

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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The Law Society
of British Columbia



Foreword and Acknowledgements

This handbook was developed by Brenda L. Hersh. As the discussion of the basic principles of trust accounting in BC is similar to other provinces and their respective Rules, some materials included are modeled after other law societies' guides or handbooks. Updates have been made by Krista Adamek, Felicia Ciolfitto, Dominique Fry and Danielle Guglielmucci, of the Trust Regulation Group.

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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 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 August 2013.

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

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 (fee billings) 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 trust funds that you handled. It should start when you receive the funds and should continue until you issue the final cheque and the balance that you owe the client is zero.

BC Code – means the *Code of Professional Conduct for British Columbia*. It replaced the *Professional Conduct Handbook* on January 1, 2013.

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 “synoptic”, “cash book” “trust journal” or “general journal”.

Cash – is coins referred to in section 7 of the Currency Act of Canada, notes issued by the Bank of Canada pursuant to 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 3-61.1(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.

Commingling – occurs when a lawyer deposits funds belonging to the client into a lawyer’s personal or general account, or 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 3-79.

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.

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 money 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.

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

Financial institution – 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 pay for day-to-day expenses of running the practice.

General funds – means funds other than trust funds, received by a lawyer in relation to the practice of law.

General receipts and disbursements journal – is a book of original entry in a double-entry bookkeeping system. The journal lists transactions and indicates the accounts to which they are posted. It is used for general account deposits and withdrawals.

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

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. A subsidiary ledger contains a group of accounts related to a specific general ledger account.

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 trust or general account that have not cleared through the financial institution's clearing and payment system. These cheques will be debited to the bank statement when paid and will be subtracted 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 3-48.

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.

Posting – is the manual or electronic process of transferring the essential facts and figures from the book of original entry to the accounts in the ledger.

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 is kept separate from other client funds and the interest earned on these trust funds is for the benefit of that one specific client.

Subsidiary ledger – is the detailed information that totals the balance in the general ledger account. For example, the total of all client accounts receivable included in the subsidiary ledger of accounts receivable is the balance in the general ledger accounts receivable account.

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

Trust funds – include:

- funds received in trust belonging in part or whole to a client;
- funds advanced to a lawyer for work not yet performed or disbursements not yet made (retainer); and
- funds received in trust by a lawyer acting as a personal representative of a person or at the request of a person, or as a trustee under a trust established by a person, if the lawyer’s appointment is derived from a solicitor-client relationship. Examples of a personal representative may include an executor, an administrator or a committee.

Trust receipts and disbursements journal – is a book of original entry in a double-entry bookkeeping system. The journal lists transactions and is used for trust account deposits and withdrawals.

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 where you 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, jewellery, stamps, coins and personal or real property.

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

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 some significant rules that form the framework of the lawyer's trust accounting requirements.

Rule 3-48 Personal responsibility

Rule 3-48 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 3-49 Designated savings institutions

Rule 3-49 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 3-51 Deposit of trust funds

Rule 3-51 requires that a lawyer who receives trust funds must deposit the trust funds in a pooled trust account as soon as practicable.

Rules 3-51.1 Cash transactions

Rule 3-51.1(1) sets out the situations where a lawyer is prohibited from receiving or accepting an aggregate amount of cash of \$7,500 or more with respect to any one client matter or transaction.

Rule 3-51.1(2) and (3) set out the situations where a lawyer is allowed to accept \$7,500 or more in cash; namely professional fees, disbursements, expenses or bail. However, as noted in Rule 3-51.1(3.1), where a lawyer accepts \$7,500 or more in cash, any refund in excess of \$1,000, must be made in cash.

Rule 3-51(3.3) sets out what a lawyer must do where cash of \$7,500 or more has been accepted in a situation not allowed under subrule (2) or (3). In this circumstance, the lawyer must make no use of the cash; return the cash, or if not possible, the same amount of cash to the payor; and make a written report of the details of the transaction to the Executive Director within seven days.

Rule 3-52 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;
- provide periodic bank statements and cancelled cheques; and be
- 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 his or her own funds in the pooled trust account.

Rule 3-53 Separate trust account

All separate trust accounts must meet the following requirements:

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

Rule 3-55 Trust account balance

Rule 3-55 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 3-56 Withdrawal from trust

Rule 3-56 provides that 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) of the Act; 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 if required by Rule 3-51.1(3.1);
- electronic transfers as permitted by Rule 3-56(3.1);
- property transfer tax withdrawals as permitted by Rule 3-56 (3.2); or
- remittance of net interest on pooled trust accounts to the Law Foundation as permitted by Rule 3-56(4).

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.

No payment from trust may be made 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 (Rule 3-56(1.2)).

If the withdrawal of trust funds is for the payment of fees, disbursements and taxes, the trust cheque must be made payable to the lawyer’s general account (Rule 3-56(3)).

Electronic funds transfers (wire transfers) are permitted for withdrawing funds from a pooled or separate trust account provided the following conditions under Rule 3-56(3.1) are met.

First, the transfer system is one that will produce, not later than the next business day, a confirmation form from the financial institution confirming the details of the transfer which should include the following:

- date of transfer;
- source trust account information, including account name, financial institution and account number;
- destination account information, including account name, financial institution address and account number;
- the name of the person authorizing the transfer; and
- the amount of the transfer.

In addition, the lawyer must do the following:

- complete and personally sign a requisition for the transfer in a form approved by the Discipline Committee (See Electronic Transfer of Trust Funds form available at www.lawsociety.bc.ca and in Appendix B);
- submit the original requisition to the appropriate financial institution;
- retain a copy of the requisition in the lawyer's records; and
- immediately on receipt of the confirmation, verify that the funds were drawn from the trust account as specified in the requisition.

Rule 3-57 Payment of fees from trust

Rule 3-57 requires that a lawyer prepare and deliver a bill to the client prior to withdrawing funds from trust. Lawyers "fees" include fees for the lawyer's services, applicable taxes on those fees and any billed disbursements in the statement of account delivered to the client. You can deliver a bill by:

- regular or registered mail to the client's last known address;
- personal delivery;
- fax to the client's last known fax number;
- e-mail to the client's last known electronic mail address; or
- have it made available to the client by means that allow the client to review the content of the document and save or print a copy; or by other means agreed to by the client.

Rule 3-57(5) requires that a lawyer must not take fees from trust funds when the client disputes the lawyer's right to take fees unless the following conditions are met:

- the lawyer has written confirmation of the client's agreement to take funds from trust to pay the bill;
- the lawyer has delivered a bill to the client;
- the lawyer has given the client written notice that the fees will be taken from trust unless, within one month, the client begins a fee review under the Act or an action disputing the lawyer's right to the funds;
- the client does not begin a fee review or action; and
- at least one month has passed since the lawyer gave written notice.

Rule 3-58 Withdrawal from a separate trust account

Rule 3-58 requires the lawyer to first transfer the funds to the pooled trust account if the separate trust account does not provide monthly statements or cancelled cheques.

Rule 3-59 Accounting records

Rule 3-59 sets out the guidelines, applicable to the accounting records in general, 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 both the trust and general accounts, including but not limited to:

- validated and detailed deposit receipts;
- monthly bank statements, including GICs, 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);
- property transfer tax payment confirmations; and
- any other bank vouchers and similar documents and invoices.

Rule 3-60 Trust account records

Rule 3-60 requires a lawyer to maintain at least the following trust account records:

- book of original 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 journal 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 3-61 General account records

Rule 3-61 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 number, payee, client reference and amount;
- accounts receivable subledger 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 3-61.1 Records of cash transactions

Rule 3-61.1 requires a lawyer to maintain a cash receipt book of duplicate receipts and record for each cash receipt; the date, person from whom cash is received, the amount, the client name and file number; for each cash withdrawal; the date, the amount, the client name and file number and the name and signatures of both the person to whom the cash was paid and the person from whom the cash was paid.

Rule 3-62 Billing records

Rule 3-62 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 and identify the client or the person charged. In addition, the bills must be maintained as part of the accounting records and filed in chronological, alphabetical or numerical order. Scanned electronic copies of final signed bills are acceptable when they are filed as set out above and printable upon demand.

Rule 3-63 Recording transactions

Rule 3-63 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 guideline 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 3-65 Monthly trust reconciliations

Rule 3-65 sets out the requirements for how and when trust reconciliations must be completed. Trust reconciliations must cover all trust funds and valuables and include the following:

- 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;

- listing of balances for each separate trust account (savings, deposit, investment or similar form of account) identifying the client for whom each is held; listing of valuables received and delivered and the undelivered portion of valuables held for each client, if applicable; and
- 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;
- the reconciliation process must be completed within 30 days after the effective date of the reconciliation.

Rule 3-66 Trust shortage

Rule 3-66 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, a shortage caused by payments from the 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 provide assistance in completing the annual Trust Report.

Rule 3-68 Retention and security of records

Rule 3-68 sets out the requirements for the location and length of time that you must retain accounting records (namely accounting records referred to in Rules 3-60 to 3-62). Under this rule a lawyer must:

- keep the books, records and accounts referred to in the Rules for at least 10 years;
- keep the books, records and accounts referred to in the Rules pertaining to the most recent 3 year period at his or her chief place of practice in BC;
- protect his or her records and information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure; and
- immediately notify the Executive Director in writing of all the relevant circumstances of any loss of custody or control over his or her records.

