

# MEMBER'S MANUAL

The Law Society  
of British Columbia



## AMENDMENT PAGES

2019: No. 3 September

### Highlights

#### Law Society Rules 2015:\*

- **General meeting reform:** New and amended rules give effect to the results of the member referendum on general meeting reform (Rules 1-8(5) to (9), 1-9(3), 1-11(5), 1-13(2), (4), (12.1), (13), (15), (15.1), (16) and (17), 1-13.1 and 1-13.2: pp. 22 to 26.2).
- **Trust accounts and cash transactions:** Lawyers may not move funds into or out of their trust accounts unless the funds are directly related to legal services (Rule 1 definition of “trust funds” and Rules 3-53, 3-58.1, 3-59, 3-70(1) and 3-98(1): pp. 17, 127, 131, 138 and 151); lawyers are prohibited from accepting more than \$7,500 in cash, which increases the previous amount by one cent for consistency with the updated Federation of Law Societies model rule (Rule 3-59: p. 131).

\**Historical notes are published only in the website version of the Rules.*

**Client identification and verification rules:** The Benchers also approved changes to the client identification and verification rules *to take effect on January 1, 2020* (Rules 3-98, 3-99, 3-100, 3-101, 3-102, 3-103, 3-104, 3-105, 3-106, 3-107, 3-109 and 3-110). The amended rules are published on the website following the current rules. They will be published in a *Member's Manual* amendment package before the end of the year.

The changes introduce more stringent requirements to verify a client's identity, provide more options for how to confirm a client's identity, and require lawyers in financial transactions to obtain additional information about a client's source of funds, as well as periodic monitoring and recording professional business relationships with clients.

**Filing:** File the amended pages in your *Member's Manual* as follows:

Manual section	Existing pages to be removed	Amendment pages to be inserted
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After filing, insert this sheet at the front of the *Manual* for reference.

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**Updates:** This amendment package updates the *Member's Manual* to **August 31, 2019**. The previous amendment package was 2019: No. 2 June.

To check that your copy of the Manual is up to date, consult the contents checklist on the next page. If you have further questions about updating your Manual, contact the Communications department: telephone 604.697.5838 or toll-free 1.800.903.5300 or email [communications@lsbc.org](mailto:communications@lsbc.org).

**Website:** The *Legal Profession Act*, Law Society Rules and *Code of Professional Conduct for British Columbia* can be accessed in the [Support & Resources for Lawyers](#) section of the Law Society website at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca) in both HTML (for online use) and PDF (for printout, including printout of *Member's Manual* replacement pages).

Refer to the Law Society website for the most current versions of the Act, Rules and Code.

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**“qualified CPA”** means a person in public accounting practice who is permitted to perform audit engagements by the Organization of Chartered Professional Accountants of British Columbia;

**“reciprocating governing body”**

(a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and

(b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

**“record”** includes metadata associated with an electronic record;

**“remedial program”** includes anything that may be recommended by the Practice Standards Committee under Rule 3-19 (1) (b) [*Action by Practice Standards Committee*];

**“respondent”** means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*], or

(b) under review by a review board under section 47 [*Review*];

**“review board”** means a review board established in accordance with Part 5 [*Hearings and Appeals*];

**“rule”** or **“subrule”** means a rule or subrule contained in these rules;

**“Second Vice-President-elect”** means the Benchler elected under Rule 1-19 [*Second Vice-President-elect*], from the time of the election until he or she takes office as Second Vice-President;

**“section”** means a section of the *Legal Profession Act*;

**“Society”** means the Law Society of British Columbia continued under section 2 (1) [*Incorporation*];

**“suspension”** means temporary disqualification from the practice of law;

**“Territorial Mobility Agreement”** means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

**“training course”** includes any assessments, examinations or remedial work taken during or after the training course, or an educational program required by the Credentials Committee;

**“trust funds”** means funds directly related to legal services provided by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, including funds

(a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

**“valuables”** means anything of value that can be negotiated or transferred, including but not limited to

- (a) securities,
- (b) bonds,
- (c) treasury bills, and
- (d) personal or real property;

**“vice-chair”** means a person appointed to preside at meetings of a committee in the absence of the chair;

**“visiting lawyer”** means a member of a governing body who is qualified to practise law in another Canadian jurisdiction.

