrelated to the provision of legal services.

The regulatory experience of law societies has shown that legal professionals sometimes use their trust accounts for purposes unrelated to the provision of legal services, and effectively act as a bank or deposit-taking institution, i.e. holding money for the limited purpose of transferring the trust money from one party to another without the provision of legal services. The use of trust accounts by clients or other parties for transactions that are completely unrelated to any legal services risks facilitating money laundering through transactions deliberately designed to disguise that the source of funds is from criminal activity. For that reason, trust accounts must not be used except when directly related to the legal services being provided by you or your firm.

In the real world: A 2016 discipline decision from the Law Society of British Columbia illustrates the practice and the risks it presents. In LSBC v. Donald Gurney, a lawyer used his trust account to transfer almost $26 million in connection with four line of credit agreements in which his client was the sole borrower. There were no legal services provided – only the receipt and disbursement of funds. The disciplinary panel found that Gurney had breached his professional and ethic duties by failing to make reasonable inquiries about the transactions, and by using his trust account as a conduit for funds notwithstanding “the series of transactions being objectively suspicious.”

Proper usage of a trust account requires you to monitor its usage and exercise your judgment about appropriate activity. Even when the use of your trust account is related to the provision of legal services, you should ask yourself whether it is appropriate and necessary under the circumstances.

Features of the Model Trust Accounting Rule
‘Money’ is a defined term and includes cash, cheques, credit card transactions, post office orders, express and bank money orders and electronic transfer of deposits at financial institutions.

Under the rule only money that may be deposited into a trust account is money that is directly related to legal services that you or your firm are providing. The term “legal services”, which is not defined in the rule, generally means the application of legal
principles and legal judgement to the circumstances or objectives of a person or entity and can include:

- Giving advice with respect to a person’s or entity’s legal interests, rights or responsibilities of the person or of another person;
- Selecting, drafting, completing or revising documents that affect or relate to the legal interests, rights or responsibilities of a person or entity;
- Appearing as counsel or advocate for a person or entity in a proceeding before a court or an adjudicative body; and
- Negotiating or settling the legal interests, rights or responsibilities of a person or entity.

Money that is not related to the legal services provided by you or your legal practice may not be placed in a trust account.

**In the real world:** Ms. G used her trust account to disburse business expenses for a client who owns a marina. Ms. G billed her client for drafting contracts, depositing moorage revenue into trust, paying marina operating expenses via trust cheque and day-to-day bookkeeping services. When asked for an explanation, Ms. G explained that the client did not utilize an accountant because the client wanted to “keep her funds safe.”

As set out in the rule, you must pay out any money remaining in trust following the completion of a transaction or matter as soon as practical.

In the spirit of the rule, you should ideally review client trust ledger accounts at least monthly. Every effort should be made to pay funds due to the client and to third parties within one month of all trust conditions being satisfied, and similarly, to swiftly transfer funds to your chequing account upon billing for your legal fees, disbursements or expenses.
### Appendix A: Examples of Acceptable Photo Identification Documents


<table>
<thead>
<tr>
<th>Type of card or document</th>
<th>Issuing jurisdiction and country</th>
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</thead>
<tbody>
<tr>
<td>Canadian passport</td>
<td>Canada</td>
</tr>
<tr>
<td>Permanent resident card</td>
<td>Canada</td>
</tr>
<tr>
<td>Citizenship card (issued prior to 2012)</td>
<td>Canada</td>
</tr>
<tr>
<td>Secure Certificate of Indian Status</td>
<td>Canada</td>
</tr>
</tbody>
</table>

#### Driver’s licences

- British Columbia Driver’s Licence: British Columbia, Canada
- Alberta Driver’s Licence: Alberta, Canada
- Saskatchewan Driver’s Licence: Saskatchewan, Canada
- Manitoba Driver’s Licence: Manitoba, Canada
- Ontario Driver’s Licence: Ontario, Canada
- Québec Driver’s Licence: Québec, Canada
- New Brunswick Driver’s Licence: New Brunswick, Canada
- Nova Scotia Driver’s Licence: Nova Scotia, Canada
- Prince Edward Island Driver’s Licence: Prince Edward Island, Canada
- Newfoundland and Labrador Driver’s Licence: Newfoundland and Labrador, Canada
- Yukon Driver’s Licence: Yukon, Canada
- Northwest Territories Driver’s Licence: Northwest Territories, Canada
- Nunavut Driver’s Licence: Nunavut, Canada
- The DND 404 Driver’s Licence: The Department of National Defence, Canada

#### Provincial services cards

- British Columbia Services Card: British Columbia, Canada

#### Provincial or territorial identity cards

- British Columbia Enhanced ID: British Columbia, Canada
- Alberta Photo Identification Card: Alberta, Canada
- Saskatchewan Non-driver photo ID: Saskatchewan, Canada
- Manitoba Enhanced Identification Card: Manitoba, Canada
- Ontario Photo Card: Ontario, Canada
- New Brunswick Photo ID Card: New Brunswick, Canada
- Nova Scotia Identification Card: Nova Scotia, Canada
- Prince Edward Island Voluntary ID: Prince Edward Island, Canada
- Newfoundland and Labrador Photo Identification Card: Newfoundland and Labrador, Canada
- Yukon General Identification Card: Yukon, Canada
<table>
<thead>
<tr>
<th>Type of Card or International Document</th>
<th>Location</th>
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</thead>
<tbody>
<tr>
<td>United States passport</td>
<td>United States</td>
</tr>
<tr>
<td>France driver’s licence</td>
<td>France</td>
</tr>
<tr>
<td>Australian driver’s licence</td>
<td>New South Wales, Australia</td>
</tr>
</tbody>
</table>
Appendix B: Examples of Reliable Sources of Information Under the Dual Process Method to Identify an Individual


Documents or information to verify name and address

1. Issued by a Canadian government body

   • Any card or statement issued by a Canadian government body (federal, provincial, territorial or municipal)
     o Canada Pension Plan (CPP) statement
     o Property tax assessment issued by a municipality
     o Provincially-issued vehicle registration
   • Benefits statement
     o Federal, provincial, territorial, and municipal levels
   • CRA documents:
     o Notice of assessment
     o Requirement to pay notice
     o Installment reminder / receipt
     o GST refund letter
     o Benefits statement

2. Issued by other Canadian sources

   • Utility bill (for example, electricity, water, telecommunications)
   • Canada 411
   • T4 statement
   • Record of Employment
   • Investment account statements (for example, RRSP, GIC)
   • Canadian credit file that has been in existence for at least 6 months
   • Product from a Canadian credit bureau (containing two trade lines in existence for at least 6 months)

3. Issued by a foreign government

   • Travel visa
Documents or information to verify name and date of birth

1. Issued by a Canadian government body

- Any card or statement issued by a Canadian government body (federal, provincial, territorial or municipal)
  - Canada Pension Plan (CPP) statement of contributions
  - Original birth certificate
  - Marriage certificate or government-issued proof of marriage document (long-form which includes date of birth)
  - Divorce documentation
  - A permanent resident card
  - Citizenship certificate
  - Temporary driver’s licence (non-photo)

2. Issued by other Canadian sources

- Canadian credit file that has been in existence for at least 6 months
- Insurance documents (home, auto, life)
- Product from a Canadian credit bureau (containing two trade lines in existence for at least 6 months)

Documents or information to verify name and confirm a financial account

Confirm that the individual has a deposit account, credit card or loan account by means of:

- Credit card statement
- Bank statement
- Loan account statement (for example, mortgage)
- Cheque that has been processed (cleared, non-sufficient funds) by a financial institution
- Telephone call, email or letter from the financial entity holding the deposit account, credit card or loan account.
- Identification product from a Canadian credit bureau (containing two trade lines in existence for at least 6 months)
- Use of micro-deposits to confirm account

How to rely on the credit file for the dual process method

A Canadian credit file that has been in existence for at least 6 months can be referred to as one source to verify name and address, name and date of birth or name and confirmation of a financial account. A second source from the dual process method, for example a CRA notice of assessment, must be relied on to verify the second category of information. In this instance, the two sources are the credit bureau that provided the credit file and CRA as the source of the notice of assessment. The information from these two sources must match the information provided by the individual.
The reference number for a credit file must be unique to the individual and associated to the credit file; it cannot be a reference number created by the legal professional.

Information from a credit bureau can also be obtained if they are acting as an aggregator and compiling original sources, often referred to as tradelines, so long as the identifying information is obtained from those tradelines. In this instance, the credit bureau must provide two independent, original tradelines as sources that verify the individual’s name and address, name and date of birth or name and confirmation of financial account. Each tradeline is a source, not the credit bureau.

If the full financial account number is not provided because it was truncated or redacted, it is not acceptable. The legal professional must also confirm that each tradeline originates from a different source.
Appendix C: Additional Resources

Canada
The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) website contains links to numerous publications and guidance documents. For example, there is a useful guidance document on Methods of identify individuals and confirm the existence of entities and, for those lawyers practicing in the area of real estate transactions, an operational brief on Indicators of Money Laundering in Financial Transactions Related to Real Estate.

Provincial law societies will have different levels of information available to their members. At the time of publishing this Guidance, the Law Society of British Columbia has published numerous FAQs, Discipline Advisories, and articles in its Bencher Bulletins on topics related to client ID and verification, the “no cash rule”, and other red flags that lawyers should watch out for. Similarly, the Law Society of Ontario has a dedicated FAQ page for cash transactions and the Law Society of Alberta has a page dedicated to client ID and verification. Contact your law society for more information.

United States
The American Bar Association, the International Bar Association, and the Council of Bars and Law Societies of Europe co-authored in 2010 a comprehensive guide for lawyers in detecting and preventing money laundering in their practices (“Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing”).

Various sections of the ABA have also produced materials that may be useful and relevant. The Criminal Justice Group has formed a Task Force on Gatekeeper Regulation and the Profession. The International Anti-Money Laundering Committee facilitates discussion and examination of issues related to AML through the organization of educational programs and sessions for ABA members.

International
The Financial Action Task Force (FATF) is an international body that sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering and terrorist financing. Their website contains links to various country reports and guidance documents, including their 2008 Risk-Based Guidance for Legal Professionals.
The International Bar Association’s (IBA) Anti-Money Laundering Forum is a mechanism that brings together information on AML legislation and compliance requirements, organized by jurisdiction. The IBA Anti-Money Laundering Forum Reading Room contains links to a range of AML resources (presentations, articles, books, websites and media); however, it should be noted that the links do not appear to have been updated since 2012.

The Council of Bars and Law Societies of Europe (CCBE) Anti-Money Laundering Committee follows the work of the FATF and developments in European jurisdictions on AML legislation. The Committee’s website contains links to position papers, letters, guides and recommendations, and reports and studies.
MEMORANDUM TO COUNCIL

FROM: Jacqueline L. Mullenger
DATE: July 10, 2019
SUBJECT: Monitoring Report – Education and Credentials

For: Approval □
     Introduction □
     Information ×

Recommendation/Motion:

Executive Summary:

The purpose of this report is to brief Council about credentialing responsibilities and the work of the department of Education & Credentials. A summary of the regulatory work undertaken by the department is attached as Appendix “A”.

Highlights

Legal Services Support – MSEL P and New Firm Registration

As mentioned in our last report to Council, based on the feedback received on our final trial run with the SAT and Workbook, we have been making changes to both documents. We have created a separate SAT and Workbook for solo and small firm practitioners which is more relevant to their practices and we have streamlined the tools to make them simpler. The plan is to launch the first round of SATs by the end of July.

