

# Trust Report

The Law Society  
of British Columbia



## Self Report Filing Instructions

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These instructions are designed for the Trust Report – Self Report. If you are required to file an *Accountant’s Report*, please refer to the *Accountant’s Report* Filing Instructions.

### 1. Introduction

Rule 3-79 requires lawyers to deliver to the Law Society an annual Trust Report. Rule 3-54 (2) allows the firm (law practice) to fulfill the obligations of the lawyer regarding its annual trust filings. In the majority of instances, one Trust Report will be completed for the practice and this will satisfy the filing requirements of all the lawyers (associates and partners) of the practice. It may not be sufficient for a lawyer who contracts with more than one law practice. If a lawyer or practice administrator is uncertain as to whether or not all lawyers will be covered with one filing, contact the Law Society’s Trust Assurance Department for clarification.

The Discipline Committee has approved the Trust Report Form, pursuant to Rule 3-79 (5). 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. These form part of the published Law Society Rules.

### 2. The Trust Report: Self Reporting Form

The Trust Report is an online filing but may also be filed using the approved paper filing form. Schedule 2 (Individual Lawyer’s Annual Practice Declaration), forms part of the Trust Report and must be filed by each member of a practice in order for the Trust Report to be considered complete.

The Trust Report, Accountant’s Reporting Form is comprehensive and divided into the following sections:

Section A	Description of Practice	(completed by the law firm)
Section B	Financial Profile	(completed by the law firm)
Section C	Accountant’s Specified Procedures	(completed by an external qualified accountant)
Undertaking & Certification		(completed by the law firm)
Schedule 1	Savings Institution Account Listing	(completed by the law firm for paper reports only)
Schedule 2	Individual Lawyer’s Practice Declaration	(Separate Form, completed by each lawyer)

## Filing requirements

1. If, in the entire reporting period, the practice maintained **no** trust accounts, complete:
  - a. Section A and the Undertaking & Certification
  - b. Schedule 2 (Annual Practice Declaration)
2. If, at any time in the entire reporting period, the practice maintained trust accounts, complete:
  - a. All Sections and the Undertaking & Certification
  - b. Schedule 1 (Paper version)
  - c. Schedule 2 (Annual Practice Declaration)

## 3. Filing deadline

The completed Trust Report must be received at the Law Society within three months immediately following the last day of your reporting period, e.g., if your period end is December 31, 2015, your report must be received by March 31, 2016.

## 4. Late and other fees

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

- There will be a late fee of \$200.00 if a Trust Report is late but within 30 days of the due date. If a Trust Report remains un-filed, after 30 days, an additional assessment of \$400.00 per month or part of a month will be applied. This monthly assessment will continue to be charged until the completed Trust Report is delivered to the Law Society.
- If the Law Society does not receive the completed Trust Report within 60 days after the due date, the lawyer(s) in the practice will be suspended until the completed report is delivered to the Law Society, except at the discretion of the Executive Director in special circumstances.
- If the Law Society engages or assigns a qualified accountant to complete the Trust Report, the law practice may be required to pay the Law Society all or part of the costs associated with the Trust Report. This will be assessed in addition to the accumulated late filing fees.

Pursuant to Rule 3-80 (4), the Discipline Committee may, in its discretion, waive payment of all or part of the assessments identified above, provided that there are extraordinary 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 your Trust Report to be considered complete. Failure to submit the complete report within 3 months of the period end will result in late filing penalties and eventual suspension (Rules 3-80 and 3-81). A lawyer who does not deliver a Trust Report as required under Rule 3-79 or 3-82 (5) does not meet the standard of financial responsibility.

1. The online Schedule 2 Lawyer's Practice Declaration (Annual Practice Declaration) forms part of the online Trust Report. The Schedule 2 must be completed and submitted with your Trust Report by your filing deadline.
2. If the practice had trust accounts in the reporting period, all trust accounts must be included in your report. Trust accounts include any accounts where a lawyer acted as a custodian, or who acted in any of the following capacities where the appointment was derived from a solicitor-client relationship: an executor or administrator of a will, an administrator of an estate; a committee; a representative authorized under a Representation Agreement to make financial or legal decisions; an attorney under **any** power of attorney; or a trustee.
3. The following records must be current and available for accountant's specified procedures:
  - 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 must be prepared and available for accountant's specified procedures.
5. All client files with trust activity and account records must be available for random selection and review. (Review of files may be done with the lawyer's supervision).
6. The accounting practice completing Section C, Accountant's Specified Procedures, must be independent from and must not be in conflict of interest with the law practice.
7. An explanation of the exceptions and qualifications noted by the accountant must be provided with the completed trust report; this is a requirement under Rule 3-83 (1).

## **SECTION A - Description of practice**

Section A must be completed by **all** law practices.

### **Reporting period**

A “reporting period” is normally 12 months either from the commencement of the law practice, 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. The Trust Report must be delivered to the Executive Director within three months of the end of each reporting period, or a late Trust Report filing fee will be assessed.

If you wish to modify your regular reporting period (Rule 3-79 (4)), you should make a written request as soon as possible (upon receipt of your filing notice) and send it to the attention of the Trust Assurance Department.

### **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? Trust accounts may also be shared. 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 that further information and/or explanations be provided with regard to 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 lawyers of your British Columbia office need be included. Please include all contract/term employees who do not file their own trust report.

## **7. Trust accounts**

The definition of “trust funds” in Rule 1 includes funds that a lawyer receives in his or her capacity as a sole or joint personal representative of a person or as a trustee under a trust if the appointment was derived from a solicitor-client relationship.

Please disclose whether your practice conducted trust transactions through your trust bank accounts in the reporting period. In the event that you received a cheque payable to the lawyer in trust and, in the ordinary course of business, paid the cheque to a client or to a third party on behalf of the client, in the form in which it was received, this trust activity would require you to answer “yes” to this question. Refer to Rule 3-62.

Answer “yes” if your practice continued to hold trust funds from the previous reporting period in one or more trust bank accounts, even if there was no trust activity.

Answer “yes” if your practice received, disbursed or held client property/valuables during the reporting period. Refer to Section 3.5 in the Code of Professional Conduct for British Columbia (the BC Code).

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

In some cases, it is appropriate for one lawyer to use the trust account of another lawyer’s practice. This may be in order to avoid the cost of an annual trust audit or as a general matter of convenience due to the infrequency of trust transactions. Payments from trust between practices (e.g. real estate closings, payments of judgments or costs, fee billings) need not be reported.

## **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. If you are unsure if your particular system meets your obligations, contact a Practice Advisor.

## 11. Computer back-up system

It is vital to your practice that your computer back-up system for accounting data is backed up on a regular basis and properly maintained in order to protect the interest of your clients and to comply with Law Society requirements. A minimum standard of financial responsibility requires that the practice maintain the ability to produce and/or copy accounting records at all times. Please note the requirements of Part 3, Division 6, Rule 3-49 (1) regarding standards of financial responsibility.

## 12. Accounting records available on demand

The Law Society Rules 3-68, 3-69 and 3-75 identify the trust and general account records to be maintained by each practice. While it is not specifically required that all the accounting records be printed to “hard copy” every month, it is required that every practice be able to print copies on demand.

## 13. Off-site storage

Please refer to Rules 3-75, 3-76 and 10-4

In this rule, "records" means the records referred to in Rules 3-67 to 3-71. 3-75 (2) A lawyer must keep his or her records for as long as the records apply to money held as trust funds or to valuables held in trust for a client and for at least 10 years from the final accounting transaction or disposition of valuables. (3) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for at least 3 years from the final accounting transaction or disposition of valuables. 10-4 (1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure. 10-4 (2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that (a) he or she has lost custody or control of any of the lawyer's records for any reason, (b) anyone has improperly accessed or copied any of the lawyer's records, or (c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

## 14. Borrowing from clients

Rule 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 (the BC Code) sets forth general principles to guide a lawyer who may be considering entering into a business transaction with a client.

