



AGENDA

Benchers

Date: Thursday, December 19, 2019

Time: 12:30 pm

Location: Law Society Classroom, 3rd Floor - 200 St. Mary Avenue, Winnipeg, Manitoba

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1.0	PRESIDENT'S WELCOME AND TREATY ACKNOWLEDGEMENT				
	The President will welcome to the meeting new Bencher Jessica Saunders.				
2.0	IN MEMORIAM				
	The Honourable Nathan Nurgitz , who passed away on October 19, 2019 at the age of 85. Mr. Nurgitz received his call to the Bar on September 30, 1959. He began his career as a partner in the firm Pollock Nurgitz Bromley Myers & Hewak, where he practised for 20 years. In 1979 Mr. Nurgitz joined Thompson Dorfman Sweatman where he continued to practise for an additional 14 years. In 1993 Mr. Nurgitz was appointed a judge of the Court of Queen's Bench, a position he held for 16 years. From 2005 to 2009 he also served as a Deputy Judge of the Nunavut Court of Justice. Upon his retirement from the Bench in 2009, Mr. Nurgitz returned to Thompson Dorfman Sweatman LLP, where he practised for an additional three years. Mr. Nurgitz also sat as a Magistrate of the City of West Kildonan from 1968 to 1975, was appointed Queen's Counsel in 1977, served as a Bencher of the Law Society from 1978 to 1982, and served in the Senate of Canada from 1979 to 1993.				

	<p>Grant William Davis, who passed away on November 17, 2019 at the age of 43. Mr. Davis received his call to the Bar on June 16, 2005. After receiving his call, Mr. Davis joined Irwin Law Office in Dauphin, Manitoba, where he practised for one year. He then relocated to Winnipeg, where he practised with Hook & Smith up to the date of his death.</p>				
ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
<p>3.0 CONSENT AGENDA</p> <p>The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or Chief Executive Officer prior to the meeting.</p>					
3.0	Consent Agenda	5	Anita Southall		
3.1	Minutes of October 31, 2019 Meeting			Attached	Approval
3.2	Rule Amendments - Financial Accountability and Client Identification and Verification			Attached	Approval
<p>4.0 EXECUTIVE REPORTS</p>					
4.1	President's Report	5	Anita Southall	Attached	Briefing
4.2	CEO Report	10	Kris Dangerfield	Attached	Briefing
4.3	Strategic Plan Update	5	Kris Dangerfield	Attached	Briefing
<p>5.0 DISCUSSION/DECISION</p>					
5.1	Code Amendments - Technological Competence	20	Darcia Senft	Attached	Discussion/ Decision

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
6.0 COMMITTEE REPORTS					
6.1	Complaints Investigation Committee	1	Wayne Onchulenko	Pending	Briefing
6.2	Discipline Committee	5	Sacha Paul	Attached	Briefing
6.3	Nominating Committee	10	Kathy Bueti		Briefing
6.4	Access to Justice Steering and Stakeholders Committees	10	Vincent Sinclair Neil Cohen		Briefing
6.5	President's Special Committee on Health and Wellness	10	Wayne Onchulenko		Briefing
6.6	President's Special Committee on Regulating Legal Entities	10	Grant Driedger		Briefing
7.0 MONITORING REPORTS					
7.1	Operations and Administration	20	Kris Dangerfield	Attached	Briefing
7.2	Financial Statements - October 31, 2019	5	Kris Dangerfield	Attached	Briefing
7.3	Investment Compliance - September 30, 2019	5	Kris Dangerfield	Attached	Briefing
8.0 MISCELLANEOUS BUSINESS					
8.1	Law Library Hub Pilot Project Update	10	Kris Dangerfield	Attached	Briefing

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
8.2	Report of Federation Council Member	10	David Swayze		Briefing
9.0 FOR INFORMATION					
9.1	Agenda for the Joint Meeting with MBA Council			Attached	Information
9.2	Invitation to Holiday Reception			Attached	Information
9.3	50 Year Lunch Program			Attached	Information
9.4	FLSC E-Briefing - December 2019			Attached	Information
9.5	Media Reports			Attached	Information

MEMORANDUM

TO: Benchers

FROM: Leah Kosokowsky

DATE: December 12, 2019

RE: **Rule Amendments - Part 5 - Division 4 - Financial Accountability**
Rule Amendments - Part 5 - Division 12 - Client Identification and Verification

At the October 31, 2019 bencher meeting, you approved of amendments to the anti-money laundering and terrorist financing rules. These rules have been translated into French and are attached for your final approval.

I also attach a certificate of translation.

Upon receiving final approval, the rules will come into effect on January 1, 2020.

LCK

- 5-30(4) Exemption for Canadian legal advisor
- 5-31 Surcharge
- 5-32 Unpaid deductible
- 5-33 Lawyers who do not contribute to the fund
- 5-34 Duty to notify insurer
- 5-35 Duty to co-operate
- 5-36 Failure to comply with rules

DIVISION 3 – REIMBURSEMENT FUND

- 5-37(1) Definitions
- 5-37(2) Annual contribution
- 5-37.1 Exemption for Canadian legal advisor
- 5-38(1) Authority of CEO
- 5-38(2) Authority of Committee
- 5-39 Report to benchers
- 5-40 Authority of benchers

DIVISION 4 – FINANCIAL ACCOUNTABILITY

- 5-41 Definitions
- 5-42(1) Trust Account Supervisor
- 5-42(2) Transition for Current Account Holders
- 5-42(3) Members who share space
- 5-42.1(1) Trust Account Supervisor Responsibility
- 5-42.1(2) Notification regarding new accounts
- 5-42.1(3) Notice of Withdrawal
- 5-42.1(4) Closure of Trust Accounts
- 5-42.2(1) Trust Account Supervisor Eligibility
- 5-42.2(2) Authority of Chief Executive Officer
- 5-42.2(3) Recovery of Expenses on Conditional Approval
- 5-42.2(4) Written Notice by Chief Executive Officer
- 5-42.2(5) Closure of Trust Accounts
- 5-42.2(6) Custodial Order
- 5-42.3(1) Appeal
- 5-42.3(2) Appeal Panel
- 5-42.3(3) Hearing
- 5-42.3(4) Decision Final
- 5-43(1) Trust Records
- 5-43(2) Monthly trust reconciliations
- 5-43(3) Balances in clients' trust ledgers
- 5-43(4) Record of valuable property
- 5-43(5) Electronic trust records
- 5-43(6) Hand posted trust records
- 5-43(7) Trust records must be current
- 5-44(1) Handling of trust money

LAW SOCIETY RULES

- 5-45(1) Restriction on receipt of cash
- 5-45(2) Recordkeeping for cash receipts
- 5-45(3) Foreign currency conversion for cash
- 5-45(4) Application of cash restriction
- 5-45(5) Exceptions to cash restriction
- 5-45(6) Acknowledgement of cash refund required
- 5-46 Repealed
- 5-46(1) Specific trust investment account
- 5-46(2) Removing funds from specific trust investments
- 5-47(1) Restricted Trust Account
- 5-47(3) Withdrawal by Teranet Manitoba LLP
- 5-47(4) Reconcile to Client File Report
- 5-47(10) Repealed
- 5-47(11) Repealed
- 5-47(12) Repealed
- 5-48(1) General records and accounts
- 5-48(2) Hand posted general records
- 5-48(3) General records must be current
- 5-49(1) Acting in a Representative Capacity
- 5-49(2) Repealed
- 5-49(3) Fiduciary Property Not in Trust Account
- 5-49(4) Appointment Outside Solicitor-Client Relationship
- 5-50(1) Report on termination of practice
- 5-50(2) Closure of trust accounts
- 5-50(3) Extension of time to file report, close trust accounts
- 5-50(4) Failure to file report
- 5-50(5) Inspection report
- 5-50(6) Costs of inspection
- 5-51(1) Investigation of accounts and records
- 5-51(2) Investigation report
- 5-51(3) Report may be treated as complaint
- 5-52(1) Production of records
- 5-52(2) Production of general records
- 5-53 CDIC compliance
- 5-54(1) Retention of records
- 5-54(2) Location of records
- 5-55 Unauthorized appropriation
- 5-56 Failure to comply with rules
- 5-56(1) Repealed
- 5-56(2) Repealed

DIVISION 5 - LAWYERS' FEES

- 5-57 Fees, disbursements and interest
- 5-57(1) Repealed

Division 4 - Financial Accountability

Definitions

5-41 In this division,

“accountant” means

- (a) a person who is a member in good standing of the Chartered Professional Accountants of Manitoba, and who is in public practice,
- (b) another person approved by the chief executive officer;
(AM. 12/15)

“books of original entry” means a book or books recording in chronological order the full details of all payments from trust, all transfers between individual client trust ledgers, all trust receipts and the form in which the trust money is received; (AM. 06/05; 12/18)

“cash” means current coins within the meaning of The Currency Act, notes intended for circulation in Canada issued by the Bank of Canada pursuant to The Bank of Canada Act and current coins or bank notes of countries other than Canada; (ENACTED 06/05)

“client trust ledger” means a separate record maintained for each client and matter, recording in chronological order, the full details of all trust transactions for that client, and the balance in the client's account;

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

“expenses” means costs incurred by a member 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*,
- (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,

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- (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; (ENACTED 06/05)

“fiduciary property” means money, other than trust money, and valuables for which a member is responsible in a representative capacity or as a trustee but not as a lawyer; (ENACTED 09/17) (AM. 12/18)

“investigator” means a person designated to investigate, inspect or audit the accounts, books and records of a member or law firm;

“member” Repealed 12/18

“money” includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders and electronic transfer of deposits at financial institutions; (ENACTED 06/05)

“monthly trust reconciliation” means a comparison prepared each month by the member or law firm showing the reasons for any differences between the books of original entry, the client trust ledgers and the bank's records;

“pooled trust account” means an interest-bearing chequing account opened at a savings institution by a member for the benefit of a number of clients;

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by a member or law firm;

“public body” means:

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- (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* 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 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; (ENACTED 06/05)

(ENACTED 06/05)

“restricted trust account” means a pooled trust account used only for the purpose of transferring funds electronically to Teranet Manitoba LP on account of land transfer tax and registration fees on real property transactions; (ENACTED 09/17)

“savings institution” means a Manitoba branch of:

- (a) a chartered bank or a trust company that is authorized by law to receive money on deposit and is insured by the Canada Deposit Insurance Corporation,
- (b) or a credit union or caisse populaire incorporated under The Credit Unions and Caisses Populaires Act;

(AM. 02/13)

“specific trust investment account” means a separate interest-bearing account opened by a member or law firm in trust for a specific client at a savings institution, and is limited to a daily interest savings account, a term deposit or a guaranteed investment certificate;

“trust account supervisor” means a practising member who has been approved to operate a trust bank account; (ENACTED 12/18)

“trust bank account” means a pooled trust account or a specific trust investment account as defined herein;

“trust money” means

- (a) all money received by a member or law firm in connection with the legal practice that
 - (i) belongs in whole or in part to a client; or
 - (ii) is received on a client's behalf or to the direction or order of a client, or
- (b) money received by a member or law firm on account of professional fees for services not yet rendered or on account of disbursements or expenses not yet paid, or for which a statement of account has not been rendered;

“trust safety appeals committee” means the committee responsible for considering appeals of decisions to deny or to approve with conditions a member's application to become a trust account supervisor and appeals of decisions to revoke a member's status as a trust account supervisor; (ENACTED 12/18)

“trust year end” Repealed 12/18

“valuable property” means anything of value, other than trust money, that can be negotiated or transferred by a member or law firm.

Trust Account Supervisor

5-42(1) Effective April 1, 2019, a member or a law firm shall, before opening a pooled trust account obtain, and at all times thereafter maintain, the approval of the chief executive officer to:

- (a) operate a trust bank account; and
- (b) designate a member as the trust account supervisor.

(ENACTED 12/18)

Transition for Current Account Holders

5-42(2) All members and law firms that have an open pooled trust account on March 31, 2019, must apply on or before April 1, 2019, to the chief executive officer to:

- (a) continue to operate a trust bank account; and
- (b) designate a member as the trust account supervisor.

(ENACTED 12/18)

Members who share space

5-42(3) Subject to the approvals required in rules 5-42(1) and (2), where a member who receives trust money participates in an arrangement with other members to share space and certain common expenses but otherwise practises as an independent practitioner:

- (a) the member must open his or her own trust account, in his or her own name; and

- (b) the member must not deposit trust money into a trust account opened by any other member or law firm.

(AM. 12/18)

Trust Account Supervisor Responsibility

5-42.1(1) The trust account supervisor is responsible for:

- (a) The controls in relation to the operation of all law firm trust bank accounts and general accounts;
- (b) The accuracy of the law firm's reporting requirements;
- (c) The timeliness and accuracy of the law firm's record keeping requirements;
- (d) Any of subrule (a), (b) or (c) that has been delegated to another person.

(ENACTED 12/18)

Notification regarding new accounts

5-42.1(2) A member or law firm with an approved trust account supervisor may open a new pooled trust account provided that, within 30 days of opening the account, the trust account supervisor notifies the chief executive officer in writing of the existence of the account, the date on which the account was opened, the account number, the name and branch of the savings institution. (AM. 12/18)

Notice of Withdrawal

5-42.1(3) A trust account supervisor who intends to withdraw from acting in that capacity must provide thirty days written notice to the chief executive officer and to the law firm. (ENACTED 12/18)

Closure of Trust Accounts

5-42.1(4) If within thirty days of receipt of a notice under subrule (3), the law firm does not obtain the approval of the chief executive officer to continue to operate a trust bank account and to designate a member as the trust account supervisor, thereafter:

- (a) the law firm shall not accept any new matters where the law firm will be required to handle trust money; and
- (b) the law firm must close all trust bank accounts within 60

days unless and until a new trust account supervisor is approved.

(ENACTED 12/18)

Trust Account Supervisor Eligibility

5-42.2(1) To be eligible to act as a trust account supervisor, an applicant must:

- (a) be a practising member;
- (b) meet the criteria for trust account supervisors established by the Law

- Society;
- (c) file the required application; and
 - (d) remit the application fee.

(ENACTED 12/18)

Authority of Chief Executive Officer

5-42.2(2) The chief executive officer may;

- (a) approve an application, with or without conditions;
- (b) deny an application; or
- (c) revoke an individual's approval to be a trust account supervisor.

(ENACTED 12/18)

Recovery of Expenses on Conditional Approval

5-42.2(3) Where the chief executive officer approves an application with conditions, the society is entitled to recover from the member who has been conditionally approved or from the law firm any expense incurred by the society in monitoring the member's compliance with the conditions.

(ENACTED 12/18)

Written Notice by Chief Executive Officer

5-42.2(4) Where the chief executive officer revokes a member's status as a trust account supervisor, approves with conditions or denies an application made pursuant to Rule 5-42.2(2), the chief executive officer must provide written notice to the member and to the law firm. (ENACTED 12/18)

Closure of Trust Accounts

5-42.2(5) Upon receipt of a notice of revocation or denial under subrule (4):

- (a) the law firm must not accept any new matters where the law firm will be required to handle trust money; and
- (b) the law firm must close all trust bank accounts within 60

days unless and until a new trust account supervisor is approved.

(ENACTED 12/18)

Custodial Order

5-42.2(6) If under rule 5-42.1(4) or 5-42.2(5), a new trust account supervisor has not been approved and if all trust bank accounts have not been closed within 60 days, the society may apply to the Court of Queen's Bench for an order appointing a custodian of the trust bank accounts pursuant to s. 57 of *The Legal Profession Act*.

(ENACTED 12/18)

Appeal

5-42.3(1) A decision of the chief executive officer to deny, approve with conditions or revoke a member's approval as a trust account supervisor may be appealed to the trust safety appeal committee by filing the required notice of appeal within 14 days of receipt of the written decision and notification of the right of appeal. The appeal process will be governed by guidelines adopted by the benchers.

(ENACTED 12/18) (AM. 05/19)

Appeal Panel

5-42.3(2) The chairperson of the committee must select a panel of three members of the committee to consider any appeal made under subsection (1). One of the panel members must be a public representative. Two of the panel members must have current practising certificates, unless it is not reasonably practicable to have two practising members on the panel, in which case the chairperson may appoint one practising member and one non-practising or inactive member to sit on the panel.

(ENACTED 12/18)

Hearing

5-42.3(3) A panel must conduct an appeal based on a consideration of written submissions and other relevant materials, except where the chairperson of the committee directs or the appellant requests an oral hearing. During an oral hearing neither the appellant nor any other person may give oral evidence, except with leave of the appeal panel and then only in such exceptional circumstances as the appeal panel may determine. The testimony of an appellant or any other person at an oral hearing must be taken under oath unless the chairperson of the panel waives the requirement. An oath must be administered by the chairperson of the panel.

(ENACTED 12/18)

Decision Final

5-42.3(4) The panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions. A decision of the panel is final. (ENACTED 12/18)

Trust Records

5-43(1) A member or law firm must maintain up-to-date trust records and supporting documentation for all pooled trust accounts, restricted trust accounts and specific trust investment accounts. The trust records must include:

- (a) a book or books of original entry; and
- (b) a client trust ledger for each client and each legal matter.

(AM. 09/17; 12/18)

Monthly trust reconciliations

5-43(2) A member or law firm must produce a monthly trust reconciliation, for all pooled, restricted and specific trust investment accounts, no later than the end of the following month, and include detailed reasons for any differences between:

- (a) the amount of money held in the trust bank account according to the member's records;
- (b) the total of the individual client trust ledgers; and
- (c) the amount of money held in the trust bank account according to the bank's records.

(AM. 09/17; 12/18)

Balances in clients' trust ledgers

5-43(3) The reconciliation in subsection (2) must be saved in a universally readable format or printed each month, and must be supported by a client list showing the balance of trust money held in each client's trust ledger.

(AM. 12/18)

Record of valuable property

5-43(4) A member or law firm must maintain a record of all valuable property held in trust. (AM. 12/18)

Electronic trust records

5-43(5) Where a member or law firm maintains electronic records the member or law firm must:

- (a) save in a universally readable format or print a copy of the books of original entry immediately after each month end;
- (b) ensure that the system is capable of producing a printed copy of any individual client trust ledger, showing a full history of all trust transactions for that client;
- (c) maintain a backup copy of the electronic records, which must be updated at least monthly, and stored in a secure manner in an off-site location; and
- (d) save in a universally readable format or print a client's closed trust ledger before it is purged from the electronic file and store it in a central file maintained for purged ledgers.

(AM. 12/18)

Hand posted trust records

5-43(6) Where a member or law firm maintains trust records that are entered and posted by hand, they shall be entered and posted in ink. (ENACTED 06/05)

(AM. 12/18)

Trust records must be current

5-43(7) A member's or law firm's trust records must be entered and posted so as to be current at all times. (ENACTED 06/05) (AM. 12/18)

Handling of trust money

5-44(1) A member or law firm must

- (a) pay into and withdraw from a trust account only trust money that is directly related to legal services that the member or law firm is providing;
- (b) deposit or cause to be deposited all trust money into a pooled trust account as soon as practicable after receipt of the money;
- (c) subject to Rules 5-45(5)(d) and 5-47(3) make all withdrawals from a pooled trust account by consecutively numbered cheques drawn to the order of the person to whom the money is to be paid, unless otherwise authorized by the chief executive officer;
- (d) not withdraw money from a trust bank account to pay for the recovery of the member's or law firm's fees, disbursements or expenses unless a statement of account is prepared and sent or delivered to the client at the time the money is withdrawn;
- (e) ensure that all cheques drawn on a trust bank account are signed only by the member or another practising lawyer in the law firm or by those persons in conjunction with other employees of the law firm, unless otherwise authorized by the chief executive officer;
- (f) not sign a trust cheque in blank or post-date a trust cheque;
- (g) not overdraw a trust bank account;
- (h) not overdraw any individual client's trust ledger account;
- (i) not pay any of the member's personal or general office accounts from a trust bank account;
- (j) at all times maintain sufficient balances on deposit in a trust bank account to meet all of the member's and law firm's obligations with respect to trust money;
- (k) not make transfers of trust money from one client's account to another client's account unless the member or law firm has obtained either:
 - (i) the written authorization of the client from whose account the money is transferred; or
 - (ii) the verbal authorization of the client from whose account the money is transferred, which authorization is subsequently confirmed in writing to the client by the member;

- (l) not retain any money other than trust money in a trust bank account;
- (m) ensure that trust money is paid out expeditiously once a legal matter is concluded.

(AM. 06/05; 06/10; 05/15, 09/17; 12/18)

Restriction on receipt of cash

5-45(1) A member or law firm must not receive or accept cash in an aggregate amount greater than \$7,500.00 Canadian dollars in respect of any one client matter.

(ENACTED 06/05) (AM. 12/18)

Recordkeeping for cash receipts

5-45(2) In addition to the recordkeeping requirements set out in rules 5-43(1) and 5-48(1), where the member or law firm receives cash for a client, the member's or law firm's records must also include a book of duplicate receipts, with each receipt identifying or containing:

- (a) the date on which cash is received;
- (b) the person from whom cash is received;
- (c) the amount of cash received;
- (d) the client for whom cash is received;
- (e) any file number in respect of which the cash is received; and
- (f) the signature of the member or a person authorized by the member who receives the cash and the signature of the person from whom the cash is received.

(ENACTED 06/05) (AM. 12/18)

Foreign currency conversion for cash

5-45(3) For the purposes of subsection (1), when a member or law firm receives or accepts cash in a foreign currency, the member or law firm will be deemed to have received or accepted the cash converted into Canadian dollars at:

- (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the member or law firm receives or accepts the cash; or
- (b) if the day on which the member receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the member or law firm receives or accepts the cash.

(ENACTED 06/05) (AM. 12/18)

Application of cash restriction

5-45(4) Subsection (1) applies to a member or law firm engaged in any of the

following activities on behalf of a client or giving instructions on behalf of a client in respect of the following activities:

- (a) receiving or paying funds;
- (b) purchasing or selling securities, real property or business assets or entities;
- (c) transferring funds by any means.

(ENACTED 06/05) (AM. 12/18)

Exceptions to cash restriction

5-45(5) Despite subsection (4), subsection (1) does not apply when the member receives cash in connection with the provision of legal services by the member or law 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 an 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.

(ENACTED 06/05) (AM. 12/18)

Acknowledgement of cash refund required

5-45(6) When a member or law firm pays a cash refund under paragraph (d) of subsection (5), the member or law firm must obtain a signed and dated acknowledgement of the payment from the person who receives the refund. (ENACTED 06/05) (AM. 12/18)

Change of trust year date

5-46 Repealed 12/18

Specific trust investment account

5-46(1) A member or law firm may, after first depositing trust money into a pooled trust account, subsequently withdraw the trust money or a portion of it and deposit it into a specific trust investment account, provided:

- (a) the specific trust investment account is opened in the name of the member or law firm in trust for the person to whom the money belongs; and
- (b) full details of the specific trust investments are recorded in the member's or law firm's trust records.

(AM. 12/18)

Removing funds from specific trust investments

5-46(2) When withdrawing funds from a specific trust investment account, a member

or law firm must deposit all resulting trust money directly back into a pooled trust account. (AM. 12/18)

Restricted Trust Account

5-47(1) A member or law firm may, after first depositing trust money into a pooled trust account, subsequently withdraw the trust money or a portion of it and deposit it into a restricted trust account for the purpose of facilitating the registration of documents with Teranet Manitoba LP, provided that:

- (a) the only funds deposited into the restricted trust account are for the payment of land transfer tax and registration fees at Teranet Manitoba LP; and
- (b) no more funds are deposited than are required to pay the document registration fees and land transfer tax for a client's real property transaction.