- (b) if the next general meeting or a ballot takes place before December 31, the members must elect a Bencher who is a member of the Society to the vacant office for the remainder of the year, and a Second Vice-President-elect.
- (7) If the First Vice-President assumes the office of President under subrule (5) on or after July 1, subrule (2) does not operate on January 1 of the following year and the President and the Vice-Presidents continue in office for an additional full year.
- (8) The powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President
  - (a) if the President is absent or otherwise unable to act, or
  - (b) with the consent of the President.

### **Removal of the President or a Vice-President**

- 1-6**
- (1) On a resolution of a majority of the Benchers to remove the President or a Vice-President from office, the Executive Director must conduct a referendum of all members of the Society to determine if the President or Vice-President, as the case may be, should be removed from office.
  - (2) If a 2/3 majority of the members voting in a referendum under this rule vote to remove the President or a Vice-President from office, he or she ceases to hold that office and ceases to be a Bencher.
  - (3) Before conducting a referendum under subrule (1), the Executive Director must notify the President or Vice-President who is affected.
  - (4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must make available to each member of the Society in good standing
    - (a) a notice stating
      - (i) that the Benchers have resolved to remove from office the President or a Vice-President, as the case may be,
      - (ii) the reasons for the Benchers' resolution,
      - (iii) that a referendum from among the membership is being conducted to determine if the President or Vice-President, as the case may be, should be removed from office, and
      - (iv) the date on which the referendum votes will be counted,
    - (b) a statement by the President or Vice-President, as the case may be, stating why he or she should not be removed from office, if that person wishes to have such a statement provided to each member, and
    - (c) voting materials as required in Rule 1-27 [*Voting procedure*].
  - (5) The President or Vice-President in respect of whom the referendum is conducted may attend personally or by agent during proceedings under this rule.
  - (6) After the counting of the ballots is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

### **Bencher ceasing to be member**

- 1-7 A Bencher, other than an appointed Bencher, must be a member of the Society in good standing to take or hold office as a Bencher.

## **Meetings**

### **Annual general meeting**

- 1-8 (1) The Benchers must hold an annual general meeting of the members of the Society each year.
- (2) Subject to subrule (3) and Rule 1-9 [*Telephone connections*], the Executive Committee may determine the place and time of the annual general meeting.
- (3) Unless the Benchers direct otherwise, the President must preside at the annual general meeting from a location in the City of Vancouver.
- (4) At the annual general meeting, the Benchers must present a report of their proceedings since the last annual general meeting.
- (5) At least 60 days before an annual general meeting, the Executive Director must issue a notice of the date and time of the annual general meeting.
- (6) In order to be considered at the annual general meeting, a resolution must be
- (a) signed by at least 2 members of the Society in good standing, and
  - (b) received by the Executive Director at least 35 days before the annual general meeting.
- (6.1) On receipt of a resolution under subrule (6), the Executive Director must promptly issue a notice of the resolution, including the text of the resolution and the names of the 2 members who signed it.
- (6.2) Not later than 21 days before the annual general meeting, the 2 members who signed a resolution submitted under subrule (6) may, by notifying the Executive Director in writing,
- (a) withdraw the resolution, or
  - (b) make changes to the resolution.
- (7) Before advance voting is permitted under Rule 1-13.1 [*Voting in advance of general meeting*] and at least 16 days before an annual general meeting, the Executive Director must issue
- (a) a notice containing the following information:
    - (i) the locations at which the meeting is to be held,
    - (ii) each resolution received in accordance with subrule (6), with any changes submitted under subrule (6.2), unless the resolution has been withdrawn under that subrule, and

- (iii) notice of advance voting if it is to be permitted under Rule 1-13.1, and
  - (b) the audited financial statement of the Society for the previous calendar year.
- (8) The accidental failure to comply with any requirement under subrule (5), (6.1) or (7) does not invalidate anything done at the annual general meeting.
- (9) A notice or other document required to be issued under this rule must be made available to Benchers and members in good standing by electronic or other means.

