

PROFESSIONAL RESPONSIBILITY

CHAPTER 3

FINANCIAL ACCOUNTABILITY

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CHAPTER 3 – FINANCIAL ACCOUNTABILITY *

Author's notes:

These materials are intended as a basic outline of the trust accounting requirements of the Law Society of Manitoba as at May 1, 2017. Any amendments to (or newly enacted) Rules of Financial Accountability which are effective after this date are not reflected in these materials. Should you have further questions, please contact the audit department of the Law Society of Manitoba.

Rule and other references are reflected throughout the document in the following format **[5-41]**, **[Practice Direction 03-02]**, etc. A copy of these references has been included in the following Appendices:

Appendix A – Rules:

- (i) Division 4 – Financial Accountability
- (ii) Division 12 – Client Identification and Verification

Appendix B – Practice Directions:

- (i) 84-01 – Interest on Client Trust Funds
- (ii) 88-02 – Enforcement of Solicitors' Liens
- (iii) 89-03 – Appropriate Billing Practices

Appendix C – *The Legal Profession Act* – Part 1

Appendix D – *Code of Professional Conduct* – Pages 8 and 9

Appendices are found in section 3.05 of this chapter.

3.01 Basic Concepts of Financial Accountability Requirements

1. Introduction

Trust accounting deals with an area of special concern to members and their clients - the accounting for funds which are held from time to time by a member "in trust" or on behalf of the member's client or clients **[5-41]**. A few examples of times a member receives trust money includes a retainer for future fees and disbursements, a deposit on a house deal, or as a settlement from a domestic matter.

Trust funds do not belong to the member. There are significant, important rules that govern how trust funds must be handled by the member. The Law Society Rules respecting financial accountability are designed to ensure that:

- trust assets are properly safeguarded;
- the member maintains client or trust funds separate from his or her own or general funds;

* This chapter was written and updated by Kathy Levacque, CPA, CA, The Law Society of Manitoba, for the 2017-2018 Manitoba CPLED resource materials.

- a proper record keeping system is in place which provides sufficient details of all trust and general transactions; and
- at all times, a member has a complete record for each client's transactions.

The title of Division 4, Financial Accountability, recognizes that a member is responsible for maintaining more than a trust account. For example, another bank account, called a general account (more on this later in 3.01(10)), must be used by the member **[5-48.1(1)]**.

Please keep in mind that the rules governing the maintenance of trust and general accounting records apply to any member that has a trust and general bank account, regardless of whether either account is actively used.

2. Who is a Member?

To talk about a member for the purposes of the Financial Accountability Rules, reference is made to both *The Legal Profession Act* definitions **[Part 1]**, as well as the Law Society Rules in Division 4 **[5-41]**. You are a member if you are a member of the Law Society of Manitoba and practise either alone or as a member of a firm, but are not a student.

3. Do You Need a Trust Account?

If you expect to be handling trust money, you must use a pooled trust account. If you are part of a firm, all members of the firm must share a firm trust account.

4. What about Space Sharing?

For those members who share space and expenses with other independent practitioners, each member must open and maintain his or her own trust account(s) **[5-43(2)]**, and the trust account must be opened in the name of the member.

5. What is a 'Pooled' Trust Account?

Although you will track the amounts held on behalf of each client, for each matter separately, you don't need to open a separate bank account for each - one bank account pools the funds for all clients together.

6. Does the Pooled Trust Account Earn Interest?

The funds held in the pooled trust account earn interest, but the interest is not to be kept by the member or the member's clients. Instead, all interest is to be directed to the Manitoba Law Foundation. In fact, the savings institution is to remit the funds directly to the Foundation. The Law Society has developed a standard form Letter of Direction (please see appendix E) that is provided to the savings institution at the time the account is opened. A copy must also be provided by the member to the Law Foundation, as well as to the Law Society of Manitoba (directed to the Audit Department).

7. Can My Client Ever Receive the Interest?

Yes, but a special type of account must be used, and additional Rules govern the use of it. Please refer to section 3.02(5)(b) “Specific Trust Investment Accounts”.

8. What is a Savings Institution?

The Rules use the term ‘savings institution’ in the definitions in a few places [5-41]. In fact, ‘savings institution’ is defined, in the same Rule. Basically, to ensure the institution where a trust account is maintained is either insured by Canada Deposit Insurance Corporation (CDIC), or is a credit union/caisse populaire incorporated under *The Credit Unions and Caisses Populaires Act*, the Rules define, and then use, the term “savings” instead of “financial” institution.