Work is ongoing to improve the LSS materials available through the Society website. There are two components to this: first, the development of a resource portal / hub (as part of the MSEL P project) and staff have continued working on locating and creating resources for this new portal. Second, as part of the website redevelopment, staff will be reviewing and improving upon how lawyers navigate LSS information across the Society’s website.
Succession planning continues to be a key topic of focus for resource development. We have spoken at the Annual Meeting about Succession Planning and are working with the Law Office Management Standards Committee to create checklists and guides for lawyers. We are also working on developing a roster of lawyers who are willing to be successors, which involves educating members about the responsibilities of being a successor.

New firm registrations and LSS inquiries continue to take up a significant amount of staff time. As was noted in my credentialing report in this year’s Annual report, we have had 23 new firm registrations to the end of April 2019. In May and June, we had 4 new firms register. An issue that we are grappling with is virtual firms and firms that want to set up in multiple jurisdictions, sometimes with offices and sometimes without. It is causing us to consider many issues that previously were not on our radar.

The new firm registration process involves the new firm completing an application form and then meeting in person with someone from the team to go over a checklist of things that they need to consider or put into place prior to opening the firm. There are typically a number of discussions prior to meeting. We have had a positive response to this new process and many of the new firms reach out to us with questions and ask for guidance as they begin their practices. After six weeks, we check in with each new firm to see how they are doing and if they need anything further from us. This work is time consuming but gratifying. We are working on ways to streamline the process to make it more efficient.

In terms of LSS inquiries, while many staff of the Society are involved in answering these inquiries, particularly trust and ethics questions, the LSS officer and LSS Manager deal with the majority of these inquiries. To date we have had approximately 250 LSS matters answered or triaged through Education & Credentials.

We are working to improve the way LSS data is recorded and measured so that our data reflects the complete range of LSS matters handled across the Society – not just those triaged by the LSS officer and manager (which are represented in the statistics above). In addition to these, our database is now able to identify which trust account queries and matters also have an LSS ‘component’ – i.e. educational / practice support – and over the coming months we will start tracking ethical inquiries handled by PR Counsel as part of our LSS work, rather than through a separate database. This will give us a more complete picture of the Society’s LSS work.

The MSELP/LSS/ New firm registration work requires staff at the Society to collaborate to ensure that lawyers are getting the guidance and answers they need to practice effectively. These processes have assisted us in seeing our interconnectedness and in breaking down the traditional barriers that have existed between departments. Working collaboratively has benefited both staff and lawyers in the consistency and completeness of advice and guidance.
To date, LIANS has maintained responsibility for LIANSWERS, the mentorship program, the Fraud Alerts and the Solo/Small Practice Conference. In the coming year LSS will be organizing the Annual RPM Conference in collaboration with LIANS staff. We will also be assuming responsibility for the Mentorship Program and expanding the options available to mentors and mentees, including ‘one off’ mentorship questions / opportunities.

We continue working to education the profession about support the Society offers to lawyers and firms. In addition to one on one meetings and conference engagements, Staff are participating in a Society ‘road show’ with the President and the Equity Office over the coming months which will provide information to lawyers throughout the province about the Society’s priorities and programs to assist them in practice.

**Credentials Committee Decisions**

The Credentials Committee is responsible for making decisions on applications where the applicant’s character or fitness is in issue. In the past fiscal year, no applications were taken to the committee. This is not unusual. Most decisions about changing category, admissions, articling are made by staff.

**Skills Course/Bar Exam**

The Skills Course is continuing this year as it has in the past. As Council is aware, we are asking Council to consider changing the course for the 2020 program year. The details of which are in the Memo I provided to Council for this meeting.

**Analysis:**

**Introduction**

The Education & Credentials department is the gatekeeper for those who wish to join the profession. Section 4 of the *Legal Profession Act*, defines the purpose of the Nova Scotia Barristers’ Society - to “uphold and protect the public interest in the practice of law”. In pursuit of this purpose, one of the responsibilities of the Society is to establish standards for the qualifications of those seeking membership in the Society.

The Society’s Regulations provide specifics as to how this mandate will be accomplished.

Education & Credentials deals with applicants applying to become members of the Society, as well as with current members who wish to change their membership category upward (i.e. to practising lawyer) or downward (to non-practising, retired or to resign). In each instance, we recognize the need to bring a risk focus to our analysis of the issues that need to be addressed. At this stage, as our part of the regulatory reform work in this area, we are gathering information and insight into what risks there are and how they might be addressed, rather than implementing a true risk management
process. If regulatory reform is approved, it is understood risk management and abatement will then become part of the regulatory role.

There are three avenues by which a person may become a member of the Society:

1. Article and complete the Bar Admission Course;
2. Transfer from another province within Canada; and
3. Transfer from outside Canada.

Members of the Society hold one of the following categories:

1. Practising Lawyer;
2. Non-Practising;
3. Resigned;
4. Life Member; or
5. Articled Clerk.

Since February 2010, the inception of the Fair Registration Practice Act, the responsibility for making initial admissions and credentialing decisions has shifted to the Executive Director. Only decisions about character and fitness are referred to the Credentials Committee in the first instance.

The Fair Registration Practices Act requires additional resources to be expended. Staff are required to complete yearly reports and undergo a review of all of our admission processes every two years. In addition, there are bimonthly FRPA breakfast meetings and the Director sits on an ad hoc advisory committee for FRPA that provides advice to the FRPA Review Officer. As has been reported previously, FRPA caused the Society to review all of the admission processes and ensure that information regarding admissions is available and easy to understand.

The Work of E&C

The work of the department can be broken down into Credentialing, MSELP/LSS, Skills course, Bar examination and Mandatory continuing professional development; each will be dealt with in turn. As we have already addressed the current work in MSELP/LSS/NFR, I will not address it here again. In the next Monitoring Report we will have additional statistics and be able to update Council on the progress made in that project.

Credentialing

The credentialing work consists of many types of applications as set out earlier. The vast majority of this work involves changes in category and transfers to Nova Scotia. It is important to note that the vast majority of department resources as used to complete this work each year.
For the last number of years we have been issuing electronic rulings. We continue to refine these processes. We have been working with other provinces to improve and make uniform processes around the issuance of certificates of standing. Many provinces still insist on paper certificates, which delays transfer and change of category applications. We have not had much success in convincing others to accept electronic certificates but we continue to try. However, in the past year the Society's have agreed to use a uniform certificate of standing and a uniform approach to “entitled to practice” under the National Mobility Agreement, thanks to the advice of a multi-provincial working group of which the Director is a member. We are now beginning work on creating more uniform questions and interpretation of character and fitness.

Our main focus this year has been on risk assessment and applying the triple “P” principles to our decision making, processes and policies. As a result of this we have been reviewing all processes, policies and decision making to ensure that risk and triple “P” principles are taken into account in all situations. We start each analysis by looking at what risk may be involved to the public by the request that is being made.

We then consider what is the most proactive, principled and proportionate way to approach the decision. Examples include finding ways to permit people to return to practice without necessarily rewriting the Bar Exam, permitting more flexible articling arrangements, abridging articles to avoid creating unnecessary burdens, finding ways to test the skills of foreign transfer without necessarily insisting that they article or work under supervision. Working to avoid situations where people cannot work for a prolonged period of time if there is no risk to public to permit them to do so.

The statistics in the following paragraphs show the numbers of in-house rulings for each fiscal year. We are currently in the 2020 fiscal year and will report, however, we are reporting on the statistics for the 2019 fiscal year which just ended. Please note that some of our rulings require more analysis than others. For example, making a ruling on a foreign transfer takes more resources and time than processing an application for a notary public. Nevertheless, each application must be processed; a decision must be made and communicated to the applicant, thereby taking resources.
In total, the following in-house rulings have been issued:

We also track certificates of standing, and abridgment of articles. The abridgment applications have come about as a result of our decreased bar admission ceremonies.
Credentialing Rulings

The Department handled 19 types of rulings during the course of the year, in addition to the Articling Rulings. The types of rulings are set out below in a chart that shows the numbers of rulings for each fiscal year.

We have examined the changes of category downward to ascertain the number of lawyers retiring from practice each year. In the last several years, 40 or more lawyers have retired each year. This year we saw a spike in the number of lawyers resigning. That number rose from 34 in the 2017 fiscal year to 45 in the 2018 fiscal year. We also continue to see an increase in the number of lawyers changing to non-practising each year. It is also notable that the certificate of standing requests continue to rise; likely as a result of government and other organizations requiring these in RFP processes.

What follows is a breakdown of the types of rulings that staff make and statistics about the credentialing work.

<table>
<thead>
<tr>
<th>Type of Ruling</th>
<th>Fiscal year 2015</th>
<th>Fiscal year 2016</th>
<th>Fiscal year 2017</th>
<th>Fiscal year 2018</th>
<th>Fiscal year 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary Practice Permit</td>
<td>17</td>
<td>34</td>
<td>42</td>
<td>41</td>
<td>43</td>
</tr>
<tr>
<td>Temporary Practice Permits (NMA)</td>
<td></td>
<td>15</td>
<td>9</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Change of Category (up)</td>
<td>36</td>
<td>61</td>
<td>55</td>
<td>60</td>
<td>54</td>
</tr>
<tr>
<td>Change of Category (down)</td>
<td>95</td>
<td>91</td>
<td>104</td>
<td>112</td>
<td>96</td>
</tr>
<tr>
<td>Domestic transfers</td>
<td>32</td>
<td>25</td>
<td>49</td>
<td>42</td>
<td>55</td>
</tr>
<tr>
<td>Foreign transfers</td>
<td>2</td>
<td>4</td>
<td>8</td>
<td>11</td>
<td>4</td>
</tr>
<tr>
<td>Foreign Legal Consultants</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Temporary mobility from outside Canada</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Please note: The Society’s fiscal year runs from May 1 to April 30

On the following page is a pie chart of the various types of rulings from the 2019 fiscal year.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Readmission following resignation</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Resignations</td>
<td>35</td>
<td>34</td>
<td>34</td>
<td>45</td>
<td>27</td>
</tr>
<tr>
<td>Retirements</td>
<td>39</td>
<td>46</td>
<td>48</td>
<td>41</td>
<td>58</td>
</tr>
<tr>
<td>Certificates of Standing</td>
<td>67</td>
<td>125</td>
<td>90</td>
<td>120</td>
<td>77</td>
</tr>
<tr>
<td>Notary Public applications</td>
<td>79</td>
<td>90</td>
<td>123</td>
<td>123</td>
<td>137</td>
</tr>
<tr>
<td>Application for law corporation</td>
<td>42</td>
<td>28</td>
<td>25</td>
<td>17</td>
<td>20</td>
</tr>
<tr>
<td>Application for LLP</td>
<td>3</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Renewal of law corporation</td>
<td>462</td>
<td>490</td>
<td>450</td>
<td>418</td>
<td>401</td>
</tr>
<tr>
<td>Renewal of LLP</td>
<td>4</td>
<td>7</td>
<td>8</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Opening trust account</td>
<td>18</td>
<td>17</td>
<td>13</td>
<td>18</td>
<td>14</td>
</tr>
<tr>
<td>New firm registrations</td>
<td></td>
<td></td>
<td></td>
<td>14</td>
<td>23</td>
</tr>
</tbody>
</table>
Articling Rulings

The Articling process involves a variety of rulings starting with the approval of the articling application up to and including the application for admission. Below is a list of the types of rulings staff make and statistics for most of those rulings. We currently have 88 articling clerks. This number is different from clerk applications because clerks can apply to article in a different fiscal year than the year they actually article. As is now the trend, we will see additional clerks start articling between now and the spring of 2020.
There are two ways to employ an articled clerk. An individual lawyer may have a clerk or a firm can employ clerks and assign a Supervising Lawyer to oversee the articling process. Overall, the number of firms taking clerks remained relatively steady. Most years the variations in numbers are caused by the differences in rural lawyers taking clerks as well as sole practitioners and government. The number of lawyers/firms who employed clerks in each year is as follows:

<table>
<thead>
<tr>
<th>Type of ruling</th>
<th>Fiscal year 2015</th>
<th>Fiscal year 2016</th>
<th>Fiscal year 2017</th>
<th>Fiscal year 2018</th>
<th>Fiscal year 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Articled clerk applications</td>
<td>69</td>
<td>71</td>
<td>79</td>
<td>78</td>
<td>70</td>
</tr>
<tr>
<td>Articling plans</td>
<td>69</td>
<td>66</td>
<td>79</td>
<td>86</td>
<td>54</td>
</tr>
<tr>
<td>Education plans</td>
<td>62</td>
<td>75</td>
<td>70</td>
<td>57</td>
<td>43</td>
</tr>
<tr>
<td>Principal applications</td>
<td>49</td>
<td>57</td>
<td>52</td>
<td>61</td>
<td>48</td>
</tr>
<tr>
<td>Change in supervising lawyer/principal</td>
<td>7</td>
<td>0</td>
<td>8</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Extension of articles</td>
<td>23</td>
<td>26</td>
<td>25</td>
<td>24</td>
<td>53</td>
</tr>
<tr>
<td>Applications for admission</td>
<td>111</td>
<td>90</td>
<td>120</td>
<td>131</td>
<td>136</td>
</tr>
<tr>
<td>Termination of articles</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Secondment of articles</td>
<td>17</td>
<td>16</td>
<td>17</td>
<td>18</td>
<td>13</td>
</tr>
<tr>
<td>Application to work outside articles</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Abridgement of articles</td>
<td>7</td>
<td>5</td>
<td>8</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Leaves of absence</td>
<td></td>
<td></td>
<td></td>
<td>5</td>
<td>1</td>
</tr>
</tbody>
</table>

There are two ways to employ an articled clerk. An individual lawyer may have a clerk or a firm can employ clerks and assign a Supervising Lawyer to oversee the articling process. Overall, the number of firms taking clerks remained relatively steady. Most years the variations in numbers are caused by the differences in rural lawyers taking clerks as well as sole practitioners and government. The number of lawyers/firms who employed clerks in each year is as follows:
The numbers of clerks have varied through the last five years. Those numbers are:
As you will see, we continue to see a large number of clerks starting articles after the regular June 1st deadline. Last year we had 14 clerks start after June 1st. That number is lower than in the previous 4 years.

The Society does not gather statistics about students looking for articling positions, as we are not involved in that process and therefore are only aware of issues anecdotally. The Society continues to work with potential clerks and principals to create articling situations that are outside the traditional type of articles but still offer the student a valuable and workable articling experience.

**Bar Admission Ceremonies**

Since June 2014, the Society has changed the admission ceremonies. Prior to that time, admission ceremonies were offered in most months of the year, resulting in duplication of effort and wasted resources. An attempt was made a few years ago to have the courts accept “paper calls” so that lawyers did not have to appear in court to be called, as happens in many provinces. Unfortunately, our court did not accept this proposal.

As a result, the Society has moved to a system where we have only four ceremonies per year, including the big call in June. The only challenge we have experienced is for articulated clerks and transfers who fall outside the normal schedule. The need for students to wait until the next call date delays their call resulting in an inability to work. We have been solving this issue by abridging articles i.e. calling people before they have completed their articles or supervision and having them go back to their firms once called to complete their term. So far, this has worked well.

The calls for the past years looked like this:

<table>
<thead>
<tr>
<th>Month of call</th>
<th>Total number called</th>
<th>Articled clerks</th>
<th>Transfers</th>
<th>Readmission following resignation</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2015</td>
<td>15</td>
<td>5</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>April 2015</td>
<td>16</td>
<td>7</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>June 5, 2015</td>
<td>52</td>
<td>50</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>November 6, 2015</td>
<td>23</td>
<td>10</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>January 15, 2016</td>
<td>10</td>
<td>4</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>April 22, 2016</td>
<td>5</td>
<td>0</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>June 10, 2016</td>
<td>57</td>
<td>51</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>October 14, 2016</td>
<td>28</td>
<td>8</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>January 13, 2017</td>
<td>20</td>
<td>3</td>
<td>16</td>
<td>1</td>
</tr>
<tr>
<td>April 21, 2017</td>
<td>15</td>
<td>7</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>June 9, 2017</td>
<td>74</td>
<td>65</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>October 13, 2017</td>
<td>33</td>
<td>12</td>
<td>21</td>
<td>0</td>
</tr>
<tr>
<td>January 12, 2018</td>
<td>15</td>
<td>3</td>
<td>12</td>
<td>0</td>
</tr>
<tr>
<td>April 20, 2018</td>
<td>9</td>
<td>1</td>
<td>8</td>
<td>0</td>
</tr>
</tbody>
</table>
As the numbers show moving to quarterly calls has resulted in larger call ceremonies, although June continues to be the biggest call. Overall, this move has been productive in terms of the use of resources; however, we continue to experience difficulty accessing appropriate courtrooms for larger calls.

The June call to the bar each year is the call where most of the articled clerks are called. The numbers for the last few years are set out in the table below. Interestingly, in June 2019, we had 59 articled clerks called to the bar. Of those, 56 secured positions. At the current time, only two who remain in Nova Scotia are seeking employment. That is a substantially higher hire back rate than we have seen in many years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Clerks Called</th>
<th>Clerks with Jobs</th>
<th>Clerks Looking</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 15, 2018</td>
<td>62</td>
<td>58</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>October 19, 2018</td>
<td>41</td>
<td>11</td>
<td>30</td>
<td>0</td>
</tr>
<tr>
<td>January 11, 2019</td>
<td>20</td>
<td>6</td>
<td>14</td>
<td>0</td>
</tr>
<tr>
<td>May 3, 2019</td>
<td>13</td>
<td>1</td>
<td>12</td>
<td>0</td>
</tr>
<tr>
<td>June 7, 2019</td>
<td>60</td>
<td>59</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

Skills Course

As mentioned earlier, we are undergoing changes in the Skills course as a result of Law Society of Prince Edward Island now running their own course and changes to the CPLED course in the West. The Society pays to use some of the on-line course from CPLED each year. As you are aware, we are working on a new plan for next year.
Students continue to find it challenging to complete the online portions during their articles. They complain that their firms/principals do not give them sufficient time to complete their assignments. Staff have increased their contact with firms in an attempt to ensure that principals are aware that the students need time to complete their work.

The Skills Course is offered 3 times in the fall of each year. The numbers of students taking the course over the last number of years are as follows.

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>NS students</th>
<th>PEI students</th>
<th>Total students</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>76</td>
<td>n/a</td>
<td>76</td>
</tr>
<tr>
<td>2018</td>
<td>75</td>
<td>14</td>
<td>89</td>
</tr>
<tr>
<td>2017</td>
<td>83</td>
<td>9</td>
<td>92</td>
</tr>
<tr>
<td>2016</td>
<td>65</td>
<td>8</td>
<td>73</td>
</tr>
<tr>
<td>2015</td>
<td>68</td>
<td>6</td>
<td>74</td>
</tr>
</tbody>
</table>
Bar Examination

In this year we have only offered one sitting of the Bar Examination to date. The numbers over the last years have looked like this:

<table>
<thead>
<tr>
<th>Exam sitting</th>
<th>Applicants writing</th>
<th>Number of repeaters</th>
<th>Passes (first time)</th>
<th>Failures (first time)</th>
<th>Total failures</th>
<th>Failure rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019-01</td>
<td>15 first time</td>
<td>14</td>
<td>13</td>
<td>2</td>
<td>6</td>
<td>13.00%</td>
</tr>
<tr>
<td>2018-07</td>
<td>66 first time</td>
<td>4</td>
<td>55</td>
<td>11</td>
<td>15</td>
<td>17.00%</td>
</tr>
<tr>
<td>2018-01</td>
<td>19 first time</td>
<td>13</td>
<td>15</td>
<td>4</td>
<td>7</td>
<td>21.00%</td>
</tr>
<tr>
<td>2017-07</td>
<td>64 first time</td>
<td>8</td>
<td>52</td>
<td>12</td>
<td>15</td>
<td>19.00%</td>
</tr>
<tr>
<td>2017-01</td>
<td>25 first time</td>
<td>15</td>
<td>18</td>
<td>7</td>
<td>8</td>
<td>28.00%</td>
</tr>
<tr>
<td>2016-07</td>
<td>64 first time</td>
<td>4</td>
<td>54</td>
<td>14</td>
<td>16</td>
<td>22.00%</td>
</tr>
<tr>
<td>2016-01</td>
<td>14 first time</td>
<td>2</td>
<td>12</td>
<td>2</td>
<td>3</td>
<td>14.28%</td>
</tr>
<tr>
<td>2015-07</td>
<td>51 first time</td>
<td>10</td>
<td>51</td>
<td>2</td>
<td>2</td>
<td>3.9%</td>
</tr>
<tr>
<td>2015-01</td>
<td>21 first time</td>
<td>9</td>
<td>15</td>
<td>6</td>
<td>7</td>
<td>28.57%</td>
</tr>
</tbody>
</table>

The numbers of applicants passing or failing at any given examination continue to fluctuate slightly.

The Exam continues to be created and marked initially by our exam consultant. The exams are reviewed and set by our Bar Examiners, who are senior members of the bar.
In addition, the Examiners act as a review body if a student asks to have their examination reviewed. These reviews result in very few changes, although occasionally a student will be successful.

We offer an online virtual exam-writing seminar to replace the in-person seminar. This permits students to take the seminar at any time and in any place. It is not a “Hollywood” seminar, however, it does give the students the same information they received on a semi-annual basis. Also, the students are free to contact staff if they have questions or need assistance.

**Mandatory Continuing Professional Development**

The mandatory CPD requirement came into effect in June 2012. All practising members are required to complete 12 hours of study annually and to report their activities in the Annual Lawyers Report.

In May 2015, Council passed a resolution, after a review process, to change the MCPD requirement. Beginning this fiscal year all lawyers were required to create and implement a professional development plan on an annual basis. Generally, compliance was high although members did need some encouragement to complete their plans. We are awaiting the results of this year’s Annual Lawyer’s Report to determine compliance. Last year there were a few lawyers who were not compliant in terms of reporting but who did have some type of plan in place when inquiries were made.

The Society has resources available to members to assist them in creating a professional development plan. In addition, E&C staff are available to review plans and to assist members should they require individual guidance. As mentioned earlier, staff have offered seminars to a variety of firms and organizations throughout the year.

Society staff have also been working to update the website and to make additional resources available to the membership. As we move forward these resources will be combined with the practice resources currently offered on the LIANS website.

I would be happy to answer questions, should you have any.

Respectfully submitted,

Jacqueline L. Mullenger
Director,
Education & Credentials
Appendix “A”

Education & Credentials

Below is the regulatory work of the department. Council is involved in the setting of some standards and policy that pertain to credentialing matters.

**Articling and Admissions** which includes: admission inquiries, Credentials Committee work, articled clerk applications, Principal/supervising lawyer applications, applications for admission, applications for academic call, education plans, mid-term and final reports, rulings involving articling and admission issues, Internal Reviews, Credentials Inquiries and Bar Admission Ceremonies. The department also processes applications for Notary Public commissions.

**Skills Course** which includes setting of standards, and curriculum, preparation, delivery and assessment of both in person and online course, volunteer management, internal reviews of marks and working on policy.

**Bar examinations** which include: choosing testing areas, liaising with Exam Consultant, oversight of Bar Examiners, screening of winter and summer examinations, preparation of Bar Review Outlines, exam writing seminars, accommodation requests, invigilation of exams, appeals, review of failing exams and providing feedback and assistance to applicants.

