MEMORANDUM

DATE: September 3, 2019

TO: All Resident Insured Members

FROM: Glenn Tait

RE: CHANGES TO TRUST, ACCOUNTING AND CLIENT IDENTIFICATION RULES

There have been substantial changes made to the Rules, which will take effect on January 1. The Rule amendments are attached as an Appendix to this memo.

These changes can be broken down into two areas. First, changes to provide more rigorous client identification and additional Rules to prevent anti-money laundering, and further clarification on the use of trust accounts.

Second, an almost total rewrite of the Rules around accounting, trust accounts and reporting to the Law Society. These rules introduce the concept of a responsible lawyer for each Law Firm, and impose reporting obligations on lawyers who are acting in a representative capacity.

This memo is an introduction to the changes that have been made. It is a summary; you should also review all of the new Rules. If you have any questions about any of these changes, please contact us.

Client Identification and Verification

The Federation of Law Societies of Canada has produced a very helpful guide to this portion of these new Rules. A link to that guide can be found here.

The introduction to those materials explains the increased focus on money laundering and terrorist financing. All of these rules are put in place to ensure that lawyers are not, wittingly or unwittingly, engaging in any money laundering, unlawful financing or other criminal activities.

Client Identification and Verification

Client identification and client verification are two different concepts, though often they happen at the same time. Rule 134.6 sets out your obligations around client identification. Individual clients are identified by getting their contact information. Organizations are identified by obtaining the organization's contact information, including incorporation information, and the name of the person you will be taking instructions from.

If you are retained by a client who is taking instructions from a third party, you must identify the third party. You have an obligation to inquire of your client to be sure that it is your client, and no one else, who is providing you with instructions.

Rules 134.7 and 134.8 set out your obligations for client verification. Client verification is necessary when (with some exceptions) you are receiving instructions from a client – or third party – concerning receiving, paying or

transferring funds. Client verification involves the review of independent information or documents, and satisfying yourself that your client is who they purport to be.

To verify an individual, you can rely on valid and current federal, territorial or provincial government issued identification which has the individual's name and photograph. You must be reviewing the original identification document. You must review this document in the presence of the client, in order to compare your client to the picture on the identification document.

You can also verify an individual's identity by referencing information that is on that individual's credit file. That information must be in a credit file located in Canada, and it must have existed for three years.

If you cannot access government issued identification of the client, or the client's credit file, you can verify an individual client's identify by relying on any two of these three sources:

- Information from a reliable source (a source which is well known and which is considered reputable) which has the individual's name and address;
- Information from a reliable source which has the individual's name and date of birth; or
- Information containing the individual's name that confirms the individual has a deposit account, credit card or loan with a financial institution.

If you are using this "dual process" method of client verification, each source of information must be different. You, or your client, cannot be the source of any of this information.

Again, you must be viewing the original document, not a copy or a photo of the document. If your client received the document electronically, your client can e-mail it to you. Your client does not have to be with you when you view these documents.

Rule 134.8(8) describes obligations for client verification of children. To verify the identity of children under 12, you must verify the identity of one of the child's parents or guardians. To verify the identity of a child who is 12 but not more than 15, you can use the "dual approach" method to verify the identity of one of the child's parents or guardians. You can rely on:

- Information from a reliable source (a source which is well known and which is considered reputable) which has the parent or guardian's name and address;
- Information from a reliable source which has the parent or guardian's name and date of birth; or
- Information containing the individual's name that confirms the parent or guardian has a deposit account, credit card or loan with a financial institution.

If that is not possible, then you can rely on information from one reliable source that contains the name and address of the child's parent or guardian, and another reliable source that contains the child's name and date of birth, to verify the child's identity.

For most organizations that you will represent, you will be required to verify the organizations' identity, and to verify the identity of the person within the organization you are taking directions from. For the organization, you can rely on confirmations from a corporate registry of the organization's status, annual returns filed by the organization, or a notice of assessment of the organization. If you obtain this information electronically, you must keep a record of the registration number of the organization, the type of record used for verification and the

source of the electronic record that you reviewed. If the organization is not registered with any government registry, you can verify the organization based on documents such as a partnership agreement, articles of association or similar documents that establish the organization.

You also must have all of the names of the directors of the organization. You must make reasonable efforts to determine beneficial ownership – ownership, either direct or indirect of more than 25% - of the organization, and the structure and control of the organization.

Another organization cannot be the beneficial owner. If that is the case, you must inquire further, and drill down to determine who the individuals who are the beneficial owners of the organization are.

You must make reasonable efforts to verify that the information which you have obtained, both for ownership and control, is correct. You can do this through examination of corporate records, or through accessing other commercially available information.

If, despite reasonable efforts, you are not able to obtain information about directors, beneficial owners and shareholders, then you must take reasonable measures to determine the identity of the senior managing officer of the organization. As well, and particularly in this case, you must assess the client's activities to determine if there is a risk that any transactions you are involved in may be part of an illegal or fraudulent enterprise.

In the end, this requires a judgement call by you. Are you confident that you know the organizational structure, the control and ownership of the organization you are acting for? Is there a risk that you are going to be engaging in, or assisting others in any illegal conduct, any dishonesty, fraud or crime? If there is a risk, then you should not be acting. You are well advised to document your conclusions, and the basis for them.

For organizations, your verification efforts must occur within 30 days of you being retained by the organization.

Whatever means you use to verify your clients, Rule 134.9 spells out that you need to keep a record of the information and documents you relied on for client verification.

Verifying Sources of Funds

You are required to verify the source of funds that you are receiving or transferring, both from individual and organizational clients. Is there anything about the transaction you are engaging in which is inconsistent with the client's means? Are the funds coming from, or going outside of the country? If so, which country? Is there a sense of urgency to the transaction? Is the client located in a location far away from you? Are you being asked to act in areas outside of your area of expertise?

Are funds coming from someone else? If so is that consistent with your knowledge of the client and the client's activities? Is there anything unusual about the source of funds? Is anyone other than the client providing you information about where the funds originated from?

