



THE PRACTITIONER'S VIEW

Vol. 6, Issue 6 August 2005

NEW TRUST ACCOUNT REGULATIONS – Impact on Accountants

The Nova Scotia Barristers' Society's new Trust Account Regulations come into effect on **November 30th, 2005**. They have been developed along with the other Atlantic Provinces' Law Societies so that there is now a fairly uniform set of rules governing lawyers' trust accounts across the region.

The August 2005 issue of *The Society Record*, published by the Nova Scotia Barristers' Society, reviews the new regulations for trust accounts, which will expand the accountants' role. The revised regulations under the *Legal Profession Act* contain a new requirement for lawyers opening a new trust account (See **Appendix A** for the full text of the article).

The Society will be communicating directly with all accountants, who have prepared a Trust Account Report Form (Form 20) in the last two years regarding the new regulations.

Questions about trust accounts or the new regulations can be directed to Glen Greencorn, CMA, Director of Finance & Administration at 422-1491 or ggrncorn@nsbs.ca.

SUCCESSION PLANNING TOOLKIT

CICA now has a new toolkit available for practitioners thinking of selling or merging an accounting practice. This unique planning resource can help you plan your exit strategy at a time and price that works for you. The kit provides three modules of practical guidance with step-by-step strategies for maximizing the profitability of your practice now so you can increase its value for future succession. It also includes comprehensive case studies as well as self-assessment checklists and planning forms on CD-ROM for customizing to your circumstances.

The Succession Planning Toolkit can be ordered through the CICA online store at www.knotia.ca/store/succession or by calling 1-800-268-3793. A special promotion is also available - mention it when ordering the toolkit and get either *Marketing Professional Services* or *The Professional's Guide to Preparing Winning Proposals* for half price.

COMPLIANCE ENGAGEMENTS AND INDEPENDENCE – When/what to disclose?

If you are unsure how Rule 204, *Independence* of the Rules of Professional Conduct in the Member's Handbook affects Notice to Reader reports issued under CICA Handbook Section 9200, an in-depth article addressing this topic may be viewed on the Alberta Institute website at: <http://www.icaa.ab.ca/pdf/CompilationEngagementsandRule204APR05.pdf>.

In addition to reviewing relevant sections of the rule and related council interpretations, examples are provided of the more frequent situations that are encountered by small practitioners, the possible safeguards that may be applied and alternative disclosures of a lack of independence in compilation engagements. Seven common scenarios are discussed and sample wording suggested for the following:

- Prohibited financial interest in the client
- Threat to independence – financial interest in the client
- Threat to independence – close business relationship
- Threat to independence – close business relationships – prior employment
- Prohibited – performance of management functions
- Threat to independence – accounting and bookkeeping assistance
- Threat to independence – long-term business relationship with the client

Practitioner's View is a regular publication of the Institute of Chartered Accountants of Nova Scotia to inform and to serve members who are involved in public accounting in Nova Scotia.

FINTRAC

The following article was submitted by Jean-François Lefebvre, LLB and Gino Vita, CMA, MBA, Senior Compliance Officers with FINTRAC, Eastern Region.

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is an independent government agency created to collect, analyze and disclose financial information and intelligence on suspected money laundering and terrorist financing activities. FINTRAC was created as a result of *The Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (The "Act").

The Act was developed to help detect and deter money laundering and terrorist financing, as well as to facilitate investigations and prosecutions for these offences. Entities are required to report certain transactions, keep records, identify clients and implement a compliance regime.

Which business sectors are covered?

- [Accountants and accounting firms](#)
- Financial entities
- Life insurance companies, brokers, and independent agents
- Securities dealers, portfolio managers, and investment counsellors
- Casinos
- Real estate brokers or sales representatives
- Agents of the Crown that sell or redeem money orders
- Foreign exchange dealing
- Money services businesses

Accountants and accounting firms

If you are an accountant or an accounting firm, you are subject to certain requirements under the Act and its regulations, when you engage in¹ any of the three activities identified below on behalf of any person or entity (other than your employer), or to give instructions in respect of those activities on behalf of any person or entity (other than your employer), or receive fees for doing any of these activities.