(ENACTED 09/17) (AM. 12/18)

5-47(2) If more funds are deposited than are required for the registration fees and land transfer tax for a client's real property transaction, the excess funds shall be transferred forthwith by way of trust cheque into the pooled trust account from which they originated. (ENACTED 09/17) (AM. 12/18)

Withdrawal by Teranet Manitoba LP

5-47(3) A member or law firm may authorize Teranet Manitoba LP to withdraw from a restricted trust account trust money required to pay the document registration fees and the land transfer tax related to a client's real property transaction, provided that such authorization specifies:

- (a) the amount of money to be withdrawn;
- (b) the deposit account number;
- (c) the firm name;
- (d) the client file number; and
- (e) registration details

and provided that Teranet Manitoba LP agrees to provide to the member or law firm confirmation of receipt of the authorization, containing the same information, not later than 6:00 p.m. on the day immediately after the day of which the member or law firm submitted the authorization. (ENACTED 09/17) (AM. 12/18)

Reconcile to Client File Report

5-47(4) Upon receipt of a client file report from Teranet Manitoba LP, the member or law firm shall compare the client file report with the member's or law firm's accounting records and reconcile and correct any discrepancies. (ENACTED 09/17) (AM.

12/18)

Suspension for failure to file

5-47(10) Repealed 12/18

Exception to requirement to file annual trust account report

5-47(11) Repealed 12/18

Exception for practicing lawyers

5-47(12) Repealed 12/11

General records and accounts

5-48(1) A member or law firm must deposit into a general account only money received in connection with the member's or law firm's practise of law that is not trust money. A member or law firm must maintain at least one general operating account and the following general books and records:

- (a) a general book of original entry recording in chronological order the full details of all general money received and disbursed. These books must identify the form in which the money is received;
- (b) an accounts receivable ledger or other suitable system that records for each client, the accounts rendered, payments made on account, and the balance owing to or from the client;
- (c) all supporting records including bank statements, pass books, cancelled cheques, cash receipts, deposit slips, bank advices and similar documents and invoices.

(ENACTED 12/03) (AM. 06/05; 12/18)

Hand posted general records

5-48(2) Where a member or law firm maintains general records that are entered and posted by hand, they shall be entered and posted in ink. (ENACTED 06/05; 12/18)

General records must be current

5-48(3) A member's or law firm's general records must be entered and posted so as to be current at all times. (ENACTED 06/05) (AM. 12/18)

Acting in a Representative Capacity

5-49(1) A member is acting in a representative capacity if the member is not providing legal services and 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 pursuant to 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 or special, enduring or otherwise whether or not the appointment arises from a solicitor and client relationship.
- (ENACTED 09/17) (AM. 12/18)

Fiduciary Property in Trust Account

5-49(2) Repealed

Fiduciary Property Not in Trust Account

5-49(3) Where a member is appointed to act in a representative capacity the member must:

- (a) provide written notice to the chief executive officer that the member is acting a representative capacity within 30 days of commencing to act in that capacity;
- (b) maintain a record of all known appointments or assumptions of a representative capacity and a list of the beneficiaries of the estate or trust together with their last known address or contact information;
- (c) maintain the books, records, accounts and documentation of the estate or trust in an organized and accessible manner so as to accommodate an examination, review, audit or investigation by the Society;
- (d) cooperate with the Society's auditor or investigator in the conduct of any examination, review, audit or investigation.

(ENACTED 09/17) (AM. 12/18)

Appointment Outside Solicitor-Client Relationship

5-49(4) Where a member acts in a representative capacity that arises outside of the solicitor and client relationship, the member must provide notice in writing to the beneficiaries of the trust and where possible the party making the appointment that neither the Professional Liability Claims Fund nor the Reimbursement Fund will respond to a claim in relation to the member's handling of the fiduciary property.

(ENACTED 09/17) (AM. 12/18)

Report on termination of practice

5-50(1) Where a member withdraws from the practice of law:

- (a) as a sole practitioner or a law firm with which the member practises winds up its practice, the member or the law firm must file a final report no later

than four months after all trust bank accounts have been closed, in the form prescribed by the chief executive officer;

- (b) the member must provide written notice to all known persons for whom the member has been appointed to act in a representative capacity or for whose benefit the member is acting in a representative capacity of the member's withdrawal from practice and that neither the Professional Liability Claims Fund nor the Reimbursement Fund will respond to a claim in relation to the member's handling of the fiduciary property after the member's withdrawal from practice.

(AM. 09/17; 12/18)

Closure of trust accounts

5-50(2) A member or law firm must close all trust bank accounts within three months after withdrawal from or winding up of a practice, in accordance with rule 2-74(2).

(AM. 12/18)

Extension of time to file report, close trust accounts

5-50(3) The chief executive officer may extend the time for the member or the law firm to file the reports required in subsection (1) or to close the trust bank accounts as required by subsection (2) and may approve another form of report. (AM. 12/18)

Failure to file report

5-50(4) Where a member or law firm fails to file the report required under this rule within the time prescribed or within such other time requirement approved by the chief executive officer, the chief executive officer may require an investigator to inspect the accounts and records of the member or the law firm to determine whether there has been compliance with the rules in this division. (AM. 12/18)

Inspection report

5-50(5) The investigator must issue a report to the chief executive officer advising whether or not the member or law firm has complied with the rules in this division.

(AM. 12/18)

Costs of inspection

5-50(6) Where the chief executive officer authorizes an inspection under subsection (4), the member or the law firm must pay to the society the costs of the inspection of the accounts and records. (AM. 12/18)

Investigation of accounts and records

5-51(1) The benchers, the complaints investigation committee, or the chief executive officer may, at any time, require an investigator to investigate the accounts and records of a member or a law firm for the purpose of ascertaining whether there has been compliance with the Act, rules, and the provisions of the code. (AM. 05/08; 12/18)

Investigation report

5-51(2) Where the investigator determines that there has been non-compliance with the Act, rules or the provisions of the code, he or she must report the particulars of any breach to the chief executive officer. (AM. 05/08; 12/18)

Report may be treated as complaint

5-51(3) Where the chief executive officer receives a report pursuant to subsection (2) he or she may treat the report as if it were a complaint received under rule 5-60. (AM. 12/18)

Production of records

5-52(1) Subject to subsection (2), a member, the law firm and the trust account supervisor must co-operate with an investigator and must produce on demand and answer questions about all records, books, files and any other document, in any form, kept by or for the member or the law firm that may be reasonably required by the investigator to conduct his or her inspection or investigation. (AM. 12/03; 05/08; 12/18)

Production of general records

5-52(2) An investigator may only demand production of a member's or the law firm's general records and accounts when they are required by the investigator for the purposes of tracing trust funds or determining if trust funds have been deposited into the member's general account. (ENACTED 12/03) (AM. 12/18)

CDIC compliance

5-53 Where a pooled trust account, a restricted trust account or a specific trust investment account is maintained by a member or a law firm in a savings institution which is insured by the Canada Deposit Insurance Corporation ("CDIC") the member or law firm must comply with the reporting and disclosure obligations set forth in the Canada Deposit Insurance Corporation Act and the Schedule thereto. (AM. 09/17; 12/18)

Retention of records

5-54(1) A member must:

- (a) keep the books, records and accounts referred to in this division for at least ten years; and
- (b) on the completion and closing of a client's file, maintain an electronic copy in a universally readable format on the electronic file or place on the file a copy of the individual client trust ledger.

(AM. 06/05; 12/18)

Location of records

5-54(2) A member or law firm must keep the books, records and accounts for all trust bank accounts and all general accounts referred to in this division pertaining to the

most recent three-year period at the member's or the law firm's chief place of practice in Manitoba, unless otherwise authorized by the chief executive officer. (AM. 09/17; 12/18)

Unauthorized appropriation

5-55 A member must not appropriate any money or property of a client held in trust or otherwise under the member's control for or on account of the member's fees without the express or implied authority of the client. (AM. 12/18)

Failure to comply with rules

5-56 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct. (AM. 12/18)

Borrowing from client

5-56(1) Repealed 02/13

Exceptions

5-56(2) Repealed 02/13

Division 5 - Lawyers' Fees

Fees, disbursements and interest

5-57 A member must not charge or accept a fee, disbursement or expense, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion. (AM. 06/09; 12/18)

DIVISION 12 – CLIENT IDENTIFICATION AND VERIFICATION DEFINITIONS

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Division 12 - Client Identification and Verification Definitions

(ENACTED 12/08)

5-116 In this division, "**client**" includes

- (a) another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and
- (b) in rules 5-120 to 5-124, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction;

(ENACTED 01/09)

"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 law firm on a client's behalf in connection with the provision of legal services to the client by the member or the law firm which will be reimbursed by the client;

"expenses" means costs incurred by a member 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*,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada,
- (c) a co-operative 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),

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- (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;

"financial transaction" means the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money;

"lawyer" means a member of a governing body who is authorized to practice law in another Canadian jurisdiction; (ENACTED 01/09)

"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; (AM. 02/09)

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

"professional fees" mean 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 law 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 or similar body incorporated under the law of another province or territory,
- (d) an organization that operates a public hospital authority and that is

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designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization, (AM. 01/09)

- (e) an organization incorporated under an Act of Canada or of a province or territory for a public purpose, or (AM. 01/09)
- (f) a subsidiary of a public body whose financial statements are consolidated within those of a public body; (ENACTED 01/09)

"reporting issuer" means an organization that is a reporting issuer within the meaning of the securities law 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; (ENACTED 01/09) (AM. 02/09)

"securities dealer" means a person or entity 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. (ENACTED 01/09)

Control

5-116(2) Repealed

Application

5-117(1) Subject to subsection (2), this division applies to a member who is retained by a client to provide legal services, in keeping with the lawyer's obligation to know his or her 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, as articulated in the *Code of Professional Conduct*.

Exemptions

5-117(2) Rules 5-118 to 5-129 do not apply when a member provides legal services

- (a) on behalf of the member's employer or engages in or gives instructions in respect of financial transactions solely in that capacity,
- (b) that do not involve a financial transaction in the following circumstances
 - (i) as part of a duty counsel program sponsored by a non-profit organization,

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- (ii) in the form of pro bono summary advice, or
- (c) if another member or lawyer who has complied with rules 5-118 to 5-129 or the equivalent provisions of a governing body
 - (i) engages the member to provide legal services to the client as an agent, or
 - (ii) refers a matter to the member for the provision of legal services.

(AM. 01/09)

Interpretation

5-117(3) In this division, the responsibilities of a member may be fulfilled by any member, associate or employee of the member's firm, wherever located. (ENACTED 01/09)

Client identification

5-118(1) A member who is retained by a client to provide legal services must obtain and record, with the applicable date, the following information:

- (a) for an individual
 - (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 an organization
 - (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, (AM 01/09)
 - (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.

(iv) the name, position 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,

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

(AM 01/09)

Subsequent identification not required

5-118(2) Repealed

Verification of Client's Identity - Exemptions

5-119 Rules 5-120 to 5-125 do not apply

(a) if the client is

- (i) a financial institution,
- (ii) a public body,
- (iii) a reporting issuer, or
- (iv) an individual who instructs the member on behalf of a client described in subparagraphs (i) to (iii);

(b) when the member

- (i) pays to or receives funds from a financial institution, public body, or a reporting issuer,
- (ii) receives funds from the trust account of another lawyer,
- (iii) receives funds from a peace officer, law enforcement agency or other public official acting in his or her official capacity,
- (iv) receives or pays funds to pay a fine, penalty or bail,
- (v) receives or pays funds for professional fees, disbursements or expenses;

(c) to a transaction in which the funds involved are transferred by electronic transmission provided that

- (i) the transfer occurs between financial institutions or financial entities headquartered in and operating in a country that is a member of the Financial Action Task Force,
- (ii) neither the sending nor the receiving account holders handle or transfer the funds, and

- (iii) the transmission record contains
 - A. a reference number,
 - B. the date,
 - C. the transfer amount,
 - D. the currency, and
 - E. the names of the sending and receiving account holders and the conducting and receiving entities.

(AM 01/09)

Requirement to Verify Client's Identity

5-120 When a member provides legal services in respect of a financial transaction the member must:

- (a) obtain from the client and record, with the applicable date, information about the source of the funds, and
- (b) verify the identity of the client, including the individuals described in Rule 5-118(1)(b)(iv) and, where appropriate, the third party using the documents or information described in Rule 5-121.

Documents and Information to Verify Individual's Identity

5-121(1) For the purposes of Rule 5-120, if the client or third party is an individual, the individual'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) an identification document containing the individual's name and photograph that is issued by the federal government, a provincial or territorial government or a foreign government, other than a municipal government, that is used in the presence of the individual to verify that the name and photograph are those of the individual, or
- (b) 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, or
- (c) any two of the following with respect to the individual
 - (i) 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.

- (ii) 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
- (iii) 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.

Restriction on Source of Information

5-121(2) For the purposes of rule 5-121(1)(c)(i), (ii) and (iii), the information referred to must be from different sources and the individual, lawyer and agent cannot be a source.

Minor Clients

5-121(3) If the client is an individual who is

- (a) under 12 years of age, the member must verify the identity of the individual's parent or guardian.
- (b) at least 12 years of age but not more than 15 years of age, the member may verify the identity of the individual by referring to information under rule 5-121(1)(c)(i) that contains the name and address of the individual's parent or guardian and verifying that the address is that of the individual.

Documents and Information to Verify Organization's Identity

5-121(4)

- (a) If the client or third party is an organization such as a corporation or a society that is created or registered pursuant to legislative authority, the organization's identity must be verified by 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,
- (b) 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, the organization's identity must be verified by 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

5-121(5) If the client or third party is an organization, the member must

- (a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer, and
- (b) make reasonable efforts to obtain, and if obtained, record with the applicable date
 - (i) the names and addresses of all persons who own, directly or indirectly, 25 percent or more of the organization or of the shares of the organization,
 - (ii) the names and addresses of all trustees, all known beneficiaries and settlors of the trust, and
 - (iii) in all cases, information establishing the ownership, control and structure of the organization.

Reasonable Measures to Confirm Information

5-121(6) The member must take reasonable measures to confirm the accuracy of the information obtained under rule 5-121(5).

Requirement to Record Efforts and Measures

5-121(7) The member must keep a record, with the applicable dates, that sets out

- (a) the efforts made under rule 1-121(5)(b),
and
- (b) the measures taken to confirm the accuracy of information obtained under rule 121(5).

Alternative Measures

5-121(8) If the member is not able to obtain the information referred to in rule 5-121(5) or confirm the accuracy of that information in accordance with rule 5-121(6), the member must

- (a) take reasonable measures to ascertain the identity of the most senior

managing officer of the organization.

- (b) determine whether
 - (i) the client's information in respect of its activities,
 - (ii) the client's information in respect of the source of the funds, 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 subrules (b) and (c).

Timing of Verification - Individuals

5-122 A member must verify the identity of

- (a) a client who is an individual, and
- (b) an individual who is authorized to provide and gives 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 the financial transaction.

Client identification and verification in non-face-to-face transactions

5-122(1) Repealed

Client present elsewhere in Canada

5-122(2) Repealed

Attestation

5-122(3) Repealed

Permitted guarantors

5-122(4) Repealed

Timing of Verification - Organizations

5-123 A member should verify the identity of a client that is an organization upon engaging in or giving instructions in respect of the financial transaction, but in any event, not later than 30 days thereafter.

Use of agent – client not present in Canada

5-123(1) If the client is not present in Canada, a member must rely on an agent to obtain the information required to verify the identity of the client under rule 5-120, which may be attested to in a form similar to that described in rule 5-122(3) provided the member and the agent have an agreement or arrangement in writing for this purpose. (AM. 01/09)

Subsequent Verification Not Required

5-124 Where the member has verified the identity of a client that is

- (a) 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.
- (b) an organization and obtained information pursuant to rule 5-121(5), 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.

Use of Agent Permitted

5-125(1) A member may rely on an agent to verify the identity of an individual client, third party or individual described in rule 5-118(1)(b)(iv) as required in the rules in this division provided that the member and agent have an agreement or arrangement in writing for this purpose.

Use of Agent Required

5-125(2) Where an individual client, third party or individual described in rule 5-118(1)(b)(iv) is not physically present in Canada, a member must rely on an agent to verify the person's identity in accordance with the rules in this division and the member and agent must have an agreement or arrangement in writing for this purpose

Requirements of Agent Agreement

5-125(3) A member who enters into an agreement or arrangement referred to in sub rules (1) or (2), must

- (a) obtain from the agent, the information that is obtained by the agent to verify the client's or person's identity, and
- (b) satisfy himself or herself that the information is valid and current and that the agent verified the identity in accordance with the rules in this division.

Previous Verification by Agent

5-125(4) A member may rely on the agent's previous verification of an individual client,

third party or an individual described in rule 5-118(1)(b)(iv) if the agent was, at the time that he or she verified the identity,

- (a) acting in his or her own capacity, whether or not the agent 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 in accordance with the rules in this division.

Record Keeping and Retention

5-126 A member:

- (a) must obtain and retain a copy of every document used to verify the identity of any client for the purposes of Rule 5-121,
- (b) may maintain the documents used to verify the identity of the client in electronic form, provided that they are saved in a universally readable format,
- (c) must retain a record of the information, with the applicable date, and any documents obtained for the purposes of rules 5-118, 5-120 and 5-129 for the longer of
 - (i) 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
 - (ii) a period of at least six years following completion of the work for which the member was retained.

Form of documents

5-126(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.

Application

5-127 Rules 5-117 to 5-126 apply to all matters for which a member is retained on or after January 1, 2020 regardless of whether the client is a new or existing client.

Duty to Withdraw - Information Obtained at time of Retainer

5-128 If, in the course of identifying or verifying the identity of a client, a member obtains information that causes the member to know or ought to know that he or she would be assisting a client in fraud or other illegal conduct, the member must withdraw from representing the client.

Duty to Monitor Relationship

5-129 During a retainer with a client in respect of a financial transaction, 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 the client's activities,

(ii) the client's information in respect of the source of the funds,

(iii) the client's instructions in respect of financial transactions are consistent with the purpose of the retainer and the information obtained about the client, and

(b) assessing whether there is a risk that the lawyer 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 pursuant to subrule (i).

Criminal activity: duty to withdraw after being retained

5-129(1) If, while retained by a client, a member knows or ought to know that he or she would be assisting the client in fraud or other illegal conduct, the member must withdraw from representation of the client. (AM. 01/09)

Duty to Withdraw - Information during Retainer

5-130 During the course of a retainer, if a member 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 representing the client.

Failure to Comply

5-131 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct. (ENACTED 01/09)

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Section 4 Responsabilité financière

(MOD. 12/03; 06/08)

Définitions

5-41 Les définitions qui suivent s'appliquent à la présente section.

« **argent comptant** » Les pièces de monnaie ayant cours légal, au sens de la Loi sur la monnaie, les billets destinés à circuler au Canada émis par la Banque du Canada en vertu de la Loi sur la Banque du Canada et les pièces de monnaie ayant cours légal et billets de banque des pays étrangers. ("cash") (ADOPTÉ 06/05)

« **bien autre que des espèces** » Tout bien ou toute valeur autre que des fonds en fiducie, qui peut être négocié ou transféré par un member ou un cabinet d'avocats ("valuable property")

« **biens fiduciaires** » L'argent, à l'exception des fonds en fiducie, et biens autres que des espèces pour lesquels un membre est responsable à titre de représentant ou de fiduciaire, mais non à titre d'avocat. ("fiduciary property") (ADOPTÉ 09/17) (MOD. 12/18)

« **déboursés** » Montants que paie ou doit payer le member ou le cabinet d'avocats à un tiers, au nom d'un client, relativement à la prestation de services juridiques rendus par lui à ce client, que ce dernier devra rembourser au member ou au cabinet. ("disbursements")

« **dépenses** » Frais engagés par un member ou un cabinet d'avocats relativement à la prestation de services juridiques rendus à un client, frais que le client remboursera, notamment des éléments comme des photocopies, des frais de déplacements, des frais de messagerie et d'affranchissement postal et des honoraires parajuridiques.

« **institution financière** »

- a) une banque régie par la Loi sur les banques,
- b) une banque étrangère autorisée au sens de l'article 2 de la Loi sur les banques à l'égard de ses activités au Canada,
- c) une société coopérative de crédit ou une caisse populaire régie par une loi provincial ou territorial,
- d) une association régie par la Loi sur les associations coopératives de crédit (Canada),
- e) une coopérative de services financiers,
- f) une centrale de caisses de crédit,

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- g) une société régie par la Loi sur les sociétés de fiducie et de prêt (Canada),
- h) une société de fiducie ou une société de prêt régie par une loi provincial ou territorial,
- i) tout ministère ou toute entité mandataire de Sa Majesté du chef du Canada ou d' une province lorsqu'ils acceptant des dépôts dans le cadre des services financiers qu'ils fournissent au public.
- j) une filiale de l'institution financière, dont les états financiers sont consolidés avec ceux de l'institution financière. ("financial institution")

« cooperative de services financiers » Coopérative de services financiers régie par la Loi sur les cooperatives de services financiers, L.R.Q., ch. C-67.3 ou la Loi sur le Mouvement Desjardins, L.Q. 2000, ch. 77, autre qu'une caisse populaire. ("financial services cooperative")

« comité d'appel de la sécurité des fiducies » Le comité chargé d'entendre les appels interjetés contre des décisions de refuser ou d'approuver sous condition des demandes de désignation à titre de superviseur des comptes en fiducie et les appels des révocations des désignations à ce titre. ("trust safety appeals committee")

« comptable » Selon le cas :

- a) un membre en règle de l'Ordre des comptables professionnels agréés du Manitoba qui exerce sa profession;
- b) toute autre personne approuvée à ce titre par le directeur général. ("accountant")

« compte bancaire en fiducie » Compte commun en fiducie ou compte individuel de placement en fiducie, selon la définition donnée à ces termes dans la présente section. ("trust bank account")

« compte commun en fiducie » Compte chèques productif d'intérêts ouvert par un membre auprès d'un établissement d'épargne au bénéfice de plusieurs de ses clients. ("pooled trust account")

« compte en fiducie avec restrictions » Compte commun en fiducie réservé aux transferts électroniques de fonds au Teranet Manitoba LP au titre du paiement des taxes sur les mutations de biens-fonds et des droits d'enregistrement fonciers. (restricted trust account)
(ADOPTÉ 09/17)

« compte individuel de placement en fiducie » Compte distinct productif d'intérêts, ouvert en fiducie par un membre ou un cabinet d'avocats auprès d'un établissement d'épargne au bénéfice d'un client en particulier, étant entendu qu'il peut seulement s'agir d'un compte d'épargne à intérêts quotidiens, de dépôts à terme ou de certificats de placement garanti. ("specific trust investment account") «

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« **date de clôture annuelle des comptes en fiducie** » Abrogé

« **établissement d'épargne** » Une succursale manitobaine :

- a) soit d'une banque ou d'une société de fiducie qui est autorisée par la loi à accepter le dépôt de sommes d'argent et qui est assurée par la Société d'assurance-dépôts du Canada;
- b) soit d'une caisse populaire ou d'une credit union constituée sous le régime de la *Loi sur les caisses populaires et les credit unions*. ("savings institution")

(MOD. 02/13, 12/15)

« **fiche de compte en fiducie** » Fiche distincte établie pour chaque client et chaque dossier, sur laquelle sont enregistrés par ordre chronologique les opérations effectuées dans le compte en fiducie du client et le solde du compte en question. ("client trust ledger")

« **fonds** » L'argent comptant, la monnaie, les titres et effets négociables ou les autres instruments financiers qui indiquent le titre de la personne ou son droit ou son l'intérêt sur ceux-ci. ("funds") (ADOPTÉ 06/05)

« **fonds en fiducie** » Selon le cas :

- a) Toute somme d'argent que touche un membre ou un cabinet d'avocats dans l'exercice de sa profession
 - (i) qui appartient en totalité ou en partie à un client;
 - (ii) ou qu'il reçoit au nom ou à l'ordre d'un client.
- b) Toute somme d'argent qu'un membre ou un cabinet d'avocats reçoit en acompte d'honoraires professionnels pour services à rendre ou en acompte de déboursés ou de dépenses à effectuer, ou en paiement pour services rendus mais non encore facturés. ("trust money")

« **livre-journal** » Livre dans lequel sont inscrits par ordre chronologique les entrées et sorties de fonds en fiducie et les virements entre comptes en fiducie de clients, ainsi que tous les reçus de fiducie; les inscriptions précisent sous quelle forme les fonds en fiducie ont été reçus. ("books of original entry") (MOD. 06/05) (MOD. 12/18)

« **enquêteur** » Personne chargée d'examiner ou de vérifier les comptes, les livres et les registres d'un membre ou d'un cabinet d'avocats. ("investigator")

« **membre** » Abrogé

« **argent** » S'entend notamment de l'argent comptant, des chèques, des traites, des d'opérations de carte de crédit, des mandats postaux, des mandats exprès et des mandats

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bancaires et transferts électroniques de depots dans des institutions financières. ("money") (ADOPTÉ 06/05)

« honoraires professionnels » Les montants facturés ou à facturer à un client pour des services juridiques fournis ou à fournir au client de la part du membre ou du cabinet d'avocats. ("professional fees").