Again, you would be well served to keep records of your conclusions in every case.

Monitoring the Client Relationship

Your obligations do not end when the client is initially retained, identified and verified. In all cases where you are receiving, transferring or disbursing funds, you must periodically assess your client and their activities. This obligation is set out in Rule 135.2.

Are there new facts that have come to light? Is the client embarking on new activities, an increased level of activities, or activities involving new sources of funds? Is your client making unexpected requests of you? Has it been some time since you checked in with the client? These are all good reasons for you to check in with your client.

When you check in, keep a record of what you learn and discover.

Duty to Withdraw

Finally, Rules 135.1 and 135.3 make it clear that that you have an obligation to withdraw if you know (or if you ought to know) that your continued representation would be engaging in, assisting in, or encouraging fraud or other illegal conduct.

Limitation on Accepting Cash

Since 2004 there has been a limit on the amount of cash you can accept from a client, or receive on behalf of a client as part of your providing legal services to the client. Those Rules (Rule 98-99) have been strengthened. Now:

- You cannot receive more than $7,500 in cash on any file, even if the money is received incrementally over time. This means that you will need to track all cash receipts over the life of a file;
- You cannot receive more than $7,500 in cash on a file which has more than one client. No matter how many clients, and which clients are providing you with cash, you cannot receive more than $7,500 in cash on a file.
- You can receive more than $7,500 in total from a client on unrelated files, as long as no more than $7,500 in cash is received on any one file, and that the files are truly unrelated.

If you receive foreign currency, you cannot receive more than the equivalent of $7,500 in Canadian dollars, using whatever the conversion rate is at the time you received these funds (or on the day before, if you received foreign currency on a holiday).

There are exceptions to this rule. You can receive more than $7,500 in cash, as long as you are providing legal services, and the cash is in connection to the legal services you are providing, from:

- A financial institution or public body (as defined in the Rule 95);
- A peace officer, acting in his official capacity;
- A law enforcement agency, provided it is money received as part of that agency's duties;
- An agent of the Crown, acting in its official capacity;
- From a client to pay a fine, penalty or bail; and
- From a client for professional fees and disbursements, including money received as a retainer.

If you receive payment of fees in cash, any refunds of those amounts must be paid back in cash. Also, you should not be accepting a retainer, particularly a cash retainer, which is far in excess of what you estimate your fees and disbursements will be.

Any time you accept cash, and particularly any time where you receive more than $7,500 in cash on a file, be sure that you document the source of the cash, and why you have accepted more than $7,500. If you accept a retainer or more than $7,500 in cash, make a note that any refunds must be paid in cash. Rule 99(2) specifies the records that need to be kept for all cash transactions.

Use of Trust Accounts

Rule 100 provides that trust accounts can only be used for the deposit or withdrawal of funds directly related to the legal services you are providing. Rule 125 requires that trust accounts only be used when legal services are being provided.

A trust account cannot be used as a general account, except in limited circumstances (Rule 128(3)). Similarly, a general account cannot be used as a trust account.

More specifically, your trust account cannot be used to hold funds for clients, where there are no legal services being provided to the client.

Money in trust must be paid out as soon as practical following the completion of a matter. Monthly review of your trust account amounts will ensure compliance. These regular reviews should also go a long way to avoiding you having to pay trust money to the Law Society when the client has disappeared.

Changes to Accounting and Trust Rules

Parts 5 and 6 of the existing Rules have been replaced by a new Part 5 – continuing the Professional Liability Levy, and Part 6, Financial Matters.

Part 6 refers to a "Law Firm", Rule 95(2) makes clear that a sole practitioner is a Law Firm for the purposes of these Rules.

Getting Started - New Law Firms

Going forward, all new Law Firms will need to receive the permission of the Law Society before they can open a trust account. Rule 121 specifies the criteria for a Law Firm to be approved to have a trust account. Rule 114 requires that this permission be received prior to the Law Firm commencing operations. If a Law Firm does not want to have a trust account, permission from the Law Society will again be required.

Within 4 months of trust account approval, new Law Firms will need to file a Start Up Report, which is prepared by the Law Firm's accountant. These requirements replace the existing requirement for a Form 2.2 from new firms and practitioners.

Responsible Lawyer

The new Rules also require that each Law Firm have a Responsible Lawyer, who must be approved before the Law Firm can commence operations. For sole practitioners, you will be the Responsible Lawyer for your firm. The Responsible Lawyer has primary responsibility for reporting to the Law Society under Part 6 of the Rules, and for ensuring that all law firm trust and general accounts are operated in accordance with the Rules. However, if timely filings with the Law Society are not made, it is all members of the Law Firm, not just the Responsible Lawyer, who will be administratively suspended. Rules 117 through 120 spell out the role of and approval process for Responsible Lawyers.

Year End Reporting Requirements

The annual reporting requirements for Law Firms has changed. Form 2.4, which is due every September, has been replaced by two forms, a Lawyers Self-Report form and an Accountant's Report.

The Self-Report must be filled out by all Law Firms, whether or not they maintain a trust account. If the Law Firm does not have a trust account, this form needs to be submitted to the Law Society be September 1.

If the Law Firm has a trust account, the Self-Report has to be filled out and provided to the Law Firm Accountant, and the Accountant's Report has to then be completed and provided to the Law Society by September 1. The Accountant is required to have a copy of the Law Firm Self-Report before completing the Accountant's Report.

The Accountant's Report includes a template engagement letter between the Accountant and the Law Firm. Rules 101 and 102 set out these obligations.

The time period for these reports has not changed. The Reports are due September 1, for a 12 month period which ends not earlier than June of the previous year.

Upon termination of a Law Firm, a Self-Report and Accountant's Report will also be required.

Firm Trust Accounts

Rule 124 requires each Law Firm to maintain (unless an exception has been granted) one pooled trust account and one general account. Rule 129 provides that a Law Firm may also have separate interest bearing trust accounts.

Rules 125 through 133 set out the Rules to be followed for trust accounts, including the provision in Rule 125 that a trust account cannot be used for client funds if no legal services are provided to the client.

