

## PART 5 DUTIES OF LAW FIRMS

### DIVISION 1 CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS

Oct2008;Feb2009

#### Definitions

118.1 In this Division,

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

- (vi) a subsidiary of a public body whose financial statements are consolidated with those of the public body;
- (h) "reporting issuer" means:
  - (i) a reporting issuer within the meaning of an Act of a province or territory of Canada in respect of the securities law of the province or territory;
  - (ii) a corporation whose shares are traded on a stock exchange designated under section 262 of the Income Tax Act (Canada) and that operates in a country that is a member of the Financial Action Task Force;
  - (iii) a subsidiary of an entity mentioned in clause (i) or (ii) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;
- (i) "securities dealer" means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services.

## Client Identity

- 118.2 (1)** Subject to subsection (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Division.
- (2)** A lawyer's responsibilities under this Division may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.
- (3)** Sections 118.3 through 118.9 do not apply to:
- (a) a lawyer when he or she provides legal services or engages in or gives instructions in respect of any of the activities described in section 118.4 on behalf of his or her employer, or
  - (b) a lawyer
    - (i) who is engaged as an agent by the lawyer for a client to provide legal services to the client, or
    - (ii) to whom a matter for the provision of legal services is referred by the lawyer for a client, when the client's lawyer has complied with sections 118.3 through 118.9, or
  - (c) a lawyer providing legal services as part of a duty counsel program sponsored by a non-profit organization, except where the lawyer engages in or gives instructions in respect of receiving, paying or transferring funds, other than an electronic funds transfer.
- 118.3** A lawyer who is retained by a client as described in section 118.2(1) shall obtain and record the following information:
- (a) the client's full name,
  - (b) the client's business address and business telephone number, if applicable,
  - (c) if the client is an individual, the client's home address and home telephone number,
  - (d) if the client is an organization, other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
  - (e) if the client is an individual, the client's occupation or occupations,
  - (f) if the client is an organization,
    - (i) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
    - (ii) the name, position and contact information for the individual(s) authorized to provide and giving instructions to the lawyer with respect to the matter for which the lawyer is retained,
  - (g) if the client is acting for or representing a third party, information about the third party as set out in paragraphs (a) to (f) as applicable.

## Client Identity and Verification

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

### Exemptions Re: Certain Funds

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

## Client Identity and Verification

- 118.6 (1)** When a lawyer is engaged in or gives instructions in respect of any of the activities described in section 118.4, including non-face-to-face transactions, the lawyer shall take reasonable steps to verify the identity of the client, including the individual(s) described in section 118.3(f)(ii), and, where appropriate, the third party, using what the lawyer reasonably considers to be reliable, independent source documents, data or information.
- (2)** For the purposes of subsection (1), independent source documents may include:
- (a) if the client or third party is an individual, valid original government issued identification, including a driver's licence, birth certificate, provincial or territorial health insurance card [if such use of the card is not prohibited by the applicable provincial or territorial law], passport or similar record;
  - (b) if the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors, where applicable, such as
    - (i) a certificate of corporate status issued by a public body,
    - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
    - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence; and
  - (c) if the client or third party is an organization, other than a corporation or society, that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.
- (3)** When a lawyer is engaged in or gives instructions in respect of any of the activities in section 118.4 for a client or third party that is an organization referred to in subsection (2)(b) or (c), the lawyer shall make reasonable efforts to obtain, and if obtained, record,
- (a) the name and occupation of all directors of the organization, other than an organization that is a securities dealer, and
  - (b) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.
- (4)** (a) When a lawyer engages in or gives instructions in respect of any of the activities in section 118.4 for a client or third party who is an individual who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the client's identity by obtaining an attestation from a commissioner for oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subsection (2)(a):

- (b) When a lawyer, who engages in or gives instructions in respect of any of the activities in section 118.4 for a client that is an organization, is instructed by an individual described in section 118.3(f)(ii) who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the individual's identity by obtaining an attestation from a commissioner for oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subsection (2)(a).
- (5) For the purpose of subsection (4), an attestation shall be produced on a legible photocopy of the document and shall include
- (a) the name, profession and address of the person providing the attestation;
  - (b) the signature of the person providing the attestation; and
  - (c) the type and number of the identifying document provided by the client, third party or instructing individual(s).
- (6) For the purpose of subsection (4), a guarantor must be a person employed in one of the following occupations in Canada:
- (a) dentist;
  - (b) medical doctor;
  - (c) chiropractor;
  - (d) judge;
  - (e) magistrate;
  - (f) lawyer;
  - (g) notary (in Quebec);
  - (h) notary public;
  - (i) optometrist;
  - (j) pharmacist;
  - (k) professional accountant (APA [Accredited Public Accountant], CA [Chartered Accountant], CGA [Certified General Accountant], CMA [Certified Management Accountant], PA [Public Accountant] or RPA [Registered Public Accountant]);
  - (l) professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec] or Eng. [Engineer, in Quebec]);
  - (m) veterinarian;
  - (n) peace officer;
  - (o) paralegal licensee in Ontario;
  - (p) nurse; or
  - (q) school principal.
- (7) A lawyer may, and where an individual client, third party or individual described in section 118.3(f)(ii) is not physically present and is outside of Canada shall, rely on an agent to obtain the information described in subsection (2) to verify the person's identity, which may include, where applicable, an attestation described in this section, provided the lawyer and the agent have an agreement or arrangement in writing for this purpose.
- (8) A lawyer who enters into an agreement or arrangement referred to in subsection (7) shall obtain from the agent the information obtained by the agent under that agreement or arrangement.
- (9) A lawyer shall verify the identity of an individual, and the individual(s) authorized to provide and giving instructions on behalf of an organization with respect to the matter for which the lawyer is retained, upon engaging in or giving instructions in respect of any of the activities described in section 118.4.
- (10) Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity if the lawyer recognizes that person.
- (11) A lawyer shall verify the identity of a client that is an organization within 60 days of engaging in or giving instructions in respect of any of the activities described in section 118.4.

- (12) Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to section 118.6(3), the lawyer is not required to subsequently verify that identity or obtain that information.

### **Record Keeping and Retention**

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

### **Application**

- 118.8** Sections 118.2 through 118.7 of this Division do not apply to matters in respect of which a lawyer was retained before this Division comes into force but they do apply to all matters for which he or she is retained after that time regardless of whether the client is a new or existing client.

### **Criminal Activity and Duty to Withdraw**

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

*Feb2009*

## Definitions

118.1 In this Division,

- (a) “credit union central” means a central cooperative credit society, as defined in section 2 of the Cooperative Credit Associations Act, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial Act other than one enacted by the legislature of Quebec;
- (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 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;
- (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 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.
- (f) “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;
- (g) “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;
- (h) “lawyer” means, in the Province of Quebec, an advocate or a notary and, in any other province, a barrister or solicitor;
- (i) “organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;
- (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;
- (k) “public body” means:
  - (i) a department or agent of Her Majesty in right of Canada or of a province or territory;
  - (ii) an incorporated city, town, village, metropolitan authority, township, district, 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 Government Act* or similar body incorporated under the law of another province or territory;
  - (iv) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization;
  - (v) a body incorporated by or under the law of an Act of a province or territory of Canada for a public purpose; or
  - (vi) a subsidiary of a public body whose financial statements are consolidated with those of the public body.
- (l) "reporting issuer" means:
- (i) a reporting issuer within the meaning of an Act of a province or territory of Canada in respect of the securities law of the province or territory;
  - (ii) a corporation whose shares are traded on a stock exchange designated under section 262 of the *Income Tax Act* (Canada) and that operates in a country that is a member of the Financial Action Task Force;
  - (iii) a subsidiary of an entity mentioned in clause (i) or (ii) where the financial statements of the subsidiary are consolidated with the financial statements of the entity.
- (m) "securities dealer" means persons and entities authorized under provincial or territorial legislation to engage in the business of dealing 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.

*Coming into force September 30, 2019*

## Requirement to Identify Client

- 118.2 (1)** Subject to subrule (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Division, 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.
- (2)** A lawyer's responsibilities under this Division may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.
- (3)** Rules 118.3 through 118.10 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 rule 118.4 on behalf of his or her employer, or
  - (b) a lawyer
    - (i) who is engaged as an agent by the lawyer for a client to provide legal services to the client, or
    - (ii) to whom a matter for the provision of legal services is referred by the lawyer for a client, when the client's lawyer has complied with rules 118.3 through 118.10, or
  - (c) a lawyer providing legal services as part of a duty counsel program sponsored by a non-profit organization, except where the lawyer engages in or gives instructions in respect of receiving, paying or transferring funds, other than an electronic funds transfer.