The three activities are as follows:

- (1) Receiving or paying funds²;
- (2) Purchasing or selling securities, real estate property, business assets or entities; or
- (3) Transferring funds or securities by any means.

For an accountant who is an employee of a reporting person or entity, these following requirements are the responsibility of the employer except with respect to reporting suspicious transactions and terrorist property, which is applicable to both:

- Reporting requirements
 - Suspicious transactions
 - Terrorist property
 - Large Cash Transactions
- Record keeping
- Ascertaining identification
- Third-party determination
- Compliance regime

Note: For greater certainty, these accountant activities do not include audit, review or compilation work carried out according to the recommendations in the Canadian Institute of Chartered Accountants (CICA) Handbook.

Giving instructions versus providing advice

Giving instructions means that the accountant is actually directing the movement of funds. By contrast, *providing advice* to a client, in the context of your accountant-client relationship, is not considered as providing

¹ *Engaged in* means to carry out the described activities. However, this does not mean that a formal engagement letter needs to be drawn, or fees charged to be *engaged in* one of those activities. If an accountant carries out the activities, on behalf of any person or entity, or for fees, he/she is covered.

² Receiving or paying any funds on behalf of a client means an accountant is covered. One common example would include a firm or accountant receiving funds in trust to pay bills on behalf of a client.

instructions. The following are examples that demonstrate the difference between *providing advice* and *giving instructions*:

Example of providing '**advice**': "For tax purposes, we recommend that you move your money into a certain investment vehicle."

Example of giving '**instructions**': "As per my client's instructions, I request that you transfer \$ XXXX from my client's account, account number XXX, to account number YYY at Bank X in Country Z."

Compliance examinations

FINTRAC has begun conducting compliance examinations. FINTRAC will continue with these examinations throughout the year, visiting every business sector covered by the *Act*.

What to expect from a FINTRAC compliance examination:

- Generally, a FINTRAC compliance officer will call to set up an appointment by telephone.
- FINTRAC will normally send a letter confirming the appointment, the location, and the examination's scope.
- FINTRAC might request that information on compliance policies and procedures, as well as on any reviews, be provided before the examination day.
- A typical on-site examination this year will last several hours.
- The examination will test policies and procedures. The information reviewed might include: the four elements of the compliance regime: Appointment of a compliance officer, development of compliance policies and procedures, a periodic review of the compliance policies and procedures, ongoing compliance training.
- During the examination, FINTRAC will meet with the designated compliance officer and senior manager. (In the case of a sole-practitioner operating in public practice, the role of designated compliance officer will usually fall to the practitioner.) FINTRAC might also interview other staff members.
- After completing the examination, FINTRAC will send a findings letter outlining the examination scope and raising any deficiencies.
- If any deficiencies are found, the business will be expected to provide FINTRAC with an action plan that addresses these deficiencies within a set period of time.

Getting ready

Before facing a compliance examination, it would be wise to examine your own practice and assess how your current procedures stack up.

During a compliance examination, a particular attention will be paid to the four elements of a compliance regime:

1. The appointment of a compliance officer;
2. The implementation of compliance policies and procedures;
3. The periodic review of those policies and procedures;
4. An ongoing compliance training.

Over the next few months you may be asked to complete a compliance questionnaire; it will be used to give us an insight about your activities and compliance regime.

More info

For more details, please visit the FINTRAC website at www.fintrac.gc.ca and review the guidelines. Or call 1-866-FINTRAC for more information.

COMPLIANCE QUESTIONNAIRE

FINTRAC has advised that it will soon be sending out requests to complete an online questionnaire to selected accounting firms in Nova Scotia enquiring about the compliance regime to report suspicious and prescribed transactions.