If you require further information regarding this question, please contact a member of our Trust Assurance Department at 604.697.5810.

**Note:** 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, your answer to this question should be “no”.

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

All funds received and disbursed on behalf of clients for regular periodic payments on mortgages or other investments are considered within the scope of the definition of trust funds. Where the practice or lawyer(s) in the practice receive or disburse such trust funds, you must follow the same rules as would apply to all trust funds of the practice.

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

This question applies to the General Account and any cheques that your practice has written on the General Account that were not processed by your bank because the practice did not have enough funds in the account to honour the cheque.

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

Government remittances for all PST, GST/HST, and payroll deductions, are required to be paid when due. It is recommended that you have a system in place to make sure that these requirements are met on a timely basis. If you have PST questions, contact the Consumer Taxation Branch (CTB) at 1.877.388.4440. If you have GST/HST or payroll remittance questions, contact the Canada Revenue Agency (CRA) at 1.800.959.5525.

**Note:** If the nature of your practice does not require you to make these remittances, answer “no” to this question and provide an explanation.

## **18. PST audit**

Please disclose if your practice was audited by the Consumer Taxation Branch 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 your practice has paid in full these amounts. Please note the requirements of Part 3, Division 6, Rule 3-49, regarding standards of financial responsibility.

## **19. CRA audit**

Please disclose if your practice 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 practice has paid in full such amounts.

Please note the requirements of Part 3, Division 6, **Rule 3-49**, regarding standards of financial responsibility.

## **20. Winding up caretaker**

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

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” when 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 ID and verification**

Law Society Rules 3-98 to 3-109 cover the Client Identification and Verification Rules. It is required that such a system be implemented and that the relevant information be kept in the client file itself or in a centralized database. If you are unsure whether your particular system meets your obligations, please contact a Practice Advisor.



## SECTION B – Financial profile

Section B must be completed if the practice held *or* handled (received or withdrew) any trust funds during the reporting period.

### 1. Banking information

Do not list GIC's or Term deposits that are held at the same bank as, and linked and processed through, your pooled trust account.

**Note:** a complete listing of accounts including all GIC and Term Deposit account numbers should be retained as supporting documentation to your monthly trust reconciliations and for future review by a Trust Assurance Auditor.

The Trust Assurance Department strongly recommends that your practice maintain a continuity schedule of all bank accounts operated in connection with your law practice together with copies of all relevant banking authorities as a single source document. The continuity schedule should include bank name and address, bank account number, type of trust account (pooled or separate), date bank account opened, date bank account closed, and the applicable client/matter identification.

**Note:** funds handled in a capacity with respect to appointments disclosed in Question 11 are to be treated in the same manner as all other trust funds of the practice. If a lawyer of your practice operates accounts with respect to appointments that you have not listed, a written explanation including full details for this exclusion is required.

### 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 your practice 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. This takes into

account the delay in notification by financial institutions to lawyers of such trust receipts. All withdrawals from separate trust accounts (in respect of which cancelled cheques and bank statements 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 of your trust accounts for the reporting period, including pooled trust account and trusts associated with a power of attorney, executor, administrator of a will, administrator of an estate, a committee, a representative capacity agreement or a trustee. Funds deposited for retainers and disbursements should also be included.

**Note:** Funds moved in and out of trust for the purpose of investments and separate interest-bearing trust accounts need not be included.

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

This question applies to the Trust Accounts and any cheques that your practice has written on a Trust Account that were not processed by your bank because the practice did not have enough funds in the account to honour the cheque or because the bank had a hold on the funds.

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

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

Review your trust bank reconciliations for the entire reporting period to identify trust account cheques that remained outstanding for periods in excess of 6 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 Rule 3-51.

Law Society Rules define an “insolvent lawyer” as a lawyer who

- a. is the respondent of a petition for a receiving order under section 43,
- b. has made an assignment of all his or her property for the general benefit of the lawyer’s creditors under section 49,
- c. has made a proposal under section 50 or 66.11,
- d. has filed a notice of intention to make a proposal under section 50.4, or

- e. has applied for a consolidation order under section 219 of the Bankruptcy and Insolvency Act, S.C. 1992, c. 27;

This information will ensure compliance by all 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 signatories of pooled trust accounts, separate interest bearing accounts, brokerage accounts, estate accounts and any other trust bank account operated by the practice.

## 10. Co-signatories

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

Please refer to Rule 3-64 (5). A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must (a) withdraw the funds with a cheque marked "Trust," (b) not make the cheque payable to "Cash" or "Bearer," and (c) ensure that the cheque is signed by a practising lawyer. Please note that at no time should a trust cheque be released without the signature of at least one practising lawyer. If a non-member is granted signing authority on a trust account it must be as a co-signatory only and the non-member's signature must be accompanied by a practising lawyer's signature.

## 11. Appointments

Include all lawyers of your practice who acted in any one of the referenced capacities and/or exercised access to trust funds in their capacity during the reporting period. This list includes a lawyer acting **solely or jointly** as an executor or administrator of a will, administrator of an estate, a committee, a representative authorized under a Representation Agreement to make financial or legal decisions, an attorney under any power of attorney, or a trustee, where the appointment was derived from a solicitor client relationship. Please ensure that there is a current list of all appointments kept at your practice.

## 12. Estate files

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

## 13. Books and records regarding appointments

Where the lawyer has a duty over handling trust funds in any one of these capacities, he/she is required to exercise the same care of such trust accounts as would apply to all trust funds of the

practice. You should maintain accurate, up to date accounts and organize and keep all source documents such as bank statements, duplicate deposit slips, cancelled cheques, receipt confirmations and vouchers to support the trust records. Trust Assurance Auditors will expect to see as a minimum, the same information in your records for these trust accounts as required for all trust records of the practice. Answer “N/A” if your answer to question 11 was “no”.

## **14. Cash received**

Please refer to Rule 3-59

While engaged in receiving or paying funds; purchasing or selling securities, real property, or business assets or entities; or transferring funds or securities by any means, on behalf of a client, a lawyer must not receive or accept an aggregate amount in cash of \$7,500 or more in respect of any one client matter or transaction. A lawyer may accept an amount of \$7,500 or more in cash for professional fees, disbursements, expenses or bail.

Cash is defined as:

- 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.

## **15. Cash receipt book**

Please refer to Rule 3-70. Any amount of cash (either Trust or General) received by the practice for a client that is not the lawyer’s employer must be recorded in the cash receipt book in accordance with this rule.

## **16. Cash refunds**

If a lawyer receives a trust or general deposit in the form of cash and subsequently refunds all or part of it, any refund of \$1,000 or more must be in the form of cash.

## **17. Internal controls**

The Law Society recommends that all members establish a system of internal controls to ensure the integrity of financial data in all areas of legal practice, especially in the areas concerning trust funds. A proper internal control system reduces the risk of undetected financial errors and irregularities.

Accordingly, it is strongly recommended that every practice establish procedures that restrict access to trust funds and ensure the reliability of accounting records. A practice should 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).

The Law Society's Rule 3-68 and Rule 3-69 identify the trust and general account records that must be maintained by each practice.

If a computerized accounting system is used by the practice, procedures should be in place to restore records should a power outage occur or should the records on site be destroyed. Back-up procedures should be regularly and appropriately maintained. While it is not specifically required that these records be printed to "hard copy" every month, it is required that every practice be able to print copies on demand.

While not required, it is recommended that an accountant prepare the annual financial statements and an accountant prepare for the law practice either a Review Engagement Report or an Audit Report. A sample internal controls checklist is available on the Law Society website.

## **18. Online banking**

Trust Accounts should be restricted to "view only" access. Online payments, transfers between bank accounts, and debit card "point of sale" transactions are not permitted.

## **19. Maintenance of records**

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

## **20. Location of accounting procedures**

The Law Society is aware that some practices 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.

## **21. 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. As a best practice, trust bank reconciliations should be reviewed, signed and dated by the member in charge of trust records. Please note that 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.