*Coming into force September 30, 2019*

**118.3** A lawyer who is retained by a client as described in rule 118.2(1) 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
  - (iv) the name, position and contact information for the individual authorized to provide and give instructions to the lawyer with respect to the matter for which the lawyer is retained,
- (c) if the client is acting for or representing a third party, information about the third party as set out in paragraphs (a) or (b) as applicable.

*Coming into force September 30, 2019*

### **Client Identity and Verification**

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

*Coming into force September 30, 2019*

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

**118.5 (1)** Rule 118.6 does not apply where the client is a financial institution, public body or reporting issuer.

**(2)** Rule 118.6 does not apply in respect of funds,

- (a) paid by or to a financial institution, public body or a reporting issuer;
- (b) received by a lawyer from the trust account of another lawyer;
- (c) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- (d) paid or received to pay a fine, penalty or bail; or
- (e) paid or received for professional fees, disbursements or expenses.

**(3)** Rule 118.6 does not apply to an electronic funds transfer.

*Coming into force September 30, 2019*

### **Client Identity and Verification**

**118.6 (1)** When a lawyer is engaged in or gives instructions in respect of any of the activities described in rule 118.4, the lawyer must:

- (a) obtain from the client and record, with the applicable date, information about the source of funds described in rule 118.4, and
- (b) verify the identity of the client, including any individual described in 118.3(b)(iv), and, where appropriate, the third party using the documents or information described in 118.6(6).

**(2)** A lawyer may rely on an agent to obtain the information described in 118.6(6) to verify the identity of an individual client, third party or individual described in 118.3(b)(iv) provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in 118.6(4).

**(3)** Notwithstanding 118.6(2), where an individual client, third party or individual described in 118.3(b)(iv) is not physically present in Canada, a lawyer must rely on an agent to obtain the information described in 118.6(6) to verify the person's identity, provided the lawyer and the agent have an agreement or arrangement in writing for



the purpose, as described in 118.6(4).

- (4)** A lawyer who enters into an agreement or arrangement referred to in 118.6(2) or (3) 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 118.6(6).
- (5)** A lawyer may rely on the agent's previous verification of an individual client, third party or an individual described in 118.3(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 rule, 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 rule, for the purpose of verifying identity under 118.6(6).
- (6)** For the purposes of 118.6(1)(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 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 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.
  - (b) For the purposes of 118.6(6)(a)(iii) (A) to (C), the information referred to must be from different sources, and 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 at least 12 years of age but not more than 15 years of age, the lawyer may refer to information under 118.6(6)(a)(iii)(A) to (C), that contains the name and address of one of the individual's parents or their guardian and verifies 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 any other similar record that confirms its existence as an organization.

- (7) When a lawyer is engaged in or gives instructions in respect of any of the activities in rule 118.4 for a client or third party that is an organization referred to in 118.6(6)(e) or (f), the lawyer must:
- (a) 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
  - (b) 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 known beneficiaries and settlors of the trust, and
    - (iii) in all cases, information establishing the ownership, control and structure of the organization.
- (8) A lawyer must take reasonable measures to confirm the accuracy of the information obtained under 118.6(7).
- (9) A lawyer must keep a record, with the applicable date, that sets out:
- (a) the efforts made under 118.6(7)(b), and
  - (b) the measures taken to confirm the accuracy of the information obtained under 118.6(7).
- (10) If a lawyer is not able to obtain the information referred to in 118.6(7) or to confirm the accuracy of that information in accordance with 118.6(8), 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 118.4, 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 118.6(10)(b) and (c).
- (11) A lawyer must verify the identity of:
- (a) a client who is an individual, and
  - (b) the individual authorized to provide and give instructions on behalf of an organization with respect to the matter for which the lawyer is retained,
- upon engaging in or giving instructions in respect of any of the activities described in 118.4.
- (12) 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.
- (13) A lawyer must verify the identity of a client that is an organization upon engaging in or giving instructions in respect of activities described in 118.4, but in any event no later than 30 days thereafter.
- (14) Where a lawyer has verified the identity of a client that is an organization and obtained information pursuant to 118.6(7), 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.

*Coming into force September 30, 2019*

## Record Keeping and Retention

- 118.7 (1)** 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 118.6(1).
- (2) The documents referred to in 118.6(1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

- (3) A lawyer must retain a record of the information, with the applicable date, and any documents obtained for the purposes of 118.3 118.6(7) and 118.10(2) and copies of all documents received for the purposes of 118.6(1) for the longer of
- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing service to the client, and
  - (b) a period of at least six years following completion of the work for which the lawyer was retained.

*Coming into force September 30, 2019*

### Application

- 118.8** Rules 118.2 through 118.7 of this Division do not apply to matters in respect of which a lawyer was retained before this Division comes into force but they do apply to all matters for which the lawyer is retained after that time, regardless of whether the client is a new or existing client.

*Coming into force September 30, 2019*

### Criminal Activity, Monitoring and Duty to Withdraw

- 118.9 (1)** If in the course of obtaining the information and taking the steps required in rules 118.3 and 118.6(1), (7) or (10), a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.
- (2) This rule applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Division comes into force.

*Coming into force September 30, 2019*

- 118.10(1)** 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 118.4, the lawyer must:
- (a) monitor on a periodic basis the professional business relationship with the client for the purposes of determining 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 118.4, and
    - (iii) the client's instructions in respect of transactions
 are consistent with the purpose of the retainer and the information obtained about the client as required by these rules;
  - (b) monitor on a periodic basis the professional business relationship with the client for the purposes of assessing whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct.
- (2) 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 118.4, the lawyer must keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of 118.10(1)(a).

*Coming into force September 30, 2019*

- 118.11(1)** If while retained by a client, including when taking the steps required in 118.10, a lawyer knows or ought to know that the lawyer is or would be assisting the client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.
- (2) This rule applies to all matters for which a lawyer was retained before this Division comes into force and to all matters for which the lawyer is retained after that time.

*Coming into force September 30, 2019;Feb2009*

## DIVISION 2 INTERPRETATION AND AUTHORITY

### Interpretation

- 119 (1)** In this Part,
- (a) **"Accountant"** means a public accounting firm as defined in the *Chartered Professional Accountants Act* (Alberta);
  - (b) **"Accountant's Report"** means the annual report prepared by the law firm's accountant in accordance with subrule 119.30(4);
  - (c) **"Approved depository"** means a branch in Alberta of
    - (i) a chartered bank or trust company that is a member of the Canada Deposit Insurance Corporation,
    - (ii) a Credit Union or Caisse Populaire that is a member of the Credit Union Deposit Guarantee Corporation, and
    - (iii) a treasury branch established under the *Alberta Treasury Branches Act*,  
and in respect of a law firm practising law from an office in the City of Lloydminster, includes a trust account in
    - (iv) a branch of a Canadian chartered bank located in the portion of the City of Lloydminster within Saskatchewan,
    - (v) a branch of a Credit Union or Caisse Populaire located in the portion of the City of Lloydminster within Saskatchewan, that is a member of the Credit Union Deposit Guarantee Corporation, and
    - (vi) a branch of a corporation located in the portion of the City of Lloydminster within Saskatchewan, if that corporation is registered as a loan corporation or trust corporation under the *Loan and Trust Corporations Act* (Alberta);
  - (d) **"Auditor"** means a person designated by the Society to investigate, inspect, audit or review the records of the law firm or lawyer;
  - (e) **"Client"** in relation to a law firm, includes a person or group of persons from whom or on whose behalf money is held by the law firm, if the money was received by the law firm in the course of its law practice and in relation to the provision by the law firm of legal services;
  - (f) **"Disbursement"** means an amount paid by a law firm on behalf of a client of the law firm;
  - (g) **"Designated Filing Date"** means the fiscal year end date of December 31;
  - (h) **"Due Date"** means March 31;
  - (i) **"Electronic Data Upload"** means the annual report prepared by the law firm in accordance with subrule 119.30(5) or (6);
  - (j) **"Executive Director"** includes the Manager, Trust Safety, and any other person designated by the Executive Director to perform any of the duties assigned to the Executive Director;
  - (k) **"General account"** means an account, other than a trust account, maintained by a law firm in connection with the firm's law practice;
  - (l) **"Late Filing Fee"** means the late filing fee; cumulative late filing fee; and any additional fee that must be paid by a law firm to the Society for failure to file the required reports by the Due Date;
  - (m) **"Law Firm Self-Report"** means the annual report prepared by the law firm in accordance with subrule 119.30(3);
  - (n) **"Lawyer"** means an active member of the Law Society;
  - (o) **"Lawyer's law firm"** in relation to a particular lawyer, means the law firm with which the lawyer practises, whether as an owner or an associate of the firm;
- (o) **"Lawyer's law firm"** in relation to a particular lawyer, means the law firm with which the lawyer

practises, whether as an owner, an associate or an employee of the firm;