9. I Want to Open a New Pooled Trust Account – Now What?

Before opening the trust account, you should:

- (a) Consider if the savings institution you wish to use can provide the necessary services for operation of a trust account. From the perspective of the Law Society, the key considerations are:
 - If cheque images are to be provided with the monthly statement instead of original cleared cheques, they must:
 - Include the front and back of the cleared cheque;
 - Be of sufficient size and clarity to be legible; and
 - Be maintained by the member in printed form (i.e. cannot maintain them only in electronic form).
 - If you wish to have internet access to view trust account transactions, the access must be restricted to “read only”. Some savings institutions are better than others at providing this type of access. Be sure that it is actually restricted – it cannot only be firm policy to not use other functions on the internet – the system must be actually restricted by the institution so that transactions cannot be done.
- (b) Obtain the most recent version of the Letter of Direction (see section 3.01(6)) from the Law Society – either through our website or by contacting the Audit Department.
- (c) Ensure:
 - the account is opened in the name of the firm;
 - the account is opened as a trust account and the bank statement reflects this;

- the account is an interest-bearing chequing account; and
- the statement period on the bank statements that will be provided correspond with the calendar month.

It is important to communicate the special nature of the trust account to the savings institution you choose. Although some often deal with lawyers and understand trust accounts, others do not realize that bank fees cannot be charged to the trust account. Even something as basic as printing costs for cheque stock cannot be charged to the trust account – they should instead be directed by the institution to the member's general account (see next section).

You will also need to decide if you want your pooled trust account to require one or two authorizing signatures on each cheque. The basic principle to remember is that every cheque requires the signature of at least one member. If your cheque stock has two signature lines, the second signature can be either another member in the firm, or another employee of your firm who is not a member **[5-43(1)(d)]**.

Speaking of cheque stock, it is a good idea to have the words 'trust account' printed on the face of the cheque somewhere, so all parties who come into contact with the cheque are aware it's a trust account. It also helps prevent confusion with the member's general account cheques.

When a pooled trust account is opened, the member has the responsibility to inform the Society within 30 days of opening the account **[5-45]**. The easiest way to do this is to forward a copy of the completed Letter of Direction to the Law Society's Audit Department.

10. If I Open a Pooled Trust Account, Do I Also Need a General Account?

Yes. A general account is used for depositing funds related to the practice of law that are not trust money **[5-48.1(1)]**. It is basically the member's business account, used to deposit fees and disbursement payments from clients after services have been rendered and a bill has been prepared (known as a statement of account). It is also used to advance client disbursements, or to pay business expenses such as rent, staff salaries, etc.

Please refer to section 3.03 Accounting Records and Requirements – General Account for more on the topic of general accounts.

You should open a general account at the same time you open a pooled trust account. Although you don't have to do so, many members choose to use the same savings institution for their general account as they do for their trust account.

From a practical perspective, it is a good idea to order different coloured cheques for the general account and trust account. This helps reduce the chance of error when

writing cheques – less possibility of writing a trust cheque on general account cheque stock, or vice versa.

3.02 Accounting Records and Requirements – Trust Accounts

1. Introduction

So, you've opened a trust and general account and notified the Law Society. Now what? It's time to set up your record keeping system for both accounts.

It is the member's responsibility to ensure that a proper and effective record-keeping system is in place. This includes maintaining up-to-date trust records and preparing the required reconciliations on a monthly basis. Are you planning to delegate some of the daily or monthly responsibilities to someone else? No problem, however, the member still maintains overall responsibility for the account.

(a) How Should I Keep My Records? – Choosing an Accounting System

The most basic first decision you will need to make is whether you wish to use a manual or electronic accounting system. Many members who still use a manual system seem to feel that they should be using computers instead. They shouldn't feel that way. If the member does not understand the records on the most basic level, putting them into a software package will only help reduce addition errors. It is often easier to learn something by doing it 'hands on'. Just because you start with a manual system doesn't mean you have to always use it – you can always convert later on.

Each system has its advantages and disadvantages.