« organisme public »

- a) Ministère ou un mandataire de Sa Majesté du chef du Canada ou d'une province ou d'un territoire;
- b) ville, village, autorité métropolitaine, canton, district, comté ou municipalité rurale constitués en personne morale, ou autre organisme municipal constitué en personne morale au Canada, ou leur mandataire au Canada,
- c) conseil local d'une municipalité constituée en personne morale sous le régime d'une loi provincial ou territorial au Canada, notamment tout conseil local au sens de la Loi sur les municipalités ou organisme semblable constitué sous le régime d'une loi d'une autre province ou d'un territoire,
- d) organisme qui exploite une administration hospitalière publique et qui est désigné comme administration hospitalière par le ministre du Revenu national aux termes de la Loi sur l'accise (Canada), ou un mandataire de l'organisme ("public body")
- e) organisme constitué en personne morale sous le régime d'une loi fédérale, provincial ou territorial à des fins d'intérêt public,
- f) filliale d'un organisme public dont les états financiers sont consolidés avec ceux de l'organisme public. ("public body") (ADOPTÉ 06/05)

« rapprochement mensuel des comptes en fiducie » État comparatif établi chaque mois par le membre, ou le cabinet d'avocats, justifiant tout écart entre les livres-journaux, les fiches de compte en fiducie du client et les relevés bancaires. ("monthly trust reconciliation")

« superviseur des comptes en fiducie » Le membre en exercice qui est autorisé à gérer un compte en fiducie. ("trust account supervisor") (ADOPTÉ 12/18)

Superviseur des comptes en fiducie

5-42(1) À compter du 1^{er} avril 2019, les membres et les cabinets d'avocats sont tenus, avant d'ouvrir un compte commun en fiducie, d'obtenir l'autorisation du directeur général

- a) de gérer un compte bancaire en fiducie;
- b) de désigner un membre à titre de superviseur des comptes en fiducie;

ils doivent également veiller à ce que ces autorisations demeurent en cours de validité.

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(ADOPTÉ 12/18)

Période de transition

5-42(2) Les membres et les cabinets d'avocats qui ont déjà un compte commun en fiducie le 31 mars 2019 sont tenus d'obtenir, au plus tard le 1^{er} avril 2019, l'autorisation du directeur général

- a) de continuer à avoir un compte bancaire en fiducie;
- b) de désigner un membre à titre de superviseur des comptes en fiducie.

(ADOPTÉ 12/18)

Membres exerçant en société de moyens

5-42(3) Sous réserve des autorisations nécessaires au titre des paragraphes 5-42(1) et (2), le membre qui exerce dans le cadre d'une société de moyens et qui reçoit des fonds en fiducie doit :

- a) ouvrir son propre compte en fiducie, à son propre nom;
- b) s'abstenir de déposer des fonds en fiducie dans un compte en fiducie ouvert par un autre member ou cabinet d'avocats.

(MOD 12/18)

Responsabilités du superviseur

5-42.1(1) Le superviseur des comptes en fiducie est responsable :

- a) du contrôle des opérations de tous les comptes bancaires en fiducie et de tous les comptes généraux du cabinet d'avocats;
- b) de l'exactitude quant aux obligations de comptabilisation du cabinet;
- c) de l'exactitude et de l'actualité quant aux obligations de tenue des dossiers du cabinet;
- d) du contrôle des fonctions visées aux alinéas a) à c) qui ont été déléguées à d'autres personnes.

(ADOPTÉ 12/18)

Avis concernant les nouveaux comptes

5-42.1(2) Les membres et les cabinets d'avocats déjà dotés d'un superviseur du compte commun en fiducie peuvent ouvrir un nouveau compte commun en fiducie à la condition toutefois que, dans les 30 jours qui suivent l'ouverture du compte, le superviseur informe par écrit le directeur général de l'ouverture du compte et de la date de l'ouverture; il lui donne aussi le numéro du compte et le nom de l'établissement d'épargne et l'adresse de la succursale. (MOD 12/18)

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Avis de retrait

5-42.1(3) Le superviseur des comptes en fiducie qui a l'intention de cesser d'exercer ses fonctions est tenu d'en informer par écrit le directeur général et le cabinet d'avocats trente jours à l'avance. (ADOPTÉ 12/18)

Fermeture des comptes en fiducie

5-42.1(4) Le cabinet d'avocats qui, trente jours après avoir reçu l'avis de retrait, n'a pas obtenu l'autorisation du directeur général de continuer à avoir un compte en fiducie et son approbation de la désignation d'un autre membre à titre de superviseur des comptes en fiducie,

- a) ne peut accepter de nouveaux mandats qui nécessiteraient l'utilisation d'un compte en fiducie;
- b) doit fermer tous ses comptes bancaires en fiducie dans les 60 jours sauf si un nouveau superviseur est nommé.

(ADOPTÉ 12/18)

Admissibilité au poste de superviseur des comptes en fiducie

5-42.2(1) La personne qui souhaite exercer les fonctions de superviseur des comptes en fiducie doit satisfaire aux conditions suivantes :

- a) être avocat en exercice;
- b) satisfaire aux critères fixés pour cette fonction par la Société du Barreau;
- c) déposer la demande nécessaire;
- d) payer les droits de demande.

(ADOPTÉ 12/18)

Pouvoir du directeur général

5-42.2(2) Le directeur général peut :

- a) approuver la demande, avec ou sans condition;
- b) rejeter la demande;
- c) annuler l'autorisation qui avait été accordée à une personne d'être superviseur des comptes en fiducie.
- d) (ADOPTÉ 12/18)

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Recouvrement des dépenses engagées pour le contrôle des conditions

5-42.2(3) Dans le cas où le directeur général assortit son autorisation de conditions, la Société est en droit de recouvrer auprès du membre concerné ou du cabinet d'avocats les dépenses qu'elle engage pour contrôler le respect par le membre des conditions imposées. (ADOPTÉ 12/18)

Avis écrit du directeur général

5-42.2(4) Le directeur général est tenu de remettre sa décision par écrit au membre concerné et au cabinet d'avocats dans les cas où il annule la désignation d'un membre à titre de superviseur des comptes en fiducie, assortit son autorisation de conditions ou rejette une demande d'autorisation présentée en vertu du paragraphe 5-42.2(2). (ADOPTÉ 12/18)

Fermeture des comptes en fiducie

5-42.2(5) Le cabinet d'avocats qui reçoit l'avis de révocation ou de rejet en conformité avec le paragraphe (4)

- a) ne peut accepter de nouveaux mandats qui nécessiteraient qu'il manipule des fonds en fiducie;
- b) doit fermer tous ses comptes bancaires en fiducie dans les 60 jours sauf si un nouveau superviseur est nommé.

(ADOPTÉ 12/18)

Nomination d'un gardien

5-42.2(6) La Société peut demander à la Cour du Banc de la Reine de rendre une ordonnance de nomination d'un gardien des comptes bancaires en fiducie en vertu de l'article 57 de la *Loi sur la profession d'avocat* dans les cas où, en conformité avec les paragraphes 5-42.1(4) ou 5-42.2(5), aucun nouveau superviseur des comptes en fiducie n'a été nommé et si tous les comptes bancaires en fiducie n'ont pas été fermés avant l'expiration du délai de 60 jours. (ADOPTÉ 12/18)

Appels

5-42.3(1) Il peut être interjeté appel devant le comité d'appel de la sécurité des fiducies de la décision du directeur général de refuser une demande d'autorisation de désignation à titre de superviseur des comptes en fiducie, de l'accepter conditionnellement ou de révoquer une autorisation; l'appel est interjeté par dépôt de l'avis d'appel prévu dans les 14 jours qui suivent la réception de la décision écrite et de l'avis du droit d'interjeter appel. Le processus d'appel sera régi par les directives adoptées par les conseillers. (ADOPTÉ 12/18) (MOD 05/19)

Comité d'audience

5-42.3(2) Le président du comité d'appel constitue un comité d'audience composé de trois membres du comité d'appel et le charge d'entendre l'appel interjeté en vertu du

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paragraphe (1). L'un des trois membres doit être un représentant du public. Deux doivent être titulaires d'un certificat d'exercice en cours de validité, sauf s'il n'est par raisonnablement faisable d'avoir deux membres en exercice pour constituer le comité d'audience, auquel le président peut nommer au comité d'audience un membre en cours d'exercice et un membre non-praticien ou inactif. (ADOPTÉ 12/18)

Audience

5-42.3(3) Le comité d'audience entend l'appel en se fondant sur les prétentions écrites des parties et tout autre document pertinent, sauf si le président du comité d'appel ordonne une audience ou si l'appelant le demande. Au cours de l'audience, ni l'appelant, ni toute autre personne ne peut présenter oralement un témoignage, sauf si le comité d'audience lui en donne la permission, et ce uniquement dans des circonstances exceptionnelles que le comité d'audience détermine. Les témoignages sont présentés sous serment, sauf si le président du comité d'audience en accorde la dispense. S'il y a lieu, c'est le président du comité d'audience qui fait prêter serment. (ADOPTÉ 12/18)

Décision définitive

5-42.3(4) Le comité d'audience peut rejeter l'appel, rendre toute décision que le directeur général aurait pu rendre ou accueillir l'appel, avec ou sans condition. Sa décision est définitive. (ADOPTÉ 12/18)

Registres comptables des comptes en fiducie

5-43(1) Les membres et les cabinets d'avocats doivent tenir à jour des registres comptables, accompagnés des pièces justificatives, à l'égard des comptes communs en fiducie, des comptes en fiducie avec restrictions et des comptes individuels de placement en fiducie dont ils ont la charge. Ces registres doivent comporter:

- a) un ou plusieurs livres-journaux;
- b) une fiche de compte en fiducie pour chaque client et pour chaque dossier.

(MOD 09/17; 12/18)

Rapprochement mensuel des comptes en fiducie

5-43(2) Les membres et les cabinets d'avocats doivent établir un rapprochement mensuel de leurs comptes en fiducie, soit tous les comptes communs en fiducie, comptes en fiducie avec restrictions et comptes individuels de placement en fiducie avant la fin du mois suivant. L'état de rapprochement doit indiquer, d'une façon détaillée, la raison de tout écart entre les éléments suivants :

- a) le solde du compte bancaire en fiducie selon les registres comptables du membre ou du cabinet;
- b) le total des soldes figurant dans les fiches de compte en fiducie du client;
- c) le solde du compte bancaire en fiducie selon les relevés bancaires.

(MOD 09/17; 12/18)

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Solde du compte en fiducie du client

5-43(3) L'état de rapprochement visé au paragraphe (2) doit être sauvegardé sous un format universellement lisible ou imprimé chaque mois; il doit être accompagné d'une liste qui indique le solde figurant dans la fiche de compte en fiducie de chaque client.
(MOD 12/18)

Registre des biens autres que des espèces

5-43(4) Les membres et les cabinets d'avocats doivent tenir un registre de tous les biens autres que des espèces qui leur sont confiés et qu'ils détiennent en fiducie. (MOD 12/18)

Registres électroniques

5-43(5) Les membres et les cabinets d'avocats qui tiennent des registres électroniques de leurs comptes en fiducie doivent se conformer aux obligations suivantes :

- a) sauvegarder sous un format universellement lisible ou imprimer un relevé des livres-journaux sans délai après chaque fin de mois;
- b) pouvoir imprimer, si besoin est, un relevé de toute fiche de compte en fiducie d'un client, faisant état de l'ensemble des opérations sur son compte en fiducie;
- c) conserver une copie de sauvegarde des registres électroniques, qu'ils mettent à jour au moins une fois par mois et qu'ils conservent en lieu sûr à l'extérieur de leur bureau;
- d) après la fermeture du compte en fiducie d'un client, le sauvegarder sous un format universellement lisible ou imprimer la fiche se rapportant au compte en question avant de la supprimer du registre électronique et la conserver dans un fichier central réservé à cette fin.

(MOD 12/18)

Inscriptions à l'encre

5-43(6) Les inscriptions manuscrites dans les comptes en fiducie sont faites à l'encre.
(ADOPTÉ 06/05) (MOD 12/18)

À jour

5-43(7) Les comptes en fiducie doivent être à jour en tout temps. (ADOPTÉ 06/05)
(MOD 12/18)

Opérations relatives aux fonds en fiducie

5-44(1) Les membres et les cabinets d'avocats doivent:

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- a) créditer ou débiteur un compte en fiducie exclusivement des fonds en fiducie directement connexes aux services juridiques fournis par le member ou le cabinet d'avocats;
- b) déposer ou faire déposer tous les fonds en fiducie dans un compte commun en fiducie, dès que possible après leur réception;
- c) sous réserve de l'alinéa 5-45(5)e) et du paragraphe 5-47(3) et sauf autorisation contraire du directeur général, effectuer tout retrait du compte commun en fiducie au moyen de chèques numérotés en ordre consécutif faits à l'ordre de la personne à qui l'argent doit être versé;
- d) retirer de l'argent d'un compte bancaire en fiducie en paiement de leurs honoraires ou déboursés seulement si un état de compte est transmis au client en même temps que le retrait;
- e) sauf autorisation contraire du directeur général, s'assurer que tous les chèques tirés sur un compte bancaire en fiducie sont soit signés uniquement par le membre ou un autre avocat en exercice du cabinet, soit signés par l'une de ces personnes et contresignés par un autre employé du cabinet;
- f) s'abstenir de signer un chèque en blanc ou un chèque postdaté tirés sur un compte bancaire en fiducie;
- g) s'abstenir de mettre à découvert un compte bancaire en fiducie;
- h) s'abstenir de mettre à découvert le compte en fiducie d'un client;
- i) s'abstenir de payer sur un compte bancaire en fiducie des comptes personnels ou des comptes relatifs au fonctionnement du bureau;
- j) conserver en permanence dans un compte bancaire en fiducie des soldes suffisants pour satisfaire à l'ensemble de ses obligations en matière de fonds en fiducie;
- k) s'abstenir de virer des fonds en fiducie entre les comptes de deux clients, sans d'abord obtenir au préalable, selon le cas,
 - (i) soit l'autorisation écrite du client titulaire du compte à partir duquel les fonds sont virés;
 - (ii) soit l'autorisation verbale du client titulaire du compte à partir duquel les fonds sont virés, à condition de faire parvenir ultérieurement au

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client en question une confirmation écrite de l'autorisation reçue;

- l) déposer ou conserver dans les comptes en fiducie exclusivement des fonds en fiducie ou des biens fiduciaires;
- m) veiller à ce que les fonds en fiducie soient versés rapidement après la conclusion d'un dossier, un membre ou un cabinet pouvant toutefois, dans des circonstances exceptionnelles, demander au directeur général la permission de les conserver pour une période plus longue.

(MOD. 06/05; 05/10; 05/15, 09/17; 12/18)

Limite des sommes en argent comptant

5-45(1) Un membre ou un cabinet d'avocats ne peut recevoir ou accepter des sommes d'argent comptant dont la valeur totale est supérieure à 7 500 \$ canadiens à l'égard d'une question particulière touchant un client. (ADOPTÉ 06/05; MOD 12/18)

Comptabilisation des encaissements

5-45(2) En plus des obligations de comptabilisation prévues aux paragraphes 5-43(1) et 5-48(1), le membre ou le cabinet d'avocats qui reçoit une somme en argent comptant pour un client doit ajouter à ses dossiers un registre des reçus d'encaissements en deux exemplaires qui donne les renseignements qui suivent à l'égard de chaque encaissement :

- a) la date de l'encaissement;
- b) la personne qui a remis l'argent comptant;
- c) le montant de la somme reçue;
- d) le client pour lequel l'argent comptant est reçu;
- e) le numéro du dossier concerné par l'encaissement;
- f) la signature du membre ou de la personne qu'il autorise à recevoir l'argent comptant et celle de la personne qui le lui remet.

(ADOPTÉ 06/05) (MOD 12/18)

Conversion des devises étrangères

5-45(3) Pour l'application du paragraphe (1), le membre ou le cabinet d'avocats qui reçoit ou accepte une somme en argent comptant en devises étrangères est réputé avoir reçu ou accepté l'équivalent en dollars canadiens au taux suivant :

- a) le taux officiel de la Banque du Canada applicable à chaque devise, selon les cours publiés à midi le jour où il reçoit ou accepte la somme en argent comptant;
- b) s'il reçoit ou accepte la somme un jour férié, le taux officiel en vigueur au jour ouvrable qui précède.

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(ADOPTÉ 06/05) (MOD 12/18)

Application de la limite

5-45(4) Le paragraphe (1) s'applique au membre ou au cabinet d'avocats qui effectue l'une ou l'autre des opérations qui suivent au nom d'un client ou donne des instructions à leur égard au nom d'un client :

- a) recevoir ou verser des fonds;
- b) acheter ou vendre des valeurs mobilières, des biens immeubles, des éléments d'actifs d'une entreprise ou une entreprise commerciale;
- c) transférer de fonds, par quelque moyen que ce soit.

(ADOPTÉ 06/05) (MOD 12/18)

Exceptions

5-45(5) Par dérogation au paragraphe (4), le paragraphe (1) ne s'applique pas au membre qui reçoit une somme en argent comptant relativement à la prestation de services juridiques par le membre ou le cabinet d'avocats:

- a) d'une institution financière ou d'un organisme public;
- b) d'un agent de la paix, d'un organisme d'exécution de la loi ou d'un autre mandataire de la Couronne agissant à titre officiel;
- c) pour payer une amende, une peine ou un cautionnement ou à titre d'honoraires, de déours, de dépenses, à la condition que tout remboursement soit également fait en argent comptant.

(ADOPTÉ 06/05) (MOD 12/18)

Reçu du remboursement

5-45(6) Dans le cas du remboursement visé à l'alinéa (5)d), le membre ou le cabinet d'avocats doit obtenir du bénéficiaire du remboursement un reçu daté et signé.

(ADOPTÉ 06/05) (MOD 12/18)

Changement de la date de clôture annuelle des comptes en fiducie

5-46 Abrogé

Compte individuel de placement en fiducie

5-46(1) Le membre ou le cabinet d'avocats qui a déposé des fonds en fiducie dans un compte commun en fiducie peut par la suite retirer la totalité ou une partie de ces fonds pour les déposer dans un compte individuel de placement en fiducie, pourvu que :

- a) le compte individuel de placement en fiducie soit ouvert au nom du membre ou du cabinet pour la personne à qui les fonds en question appartiennent;
- b) l'ensemble des opérations relatives au compte individuel de placement en

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fiducie soient inscrites dans les registres comptables du membre ou du cabinet relatifs à ses comptes en fiducie.

(MOD 12/18)

Retrait de fonds déposés dans des comptes individuels de placement en fiducie

5-46(2) Le membre ou le cabinet d'avocats qui retire des fonds d'un compte individuel de placement en fiducie doit les déposer au complet dans un compte commun en fiducie.

(MOD 12/18)

Compte en fiducie avec restrictions

5-47(1) Le membre ou le cabinet d'avocats qui a déposé des fonds en fiducie dans un compte commun en fiducie peut par la suite retirer la totalité ou une partie de ces fonds pour les déposer dans un compte en fiducie avec restrictions en vue de faciliter l'enregistrement de documents au Teranet Manitoba LP, pourvu que:

- a) soient déposés au compte en fiducie avec restrictions uniquement les fonds nécessaires au paiement de la taxe sur les mutations d'un bien-fonds et des droits d'enregistrement fonciers au Teranet Manitoba LP;
- b) aucune somme supérieure à ce qui est nécessaire à ces paiements liés à l'opération immobilière d'un client ne soit transférée.

(ADOPTÉ 09/17) (MOD 12/18)

5-47(2) Les sommes supérieures à ce qui est nécessaire qui auraient été déposées doivent être retournées par chèque sans délai dans le compte commun en fiducie dont elles proviennent. (ADOPTÉ 09/17) (MOD 12/18)

Retrait par Teranet Manitoba LP

5-47(3) Un membre ou un cabinet d'avocats peut autoriser Teranet Manitoba LP à retirer d'un compte en fiducie avec restrictions les fonds nécessaires au paiement de la taxe sur les mutations d'un bien-fonds et des droits d'enregistrement fonciers liés à l'opération immobilière d'un client à la condition de préciser dans son autorisation les éléments suivants:

- a) le montant à prélever;
- b) le numéro de compte de dépôt;
- c) le nom du cabinet;
- d) le numéro de dossier du client;
- e) les renseignements nécessaires à l'enregistrement;

il est nécessaire également que Teranet Manitoba LP accepte de faire parvenir au membre une confirmation de réception de son autorisation au plus tard à 18 heures le lendemain du jour d'envoi de l'autorisation. (ADOPTÉ 09/17) (MOD 12/18)

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Vérification

5-47(4) Dès qu'il reçoit la confirmation de réception de Teranet Manitoba LP, le membre ou le cabinet d'avocats en vérifie le contenu avec le dossier du client et ses propres dossiers comptables et corrige les divergences éventuelles. (ADOPTÉ 09/17) (MOD 12/18)

Suspension en cas de défaut

5-47(10) Abrogé 12/18

Exception à l'obligation de déposer le rapport annuel sur les comptes en fiducie

5-47(11) Abrogé 12/18

Exception quant aux membres en exercice

5-47(12) Abrogé 12/11

Registres et comptes généraux

5-48(1) Les membres et les cabinets d'avocats doivent déposer dans un compte général uniquement l'argent qui lui est versé en rapport avec leurs activités professionnelles et qui ne constitue pas des fonds en fiducie. Il est tenu d'avoir au moins un compte général de fonctionnement et de tenir les registres et journaux comptables suivants :

- a) un journal général originaire dans lequel sont inscrites, de façon détaillée et par ordre chronologique, les entrées et les sorties d'argent; les inscriptions précisent la forme sous laquelle l'argent est reçu;
- b) un grand livre des comptes clients – ou tout autre système comptable équivalent – dans lequel sont inscrits, pour chaque client, les comptes envoyés, les paiements reçus et le solde à verser au client ou à percevoir;
- c) tous les documents justificatifs, notamment les relevés bancaires, les livrets bancaires, les chèques payés, les reçus d'encaissement, les bordereaux de dépôt, les avis bancaires et autres documents semblables et les factures.