Rule 3-70 Annual CDIC report

Rule 3-70 requires a lawyer, who holds pooled trust funds in a designated savings institution insured by the Canada Deposit Insurance Corporation (CDIC), to file an annual report for each account with the financial institution to ensure that the trust account is properly designated for deposit insurance protection. The report, which is due May 30 of each year, should provide the financial institution with a list of individual trust balances reconciled to the bank statement balance as at April 30.

To preserve client confidentiality lawyers are not required to identify their clients by name. Section 7(2) of the Canada Deposit Insurance Corporation Joint and Trust Account Disclosure by-law permits lawyers to substitute disclosure of a client's name and address with an alphanumeric code or other identifier.

Best Practice: The CDIC report must be filed to ensure coverage of all funds regardless of the balance of funds in the pooled trust account. A CDIC report is not required for funds held in Credit Union trust accounts.

Rule 3-80 Disposition of files, trust money, other documents and valuables

Rule 3-80 requires that a lawyer must advise the Executive Director in writing of his or her intended disposition of all of the following that relate to the lawyer's practice in British Columbia:

- open and closed files;
- wills and wills indices;
- titles and other important documents and records;
- other valuables;
- trust accounts and trust funds.
- Within 30 days of withdrawing from practice, the lawyer must confirm to the Executive Director in writing that:
 - the disposition of 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 or trustee have been notified regarding the lawyer's withdrawal from practice.

The Legal Profession Act

You should also be aware of the following sections of the *Legal Profession Act*.

Section 11(1)

The Benchers make rules for the governing of the society, lawyers, articled students and applicants, and for the carrying out of this Act.

Section 11(2)

Subsection (1) is not limited by any specific power or requirement to make rules given to the Benchers by this Act.

Section 33(1)

The Benchers may require a lawyer to do any of the following:

- provide information or an annual report concerning the lawyer's books and records;
- have all or part of the lawyer's books and accounts audited or reviewed annually;
- provide the Executive Director with an Accountant's Report on the lawyer's books and accounts.

Section 33(2)

The Benchers may:

- exempt all or part of classes of lawyers from the requirements of section 33(1);
- determine the qualifications required of a person performing an audit or review referred to in section 33(1).

Section 33(3)

The Benchers may make rules to do any of the following:

- establish standards of accounting for and management of funds held in trust by lawyers;
- designate savings institutions and classes of savings institutions in which lawyers may deposit money that they hold in trust;
- provide for precautions to be taken by lawyers for the care of funds or property held in trust by lawyers.

Section 62(1)

A lawyer must deposit money received or held in trust in an interest bearing trust account at a savings institution designated under section 33(3).

Section 62(2)

A lawyer who is credited by a savings institution with interest on money held in the trust, holds the interest in trust for the Foundation, and must remit the interest to the Foundation in accordance with the Rules.

Section 62(3)

The Benchers may make rules permitting a lawyer to hold money in trust for more than one beneficiary in the same trust account and respecting payment to the Foundation of interest on trust accounts.

Section 62(5)

On instruction from his or her client, a lawyer may place money held on behalf of the client in a separate trust account in which case the interest paid on money in the account is the property of the client.

Section 69(1)

A lawyer must deliver a bill to the person charged.

Section 69(2)

A bill may be delivered under subsection (1) by mailing the bill to the last known business or residential address of the person charged.

Section 69(3)

The bill must be signed by or on behalf of the lawyer or accompanied by a letter, signed by or on behalf of the lawyer that refers to the bill.

Section 69(4)

A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services, with a lump sum charge and detailed statement of disbursements.

Client identification and verification

Lawyers are required to follow the client identification and verification procedures contained in Law Society Rules 3-91 to 3-102 when retained by a client.

Identification and verification are two distinct concepts.

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 individual or organizational clients such as name, personal and/or business addresses, telephone numbers and occupation.

The verification requirements go a step further than simple identification 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 your 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 exceptions to the verification requirement are included in the Rules. For example, a lawyer is exempted from the verification requirements when funds are paid to the lawyer by a financial institution, public authority, or public company, or received from the trust account of another lawyer. For further information, please see the link to the checklist manual and frequently asked questions provided in the Resource section on page 87.

Financial classifications and accounting systems

A general understanding of financial classifications and double-entry bookkeeping is required whether a manual or computerized accounting system is used. The following is a very basic outline of financial classifications:

REVENUES	Increase in Economic Resources
EXPENSES	Decrease in Economic Resources
NET INCOME (LOSS)	Excess (Deficiency) of Revenue over Expenses
Revenue – Expenses = Net Income (Loss)	
ASSETS	Economic Resources
LIABILITIES	Debts/Obligations
EQUITY	Excess of Assets over Liabilities
Assets – Liabilities = Equity	

Transactions are any event that involves the transfer of something of value between two or more entities or accounts. Every trust and general transaction must be recorded in the law firm books. There are several types of accounting systems available to assist in recording transactions, such as manual ledgerbooks, manual one-write system, spreadsheet software, general accounting software and software especially designed for law firms. You must determine which system suits your practice best, bearing in mind that any chosen system must meet the same basic requirements outlined in the Rules.

Double-entry bookkeeping is the accepted recording method whereby each financial transaction is recorded twice: once as a debit and once as a credit. Debit entries must equal credit entries for each transaction and at any point in time. The left side of any account is the debit side. The right side of any account is the credit side

The basic rules of double-entry bookkeeping can be summarized as follows:

Account Type	Increase	Decrease
Assets	Debit	Credit
Liabilities	Credit	Debit
Revenue	Credit	Debit
Expense	Debit	Credit
Retained Earnings	Credit	Debit
Net Income/Equity	Credit	Debit

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 practice. For example, practices 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. You must instruct the savings institution to pay net interest earned on the pooled 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 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 3-52 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 three 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 duties have been delegated 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. Any service charges can be posted against this trust ledger account. 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.

Know your financial institution including: its schedule for posting and crediting deposits, amounts for service charges, cheque printing charges, and hours of operation.

If your practice has merchant credit card charges, it is a good idea to have these taken from the firm’s general account, even if your credit card payments go directly into trust. The reason for this is that sometimes those charges exceed the allowable \$300 float limit, and therefore increase the risk of 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 3-51(4) permit a lawyer, on instruction from his or her client, to place funds in a separate interest bearing trust account (SIBTA). It is good practice with obtain such instructions in writing. 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.

Errors are sometimes made when recording of the transfer of funds from the pooled trust account to a SIBTA which have the effect of understating the trust liability. Separate interest bearing accounts are still part of the trust liability and must continue to be included in the gross trust liability of the firm.

Considerations when setting up a SIBTA

Here are some practical considerations to help determine when trust funds should be invested for the benefit of one specific client including:

- directions of the client;
- amount of funds;
- period of time the funds are expected to be held in trust;
- cost of establishing and maintaining an interest bearing account, including service charges, costs of issuing tax receipts for interest accruing to the client.
- you do not need to get the client authorization if you receive a court order directing you to place the funds into a separate interest bearing account;

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 which must be forwarded to the appropriate parties in a timely fashion. The lawyer should be mindful of any other income tax implications such as withholding taxes and remittances for non-resident clients. Consult your external public accountant if you have any concerns.

Steps to establish a SIBTA

1. Satisfy yourself you have the client's authority to set up and transfer trust funds to a SIBTA. It is recommended 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". The letter of direction to the financial institution and the cheque should both be signed by an authorized signatory to the trust account. 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.
3. Record the transfer in the trust receipts and disbursements journal. This transfer will generate two trust entries, one for the withdrawal from the pooled trust account and one for the deposit to the SIBTA.
4. Post the transfer to the client trust ledger for the pooled trust account, record full particulars of the transaction and calculate the running balance.
5. Create a new client trust ledger for the SIBTA and post the transfer to the new client trust ledger for the SIBTA. Record full particulars and update the running balance.

Please note that the above steps are a general guideline and may vary slightly depending on the type of accounting system used.

Steps required to record interest on SIBTAs

1. Determine the amount of interest received on deposit from the financial institution.
2. Post the deposit of interest in the trust receipts and disbursements journal and update the running balance.
3. Post the interest to the SIBTA client trust ledger and update the running balance.

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. The letter should be signed by an authorized signatory to the trust account.
2. Post the transfer to the SIBTA client trust ledger card and the pooled client trust ledger card. This transaction will create two entries in the trust receipts and disbursements journal, one for the withdrawal from the SIBTA and one for the deposit to the pooled trust account.

Foreign currency accounts

All trust deposits must be placed into pooled trust accounts as set out in Rule 3-51(1) unless the lawyer receives specific client instructions to deposit the funds elsewhere. A lawyer who receives trust funds with instructions to place the funds in a SIBTA may do so in accordance with those instructions as provided by Rule 3-51(3). However, the client instructions must be in writing to deposit trust funds into an account other than a designated savings institution as provided by Rule 3-51(4). The client should acknowledge in writing if the deposit is to an account that is not insured by Canada Deposit Insurance Corporation or Credit Union Deposit Insurance Corporation (Rule 3-51(4) and 3-49). A sample letter can be found in Appendix C.

Please note that a foreign currency account, such as, a USD account is not considered a “designated” insured account under CDIC; however, it is insured at a credit union under CUDIC. Investments such as mutual funds or RRSP equity plans are not insured under CDIC or CUDIC.

