

Law Society
of British Columbia

The Trust Accounting Handbook

A handbook designed to assist lawyers and their staff in understanding the procedures and rules for operating a trust account.

Trust Assurance Department

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Introduction

The purpose of this handbook is to assist lawyers and their staff in understanding and complying with the Law Society Rules: Part 3, Division 7 – Trust Accounts and Other Client Property and Division 8 – Unclaimed Trust Money. The *Legal Profession Act* and the Code of Professional Conduct for British Columbia (the *BC Code*) also impose specific requirements with respect to handling and recording trust funds. It will explain the rules of the Law Society of BC concerning the handling of trust funds and will demonstrate the simple step-by-step procedures for accounting for trust funds.

Each day millions of dollars pass through lawyers' trust accounts. Lawyers must safeguard and segregate these assets. Lawyers have an obligation to keep adequate books and records in accordance with these rules and statutes.

As the lawyer or delegated individual maintaining the accounting records for the practice, it is incumbent upon you to be familiar with the rules and understand why and how they apply to your firm.

Readers should understand that this handbook is designed as a tool to aid lawyers and their staff to make decisions regarding the operation of trust accounts. Ultimate responsibility for the trust account and its operation remains with the lawyer who receives, holds, or disburses client trust funds.

The Trust Accounting Handbook should be used as a secondary reference only. It is not a substitute for the Law Society's Part 3 Division 7 Rules on Trust Accounts and Other Client Property.

The Law Society of British Columbia, and the authors and editors of the Trust Accounting Handbook accept no responsibility for any errors or omissions, and expressly disclaim any such responsibility. All references to Law Society Rules and the *BC Code* are current to March 31, 2022.

Significant trust accounting rules

In order to maintain law firm books, it is important to familiarize yourself with the Law Society Rules: Part 3, Division 7 – Trust Accounts and Other Client Property. These rules can be downloaded from the Law Society website at www.lawsociety.bc.ca.

The following is an overview of the significant rules that form the framework of the lawyer's trust accounting requirements.

Rule 3-54 Personal responsibility

Rule 3-54 requires that a lawyer account in writing to a client for all funds and valuables received on behalf of the client. The lawyer remains personally responsible to ensure that the duties and the responsibilities of Division 7 are carried out.

Rule 3-55 Fiduciary property

Rule 3-55 requires lawyers to produce the following records for any period for which the lawyer is responsible for fiduciary property:

- a current list of valuables, with a reasonable estimate of the value of each;
- accounts and other records respecting the fiduciary property; and
- 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.

The records within this rule form part of a lawyer's books, records and accounts and must be produced and permitted to be copied upon request.

Rule 3-56 Designated savings institutions

Rule 3-56 sets out the requirements for a designated savings institution. It must have an office located in British Columbia accepting demand deposits and be insured by the Canada Deposit Insurance Corporation or the Credit Union Deposit Insurance Corporation of British Columbia.

Rule 3-58 Deposit of trust funds

Rule 3-58 requires that a lawyer who receives trust funds must deposit the trust funds in a pooled trust account as soon as practicable.

Rule 3-58.1 Trust account only for legal services

Rule 3-58.1 prohibits a lawyer from depositing funds into or withdrawing funds from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm. However, a lawyer is permitted to deposit funds received as a retainer for services as a mediator, arbitrator or parenting coordinator into a trust account. In addition, a lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds from trust as soon as practicable on completion of the services to which the funds relate.

Rules 3-59 Cash transactions

Rule 3-59 (1) sets out the situations where a lawyer or law firm is prohibited from receiving or accepting an aggregate amount of cash of more than \$7,500 with respect to any one client matter.

Rule 3-59 (4) sets out the situations where a lawyer or law firm is allowed to accept an aggregate of more than \$7,500 in cash, for legal fees, disbursements or expenses. However, the lawyer must investigate the source of the cash and if it appears the cash may be from proceeds of crime the lawyer is not permitted to accept the cash.

Rule 3-59 (5), states if a lawyer or law firm accepts more than \$7,500 in cash, any refund must be made in cash.

Rule 3-59 (6) sets out what a lawyer or law firm must do where cash of more than \$7,500 has been accepted in a situation not allowed under subrule (2) or (3). In this circumstance, the lawyer or law firm must make no use of the cash and return the cash, or if not possible, the same amount of cash to the payer. They must also make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash and comply with all other rules pertaining to the receipt of trust funds.

Rule 3-60 Pooled trust account

All pooled trust accounts must meet the following requirements:

- kept at a designated savings institution (i.e. bank or credit union);
- be readily available to draw on;

- designated as “trust” on the records of the lawyer and savings institution;
- earn interest that is remitted to the Law Foundation of BC;
- provide periodic bank statements and cancelled cheques; and
- kept in the name of the lawyer or firm.

In order to offset inadvertent service charges by the financial institution, a lawyer may deposit up to \$300 of their own funds in the pooled trust account.

Rule 3-61 Separate trust account

All separate trust accounts must meet the following requirements:

- kept at a designated savings institution;
- earn interest;
- designated as “trust” on the records of the lawyer and the savings institution; and
- kept in the name of the lawyer, the firm or the trust and identified by a number that identifies the client.

Rule 3-63 Trust account balance

Rule 3-63 requires that a lawyer must 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.

Rule 3-64 Withdrawal from trust

A lawyer may withdraw trust funds if the funds are:

- properly required for payment on behalf of a client or to satisfy a court order;
- the property of the lawyer;
- in the account as a result of a mistake;
- paid to the lawyer to pay a debt of that client to the lawyer;
- transferred between trust accounts;

- due to the Law Foundation under section 62 (2) (b); or
- unclaimed trust funds remitted to the Law Society under Division 8.

All withdrawals from the trust account must be made with a cheque marked “trust” and signed by a practising lawyer unless the withdrawal falls within one of the following exceptions:

- cash withdrawals as required by Rule 3-59 (5) or (6);
- electronic transfers as permitted by Rule 3-64.1 (2);
- bank drafts as permitted by Rule 3-64.3;
- property transfer tax withdrawals as permitted by Rule 3-64.1 (6); or
- remittance of net interest on pooled trust accounts to the Law Foundation as permitted by Rule 3-64 (9).

Lawyers are not permitted to withdraw funds from trust unless the trust accounting records are current and there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.

Best Practice: There may be times when the financial institution has deposited an amount to the trust account in error, and creates a “Debit Memo” or other type of withdrawal to take back the funds. Because the rules do not allow for these types of transactions, the error should be identified during your monthly trust reconciliation and fully explained in your supporting documentation.

Rule 3-64.1 Electronic transfers from trust

A lawyer may withdraw trust funds using electronic funds transfer if the following conditions are met:

- The law firm uses a commercial banking platform that requires two individuals:
 - a person other than the lawyer, who uses their password and enters data into the online system; and
 - the lawyer, who uses another password and enters data to authorize the transaction online.

- Before any data is entered into the electronic funds transfer system, the lawyer must sign the completed Law Society's Electronic Funds Transfer (EFT) requisition form (See Electronic Transfer of Trust Funds form available at www.lawsociety.bc.ca and in Appendix B).
- The transfer system must produce, no later than the next business day, written confirmation from the financial institution confirming the details of the transfer which must contain the following:
 - the name of the person authorizing the transfer;
 - the amount of the transfer;
 - the trust account name, trust account number and name of the financial institution from which the money is drawn;
 - the name, branch name and address of the financial institution where the account to which money is transferred is kept;
 - the name of the person or entity in whose name the account to which money is transferred is kept;
 - the number of the account to which money is transferred;
 - the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution; and
 - the time and date that the confirmation in writing from the financial institution was sent to the lawyer authorizing the transfer.
- No later than the next business day after the day the confirmation is required, the lawyer must:
 - produce a printed copy of the confirmation;
 - compare the printed copy of the confirmation against the signed EFT requisition to verify the funds were withdrawn as specified;
 - indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and the file number; and
 - sign and date the confirmation.

The EFT requisition and the confirmation must be retained as supporting documentation for the transaction. Keep these documents with your accounting records so that they are easily accessible.

Lawyers must not disclose their password or allow anyone else to use their password.

A lawyer who is a sole practitioner without non-lawyer staff is permitted to use one password to enter the data into the online banking platform and use another password to enter data to authorize the transaction. The sole practitioner must use two separate passwords to process the transaction.

Rule 3-64.2 Electronic deposits into trust

Electronic deposits into the trust account are permissible, so long as the lawyer obtains written confirmation, either from the financial institution or remitter, within two banking days of the deposit. This written confirmation includes, but is not limited to, a deposit receipt, letter, or email. The form is generally acceptable if it provides sufficient details for the deposit to be identified and properly recorded in the firm's trust accounting records.

Rule 3-64.3 Withdrawal from trust by bank draft

A lawyer may withdraw trust funds by bank draft provided they:

- obtain written consent from the payee to receive the funds in the form of a bank draft;
- complete the Law Society's *Withdrawal from Trust by Bank Draft requisition form*. (Available www.lawsociety.bc.ca and in Appendix B);
- obtain a bank draft at the financial institution where the lawyer or law firm has a trust account;
- obtain written acknowledgement of receipt of the bank draft from the payee; and
- keep a copy of the written consent, written acknowledgement, requisition and bank draft.

Rule 3-65 Payment of fees from trust

Lawyers are required to prepare and deliver a bill to the client prior to withdrawing funds from trust for the payment of the lawyer's fees. Lawyer's "fees" include fees for the lawyer's services, disbursements and taxes. You can deliver a bill by:

- regular or registered mail to the client's last known address;
- personal hand delivery;
- fax to the client's last known fax number;
- email to the client's last known electronic mail address; or
- making it available to the client by other means agreed to in writing by the client.

A lawyer is permitted to withdraw trust funds for payment of fees by:

- trust cheque payable to the lawyer's general account; or
- electronic transfer under Rule 3-64.1.

Under subrule (5) a lawyer must not take fees from trust if the client is disputing the fees.

Rule 3-66 Withdrawal from a separate trust account

A lawyer who withdraws funds from a separate trust account that does not provide monthly bank statements and cancelled cheques must first transfer the funds to the pooled trust account.

Rule 3-67 Accounting records

Rule 3-67 sets out the guidelines, applicable to the accounting records, as follows:

- all funds received and disbursed must be recorded in the books and records;
- the records must be maintained in a legible handwritten form, in ink or other permanent form (either printed form or electronic form that can be transferred to printed form on demand); and
- the records must be entered in chronological order and in an easily traceable form.

In addition, the lawyer must retain all supporting documents for all trust and general accounts, including but not limited to:

- validated and detailed deposit receipts;

- monthly bank statements, including guaranteed investment certificates, term deposits and other financial institution confirmations;
- passbooks;
- cancelled and voided cheques, including certified cheques (scanned images of the cleared cheques are acceptable in place of the original cancelled cheques, as long as the practice is receiving copies of the images of both the front and back of each cheque);
- bank vouchers and other similar documents;
- vendor invoices; and
- bills for fees charges and disbursements.

A lawyer who maintains accounting records, including supporting documents, in electronic form must ensure that they are maintained in a way that will allow compliance with Rule 10-3 (2). They must ensure that copies are made of both sides of all paper records and documents including any blank pages, and that there is clear indication of the date of the transaction, the individual who performed the transaction, and all additions, deletions or modifications to the accounting records and the individual who made each of them.

Rule 3-68 Trust account records

Rule 3-68 requires a lawyer to maintain at least the following trust account records:

- book of entry to record the details of all trust funds received including the date, source and form of funds, client reference and amount; and the details of all trust funds disbursed including the date, cheque number, payee, client reference and amount;
- individual trust ledgers showing, separately for each client matter, all trust funds received and disbursed and the unexpended running balance;
- trust transfer records documenting all file-to-file transfers of trust funds between client trust ledgers;
- monthly trust reconciliations; and
- a current listing of all valuables held in trust.

Rule 3-69 General account records

Rule 3-69 requires a lawyer to maintain at least the following general account records:

- book of original entry to record the details of all general funds received including the date, source, client reference and amount; and the details of all general funds disbursed including the date, cheque or voucher number, payee, client reference and amount; and
- accounts receivable ledger showing, for each client, all invoices billed, any transfers from trust, any other receipts from the client and the balance owed by the client.

Rule 3-70 Records of cash transactions

Rule 3-70 requires a lawyer to maintain a cash receipt book of duplicate receipts. The lawyer or law firm must record for each cash receipt: the date, person from whom cash is received, the amount, the client name and file number. The lawyer or law firm must record for each cash withdrawal; the date, the amount, the client name and file number. All cash receipts must include two signatures; the person to whom the cash was paid and the person from whom the cash was received. As well, all receipts must indicate all dates on which the receipt was created or modified.

Rule 3-71 Billing records

Rule 3-71 requires a lawyer to maintain billing records that contain copies of all manual or system generated bills rendered to clients. The bill must show the amounts and dates the charges are made, identify the client or the person charged and indicate all dates on which the bill was created or modified. In addition, the bills must be maintained as part of the accounting records and filed in chronological, alphabetical or numerical order. Therefore, maintaining a copy of the final signed bills in each of the client files is not sufficient to meet record keeping requirements. Scanned electronic copies of final signed bills are acceptable when they are filed as set out above and printable upon demand.

Rule 3-72 Recording transactions

Rule 3-72 requires that all transactions must be recorded promptly. General transactions must be recorded within 30 days of the transaction. Trust transactions must be recorded within 7 days of the transaction. An exception to the 7 day time limitation is for the receipt of interest on separate trust accounts, which must be recorded within 30 days of payment or of notice that the funds have been credited to the account.

Rule 3-73 Monthly trust reconciliations

Rule 3-73 sets out the requirements for how and when trust reconciliations must be completed. Lawyers must prepare a monthly trust reconciliation that covers all funds held in the pooled and separate interest bearing trust accounts as well as valuables held. Each monthly trust reconciliation should include the following:

- detailed listing showing the balance held in trust for each client, and identifying each client for whom trust funds are held;
- detailed monthly trust bank reconciliation for each pooled trust account;
- original bank statements and cancelled cheques (or approved electronic form);
- listing of all outstanding items including outstanding cheques, outstanding deposits and errors by financial institutions;
- differences between the total of reconciled bank balances, client trust liability listings and balances per trust book of entry must be clearly identified, explained and documented.
- listing of balances for each separate trust account (savings, deposit, investment or similar form of account) identifying the client for whom each is held; and
- listing of valuables received and delivered and the undelivered portion of valuables held for each client, if applicable.

The reconciliation process must be completed within 30 days after the effective date of the reconciliation and must include the date on which it was prepared. The monthly reconciliations and the supporting documents noted above must be kept for at least 10 years.