### **Telephone and internet connections**

- 1-9** (1) The Benchers may conduct a general meeting by joining any number of locations by
- (a) telephone, or
  - (b) internet connection.
- (1.1) Persons participating in and entitled to vote at a general meeting who are connected by telephone or internet connection must be able to hear all others participating in person or by telephone.
- (1.2) Persons participating in and entitled to vote at a general meeting who are connected by telephone must be able to speak at the meeting if recognized by the President.
- (1.3) Persons participating in and entitled to vote at a general meeting who are connected by the internet must be able to vote in real time when called upon by the President to do so.
- (2) The Executive Director may appoint a Bencher or a member of the Society in good standing to act as local chair of a location where the President is not present.
- (3) The local chair must record the names of those in attendance and, unless the Executive Director directs otherwise, may dispense with registration and voting, non-voting and student cards under Rule 1-13 [*Procedure at general meeting*].
- (4) A person participating in a general meeting at any location connected under subrule (1) is present at the meeting for the purpose of Rule 1-13 [*Procedure at general meeting*] and the calculation of a quorum.
- (5) The Executive Committee must designate locations to be joined to the annual general meeting by telephone, including at least the following locations:
- (a) one in District No. 1, County of Vancouver, or District No. 4, County of Westminister;
  - (b) one in District No. 2, County of Victoria;
  - (c) one in District No. 3, County of Nanaimo;
  - (d) one in District No. 5, County of Kootenay;
  - (e) one in District No. 6, Okanagan;
  - (f) 2 in District No. 7, County of Cariboo;
  - (g) one in District No. 8, County of Prince Rupert;
  - (h) one in District No. 9, Kamloops.

- (6) As an exception to subrule (5), if, 7 days before an annual general meeting, fewer than 15 members of the Society have indicated to the Executive Director an intention to attend the meeting at any location announced under Rule 1-8 (7) [*Annual general meeting*], the Executive Committee may cancel that location.
- (6.1) The Executive Director
  - (a) may retain a contractor to assist in any part of a general meeting conducted by way of the internet,
  - (b) must ensure that votes cast electronically in a secret ballot remain secret, and
  - (c) must take reasonable security measures to ensure that only members entitled to vote can do so.
- (7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting.

## **Auditors**

- 1-10** (1) At each annual general meeting, the members of the Society must appoint an auditor.
- (2) The auditor appointed under subrule (1) must be a qualified CPA.
- (3) A Bencher, Life Bencher or an employee of the Society is not eligible to be appointed auditor under subrule (1).
- (4) A member of the Society may require the attendance of the auditor at the meeting at the expense of the Society by giving notice in writing to the Executive Director at least 10 days before a meeting at which the financial statements of the Society are to be considered or the auditor is to be appointed or removed, and, in that case, the auditor must attend the meeting.
- (5) The auditor of the Society is entitled to
  - (a) attend any general meeting of the Society and to receive every notice and other communication relating to the meeting that a member of the Society is entitled to receive, and
  - (b) be heard at any general meeting that the auditor attends on any part of the business of the meeting that concerns the auditor or the financial statements of the Society.
- (6) At any general meeting, the auditor, if present, must answer enquiries directed to the auditor concerning the financial statements of the Society and the opinion on them stated in his or her report.
- (7) The auditor is entitled at all times to have access to every record of the Society and is entitled to require from the Benchers, officers and employees of the Society information and explanations that the auditor considers necessary to enable the auditor to prepare his or her report.

### **Special general meeting**

- 1-11** (1) The Benchers may at any time convene a special general meeting of the Society.
- (2) The Benchers must convene a special general meeting of the Society on a written request
- (a) delivered to the Executive Director,
  - (b) stating the nature of the business that is proposed to be considered for the meeting, and
  - (c) signed by 5 per cent of the members of the Society in good standing at the time the request is received by the Executive Director.
- (3) The Benchers must convene a special general meeting within 60 days of the receipt of a request under subrule (2).
- (4) Subject to subrule (3), a special general meeting must be held at a time and place that the Benchers may determine.
- (5) At least 21 days before a special general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing
- (a) a notice of the meeting stating the business that will be considered at the meeting, and
  - (b) any resolution to be voted on under Rule 1-13.1 [*Voting in advance of general meeting*].
- (6) The accidental omission to give notice of a special general meeting to any Bencher or member of the Society, or the non-receipt of that notice, does not invalidate anything done at the meeting.
- (7) No business other than the business stated in the notice under subrule (5) may be considered at a special general meeting.

### **Quorum**

- 1-12** At a general meeting of the Society, 50 members of the Society in good standing constitute a quorum.