(ADOPTÉ 12/03) (MOD. 06/05; 12/18)

Inscriptions à l'encre

5-48(2) Les inscriptions manuscrites dans les registres généraux sont faites à l'encre. (ADOPTÉ 06/05) (MOD 12/18)

À jour

5-48(3) Les registres généraux doivent être à jour en tout temps. (ADOPTÉ 06/05) (MOD 12/18)

Le membre à titre de représentant

5-49(1) Dans les cas qui suivent, s'il ne fournit pas de services juridiques le membre agit à titre de représentant:

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- a) il est le représentant personnel, l'exécuteur testamentaire ou l'administrateur ou l'un des représentants, exécuteurs ou administrateurs, de la succession d'une personne décédée;
- b) il est le fiduciaire ou l'un des fiduciaires, d'une fiducie, au titre d'une nomination faite en conformité avec l'instrument qui crée la fiducie;
- c) le tribunal le nomme fiduciaire ou l'un des fiduciaires des biens d'une autre personne;
- d) il est fiduciaire de facto;
- e) il est mandataire ou l'un des mandataires nommé au titre d'une procuration, notamment d'une procuration générale, spéciale ou durable. (ADOPTÉ 09/17) (MOD 12/18)

Biens fiduciaires déposés dans le compte en fiducie

5-49(2) ABORGÉ

Biens fiduciaires exclus du compte en fiducie

5-49(3) Un membre nommé pour agir à titre de représentants doit:

- a) informer le directeur général par écrit du fait qu'il agit à titre de représentant, dans les 30 jours suivant le début de son mandat;
- b) tenir un relevé des nominations qu'il reçoit et des prises en charge qu'il accepte à titre de représentant, accompagné de la liste des bénéficiaires de la succession ou de la fiducie sur laquelle sont notées leur dernière adresse connue ou leurs coordonnées;
- c) tenir les livres, registres et états de compte, ainsi que toutes les pièces justificatives, liés à la succession ou à la fiducie d'une façon organisée et facile d'accès afin de faciliter les examens, les inspections, les révisions, les vérifications par la Société;
- d) collaborer avec le vérificateur ou l'enquêteur que la Société charge d'un examen, d'une inspection, d'une révision ou d'une vérification.

(ADOPTÉ 09/17) (MOD 12/18)

Non-application du fonds d'indemnisation ni du fonds de remboursement

5-49(4) Le membre qui agit à titre de représentant dans un cas qui ne découle pas d'une relation entre avocat et client est tenu d'informer par écrit les bénéficiaires de la fiducie et, si possible, la personne qui procède à sa nomination que ni le fonds d'indemnisation ni le fonds de remboursement ne prendront en charge une demande de remboursement liée

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aux opérations qu'il aura faites à l'égard des biens fiduciaires. (ADOPTÉ 09/17) (MOD 12/18)

Rapport de cessation d'exercice

5-50(1) Le membre qui cesse d'exercer à titre individuel doit :

- a) déposer un rapport final conforme au modèle fixé par le directeur général, au plus tard quatre mois après la fermeture de tous les comptes en fiducie; le cabinet qui cesse ses activités est tenu de faire de même;
- b) informer par écrit toutes les personnes qui, à sa connaissance, l'ont nommé à titre de représentant ou qui sont les bénéficiaires de son mandat à ce titre qu'il cesse d'exercer le droit et que ni le fonds d'indemnisation ni le fonds de remboursement ne prendront en charge une demande de remboursement liée aux opérations qu'il aura faites à l'égard des biens fiduciaires après qu'il a cessé d'exercer le droit.

(MOD. 09/17; 12/18)

Fermeture des comptes en fiducie

5-50(2) Le membre qui cesse d'exercer ou dont le cabinet cesse ses activités doit fermer tous ses comptes bancaires en fiducie dans un délai de trois mois, en conformité avec le paragraphe 2-74(2). (MOD 12/18)

Prorogation du délai

5-50(3) Le directeur général peut proroger le délai pour le dépôt des rapports visés au paragraphe (1) ou pour la fermeture des comptes bancaires en fiducie visés au paragraphe (2); il peut en outre approuver le dépôt des rapports en question selon une forme autre que la forme prescrite. (MOD 12/18)

Défaut de déposer le rapport

5-50(4) Lorsqu'un membre ou un cabinet d'avocats omet de produire le rapport prévu au présent article dans le délai prescrit ou tout autre délai fixé par le directeur général, le directeur général peut ordonner à un enquêteur d'inspecter les comptes et les dossiers du membre ou du cabinet en vue de déterminer si les dispositions de la présente section ont été respectées. (MOD 12/18)

Rapport d'inspection

5-50(5) L'enquêteur remet au directeur général un rapport indiquant si le membre ou le cabinet s'est conformé aux dispositions de la présente section. (MOD 12/18)

Frais de l'inspection

5-50(6) Le membre ou le cabinet d'avocats qui fait l'objet d'une inspection ordonnée par le directeur général en vertu du paragraphe (4) rembourse à la Société les frais de l'inspection. (MOD 12/18)

Enquête sur les comptes et registres

5-51(1) Les conseillers, le comité d'enquête sur les plaintes ou le directeur général

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peuvent, à tout moment, ordonner à un enquêteur d'inspecter les comptes et registres d'un membre ou d'un cabinet d'avocats en vue de déterminer si les dispositions de la Loi, des règles et du Code de déontologie professionnelle ont été respectées. (MOD. 05/08; 12/18)

Rapport d'enquête

5-51(2) S'il conclut à une contravention à la loi, aux présentes règles ou au Code de déontologie professionnelle, l'enquêteur précise dans un rapport au directeur général les manquements qu'il a relevés. (MOD. 05/08; 12/18)

Rapport assimilable à une plainte

5-51(3) Le directeur général peut considérer un rapport de non-conformité déposé en vertu du paragraphe (2) comme à une plainte déposée en vertu de l'article 5-60. (MOD 12/18)

Production des registres

5-52(1). Sous réserve du paragraphe (2), le membre ou le cabinet d'avocats qui fait l'objet d'une inspection ou d'une enquête, de même que le superviseur des comptes en fiducie sont tenus de collaborer avec l'enquêteur et de produire, à la demande de ce dernier tous les registres, livres, dossiers et autres documents, peu importe leur forme, qu'ils détiennent ou qu'un tiers détient pour le membre ou le cabinet et de répondre à toutes les questions qu'il peut poser à leur sujet dans la mesure où la demande ou les questions sont raisonnablement nécessaires à l'inspection ou à l'enquête. . (MOD. 12/03; 05/08; 12/18)

Production des registres généraux

5-52(2) L'enquêteur ne peut exiger la production des registres et comptes généraux d'un membre ou d'un cabinet que dans la mesure où il en a besoin pour retracer des fonds en fiducie ou pour déterminer si des fonds en fiducie ont été déposés dans le compte général du membre. (ADOPTÉ 12/03) (MOD 12/18)

Respect des obligations relatives à la SADC

5-53 Le membre ou le cabinet d'avocats titulaire d'un compte commun en fiducie, d'un compte en fiducie avec restrictions ou d'un compte individuel de placement en fiducie auprès d'un établissement d'épargne assuré par la Société d'assurance-dépôts du Canada (« SADC ») sont tenus de se conformer aux dispositions de la *Loi sur la Société d'assurance-dépôts du Canada* et de son annexe quant à la divulgation de renseignements. (MOD. 09/17; 12/18)

Conservation des registres

5-54(1) Les membres doivent:

- a) conserver les livres, registres et états de compte visés à la présente section pendant au moins dix ans;
- b) lors de la fermeture du dossier d'un client, verser à ce dossier une copie de la fiche de compte en fiducie du client en question ou en conserver une version électronique sous un format universellement lisible.

(MOD 12/18)

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Lieu de conservation des registres

5-54(2) Sauf dérogation autorisée par le directeur général, les membres et les cabinets d'avocats doivent conserver au bureau principal où ils exercent au Manitoba les livres, registres et états de compte qui se rapportent aux trois dernières années et qui portent sur leurs comptes bancaires en fiducie et sur leurs comptes généraux visés à la présente section. (MOD. 09/17; 12/18)

Autorisation de paiement requise

5-55 Le membre qui, en qualité de fiduciaire ou autrement, a la garde de fonds ou de biens appartenant à un client ne peut les affecter au paiement de ses honoraires qu'avec l'autorisation expresse ou implicite du client en cause. (MOD 12/18)

Défaut de se conformer aux règles

5-56 Est susceptible de constituer une faute professionnelle toute contravention aux dispositions de la présente section, sauf excuse légitime du membre. (MOD 12/18)

Emprunts auprès des clients

5-56(1) Abrogé 02/13

Exceptions

5-56(2) Abrogé 02/13

Section 5 - Honoraires d'avocats

Honoraires, déboursés et intérêts

5-57 Nul membre ne facture ni n'accepte des honoraires ou des déboursés, ou dépenses, notamment des intérêts, qui ne sont pas justes et raisonnables et qui n'ont pas été communiqués au client en temps utile. (MOD. 06/09; 12/18)

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SECTION 12 - IDENTIFICATION ET VÉRIFICATION DE L'IDENTITÉ DES CLIENTS

- 5-116 Définitions
- 5-116(2) Abrogé
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- 5-123(1) Utilisation d'un agent et d'un client non présent au Canada
- 5-124 Vérification unique
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- 5-126 Contravention des documents
- 5-126(2) Forme des documents
- 5-127 Application
- 5-128 Obligation de désistement – renseignements obtenus au moment où les services de l'avocat sont retenus
- 5-129 Obligation de surveiller la relation
- 5-129(1) Activité criminelle: obligation de désistement, une fois les services retenus

- 5-130 Obligation de désistement – Renseignements obtenus au cours du mandat
5-131 Contravention

Section 12 Identification et vérification de l'identité des clients

(ADOPTÉ 12/08)

Définitions

5-116 Les définitions qui suivent s'appliquent à la présente section.

« **avocat** » Personne qui est membre d'un organisme de réglementation professionnelle et est autorisée à exercer le droit dans une autre province ou un territoire du Canada. ("lawyer")
(ADOPTÉ 01/09) « **client** » S'entend notamment des personnes suivantes :

- a) une autre partie que le client de l'avocat représente ou au nom de laquelle le client agit pour obtenir des services juridiques de l'avocat;
- b) aux articles 5-120 à 5-124, un particulier qui donne des instructions à l'avocat au nom du client dans le cadre d'une opération financière. ("client")

(ADOPTÉ 01/09)

« **centrale de caisses de crédit** » Coopérative de crédit centrale, au sens de l'article 2 de la Loi sur les associations coopératives de crédit, ou centrale de caisses de crédit ou fédération de caisses de crédit ou de caisses populaires régie par une loi provinciale autre qu'une loi édictée par la législature du Québec. ("credit union central")

« **déboursés** » Montants que paie ou doit payer le membre ou le cabinet d'avocats à un tiers, au nom d'un client, relativement à la prestation de services juridiques rendus par lui à ce client, que ce dernier devra rembourser au membre ou au cabinet. ("disbursements")

« **dépenses** » Frais engagés par un membre ou un cabinet d'avocats relativement à la prestation de services juridiques rendus à un client, frais que le client remboursera, notamment des éléments comme des photocopies, des frais de déplacements, des frais de messagerie et d'affranchissement postal et des honoraires parajuridiques. ("expenses")

« **institution financière** »

- a) Banque régie par la Loi sur les banques;
- b) banque étrangère autorisée au sens de l'article 2 de la *Loi sur les banques* à l'égard de ses activités au Canada;
- c) société coopérative de crédit ou une caisse populaire régie par un une loi provincial ou territoriale;

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- d) association régie par la *Loi sur les associations coopératives de crédit* (Canada);
- e) coopératives de services financiers;
- f) centrale de caisses de crédit;
- g) société régie par la Loi sur les sociétés de fiducie et de prêt (Canada)
- h) société de fiduci ou société de prêt régie par une loi provincial ou territoriale;
- i) tout ministère ou toute entité mandataire de Sa Majesté du chef du Canada ou d'une province lorsqu'ils acceptent des dépôts dans le cadre des services financiers qu'ils fournissent au public;
- j) filiale de l'institution financière, dont les états financiers sont consolidés avec ceux de l'institution financière. ("financial institution")

(ADOPTÉ 01/09)

« coopérative de services financiers » Coopérative de services financiers régie par la Loi sur les coopératives de services financiers, L.R.Q., ch. C-67.3, ou la Loi sur le Mouvement Desjardins, L.Q. 2000, ch. 77, autre qu'une caisse populaire. ("financial services cooperative")

« opération financière » Recevoir, payer ou transférer une somme d'argent au nom d'un client ou donner des instructions au nom d'un client à l'égard de la réception, du paiement ou du transfert d'une somme d'argent. ("financial transaction") (MOD. 02/09)

« fonds » L'argent comptant, la monnaie, les titres et effets négociables ou les autres instruments financiers qui indiquent le titre de la personne ou son droit ou son intérêt sur ceux-ci. ("funds") (MOD. 02/09)

« organisme » Personne morale, société de personnes, fonds, fiducie, coopérative ou association non constituée en personne morale. ("organization")

« honoraires professionnels » Les montants facturés ou à facturer à un client pour des services juridiques fournis ou à fournir au client de la part du membre ou de la membre ou du cabinet d'avocats. ("professional fees")

« organisme public »

- a) Ministère ou mandataire de Sa Majesté du chef du Canada, d'une province ou d'un territoire;
- b) ville, village, autorité métropolitaine, canton, district, comté ou municipalité rurale constitué en personne morale, ou autre organisme municipal constitué en personne morale au Canada, ou leur mandataire au Canada;
- c) conseil local d'une municipalité constituée en personne morale sous le régime

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d'une loi provinciale ou territoriale au Canada notamment tout conseil local au sens de la Loi sur les municipalités ou organisme semblable constitué sous le régime d'une loi d'une autre province ou d'un territoire;

- d) organisme qui exploite un administration hospitalière publique et qui est désigné comme administration hospitalière par le ministre du Revenu national aux termes de la *Loi sur la taxe d'accise* (Canada) ou un mandataire de l'organisme; (MOD 01/09)
- e) organisme constitué en personne morale sous le régime d'une loi fédérale, provinciale ou territoriale à des fins d'intérêt public; (MOD. 01/09)
- f) filiale d'un organisme public don't les états financiers sont consolidés avec ceux de l'organisme public. ("public body")

(ADOPTÉ 01/09)

« émetteur assujetti » Émetteur assujetti au sens des lois sur les valeurs mobilières d'une province ou d'un territoire du Canada, ou personne morale dont les actions se transigent sur une bourse désignée sous le régime de l'article 262 de la *Loi de l'impôt sur le revenu* (Canada) et qui exerce ses activités dans un pays membre du Groupe d'Action financière, notamment une filiale de cet organisme ou personne morale dont les états financiers sont consolidés avec ceux de l'organisme ou de la personne morale. ("reporting issuer") (ADOPTÉ 01/09) (MOD 02/09)

« courtier en valeurs mobilières » Personne ou entité autorisée en vertu de la législation provinciale à se livrer au commerce des valeurs mobilières ou d'autres instruments financiers, ou à la fourniture de services de gestion de portefeuille et de conseils en placement, à l'exception des personnes agissant exclusivement au nom de telles entités ou personnes. ("securities dealer") (ADOPTÉ 01/09)

« somme d'argent » L'argent comptant, la monnaie, les titres et effets négociables ou les autres instruments financiers qui indiquent le titre de la personne ou son intérêt sur ceux-ci. ("money") (MOD. 02/09)

Contrôle

5-116(2) Abrogé

Application

5-117(1) Sous réserve du paragraphe (2), la présente section s'applique au membre dont les services sont retenus par un client pour fournir des services juridiques, conformément à l'obligation de l'avocat de connaître son client, de comprendre les opérations financières du client dans le cadre du mandat que ce dernier lui a confié et de gérer tout risque découlant de sa relation d'affaires avec le client, comme l'indique le Code de déontologie.

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Exemptions

5-117(2) Les articles 5-118 à 5-129 ne s'appliquent pas au membre qui fournit des services juridiques dans les cas suivants:

- a) il les fournit au nom de son employeur ou effectue des opérations financières, ou donne des instructions à cet égard, uniquement à ce titre:
- b) les services ne mettent pas en cause des opérations financières et sont fournis dans les circonstances suivantes :
 - (i) le membre agit à titre d'avocat de garde dans le cadre d'un programme parrainé par un organisme sans but lucratif,
 - (ii) le membre fournit bénévolement des avis sommaires;
- c) lorsqu'un autre membre ou un avocat s'est lui-même conformé aux articles 5-118 à 5-129, ou aux dispositions équivalentes prises par un autre organisme de réglementation professionnelle et:
 - (i) soit l'a engagé pour fournir les services juridiques au client à titre de mandataire,
 - (ii) soit lui soumet une question pour qu'il lui fournisse les services juridiques

(MOD. 01/09)

Règle d'interprétation

5-117(3) Dans la présente section, les obligations d'un membre peuvent être remplies par un membre, un associé ou un employé de son cabinet, peu importe l'endroit ou il est situé (ADOPTÉ 01/09)

Identité du client

5-118(1) Le membre dont les services sont retenus par un client pour fournir des services juridiques a l'obligation d'obtenir et de noter au dossier tous les renseignements qui suivent, en prenant soin de les dater:

- a) dans le cas d'un particulier :
 - (i) le nom complet du client,
 - (ii) son adresse et le numéro de téléphone de sa résidence,
 - (iii) sa profession ou ses professions.
 - (iv) l'adresse et le numéro de téléphone de son lieu de travail ou de son employeur, le cas échéant;
- b) dans le cas d'un organisme:

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- (i) le nom complet du client, son adresse et son numéro de téléphone professionnels,
 - (ii) dans le cas d'un organisme qui n'est ni une institution financière, ni un organisme public, ni un émetteur assujetti, le numéro de constitution ou d'identification de l'organisme et le lieu de délivrance du numéro, le cas échéant, (AM 11/19)
 - (iii) dans le cas d'un organisme qui n'est ni une institution financière, ni un organisme public, ni un émetteur assujetti, la nature générale de ses activités, notamment commerciales, le cas échéant.
 - (iv) le nom, le titre et les coordonnées des personnes autorisées à donner des directives à l'égard du dossier pour lequel les services de l'avocat sont retenus;
- c) si le client agit pour le compte d'un tiers ou représente un tiers, les renseignements se rapportant au tiers énoncé à l'alinéa (a) ou (b) selon les cas.

(MOD. 01/09)

Vérification unique

5-118(2) Abrogé

Vérification de l'identité du client - exemptions

5-119 Les articles 5-120 à 5-125 ne s'appliquent pas:

- a) si le client est :
 - (i) une institution financière,
 - (ii) un organisme public
 - (iii) un émetteur assujetti,
 - (iv) un particulier qui donne des directives au membre au nom d'un client visé aux sous-alinéas (i) à (iii);
- b) lorsque le membre :
 - (i) verse des fonds à une institution financière, un organisme public ou un émetteur assujetti, ou en reçoit de ceux-ci,
 - (ii) reçoit des fonds provenant du compte en fiducie d'un autre avocat,
 - (iii) reçoit des fonds d'un agent de la paix, d'un organisme chargé de l'application de la loi ou d'un autre fonctionnaire dans l'exercice de ses fonctions,

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- (iv) reçoit ou verse des fonds pour payer une amende, une autre sanction ou un cautionnement,
 - (v) reçoit ou verse des fonds pour des honoraires professionnels, des déboursés ou des dépenses;
- c) à une opération lors de laquelle des fonds sont virés électroniquement, si les conditions suivantes sont réunies :
- (i) le virement se fait entre des institutions financières ou entre des entités financières qui exercent leurs activités dans des pays membres du Groupe d'Action financière sur le blanchiment des capitaux,
 - (ii) ni le titulaire du compte expéditeur ni celui du compte destinataire ne touche ni ne transfère les fonds,
 - (iii) les renseignements qui suivent sont inscrits sur le document de virement :
 - A. un numéro de référence,
 - B. la date,
 - C. le montant viré,
 - D. la devise,
 - E. le nom de l'expéditeur et du destinataire et celui des entités expéditrice et destinataire.

(MOD. 01/09)

Obligation de vérifier l'identité du client

5-120 Le membre qui fournit des services juridiques à l'égard d'une opération financière doit:

- (a) obtenir auprès du client et consigner les renseignements relatifs à la source des fonds en prenant soin de dater les renseignements;
- (b) vérifier l'identité du client, y compris celle des personnes décrites au sous-alinéa 5118b)(iv) et, s'il y a lieu, du tiers ayant recours aux documents ou aux renseignements décrits à l'article 5-121.

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Documents et renseignements nécessaires pour vérifier l'identité d'un particulier

5-121(1) Pour l'application de l'article 5-120, si le client ou le tiers est un particulier, l'identité de cette personne doit être vérifiée par la consultation des documents suivants, qui doivent être des originaux valables et à jour, ou des renseignements suivants, qui doivent être valables et à jour, et exempt d'images électroniques d'un document :

- (a) une pièce d'identité délivrée par le gouvernement fédéral, un gouvernement provincial ou territorial, ou un gouvernement étranger, autre qu'un gouvernement municipal, la consultation ayant lieu en présence du particulier pour qu'il puisse être vérifié que le nom et la photo sont bien ceux du particulier;
- (b) les renseignements qui figurent au dossier de crédit du particulier si ce dossier est tenu au Canada depuis au moins trois ans, pour qu'il puisse être vérifié que le nom, l'adresse et la date de naissance figurant au dossier de crédit sont bien ceux du particulier;
- (c) deux des éléments suivants quant au particulier :
 - (i) des renseignements d'une source fiable où figurent le nom et l'adresse du particulier pour qu'il puisse être vérifié que le nom et l'adresse sont bien ceux de la personne,
 - (ii) des renseignements d'une source fiable où figurent le nom et la date de naissance du particulier pour qu'il puisse être vérifié que le nom et la date de naissance sont ceux du particulier,
 - (iii) des renseignements où figurent le nom du particulier et qui confirment qu'il possède un compte de dépôt ou une carte de crédit ou d'autres passifs auprès d'une institution financière pour que ces renseignements puissent être vérifiés.

Restriction quant aux sources de renseignements

5-121(2) Pour l'application des sous-alinéas 5-121(1)c)(i), (ii) et (iii), les renseignements consultés doivent émaner de sources diverses, et le particulier, l'avocat et le mandataire ne sauraient être une source.

Clients mineurs

5-121(3) Si le client est un particulier qui est:

- a) âgé de moins de 12 ans, le member doit vérifier l'identité des parents ou tuteurs du particulier;
- b) âgé de 12 à 15 ans, le member doit vérifier l'identité du particulier en consultant les renseignements visés au sous-alinéa 5-121(1)c)(i) ou figurant le nom et l'adresse des parents ou tuteurs du particulier et s'assurer qu'il s'agit bien de l'adresse du particulier.

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Documents et renseignements nécessaires pour vérifier l'identité d'un organisme

5-121(4)

- a) Si le client ou le tiers est un organisme qui est une corporation ou autre personne morale constituée ou enregistrée sous le régime d'un texte législatif, l'identité de l'organisme doit être vérifiée au moyen d'une confirmation écrite provenant d'un register gouvernemental faisant état de l'existence, du nom et de l'adresse de l'organisme et donnant les noms de ses administrateurs, s'il y a lieu. Cette confirmation peut être:
- (i) un certificate de constitution délivré par un organisme public,
 - (ii) une copie, délivrée par un organisme public, d'un document que la corporation ou la personne morale est tenue de déposer annuellement en conformité avec la loi,
 - (iii) une copie, délivrée par un organisme public, d'un document semblable qui confirme l'existence de la corporation ou de la personne morale;
- b) si le client ou le tiers est un organisme autre qu'une corporation ou une personne morale, et n'est inscrit dans aucun register gouvernemental, comme une fiducie ou une société de personnes, l'identité de l'organisme doit être vérifié au moyen d'une copie des actes constitutifs de l'organisme, comme la convention de fiducie ou de société, un acte d'association ou tout autre document semblable qui confirme son existence.