Rule 3-74 Trust shortage

Rule 3-74 requires a lawyer who discovers a trust shortage to immediately pay enough funds into the account to eliminate the shortage. If the shortage is greater than \$2,500 or if the lawyer cannot deliver up, when due, any trust funds held, the lawyer is required to immediately report the shortage and the circumstances to the Law Society. A trust shortage includes, but is not limited to, trust funds inadvertently deposited into the firm's general account, payments from a wrong trust account, service charges, credit card discounts and financial institution errors. It is important to remember that you may not offset an individual client's overdrawn trust balance against other trust credit balances.

Best Practice: Maintain a history of all trust shortages that occur within your law practice. Document the date of occurrence, date of correction, how the shortage was corrected, acknowledgement by accounting staff, acknowledgement by lawyer in charge of trust, and copies of correspondence to the financial institution, Law Society or other affected parties. This history will be used by the firm in completing the annual trust report and during a compliance audit.

Rule 3-75 Retention of records

Rule 3-75 sets out the requirements for the location and length of time that you must retain accounting records (namely accounting records referred to in Rules 3-67 to 3-71). Under this rule a lawyer must:

- keep the books, records and accounts referred to in the rules for at least 10 years from the final accounting transaction or disposition of valuables; and
- keep the books, records and accounts referred to in the rules, other than electronic records, at their chief place of practice in BC for at least 3 years from the final accounting transaction or disposition of valuables.

Rule 3-76 Executive Director's modification

Rule 3-76 allows a lawyer to make a written request to the Executive Director to modify the record retention requirements of Rule 3-75. A lawyer who receives written modification from the Executive Director must retain it as long as the records are required to be retained under the Law Society Rules. Further, the Executive Director may, at any time, cancel or amend a modification previously given.

Rule 3-77 Annual CDIC report

On April 30, 2022, a new Canada Deposit Insurance Corporation (CDIC) Act and By-law requirements for trust came into effect. A lawyer, partnership of lawyers or a law corporation acting in that capacity as a trustee of moneys for others is a Professional Trustee as defined under the CDIC Act. Lawyers must designate their trust account(s) as a professional trust account (PTA) and file an attestation on an annual basis to their financial institution by April 30 of each year. This attestation replaces the prior requirement for lawyers to deliver by May 30th each year a listing of balances held for each client as of April 30th.

Lawyers who do not designate their trust account(s) as a PTA or file the annual attestation will have their trust account treated as a general trust account. General trust account holders are required to disclose beneficiary names, addresses and interests in the account. There is no exemption for lawyers to redact the names and addresses or provide an alphanumeric code or identifier. Failure to provide the required beneficiary information to the financial institution may result in a loss or reduction of insurance coverage available for the beneficiaries.

Rule 3-79 Trust report

Rule 3-79 requires a lawyer to deliver to the Executive Director a completed trust report on an annual basis. Not operating a trust account does not exempt you from the requirement of filing a trust report. The trust report must be in the prescribed form and completed to the satisfaction of the Executive Director.

Rule 3-80 Late filing of trust report

A lawyer who does not deliver a trust report as required under Rule 3-79 or Rule 3-82 by the due date is liable for a late fee assessment of \$200. Furthermore, if the trust report is not delivered within 30 days after it is required the lawyer is liable for a late fee assessment of \$400 per month or part of a month until the report is delivered. Lawyers should diarize the due dates for the trust report each year so that the report is filed in a timely manner.

Rule 3-81 Failure to file trust report

Rule 3-81 sets out the consequences for lawyers who do not file their trust reports. A lawyer who does not deliver a trust report for 60 days after it is required, is suspended until the report is completed to the satisfaction of the Executive Director provided that the Executive Director delivers notice of the potential suspension at least 30 days before the date of suspension.

Rule 3-82 Accountant's report

Rule 3-82 the Executive Director may direct a lawyer to file an accountant's report as part of the trust report. The accountant's report must be completed and signed by a qualified Chartered Professional Accountant¹ (CPA).

Rule 3-85 Compliance audit of books, records and accounts

Rule 3-85 permits the Executive Director at any time to order a compliance audit of the books, records and accounts of a lawyer to determine whether the lawyer has met the standards of the financial responsibility under Part 3 of the Law Society Rules.

Rule 3-86 Failure to produce records on compliance audit

Rule 3-86 sets out the consequences for lawyers who do not produce records or provide explanations as required under Rule 3-85. A lawyer who does not provide records or explanations is suspended until the records are produced and explanations are provided to the satisfaction of the Executive Director. The Executive Director must provide at least 7 days notice before this Rule can take effect.

Rule 3-87 Disposition of files, trust money, other documents and valuables

Rule 3-87 requires that a lawyer must advise the Executive Director in writing of their intended disposition of all of the following that relate to the lawyer's practice in British Columbia:

- open and closed files;
- wills and wills indices;
- titles and other important documents and records;
- other valuables;
- trust accounts and trust funds; and
- fiduciary property.

¹ "Qualified CPA" is a defined term and means a person in public accounting practice who is permitted to perform audit engagements by the Organization of Chartered Professional Accountants of British Columbia.

Within 30 days of withdrawing from practice, the lawyer must confirm to the Executive Director in writing that:

- the above documents and property have been disposed of as previously reported;
- all trust accounts have been closed;
- all trust balances have been remitted to clients, transferred to another lawyer or paid to the Society;
- any net interest on a pooled trust account has been remitted to the Law Foundation; and
- all clients and other persons for whom the lawyer is or potentially may become a personal representative, executor, trustee or other fiduciary have been notified regarding the lawyer's withdrawal from practice.

Rule 3-89 Payment of unclaimed trust money to the Society

Rule 3-89 allows a lawyer to apply to the Executive Director to pay any money held in trust for a person, where the lawyer has been unable to locate the person for two years. If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the money, the Executive Director may accept the money. Refer to Appendix B for the *Payment of Unclaimed Trust Money Form*.

Rule 10-3 Records

Rule 10-3 sets out the requirements for a law firm that uses a storage provider to store or process records outside of the lawyer's office whether or not for payment. When required under the Act or the Rules, a lawyer must, on demand, be able to print the records in a comprehensible format, provide access on a read-only basis, or export to an electronic format that allows access to the records in a comprehensible form. Further details can be found within the body of the Rule.

Rule 10-4 Security of records

Rule 10-4 requires a lawyer to protect their records and information against all risks of loss, destruction and unauthorized access, use or disclosure. A lawyer must immediately notify the Executive Director in writing if they have reason to believe that they have lost custody and control of records, anyone has improperly accessed the records, or a third party has failed to destroy records completely and permanently contrary to instructions from the lawyer.

Client identification and verification

The Law Society has an integral role in the anti-money laundering regime and continuously monitors the current landscape in order to stay current with Fintrac on client identification and verification (CIV) Rules. Please visit our website to view the CIV Rules.

Lawyers are required to follow the CIV procedures contained in Law Society Rules 3-98 to 3-109 when retained by a client.

Identification and verification are two distinct concepts.

Identification	Verification
The client identification requirements apply whenever a lawyer provides professional services to a client. These requirements call for the lawyer to obtain and record basic identifying information about the client, whether they are an individual or an organization, such as name, personal and/or business addresses, telephone numbers and occupation.	The verification requirements go a step further and apply when a lawyer receives, pays or transfers funds on behalf of a client or gives instructions for such activities on behalf of a client. Verification refers to the information you need to obtain to confirm that the client is who or what they say they are. These rules require lawyers to retain a copy of every document obtained to identify and verify a client's identity when providing legal services in respect of a financial transaction.

A number of exemptions to the verification requirement are included in the CIV Rules. For example, a lawyer is exempted from the verification requirements when the client is a financial institution, public authority, or public company. We have provided a direct link to the *Client Identification, Verification and Source of Money Checklist* and CIV frequently asked questions in the Resources section at the end of this handbook. If you have question about the CIV Rules, please contact a Practice Advisor at practiceadvice@lsbc.org or at 604.443.5797.

Chapter 1 - Setting up Trust Accounts

Setting up a pooled trust account

Many law firms will operate one or more pooled trust accounts depending on the nature and needs of the law firm. For example, firms that handle real estate matters may require several pooled trust accounts at different financial institutions; whereas a criminal practice may require only one pooled trust account.

The pooled trust account established at a designated savings institution must be kept in the name of the lawyer or firm and designated as “trust” on all of the records of the savings institution and the lawyer. This includes bank statements, cheques, deposit slips, and other records. The designated savings institution must have an office located in BC accepting demand deposits and be insured by the CDIC or CUDIC. Lawyers are not permitted to open or operate a pooled trust account in a foreign country.

You must instruct the savings institution to pay net interest earned on the pooled trust account to the Law Foundation. The account must provide for the return of cancelled cheques and bank statements covering all transactions on the account. Scanned images of the front and back of each negotiated cheque are allowed and electronic copies of bank statements may be stored on the firm’s server or computers. However, reliance on the financial institution’s website to store and obtain documents on demand is not permitted. Refer to Rule 3-67 and the Letter of Direction to Financial Institution in Appendix C.

Key elements of a pooled trust account

Separate

Trust funds in the pooled trust account must not be commingled with any personal or general funds of the practice other than a small amount of up to \$300 to cover service charges.

Identifiable

The pooled trust account bank statements, cheques and deposit slips must be clearly labelled as “Trust” or “Trust Account” on the records of the lawyer and the financial institution.

Accountable

The books and records for the pooled trust account must be accurate, up to date, and readily accessible at all times. Records must be kept on site for 3 years (the current and previous 2

years). Records must be maintained for at least 10 years after the termination of the representation and completion of the client matter. The lawyer is ultimately responsible for the trust account even when delegating duties to a non-lawyer.

Service charges on the pooled trust account

A lawyer may maintain up to \$300 of general funds in the trust account to offset service charges associated with the account. A common way of identifying these funds in the accounting records is by creating a “trust float” ledger. When the balance of the trust float is reduced to an amount that is not adequate for the deduction of further service charges it should be replenished with a general account cheque that brings it back to a maximum amount of \$300.

Best Practice: When setting up a new trust account, instruct your financial institution to provide trust account statements at the end of the reporting period, which is normally the month-end date. This will ensure that the financial institution reports the activity and balances in your trust account at month-end and year-end dates, which is useful for trust reconciliations and annual trust report requirements.

If your law firm has merchant credit card charges, it is recommended to have these taken from the firm’s general account to mitigate the risk of exceeded the allowable \$300 float limit, and therefore creating a shortage in the trust account.

Setting up a separate interest bearing trust account

Section 62 (5) of the *Legal Profession Act* and Rule 3-58 (2) permit a lawyer, on instruction from a client, to place funds in a separate interest bearing trust account (SIBTA). Interest paid on a SIBTA becomes the property of the client rather than the Law Foundation. Common investment accounts for SIBTAs include savings accounts, term deposits, guaranteed investment certificates and other similar financial instruments.

Best Practice: It is good practice to obtain client instructions to open a SIBTA in writing.

Considerations when setting up a SIBTA

Some practical considerations to help determine when trust funds should be invested for the benefit of one specific client include:

- directions of the client;
- amount of funds;

- period of time the funds are expected to be held in trust; and
- cost of establishing and maintaining a SIBTA, including service charges, costs of issuing tax receipts for interest accruing to the client.

As interest earned on the SIBTA is the property of the client, income tax due on the interest earned is the responsibility of the client. The financial institution will issue T5 income tax slips that must be forwarded to the appropriate parties in a timely manner. The lawyer should be mindful of any other income tax implications such as withholding taxes and remittances for non-resident clients. Consult your CPA if you have any questions.

Steps to establish a SIBTA

1. Satisfy yourself you have the client's authority to set up and transfer trust funds to a SIBTA. We recommend that the client authorization be in writing.
2. Prepare a letter and write a cheque made payable to the financial institution. The letter should direct the financial institution to set up an interest bearing account and specify the type of investment account authorized by the client. The name on the bank account should be the name of the law firm "in trust for client X". An authorized signatory to the trust account should sign both the letter of direction to the financial institution and the cheque. Place a copy of the letter in the client's correspondence file and in a folder for separate interest bearing trust accounts in the accounting records. Should you wish to transfer the funds electronically please review Rule 3-64.1.

Record the transfer in the trust book of entry and client trust ledger of withdrawing the funds from the pooled trust account and depositing it into the SIBTA.

Steps required to record interest on SIBTAs

1. Determine the amount of interest received on deposit from the financial institution.
2. Record the interest within 30 days in the trust book of entry and the client trust ledger.

Steps required to collapse a SIBTA

1. Prepare a letter to the financial institution with instructions to close the SIBTA and transfer the funds, including accrued interest, to the pooled trust account. A practising lawyer who is an authorized signatory to the trust account must sign the

letter. Should you wish to transfer the funds electronically, please review Rule 3-64.1.

2. Record the transfer in the trust book of entry and client trust ledger of withdrawing the funds from the SIBTA and depositing it into the pooled trust account.

Foreign currency trust accounts

Lawyers who routinely deal with trust funds in a currency other than the Canadian dollar may consider operating a pooled trust account in that currency (e.g. U.S. dollar, European euro and Hong Kong dollar). While the currency is different, the rules are not. The rules pertaining to pooled trust accounts apply to funds of any currency.

Effective April 30, 2020, CDIC offers protection on eligible deposits in foreign currencies. This change removes the previous requirement for lawyers to obtain written confirmation from their client before placing funds in a trust account that was not insured by CDIC (e.g. a U.S. dollar pooled trust account at a bank). As these foreign currencies are covered by CDIC, lawyers must designate the accounts as a professional trustee account and file an annual attestation in April.

Lawyers who bank with a provincial credit union continue to enjoy CUDIC coverage for their Canadian dollar trust accounts and trust accounts in foreign currencies. However, CUDIC does not require account holders to provide an annual attestation.

Setting up online banking access

A lawyer may wish to view the trust account balances through online banking. This can be helpful to ensure timely review of trust transactions prior to the delivery of the statement. Online banking access is permitted and the financial institution often will issue a bank card which can be used to access the online information.

You should consider whether you will need to electronically withdraw funds from trust. The rules permit lawyers to electronically withdraw trust funds to send funds to other lawyers, clients, third parties and to your own general bank account. This will be discussed in more detail in a later section.

The rules requires lawyers to use a commercial banking platform with two passwords:

- one person to use their password to enter the details of the withdrawal; and
- a second person, who is a practising lawyer, to use their password to authorize the transaction.

Best Practice: Do not write down your password. If you have difficulty recalling passwords, we recommend that you use a password manager as a safeguard.

If you anticipate accepting electronic deposits into your trust account, it would be prudent to be able to access your trust transactions online as Rule 3-64.2 requires lawyers to obtain written confirmation from the remitter or financial institution within two banking days of the deposit.

Chapter 2 - Operating a Trust Account

The following sections explain the general procedures and issues that can arise in operating a trust account.