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 statement delivery date. 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 specifically request that the bank card be set up as “deposit only” to ensure no unauthorized or accidental withdrawals occur with the card. In addition, you should also specifically request the online banking access to be set up as “view only” which restricts ability to conduct internet transfers out of the trust account and ensures that no transfers are completed in error.

It should be noted that using online banking software to create and submit wire payments to third parties from the trust account is not permitted. All wire transfer requests from trust must be initiated by using the Law Society Electronic Transfer of Trust Funds form which should be provided to your financial institution for completion. (This will be discussed in more detail in a later section) Finally, web payments out of trust, for the movement of fees from trust to general, are also not permitted. Fees must always be moved by way of trust cheque.

Chapter 2 - Operating a Trust Account

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

Deposits

Rule 3-51 sets out the provisions regarding the deposit of trust funds. 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 3-51(4) permits 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 belongs 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;
- funds that the lawyer receives on behalf of the client such as proceeds from property sales;
- a lawyer may deposit up to \$300 of his or her own funds (Rule 3-52(4)).

What must NOT be deposited to a trust account?

- Funds that in the ordinary course of business are paid to a client or a third party on behalf of the client in the form in which it is received (Rule 3-54). For example, the practice may obtain cash to pay a fine or bail on behalf of a client. Another example is when a cheque is made out to the client by the client's spouse for a maintenance arrangement;
- funds that belong to the firm of the lawyer; or
- funds that the lawyer is holding in a personal capacity which do not meet the definition of trust funds. For example, little league funds for which the lawyer is the team coach etc.

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 practice, such as retainer, mortgage advance, settlement proceeds etc.
2. Photocopy the deposit instrument and note the date, file number and purpose of the deposit on the photocopy.
3. Post the details of the deposit in the trust receipt and disbursement journal. Calculate the new running balance.
4. Post the deposit to the client's trust ledger. Record full particulars about the deposit in your client trust ledger for the specific client and matter. Calculate the new running balance on the client ledger.
5. Post the trust administration fee, if applicable.
6. 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.
7. Deposit all receipts as soon as practicable, preferably daily, in the appropriate bank accounts. Always retain a copy of the validated deposit receipt, stamped by the teller.
8. Mark or stamp the trust receipts as "posted" to indicate that the trust records have been updated and the necessary entries have been recorded in the trust receipts and disbursements journal and the client trust ledger.

Best Practices:

A deposit voucher or other document should be prepared by the responsible lawyer instructing the appropriate staff to deposit the funds on behalf of the client named in the voucher or receipt that identifies the trust account to be used. Written communication avoids later uncertainty with respect to the deposit instructions and provides an audit trail.

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., 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 practice 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.

Some lawyers take steps to certify cheques before they will accept the instrument for deposit and payout. Please note the commentary to BC Code rule 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 his or her own expense, to have another lawyer’s cheque certified.”.

You should be aware of the following:

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

If you are going to pay out on trust funds soon after you deposit the funds to your trust account, best practices 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.

If the trust deposit is not received in cash (permitted under limited circumstances), certified cheque, money order, draft, or wire payment, a trust cheque should not be written on behalf of that specific client until you are satisfied that the funds have cleared the account.

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 clear the trust account for your records.

Interest on trust accounts

Interest on the pooled trust account must be paid by the financial institution directly to the Law Foundation (Rule 3-52(2)). It is the lawyer's responsibility to ensure that the financial institution they are dealing is instructed in writing 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 Foundation.

Withdrawals

The provisions that allow for the withdrawal of trust funds are included in Rules 3-56, 3-57 and 3-58. No withdrawals from trust may be made unless the practice's trust records are current and there are sufficient funds held to the credit of the client (Rule 3-56(1.2)). This means that the trust funds must be on deposit in the same account for the specific client matter that you draw the funds on. It is not permitted to draw funds on Bank A when the funds are on deposit in Bank B.

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;
- are remitted to the Law Society as unclaimed trust funds.

Forms of withdrawal

The Rules allow for several forms of withdrawal including:

- by cheque as permitted by Rule 3-56(2) and (3);
- by electronic transfer as permitted by Rule 3-56(3.1) and (3.2);
- by instructions to the designated savings institution to remit net interest to the Law Foundation as permitted by Rule 3-56(4); and
- in cash as permitted by Rule 3-51.1(3.1) in very specific circumstances.

Steps required to issue a trust cheque:

1. Satisfy yourself as to the authority to draw 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 and the trust bank account that there are sufficient funds on deposit for this client to issue the trust cheque.
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 receipts and disbursement journal and update the running balance.
5. Post the trust cheque details to the specific client's trust ledger and update the running balance.
6. Have the trust cheque signed by an authorized signatory to the trust account. Deliver the signed cheque to the person requisitioning the trust cheque.
7. Mark or stamp the trust cheque stub as "posted" to indicate that the trust records have been updated and the necessary entries have been recorded in the trust receipts and disbursement journal and the client's trust ledger.

A cheque on a pooled or separate trust account must be signed by the lawyer and marked "trust". It is best practice to note the file number on the face of the cheque as well as the cheque stub.

Electronic withdrawal of trust funds

Electronic withdrawal of trust funds is permitted for withdrawal by wire transfer (Rule 3-56(3.1) and for the payment of Property Transfer Tax (Rule 3-56(3.2)). 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 his or her digital signature and is not permitted to delegate signing authority to a non-lawyer.

Electronic withdrawal of trust funds is also permitted by wire transfer and these provisions are outlined in Rule 3-56(3.1). Wire transfers must be initiated using the Law Society Electronic Funds

Transfer form. It is important to note that online payments from the trust account via the internet are not permitted under this rule.

Please refer to Appendix B for a sample of the Electronic Trust Transfer form.

Cheques, wire transfers and bank drafts

Trust cheques and wire transfers leave a better audit trail than bank drafts purchased with a trust cheque. Cheques, including certified cheques, belong to the practice and must be retained in the accounting records. Wire payments made using the Electronic Transfer of Trust Funds form also provide an adequate audit trail. Trust cheques and wire payments are preferred over the use of bank drafts. If a bank draft is lost, there is very little the financial institution can do to assist you in reclaiming the funds. 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.

Best Practices:

Use pre-numbered cheques and periodically examine the sequential order of the blank cheque supply.

Keep blank cheques under your control during the day and in a locked, secure location during non-office hours.

Keep all voided cheques.

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 practice'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.

Limit access to trust cheques to authorized signatories and ensure that at least one practising lawyer is a signatory on every trust cheque.

The individual signing the trust cheque should review the individual client trust account ledger to determine if payment is appropriate. Under no circumstances should the practice disburse more funds than received for a specific client.

Signing authority on trust accounts

Withdrawals by trust cheque must be signed by at least one practicing lawyer in good standing with the Law Society (Rule 3-56(2)).

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

- as an undischarged bankrupt;
- as a result of a Law Society disciplinary hearing; or
- as a result 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 practicing 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 to provide some form of confirmation to the signing lawyer. In addition, signature stamps and digital signatures are not permitted on trust cheques.

Payment of fees from trust

Rules 3-56 and 3-57 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 billing is rendered to the client itemizing all the amounts charged prior to withdrawing funds from trust. Any fees withdrawn from trust must be by trust cheque made payable to the lawyer's general account. Due to the commingling rule (Rule 3-52(4)), a lawyer is not allowed to defer the transfer of trust funds to the general account for an unreasonable amount of time.

Best Practice: Before you write a cheque to your general account 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 is prior to the date you are writing the cheque.

Shortages and overdrafts

Trust shortages are a very serious matter. Rule 3-55 requires that a lawyer must, at all times, maintain sufficient funds on deposit in each trust account to meet all of his or her obligations to 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 short with regards to a specific client.

Here is an 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; \$5,000 under John's trust ledger and \$1,000 under Mary's trust ledger. Mary asks you to make a payment out of trust in the amount of \$4,000, and you do so. You have now created a shortage under Mary's trust ledger in the amount of \$3,000. Why? Because Mary only had \$1,000, yet you paid out \$4,000.

So, even though you still have a positive balance in your trust account of \$2,000 ($\$6,000 - \$4,000 = \$2,000$), you have a shortage with respect to Mary's trust funds in the amount of \$3,000. It is considered a shortage because Mary did not have enough funds under her ledger card to make the payment and you ended up using some of John's funds towards Mary's payment.

In the event that you discover a trust shortage, Rule 3-66(1) requires that the lawyer immediately pay enough funds into trust to correct the trust shortage. Rule 3-66(2)(a) requires that any trust shortage in excess of \$2,500 and the circumstances surrounding the shortage, must be reported in to the Executive Director of the Law Society. Rule 3-66(2)(b) requires that if a lawyer is unable to deliver trust funds when due they shall immediately report the fact, and the reasons for it, in writing to the Executive Director.

Please refer 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. Make sure you have funds for the specific client in the right 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 practice 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 as set out in Rule 3-65. 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.

Best Practice: A copy of the signed receipt for the valuable property should be placed in the client file. Another copy should be kept with the valuable property record that is maintained with the other trust account records. In the event that the lawyer is unavailable, due to death or illness, this record keeping will provide assistance in determining the location and ownership of any valuable property in the firm's possession.