### **Procedure at general meeting**

- 1-13** (1) Benchers, members of the Society in good standing and articulated students are entitled to be present and to speak at a general meeting.
- (1.1) Despite subrule (1), a person participating in a general meeting by way of internet connection is not entitled to speak at the meeting.

- (2) The Executive Director must register all persons attending a general meeting as follows:
  - (a) members of the Society in good standing who have not previously voted on any resolution under Rule 1-13.1 [*Voting in advance of a general meeting*], who must be given a voting card;
  - (a.1) members of the Society in good standing who have previously voted on any resolution under Rule 1-13.1, who must be given a non-voting member card;
  - (b) articulated students, who must be given a student card;
  - (c) appointed Benchers and persons given permission to attend the meeting by the President, who may be given a card for identification only.
- (3) As an exception to subrule (2), the Executive Committee may authorize the Executive Director to dispense with registration or voting and student cards at a special general meeting.
- (4) At a general meeting, the President may allow a person who is not a Bencher, a member in good standing or a student to speak.
- (5) Subject to subrules (6) and (7), in the absence of the President, the First Vice-President or the Second Vice-President must preside at a general meeting and assume the duties of the President under Rules 1-8 to 1-13.
- (6) In the absence of the President and Vice-Presidents, one of the other Benchers present must preside at a general meeting and assume the duties of the President under Rules 1-8 to 1-13.
- (7) The members of the Society present at a general meeting must choose one of their number to preside at the meeting if
  - (a) no Bencher is present 30 minutes after the time appointed for holding the meeting, or
  - (b) all Benchers present are unwilling to preside.
- (8) At the beginning of the meeting, the President must declare whether or not a quorum is present.
- (9) If a quorum is not present 30 minutes after the time appointed for a general meeting, the meeting
  - (a) if convened at the written request of members, is terminated, or
  - (b) in any other case, may be adjourned to a specified place and a new date within one week, as determined by the President.
- (10) No business, other than the election of a presiding Bencher and the adjournment or termination of the meeting, can be begun unless and until a quorum is present.
- (11) If the President has declared that a quorum is present, a quorum is deemed to remain present until a member present at the meeting challenges the quorum.

- (12) The Executive Committee is authorized to set the agenda for a general meeting.
- (12.1) A resolution on which members have voted in advance of the general meeting must not be amended, postponed or referred at the general meeting.
- (13) The President must decide questions of procedure to be followed at a general meeting not provided for in the Act or these Rules.
- (14) When a decision of the President is appealed, the President must call a vote of all members present, without debate, on whether they are in favour of or opposed to sustaining the President's decision.
- (15), (15.1), (16) and (17) [moved to Rule 1-13.2]
- (18) A general meeting may be adjourned from time to time and from place to place, but no business can be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

### **Voting in advance of general meeting**

- 1-13.1** (1) The Benchers may authorize the Executive Director to permit members of the Society in good standing to vote by electronic means on general meeting resolutions in advance of the general meeting.
- (2) When advance voting is permitted under subrule (1), all members of the Society in good standing must have the opportunity to vote by electronic means on all general meeting resolutions.
  - (3) The Executive Director
    - (a) may retain a contractor to assist in any part of electronic voting on general meeting resolutions,
    - (b) must ensure that votes cast electronically in a secret ballot remain secret, and
    - (c) must take reasonable security measures to ensure that only members entitled to vote can do so.
  - (4) A ballot on a general meeting resolution may be produced electronically, and to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.
  - (5) The period of voting in advance of a general meeting must be at least 15 days ending at the close of business on the last business day before the general meeting.
  - (6) A person who has voted electronically in advance of the meeting is present at the meeting for the purpose of calculation of a quorum under Rule 1-12 [*Quorum*].

### **Voting at general meeting**

- 1-13.2** (1) A member of the Society in good standing who is present at a general meeting and has not previously voted on any resolution under Rule 1-13.1 [*Voting in advance of general meeting*] is entitled to one vote.
- (2) A member of the Society must not
- (a) cast a vote or attempt to cast a vote that he or she is not entitled to cast, or
  - (b) enable or assist a person
    - (i) to vote in the place of the member, or
    - (ii) to cast a vote that the person is not entitled to cast.
- (3) Voting at a general meeting must be by show of voting cards, or by show of hands if voting cards have not been issued, unless the President orders a secret ballot.
- (4) A member of the Society is not entitled to vote by proxy.