Obligation d'identifier les administrateurs, les actionnaires et les propriétaires

5-121(5)

Si le client ou le tiers est un organisme, le member doit:

- a) obtenir, consigner et dater les noms de tous les administrateurs de l'organisme, à l'exception d'un organisme qui est un courtier en valeurs mobilières,
- b) prendre les mesures raisonnables pour obtenir les renseignements qui suivent et, s'il les obtient, les consigner au dossier et les dater:
- (i) le nom et l'adresse de toutes les personnes qui possèdent directement ou indirectement 25 pour cent ou plus de l'organisme ou de ses actions,
 - (ii) le nom et l'adresse de tous les fiduciaires, de tous les bénéficiaires et disposants de la fiducie connus,
 - (iii) dans tous les cas, les renseignements établissant la propriété, le contrôle et la structure de l'organisme.

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Mesures raisonnables pour confirmer les renseignements

5-121(6) Le member prend les mesures raisonnables pour confirmer l'exactitude des renseignements obtenus en application du paragraphe 5-121(5).

Obligation de consigner les mesures prises

5-121(7) Le member tient un register où il consigne, par dates:

- a) d'une part, les mesures prises en application de l'alinéa 1-121(5)b);
- b) d'autre part, les mesures prises pour confirmer l'exactitude des renseignements conformément au paragraphe 121(5).

Mesures de rechange

5-121(8) Le member qui n'est pas en mesure d'obtenir les renseignements visés au paragraphe 5-121(5) ou de confirmer leur exactitude conformément au paragraphe 5-121(6):

- a) doit prendre des mesures raisonnables pour attester l'identité du member de la haute direction au plus haut rang de l'organisme;
- b) doit déterminer si:
 - (i) les renseignements du client quant à ses activités,
 - (ii) les renseignements du client quant la source des fonds,
 - (iii) les instructions du client quant à l'opération, sont compatibles avec l'objet du mandate et les renseignements obtenus au sujet du client conformément au présent article;
- c) doit évaluer si la situation présente un risqué que l'avocat prête assistance ou encourage un acte frauduleux ou une autre conduit illégale;
- d) doit tenir un register où il consigne et date ce qu'il a determine et les résultats de son évaluation en vertu des alinéas b) et c).

Moment de la verification - particuliers

5-122 Le member doit verifier l'identité;

- a) d'un client qui est un particulier;
- b) d'un particulier qui donne des instructions et est autorisé à donner des instructions au nom d'un organisme quant à l'affaire pour laquelle les services de l'avocat ont été retenus,

au mement où il s'occupe de l'opération financière ou donne des instructions à son égard.

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Identité du client et vérification – opérations à distance

5-122(1) Abrogé

Client qui se trouve ailleurs au Canada

5-122(2) Abrogé

Attestation

5-122(3) Abrogé

Répondants

5-122(4) Abrogé

Moment de la vérification – organismes

5-123 Le membre devrait vérifier l'identité d'un client qui est un organisme au moment où il s'occupe de l'opération financière ou donne des instructions à son égard, mais, en tout état de cause, au plus tard dans les 30 jours subséquents.

Utilisation d'un agent et d'un client non présent au Canada

5-123(1) Si le client est à l'extérieur du Canada, le membre doit confier à un mandataire la responsabilité d'obtenir les renseignements nécessaires pour vérifier l'identité du client en conformité avec l'article 5-120; ces renseignements peuvent notamment prendre la forme d'une attestation visée à l'article 5-122(3) à la condition que le membre et le mandataire aient conclu une entente écrite à cette fin. (MOD. 01/09)

Vérification unique

5-124 A moins d'avoir des raisons de croire que les renseignements ont changé ou ne sont plus exacts, si le membre a vérifié l'identité d'un client qui:

- a) est un particulier, le membre n'est pas tenu de la vérifier l'identité de nouveau;
- b) est un organisme, et s'il a reçu les renseignements visés au paragraphe 5-121(5), le membre n'est pas tenu de la vérifier ni d'obtenir les renseignements de nouveau.

Recours à un mandataire

5-125(1) Le membre peut recourir à un mandataire pour vérifier l'identité d'un particulier client, d'un tiers ou d'un particulier visé au sous-alinéa 5-118b)(iv) comme l'exigent les règles de la présente section, à la condition que le membre et le mandataire aient conclu une entente ou un arrangement par écrit à cette fin.

Recours à mandataire requis

5-125(2) Si le particulier client, le tiers ou un particulier visé au sous-alinéa 5-118b)(iv) est physiquement à l'extérieur du Canada, le membre doit recourir à un mandataire pour vérifier l'identité de la personne en question conformément aux règles énoncées à la

RÈGLES DE LA SOCIÉTÉ DU BARREAU

présente section, et le member et le mandataire doivent conclure une entente ou un arrangement par écrit à cette fin.

Exigences relatives à l'entente du mandataire

5-125(3) Le membre qui conclut une entente ou un arrangement visé au paragraphe (1) ou (2)

- a) reçoit du mandataire les renseignements que ce dernier a obtenus en vue de vérifier l'identité du client ou d'une personne;
- b) s'assure que les renseignements sont valables et à jour et que le mandataire a vérifié l'identité conformément aux règles de la présente section.

Vérification antérieurement effectuée par le mandataire

5-125(4) Le membre peut s'appuyer sur la vérification déjà faite par le mandataire quant à l'identité d'un particulier client, d'un tiers ou d'un particulier visé au sous-alinéa 5-118b)(iv) si le mandataire, au moment où il a vérifié l'identité :

- a) soit agissait pour son propre compte, que le mandataire ait été ou non tenu de vérifier l'identité de la personne conformément à la présente règle;
- b) soit agissait comme mandataire aux termes d'une entente ou d'un arrangement conclu par écrit avec un autre avocat tenu de vérifier l'identité de la personne conformément à la présente règle, aux fins de la vérification d'identité conformément aux règles de la présente section.

Conservation des documents

5-126 Le member:

- a) doit obtenir une copie de tous les documents utilisés pour vérifier l'identité d'un client pour l'application de l'article 5-121,
- b) peut conserver les documents utilisés pour vérifier l'identité du client sous forme électronique, pourvu qu'ils soient sauvegardés sous un format universellement lisible;
- c) doit conserver au dossier les renseignements, accompagnés des dates, et les documents obtenus pour l'application des articles 5-118, 5-120 et 5-129 :
 - (i) tant que le particulier ou l'organisme demeure son client et aussi longtemps que nécessaire pour lui fournir des services,
 - (ii) pendant au moins six ans suivant l'achèvement du travail pour lequel ses services ont été retenus.

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Forme des documents

5-126(2) Les documents visés au paragraphe (1) peuvent être sous forme lisible par machine ou électronique, pourvu qu'un imprimé puisse facilement être produit.

Application

5-127 Les règles 5-117 à 5-126 s'appliquent à toutes les questions à l'égard desquelles les services d'un membre sont retenus le 1er janvier 2020 ou après cette date, qu'il s'agisse d'un nouveau client ou d'un client existant.

Obligation de désistement - renseignements obtenus au moment où les services de l'avocat sont retenus

5-128 Le membre est tenu de cesser de représenter le client si, pendant qu'il établit ou vérifie l'identité d'un client, il obtient des renseignements qui lui font savoir ou devraient lui faire savoir qu'il aiderait le client à commettre une fraude ou tout autre acte illégal.

Obligation de surveiller la relation

5-129 Pendant l'exécution d'un mandat confié par un client quant à une opération financière, le membre doit:

(1) surveiller de façon périodique sa relation d'affaires avec le client en vue de :

- a) déterminer si:
 - (i) les renseignements du client quant à ses activités,
 - (ii) les renseignements du client quant à la source des fonds,
 - (iii) les instructions du client quant à l'opération financière, sont compatibles avec l'objet du mandat et les renseignements obtenus au sujet du client;
- b) évalue si la situation présente un risque que l'avocat favorise ou facilite un acte frauduleux ou une autre conduite illégale;

(2) tient un registre dans lequel il consigne et date les mesures prises et les renseignements obtenus conformément au sous-alinéa (i).

Activité criminelle : obligation de désistement, une fois les services retenus

5-129(1) Le membre est tenu de cesser de représenter le client si, pendant que ses services ont été retenus, il sait ou devrait savoir qu'il aiderait le client à commettre une fraude ou tout autre acte illégal. (MOD. 01/09)

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Obligation de désistement – Renseignements obtenus au cours du mandat

5-130 Le membre est tenu de cesser de représenter le client si, pendant qu'il s'acquitte d'un mandat, il sait ou devrait savoir qu'il aiderait le client à commettre une fraude ou tout autre acte illégal.

Contravention

5-131 La contravention à l'une des dispositions de la présente section sans excuse raisonnable peut constituer une faute professionnelle. (ADOPTÉ 01/09)



Centre de traduction et de documentation juridiques
Centre for Legal Translation and Documentation

CERTIFICATE OF TRANSLATION ACCURACY

I, François Blais, being a member of the Corporation of Translators, Terminologists and Interpreters of New Brunswick (CTINB), hereby certify that I am fluent in the English and the French languages and that the translations showing in the here-attached Part 5-Financial Accountability Nov.5-19 - ENG and FRE.pdf and Part 5-Financial Accountability Nov.5-19 - ENG and FRE.pdf are accurate.

François Blais

M^e François Blais
CTINB Certified Member
Barreau du Québec Member (Retired Lawyer)

December 9 2019

Date

MEMORANDUM

TO: Benchers

FROM: Darcia Senft

DATE: December 11, 2019

RE: CODE OF PROFESSIONAL CONDUCT – PROPOSED AMENDMENTS

A. MODEL CODE OF CONDUCT – BACKGROUND

In the mid-2000s Canadian law societies agreed that in light of the increasing mobility of the legal profession professional conduct rules across the country should be harmonized as much as possible. In February 2009, Council of the Federation of Law Societies (“Federation Council”) approved a project to develop a “Model Code of Professional Conduct” with the goal of aligning professional ethical obligations on a national basis. The Model Code was approved in 2010 and since then our Benchers have generally taken the view that they will adopt the Model Code provisions for inclusion in the Manitoba Code unless those provisions are inconsistent with Manitoba practice.

A Standing Committee on the Model Code was established to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from the law societies and other interested parties regarding the Model Code, and to make recommendations to the Federation Council with respect to any changes it considers appropriate. On a regular basis, the Standing Committee consults with representatives of each law society about the work of the committee and implementation of common code provisions. When amendments are proposed, feedback is solicited not only from law societies but also from legal ethics academics, the Canadian Bar Association, other legal system stakeholders and members of the public. We are fortunate that the Chair of the Standing Committee is our own David Swayze.

B. TECHNOLOGICAL COMPETENCE

Rule 3.1-2 of the Model Code (and our own Manitoba Code) provides that:

A lawyer must perform all legal services undertaken on the client's behalf to the standard of a competent lawyer....

In 2016, the Standing Committee first considered whether the Model Code should be amended to address technological competence. An environmental scan revealed that technological competence had already become an issue for regulators and lawyers in a number of jurisdictions.

For example, the Model Rules of the American Bar Association (“ABA”) stipulate that lawyers have a duty to provide competent representation to their clients. Rule 1.1 states that “[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. In 2012, the ABA amended the general competence rule when it clarified that in order to maintain competent representation, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology. Many states have adopted the duty of technological competence for lawyers. Lawyers are not expected to become tech experts. They are expected, however, to make efforts to keep abreast of changing technologies. They are also expected to use technology appropriately and in a way that is consistent with the needs of their practice and the norms of their legal community.

In 2017, the Federation’s Standing Committee on the Model Code proposed a draft amendment to the Commentary that follows Model Code Rule 3.1-2 in order to specifically address the need to be technologically competent. Acknowledging that technology changes very quickly, the Committee stated that the intent was to caution lawyers that they need to understand technology as well as how to use it properly (i.e. the implications of using it and the risks involved).

The feedback to the proposed amendment was largely positive, however, some issues were raised that needed to be addressed. For example, some concerns were expressed that the proposed language could be interpreted as imposing an obligation on lawyers to achieve a minimum level of technological competence rather than as an obligation that a lawyer be technologically competent in respect of technology that is actually used. It was noted that the lack of reliable access to technology in a rural or remote community could prevent lawyers from meeting such an obligation if it were interpreted as a minimum standard.

The Standing Committee again reviewed the intention and history of the proposed commentary, the concerns raised relating to rural or remote communities, existing provisions and guidelines on technological competence from Canadian and international sources and some recent regulatory issues which had arisen in respect of technological competence. Based on its review, the Standing Committee added a paragraph to the Model Code commentary in order to address specifically the concerns raised about the lack of reliable access to technology.

The proposed amendment which was approved by Federal Council on October 19, 2019, expresses that the purpose of the commentary is to remind lawyers of their obligation to be technologically competent in a manner appropriate to their areas of practice and

circumstances. It provides interpretive guidance by clarifying that a contextual inquiry is needed in order to determine whether a lawyer has maintained the required level of technological competence. It also provides a non-exhaustive list of factors for lawyers and regulators to consider in determining the appropriate level of technological competence. The amendment to Model Code Rule 3.1-2 on Competence includes two additional commentaries as follows:

4A To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

4B The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

- a) The lawyer's or law firm's practice areas;*
- b) The geographic locations of the lawyer's or firm's practice; and*
- c) The requirements of clients.*

We recommend that you approve amendments to Rule 3.1-2 of our own Code of Professional Conduct as outlined in Appendix 1.

C. HOUSEKEEPING AMENDMENTS

Some typographical errors have been identified in a few Code provisions and these are outlined below.

1. Commentary re: Borrowing from Clients

In the commentary immediately following Rules 3.4-31 and 3.4-32, there is reference made to the rationale for the restrictions set out in Rule 3.4-31 and 3.4-32. However, the commentary includes references to the Rule related to lending to clients. (i.e. Rule 3.4-33) These references to Rule 3.4-33 are typos. The required corrections have been made to the commentary and these are set out in **Appendix 2**.

2. Exception to Rule 3.4-34

In Rule 3.4-34 it says that "Except as provided by rule 3.4-36, a lawyer retained to act with respect to a transaction . . . must not guarantee personally . . . any indebtedness." It appears that the reference ought to be to Rule 3.4-35 as an exception. The required correction has been made to the Rule and it is set out in **Appendix 2**.

We recommend that you approve amendments to Rule 3.4-32 (Commentary) and to Rule 3.4-34 as outlined in Appendix 2.

Atc.

Competence

3.1-2 A lawyer must perform all legal services undertaken on the client's behalf to the standard of a competent lawyer.

Commentary

[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

[3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

- (a) the complexity and specialized nature of the matter;
- (b) the lawyer's general experience;
- (c) the lawyer's training and experience in the field;
- (d) the preparation and study the lawyer is able to give the matter; and
- (e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

[4] In some circumstances expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice

and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

(a) the lawyer's or law firm's practice areas;

(b) the geographic locations of the lawyer's or firm's practice; and

(c) the requirements of clients.

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk, or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[6] A lawyer should recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

- (a) decline to act;
- (b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or
- (c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] A lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting, or other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[7A] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1A.

[7B] In providing short-term summary legal services under Rules 3.4-2A – 3.4-2D, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. A lawyer should only express his or her legal opinion when it is genuinely held and is provided to the standard of a competent lawyer.

[9] A lawyer should be wary of providing unreasonable or over-confident assurances to the client, especially when the lawyer's employment or retainer may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social implications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[10A] When it becomes apparent that the client has misunderstood or misconceived the position or what is really involved, the lawyer should explain, as well as advise, so that the client is apprised of the true position and fairly advised about the real issues or questions involved.

[11] Intentionally left blank.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] A lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] **Incompetence, Negligence and Mistakes** - This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

Borrowing from Clients

3.4-31 A lawyer must not borrow money from a client unless:

- (a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public; or
- (b) the client is a related person as defined by the *Income Tax Act* (Canada) and the lawyer:
 - i. discloses to the client the nature of the conflicting interest; and
 - ii. requires that the client receive independent legal advice or, where the circumstances reasonably require, independent legal representation.

3.4-32 Subject to rule 3.4-31, if a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest borrows money from a client, the lawyer must:

- (a) disclose to the client the nature of the conflicting interest; and
- (b) require that the client obtain independent legal representation.

Commentary

[1] Whether a person is considered a client within rules ~~3.4-32 and 3.4-33~~ **3.4-31 and 3.4-32** when lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

[2] Given the definition of "lawyer" applicable to these Doing Business with a Client rules, a lawyer's spouse or a corporation controlled by the lawyer would be prohibited from borrowing money from a lawyer's unrelated client. Rule ~~3.4-33~~ **3.4-32** addresses situations where a conflicting interest may not be immediately apparent to a potential lender. As such, in the transactions described in the rule, the lawyer must make disclosure and require that the unrelated client from whom the entity in which the lawyer or the lawyer's spouse has a direct or indirect substantial interest is borrowing has independent legal representation.

Lending to Clients

3.4-33 A lawyer must not lend money to a client unless before making the loan, the lawyer:

- (a) discloses to the client the nature of the conflicting interest;
- (b) requires that the client:
 - i. receive independent legal representation; or
 - ii. if the client is a related person as defined by the *Income Tax Act* (Canada), receive independent legal advice; and
- (c) obtains the client's consent.

Guarantees by a Lawyer

3.4-34 Except as provided by rule ~~3.4-36~~ **3.4-35**, a lawyer retained to act with respect to a transaction in which a client is a borrower or a lender must not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is the borrower or lender.

3.4-35 A lawyer may give a personal guarantee in the following circumstances:

- (a) the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of business, and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer's spouse, parent or child;
- (b) the transaction is for the benefit of a non-profit or charitable institution, and the lawyer provides a guarantee as a member or supporter of such institution, either individually or together with other members or supporters of the institution; or
- (c) the lawyer has entered into a business venture with a client and a lender requires personal guarantees from all participants in the venture as a matter of course and:
 - i. the lawyer has complied with rules 3.4-28 to 3.4-36; and
 - ii. the lender and participants in the venture who are clients or former clients of the lawyer have independent legal representation.

Payment for Legal Services

3.4-36 When a client intends to pay for legal services by transferring to a lawyer a share, participation or other interest in property or in an enterprise, other than a nonmaterial interest in a publicly traded enterprise, the lawyer must recommend but need not require that the client receive independent legal advice before accepting a retainer.

Commentary

[1] The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.
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MEMORANDUM

TO: Benchers

FROM: Kris Dangerfield

DATE: December 12, 2019

RE: Law Library Hub Pilot Project Update

It has been some time since we have reported to you in any detail on the Law Library Hub Pilot Project. As part of its Strategic Plan for 2017-2020, one of the Law Society of Manitoba's objectives is to "demonstrate leadership in the advancement, promotion and facilitation of increased access to justice for all Manitobans." The Benchers identified specific strategies as a way to achieve that objective and, in doing so, committed to increasing and improving collaboration with the Courts and other justice system stakeholders to advance, promote and increase access to justice.

It was this commitment that led to us exploring the opportunity to collaborate with other stakeholders in the justice system to share legal resources with the public via the Manitoba Law Library Inc. and to explore funding sources to create the development of an information portal. This was a direction that was developed in large part due to the work of the Access to Justice Steering Committee in 2017-2018.

We engaged with our colleagues from CLEA, the Legal Help Centre, the Faculty of Law and the Province of Manitoba and submitted an application for a grant from the Manitoba Law Foundation for the funding of a pilot project, premised on exploring the provision of new services through the Great Library with a view to increasing access to justice and transforming the library into a true hub for the provision of helpful legal information and resources. There were two distinct aspects to the Hub, namely the provision of front-line legal information and assistance and the creation of an online portal for better access to legal information and services.

In January 2019 we learned that the application for a grant to develop the project was approved by the Manitoba Law Foundation in the amount of \$100,000. While it was anticipated that a significant portion of the funds would be allocated to hiring a project manager to develop the framework for the Pilot Project, in fact we identified that it was more efficient to do the preliminary investigations and develop the framework with the Law Society's internal resources. In August 2019 we retained Leah Klassen, a lawyer with Wolseley Law, to prepare a Business Plan/Proposal on the Hub project to share with the respective boards of the stakeholders involved in the project. You will find that Report attached at **Appendix A**.

You will note that based on the work done to date, the various stakeholders have agreed that the Project ought to proceed in two phases, with the first being the Law Library Hub situated in the Great Library to provide front-line information and assistance from law students and supervising lawyers. The second phase is the further exploration

of the development of an Online Portal modeled on the "Steps to Justice" website developed by Community Legal Education Ontario. The stakeholders have concluded that the development of the Online Portal ought to be put on hold for the time being, as Manitoba Justice is developing its new online Family Law website and we want to ensure there is no duplication of services. It will then be necessary to identify how best to create and maintain content for an Online Portal that would provide appropriate online legal information in an effort to meet the needs of those in rural and remote communities.

Given that we were able to complete the framework and Business Plan with an expenditure of only \$10,000, we sought approval from the Manitoba Law Foundation to allocate the remaining funds (\$90,000) to proceed with the implementation of the Library Hub as a pilot project in January 2020. On December 10, 2019 we were advised that the request had been approved by the Foundation.

We have now retained Leah Klassen to serve as the Project Manager for the implementation stage and she will work closely with Karen Sawatzky, our Director of Legal Resources at the Law Library, and with the various stakeholders who have expressed a willingness to participate in the project.

At the conclusion of the Pilot Project there will be an evaluation of outcomes, including an assessment of the viability of the Hub, options for future funding, an evaluation of needs of those accessing the Hub, the optimal location for the provision of legal information and assistance and the extent to which various stakeholders can effectively collaborate on the provision of services through the Hub.

This has been an exciting opportunity to engage in a collaborative way with our colleagues who are also engaged in the work of increasing access to justice for Manitobans. We are grateful to them for their time, support and willingness to explore new and innovative ways to deliver services.

Atc.

BUSINESS PLAN/PROPOSAL – LIBRARY HUB AND ONLINE PORTAL PILOT PROJECT

Report Objectives

This report is intended to explore options for the development of the library hub and online portal pilot project which has been proposed by the Law Society of Manitoba (“LSM”), through the Manitoba Law Library Corporation (“MLLC”). The information gathered was based on the MLLC’s proposal to the Manitoba Law Foundation for funding endorsed by the Faculty of Law, Manitoba Justice, the Legal Help Centre (“LHC”) and the Community Legal Education Association (“CLEA”). I met with representatives from both the LHC and CLEA, Natasha Brown (Director of Professional Practice and Externships, Faculty of Law and Matthew Renaud (Law Librarian) at Robson Hall, Karen Fulham with the Province of Manitoba and Karen Sawatzky, Director of Legal Resources at the Great Library. I was also able to have phone meetings with Mary Auxi Guiao (the coordinator of the Family law Project at the National Office of Pro Bono Students Canada in Toronto “PBSC”), Fara Wali (a staff lawyer at Community Legal Education Ontario), and Guy Jourdain (Executive Director of InfoJustice Manitoba).

Goals of the Pilot Project

It is recognized that the public, private and nongovernmental (NGO) access to justice services are typically delivered through silos and are often duplicative in nature. Services are primarily delivered in person and over the phone. While static print and online resources exist, it can be challenging to locate them and use them. In addition, the delivery of legal information and assistance in Manitoba has not kept pace with the advance of technology and taken advantage of modern opportunities to deliver information and assistance. Front-end justice system supports are lacking. Broadly stated, the pilot-project represents an attempt to expand access to justice and provide improved access to a wider range of services for free (and/or low cost) while also reducing duplication among various service providers in the justice system.

