

# Trust Report

## Law Society of British Columbia

### Accountant's Report Filing Instructions

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These instructions are designed for the Trust Report - Accountant's Report. If you are completing a Self Report, please refer to the *Self Report Filing Instructions*. Should you or the individual delegated to file the report have any questions please contact the Law Society's Trust Assurance department.

## 1. Introduction

Rule 3-79 requires lawyers to deliver an annual Trust Report to the Law Society. Rule 3-54 (2) allows the firm to fulfill the lawyer's obligations for their annual trust filings. In the majority of instances, one Trust Report will be completed for the firm that satisfies the filing requirements of all the lawyers of the law firm.

The Benchers set the specific trust accounting rules under the authority of the *Legal Profession Act*. Approved rules form part of the regulations governing the practice of law in British Columbia.

## 2. The Trust Report: Accountant's Reporting Form

The Trust Report – Accountant's Report is comprehensive and divided into the following sections:

Section A Description of Practice

Section B Financial Profile

Section C Accountant's Specified Procedures

Undertaking and Certification

Section C must be completed by a qualified Chartered Professional Accountant (CPA) who is licensed with CPA BC to perform either audit or review engagements.

Each individual lawyer of the firm must file an Annual Practice Declaration (APD) in order for the Trust Report to be considered complete.

### 3. Filing Deadline

You must file the completed Trust Report with the Law Society within three months of the reporting period end. The due date of the report is noted in the Filing Notice and in the email correspondence sent to the designated representative of the firm.

### 4. Late Fee Assessment and Possible Suspension

Under Rules 3-80 and 3-81, the following late filing fees and membership conditions will be applied:

- There will be an assessment of \$200 if a Trust Report is late but within 30 days of the due date. A lawyer who does not deliver a Trust Report for 30 days after it is required is liable to an additional assessment of \$400 per month or part of a month. This monthly assessment will continue to be charged until the completed Trust Report is delivered to the Law Society.

Under Rule 3-80 (4), the Executive Director may, on application and their discretion, waive payment of all or part of the assessments provided that there are extraordinary and unforeseen circumstances that prevented the timely preparation and filing of the Trust Report.

- If the Law Society does not receive the completed Trust Report within 60 days after the due date, the lawyer(s) in the firm will be suspended until the completed report is delivered to the Law Society to the satisfaction of the Executive Director.

Under Rule 3-81 (3), the Discipline Committee may, on application and its discretion order that a lawyer not be suspended or a suspension be delayed for a specified period of time provided that there are extraordinary and unforeseen circumstances that prevented the timely preparation and filing of the Trust Report.

### 5. Criteria for Complete Report

Pursuant to Law Society Rule 3-79 (5) (b), a Trust Report delivered to the Law Society under this rule must be complete to the satisfaction of the Executive Director. The following are the minimum criteria for a complete Trust Report.

1. The online APD must be completed for each lawyer of the firm and submitted with the Trust Report by the filing deadline.
2. If the firm had trust accounts in the reporting period, all trust accounts must be included in the report.

3. The following records must be current and available for the CPA's review:
  - a. Rule 3-67: Accounting records
  - b. Rule 3-68: Trust account records
  - c. Rule 3-69: General account records
  - d. Rule 3-71: Billing records
4. Trust reconciliations, along with supporting documents must be prepared and available for the CPA to review.
5. All client files with trust activity and accounting records must be available for random selection and review, by the CPA.
6. The CPA completing Section C, Accountant's Specified Procedures, must be independent from the law firm and must not be in conflict of interest with the firm.
7. The firm must provide an explanation of the exceptions and qualifications noted by the CPA with the completed trust report, as required under Rule 3-83 (1).

## **SECTION A - Description of Practice**

All law firms must complete section A, regardless of whether a trust account was maintained.

### **Reporting period**

A “reporting period” is normally 12 months either from the commencement of the law firm or the expiry date of the last reporting period. The Law Society may, pursuant to Rule 3-79 (4), permit a reporting period other than 12 months if a written request is made before the due date of the Trust Report. If you wish to modify the regular reporting period, you should make a written request as soon as possible and email it to [trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org).