Credit card transactions

A law practice 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. Your accounting records should be maintained in the same manner as for deposits in the form of cheque or cash.

Various charges may be made from time to time against the general account. The main charges will be:

- the charge card issuer's discount;
- the annual rental fee for the charge card printer;
- mathematical errors made by your firm in calculating the amount of the deposit.

Best Practice: If the financial institution is not willing to set up two separate machines, 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 your 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 Rules 3-51.1 is required.

Generally, the Rule prohibits a lawyer from receiving cash in an aggregate amount of \$7,500 or more (Canadian funds) in respect of any one client matter or transaction 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, to pay a fine or penalty;
- for professional fees, disbursements, expenses or bail.
- Cash, in any amount, can be received as a retainer or for the payment of an outstanding invoice for services rendered. When a practice does accept \$7,500 or more in cash, any refunds greater than \$1,000 must be refunded out of funds received or accepted and must also be made in cash. In addition the lawyer must have the client or third party sign the receipt. Any refunds less than \$1,000 should be made by cheque. 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. Also, the distinction between "client" and "client

matter” is 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.

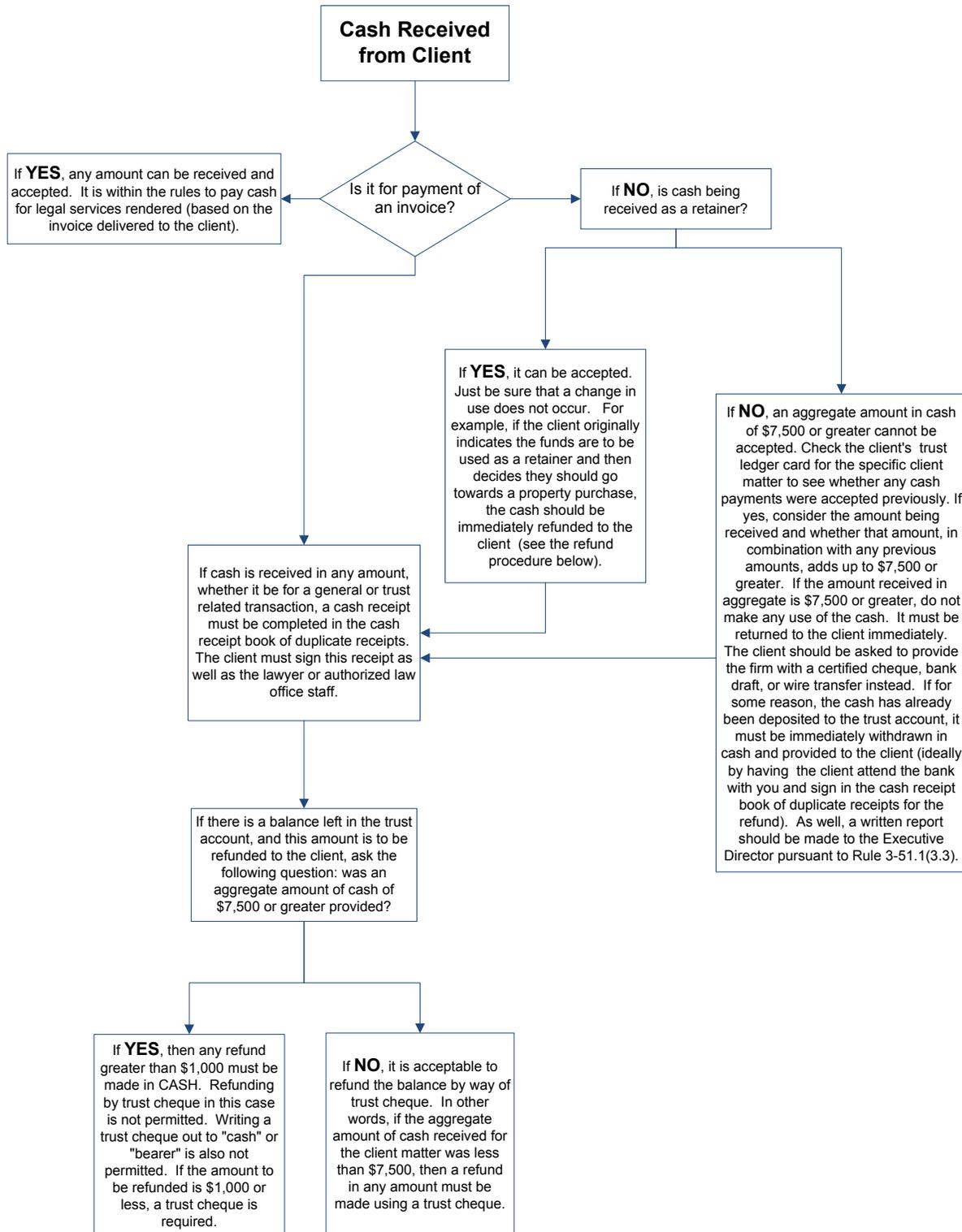
Cash receipt book of duplicate receipts

- The rules for handling cash require that you prepare a duplicate receipt for all cash that you receive for the law practice. 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; and
 - the signature of the person who provided the cash.

In addition, Rule 3-61.1(3) requires that for each withdrawal of cash required by Rule 3-51.1(3.2) and (3.3), 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; and
- the signature of the person to whom the cash was paid.
- The diagram on the next page outlines the steps for dealing with cash.

Cash Handling Process



Cash refund example *(Excerpted from the Benchers' Bulletin, 2008: No.3 July. Written by Barbara Buchanan, Practice Advisor)*

Jane Doe retained lawyer John Smith and gave John a \$10,000 cash retainer for a litigation file. John did the work and billed the file for \$10,000. Then John asked Jane to replenish his retainer by providing \$2,000 to do more work for the same file. Jane gave John \$2,000 in cash. Unexpectedly, the matter settled and John issued a final bill for \$800. He received a total of \$12,000 in cash from Jane. How should John refund the \$1,200 in trust to Jane? John has received a cash retainer of \$7,500 or more (a total of \$12,000 for this file) and the refund is greater than \$1,000. The Rule requires John to refund the \$1,200 to Jane in cash.

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 3-56(2)(b)). You can use the form of withdrawal slip provided by your financial institution to make the withdrawal. I 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 3-61.1). 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.

Unclaimed trust funds

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 3-82 and section 34 of the 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 his or her 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 3-82, the lawyer must report to the Law Society, in prescribed form, 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.

Examples of unclaimed trust funds may include retainer funds left over in a trust account, payments to court that are subsequently reimbursed, late reimbursements for estate taxes or late payments from the purchase or sale of a house.

Handling aged trust accounts

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 3-56(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:

- 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 3-57 and section 69 of the 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 does hold unclaimed trust funds, she or he must make reasonable efforts to locate the owner of the funds to pay them to the owner. The lawyer should also document the efforts 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 3-82.

Please refer to Appendix B for a sample of the Unclaimed Trust Funds form.

If you require further information, contact the Law Society at: unclaimed@lsbc.org.

Annual reporting requirements

Every practice must deliver an annual Trust Report complete to the satisfaction of the Executive Director of the Law Society and in a form approved by the Discipline Committee.

The purpose of the Trust Report is to ensure that the practice 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 practice began operating.

Failure to submit the required Trust Report by the due date will result in late filing penalties. In addition, the practice 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.

Please refer to Rules 3-72 to 3-77.

Compliance audits

The Compliance Audit Program is a proactive process that is designed to be a more 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 3-47 as “an examination of a lawyer’s books, records and accounts and the answering of questions by lawyers”. Rule 3-79 authorizes the Law Society to perform the audit. All law firms in BC that handle trust funds 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 *BC Code*. 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 issues.

The audits are generally selected at random and the goal is to audit each firm at least once every six year cycle. Compliance audits are conducted by a trust assurance auditor onsite at your chief place of practice. The time period examined is typically the most recent 12 to 18 months. Advance notice is given along with a checklist of the books and records required for the audit period. A compliance audit usually takes two to five days to complete.

Receiving a compliance audit does not waive the requirement under Law Society Rule 3-72 to file a Trust Report. The Trust Report is still required in the year in which the Law Society audits the practice.

Other trust fund regulations

You should also be familiar with the provisions of the *BC Code* 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;
- the mental instability of a lawyer such a nature that the lawyer's clients are likely to be materially prejudiced;
- 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 practice is closing a trust account, you are required to get 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 practice are made. The account is kept in the name of the practice and is identified as the general account on the books and records of the practice and the financial institution.

The general account is normally opened at the same financial institution as your pooled trust account. Many law practices 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 practice.

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 practice. It is up to the individual practice to decide on the appropriate signing authorities on the general account.

Deposits to the general account

The general account is used for the following:

- deposit of funds from clients on account of fee billings for services rendered;
- deposit of funds withdrawn from the pooled trust account on account of fee billings for services rendered;
- deposit of funds from other sources such as a bank loan;
- deposit of funds from the owners of the practice.

Steps required to process a general deposit

1. Issue a receipt that contains the full particulars about the transaction.
2. Photocopy the deposit instrument and note the date, file number and purpose of the deposit on the photocopy.
3. Post the deposit to the general cheque book register – record the deposit on the current cheque stub and update the running general account balance.