*Coming into force TBD*

(p) **"Money"** includes any negotiable instrument;

(p) **"Money"** means a negotiable instrument and includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders, and electronic transfer of deposits at financial institutions;

*Coming into force September 30, 2019*

(q) **"Pooled trust account"** means an interest-bearing trust account required to be maintained for one or more clients at an approved depository pursuant to section 126(1) of the Act and designated as a trust account in the name of the law firm;

(r) **"Prescribed financial records"** means records required to be maintained in accordance with rules 119.36, 119.37, 119.39 and 119.40;

(s) **"Responsible Lawyer"** means a lawyer designated as a Responsible Lawyer under Rule 119.4;

(t) **"Separate interest-bearing account"** means

(i) trust money deposited with an approved depository in an interest-bearing form either for a fixed period or in a separate account, or

(ii) a Treasury Bill purchased with trust money through an approved depository,

where the trust money or Treasury Bill is deposited or purchased on behalf of a specified client pursuant to an arrangement referred to in section 126(3) of the Act;

(u) **"Trust account"** means a pooled trust account or a separate interest-bearing account;

(v) **"Trust money"** means

(i) money entrusted to or received by a lawyer in the lawyer's capacity as a barrister and solicitor in connection with the lawyer's practice in Alberta and the provision by the lawyer of legal services, and that belongs in whole or in part to a client of the law firm or is received on a client's behalf or to the direction or order of a client, or

(ii) money received by a lawyer as a general retainer, subject to subclause (iv), or on account of fees for services not yet rendered or on account of disbursements not yet made,

but does not include

(iii) money received on account of the law firm's fees or disbursements respecting services already performed and for which a written billing has been rendered and delivered or for which a written billing is rendered and forwarded forthwith after receipt of the money, or

(iv) money received as a general retainer where the client has signed a written acknowledgment, to be retained by the law firm in accordance with rule 119.37(1)(f) that

(A) the money is non-refundable and belongs to the law firm immediately upon receipt,

(B) the law firm is not obliged either to account for the money or render services with respect to the money, and

(C) services may never be rendered in respect of the money;

(w) **"Trust property"** means any property of value that belongs to a client or is received on a client's behalf, other than trust money that can be negotiated or transferred by a lawyer or law firm.

*Nov2010;Jun2017*

## Required Approvals for Lawyers and Law Firms

**119.1** A law firm shall, before commencing the carrying on of its law practice in Alberta, obtain and at all times thereafter maintain, the following approvals:

- (a) designation of a responsible lawyer; and
- (b) authorization to maintain a trust account

unless specifically exempted from these requirements by the Executive Director.

*Nov2010*

- 119.1.1** A lawyer who has obtained an exemption from the professional liability indemnity assessment levy under rule 148(1)(b) or (c) may operate a trust account, provided that
- (a) all trust money deposited into that trust account is disbursed for the benefit of the person who employs or contracts with that lawyer, and
  - (b) the lawyer otherwise complies with the rules set out in this Part as if the lawyer were the sole owner of a law firm, and shall be deemed as such for the purposes of this Part.

*Dec2013;Jul2019*

- 119.2** Subject to rule 119.1.1, only a lawyer practicing with a law firm approved to operate a trust account is permitted to receive trust money, unless a specific alternate arrangement is approved by the Executive Director or Manager, Trust Safety, where

- (a) a lawyer approved as a responsible lawyer is permitted to receive trust money that will be held in the trust account of a law firm approved to operate a trust account where he or she is not practicing; or
- (b) a law firm approved to operate a trust account is permitted to hold trust money received by a lawyer approved as a responsible lawyer, who is not practicing with that law firm.

*Nov2010;Dec2013;Jun2016*

### DIVISION 3 APPROVAL OF RESPONSIBLE LAWYER AND TRUST ACCOUNT

#### QUALIFYING AS A RESPONSIBLE LAWYER

##### Accountability as Responsible Lawyer

- 119.3 (1)** The responsible lawyer is accountable for
- (a) the controls in relation to and the operation of all law firm trust accounts and general accounts,
  - (b) the accuracy of all reporting and filing requirements of the law firm,
  - (c) ensuring all reporting and filing requirements of the law firm are met,
  - (d) ensuring all payment requirements of the law firm are met, and
  - (e) any of subrule (1)(a), (b), (c) or (d) that have been delegated to another person.
- (2)** A lawyer shall not serve as responsible lawyer with more than one law firm unless authorized to do so by the Executive Director.
- (3)** A lawyer may apply to the Executive Director to be designated as an alternate responsible lawyer.
- (4)** There must be only one person acting as responsible lawyer for a law firm at any one time unless specifically exempted from this requirement by the Executive Director.

*Nov2010;Apr2012;Jun2017*

##### Responsible Lawyer

- 119.4** To be or continue to be designated as a responsible lawyer a lawyer must
- (a) be an active member of the Society,
  - (b) be covered by the professional liability indemnity program or have an exemption under rule 148(1)(b) or (c),
  - (c) be covered by the misappropriation indemnity program,
  - (d) reside in Canada,
  - (e) make an application for approval as a responsible lawyer to the Executive Director, and

- (f) fulfill all conditions required for the approval as a responsible lawyer.

*Nov2010;Dec2013;Jun2014;Jul2019*

### **Review of Application for Responsible Lawyer**

- 119.5 (1)** An application to be designated as a responsible lawyer or as alternate responsible lawyer must be submitted to the Executive Director or Manager, Trust Safety in the form and prescribed filing method designated by the Executive Director.
- (2)** In the course of a review under this rule the Executive Director or Manager, Trust Safety may
- (a) approve the application with or without conditions,
  - (b) deny the application, and/or
  - (c) require the applicant to answer any inquiries or to furnish any records that the Executive Director or Manager, Trust Safety considers relevant for the purpose of the review.
- (3)** The Executive Director or Manager, Trust Safety shall provide the applicant with a copy of the written decision.
- (4)** A decision of the Manager, Trust Safety is deemed to be a decision of the Executive Director and any conditions must be fully complied with by the applicant.
- (5)** If the applicant does not accept the decision of the Executive Director, the applicant may appeal the decision to the Trust Safety Committee.

*Nov2010;Sep2014;Jun2016*

- 119.6** Repealed June 2016.

*Nov2010;Jun2016*

### **Revocation and Resignation of Responsible Lawyer**

- 119.7 (1)** If a responsible lawyer is unable or unwilling to discharge the duties of a responsible lawyer, he or she shall, a minimum of 14 days before the date he or she intends to cease to be responsible lawyer;
- (a) advise the Society of
    - (i) the intention to cease to be the responsible lawyer, and
    - (ii) the effective date of the responsible lawyer's departure (the "responsible lawyer departure date");
  - (b) ensure the preparation of a final Law Firm Self-Report;
  - (c) comply with any outstanding audit requirements;
  - (d) ensure a replacement responsible lawyer by confirming
    - (i) the necessary application has been filed with the Society, and
    - (ii) the necessary steps have been taken to enable the transfer of the responsible lawyer designation to another qualified member of the law firm.
- (2)** The law firm must file a final Law Firm Self-Report within 14 days of the responsible lawyer departure date.
- (3)** A replacement responsible lawyer assumes the responsibilities of and is accountable as the responsible lawyer effective the date upon which the Executive Director or Manager, Trust Safety provides approval of the arrangement.
- (4)** If the responsible lawyer fails to comply with subrule (1), the Executive Director or Manager, Trust Safety shall send notice to all members of the responsible lawyer's law firm advising that the law firm is required to have a responsible lawyer and must comply with subrule (1) by a given date, and notice that failure to comply may result in the revocation of approval to operate a trust account.
- (5)** If, at any time, the Executive Director or Manager, Trust Safety is of the opinion a responsible lawyer does not continue to be suitable to fulfill their duties, the Executive Director or Manager, Trust Safety shall do any of the following:
- (a) attach conditions to the responsible lawyer approval; or
  - (b) revoke the responsible lawyer's status as a responsible lawyer.

Nov2010;Jun2016

## QUALIFYING FOR A TRUST ACCOUNT

### Qualifying for a Trust Account

- 119.8 (1)** Every law firm shall obtain approval from the Society before opening a trust account, and thereafter keep current the approval to maintain and operate a trust account.
- (2)** To satisfy the requirements in subrule (1) a law firm must
- (a) have at least one lawyer who is an active member of the Society and is resident in Canada,
  - (b) carry on business in Canada,
  - (c) include a lawyer who has been designated a responsible lawyer pursuant to rule 119.4, and
  - (d) use a Society approved accounting program unless specifically exempted from this requirement by the Executive Director or Manager, Trust Safety.