### **Bencher meetings**

- 1-14** (1) Bencher meetings are held in British Columbia, unless the Benchers direct otherwise.
- (2) The President or any 2 Benchers may call a special meeting of the Benchers.
- (3) At a meeting of the Benchers, 7 Benchers constitute a quorum, provided that a majority of the Benchers present are members of the Society.

### **Notice of Bencher meeting**

- 1-15** (1) The Executive Director must notify the Benchers of the date, time and place of the next Bencher meeting or of an adjourned Bencher meeting.
- (2) The Executive Director must notify the Benchers under subrule (1) at least 48 hours before the meeting, or within less time if that is reasonable in the circumstances.

- (4) Any lawyer who becomes an undischarged bankrupt must resign any directorships in corporations, including law corporations.

### **Consideration by Discipline Committee**

- 3-52** (1) After receiving the information and material required under Rule 3-51 (1) [*Insolvent lawyer*], the Executive Director may refer an insolvent lawyer to the Discipline Committee.
- (2) The Executive Director may refer any matter for decision under this Division to the Discipline Committee.
  - (3) When the Executive Director refers a matter to the Discipline Committee under this Division, the Committee may make or authorize any investigations it considers desirable.
  - (4) The Discipline Committee may suspend or impose conditions and limitations on the practice of a lawyer that it considers does not meet the standards of financial responsibility established under section 32 [*Financial responsibility*].
  - (5) The Discipline Committee must not suspend a lawyer or impose conditions and limitations on the practice of a lawyer under subrule (4) until it has notified the lawyer of the reasons for the proposed action and given the lawyer a reasonable opportunity to make representations about those reasons.
  - (6) The Discipline Committee may rescind the suspension or vary or remove conditions and limitations imposed under subrule (4).
  - (7) When the Discipline Committee imposes conditions or limitations on the practice of a lawyer under subrule (4), the Executive Director may disclose the fact that the conditions or limitations apply and the nature of the conditions or limitations.
  - (8) If the Executive Director discloses the existence of conditions or limitations under subrule (7) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the conditions or limitations cease to be in force.

## **Division 7 – Trust Accounts and Other Client Property**

### **Definitions**

**3-53** In this division,

**“cash”** means

- (a) coins referred to in section 7 of the *Currency Act* (Canada),
- (b) notes intended for circulation in Canada issued by the Bank of Canada under the *Bank of Canada Act*, and
- (c) coins or bank notes of countries other than Canada;

**“cash receipt book”** means the book of duplicate receipts referred to in Rule 3-70 (1) [*Records of cash transactions*];

**“client”** includes any beneficial owner of funds or valuables received by a lawyer in connection with the lawyer’s practice;

**“compliance audit”** means an examination of a lawyer’s books, records and accounts and the answering of questions by lawyers ordered under Rule 3-85 [*Compliance audit of books, records and accounts*];

**“disbursements”** means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client;

**“expenses”** means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client;

**“financial institution”** means

- (a) an authorized foreign bank within the meaning of section 2 [*Definitions*] of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* applies,
- (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (d) a financial services co-operative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, SQ 2000, c. 77, other than a caisse populaire,
- (e) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (f) a trust company or loan company regulated by a provincial or territorial Act,
- (g) a ministry, department or agent of Her Majesty in right of Canada or of a province or territory where the ministry, department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (h) a subsidiary of a financial institution whose financial statements are consolidated with those of the financial institution;

**“lawyer”** includes a law firm;

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

“public body” means

- (a) a ministry, department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*, or a similar body incorporated under the law of another province or territory, or
- (c) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

### **Personal responsibility**

- 3-54** (1) A lawyer must account in writing to a client for all funds and valuables received on behalf of the client.
- (2) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer’s firm.
- (3) A lawyer is personally responsible to ensure that the duties and responsibilities under this division are carried out, including when the lawyer
- (a) is authorized by the firm or lawyer through which the lawyer practises law to open, maintain, or deal with funds in a trust or general account, or
  - (b) delegates to another person any of the duties or responsibilities assigned to a lawyer under this division.