Trust Account Records

Rule 106 spells out the records that a Law Firm must maintain. In summary, trust account records must include:

- Chronological journal showing receipts, disbursements and transfers;
- Trust ledger with separate accounts for each client matter;
- Journal showing transfers between trust accounts;
- Monthly comparison between amount in the trust account and total client trust balances;
- General journal;
- Billing journal;
- Chronological journal of fees and disbursements received;
- Bank documents to support the transactions in the account; and
- A record of all non-monetary client trust property.

Monthly trust reconciliations

Rule 107 provides an exception to the general rule about monthly trust account reconciliations. If there has been no trust activity in an account for a month, there is no requirement for a trust reconciliation. However, once there is activity, there needs to be a reconciliation no later than 30 days after the activity, or 10 days after you become aware of the activity. No matter how little activity there is, trust accounts must be reconciled at least once in every 12 month period.

Trust and General Account Deposits and Trust Withdrawals other than by cheque.

The Rules allow for deposits to trust and general accounts, and withdrawals from trust accounts by means other than cheque. In each case the records that need to be kept are specified:

- Rules 109 and 110 allow for electronic deposits to, and withdrawals from trust accounts;
- Rule 111 provides for trust receipts by credit and debit cards;
- Rule 112 allows for ATM deposits to trust and to general accounts;
- Rule 113 provides for trust withdrawals by bank draft or money order.

Acting in Representative Capacity

Rule 134 requires that if you act in a representative capacity (as a personal representative, executor, administrator, trustee, *de facto* trustee or as attorney under any form of power of attorney) you must notify the Law Society within 14 days of beginning to act in that capacity. You may also be required to provide additional details of your engagement in a representative capacity.

Upcoming Sessions on New Rules

We will be putting on two sessions for lawyers and there staff on these new Rules. These sessions will be:

- **Wednesday November 20, 2019 at noon; and**
- **Wednesday November 27, 2019 at noon**

Both sessions will be held at the law Society office.

We encourage you, and your staff, to attend these sessions. RRSP to bob.wilson@lawsociety.nt.ca and indicate which session you will be attending, and how many will be attending.

Questions?

If you have any questions, please call.

1. The following definitions are added in alphabetical order in subrule 1(1):

"books of account" means the books, ledgers, journals, records and accounts referred to in section 43 of the Act;

"cash" means coins referred to in section 7 of the *Currency Act* (Canada), notes issued by the Bank of Canada under the *Bank of Canada Act* that are intended for circulation in Canada, and coins or bank notes of countries other than Canada;

"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;

"money" includes cash, cheques, drafts, negotiable instruments, credit card transactions, post office orders, express money orders, bank money orders and electronic transfer of deposits at financial institutions;

…

Parts 5 and 6 are repealed and the following is substituted:

PART 5

PROFESSIONAL LIABILITY LEVY

Professional Liability Claims

90. (1) The Professional Liability Claims Fund is continued, to receive money collected from members for the payment of premiums payable by the Society under a group contract entered into by the Society under subsection 61(1) of the Act.

(2) An annual insurance levy shall be levied on active members in such amount as may be fixed by the Executive from time to time for the purpose of maintaining and augmenting the Professional Liability Claims Fund, and such annual assessment may, in the discretion of the Executive, be paid in one or more instalments on such dates as may be specified by the Executive.

(3) In determining the amount or amounts of the assessment fund referred to in subrule (2), the Executive may include in the levy on particular members an additional amount based on the paid claims record of those members.

(4) The following categories of active members are exempt from payment of the assessment and are not entitled to indemnification under the group contract entered into under subsection 61(1) of the Act:

(a) an active member who does not ordinarily reside in nor carry on his or her principal practice of law in the Northwest Territories and proves to the satisfaction of the Executive that he or she has errors and omissions insurance that covers him or her in the practice of law in the Northwest Territories and that entitles him or her to indemnification to the same extent and for the same limits as the group contract entered into under subsection 61(1) of the Act;

(b) an active member who is employed by and whose professional services are provided exclusively to

(i) a government or government agency, or

(ii) an employer who does not practice law; or

(c) an active member who has submitted to the Executive Director an undertaking that he or she will not engage in the practice of law during a period of leave or sabbatical.

(5) The exemption under paragraph (4)(b) does not apply to an active member, however employed, who renders legal services to the public in the Northwest Territories.

(6) Each applicant for membership and each member who claims to be exempt from payment of the insurance levy by virtue of subrule (4), shall provide proof to the satisfaction of the Executive of his or her entitlement to the exemption with his or her application and annually on or before March 31 in each year.

(7) In addition to the requirements of subrule (6), each member who claims to be exempt from payment of an assessment under subrule (4) shall, at the request of the Secretary and within the time specified in the request, certify in writing to the Executive the circumstances entitling the member to the exemption.

(8) An active member who does not carry on the principal practice of law in the Northwest Territories and who does not qualify for an exemption under subrule (4), shall participate in the indemnity program and pay the assessment referred to in subrule (2).

(9) The coverage provided under subrule (8) is restricted to the member's practice of law in the Northwest Territories.

(10) Where the Executive considers that a member no longer qualifies for exemption under subrule (4), it shall request the member to pay to the Society the full amount of the assessment payable by that member.

(11) A member is automatically suspended from membership, without notice, if he or she fails

(a) to pay the assessment;
(b) to comply with subrule (6);
(c) to comply with a request made under subrule (7); or
(d) to comply with subrule 91(2).

(12) Notwithstanding subrule (4), an active member who is exempt under subrule (4), a suspended member or an inactive, deceased or former member, is entitled to indemnification provided under the group contract entered into under subsection 61(1) of the Act, but only with respect to professional services performed while the member was not exempt and was an active member in good standing.

91. (1) Where a member exempted under subrule 90(4) intends to practice law in the Northwest Territories in circumstances where the exemptions are no longer applicable,

(a) the member shall so notify the Secretary; and
(b) the Secretary shall, on receiving notification, give the member written notice of the amount of the insurance levy payable by him or her and the date payment is due to the Society.