The Law Society of Manitoba recognizes the potential to address the existing and significant access to justice gap through collaboration with other stakeholders in the justice system. There is an opportunity to provide new services through the courthouse library with a view to increasing access to justice and transforming the library into a true

“Hub” for the provision of helpful legal information and assistance. The Hub will have two distinct aspects: the provision of front-line legal information and assistance (Phase One) and the creation of an online portal for better access to legal information and services (Phase Two).

Currently, some organizations such as CLEA and the LHC provide invaluable access to legal information and assistance. We know, at least anecdotally, that these organizations are operating at full capacity and that many members of the public do not have the opportunity to avail themselves of existing services. We also know that, each day there are members of the public who are required to attend at the Law Courts to deal with a legal matter without counsel. The proximity of self-represented litigants to the courthouse library opens an opportunity for a pilot project that will attempt to gather some statistics on needs and explore having the Great Library serve as a Hub to provide legal information and assistance to those who need it, when they need it.

Some specific goals of the front-line information and assistance to be provided through the Hub (Phase One) are as follows:

1. To provide legal information and assistance to self-represented litigants through different organizations in the legal community working collaboratively toward this goal.
2. “Legal Literacy” - To improve knowledge and understanding of the law and justice system through outreach and other initiatives.
3. To increase the ability for members of the public to represent themselves competently in relation to their legal matters.
4. To provide increased opportunities for students to engage in experiential learning.

The intention of the online portal component of the pilot project (Phase Two) would be to create an online “no wrong door” portal that could be embedded into various websites and through which any person could access legal information. The creation of such a portal would necessitate ongoing consultation with service providers and coordination of existing online resources into a centralized point of entry. Service providers would be trained in the

use of the resources and they would be able to make more appropriate and effective referrals. Some specific goals of the online portal are as follows:

1. To make legal information and resources accessible to people in Manitoba who do not currently have any access;
2. To assist the multiple service providers that currently provide assistance to Manitobans with their legal problems by filling in gaps that exist in access to legal information and assistance; and
3. To create a central hub that will better share information among all service providers and reduce overlap and duplication in the provision of legal information and assistance to Manitobans, both online and in-person.

The following report will endeavor to identify the resources and collaboration required in order to begin this pilot project and meet the above noted objectives. Ongoing discussions will be required from all collaborators, but it is hoped that the plan proposed set out within this report will be a starting point for these discussions to take place and move forward in a meaningful way.

Library Hub – Phase One

Location and Physical Space

For the purpose of a pilot project, a decision was made to house the Hub in the Great Library. While there have been discussions about the advisability of co-locating different service providers under “one roof” to create more of a “one-stop shop”, the reality is that various organizations have committed to lease agreements in different locations and it is beyond the scope of this project to explore either an amalgamation of existing non-profits or at least a co-location agreement between them. The goal of a one-stop shop in some format, should remain on the table for future discussion.

In any event, it has been said that courthouse or law society librarians remain closest to the front line of practice.¹ They never know who is going to come to them for help or with what question they will be presented. Courthouse librarians tend to have in-depth bibliographical knowledge and familiarity with the whole spectrum of legal literature. With the advent of digital legal information and the growing costs associated with the maintenance of traditional law libraries, there has been increasing pressure to reduce library funding and the provision of courthouse legal services. In an effort to expand the accessibility of digital legal information, the Federation of Law Societies established CanLII, which is funded by every law society in Canada and has developed into an indispensable digital legal information platform. Over the past several years, the Law Society has had to deal with increased library maintenance costs and consider how best to utilize dedicated resources in an ever-changing legal information environment. In 2016, the Society hired a dedicated, full-time law librarian, Karen Sawatzky, to serve as the Director of Legal Resources at the Great Library. To date, her focus has been on expanding the provision of legal information and resources to the profession. However, increasingly it has become evident that although the creation and expansion of CanLII has increased access to statutes and case law across the country, the reality is that most members of the public have very limited understanding of how to interpret and practically utilize the information should they even be able to access it, resulting in a significant access to justice gap.

As noted, the Society believes that there is an opportunity to provide new services through the courthouse library with a view to increasing access to justice. There is space available to house the pilot in the open room to the right immediately before entering the Great Library. Adjacent to the open room, there is no private space available to conduct interviews. There is access to an extremely small room in the upper level of the Great Library, but upon viewing the room, I identified it as too much of a security concern to have students meet privately with self-represented litigants in that space. There is a more private space for interviews in the corner, where lawyers have had client interviews in the past. There is a table and chairs in this space. Currently in the open space where the Hub would be located, there is a large board room table and several chairs. Additional smaller tables and chairs would be required for students to be able to assist attendees. Before obtaining furniture, Jason Piush at the Law Courts will need to be contacted to determine that the furniture is congruent with the space. After a meeting with Jason Piush earlier this month on November 14th, he identified that there is some furniture that may be able to be used, including chairs, desks and several partitions, in order to provide separated meeting areas within the open

¹ Louis Mirando, "The Unrealized Potential of Courthouse Libraries," *Slaw* April 18, 2018

space. He advised that he would look into this and confirm this furniture can be used. A display shelf for print resources (such as CLEA's) will be available to put into the space.

It would be valuable to have a desktop computer available for the use of the attendees. The computer could be used to access online resources and court forms under the supervision of students. It could also potentially be used by attendees on the days when students are not present; however, there are potential issues with having free internet access available to all attendees in this way without supervision. Karen Sawatsky has identified that any computer used in the space would need to have access to its own internet network, as it could not be a part of the library's open network and the internet in the courthouse itself is not sufficient. My understanding of my conversation with Karen Sawatsky is that using the library's open network would be a security risk as there are fewer security features in place, and that the internet in the courthouse is not of a speed or quality that would support the resources that are intended to be used. I believe this could be resolved by way of an internet USB stick². Karen Sawatzky has confirmed that any equipment, including stationary, could be stored securely at the library in a locked room. If the desktop computer is found to be a valuable resource, it may be prudent to reserve some funds for additional laptops and/or desktop computers.

Through conversations with Jason Piush, Sean Rivera (Director of Information Technology at the Law Society of Manitoba), Karen Fulham and Karen Sawatsky, several additional possibilities for a desktop computer have been identified. These include the possibility of bringing in a Public Access workstation, to utilize an outside Wi-Fi service or to "piggy-back" on the network already available in the Law Courts. Jason and Sean advised that they would have discussions with internet companies to determine whether additional bandwidth would be possible. Jason also advised that he would determine the cost of installing additional ports. Additional wiring was installed for the Supreme Court hearings in September, and there is a possibility that the wiring already in place could be extended to the Great Library for the purpose of the Hub. The cost of this has not yet been determined. It would be prudent to reserve some funds for this purpose.

² An example of the referenced device can be found here: <https://www.telus.com/en/mb/mobility/mobile-internet/>

Students

It is proposed that students from the LHC (4), the family law externship course taught by Natasha Brown (3), and potentially volunteer students from PBSC (2) could provide front-line information and assistance at the Hub. One issue that has come up is that of potential conflicts that students may have, particularly for those who also work at the LHC. Based on my experiences from working at the LHC and on my discussions with LHC staff in relation to this report, it is certainly possible that the opposing party on a self-represented litigant's file may attempt to access the resources available through the Hub, where the self-represented litigant has already obtained legal information or summary legal advice through the LHC during a student's time there. Alternatively, a self-rep may access services at the Hub and then the ex-partner decides to access the services of the LHC.

It is important to keep in mind that the *Code of Professional Conduct* was amended some time ago to specifically address the provision of short-term summary legal services. [See Rule 3.4-2A – 3.4-2D) Short-term summary legal services is defined as advice or representation to a client under the auspices of a pro-bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter. Rule 3.4-2B the specifically sets out that:

A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

The Rules go on to provide that a lawyer must not provide or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest. Also, except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest. Finally, the Rules state that a lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

These Rules were introduced in order to facilitate increased access to justice by allowing lawyers who do pro bono work at legal clinics to provide some summary legal services without having to be concerned that the person receiving such services may be a client opposite of another client at the lawyer's own law firm. In other words, a

lawyer who is providing such services does not have to run the typical conflicts search by comparing the file matters that have been handled or that are being handled at his/her firm before providing some limited advice to an attendee of a pro-bono clinic. The Rule is intended to address the provision of short-term legal services only and is not meant to absolve a lawyer from providing long-term assistance to an attendee of a pro bono clinic perhaps at the expense of the client opposite who is a client of the lawyer's firm. It is true that some attendees at the LHC may re-attend for additional assistance; however, depending on the facts, these additional attendances could very well be treated as part of the summary legal services provided by the clinic. For example, a client may have an additional question about a further form that must be submitted. To answer that further question would not put the LHC or the Hub in a position where they would be off-side of the referenced rules. If volunteers (lawyers or students) become heavily engaged in a legal matter by providing advice and assistance on a long-term basis, throughout the processing of a client's legal matter, that situation would not be covered off by the short term summary legal services provisions and exceptions. In other words, the usual conflicts rules would apply.

In any event, some potential issues could be avoided by asking Hub attendees certain questions to determine if they have already accessed the resources at the LHC and what type of assistance they have received (see: *Data Collection and Statistics* on pg. 9 of this report). For example, if a Hub attendee only received some legal information at the LHC that should not preclude the attendee from obtaining additional legal information or even summary legal services through the Hub. The names of the attendees, and if they have attended the Legal Help Centre, can be recorded on a spreadsheet.

I understand that the LHC has a database which includes the names of all those who access the service, as well as the opposing party in the matter. It would be helpful to have further discussions with the LHC to determine if it is possible that when a student from the Legal Help Centre is at the Hub, they would be able to conflict check the names with the Legal Help Centre's database in an effort to address any potential issue on a proactive basis. I would also suggest that conflicts issues (to the extent that there are any), could be avoided by creative scheduling. For example, the schedule of students at the Hub could be set up so that there would always be at least one student who is not from the LHC, but either from PBSC or the family law externship course at the Faculty of Law. As is always the case, students (under the supervision of the lawyer) would need to remove themselves if they became aware of an actual conflict.

Days/Times

The only day that will not be the best to have students there is on Fridays, as there are often receptions held in the Great Library on Fridays. Any other day will work in terms of the actual physical space. The Family Justice Resource Centre (FJRC) clerk has indicated that Mondays, Wednesdays and Fridays seem to be the busiest days for the FJRC, and suggests that it might be good to stagger the service of the library hub with the Legal Help Centre drop-in, which is Tuesdays and Thursdays. If it is possible to have students present at the Hub on Mondays and Wednesdays, that would appear to be the best way to move forward.

Resources for Attendees

Karen Sawatzky has advised that there are legal textbooks written at a comprehension level of most reasonably educated people (i.e. not lawyers or law students). They are published by Emond Publications and aimed at the law school market, but they would also be helpful to this program for self-represented litigants who are doing their own legal research. She further advised that we could purchase a starter collection for around \$500. Additional coordination with her will be required to determine the best resources to obtain which will be of the most help to Hub attendees.

There is a video library on the Manitoba Courts website which attendees may be directed to. It may be helpful to have headphones available for attendees who wish to watch these video resources.

CLEA has offered to make as many of their print resources as possible available to be put into the space for the use of attendees. There are certain of their print resources that are in the process of being updated and CLEA has offered to endeavor to have them updated for the projected January start date.

The Family Justice Resource Centre has the potential to be located in the Hub as well. Justice Manitoba has indicated that they would be open to having the FJRC clerk be available at the Hub to assist in the same way she would typically assist when downstairs at the courthouse. She could be available at the Hub on days when students are not present. The FJRC currently assists self-represented litigants by directing them to services relating to family law, assisting with filling out forms, and can draft some orders.

InfoJustice, LHC and CLEA have all indicated that they would be open to have their workshops held at the Hub.

Data Collection and Statistics

The intention would be to have the Hub open at prescribed times and on specified dates. When open, it would always be staffed by a supervising lawyer with or without the support of students. Several intake questions should be presented to every attendee of the Hub, specifically related to if they have previously attended the LHC and if so, what kind of assistance they received and what area of law was involved. This information would be important from a data standpoint (which and how many resources do self-represented litigants access), and from a conflicts standpoint as previously indicated. The questions might consist of the following:

1. Before today, have you accessed any other resources to assist you with representing yourself in your matter?
2. Have you attended the Legal Help Centre at the University of Winnipeg?
3. If you have attended the Legal Help Centre, did you attend only the drop-in clinic or have you been to the Legal Help Centre on more than one occasion?

Another area of data collection which would be useful is that of how many attendees are referred by the courts. It was suggested initially that the judiciary be given referral cards, which they could hand to self-represented litigants who may benefit from the resources at the Hub. Those referral cards could be collected and the information included in the data collection. However, it seems that there has not been much use of such referral cards through services provided by the LHC and, therefore, it would be beneficial to discuss with the courts how best to engage the judiciary's assistance in the collection of this kind of helpful data.

Time Frame

All of those consulted generally agree that the end of January of 2020 is a reasonable start date for the pilot. The pilot should be in place from January 2020 until the end of the "school term" in December 2020. However, depending on student availability during the summer months of April – September, the format may need to be adjusted to account for less student availability.

The LHC has advised that their summer students may have the same availability as the students in the externships do during the school year. There is a possibility that students from the LHC could attend during the summer months, or that volunteer students could be recruited. During the summer months, some flexibility will need to be utilized. I anticipate the Hub leaning more heavily on lawyer volunteers, rather than students, during this time.

I would suggest that in December of 2020, the Part-Time Supervisor compile a review of the collected data and provide an assessment of the needs that had been addressed through the Hub during the time frame of the Pilot.

Online Portal – Phase Two

The Law Society's Access to Justice Steering Committee has identified barriers in accessing appropriate online legal information. The Manitoba Law Foundation's own survey of legal help and services for low and middle income people in the province identified significant gaps in access in rural and remote communities. The Steering Committee did some strategic planning and determined to create a "Public Education and Information" working group with a mandate to explore how to improve the coordination of public legal information and the public's ability to access it so that people can be directed to places or resources that will assist them with their specific needs.

Certain organizations provide "pockets" of information; however, members of the public would be better served if they could obtain information about different areas of the law and various resources through a centralized point of entry. Collaboration and coordination is desirable among those who provide resources so that efforts are not duplicated. In addition, it is critical that stakeholders and service providers in the justice system are aware of the varied players and resources that are available to the public so that efficient referrals may be made. For self-represented litigants who are trying to access legal information and services, it only makes sense that they be able to access what they need more easily and more efficiently.

The ultimate objective would be to develop a made-in-Manitoba version of CLEO's "Steps to Justice" type of triage and referral component. The creation of this type of online portal could make a marked difference for the significant number of Manitobans who are dealing with legal problems but do not have access to resources, are ineligible for

legal aid, and/or who are unable to afford a lawyer. The need for legal information is significant throughout the province but especially in rural and remote communities.

The collaborators of this pilot project are aware that Manitoba Justice is in the process of creating a family-law oriented website hub and there is mutual desire to not overlap the work that is being done on that resource. I understand from my conversation with Karen Fulham that the pathway they are looking to provide for family law services is a “digital first but not digital only” service pathway. It is intended to support families in accessing the social, relationship and financial assistance that they require, online or in person. It will enable service providers in various sectors to deliver a wider range of services to a greater number of Manitobans by aligning efforts, centralizing common functions and supporting client self-service on a 24/7 basis. This single service pathway is comprised of two complementary digital products: a Responsive Web Application nested in a new online Family Law website. Together, these products are intended to deliver a single front-end client experience.

This Manitoba Justice resource would be different in nature from the “Steps to Justice” type of site that this pilot project would aim to create, and it appears that these two resources could work well together. The proposed portal of this pilot could link to the online hub that is being developed as part of Manitoba’s Family Law Modernization Strategy as a resource and vice versa. It appears that there would be a distinct role for each resource. Leita Kalinowsky is the best contact moving forward to ensure ongoing coordination with the Province.

I had an extremely helpful discussion with a representative from CLEO in Toronto regarding the resources that would likely be required to create and update a website similar to their “Steps to Justice” website but geared towards a Manitoba audience. Fara Wali, a staff lawyer at CLEO who is heavily involved with creating and managing content, was able to walk me through how the CLEO Steps to Justice site was created and how it continues to be maintained. Ms. Wali indicated that the project was intended to be even more collaborative in nature; however, for practical reasons it became necessary for one organization (CLEO) to be in charge of creating the content themselves, while enlisting assistance and collaboration from the appropriate organizations and lawyers. She indicated it was practically easier to have one organization/person be in charge of coordinating the content.

Creating Content

It would seem prudent to follow CLEO's model with respect to the creation of content for the proposed online portal, as this is a model that the Hub is trying to emulate and it has been successful with CLEO.

CLEO began with creating content in three different areas of law. They deliberately limited the areas of law to begin with in order to make it easier to start the project. They began with the areas of family, employment and housing as those were the areas of the three staff lawyers they had at the time. CLEO created content prior to having the website built. This did not appear to be a detriment but was rather useful in knowing how the website would need to work to support the content. Some of the current funding, if rolled over, could be used to create some of the content rather than to build the website.

CLEO has organized content committee members, who are lawyers in the community working in the areas of law they wish to target with the questions they draft. These committee members are available on a volunteer basis to assist with reviewing questions and answers before they are posted to the site.

Each question and answer segment on the site takes between 7-10 hours to develop, without plain language editing. The process begins with a lawyer drafting the question, using a style guide and a template which is provided to them³. The "Steps to Justice" site utilizes a specific method of disseminating information, which is one of the reasons each question/answer segment requires a significant amount of work and review. The lawyer will be proficient in the type of law the question is answering. CLEO has three staff lawyers – if the question is one that lawyer practices in, the staff lawyer will write the question. If they do not practice in that area, CLEO will find a lawyer who does practice in that area (either a private bar or clinic lawyer) to draft the question on a volunteer basis. There is then an internal review of the draft question at CLEO. If there are edits that need to be made, it may go back to the lawyer who drafted it for questions. The next stage is an external review. The external review can be done by lawyers or non-lawyers who are working with the group of people the question is targeted at. Additional external review may also be done by content committee members. The last stage is plain language editing.

³ The style guide and template that CLEO uses was provided by CLEO and are attached to the end of this report as **Appendix A** and **Appendix B**.

One person (in this case Ms. Wali), is responsible for keeping on top of what updates need to be done to the content. She does this in part by subscribing to as many list serves as possible that are available to those in the profession. If the update to the law is a small one, she is able to make the changes herself. If the change is a large one, she will go back to the lawyer who originally drafted that content and have them make the changes.

When developing content for a question, CLEO will identify an organization that works with the target audience or has an interest in the content. They will give that organization an opportunity to write the content themselves, using the style guide and template. If that organization does not have the resources to write the content, CLEO will write the content and send it to that organization for review, which requires less resources.

Another part of the "Steps to Justice" site is triaging to other resources. The site includes as many links as possible to external resources. The staff at CLEO does as much due diligence as possible to ensure that the linked resources are reliable, which may require connecting with those resources or speaking with people who have utilized those resources. They provide contact information for clinics and call centers as well as the Law Society of Ontario's lawyer referral service.

CLEO had three staff lawyers who worked on creating content. The proposed online portal would necessarily be on a smaller scale than CLEO. A similar model to that of CLEO could be used to recruit volunteer lawyers to write content and have organizations such as CLEA and the LHC review that content. The more resources that are put into the proposal, the faster the content will be able to be created. Once a certain amount of content is created, the Law Society and the Great Library could move forward with obtaining a more detailed quote with respect to building a website.

Online Chat Function

Another component of the CLEO's Steps to Justice web site is an online chat service. The purpose of the chat is to guide people to information and make referrals to resources. CLEO originally had an outside resource (a private bar lawyer) answering the chat. However, that lawyer retired so it is now being answered in-house. Any person who manages the online chat needs to be familiar with the content. What CLEO does is create canned responses and keyboard shortcuts to those canned responses to make it easier to respond instead of typing out large blocks of text.

Caution should be used in considering if an online chat function should be a part of the proposed portal. Most users of the online chat will want legal advice instead of guidance to resources. Karen Sawatzky has offered to have the online chat go to her directly if it is implemented. It would be something to discuss with her further to see if this function should be implemented.

Translation

CLEO was not immediately able to translate all content into French as they did not have the funding to do so. They did not want to launch the site in French until they were fully ready to do so and were only able to in January of this year. They had conversations with French organizations during development to provide advice in relation to the process. As a result of that consultation, two things currently happen with respect to translation: there is a straight translation done, and there is also French content created with the assistance of a French editor. Links are also provided to the French versions of court forms.

InfoJustice Manitoba has expressed willingness to assist with the creation of French content and collaborate further in this way. Further discussions will need to be had with InfoJustice Manitoba to determine the best way to move forward with respect to translation and the possibility of creating French-specific content.

Karen Sawatzky has offered to assist with plain language usage.

Other Items to Consider

There should be an imbed function in the site to allow other sites to imbed.

Social media is part of what CLEO does for the Steps to Justice web site as well. Eventually, the use of social media may be a valuable way to advertise the Hub and guide self-represented litigants to the resources available through the online portal.

Partnerships

The Legal Help Centre

The LHC is open to allowing their four extern students to attend the Hub. The students would be able to assist in any area of law, and would need to be supervised by a lawyer. Students from LHC could attend Monday, in either the morning or the afternoon or Tuesday morning. However, the students may not be able to attend every week. It may be preferable for students to attend every other week, depending on the plan that is in place. There is no specific expectations for the kind of work that the students would be asked to do. They would have a better sense of the workload the students will have in a few months, once they are able to see what it is like to have four students available.

LHC is open to being involved in the writing of the content for the online portal.

Also, LHC is open to holding some of their workshops at the Hub.

Community Legal Education Association

See above re: workshops and print resources. Additionally, CLEA has indicated that they would be open to reviewing content for the online portal once it is created.

Pro Bono Students Canada (PBSC)⁴

PBSC would like the opportunity to develop a volunteer opportunity for students for their National Family Law Project. There is the potential for additional student volunteers to be available through this project. The coordinator

⁴ The contact person for this project is Mary Auxi Guiao (maryauxiguiao@probonostudents.ca, 416-946-5178).

has agreed to prepare a proposal for a project description for review⁵. There is the potential for approximately 4 students for 3-5 hours a week. The number of students would be variable depending on what is required for the project. She will also be looking into which days students could be available based on their class schedules. She will not be able to confirm this information immediately, so additional discussions with her will be required. The students would need to assist in the area of family law and would need to be supervised by a lawyer.

Robson Hall – Faculty of Law

See above re: allowing students to attend at the Hub as part of their experiential education. There is no expectation in terms of the kind of work that the students would be doing at the Hub. Natasha Brown's Family Law Externship Course will be a 12 credit hour, intensive class with a focus on practical skills that is meant to be a bridge from education into practice as a lawyer. The students would be available on Mondays and Tuesdays - perhaps every second week. The students would need to be supervised by a lawyer and would need to assist in the area of family law. The content of the class is meant to include students doing work at the Hub, specifically in the area of family law⁶.

InfoJustice Manitoba

See above re: French content creation and translation. Additionally, they have indicated there may be an option to have either one of their staff members or their articling student or both, be at the Hub weekly, to provide some legal information in French. They are also willing to put on their workshops which are held in French at the Hub.

⁵ Attached as **Appendix C** is the draft project description of the work that PBSC students would be able to do at the Hub. Please note that this is a draft only that I have not yet had a chance to discuss its contents directly with Mary Guiao at PBSC.

⁶ The syllabus for the Family Law Externship Course is attached as **Appendix D**.