4. Post the details of the deposit in the general receipt and disbursement journal. Calculate the new running general account balance in the journal.
5. Post the deposit details for payments of a client account to the account receivable ledger. Calculate the new running accounts receivable balance.
6. Record the deposit amount and matter number in the general deposit book. Total the general deposits for the day.
7. Deposit all receipts as soon as practicable, preferably daily in the appropriate accounts. Always retain a copy of the validated deposit receipt stamped by the teller.
8. Mark or stamp the general receipts as “posted” to indicate that the general records have been updated and the necessary entries have been recorded in the general receipts and disbursements journal and the accounts receivable ledger, if applicable.

Rendering accounts to clients

The practice must prepare and deliver fee billings to their clients prior to receiving any funds into the general account. You are required to keep a file copy of all fee billings accounts 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 fee billings (commonly referred to as statements of account) that are numbered so it is easy to file the fee billings in numerical order.

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

The amount of fees billed may be calculated by multiplying the lawyer’s hourly billing rate times the number of hours spent on the particular client matter. The billing normally includes a description of the professional services charged. Payments to third parties by the practice 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.

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.

Best Practices:

Mark on your invoices the amount which was paid from trust. If your system does not have this capability, then you can get a stamp made to say “paid from funds in trust”.

The fee billing 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 Resources at the end of this handbook for web addresses that contain information on GST and PST issues relating to a law practice.

Payment of fees and disbursements

When the practice renders and delivers a statement of account, the total amount of the bill to the client is entered in the accounts receivable ledger (debit entry to accounts receivable).

On receipt of payment the appropriate accounts receivable will be credited. If funds are available in the client’s trust account to cover a fee billing which has been rendered to the client, the transfer by trust cheque from the trust account to the general account is required by the Rules. The trust cheque drawn on the trust account must be made payable to the firm’s general account. Please refer to Rule 3-56(3).

Disbursements paid by lawyers on behalf of clients can represent a significant expense of running a law practice. If you adopt a practice of properly recording disbursements, your accounts receivable records will be organized and up-to-date. This will help you comply with the Act and Rules and reduce the prospect that you will sustain a monetary loss. It will also make it easier to bill your clients.

Lawyers must properly record and bill disbursements (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.

Lawyers also have a professional duty to meet their financial obligations (*BC Code* rule 7.1-2). 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.

Note: Disbursements must be billed at their actual rather than estimated costs - disbursements must not be inflated. It is important to keep back up documentation for all disbursements.

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; and
- pay owners of the practice, associate lawyers and staff for work performed for the law practice.

Steps required to process 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 general cheque information in your cheque book register and cheque stub.
4. Record the cheque in the general receipts and disbursements journal.

Capital contributions

The owners of the practice may deposit funds to the general account from other personal sources. These amounts increase the amount of the funds in the general account (a debit entry) and increase the amount that each owner has put into the law practice or the respective capital account (a credit entry).

Loans

The law practice may arrange a loan with its main financial institution. It could be a revolving line of credit with a maximum dollar value or a set amount that is paid back in equal monthly amounts. The deposit of loan advances must always go into the general account. It is important that you identify and record these transactions as they occur. The financial institution will usually provide a monthly statement of the activity from these general account transactions. The amount of loan payments will have to be broken down between the principal amount and the interest amount and posted to the general ledger accounts accordingly.

Payroll

The payroll accounting is done through the general account. In addition to making the necessary salary cheques to staff you will also have to make the mandatory payroll remittances to Canadian Revenue Agency (CRA) for the practice. Payroll remittances include the amounts you withhold from the salary cheques including amounts for income tax, CPP and EI. The remittance to CRA is made up of these employee withholdings and the employer's portion of CPP and EI.

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. The TAF is applied to trust monies received in practice areas such as, but not limited to, conveyancing, criminal, personal injury, family, and wills & estates. Rules 2-72.2 through 2-72.5 relate to the TAF.

Under Rule 2-72.2(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. These TAF remittances are due quarterly by April 30, July 31, October 31 and January 31. 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 bring forward system to ensure that the practice remits on time. A penalty 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 practice or by specific request of the Trust Assurance Department.

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

Law Society Rules - Trust Administration Fee

Application and definition

Rule 2-72.1

1. Rules 2-72.1 to 2-72.5 apply to client matters in connection with which a lawyer receives trust funds on or after March 1, 2005.
2. In Rules 2-72.1 to 2-72.5, "client matter" means any distinct matter on which a lawyer is retained to represent or advise a client, including but not limited to the following:
 - a. a transaction of any kind;
 - b. claim or potential claim by or against the lawyer's client;
 - c. a proceeding.

Trust Administration Fee

Rule 2-72.2

1. A lawyer must pay to the Society the trust administration fee specified in Schedule 1 for each client matter undertaken by the lawyer in connection with which the lawyer receives any money in trust, not including fees and retainers.
2. Only one trust administration fee is payable in respect of a single client matter in which:
 - a. a lawyer represents joint clients; or
 - b. more than one lawyer in a law firm acts.
3. For each quarter year ending on the last day of March, June, September or December, a lawyer must remit the following to the Society within 30 days of the end of the quarter year to which they apply:
 - a. trust administration fees that have become payable under subrule (1) during the quarter year;
 - b. completed trust administration report in a form approved by the Executive Committee.

Late Payment of the Trust Administration Fee

Rule 2-72.3

A lawyer who fails to remit the trust administration fee and report by the time required under this rule must pay a late payment fee of 5 percent of the amount due for each month or part of a month from the date the lawyer is required to remit the fee and report under Rule 2-72.2(3) until the fee, including the late payment fee, and the report are received by the Society.

Pursuant to Rule 3-43.1(e), a lawyer who does not report and pay the trust administration fee to the Law Society as required under Rule 2-72.2, has failed to meet a minimum standard of financial responsibility.

TAF - Frequently Asked Questions

Filing requirements

Nil returns

Q: If the law firm did not receive any trust funds, which were subject to the TAF, does the law firm need to file a nil return?

A: No, nil returns are not required if TAF was not accrued in a given quarter.

Payment due dates

Q: If a TAF due date falls on a weekend or holiday, when is it actually due?

A: If a TAF due date falls on a weekend or holiday, then the due date would be extended to the next business day. Postmarks and courier slips dated by the due date are honoured as timely payment. Law Society office hours are Monday to Friday 8:30-5:00. A late penalty of 5% is applied on all overdue payments.

Collection requirements

When is TAF payable to the Law Society?

Q: When does the TAF become due: on receipt of trust funds; when a bill is created; or, when we close the file?

A: The TAF is due upon receipt of funds into the trust account.

Opening a new trust account

Q: What does “opening a new trust account,” mean? Is it a deposit into the pooled trust account on a new client matter or the transfer of trust funds into a separate interest bearing trust account (SIBTA)?

A: The initial deposit of trust funds on a new client matter into the pooled trust account or directly into a SIBTA attracts one TAF. A subsequent transfer between trust accounts would not attract another fee.

GST on TAF

Q: If billed to our client, is the TAF subject to GST?

A: In the ordinary course of business, the TAF can be handled in three ways:

1. as a disbursement on your bill where GST will be charged to the client; or
2. included in your fees where GST and PST will apply as it now forms part of the legal fee; or
3. absorbed by the firm where the GST will only be paid to the Law Society.

When the law firm makes their quarterly remittance to the Law Society, GST must be included on the total TAF paid. The GST collected from the client will be offset by the GST paid to the Law Society.

GST-exempt client

Q: We have a client who is exempt from GST. If the TAF is billed to that client as a disbursement, is the TAF also GST-exempt?

A: It is up to each law firm to determine how to bill the client; however, the law firm must include GST in their remittance to the Law Society.

Pro bono work and settlements

Q: Does a settlement amount received for pro bono work attract the TAF?

A: Yes, if funds are received on any settlement into trust, then a TAF is payable (e.g. pro bono settlement for wrongful dismissal, WCB, etc.).

Extra-provincial trust receipts

Q: Does the TAF apply to a trust deposit taken by our Toronto office on a BC matter?

A: Yes, the TAF applies to trust funds received in respect of a BC matter. It is expected that the fee would be paid by the BC office.

Trust monies on deposit for Canada Revenue Agency

Q: Would money provided for a debt to CRA be considered a disbursement or a deposit to trust?

A: It would be considered a deposit to trust and would attract the TAF.

Standard file disbursements

Q: Do standard file disbursements attract the TAF?

A: Most disbursements are paid from a lawyer's general account and recovered through regular billings, so TAF would not apply.

If disbursements are funded through a retainer to trust and are incidental to the provision of legal services, TAF does not apply (e.g. phone charges, facsimiles, photocopying, registry fees and expert opinions).

For more examples, refer to Appendix B –Checklists and Forms

Trust cheque endorsed over to third party

Q: We're endorsing a trust cheque, without recourse, over to a third party. It is not deposited/withdrawn through our trust bank accounts; however, it is recorded in our trust books. Does this transaction attract the TAF?

A: No, this transaction would not attract the TAF.

Refund of deposited trust monies from a client

Q: Trust monies are received and deposited in anticipation of the client purchasing a business. The client subsequently decides not to go ahead with the transaction and all monies (less fees) are returned. Does a TAF become payable?

A: Yes, the TAF applies, as the fee is due upon receipt of the funds into the trust account.

TAF recording requirements

Accumulate TAF in the general account

Q: Do we keep TAF that we collect in the trust account and pay them from trust each quarter?