Nov2010;Jun2016

### Review of Application for Trust Account

- 119.9 (1)** An application for approval to open, operate and maintain a trust account must be submitted to the Manager, Trust Safety by the responsible lawyer of a law firm and must be in the form and prescribed filing method designated by the Executive Director.
- (2)** After review, the Executive Director or Manager, Trust Safety may
- (a) request that the applicant provide further information or documentation,
  - (b) approve the application, with or without conditions,
  - (c) deny the application, and
  - (d) require the applicant to pay all or part of the costs incurred in any examination, review, audit or completion of the law firm's financial records or investigation in relation to the applicant's law firm.
- (3)** The Executive Director or Manager, Trust Safety shall provide the applicant with a copy of the written decision.
- (4)** A decision of the Manager, Trust Safety is deemed to be a decision of the Executive Director and any conditions must be fully complied with by the applicant.
- (5)** If the applicant does not accept the decision of the Executive Director or Manager, Trust Safety, the applicant may appeal the decision to the Trust Safety Committee.

Nov2010;Sep2014;Jun2016

### Term of Trust Account Approval

- 119.10 (1)** Approval to open, operate and maintain a trust account may be revoked if a law firm does not have an approved responsible lawyer unless timely and adequate steps have been taken to comply with the requirements of rule 119.7.
- (2)** If, at any time the Executive Director or Manager, Trust Safety
- (a) has received a notice pursuant to rule 119.34, or
  - (b) is of the opinion a law firm or responsible lawyer is failing to
    - (i) comply with these rules, and/or
    - (ii) actively assess and/or respond to risks to trust accounts,
- then the Executive Director or Manager, Trust Safety shall do any of the following:
- (c) attach conditions to the approval to open, operate and maintain a trust account; or
  - (d) revoke the approval to open, operate and maintain a trust account..

Nov2010;Jun2016



## TRUST SAFETY COMMITTEE DECISIONS

### Trust Safety Committee

- 119.11 (1)** The Trust Safety Committee is established.
- (2)** The Trust Safety Committee shall consider any matters under Part 5 of the Rules and take such action it considers necessary.

*Nov2010*

### Jurisdiction of the Trust Safety Committee

- 119.12 (1)** The Trust Safety Committee may conduct appeals from decisions under rules 119.5, 119.7(5), 119.9, 119.10(2)(c) or (d), 119.34 and 119.35.
- (2)** The Trust Safety Committee may sit in panels of 3 members appointed by the Chair or Vice-Chair.
- (3)** All 3 members of a panel of the Trust Safety Committee constitute a quorum at a meeting of the panel.

*Nov2010;Jun2016*

### Appeal of Decisions of the Executive Director or Manager Trust Safety

- 119.13 (1)** An applicant may appeal a decision of the Executive Director or Manager, Trust Safety, under rules 119.5, 119.7(5), 119.9, 119.10(2)(c) or (d), 119.34 and 119.35 to the Trust Safety Committee.
- (2)** Notice of intention to appeal must be provided in writing to the Executive Director no more than 14 days after notice of the Executive Director or Manager, Trust Safety's decision is provided to the applicant.
- (3)** Appeals to the Trust Safety Committee will be dealt with as appeals based on the record and the Committee shall be entitled to review and consider the written decision of the Executive Director or Manager, Trust Safety as part of the materials before it.
- (4)** Upon determining an appeal, the Trust Safety Committee may
- (a)** uphold the original decision to approve or deny an application, without modification,
  - (b)** uphold the original decision to approve an application but add, remove or amend conditions,
  - (c)** reverse the original decision to approve an application, or
  - (d)** reverse the original decision to deny an application and determine any conditions for approval.
- (5)** The Trust Safety Committee shall have the discretion to order the applicant to pay the costs of the appeal, in whole or in part, regardless of the outcome of the application (including where the application is withdrawn). Unless a date for payment of costs is specified, the costs shall be payable immediately.

*Nov2010;Jun2016*

- 119.14** Repealed June 2016.

*Nov2010;Jun2016*

### Panel Process

- 119.15 (1)** To commence a hearing under this part the Executive Director shall serve the applicant with a Letter of Appointment of the panel and notice of the materials to be provided to the panel to decide the matter.
- (2)** The Trust Safety Committee panel shall make its decision on a matter on the basis of
- (a)** the materials that were before the Executive Director or Manager, Trust Safety, and
  - (b)** the written reasons for the decision of the Executive Director or the Manager, Trust Safety.
- (3)** In making its decision on a matter, the Trust Safety Committee panel may also consider either or both of the following
- (a)** any additional materials that may be requested by the panel from the applicant or the Society; and
  - (b)** any additional materials provided to the panel by the applicant or the Society.
- (4)** The panel hearing the matter shall determine the process to be followed in accordance with the Act, the Rules, the principles of natural justice and the circumstances of the matter. In the event the panel requests oral

submissions, the panel shall comply with rule 98 as to persons present at a hearing, exhibits and records of the Society.

- (5) The panel shall provide a written decision and written reasons for its decision to the Executive Director.
- (6) On receipt of the written decision and reasons, the Executive Director shall provide a copy of the written decision and reasons to the applicant.
- (7) The decision of the panel shall be final.

*Nov2010;Jun2016;Sep2016*

## DIVISION 4 FINANCIAL RECORDS AND MANDATORY PROCEDURAL CONTROLS

### ACCOUNT OPERATION REQUIREMENTS

#### Pooled Trust Accounts and General Accounts

- 119.16 (1)** Every law firm shall maintain
- (a) at least one pooled trust account in the name of the law firm, and
  - (b) at least one general bank account in the name of the law firm
- unless specifically exempted from any of these requirements by the Executive Director.
- (2) Every trust account must be maintained with an approved depository in the name of the law firm and designated as a trust account.
  - (3) Every law firm shall instruct each approved depository with which it maintains a pooled trust account to remit the interest earned on the bank account to the Alberta Law Foundation at least semi-annually in each year.
  - (4) Every law firm shall maintain the bank accounts referred to in subrule (1) in the province of Alberta.

*Nov2010*

### TRUST TRANSACTIONS

#### Prohibition on Use of Trust Accounts

- 119.17** The use of a trust account is prohibited where no legal services are provided in relation to the trust money in the trust account.

*Nov2010*

**119.17(1)** A lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only trust money that is directly related to legal services that the lawyer or the lawyer's law firm is providing.

- (2) A lawyer must pay out trust money held in a trust account as soon as practicable upon completion of the legal services to which the trust money relates.

*Coming into force September 30, 2019;Nov2010*

#### A lawyer or law firm must not benefit from trust money in a trust account

- 119.17.1 (1)** A lawyer or law firm must not
- (a) receive, or
  - (b) permit that any other person, other than the client for whose benefit the funds are held or the Alberta Law Foundation, receive,
- a benefit in any way calculated or determined as a consequence of depositing or maintaining funds in a trust account.
- (2) Subrule (1) does not apply to an adjustment of trust account fees charged by the deposit taking institution.

*Apr2012*

## Conditions Upon Which Money is Held in Trust

- 119.18 (1)** Only a law firm with an approved trust account may hold trust money.
- (2)** When receiving trust money, a lawyer shall, whenever it is reasonably practicable to do so, obtain the following, in writing:
- (a)** confirmation that the money is to be held in trust;
  - (b)** any conditions upon which the money is to be held in trust;
  - (c)** any instructions directing that the money be paid to a person other than the client.

Nov2010

## Receiving Trust Money

- 119.19 (1)** Every law firm that receives trust money shall deposit the money into a pooled trust account of the law firm on or before the next banking day.
- (2)** Trust money may not be withdrawn from a pooled trust account of a law firm or transferred to any other account until subrule (1) has been completed.
- (3)** When trust money deposited by a law firm in a pooled trust account pursuant to subrule (1) consists of a credit card slip, the law firm shall pay or transfer from its general account to the operating trust account an amount equal to any discount deducted from the total amount of the credit card slip concurrently with the deposit.
- (4)** A trust account of a law firm must be used only for the deposit and retention of trust money received by the law firm and not as a general account by or for the law firm, except as follows:
- (a)** money belonging to the law firm may be paid into a trust account of the firm with respect to an isolated transaction if the money is paid out expeditiously;
  - (b)** money paid to the law firm which belongs in part to the law firm and in part to another person must be paid into a trust account where it is impractical to split the payment;
  - (c)** money withdrawn from a trust account by mistake or accident or in contravention of these rules must be replaced forthwith;
  - (d)** the law firm may maintain not more than \$500 of the firm's own money in each of the firm's pooled trust accounts.
- (5)** A lawyer or law firm is permitted to handle its own legal transactions through a trust account as long as the money is handled in the normal course of a legal file and the money is paid out expeditiously when the matter is concluded.