(2) No member exempted under subrule 90(4) shall begin to practice law in the Northwest Territories in circumstances where the exemptions are no longer applicable, until he or she has paid to the Society the full amount of the insurance levy payable.

92. Where a member is enrolled under subsection 21(3) of the Act or where a member who is exempted under subrule 90(4) begins to practice law in the Northwest Territories in circumstances where the exemptions are no longer applicable, the insurance levy must be pro-rated so that the member is levied one-twelfth of the insurance levy for each month or unexpired portion of a month remaining in the period for which the levy is payable.

93. A member shall promptly notify the Secretary and the insurer under the group contract of any situation that may result in a claim being made against the Professional Liability Claims Fund or the group contract entered into by the Society under subsection 61(1) of the Act.

94. A member is deemed to have instructed the insurer under the group contract to release to the Society sufficient information respecting a professional liability claim, excluding the name of the member, to enable the Society to

(a) publish bulletins for the education of its members to assist them in avoiding similar claims and to improve the profession's service to the public;
(b) compile claims experience under the group contract.

PART 6

FINANCIAL MATTERS

Interpretation

95. (1) In this Part,

"accountant" means a public accounting firm as defined in subsection 1(1) of the *Chartered Professional Accountants Act*;

"disbursement" means an amount 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;

"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;

"financial institution" means

(a) a bank that is regulated by the *Bank Act* (Canada),

(b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,

(c) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,

(d) an association that is regulated by the Cooperative Credit Associations Act (Canada),

(e) a financial services cooperative that is regulated by An Act respecting financial services cooperatives, C.Q.L.R., c. C-67.3, or An Act respecting the Mouvement Desjardins, S.Q. 2000, c.77, other than a caisse populaire;

(f) a central cooperative credit society, as defined in section 2 of the Cooperative Credit Associations Act (Canada), or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial or territorial Act other than one enacted by the legislature of Quebec,

(g) a company that is regulated by the Trust and Loan Companies Act (Canada),

(h) a trust company or loan company that is regulated by a provincial or territorial Act,

(i) 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

(j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution;

"organization" means a body corporate, partnership, fund, trust, cooperative or an unincorporated association;

"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;

"public body" means

(a) a department or agent of Her Majesty in right of Canada or of a province or territory,

(b) an incorporated city, town, village, hamlet, charter community, Tåîchô community government, metropolitan authority, township, district, county, rural municipality, or other incorporated municipal body in Canada, or an agent in Canada of any of them,

(c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada or a similar body incorporated under the law of another province or territory,

(d) 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,

(e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose, or

(f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

(2) For the purposes of this Part, "law firm" or "firm" means any of the following that owns and carries on a law practice in the Northwest Territories and has a physical presence in the Northwest Territories, including an LLP as defined in rule 142:

(a) a sole practitioner;

(b) a professional corporation that is not part of a partnership; or

(c) a partnership consisting wholly or partly of active members or professional corporations.

(3) For the purposes of this Part, a member is an owner of a law firm if

(a) the firm consists of a sole practitioner and the member is the sole practitioner;

(b) the law firm is a professional corporation that is not part of a partnership, and the member is the sole voting shareholder of the corporation or one of the voting shareholders of the corporation; or

(c) the law firm is a partnership, and the member is one of the partners or is a voting shareholder of a professional corporation that is one of the partners.

(4) For the purposes of this Part, a member "practises with" a law firm if the member is the owner or one of the owners of the law firm or is an associate of the firm.

(5) Where a provision of this Part imposes a duty on a law firm,

(a) the owner of the law firm is responsible for performing the duty, if the firm has only one owner; and

(b) the owners of the law firm are jointly and severally responsible for performing the duty, if the firm has two or more owners.

96. Each member shall comply with sections 43, 44, 45 and 48 of the Act.

DIVISION 1 - ACCOUNTS

Interpretation

97. In this Division,

"Accountant's Report" means the annual report prepared by the law firm's accountant in accordance with subrule 101(4);

"general account" means an account, other than a trust account, maintained by a law firm in connection with the firm's law practice;

"Law Firm Self-Report" means the annual report prepared by the law firm in accordance with subrule 101(3);
"pooled trust account" means an interest-bearing trust account required to be maintained for one or more clients at an financial institution and designated as a trust account in the name of the law firm;

"responsible lawyer" means a lawyer designated as a responsible lawyer under rule 118;

"separate interest-bearing account" means

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

(b) a treasury bill purchased with trust money through a financial institution, where the trust money or treasury bill is deposited or purchased on behalf of a specified client;

"trust account" means a pooled trust account or a separate interest-bearing account;

"trust money" means

(a) money entrusted to or received by a lawyer in his or her capacity as a barrister and solicitor in connection with his or her practice in the Northwest Territories 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

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

but does not include

(c) 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

(d) 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 108(1)(f) that

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

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

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

"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.

Cash Transactions

98. (1) A lawyer shall not receive or accept cash in an aggregate amount greater than $7,500 Canadian in respect of any one client matter.

(2) For the purposes of this rule, when a lawyer receives or accepts cash in a foreign currency that cash is deemed to have been received or accepted as 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) 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, if the day on which the lawyer receives or accepts cash is a holiday.

(3) 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.

(4) Notwithstanding subrule (3), subrule (1) 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.

Record Keeping Requirements for Cash Transactions

99. (1) A lawyer, in addition to existing financial record keeping requirements to record all money and other property received and disbursed in connection with the lawyer's practice, shall maintain a book of original entry

(a) identifying the method by which money is received in trust for a client; and
(b) showing the method by which money, other than money received in trust for a client, is received.

(2) A lawyer who receives cash for a client shall, in addition to existing financial record keeping requirements, maintain a book of duplicate receipts, with each receipt

(a) identifying
    (i) the date on which cash is received,
    (ii) the person from whom cash is received,
    (iii) the amount of cash received,
    (iv) the client for whom cash is received,
    (v) any file number in respect of which cash is received; and
(b) featuring the signature
    (i) of the lawyer who receives cash, and
    (ii) of the person from whom cash is received.