### **1. Practice name**

If during the reporting period you have changed your practice name, please update accordingly.

### **2. Practice address**

This address should be your main office practice location, where you conduct the majority of your work, where you normally receive your mail and where you keep your accounting records required by Part 3, Division 7 – Trust Accounts and Other Client Property.

### **3. Practice arrangement**

Does the law practice consist of two or more lawyers practicing from the same premises, sharing a common letterhead, common overhead expenses? Do you hold yourself out to clients as a single business but otherwise practice as independent practitioners? If so, please include apparent partnership in your selection.

### **4. Other practice locations in BC**

You need not provide practice addresses for out of province or international locations.

### **5. Contact information**

The Law Society may require the firm to provide further information and/or explanations regarding this report.

### **6. Lawyers at the practice**

Include all lawyers at your practice at any time during the reporting period. This includes all partners, apparent partners, associates, term employees and associate counsel. In instances where

the practice operates nationally or internationally, only British Columbia lawyers need be included. Please include all contract/term employees who do not file their own trust report.

## **7. Trust accounts**

You must disclose whether the law firm conducted trust transactions through trust bank accounts in the reporting period. You must answer “yes” to the question, if the firm:

- continued to hold trust funds from the previous reporting period in one or more trust bank accounts, even if there was no trust activity, and
- received, disbursed or held client property/valuables during the reporting period.

## **8. Use of another lawyer's trust account**

Under Rule 3-58.1 a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

## **9. System for logging and opening files**

Answer, “yes” as long as there is a suitable system, whether manual or electronic form for recording the opening of new client matters.

## **10. Computer software**

A manual system may be adequate for a practice with limited trust and general account activity.

## **11. Computer back-up system**

It is vital to the firm that the accounting data is backed up on a regular basis and properly maintained in order to protect the interest of clients and to comply with Law Society requirements. Under Rule 3-49, a minimum standard of financial responsibility requires that the firm maintain the ability to produce and/or copy accounting records at all times.

## **12. Accounting records available on demand**

The Law Society Rules 3-67, 3-68, 3-69 and 3-75 identify the trust and general account records each law firm must maintain. While it is not specifically required that all the accounting records be printed to “hard copy”, it is required that every firm be able to produce records on demand in accordance with Rule 10-3 (2).

### **13. Off-site storage**

Please refer to Rules 3-75 [*Retention of records*] and 3-76 [*Executive Director's modification*].

### **14. Borrowing from clients**

Rule 3-58.1, 3-60 (4) and Rule 3-61 (3) prohibit lawyers from depositing into a trust account any funds other than trust funds. Section 3.4 of the *Code of Professional Conduct for British Columbia (BC Code)* sets forth general principles to guide a lawyer who may be considering entering into a business transaction with a client. Borrowing from lending institutions, financial institutions, insurance companies, trust companies or any similar corporation whose business includes lending money to members of the public is acceptable. If this was the only form of borrowing, the answer to this question should be “no”.

If you require further information regarding this question, please contact a Practice Advisor.

### **15. Funds received and disbursed on behalf of clients**

Under Rule 3-58.1 the firm is only permitted to deposit funds in trust that are directly related to legal services provided.

Should you have any questions please contact a Practice Advisor.

### **16. General cheque not honoured**

This question applies to the general account and any cheques that the firm has issued on the general account that were not processed by the financial institution or were returned as non-sufficient funds (NSF).

### **17. PST, GST/HST and payroll remittances**

Government remittances for all PST, GST/HST, and payroll deductions, are required to be paid when due. We recommend that you have a system in place to ensure that these requirements are met on a timely basis. If the nature of the firm does not require you to make these remittances, answer “no” to this question and provide an explanation.

If you have additional questions on tax filing obligations please contact the appropriate government agency.

## **18. PST audit**

Please disclose if the firm was audited by the Ministry of Finance during the reporting period and disclose if the audit is ongoing or complete. If complete, disclose if the audit resulted in any assessments, penalties or interest and whether or not the firm has paid in full these amounts.

