

Practice Resource

Did you know that banks can place holds on trust cheques, certified cheques and bank drafts?

Financial institutions can and have placed holds on trust cheques, certified cheques and bank drafts. A hold could be for as little as one day or for seven or more days. A financial institution may put on a hold to verify that the funds are available from the account at the institution from which the financial instrument is drawn. If the financial institution determines that the financial instrument is counterfeit or altered, the institution and the lawyer may be protected from the fraud. However, a hold on a legitimate instrument can cause potential issues with closings and lawyers' undertakings.

Read the tips below to help reduce the risk of a hold on trust cheques, certified cheques and bank drafts interfering with your obligations or procedures.

1. Know your client. Comply with the client identification and verification rules (3-98 to 3-110). Ask questions to obtain information about the client and the source of money for the financial transaction. Review *BC Code* rules 3.2-7 and 3.2-8 regarding dishonesty and fraud. See the [Client ID & Verification Frequently Asked Questions](#) regarding a client's source of money and [fraud prevention](#) information, including the bad cheque scam online.
2. Review your account agreement with your financial institution and its hold policy.
3. Establish a relationship with your account manager.
4. Ask your financial institution what factors it takes into account when placing a hold on an instrument and find out what risks the institution is prepared to assume for any particular transaction. Financial institutions may take a number of factors into account when assessing whether to impose a hold including:
 - the size of the firm and credit risk of the lawyer or law firm making the deposit
 - the financial instrument's dollar value
 - whether the instrument is drawn on an account from the financial institution's branch in Canada
 - whether the instrument is drawn on an account at another Canadian financial institution in financial difficulty
 - whether the financial instrument is drawn on a foreign bank
 - advance notice provided by the lawyer to the financial institution about the transaction and timing
 - pre-established hold limits on a lawyer's trust account
 - how the item was deposited (in person with a teller or other method)

5. Consider whether a wire transfer is preferable for a large transaction. See Payments Canada's information about [how wire transfers work](#) and its [educational videos](#) about wires, cheques and understanding payments. Read Law Society Rule 3-64.1 about electronic transfers from trust.
6. See the Financial Consumer Agency of Canada website for information about [cheque holds](#) and access to funds for small and medium sized businesses, including consumer rights.
7. When drafting or accepting undertakings, consider how a bank hold on a paper financial instrument or even a wire transfer could affect your undertakings. Review *BC Code* rules 2.1-4(b), 5.1-6, 7.1-3(a.1), 7.2-11 to 7.2-13. Rule 7.2-11 provides detailed guidance in commentaries [1] to [6]. See section 84(6) of the *Legal Profession Act* regarding undertakings given by or on behalf of a law corporation.

For more information from the Law Society

If you have questions about the trust rules, please contact the Trust Assurance Department at trustaccounting@lsbc.org or 604.697.5810. If you have a practice advice inquiry, you are welcome to contact a practice advisor at practiceadvice@lsbc.org or 604.443.5797. You can also choose to [book an appointment](#).