(3) The financial records described in subrules (1) and (2) may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they must be entered and posted in ink.

(4) The financial records described in subrules (1) and (2) must be entered and posted so as to be current at all times.

(5) A lawyer shall keep the financial records described in subrules (1) and (2) for at least the six-year period immediately preceding the lawyer's most recent fiscal year end.

Reporting Requirements for Law Firms

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

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

101. (1) A law firm shall, within four months after receiving approval to operate a trust account,

(a) retain an accountant to complete a Start Up Report, in a form approved by the Executive Director; and
(b) submit a copy to the Executive Director.

(2) The Start Up Report must be submitted in a manner approved by the Executive Director and include a designated filing date for the law firm.

(3) A law firm shall
(a) on or before September 1 in each year, file with the Executive Director a completed Law Firm Self-Report, in a form and manner approved by the Executive Director, and provide a copy of it to the law firm's accountant; and
(b) retain, as part of the law firm's financial records, a copy of each Law Firm Self-Report provided under paragraph (a).

(4) A law firm, if approved to operate a trust account, shall, on or before September 1 in each year,

(a) have the law firm's financial records reviewed by an accountant; and
(b) cause an Accountant's Report, in a form and manner 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) The duty of a law firm to comply with subrules (3) and (4), as applicable, ceases only when
(a) the law firm's trust accounts and financial records are closed; and
(b) the final Law Firm Self-Report and the final Accountant's Report are provided in accordance with subrule (8).

(6) 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 as soon as is practicable after the date on which the firm's 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.

(7) A law firm that provides notice to the Executive Director in accordance with subrule (6) shall comply with subrules (3) and (4), as applicable.

(8) Any Law Firm Self-Report or final Accountant's Report filed under this section must be made up to the end of a 12-month fiscal period ending no earlier than June 1 of the previous year, unless the Executive designates alternative periods after receiving an application from the member under subsection 48(2) of the Act.

(9) A law firm shall comply with subrules (1) through (8), unless specifically exempted from the requirement to do so by the Executive Director.

(10) For greater certainty, each Law Firm Self-Report and Accountant's Report filed under this rule is a certificate referred to in section 48 of the Act.

Notices to the Executive Director

102. 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.

Examination, Review, Audit or Investigation of Financial Records

103. (1) The chairperson of the Discipline Committee may designate a person to 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.

(2) 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 the 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 request, grant authorization to the Society to obtain law firm bank account information directly from the law firm's banking institution.

(3) The person conducting an examination, review, audit or investigation under this rule shall provide a report to the chairperson of the Discipline Committee with a copy to any of the lawyer, the responsible lawyer and the law

firm, as may be applicable, advising whether the provisions of the Act and these 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.

(4) 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.

(5) The disclosure of privileged information to the Society is not a waiver of privilege for any other purpose.

(6) If an examination, review, audit or investigation has been made under this rule, the Executive may order, with reasons stated, that the cost of the examination, review, audit or investigation be either paid

(a) from the Assurance Fund; or
(b) by the subject member.

Notice of Bankruptcy Proceedings or Writ of Execution

104. (1) A lawyer, student-at-law, or applicant for admission or re-admission, shall immediately notify the law firm's
responsible lawyer and the Executive Director, 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 under 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 under 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 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.

(4) A decision under this rule made by the Executive Director under this rule may be appealed to the Executive.

Location of Financial Records

105. A law firm shall maintain all its financial records at its offices in the Northwest Territories unless exempted by the Executive Director.

Financial Records

106. (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 the Northwest Territories; 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 one month after 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 of each 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 as 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.

Monthly Trust Reconciliations

107. (1) Except where monthly trust reconciliations are not required, a member shall prepare a monthly trust reconciliation of the total of all unexpended balances of trust money held for clients as they appear in the trust ledger, with the total of balances held in the trust account or accounts, together with the reasons for any differences between the totals and supported by the following:

(a) a detailed monthly listing showing the unexpended balance of trust money held for each client, and identifying each client for whom trust money is held;

(b) a detailed monthly bank reconciliation for each trust account held for more than one client;

(c) a listing of balances of each separate trust account, identifying the client for whom each account is held;

(d) a listing of balances of trust money received under rule 128.

(2) The member shall retain the detailed listings described in paragraphs (1)(a) to (d) as records supporting the monthly trust reconciliations.

(3) The member shall prepare the monthly trust reconciliation required by subrule (1) not more than 30 days after the effective date of the reconciliation.

(4) Notwithstanding subrule (1) and subject to subrule (5), monthly trust reconciliations are not required in months where there has been no activity in the member's trust account.

(5) Where a trust reconciliation is reconciled to the most recent member's trust account reconciliation, the monthly trust reconciliation must be prepared no later than

(a) 30 days after the last activity in the trust account; or
(b) 10 days after the date the member first became aware of the activity in the trust account.

(6) Notwithstanding subrule (3), all trust accounts must

(a) be reconciled at least once in each 12-month period and at the end of the member's fiscal year; and
(b) relate back to the date of the last trust account reconciliation.

Client Files

108. (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 two years of financial records at its principal place of practice in the Northwest Territories;

(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 paragraphs 106(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 106, 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 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 its clients or former clients 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 financial records, which copy is deemed to be an original for the purposes of the Act and the Rules.

Electronic Banking Withdrawals

109. A law firm may withdraw money from trust electronically subject to the following conditions:
(a) the system used must be able to produce a hard copy confirmation from the financial institution within two banking days after 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 money is withdrawn 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 approved by the Executive Director;
(e) the law firm shall obtain a confirmation from the financial institution and within two banking days after 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.

Electronic Banking Deposits

110. (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 or remitter of the funds within two banking days after the deposit;
(b) where practicable, the law firm shall request that the confirmation include the name of the client or file number;
(c) the law firm must retain any confirmation received with the law firm banking records.