## **19. CRA audit**

Please disclose if the firm was audited by the Canada Revenue Agency during the reporting period and disclose if the audit is ongoing or complete. If complete, disclose if the audit resulted in any assessments, penalties or interest and whether or not the firm has paid in full these amounts.

## **20. Winding up caretaker**

In the event that you are unable to manage or operate your law firm unexpectedly due to unforeseen circumstances, it is prudent to identify a person capable of carrying on the day-to-day operation of your firm.

The Law Society is requesting that lawyers put their minds to such a potential occurrence. In most multi-lawyer firms, this question can be answered “yes” where there is a current partnership agreement in place.

## **21. Excess professional liability insurance**

Answer “yes” to this question if you have professional liability insurance coverage in excess of the mandatory Law Society limits covering this reporting period.

## **22. Client identification and verification**

Law Society Rules 3-98 to 3-110 cover the client identification and verification (CIV) rules, requiring every firm to have a system in place to ensure compliance with their CIV obligations.

If you are unsure whether your particular system meets your obligations, please contact a Practice Advisor.

## **23. Appointments**

Include all lawyers of the firm who acted in a representative or fiduciary capacity to manage funds on behalf of a beneficiary or other third party, when the appointment was derived from a solicitor-client relationship.

Some examples of when a lawyer may be handling fiduciary property include lawyers who are:

- a. acting solely or jointly as an executor or administrator of a will;
- b. an administrator of an estate;
- c. a Committee;
- d. a representative authorized under a representation agreement to make financial or legal decisions;
- e. an attorney under any power of attorney (but only if the lawyer has actually taken control of or dealt with the funds); or
- f. a trustee.

Please ensure that there is a current list of all appointments kept at the firm's chief place of practice.

## **24. Fiduciary property books and records**

Where the lawyer has a duty over handling fiduciary property in any one of these capacities, the lawyer is required to keep, and be able to produce on demand, proper records to account for fiduciary property that the lawyer responsible for. Trust Assurance Auditors will expect to see as a minimum, records that will provide a full accounting of the receipts and disbursements of the fiduciary property and any capital or income associated with the fiduciary property.

## **SECTION B – Financial Profile**

Section B must be completed if the firm maintained a trust account, even if the account was inactive during the reporting period.

### **1. Banking information**

Do not list term deposits or guaranteed investment certificates (GIC) held at the same financial institution and linked to the pooled trust account.

A complete listing of accounts including all term deposit and GIC account numbers should be retained as supporting documentation to the monthly trust reconciliations and for future review by a Trust Assurance Auditor.

### **2. Pooled trust account requirements**

Refer to Law Society Rule 3-60, which sets out the provisions that apply to pooled trust accounts.

### **3. Interest to the Law Foundation**

Please refer to Law Society Rule 3-60 (3) (a). If the firm opens or maintains a pooled trust account, you are required to instruct the savings institution in writing to pay net interest earned on the account to the Law Foundation. A sample instruction letter is available on the Law Society website.

### **4. Separate trust account requirements**

Refer to Law Society Rule 3-61 and 3-72 (4), which set out the provisions that apply to separate trust accounts. All receipts of interest on a separate trust account must be recorded within 30 days of payment or of notice that funds have been credited to the account. All withdrawals from separate trust accounts, in respect of which cancelled cheques are not received, must first be deposited to the pooled trust account.

### **5. Total trust funds deposited**

Please provide the total amount of “new” funds deposited into all trust accounts for the reporting period. Funds that have moved in and out of trust for the purpose of investments, separate interest-bearing trust accounts, and / or moving funds to another pooled trust account of the firm should not be included.

## **6. Trust cheques not honoured**

This question applies to the trust accounts and any cheques that the firm has issued that were not processed by the firm's financial institution or was returned as NSF.

In the event that you reported these incidents previously under Rule 3-74 (2), you may refer to earlier correspondence to the Law Society.