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

Indicate if you handled trust funds for another lawyer or law practice during the reporting period. In some cases, it is appropriate for one lawyer to use the trust account of another lawyer's practice. This may be a matter of convenience due to the infrequency of trust transactions.

Examples of this situation are when another lawyer has asked you to receive and disburse funds while he/she is on vacation, medical leave or if the lawyer is restricted for handling trust funds.

## **23. Practice billing information**

Indicate if the practice 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 practice as a whole.

## **24. 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 and certain disbursements. The TAF must be remitted to the Law Society quarterly. If you answer, “yes” to this question, you are indicating that you have made your quarterly TAF remittances when due. A TAF Information Booklet is available on the Law Society website.

## **25. CDIC insurance**

Please refer to Rule 3-77

All institutions named in Part B, Question 1 that are covered by Canada Deposit Insurance Corporation protection should be provided with a list of trust beneficiaries for each pooled trust account on an annual basis. This list is required by Canada Deposit Insurance Corporation (CDIC) on an annual basis, a trust listing as at April 30 is submitted to your trust bank(s) by May 30. If you need to obtain a sample of the CDIC reporting letter, contact the Trust Assurance Department or download the sample from the Law Society website. Please note that Credit Unions do not require the filing of this report.

## 26. Areas of practice

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

For areas of law not listed, please break legal issues transacted during the reporting period into components that conform to the existing categories. For example, the breakdown for a practice with lawyer(s):

- practising aboriginal law might include administrative, civil litigation, mediation/arbitration and commercial.
- practising environmental law might include administrative and civil litigation.
- conducting legal research might include family, tax, wills, trusts and estates and motor vehicle.

## SECTION C – Accounting procedures

**Section C must be completed if the practice held *or* handled (received or withdrew) *any* trust funds during the reporting period.**

Before completing this Section, please download and read the excerpts from the Legal Profession Act, the Code of Professional Conduct for British Columbia (the BC Code) and the Law Society Rules including:

- Part 3, Division 6, Rule 3-51
- Part 3, Divisions 7 and 8
- Section 3.5 of the BC Code
- Sections, 11, 32, 33, 62 and 88 of the Legal Profession Act

### 1. Recording trust and general transactions

Refer to Law Society Rules 3-54 to 3-77.

You must keep financial records available for the time periods set out in Rule 3-75. You must have the following trust account records:

- trust cashbook for receipts and disbursements;
- trust ledger;
- trust transfer journal;
- monthly trust reconciliations;
- valuable property record;
- cash receipt book of duplicate receipts; and
- all supporting documentation

You must have the following general account records:

- general cashbook for receipts and disbursements;
- accounts receivable sub-ledger
- fee billings book or chronological file of bills to clients;
- cash receipt book of duplicate receipts; and
- all supporting documentation



If you answer “yes” to this question, you are indicating that you have recorded on a current basis all trust and general funds received and disbursed in the above-noted accounting records, as applicable.

## **2. Maintenance of books and records**

Please refer to Law Society Rules 3-67 (3) and 3-67 (4).

Your accounting records may be entered manually or posted to an electronic (computerized) system.

If your records are entered by hand, they must be entered and posted in ink in an easily traceable form e.g. chronological entries.

If your records are posted to a computerized system, you must be able to produce a paper copy of any record promptly upon request by a Trust Assurance Auditor. As with a manual system, the computerized system must be recorded in an easily traceable form.

## **3. Storage of books and records**

Please refer to Law Society Rules 3-75 and 3-76.

The current and prior two years accounting records must be kept at your chief place of practice in British Columbia for as long as records apply to money held in trust and, in any case, for at least 3 years.

## **4. Retention of books and records**

Please refer to Law Society Rule 3-75 (2).

You must keep your records for as long as the records apply to money held as trust funds or to valuables held in trust for a client and for at least 10 years from the final accounting transaction or disposition of valuables.

## **5. Loss of custody or control of books and records**

Please refer to Law Society Rule 10-4.

You must immediately notify the Executive Director in writing of all the relevant circumstances if the you have reason to believe that (a) you have lost custody or control of any of the books or records for your practice for any reason, (b) anyone has improperly accessed or copied any of the your books or records, or (c) a third party has failed to destroy records completely and permanently despite instructions from you to do so.

Examples may include loss of records due to fire, theft or loss of computer hardware or computerized data back-up files.

## 6. Trust records

Please refer to Law Society Rules 3-68, 3-69, 3-73, Section 3.5 of the BC Code and specifically:

Trust Book of Original Entry:	Rule 3-68 (a) (i) to (v)
Trust ledger:	Rule 3-68 (b)
Trust transfer journal:	Rule 3-68 (c)
Monthly trust reconciliation:	Rule 3-68 (d), 3-73
Valuable Property Record:	Rule 3-68 (e); Section 3.5 of the BC Code
Cash Receipt Book of Duplicate Receipts	Rule 3-70 (1) to (4)

If you answer, “yes” to any part of this question, you are indicating that your trust records have been recorded in such a manner to provide all the information set out in the provisions of the above-noted rules.

## 7. General records

Please refer to Law Society Rules 3-69 and 3-62, and specifically:

General Book of Original Entry:	Rule 3-69 (1) (a) (i) to (ii)
Accounts Receivable Ledger:	Rule 3-69 (1) (b) (i) to (iii), 3-69 (2)
Cash Receipt Book of Duplicate Receipts:	Rule 3-70 (1) to (4)

If you answer, “yes” to any part of this question, you are indicating that your general records have been recorded in such a manner to provide all the information set out in the provisions of the above-noted rules.

## 8. Supporting documents

Please refer to Law Society **Rule 3-67 (6)**.

You are required to retain all supporting documents for both the trust and general accounts.

If you answer, “yes” to this question, you are indicating that you have retained as a minimum, all of the documents listed in the question to support the trust and general account transactions during the reporting period.

## 9. Third party transactions

Please refer to Law Society Rule 3-62.

Does the practice maintain a written record and a copy of any cheque payable to the lawyer or law practice in trust that was not deposited to trust bank account but paid to a client or a third party in the form in which it was received? This means that an authorized signatory to the trust account has endorsed the back of the incoming cheque (normally deposited to trust account) and endorsed it over to another payee such as the client or another third party.

If you answer, “yes” to this question, you are indicating that this type of trust transaction has occurred during the reporting period.

## **10. Recording trust transactions**

Please refer to Law Society Rule 3-72 (1) (a).

All trust deposits received and trust cheques issued must be recorded in your accounting records not more than 7 days after the transaction. Please note, receipts of interest on a separate trust account are referred to later in this section.

## **11. Recording general transactions**

Please refer to Law Society Rule 3-72 (1) (b).

All general deposits received and general cheques issued must be recorded in your accounting records not more than 30 days after the general transaction.

## **12. Lawyer’s funds in trust**

Please refer to Law Society Rule 3-60 (5) and 3-74 (1) & (3).

A lawyer may maintain in a pooled trust account up to \$300 of his/her own funds to offset any inadvertent bank service charges, cheque printing charges etc. Rule 3-74 (1) requires a lawyer to eliminate all trust shortages immediately. It is not acceptable to wait until third parties issue replacement cheques or until banks reverse charges.

## **13. Funds deposited as soon as practicable**

Please refer to Rules 3-58, 3-61, and Section 62 (5) of Legal Professions Act.

Trust funds are required to be deposited to a pooled trust account in a designated savings institution as soon as practicable, or as directed with written client instructions.

## **14. Monies in trust**

Please refer to Law Society Rule 3-60 and 3-61; Section 3.4 of the BC Code and Rule 1 - Definition of Trust Funds.

A lawyer may maintain in a pooled trust account up to \$300 of his/her own funds to offset any inadvertent bank service charges, cheque printing charges etc.

These rules prohibit lawyers from depositing to a trust account any funds other than trust Funds.

Section 3.4 of the BC Code sets forth general principles to guide a lawyer who may be considering entering into a business transaction with a client. If you require further information regarding this question, please contact a member of our Trust Assurance Department at 604-697-5810 or [trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org).