See above re: availability to have the FJRC clerk available at the Hub on certain days, to be determined once the pilot has started and the level of need has been determined.

Hiring a Lawyer Coordinator/Supervisor

The pilot project will require a dedicated point person in order to move the project forward. Following additional consultation with the project partners, it was recognized that the project will need to be scaled back initially with a view to determining whether it would be feasible to scale up at a later date once needs can be assessed. The process of collaborating with key stakeholders is a critical piece to the success of the pilot and it is taking some time to obtain and properly consider the views of the various stakeholders and coordinate everyone's efforts to improve access to justice. It has become apparent that before we can proceed to build an online portal, much work needs to be done at the front-end in terms of creating the necessary content. There are insufficient resources available to proceed with Phase Two of the pilot as this point. The intention is to start with Phase One and attempt to be nimble enough to scale up the level of assistance that will be provided through the Hub in the coming months, if it is financially possible.

At this stage, we intend to hire a Part-Time Supervisor (approximately 10 hours each week up to a maximum of 20 hours each week). The Supervisor will need to set up the space in the Great Library (i.e. ensure that the appropriate infrastructure is in place including resources and technical requirements), procure students to provide the proposed services at the Hub, ensure that the students will be supervised and begin assessing legal needs. The Supervisor would also need to assume a reporting and evaluating function relating to the Hub's operations.

The Supervisor would be expected to:

- a) Ensure that a lawyer supervisor is present at the Hub when it is open to the public;
- b) Create and coordinate (with all necessary parties) an appropriate schedule for the students and any lawyer volunteers who will provide assistance at the Hub;
- c) Assess the optimal way to collect data relating to legal needs and analyze that data;

- d) Assist Karen Sawatzky to curate available resources;
- e) Coordinate the scheduling of workshops with key stakeholders and be a point of contact for these organizations;
- f) Evaluate and report on the Outcome of the Pilot Project including an assessment of:
 - i) The viability of the Hub;
 - ii) Options for future funding requirements including a costs analysis with recommendations about what resources would be required both to scale up the work initiated in the pilot project (Phase One) and to create and maintain the proposed “no wrong door” online portal (Phase Two).
 - iii) The optimal location for the provision of legal information and assistance by the Hub;
 - iv) The needs of those accessing services at the Hub; and,
 - v) The extent to which various stakeholders can collaborate on the provision of services through the Hub.

Possible Funding Opportunities

In a conversation with Karen Dyck (former Executive Director of the Manitoba Law Foundation and current Access to Justice Steering Committee member), the idea of an Access to Justice fee charged to members of the profession was suggested. This idea has been floated before by lawyers in other provinces⁷, including Jamie Maclaren in British Columbia. A small fee charged along with practicing fees could go a long way in funding projects such as this that would increase and promote access to justice.

*Access to Justice in Both Official Languages Support Fund*⁸

Either the Great Library or the Law Society might be eligible for this grant, as it must be a Canadian non-profit organization. Projects of interest for this fund include those that:

⁷<http://www.slaw.ca/2012/01/17/a-pay-or-play-proposition-for-access-to-justice/>

⁸ <https://www.justice.gc.ca/eng/fund-fina/jsp-sjp/ol-lo/index.html>

- Promote awareness, information and training about language rights and issues related to access to justice in both official languages;
- Develop linguistic and legal tools;
- Disseminate linguistic and legal tools;
- Undertake research to the benefit of official language minority communities;
- Provide justice services to official language minority communities as pilot projects;
- Promote activities related to the Justice Training Component:
 - o Provide advance training focusing on legal terminology for bilingual justice professionals
 - o Contribute to the development of a curriculum for bilingual students interested in pursuing a career in the field of justice
 - o Elaborate a recruitment strategy and the promotion of justice-related careers
 - o Develop linguistic training tools.

The Department will only consider providing funding for activities related to public legal education and information and/or awareness when the recipient has confirmed funding (financial and/or in-kind) from other sources and will take this amount into consideration when determining the contribution amount. This funding would be good to explore as the pilot project seems to fit many of the criteria.

Law Foundation of Ontario – Access to Justice Fund

Organizations based outside of Ontario can only be eligible for a grant with this fund if the project they wish to have funded offers a benefit to the people of Ontario.

Manitoba Law Foundation Funds – Revised Budget

The initial grant comprised the sum of \$100,000. To date, \$10,000 has been expended for costs associated with project management and development, leaving a balance of \$90,000 from the original project grant funding. It is proposed that the pilot project proceed to the implementation stage in 2020 with the balance of the 2019 grant funds in conjunction with in-kind support (personnel and services) as follows:

1. Salaries and Benefits

A Supervising Lawyer/Coordinator will be hired (to a maximum of 20 hours/week) to assume tasks outlined and continue to liaise with key stakeholders (January 2020 – December 2020)

Cost:

Up to 20 hours/week (maximum) at \$90/hour	\$86,000
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2. In-Kind Support (Personnel)

Karen Sawatzky will provide services to support the Hub Pilot Project.
Volunteers may be asked to assist with supervision, however the value of in-kind support from volunteers cannot be evaluated at this point.

3. In-Kind Support (Services & Supply Expenditures)

Space for the Law Library Hub is available under the terms of the Licence between the Province of Manitoba and the Manitoba Law Library Inc..
The Law Society of Manitoba and the Manitoba Law Library Inc. will contribute meeting space, equipment (such as computers, desks, and chairs)

and costs associated with mail and photocopying.

4. Purchase of additional equipment (e.g. additional computer etc.)

Cost: 1,000

5. Library Resources/Acquisitions

Purchase of Emond publications (starter package)

Cost: 500

6. Infrastructure – Additional Wiring

Cost (estimate) 2,500

Total 90,000

Steps to Justice style sheet

Contents

1. Audience description (p. 1)
2. Tone and style of writing (p. 1)
3. Guidelines for specific types of content (p. 2)
4. Readability and grade reading level (p. 8)

This style sheet is meant to be used with these other related documents:

- CLEO House Style Guide
- S2J checklist for upload
- S2J Word template
- Guide to adding S2J content online

Audience description

The primary audience is the general public in Ontario, with a focus on low-to-moderate income and disadvantaged communities that face access to justice barriers. The audience is comfortable accessing information online.

The audience is interested in practical steps information to help them understand their legal problem and translate their knowledge into appropriate action. This includes people who are taking one or more steps on their own, or with:

- the guidance of a legal professional, or
- the help of a trusted community worker or a friend.

Other audiences include community service providers in Ontario and other legal information or service organizations.

Tone and style of writing

Adopt a conversational, engaging tone and speak directly to your reader as “you”.

Always think about what questions a reader experiencing the legal problem would ask and what actions they could reasonably take.

Remember that people read more slowly online and tend to scan rather than read carefully. So good web writing is concise and gets to the main point right away.

Think about writing in a pyramid style. Start with your conclusion or main points and then explain. Break up text using subheadings, lists, and bolded text, where appropriate.

Guidelines for specific types of content

Each question has a number of parts, including:

- question heading
- answer, with headings and subheadings
- steps, with headings and subheadings
- You May Also Need
- Related Questions
- Get help from someone about this topic
- Learn More About This Topic
- reviewed date

Formatting a Word file

Make sure to use the Word template, which has:

- a custom set of styles
- margins set to match the width of the online content
- an outline of the different types of content that appear in each question

Question headings

Write a question heading as the reader would ask it and in the first person.

Limit the question to 15 words, but ideally shorter. Use keywords when possible.

Keywords are words or terms that relate to your main topic. They help users find your content and are likely to appear as search terms when people use a search engine like Google, Yahoo, or DuckDuckGo.

Example: How do I adopt a child?

Answers

The maximum word count for an answer is 300 words.

As a general guide, write in chunks of about 100 words. Start a chunk with a heading. Answers should be 1 to 3 chunks long but shorter is better. A chunk can be more than one paragraph.

You can break up chunks and text by using subheadings, lists, and bolded text, where appropriate.

Steps

The maximum word count for a step is 300 words.

As a general guide, write in chunks of about 100 words. Start a chunk with a heading. Steps should be 1 to 3 chunks long but shorter is better. A chunk can be more than one paragraph.

You can break up chunks and text by using headings, lists, and bolded text, where appropriate.

Each answer should have 3 to 5 steps.

Steps can be numbered or unnumbered. If you want the steps numbered, make sure to put numbers at the beginning. Use asterisks (*) to mark unnumbered steps.

Naming a step:

Start with a verb. There may be times when this isn't possible but this is the general rule.

Keep the name of the step as short as possible, on average 5 to 6 words. Use keywords when possible.

You May Also Need

Each step should have one or 2 of these.

Choose a practical resource that's available online from a reliable source, such as a court form, tip sheet, or checklist.

In limited situations, you can leave out the You May Also Need, but try to find something. For example, it can be a resource you've already talked about in the step.

In your Word file, make the title of the resource into a hyperlink that goes directly to the source and give the name of the producing organization.

Related Questions

These must link to other Steps to Justice questions. Choose 3. They can be questions in other legal topics and subtopics. See more about linking to another question on page 7.

Get help from someone about this topic and Learn More About This Topic

These link directly to the service or resource. Choose 3 to 5.

Choose reliable and helpful services and resources.

How the glossary tool works

When content is live on the site, the **first time** a term appears in an answer and in a next step, it will be detected by the glossary tool and appear with the pop-up definition.

The tool is automated so how it tracks terms is case sensitive and precise in terms of spelling, tense, and capitalization. So the tool identifies a term the exact way it appears in the glossary.

For example, if the term is “discrimination”, and you start a sentence with “Discrimination...”, the tool won’t pick it up as a term because it’s capitalized. Or, if your term is “offence”, the tool won’t identify “offences” because it’s plural.

Make sure you don’t put quotations marks around terms that will show up with the glossary definition.

Remember that a **term won’t appear as a definition** if it’s part of the anchor text for a link.

It’s possible to **manually add or hide a definition**. To do this, you add special coding when the content is uploaded into Drupal. Follow the instructions in **Guide to adding S2J content online**. Make a note in the Word file that the term is to be manually added or hidden.

Each legal topic has its own glossary. And questions are sometimes assigned to more than one legal topic. So when a term is used in more than one legal topic, try to write one definition that works for all of those topics.

For example, the term *discrimination* appears in a number of topics and there’s one definition that’s used for all of them.

Glossary terms

Keep track of glossary terms in a separate document and write the definitions as you’re writing the content.

When creating glossary terms, avoid single words that have other meanings. For example, instead of support or notice, use two-word terms like child support or termination notice.

Guidelines for writing glossary definitions:

Use full sentences. Start with a full sentence, not a sentence fragment.

Instead of starting a definition of by-law with a sentence fragment: A rule passed by a city or town council.

Write a full sentence: A by-law is a rule passed by a city or town council.

You don't have to start off a definition with a statement that says what the term means. Sometimes you'll have to give some background information or provide a lead-in to the definition.

Example of definition for pay in lieu of notice:

When an employer fires you or lays you off, they usually have to give you notice ahead of time. The amount of time can depend on many things including how long you've been in the job.

If they let you go right away, they must pay you the money you'd have earned if they had told you ahead of time. This is called pay in lieu of notice or termination pay.

Aim for a definition to be less than 90 words or 500 characters with spaces.

Keep definitions to one paragraph if possible. And try not to go beyond 2 paragraphs.

Each paragraph should contain only **one point or topic**. Keep most paragraphs to **3 sentences or less**.

Use bulleted lists in longer definitions to break up the text.

Include an example if you think it would be helpful and not make the definition too long.

In a definition, you can include a link to **another term** that's in the glossary. The term will open in another window.

Headings and subheadings

Use headings and subheadings as signposts to guide your readers.

Keep to an average of 3 to 4 words. Use keywords when possible.

Write headings and subheadings as statements rather than questions.

Example: How do I apply for a divorce? (question)

- Time limits (heading)
- Religious divorce (heading)

You can also use a short phrase, starting with a gerund, or you can use a short phrase starting with "If".

Example: Finding a lawyer

Example: If you signed a contract

Always write headings and subheadings in sentence case.

Instead of: Rules About Child Support
Write: Rules about child support

But make sure to capitalize proper nouns, for example, “Making an appeal to the Social Benefits Tribunal”.

Using acronyms in question headings, step headings, and headings within questions and steps:

Try to avoid this. But if the term is quite long or commonly understood, it may work better to use the acronym. Make sure to spell out the term directly after the question or heading.

Example: Go to the appointment with ODSP
At the appointment, you meet with an Ontario Disability Support Program (ODSP) worker.

Links within questions and steps

You may need to add a link for:

- an external site
- another question within Steps to Justice

Remember that words can't be both a definition and a link.

General guidelines for all types of links:

- select a short phrase with no more than 5 words as the anchor text and don't include punctuation, like a period or comma, in the link text
- start the anchor text phrase with a **verb** whenever possible
- put the anchor text at the **end of a sentence** whenever possible, as this allows the user to read the context first and then click on the link (This won't always be possible and having some variety as to where the links fall on the page helps guide the reader's eye.)
- incorporate the link so it flows as part of the text instead of saying “For more information click here” or “Read more here”

Examples of different types of links:

Linking to an external site:

Create the hyperlink in the Word document.

Sometimes you'll want to mention the source for the external link in your text but this is something for the lawyer and editor to decide. See the examples highlighted in the box below.

Example: Some employers ask questions on application forms or in interviews that go against human rights laws. It's a good idea to think about how you might answer questions.

Example: Citizenship and Immigration Canada has a list of jobs that foreign workers can do without a work permit.

Linking to another question or a step within another question:

You can add a link that's to the main question or to a specific step within another question. Don't link to a step within the same question.

What you do in the Word file depends on whether or not the other question is live on the site.

If the question is already live on the site, create the hyperlink in Word as you would with an external link. When it's uploaded in Drupal, this will be set as an internal link and open in the same window.

If the question is not yet live on the site, underline the text to include in the link and put instructions after it, including the exact name of the question it's linking to.

Example: If you need money right away, you may want to start by applying for financial assistance from OW. [Link to How do I apply to Ontario Works?]

Depending on the context, you can either include the name of the other question and make that the link or link to the other question using words that are in your text. You don't need to state for the reader that it's a link to another question. See the examples highlighted in the box below.

Example: For information about **pregnancy leave**, which is for women who are pregnant or have just given birth, see I'm pregnant. What are my rights as a worker?

Example: A birth mother can take up to **35 weeks** of parental leave. She can also get **17 weeks of pregnancy leave**.

Referring to a step within the same question

If you need to direct the reader to a step, follow the examples below. How you do it will differ if you have numbered or unnumbered steps.

Example for a numbered step: If your unit is not covered by the guideline, there's no limit on how much your landlord can raise your rent. See Step 2.

Example for an unnumbered step: To find out if your job is covered by the ESA and which parts apply to you, see the step called **Find out if you're covered by the Employment Standards Act**.

Readability and grade reading level

The grade reading level we're aiming for is **grade 8**.

This is based on the average literacy level for web users being between grades 6 to 8. And also that the subject matter we're covering includes information for the general public that:

- introduces new terms and concepts
- is specialized

To test the reading level, use the Readability tool in **MS Word**.

When looking at the readability statistics, the results under "Averages" should be roughly:

- Sentences per Paragraph: 2-3
- Words per Sentence: 15-20

Under "Readability", there may be problems if:

- Passive Sentences percentage is higher than 6-8% (ideally this will be lower)
- Flesch Reading Ease is lower than 70%
- Flesch-Kincaid Grade Level score is higher than 8

It's important to note that computerized readability tests have shortcomings and don't take into account whether the content:

- uses headings effectively
- is ordered in a logical way
- adopts the right tone for the audience
- uses proper grammar and punctuation
- is presented in a format and typeface that's easy to read
- is skewed by things like long words and legal terminology

Include at top of each question:

Legal topic

Legal subtopic

Name of writer and editor, and method of tracking versions

Styles to use:

Question title style

Answer text is set as Body text style.

Heading style

Subheading style (put [H4] at end of subheading)

Bullets and sub bullets:

- bullets set as Bullet style
 - sub bullets set as Sub bullet style

Next steps style

1. Step title style [if not numbered, leave number out and use asterisk *]

Step content is set as Body text style.

Heading style

Subheading style (put [H4] at end of subheading)

Bullets and sub bullets:

- bullets set as Bullet style

- sub bullets set as Sub bullet style

At end of each step, include:

You may need:

Title of resource

Name of source

At end of each question, include:

Related questions

Question that isn't live yet [Link to: Question that isn't live]

Question that is live

Question that is live

Learn more about this topic

Title of resource

Name of source

Title of resource

Name of source

Title of resource

Name of source

Title of resource

Name of source

Get help from someone about this topic

Title of resource

Title of resource

Title of resource

Title of resource

Title of resource

Keywords:

Date reviewed:

PROJECT DESCRIPTION FORM - DRAFT

(ALL SECTIONS IN THIS FORM MUST BE FILLED FOR PROJECT REVIEW AND APPROVAL)

Chapter: UNIVERSITY OF MANITOBA

Program year: 2019-2020 (to start January 2020)

**Project Name: FAMILY LAW PROJECT & LAW SOCIETY OF MANITOBA (FLP-LSM) PILOT
PARTNERSHIP**

SECTION A – ORGANIZATIONAL INFORMATION

1. **Name of Organization:** Law Society of Manitoba
2. **Web-site of Organization (if applicable):** <http://www.lawsociety.mb.ca>
3. **Type of Organization:**
 - Charity
 - Not-for-profit
 - Association
 - Government
 - University
 - Law firm
 - Other please specify

4. **Brief overview of the organization's mandate (2 to 4 lines maximum):**

"The aim of the Law Society of Manitoba (LSM) is a public well served by a competent, honourable and independent legal profession."

5. **Organization Contact Person**

Name: Leah Klassen

Title: Lawyer

Telephone Number: (204) 977-1706

Email Address: l.c.a.klassen@gmail.com

6. **Preferred mode of contact:** Phone Email

7. **Lawyer supervisor**

Name: To be determined.

Title: Click or tap here to enter text.

Telephone Number: Click or tap here to enter text.

Email Address: Click or tap here to enter text.

The lawyer supervisor is:

- an employee of your organization
- a board member
- other (please specify relationship)

8. How often will the lawyer supervisor be available to meet with the student(s)?

At this time, it is anticipated that LSM will hire a Lawyer Supervisor on a part-time basis to directly supervise FLP-LSM law students. The LSM will be available to meet with students during their scheduled volunteer shifts.

SECTION B – PROJECT INFORMATION

9. Please describe the project tasks:

Note: If there are multiple projects, please complete a separate Project Description Form for each project.

OVERVIEW – LSM will be creating a legal resources hub in [exact hub name and location here]. This pilot partnership with Pro Bono Students Canada (PBSC) creates family law services in the hub for eligible self-represented family law litigants who would not otherwise be able to afford to retain a family lawyer. PBSC's Family Law Project (FLP) is a signature initiative that exists in law schools nation-wide. The FLP-LSM pilot partnership further aims to address critical access to family justice gaps in Winnipeg, Manitoba, while simultaneously developing core family law practice competencies and empathy in the next generation of lawyers.

DIRECT SERVICE – When a self-represented family law litigant is referred to the hub, the law student volunteers will provide them with relevant family law information, and connect them to additional resources where available.

We anticipate that students will assist with the following tasks, to be confirmed:

- client intake, screening and triage;
- provision of general family law information
- limited family law forms assistance (to be determined)
- court house navigation
- appropriate resources referrals

The law students and Lawyer Supervisor will not provide any legal advice.

10. What is the main project output?

Select ONE option.

- Helping clients with their ID documents
- Assisting the same client multiple times (e.g. assisting a client to create a will)
- Assisting clients with Family Law related issues
- Completing client intake and assistance
- Creating produced content (e.g. blogs, research memos, radio shows, newsletters, etc.)

Supporting public Legal Education

11. A work plan is required for this project: Yes No

If yes, the student(s) must reach out to the lawyer supervisor, draft a work plan, and submit it by email to the Program Coordinator and the lawyer supervisor by November 1st at the latest.

Click or tap here to enter text.

12. Do you have PBSC placements with students from any other PBSC chapter(s)?

If so, which chapters? Do the placements relate to the same project?

No.

13. What type of training will the organization provide to the student(s)?

Note: All first year PBSC volunteers and all volunteers working on research projects must also attend a PBSC/Thomson Reuters legal research strategies workshop.

To be determined.

We anticipate at least one half day of training including the following:

- substantive family law overview;
- client intake and screening procedures;
- professionalism and ethics (including confidentiality and conflicts of interest);
- working with vulnerable or marginalized clients;
- overview of local family law resources.

14. How many students would you like assigned to this project?

Two (2) in total.

15. How many hours per week will the student volunteer(s) be expected to work?

Note: PBSC students are expected to volunteer 3-5 hours per week. Additional hours are at the students' discretion, but at no time should the student be volunteering more than 10 hours per week.

3-5 hours per week.

16. Will the student(s) be expected to show up for regular shifts each week, or is the schedule flexible?

Depending on students' academic schedules and expected client flow, the Lawyer Supervisor will schedule students for regular morning or afternoon weekly shifts.

17. Is workspace provided for the student volunteer(s) at your organization?

Yes.

SECTION C – STUDENT REQUIREMENTS

18. Is there an expectation for the student(s) to be bilingual?

No, but bilingualism (or multilingualism) is an asset.

19. Can first year law students volunteer for this project? Yes No

Upper year students are preferred.

20. Please list any law school prerequisites required for this project. (e.g., administrative law, family law, immigration and refugee law.)

None, but family law is an asset.

21. Please list any other requirements or expectations for this project. (e.g., professional or academic background, experience, etc.)

We are an equity-seeking project. We welcome students who identify as belonging to equity-seeking communities. Students would ideally have experience working collaboratively with clients or communities who experience marginalization, e.g. those living with low income/poverty or self-identifying visible and/or invisible disability.

SECTION D – TO BE COMPLETED BY THE PROGRAM COORDINATOR

22. Which project model(s) most accurately describes this project? If the project has multiple activities, please choose a **maximum of 3** project models. In order to obtain the most accurate data, please only select the project models that describe the majority of the project's activities. If the relevant project model is not indicated below, please contact your Program Officer.

- LRW: law reform or policy research memos
- LRW: legal analysis for blogs, radio shows, newsletters, etc.
- PLE: preparing and presenting workshops
- PLE: drafting plain language resources
- Client Assistance: legal drafting, filling out forms
- Client Assistance: Procedural guidance for litigants
- Client Assistance: Court support / accompaniment
- Client Assistance: Intake, legal information and/or referrals
- Internships
- Client advocacy / representation

23. Which communities does this project serve? Please identify the top 3 communities that this project serves. Please choose the primary (1), secondary (2) and tertiary (3) communities served by writing 1, 2, or 3 next to the community. This will help us understand gaps in our programming, resource allocation and provide us with information for funding proposals and reports. We understand that due to the intersectionality of identities, it is difficult to rank the top three communities served. Please note that by ranking, you are not prioritizing any issues,

or communities. If you would like to add any comments, please use the comment box below. You will have the opportunity to choose the type of law in the following question.

- Children & Youth
- Domestic Violence Survivors
- Female-identifying individuals
- Homeless & marginally housed
- Immigrants, refugees & newcomers
- Indigenous (First Nations, Inuit, Métis)
- LGBTQ+
- Linguistic minorities
- 1 People living in poverty
- 2 People living with disabilities & chronic illnesses
- People living with HIV
- People living with mental health challenges
- Precariously employed individuals
- Prisoners & former prisoners
- Racialized communities
- Religious minority communities
- 3 Self-represented litigants
- Seniors
- Trans and gender diverse individuals
- Two-Spirit individuals
- Veterans

Comments:

24. Which types of law are used in this project? Please choose the top 3 types of law that this project serves. Please choose the primary (1), secondary (2) and tertiary (3) area of law by writing 1, 2, or 3 next to the type of law below.