Credit and Debit Card Receipts

111. (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 two banking days, directly into a trust account;
(b) general receipts must be deposited directly into a general account, or 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.

ATM Deposits

112. (1) Law firms may, subject to the following conditions, deposit trust and general receipts into automated teller machines (ATMs):

(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.

Bank Drafts and Money Orders

113. (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 written authorization to receive the funds in the form of a bank draft or money order;

(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 the recipient's written acknowledgment of receipt of the funds.

Required Approvals for Lawyers and Law Firms

114. Unless specifically exempted from these requirements by the Executive Director, a law firm shall, before commencing the carrying on of its law practice in the Northwest Territories, obtain and at all times thereafter maintain, the following approvals:

(a) designation of a responsible lawyer; and

(b) authorization to maintain a trust account.

115. A lawyer employed by or who contracts with a person other than a law firm, and who practises law solely within the scope of that employment or contract, 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 he or she were the sole owner of a law firm.

116. Subject to rule 115, only a lawyer practising 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, 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 practising; 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 practising with that law firm.

Accountability as Responsible Lawyer

117. (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 requirements of the law firm under this Part,
(c) the accuracy of all filing requirements of the law firm under this Part, and
(d) any of paragraphs (a), (b), or (c) 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 the law firm is specifically exempted from this requirement by the Executive Director.

Responsible Lawyer

118. A responsible lawyer shall meet and continue to meet the following criteria:
(a) be an active member of the Society;
(b) if employed by or contracting with a law firm, be covered by the professional liability insurance program, and the trust safety insurance program administered by the Canadian Lawyers Insurance or equivalent insurance in another province;
(c) if employed by or contracting with a person other than a law firm and practices solely within the scope of that employment or contract, be covered by the trust safety insurance program;
(d) reside in Canada;
(e) make an application for approval as responsible lawyer to the Executive Director; and
(f) fulfill any conditions in relation to the approval of responsible lawyer.

Review of Application for Responsible Lawyer

119. (1) An application to be designated as a responsible lawyer or as alternate responsible lawyer must be submitted to the Executive Director in a form and manner approved by the Executive Director.

(2) In the course of a review under this rule the Executive Director may
(a) approve the application with or without conditions;
(b) deny the application; or
(c) require the applicant to answer any inquiries or to provide any records that the Executive Director considers relevant for the purpose of the review.

(3) An approval or denial under subrule (2) must be in the form of a written decision.

(4) The Executive Director shall provide the applicant with a copy of the written decision.

Revocation and Resignation of Responsible Lawyer

120. (1) A responsible lawyer who is unable or unwilling to discharge the duties of a responsible lawyer shall, at least 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 Law Firm Self-Report, in a form approved by the Executive Director 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 the Executive Director provides approval of the designation of the replacement responsible lawyer under rule 104.

(4) If the responsible lawyer fails to comply with subrule (1), the Executive Director 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 considers that a responsible lawyer does not continue to be suitable to fulfill their duties, the Executive Director shall

(a) attach conditions to the responsible lawyer approval; or

(b) revoke the responsible lawyer's designation as a responsible lawyer.

Qualifying for Trust Account

121. (1) Each 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 under rule 118; and

(d) use an accounting program approved by the Society, unless specifically exempted from this requirement by the Executive Director.

Review of Application for Trust Account

122. (1) An application for approval to open, operate and maintain a trust account must be submitted to the Executive Director by the responsible lawyer of a law firm, and must be in a form approved by the Executive Director.

(2) After review, the Executive Director 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

(i) examination, review, audit or completion of the law firm's financial records, or

(ii) investigation in relation to the applicant's law firm.

(3) An approval or denial under subrule (2) must be in the form of a written decision.

(4) The Executive Director shall provide the applicant with a copy of the written decision.

Term of Trust Account Approval

123. (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 120.

(2) If, at any time the Executive Director
- (a) has received a notice under rule 98; or
- (b) considers that a law firm or responsible lawyer is failing to
  - (i) comply with these rules, or
  - (ii) actively assess or respond to risks to trust accounts, then the Executive Director shall
    - (A) attach conditions to the approval to open, operate and maintain a trust account;

    or
    - (B) revoke the approval to open, operate and maintain a trust account.

Pooled Trust Accounts and General Accounts

124. (1) A 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 either of these requirements by the Executive Director.

(2) Every trust account must be maintained with a financial institution
- (a) in the name of the law firm; and
- (b) designated as a trust account.

(3) Every law firm shall instruct each financial institution with which it maintains a pooled trust account to remit the interest earned on the bank account to the Northwest Territories Law Foundation at least once in each year.

(4) Every law firm shall maintain the bank accounts referred to in subrule (1) in the Northwest Territories.

Prohibition on Use of Trust Accounts

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

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

126. (1) A lawyer or law firm must not receive or permit any other person other than the client for whose benefit the funds are held or the Northwest Territories Law Foundation, to 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.

Conditions Upon Which Money is Held in Trust

127. (1) Only a law firm with an approved trust account may hold trust money.

(2) A lawyer receiving trust money 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.

Receiving Trust Money

128. (1) A law firm that receives trust money shall, within a reasonable time after receipt, deposit the money into a pooled trust account of the law firm.

(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) 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 must not be used 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.

(4) 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.

Separate Interest-Bearing Accounts

129. (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 no later than the next monthly bank reconciliation of the separate interest-bearing account required to be made under subparagraph 106(4)(d)(i).

(3) In each of the following cases, money may be transferred by a law firm by a document signed in compliance with 131(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:

(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 financial institution;

(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 financial institution.

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

Certification of Funds Prior to Signing Trust Withdrawals and Transfers

130. (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 under 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, under subrule 127(2);

(e) the client has sufficient money in the trust account to cover the withdrawal; and

(f) the trust 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 under 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 person; or

(f) the money is paid under a court order.

(4) Money that is not held for a designated purpose may be withdrawn from a trust account of a law firm under subrule (3)(b), if not held for a designated purpose, but 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 one month after the law firm is entitled to the funds.