A: The TAF should be handled the same way GST is handled. The TAF should be transferred to the general bank account along with the fees associated with the client matter.

Areas of practice

ICBC settlements

Q: Does the TAF apply to settlement funds received from ICBC?

A: Yes, the TAF applies to settlement funds. If there is more than one client matter involved in the same accident, then more than one TAF applies (one TAF per each distinct client matter).

Sale and purchase

Q: When is the TAF due on the sale of one house when those funds are being used to purchase another house?

A: There is one TAF due on the receipt of funds on the sale of the house and another TAF due on the purchase of the new house. Each sale and purchase is a distinct client matter even though there may be no additional deposit into trust.

Multiple deals for one client

Q: We have a purchaser who has one contract for the purchase of many lots from a developer. The registration of the transfers will not all be on the same date; rather, the registration process will be over several months. So we have one purchaser, one vendor, and one contract. Will the deposit of trust funds for the first purchase attract the TAF only, or will subsequent deposits also attract the TAF?

A: There are two criteria to the TAF:

1. The initial receipt of trust funds that are deposited to either a pooled trust account or directly to a separate interest-bearing trust account;
2. The initial trust deposit is for a distinct client matter.

If the purchase of a block of lots occurred at the same time from one seller to one buyer, even if the funds accumulate over a period of time, then the purchase would attract only one TAF. If, however, there was a deviation from that process and a number of client matters were created, then multiple TAFs would apply (one per each client matter).

To determine if the second criterion has been met, consider the following characteristics of a distinct client matter that are clearly identifiable upon examination of your accounting records:

- Upon examination of your trust records you have opened a separate client trust ledger card with a separate identifier (new client file number assigned either manually or electronically by your accounting system) to record trust receipts and trust disbursements, *distinct and separate* from all other trust ledger records. Upon looking at the trust ledger record, the identity of the client on whose behalf trust funds are received or disbursed is unambiguously stated.
- Upon examination of your accounts receivable ledger in your general records, you have opened a separate accounts receivable subledger showing all transactions including transfers from the trust account, other receipts from or on behalf of the client and the balance owed by the client, distinct and separate from all other accounts receivable records.
- Upon examination of your billing records, there is a separate legal billing for this client matter, distinct and separate from all other matters that clearly identifies the nature of the legal services provided that the lawyer has been retained to represent or advise the client.
- Upon examination of your monthly trust reconciliation, you have listed the unexpended balance of trust funds for this client matter that distinct and separate from all other clients' trust balances listed.

Multiple property sales

Q: If there are multiple properties being sold, does the TAF apply to each sale?

A: If the multiple properties are sold to one buyer, then only one TAF applies. If there are multiple buyers, then there will be multiple TAFs.

Real estate client matters

Q: What is a residential conveyance real estate client matter?

A: A residential conveyance real estate client matter is a residential conveyance, a purchase or sale of a house, townhouse, condominium, vacation house or residential building lot or lots.

This category would not include as examples: commercial conveyances, lease arrangements, strata corporation disclosure statements, litigation involving real estate or a refinancing of a residential mortgage.

Divorce file where property is sold – how many client matters?

Q: If we have a divorce file, and property is sold where we handle the conveyance, does the TAF apply both to the divorce file and to the conveyance file?

A: One TAF applies to the divorce file and a second TAF applies to the conveyance file. These are two separate client matters.

Estate file where property is sold – how many client matters?

Q: Where we have to sell a residence to settle an estate, does the sale attract a TAF?

A: One TAF applies to the estate file and a second TAF applies to the conveyance file. These are two separate client matters.

Class action law suits

Q: I represent 500 clients on a class action lawsuit. Does the TAF apply once or 500 times?

A: Class action is considered one distinct client matter, which attracts one TAF.

Monies received by criminal lawyers

Q: Monies are seized from a client by law enforcement and subsequently returned to the client. The method of return is by way of a bank draft or money order made payable to the client's lawyer "in trust". Is this deposit subject to the TAF?

A: The bank draft or money order is deposited into the lawyer's trust account and then withdrawn as a cheque payable to the client. The TAF applies to such deposits.

Payment of bail

Q: Would monies provided for the payment of bail be considered a disbursement or a deposit to trust?

A: It would be considered a deposit to trust and would attract the TAF.

Refund of bail

Q: Would monies provided by the courts representing a refund of bail payable to the client attract the TAF?

A: Yes, it would be considered a deposit to trust and would attract the TAF.

Transfers between law firms

Q: Law Firm A transfers trust funds to Law Firm B. Law Firm A assessed the TAF when it first received the monies. Now that the monies are transferred to Law Firm B, will Law Firm B need to assess TAF again?

A: Yes, Law Firm B must charge one TAF upon receipt and deposit of the transferred trust monies. Effectively, Law Firm B is opening up a new client matter.

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 termination² 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 ledger card 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 trust and general account records.

Trust accounts records:

- trust receipt book;
- trust deposit book;
- pooled trust account cheque book;
- trust receipts and disbursement journal;
- client trust ledger;
- trust transfer journal showing all transfers between client's trust ledgers including the name and number of both the source client file and the destination client file and an explanation of the purpose of the transfer together with the lawyer's written approval of the transfer;
- original bank statements and cancelled cheques, statements for savings accounts, term deposits and other type of accounts;
- monthly trust reconciliations prepared in the form set out in Rule 3-65; and
- all other supporting documents, vouchers and invoices.

General accounts records:

- general receipts and disbursement journal;
- accounts receivable ledger;
- file copies of fee billings;
- original validated bank deposit receipts including ATM deposit slips.
- original bank statements and cancelled cheques, statements for savings accounts, term deposits and other type of accounts;

- all other documents that support the above-noted records and accounting transactions such as credit and debit memos.

Upon dissolution, transfer or the discontinuance of any law practice, the lawyers must make appropriate arrangements for the maintenance of the books and records specified in Rule 3-80.

Additional accounting procedures and reports

There are a number of additional accounting procedures that you will commonly encounter in a law practice. 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:

- *Trial Balance* – usually performed monthly confirms that there has been no incomplete recording or transposition errors in the general ledger;
- *General Reconciliation* – usually performed monthly to confirm that the general bank statement accurately reflects the transactions recorded in the non-trust cashbook;
- *Accounts Receivable – Aged Trial Balance* – that enables managers of the practice to follow up on delinquent accounts receivable;
- *Works In Progress Report* – that enables lawyers to monitor the level of unbilled time and unbilled client disbursements and aids management in monitoring the work performed by each lawyer;
- *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;
- *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.
- *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. This is one of the most commonly used reports.

Internal controls

Clients trust their funds to their lawyers and you are part of the team that must provide adequate and complete recordkeeping of all client trust funds and trust property. Reduce the opportunity of misappropriation by implementing and monitoring 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 fashion such as phone or utility bills;
- failure to meet regulatory remittances such as GST, PST or payroll remittances;
- signs of a lifestyle beyond the means of the person, signs of depression, or drug and alcohol abuse;
- unwillingness to take vacation or extended periods of time off; and an
- 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. 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, 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;
- deposit slip and financial institution receipt which shows the date of the deposit, the amount of the deposit, the name/file reference of the client on whose behalf the funds are received, the source of funds and the date stamp showing the date the funds were deposited and received by the financial institution;
- bank statement which shows the date of deposit;
- cheque stub and cheque requisition which shows when the withdrawal was authorized and to whom;
- cheque which shows 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;
- bank statement which shows the date the account was charged with the cheque; 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.

Each deposit and disbursement should have adequate documentation to provide a complete description of the transaction.

Chapter 6 - The Reconciliation Process

Mistakes happen! To make sure that you find any mistakes, Rule 3-65(4) 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 ledger and the trust receipt and disbursement journal. 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 up-dated statements for separate interest bearing accounts that have been adjusted for outstanding deposits and outstanding cheques and any posting errors;
- trust receipts and disbursements journal – the running balance shown in your journal at the reconciliation date;
- client trust listing – the total of all client trust ledger balances including client ledger balances held in separate interest bearing trust accounts.

How to perform a trust account reconciliation

1. Obtain the trust bank statements.
2. Check off all returned cheques on the trust bank statement and the trust receipts and disbursements journal 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 receipt and disbursement journal.
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 receipts and disbursements journal.
7. List the outstanding deposits for the previous month, 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 and/or posting errors individually by date of occurrence and provide a brief explanation; copy any supporting documents and attach 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. Enter the following from the receipts and disbursements journal on the trust reconciliation form:
 - the beginning balance, balance at the end of the previous month;
 - the total deposits made in the current month;
 - the total cheques written in the current month; and
 - the ending balance in the journal.
12. From the client trust ledgers, identify and list the clients for whom you hold trust funds at the month end.
13. 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.
14. Include the date of the last trust activity to help you monitor inactive trust accounts.
15. Total the client trust listing and enter the total on your trust reconciliation form.

The comparison

1. Compare your reconciled trust bank balance to your trust receipts and disbursements journal balance and your client trust listing balance.
2. All three figures must be the same. If there is a discrepancy, you must find and correct the discrepancy.
3. When all numbers are in agreement, 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 included (pooled, GICs, term deposits, estate accounts, power of attorney accounts, if applicable);

- reconciling items are cleared each month and are clearly explained and documented;
- stale-dated cheques, which are cheques more than 6 months old, are monitored and cancelled or re-issued if appropriate;
- there are no overdrawn client trust ledger balances;
- 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.