A manual system is well suited to a member who doesn't have a significant volume of trust transactions. It is also inexpensive and may be easily adapted to meet the member's needs, while still complying with the Rules. Simple basic journals and ledgers may be purchased at any office supply store. A new practitioner may wish to hire an accountant/bookkeeper to help set up the required bookkeeping system. It is also useful to talk to other members with similar practices to see what system has worked well for them. You may also contact an auditor of the Law Society of Manitoba for direction or visit our website.

Those finding the manual system time consuming may wish to switch to an electronic (computerized) system.

An electronic system can provide a wide range of timely information which is not quickly obtained when using a manual system. Other benefits include ease of recording transactions, eliminating certain types of errors, and various controls which are built into some of the systems. However, the system is more expensive to acquire and maintain. Further, as mentioned earlier, it also seems to make it more difficult to understand the fundamental accounting records.

An additional option would be a 'semi' electronic system where a spreadsheet program such as Excel is used. While the fluent user of the program can set up various spreadsheets for the records and usually eliminate addition errors, it lacks some of the controls built into specially designed accounting software.

2. Overview of Trust Accounting Records and Related Concepts

The two most basic accounting records needed are:

- (a) the book(s) of original entry; and
- (b) client trust ledgers.

You will need both of the above records for each and every transaction in the trust account(s) – receipt or cheque. They are key records, and a bit of background on each of them follows below.

(a) Books of Original Entry

The term “book of original entry” is used regularly in this document, so it’s much easier if it’s abbreviated – “BOOE”.

The term “BOOE” is not a commonly used term in accounting. A BOOE is meant to capture each and every transaction, as it happens, in full detail **[5-41]**. The term “journal” is also used by accountants, and in fact many of the electronic accounting systems used by law firms use that term.

One of the unique accounting needs in a law firm relates to making transfers between client ledgers. Transfers are discussed in more detail in 3.02(2)(c). In addition to being recorded in the affected ledgers, a transfer also needs to be captured by your trust account BOOE.

You might also be wondering why it may be ‘book’ or ‘books’ of original entry. The singular/plural option encompasses the possibility a member may use a number of books together as their records. Sometimes a separate one is used for receipts, one for disbursements, and one for transfers. Other times, only two are used – one for receipts and disbursements together, and the other for transfers. Finally, because you must also track transactions for Specific Trust Investment Accounts (more on this later – see section 5(b) “Specific Trust Investment Accounts”), you may use a separate book or books for those transactions too. It’s up to you.

(i) “Form” of Receipt? What’s That?

If someone gives you money, you ‘receive’ it. You may receive cash, cheque, bank draft, or a wire transfer. This is the ‘form’ of receipt, and you must record it in your BOOE somewhere for each and every receipt **[5-41 Definition of BOOE]**.

(ii) How Often Do I Need to Record Transactions?

Every time you have a transaction, you must record it right away **[5-41 Definition of BOOE, 5-42(1), and 5-42(7)]**.

Should you be using a manual system, you must use ink **[5-42(6)]**.

(b) Client Trust Ledgers

A BOOE will track everything that happens in the pooled trust account for all clients together. However, you still need to be able to track what happens for each client, for each matter **[5-41 Definition of Client Trust Ledger]** separately. For this, you use client trust ledgers. So, if you are representing Mr. Jones for the sale of his current house and the purchase of his next house, you'll need two different client trust ledgers.

Client trust ledgers are often referred to simply as 'ledgers'.

In addition to tracking every transaction, the ledger must also show the running balance after each transaction is recorded **[5-41 Definition of Client Trust Ledger]**.

(i) How Often Do I Need to Record Transactions?

As required for the BOOE, the ledgers must also be current at all times **[5-42(7)]** and ink must be used if they are hand written **[5-42(6)]**.

(ii) What Does 'Overdraw a Ledger' Mean?

If you write a cheque for more than the client's running balance, the ledger becomes overdrawn. The Rules do not allow you to overdraw a client's ledger; therefore always make sure there is enough money on the client's ledger before writing a cheque **[5-41(f)]**.

(c) Transfers

(i) What are Transfers?

Sometimes, money needs to be transferred from one ledger to another – it is explained best by the following examples:

- Ledgers A and B are both in the name of the same client. You have completed acting on behalf of this client who is both selling one home and purchasing another. As both ledgers are for the same client, if you were to transfer funds held from ledger A to B for the purpose of paying the fees and disbursements on B, you must obtain the express consent of the client **[Practice Direction 88-02]**. Consent must be fully informed and voluntary, and is defined in the *Code of Professional Conduct* **[Page 8 Definition of "consent"]**.

