



LAW SOCIETY
of ALBERTA

Amendments to Anti-Money Laundering & Terrorist Financing Model Rules

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Agenda

1. Overview of Money Laundering
2. Regulatory Evolution
3. Amendments to Anti-Money Laundering Rules
4. Amendments to Existing Representative Capacity Rules
5. Q & A

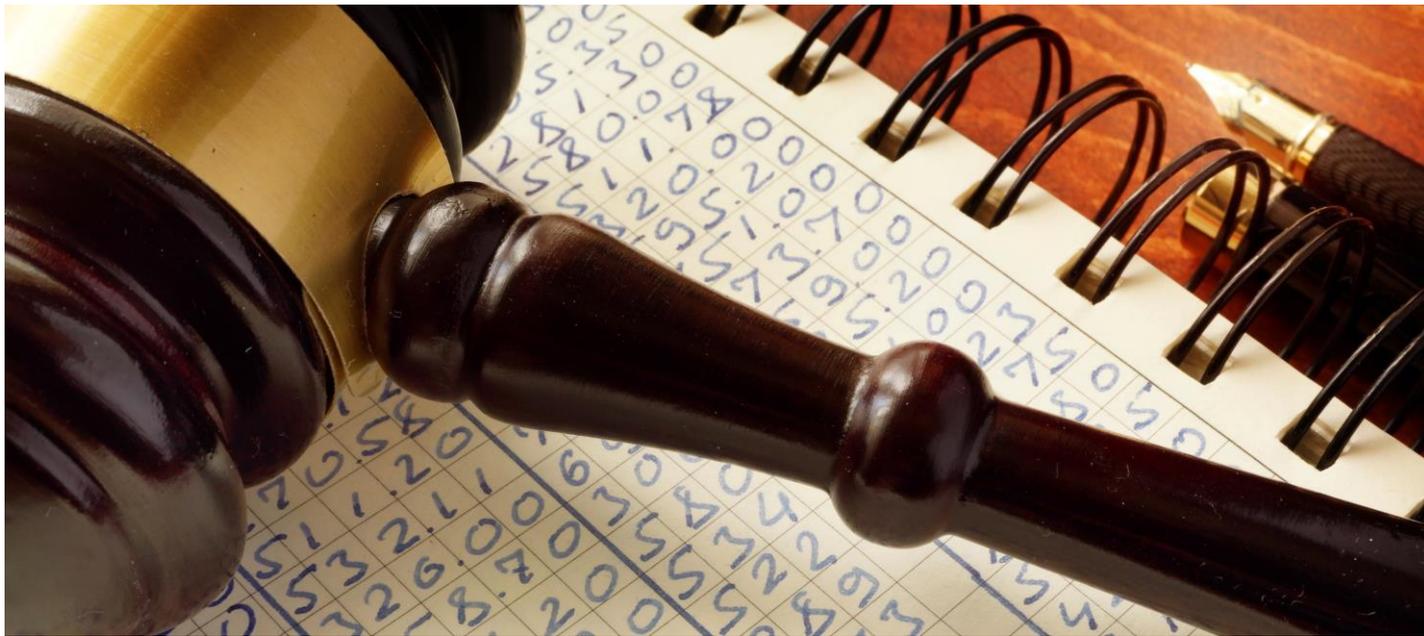




What is Money Laundering?

What is Money Laundering?

- Money Laundering – Proceeds “Of” Crime
- Terrorist Financing – Proceeds “For” Crime