If you answer, “yes” to this question, provide details of any such funds in your trust account(s).

If you answer “no” to this question, you are indicating that all monies in any trust account are included within the meaning of trust funds as described in Definition 1 of the rules.

## **15. Client authorization**

Please refer to Law Society Rules 3-56 and 3-58.

Client authorizations are required for any trust deposits that do not comply with the provisions of these rules. It is the responsibility of the practice to account to the client for the handling of all trust funds received. For example, trust deposits received in a foreign currency (that are not CDIC insured) would require the practice to obtain written client authorizations.

Client authorizations form part of your permanent accounting records and you may be required to produce these documents at a later date.

## **16. Method of withdrawing trust funds**

Please refer to Law Society Rule 3-64.

All withdrawals of trust funds must be made by way of trust cheque signed by a practising lawyer except in the following circumstances:

- Property transfer tax Interest paid to the Law Foundation
- Cash as required under Rule 3-59 (5) & (6)

If you answer, “yes” to this question, you are indicating that all trust withdrawals during the reporting period were done by way of trust cheque signed by a lawyer except for the above-noted exceptions.

## **17. Cheques payable to cash or bearer**

Please refer to Law Society Rule 3-64 (5) (b) and 3-59 (5) & (6).

A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must not make the trust cheque payable to “cash” or “bearer”.

If you answer, “yes” to this question, you are indicating that you have issued a trust cheque payable to “cash” or “bearer” during the reporting period, which is not permitted under Rule 3-64 (5) (b).

If you answer “no” to this question, you are indicating that you have not issued any trust cheque payable to “cash” or “bearer”.

## **18. Current records and sufficient funds for payments**

Please refer to Law Society Rules 3-63 and 3-64 (3).

A lawyer may not make any payment from trust funds unless trust accounting records are current and there are sufficient funds held to the credit of the client on whose behalf the trust funds are being paid.

If you answer “yes” to this question, you are indicating that at all times during the reporting period your trust records were maintained on a current basis and that all payments from trust occurred only when there were sufficient funds held to the credit of the client on whose behalf the trust funds were paid.

## **19. Electronic funds transfers**

Electronic funds transfers is a system of transferring funds from one bank account to another by electronic means rather than the conventional paper based method of issuing a trust cheque for deposit by the payee. All withdrawals from trust must be by way of trust cheque unless permitted by Rule 3-64 (7) and (8).

## **20. Bills prepared before withdrawal of trust funds**

Please refer to Law Society Rule 3-64 and 3-65.

A lawyer who withdraws trust funds in payment for lawyer’s fees must first prepare a bill for those fees and immediately deliver the bill to the client. Rule 3-65 (3) sets out the meaning of “delivered”.

Before any payment of fees from trust to the lawyer’s general account is made, the work must have been done and the bill must be prepared and delivered to the client. The payment must be done by way of trust cheque payable to the general account of the practice.

## **21. Fees in dispute**

Please refer to Rule 3-65.

A lawyer may not take any fees from trust funds when he/she knows that the client disputes the right of the lawyer to receive payment from trust funds unless proper procedures have been followed as set out in Rule 3-65 (5) & (6).

## **22. Review of accounts receivable**

Please refer to Rule 1 – Definition of Trust funds and Rule 3-58 (4).

When a lawyer receives monies belonging partly to a client and partly to a lawyer, these funds must first be deposited to a pooled trust account, not to the lawyer's general account. As part of your internal control procedures, it is recommended that you review the balances in your accounts receivable sub-ledger regularly to identify overpayments and duplicate payments.

## **23. Withdrawing funds for payment of fees**

Please refer to Law Society Rule 3-64 (6).

A lawyer who authorizes the withdrawal of trust funds for the payment of fees must withdraw the funds with a cheque payable to the lawyer's general account.

You must consider if any such trust cheques have been deposited to a lawyer's personal account in which case you must answer "no" to this question.

## **24. Trust and general account 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. As a best practice, trust bank reconciliations should be reviewed, signed and dated by the member in charge of trust records.

If you answer "yes" to part a of this question you are indicating that your trust reconciliation and all supporting documentation as required under Rule 3-73 (2) has been prepared within 30 days of month end and is stored in paper form or in an electronic format readily printable upon demand.

If you answer, "yes" to part b of this question, you are indicating that you reconcile your general account monthly. Best practices encourage lawyers to reconcile the general account regularly to provide early detection of errors that may have occurred between the two types of bank accounts of the practice.

## **25. Monthly trust reconciliation (comparison)**

Please refer to Rule 3-73 that sets out the requirements for monthly trust reconciliations.

A proper monthly trust reconciliation compares the following:

- a. total of all unexpended balances of trust funds held for each client commonly referred to as client trust liability listing;
- b. total of all reconciled balances held in all pooled and separate trust bank accounts;
- c. balance per the trust cashbook/general ledger control account
- d. reasons for any differences between the totals (e.g., Trust assets do not equal Trust liabilities)

## **26. Supporting documentation for reconciliations**

Refer to Law Society Rules 3-73 (2) and 3-67 (6).

Please note that you must retain all supporting documentation in accordance with the rules and for future review by the Law Society.

## **27. Components of trust reconciliation**

Please refer to Law Society Rule 3-73.

The trust reconciliation consists of three components: the trust bank reconciliations; a listing of individual client trust ledger balances and the total; the ending balance held in trust as derived from the book of original entry (general ledger or trust bank journal). The three components must be reconciled to each other and shown to be in agreement on the monthly trust reconciliation. This comparison shows that the total trust liabilities to clients are matched by the total of trust funds on deposit.

## **28. Other client valuables**

Please refer to Law Society Rule 3-68 (e) and 3-73 (2) (e) and Section 3.5 of the BC Code.

You may be requested by your client to hold in safekeeping valuable property other than trust monies. Examples of these items may be of a personal nature such as jewellery, paintings, or may have fixed monetary value such as original bonds or stock certificates.

A receipt should be given to the client giving sufficient details to identify the property concerned. The property should be immediately secured. Valuable paper and original documents should not be stored in the client file.

Rule 3-68 (e) and Rule 3-73 (2) (e) require that a listing of client valuables received and delivered and the undelivered portion of valuables held for each client be maintained and form part your month end trust reconciliation (see sample below). For estate accounts the listing may simply be the Statement of Assets, but must still form part of your month end trust reconciliation and retained as part of your records and for future review by a Trust Assurance Auditor.

## **29. Reviewing trust reconciliations**

Please refer to Law Society Rule 3-54 (3).

A lawyer is personally responsible to ensure that all the duties under Part 3 – Division 7 of the rules are carried out.

If you answer, “yes” to this question, you are indicating that you have delegated the responsibility to review, sign and date, on a current basis, all monthly trust reconciliations.

## **30. Individual client trust ledgers**

Please refer to Law Society Rules 3-63 and 3-74 (1).

Please review the listings of individual client ledgers that form part of your monthly trust reconciliations to determine if there were any overdrawn client trust ledger balances (debit balances) that occurred during the reporting period.

Of the overdrawn client trust balances identified, determine if any such balances remained uncorrected for periods greater than one month and provide a detailed listing of such shortages.

## **31. Outstanding trust deposits**

Please refer to Law Society Rule 3-58, which requires that trust funds be deposited as soon as practicable.

Please review your monthly trust reconciliations for the entire reporting period. It is expected that any outstanding trust deposits listed as reconciling items be cleared by making the necessary bank deposit within 3 banking days from the date of receipt of trust funds. These trust bank deposits are required to be supported by a validated deposit slip providing confirmation that the trust deposit has been made.

## **32. Reporting trust shortages**

Please refer to Law Society Rule 3-74 (2) (a).