- Ledgers C and D are in the name of different clients. You are acting for both the purchaser C and vendor D in a real estate transaction. As both ledgers are for different clients, a transfer of funds held from ledger C to D must either be:
 - a. Preceded by written consent of Purchaser C; or
 - b. Preceded by verbal consent which is then followed by written confirmation of the verbal authorization. This might take the form of a letter to the client that confirms the verbal authorization **[5-43(1)(i)]**.

(ii) How Do I Record Transfers?

From a bookkeeping perspective, the transfers must be recorded in both the BOOE, as well as the affected ledgers **[5-41 Definition of Client Trust Ledger and Books of Original Entry]**. Remember that full details must be recorded.

3. Daily Trust Accounting Records

The Appendices include the following documents related to these records:

- Appendix F: Trust Accounting Transactions – Bookkeeping Illustration. Here, example transactions are described for a newly opened firm, together with fully completed sample BOOE and ledgers;
- Appendix H: Blank templates for the BOOE and ledgers used in Appendix F.

For illustration purposes, assume you are using a manual accounting system.

(a) Receipt

So, you're meeting with your first client, and at the end of the meeting, the client writes a cheque, payable to the member, for a retainer. What do you do?

- **Receipt**

Many members use a duplicate receipt book when money is received from a client. A duplicate receipt book allows a copy to be given to the client for their records, and a member copy to remain in the book for accounting purposes. Had the client paid in cash instead of a cheque, a duplicate receipt book must be used (more on this in 3.04(8) "Miscellaneous Topics – Cash"). As it was a cheque in the example, you have the option of using a receipt book or not, as it is not required by the Rules for non-cash receipts. However, it is a good business practice;

- **BOOE**

Full information for the receipt must be recorded.

- **Ledger**

A ledger must be started, recording full information, including the name of the client and a description of the matter.

- **Deposit Book**

The receipt must be deposited to the pooled trust account within one to two days of receipt, although the Rules use a more generic term “as soon as practicable” [5-43(1)(a)].

(b) Cheque

You need to file a Statement of Claim for the above client, and wish to use the money in the pooled trust account for the filing fee disbursement. What are the steps for the pooled trust account?

- **Sufficient Funds Held for the Client?**

You need to check the balance on the ledger. Are sufficient funds held in trust for that matter to pay for the disbursement [5-43(1)(f)]?

- **Cleared**

If you've established that sufficient funds are held, you then need to ask yourself if the funds you had deposited earlier have 'cleared' yet. This is a potential issue on any receipt other than cash or wire transfer proceeds, and is particularly more of a risk if the receipt had been a personal cheque. Although you have deposited the funds to the pooled trust account, your savings institution may return it for non-sufficient funds (NSF). If this happens and you have disbursed any of the funds already, it becomes the member's obligation to return the funds to the trust account immediately [5-43(1)(f)], regardless of how swiftly the client may return to the firm to replace the funds. If you have questions for how long you should wait before disbursing funds, it is best discussed with your savings institution. They should be able to give you the approximate timeframe within which a deposited cheque should clear or may be returned as NSF.

- **Cheque Preparation**

Assuming the results of the above two steps are positive, the cheque can be prepared.

- **BOOE**

Full information for the disbursement must be recorded.

- **Ledger**

As with the BOOE, full information is to be recorded.

4. Monthly Trust Accounting Records

(a) Overview of Monthly Requirements

For each and every month, you must do the following:

(i) Prepare a Monthly Reconciliation

Even if there has been no activity in the account or the balance is zero, you must prepare a monthly trust reconciliation **[5-42(2)]** for every pooled trust account of the firm. This is also true should you have any specific trust investment accounts **[*ibid*]**.

(ii) Address Reconciling Items from the Prior Month's Reconciliation

The reconciliation process identifies the differences between your savings institution's records and the firm's records. Sometimes the differences will resolve with no further intervention on your part (such as someone cashing a cheque the month after it was issued). In other cases, you will need to address them in some manner.

(b) What is a Monthly Trust Reconciliation?

