

Part XVI – Client Identification and Verification Requirements

Definitions

16.01 In this Rule,

“credit union central” means a central cooperative credit society as defined in section 2 of the *Cooperative Credit Associations Act*, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial or territorial Act other than one enacted by the legislature of Quebec.

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

“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.

“expenses” means costs incurred by a member or member’s 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*,

(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,

(f) a credit union central

(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.

“financial services cooperative” means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c. 77, other than a caisse populaire.

“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.

“legal services” means the practice of law as defined in s. 2(2) of the *Law Society Act*, 1999.

“member” means, in the Province of Quebec, an advocate or a notary and, in any other province, a barrister or solicitor.

“organization” means a body corporate, partnership, fund, trust, co-operative 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 member or the member’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, 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 including any local board as defined in the *Municipal Act* (Ontario) [or equivalent legislation] or similar body incorporated under the law of another province or territory,

(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 the law of an Act of a province or territory of Canada for a public purpose, or

(f) 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 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.

Requirement to Identify Client

16.02 (1) Subject to section 16.02(3), a member who is retained by a client to provide legal services must comply with the requirements of this Rule in keeping with the member’s obligation to know their client, understand the client’s financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

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

(3) Sections 16.03 through 16.10 do not apply to

(a) a member when he or she provides legal services or engages in or gives instructions in respect of any of the activities described in section 16.04 on behalf of his or her employer,

(b) a member

(i) who is engaged as an agent by the lawyer for a client to provide legal services to the client, or

(ii) to whom a matter for the provision of legal services is referred by the lawyer for the client when the client's lawyer has complied with sections 16.03 through 16.10,

or

(c) a member providing legal services as part of a duty counsel program sponsored by a non-profit organization, except where the member engages in or gives instructions in respect of the receiving, paying or transferring of funds other than an electronic funds transfer.

16.03 A member who is retained by a client as described in section 16.02(1) must obtain and record, with the applicable date, the following information:

(1) for individuals

(a) the client's full name,

(b) the client's home address and home telephone number,

(c) the client's occupation or occupations, and

(d) the address and telephone number of the client's place of work or employment, where applicable;

(2) for organizations

(a) the client's full name, business address and business telephone number,

(b) 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,

(c) 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

(d) the name and position of and contact information for the individual who is authorized to provide and gives instructions to the member with respect to the matter for which the member is retained,

(3) If the client is acting for or representing a third party, information about the third party as set out in sections 16.03(1) and 16.03(2) as applicable.

When Verification of Client Identity Required

16.04 Subject to section 16.05, section 16.06 applies where a member 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.

Exemptions re: certain funds

16.05 Section 16.06 does not apply:

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

(2) in respect of funds,

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

(b) received by a member from the trust account of another member;

(c) received from a peace officer, law enforcement agency or other public official acting in their official capacity;

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

(e) paid or received for professional fees, disbursements or expenses.

or

(3) to an electronic funds transfer.

Requirement to Verify Client Identity

16.06 (1) When a member is engaged in or gives instructions in respect of any of the activities described in section 16.04, the member must

(a) obtain from the client and record, with the applicable date, information about the source of funds described in section 16.04, and

(b) verify the identity of the client, including the individual(s) described in paragraph 16.03(2)(d), and, where appropriate, the third party using the documents or information described in section 16.06(6).

Use of Agent

(2) A member may rely on an agent to obtain the information described in section 16.06(6) to verify the identity of an individual client, third party or individual described in section 16.03(2)(d) provided the member and the agent have an agreement or arrangement in writing for this purpose as described in 16.06(4).

(3) Notwithstanding section 16.06(2), where an individual client, third party or individual described in section 16.03(2)(d) is not physically present in Canada, a member must rely on an agent to obtain the information described in 16.06(4) to verify the person's identity provided the member and the agent have an agreement or arrangement in writing for this purpose as described in section 16.06(4).

Agreement for Use of Agent

(4) A member who enters into an agreement or arrangement referred to in sections 16.06(2) and 16.06(3) must:

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

(b) satisfy themselves that the information is valid and current and that the agent verified identity in accordance with section 16.06(6).

(5) A member may rely on the agent's previous verification of an individual client, third party or an individual described in section 16.03(2)(d) if the agent was, at the time they verified the identity,

(a) acting in their own capacity, whether or not they were required to verify identity under this Rule, or

(b) acting as an agent under an agreement or arrangement in writing, entered into with another member who is required to verify identity under this Rule, for the purpose of verifying identity under section 16.06(6).