- Alternative Dispute Resolution
- Animal Rights
- Civil Litigation (e.g., small claims)
- Constitutional (Federalism or the Charter)
- Criminal
- Employment & Labour
- Environmental
- 1 Family
- Health
- Housing (Landlord & Tenant)
- Human Rights

- Identification (ID)
- Immigration & Refugee
- Indigenous & Aboriginal
- Non-profit Corporate
- Poverty (Clinics)
- Prison
- Social Assistance
- Tax
- Wills & Estates
- Wrongful Conviction

Comments:

Project reviewed by Program Manager

_____ (Date & initial)

Note: A final/complete copy of this Project Description Form must be provided to:

- The Organization Contact Person
- The Student Volunteer(s)
- Your Program Manager at National Office

FAMILY LAW EXTERNSHIP COURSE

2019/2020

COURSE INSTRUCTOR:

Natasha Brown

Director, Professional Practice & Externships

305A Robson Hall

Email: natasha.brown@umanitoba.ca

Office line: 204.474.7040

Office hours: Monday & Tuesday 9:00 am – 4:30 pm & Friday 9:00 am – 3:00 pm

MATERIALS:

The Robson Hall Externship Manual, provided in advance via UMLearn. There is one textbook required for this class: *Learning from Practice: A Text for Experiential Legal Education (3^d ed.)*. All other materials will be provided via UMLearn.

COURSE PRE-REQUISITES:

Family Law [LAW 2640]

COURSE CO-REQUISITES:

Legal Profession and Professional Responsibility [LAW 3024]

COURSE ENROLMENT:

It is anticipated that 6 third year students will be selected. Students must apply by completing the Application Form and providing a Letter of Reference. Candidates will be shortlisted for interviews and the successful students will be notified following the interview process. Interviews will take place by the course instructor.

COURSE DESCRIPTION:

The Family Law Externship Course (FLEC) is a 12-credit, full-year clinical course including practicum and roundtable reflective discussions. Students earn 6 credits per term (fall and winter) for a total of 12 credits over both terms. Students are expected to devote a minimum of 14 hours each week for 12 consecutive weeks in the fall term and devote an additional 14 hours each week for 12 consecutive weeks in the winter term (excluding reading weeks). In addition, students must participate in a Reflective Practice Seminar for two (2) hours each week.

FLEC is a live client clinical course. It has been designed as a bridge between the academic study of law and the practice of law. Connecting academic study with community service through structured supervision and reflection contributes to learning that is deeper, longer lasting and can be generalized to new situations and contexts. Students are required to engage in real time problem solving by drawing on the substantive knowledge and skills that they have acquired over the course of their law studies. Students will also come to appreciate that a lawyer's involvement with the client and the broader community is less about "answering the legal question" than it is about collaborating with others whose resources, skill sets and perspectives are complementary, to better understand and resolve challenges facing our clients and our communities.

PROFESSIONAL INTEGRITY:

Federation of Law Societies Canada, "Model Code of Professional Conduct" (As amended October 10, 2014):

Section 2.1-1: A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Section 2.1-2: A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

USE OF COPYRIGHT MATERIAL:

Please respect copyright. We will use copyrighted content in this course. I have ensured that the content I use is appropriately acknowledged and is copied in accordance with copyright laws and university guidelines. Copyrighted works, including those created by me, are made available for private study and research and must not be distributed in any format without permission. Do not upload copyrighted works to a learning management system (such as UM Learn), or any website, unless an exception to the *Copyright Act* applies or written permission has been confirmed. For more information, see the University's Copyright Office website at <http://umanitoba.ca/copyright/> or contact um_copyright@umanitoba.ca.

WITHDRAWAL DEADLINE:

Students will receive a mid-term evaluation from the Course Instructor in advance of the withdrawal deadline of January 17, 2020.

AUDIO AND VIDEO RECORDINGS:

No recording of lectures is permitted without the permission of the Course Instructor.

CANCELLED CLASSES:

There will be no classes during the fall and winter readings weeks, during exam periods and on statutory holidays.

ACADEMIC INTEGRITY:

Each student in this course is expected to abide by the University of Manitoba Academic Integrity principles. Always remember to reference the work of others that you have used. Also be advised that you are required to complete your assignments independently unless otherwise specified. If you are encouraged to work in a team, ensure that your group work complies with the academic integrity regulations. Inappropriate collaborative behavior and violation of other Academic Integrity principles, will lead to the serious disciplinary action. Visit the Academic Calendar, Student Advocacy, and Academic Integrity web pages for more information and support.

STUDENT ACCESSIBILITY SERVICES:

The University of Manitoba is committed to providing an accessible academic community. Students Accessibility Services (SAS) offers academic accommodation supports and services such as note-taking, interpreting, assistive technology and exam accommodations. Students who have, or think they may have, a disability (e.g. mental illness, learning, medical, hearing, injury-related, visual) are invited to contact SAS to arrange a confidential consultation.

Student Accessibility Services
520 University Centre
Phone: (204) 474-7423
Email: Student_accessibility@umanitoba.ca

COURSE GOALS:

The goals of the course will include:

Knowledge based goals - differentiation between public and private law and an understanding of jurisdiction; the difference between legal advice and legal information; substantive law through the consultation with the course instructor, preparation of a minor discussion paper, document drafting, research memo writing and other research; where to find resources for legal information for the public; to describe the Code of Conduct rules re: confidentiality, conflict, competence and duty to clients; concepts of both adversarial and alternative dispute resolution processes; and, the difference between legal and social issues

and how the two are intertwined.

Skills based goals - oral and written legal communication such as conducting an interview with a client that is respectful, time sensitive, and useful for the client; counseling a client and giving legal information and summary legal advice and effectively presenting legal argument; conducting client-centered research in a client-centered practice; creative thinking and problem solving skills; and ethics and professionalism by working collaboratively with others; managing client expectations; and managing time effectively.

Attitude based goals - ethics and professionalism related to fiduciary duty to the client, conflicts of interest, confidentiality, and the duty to be professional with clients, other counsel, the court, the judiciary and the public; to identify and address ethical dilemmas. Finally, through self-reflection, to think critically about the role legal education has played in the preparation for a legal career; to consider their own career development path and the kind of lawyer they want to be; to increase their self-awareness/appraisal of their own bias; and, to recognize the importance of collaborative work with others.

FAMILY LAW EXTERNSHIP FIELD WORK:

Students placed in the FLEC will participate in all of the following experiences:

Clinical Family Law Seminar: *Mondays 9:00 am -11:00 am at Robson Hall.*

The major objective of the seminar is to introduce students to the procedural aspects of family law. The students will be given fact situations and through simulation exercises, they will learn all the components of the family law process. The components will include drafting pleadings, applications, notices of motion, affidavits, case management information statements and orders. A week-by-week schedule of these seminar discussions is attached.

Family Law Clinic: *Mondays 12:00 pm – 4:00 pm and Tuesdays 9:00 am – 4:00 pm (various locations)*

In partnership with Legal Aid Manitoba and under the direct supervision of the course instructor, students will provide clients with legal assistance. Students meet directly with Legal Aid Manitoba clients who are seeking assistance with uncontested divorces. Students will draft the necessary pleadings, affidavits

and/or legal correspondence with the goal that the students will work on a file from file opening through file completion.

Students will also have the opportunity to spend time with judges from the Court of Queen's Bench of Manitoba – Family Division, observing court hearings and case conferences and engaging in debrief discussions with the Court.

Students will, on a rotating basis in groups of three, assist self-represented clients at the Maintenance Enforcement Docket at the Manitoba Court of Queen's Bench. Students will assist unrepresented parties appearing in a Family Division docket court by answering their legal questions and providing guidance to clients with respect to court processes and court forms.

Students will have the opportunity to spend time at various community organizations to: gain an understanding of the access to justice crisis; become familiar with the community resources available to those navigating family breakdowns; and to appreciate how mediation/collaboration assists in resolving family law disputes. These community organizations may include but are not limited to A Women's Place, Mediation Services, Family Conciliation, The Canadian Centre for Child Protection and the Great Library Information Hub (which is anticipated in open in early 2020).

Some of the skills developed throughout the family law externship field work include:

- Identifying the difference between legal and social issues and understanding how those issues are intertwined;
- Effective writing;
- Interviewing clients with the goal of obtaining material facts;
- Learning how to identify legal issues from complex fact scenarios;
- Working with the Court of Queen's Bench Rules and forms in great detail;
- Understanding how disputes can be resolved without legal processes;
- Gaining empathy to those in domestic violence situations;
- Becoming familiar with social service organizations that can assist with the family breakdown;
- Managing client expectations;
- Managing time effectively;
- Problem solving;
- Effective note-taking;

- Obtaining complex legal information and relaying the information to clients in plain language;
- Applying the Code of Professional Conduct, specifically the rules on confidentiality, conflicts and duties to clients;
- Advocacy (written and oral);
- Effective verbal communication skills;
- Gaining familiarity with courtroom procedures and decorum;
- Proficiency with legal research & memo writing;
- On the spot problem solving (thinking on your feet); and
- Developing empathy for those who are forced to advocate on their own.

****NOTE:** As this course is new, programming is always subject to change and new programming can be included or removed at any time.

Reflective Practice Seminar: *Fridays 9:00 am - 11:00 am at Robson Hall.*

The Reflective Practice Seminar is designed as an opportunity for students to critically reflect upon their clinical experiences, the law, the legal system, and their roles and identities as legal advocates. Discussions will occur on Friday mornings at Robson Hall and will be combined with all Robson Hall students participating in externships.

Students will engage in discussions about access to justice, theories of lawyering, and the connection between law and social change, with a focus on the experiences that students have at the clinic. By reflecting on the experiences and observations during their field work, reading the relevant literature, and engaging in thoughtful discussion as a class, the goal is that students will work through questions including the following: How does the legal system purport to deliver "justice" for our clients? How is "justice" conceptualized by our clients and by other agents within the legal system? What does professional and ethical legal practice look like in Winnipeg? What are the barriers to and possibilities for access to justice in Winnipeg and why should this matter for the legal profession? How does unconscious bias impact the delivery of legal services? A week-by-week schedule of these seminar discussions is attached.

COURSE EXPECTATIONS:

This is a 12-credit hour course and academic credit is earned on a Pass/Fail basis. The Course Instructor will evaluate the work of all students. The evaluation in this course is intended to be formative, in that it serves to promote student learning, rather than summative, which aims to rank students relative to each other. To

pass, all students must have met the Law Society Guidelines for professional conduct throughout the term, attend on time, prepare for all clinics/court dates/client meetings, actively participate in group discussions and complete client work and course assignments, in a competent and professional manner.

The course work is as follows:

- 1) Attendance: Students MUST devote Monday from 9:00 am – 4:00 pm, Tuesday from 9:00 am – 4:00 pm and Friday morning from 9:00 am – 11:00 am to the course field work and reflective practice seminars. The students must conduct themselves according to the highest standards of the profession as set out in the Law Society's Code of Professional Conduct in performing the duties set out above. The course has limited the number of students who can participate so the learning opportunity will be maximized for the chosen students. The course has a mandatory attendance policy. Severe illness or a death in the immediate family will excuse students from attending. In that event, students must notify the course instructor and seek leave from the Associate Dean as soon as possible. Please note that documentary substantiation may be required by the Associate Dean's office. Any absence without leave may be grounds for earning a failing grade. Students must choose other courses to avoid conflicts.
- 2) Discussion Paper: Students will be required to submit by the end of term a minor discussion paper wherein they will critically examine the access to justice crisis in family law, reflect upon their personal experiences throughout the term regarding the access to justice crisis in family law and propose ways in which law students and/or the law school can aid in the crisis.
- 3) Participation in Reflective Practice Seminar: The seminar is designed to complement the field work experience and includes readings, verbal and written reflection, developing an educational plan and mid- and end-of-year evaluations. Students must prepare for each week's assignment before coming to class by reading, reflecting, critically thinking, and writing. Class participation requires more than class attendance. Since this is not a lecture course, but a collaborative discussion course, students must be prepared to discuss the readings and their reflective analysis. The writing aspect of the course work also requires students to engage in guided self-critique, which is a skill in itself requiring practice and ongoing evaluation.

MANDATORY DEADLINES

Event	Deadline
Students complete orientation, write Learning Agreement, sign and return Confidentiality Agreement to Director of Externships and begin work at placement	First week of September
Students complete Learning Agreement and Memorandum of Understanding with Externship Supervisor	Second week of September
Students meet with Director of Externships for seminar course.	Every Friday from 9:00 am – 11:00 am at Robson Hall from September through early April (max. 24 classes total). No class during reading weeks or exam periods
Mid-Term Self-Evaluation is due from students. Mid-Term Evaluation is due from Externship Supervisors. Director of Externship meets with all students and organizations individually to check on learning goals, any issues in the workplace and the plan for the rest of term	Last week of November/ First week of December
Students end placements, Final Self-Evaluation is due from students, Final Evaluation is due from Externship Supervisors	First week of April

CLINICAL FAMILY LAW SEMINAR (MONDAYS 9:00 am – 11:00 am)

WEEK-BY-WEEK

Each week a different family law topic will be discussed. For most seminars, students will be shown examples of court documents and will be walked through how to draft the documents. They will then be given class time to draft the documents based on fact scenarios provided. Time will also be allotted for students to discuss their files with one another and the course instructor.

*Subject to change.

Date	Topic	Materials
September 9	Introduction to clinical family practice Legislation and Relief Available	-Court of Queen's Bench Rules -Bill 9: <i>The Family Law Modernization Act</i> - the <i>Divorce Act</i> - <i>The Family Maintenance Act</i> - <i>The Domestic Violence & Stalking Act</i> - <i>The Homesteads Act</i> - <i>The Family Property Act</i> - <i>The Pension Benefits Act</i> - <i>The Law of Property Act</i>
September 16	Pleadings and Process	-Petition for Divorce -Petition -Answer -Notice of Application -Notice of Application to Vary -Notice of Motion to Vary
September 23	Interviewing clients LAMAS computer training (at Legal Aid Office Downtown) *proposed. Subject to change	N/A
September 30	Service	-Court of Queen's Bench Rules -Notice of Motion -Affidavit of Service

		-Affidavit of Attempted Service
October 7	Uncontested Divorces	-Petition for Divorce -Requisition -Affidavit of Petitioner's Evidence -Divorce Judgment -Final Order
October 14	Thanksgiving	No class
October 21	Affidavits	-Court of Queen's Bench Rules -Supporting affidavit -Responding affidavit
October 28	Case Conferences and Triage	-Triage Brief -Request for Triage Conference -Court of Queen's Bench Rules
November 4	Child Support and Spousal Support Calculations Determining Income	-Child Support Guidelines (Federal and Provincial) -Financial Statement -Child Support Guidelines (Federal and Provincial) -Spousal Support Advisory Guidelines -ChildView Software
November 11	Remembrance Day	No class
November 18	Variation Applications	-Notice of Motion to Vary -Notice of Application to Vary -Certificate of Completion of Pre-Requisites - <i>The Inter-jurisdictional Support Orders Act</i>
November 25	No class	

December 3	Court Orders	-“Standard Clauses For Orders In Family Proceedings” -Final Order -Variation Order -Interim Order -Court Disposition Sheet
January 6	Domestic Violence Presentation	Manitoba will present to the students on screening for domestic violence Speaker: TBA
January 13	Written Agreements	-Separation Agreements -Cohabitation Agreements -Pre-Nuptial Agreements
January 20	Collaborative Practice Manitoba presentation	Speaker: TBA
January 27	Maintenance Enforcement and The Child Support Recalculation Service	- <i>The Family Maintenance Act</i> Speaker: TBA
February 3	Poverty and Family Law	Speaker: TBA
February 10	Using Community Resources	-speakers from A Woman’s Place, Mediation Services, Family Conciliation, The Family Justice Resource Centre will present on their organizations and how they assist families experiencing a breakdown
February 17	Louis Riel Day	No class
February 24	Mental Health and Family Law	Speaker: TBA
March 2	Contested Motions	-Notice of Motion -Motions Brief

		-Discussion on oral arguments
March 9	Family Property Accountings	-Form 70U of the Court of Queen's Bench Rules -Comparative Family Property Statement
March 16	Family Law practice and intersection with Child Protection and Criminal Law	-Mike Walker from Legal Aid (Criminal Office) and Meredith Mitchell from Legal Aid (Child Protection Office) will present on what family law lawyers should know when clients present before them with multiple legal issues
March 23	Access to Justice in Family Law presentations	-students will present their papers on "Access to Justice in Family Law"
March 30	Course Wrap-Up	N/A

REFLECTIVE PRACTICE SEMINAR (FRIDAYS 9:00 am – 11:00 am)

WEEK-BY-WEEK

*Seminars are subject to change. LFP="Learning from Practice" Textbook

Date	Topic	Materials
September 6	Introduction to the Externship Course	-Overview and course requirements -Developing a Learning Plan Read: LFP ch 2 – Professional Development Planning LFP ch 3- Learning from Supervision
September 13	Getting Effective Supervision, Reflective Practice	-Getting and clarifying a work assignment -Reflective lawyering to develop professional expertise -Reflective writing for self-evaluation, professional identity formation Read: LFP ch 8- Reflection and Writing Journals

September 20	Getting to know our clients	<p>Read: LFP ch 15- Client Relationships</p> <p>Questions for discussion:</p> <ul style="list-style-type: none"> -Who are our clients? What larger social forces inform and affect their lives? -What is your definition of "justice"? -How should your placement location prioritize the cases of its clients?
September 27 (from 9:30 am – 11:00 am)	Work & Well-being	<ul style="list-style-type: none"> -Discussion on properly caring for oneself and unpacking difficult and emotionally challenging work -Dealing with compassion fatigue -Discussion on available and accessible mental health resources <p>Read: LFP ch 25- Work & Well-being https://www.yourworkplace.ca/2017/05/08/a-lawyers-brush-with-death/</p> <p>Speakers: Michelle Pomrenk & Michelle Pearson (University of Manitoba Counsellors)</p>
October 4	Credibility and Reputation	<ul style="list-style-type: none"> -Defining Professionalism -Building and maintaining a good reputation <p>Read: LFP ch 9- Professionalism</p> <p>Speaker: Lisa LaBossiere, Myers LLP</p>
October 11	Unconscious Bias in the Legal Profession	<p>Read: LFP ch 70- Bias in the Legal Profession</p> <p>Do: Implicit Association Test: https://implicit.harvard.edu/implicit/canada/takea-test.html</p> <p>Questions for Discussion:</p> <ul style="list-style-type: none"> -How should we address the cultural biases within the legal system? -How can we better respond to the needs and realities of its clients and the communities it works with?
October 18	Cross-Cultural Issues and Decolonization &	<p>Read: <u>Beyond Reconciliation: Decolonizing Clinical Legal Education</u> by Patricia Barkaskas and Sarah Buhler</p>

	Indigenous Sharing Circle	https://digitalcommons.osgoode.yorku.ca/jlsp/vol26/iss1/1/ LFP ch 6- Navigating Cultural Differences Questions for Discussion: -How is your legal identity shaped by your personal history, identity and experiences? -What is one step you can take to incorporate decolonization in your practice? Guest: Knowledge Keeper, Victoria McIntosh
October 25	Lawyering Competencies : Ethical Issues in Externships (Confidentiality)	-Overview of common ethical considerations in practice -Discussions re: the challenges of confidentiality in group discussions Read: LFP ch 10- Ethical Issues in Externships: An Introduction LFP ch 11- Ethical Issues in Externships: Confidentiality
November 1	Lawyering Competencies : Ethical Issues in Externships (Conflicts of Interest)	-Discussions re: different types of conflicts of interest in practice and how to approach them to be in accordance with the Code of Professional Conduct of The Law Society of Manitoba http://www.lawsociety.mb.ca/lawyer-regulation/code-of-professional-conduct/documents/english-version/code_of_conduct.pdf Read: LFP ch 12- Ethical Issues in Externships: Conflicts of Interest
November 8	Mental Health & Clients	Questions for discussion: What factors influence the ways in which we "hear" the stories of clients? How do mental health issues affect some clients' interactions within the legal system?
November 15	Reading Week	No class

November 22		No seminar- class cancelled
November 29	End of term discussion	<p>Questions for discussion:</p> <ul style="list-style-type: none"> -Is there a certain client meeting that you would you do differently if you had a chance to re-do it? -Did you see any common challenges among clients? -What did you find to be the most helpful part of the externship so far? -Do you feel that your experience in law school adequately prepared you for this externship? -For the more part, do you think your clients understood the information/advice you provided to them? -What has surprised you about your externship experience?
January 10	Introduction to term 2	Students will set personal and professional goals for the second term, in consultation with the course instructor, to ensure that they are working to fulfill the goals set out in their Learning Plans
January 17	Access to Justice	<p>Read: Canadian Bar Association Access to Justice Committee, "Access to Justice Metrics Informed by the Voices of Marginalized Community Members" online at http://www.cba.org/CBA/cle/PDF/JUST13_PaperDodge.pdf</p> <p>Questions for discussion:</p> <ul style="list-style-type: none"> -Do people experience the law differently depending on their economic and social identity and location? -Does it matter what our clients think about law or lawyers? Does this affect the operation of or the legitimacy of, our legal systems? -Does the social location/ identity of judges make a difference in their judging? -What do you think your clients understand the legal system to be all about?
January 24	Cross-Cultural Issues and	TBA

	Decolonization (part 2)	
January 31	Legal Writing	<p>Read: LFP ch 17- Writing for Practice</p> <p>Questions for Discussion: -Find a public legal education handout or website. Does it do a good job of explaining the law in a way which is accessible? -How common is plain language communication in legal writing? -It is a challenge to communicate with our clients in writing using plain language? If so, why do you think that may be?</p>
February 7	Avoiding pitfalls in practice	Speakers: TBA
February 14	Professional Competencies : Workplace Challenges	<p>-Discussion on time tracking/billing</p> <p>Read: LFP ch 4- Observation</p> <p>Do: Track your time for one week as though you were a billing lawyer?</p> <p>Questions for Discussion: -What are some of the professional challenges that you have faced in your placement? How did you approach the challenge? What worked well and what would you do differently next time? -What are your thoughts on a billing by the hour model? ---What other billing models would you consider?</p>
February 21	Reading Week	No class
February 28	Networking within the Legal Profession	<p>Read: LFP ch 26- Career Development pp.743-747 (networking)</p> <p>Do: Create a list of mentors/advisors you can connect with within the profession in future. What type of guidance can each mentor offer?</p> <p>Listen: Ari Kaplan, Opportunity Maker, Chapter 5, "Networking and the Personal Aspects of</p>

		Promoting Yourself" http://www.arikaplanadvisors.com/the-opportunity-maker-free-audio-book/
March 6	Professional Growth & Change	Questions for Discussion: -Were there certain legal skills, i.e. interviewing, note-taking, time management, etc. that you noticed you improved upon? If so, was the improvement conscious or unconscious? -What legal skills to do still wish to build upon? -What have you noticed in terms your own client-management skills since the beginning of term?
March 13	Externships for Career Planning	-Finding your career direction -Work/life balance Read: LFP ch 24- Professional Identity Formation LFP ch 26- Externships and Career Development Do: DISC Work Values Test: https://www.123test.com/work-values-test/
March 20	End of term discussion	Questions for Discussion: -Which single activity did you undertake in your externship that you consider being your best achievement? And, how could you further improve upon that achievement? -What would you like to see change for future externships? -Do you think the externship has assisted in preparing you for articling? If so, how and if not, why?
March 27	Course Wrap-Up Breakfast and course evaluations	N/A