**Transfer Applications** which include: rulings involving transfers, bar examinations for transfers, education plans and supervision for transfers, temporary permits for transfers, foreign legal consultants, temporary permits for lawyers from outside Canada, temporary permits for lawyers from within Canada. Internal reviews of rulings.

**Change of Category Applications** which include: changes of category upwards, reinstatement of former judges, readmission following resignation or disbarment, and internal reviews of rulings. Since September 2012, the department has also been responsible for changes of category downwards, including resignations and retirement.

**Certificates of Standing/ Letters of standing**: The department processes all applications and provides these certificates and letters.

**Reports regarding applications for QC appointments and judicial appointments**: In the near future, the department will be taking over this process which currently happens in the Executive Director’s office.

**Opening of Trust Accounts**: The department is responsible for the opening of new trust accounts. This process includes administering the trust account assessment and working with the member to obtain the appropriate documentation and information about the opening of new trust accounts. In most cases this also involves new law firms.
so the need to understand the structures and relationships that are being created becomes part of the focus.

**Limited Liability Partnerships:** The department is responsible for administration and oversight of both the creation of these entities and their yearly renewal.

**Law Corporations:** The department is responsible for the administration and oversight of the creation of law corporations and their renewals.

**Continuing Professional Development** which includes the implementation and monitoring of the requirements set out in the regulations for mandatory cpd, the offering of cpd where appropriate and liaising with members, firms and providers. It also involves the delivery of the LRA assessment and working with other departments to create and implement education for staff, committees and Council.

**Legal Services Support / Self-Assessment Process:** The department is responsible for the implementation of this work. The work involves the self-assessment process as well as giving advice, guidance and support to practicing members who are looking for advice on a variety of topics. It also involves maintaining a resource portal for members and some limited education where the need arises.

**New Firm Registration Process:** Prior to opening a new practice, a lawyer or firm must go through the new firm registration process which includes completing a registration form and meeting with one of the E&C team members. Staff review the processes, obligations and items that members need to consider prior to opening their practice. If needed, we offer guidance, advice and support.

**Standards Committees:** The department has taken on responsibility for staffing both the Family Law Standards Committee and the Law Office Economics Management Standards Committee (LOEMC). In the upcoming year, the LOEMC will be focusing on Succession Planning.
MEMORANDUM TO COUNCIL

From: Credentials Committee

Date: June 4, 2019

Subject: Skills Course and CPLED PREP course

For: Approval

   Introduction X

   Information

Last year, Council was advised that the Society was discussing the possibility of collaborating with the Canadian Center for Legal Education (“CPLED”) to offer a new Bar Admission Course in Nova Scotia.

CPLED is the organization that offers the Bar Admission Course in Alberta, Saskatchewan and Manitoba. The bar admission course offered by CPLED in the western provinces is similar to the course in Nova Scotia. It offers both in-person and on-line modules. Clerks are tested in all of the Skills that Nova Scotia currently assesses, which includes Legal Writing, Legal Drafting, Negotiation, Interviewing, Oral and Written Advocacy, Practice Management and Client Management. It follows the National Admission Standards that were agreed to by all provinces.

In 2017, after conducting a thorough review of its program, CPLED determined that the program needed to be revamped and that CPLED needed a different governance structure. As a result, CPLED now has its own Board of Directors and a CEO. The CEO is Dr. Kara Mitchelmore who was previously the CEO and also VP of Program Development for CMA Alberta. Council met Dr. Mitchelmore at its March 2019 meeting.

For many years now, Nova Scotia has been partnering with CPLED to offer our on-line portions of our course. These are Legal Writing and Drafting, Practice Management and Client Relationship Management. These modules are modeled after the CPLED modules and are hosted on the CPLED server for an annual fee.
As part of the re-working of CPLED, their program has undergone a major overhaul. The new course will be called PREP. It will be described in detail later in this memo.

The prairie provinces have committed substantial funds to the capital fund to create the new program. Nova Scotia has not been asked to contribute to the building of the program but we have been collaborating and assisting in focus groups, work groups and meetings to determine what the new program should look like and how it will be offered.

Nova Scotia has been invited to become a full partner in the new program and we will need to decide if it wants to do so. If we choose not to do so, we will no longer have access to the modules that we are currently using. As a result of the way the new course is being constructed, each province will have to be all in or all out. CPLED is planning on piloting the new program in Alberta and Manitoba in the fall of 2019 and beginning the new program throughout the three provinces in 2020. If Nova Scotia is to join, it will need to make a decision in the coming months.

Dr. Mitchelmore made a presentation to Council in March 2019, which provided details of how the program would operate. The new program is not entirely different from what we are currently offering in terms of the skills and competencies being taught and evaluated. There are advantages to moving in this direction for both the Nova Scotia public and for the students whose competency is being assessed.

One of our goals as we move forward is to make the bar admission programs across the country harmonized. That was the vision when the National Admission Standards were created and agreed to by all provinces. The intention was that clients in any province could be assured that wherever they were in Canada their lawyers had been held to the same admission standards. It also gives more certainty to those being evaluated that the same standards of competency are being expected of them wherever they are articling.

Secondly, the program that is being designed will better test the student’s actual competency in readiness for practice because they will have more opportunity to demonstrate their competency in a manner that more closely resembles the real world. Students will be placed in virtual law firms and will learn and be tested in the competencies in an integrated fashion. They will be assigned a file and will work from retainer to closure incorporating all the skills listed. They will be assessed at four levels rather than simply testing interviewing or negotiation, etc. At each level as they move through the program they will be expected to become more and more competent. They will receive feedback along the way from lawyers trained as learning group facilitators. All students will be tested for competency at the same time, near the end of their articles rather than at all different stages which is now the case.

Thirdly, collaborating across provinces allows societies to create, implement and maintain a more effective program because of the integration of resources both human and financial. Should Nova Scotia decide to do this work on its own it would involve far more money and additional human resources to develop and maintain our own on-line modules and competency assessments. Working with CPLED provides Nova Scotia the opportunity to
capitalize on resources and perhaps realize some savings of our own, while offering an innovative and effective means of testing competency of new lawyers.

Finally, as mentioned earlier, four provinces working together and harmonizing their bar admission course is what the National Admission Standards actually envisaged. It supports the notion of national mobility and also responds to government’s concern that lawyers in each province are being subjected to the same requirements and that they have the same competencies. The more provinces who join, the more defensible the requirements will be for the profession. CPLED is currently talking to other provinces about the possibility of them joining as partners. In addition, the Society Executive Director have an opportunity to participate on the CPLED Board and therefore will be able to bring Nova Scotia ideas and/or concerns to the table.

In working on this project, the Society has identified that the actual cost per student of the current Bar Admission Course, including the Bar Exam is $6,000 per student. At present, we charge each student $3750. From that analysis, it is clear that the Society is substantially subsidizing the program. The new course has not yet set a price for the course but it will be somewhere in the $6,000 range per student.

In considering this increase it must be borne in mind that the cost of delivering the program is going to increase for the Society regardless. If we do not join CPLED, the Society will need to create and run our own on-line components which will cost the Society substantially more money. Staff have discussed the creation of new modules with CPLED and they have indicated that each new module costs them upwards of $100,000. That means Nova Scotia could potentially be looking at spending at least $400,000 to create four new modules that are effective and defensible. In addition, our Exam consultant is preparing to retire which means we have to make decisions about our Bar Examination.

In either case, the cost of the Bar Admission Course is going to increase over the next few years. One main difference between Nova Scotia and most other provinces is that Nova Scotia receives no funding from the Law Foundation for our bar admission program. Almost all other law societies receive substantial funding/subsidies for their courses. Our Executive Director has reached out to the Law Foundation to discuss the possibility of the Law Foundation providing some type of funding for students who need assistance with the cost of the program. We are now in the process of applying for a grant from the Law Foundation to assist students who have financial hardship and have to pay for the course on their own. We understand that our request has the support of the Board. That application will be filed in September.

The committee had the benefit of a presentation at our last meeting as well as regular updates and advice from Society staff. We are prepared to make a recommendation to Council that we move forward with this project and accept CPLED’s offer to become a full member of the program.
The committee identified several issues that Council should take into consideration when moving forward:

1. **Cost to students**: The committee is mindful that there are some students who are paying for the course out of their own pockets. As a result, increasing the cost to $6100 (estimate) will be a significant burden to those students who may already have increased financial challenges as a result of articling either for no or very low remuneration. The Committee recommends that Council consider whether the increased cost of the course should be subsidized by the membership as a whole rather than placing the burden on those students or on the firms who are paying for their clerks to take the course.

2. **Fewer articling positions**: The committee asks Council to consider whether fewer firms will take clerks if the cost of the course is increased by $2350 per student. Again, we are mindful of the fact that, although there is not an articling crisis *per se*, we would not want to do anything that would reduce the number of articled clerk positions in the province. That is not to say that we think the Society should not move forward with the new program, but rather that serious consideration needs to be given to how the course will be paid for.

3. **Messaging to firms**: Given that the students will only spend two weeks at the Society in the classroom and instead, much of their time engaged in online course work while at the firm, the Committee wants to ensure that there is proper messaging and dialogue with the firms so that they provide sufficient time to the students to complete their course work.

4. **Transfer applications**: Council will need to consider how to deal with both foreign and domestic transfers when the new program is put into place. At the current time, domestic transfers are asked to review the Bar Review Outlines before being called to the bar in Nova Scotia. Foreign transfers are required to write the Nova Scotia Bar examination before being called to the bar. Given that the new program will not have a bar examination, how will these transfers be dealt with? Will there be some other type of reading requirement for domestic transfers and will foreign transfers be required to take the PREP course? Council may want to look to the other CPLED jurisdictions for answers to these questions.

5. **Regulation changes**: Council will need to consider what, if any, changes need to be made to the articling, admission and transfer regulations to implement the new program. There will, in all likelihood need to be a major review and overhaul to both regulations and the policies that complement those regulations.

6. **Accessibility of PREP course**: Council will need to ensure that any new course is accessible to all differently abled applicants. Additional resources may be required to give each applicant an equal footing in the program.

7. **Risks involved in outsourcing**: The committee also discussed the fact that there are inherent risks in outsourcing any of our mandated obligations. Council may want to look for assurances as to how the Society would proceed should CPLED decide to abandon the project or wind up at some point in the future.
Finally, the committee is in support of this very important step forward in the Society’s assessment of competency for those beginning the practice of law. We are satisfied that the PREP course will better assess students so that the Society can be confident in the lawyers starting out in the practice of law. We have raised the above issues as considerations for implementation rather than bars to moving forward.

We would be happy to answer any questions.

All of which is respectfully submitted,

Cheryl Canning QC
On behalf of Credentials Committee
MEMORANDUM TO COUNCIL

From: Jacqueline Mullenger
Date: July 5, 2019
Subject: Skills Course Changes

For: Approval

Introduction

Information

Section 28(1)(c) of the Legal Profession Act provides that the Society has the authority to make regulations establishing, and maintaining or otherwise supporting a bar admission program and courses for lawyers from foreign jurisdictions seeking the right to practise in Nova Scotia.

Sections 3.6.1 and 3.6.2 of the regulations provide as follows:

3.6.1 The Society shall offer a Bar Admission Course which shall consist of the following components:
   (a) the Skills Course;
   (b) the Bar Examination;
   (c) such seminars as are prescribed by the Committee.

3.6.2 The purpose of the Bar Admission Course is to determine that those who successfully complete each required component possess the particular level of competence required of:
   (a) an articled clerk being called to the Bar as a lawyer;
   (b) a lawyer being called to the Bar in the province on transfer from a foreign jurisdiction;
   (c) a member changing category of membership to become a practising lawyer, or
   (d) a person resuming membership as a practising lawyer.