### **Fiduciary property**

- 3-55** (1) In addition to any other obligations required by law or equity, this rule applies to lawyers who are responsible for fiduciary property.
- (2) A lawyer must make all reasonable efforts to determine the extent of the fiduciary property for which the lawyer is responsible and must maintain a list of that fiduciary property.
- (3) A lawyer must produce on demand the following records for any period for which the lawyer is responsible for fiduciary property:
- (a) a current list of valuables, with a reasonable estimate of the value of each;
  - (b) accounts and other records respecting the fiduciary property;
  - (c) all invoices, bank statements, cancelled cheques or images, and other records necessary to create a full accounting of the receipt or disbursement of the fiduciary property and any capital or income associated with the fiduciary property.
- (4) The records required under subrule (3) form part of the books, records and accounts of a lawyer, and the lawyer must produce them and permit them to be copied as required under these rules.

- (5) Subrules (3) and (4) continue to apply for 10 years from the final accounting transaction or disposition of valuables.
- (6) A lawyer may deposit funds that are fiduciary property to a pooled or separate trust account, provided that the lawyer complies with the rules pertaining to trust funds with respect to the fiduciary property.

### **Designated savings institutions**

- 3-56** Subject to Rule 3-57 [*Removal of designation*], a savings institution is a designated savings institution within the meaning of section 33 (3) (b) [*Trust accounts*] if it has an office in British Columbia accepting demand deposits and is insured by
- (a) the Canada Deposit Insurance Corporation, or
  - (b) the Credit Union Deposit Insurance Corporation of British Columbia.

### **Removal of designation**

- 3-57** (1) The Executive Committee may declare, by resolution, that a savings institution is not or ceases to be a designated savings institution within the meaning of section 33 (3) (b) [*Trust accounts*].
- (2) A lawyer who holds trust funds in a savings institution that is not or ceases to be a designated savings institution must immediately transfer those funds into a designated savings institution.
- (3) Subrule (2) does not apply if the lawyer has written instructions from the client to the contrary.

### **Deposit of trust funds**

- 3-58** (1) Subject to subrule (2) and Rule 3-62 [*Cheque endorsed over*], a lawyer who receives trust funds must deposit the funds in a pooled trust account as soon as practicable.
- (2) Despite subrule (1), a lawyer who receives trust funds with instructions to place the funds otherwise than in a pooled trust account may place the funds in a separate trust account in accordance with section 62 (5) [*Interest on trust accounts*] and Rule 3-61 [*Separate trust account*].
- (3) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.
- (4) As soon as it is practicable, a lawyer who deposits into a trust account funds that belong partly to a client and partly to the lawyer or the lawyer's firm must withdraw the lawyer's or firm's funds from the trust account.

### **Trust account only for legal services**

- 3-58.1** (1) Except as permitted by the Act or these rules or otherwise required by law, 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.
- (2) A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate.

### **Cash transactions**

- 3-59** (1) This rule applies when a lawyer or law firm engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:
- (a) receiving or paying funds;
  - (b) purchasing or selling securities, real property or business assets or entities;
  - (c) transferring funds or securities by any means.
- (2) Despite subrule (1), this rule does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm
- (a) [rescinded]
  - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
  - (c) pursuant to the order of a court or other tribunal for the release to the lawyer or the lawyer's client of cash that has been seized by a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
  - (d) to pay a fine, penalty or bail, or
  - (e) from a financial institution or public body.
- (3) While engaged in an activity referred to in subrule (1), a lawyer or law firm must not receive or accept cash in an aggregate amount greater than \$7,500 in respect of any one client matter.
- (4) Despite subrule (3), a lawyer or law firm may receive or accept cash in an aggregate amount greater than \$7,500 in respect of a client matter for professional fees, disbursements or expenses in connection with the provision of legal services by the lawyer or law firm.
- (5) A lawyer or law firm that receives or accepts cash in an aggregate amount greater than \$7,500 under subrule (4) must make any refund out of such money in cash.

- (6) A lawyer or law firm that receives cash, unless permitted under this rule to accept it, must
  - (a) make no use of the cash,
  - (b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,
  - (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
  - (d) comply with all other rules pertaining to the receipt of trust funds.
- (7) For the purposes of this rule, a lawyer or law firm that receives or accepts cash in foreign currency is deemed to have received or accepted the cash converted into Canadian dollars based on
  - (a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Noon Rates in effect at the relevant time, or
  - (b) if no official conversion rate is published as set out in paragraph (a), the conversion rate of the Bank of Canada in effect on the most recent business day.