Deposits

Under Rule 3-58 all trust funds received must be deposited as soon as practicable into a pooled or separate account of the practice unless it is specifically exempted by the rules. Rule 3-58 (3) permits the deposit of trust funds to an account other than a trust account in a designated savings institution with client's written instructions.

What must be deposited to a trust account?

- Funds belonging entirely to the client such as retainers for legal work yet to be performed or disbursements yet to be made;
- funds that belong partly to the lawyer and partly to the client that cannot be easily split, such as a settlement for a personal injury case that will be withdrawn and paid in part to the client and to the lawyer for fees; and
- funds that the lawyer receives on behalf of the client such as proceeds from property sales.

What may be deposited to a trust account?

- a lawyer may deposit up to \$300 of their own funds, under Rule 3-60 (5); and
- retainer for services as a mediator, arbitrator or parenting coordinator.

What must not be deposited to a trust account?

- funds that belong to the firm or the lawyer;
- funds that are not directly related to legal services provided; and
- funds that the lawyer is holding in a personal capacity which do not meet the definition of trust funds.

Trust funds must be directly related to legal services

Rule 3-58.1 requires any deposits into the trust account be directly related to legal services provided by that lawyer or law firm. For example, the lawyer would not be permitted to deposit funds into their trust account in the following scenarios:

- a. A lawyer is a team coach for a local soccer league. The lawyer is not permitted to deposit the funds related to the league in the trust account.
- b. Lawyer A does not have a trust account but is representing a client in the sale of a property matter. Lawyer B has a trust account. Lawyer A asks lawyer B if the sale transactions can be run through lawyer B's trust account. Lawyer B would not be permitted to deposit Lawyer A's trust funds into lawyer B's trust account because the funds are not directly related to the legal services provided by lawyer B.
- c. A lawyer is representing a client in a criminal matter and expects the legal fees to total approximately \$75,000. The client gives the lawyer \$1,800,000 as a retainer. The lawyer provides legal services and issues a bill to the client for \$75,000. The client promptly pays the invoice with a bank draft. The lawyer holds the \$1,800,000 in a separate interest bearing trust account pending instructions from the client. While the lawyer was providing legal services, the amount held as a retainer is not commensurate with the expected legal services to be performed and should not be held in a trust account.
- d. A lawyer is representing a non-resident in a corporate matter that will last several months. During this time, the client asks the lawyer to deposit \$60,000 into the trust account as the client is having difficulties opening a bank account in Canada. While the lawyer is providing legal services, the \$60,000 is not directly related to the legal services being provided and the lawyer should not deposit the \$60,000 into their trust account.
- e. A lawyer is acting as an escrow agent. They are holding \$250,000 in their trust account pending an event on September 7, 2022. If the lawyer does not provide legal services that directly relate to the \$250,000 and is simply handling the funds according to an escrow agreement, the funds should not be deposited into the trust account.
- f. A lawyer is acting for the seller in a sale of a property. The funds are received in trust in accordance to the purchase and sale contract. However, the client provides instructions to the lawyer to leave the funds in trust and periodically request to disburse the funds to various third parties unrelated to the transaction. In this situation, the lawyer is not permitted to hold funds in trust after completion of the

legal services and it is not appropriate to disburse to parties that are not involved in the transaction.

Lawyers must not allow their clients to use their trust account as the client's personal or business bank account. Before depositing funds into trust, you should determine what legal services are you are providing and whether the trust account is potentially being used to facilitate money laundering. The misuse of a lawyer's trust account can lead to disciplinary action so lawyers should exercise professional judgment before depositing funds into a trust account.

Steps required to process a trust deposit

1. Issue a receipt that contains the full particulars of the transaction including the reason the funds were paid to the firm, such as retainer, mortgage advance, settlement proceeds etc.
 - a. If cash was received, review Rule 3-59 to determine whether the firm is permitted to accept the funds. If the funds received do not fall under the exemptions listed in the rule, the firm must take immediate steps to return the cash.
 - b. If funds were directly deposited into trust, obtain confirmation from the remitter or the financial institution as to the form of the funds received. A cash receipt must still be issued if cash was directly deposited into your trust account.
 - c. If funds were electronically deposited into trust, obtain confirmation from the remitter or financial institution sufficient details to record the transaction (e.g. payer's name and client's name). Lawyers have two banking days to obtain this information.
2. Record the deposit, including the client matter number and the amount, in the trust deposit book issued by the financial institution. Total the trust deposits for the day.
3. Make the deposit as soon as practicable, preferably the same day. Always retain a copy of the validated deposit receipt.
4. Records the details of the deposit in the trust book of entry and client trust ledger. You will need to record the date, the amount, the source and form of the funds received and the client's name and client number.
5. Record the trust administration fee, if applicable.

Lawyers looking for an alternative to visiting the financial institution in-person to make deposits should consider remote deposit capture or mobile deposits. Both options allow you to make trust deposits 24 hours a day, 7 days a week. If you choose to use either of these methods of depositing funds into trust, ensure the financial institution (or its related software application) is able to provide a validated deposit slip.

Remote capture deposits allows law firms with the ability to scan incoming cheques at the law firm's office for deposit into the trust account.

Mobile deposits enable lawyers to deposit paper cheques directly into their trust account using a mobile app. The financial institution will require you to take a photo of the front and back of the cheque and upload the photos into your financial institution's app.

Best Practice: Control who opens the mail regarding the trust account and incoming deposits; ensure that each cheque is stamped with a restrictive endorsement such as "For Deposit Only".

Order trust account supplies including trust deposit slips and trust cheques in a distinct colour from the general account. Ensure new supplies are imprinted with "Trust Account" and the correct account number before you start using them.

Issue numbered receipts for all incoming trust funds and duplicate numbered cash receipts for trust funds received in the form of cash received by the law practice. Keep copies of all cheques that are deposited noting which have not been certified. Note the date of deposit, and compare the list to your financial institution statement to ensure no cheques have been returned (i.e., non-sufficient funds or NSF) prior to disbursing the funds.

Certified vs. uncertified cheques

Certified funds may take different forms including a certified bank cheque, bank draft, or money order. A certified bank cheque must be certified at the financial institution where the cheque is drawn.

Trust cheques issued by the law firm must be capable of certification. BC Code 7.2-12 requires that if a lawyer authorizes the withdrawal of trust funds from a trust account by cheque, they undertake that the cheque will be paid and that it is capable of being certified if presented for that purpose. Please note the commentary to BC Code 7.2-12 which states,

"Unless funds are to be paid under an agreement that specifically requires another form of payment or payment by another person, a lawyer must not refuse to accept another lawyer's uncertified cheque for the funds. It is not improper for a lawyer, at that lawyer's own expense, to have another lawyer's cheque certified."

You should be aware of the following so that there is sufficient funds in trust:

- your law firm's policy for accepting uncertified cheques for deposit into the firm's trust accounts;
- your financial institution's policy on placing holds on funds in your law firm's trust account; and
- the time required for the financial institution to negotiate cheques within your city, within the province, and elsewhere.

If you are going to withdraw trust funds soon after you deposit the funds to your trust account, we suggest that you request guaranteed deposit funds from the client. One of the most reliable ways to receive funds into your trust account is by way of wire or electronic transfer. Options for receiving payment into your trust account should be discussed with your financial institution.

Best Practice: Take a photocopy of the cheque prior to getting the cheque certified for your records. If the financial institution does not return the original certified cheque, request at a minimum, copies of the front and back of all certified cheques that cleared the trust account for your records.

The Law Society's Practice Advice Department has prepared guidance on risk management tips to reduce the risk of a hold on trust cheques, certified cheques and bank drafts. Refer to the Resources section at the end of the handbook for the link to the guidance on our website.

Electronic deposits into trust

Lawyers are permitted to receive money into a trust account by electronic transfer if the lawyer obtains sufficient information from the financial institution or the remitter in order to record the transaction. Therefore, the lawyer needs to obtain the source of funds received, the client's name and the client matter. Furthermore, lawyers must obtain this written confirmation within two banking days of the deposit.

Interest on trust accounts

Under Rule 3-60 (3) interest on the pooled trust account must be paid by the financial institution directly to the Law Foundation. It is the lawyer's responsibility to ensure that they have provided written instructions to the financial institution to pay interest to the Law Foundation.

The calculation of interest has been negotiated between the Law Foundation and the various financial institutions. Usually interest is calculated at an agreed upon rate and may be in

some cases be reduced by the amount of service charges related to the trust account. The total or gross interest amount minus service charges equals the net interest amount to be remitted to the Law Foundation.

Trust withdrawals

The provisions that allow for the withdrawal of trust funds are included in Rules 3-58.1, 3-64, 3-64.1, 3-64.3, 3-65 and 3-66. Under Rule 3-64 (3) no withdrawals from trust may be made unless the firm's trust accounting records are current and there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid. As such, the trust funds must be on deposit in the same account for the specific client matter that you draw the funds on.

Generally, you may withdraw trust funds that:

- are properly required for payment to or on behalf of a client or to satisfy a court order;
- belong to the lawyer;
- are in the trust account because of a mistake;
- are paid to the law practice to pay a debt of the client;
- are transferred between trust accounts;
- are due to the Law Foundation; or
- are remitted to the Law Society as unclaimed trust money.

Rule 3-58.1 requires any withdrawals from the trust account be directly related to legal services provided by that lawyer or law firm. Furthermore, the funds must be withdrawn from trust as soon as practicable on completion of the services to which the funds relate. For example, the lawyer would not be permitted to withdraw funds from their trust account in the following scenarios:

- a. A lawyer is representing a client in a sale of a property matter. The transaction completes and the lawyer is about to issue a trust cheque to the client for the sale proceeds. The client instructs the lawyer to make the trust cheque payable to a third party, unrelated to the transaction. Paying sale proceeds to the seller is an action that is directly related to legal services provided by the lawyer. Paying sale proceeds to someone else is not. The lawyer should issue the trust cheque to the client and the client can issue a cheque to the third party themselves.

- b. A lawyer is representing a client in a personal injury matter. The transaction completes and the settlement proceeds of \$1,000,000 are deposited into trust. The client instructs the lawyer to wire \$50,000 into the client's bank account on the first of every month for the next 20 months. While the funds paid to the client are directly related to legal services provided by the lawyer, the lawyer must deliver the \$1,000,000 to the client as soon as practicable as the legal services have been completed.
- c. A lawyer is representing a client in the sale of a property matter. The transaction completes and the client instructs the lawyer to put the funds into a separate interest bearing trust account as they will be purchasing a property soon. The lawyer must not hold onto the funds. The lawyer must deliver the funds to the client as soon as the legal services have been completed.
- d. A lawyer is representing a client in the purchase of a company matter. The client provides a personal cheque for \$300,000 to the lawyer and the funds are deposited into the trust account. The deal collapses and the client instructs the lawyer to wire the \$300,000 to a foreign company that is purportedly owned by the client. The lawyer must return the funds to the client and not the client's company.

Before withdrawing funds from trust, lawyers should ask themselves whether the payment is required as part of the legal services provided. This includes evaluating who funds are being paid to as lawyers should not be acting as a financial intermediary. Lawyers are expected to exercise caution and not follow their client's instructions blindly. The misuse of a lawyer's trust account can lead to disciplinary action so lawyers should exercise professional judgment before withdrawing funds from trust.

Forms of trust withdrawals

The Rules allow lawyers to withdraw trust funds:

- by cheque as permitted by Rule 3-64 (5) or 3-65 (1.1) (a);
- by electronic transfer as permitted by Rule 3-64.1;
- by bank draft as permitted by Rule 3-64.3;
- by instructions to the designated savings institution to remit net interest to the Law Foundation as permitted by Rule 3-64 (9); and
- in cash as permitted by Rule 3-59 (5) or (6) in very specific circumstances.

Steps required to issue a trust cheque

The majority of trust withdrawals by lawyers are conducted via trust cheque. Familiarize yourself with the following steps so that trust funds are properly accounted for:

1. Satisfy yourself as to the authority to issue the trust cheque. An example would be a trust cheque requisition approved by the lawyer in charge of the trust account or a signed statement of adjustments on a conveyance matter.
2. Verify by checking the client ledger that there are sufficient funds on deposit for this client to issue the trust cheque. Also, verify that the firm did not accept an aggregate amount of more than \$7,500 in cash, if so you are required to refund your client in cash and not issue a trust cheques. The topic of cash will be discussed in a later section.
3. Prepare the trust cheque. Photocopy or scan the cheque and retain a copy on file (this is an optional procedure).
4. Record the cheque details in the trust book of entry and client trust ledger.
5. Have the trust cheque signed by an authorized signatory to the trust account. At least one of the signatories must be a practising lawyer in BC.

A cheque issued from a pooled or separate trust account must be signed by a practising lawyer and marked “trust”. Lawyers must not sign blank trust cheques. If a lawyer will be away, arrange to have another practising lawyer sign the trust cheque on their behalf.

Best Practice: Record the file number on the face of the cheque as well as the cheque stub so that the disbursement can be easily traced.

Electronic withdrawal of trust funds

Lawyers are permitted to electronically withdraw trust funds under Rule 3-64.1. For property transfer tax electronic payments you are required to keep the following records:

- all electronic payment authorizations submitted to electronic filing system;
- the property transfer tax return; and
- the transaction receipt provided by the electronic filing system.

In addition, the lawyer must digitally sign the property transfer tax return in accordance with the requirements of the electronic filing system and verify that the funds were drawn from

the trust account as specified by the property tax return. A lawyer must safeguard their digital signature and is not permitted to delegate signing authority to a non-lawyer.

Lawyers are also permitted to electronically withdraw trust funds provided that they:

1. Complete and sign the Law Society Electronic Transfer of Trust Funds (EFT) requisition form (refer to Appendix B for a copy of the form).
2. Use a financial institution's commercial banking platform that requires a two-person authentication system. The first person will enter the details of the transaction using one password and the second person, who must be a lawyer and using another password, will enter the details to authorize the transaction.
3. Obtain written confirmation from the financial institution by the close of the next banking day.
4. Verify the transaction by completing the following by the close of the next banking day after the confirmation is required:
 - a. Print a copy of the confirmation;
 - b. Compare the printed copy of the confirmation to the requisition to ensure transaction was processed as requested;
 - c. Write on the printed copy of the confirmation the name of the client, the subject matter and the file number;
 - d. Sign and date the paper copy of the confirmation; and
 - e. Retain a copy of the confirmation and requisition form as part of the accounting records.

If you are a sole practitioner who does not have non-lawyer staff, you are permitted to perform the duties of both individuals in a two-person authentication system if you maintain a different password for each function.

Withdrawal by bank draft

Lawyers are permitted to directly withdraw funds from trust using a bank draft provided they:

1. Obtain written consent from the payee to receive the funds via bank draft;
2. Complete the prescribed form (See Appendix B);

3. Obtain the bank draft at the financial institution where the lawyer's law firm has a trust account;
4. Obtain written acknowledgement of receipt of the bank draft from the payee; and
5. Retain a copy of all documents listed above, including the bank draft.