Nov2010

## Separate Interest-Bearing Accounts

- 119.20 (1)** A law firm may, after first depositing trust money into a pooled trust account, transfer trust money into a separate interest-bearing account, subject to the following:
- (a)** the separate interest-bearing account must be opened in the name of the law firm in trust for the client and the name of the bank account shall include a reference to the specific client;
  - (b)** the separate interest-bearing account must be recorded in the law firm trust records.
- (2)** Where interest is earned on a separate interest-bearing account held for a client, the amount of the interest must be credited to the client's trust ledger account when the law firm is informed of the amount of the interest earned, but, in any event, not later than the next monthly bank reconciliation of the separate interest-bearing account required to be made pursuant to rule 119.36(4)(d)(i).
- (3)** Money may be transferred by a law firm
- (a)** from a pooled trust account of the law firm to a separate interest-bearing account maintained by the firm in the same branch of the approved depository, or
  - (b)** from a separate interest-bearing account maintained by the law firm to a pooled trust account maintained by the firm in the same branch of the approved depository,
- by a document signed in compliance with rule 119.22(2) and showing the amount and date of the transfer, the pooled trust account or separate interest-bearing account involved and sufficient information to identify the client.

- (4) Withdrawals from a separate interest-bearing account must be returned to a pooled trust account before being disbursed.

Nov2010;Nov2012

### **Certification of Funds Prior to Signing Trust Withdrawals and Transfers**

- 119.21 (1)** All withdrawals and transfers from a trust account must be signed by a lawyer of the law firm, unless otherwise authorized in writing by the Executive Director.
- (2) A signature by the lawyer pursuant to subrule (1) is deemed to certify that
- (a) the trust accounting records are current to the date of the signature,
  - (b) the withdrawal of money is properly required for payment for the legal matter for which the law firm was retained by the client,
  - (c) the money is not subject to trust conditions or restricted for another purpose,
  - (d) the lawyer has the explicit or implicit authority of the client to make the withdrawal, pursuant to rule 119.18(2),
  - (e) the client has sufficient money in the trust account to cover the withdrawal, and
  - (f) the trust bank account has sufficient funds to permit the withdrawal to be completed.
- (3) Money must not be withdrawn from a trust account unless
- (a) the money is properly required for
    - (i) a payment to the client for whom the money is held, or
    - (ii) a payment to any other person but only if the law firm does so pursuant to the authorization of the client for whom the money is held,
  - (b) the money is properly required for payment of a billing for fees or disbursements, but only if the withdrawal is made in compliance with subrule (2),
  - (c) the money is being transferred directly into another trust account of the law firm,
  - (d) the money has by inadvertence been paid into a trust account in contravention of these rules,
  - (e) money paid to the law firm has been deposited in a trust account because the payment to the law firm belonged in part to the law firm and in part to another, or
  - (f) the money is paid pursuant to a court order.
- (4) Money may be withdrawn from a trust account of a law firm pursuant to subrule (3)(b), if not held for a designated purpose, only in accordance with the following conditions:
- (a) money may be paid from the trust account to the law firm to reimburse the firm for a disbursement made by it if the law firm has prepared a billing respecting the disbursement and either delivers the billing to the client before the withdrawal or forwards the billing to the client concurrently with the withdrawal;
  - (b) money may be paid from the trust account to the law firm to pay for the law firm's fees for services if the law firm has prepared a billing for the services, the billing relates to services actually provided and is not based on an estimate of the services, and the firm either delivers the billing to the client before the withdrawal or forwards the billing to the client concurrently with the withdrawal.
- (5) When money in a law firm's trust account becomes payable to the firm, subject to subrules (3) and (4), the money must be withdrawn no later than 1 month after the law firm is entitled to the funds.

Nov2010

### **Trust Withdrawals by Cheque**

- 119.22 (1)** Except as provided in rules 119.23, 119.42, and 119.46, trust money must be withdrawn by consecutively numbered cheques which, at the time the cheque is signed by the lawyer shall
- (a) clearly indicate that it is a cheque drawn on a trust account,
  - (b) not be made payable to cash or bearer except where required to return cash to a person under rule 119.38(5)(d),

- (c) be made payable to the ultimate recipient,
  - (d) if the payee is a financial institution, provide a reason for payment in the memo field of the cheque,
  - (e) be dated, but not post-dated, and
  - (f) be fully completed as to the payee and amount before being signed.
- (2) A cheque referred to in subrule (1) or a transfer made pursuant to rule 119.20(3) must bear the signature or counter-signature of a lawyer authorized by that law firm to sign it, except that, in special circumstances, the Executive Director, on application and with or without conditions, may authorize
- (a) the withdrawal of money from a trust account by cheques signed by one or more persons who are not lawyers, or
  - (b) transfers of money pursuant to rule 119.20(3) by documents signed by one or more persons who are not lawyers.

Nov2010;Nov2012

### Trust Withdrawals Greater than \$25 million

- 119.23** A law firm may electronically transfer an amount greater than \$25 000 000 provided the firm meets all requirements set forth under rule 119.42.

Nov2010;Nov2012

### Additional Obligations Related to Trust Money

- 119.24 (1)** A law firm shall at all times maintain money on deposit in the law firm's trust account or accounts in an aggregate amount sufficient to meet all obligations with respect to money held in trust for the firm's clients.
- (2) If a lawyer becomes aware of a deficiency in a client's ledger account, the lawyer is required to immediately notify the law firm's responsible lawyer of the deficiency and of any relevant information regarding the reason for the deficiency.
- (3) If a responsible lawyer becomes aware of a deficiency in a client's ledger account, the responsible lawyer is required to immediately notify the Executive Director of the deficiency in the form and prescribed filing method designated by the Executive Director and provide any relevant information regarding the reason for the deficiency if
- (a) the law firm does not correct the deficiency within 7 days of the time the shortage arose, or
  - (b) the deficiency is an amount greater than \$2500, regardless of when the deficiency is corrected.
- (4) Subject to subrule (5), a trust account may not be closed until the law firm's obligations in relation to the money in the account are discharged by doing one or more of the following:
- (a) distributing the money to the persons entitled to it;
  - (b) making written arrangements for the transfer of the money to a trust account of another law firm and the assumption by that other law firm of the trust obligations applicable to that money;
  - (c) transferring the money to another trust account of the same law firm;
  - (d) paying the money to the Society in accordance with section 117 of the Act;
  - (e) paying the money into court pursuant to a court order.
- (5) A trust account of a law firm may be closed before the law firm's obligations in relation to the money in the account are discharged if the trust account is transferred to a lawyer who is appointed under the Act as the custodian of the law firm's practice.
- (6) A lawyer shall, on being requested to do so by a client, provide to the client any information sought by the client with respect to
- (a) the balance of trust money held for the client at the time of the request or at any previous time and how the balance is or was calculated, or
  - (b) any transactions relating to trust money held for the client.
- (7) A law firm is required to immediately report to the Executive Director any theft of money by any person from the law firm's trust accounts or general accounts.

Nov2010;Sep2014

**Transfers between Client Ledgers**

**119.25** Trust money may be transferred between client files but only pursuant to a transfer document signed by a lawyer showing the date of transfer, source file, destination file and amount.

Nov2010

**SPECIALIZED CIRCUMSTANCES****Lawyers Acting in a Representative Capacity****119.26 (1)**

- (a) A lawyer is acting in a representative capacity if the lawyer is
- (i) the personal representative, executor or administrator, or one of the personal representatives, executors or administrators, of the estate of a deceased person,
  - (ii) a trustee, or one of the trustees, of a trust under an appointment made pursuant to a trust instrument creating the trust,
  - (iii) a trustee, or one of the trustees, of the property of another person under an appointment by a court,
  - (iv) a *de facto* trustee, or
  - (v) an attorney, or one of the attorneys, of a person under a power of attorney, whether general or special, enduring or otherwise.
- (b) "Estate" means the estate or property in respect of which a lawyer acts in a representative capacity.