### **Pooled trust account**

- 3-60** (1) The following provisions apply to a pooled trust account:
- (a) the account must be kept in a designated savings institution;
  - (b) the account must be readily available for the lawyer to draw on;
  - (c) the lawyer must periodically receive
    - (i) cancelled cheques, and
    - (ii) bank statements for the account covering all transactions on the account;
  - (d) the savings institution must agree with the lawyer to pay interest to the Foundation in accordance with subrule (3);
  - (e) the account must be kept in the name of
    - (i) the lawyer, or
    - (ii) the firm of which the lawyer is a partner, employee, member or voting shareholder;
  - (f) the account must be designated as a "trust" account on the records of the savings institution and of the lawyer.
- (2) The cancelled cheques and bank statements referred to in subrule (1) (c) may be received or retained by the lawyer in an electronic form acceptable to the Executive Director.

- (3) A lawyer who opens or maintains a pooled trust account must
  - (a) instruct the savings institution in writing to remit the net interest earned on the account to the Foundation at least quarterly, and
  - (b) if the lawyer opens or maintains the account at a bank or trust company, notify the institution in writing that the account is a trust account containing the funds of more than one client.
- (4) Subject to subrule (5) and Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a pooled trust account any funds other than trust funds or funds that are fiduciary property.
- (5) A lawyer may maintain in a pooled trust account up to \$300 of the lawyer's own funds.

### **Separate trust account**

- 3-61** (1) A separate trust account must be
- (a) an interest-bearing trust account or a savings, deposit, investment or similar form of account in a savings institution in British Columbia, and
  - (b) designated as a "trust" account on the records of the savings institution and of the lawyer.
- (2) An account referred to in subrule (1) must be
- (a) in the name of
    - (i) the lawyer,
    - (ii) the firm of which the lawyer is a partner, employee, member or voting shareholder, or
    - (iii) the trust, or
  - (b) identified by a number that identifies the client on inspection of the lawyer's books and accounts.
- (3) Subject to Rule 3-74 [*Trust shortage*], a lawyer must not deposit to a separate trust account any funds other than trust funds or funds that are fiduciary property.

### **Cheque endorsed over**

- 3-62** If a lawyer receives a cheque payable to the lawyer in trust and, in the ordinary course of business, pays the cheque to a client, or to a third party on behalf of the client, in the form in which it was received, the lawyer must keep a written record of the transaction and retain a copy of the cheque.

### **Trust account balance**

- 3-63** A lawyer must at all times maintain sufficient funds on deposit in each pooled or separate trust account to meet the lawyer's obligations with respect to funds held in trust for clients.

### **Withdrawal from trust**

- 3-64** (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are
- (a) properly required for payment to or on behalf of a client or to satisfy a court order,
  - (b) the property of the lawyer,
  - (c) in the account as the result of a mistake,
  - (d) paid to the lawyer to pay a debt of that client to the lawyer,
  - (e) transferred between trust accounts,
  - (f) due to the Foundation under section 62 (2) (b) [*Interest on trust accounts*], or
  - (g) unclaimed trust funds remitted to the Society under Division 8 [*Unclaimed Trust Money*].

### Trust account records

**3-68** A lawyer must maintain at least the following trust account records:

- (a) a book of entry or data source showing all trust transactions, including the following:
  - (i) the date and amount of receipt or disbursements of all funds;
  - (ii) the source and form of the funds received;
  - (iii) the identity of the client on whose behalf trust funds are received or disbursed;
  - (iv) the cheque or voucher number for each payment out of trust;
  - (v) the name of each recipient of money out of trust;
- (b) a trust ledger, or other suitable system, showing separately for each client on whose behalf trust funds have been received, all trust funds received and disbursed, and the unexpended balance;
- (c) records
  - (i) showing each transfer of funds between clients' trust ledgers, including the name and number of both the source file and the destination file,
  - (ii) containing an explanation of the purpose for which each transfer is made, and
  - (iii) containing the lawyer's written approval of the transfer;
- (d) the monthly trust reconciliations required under Rule 3-73 [*Monthly trust reconciliation*], and any documents prepared in support of the reconciliations;
- (e) a current listing of all valuables held in trust for each client.