## **7. Outstanding stale-dated cheques**

Review the trust bank reconciliations for the entire reporting period to identify trust account cheques that remained outstanding for periods in excess of six months from date of issue. You may be required to provide full particulars of such stale-dated cheques at a later date.

## **8. Insolvent lawyer**

Refer to Rules 3-47 and 3-51.

This information will ensure compliance by lawyers who cannot operate a trust account without a second signatory approved by the Executive Director.

## **9. List of trust account signatories**

This listing includes all practising lawyers who are signatories for the pooled and separate interest bearing trust accounts, operated by the firm.

## **10. Co-signatories**

Disclose whether the firm has granted signing authority to any other individual not disclosed in question 9 of this section. Provide the name and position of the individual.

A trust cheque should not be released without the signature of at least one practising lawyer. If a non-lawyer is granted signing authority on a trust account it must be as a co-signatory only and the non-lawyer's signature must be accompanied by a practising lawyer's signature.

## **11. Cash received**

Please refer to Rule 3-59.

A lawyer must not receive or accept cash in an aggregate amount greater than \$7,500 for any one client matter. A lawyer may accept an amount of \$7,500 or more in cash for professional fees, disbursements, expenses or bail.

## **12. Cash receipt book**

Please refer to Rule 3-70.

Any amount of cash received by the firm for a client must be recorded in the cash receipt book in accordance with this rule.

## **13. Cash refunds**

If a lawyer receives an aggregate amount of more than \$7,500 in cash for a client matter and subsequently refunds all or part of it, the refund must be in the form of cash and a cash receipt must be issued for the return of the funds.

## **14. Internal controls**

We recommend all lawyers establish a system of internal controls to ensure the integrity of financial data. A proper internal control system reduces the risk of unauthorized transactions, undetected financial errors and plays a key role in safeguarding client trust funds.

Every firm should create procedures that restrict access to trust funds and ensure the reliability of accounting records. A firm should also conduct a regular review of the segregation of duties and provide education and training to anyone to whom the lawyer delegates duties and responsibilities under Rule 3-54 (3) (b).

## **15. Online banking**

Please refer to Rule 3-64.1.

Online payments, transfers between bank accounts, and debit card “point of sale” transactions are not permitted. Should you wish to conduct online electronic funds transfers (EFT) please ensure you use a banking platform that requires a dual password / access code authentication procedure to authorize the transaction.

## **16. Maintenance of records**

Include all individuals/firms that are wholly or partially responsible for maintenance of the trust and general account records.

## **17. Location of accounting procedures**

The Law Society is aware that some firms must rely on outside resources to complete some aspects of the day-to-day accounting and/or month end procedures. Identify the locations (other than your chief place of practice) that are used to carry out these procedures.

## **18. Monthly trust reconciliations**

Rule 3-73 (5) requires that the monthly trust reconciliation be prepared for each trust account not more than 30 days after the effective date of the reconciliation. Rule 3-54 (3) (b) states that a lawyer is personally responsible to ensure that the duties and responsibilities under the Division 7 Rules are carried out, including when the lawyer delegates to another person any of the duties or responsibilities assigned to a lawyer under this division.

As a best practice, trust bank reconciliations should be reviewed, signed and dated by the member responsible for the trust records.

## **19. Handling trust funds on behalf of another lawyer**

Indicate if you handled trust funds for another lawyer or law firm during the reporting period. Please be reminded of Rule 3-58.1.

## **20. Practice billing information**

Indicate if the firm has a client or a related group to which more than 20% of the billings (dollar totals) can be attributed in the reporting period. Do not provide client information. "Group" means a group of related clients such as an extended family or within one corporate structure of related companies. The information for this question relates to the firm as a whole.

## **21. Trust administration fee**

Please refer to Rule 2-110.

The Trust Administration Fee (TAF) is a \$15 charge for each distinct client matter in which trust funds are deposited into the trust account for other than the payment of legal fees or retainers. The TAF must be remitted to the Law Society quarterly. If you answer, "yes" to this question, you are indicating that you have made the quarterly TAF remittances when due.

## **22. CDIC insurance**

Please refer to Rule 3-77.