**(2)** Rule 119.19(1) does not apply to trust money received by a lawyer acting in a representative capacity and money so received need not be paid into a trust account of the lawyer's law firm or recorded in the prescribed financial records of the lawyer's law firm

- (a) if the total trust money held at one time in a representative capacity or the total combined receipts and disbursements made in a representative capacity in any one reporting year does not exceed \$20 000; or
- (b) if the lawyer
- (i) notifies the Manager, Trust Safety, in writing, that the lawyer is acting in a representative capacity, within 14 days of the lawyer commencing to so act, and
  - (ii) files with the Manager, Trust Safety, an undertaking to submit, on demand
    - (A) particulars relating to the lawyer's appointment or assumption of a representative capacity and a list of the beneficiaries of the estate or trust together with their last known address, and
    - (B) to the extent that a lawyer is lawfully able, the books, records, accounts and documentation of the estate or trust in a form sufficient to accommodate an examination, review, audit or investigation ordered by the Executive Director and to co-operate with the Society's auditor or investigator in the conduct of any examination, review, audit or investigation so ordered.

Nov2010

<p><b>119.26 (1)</b> A lawyer is acting in a representative capacity if the lawyer is</p> <ul style="list-style-type: none"> <li>(a) the personal representative, executor or administrator, or one of the personal representatives, executors or administrators, of the estate of a deceased person,</li> <li>(b) a trustee, or one of the trustees, of a trust under an appointment made pursuant to a trust instrument creating the trust,</li> <li>(c) a trustee that holds property in trust for third parties until the occurrence of a condition or event that is specified in an agreement between the third parties,</li> </ul>
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- (d) a trustee, or one of the trustees, of the property of another person under an appointment by a court, or
  - (e) an attorney, or one of the attorneys, of a person under a power of attorney, whether general or special, enduring or otherwise.
- (2) Rule 119.19(1) does not apply to money received by a lawyer acting in a representative capacity.
- (3) When a lawyer receives money in a representative capacity, the money must not be paid into a trust account of the lawyer's law firm but must be paid into a separate trustee account that has been established by the lawyer for that purpose.
- (4) The lawyer must
- (a) notify the Manager, Trust Safety, in writing, that the lawyer is acting in a representative capacity, within 14 days of receiving the money;
  - (b) submit particulars relating to the lawyer's appointment and a list of the beneficiaries of the estate or trust, together with their last known addresses; and
  - (c) file with the Manager, Trust Safety, an undertaking to submit, on demand, the books, records, accounts and documentation of the estate or trust in a form sufficient to accommodate an examination, review, audit or investigation ordered by the Executive Director and to co-operate with the Society's auditor or investigator in the conduct of any examination, review, audit or investigation that may be ordered.

*Coming into force September 30, 2019; Nov 2010*

## Undisbursable Trust Money

- 119.27 (1)** An application to the Executive Director under section 117(1)(a) of the Act must be submitted using the prescribed filing method on
- (a) a short form application as designated by the Executive Director, if the subject amount is under \$50, or
  - (b) a long form application as designated by the Executive Director, if the subject amount is \$50 or more.
- (2) A claim made under section 117(5) of the Act must be in a form designated by the Executive Director.
- (3) A claim made under section 117(5) of the Act must be adjudicated by
- (a) the Executive Director, if the claim does not exceed \$2500, or
  - (b) the Trust Safety Committee, in any other case.
- (4) The Executive Director or the Trust Safety Committee may, for the purpose of coming to its decision respecting a claim
- (a) request of the claimant any further information and documents related to the claim that the Executive Director or the Trust Safety Committee reasonably requires,
  - (b) make or authorize any enquiries or investigations as it considers necessary, and
  - (c) rely wholly or partly on the information and documents received by it.
- (5) The Executive Director or the Trust Safety Committee shall, on considering a claim,
- (a) approve the claim, with or without conditions, or
  - (b) reject the claim.
- (6) The Executive Director shall report his/her decisions to the Trust Safety Committee in accordance with the directions of the Trust Safety Committee.

*Nov 2010; Sep 2014*

## Obligations Related to Clients' Property

- 119.28** If a law firm receives trust property, it shall
- (a) promptly notify the client of its receipt of the trust property, unless the responsible lawyer is satisfied that the client is already aware of the receipt of the trust property by the law firm,

- (b) if the trust property does not on its face contain any identification of the client, immediately label or otherwise identify the trust property as property of the client,
- (c) maintain adequate records of the trust property,
- (d) keep the trust property safe and secure and in such a manner that it cannot be examined by persons not entitled to do so, and
- (e) provide to the client any information sought by the client with respect to the trust property.

Nov2010

## Custodianships

- 119.29** Where a lawyer's property or legal business comes under the administration of a custodian, the rules in this Part or any provisions of them, may be suspended by the chair or vice-chair of the Conduct Committee, so that the administration by the custodian is governed by the provisions of the Act, any guidelines adopted by the Benchers with respect to custodianships, and any court order.

Nov2010

## DIVISION 5 REPORTING AND AUDIT REQUIREMENTS

### REPORTING REQUIREMENTS

#### Reporting Requirements

- 119.30 (1)** A law firm shall, within 4 months of being approved to operate a trust account, retain an accountant to complete a Start Up Report and provide a copy to the Executive Director.
- (2)** The Start Up Report must be in the form and the prescribed filing method approved by the Executive Director.
- (3)** A law firm shall annually
- (a) by the Due Date, provide to the Executive Director a completed Law Firm Self-Report using the form and prescribed filing method approved by the Executive Director,
  - (b) furnish a copy of every Law Firm Self-Report to the law firm's accountant,
  - (c) retain as part of the law firm's prescribed financial records a copy of every Law Firm Self-Report furnished under subparagraph (a), and
  - (d) grant a written authorization to the Society to obtain law firm bank account information directly from the law firm's financial institution.
- (4)** A law firm, if approved to operate a trust account, shall annually, by the Due Date,
- (a) have the law firm's prescribed financial records reviewed by an accountant, and
  - (b) cause an Accountant's Report, in the form and the prescribed filing method approved by the Executive Director, to be completed by an accountant and filed with the Executive Director by the accountant responsible for the review.
- (5)** A law firm is not required to comply with subrule (4) if
- (a) the law firm uses approved accounting software, and
  - (b) annually, the law firm submits the law firm's trust account(s) data electronically, as an Electronic Data Upload, to the Executive Director by the Due Date.
- (6)** The Executive Director may require a law firm to
- (a) annually submit to the Executive Director by the Due Date the law firm's trust account(s) data electronically, as an Electronic Data Upload, as an alternate to or in addition to an Accountant's Report under subrule (4), and
  - (b) provide an Electronic Data Upload or Accountant's Report monthly or quarterly.



- (7) A lawyer or law firm may not refuse to produce or make available any records or other property in compliance with the firm's obligations under this Part on the grounds of solicitor and client privilege.
- (8) The disclosure of privileged information to the Society is not a waiver of privilege for any other purpose.
- (9) The Society shall not disclose or use any privileged information received under this Part for any purpose other than the administration of the trust safety program or as authorized by the Act, including proceedings under Part 3 of the Act.
- (10) The duty of a law firm to comply with subrules (3), (4), (5) and (6), as applicable, ceases only when
- (a) the law firm's trust accounts and prescribed financial records are closed, and
  - (b) the final Law Firm Self-Report and either the final Accountant's Report or final Electronic Data Upload are provided in accordance with subrule (12).
- (11) A law firm that terminates its practice shall file with the Executive Director written notice of
- (a) termination of the law firm practice before or forthwith after the date on which the firm's prescribed financial records are closed, and
  - (b) the effective date of the law firm's termination of practice, which becomes the law firm's new designated filing date.
- (12) A law firm that provides notice to the Executive Director in accordance with subrule (11) shall comply with subrules (3), (4), (5) and (6), as applicable.
- (13) A law firm shall comply with subrules (1) – (12), unless specifically exempted from the requirement to do so by the Executive Director.
- (14) A law firm that does not file the Law Firm Self-Report and either an Accountant's Report or Electronic Data Upload by the Due Date each year shall be levied the Late Filing Fee in accordance with the Late Filing Fee schedule.
- (15) If a law firm fails to
- (a) annually file a Law Firm Self-Report,
  - (b) annually file either an Accountant's Report or Electronic Data Upload, and
  - (c) pay any Late Filing Fee
- the Responsible Lawyer shall stand automatically suspended as of July 1.
- (16) Rule 165.1 shall apply to any suspension under subrule (15).

*Nov2010;Nov2012;Jun2014;Sep2014;Jun2017;Sep2018*

## AUDIT REQUIREMENTS

### Notices to the Executive Director

- 119.31 (1)** A law firm shall file with the Executive Director written notice of
- (a) any change in the law firm name or the designated filing date, before or immediately after the change is made, and
  - (b) a lawyer becoming or ceasing to be an owner or associate of a law firm, before or immediately after the event occurs.

*Nov2010*

### CDIC Compliance

- 119.32** A law firm that maintains a trust account at a depository that is insured by the Canada Deposit Insurance Corporation shall comply with the reporting and disclosure obligations as set forth in the *Canada Deposit Insurance Corporation Act*.