Cheques, wire transfers and bank drafts

Trust cheques and wire transfers leave a better audit trail than bank drafts as you can easily determine the funds have been withdrawn. Financial institutions will typically debit your trust account to remove the funds for the bank draft. If you want to determine whether the bank draft was deposited by the payee, you will need to follow-up with your financial institution. Furthermore, if a bank draft is lost, it may be difficult for the financial institution to assist you in reclaiming the funds.

Cancelled cheques, including certified cheques, belong to the firm must be retained in the accounting records. Wire payments made using the Electronic Transfer of Trust Funds requisition form also provide an adequate audit trail. In addition, if you are making a payment to a client overseas, it is strongly suggested that a wire payment be used. Sending a cheque overseas increases the risk of loss or theft.

The lawyer signing the trust cheque should review the client trust ledger to determine if payment is appropriate. Under no circumstances should the firm disburse more funds than received for a specific client. To do so would create a trust shortage and may require a written report to the Executive Director, under Rule 3-74 (2).

Best Practice:

Use pre-numbered cheques and periodically examine the sequential order of the blank cheque supply. Keep all voided cheques and blank cheques under your control during the day and in a locked, secure location during non-office hours.

Establish a disbursement/withdrawal procedure. Written documentation such as a signed statement of account or an approved invoice provides authorization that the withdrawal is appropriate. The firm's withdrawal procedures should be clearly communicated.

Stamp original copies of invoices "PAID" to prevent duplicate payments.

Cheques payable to a financial institution should include details of the transaction such as a mortgage number and file reference.

Signing authority on trust accounts

Withdrawals by trust cheque must be signed by at least one practising lawyer as required by Rule 3-64 (5).

A lawyer may lose the right to sign on trust accounts in the following instances:

- as an undischarged bankrupt;
- as a result of a Law Society disciplinary hearing; or
- because of a voluntary undertaking to the Law Society.

On occasion, sole practitioners may allow another lawyer to sign their trust cheques when they are not available to sign themselves. It is permitted to provide another practising lawyer with temporary signing authority on your trust account.

The rules do not permit trust cheques to be signed by a non-lawyer alone. A non-lawyer may be a second signatory to the trust account. This is common in larger firms where the director of finance or office manager may be given signing authority as an internal control.

A lawyer is also required to sign the *Electronic Transfer of Trust Funds* and *Withdrawal from Trust by Bank Draft requisition forms* if funds are being withdrawn electronically or via bank draft.

Lawyers must be scrupulous with the funds they hold in trust on behalf of clients. Before a withdrawal is made from trust, a lawyer's signature authorizing the transaction is required.

Payment of fees from trust

Rules 3-64, 3-64.1 and 3-65 deal with the provisions for withdrawing funds from the trust account, for the payment of fees. Familiarize yourself with the provisions of these specific rules. Generally, once the work is performed by the lawyer, a fee bill is rendered to the client itemizing all the amounts charged prior to withdrawing funds from trust. Fees can be withdrawn from trust by a trust cheque payable to the lawyer's general account or by electronic funds transfer using a financial institution's commercial banking platform that requires a two-person authentication system. In order to avoid comingling the lawyer's funds with trust funds, under Rule 3-60 (5), a lawyer should not defer the withdrawal of trust funds to the general account for an unreasonable period of time.

Best Practice: Before you write a trust cheque to your general account or complete the Law Society's *Electronic Transfer of Trust Funds requisition form* for fees, look at the date of the invoice and cover letter. You should not be taking any funds unless the invoice is dated and delivered prior to the date you are writing the cheque or completing the requisition form.

Shortages and overdrafts

Trust shortages are a very serious matter. Rule 3-63 requires that a lawyer must, at all times, maintain sufficient funds on deposit in each trust account to meet all of their obligations to the clients. Trust shortages are not the same as a physical overdraft. A trust shortage occurs when more funds are paid out on a client matter than what is available to the credit of that particular client. So, even though the trust account may have a positive balance, it may experience a shortage with a specific client matter. Shortages also include instances in which trust funds are deposited to an account which is not designated as a trust account, such as a general account or personal account.

For example: John gives you \$5,000 in trust. Mary gives you \$1,000 in trust. Assuming that these are your only two clients, you now have \$6,000 in trust. You withdraw \$4,000 from trust in payment of an invoice for fees and disbursement issued to Mary; creating a \$3,000 trust shortage under Mary's trust ledger. Why? Because Mary only had \$1,000, yet you paid \$4,000, even though you still have a positive balance in your trust account of \$2,000 ($\$6,000 - \$4,000 = \$2,000$). It is considered a shortage because Mary did not have enough funds under her client trust ledger to make the payment resulting in using some of John's funds.

In the event that you discover a trust shortage, Rule 3-74 (1) requires you to immediately pay enough funds into trust to correct the trust shortage. Under Rule 3-74 (2) you must make a written report to the Executive Director noting the circumstances if you:

- have a trust shortage in excess of \$2,500; or
- are unable to deliver trust funds when due (eg. a trust cheque has been returned by your financial institution and was not negotiated).

There are several scenarios where a trust shortage could occur. Additional examples of shortages include:

- Trust funds inadvertently deposited into the general account.
- Trust funds were held in Bank A but the funds were withdrawn from Bank B.

- The client's cheque was deposited into trust and subsequently a trust cheque was issued to withdraw the trust funds. However, the client's cheque was returned as non sufficient funds.
- The bank debits the trust account for NSF fees, cheque printing and other service charges.
- The bank debits the trust account an amount greater than what the trust cheque was issued for.

Please refer to Appendix C for sample trust shortage letters to the Law Society.

Best Practice: Do not authorize a trust cheque until you are satisfied that the deposited trust funds have cleared your financial institution. Be diligent and ensure you have funds for the specific client in the right trust account to cover the trust cheque.

Other valuable property

When valuable property is received by the law firm, a receipt should be given to the client providing sufficient detail to identify the property concerned. The property should be immediately secured. If the law firm does not have a fire protected safe the property should be delivered to a safety deposit box with the client's authorization. Valuable paper and property should not be stored in the client file.

A permanent record must be maintained of the receipt and disposition of all valuable property handled on behalf of the clients. It is also required as part of the monthly trust reconciliation process to reconcile the valuable property listing. Each month, compare the listing against the physical valuable property. Any discrepancies must be investigated and corrections made. Retain a copy of the listing as part of the monthly trust reconciliation and record the date it was prepared.

The valuable property record may include executed Powers of Attorney, bearer bonds, share certificates or similar securities, estate assets including jewellery, antiques or other negotiable property. Please refer to Appendix A for a sample of a Valuable Property Record.

Credit card transactions

A law firm may accept credit or debit card payments from clients for both trust and general funds. You must make proper arrangements with your financial institution to ensure that all service charges relating to these payments are paid from the general account. The effect of this arrangement will be that funds deposited to trust accounts will not be reduced by discounts or service charges.

Best Practice: If the financial institution is not willing to set up two separate machines (one for trust and one for general), these payments can be received directly into the law firm's trust account with all related service charges being paid from the law firm's general account. Then, if funds are received related to the payment of a statement of account, they should be immediately transferred to the general account.

Cash transactions

Anytime a lawyer or law firm is dealing with cash received from or on behalf of a client, special attention is required. The improper handling of cash transactions can lead to disciplinary action so a careful reading of Rule 3-59 is required.

Generally, the rule prohibits a lawyer or law firm from receiving cash in connection with the provision of legal services by the lawyer or law firm in an aggregate amount over \$7,500 Canadian dollars in respect of any one client matter unless received:

- from a financial institution or public body;
- from a peace officer, law enforcement agency, or other agent of the Crown;
- pursuant to a court order or other tribunal for the release to the lawyer or the lawyer's client of cash that has been seized by a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;
- to pay a fine, penalty or bail;
- for professional fees, disbursements or expenses.

Cash, in any amount, can be received as a retainer or for the payment of an outstanding invoice for services rendered. When a firm does accept more than \$7,500 in cash, any refund out of those funds, must be refunded in cash. In addition, the lawyer must have the payee sign the receipt for the refund. An important point to remember is that cash receipts are considered in aggregate and over the entire life of the client matter. That means that not all the cash has to come in on the same day. So, \$1,000 can come in today, \$500 tomorrow, etc. The distinction between "client" and "client matter" is also important since you may have a client with several distinct client matters such as a purchase, sale, or personal injury matter. You must track the cash received on each distinct client matter.

Lawyers must be on guard against cash that is deposited directly into their trust account. Lawyers must investigate all direct deposits to determine the form of funds received. We recommend lawyers retain supporting documents (e.g. a copy of the validated deposit receipt or wire transfer confirmation form) for each direct deposit. The form of funds

received must be accurately recorded in the accounting records. Lawyers are not permitted to record the form of funds received as “direct deposit”.

Beware of a change in use of the cash accepted. A lawyer may have accepted more than \$7,500 in cash for a retainer but subsequently uses that cash to pay for something other than the lawyer’s fees (e.g. settlement or property purchase), the lawyer may face disciplinary action for not complying with the cash rules.

Cash receipt book of duplicate receipts

The rules for handling cash require that you prepare a duplicate receipt for all cash that you receive for the law firm. In this cash receipt book of duplicate receipts, you must record the following for each receipt of cash:

- the date of receipt;
- the name of the person from whom the cash was received;
- the amount of cash received;
- the name of the client for whom the cash was received;
- the file number;
- the signature of the lawyer or a person designated by the lawyer;
- the signature of the person who provided the cash; and
- all dates on which the record was created or modified (if generated electronically).

In addition, Rule 3-70 (3) requires that for each withdrawal of cash required by Rule 3-59 (5) and (6), you must issue a receipt and record the following:

- the date of the withdrawal;
- the amount of the withdrawal;
- the name of the client in respect of whom the cash was withdrawn;
- the number of the file in respect of which the cash was withdrawn;
- the name of the person to whom the cash was paid;
- the signature of the lawyer or a person designated by the lawyer;

- the signature of the person to whom the cash was paid; and
- all dates on which the record was created or modified (if generated electronically).

Cash refund examples

Review the examples below to see if you know how to properly refund a client. You may be assisting your client in money-laundering if you do not refund the client in a method that is required by the rules.

Scenarios for cash or cheque refunds – as of July 12, 2019	
Scenario 1	<ul style="list-style-type: none"> • Lawyer requests an \$8,000 retainer for legal services • Client provides an \$8,000 cash retainer • Lawyer provides the services and bills the client \$7,500 • Lawyer must refund \$500 to the client
	The lawyer must refund \$500 to the client in cash because the cash accepted was greater than \$7,500.
Scenario 2	<ul style="list-style-type: none"> • Lawyer requests \$7,000 retainer for legal services • Client provides \$7,000 cash retainer • Lawyer provides the services and bills the client \$4,000 • Lawyer must refund the client \$3,000
	The lawyer must refund \$3,000 to the client by trust cheque or wire transfer because the cash accepted was \$7,500 or less.
Scenario 3	<ul style="list-style-type: none"> • Lawyer requests an \$8,000 retainer for legal services • Client provides an \$8,000 cash retainer

Scenarios for cash or cheque refunds – as of July 12, 2019	
	<ul style="list-style-type: none"> Client decides to be represented by another another lawyer and requests that the \$8,000 retainer be transferred to the new lawyer
	The lawyer must refund the \$8,000 to the client in cash because the cash accepted was greater than \$7,500. The lawyer should not issue a trust cheque or bank draft or wire the \$8,000 to the new lawyer.

The following is an excerpt from the Benchers’ Bulletin, 2008: No. 3 July written by Practice Advisor Barbara Buchanan, QC (Buchanan):

“If you are providing a cash refund, it means a trip to your financial institution to make a cash withdrawal. You must not make out a trust cheque payable to "Cash" or "Bearer" (Rule 3-64 (5) (b)). You can use the form of withdrawal slip provided by your financial institution to make the withdrawal. We suggest that you ask for a copy of the withdrawal slip to staple in your deposit book or to your bank statement.

When you hand over the cash to your client, have the client sign your duplicate receipt book for the cash refund just as you had the client sign your duplicate receipt book when your client originally gave you cash (Rule 3-70). Also, make sure that you document the cash refund in both the individual client file and the monthly trust reconciliation so you have a written explanation for a withdrawal made other than by way of a trust cheque.”

While lawyers are permitted to accept cash in aggregate of more than \$7,500 for fees, we urge lawyers to exercise caution. While there are no limitations to the amount of cash you may accept for fees and disbursements with respect to Rule 3-59, the Law Society Rules do not supersede the *Criminal Code* or allow lawyers to accept cash without inquiry or scrutiny. The following is an excerpt from Buchanan’s article in the Benchers’ Bulletin, 2019: No. 2 Summer:

“Lawyers must be aware of their vulnerabilities, as well as, changes in the regulatory and legislative landscape regarding criminal activities and money laundering. It is an offence to possess property obtained by crime (section 354(1), 462.3(1) and 462.31(1) of the Criminal Code). A lawyer owes a duty to the state to maintain the law and not to aid, counsel or assist any person to act contrary to the law (Canon 2.1-1(a) of the Code of Professional Conduct for British Columbia.)”

Dealing in large volumes of cash is inconsistent with most mainstream activities. Routinely accepting large volumes of cash is a high-risk practice and will be reviewed in detail during a compliance audit.

Best Practices: Create a “no cash” policy in the firm. Educate your staff, inform your clients, include wording in the retainer agreement and instruct the bank to put a note in your account to not accept any cash.

Unclaimed trust money

When a lawyer is holding funds in trust for a client for a period in excess of two years and the client cannot be located to return the funds, the lawyer may use the provisions of Rule 3-89 and section 34 of the *Legal Profession Act* to pay the funds to the Law Society.

Once the funds have been received by the Law Society, the Society will attempt to locate the rightful owner or their heirs. If the owner cannot be found within five years, the funds will be paid to the Law Foundation with the understanding that all valid claims for return of trust funds will be honoured.

When remitting funds to the Law Society under Rule 3-89, the lawyer must report to the Law Society the full name and last known address of the owner, the amount of trust funds held, efforts made to locate the party, any unfulfilled undertakings given by the lawyer in relation to the funds, and the details of the transaction. Refer to Appendix B for the Law Society’s *Unclaimed Trust Money form*.

Handling aged trust funds

All trust funds, regardless of the amount or the length of time held in trust, must be dealt with properly in accordance with the Rules. Rule 3-64 (1) sets out the circumstances in which a lawyer may withdraw funds from trust. A withdrawal for any other reason is improper. Further, a lawyer may only transfer funds from trust to general if the lawyer:

- is entitled to those funds as payment for fees, disbursements or taxes; and
- has prepared and delivered a bill to the client in accordance with the requirements of Rule 3-65 and section 69 of the *Legal Profession Act*.