Monthly Trust Reconciliation Sample

TRUST BANK SEPTEMBER 30, 2013			
TRUST ASSETS			
Bank Reconciliation – Pooled Trust A/C 123-456			
Balance per bank statement			\$40,300.00
Add: outstanding deposits (per listing attached)			Nil
Less: outstanding cheques (per listing attached)			Nil
Add/deduct adjustments			
	Subtotal		\$40,300.00
Separate interest bearing trust account (SIBTA #99-001)			
Innocent, Jimmy File #1003			\$10,000.00
	Total Trust Assets as at September 30, 2013		\$50,300.00
TRUST LIABILITIES			
Pooled Trust Account #123-456			
		Last Transaction Date	
I.M. Lawyer	Client Matter # 1001	Aug 31 2013	\$ 300.00
Injured, John	Client Matter # 1002	Sept 30 2013	\$40,000.00
		Subtotal	\$40,300.00
Separate interest bearing trust account #9-8888			
Innocent, Jimmy	Client Matter#1003	Sept 30 2013	\$10,000.00
	Total Trust Liabilities as at Sept 30 2013		\$50,300.00
Control Account – Trust Receipts and Disbursement Journal			
Beginning balance	Aug 31 2013		\$300.00
Add: current month receipts	Sept 2013		\$50,000.00
Less: current month cheques	Sept 2013		Nil
Ending Balance	Sept 30 2013		\$50,300.00
<i>Prepared by:</i>		<i>Date:</i>	
<i>Reviewed and Approved by:</i>		<i>Date:</i>	

How to review a trust account reconciliation

The trust bank balance, trust receipts and disbursements journal and client trust listing must all be the same. 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 3-65(4).

Trust bank statement

1. Are there any outstanding deposits noted? If so, is it a timing difference (i.e., where the funds are deposited on the last day of the month but posted by the bank to the following day). Outstanding deposits not due to timing differences merit your immediate attention.
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 3-82.
3. Are there any bank service charges, bank errors or posting 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 returning the funds to the client or remitting the funds to the Law Society under the provisions of Rule 3-82.
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? Is a “suspense account” utilized? If so, the deposit should be immediately tracked in order to identify the ownership of the funds.
4. Is the member’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 3-52(4).
5. Are there any overdrawn client trust ledger balances? If so, the trust shortage must be resolved immediately. If the trust shortage is greater than \$2,500, please provide a written explanation to the Executive Director, as required under Rule 3-66(2)(a).

6. Are there any funds in trust which should be transferred to the general account (i.e., an invoice recently rendered yet the fees have not been withdrawn from trust)?

Trust receipts and disbursement journal

Ensure the ending balance of the trust bank statement agrees with the client trust listing and trust receipts and disbursement journal balances.

Appendix A - Trust Accounting Samples

Trust receipts and disbursements journal – Rule 3-60(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, certified funds 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 receipts and disbursement journal – sample

DATE	PARTICULARS	DOC#	DEPOSITS	CHEQUES	BALANCE	FORM FUNDS RECEIVED
Sept 30 2013	Balance Forward				10,500.00	
Oct 01 2013	Received from: Smith- Retainer Smith, John Client Matter #1001	R123	500.00		11,000.00	Cash
Oct 07 2013	Paid to Jones & Jones in Trust- balance due Brown, Tom Client Matter #1002	T1005		5,000.00	6,000.00	

Client trust ledger – Rule 3-60(b)

This subsidiary 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;
- posting transactions by date, purpose and amount;
- calculation of the unexpended balance in trust for the client matter.

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

Client trust ledger – sample

Account: SMITH, JOHN Re: Litigation Matter Bank: Pooled Trust Account #123-456 Client Matter: #1001					
DATE	PARTICULARS	DOC.#	CHEQUES	DEPOSITS	BALANCE
Oct 01 2013	Received from Smith-Retainer- cash	R123		500.00	500.00

Trust transfer journal – Rule 3-60(c)

This journal is used to record all transfers between client trust ledger cards. Whenever you move trust funds from one client’s trust ledger to another client’s 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 post 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
Oct 01 2013	Jones, J. Client Matter #1006	Elliot, Sam Client Matter #1050	40,000.00	Transfer from: Jones purchase file to Elliot sale file

General receipts and disbursements journal – Rule 3-61(1)

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
- invoice number, if applicable.

It also lists all general cheques 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;
- cheque or voucher number used.

A manual general receipts and disbursements journal synoptic 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 receipts and disbursements journal – sample columns

Date	Particulars Payor/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 Payabl e
Auto	Business Promo 50%	Phone	Office	Travel	Sundry Description	Amount	Running Balance	

Cash receipt book of duplicate receipts – sample

DUPLICATE CASH RECEIPT	No. 001
Date: _____	
Received From: _____	the amount of \$ _____
Paid to: _____	the amount of \$ _____
On behalf of _____	for File # _____
Signature of payor/payee: _____	
Authorized Signature on behalf of (name of law firm): _____	

Valuable property record

- When valuable property is received by the law firm, 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, physically 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.
- The record should be kept in bound book form or other organized form similar to the following example.
- 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.

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 27/09			Bearer Bonds
Estate of John Doe	CDE Explorations	3,000	YX4329 YX4372	Lily Doe	Apr 3/09			
Jason Jones	Power of Attorney	1	Dated Apr 5/97	Jason Jones	Apr 6/09			

Trust Account Reconciliation Sample

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
(A + B - C + D + E)

Trust Liabilities (attach separate sheet if necessary)

Client Name/Identifier	Date of Last Trust Transaction	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
		\$ _____ - G

Control Account - Trust Liabilities per General Ledger

\$ _____ H

Preparer's Signature

Reconciliation Preparation Date

Lawyer's Signature

Reconciliation Review Date

Note-To Reconcile: Trust Assets (F) = Trust Liabilities (G) = Control Account (H)

Appendix B - Checklists and Forms

Transfer Form

The Law Society
of British Columbia



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

Electronic Transfer of Trust Funds Law Society (Rule 3-56)

PART A: Instructions		
Date of request	Accounting control #	
Client name	Client file #	
Payee		
Beneficiary Address		
PART B: Source account		
Account name		
Financial institution		
Account #		
PART C: Destination account		
Account name		
Financial institution		
Financial institution address		
Account #		
Amount (in numerals as well as written out)		
Initiating lawyer		
Authorizing lawyer(s): (must be a signatory to the trust account)		
Name of Lawyer	Signature	Date
Name of Lawyer	Signature	Date
Financial institution confirmation # (if available)		
Please staple a copy of the financial institution's confirmation to this form for filing.		

Filed in Accounting Records	
Filed in Client File	
PART D: Verification of transfer (for law firm use)	
Confirmation Received Date	
Confirmation Verified Date	Verified by
Notes/Follow up (if applicable)	
PART E: Law Society Rules	
<ul style="list-style-type: none"> • This form must be completed in its entirety for all electronic transfers from the trust account other than those covered under Rule 3-56 (4). • The initiating and authorizing lawyer(s) must be practicing members of the Law Society and authorized signatories on the trust account. • The accounting control number is a sequential number obtained from the law firm’s accounting system. • The financial institution confirmation must be obtained by the law firm within one banking day and must contain the following information: <ol style="list-style-type: none"> a. Date of transfer b. Source account information: account name, financial institution and account number c. Destination account: account name, financial institution (including address) and account number d. Name of authorizing person e. Amount of funds being transferred • The confirmation received from the financial institution must be verified against the transfer form the day it is obtained by the practice from the financial institution. • The original paper copy of this form, signed by the authorizing lawyer(s), must be delivered to the source financial institution. • Authorized, signed copies of this form and the confirmation received from the financial institution must be retained in the firm’s trust accounting records and a copy placed in the client’s file • <u>Online payments from the trust account via the web are NOT PERMITTED under this Rule.</u> All EFT payments must be requested using this form and provided to your financial institution for completion. 	

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 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?	
When applicable, do you prepare a proper audit trail for electronic transfers? (See LSBC website to download form).	
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 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?	
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?	
Is access to the trust account controlled by password?	

Application

The Law Society
of British Columbia



Payment of Unclaimed Trust Funds 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
<p>The information on this form is collected under the authority of Rule 3-82(1) and (2) of the Law Society Rules, which is as follows:</p> <p>3-82 (1) A lawyer who has held funds in his or her trust account on behalf of a person whom the lawyer has been unable to locate for 2 years may apply to the Executive Director to pay those funds to the Society under section 34 of the Act.</p> <p>(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:</p> <ul style="list-style-type: none"> (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.