All institutions named in Part B, Question 1 that are covered by Canada Deposit Insurance Corporation (CDIC) protection should be provided with a list of trust beneficiaries for each pooled trust account on an annual basis. CDIC requires this list on an annual basis. Submit a trust listing as at April 30 to the trust bank(s) by May 30. A sample CDIC reporting letter is available on the Law Society website. Please note that credit unions, except Coast Capital Savings Federal Credit Union, do not require the filing of this report.

### **23. Estate files**

Provide details including: file reference number, date file opened, the amount held in trust at the end of the reporting period and date of the last trust transaction.

### **24. Areas of practice**

This question relates to the firm as whole. Indicate all applicable areas.

## **SECTION C – Summary of Accountant's Specified Procedures**

The firm must engage a qualified CPA to complete Section C of the Accountant's Report. The CPA:

- must be licensed with CPA BC to perform either audit or review engagements,
- must be independent from the law firm, and
- cannot be in conflict of interest with the law firm.

To confirm the credentials of an accountant, please contact the Public Practice Division of:

**Chartered Professional Accountants of British Columbia**

800-555 West Hastings Street

Vancouver, BC V6B 4N6

Tel: 604.872.7222

Website: [www.bccpa.ca](http://www.bccpa.ca)

Your CPA is required to select client files randomly. Accordingly, it is important that during the preparation of the Trust Report, access to your client file information be provided to your CPA as necessary to perform the specified procedures. Should the CPA be unable to perform the procedures required, the Trust Report will not be considered complete. As noted in Section 88 of the *Legal Profession Act*, accountants are subject to a duty of confidentiality.

## Important Information for Accountants

### 1. Minimum procedures

When completing Section C – Summary of Accountant's Specified Procedures, your review may or may not be limited to the procedures specified. Exercise your professional judgment in determining the scope of your review. Any additional procedures applied to test check compliance with Law Society Rules should be noted on your report together with any exceptions. If the law firm does not agree to the expansion of the scope or inhibits your performance of the specified procedures, provide information on any limitations to the scope of your review.

Read all the required excerpts before beginning your review. If you require clarification of the procedures or with the interpretation of Law Society Rules, please call the Trust Assurance Department at 604.697.5810 or email: [trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org).

The Law Society expects accountants to take reasonable steps necessary to meet the proper minimum standards and procedures to review the records and the accounting system of the law firm. If these procedures were not met provide a separate explanation.

### 2. Sample size

Select eight files, with trust activity, and test check that:

- trust funds were deposited promptly and handled appropriately; Rules 3-58, 3-58.1, 3-59, and 3-64.2,
- withdrawals from trust for fees were made in accordance with Rule 3-65 and if applicable 3-64.1, and
- withdrawals from trust for payments to the clients or third parties were in accordance with Rules 3-58.1, 3-64, 3-64.1, and 3-66.

### 3. Guidelines

You are required to use your professional judgment in executing the specified procedures. There is no materiality threshold so all exceptions identified must be noted and provided to the Law Society.

If you were able to perform the specified procedure in the question, answer "Yes". Answering, "Yes" assures the Law Society that the necessary procedures were performed.

If you were not able to perform the specified procedure in the question, answer "No". Answering "No" may result in a scope limitation and may not meet the criteria for a complete report; see

*Criteria for Complete Report.* We encourage you to enter an explanation in the “Note” section of that question.

#### 4. Other client valuable property

Section 3.5 of the *BC Code*, requires lawyers to preserve and account for valuables. (See the definition of “valuables” under Law Society Rule 1.) A lawyer or law firm must take the following steps as a minimum to adequately preserve and keep safe a client’s valuables:

- clearly label and identify the client’s valuables,
- place the valuables in a secure place apart from the lawyer’s own property,
- maintain with the lawyer’s accounting records a complete listing of clients’ valuables in the firm’s custody, and
- scan the monthly reconciled listing to ensure compliance with Rules 3-68 (e) and 3-73 (2) (e).