A lawyer who has no entitlement to the money must not issue a bill to “zero out” the remaining trust balance. A lawyer’s conduct in transferring funds from trust to general without meeting the proper requirements may lead to disciplinary action for failure to comply with the Rules. Moreover, depending on the circumstances, this conduct could be considered misappropriation.

What should you do?

Avoid the problem of dealing with lingering trust funds by the early identification of files which have a remaining trust balance after the work has been completed. Once the files have been identified the remaining funds should be immediately disbursed to the appropriate party. Do not let it get to the point where a great deal of time has passed since your last contact with the person(s) for whom you hold the money.

Carefully review the monthly trust reconciliations for any trust cheques that have not cleared within two or three months of issuance and for any trust balances remaining on closed or inactive files.

If a lawyer holds unclaimed trust funds, they must make reasonable efforts to locate the owner of the funds to pay them to the owner. The lawyer should also document the efforts taken to locate the owner. If, after 2 years, the lawyer has been unsuccessful in locating the owner of the funds, they may then remit the funds to the Law Society under Rule 3-89.

Best Practice: Request a voided cheque from the client as part of the client intake process. If there are funds remaining in trust, you may issue a trust cheque and deposit the funds directly into the client's account or electronically transfer the funds to the client's account. Please refer to Appendix B for the *Unclaimed Trust Money form*.

If you require further information about the process of submitting funds as unclaimed trust money, contact the Law Society at: unclaimed@lsbc.org.

Annual reporting requirements

Every law firm must deliver to the Law Society an annual trust report complete to the satisfaction of the Executive Director. The requirement to file a trust report is in place for all firms regardless if they do not maintain a trust account.

The purpose of the trust report is to ensure that the firm has an adequate system for recording all financial transactions and complies with the trust accounting requirements set out in Part 3, Division 7 of the Law Society Rules.

A trust report usually covers a period of 12 months; however, it may cover a period of less than 12 months in the first or last year of operation. The report is due within 90 days of the year-end for trust reporting. The trust reporting year-end month is usually the month in which the firm began operating.

Failure to submit the required trust report by the due date will result in late fee assessment(s). In addition, the firm will be on notice that all lawyers at the firm will have

their membership suspended if the trust report is not submitted within 60 days after the due date. We recommend you diarize the due date to ensure the trust report is filed on time.

Please refer to Rules 3-79 to 3-83.

Compliance audits

The Compliance Audit Program is a proactive process that is designed to be an effective means by which the Law Society can fulfill its duty to ensure compliance with the trust accounting rules.

A compliance audit is defined in Rule 3-53 as “an examination of a lawyer’s books, records and accounts and the answering of questions by lawyers”. Rule 3-85 authorizes the Law Society to perform the audit. All law firms in BC are subject to a compliance audit. The primary goal of the compliance audit is to ensure that books, records and accounts comply with the requirements of the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct for BC*. The compliance audit process also aims to provide on-site guidance to help law firms identify and correct minor problems with record-keeping before they lead to serious issues of non-compliance; and to identify possible professional conduct concerns.

The audits are generally selected at random and the goal is to audit each firm at least once every 6 year cycle. Compliance audits are conducted by a trust assurance auditor either onsite at your chief place of practice or remotely. The time period examined is typically the most recent 12 to 24 months. Advance notice is given along with a checklist of the books and records required for the audit period. A compliance audit usually takes 2 to 5 days to complete.

Receiving a compliance audit does not waive the requirement under Law Society Rule 3-79 to file a trust report. The report is still required in the year in which the Law Society audits the firm.

Other trust fund regulations

You should also be familiar with the provisions of the *Code of Professional Conduct for BC* that set out additional requirements governing the handling of trust funds.

BC Code 7.1-3: states that unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society:

- a shortage of trust monies;
- a breach of undertaking or trust condition that has not been consented or waived;

- the abandonment of a law practice;
- participation in criminal activity related to the lawyer's practice;
- conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer; and
- any other situation in which a lawyer's clients are likely to be materially prejudiced.

Closing a trust account

If the firm is closing a trust account, you are required to obtain confirmation from your financial institution of account closure. This can come in different forms. First, if your final statement specifically states that the account is "closed", you do not have to do anything further. However, if your final bank statement simply shows a zero balance, with no notation that the account is closed, then you must contact your financial institution and ask them to provide written confirmation that the account has been closed, and the date it was closed. The confirmation of account closure should be maintained within your accounting records, with a copy in your monthly trust reconciliation in the month it was closed. This confirmation will be reviewed during the compliance audit.

If the trust account you are closing is your sole or final trust account, and after its closure, you no longer are operating a trust account; then, upon request, you will be required to provide a copy of the account closure to the Law Society.

Chapter 3 - Setting Up and Operating a General Account

The general account of the practice is a deposit account at a financial institution with cheque writing privileges that is commonly referred to as the operating account. It is a non-trust account and one from which payments for the day to day operating expenses of the firm are made. The account is kept in the name of the firm and is identified as the general account on the books and records of the firm and the financial institution.

The general account is normally opened at the same financial institution as your pooled trust account. Many law firms will also set up a line of credit or other borrowing vehicle that is used to fund the general account in case the available cash in this account falls below the level required to meet all the operating expenses of the firm.

Signatories to the general account

The rules do not have any specific requirements regarding who signs a general account cheque. Often, administrators have signing authority on the general account, as well as, a lawyer of the firm. It is up to the individual firm to decide on the appropriate signing authorities on the general account.

Best Practice: The law firm should set up segregation of duties to ensure there is appropriate oversight that the person given signing authority on the general account has not abused their privilege. As such it would be prudent to have another person, other than the signing officer to the account, open the bank statements and review the negotiated cheques to ensure that all cheques have been accounted for and appropriately authorized.

Steps required to process a general deposit

1. Issue a receipt that contains the full particulars about the transaction. If funds were directly deposited into general, obtain confirmation from the remitter or the financial institution as to the form of the funds received. A cash receipt must still be issued if cash was directly deposited into your general account.
2. Record the deposit amount and matter number in the general deposit book.
3. Deposit all receipts as soon as practicable, preferably daily in the appropriate accounts. Always retain a copy of the validated deposit receipt.
4. Record the details of the deposit in the general book of entry and update the running balance.

5. Record the deposit details for payments of a client account to the accounts receivable ledger and update the running balance.

Rendering accounts to clients

The law firm must prepare and deliver a bill to their clients prior to receiving any funds into the general account. You are required to keep a file copy of all bills to clients showing the professional fees and other charges that you have billed and keep them in an organized manner such as chronologically, numerically or alphabetically. Most firms issue bills (commonly referred to as statements of account) that are numbered so it is easy to file the bills in numerical order.

You must also keep an accounts receivable ledger or some other suitable system that records all firm billings and all payments made and the remaining accounts receivable running balance for each client. When you have created an invoice, whether it was paid immediately or not, you have created a “receivable”. Therefore, every bill issued by the firm should be recorded in the accounts receivable ledger.

The bill should include a reasonably descriptive statement of the services and a detailed statement of disbursements. Payments to third parties by the firm such as courier charges, court filing fees, land registry fees and internal costs such as photocopying, receiving and sending faxes may also be charged as client disbursements. These client disbursements are usually broken down between taxable and non-taxable disbursements on the statement of account and can only be charged after the firm has incurred the expense. GST and PST will also be charged to the clients at the rates set by the federal and provincial government applicable at the time of billing.

The bill must also be signed by or on behalf of a lawyer. Alternatively, the bill must be accompanied by a letter, signed by or on behalf of the lawyer that refers to the bill. Retain a copy of the signed bill or letter as a supporting document of what was provided to the client. The Rules require that the bill be delivered to the client so we recommend you manually indicate the method of delivery and the date it was delivered on the copy retained (e.g. dropped off at Post Office on September 7, 2022).

Best Practice: Mark on your invoices the amount which was paid from trust. The bill will normally include a record of trust funds received and withdrawn for the relevant client matter, if any, and inform the client if any trust funds have been applied to the amount owing on the bill. It will also inform the client of any amounts owing after the transfer of funds from trust.

Please refer to the Resources section at the end of this handbook for links to the Canada Revenue Agency and Ministry of Finance website that contains information on GST and PST.

Payment of fees and disbursements

When the firm renders and delivers a statement of account, the total amount of the bill to the client is entered in the accounts receivable ledger.

If funds are available in the client's trust account to cover a bill, which has been rendered to the client, the funds can be withdrawn from trust and paid to the firm's general account.

Lawyers must properly record and bill disbursements as required under section 69 (4) of the *Legal Profession Act*. When you sign your name to an account, you represent that the fees and disbursements are accurate and verifiable. For billing purposes, disbursements must be:

- reasonably incurred in the circumstances of the client matter or be authorized by the client under section 71 (2) (b) of the Act;
- billed at their actual, rather than estimated costs; and
- properly described in detail in the statement of account.

Disbursements must be billed at their actual rather than estimated costs. In addition, disbursements must not be inflated. It is important to keep back up documentation for all disbursements so that the disbursement is easily traceable should the client or auditor request a copy.

Under *Code of Professional Conduct of BC 7.1-2* lawyers also have a professional duty to meet their financial obligations. This includes those that are incurred or assumed in the course of practice, apart from any legal liability to do so. You are responsible to pay disbursements if clients do not, and your recourse is to collect the amounts from the clients.

Withdrawals from the general account

The general account funds are used to pay for the following:

- general overhead and expenses of the practice such as rent, parking and general office expenses;
- disbursements on behalf of clients;

- pay owners of the firm, associate lawyers, employees of the firm along with contract staff; and
- tax remittances such as PST, GST and corporate taxes, and payroll source deductions.

Steps required to issue a general cheque

1. Check the balance in the account to ensure that you have sufficient funds to cover the cheque.
2. Prepare the cheque and have an authorized signatory to the general account sign it.
3. Record the cheque in the general book of entry and update the running balance.

Chapter 4 - Trust Administration Fee

Lawyers who maintain one or more trust accounts in BC are required to remit to the Law Society a trust administration fee (TAF) for each client matter upon initial deposit of funds into trust, not including fees and retainers for fees.

Under Rule 2-110 (3) a lawyer must remit the TAF collected or allocated to a client file for the previous quarter within 30 days of the end of that quarter. Each of these remittances will cover three-month period of trust activity ending March 31, June 30, September 30, and December 31. Zero balance returns are not required. The due dates should be diarized in your calendar to ensure that the firm remits on time. A late fee of 5% of the amount due will be applied to late payments.

It is important to note that sufficient backup documentation must be maintained as the reasonableness of your TAF remittances will be tested during any Law Society compliance audit of your firm or by specific request of the Trust Assurance Department. At a minimum, you will need to retain a list of client numbers and client names for which TAF was remitted.

Please consult the Law Society website for the most up to date information regarding the current rate of the TAF.

Chapter 5 - Recordkeeping

Accounting records must be retained at the chief place of practice for a minimum of 3 years and retained for a period of 10 years after the termination of the representation. Termination of the representation usually occurs when the final billing has been rendered to the client and all balances including trust funds owing to the client have been accounted for to the client as recorded on the client trust ledger and the client file is closed and sent to storage.

What do you keep?

A lawyer who practices in BC must maintain current financial records as set out in the rules and retain the following fiduciary, trust and general account records.

Fiduciary property records

As required by Rule 3-55

- current list of valuables, with a reasonable estimate of the value of each;
- accounts and other records respecting the fiduciary property; and
- 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.

Trust accounts records

As required by Rule 3-67 (6)

- original bank statements and cancelled cheques, statements for savings accounts, term deposits and other type of accounts (electronic bank statements and cheque images are also acceptable provided they are saved on the firm's service and not the financial institution's server);
- trust deposit book, including original validated bank deposit receipts and ATM deposit slips;
- pooled trust account cheque book, along with voided cheques;
- Electronic Funds Transfer (EFT) requisition forms and confirmations; and

- all other supporting documents, vouchers and invoices.

As required by Rule 3-68

- trust book of entry;
- client trust ledgers; and
- trust transfer journal.

As required by Rule 3-70

- cash receipt book of duplicate receipts.

As required by Rule 3-73

- monthly trust reconciliations for pooled and separate interest bearing accounts, along with client trust liability listing; and
- valuable property record.

General accounts records

As required by Rule 3-67 (6)

- original bank statements and cancelled cheques, statements for savings accounts, term deposits and other type of accounts (electronic bank statements and cheque images are also acceptable provided they are saved on the firm's service and not the financial institution's server);
- general account deposit book, including original validated bank deposit receipts and ATM deposit slips;
- general account cheque book; and
- all other documents that support the above-noted records and accounting transactions such as credit and debit memos.

As required by Rule 3-69

- general book of entry; and
- accounts receivable ledger.

As required by Rule 3-70

- cash receipt book of duplicate receipts.

As required by Rule 3-71

- file copies of bills delivered to clients.

Upon dissolution, transfer or the discontinuance of a law firm, the lawyers must make appropriate arrangements for the maintenance of the books and records specified in Rule 3-87.

Additional accounting procedures and reports

There are a number of additional accounting procedures that you will commonly encounter in a law firm. These additional procedures are not required by the Law Society Rules but can help confirm the accuracy of the books and records and assist the lawyers in making decisions about such matters as billing, budgeting, compensation and operational cashflow.

These additional procedures and reports are commonly available from computerized accounting packages and may include:

- *Accounts receivable – aged trial balance* – enables managers of the practice to follow up on delinquent accounts receivable.
- *Budget reports* – usually set up at year end and monitored monthly to assist management in anticipating cash needs of the practice and monitor performance of the firm.
- *Fee analysis reports* – enables management to assess the fee income by area of law.
- *Financial statements* – enables management to determine revenue, expenses, uncollected fees, and income or loss.
- *Pre-bill report* – usually completed as needed to help determine for each individual client the amount of unbilled work in progress, unbilled disbursements, previous billings, payments, amount in trust if any, and the accounts receivable balance.
- *General reconciliation* – usually performed monthly to confirm that the general bank statement accurately reflects the transactions recorded in the general book of entry.

- *Work in progress report* – enables lawyers to monitor the level of unbilled time and unbilled client disbursements and aids management in monitoring the work performed by each lawyer.

Internal controls

To mitigate the risk of misappropriation of trust or general funds its recommended to implement and monitor internal controls. In addition, be mindful of some of the warning signs that someone might be involved in the misappropriation of client or firm funds or property such as:

- blank or incomplete deposit slips or cheque stubs;
- missing cheques;
- bank accounts that do not reconcile;
- cheques returned for insufficient funds;
- unidentified counter cheques or electronic transfers;
- cheques that clear the account out of numerical sequence;
- excessive number of voided cheques;
- excessive cheques to a particular vendor or client including numbered companies;
- frequent trips to the financial institution that break the normal routine;
- complaints from vendors or third parties that their accounts are not paid in a timely manner;
- failure to meet regulatory remittances such as GST, PST or payroll source deductions;
- signs of a lifestyle beyond the means of the person, signs of depression, or drugs and alcohol abuse;
- unwillingness to take vacation or extended periods of time off; and
- unwillingness to share accounting duties with another person.