The March 2005 issue of *The Practitioner's View* included an article on the questionnaire and what to do if you receive a request. For a review, go to www.icans.ns.ca/media/documents/PractitionersViewMar05.pdf or the FINTRAC website at www.fintrac.gc.ca/publications/guide/guide_e.asp for more specific guidelines.

UPDATE TO FINTRAC GUIDELINES

The Financial Transactions and Reports Analysis Center of Canada (FINTRAC) has recently published an update to its guidelines. *Guideline 6B: Record Keeping and Client Identification for Accountants and Real Estate Brokers or Sales Representatives* was reissued on June 16, 2005. Members in public practice are particularly encouraged to review this guideline. This recent version of the FINTRAC guidelines will provide chartered accountants and firms with a clear understanding of the obligations set out in the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Details can be obtained on FINTRAC's website at www.fintrac.gc.ca/publications/guide6/6B_e.asp.

ESSENTIAL TOOLS FOR CAS IN PUBLIC PRACTICE

CICA has developed various products for practitioners and recommends the following professional practice resources to help you save time and money while maximizing your efficiency and productivity:

Practice Management

- QAM
- PEM
- Model Agreements: Resolutions and Contracts
- Professional Services Checklist and Collection

Taxation

- Canadian Tax Principles – Professional Edition
- CICA Tax Practice Manual
- Annotated Federal Income Tax Act
- Personal Tax Planner Guide

Practice Development

- Business Matters
- Selling Your Private Company
- Marketing Professional Services
- Marketing Matters
- The Professional's Guide to Preparing Winning Proposals
- The Succession Planning Toolkit

Financial Planning

- Canadian Guide to Wealth Preservation and Accumulation
- Personal Financial Planner's Manual

Business Law

- The Accountant's Manual

If you are not familiar with some of these products, further details are available at http://www.cica.ca/multimedia/Download_Library/Services_and_Products/Small_and_Medium_Practices/CAPA/PublicPracticeCatalogue.pdf

FREE NEWSLETTER - CA PRACTICE ADVANTAGE

CICA has launched a new publication, *CA Practice Advantage (CAPA)*, for CAs in public practice. Distributed quarterly, this complimentary e-newsletter is a valuable source of timely synopses of information about trends and views, standards and regulations, client development, technology, marketing your services, professional resources, events and other information relevant to CAs in public practice — with links to the web-based sources.

The two issues to date, March and June 2005, include topics such as "What the Financial Instruments Standards Mean", "Bill What You're Worth", "A Guide for Women & Their Firms", "Improve Client Satisfaction and Your Profitability", "Primer for Directors of Not-for-Profit Organizations", among many others.

To receive this free e-newsletter, you must register your request. Simply click the "subscribe" link below to complete the form and CAPA will be e-mailed to you bi-monthly:

http://www.cica.ca/index.cfm/ci_id/25538/la_id/1.htm

UNDERSTANDING DIFFERENTIAL REPORTING

An article in the June 2005 issue of *CA Practice Advantage*, **Differential – Straight Up!** points out some of the more common misconceptions on differential reporting and will be helpful to many practitioners who frequently use it. Based on a recent survey of practitioners across the country, feedback indicates that while it is widely used, some practitioners are misinformed with respect to differential reporting and some of its various options, such as obtaining consent, future income taxes, goodwill and other intangible assets, fair value and retractable preferred shares.

To ensure you have no misconceptions about differential reporting, review the full article at http://www.cica.ca/html/capa/e_06_2005_001.pdf.

PROFESSIONAL LIABILITY INSURANCE

Court Case Determines Auditors Duty of Care to Shareholders

The June 2005 issue of *CARM*, a newsletter published by AICA Services Inc., provides an in-depth review of a recent court case, *Waxman v. Waxman*, which reconsidered the auditors duty of care owed to shareholders personally.

The court has held that “the purpose of a general corporate audit is to provide the shareholders (as a group) with the information necessary to assess the performance of the directors and management of the company. An audit is not designed to assist a shareholder in making decisions that involve his or her own personal interests.”