Stages of Money Laundering

- Predicate offence
- Placement
- Layering
- Integration



Brain Teaser #1

1. What is the estimated amount of money laundered globally in one year?

- A. \$500 Billion
- B. \$800 Billion
- C. \$1 Trillion
- D. \$3 Trillion



Brain Teaser #2

2. Which province in Canada had the most flow of dirty money in 2015?

A. British Columbia

B. Ontario

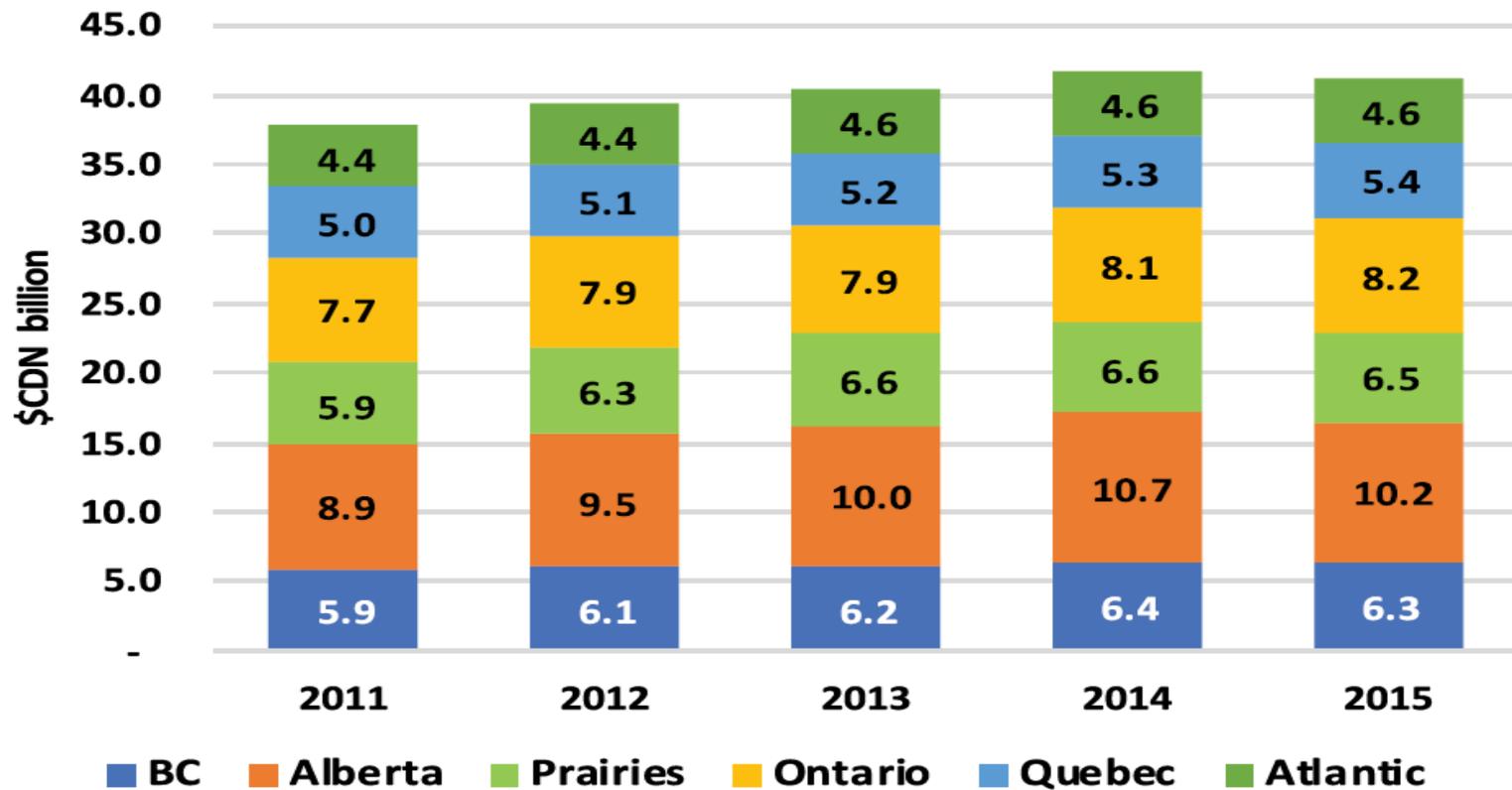
C. Alberta

D. Prairies —
Saskatchewan
& Manitoba



Money Laundering Estimates in Canada

Figure G-1: Money laundering in Canada by region



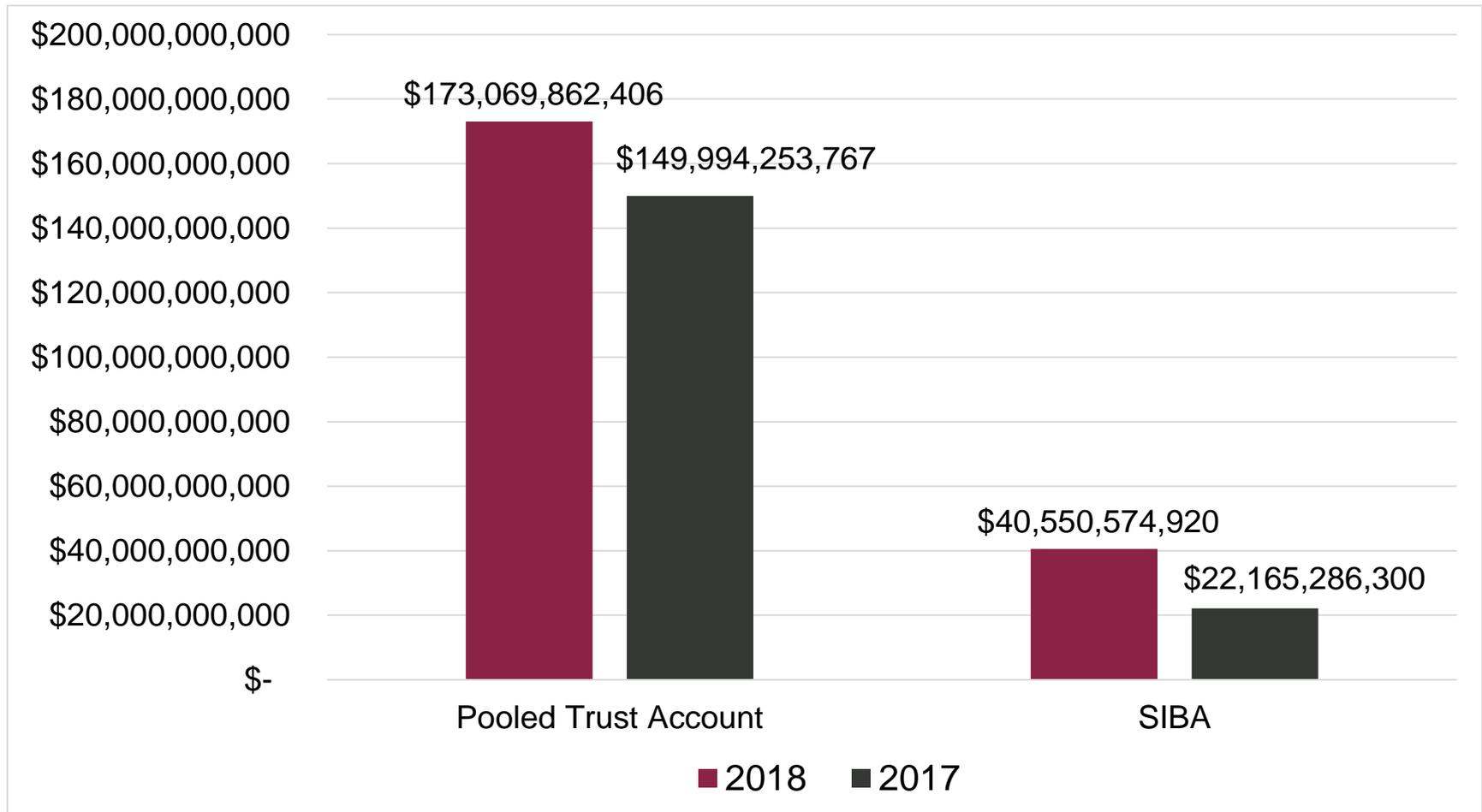
Brain Teaser #3

3. How much money flowed through lawyer's trust account in Alberta in 2018?

- A. \$100M
- B. \$200M
- C. \$175B
- D. \$400B



Flow of Funds in Alberta



How the Legal Profession is used to launder funds

- Use of bank accounts for right to deposit & withdraw
- Use of bank accounts to pay 3rd parties (paymaster)
- Advice on laundering funds; avoiding reporting requirements
- Set up trusts & companies, incl. offshore
- Invest in private placements to wash proceeds
- Buy real estate
- Set up bank accounts for them (liaise with bank)
- Falsify documents for them
- To outright wash illicit funds (often tied to immigration)



Section One Q & A



Anti-Money Laundering Regulatory Evolution

FATF: What is It?