If you observe any of the above warning signs you should follow up in order to satisfy yourself that there is a reasonable explanation for the event.

Best Practice: Establish a system of internal control over all funds of the practice. Refer to Appendix B for a sample *Internal Control Checklist*. An easy internal control measure for small firms is to have all the bank statements (trust and general) go unopened to a designated person, usually the lawyer in charge of trust activities. The initial review, by someone other than the person recording deposits, issuing cheques and reconciling the accounts, may identify unusual items such as unauthorized signatures, non-sufficient funds (NSF) cheques, and overdrawn balances.

Maintaining an audit trail

Your ability to tell the complete story of what happened to all client funds from the date of receipt to the date of the final disposition is essential. An audit trail is a number of documents that make it possible to trace what happened to trust or general funds that the practice has handled. You need to maintain a good audit trail that ties together all the records that relate to a financial transaction and you may record the same information several times in various journals and ledgers to accomplish this function.

The following documents provide an audit trail for most transactions that you will record:

- copy of the cheque or deposit instrument;
- cash receipt, if applicable;
- validated deposit slip showing the date and amount of the deposit, the name/file reference of the client, the form and source of the funds received, and the date stamp showing the date the funds were deposited in the bank account;
- written confirmation for electronic deposit into trust from the financial institution or remitter showing the date and amount of the deposit, the name/file reference of the client and the source of the funds received;
- bank statement showing the date and amount of the deposits, the date and amounts of the withdrawals and the running balance of the funds held in the account;
- cheque stub and cheque requisition showing when the withdrawal was authorized, to whom and the lawyer authorizing the withdrawal;
- cancelled cheque showing the date it was drawn, the amount, the payee, the purpose of the cheque and the order of negotiation from the endorsements on the back of the cheque;

- Electronic Funds Transfer (EFT) requisition form and confirmation which shows who authorized the transaction, the date, the amount, the client number and the payee's name;
- Withdrawal from Trust by Bank Draft requisition form, written confirmation of receipt from the payee and copy of the bank draft; and
- any file documentation that would explain and support the deposit or the authority for how the client's funds were distributed such as a closing statement of account, a court order or a signed authorization by the client for the disbursements of the funds.

Chapter 6 - The Reconciliation Process

Mistakes happen! The best way to find and correct these errors is through the reconciliation process. Rule 3-73 (5) requires that you reconcile all the trust accounts monthly. This is one of the most important functions that you perform with respect to the accounting records. The reconciliation process involves the comparison of three basic records: the bank statements, the client trust ledgers and the trust book of entry. At the end of the process all three amounts must agree.

The reconciliation process is a simple arithmetical procedure, usually completed at month-end, and involves the following documents:

- bank statements – the totals of the balances as shown on each pooled trust account and the statements for separate interest bearing accounts that have been adjusted for outstanding deposits and outstanding cheques and any recording errors;
- client trust listing – the total of all client trust ledger balances including client ledger balances held in separate interest bearing trust accounts; and
- trust book of entry – the running balance shown in your journal at the reconciliation date.

How to perform a trust account reconciliation

1. Obtain the trust bank statement(s).
2. Check off all returned cheques on the trust bank statement and the trust book of entry for the previous month, noting any discrepancies in the amounts.
3. Identify any cheques that you have issued, but have not cleared the financial institution, from your trust book of entry.

4. List the outstanding cheques including cheque number, date of issue, amount, payee, and client file reference. Total the listing of outstanding cheques; these are your outstanding cheques to note on your trust account reconciliation.
5. From your deposit book, check off all deposits on the bank statements noting any discrepancies in the amounts.
6. Identify any deposits that do not appear on the bank statement that you recorded in your trust book of entry.
7. List the outstanding deposits, by date and the amount that are not recorded on the bank statement; these are your outstanding deposits to note on your trust account reconciliation.
8. List any errors individually by date of occurrence and provide a detailed explanation. Attach a copy of any supporting documents to your reconciliation.
9. Enter the ending balance from the trust bank statement on your trust reconciliation form.
10. Calculate your reconciled trust bank balance by subtracting the outstanding cheques, adding the outstanding deposits from the ending balance on the trust bank statement and adjust any errors or reconciling items.
11. From the client trust ledgers, identify and list the clients for whom you hold trust funds at the month end.
12. List the client names, client matter number, pooled trust account balances and separate interest bearing trust account balances, if any, for each client trust ledger with an unexpended balance at month end. This is your client trust listing.
13. Include the date of the last trust activity on your client trust listing to help you monitor inactive trust accounts.
14. Total the client trust listing and enter the total on your trust reconciliation form.
15. Enter the following from the trust book of entry on the trust reconciliation form:
 - a. record the beginning balance by carrying forward the balance at the end of the previous month;
 - b. add the total deposits made in the current month;

- c. subtract the total cheques written, electronic withdrawals made and bank drafts withdrawn in the current month; and
- d. the total amount is the month end balance in the trust book of entry.

The comparison

1. Compare your reconciled trust bank balance to your client trust listing balance and your trust book of entry balance.
2. All three figures must be the same. If there is a discrepancy, you must find and immediately correct the discrepancy.
3. When all numbers agree, sign and date the reconciliation.

Regardless of who prepares the trust comparisons, good internal control requires that the lawyer in charge of trust review all supporting documentation to ensure:

- the trust reconciliation is completed on time;
- all client trust funds are accounted for (pooled and separate interest bearing accounts);
- reconciling items are cleared each month;
- any unreconciled items have been explained and documented;
- stale-dated cheques, which are cheques more than 6 months old, are re-issued;
- there are no overdrawn client trust ledger balances;
- the trust float balance is \$300 or less;
- the balances listed in trust for each client are correct;
- any client trust ledger balance with no activity in the previous 12 months is investigated;
- funds in trust for completed matters have been billed to the proper clients and the funds are either transferred to the general account or returned to the client as appropriate; and

- all trust funds are allocated to a client and there are no miscellaneous or suspense accounts or accounts in the name of the lawyer or the practice, except for the trust float.

Practice makes perfect. We have a simple trust reconciliation exercise that you can download on our website to test your proficiency at preparing trust reconciliations. See the Resources section at the end of this handbook to find the Trust Accounting Basics course.

Monthly Trust Reconciliation Sample

TRUST BANK SEPTEMBER 30 2022		
TRUST ASSETS		
Bank Reconciliation – Pooled Trust Account #123-456		
Balance per bank statement at September 30 2022		\$40,800.00
Add: outstanding deposits (per listing attached)		Nil
Less: outstanding cheques (per listing attached)		\$500.00
Add/deduct adjustments		
	Subtotal	\$40,300.00
Separate interest bearing trust account (SIBTA #99-001)		
Client Matter #1003		\$10,000.00
	Total Trust Assets as at September 30 2022	\$50,300.00
TRUST LIABILITIES		
Pooled Trust Account #123-456		
	Last Transaction Date	
Client Matter # 1001	Aug 31 2022	\$ 300.00
Client Matter # 1002	Sept 30 2022	\$40,000.00
	Subtotal	\$40,300.00
Separate interest bearing trust account #9-8888		
Client Matter # 1003	Sept 30 2022	\$10,000.00
	Total Trust Liabilities as at Sept 30 2019	\$50,300.00
Control Account – Trust Book of Entry		
Beginning balance	Aug 31 2022	\$300.00
Add: current month receipts	Sept 2022	\$50,000.00
Less: current month cheques	Sept 2022	Nil
Ending Balance	Sept 30 2022	\$50,300.00
Prepared by:		Date:
Reviewed and Approved by:		Date:

How to review a trust account reconciliation

The trust bank balance, trust book of entry and client trust listing must all agree. If there is a discrepancy, it must be identified and fully explained on the reconciliation. When all numbers are in agreement, sign and date the reconciliation. The trust reconciliation must be prepared within 30 days of the effective date of the reconciliation, as required by Rule 3-73 (5), so please remember to indicate on the trust reconciliation the date it was prepared.

Trust bank statement

1. Are there any outstanding deposits noted? If so, is it a timing difference (i.e., were the funds deposited on the last day of the month but recorded by the bank on the following day). Outstanding deposits not due to timing differences merit your immediate attention as it may indicate a trust shortage.
2. Are there any stale-dated cheques listed under the outstanding cheque list? If so, consider re-issuing the cheque(s) to your client(s) or consider submitting the funds to the Law Society under the provisions of Rule 3-89.
3. Are there any bank service charges, bank errors or recording errors? If so, ensure that they have been corrected.
4. Ensure that all separate interest bearing trust accounts are included on the trust reconciliation.

Client trust listing

1. Are there any client files that have been inactive for more than 2 years? If so, consider remitting the funds to the Law Society under the provisions of Rule 3-89.
2. Are there any files with large balances in trust? If so, consider whether it would be appropriate to open a separate interest bearing trust account. Please obtain written client authorization prior to opening a separate interest bearing trust account.
3. Are there any unidentified funds? If so, the deposit should be immediately tracked in order to identify the ownership of the funds.
4. Is the firm's "float" within the allowable limit of up to \$300? If not, please issue a trust cheque payable to the general account for the excess amount over \$300, as required by Rule 3-60 (5).

5. Are there any overdrawn client trust ledger balances? If so, the trust shortage must be immediately eliminated. If the trust shortage is greater than \$2,500, please provide a written explanation to the Executive Director, as required under Rule 3-74 (2) (a).
6. Are there any funds in trust that should be transferred to the general account (i.e., an invoice recently rendered yet the fees have not been withdrawn from trust)? If the fees are not in dispute or impressed with a specific purpose, the funds must remain in the trust account.

Trust book of entry

Ensure the ending balance of the trust bank statement agrees with the client trust listing and trust book of entry balances.

Appendix A - Trust Accounting Samples

Trust book of entry – Rule 3-68 (a)

This journal lists all trust deposits chronologically for all clients and must include:

- the date and the amount of funds received;
- the source, name of person or institution from whom you received the funds;
- the form of funds received, cash, cheque, bank draft, wire transfer etc.; and
- the name of the client for whom you received the funds.

This journal lists all trust account cheques chronologically and must include:

- the date and amount of the trust cheque;
- the identity of the client on whose behalf the trust funds are disbursed;
- the cheque or voucher number for each payment out of trust; and
- the name of each recipient of funds out of trust.

Trust book of entry – sample

DATE	PARTICULARS	DOC#	DEPOSITS	CHEQUES	BALANCE	FORM FUNDS RECEIVED
Sept 30, 2022	Balance Forward				10,500.00	
Oct 01, 2022	Received from: Smith - Retainer Smith, Josie Client Matter #1001	R123	500.00		11,000.00	Cash

DATE	PARTICULARS	DOC#	DEPOSITS	CHEQUES	BALANCE	FORM FUNDS RECEIVED
Oct 07, 2022	Paid to Jones & Jones in Trust - balance due Brown, Tamara Client Matter #1002	T1005		5,000.00	6,000.00	

Client trust ledger – Rule 3-68 (b)

The client trust ledger is used to record chronologically, for each client matter, all trust receipts and disbursements and must include:

- a separate client ledger for each client matter;
- transactions by date, purpose and amount; and
- calculation of the unexpended balance in trust for the client matter.

Each entry in the trust book of entry must be recorded in the client trust ledger. Keep the entire client trust ledger intact as part of your accounting records.

Accurately record trust transactions in the client trust ledgers as the balances will be used to create the client trust listing for the monthly trust reconciliations.

Client trust ledger – sample

Client: SMITH, JANE Re: Litigation Matter Bank: Pooled Trust Account #123-456 Client Matter: #1001 Responsible Lawyer: Evan Johnson						
DATE	PARTICULARS	DOC.#	CHEQUES	DEPOSITS	BALANCE	
Oct 1, 2022	Received from Jane Smith- Retainer- cash	R123		\$500.00	\$500.00	

Nov 1, 2022	Received from Oliver Smith – Retainer – cheque	R127		\$1,500.00	\$2,000.00
Nov 11, 2022	Payment of account – bill #493867	TC#62	\$1,800.00		\$200.00
Dec 15, 2022	Payment of account – bill #493900	TC#86	\$200.00		Nil

Trust transfer journal – Rule 3-68 (c)

This journal is used to record all transfers between client trust trust ledgers. Whenever you move trust funds from one client trust ledger to another client trust ledger you must record the transfer, explain the purpose of the transfer and have the transfer authorized in writing by the lawyer. From this journal, you need to record the entries to the specific client trust ledger involved in the transfer.

The transfer journal should be signed by the lawyer, outline the specifics of the transfer, form part of your accounting records and be retained for at least 10 years.

Trust transfer journal – sample

DATE	FROM CLIENT	TO CLIENT	AMOUNT	PURPOSE	LAWYER'S AUTHORIZATION
Oct 01 2019	Jones, Jessica Client Matter #1006	Elliot, Sue Client Matter #1050	40,000.00	Transfer from: Jones sale file to Elliot purchase file	

General book of entry – Rule 3-69 (1) (a)

This journal lists all general deposits chronologically for all amounts received in connection with the law practice, other than trust funds, and must include:

- the date of the receipt;
- from whom the funds were received;
- amount received;

- the purpose of the funds (e.g. paid on account, expense recovery); and
- bill number, if applicable.

It also lists all general cheques issued and other other withdrawals chronologically for all amounts paid in connection with the law practice, other than trust funds, and must include:

- the date paid;
- to whom the funds were paid;
- amount paid;
- the purpose of the funds, e.g. paid on account, expense recovery; and
- cheque or voucher number used, if applicable.

A manual general book of entry may contain over 20 columns to categorize and record general account transactions. Some of the more common headings are presented in the following sample:

General book of entry – sample columns

Date	Particulars Payer/Payee	Receipt / Cheque #	General Bank		Revenue		Client Disbursements	
			Deposits	Cheques	Fees	Other	Description	Amount
PST Payable	GST Payable	GST ITC	Accounts Receivable	Salaries	Income Tax Withheld/Paid	CPP Withheld/Paid	EI Withheld/Paid	TAF Payable
Auto	Business Promo 50%	Phone	Office	Travel	Sundry Description	Amount	Running Balance	

Accounts receivable ledger – Rule 3-69 (1) (b)

This ledger lists all bills issued by the firm and any payments received for those bills. Each time a bill is generated, an entry must be recorded in the accounts receivable ledger even when the payment has been made immediately by the client or from the trust account. Maintain a separate accounts receivable subledger for each client to track the balances owed to the firm. This will enable the firm to follow-up with the specific client for payment if necessary.

