

Law Society of Nunavut

Rule on Client Identification effective on January 1, 2009.

1. Rule 80 is deleted and replaced by the following:

Definitions

80. In this Part,

“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*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

“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 institution” means

- (a) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which the *Bank Act* applies,
- (b) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (d) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (e) a trust company or loan company regulated by a provincial or territorial Act,
- (f) a department or agent of Her Majesty in right of Canada or of a province, or a department or agent of a territorial government, where the department or agent

accepts deposit liabilities in the course of providing financial services to the public, or

- (g) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

“funds” means cash, money as defined in section 42 of the Act, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;

“organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

"proceedings" means a legal action, application or other proceeding commenced before a court of any level, a statutory tribunal in Canada or an arbitration panel or arbitrator established pursuant to provincial, territorial, federal or international legislation and includes proceedings before foreign courts.

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province, or a department or agent of a territorial government,
- (b) a municipality in Nunavut or an agent of a municipality in Nunavut,
- (c) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent or local board of a municipal body incorporated by or under an Act of a province or territory,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under the law of an Act of a province or territory for a public purpose, or
- (f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

"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 prescribed by the Income Tax Regulations (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 a person or entity that is 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.

2. Rule 80.1 is deleted and Rule 80.2 is renumbered as rule 80.1.

3. The following is added after rule 80.1

Client Identity

80.2 (1) Subject to subsection (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule.

(2) A lawyer's responsibilities under sections 80.1 to 80.10 may be fulfilled by a member, associate or employee of the lawyers firm, wherever located.

(3) Sections 80.3 through 80.9 do not apply to

- (a) a lawyer when he or she provides legal services and engages in or gives instructions in respect of any of the activities described in section 80.4 on behalf of his or her employer,
- (b) a lawyer
 - (i) who is engaged as an agent by the client's lawyer to provide legal services to the client, or
 - (ii) or provides legal services as the result of a referral by the client's lawyer, when the client's lawyer has complied with sections 80.3 to 80.9; or

- (c) a lawyer providing legal services as part of a duty counsel program, except if the lawyer engages on behalf of a client in or gives instructions on behalf of a client in respect of the receiving, paying or transferring of funds.

80.3 A lawyer who is retained by a client as described in section 80.2(1) shall obtain and record the following information:

- (a) the client's full name,
- (b) the client's business address and business telephone number, if any,
- (c) if the client is an individual, the client's home address and home telephone number, if any,
- (d) if the client is an organization, other than a financial institution, public body or company that is not a private company, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
- (e) if the client is an individual, the client's occupation or occupations, if any,
- (f) if the client is an organization,
 - (i) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
 - (ii) the name and position of and contact information for each individual who is authorized to provide and gives instructions for the lawyer with respect to the matter for which the lawyer is retained,
- (g) if the client is acting for or representing a third party, information about the third party as set out in paragraphs (a) to (f) as applicable.

80.4 Section 80.6 applies where a lawyer who has been retained by a client to provide legal services engages on behalf of a client in or gives instructions on behalf of a client in respect of the receiving, paying or transferring of funds, other than an electronic funds transfer.

80.5 (1) Section 80.6 does not apply where the client is a financial institution, public body or reporting issuer.

(2) Section 80.6 does not apply in respect of funds,

- (a) paid by or to a financial institution, public body or a company that is not a private company, or a subsidiary of a public body or a reporting issuer;
- (b) received by a lawyer from the trust account of another lawyer;
- (c) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- (d) paid or received pursuant to a court order or to pay a fine or penalty;
- (e) paid or received as a settlement of any legal or administrative proceedings; or
- (f) paid or received for professional fees, disbursements, expenses or bail.

80.6. (1) When a lawyer is engaged in or gives instructions in respect of any of the activities described in section 80. 4, including non-face-to-face transactions, the lawyer shall take reasonable steps to verify the identity of the client, including the individuals described in subparagraph 3(f)(ii) and, where appropriate, the third party, using what the lawyer reasonably considers to be reliable, independent source documents, data or information.

