

Practice Resource

Anti-money laundering: settlement agreements

In the course of being retained or while already acting on a matter, you may learn that some of your client's assets were obtained, or may have been obtained, through the proceeds of crime. For example, you may learn that your client, with their spouse, the opposing party, purchased property or made improvements to property using funds from illicit transactions. Now the client wants you to negotiate an agreement for the division of property with their spouse. What do you do?

Stop. Consider obtaining advice from a lawyer knowledgeable about the obligations in dealing with the proceeds of crime even if it is just for the purpose of a second opinion.

Be aware that:

1. You must not negotiate the settlement of the proceeds that you know, or ought to know, to be the proceeds of crime between your client and another person and you must not accept any proceeds of crime into your trust account. You are encouraged to review *Criminal Code* section 462.31 [offence of laundering the proceeds of crime], which was recently amended to provide that the court may infer knowledge in certain circumstances, and section 354 [offence of being in possession of property that was obtained or derived directly or indirectly from the commission of an offence].
2. If in the course of obtaining instructions, or at any time while retained by a client, you know or ought to know that you are or would be assisting in or encouraging any dishonesty, crime or fraud, including the division of the proceeds of crime, you must withdraw from representing the client (see [Law Society Rule 3-109](#) and the [Code of Professional Conduct of British Columbia \(BC Code\)](#) rules 3.2-7 to 3.2-8 and 3.7-7). If there are red flags that assets may have been obtained with illicit funds, you must make reasonable inquiries to objectively satisfy yourself of the legitimacy of the matter and make a record of your inquiries.
3. If you discover that you may have proceeds of crime in your possession, you must not return the property to the client or deal with it in any way because that may constitute money laundering or aiding your client or someone else to take possession of the proceeds of crime. The client may need to obtain new counsel and you may need to withdraw. In such case you should immediately seek legal advice regarding your obligations. Be aware, as well, that it is conceivable that the communications between you and your client will not be privileged. For example, if the client lied to you and funds were deposited into your trust account in order to facilitate money laundering, such communications may not be privileged.

4. With the client's informed consent, and after the client has obtained independent legal advice from a criminal lawyer, you may continue to act for the purpose of obtaining directions from the court about the handling of the funds that are the proceeds of crime, with the court being fully informed about the illicit transactions (see [BC Code](#) rule 5.1-2(b) and (e)). You have a continuing duty of confidentiality to hold in strict confidence all information concerning the client's business and affairs, and must not divulge it without the client's consent or unless required by law or a court order, or other limited exceptions ([BC Code](#) section 3.3).

If you have questions about some of your anti-money laundering obligations under the Law Society Rules and the *BC Code*, you are welcome to contact practice advisor Barbara Buchanan, KC at bbuchanan@lsbc.org or 604.697.5816.