Rule 3-74 (2) (a) requires all trust shortages over \$2,500 to be reported immediately in writing to the Law Society. Examples of shortages include:



- Funds are on deposit in one trust bank account but trust cheques are issued from another trust bank
- Bank errors including delays or incorrect postings of trust deposits
- Trust cheques that go NSF after the funds have already been disbursed to outside parties or to the general account
- Trust deposits to other than trust accounts (e.g., general account due to bank error in posting or incorrect account number on deposit slip).

### **33. Delivering trust funds**

Please refer to Law Society Rule 3-74 (2) (b).

Rule 3-74 (2) (b) requires that a lawyer must make a written report to the Executive Director including all the relevant facts and circumstances if the lawyer is or will be unable to deliver up, when due, any trust funds held by the lawyer.

### **34. Review of all monthly trust account bank statements**

Please refer to Law Society Rule 3-54 and 3-74 (2) (a).

A lawyer is personally responsible to ensure that all the duties and responsibilities of Part 3, Division 7 of the rules are carried out. Best practices suggest that all monthly trust bank statements are reviewed to identify overdrawn bank balances, unauthorized debit memos or other peculiar transactions that warrant your attention. Overdrawn bank balances may require that you submit a written report to the Law Society as required by Rule 3-74 (2) (a).

If you answer, “yes” to this question, you are indicating that you or a delegated person review and identify on a monthly basis all trust bank statements for any transaction not supported by either an authorized trust cheque or a validated deposit slip.

### **35. Inactive client trust ledger accounts**

Inactive client trust ledger accounts ought to be reviewed on a regular basis to ensure that proper instructions can be given to disburse and close the client trust liability account by either paying the remaining funds back to the client, by billing and transferring trust funds to the general account, or by paying the trust funds to the Law Society as permitted by Rule 3-89.

If you answer, “yes” to this question, you are indicating that your practice reviews all monthly trust liability listings on a regular basis to identify any client trust obligations that remained unchanged for periods greater than one year.

### **36. Unclaimed trust funds**

Refer to Rule 3-89.

The Unclaimed Trust Funds form can be downloaded from the Law Society's website.

### **37. Private mortgages**

A private mortgage involves the advance of funds by an individual, a corporate client or a group of clients, rather than funds advanced by a financial institution.

The following questions may help you determine if your practice has been involved in a transaction that would be considered a private mortgage:

- Did your practice act for private lenders?
- Did your practice receive monies from private lenders?
- Did your practice act for mortgages arranged through mortgage brokers or other third parties?
- Did your practice act for lenders on mortgages where the lender is not a financial institution?

If you require further information regarding this question, please contact the Trust Assurance Department.

If you answer "yes" to this question, you may be required by the Trust Assurance Department to provide full particulars including name of the lender and borrower, the amount of the private mortgage, the security provided and the particulars of independent legal advice.

# Legal Profession Act, Law Society Rules and Code of Professional Conduct for British Columbia (the BC Code)

## Legal Profession Act S.B.C. 1998, c. 9

### Rules

- 11 (1) The benchers may make rules for the governing of the society, lawyers, articulated students and applicants, and for the carrying out of this *Act*.
- (2) Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this *Act*.
- 33 (1) The benchers may require a lawyer to do any of the following:
- (a) provide information or an annual report concerning the lawyer's books and accounts;
  - (b) have all or part of the lawyer's books and accounts audited or reviewed annually;
  - (c) provide the executive director with a trust report on the lawyer's books and accounts.
- (2) The benchers may
- (a) exempt all or part of classes of lawyers from the requirements of subsection (1), and
  - (b) determine the qualifications required of a person performing an audit or review referred to in subsection (1).
- (3) The benchers may make rules to do any of the following:
- (a) establish standards of accounting for and management of funds held in trust by lawyers;
  - (b) designate savings institutions and classes of savings institutions in which lawyers may deposit money that they hold in trust;
  - (c) provide for precautions to be taken by lawyers for the care of funds or property held in trust by lawyers.

- (4) The rules referred to in subsection (3) apply despite section 19 of the Trustee Act.

### **Interest on trust accounts**

- 62 (1) A lawyer must deposit money received or held in trust in an interest bearing trust account at a savings institution designated under section 33 (3) (b).
- (2) Subject to subsection (5), a lawyer who is credited by a savings institution with interest on money received or held in trust,
- (a) holds the interest in trust for the foundation, and
- (b) must remit the interest to the foundation in accordance with the rules.
- (3) The benchers may make rules
- (a) permitting a lawyer to hold money in trust for more than one beneficiary in the same trust account, and
- (b) respecting payment to the foundation of interest on trust accounts.
- (4) A relationship between a lawyer and client or a trust relationship between a lawyer, as trustee, and the beneficiary of the trust does not make the lawyer liable to account to the client or beneficiary for interest received by the lawyer on money received or held in an account established under subsection (1).
- (5) On instruction from his or her client, a lawyer may place money held on behalf of the client in a separate trust account, in which case
- (a) this section and the rules made under it do not apply, and
- (b) interest paid on money in the account is the property of the client.

### **Non-disclosure of privileged and confidential information**

- 88 (1) A lawyer who, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential, or subject to a solicitor client privilege, is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records.
- (2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained.

- (3) A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or the rules.
- (4) A person who, during the course of an appeal under section 48 or an application under the Judicial Review Procedure Act respecting a matter under this Act, acquires information or records that are confidential or are subject to solicitor client privilege must not
  - (a) use the information other than for the purpose for which it was obtained, or
  - (b) disclose the information to any person.
- (5) The Court of Appeal, on an appeal under section 48, and the Supreme Court, on an application under the Judicial Review Procedure Act respecting a matter under this Act, may exclude members of the public from the hearing of the appeal or application if the court considers the exclusion is necessary to prevent the disclosure of information, files or records that are confidential or subject to solicitor client privilege.
- (6) In giving reasons for judgment on an appeal or application referred to in subsection (5), the Court of Appeal or the Supreme Court must take all reasonable precautions to avoid including in those reasons any information before the court on the appeal or application that is confidential or subject to solicitor client privilege.
- (7) Despite section 14 of the Freedom of Information and Protection of Privacy Act, the benchers may make rules for the purpose of ensuring the non-disclosure of any confidential information or information that, but for this Act, would be subject to solicitor client privilege, and the rules may be made applicable to any person who, in the course of any proceeding under this Act, would acquire the confidential or privileged information.
- (8) Section 47 (4) of the Freedom of Information and Protection of Privacy Act does not apply to information that, but for this Act and the production of the information to the commissioner under that Act, would be subject to solicitor client privilege.

## Division 7 Rules – 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);

"**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;

"**public body**" means

- (a) a ministry or department of the government of Canada or of a province or territory, or
- (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;

"**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.

**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 and 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.

**Designated savings institutions**

3-56 Subject to Rule 3-57, a savings institution is a designated savings institution within the meaning of section 33 (3) (b) of the Act 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) of the Act.
- (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 (3) and Rule 3-62, 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) of the Act and Rule 3-61.
  - (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.

**Cash transactions**

- 3-59 (1) This rule applies to a lawyer when engaged 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) This rule does not apply to a lawyer when
- (a) engaged in activities referred to in subrule (1) on behalf of his or her employer, or
  - (b) receiving or accepting cash
    - (i) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
    - (ii) pursuant to the order of a court or other tribunal,
    - (iii) to pay a fine or penalty, or
    - (iv) from a savings institution or public body.
- (3) While engaged in an activity referred to in subrule (1), a lawyer must not accept an aggregate amount in cash of \$7,500 or more in respect of any one client matter or transaction.
- (4) Despite subrule (3), a lawyer may accept an aggregate amount in cash of \$7,500 or more in respect of a client matter or transaction for professional fees, disbursements, expenses or bail.
- (5) A lawyer who accepts an aggregate amount in cash of \$7,500 or more under subrule (4), must make any refund greater than \$1,000 out of such money in cash.
- (6) A lawyer who 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, foreign currency is to be 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 Memorandum of Exchange 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 that the client would use for that currency in the normal course of business at the relevant time.

### **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 (4) and Rule 3-74, a lawyer must not deposit to a pooled trust account any funds other than trust funds.
- (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, a lawyer must not deposit to a separate trust account any funds other than trust funds.