*Nov2010*

## Examination, Review, Audit or Investigation of Financial Records

- 119.33 (1)** For purposes of this rule, "law firm" means
- (i) a law firm as defined in Rule 2,
  - (ii) two or more lawyers practising law in the same premises, who expressly or impliedly hold themselves out to be practising law together and indicate a commonality of practice,
  - (iii) two or more lawyers practising law in the same premises who indicate that their practices are independent, or
  - (iv) a lawyer and a law firm practicing independently but participating in a specific alternate arrangement approved under Rule 119.2.
- (2)** The Benchers may direct that a person designated by the Benchers examine, review, audit, investigate or complete the financial records and other records of any lawyer or law firm that in any way relate to a lawyer's or the firm's practice of law for the purpose of ascertaining and advising as to whether the provisions of the Act and the Rules have been and are being complied with by a lawyer or law firm.
- (3)** The powers conferred on the Benchers by subrule (2) may also be exercised by
- (a) the President of the Society,
  - (b) the President-Elect of the Society,
  - (c) the chair of the Conduct Committee,
  - (d) the chair of the Trust Safety Committee,
  - (e) the Executive Director, or
  - (f) the Manager, Trust Safety.
- (4)** Where a person conducts an examination, review, audit or investigation under this rule
- (a) a lawyer shall produce all records and supporting documentation, including client files that that person may require for the examination, review, audit or investigation,
  - (b) the examination, review, audit or investigation must, where practicable, be held in the office of the lawyer or law firm whose financial records and other records are the subject of the examination, review, audit or investigation, or must be held in the Society's offices, and
  - (c) a law firm shall, upon demand, grant written authorization to the Society to obtain law firm bank account information directly from the law firm's banking institution.
- (5)** The person conducting an examination, review, audit or investigation under this rule shall provide a report to the Executive Director with a copy to any of the lawyer, the responsible lawyer and the law firm, advising whether the provisions of the Act and the Rules have been and are being complied with, giving full particulars of any breach of those provisions and of any attempt to remedy any breach.
- (6)** A lawyer or law firm may not refuse to give evidence, answer inquiries or produce or make available any records or other property in compliance with the firm's obligations under this Part on the grounds of solicitor and client privilege.
- (7)** The disclosure of privileged information to the Society is not a waiver of privilege for any other purpose.
- (8)** The Society shall not disclose or use any privileged information received under this Part for any purpose other than the administration of the trust safety program or as authorized by the Act, including proceedings under Part 3 of the Act.

*Apr2019;Nov2010'Sep2014;Sep2018*

## Notice of Bankruptcy Proceedings or Writ of Execution

- 119.34 (1)** A lawyer, student-at-law, or applicant for admission or re-admission, shall immediately notify the law firm's responsible lawyer and the Manager, Trust Safety, and a visiting lawyer shall notify the Manager, Trust Safety, in writing, of:
- (a) service on the lawyer or a member of the law firm of a petition under the *Bankruptcy and Insolvency Act* for a receiving order in respect of the property of the lawyer or law firm;

- (b) the making by the lawyer or the law firm of an assignment pursuant to the *Bankruptcy and Insolvency Act*;
  - (c) the filing by the lawyer or the law firm under section 50.4 of the *Bankruptcy and Insolvency Act* of a notice of intention to make a proposal under that Act;
  - (d) the lodging of a proposal in respect of the lawyer or law firm pursuant to the *Bankruptcy and Insolvency Act*; or
  - (e) the issuance of a writ of enforcement against the lawyer or law firm.
- (2) A notice under subrule (1) shall include a full explanation of the circumstances of the matter and must be accompanied by copies of all materials relating to proceedings taken in that matter.
- (3) On receiving a notice referred to in subrule (1) or on learning of any of the matters referred to in subrule (1), the Executive Director or Manager, Trust Safety may reassess the person's eligibility to act or continue to act as responsible lawyer.
- (4) On receiving a notice referred to in subrule (1) or on learning of any of the matters referred to in subrule (1), the Executive Director or Manager, Trust Safety may do any of the following:
- (a) give notice of the referral to the responsible lawyer of the law firm concerned; or
  - (b) reconsider the trust account approval of the law firm.
- (5) A decision under this rule made by the Executive Director or the Manager, Trust Safety may be appealed to the Trust Safety Committee.

Nov2010;Jun2016

## DIVISION 6 RECORDS RETENTION AND BANKING TRANSACTIONS

### RECORDS RETENTION

#### Location of Prescribed Financial Records

- 119.35** A law firm shall maintain all its prescribed financial records at its offices in Alberta unless exempted by the Executive Director.

Nov2010

#### Prescribed Financial Records

- 119.36 (1)** A law firm shall record in its financial records, in a legible form, in ink or other permanent form, all financial transactions related to its practice of law.
- (2) A law firm shall keep current the recorded financial transactions in subrule (1).
- (3) Every law firm shall maintain financial records that:
- (a) record, on a double entry basis, all money received and paid out in connection with the law firm's practice of law within Alberta; and
  - (b) show and distinguish
    - (i) all receipts and payments of money by the law firm,
    - (ii) the balances of money held by the law firm, and
    - (iii) on the face of the bank statement, whether the account is a general account or a trust account.
- (4) The financial records for trust money shall consist of at least the following:
- (a) a chronological trust journal of all trust receipts and trust withdrawals, and all transfers between individual client ledgers showing the following details:
    - (i) the date of receipt or date of withdrawal,
    - (ii) the source of the trust money received or the name of the payee to whom the trust payment or withdrawal is made,

- (iii) the form in which the money is received,
  - (iv) the client name and/or file number,
  - (v) in the case of transfers between individual client ledgers, the client name and file number for both the source and destination of the trust money between client files,
  - (vi) the receipt or cheque number,
  - (vii) the amount of the receipt, withdrawal or transfer, and
  - (viii) a running balance of the total amount in trust;
- (b) a trust ledger consisting of separate trust ledger accounts for each client matter in respect of every client from whom the law firm has received trust money or on whose behalf or at whose direction or order the law firm has received trust money, with each trust ledger account showing;
- (i) the name, matter description and file number of the client,
  - (ii) all receipts and withdrawals, in chronological order with the dates of receipt and withdrawal and indicating the source of the money or the payee, the receipt or cheque number, if applicable, and a description of the nature of the receipt or withdrawal, and
  - (iii) the running balance of the amount remaining in the account;
- (c) a journal showing all transfers of money between trust ledger accounts or a chronological file of copies of all documents by which transfers of money between trust ledger accounts were effected;
- (d) a comparison prepared within 1 month of the last day of each month, between the total of the trust accounts of the law firm and the total of all unexpended trust balances as per the trust ledger accounts, together with the reasons for and steps taken to correct any differences, supported by
- (i) a detailed bank reconciliation including the disclosure of the balance per bank account, deposits in transit, outstanding cheques itemized by date, cheque number, payee and amount and any other items necessary for the reconciliation which would be fully detailed and explained, and
  - (ii) a detailed listing made monthly by trust account showing the unexpended balance of money in each trust ledger account;
- (e) a general journal showing;
- (i) the date of receipt or date of withdrawal,
  - (ii) the source of the general money received or the name of the payee to whom the general payment or withdrawal is made,
  - (iii) the form in which the money is received,
  - (iv) the client name and file number, if applicable,
  - (v) the receipt or cheque number,
  - (vi) the amount of the receipt, withdrawal or transfer, and
  - (vii) a running balance of the total amount in the general account;
- (f) a separate billing journal showing all fees and charges to clients, the dates of the statements of account for those fees and charges and the names of the clients;
- (g) a chronological fees and disbursements receivable ledger to record the law firm-client position for each client, showing statements of account rendered, payments on account and a continual running balance owing;
- (h) bank statements or passbooks, negotiated cheques, printed digital images of negotiated cheques, transfers between accounts and detailed duplicate deposit slips for all trust accounts and general accounts, bank advices, credit card slips, interac slips invoices and such parts of client files that are necessary to support the financial transactions;
- (i) a central record of all non-monetary client trust property received from and returned to the client by the law firm.
- (5)** A law firm using a computerized accounting system shall

- (a) maintain an electronic backup of the accounting records in a safe and secure location,
- (b) on a monthly basis,
  - (i) print all trust records, with the exception of client trust ledger cards provided they can be printed upon demand,
  - (ii) print all general records, with the exception of the accounts receivable ledger cards provided they can be printed upon demand,
  - (iii) update the electronic backup of all accounting records, and
- (c) at the conclusion of every matter, print the client trust ledger card and accounts receivable ledger card for that matter and store it in a central file maintained for closed ledgers.