#### 5. Examples of reportable exceptions

The following is **not** a complete listing of all possible reportable exceptions. You should also bring to the attention of the Law Society any other exceptions noted along with qualifications to procedures performed, scope limitations and any reasons why you are unable to comply with the minimum standards within Section C.

##### **Rules 3-58, 3-58.1, 3-59, 3-60 and 3-61:**

- Trust funds not being deposited “as soon as practicable” or being deposited directly into the general account of the law firm.
- Trust funds, including fee retainers, placed in the firm’s general bank account or an account that is not the firm’s trust account.
- Total cash of more than \$7,500 received in respect of one client matter, unless an exemption applies.
- Law firm funds greater than \$300 on deposit in the trust account.
- Trust bank statements and cancelled cheques not designated as “trust”.
- Funds deposited into the trust account where the lawyer was unable to provide a satisfactory explanation as to the legal services provided.

**Rules 3-64, 3-65 and 3-66:**

- Inappropriate withdrawal of trust funds for fees or duplicate charges for fees. Use of trust funds to pay personal or firm expenses.
- Withdrawal of trust funds before a bill was prepared and delivered to the client, unless the client had instructed otherwise in writing.
- Funds withdrawn from a separate trust account directly instead of first being transferred to pooled trust account.
- Post-dated trust cheques are issued.
- Withdrawal from trust accounts when trust accounting records are not current.
- Trust cheque issued to “cash” or “bearer” or did not contain a practicing lawyer’s signature.

**Rule 3-64.1:**

- Funds were electronically withdrawn from trust without:
  - using a banking platform that requires two individuals with different passwords;
  - completing the Law Society’s requisition form; and
  - retaining a copy of the confirmation from the financial institution.

**Rules 3-67, 3-68, 3-69, 3-70 and 3-71:**

- Books and records not being maintained in a legible or permanent form (e.g., in pencil rather than ink) or in chronological order.
- Failure to maintain all of the required trust and general books, records, and accounts. Failure to maintain cash receipt book of duplicate receipts.
- Failure to maintain a current listing of all valuables held in trust for each client.

**Rule 3-72:**

- Failure to record trust transactions within 7 days of the transaction, with the exception of Rule 3-72 (4) and general transactions within 30 days of the transaction.

**Rule 3-73:**

- Monthly bank and trust reconciliations not prepared, prepared late, or prepared improperly.
- Failure to compare reconciliation with client trust liability listings and to provide a written explanation for any differences.
- Failure to correct obvious errors promptly (e.g., overdrawn balances on trust ledger sheets, bank service charges, or stale-dated cheques).
- Failure to include listing of separate trust account balances to the monthly trust reconciliation. Failure to include valuables listing with monthly trust reconciliation.

**Rules 3-63 and 3-74:**

- Failure to immediately pay funds into a trust account to eliminate a shortage.
- Failure to immediately provide a written report of trust shortages greater than \$2,500 to the Law Society.
- Shortages include:
  - Trust monies deposited into the general account.
  - Using one client's trust funds on hand to cover another client's shortage.
  - Outstanding trust deposits listed on trust reconciliations.
  - Trust cheques issued before trust funds have been received.
  - Debit balances on the trust liability listings or trust ledgers.
  - Funds deposited into one trust account but withdrawn from another trust account.

**Rule 3-75:**

- Failure to maintain records at chief place of practice for at least three years from the final accounting transaction or disposition of valuables, unless written authorization has been received from the Law Society.

**Rule 3-77:**

- Failure to file annual Canada Deposit Insurance Corporation (CDIC) reports by May 30 for balances held in trust as at April 30 for each pooled trust account.

- Providing inaccurate balances in the CDIC reports for funds held in trust as at April 30<sup>th</sup>.
- Providing client's confidential information (e.g. names and addresses of the clients) in the annual CDIC reports.

**Rule 3-89 and 3-58.1:**

- Failure to take appropriate action for inactive trust funds.

**Rule 2-110:**

- Failure to pay the Trust Administration Fee (TAF) on each client matter unless funds deposited into trust were exclusively for payment of legal fees or a retainer.