### **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) of the Act, or
  - (g) unclaimed trust funds remitted to the Society under Division 8.
- (2) The Executive Director may authorize a lawyer to withdraw trust funds for a purpose not specified in subrule (1).
- (3) No payment from trust funds may be made unless
- (a) trust accounting records are current, and
  - (b) there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.
- (4) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except
- (a) by cheque as permitted by subrule (5) or (6),
  - (b) by electronic transfer as permitted by subrule (7) or (8),
  - (c) by instruction to a savings institution as permitted by subrule (9), or
  - (d) in cash if required under Rule 3-59 (5) or (6).

- (5) A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must
  - (a) withdraw the funds with a cheque marked "Trust,"
  - (b) not make the cheque payable to "Cash" or "Bearer," and
  - (c) ensure that the cheque is signed by a practising lawyer.
- (6) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of fees must withdraw the funds with a cheque payable to the lawyer's general account.
- (7) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:
  - (a) the transfer system is one that will produce, not later than the next banking day, a confirmation form from the financial institution confirming the details of the transfer, which should include the following:
    - (i) the date of the transfer;
    - (ii) source trust account information, including account name, financial institution and account number;
    - (iii) destination account information, including account name, financial institution, financial institution address and account number;
    - (iv) the name of the person authorizing the transfer;
    - (v) amount of the transfer;
  - (b) the lawyer must
    - (i) complete and personally sign a requisition for the transfer in a form approved by the Discipline Committee,
    - (ii) submit the original requisition to the appropriate financial institution,
    - (iii) retain a copy of the requisition in the lawyer's records,
    - (iv) obtain the confirmation referred to in paragraph (a) from the financial institution,
    - (v) retain a hard copy of the confirmation in the lawyer's records, and

- (vi) immediately on receipt of the confirmation, verify that the money was drawn from the trust account as specified in the requisition.
- (8) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer using the Electronic Filing System of the Land Title Branch for the purpose of the payment of Property Transfer Tax on behalf of a client, provided that the lawyer
- (a) retains in the lawyer's records a copy of
    - (i) all Electronic Payment Authorization forms submitted to the Electronic Filing System,
    - (ii) the Property Transfer Tax return, and
    - (iii) the transaction receipt provided by the Electronic Filing System,
  - (b) digitally signs the Property Transfer Tax return in accordance with the requirements of the Electronic Filing System, and
  - (c) verifies that the money was drawn from the trust account as specified in the Property Transfer Tax return.
- (9) A lawyer may instruct a savings institution to pay to the Foundation under Rule 3-60 the net interest earned on a pooled trust account.
- (10) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

### **Payment of fees from trust**

- 3-65 (1) In this rule, "fees" means fees for services performed by a lawyer and taxes on those fees.
- (2) A lawyer who withdraws or authorizes the withdrawal of trust funds under Rule 3-64 in payment for the lawyer's fees must first prepare a bill for those fees and immediately deliver the bill to the client.
  - (3) A bill or letter is delivered within the meaning of this rule if it is
    - (a) mailed by regular or registered mail to the client at the client's last known address,
    - (b) delivered personally to the client,
    - (c) transmitted by electronic facsimile to the client at the client's last known electronic facsimile number, or

- (d) transmitted by electronic mail to the client at the client's last known electronic mail address.
- (4) As an exception to subrule (2), a lawyer need not deliver a bill if the client instructs the lawyer otherwise in writing.
- (5) A lawyer must not take fees from trust funds when the lawyer knows that the client disputes the right of the lawyer to receive payment from trust funds, unless
  - (a) the client has agreed that the lawyer may take funds from trust to satisfy the lawyer's account and the client has acknowledged that agreement in writing or the lawyer has confirmed the client's agreement in a letter delivered to the client,
  - (b) a bill has been delivered under subrule (3), whether or not the client has directed otherwise under subrule (4),
  - (c) the lawyer has given the client written notice that the fees will be taken from trust unless, within one month, the client commences a fee review under section 70 of the Act or an action disputing the lawyer's right to the funds, and
  - (d) the client has not commenced a fee review under section 70 of the Act or an action at least one month after written notice is given under paragraph (c).
- (6) Despite subrule (5), if a lawyer knows that the client disputes a part of the lawyer's account, the lawyer may take from trust funds fees that are not disputed.
- (7) A lawyer must not take fees from trust funds impressed with a specific purpose, if the object of the trust has not been fulfilled, without the express consent of the client or another person authorized to give direction on the application of the trust funds.

### **Withdrawal from separate trust account**

- 3-66 (1) A lawyer who makes or authorizes the withdrawal of funds from a separate trust account in respect of which cancelled cheques and bank statements are not received from the savings institution monthly and kept in the lawyer's records must first transfer the funds into his or her pooled trust account.
- (2) Rules 3-64 and 3-65 apply to funds that have been transferred into a pooled trust account in accordance with subrule (1). (3) A lawyer who disburses trust funds received with instructions under Rule 3-58 (2) must keep a written record of the transaction.

**Accounting records**

- 3-67 (1) In this rule, “supporting document” includes
- (a) validated deposit receipts,
  - (b) periodic bank statements,
  - (c) passbooks,
  - (d) cancelled and voided cheques,
  - (e) bank vouchers and similar documents,
  - (f) vendor invoices, and
  - (g) bills for fees, charges and disbursements.
- (2) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this division.
- (3) A lawyer must maintain accounting records including supporting documents, in
- (a) legibly handwritten form, in ink or other duplicated or permanent form,
  - (b) printed form, or
  - (c) an electronic form in compliance with subrule (4)
- (4) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that
- (a) all records and documents are maintained in a way that will allow compliance with Rule 10-3 (2),
  - (b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and
  - (c) there is a clear indication, with respect to each financial transaction, of
    - (i) the date of the transaction,
    - (ii) the individual who performed the transaction, and
    - (iii) all additions, deletions or modifications to the accounting record and the



individual who made each of them.

- (5) A lawyer must record transactions in accounting records in chronological order and in an easily traceable form.
- (6) A lawyer must retain all supporting documents for both trust and general accounts

### **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, 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, 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 that is not the lawyer's employer 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, and
  - (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.
- (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.
- (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.

### **Billing records**

- 3-71 (1) A lawyer must keep file copies of all bills delivered to clients or persons charged
- (a) showing the amounts and the dates charges are made,
  - (b) indicating all dates on which the bill was created or modified,
  - (c) identifying the client or person charged, and
  - (d) filed in chronological, alphabetical or numerical order.
- (2) For the purpose of subrule (1), a bill includes a receipt issued under Rule 3-72 (3).

### **Recording transactions**

- 3-72 (1) A lawyer must record each trust or general transaction promptly, and in any event not more than
- (a) 7 days after a trust transaction, or

- (b) 30 days after a general transaction.
- (2) A lawyer must record in his or her general account records all funds
  - (a) received by the lawyer expressly on account of fees earned and billed or disbursements made by the day the funds are received,
  - (b) subject to a specific agreement with the client allowing the lawyer to treat them as his or her own funds, or
  - (c) that the lawyer is entitled to keep whether or not the lawyer renders any services to or makes any disbursements on behalf of that client.
- (3) A lawyer who receives funds to which subrule (2) applies must immediately deliver a bill or issue to the client a receipt for the funds received, containing sufficient particulars to identify the services performed and disbursements incurred.
- (4) As an exception to subrule (1), a lawyer must record the receipt of interest on a separate trust account within 30 days of payment or of notice that funds have been credited to the account.