The Bar Admission course has had several iterations over the years. For the last decade, the Course has consisted of a three-week in-person course and a series of on-line learning modules which the Society has offered in conjunction with the Canadian Center for Legal Education (“CPLED”). CPLED is now in the process of replacing their existing skills course with a new course that will be known as Practice Readiness Preparation Program or PREP, as it is being referred to. As a result of this change, CPLED has offered to work collaboratively with the Society and have us join as a full partner in the course. If we choose not to join then we will no longer have access to the on-line program. The
Society has not been asked to contribute to the capital of the program, which has cost the CPLED organization millions of dollars. As a result of this change and other changes, taking place in our own program the Society finds itself at a crossroads. We need to determine if we should move forward with the partnership or abandon the relationship and create our own on-line modules.

Council has had the benefit of a memo written by Cheryl Canning, on behalf of the Credentials Committee. The purpose of this memo is to provide Council with additional information to assist in your discussion of this issue.

A. Background:

At the January 2019 Council meeting, staff presented a report to Council about the existing Skills Course and the work that was being undertaken with CPLED as they work toward a new way to prepare articled clerks to be evaluated on their readiness to enter the practice of law. That memo is attached as Appendix “A” for the benefit of the new Council members.

In March 2019, Dr. Kara Mitchelmore, the CEO of CPLED made a presentation to Council about the PREP course being created by CPLED. Dr. Mitchelmore went through the basic design of the course and answered Council’s questions. Her slides are attached as Appendix “B”.

As we move forward, Council has two decisions to make, which I will address in this memo. The questions are:

1. Should The Society join as full partner in the PREP course and implement a new Bar Admissions Program?
2. If the Society joins CPLED how will the PREP course be funded?

I will answer each question in turn.

1. Should The Society join as full partner in the PREP course and implement a new Bar Admissions Program?

In order to answer the question, Council must first consider what the “new” course will look like.

The PREP program is not entirely different from what we are currently doing. All of the same skills and competencies will still be taught and evaluated. It will be piloted in Alberta and Manitoba in the fall of 2019.

It is important to note that with the new program there will no longer be a separate Bar Examination. That being said, the law will be tested in the actual components of the PREP course. In order to demonstrate competency the student will have to know the law sufficiently well to perform the various skills that are assessed.

The program consists of four segments and focuses on spiral learning to prepare the articulated clerks for the final stage, the Capstone evaluation. The segments of the program are as follows:
I. Foundation Modules

These modules will run from August to October. This segment contains eight online modules which introduce articled clerks to the various areas they will be covering throughout the year. The modules describe for articled clerks the key concepts in the various areas and contain interactive components to engage the articled clerks in the content. These include videos, interactive assessments and an e-portfolio.

The modules covered in this segment are:

a. Indigenous Law, Cultures and People  
b. Professional Ethics and Character  
c. Oral Communications Skills: Interviewing, Negotiating, Advocacy and Client Relationship Management  
d. Written Communication Skills: Drafting and Legal Writing  
e. Legal Research, Fact Gathering and Case Management  
f. The Effective Lawyer: Personal Attributes and Relationships  
g. Practice Management and Trust Accounting Fundamentals  
h. Technological Skills and Tools

After completing the reading and interactive components of the modules the articled clerks will enter into a multimedia segment which will given them an opportunity to see various skills in action and to begin working on those skills. A number of the assignments they will complete during this segment will be reviewed in the Foundation Workshop.

II. Foundation Workshop

The Foundation Workshop will be a one-week workshop which will take place in November. Given the number of articled clerks we currently enroll, we will be running three or four sessions in the month of November.

The Foundation Workshop will contain many elements similar to our current in-person Skills Course. The articled clerks will work on various scenario to practice their lawyering skills and gain feedback on their performance. All of the topics covered in the Foundation Modules will be touched on during the Foundation Workshop. It will also be used to introduce the articled clerks to the Virtual Law Firm.

The current proposed schedule for the Foundation Workshop is as follows:

**Day 1:** Interviewing Workshops – 2 scenarios

**Day 2:** Negotiation Workshops – 2 scenarios  
Legal Writing Workshop – Opinion Letter

**Day 3:** Legal Drafting Workshops – Affidavit or Contract  
Oral Advocacy Workshops – Ex parte application

**Day 4:** Oral Advocacy Workshop – Contested application  
Legal Drafting Workshop – Will  
Legal Research Workshop – Legal Memorandum
Day 5: Professional Ethics
The Effective Lawyer
Cross Cultural Communication
Practice Management
Technology

III. Virtual Law Firm

The virtual law firm will include three rotations of a month each. The purpose of this segment of PREP is to simulate the law firm experience and to increase the articled clerks proficiency in the various lawyering skills. This segment will run from January to March and will cover the areas of business law, criminal law and family law/real estate.

During this portion of PREP the articled clerks will be monitored by a Practice Manager who will be their mentor and will be responsible for evaluating their practice management skills. The articled clerks will be assessed in each of the skill areas during each rotation with the expectation that their proficiency will increase as they move through the rotations.

In this segment the articled clerks will be provided with various tools to assist them in their learning. These will include access to LexisNexis and use of Clio (practice management software).

IV. Capstone Evaluation

The Capstone Evaluation will be a one-week comprehensive summative simulation and assessment. Articled clerks will be assessed in all the modules and will need to demonstrate competency in all areas.

What does Council need to consider?

Essentially Council needs to determine if it is prepared to move ahead with becoming a full partner in the CPLED organization and committing resources to implementing that program.

If the Society chooses not to become a partner in the program then we will no longer have access to the four on-line skills modules that we currently use. Those are Legal Writing, Legal Drafting, Client Management and Practice Management.

These would be online modules and based on the cost that CPLED has incurred to create these modules, the Society is looking at a capital cost to develop four modules of at least $400,000, in addition to the cost of finding a host for our course, IT support and the ongoing maintenance and updating of the modules. In addition, if we do not move forward with the new program Council will need to decide what we are going to do with the current Bar Examination. Our current exam consultant is nearing retirement. As a result, decisions will need to be made about moving forward.

Ms. Canning has set out the reasons for moving to the PREP program succinctly in her memo. Without repeating her submissions, moving to this program makes sense for the following reasons:

1. Better test of student competency
2. Harmonization across some provinces
3. Increased efficiencies by pooling resources
4. Reduction in resources committed to Skills Course

It is also important to note, as was stated in Ms. Canning’s memo that CPLED is currently in discussions with both the PEI and NL law societies about joining CPLED and implementing the PREP program in those provinces. From the point of view of having national admission standards, the more harmonization there is across the country the better it is for both the public and the lawyers in those provinces.

The issues raised by Credentials that Council needs to grapple with in determining if the Society should adopt the PREP program are: accessibility of the PREP course, transfer applications, messaging to firms and risks involved in outsourcing. Of these issues, only one is unique to Nova Scotia. That would be the issue around outsourcing. In an effort to assist Council’s discussion around these topics, we offer the following:

A. **Accessibility of the PREP course**

Staff have been communicating with CPLED and are aware that CPLED is working on ways to make the entire PREP course accessible to all kinds of students. That will continue to be a priority for both the Society and CPLED. Every province offering a Skills course or Bar Admission program must ensure that all applicants are accommodated.

B. **Transfer applications**

Staff have begun to look at how to deal with applications for transfer. There will be different processes for domestic transfers and foreign transfers. For domestic transfers it may be that a different reading requirement is set to assist them in transitioning to Nova Scotia. We must also consider whether that is necessary given that they have an ethical obligation to practice only where they are competent and also whether a reading requirement is any longer proactive, principled and proportionate. For foreign transfers it is likely that we will want to treat them the way they are treated in the other provinces that have the PREP program for consistency and fairness. Those candidates will have to be assessed and a determination will have to be made about whether they have to take any or all of the modules in the PREP program. Staff are currently talking to the other jurisdictions to gather information on this issue.

C. **Messaging to firms**

The Society will need to create and implement a communication plan to assist principals in understanding the needs of the students and the expectations on them while taking the course. The Director and staff will meet with as many as possible in person to discuss the new program and to assist principals/firms in coordinating the articling work and the PREP course work. This is an opportunity for clerks to work on managing competing priorities and learning how to navigate a process that will resemble what they are required to do when practising.

D. **Risks involved in outsourcing**

While we appreciate this concern, it is noteworthy that CPLED has been in existence for more than a decade and the prairie provinces have invested a significant amount of money and resources into this new program. While there is always a risk with outsourcing, Society staff will continue to be involved in
the program and if there was to be a wind up the Society has the ability and resources to re-establish
our own Skills Course should the need arise.

2. If the Society joins CPLED how will the PREP course be funded?

Once Council determines whether to move to the PREP course, the key issue becomes how the course
will be funded. The two most obvious options are either requiring the students/firms with clerks to pay
the full amount of the tuition or to subsidize the cost of the course.

In terms of joining CPLED, both Ms. Canning and I have provided Council with the information about
the cost of the current course and the cost should we move to the PREP course.

As Ms. Canning pointed out, the current tuition for our course is $3750 per student. The actual cost to
the Society for the Skills Course is approximately $6000 per student. The amount varies depending on
the number of students we have each year.

The Credentials Committee has identified a number of issues that may arise if the total cost of the
course is put on students and/or their firms. I will now address the Committee’s issues:

a. Cost to students

As the Committee points out, costs to students is a very real issue and one that Council identified at
your January meeting. If the tuition for the PREP course is set at $6100 the increase in tuition would be
$2350. That is a significant increase whether the clerk is paying the full tuition or if the firm is paying for
the clerk.

In terms of the clerks paying, staff have investigated the situation with the clerks from last year to get a
bench mark for Council. Of the 76 students who took the course, 8 paid for the course on their own.
The Society covered the tuition for two students from the Ku’TawTinu initiative. For those of you who
are not aware of this initiative, it was created to assist Mi’kmaq students in securing articling positions in
an effort to improve the administration of justice.

As indicated in Ms. Canning’s memo to Council we are also working with the Law Foundation in an
effort to secure a grant which would provide tuition for at least 10 students who have financial hardship.
As stated in that memo, we have been advised that the Law Foundation Board is supportive of our
efforts in this regard.

We have been working with Finance and Administration to understand the cost of moving to the PREP
course and how this will affect the Society’s finances as well as the impact on students and firms
paying for the course.

The cost of the PREP program is estimated by CPLED to be $6,100 per student, or $439,000 (based
on 72 students, which is our average number). Our current cost of running the Skills Course program and the Bar Exam are approximately $415,000 or
$5,764 per student. It varies from year to year depending on the number of students and the students
who are in the Ku’TawTinu initiative (the Society waives the fee for these students).
By moving to CPLED, we would be able to eliminate some, but not all of the existing expenses. Some expenses which will continue may be reimbursable by CPLED if they continue to be incurred in the delivery of the PREP course.

Of the $414,000 existing costs, we anticipate that $166,000 of costs will be eliminated by reducing our expenses. Of course, we will also lose $286,000 in revenue. The residual cost is then $248,000.

Please note that the most recent CPLED documentation suggested $88,000 reimbursable for work done by NSBS, the additional $49,000 we are estimating is mostly for facilitation and consulting work carried out by staff).

Of the $248,000, $110,000 of remaining costs relate primarily to the rental cost of the classroom ($60,000 of costs remaining), office space rental for staff ($19,000), salaries and related costs for staff working on the skills course where these salary and related costs are neither eliminated or reimbursed ($29,000). If the classroom and office space is not re-purposed, it could potentially be eliminated at the time of the lease renewal in March 2022.