### General account records

**3-69** (1) A lawyer must maintain at least the following general account records:

- (a) a book of original entry or data source showing
    - (i) the amount, date of receipt and the source of all general funds received, and
    - (ii) the cheque or voucher number, the amount, date and the name of each recipient of each disbursement;
  - (b) an accounts receivable ledger or other suitable system to record, for each client, showing all transactions including
    - (i) transfers from a trust account,
    - (ii) other receipts from or on behalf of the client, and
    - (iii) the balance owed by the client.
- (2) As an exception to subrule (1) (b), a lawyer may enter the information required under that subrule on the trust ledger or other suitable system referred to in Rule 3-68 [*Trust account records*], provided that the entry is clearly identified and distinct from trust account information.

### Records of cash transactions

- 3-70** (1) A lawyer who receives any amount of cash for a client must maintain a cash receipt book of duplicate receipts and make a receipt in the cash receipt book for any amount of cash received.
- (2) Each receipt in the cash receipt book must
- (a) be signed by
    - (i) the lawyer who receives the cash or an individual authorized by that lawyer to sign the receipt on the lawyer's behalf, and
    - (ii) the person from whom the cash is received,
  - (b) identify each of the following:
    - (i) the date on which cash is received;
    - (ii) the person from whom cash is received;
    - (iii) the amount of cash received;
    - (iv) the client for whom cash is received;
    - (v) the number of the file in respect of which cash is received, and
  - (c) indicate all dates on which the receipt was created or modified.
- (3) A lawyer who withdraws funds in cash from a pooled or separate trust account must make a record of the transaction signed by the person to whom the cash was paid and identifying:
- (a) the date on which the cash was withdrawn,
  - (b) the amount of cash withdrawn,
  - (c) the name of the client in respect of whom the cash was withdrawn,
  - (d) the number of the file in respect of which the cash was withdrawn, and
  - (e) the name of the person to whom the cash was paid, and
  - (f) all dates on which the record was created or modified.
- (4) The cash receipt book must be kept current at all times.
- (5) A lawyer is not in breach of this rule if a receipt is not signed by the person from whom the cash is received if the lawyer makes reasonable efforts to obtain the signature of that person.

## Division 11 – Client Identification and Verification

### Definitions

**3-98** (1) 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 3-102 to 3-105, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction;

“**disbursements**” has the same meaning as in Rule 3-53 [*Definitions*];

“**expenses**” has the same meaning as in Rule 3-53;

“**financial institution**” has the same meaning as in Rule 3-53;

“**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;

“**interjurisdictional lawyer**” means a member of a governing body who is authorized to practise law in another Canadian jurisdiction;

“**money**” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;

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

“**professional fees**” has the same meaning as in Rule 3-53;

“**public authority**” means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) a municipality or regional district or a municipal body incorporated under the law of another province or a territory, or an agent of any of them,
- (c) a college, institute, university or school district,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) an organization established or continued under an Act of Canada or of a province or territory for a public purpose, or
- (f) an organization controlled by a public authority;

**“reporting issuer”** means an organization that is

- (a) a reporting issuer within the meaning of the securities law of any province or territory of Canada,
- (b) a corporation whose shares are traded on a stock exchange that is prescribed by the *Income Tax Act* (Canada) and operates in a country that is a member of the Financial Action Task Force on Money Laundering, or
- (c) controlled by a reporting issuer;

**“securities dealer”** means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services.

- (2) In this division, a person controls an organization if the person, directly or indirectly, has the power to elect a majority of the directors or equivalent body of the organization by virtue of
  - (a) ownership or direction over voting securities of the organization,
  - (b) being or controlling the general partner of a limited partnership, or
  - (c) being a trustee of or occupying a similar position in the organization.

### Application

- 3-99** (1) Subject to subrule (2), this division applies to a lawyer who is retained by a client to provide legal services.
- (2) Rules 3-100 to 3-108 do not apply when a lawyer provides legal services
  - (a) on behalf of his or her employer,
  - (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;
    - (ii) in the form of pro bono summary advice, or
  - (c) if another lawyer or an interjurisdictional lawyer who has complied with Rules 3-100 to 3-108 or the equivalent provisions of a governing body
    - (i) engages the lawyer to provide legal services to the client as an agent, or
    - (ii) refers a matter to the lawyer for the provision of legal services.
- (3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer’s firm, including members or employees of the firm conducting business in another Canadian jurisdiction.