The decision of the court will be useful in defending auditors and accountants in the future on three counts:

- A duty of care is not generally owed to shareholders personally;
- An accountant does not owe a general obligation to look after a client's best interests unless specifically retained to do so; and
- Provides useful ammunition to defend the allegation of breach of fiduciary duty.

Another take home message from the case is the “**extreme importance of the engagement letter and documentation**”. The article stresses the importance of engagement letters, what to include and when to update as well as critical documentation issues. It can be accessed on AICA's website at http://www.aica.ca/carm_newsletters.aspx.

And Finally...

Don't forget to send in your annual declaration of insurance coverage. If you've misplaced the form sent to you in June, please contact Wenda Bennett at wbennett@icans.ns.ca.

SUGGESTIONS FOR THE NEXT ISSUE?

Contact **Wenda Bennett, CA** at the Institute wbennett@icans.ns.ca or (902) 425-3291.

NEW TRUST REGULATIONS

come into effect November 30, 2005

(Printed with the permission of the Nova Scotia Barristers' Society)

Roberta Clarke, QC, Blois, Nickerson & Bryson

The new Legal Profession Act and Regulations contain a number of changes for the operation, maintenance, and reporting requirements of lawyers' trust accounts. Most of these appear in Part 10, although others appear in Parts 4 and 7. Some of these changes address risk management issues which arose from the current regulations, and others were made as part of a continuing project to develop uniform trust account rules with the law societies of the other Atlantic Provinces. Some of the changes are a response to practice concerns. For example, a new regulation, Regulation 10.3.7(a), allows the lawyer or law firm to use the firm's trust account to handle personal trust transactions for a lawyer who is a member of or employed by the firm. This has long been problematic for lawyers in Nova Scotia as there was no specific regulation permitting this practice.

Significant changes will be required for the withdrawal or transfer of funds from a lawyer's trust account. While Regulation 10.4.5 continues the requirement that all trust cheques be marked as a trust cheque and be payable to a named payee, the new regulation also requires that:

- the cheque must be signed by a practising lawyer;
- the cheque must be signed by at least two persons; and
- the cheque must not be released from the practising lawyer's office until there are funds on deposit to the credit of the client on whose behalf the cheque is drawn.

Recognizing the difficulty that this would pose for sole practitioners, there is a specific exception, Regulation 10.4.6, which exempts them from the requirement to have two people sign the trust cheque. However, the trust cheque must be signed by a practicing lawyer. The requirement for a lawyer's signature on the trust cheque brings our regulations in line with those of all other law societies across Canada. A trust cheque will no longer be able to be signed by a "non-lawyer" alone.

The regulation now requires that a trust cheque not be released from the lawyer's office until there are funds on deposit to the credit of the client on whose behalf the cheque is drawn ensures that the lawyer maintains complete control over the client's funds. It is important to remember that once a cheque leaves a lawyer's office, despite any conditions that may be attached to that cheque, the lawyer has lost control over that cheque and therefore over the trust funds.

There is a new requirement for lawyers to report immediately to the Executive Director any overdrafts in the lawyer's or firm's trust account, except in the limited circumstances set out in Regulation 10.5.2. Note that it is not sufficient to simply state that an overdraft occurred — an explanation must be provided.

Regulation 10.6 addresses the investigations and audits which may be conducted.

New regulations are also being introduced (Regulation 10.8) to govern the receipt of large amounts of cash into a lawyer's trust account. These regulations are consistent with regulations being adopted by law societies across Canada to prevent money laundering through a lawyer's trust account. Essentially, Regulation 10.8 prohibits a lawyer from receiving or accepting an amount in cash of \$7,500 or more in the course of a single transaction. This was approved by Council last year.