Documents and Information for Verification

(6) For the purposes of section 16.06(1)(b), the client's identity must be verified by referring to the following documents, which must be valid, original and current, or the following information, which must be valid and current, and which must not include an electronic image of a document:

(a) if the client or third party is an individual,

(i) an identification document containing the individual's name and photograph that is issued by the federal government, a provincial or territorial government or a foreign government, other than a municipal government, that is issued 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 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 addresses are those of the individual;

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

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

(b) For the purposes of sections 16.06(6)(a)(iii)(A) to (C), the information referred to must be from different sources, and the individual, member and agent cannot be a source.

(c) To verify the identity of an individual who is under 12 years of age, the member must verify the identity of one of their parents or their guardian.

(d) to verify the identity of an individual who is at least 12 years of age but not more than 15 years of age, the member may refer to information under section 16.06(a)(iii)(A) that contains the name and address of one of the individual's parents or their guardian and verifying that the address is that of the individual.

(e) if the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, where applicable, such as

(i) a certificate of corporate status issued by a public body,

(ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or

(iii) a copy of a similar record obtained from a public body that confirms the organization's existence; and

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

Requirement to Identify Directors, Shareholders and Owners

(7) When a member is engaged in or gives instructions in respect of any of the activities in section 16.04 for a client or third party that is an organization referred to in section 16.06(6)(e) or (f), the member must

(a) obtain and if obtained, 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.

(8) A member must take reasonable measures to confirm the accuracy of the information obtained under section 16.06(7).

(9) A member must keep a record, with the applicable date(s), that sets out the information obtained and:

(a) the efforts made under section 16.06(7)(b), and

(b) the measures taken to confirm the accuracy of the information obtained under section 16.06(7).

(10) If a member is not able to obtain the information referred to in section 16.06(7) or to confirm the accuracy of that information in accordance with section 16.06(8), the member must

(a) take reasonable measures to ascertain the identity, of the most senior managing officer of the organization; and

(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 section 16.04, 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 require by this Rule;

(c) assess whether there is a risk that the member 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 sections 16.06(10)(b) and 16.06(10)(c).

Timing of Verification for Individuals

(11) A member must verify the identity of

(a) a client who is an individual, and

(b) the individual(s) authorized to provide and give instructions on behalf of an organization with respect to the matter for which the member is retained

upon engaging in or giving instructions in respect of any of the activities described in section 16.04.

(12) Where a member has verified the identity of an individual, the member is not required to subsequently verify that same identity unless the member has reason to believe the information, or the accuracy of it, has changed.

Timing of Verification for Organizations

(13) A member must verify the identity of a client that is an organization upon engaging in or giving instructions in respect of any of the activities described in section 16.04 but in any event no later than 30 days thereafter.

(14) Where the member has verified the identity of a client that is an organization and obtained information pursuant to section 16.06(7), the member is not required to subsequently verify that identity or obtain that information unless the member has reason to believe the information, or the accuracy of it, has changed.

Record keeping and retention

16.07 (1) A member must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of section 16.06(1).

(2) The documents referred to in section 16.06(1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

(3) A member must retain a record of the information, with the applicable date, and any documents obtained for the purposes of sections 16.03 and 16.06(7) 16.06(10(2) and copies of all documents received for the purposes of section 16.06(1) for the longer of

(a) the duration of the member 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 member was retained.

Application

16.08 Sections 16.02 through 16.07 of this Rule do not apply to matters in respect of which a member 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

16.09 (1) If in the course of obtaining the information and taking the steps required in sections 16.03, 16.06(1), 16.06(7) or (10), a member who knows or ought to know that he or she is or would be assisting a client in fraud, or other illegal conduct, the member must withdraw from representation of the client.

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

Monitoring

16.10 During a retainer with a client in which the member is engaged in or gives instructions in respect of any of the activities described in section 16.04, the member must:

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

(a) determining whether

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

(ii) the client's information in respect of the source of the funds described in section 16.04, and

(iii) the client's instructions in respect of transactions

are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule, and

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

(2) keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of section 16.10(1)(a).

Duty to Withdraw

16.11 (1) If while retained by a client, including when taking the steps required in section 16.10, a member who knows or ought to know that he or she is or would be assisting the client in fraud, or other illegal conduct, the member must withdraw from representation of the client.

Application

(2) This section applies to all matters for which a member was retained before this Rule comes into force and to all matters for which he or she is retained after that time.