(2) For the purposes of subsection (1), independent source documents may include:

- (a) if the client or third party is an individual, valid original government issued identification, including a driver's licence, birth certificate, provincial or territorial health insurance card, passport or similar record;
- (b) if the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors, where applicable, such as
 - (i) a certificate of corporate status issued by a public body,
 - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or

- (iii) a copy of a similar record obtained from a public body that confirms the organization's existence; and
- (c) if the client or third party is an organization, other than a corporation or society, that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

(3) When a lawyer is engaged in or gives instructions in respect of any of the activities in section 80.4 for a client or third party that is an organization referred to in subsection (2)(b) or (c), the lawyer shall make reasonable efforts to obtain, and if obtained, record,

- (a) the name and occupation of all directors of the organization, other than an organization that is a securities dealer, and
- (b) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.

(4) When a lawyer engages in or gives instructions in respect of any of the activities in section 80.4 for

- (a) a client or third party who is an individual who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the client's identity by obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subsection (2)(a).
- (b) a client that is an organization is instructed by an individual described in subparagraph 80.3(f)(ii) who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the individual's identity by obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subsection (2)(a).

(5) For the purpose of subsection (4), an attestation shall be produced on a legible photocopy of the document and shall include

- (a) the name, profession and address of the person providing the attestation;
- (b) the signature of the person providing the attestation; and
- (c) the type and number of the identifying document provided by the client, third party or instructing individuals.

(6) For the purpose of subsection (4), a guarantor must be a person employed in one of the following occupations in Canada:

- (a) dentist;
- (b) medical doctor;
- (c) chiropractor;
- (d) judge;
- (e) magistrate;
- (f) lawyer;
- (g) notary (in Quebec);
- (h) notary public;
- (i) optometrist;
- (j) pharmacist;
- (k) professional accountant, meaning an APA (Accredited Public Accountant), CA (Chartered Accountant), CGA (Certified General Accountant), CMA (Certified Management Accountant), PA (Public Accountant) or RPA (Registered Public Accountant);
- (l) professional engineer;
- (m) veterinarian;
- (n) peace officer;
- (o) paralegal licensee in Ontario;
- (p) nurse; or
- (q) school principal.

(7) For the purpose of subsection (2)(a), and in connection with subsection (2)(b) and the individuals described in subparagraph 80.3(f)(ii), a lawyer may, and in the case of a non-face-to-face transaction involving a client who is not present in Canada a lawyer shall, rely on an agent to obtain the information described in subsection (2) to verify the persons identity, which may include, where applicable, an attestation described in this section, provided the lawyer and the agent have an agreement or arrangement in writing for this purpose.

(8) A lawyer who enters into an agreement or arrangement referred to in subsection (7) shall obtain from the agent the information obtained by the agent under that agreement or arrangement.

(9) Upon engaging in or giving instructions in respect of any of the activities described in section 80.4, a lawyer shall verify the identity of

- (a) a client who is an individual, and
- (b) each individual authorized to provide and who gives instructions on behalf of an organization with respect to the matter for which the lawyer is retained.

(10) Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity if the lawyer recognizes that person.

(11) A lawyer shall verify the identity of a client that is an organization within 60 days of engaging in or giving instructions in respect of any of the activities described in section 80.4.

(12) Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subsection 6(3), the lawyer is not required to subsequently verify that identity or obtain that information.

80.7. (1) A lawyer shall obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of section 80.6(1).

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

(3) A lawyer shall retain a record of the information and any documents obtained for the purposes of sections 80.3 and 80.6(3) and copies of all documents received for the purposes of section 80.6(1) for the longer of

- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing service to the client, and
- (b) a period of at least six years following completion of the work for which the lawyer was retained.

80.8 Sections 80.2 through 80.7 of this Rule 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.

80.9 (1) If in the course of obtaining the information and taking the steps required in sections 80.3 and 80.6(1) or (3), a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.

(2) This section applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Rule comes into force.

80.10 (1) If while retained by a client, a lawyer knows or ought to know that he or she is or would be assisting the client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.

(2) This section applies to all matters for which a lawyer was retained before or after this Rule comes into force.