As the BOOE tracks every transaction in the pooled trust account, it seems logical to think the balance in the trust account would be the same balance as the BOOE at any given time. However, there are a variety of reasons this would not be the case. Consider a cheque that is written on the account, but is not cashed right away. Your BOOE would show the cheque right away, but your trust account balance would not until the cheque is cashed.

A trust reconciliation must also compare the firm's second basic record – the client trust ledgers – with the balance in the trust bank account. It is this secondary comparison that earns a trust reconciliation its nickname as 'a three-way reconciliation', as the trust bank account, the BOOE, and the total of the ledgers are compared each month.

So, a reconciliation is the systematic comparison of the following three components, explaining with 'reconciling items' the reasons for the difference between the three balances:

- the transactions in the BOOE;
- the transactions in the trust bank account; and
- the total client trust ledger balances.

Appendix G demonstrates a monthly trust reconciliation for both a pooled trust account, and Specific Trust Investment Accounts (STIAs) for the bookkeeping illustration from Appendix F.

(c) Is There a Deadline Each Month for Completion of the Reconciliation?

Yes. The reconciliation must be completed by no later than the last day of the subsequent month **[5-42(2)]**. So, the May reconciliation must be completed by June 30.

(d) What Do I Do About Reconciling Items?

Once you've completed a reconciliation for your trust bank account, you may have no reconciling items, or a variety of different types of them. What now? Depending on the nature of the item, you'll need to address them before the end of the subsequent month. Following the earlier example, your May reconciling items, which you identified sometime in June when you completed your reconciliation, should be investigated and resolved by the end of July (or earlier).

Here are some basic guidelines for evaluating your reconciling items:

(i) Outstanding Cheques

Outstanding cheques can often resolve themselves without any additional work on your part. However, you should still review them each month to see if any are unusual, such as:

- Cheques for large dollar amounts that are still outstanding at the end of a month can be unusual, as large cheques are generally cashed quickly. If they are still outstanding, a bit of further investigation may be needed to ensure the end recipient actually received the cheque;
- It is a good business practice to review cheques that have been issued three or more months ago. This is the time to investigate them and try to ensure they are cashed before they become stale-dated (more on this below);
- Cheques that are more than six months old are considered stale-dated. Although the return policy of savings institutions vary, some may refuse payment on the cheques once they are six months old. The member then needs to cancel the original cheque and re-issue a new one, recording all the associated trust accounting entries for each transaction. Depending upon the dollar amount and risk associated with the first one, the member will also need to consider placing a stop payment on the original cheque if it cannot be located. For further discussion about stale dated cheques and stop payments, please refer to a December 2010 Communiqué article reproduced in Appendix I.

(ii) Outstanding Deposits

Outstanding deposits usually require no action on your part. This is true if they result from a receipt being recorded in your BOOE at the end of the month but the corresponding deposit was not made to your savings institution until the beginning of the next month. Assuming the deposit was already brought in on the first or second banking day of the month, the deposit will have resolved itself.

However, if you instead have a reconciliation that shows an outstanding deposit that doesn't meet the above criteria, you must investigate and resolve it (i.e. why aren't the funds in the trust bank account?)

(iii) Other Reconciling Items

Other reconciling items always require action. Some examples include:

- The cheque you wrote and recorded was for \$197, but the savings institution recorded it as \$179 in their records. The \$28 difference is a reconciling item and you must contact your savings institution to resolve the error.
- You ran out of trust cheque stock recently and ordered more. The fee for cheque printing was charged to the trust bank account. This \$35 fee is a reconciling item for which you also must contact your savings institution to resolve.
- Your client provided a cheque for \$100, but you recorded the receipt as \$101 in error in the firm accounting records. The \$1 difference must be recorded as a reconciling item for the month in question. Correcting entries must be recorded in the BOOE and the applicable ledger to reverse the original entry that was for the wrong amount, and re-record an entry in the correct amount. The specifics of how you correct it will depend on your accounting system. However, all corrections should be recorded in your system using the current date – the date you are making the correction. Some members think the adjustment should use the same date as the original entry. This is called back-dating and should not be used.
- If you were using a manual accounting system, sometimes the reconciling item is not related to the trust bank account at all. Sometimes the amount recorded in the BOOE doesn't match the amount recorded in the ledger. This too is a reconciling item to be shown on your reconciliation, and corrected in which ever of the two records had the error. Remember – no back-dating!

(e) What If the Reconciling Difference or Reconciling Items are Really Small Dollar Value?