Nov2010

## Client Files

**119.37 (1)** Except as otherwise authorized by the Executive Director, a law firm shall:

- (a) maintain its financial records in a safe and secure location;
  - (b) maintain its most recent 2 years of financial records at its principal place of practice in Alberta;
  - (c) upon completion and closing of a client file, place a copy of the client trust ledger card on the client file;
  - (d) retain its trust ledger accounts referred to in rule 119.36(4)(b) and (c) for at least the 10-year period following the fiscal year of the law firm in which the trust ledger account was closed;
  - (e) retain all other financial records referred to in rule 119.36, for at least the 10-year period following the fiscal year of the law firm in which the records came into existence;
  - (f) retain such parts of the files of the law firm, relating to the affairs of clients or former clients of the law firm, as are necessary to support the prescribed financial records for at least the 10-year period following the fiscal year of the law firm in which the file was closed.
- (2)** A law firm must not give up possession of any financial records and client files of the law firm relating to the affairs of clients or former clients of the law firm to a person other than a lawyer, unless the law firm retains or makes a copy of such parts of the file as are necessary to support the prescribed financial records, which copy must be deemed to be an original for the purposes of the Act and the Rules.

Nov2010

## Cash Transactions - Additional Obligations

**119.38 (1)** For the purposes of this rule:

- (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) “**funds**” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;
  - (c) “**public body**” means
    - (i) a department or agent of Her Majesty in right of Canada or of a province,
    - (ii) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them, or
    - (iii) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* or an agent of the organization.
- (2)** A lawyer shall not receive or accept from a person, cash in an aggregate amount of \$7500 or more Canadian dollars in respect of any one client matter or transaction.
- (3)** For the purposes of this rule, when a lawyer receives or accepts from a person cash in a foreign currency the lawyer must 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.
- (4) Subrule (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.
- (5) Despite subrule (4), subrule (2) does not apply when the lawyer receives cash
- (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 or her official capacity),
- (c) pursuant to a court order, or to pay a fine or penalty, or
- (d) in an amount of \$7500 or more for professional fees, disbursements, expenses or bail, provided that any refund greater than \$1000 out of such receipts is also made in cash and a receipt signed by the person receiving the cash is obtained by the lawyer.

Nov2010

**119.38 (1)** For the purposes of this rule:

- (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,
- (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.
- (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;
  - (h) **“public body”** means
    - (i) a department or agent of Her Majesty in right of Canada or of a province or territory,
    - (ii) an incorporated city, town, village, metropolitan authority, township, district, 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.
- (2) A lawyer must not receive or accept cash in an aggregate amount greater than \$7500 Canadian dollars in respect of any one client matter.
- (3) For the purposes of this rule, 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.
- (4) Subrule (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.
- (5) Despite subrule (4), subrule (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 or her official capacity),
  - (c) 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.

*Coming into force September 30, 2019; Nov 2010*

## Cash Transactions - Duplicate Book of Receipts

- 119.39 (1)** Subject to rule 119.38, every law firm that receives cash on behalf of a client shall maintain a separate book of duplicate receipts, in addition to existing financial record keeping requirements, which includes the following:
- (a) the date on which cash is received;

- (b) the person from whom cash is received;
  - (c) the amount of cash received;
  - (d) the client for whom cash is received;
  - (e) any file number in respect of which cash is received;
  - (f) the signature of the lawyer or person authorized by the lawyer to receive cash and the signature of the person from whom cash is received.
- (2) Subject to rule 119.38, a record of cash payment shall be maintained by every law firm that returns cash pursuant to rule 119.38(5)(d), in addition to existing financial record keeping requirements, and which includes the following with each record:
- (a) the date on which cash is paid;
  - (b) the amount of cash paid;
  - (c) the client name in respect of which cash is paid;
  - (d) any file number in respect of which cash is paid;
  - (e) the name and signature of the person to whom cash is paid.
- (3) A lawyer does not breach subrules (1)(f) or (2)(e) if a receipt or record does not contain the signature of the person from whom cash is received or to whom cash is paid, provided that the lawyer has made reasonable efforts to obtain the signature of the person from whom cash is received or to whom cash is paid.

Nov2010

## Monthly Reconciliation of General Accounts

**119.40** A law firm shall reconcile its general accounts no later than the end of the following month.

Nov2010

## BANKING TRANSACTIONS

### General Retainer Acknowledgment

- 119.41 (1)** A law firm may deposit a general retainer directly into its general account if the client has signed a written general retainer acknowledgment providing that
- (a) the money is non-refundable and belongs to the law firm immediately upon receipt,
  - (b) the law firm is not obliged either to account for the money or render services with respect to the money, and
  - (c) services may never be rendered in respect of the money.
- (2) The law firm shall retain the written acknowledgment referred to in subrule (1).

Nov2010

### Electronic Banking Withdrawals

- 119.42 (1)** A law firm may withdraw money from trust electronically subject to the following conditions:
- (a) the system used must be able to produce a hardcopy confirmation from the financial institution within 2 banking days of the withdrawal showing the details (date, amount, source account number, and destination account number and name) of the withdrawal or the withdrawal instructions to the financial institution;
  - (b) if the withdrawal is done online,
    - (i) the system used must be one where each law firm user has an individual password or access code, and only a lawyer of the law firm can authorize the financial institution to carry out the withdrawal unless otherwise approved by the Executive Director, and



- (ii) only a lawyer of the law firm, using his or her password, shall execute the instruction to the financial institution authorizing the withdrawal of money unless otherwise approved by the Executive Director;
- (c) the law firm shall obtain written instructions from the payee detailing the destination account (account name, account number, financial institution and financial institution address), unless the money is being transferred to another account of the law firm;
- (d) the law firm shall complete a non-cheque withdrawal form in a form prescribed by the Executive Director;
- (e) the law firm shall obtain a confirmation from the financial institution and within 2 banking days of the withdrawal shall write the name of the client and file number on the confirmation if not already present;
- (f) the written instructions from the payee and the financial institution confirmation must be maintained with the law firm banking records as part of the financial records.

*Nov2010;Nov2012*

### Electronic Banking Deposits

**119.43 (1)** A law firm may receive money into a law firm trust account electronically subject to the following conditions:

- (a) the law firm shall obtain a confirmation from the financial institution and/or remitter of the funds within 2 banking days of the deposit;
- (b) where practicable, the law firm shall request that the confirmation include the name of the client and/or file number;
- (c) the law firm must retain any confirmation received with the law firm banking records.

*Nov2010/Apr2012*

### Credit and Debit Card Receipts

**119.44 (1)** A law firm may receive trust and general receipts by credit or debit cards subject to the following conditions:

- (a) trust receipts must be deposited, within 2 banking days, directly into a trust account;
- (b) general receipts must be deposited directly into a general account or only subject to the following conditions may be deposited to a trust account:
  - (i) the general portion of the receipt must be transferred expeditiously to the general account,
  - (ii) the law firm shall maintain a trust ledger card recording the receipt and payout of the general receipts, and
  - (iii) the ledger card must distinguish the general receipts by client;
- (c) the payor, client name, and file number must be recorded on the merchant slip;
- (d) the word "Trust" must be recorded on the merchant slip for all trust receipts;
- (e) the receipt must be recorded in the applicable trust or general journal and the merchant slip must be attached to the deposit slip;
- (f) all service charges and discounts, including those related to trust receipts must be withdrawn from the law firm general account.

*Nov2010*

### ATM Deposits

**119.45 (1)** Law firms may deposit trust and general receipts into automated teller machines (ATMs) but only subject to the following conditions:

- (a) ATM cards for trust accounts must be restricted to deposit only;
- (b) trust receipts must be deposited directly into a pooled trust account of the law firm on or before the next banking day;
- (c) the payor, client name and file number, if applicable, must be recorded on all ATM slips.

- (2) The receipt must be recorded in the applicable trust or general journal and the ATM slip must be attached to the deposit slip.

Nov2010

### **Bank Drafts and Money Orders**

**119.46 (1)** Trust withdrawals may be made by a bank draft or money order in the form designated by the Executive Director.

(2) If a withdrawal is made by a bank draft or money order, the lawyer shall:

- (a) obtain the recipient's authorization to receive the funds in the form of a bank draft or money order in writing;
- (b) document the transaction on the client's file using the designated form;
- (c) purchase the money order only at a financial institution where the law firm has a pooled trust account;
- (d) maintain a copy of the bank draft or money order on the client's file; and
- (e) obtain acknowledgment of receipt of the funds by the recipient in writing.

Nov2010;Sep2014;Dec2016

**Rules 120-136 are intentionally blank.**

**The next numbered rule is rule 137.**

Nov2010