### **Monthly trust reconciliation**

- 3-73 (1) A lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total of balances held in the trust bank account or accounts, together with the reasons for any differences between the totals.
- (2) The monthly trust reconciliation must be supported by
    - (a) a detailed monthly listing showing the unexpended balance of trust funds held for each client, and identifying each client for whom trust funds are held,
    - (b) a detailed monthly bank reconciliation for each pooled trust account,
    - (c) a listing of balances of each separate trust account or savings, deposit, investment or similar form of account, identifying the client for whom each is held,
    - (d) a listing of balances of all other trust funds received pursuant to Rule 3-58 (2), and
    - (e) a listing of valuables received and delivered and the undelivered portion of valuables held for each client.
  - (3) Each monthly trust reconciliation prepared under subrule (1) must include the date

on which it was prepared.

- (4) A lawyer must retain for at least 10 years
  - (a) each monthly trust reconciliation prepared under subrule (1), and
  - (b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.
- (5) A lawyer must make the trust reconciliation required by this rule not more than 30 days after the effective date of the reconciliation.

### **Trust shortage**

- 3-74 (1) A lawyer who discovers a trust shortage must immediately pay enough funds into the account to eliminate the shortage.
- (2) A lawyer must immediately make a written report to the Executive Director, including all relevant facts and circumstances, if the lawyer
    - (a) discovers a trust shortage greater than \$2,500, or
    - (b) is or will be unable to deliver up, when due, any trust funds held by the lawyer.
  - (3) A trust shortage referred to in this rule includes a shortage caused by service charges, credit card discounts and bank errors.

### **Retention of records**

- 3-75 (1) In this rule, "records" means the records referred to in Rules 3-67 to 3-71.
- (2) A lawyer must keep his or her records for as long as the records apply to money held as trust funds or to valuables held in trust for a client and for at least 10 years from the final accounting transaction or disposition of valuables.
  - (3) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for at least 3 years from the final accounting transaction or disposition of valuables.

### **Executive Director's modification**

- 3-76 (1) Having regard to the accounting and storage systems employed by a specific lawyer, the Executive Director may modify the requirements of that lawyer under Rules 3-68 to 3-71 or 3-75.

- (2) The Executive Director may, at any time, cancel or amend a modification under subrule (1).
- (3) The Executive Director must make a modification under subrule (1) or a cancellation or amendment of a modification under subrule (2) in writing.
- (4) A lawyer who receives a written modification from the Executive Director under subrule (1) must retain it and any amendment under subrule (2) for as long as
  - (a) the books, records and accounts to which it relates are retained, or
  - (b) the lawyer would have been required to retain the books, records and accounts to which it relates, but for the modification and any amendment.

### **Annual CDIC report**

- 3-77 A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must file an annual report for each account maintained by the lawyer with that institution in accordance with section 3 (3) of the Schedule to the Canada Deposit Insurance Corporation Act, so that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.

### **Lawyer's right to claim funds**

- 3-78 Nothing in this division deprives a lawyer of any recourse or right, whether by way of lien, set-off, counterclaim, charge or otherwise, against
  - (a) funds standing to the credit of a client in a trust account, or
  - (b) valuables held for a client.

### **Trust report**

- 3-79 (1) Subject to subrules (4) and (6), a lawyer must deliver to the Executive Director completed trust reports for reporting periods of 12 months covering all the time that the lawyer is a member of the Society.
- (2) The date on which a firm ceases to practise law is the end of a reporting period.
  - (3) A lawyer must deliver a completed trust report to the Executive Director within 3 months of the end of each reporting period.
  - (4) On a written request made before the due date of a trust report, the Executive Director may allow a lawyer to submit a trust report covering a time period other than 12 months.

- (5) A trust report delivered to the Executive Director under this rule must
  - (a) be in a form approved by the Discipline Committee,
  - (b) be complete to the satisfaction of the Executive Director, and
  - (c) include all signatures required in the form.
- (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-43 from the requirement to maintain professional liability insurance and pay the insurance fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has
  - (a) not received any funds in trust,
  - (b) not withdrawn any funds held in trust, and
  - (c) complied with this division.

### **Late filing of trust report**

- 3-80 (1) A lawyer who does not deliver a trust report as required under Rule 3-79 or 3-82 (5) is in breach of these rules.
- (2) A lawyer who fails to deliver a trust report by the date required under Rule 3-79 or 3-82 (5) is deemed to have been in compliance with the rules during the period of time that the lawyer was late in delivering the report if the lawyer delivers the following to the Executive Director within 30 days of the due date:
    - (a) the required report;
    - (b) the late fee specified in Schedule 1.
  - (3) A lawyer who does not deliver a trust report for 30 days after it is required under Rule 3-79 or 3-82 (5) is liable to an assessment of \$400 per month or part of a month until the report is delivered.
  - (4) When there are special circumstances, the Discipline Committee may, in its discretion, waive payment of all or part of an assessment made under this rule.

### **Failure to file trust report**

- 3-81 (1) Subject to subrules (3) and (4), a lawyer who does not deliver a trust report under Rule 3-79 or 3-82 (5) for 60 days after it is required, is suspended until the report is completed to the satisfaction of the Executive Director and delivered as required.

- (2) A trust report is not delivered for the purposes of subrule (1) unless all explanations of exceptions required by the Executive Director are delivered to the Executive Director.
- (3) When there are special circumstances, the Discipline Committee may, in its discretion, order that
  - (a) a lawyer not be suspended under subrule (1), or
  - (b) a suspension under subrule (1) be delayed for a specified period of time.
- (4) At least 30 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
  - (a) the date on which the suspension will take effect;
  - (b) the reasons for the suspension;
  - (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (3) and the deadline for making such an application before the suspension is to take effect.
- (5) If a lawyer has not delivered a trust report after it is required, the Executive Director may do either or both of the following:
  - (a) engage or assign a qualified accountant to complete the trust report;
  - (b) order an examination of the lawyer's books, records and accounts under Rule 3-85.
- (6) The Discipline Committee may order that a lawyer pay to the Society all or part of the costs associated with the trust report referred to in subrule (5) (a).
- (7) A lawyer who is ordered by the Discipline Committee, under subrule (6), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (8) If any part of the amount owing under subrule (6) remains unpaid by the date set in Rule 2-105, the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

### **Accountant's report**

- 3-82 (1) The Executive Director may require a lawyer who is required to deliver a trust report under Rule 3-79 or a lawyer or former lawyer who is required to deliver a trust report under Rule 3-84 to deliver as part of the report required under the relevant rule, an



- accountant's report completed and signed by a person in public accounting practice who is permitted to perform audit engagements by
- (a) the Institute of Chartered Accountants of British Columbia, or
  - (b) the Certified General Accountants Association of British Columbia.
- (2) The Executive Director must specify the matters to be included in the accountant's report referred to in subrule (1) and the time within which it must be delivered to the Executive Director.
- (3) Despite subrule (1), an accountant's report must not be completed and signed by any person determined by the Executive Director to be ineligible to do so.
- (4) Despite subrule (1), on application by the lawyer, the Executive Director may allow a person without the credentials referred to in subrule (1) to complete and sign an accountant's report if the Executive Director is satisfied that
- (a) the person has adequate accounting credentials, and
  - (b) no person qualified under subrule (1) is reasonably available to the lawyer.
- (5) The Executive Director may at any time require a lawyer to deliver a new accountant's report completed and signed by a person who has the qualifications specified by the Executive Director if the lawyer's accountant's report was completed and signed by a person
- (a) without the credentials referred to in subrule (1), or
  - (b) ineligible under subrule (3)
- (6) If the Executive Director requires a new accountant's report under subrule (5), the lawyer must deliver the report within 3 months of notice of the requirement being sent by the Executive Director.

### **Exceptions and qualifications**

- 3-83 (1) The trust report of a lawyer who has not complied with this division must state the exceptions and qualifications, together with an explanation of the circumstances of and reasons for them.
- (2) The Executive Director may, following a review of a trust report with exceptions and qualifications, accept the lawyer's explanation and reasons

- (a) without condition, in which case the lawyer is deemed to have complied with Rule 3-79, or
- (b) subject to the lawyer fulfilling accounting conditions specified by the Executive Director, in which case, on fulfilment of those conditions, the lawyer is deemed to have complied with Rule 3-79.