Regulation 10.9 allows the creation of a special trust account for the purposes of forwarding funds to Service Nova Scotia and Municipal Relations for the payment of deed transfer tax and fees. These regulations were adopted by Council on April 22, 2005, as Regulation 47D, to allow a pilot project to begin with 10 firms in the Halifax Regional Municipality. On the completion of the pilot project, it is anticipated that law firms and practising lawyers throughout the province will be able to submit documents and payments electronically. The new regulation prescribes how those transactions are to take place, as well as the requirements to set up a special trust account for that activity.

Part 4 of the new regulations outlines the obligations of practising lawyers and law firms. A significant new regulation respecting the opening of a trust account by a lawyer or law firm appears in Regulation 4.1.4. This regulation requires that a lawyer or law firm who previously has not had a trust account must file a written notice of the opening of the trust account to the Executive Director of the Society, a certificate from a licensed public accountant certifying that the practicing lawyer or law firm has in place a trust accounting system that will enable the practising lawyer or law firm to comply with Part 10 of the regulations, confirmation that the member has been instructed in the procedures to be followed in order to operate the trust accounting system, and confirmation that the practising lawyer (or in the case of a law firm, all the practising lawyers) has completed the mandatory training required by Council for practising lawyers or law firms opening new trust accounts.

This is a significant change to the Society's regulations. Its purpose is to ensure that when lawyers or a law firm open trust account for the first time, they know and understand the requirements for accounting and record keeping, and that they have taken the Society's course to understand the obligations of the lawyer or law firm upon opening that trust account.

Part 4 also includes the requirement for a lawyer to file the Annual Trust Account Report. This is the equivalent of the current annual filing requirement for the Form 20. Regulation 4.2.3 outlines some of the content of the Annual Trust Account Report. While most of these regulations are unchanged, there is a requirement that the Trust Account Report be signed by, in the case of a practising lawyer, by that practising lawyer, and in a law firm of at least four partners, by four partners of that firm or, if there are not more than four partners, by all the partners who by signing verify the accuracy and completeness of the information contained in the form.

Regulation 4.2.3 also requires that the Trust Account Report be signed by a public accountant to confirm that the review required has been done in accordance with the prescribed standards, and to verify the accuracy of the information contained in the part of the Trust Account Report prepared by that public accountant. Note that this requirement to file the Trust Account Report applies even if the lawyer is suspended at the time that the report is due.

Regulations 4.2.6 and 4.2.7 allow the Executive Director to request additional information from either the lawyer, law firm or the public accountant if the information provided in the trust account report is incomplete or indicates that the practising lawyer has not maintained the books, records, and accounts as required.

The changes in the Trust Account Regulations are intended to enhance the Society's protection of the public and to protect the assets of other lawyers. As well, many of the changes to the regulations represent best practices for the operation of lawyer's trust accounts.

Opening a new trust account?

Planning to open a new trust account following adoption of these regulations? If so, here is a brief checklist of things to prepare for:

1. Engage your accountant early in the process to assist you in setting up the appropriate accounting system.
Your accountant will need to provide the Society with a certificate saying that you have an accounting system in place that will enable you to comply with Part 10 of the regulations.
2. Spend some time with your accountant learning the procedures to be followed in the trust account system.
Again, you will need to confirm to the Executive Director that you have that understanding.
3. Take the Society's mandatory Trust Account Education Program.
4. File your notice, in writing, with the Society that you have opened a trust account.

Already have a trust account?

If you already have a trust account, certain new regulations apply to the operation and maintenance of your account. Here is a checklist to help you come into compliance with the new regulations:

1. Can a trust cheque be issued and signed by someone other than a lawyer? If so, ensure that your signing authorities are changed so that at least one of the signatures is required to be a lawyer.
2. If you are not a sole practitioner, does your trust account require two signatories on the cheque? If not, make the changes necessary to ensure that all cheques require at least two signatures.
3. Review the Trust Account Regulations at www.nsbs.ns.ca to ensure that the rest of your practices are consistent and in compliance with the Regulations. Now is an excellent time to review those practices.