The dollar value is irrelevant. The trust account, by its very nature, must be reconciled to the penny, with each and every adjustment identified in full detail and corrected on a timely basis.

5. Other Types of Trust Accounting Records You May Need

Depending upon the nature of your practice, you may not need some or all of the following different types of records:

(a) Transfers

Transfers are generally not a daily occurrence, especially in a new practice. However, if you need to make a transfer between client ledgers, these are the steps you should be using:

- **Authorization?**

As discussed previously in 3.02(2)(c) “Transfers”, you must ensure you have appropriate client authorization prior to making the transfer.

- **Sufficient Funds?**

Are sufficient funds held in trust for that matter currently to make the transfer **[5-43(1)(f)]**? You need to check the balance on the ledger.

- **Cleared?**

Although you are moving the funds from ledger to ledger with a transfer (as opposed to disbursing it out of the pooled trust account with a cheque), if the funds on deposit haven't cleared, a transfer that is followed by a returned item by your savings institution can result in an overdrawn client matter **[5-43(1)(f)]**. So, make sure the funds have cleared before making the transfer.

- **BOOE**

Full information for the transfer must be recorded, usually as a separate line for each matter affected by the transfer.

- **Ledger**

Both affected ledgers must be updated with full information to show the transfer.

(b) Specific Trust Investment Accounts

As noted earlier in 3.01(7) “Can My Client Ever Receive the Interest?”, there may be situations where you should open a separate bank account for a client so they can earn the interest on the money held in trust. This is called a specific trust investment account (“STIA”).

(i) Opening a STIA

Although it may be appealing to both the member and the client to open a STIA, there are considerations beforehand. The broad guideline is that the cost should not exceed the interest earned. Some of the considerations include:

- the administrative costs of opening an account and completing the required bookkeeping;
- the length of time the money is to be retained;
- the sum of money involved; and
- the interest rate [**Practice Direction 84-01**].

As with a pooled trust account, a STIA must be opened at a savings institution. Furthermore, the money may only be invested in a daily interest savings account, a term deposit, or a guaranteed investment certificate [**5-41**].

Please also note that there is no requirement for all of a client's funds to be transferred to a STIA. Therefore, only the amount that is likely to be held for a reasonable period should be invested.

(ii) Accounting for Specific Trust Investment Accounts

STIAs have a number of similarities and differences with pooled trust accounting practices and Rules. Similarities include:

- A BOOE must record each transaction, and a ledger must be used for each matter [**5-42(1) and 5-44(1)(b)**]. While these may be integrated with your pooled trust accounting records, they are sometimes kept separately; and
- A trust reconciliation must be performed each month [**5-42(2)**].

However, the flow of receipts and disbursements is completely different. You cannot deposit directly to, or withdraw directly from a STIA. You must first deposit all trust money received into the pooled trust account, regardless whether you intend to invest it immediately or not. When it is time to redeem the investment, the funds, including interest, must be deposited to your pooled trust account [**5-44(1) and (2)**].

(iii) Other Rules Regarding STIAs

The cheque written from the pooled trust account to open the STIA must use the payee of "Your firm's name in trust for beneficiary's name". A common error of members is to make the cheque payable to the savings institution where the investment will be held. However, using the above payee instead recognizes that this payment is not being

made to the benefit of the savings institution, in fact it is to be placed in an account that, like the pooled trust account, is in the care and control of the member **[5-43(1)(b)]**.

Similarly, the savings institution must open the STIA in the name of “Your firm’s name in trust for beneficiary’s name” **[5-44(1)(a)]**.

In both of the above paragraphs, the reference to ‘beneficiary’s name’ reflects that you may occasionally be opening the STIA in the name of someone other than the client. This can happen on an estate, where the STIA is being opened in the name of one of the beneficiaries, but the client of the firm is the estate’s personal representative. Further, if that same estate required STIAs for two different beneficiaries, then two different accounts must be opened **[5-44(1)(a)]**.

6. Annual Trust Accounting Requirements

In addition to maintaining all of the records discussed in this section, you will need to report annually to the Law Society Audit Department on the operation of your trust account **[5-47(1)]**.