Council should keep in mind that although the entire rent for the classroom is assigned to the Skills Course the classroom is used for many other purposes. In addition, the calculation for the portion of salaries and rental space is an inexact science given that it is very difficult to determine an exact proportion of work that is for just the Skills Course. We have done our best, but it is, at best, an estimate. The point being that with or without a Skills Course, the remaining $248,000 would still be a cost to the Society in order to fulfill the credentialing, LSS and MCPD mandate.

Recognizing that increasing the tuition for students from $3750 to $6100 is a drastic increase, Council may want to consider whether, instead, the Society should be considering further subsidies for the cost of the course. It is important to note that currently Alberta, Manitoba and Saskatchewan all receive subsidies from their law foundations for their courses. Alberta receives $923,000 Manitoba receives $63,000 and Saskatchewan receives $96,000. The proposed subsidies for each of those provinces are $1,000,000, $121,000 and $208,000 respectively if students charge a tuition of $3750.

With the PREP program, if the students pay their tuition of $3750 directly to CPLED, that would total $232,500 for 62 students who pay and $61,000 for 10 students paid for by the Law Foundation which will total $293,500. CPLED will be expecting $439,200 for 72 students. The difference between the two numbers is $145,700. As CPLED is crediting us with $137,000 the actual money changing hands would be $8,700. See Appendix “C”.

Although the Society would only pay $8,700 to CPLED, the total “cost” to the Society of the program is $256,862, which is 129,362 more than the current cost. Therefore, the Society is currently subsidizing the course at the cost of $63.75 per member. If Council wishes to subsidize the increased cost, it would amount to an additional $64.68 per member. That would mean that each member of the Society would be subsidizing the course in the amount of $128.43 per member, per year.

Of course, there are other options. The Society could increase the portion of the tuition that students/firms pay. Council could increase the tuition to 4000 or more, depending on what level they feel is appropriate. Any increase in tuition would offset the amount the Society has to subsidize the course.
There may also be additional savings in that the Society may actually receive additional credits from CPLED depending on the work the Society undertakes on CPLED’s behalf.

Moving to the PREP program will also free up time and resources within the E&C department to devote to the LSS work which is increasing as the program moves forward.

The alternative to the PREP program is to keep our current course and create and implement our own on-line modules, which would require up-front investment over the next twelve months of at least $500,000 and ongoing cost associated with hosting and running our own on-line modules. In addition, the Society will need to determine how to deal with the Bar Examination and what we do moving forward with that process.

As the course is already costing close to $6,000 per student adding a $500,000 expense will either significantly increase the tuition or the subsidy for the course.

b. Fewer Articling positions

I addressed this issue in the above paragraphs. Although there are a minimal number of students who currently pay for the course on their own and we may adjust for that with the Law Foundation grant, it is also true that firms may take fewer clerks if they have to pay 6100 for each of their clerks to be assessed. One way to deal with this is to consider subsidizing the course so that each member pays towards the training and assessment of new members of the profession.

I hope this provides you with the information you need to make a decision. Should you need any additional information or have questions I would be happy to answer them.

All of which is respectfully submitted,

Jacqueline L. Mullenger
Director,
Education & Credentials
Appendix C

<table>
<thead>
<tr>
<th>Description</th>
<th>Current Situation</th>
<th>Estimated with CPLED</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paying CPLED</td>
<td>0</td>
<td>$8,700*</td>
<td>$8700</td>
</tr>
<tr>
<td>NSBS Expenses</td>
<td>$414,000</td>
<td>$248,162</td>
<td>($166,024)</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$414,000</td>
<td>$256,862</td>
<td>$135,000</td>
</tr>
<tr>
<td>Bar exam revenue and Course Fee Revenue @ $3,750</td>
<td>($286,500)</td>
<td>(0)</td>
<td>(0)</td>
</tr>
<tr>
<td>Net cost to NSBS (Subsidy)</td>
<td>$127,500</td>
<td>$256,862</td>
<td>$129,362</td>
</tr>
</tbody>
</table>

* Tuition owing to CPLED for 72 students          | $439,200          |
Tuition paid by students (3750 x 62)             | ($232,500)        |
Tuition paid by Law Foundation (10 x6100)        | ($61,000)         |

$145,700                                         |

Credit to NSBS for services rendered             | ($137,000)        |

Owing to CPLED from NSBS                         | **$8.700**        |
Introduction

Dr. Kara Mitchelmore, CEO
Canadian Centre for Professional Legal Education

Doctorate in Business Administration

Fellow of the Chartered Professional Accountants (FCPA)

Fellow of the Certified Management Accountant (FCMA)

Certified Marketing Research Professional (CMRP)
CPLED Competency Framework

Building a Framework:

1. External Report on CPLED Program
2. Hiring CPLED CEO
3. Focus Groups and Interviews with Principals, Students and Law School
4. New Framework
Outside the Framework

Foundation: Legal Knowledge
The Practice of Law

Lawyer Skills
- Language, oral and written communication and drafting/legal writing skills
- Legal matter management
  - Initiate
  - Plan
  - Research
  - Analyze
  - Resolve (non-litigated and litigated)
  - Finalize

Practice Management
- Risk management
- Trust and office accounting
- Technology
- Time/project management
- File management
- Relationship management
- Self management
The Lawyer

Professional Ethics
- Knowledge of the Code of Conduct
- Decision-making regarding ethical issues
- Complying with fiduciary duties
- Complying with professional conduct
- Protecting confidences
- Avoiding conflicts of interest
- Professional development

Character
- Ethical
- Courteous
- Non-discriminatory
- Honest
- Trustworthy
- Honourable
- Principled
- Respectable
What is PREP?
VIDEO
Practice Readiness Education Program (PREP)

INTERACTIVE ONLINE MODULES & ORIENTATION

IN-PERSON WORKSHOPS

VIRTUAL LAW FIRM (1 month rotations)
- Business Law
- Criminal
- Family Law & Real Estate

Simulated Matter Management
Initiate > Plan > Research > Analyze > Resolve > Finalize

Practice Management
Contacts, Clients, Conflicts, Time, Bill, Schedule

Summative Assessments
Portfolio Reflection
Re-work

IN-PERSON CAPSTONE
Overview

• Foundation Modules & Orientation
• Foundation Workshops
• Virtual Firm
• Capstone Simulation
Foundation Modules

1. Professional Ethics and Character
2. Indigenous Law, Cultures and People
3. Oral Communication: CRN
4. Oral Communication: Interviewing
5. Oral Communication: Negotiating
6. Oral Communication: Advocacy
7. Legal Research, Fact Gathering and Case Management
8. Written Communications: Legal Writing
9. Written Communications: Drafting
10. Legal Skills in Action
11. Technology Skills and Tools for Lawyers
12. Practice Management and Trust Accounting
13. Practice Management Skills in Action
14. The Effective Lawyer

CPLED
Canadian Centre for Professional Legal Education
Foundation Workshops

• Five days
• Face-to-face
• Students in cohorts from 24 to 32
• Meet their Practice Managers and fellow students
Virtual Firm

• 3 practice simulations:
  • Business Law
  • Criminal Law
  • Family Law + Real Estate
• Students are supported by
  • Practice Manager
  • LexisNexis law library
  • Practice management software (Clio)
Virtual Firm Assessments

1. Interview skills assessed by simulated clients
3. Practice management skills assessed by practice managers
Capstone Simulation

• 5 days
• Students will work through a multi-practice area matter from initiation to finalization.
Interactive & Engaging Online Learning
Contact Information

admin@cpled.ca
Cpled.ca
587.393.2189
Questions?
MEMORANDUM TO COUNCIL

From: Jacqueline Mullenger
Date: January 31, 2019
Subject: Skills Course and CPLED 2.0

For: Approval

Introduction

Information X

CPLED is the organization that offers the Bar Admission Course in Alberta, Saskatchewan and Manitoba. The bar admission course offered by CPLED in the western provinces is similar to the course in Nova Scotia. It offers both in-person and on-line modules. Clerks are tested in all of the Skills that Nova Scotia currently assesses. Those include Legal Writing, Legal Drafting, Negotiation, Interviewing, Oral and Written Advocacy, Practice Management and Client Management. It follows the National Admission Standards that were agreed to by all provinces.

The Society has been collaborating with CPLED for many years now in the offering of the on-line portions of our Skills Course. The Society makes use of CPLED’s writing, drafting, practice management and client relationship modules.

Last year, after conducting a thorough review of the program, it was determined that CPLED needed to be revamped and that it needed a different governance structure. As a result, CPLED now has its own Board of Directors and a CEO. The CEO is Dr. Kara Mitchelmore who was previously the CEO and also VP of Program Development for CMA Alberta.

For many years now, Nova Scotia has been partnering with CPLED to offer our on-line portions of our course. These are Legal Writing and Drafting, Practice Management and Client Relationship Management. These modules are modeled after the CPLED modules and are hosted on the CPLED server for an annual fee.
As part of the re-working of CPLED, it has been determined that CPLED will undergo a major overhaul. Nova Scotia has been invited to become a full partner in the new program. While the prairie provinces have committed substantial monies to the capital fund to create the new program, Nova Scotia has not been asked to contribute to the building of the program. We have however, been collaborating and assisting in focus groups, work groups and meetings to determine what the new program should look like and how it will be offered. Nova Scotia will need to decide if it wants to become a full partner in the new program. If we choose not to do so, we will no longer have access to the modules that we are currently using. As a result of the way the new course is being constructed a province will have to be “all in” or out altogether.

The new program is not entirely different from what we are currently offering. All of the same skills and competencies will still be taught and evaluated. There are advantages to moving in this direction for both the Nova Scotia public and for the students whose competency is being assessed. Dr. Mitchelmore will make a presentation to Council in March, which will provide you with more detail of how the program will operate. CPLED is planning on piloting the new program in Alberta and Manitoba in the fall of 2019 and beginning the new program throughout the three provinces in 2020. If Nova Scotia is to join, it will need to make a decision in the coming months.

First, as we move forward, it is important that as much as possible the bar admission programs across the country be harmonized. That was the vision when the National Admission Standards were created and agreed to by all provinces. The intention was that clients in any province could be assured that wherever they were in Canada their lawyers had been held to the same admission standards. It also gives more certainty to those being evaluated that the same standards of competency are being expected of them wherever they are articling.

Secondly, the program that is being designed will better test the student’s actual competency in readiness for practice because they will have more opportunity to demonstrate their competency in a manner that more closely resembles the real world. Students will be placed in virtual law firms and will learn and be tested in the competencies in an integrated fashion. They will be assigned a file and will work from retainer to closure incorporating all the skills listed. They will be assessed at four levels rather than simply testing interviewing or negotiation, etc. At each level as they move through the program they will be expected to become more and more competent. They will receive feedback along the way from lawyers trained as learning group facilitators. All students will be tested for competency at the same time, near the end of their articles rather than at all different stages which is now the case.

Thirdly, collaborating across provinces allows societies to create, implement and maintain a more effective program because of the integration of resources both human and financial. Should Nova Scotia decide to do this work on its own it would involve far more money and additional human resources to develop and maintain our own on-line modules and competency assessments. Working with CPLED provides Nova Scotia the opportunity to capitalize on resources and perhaps realize some savings of our own, while offering an innovative and effective means of testing competency of new lawyers.
Finally, as mentioned earlier, four provinces working together and harmonizing their bar admission course is what the National Admission Standards actually envisaged. It supports the notion of national mobility and also responds to government’s concern that lawyers in each province are being subjected to the same requirements and that they have the same competencies. The more provinces who join, the more defensible the requirements will be for the profession. CPLED is currently talking to other provinces about the possibility of them joining as partners. In addition, the Society Executive Director will sit on the CPLED Board and therefore will have influence on the policies and governance of CPLED.