Trust Withdrawals by Cheque

131. (1) Except as provided in rules 109 and 114, 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 paragraph 102(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 under subrule 129(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 under subrule 129(3) by documents signed by one or more persons who are not lawyers.

Additional Obligations Related to Trust Money

132. (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) On becoming aware of a deficiency in a client's ledger account a responsible lawyer shall immediately notify the Executive Director of the deficiency in a form and manner approved by the Executive Director, and shall provide any relevant information explaining the deficiency if

(a) the law firm does not correct the deficiency within seven days after the time the shortage arose; or
(b) the deficiency is an amount greater than $2,500, 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 into court under 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 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.

Transfers between Client Ledgers

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

Lawyers Acting in a Representative Capacity

134. (1) In this rule, "estate" means the estate or property in respect of which a lawyer acts in a representative capacity.

(2) A lawyer acts in a representative capacity if he or she is

(a) the personal representative, executor or administrator, or one of the personal representatives, executors or administrators, of the estate of a deceased person;
(b) a trustee, or one of the trustees, of a trust under an appointment made under a trust instrument creating the trust;
(c) a trustee, or one of the trustees, of the property of another person under an appointment by a court,

(d) a *de facto* trustee; or
(e) an attorney, or one of the attorneys, of a person under a power of attorney, whether general, special, enduring or otherwise.

(3) Subrule 128 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 financial records of the lawyer's law firm, if

(a) 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) the lawyer
(i) notifies the Executive Director, in writing, that the lawyer is acting in a representative capacity, within 14 days after the lawyer so commences to act,
(ii) files with the Executive Director 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 addresses, 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
(iii) co-operates with the Society's auditor or investigator in the conduct of any examination, review, audit or investigation, to the extent that the lawyer is lawfully able to do so.

Undisbursable Trust Money

134.1. (1) An application to the Secretary under subsection 46.1(1) of the Act must be made by submitting a Declaration of Undisbursable Trust Money in Form 5.1.

(2) An application to the Secretary under subsection 46.1(1) of the Act must

(a) show the name of the member making the application and the name, address and phone number of the law firm holding the trust money that is the subject of the application;
(b) show the aggregate amount of the trust money that is the subject of the application; and
(c) contain a certification by the applicant that the statements made in the application are true and correct.

(3) If the application relates to trust money to which one or more persons are entitled, the application shall state, in respect of each person so entitled,

(a) the amount of the trust money to which the person is entitled, according to the law firm's trust account records;
(b) the name of the person so entitled and that person's last known address according to the law firm's records;
(c) if the person so entitled was a corporation in existence at the commencement of the two-year period preceding the date of filing of the application, whether the corporation still exists according to the official records of the government of the jurisdiction in which it was incorporated or continued;
(d) the name of the person who paid the money to the law firm, the last known address of that person according to the law firm's records and the date on which the money was paid to the law firm;
(e) the details of the transaction under which the trust money was received by the law firm and the name and last known address of the client concerned;
(f) a description of the efforts made during the two-year period preceding the date of filing of the application to locate the person entitled to the trust money, including the date of the last uncashed cheque or the date of the last attempt to contact that person;
(g) in the case of a natural person, whether any request was made to pay the trust money to the Public Trustee;
(h) the name of the member in the law firm currently responsible for the file, if the applicant is not a sole practitioner; and

(i) that there are no trust conditions to which the trust money is subject.

(4) If the application relates to trust money that cannot be attributed to any client or other person, the application shall state

(a) the amount of the unattributed trust money;
(b) the period of time during which the trust money has been held in the clients' trust account; and
(c) the reason, if known, why the money was credited to the clients' trust account and why the money cannot be attributed to any particular client or other person.

(5) A claim made under subsection 46.1(5) of the Act must be made by submitting a Claim to Trust Money in Form 5.2.

(6) A claim made under subsection 46.1(5) of the Act must be adjudicated by

(a) a committee consisting of the Executive Director and the Treasurer, if the claim does not exceed $500.00; or
(b) the Finance Committee, in any other case.

(7) The Finance Committee or the committee referred to in paragraph (6)(a) may, for the purpose of coming to its decision respecting a claim,

(a) request that the claimant provide any further information and documents related to the claim that the 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.

(8) The Finance Committee or the committee referred to in paragraph (6)(a) shall, on considering a claim,

(a) approve the claim, with or without conditions; or
(b) reject the claim.

(9) The Finance Committee or the Committee referred to in paragraph (6)(a) shall report its decisions to the Executive.

Obligations Related to Clients' Property

134.2. On receiving trust property a law firm 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.

Custodianships

134.3. 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 Executive, so that the administration by the custodian is governed by the Act, any guidelines adopted by the Executive with respect to custodianships, and any court order.

DIVISION 2 - CLIENT IDENTITY AND VERIFICATION

Interpretation

134.4. In this Division,

"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;

"Financial Action Task Force" means the inter-governmental body, of which Canada is a member, established in 1989 by the G-7 Summit held in Paris in 1989 and now responsible for combatting the threat posed by money laundering and terrorist financing and proliferation, and other related threats to the integrity of the international financial system;

"reporting issuer" means an organization that is a reporting issuer within the meaning of the securities laws of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange that is designated under section 262 of the *Income Tax Act* (Canada) and operates in a country that is a member of the Financial Action Task Force, and includes a subsidiary of that organization or corporation whose financial statements are consolidated with those of the organization or corporation;

"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;

134.5. (1) Subject to subrule (3), a lawyer who is retained by a client to provide legal services shall comply with the requirements of this rule in keeping with the lawyer's obligation to know their client, understand the client's financial dealings in relation to the retainer and manage any risks arising from the professional business relationship with the client.

(2) A lawyer's responsibilities under this rule may be fulfilled by any member, associate or employee of the lawyer's firm, wherever they may be located.

(3) Rules 134.6 through 135.2 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 134.7 on behalf of his or her employer;

(b) a lawyer

(i) who is engaged as an agent by the lawyer for a client to provide legal services to that 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 134.6 through 135.2; 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 the receiving, paying or transferring of funds other than by an electronic funds transfer.