- The Financial Action Task Force on Money Laundering (**FATF**), created in 1989 by the G-7 and other countries to coordinate international efforts to combat money laundering
- Comprises of 38 member jurisdictions, representing most major financial centres in all parts of the globe.
- FATF issued 40 Recommendations in 1990—global standards for anti-money laundering (**AML**)
- After 9.11, FATF issued 9 Special Recommendations dealing with counter-terrorism issues
- Referred to as the “40+9 Recommendations.”
- In 2012, FATF revised the Recommendations. Now known as “**FATF Recommendations**”

FATF: What Does It Do?

- Paris-based FATF has no legislative authority but is regarded as one of the most powerful intergovernmental bodies in the world—its policies set the standard for regulating trillions of dollars.
- FATF operates as the ultimate international peer pressure group.
- **FATF conducts “mutual evaluations” on member countries to assess compliance with FATF Recommendations.**
- Canada is a member of FATF – since 1990.

FATF MER 2015-16

- The evaluation report outlined several deficiencies that Canada needs to address
- One of the deficiencies raised by FATF evaluators”

“Legal persons and arrangements are at a high risk of misuse, and that risk is not mitigated. Major weakness was the fact that the legal profession is not covered by the PCMLTFA.....”

Legal Profession Regulatory Evolution

AML Model Rules Timeline

| 2004 – 2008 | 2015 | 2016 | 2018 | 2019 |
|--|--|---|--|--|
| <ul style="list-style-type: none">• Adoption of Model Rules by Law Societies | <ul style="list-style-type: none">• Supreme Court Decision• AML / ATF requirements found to breach solicitor-client privilege | <ul style="list-style-type: none">• FATF Review• AML / ATF Working Group | <ul style="list-style-type: none">• March AML / ATF Consultation• Submission to Federation Council in October for a three-part decision | <ul style="list-style-type: none">• Approval, Implementation and adoption by law societies |

No updates to the Model Rules in 15 years



Section Two Q & A

Importance of Gatekeepers – Key Amendments



Amendments to Model Rule

1. No Cash Model Rule (Definitions and Exceptions)
2. Identification and Verification of Individual and Organizational Clients (Methods, Definition, Exemption, Timing of verification)
3. Identifying Beneficial Ownership
4. Use of an Agent
5. Source of funds
6. Ongoing Monitoring of Clients
7. Trust Accounting Model Rule

No Cash Model Rule: Exemptions

Current State

- (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, penalty, or bail, or
- (d) in an amount of \$7,500 or more for professional fees, disbursements, or expenses or bail, provided that any refund out of such receipts is also made in cash.

New Rule

- The only exception that has been eliminated is that relating to cash received pursuant to a court order.
- Any refund ~~greater than \$1000~~ of cash receipts is made in cash
- No changes regarding the Recordkeeping Requirements for Cash Transactions



CIV – Individual Clients

Current State

- Valid original government issued identification



New Rule

- Government-issued **photo** identification; or
- Credit file; or
- Dual process method, which refers to information from two different and reliable, independent sources.

CIV Exemptions

Current State

- (a) where the client is a financial institution, public body or reporting issuer;
- (b) paid by or to a financial institution, public body or a reporting issuer;
- (c) received by a lawyer from the trust account of another lawyer
- (d) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- (e) paid or received pursuant to a court order or to pay a fine or, penalty
- (f) paid or received as a settlement of any legal or administrative proceedings
- (g) paid or received for professional fees, disbursements, expenses or bail.