Accounts receivable ledger - sample

Client: #2022-0005 Travis Boots				
Date	Description	Bill Amount	Payments made	Balance
January 8, 2022	Issued bill #297538	\$5,000.00		\$5,000.00
March 21, 2022	Cheque #7 from Tiffany Boots		\$2,000	\$3,000.00
March 22, 2022	Issued bill #297544	\$1,000.00		\$4,000.00
May 25, 2022	Issued bill #297591	\$500.00		\$4,500.00
July 2, 2022	Interact e-transfer from Travis Boots		\$4,500.00	Nil

Cash receipt book of duplicate receipts² (Rule 3-70)

Duplicate Cash Receipt		No. _____	
Select one:	<input type="checkbox"/> Cash Receipt <input type="checkbox"/> Cash Refund		
Date:		Amount of \$:	
Client Name		File #:	
Name of payer / payee:		Signature of payer / payee:	
Name of lawyer or authorized staff:		Signature of lawyer or authorized staff:	
Comments:			

Valuable property record

- When the law firm receives valuable property, a receipt should be given to the client giving sufficient details to identify the property concerned.
- The property should be immediately secured. Where the law firm does not have proper fire protection or secured facilities, the property should be delivered to a safety deposit box with the client's concurrence. Valuable paper and original documents should not be stored in the client file.
- A permanent record must be maintained of the receipt and disposition of all valuable documents handled on behalf of clients.

² This applies to both cash received as general funds and as trust funds.

- The record should be kept current as it forms a part of the monthly trust reconciliation.
- The type of documents or securities to be detailed in this record include Powers of Attorney, bearer bonds, share certificates or similar securities, mortgages registered in the name of the lawyer or the lawyer in trust, estate assets including jewelry, antiques, etc.
- Any valuable property maintained as fiduciary property should be kept on a separate list as required by Rule 3-55 from other valuable property held by the firm.

Valuable property record - sample

Client	Security	Amount or # of shares	Certificate Numbers	Deposited by	Date	Removed by	Date	Comments
Jane Smith	ABC Hydro Bearer Bonds	1,000	AK-39-1052	Jane Smith	Feb 27/22			Bearer Bonds
Estate of Jessica Doe	CDE Explorations	3,000	YX4329 YX4372	Lily Doe	Apr 3/22			
Julie Jones	Power of Attorney	1	Dated Apr 5/02	Jaclyn Jones	Apr 6/22			

Trust Account Reconciliation Template

Firm Name: _____

Account: _____

Date: _____

Trust Assets - Bank Statement Balance

\$ _____ A

Plus: Outstanding Deposits / Deposits In Transit

Date of Deposit	Amount	Date of Deposit	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

_____ - B

Minus: Outstanding Cheques (attach separate sheet if necessary)

Cheque # & Payee	Cheque Date	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ - C

Plus/Minus: Adjustments / Errors

Description	Date	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ - D

Plus: Separate Interest Bearing Trust Accounts

Client Name/Identifier	Amount	Client Name/Identifier	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

_____ - E

Total Trust Assets - Reconciled:

_____ - F

Appendix B – Checklists and Forms

Requisition – Electronic transfer of trust funds

Requisition

Law Society
of British Columbia

Electronic Transfer of Trust Funds

845 Cambie Street, Vancouver, BC, Canada V6B 4Z9
t 604.669.2533 | BC toll-free 1.800.903.5300
f 604.646.5917 | TTY 604.443.5700 Email
trustaccounting@lsbc.org | lawsociety.bc.ca

Rule 3-64.1 *Requires dual password/access code system*

PART A: Details of transfer		
Amount	Recipient	
Source account		
Financial institution	Account number	
Destination account		
Financial institution	Account number	
Branch address		
PART B: Client matter		
Client name	Client file number (May be entered into transfer system as customer reference)	
Client file subject matter	Reason for transfer	
PART C: Person entering details of transfer		
Must be someone other than the lawyer authorizing the transfer in Part D unless the lawyer is the only lawyer in the firm and has no non-lawyer staff. (Rule 3-64.1(2) (a) & (3))		
Name	Position	
PART D: Lawyer(s) authorizing transfer		
Lawyer (required)	Signature	Date
Second lawyer (optional)	Signature	Date

After transfer, obtain written confirmation from financial institution (Rule 3-64.1(2) (c) (d) & (g)) and complete steps under Rule 3-64.1 (4). File the requisition and confirmation together in a centralized location with your accounting records.

Requisition – Bank Draft

Requisition

Law Society of British Columbia

Withdrawal from Trust by Bank DraftRule 3-64.3 *Requires using the prescribed form*

845 Cambie Street, Vancouver, BC, Canada V6B 4Z9
 t 604.669.2533 | BC toll-free 1.800.903.5300
 f 604.646.5917 | TTY 604.443.5700
 Email trustaccounting@lsbc.org | lawsociety.bc.ca

PART A: Details of bank draft withdrawal		
Amount	Recipient	
Date of written consent to receive bank draft		
Delivery method of bank draft		
Source account		
Financial institution	Account number	
Branch address		
PART B: Client matter		
Client name	Client file number	
Reason for withdrawal		
Part C: Lawyer(s) authorizing bank draft withdrawal		
Lawyer (required)	Signature	Date
Second lawyer (optional)	Signature	Date
PART D: Written acknowledgement from recipient		
Date of acknowledgement of bank draft received		

Maintain all documents obtained from the recipient under Rule 3-64.3 (a), the completed prescribed form and a copy of the bank draft together in a centralized location with your accounting records.

Sample Checklist of Internal Controls

Segregation of duties:	Yes/No
Is the individual who is responsible for opening the mail different than the individual who issues receipts for all cash and cheques?	
Are all cheques received stamped for “deposit only”?	
If a staff member deposits cash and cheques, does another individual enter the receipts into the accounting records?	
Are all receipts issued in numerical sequence?	
Is there a check of the numerical sequence of receipts to ensure that all receipts are recorded in the accounting records and deposited to the proper bank account?	
Does the lawyer in charge of trust review the original bank statements and cancelled cheques before forwarding the documents to the individual responsible for completing the monthly trust and general bank reconciliations?	
Staffing policies and procedures:	Yes/No
Do you conduct thorough reference checks before hiring lawyers and support staff?	
Does the practice maintain a written description of the accounting system and procedures?	
Do you provide your staff with written instructions on your accounting procedures and retention policies?	
Does your practice maintain an up-to-date copy of the Law Society Rules?	
Are the amendments to the Law Society Member’s Manual filed and up-to-date?	
Do you ensure that all staff have access to the Law Society Rules?	
Do you ensure that you and your staff conduct yourself in a professional manner and identify and address conflict of interest situations?	
Do you ensure that all staff are aware and respect the requirements of client confidentiality?	
Does the practice have a policy respecting all staff to take a vacation?	
Does the lawyer in charge of trust periodically review client files to make sure that the clients receive an accounting of trust receipts and disbursements?	
Are there periodic reviews of a lawyer’s work to ensure that clients are receiving an accounting of trust receipts and disbursements?	
Does your firm conduct a periodic review of all staff to identify individuals who are too busy to take a vacation or request urgent need for a salary advance?	
Are your trust cheques:	Yes/No
Sequentially numbered and accounted for?	
Secured in a locked and fireproof vault or safe?	
Clearly identified (pre-printed or marked) as trust cheques?	
Printed in a different colour than your general account cheques?	
Are blank trust cheques kept in a secure manner?	

Are all cheque requisitions accompanied by a signed cheque requisition evidencing approval?	
If you are a sole practitioner, have you made arrangements with another member of the Law Society to sign cheques on your trust account if you are unable to do so?	
If applicable, have lawyers kept their banking password secure?	
Does supporting documentation accompany a cheque requisition?	
Cash transactions:	Yes/No
Do you issue duplicate receipts, of which you retain a copy, for all receipts of cash and cash refunds?	
Does the individual providing the cash sign the receipt as well as the individual at the firm who receives the cash?	
Signatories:	Yes/No
Do cheques in excess of a threshold amount require the approval and signature of partners, if applicable?	
Is there a policy in place that prohibits cheques to be signed in blank?	
For trust cheques, is the individual signing the cheque reviewing the validity of the request, the reasonableness of the amount requested and determining if there are sufficient funds available to pay the amount of the cheque requisition?	
Do you review the supporting documentation prior to signing the cheques to ensure that the service was provided and billed, or the disbursement is proper?	
Do cheques payable to a financial institution include sufficient details of the transaction?	
Are all trust cheques signed by at least one practicing lawyer who is authorized to sign?	
Are all EFT requisition forms signed by a lawyer?	
Are your trust account deposit books:	Yes/No
Clearly identified as being for your trust account?	
Stored in a different location than your general account deposit books?	
If you make automatic bank machine (ABM) deposits, do you always print out an ABM deposit receipt, attach it to your trust deposit book and record all the details of the deposit?	
Trust records:	Yes/No
Are your books and records up-to-date?	
Do you review your client trust ledgers on a regular basis to identify unusual activities?	
Are the trust reconciliations and reconciling items reviewed and signed on a monthly basis by someone other than the individual who prepared the reconciliation?	
Does the review of the trust reconciliation ensure that reconciliations are prepared on time; that reconciling items are cleared promptly; that unusual items are questioned and adequately explained?	
Do you ensure that the trust comparison which compares your trust reconciliation of all trust bank accounts and the client trust listing is completed within 30 days of the month end?	
Do you review, date and sign the monthly trust reconciliations?	

Have you instructed your bank in writing to pay net interest to the Law Foundation?	
Are the listings of client trust ledger balances reviewed periodically for closed and completed matters including trust balances that have not changed for twelve months?	
Are all reconciling items on the trust reconciliations cleared promptly?	
Are all unusual reconciling items on the trust reconciliations questioned and followed up?	
Does the lawyer in charge of trust periodically review the trust client ledger balances for unusual items?	
Are trust transfer requisitions signed by the responsible lawyer?	
Has the accounting department or person responsible for trust records been informed to process trust transfers only if the criteria for authorized signatures and explanations have been met?	
Billing:	Yes/No
Do you discuss the fees and anticipated disbursements with your client at the start of the matter?	
Do you confirm all fee arrangements in writing?	
Do you ensure that all billings for legal fees are mailed or delivered before transferring the fee amount from your trust bank account to your general account?	
Are all computerized or manual billings entered in your books and records as to date, client and amount?	
Do you review your accounts receivable periodically to identify any credit balances, which may indicate that billings to clients have not been prepared and entered in your books and records?	
Are major billing adjustments reviewed by a partner or another lawyer other than the lawyer responsible for the client file and its billing?	
Computerized systems:	Yes/No
Is your software licensed?	
Is your computer protected with a surge protector?	
Is your data backed up and stored offsite on a regular basis?	
Is your computer system password protected?	
Do you change passwords periodically?	
Do you maintain a list of lawyers and staff who have been assigned passwords and is it updated for changes in staff?	

Unclaimed Trust Money Application Form

Application

Law Society of British Columbia

**Payment of Unclaimed Trust
Money to the Law Society**

845 Cambie Street, Vancouver, BC, Canada V6B 4Z9
 t 604.669.2533 | BC toll-free 1.800.903.5300
 f 604.687.0135 | TTY 604.443.5700
 Email unclaimed@lsbc.org | lawsociety.bc.ca

PART A: Contact information

Name of law firm		Date
Responsible lawyer		
Street address		City
Province/State	Postal/ZIP code	Telephone
Name of custodian (if applicable)		
Street address		City
Province/State	Postal/ZIP code	Telephone

The information on this form is collected under the authority of Rule 3-89 (1) and (2) of the Law Society Rules, which is as follows:

3-89 (1) A lawyer who has money in trust 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 [Unclaimed trust money].

(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 funds were held;
- (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 funds;
- (e) the details of the transaction in respect of which the funds were deposited with the lawyer.

The information on this form is collected under authority of section 34 of the Legal Profession Act and Part 3, Division 8 of the Law Society Rules. The information provided will be used to administer the unclaimed trust funds. If you have any questions about the collection and use of this information, contact Member Services at the Law Society of British Columbia, 845 Cambie Street, Vancouver, BC V6B 4Z9, telephone 604.669.2533.

For Law Society use only

Approved by:

PART B: Trust amount information		
Client A		
Name of rightful owner(s) of funds		Amount
Last known address		
Province/State	Postal/ZIP code	City
Telephone	Fax	Email
For corporate clients please provide name, address and telephone number for contact person(s), officer(s) and/or directors		
Efforts to locate client (telephone directory/criss-cross searches, internet searches conducted, etc.)		
Unfulfilled undertakings in relation to these trust funds <input type="checkbox"/> Yes <input type="checkbox"/> No If 'yes' please provide details		
Details of the transaction in which the funds were deposited in trust		
Date of last contact with client (must exceed two years)		
Other information		
Client B		
Name of rightful owner(s) of funds		Amount
Last known address		
Province/State	Postal/ZIP code	City
Telephone	Fax	Email
For corporate clients please provide name, address and telephone number for contact person(s), officer(s) and/or directors		
Efforts to locate client (telephone directory/criss-cross searches, internet searches conducted, etc.)		
Unfulfilled undertakings in relation to these trust funds <input type="checkbox"/> Yes <input type="checkbox"/> No If 'yes' please provide details		
Details of the transaction in which the funds were deposited in trust		
Date of last contact with client (must exceed two years)		
Other information		

Appendix C - Sample letters

Letter of Direction to Financial Institution – New Trust Account

[Name]

[CONFIDENTIAL]

[Date]

[Addressee]

[Address]

Dear Sir/Madam:

Re: Trust Account – [Number]

By this letter, I am (*we are*) advising your institution that the above account is a pooled trust account that will contain the funds of more than one client.

The Law Society of British Columbia requires that a pooled trust account shall:

- be interest bearing;
- provide monthly cancelled cheques and statements to the lawyer;
- be readily available to be drawn upon by the lawyer;
- be designated as a “trust” account on the records of the savings institution (and the lawyer);
and
- be an account in respect of which the savings institution has agreed with the lawyer to pay interest to the Law Foundation.

Law Society Rule 3-60 (3) (a) requires that every lawyer who opens or maintains a pooled trust account “instruct the savings institution, in writing, to remit the net interest earned on the account, directly to the Law Foundation of British Columbia.”

This letter is my (*our*) instruction to you to calculate the interest on the above account at the rate and in the manner agreed upon between your institution and the Law Foundation of British Columbia, and to remit such interest directly to the Law Foundation according to the terms of that agreement (in the event that there is no agreement in place, please contact The Executive Director of the Law Foundation). This letter authorizes and directs you to provide the Law Foundation with such information and explanation, as it requires verifying the calculation of the interest remitted, including:

- account balance information during the reporting period;
- the interest rate and the gross interest earned;
- service charges deducted (if service charges are deducted, they are limited to the routine processing of transaction items for: deposits; cheques; return of cancelled (cleared) cheques; stop payment orders; and a reasonable fee for Law Foundation payment processing; and
- the net interest earned after deduction of service charges.