134.6. A lawyer who is retained by a client as described in subrule 134.5(1) shall 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 and position of and contact information for the individual who is authorized to provide and gives instructions to the lawyer with respect to the matter for which the lawyer is retained;

(c) if the client is acting for or representing a third party, information about the third party as set out paragraphs (a) and (b), as applicable.

WHEN VERIFICATION OF CLIENT IDENTITY REQUIRED

134.7. Subject to subrule 134.8(1), subrule 134.8(2) 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.

Requirement to Verify Client Identity

134.8. (1) This rule does not apply

(a) where the client is a financial institution, public body or reporting issuer;

(b) in respect of funds,

(i) paid by or to a financial institution, public body or a reporting issuer,

(ii) received by a lawyer from the trust account of another lawyer,

(iii) received from a peace officer, law enforcement agency or other public official acting in his or her official capacity,

(iv) paid or received to pay a fine, penalty or bail, or

(v) paid or received for professional fees, disbursements or expenses; or

(c) to an electronic funds transfer.

(2) When a lawyer is engaged in or gives instructions in respect of any of the activities described in rule 134.7, the lawyer shall

(a) obtain from the client and record, with the applicable date, information about the source of funds described in rule 134.7; and

(b) verify the identity of the client, including the individual or individuals described in subparagraph 134.6(b)(iv), and where appropriate, the third party using the documents or information described in subrule (7).

(3) A lawyer may rely on an agent to obtain the information described in subrule (7) to verify the identity of an individual client, third party or individual described in subparagraph 134.6(b)(iv), provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subrule (5).

(4) Notwithstanding subrule (2), where an individual client, third party or individual described in subparagraph 134.6(b)(iv) is not physically present in Canada, a lawyer shall rely on an agent to obtain the information described in subrule (5) to verify the person's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subrule (4).

(5) A lawyer who enters into an agreement or arrangement referred to in subrule (3) or (4) shall:

(a) obtain from the agent the information obtained by the agent under that agreement or arrangement; and

(b) satisfy himself or herself that the information is valid and current and that the agent verified identity in accordance with subrule (7).

(6) A lawyer may rely on the agent's previous verification of an individual client, third party or an individual described in subparagraph 134.6(b)(iv) if the agent was, at the time he or she verified the identity,

(a) acting in his or her own capacity, whether or not he or she was 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 subrule (7).

(7) For the purposes of paragraph (2)(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, that is used in the presence of the individual to verify that the name and photograph are those of the individual;

(ii) information that is in the individual's credit file if that file is located in Canada and has been in existence for at least three years that is used to verify that the name, address and date of birth in the credit file are those of the individual;

(iii) any two of the following with respect to the individual:

(A) information from a reliable source that contains the individual's name and address that is used to verify that the name and address are of those of the individual,

(B) information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual, or

(C) information that contains the individual's name and confirms that they have a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information;

(b) for the purposes of clauses (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) if the client or third party is an organization such as a body corporate that is created or registered under 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

(d) if the client or third party is an organization, other than a body corporate, 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.

(8) To verify the identity of an individual who is

(a) under 12 years of age, the lawyer shall verify the identity of one of the individual's parents or their guardian; and

(b) at least 12 years of age but not more than 15 years of age, the lawyer may refer to information under clause (7)(a)(iii)(A) that contains the name and address of a parent or guardian of the individual that verifies that the address is that of the individual.

(9) When a lawyer is engaged in or gives instructions in respect of any of the activities in rule 134.7 for a client or third party that is an organization referred to in paragraph (7)(c) or (d), the lawyer shall

(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 all known beneficiaries and settlors of the trust, and
(iii) in all cases, information establishing the ownership, control and structure of the organization.

(10) A lawyer shall take reasonable measures to confirm the accuracy of the information obtained under subrule (9).

(11) A lawyer shall keep a record, with the applicable dates, that sets out the information obtained and the measures taken to confirm the accuracy of that information.

(12) If a lawyer is not able to obtain the information referred to in subrule (9) or to confirm the accuracy of that information in accordance with subrule (10), the lawyer shall
(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 rule 134.7, and
(iii) the client's instructions in respect of the transaction,
are consistent with the purpose of the retainer and the information obtained about the client as required by this rule;
(c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and
(d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).

(13) A lawyer shall verify the identity of
(a) a client who is an individual, and
(b) the individual or individuals 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 rule 134.7.

(14) A lawyer who has verified the identity of an individual 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.

(15) A lawyer shall verify the identity of a client that is an organization upon engaging in or giving instructions in respect of any of the activities described in rule 134.7, but in any event no later than 30 days thereafter.

(16) A lawyer who has verified the identity of a client that is an organization and obtained information under subrule (9) 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.

Record Keeping and Retention

134.9. (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 subrule 134.8(2).

(2) The documents referred to in subrule (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, with the applicable date, and any documents obtained for the purposes of rule 134.6, subrule 134.8(10) and subrule 135.2(2), and copies of all documents received for the purposes of subrule 134.8(2), 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

135. Rules 134.4 through 134.9 do not apply to matters in respect of which a lawyer was retained before this rule 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, DUTY TO WITHDRAW AT TIME OF TAKING INFORMATION

135.1. (1) If in the course of obtaining the information and taking the steps required in rule 134.6 and subrules 134.8(2), (9) or (12), 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 shall 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 rule comes into force.

MONITORING

135.2. 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 rule 134.7, the lawyer shall

(a) monitor on a periodic basis the professional business relationship with the client for the purposes of:

(i) determining whether

(A) the client's information in respect of their activities,

(B) the client's information in respect of the source of the funds described in rule 134.7, and

(C) 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 this Division, and

(ii) assessing whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and

(b) keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of subparagraph (a)(i).

DUTY TO WITHDRAW

135.3. If while retained by a client, including when taking the steps required in rule 135.2, 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 shall withdraw from representation of the client.

5. Rule 137 is repealed.