New Rule

- (e) paid or received ~~pursuant to a court order~~ or to pay a fine or, penalty
- (f) ~~paid or received as a settlement of any legal or administrative proceedings~~
- (h) to an electronic funds transfer (moved to exemption section)

CIV – Organizational Clients

- **Identification Details:**
 - Name and address of the corporation
 - Names of the Directors
- **Verification Details:**
 - Confirming the existence of an entity that is a corporation
 - Confirming the existence of an entity other than a corporation

Beneficial Ownership

Legal Owner

- holds legal title to a property or asset in his/her own name.

Beneficial Owner

- an individual who possesses certain benefits of ownership over a property or asset irrespective of appearing on its legal title.
- the actual person(s) who directly or indirectly owns or controls 25% or more of entities such as a corporations or trust.
- money-launderers may obscure their identities through beneficial ownership of an entity, (e.g. shell corporation or other legal arrangements).
- **cannot** be another corporation or entity; they must be a natural person.

Beneficial Ownership

Current State

Make reasonable efforts to obtain:

- 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.

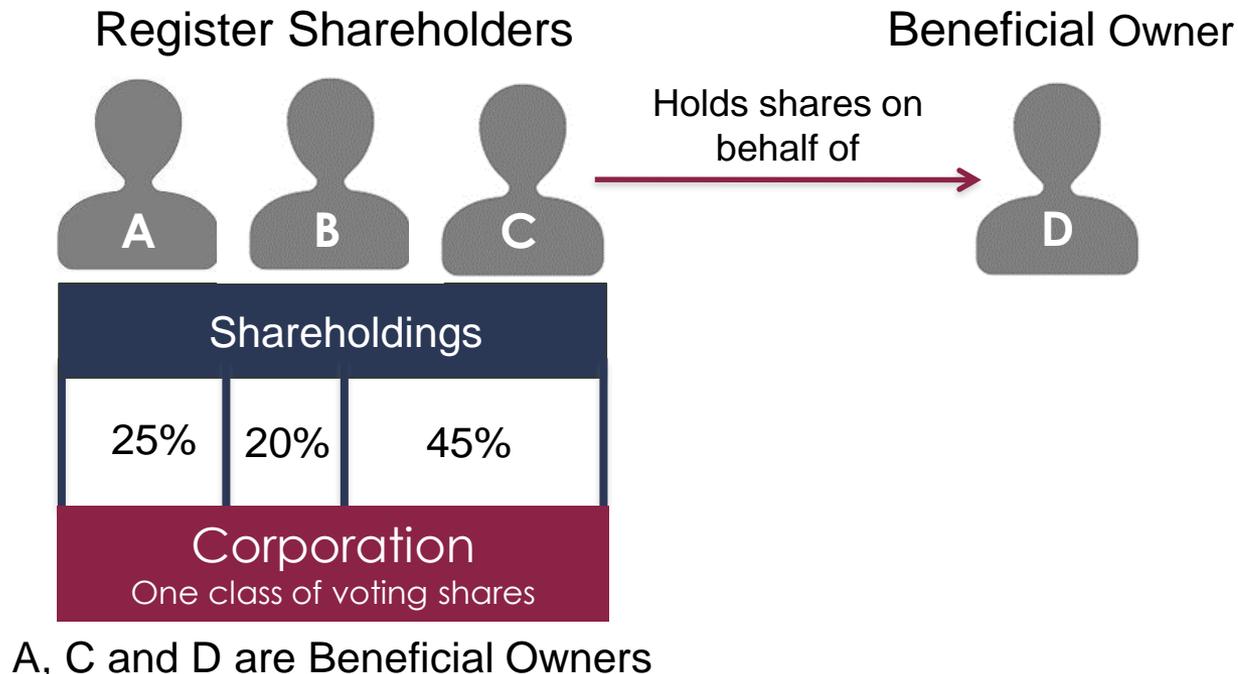
New Rule

“Make reasonable efforts” to obtain and **verify**:

- the names and addresses of persons **who own directly or indirectly** 25 per cent or more of an organization.
- **the names and addresses of all trustees and all known beneficiaries and settlors of the trust.**

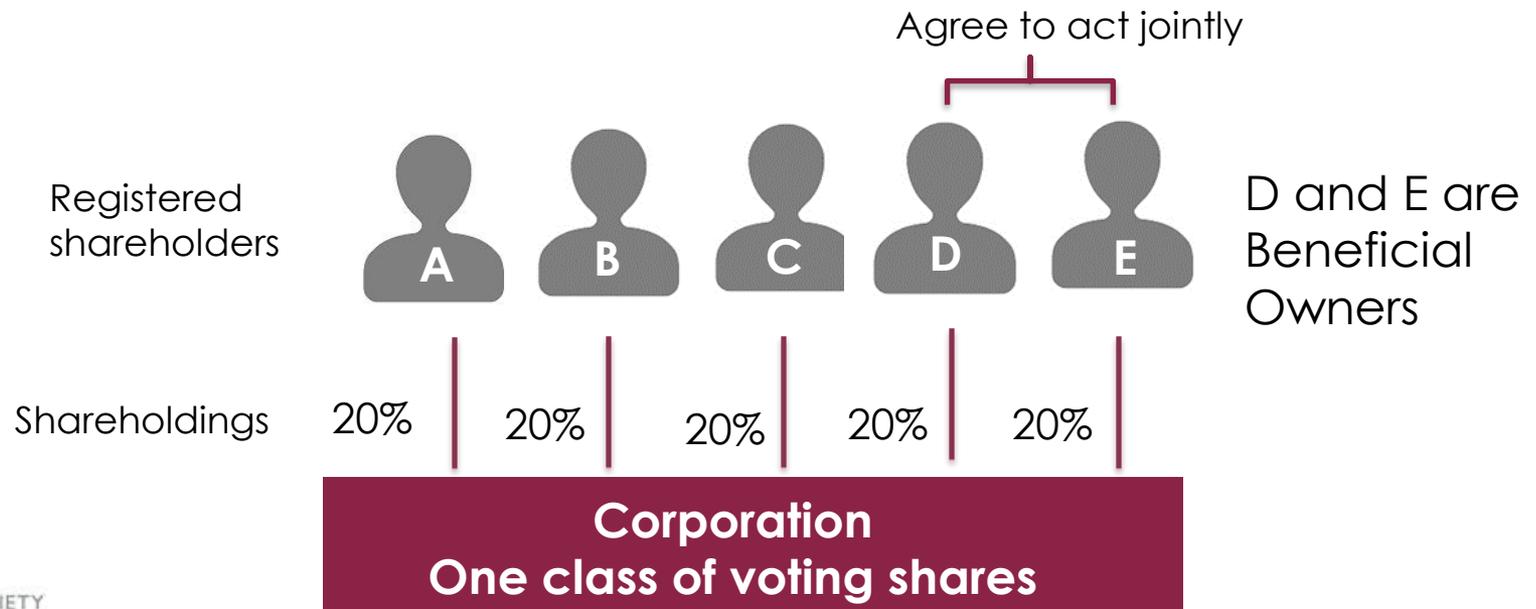
Who is a Beneficial Owner

1. An individual who directly or indirectly owns at least 25% of voting shares



Who is a Beneficial Owner (cont'd)

- Two or more individuals who jointly hold an interest or have an agreement to exercise those rights jointly



Beneficial Ownership

New

If not able to obtain the information, then:

- do not onboard client; or
- take reasonable measures to ascertain the identity of the most senior managing officer of the organization.

Why is this so Hard?

- No government registry contains all the required information.
- Virtually no government verification of registry information, or enforcement of standards.
- Ongoing monitoring requires periodic updates.
- Complex structures can frustrate the process.