<p>For Law Society use only</p> <p>Approved by:</p>

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		

Applicability of TAF Checklist

Common Disbursements funded by Retainers	
Expert Medical Report	<i>No TAF</i>
Private Investigator Report	<i>No TAF</i>
Photocopying	<i>No TAF</i>
Postage	<i>No TAF</i>
Courier	<i>No TAF</i>
Court Fees	<i>No TAF</i>
Expert Witness Fees	<i>No TAF</i>
Process Server Fees	<i>No TAF</i>
Registry Fees	<i>No TAF</i>
Fax charges	<i>No TAF</i>
Binding Costs	<i>No TAF</i>
Hospital Records	<i>No TAF</i>
Interpreter	<i>No TAF</i>
Telephone charges	<i>No TAF</i>
Online Searches	<i>No TAF</i>
Car/Taxi Transportation	<i>No TAF</i>
Parking	<i>No TAF</i>
Meals	<i>No TAF</i>
Police Accident Reports	<i>No TAF</i>
FOI Processing Fee	<i>No TAF</i>
Vancouver Police Fingerprint Deletion Admin Fee	<i>No TAF</i>
Admin Fee to the Superintendent of Motor Vehicles (for oral hearing or written submission)	<i>No TAF</i>

All areas of Law	
Legal Fees or Retainers only	<i>No TAF</i>
Criminal Law	
Bail	<i>TAF</i>
Monies provided by a client to lawyer in trust to pay CRA debt	<i>TAF</i>
Money seized by RCMP and then returned to client by way of lawyer's trust account	<i>TAF</i>
Conveyancing	
Real Estate sale	<i>TAF</i>
Real Estate purchase	<i>TAF</i>
Real Estate sale & purchase for same client (treated as two distinct client matters)	<i>Two TAF's</i>
Client with one contract for the purchase of many lots from one developer (one purchaser, one contract)	<i>One TAF</i>
Real Estate re-finance	<i>One TAF</i>
Multiple property Sales to multiple buyers	<i>Multiple TAF</i>
Personal Injury	
Settlement amounts. Common examples: ICBC or Insurance Company Settlements	<i>TAF</i>
Wills & Estates	
Estate File: The assembling of the funds from savings accounts, chequing accounts, RRSPs, Investment Accounts and the disposal of any tangible <i>personal</i> property (vehicles, furniture, etc.).	<i>One TAF</i>
Sale of <i>real</i> property to settle an estate, (one Trust Administration Fee applies to the Estate File and a second to the Conveyance File). These are two separate client matters.	<i>Two TAF's</i>

Family Law	
Divorce file in which real property is sold and where the lawyer handles the conveyance attracts the TAF. (One Trust Administration Fee applies to the Divorce File and a second Trust Administration Fee applies to the Conveyance File as this is considered two distinct client matters).	<i>Two TAF's</i>
Other	
Class action lawsuit (multiple clients, one lawsuit)	<i>One TAF</i>
Holdback payable to a firm's trust account	<i>TAF</i>
Non-billable trust monies	<i>TAF</i>
Pro bono work if settlement received in trust	<i>TAF</i>
Refunds & Transfers	
Transfers between law firms (i.e., Lawyer leaves Firm A to go to Firm B and takes his client trust monies to new firm)	<i>TAF</i>
Refund of deposited trust monies (non-retainer related) for a real estate deal, for example, that does not go through	<i>TAF</i>
Refund of retainer for legal fees and disbursements to clear out balance remaining in trust	<i>No TAF</i>
Funds initially in trust as a retainer for the payment of legal fees and disbursements which your client then instructs you to use for another purpose.	<i>TAF</i>

Information provided by the "Applicability of TAF Checklist" is categorized by area of law and is intended to provide a general guideline only. It is *not* intended to include every trust transaction that may or may not attract the Trust Administration Fee.

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 3-52(2)(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

and please advise me (*our*) of the amount of each transmittal.

Yours truly,

[Name, Title]

cc: Law Foundation

Sample Annual CDIC Report (Rule 3-70)

Canada Deposit Insurance Corporation (CDIC)

To: Each financial institution, except credit unions, where the law firm has a pooled trust account.

Dear Sir or Madam:

Re: Pooled Trust Account – CDIC Report

This is to advise you that account number _____ is a multi-beneficiary trust account which, as at April 30, 20____, contained the funds of various clients as follows:

File Number	<u>or</u>	Other confidential identifier	\$Amount
File Number	<u>or</u>	Other confidential identifier	\$Amount
File Number	<u>or</u>	Other confidential identifier	\$Amount
			\$TOTAL

We are providing you with this information so that you can comply with CDIC requirements.

We further confirm our instructions that you are to remit net interest earned on the aforesaid pooled trust account to the Law Foundation of BC.

Yours truly,

Notes:

- Deliver the report to the financial institution within 30 days of April 30 each year. Do not use client's names. It is also suggested that client initials not be used.
- The total is to agree with the balance per the bank statement of the same date.
- Maintaining a pooled trust account with less than \$100,000 does not exempt you from this requirement. It is not necessary to file this report with credit unions whose insurers do not require it.
- Whenever you open a new pooled trust account inform your bank, trust company, or credit union, in writing, that this is a pooled trust account which will contain the funds of more than one client. (This advice can be combined with the required letter instructing the bank to forward net interest to the Law Foundation).
- Keep a copy of the CDIC report, with receipt acknowledged by the bank, to give to your auditor, who is specifically instructed by the Law Society to confirm that you have complied with Rule 3-70.

Confirmation of Law Foundation of BC interest remittance

Financial institution (Name, branch & address)	Law firm (Name, address & contact information) Pooled trust account number(s)
--	---

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.

TO BE COMPLETED BY FINANCIAL INSTITUTION

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.

Authorized signature of financial institution _____

Date _____

Please mail or fax 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
845 Cambie Street
Vancouver, BC V6B 4Z9
Attention: Trust Assurance
t 604.669.2533 f 604.646.5917

Client Direction to Deposit Foreign Currency

[Date]

[Name and address of responsible lawyer and name of law firm]

[Client's name] has delivered to [name of law practice] trust funds in the amount of [amount] U.S. dollars and directs that [name of law practice] deposit the trust funds in:

A United States dollar savings account or

A United States dollar term deposit receipt or

A United States dollar guaranteed investment certificate.

[Client's name] acknowledges that [lawyer's name] has informed [client's name] that the trust deposit is not insured by Canada Deposit Insurance Corporation because it is in U.S. dollars.

DATED at _____, this _____ day of _____ 20XX.

Name of Client

Signature

Trust Shortage Letter Samples – Rule 3-66

NSF Client Cheque

[Date]

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

Dear Sir:

Re: Trust Shortage – Rule 3-66

Pursuant to Law Society **Rule 3-66(2)**, please be advised that a trust shortage in the amount of \$15,000 occurred as follows:

- | | |
|------------------------|---|
| August 24, 2013 | Client cheque in the amount of \$15,000 was deposited into our Scotiabank trust account. |
| August 25, 2013 | Funds were paid out on behalf of the client by trust cheque in the amount of \$15,000. |
| August 26, 2013 | Scotiabank called to advise that the client's cheque in the amount of \$15,000 was returned NSF. |
| August 26, 2013 | Cheque #1234 in the amount of \$15,000 was written from our general account to our trust account to cover the shortage. |
| August 30, 2013 | Client provided replacement funds in the form of a \$15,000 bank draft. |

Please find attached a copy of our August 2013 trust bank statement along with a copy of the front and back of General cheque #1234.

If you have any questions or require any further information, please do not hesitate to contact the writer.

Sincerely

Lawyer

Enclosures

Trust funds deposited to wrong trust account

[Date]

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

Dear Sir:

Re: Trust Shortage – Rule 3-66

Pursuant to Law Society **Rule 3-66(2)**, please be advised that a trust shortage in the amount of \$25,000 occurred as follows:

August 24, 2013 Client cheque in the amount of \$25,000 was deposited into our Scotiabank trust account.

August 25, 2013 Due to an internal error, funds were paid out by trust cheque in the amount of \$25,000 on our Bank of Montreal trust account.

September 15, 2013 Upon doing our August 2013 bank reconciliation for the Scotiabank account, we noticed this error.

September 15, 2013 Trust Cheque #1234 from the Scotiabank trust account was written to our Bank of Montreal trust account to cover the shortage.

If you have any questions or require any further information, please do not hesitate to contact the writer.

Sincerely

Lawyer

Trust funds deposited into general account

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

Dear Sir:

Re: Trust Shortage – Rule 3-66

Pursuant to Law Society **Rule 3-66(2)**, please be advised that a trust shortage in the amount of \$350,000 occurred as follows:

- | | |
|------------------------|---|
| August 24, 2013 | Trust Deposit in the amount of \$350,000 was prepared and taken to Scotiabank. |
| August 26, 2013 | Scotiabank called to advise that there was an overdraft in our trust account. |
| August 26, 2013 | It was discovered that the trust deposit was inadvertently posted to our general account as a result of our clerk using the wrong deposit book. |
| August 30, 2013 | General cheque #1234 was written to our trust account in the amount of \$350,000 to correct the error. |

Please find attached a copy of our August 2013 trust and general bank statements along with a copy of the front and back of General cheque #1234.

If you have any questions or require any further information, please do not hesitate to contact the writer.

Sincerely

Lawyer

Enclosures

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>
http://www.lawsociety.bc.ca/page.cfm?cid=943&t=Client-Identification-and-Verification	Additional information on client identification and verification procedures and FAQs.
http://www.cra-arc.gc.ca/menu-eng.html http://www2.gov.bc.ca/en	Access information regarding <i>income tax, GST/PST, payroll</i>
Trust Accounting Courses	
Trust Accounting Courses are held in various locations around BC. If you would like to attend one, please contact the Trust Assurance Department for information on any upcoming courses in your area.	
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