In working on this project, the Society has identified that the actual cost per student of the current Bar Admission Course, including the Bar Exam is $6,000 per student. At present, we charge each student $3750. From that analysis, it is clear that the Society is substantially subsidizing the program. The new course has not yet set a price for the course but it will be somewhere in the $6,000 range per student. That is a substantial increase, however, if we do not join CPLED the Society will need to create and run our own on-line components which will cost the Society substantially more money. In addition, our Exam consultant is preparing to retire which means we have to make decisions about our Bar Examination.

Either way, the cost of the Bar Admission Course is going to increase over the next few years. One main difference between Nova Scotia and most other provinces is that Nova Scotia receives no funding from the Law Foundation for our bar admission program. Almost all other law societies receive substantial funding/subsidies for their courses. Our Executive Director has reached out to the Law Foundation to discuss the possibility of the Law Foundation providing some type of funding for students who need assistance with the cost of the program.

I will be pleased to answer any questions you may have.

All of which is respectfully submitted.

Jacqueline L. Mullenger
Director, Education & Credentials
MEMORANDUM TO COUNCIL

From:   Tilly Pillay, QC
Date:   July 19, 2019
Subject:   Executive Director’s Report

Since my last report to Council in May, our time has been used to focus on three important matters:

1. Preparation and attendance at the Annual meeting;
2. Collection of fees and the Annual Lawyer Report; and
3. Finalizing the strategic plan with the support of the Steering Committee

Annual Meeting

There is a lot of work that goes into preparing for the Annual Meeting, from coordination of the meeting portion itself to the education program delivered afterwards. All employees of the Society are involved, as well as many of our committee members, but the lead is taken by our Education and Credentials department. In addition, our Communications Advisor, Collette, works diligently to ensure that the Annual Report is ready for distribution at the meeting as well as being available online. That report would not be possible without the many contributions of NSBS employees and the President. A huge thanks to everyone for contributing, participating and making the Annual Meeting a success, and a special thank you to our educators/presenters who did a fabulous job!

Collection of Fees

As many members of the Finance Committee would know, “fees season” is a marathon! Our Finance and Administration team (supported by our Receptionist) work long hours to ensure invoices are sent out properly, that individual enquiries are responded to promptly and that we follow up with members as required. This year we tried to be more proactive in our communications with our members and reached out directly to individuals whom we know may have been having some challenges. By employing our “triple P” approach and applying our equity lens, we arrived at some decisions/solutions that worked for both the member and the Society.
Strategic Plan

The management team reviewed the draft strategic plan presented to Council at its June meeting and provided some feedback that will be relayed to the Steering Committee. The focus of those discussions was to help Council articulate goals that are measurable and that the language in our strategic plan is consistent with the language used in all our other communications. The strategic plan will be discussed in detail at Council’s July meeting.

Finally, it is that time of the year when I meet with the Officers to set my performance goals for the coming year. By the time Council receives this report, I will have had that meeting, so I look forward to presenting and discussing my goals at the Council meeting.
## Council Year: July 2019 – June 2020

<table>
<thead>
<tr>
<th>JULY</th>
<th>AUGUST</th>
<th>SEPTEMBER</th>
<th>OCTOBER</th>
</tr>
</thead>
</table>
| Council Meeting – July 19  
**Big Issue: Strategic Plan**  
- Credentials Monitoring Report  
- TA Update and TARWG Update  
- DSA Recipient Announced  

**Other Activities**  
- CBA SOGIC Panel - July 16 (Halifax Public Library)  
- Pride Parade – July 20  
- Pride Reception - July 25  

No Council meeting | | Council Meeting in the Community (?) – September 27  
**Big Issue: EDI & TRC**  
- LIANS Report to Council  
- Report on 2019 Annual Lawyer Report  
- MDP Update  
- Report from GNC on Court Liaison Task Force and Consideration of splitting GNC  

**Other Activities**  
- Wickwire Lecture – Schulich School of Law (Date TBD)  

No Council Meeting | | | |

<table>
<thead>
<tr>
<th>NOVEMBER</th>
<th>DECEMBER</th>
<th>JANUARY</th>
<th>FEBRUARY</th>
</tr>
</thead>
</table>
| Council Meeting – November 22  
**Big Issue: TBD**  
- Introduction of 2020 Activity Plan  
- Committees’ Interim Reports  
- Public Website Redevelopment Project  

**Other Activities**  
- Recognition Reception – November 22  

No Council Meeting | | Council Meeting – January 24  
**Big Issue: Review of Strategic Plan**  
- Approval of 2020 Activity Plan  
- Report from GNC re 2nd VP nominee  
- 2020 Committee Work Plans  
- TARWG Report  

**Other Activities**  
- GNC interviews for 2nd VP (early January)  
- Call to the Bar – January 17 @ 10:30am  
- Minister’s Reception Honouring IB&M Law Students – Date TBD  

No Council Meeting | | | Possible Council training/education session (?)  
**Other Activities**  
- Nominations for 2nd VP close – February 14 | | | |
## Council Year: July 2019 – June 2020

<table>
<thead>
<tr>
<th>MARCH</th>
<th>APRIL</th>
<th>MAY</th>
<th>JUNE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council Meeting – March 27</td>
<td>Council Meeting – April 24</td>
<td>Council Meeting – May 22 – Big Issue: Review of Strategic Plan</td>
<td>Council Session – June 12 @ 1:00pm</td>
</tr>
<tr>
<td>Big Issue: Budget introduction/debate/preliminary approval</td>
<td>Big Issue: Fee/Budget approval/LIANS Levy</td>
<td>Other Activities</td>
<td>Other Activities</td>
</tr>
<tr>
<td>• LIANS Report to Council</td>
<td></td>
<td>• Draft Annual Lawyer Report presented</td>
<td>• Main Call to the Bar – June 5 @ Pier 21 10:00am</td>
</tr>
<tr>
<td>• Equity &amp; Access Monitoring Report</td>
<td></td>
<td>• PR Monitoring Report</td>
<td>• REC Event Honouring Articled Clerks from Racialized &amp; Indigenous Communities – Date TBD</td>
</tr>
<tr>
<td>Other Activities</td>
<td>Other Activities</td>
<td></td>
<td>• Council Dinner – June 12</td>
</tr>
<tr>
<td>• 2nd VP Election – if required</td>
<td>• Call to the Bar – April 17 @ 10:30am</td>
<td></td>
<td>• Annual Meeting – June 13 @ Schulich School of Law</td>
</tr>
<tr>
<td>• Dara Gordon Event – Date TBD (or April?)</td>
<td>• Review ED Performance Evaluation Process and Participation</td>
<td></td>
<td>• Annual Lawyer Report filings due – June 30</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other Activities</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Complete Council Evaluation and ED Performance Evaluation Surveys</td>
<td></td>
</tr>
</tbody>
</table>

To be slotted in:

- Retroactive application of PRPPC Remuneration Policy
- Outcomes Measurement
- Regulatory Risk – next steps
- Communications strategy
- Communications Monitoring Report
<table>
<thead>
<tr>
<th>Objective</th>
<th>Activities</th>
<th>Timelines</th>
<th>Outcomes</th>
<th>Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. To improve the REGULATION AND GOVERNANCE of the legal profession</td>
<td>1.1 Implementation of Legal Services Regulation and Legal Services Support</td>
<td>December 2019 – 1st Tranche of law firms completed;</td>
<td>1.1.1 MSELP Rollout continues on track for implementation of 3-year cycle for completion by all firms</td>
<td>All firms are on a three-year cycle; 1st Tranche firms have a “Confidential Planner” MSELP regularly updated to reflect user feedback</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ED</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>February 2019 LSS Council (Update) May 2019 LSS Council Update November LSS Council Update</td>
<td>1.1.2 Legal Services Support team is established; 1.1.3 Processes and protocols established to assess ongoing member support</td>
<td>Membership has access to and is using LSS team; Process for measuring usage is established; Council reviews and considers data</td>
</tr>
<tr>
<td>Task</td>
<td>Responsible Parties</td>
<td>Date</td>
<td>Description</td>
<td>Status</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------</td>
<td>--------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>1.1.3 If amendments to Legal Profession Act are passed in the Legislature, Regulations in support of approved amendments to LPA are adopted by Council</td>
<td>LOMC, ED</td>
<td>December 2019</td>
<td>Regulations in support of approved amendments to LPA are adopted by Council</td>
<td></td>
</tr>
<tr>
<td>1.1.4 Development of Succession Planning guidance and support is complete</td>
<td>LOMC</td>
<td>December 2019</td>
<td>Checklists and guidelines for file retention and destruction are created and distributed to membership</td>
<td></td>
</tr>
<tr>
<td>1.2 Develop and promote restorative processes and approaches with Edward</td>
<td>ED</td>
<td>Council update March 2019</td>
<td>Council has received training in restorative processes</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1.2.1 An understanding of restorative approaches and when and how to use them is</td>
<td></td>
</tr>
</tbody>
</table>
### Council and Committees

<table>
<thead>
<tr>
<th>1.3 Ensure regulatory risk issues are at the forefront in all work of the society</th>
<th>ED</th>
<th>March 2019</th>
<th>1.3.1 Additional education sessions around regulatory risk are offered</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Council, ED</strong></td>
<td>May 2019</td>
<td>1.3.2 Preliminary risk information informs Council’s strategic planning and decision making on priorities</td>
<td></td>
</tr>
<tr>
<td><strong>ED</strong></td>
<td>November 2019</td>
<td>1.3.3 Tools developed for ensuring assessment of regulatory risks is considered in committee work</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.4 Develop and promote an outcomes measurement lens in</th>
<th>ED</th>
<th>March 2019 and ongoing</th>
<th>1.4.1 Education session on Outcomes Measurement developed and delivered</th>
</tr>
</thead>
</table>

Training plan developed for educating committees on restorative processes.
| **1.4.2** An outcomes measurement lens is applied by Council to strategic planning | | **2019-2022 Strategic Plan includes objectives and measurable outcomes** |
| **1.4.3** Council and Committees consider and incorporate measurable outcomes in work plans and projects. | | **All Committees have workplans that have clear and measurable goals and objectives** |
| **1.5.1** A Trust Assurance Program and Regulations are in place that reflect the Society’s Triple-P approach. | | **Updated Trust Assurance Program in place.** |

| **1.5** Develop and support modernized trust accounts requirements | **Finance Committee; TARWG** | **First Report with initial Regulatory Changes to Council (January 2019)** |
| | | **May 2019 TARWG report to Council:**
| | | **August 2019 Update from TARWG; November 2019 TARWG Report** |

| **Council and Committees** | **2019-2022 Strategic Plan** | **2019-2022 Strategic Plan** |
| | **includes objectives and measurable outcomes** | **includes objectives and measurable outcomes** |

| **ED Council** | **May 2019** | **delivered to all Council Members** |

| **all work of the society** | | **delivered to all Council Members** |

| **Council and Committees** | **Ongoing** | **Council and Committees consider and incorporate measurable outcomes in work plans and projects.** |

| **Finance Committee; TARWG** | **First Report with initial Regulatory Changes to Council (January 2019)** | **Updated Trust Assurance Program in place.** |