B.C. unveils Canada's first beneficial ownership registry

WENDY STUECK >
VANCOUVER
PUBLISHED APRIL 2, 2019

13 COMMENTS



TRENDING

- 1 B.C. family devastated after teen's death from apparent overdose unfolds on social media
- 2 Doug Ford announces that cuts to municipal public health and childcare programs will go ahead
- 3 Modest calorie restriction may add healthy years to your life
LESLIE BECK
- 4 OPINION
Here's what Ottawa is getting wrong on pensions
FREDERICK VETTESE
- 5 An employee is quitting and taking clients with them. What are my options? @-

CBCA Corporations Required To Track Beneficial Ownership

By Jagdeep S. Shergill, Andrew Kemp on January 30, 2019

Posted in Commercial



Corporations governed by the [Canada Business Corporations Act](#) (the "CBCA") will be required to maintain a securities register of all individuals with "significant control" over the corporation pursuant to new legislation coming into force on June 13, 2019. The [Budget Implementation Act, 2018, No. 2 \(Bill C-86\)](#) introduces amendments to the CBCA (the "CBCA Amendments") that are intended to further

align Canada with the standards for corporate transparency set by the Financial Action Task Force.^[1] It is expected that the provinces and territories will adopt similar amendments to their corporate statutes in the near future.

[Home](#) > [Parliamentary Business](#) > [41st Parliament](#) > [4th Session](#) > [Bills](#) > [First Reading](#) > [Bill 23 – 2019: Land Owner Transparency Act](#)

Bill 23 – 2019: Land Owner Transparency Act

2019 Legislative Session: 4th Session, 41st Parliament
FIRST READING

The following electronic version is for informational purposes only.
The printed version remains the official version.

- **Federal:** Canada Business Corporations Act (CBCA) – June 13th, 2019
- **Provincial:** BC Land Owner Transparency Act. - (April 2, 2019)

Use of an agent

- Counsel **may** use an agent in any circumstances to verify their client
- Counsel **must** use an agent when a client is not physically present in Canada
- Must have a written agreement with the agent
- Requirement to review information from agent to ensure that it is valid and current

Who may act as an Agent?

- The Model Rule does not specify who may act as an agent.
- Ensure that the person engaged is:
 - reputable
 - can be relied upon
 - can capably carry out the required work to verify identity and
 - will provide the information they have obtained as required under the Model Rule.

Information About the Source of Funds - Updated

- Obtain and record information about the source of the funds relating to the legal services to be provided.
- Refers to the origin of the funds which are the subject of the transaction (**how** the client got the money vs **where** it is coming from)
- This requirement applies to both individual and organizational clients.

Ongoing Monitoring

New Provision

Requires ongoing monitoring of clients and requirement to withdraw from representation of the client if, once retained, the lawyer becomes aware that they would be assisting the client in fraud or other illegal conduct.



Section Three Q & A

New Trust Accounting Rule

Not new to Alberta

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.

New Trust Accounting Rule

Revised Wording

1. A lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the lawyer or the lawyer's law firm is providing.
2. A lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.

Amendments to Representative Capacity Rule

- **New Trust Accounting Rule** in conflict with existing **Representative Capacity Rule**



Amendments to Representative Capacity Rule

Background

- A small group of law societies permit lawyers to deposit funds, other than trust funds, into their trust accounts for limited purposes.
- Rule allows lawyers who are acting in a representative capacity (i.e. not as a lawyer) to deposit into trust funds that are received in that capacity.

Solution and Recommendation

- Eliminate the ability of lawyers to deposit fiduciary property into their trust accounts when acting solely in a representative capacity.
- Maintain the requirement that lawyers who act in that capacity maintain books and records that are capable of being audited.

Questions?



LAW SOCIETY
of ALBERTA

Thank you!

Journey of Continuous
Improvement

Upcoming Sessions

| Location | Date* |
|--|---------------------------|
| Edmonton | August 15, 2019 |
| Calgary | August 21, 2019 |
| Lethbridge | August 23, 2019 |
| Calgary | September 10, 2019 |
| Anti-Money Laundering Final Q&A Webinar | September 19, 2019 |

*For more information and to register, visit <https://www.lawsociety.ab.ca/>.



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Thank you!