### **Former lawyers**

- 3-84 (1) A former lawyer must deliver a trust report as required under Rule 3-79 for any period during which the former lawyer was a member of the Society.
- (2) If a former lawyer does not deliver a trust report as required under subrule (1), an assessment under Rule 3-80 applies.

### **Compliance audit of books, records and accounts**

- 3-85 (1) The Executive Director may at any time order a compliance audit of the books, records and accounts of a lawyer for the purpose of determining whether the lawyer meets standards of financial responsibility established under this Part, including but not limited to maintaining books, records and accounts in accordance with this division.
- (2) When an order is made under subrule (1),
- (a) the Executive Director must designate one or more persons to conduct the compliance audit, and
  - (b) on notification of the order, the lawyer concerned must immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and must provide any explanations required by the person designated under paragraph (a) for the purpose of completing the compliance audit.

### **Failure to produce records on compliance audit**

- 3-86 (1) Subject to subrules (2) and (3), a lawyer who does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-85 (2) (b) is suspended until the records are produced, copying is permitted and explanations are provided to the satisfaction of the Executive Director.
- (2) When there are special circumstances, the Discipline Committee may, in its discretion, order that
- (a) a lawyer not be suspended under subrule (1), or

- (b) a suspension under this rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this rule can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
  - (b) the reasons for the suspension;
  - (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

### **Disposition of files, trust money and other documents and valuables**

- 3-87 (1) Before leaving a firm in British Columbia, a lawyer must advise the Executive Director in writing of his or her intended disposition of all of the following that relate to the lawyer's practice in British Columbia and are in the lawyer's possession or power:
- (a) open and closed files;
  - (b) wills and wills indices;
  - (c) titles and other important documents and records;
  - (d) other valuables;
  - (e) trust accounts and trust funds.
  - (f) fiduciary property
- (2) Within 30 days after withdrawing from the practice of law in British Columbia, a lawyer or former lawyer must confirm to the Executive Director in writing that
- (a) the documents and property referred to in subrule (1) (a) to (d) have been disposed of, and any way in which the disposition differs from that reported under subrule (1),
  - (b) all trust accounts referred to in subrule (1) (e) have been closed and that
    - (i) all the balances have been
      - (A) remitted to the clients or other persons on whose behalf they were held,

- (B) transferred to another lawyer with written instructions concerning the conditions attaching to them, or
  - (C) paid to the Society under Rule 3-89, and
  - (ii) any net interest earned on a pooled trust account has been remitted to the Foundation in accordance with this division, and
  - (c) the lawyer or former lawyer has notified all clients and other persons for whom the lawyer is or potentially may become a personal representative, executor or trustee regarding the lawyer or former lawyer's withdrawal from practice and any change in his or her membership status.
- (3) A law corporation must confirm to the Executive Director as required under subrule (2) within 30 days of
- (a) cancellation of its permit under Part 9, and
  - (b) ceasing to provide legal services.
- (4) The Executive Director may, on application in writing by the lawyer, former lawyer or law corporation, extend the time limit referred to in subrule (1), (2) or (3) or, if in the opinion of the Executive Director it is in the public interest, relieve the lawyer, former lawyer or law corporation of any of the requirements of those subrules.
- (5) On an enquiry, the Executive Director may disclose information collected under this rule if satisfied that
- (a) the person enquiring has a bona fide reason to obtain the information, and
  - (b) disclosure of the information would not be an unreasonable invasion of anyone's privacy.

## **Division 8 – Unclaimed Trust Money**

### **Definition**

- 3-88 In this division, "efforts to locate" means steps that are reasonable and adequate in all the circumstances, including the amount of money involved.

### **Payment of unclaimed trust money to the Society**

- 3-89 (1) A lawyer who has held funds in his or her trust account on behalf of a person whom the lawyer has been unable to locate for 2 years may apply to the Executive Director to pay those funds to the Society under section 34 of the Act.
- (2) A lawyer must make the application referred to in subrule (1) in writing containing all of the following information that is available to the lawyer:
- (a) the full name and last known mailing address of each person on whose behalf the lawyer held the money;
  - (b) the exact amount to be paid to the Society in respect of each such person;
  - (c) the efforts made by the lawyer to locate each such person;
  - (d) any unfulfilled undertakings given by the lawyer in relation to the money;
  - (e) the details of the transaction in respect of which the money was deposited with the lawyer.
- (3) A lawyer who cannot provide all the information described in subrule (2) must advise the Executive Director of the reasons why the lawyer does not have that information and deliver to the Executive Director copies of all records in the lawyer's power or possession that relate to the ownership and source of the money.
- (4) If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the funds, the Executive Director may accept the funds under section 34 of the Act.
- (5) The Executive Director must account for funds received by the Society under subrule (4) separately from the other funds of the Society.

## **Part 10 – General**

### **Records**

- 10-3 (1) In this rule, “**storage provider**” means any entity storing or processing records outside of a lawyer’s office, whether or not for payment.
- (2) When required under the Act or these rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:
- (a) printed in a comprehensible format;

- (b) accessed on a read-only basis;
  - (c) exported to an electronic format that allows access to the records in a comprehensible format.
- (3) A lawyer who is required to produce records under the Act or these rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.
- (4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer
- (a) retains custody and control of the records,
  - (b) ensures that ownership of the records does not pass to another party,
  - (c) is capable of complying with a demand under the Act or these rules to produce the records and provide access to them,
  - (d) ensures that the storage provider maintains the records securely without
    - (i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,
    - (ii) allowing unauthorized access to or copying or acquisition of the records, or
    - (iii) failing to destroy the records completely and permanently on instructions from the lawyer, and
  - (e) enters into a written agreement with the storage provider that is consistent with the lawyer's obligations under the Act and these rules.
- (5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this rule, no lawyer is permitted to maintain records of any kind with that entity.

### **Security of records**

- 10-4 (1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.
- (2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that:
- (a) he or she has lost custody or control of any of the lawyer's records for

any reason,

- (b) anyone has improperly accessed or copied any of the lawyer's records,  
or
- (c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

## Code of Professional Conduct for British Columbia (the BC Code)

### 3.5 Preservation of clients' property

**3.5-1** In this section, “**property**” includes a client’s money, securities as defined in the *Securities Act*, original documents such as wills, title deeds, minute books, licences, certificates and the like, and all other papers such as client’s correspondence, files, reports, invoices and other such documents, as well as personal property including precious and semi-precious metals, jewellery and the like.

#### **3.5-2 A lawyer must:**

(a) care for a client’s property as a careful and prudent owner would when dealing with like property; and

(b) observe all relevant rules and law about the preservation of a client’s property entrusted to a lawyer.

#### **Commentary**

**[1]** The duties concerning safekeeping, preserving, and accounting for clients’ monies and other property are set out in the Law Society Rules.

**[2]** These duties are closely related to those regarding confidential information. A lawyer is responsible for maintaining the safety and confidentiality of the files of the client in the possession of the lawyer and should take all reasonable steps to ensure the privacy and safekeeping of a client’s confidential information. A lawyer should keep the client’s papers and other property out of sight as well as out of reach of those not entitled to see them.

**[3]** Subject to any rights of lien, the lawyer should promptly return a client’s property to the client on request or at the conclusion of the lawyer’s retainer.

**[4]** If the lawyer withdraws from representing a client, the lawyer is required to comply with section 3.7 (Withdrawal from Representation).

### Notification of receipt of property

**3.5-3** A lawyer must promptly notify a client of the receipt of any money or other property of the client, unless satisfied that the client is aware that they have come into the lawyer’s custody.

### Identifying clients’ property

**3.5-4** A lawyer must clearly label and identify clients’ property and place it in safekeeping distinguishable from the lawyer’s own property.



**3.5-5** A lawyer must maintain such records as necessary to identify clients' property that is in the lawyer's custody.

**Accounting and delivery**

**3.5-6** A lawyer must account promptly for clients' property that is in the lawyer's custody and deliver it to the order of the client on request or, if appropriate, at the conclusion of the retainer.