A standard form remittance report that should accompany that remittance can be obtained from the Law Foundation.

Please forward the interest directly to:

**The Law Foundation of British Columbia
1340 - 605 Robson Street
Vancouver, BC V6B 5J3**

As well, please advise me of the amount of each transmittal.

Yours truly,

[Name, Title]

cc: Law Foundation

Confirmation of Law Foundation of BC interest remittance

<p>Financial institution (Name, branch & address)</p>	<p>Law firm (Name, address & contact information)</p> <p>The financial institution is authorized to provide the details requested herein to the Law Society of British Columbia.</p> <p>_____</p> <p>Client's authorized signature Client's authorized signature</p> <p>Pooled trust account number(s)</p> <p>_____</p>
--	--

Date _____

Dear Sir or Madam:

Our law firm is in the process of updating our records and, pursuant to the regulations of the Law Society of British Columbia and the *Legal Profession Act*, a lawyer who opens or maintains a pooled trust account must direct the savings institution to remit the interest earned on the pooled trust account, net of service charges if any, to the Law Foundation of British Columbia (Foundation).

Interest rate agreements on pooled trust accounts are negotiated between the Foundation and senior executives at your financial institution. At the branch level it may not be readily apparent that the interest is being calculated and remitted to the Foundation as, in some instances, this process may be performed at a central administration branch.

As we are updating our records for audit purposes, we require written confirmation that interest is being calculated on the pooled trust account and that this interest is being remitted to the Foundation as required. If you are unable to confirm this is being done at the branch level, please contact your central administration branch for verification.

<p>TO BE COMPLETED BY FINANCIAL INSTITUTION</p> <p>We hereby acknowledge and confirm that the interest is being calculated on the above-noted pooled trust account and that the interest earned has been, and is being, paid to the Law Foundation of British Columbia.</p> <p>Authorized signature of financial institution _____ Date _____</p> <p>Branch Contact (Name and telephone number) _____</p>	
---	--

Please mail or email this form back to our firm with a copy to the Law Society of British Columbia.

Law firm name and address:

The Law Society of British Columbia

Attention: Trust Assurance
845 Cambie Street, Vancouver, BC V6B 4Z9
Email: trustaccounting@lsbc.org

Trust Shortage Letter Samples – Rule 3-74

NSF Client Cheque

[Date]

Sent via email (*trustaccounting@lsbc.org*)

Executive Director
The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Executive Director:

Re: Trust Shortage – Rule 3-74

Pursuant to Law Society Rule 3-74 (2), please be advised that a trust shortage of \$15,000 occurred as follows:

- | | |
|------------------------|--|
| August 24, 2022 | Client cheque for \$15,000 was deposited into our Scotiabank trust account. |
| August 25, 2022 | Funds were paid out on behalf of the client by Scotiabank trust cheque for \$15,000. |
| August 26, 2022 | Scotiabank called to advise that the client’s cheque for \$15,000 was returned NSF. |
| August 26, 2022 | Cheque #1234 for \$15,000 was written from our general account to our trust account to cover the shortage. |
| August 30, 2022 | Client provided replacement funds in the form of a \$15,000 bank draft. |

Please find attached a copy of our August 2022 trust bank statement along with a copy of the front and back images of general cancelled cheque #1234.

Please contact me if you have any questions or require any further information.

Sincerely,

Lawyer

Trust funds deposited to wrong trust account

[Date]

Sent via email (*trustaccounting@lsbc.org*)

Executive Director
The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Executive Director:

Re: Trust Shortage – Rule 3-74

Pursuant to Law Society Rule 3-74 (2), please be advised that a trust shortage of \$25,000 occurred as follows:

- | | |
|---------------------------|---|
| August 24, 2022 | Client cheque for \$25,000 was deposited into our Scotiabank trust account. |
| August 25, 2022 | Due to an internal error, \$25,000 was paid out by trust cheque on our Bank of Montreal trust account. |
| September 15, 2022 | Upon completing our August 2022 bank reconciliation for the Bank of Montreal account, we noticed this error. |
| September 15, 2022 | We issued trust cheque #1234 from the Scotiabank trust account to our Bank of Montreal trust account to cover the shortage. |

Please find attached a copy of our August 2022 and September 2022 trust bank statement along with a copy of the front and back images of Scotiabank cancelled trust cheque #1234.

Please contact me if you have any questions or require any further information.

Sincerely,

Lawyer

Enclosures

Trust funds deposited into general account

[Date]

Sent via email (*trustaccounting@lsbc.org*)

Executive Director
The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Executive Director:

Re: Trust Shortage – Rule 3-74

Pursuant to Law Society Rule 3-74 (2), please be advised that a trust shortage of \$350,000 occurred as follows:

- | | |
|------------------------|--|
| August 24, 2022 | Trust deposit of \$350,000 was prepared and taken to Scotiabank. |
| August 26, 2022 | Scotiabank called to advise that there was an overdraft in our trust account. |
| August 26, 2022 | We discovered that the trust deposit was inadvertently deposited to our general account as a result of using the wrong deposit book. |
| August 30, 2022 | We deposited general cheque #1234 to our trust account for \$350,000 to correct the error. |

Please find attached a copy of our August 2022 trust and general bank statements along with a copy of the front and back images of general cancelled cheque #1234.

Please contact me if you have any questions or require any further information.

Sincerely,

Lawyer

Enclosures

Key definitions

The following key definitions are commonly used in the rules and when referring to the books and records of a law practice.

Accounts receivable – are amounts due from law firm clients for statements of account (bill) for legal services provided and billed.

Accrual basis – is a method of accounting that recognizes revenues (typically fees billed in a law firm) when earned rather than when collected. Expenses are recognized when incurred rather than when paid.

Act – means the *Legal Profession Act*, S.B.C. 1998, c 9.

Audit trail – is a series of records such as, cancelled cheques, bank deposit slips, bank statements that enable you to trace what happened to the trust and general funds that you handled. For trust funds, it should start when you receive the funds and would continue until you disburse all the funds bringing the balance that you owe the client to zero.

BC Code – means the *Code of Professional Conduct for British Columbia*.

Benchers – members of the Law Society’s board of governors.

Book of original entry – is a book (or books) recording in chronological order, the receipt of all funds, both trust and general funds, showing from whom and for whom the funds were received and all disbursements made out of trust and general funds, showing to whom and for whom the funds were paid and showing the date when funds were received and/or disbursed. This is also commonly known as a “receipts and disbursements journal”.

Cash – is coins referred to in section 7 of the Currency Act of Canada, notes issued by the Bank of Canada under the *Bank of Canada Act* that are intended for circulation in Canada, and coins or bank notes of countries other than Canada.

Cash receipt book – means a book of duplicate receipts for funds received in the form of cash (whether received in trust or as payment for non-trust related activities) referred in Rule 3-70 (1).

CDIC (Canada Deposit Insurance Corporation) – is a federal Crown Corporation that provides deposit insurance on eligible deposits at member institutions (up to \$100,000 per depositor) and reimburses depositors for the amount of their insured deposits if a member institution fails.

Client – includes any beneficial owner of funds or valuables received by a lawyer in connection with the lawyer's practice.

Client trust ledger – is an individual ledger for each client recording all trust transactions for that client matter. If a client has trust funds on deposit for more than one client matter, separate client ledger cards should be kept for each matter showing the trust transactions pertaining to that matter.

Comingling – occurs when a lawyer deposits personal or business funds into a trust account where trust funds are maintained.

Compliance audit – means an examination of a lawyer's books, records and accounts and the answering of questions by lawyers as ordered under Rule 3-85.

Credit – is an entry on the right side of the double-entry bookkeeping system that represents the decrease of an asset or expense or the increase of a liability or revenue.

CUDIC (Credit Union Deposit Insurance) – is a government corporation that protects credit union members against loss of deposits (providing unlimited insurance) held by British Columbia credit unions. CUDIC's responsibility is to administer and operate a deposit insurance fund.

Debit – is an entry on the left side of the double-entry bookkeeping system that represents the increase to an asset or expense or a decrease to a liability or revenue.

Deposit book – is a bound book supplied by a financial institution in which deposits are recorded chronologically.

Designated savings institution – is a savings institution that has an office in British Columbia for accepting demand deposits insured by CDIC or CUDIC.

Disbursements – means amounts paid or required to be paid to a third party by a lawyer or law firm on behalf of a client in connection with the provision of legal services to the client by the lawyer or law firm that are to be reimbursed by the client.

Document – is a written or printed paper that bears information that can be used to furnish evidence of a financial transaction. It may also be in the form of computer readable information, such as a PDF.

Double-entry system – is a system of accounting that records each transaction twice – once as a debit and once as a credit.

Efforts to locate – means steps that are reasonable and adequate in all circumstances, including the amount of funds involved in relation to the Law Society Rules, Part 3, Division 8 – Unclaimed Trust Money.

Electronic funds transfer – is a system of transferring funds electronically from one account to another. It does not involve the exchange of paper-based instruments such as cash or cheques.

Executive Director – includes a person designated by the Executive Director to perform any of the duties assigned to the Executive Director in these rules.

Expenses – means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client that are to be reimbursed by the client.

Fees – means fees for services performed by a lawyer and the taxes (GST/PST) on those fees.

Fiduciary property – means funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer's appointment is derived from a solicitor-client relationship. Fiduciary property does not include any funds and valuables that are subject to a power of attorney granted to the lawyer if the lawyer has not taken control of or otherwise dealt with the funds or valuables.

Financial institutions – are those institutions legally entitled to accept funds on deposit and includes chartered banks, trust or loan companies, and credit unions.

Firm – includes one lawyer or two or more lawyers in practice arrangements that include a sole proprietor, a partnership, an apparent partnership or any other joint arrangement.

Funds – includes current coin, government bank notes, bills of exchange, cheques, drafts, money orders, email payments, PayPal payments, charge card sales slips, credit slips and electronic transfers.

General account – is a deposit account set up at a financial institution, commonly known as the operating account, to receive funds other than trust funds and fiduciary property and pay for day-to-day expenses of running the practice.

General funds – means funds received by a lawyer in relation to the practice of law, but does not include trust funds or fiduciary property.

General book of entry – is a journal in a double-entry bookkeeping system, chronologically listing deposits into and withdrawals from the general account.

Journal – is a book of original entry in a double-entry bookkeeping system. The journal lists all transactions chronologically and the accounts to which they are recorded.

Ledger – is the book or computer software containing the accounts of the practice. A general ledger is a collection of all the asset, liability, owner's equity, revenue and expense accounts.

Net interest – means the total interest earned on a pooled trust account, minus any service charges and transmittal fees that the savings institution charges to that account.

Outstanding deposits – are deposits that arrive too late at the financial institution to be credited to the bank statement for the current month. These deposits will be added to the bank balance when preparing the bank reconciliation.

Outstanding cheques – are cheques that you have issued from the trust or general account that have not cleared through the financial institution's clearing and payment system. These cheques will be deducted from the bank balance when preparing the bank reconciliation.

Partnership – is a relationship between two or more persons or corporations based on a written, oral or implied agreement whereby they agree to carry on business for profit and share in resulting profits. The partners are liable for the debts of the partnership.

Personal responsibility – means that a lawyer must account in writing to a client for all funds and valuables received on behalf of the client and is personally responsible to ensure that the duties and responsibilities of the Law Society Rules are carried out as set out in Rule 3-54.

Pooled trust account – is a deposit account in a financial institution, which may contain funds of more than one client. Interest earned on these pooled funds is for the benefit of the Law Foundation.

Professional fees – means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or law firm.

Reconciliation – is the procedure that proves the accuracy of the recording of the transactions in books and records of the law practice by comparing the law firm's internal records to external records such as bank statements.

Separate trust account – is a deposit account in a financial institution where funds received in trust for one client are kept separate from other client funds and the interest earned on these trust funds is for the benefit of that one specific client.

Trial balance – is a statement of all general ledger accounts with open debit and credit accounts to test their equality.

Trust funds – means funds directly related to legal services provided by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, including funds received from a client for services to be performed or for disbursements to be made on behalf of the client (retainer funds), or belonging partly to a client and partly to the lawyer if it is not practicable to split the funds.

Trust book of entry – is a journal in a double-entry bookkeeping system, listing trust account deposits and withdrawals in chronological order along with a running balance.

Trust property – is any property of value belonging to the client, other than trust funds, received by a lawyer in trust over which the lawyer has authority or control in any representative capacity.

Trust transfer journal – is used to keep track of all transfers between client trust ledgers. It includes an explanation for the purpose of each transfer and the lawyer's written approval of the transfer.

Valuables – means anything of value that can be negotiated or transferred, including, but not limited to, securities, bonds, treasury bills, and personal or real property.

Valuable property record – is a record showing all valuable property, other than monetary funds, held for each client matter.

Resources

Websites	Description
www.lawsociety.bc.ca	Access The Law Society website for information regarding: <i>Division 7 Rules, the Trust Report, TAF and Compliance Audits</i>
https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/checklists/A-1.pdf	Client Identification, Verification and Source of Money Checklist
https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-clients/client-id-verification/client-id-verification-faqs/	Client Identification and Verification FAQs
http://www.lawsociety.bc.ca/docs/practice/resources/guidelines-cloud.pdf http://www.lawsociety.bc.ca/docs/practice/resources/checklist-cloud.pdf	Information on cloud computing guidelines and the Law Society's <i>Cloud Computing Checklist</i> .
https://www.canada.ca/en/revenue-agency.html	Access information regarding income tax, GST and payroll
https://www2.gov.bc.ca/gov/content/taxes/sales-taxes/pst	Access information regarding PST
https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Holds-on-certified-cheques-and-bankdrafts.pdf	Risk management tips to reduce the risk of holds on cheques and bank drafts.
Trust Accounting Online Courses	
Anti-Money Laundering Measures (2 hours of CPD credit) https://www.youtube.com/watch?v=d5yO_iI58BM	Information on money laundering, cash, client identification and verification, red flags and risk management.

Trust Accounting Basics (2 hours of CPD credit) https://www.youtube.com/watch?v=8RgxoXMFrpk	Information on opening and operating a trust account, seven key concepts in trust accounting, dealing with trust shortages and inactive trust balances and understanding and preparing trust reconciliations.
Trust Accounting Regulatory Requirements (1 hour of CPD credit) https://www.youtube.com/watch?v=CW-w1qocZu0	Covers reporting requirements to the Executive Director, the compliance audit process and common exceptions identified during a compliance audit.
Contact Us	
Trust Assurance Department - direct phone line	604.697.5810
Trust Assurance Department - email	trustaccounting@lsbc.org
Trust Assurance Department - direct fax line	604.646.5917