| **May 2019 TARWG report to Council:**
<p>| | <strong>August 2019 Update from TARWG; November 2019 TARWG Report</strong> | <strong>Updated Trust Assurance Program in place.</strong> |</p>
<table>
<thead>
<tr>
<th>1.6 Continue to develop and support budgets using 3-year forecasting, sound financial management and reporting</th>
<th>Finance Committee</th>
<th>Budget approved April 2019</th>
<th>1.6.1 Budget approved by Council; Budget info is available to Council, Committees, Staff and Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance Committee</td>
<td>Proposed policy and regulation changes brought to Council regularly</td>
<td>1.6.2 Monitor and update Internal Controls; Financial, Administration and Operational Policies</td>
<td>Financial policies are adaptive and up-to-date</td>
</tr>
<tr>
<td><strong>2. To promote, support and improve Administration of Justice in the Nova Scotia Legal System</strong></td>
<td><strong>2.1 Promotion of access to legal services</strong></td>
<td><strong>COPCC</strong></td>
<td><strong>February 2019 - report to Council</strong></td>
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<tr>
<td>2.1.1 Recommendations from the Code of Professional Conduct Committee regarding multi-disciplinary practices (MDPs) are presented to council</td>
<td>COPCC; PRPPC</td>
<td>June 2019 COPC recommend Draft Regs; and send to PRPPC; September 2019 Additional Research and consultation with stakeholders;</td>
<td>2.1.2 Recommendations made relating to regulatory and Code of Conduct provisions for permitting MDPs in Nova Scotia</td>
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<td>Council decides whether to adopt rules permitting MDPs and if so, adopts regulatory changes</td>
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<td>2.2 Promotion of Substantive Equality and Freedom from Discrimination in Delivery of Legal Services and the Justice System</td>
<td>Equity Committees; TRC WG; Executive; ED</td>
<td>September 2019</td>
<td>2.2.1 Tools and resources are developed and distributed to increase staff, Council, committees and membership capacity to define and apply an equity lens.</td>
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<td>Standards Committees</td>
<td>December 2019</td>
<td>2.2.2 Standards reviewed for appropriate references to lawyer cultural competence in delivery of legal services.</td>
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<td>2.3 Engagement with justice sector players and equity-seeking communities to enhance access to legal services and the justice system</td>
<td>Executive; Equity Committees; TRC; Court Liaison Committees;</td>
<td>December 2019</td>
<td>2.3.1 #TalkJustice data is collected and incorporated into the work of Council</td>
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<tr>
<td>ED</td>
<td>May 2019 EDI Council Update September EDI Council Update</td>
<td>May 2019 EDI Council Update</td>
<td>Council decisions reflect consideration of #TalkJustice data</td>
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<td></td>
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<td>Communities and stakeholders are regularly engaged and their input is valued in the work of Council</td>
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<td>2.3.3 Communities and stakeholders consulted in relation to 2019-2022 Strategic Plan</td>
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<td><strong>2.4 Establishment of and support provided to the TRC Working Group in response to TRC Call to Action #27</strong></td>
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<td>TRCWG; FLSC TRC Working Group, REC</td>
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<td>April 2019 - Financial support incorporated in budget</td>
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<td>2.4.1 Planning continued for education and materials to be developed which reflect a response to Call to Action #27</td>
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<td>Materials developed and education delivered in intercultural competency, human rights and anti-racism</td>
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<td>TRCWG report is a standing item on Council agenda</td>
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<td>2.4.2 Provide prompt, supportive and substantive support to the TRC Working Group and the Racial Equity committee as they complete their own TRC work</td>
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<td>TRC Working and Racial Equity Committee are able to efficiently and effectively advance efforts to respond to TRC Call to Action #27.</td>
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<td><strong>2.5 Promotion of Equity, Diversity and Inclusion in the Legal Profession</strong></td>
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<td>Equity Committees, GNC; ED</td>
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<td>May 2019 EDI Council Update September EDI Council Update</td>
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<tr>
<td>2.5.1 Council will leverage its education, experience and networks to promote equity, diversity and inclusion in the legal profession</td>
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<td>Society activities, including nominations, promote the inclusion of members from equity-seeking communities.</td>
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<tr>
<td>3. Additional Strategic Activities</td>
<td>3.1 Development of Society Strategic Plan for 2019-2021</td>
<td>Equity Committees, GNC; ED</td>
<td>May 2019 – Dara Gordon Event; May 2019 – Review ALR Questions</td>
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<td>3.2 Review of bar admission training program</td>
<td>Strategic Planning Steering Committee, Consultant</td>
<td>March 2019 – Council session re: risk analysis May 9-10 2019 – Strategic Planning session June 2019 – Adoption of Strategic Plan</td>
<td>3.1.1 Council will engage members, stakeholders, community organizations and others as appropriate to develop a new strategic plan which reflect the mission and values of the Society.</td>
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</table>
Greetings,

This is my first report as President and it seems hard to believe that almost a month has passed since the AGM. It has been a busy month!

As part of our efforts to reach and engage with members of the Society, the President traditionally visits the county bars on at least an annual basis. This year, we are modifying this slightly. The Society is traveling to each of the county bars to present on its work represented by myself, Angela Simmonds and Jen Pink. Together, we are presenting on the upcoming strategic work of the Society and, more specifically, on equity and diversity initiatives, support from the Equity and Access Office, the MSEL tool and how Legal Services Support can assist lawyers in practice.

This week, we visited the Kings County Bar Association and met with approximately 15 members. The reception and discussion were very positive. Many members commented that they had clearly seen a positive shift over the last few years in the approach and the engagement of the Society to be more proactive and supportive. The discussion was open and positive, with members raising a number of concerns and comments:

- We heard concerns with a lack of awareness from the judiciary and other members of the bar about potential health conditions that may not be visible and disclosed by counsel which then lead to negative and inappropriate comments. As an example, commenting negatively on a lawyer’s speed in accessing documents, when the lawyer is suffering from a health condition, can erode confidence in the lawyer by their client, force a lawyer to disclose a health concern and increase stress for the lawyer.

- Members asked the Society to take an active role in advocating for improving funding and access to legal aid, including updating of certificate practices.
- Members asked about options and expressed concerns about how to raise issues in relation to the judiciary. Concerns included significant burdens placed on counsel appearing opposite self-represented parties with increasing costs for their clients; how to increase judicial knowledge in specialized area and how to improve respectful engagement in the courtroom.

- Rural concerns in relation to unauthorized practice continue.

- There was also a discussion of the disproportionate numbers of asks received by non-majority lawyers for reviews and comments on policies, initiatives, legislation and the additional pressure and expectation that this creates.

- Taxation procedures and the lack of a limitation period create uncertainty and financial risk for firms and lawyers particularly in rural areas. This risk and the uncertainty are barriers to innovation in practice and can lead to access issues.

We have been invited to come back later in the Council year to talk more about the Strategic Plan and the Society’s work.

Consistent with our public interest mandate and strategic direction to address the TRC Calls to Action, along with members of the TRC Working Group and Angela Simmonds, I participated in the Big Meeting for the Mi’kmaw’Ki Provincial Network at Millbrook First Nation on July 11. The meeting included participation from Band leaders, community support workers, healthcare providers, lawyers and community members. The gathering focused on the role of the Barristers’ Society, its equity and diversity initiatives and how we are responding to the TRC Calls to Action.

We received a very warm and engaging welcome to our presentations and, after lunch, we had facilitated small group discussions. Angela and I spoke with the small groups about what questions they had about our work and what support the profession and the Society could potentially offer to their communities. Feedback included:

- Excitement that the communities feel seen and included in the work of the Society. Participants felt reassured by the Society’s work. Emphasized the needs for continued engagement with communities. Participants stressed their knowledge of what is best for their communities, particularly for their women and children.

- There is an identified need to be able to obtain clear, plain language information about how to find a lawyer, what kinds of questions to ask, what are appropriate expectations of your lawyer and where to go if you have concerns about your lawyer. User-friendly online materials and links would be helpful.
- Access to lawyers in our First Nations communities is a significant issue. Indigenous lawyers are very busy and are often working for bands or community organizations, so are not able to take on individual clients though they do a great deal to assist as much as possible. The process to obtain legal aid can be confusing, with distance and availability also being issues. Attendees were excited at the idea of legal clinics in the community where lawyers could be available to provide basic information about processes, timelines, completing legal aid forms, how a lawyer can help, etc.

- Lawyer education is critical. Education of lawyers should address the history of Indigenous peoples with attention to the history of individual local communities, the impact of inter-generational trauma, forms of Indigenous healing and restitution, and cultural assessments. It is also critical that all lawyers be trained in the need to ask clients questions about race and ethnicity and canvas ways in which a client’s history and cultural background may impact their case. This needs to be done in a culturally sensitive and competent way. The need for education on resources and specific topics in family law was highlighted as well, including Jordan’s Principle.

- Communities are extremely concerned about their youth. Work needs to continue to look at holistic, restorative approaches and effecting those early when youth engage with the judicial system. Judges and lawyers need to work collaboratively and look for creative, community-based solutions to legal matters whenever possible.

- Band and community engagement and notification in legal proceedings is critical.

- Cultural assessments are beneficial, but we need to continue to examine how they are being done and improvements could be made in lawyer understanding of the need for, and appropriate considerations in, these assessments as well as parental assessments.

Members of the TRC Working Group facilitated separate small group discussions specific to areas of the Committee’s Work Plan.

We committed to continuing the discussions and to returning to update the group on our ongoing work in the future.

The Society was also ably represented by First VP, Jim Rossiter Q.C. at the robing ceremony for the Hon. Justice John Keith and by Second VP, Tuma Young, at the Cape Breton Bar Society Annual Lobster Dinner, both on June 21.

Upcoming activities include the NSBS Pride activities such as the Halifax Parade and the NSBS Pride Reception, a presentation at the opening of the Schulich School of Law in September, and continued attendance at the county bar association meetings.
Date June 15, 2019
Time 10:15 a.m.

Present Carrie Ricker, President
Jim Rossiter QC, First Vice-President
Tuma Young, Second Vice-President
Tilly Pillay QC
Natalie Borden
Cheryl Canning QC
Sheree Conlon QC
Deanna Frappier QC
Ellen Burke
Jill Perry QC
Shane Russell
Michelle Ward
Dr. Rod Wilson
Bryan Darrell
Melanie Petrunia
Jack Townsend
Josie McKinney
Patrick Young

Regrets:
Peggy Gates-Hammond
David Hirtle
Andy Nickerson QC
Jillian Barrington
Deanna Frappier QC
Michelle Kelly

Guests:

Staff:
Anne Broughm, recording

1. INTRODUCTORY MATTERS / CALL TO ORDER

1.1 Introductory Remarks

President Carrie Ricker called the meeting to order.

2. APPROVALS

2.1 Strategic Plan 2019-2022

President Carrie Ricker introduced the draft Strategic Plan 2019-2020 to Council for their review. She advised that the Strategic Planning Steering Committee will be finalizing the Strategic Plan and bringing it back to Council in July for discussion and approval.

Council members indicated that they were generally in agreement with the direction of the draft Strategic Plan and did not identify any missing items at this time.

Any feedback on the Strategic Plan can be forwarded to President Carrie Ricker by the end of June.
3. FOR INFORMATION

3.1 2019-2020 Council Calendar

4. CONSENT AGENDA

4.1 Minutes of May 17, 2019, meeting

4.2 Resignation of Candace Thomas QC from the Hearing Committee and from the Governance and Nominating Committee

4.3 Resignation of Ruth Marlain DeMone, Robert Alain Deveau QC, Ludmilla Jarda, Patrick Howard MacMillan, Aaron David Martens and Audbur Vance Wirth (all effective July 1, 2019)

4.4 Appointment of Meredith MacLeod to the Code of Professional Conduct Committee; Appointment of Julia Cornish QC and Celia Melanson to the Hearing Committee

4.5 Society Committees List January 2019 – December 2020 (reflects appointments and reappointments of Council members)

UPON MOTION BY Natalie Borden and seconded by Dr. Rod Wilson that the Consent Agenda be approved as presented. MOTION CARRIED