This annual report comes in two forms. Most members are provided the option of filing either a Self Report, or a Form D with Accountant’s Review **[5-47(2)]**. The Self-Report requires the member to complete a questionnaire and submit copies of various supporting documentation. On the other hand, the Form D involves a review of the accounting records by an independent accountant, with the law firm responsible for paying for the review. Certain members with previously inadequate accounting systems, unfavourable past audit results, or other concerns are required to file a Form D with an independent accountant’s review.

(a) What is a Trust Year End Date?

Members may select either a June 30th or December 31st year end for purposes of their Law Society trust account filing. You are required to advise the Law Society of your chosen year end within 30 days of opening the first pooled trust account. In choosing a year end, consider your own time limitations at each of these times of year, and whether your law practice is busier at one of those times.

Note that a trust year end is separate and distinct from a fiscal year end, which your firm uses for tax or other business purposes.

(b) What are the Filing Deadlines?

The Self Report filing deadline is 8 weeks after the member’s trust year end, while the Form D is due 4 months after the trust year end. If your firm requires an extension, a written request must be made in advance of the deadline providing an explanation for the request. If you are filing a Form D, you should remember to retain an accountant well in advance to allow the accountant time to complete the review and meet the filing deadline.

(c) What If I Do Not File an Annual Trust Account Report?

Failure to file the report, without approval of an extension by the Law Society, may result in a Law Society auditor visiting the member to conduct an inspection or audit **[5-47(7)]**. The cost of the inspection must be paid by the member **[5-47(9)]**. You may also be automatically suspended from the practice of law until the report is filed and a re-instatement fee is paid **[5-47(10)]**.

(d) What Else Do I Need To Do Annually?

In the unlikely event that a savings institution fails, Canada Deposit Insurance Corporation (“CDIC”) provides coverage up to a maximum amount for each client of the institution. As the pooled trust account is a combination of money from many different clients, it is important that you demonstrate annually that your accounting records can identify the amount held on behalf of each client. Each April, you need to provide a report to your savings institution to comply with these requirements **[5-50, Practice Direction 00-01]**. There is no specific format for this report.

This report is only required for savings institutions that are members of CDIC. Credit unions and caisse populaires are instead insured through the Deposit Guarantee Corporation of Manitoba, which currently does not have an annual filing requirement for trust accounts.

3.03 Accounting Records and Requirements – General Account

There are two main accounting record requirements for your general account:

1. A Book of Original Entry

You must have a BOOE for your general account, and it has a number of the same requirements as a trust account BOOE:

- It must contain the full details of all transactions **[5-48.1(1)(a)]**;
- You must record the ‘form’ of receipt **[ibid]**;
- Every time you have a transaction, you must record it right away **[5-48.1(3)]**; and
- Ink must be used if it is hand written **[5-48.1(2)]**,

While the Rules do not currently require you to perform a monthly reconciliation for the general account, for a number of reasons it is a very good business practice to do so. It is also a way to ensure compliance with the requirement for ‘full details for all transactions’ **[5-48.1(1)(a)]**.

2. An Accounts Receivable Ledger or Other Suitable System

When you complete work and provide your client with a statement of account, they may not pay it right away. Or, they may be making time payments, which can happen on a large bill. This creates a receivable for your firm – you’ve sent a statement of account to your client, but you haven’t yet been paid.

You are required to record receivables on a systematic basis, tracking the amount of the statement of account, any payment(s) made so far on it, and the remaining balance **[5-48.1(1)(b)]**.

3.04 Miscellaneous Topics

1. Accounting Controls

In addition to the accounting requirements already discussed, there are a number of additional Rules which act as important safeguarding controls over trust funds:

- Generally, the only way to pay funds from the trust account is by using a cheque made payable to the person to whom the money is to be paid **[5-43(1)(b)]**. There are only a couple of exceptions discussed below (see 3.04(3) for wire transfers and 3.04(8) regarding cash refunds);
- The cheque used to withdraw money from the pooled trust account must have pre-printed numbers on the cheque stock, and the cheques are used in sequential order **[5-43(1)(b)]**;
- A trust cheque must be fully completed *before* it is signed, and cannot be post-dated **[5-43(1)(d)(i)]**;
- To compliment the basic principle that trust money is the client’s money, there are a number of very specific Rules:
 - At all times there must be sufficient funds in the trust account to meet the member’s obligations to all clients with respect to trust money **[5-43(1)(h)]**;
 - A member cannot:
 - overdraw a trust bank account **[5-54(1)(e)]**;
 - pay any personal or business related expenses from the trust bank account **[5-43(1)(g)]**; or
 - appropriate trust money or other property for fees without the express or implied authority of the client **[5-52]**; and
 - Only trust money can be kept in a trust bank account **[5-43(1)(j)]**.

2. Responsible Billing Practices

A statement of account (“SOA”) refers to an invoice or bill for services and or disbursements. Disbursements are payments made from the general account on behalf of the matter, such as a courier charge or filing fee to the Minister of Finance.

Typically when a matter is concluded quickly, a SOA may be rendered at the conclusion of the matter. An example of this is a criminal matter where you are solely retained to perform the bail hearing.

If the matter is lengthy, you may wish to interim bill - such as with a protracted domestic matter.

In either situation, you must make sure the fee charged is fair and reasonable and accurately reflects the value of the legal services performed to that date. You must also remember that if funds in the trust account are going to be used to pay the SOA, the client must be provided with a copy of the SOA before or at the time the trust cheque to the member is written **[5-43(1)(c)]**.

Of course, you cannot prepare and provide a SOA to a client without having provided any significant services yet **[Practice Direction 89-03]**.

For real estate transactions in particular, don't fall into one of the common errors of lawyers who:

- make the double error of considering the Estimate of Funds Required that is prepared at the beginning of the transaction as:
 - a substitute for preparing a SOA, in the proper format, and/or
 - a green light to pay fees and disbursements to the firm at any time in the transaction without any further communication to the client.
- collect fees and disbursements too early in real estate transactions. It is the Law Society's position that legal services can be considered concluded after disbursement of the substantial portion of the money. In most transactions, this is after the transfer has cleared land titles, after the mortgage funds are requested and ultimately paid to the vendor's lawyer and, on the vendor's side of the transaction, after the vendor's encumbrances have been paid out.

3. Wire Transfers

The Law Society recognizes that there may be situations where use of a wire transfer would be better than a cheque to withdraw funds from the pooled trust account. This is one of the rare exceptions to the Rules requiring cheques. Although advantageous, their use also raises some concerns about the security of the funds, so there are specific steps that must be taken by the member both prior to and subsequent to execution of a wire transfer **[Practice Direction 03-02]**.

Members wanting to send a wire transfer must first read the Practice Direction and then log into the member portal on the Law Society's website. When logging in, the member will be asked to confirm the various steps outlined in the Practice Direction have been taken. Assuming all steps are followed, a confirming response will be received by the member (and by the audit department as well), after which the wire transfer may proceed.

Members that need to perform wire transfers on a regular basis due to the nature of their practice can contact the Audit Department of the Law Society to discuss the possibility of special authorization to perform wires without prior contact with the Law Society for each one executed.

4. Supporting Documentation for the Trust and General Accounts

In addition to the BOOE, ledgers, and monthly reconciliations, you must maintain supporting documentation for all pooled and specific investment trust accounts **[5-42(1)]**, as well as your general account **[5-48.1(1)(c)]**.

Such supporting documentation includes, but is not limited to, deposit slips, bank statements/passbooks, receipt books, third party invoices/receipts and negotiated/cleared cheques (either as originals or hard copies of cheque images).

5. Record Storage

Sometimes storage of multiple years of accounting records becomes cumbersome. Should you want to keep any in a place other than your office, keep in mind that you must maintain the most recent three years at your chief place of practice in Manitoba, unless otherwise authorized by the Law Society **[5-51(2)]**.

As for older records, all trust books, records and accounts must be kept for no less than ten years **[Rule 5-51(1)(a)]**.

6. Electronic Trust Records [5-42(5)]

If you use electronic trust records, it may be tempting to store your records electronically and reduce paper copies. Although you may choose to do this for some records, you do not have that option for others. Specifically, you must print your BOOE(s) immediately after each month end, as well as your completed monthly trust bank reconciliation.

A back up copy of the electronic records must also be done, at least monthly, that is stored securely off-site. While these are the minimum requirements, many members choose to back-up more frequently, as it can be costly and time consuming to recreate accounting records after the data is lost. It is also a good idea to test the back up regularly to ensure it is functioning as you expect. Some members have needed their back up due to a system failure, only to discover it wasn't working properly and therefore of little to no value at all.

7. The Matter is Complete, Now What?

You've completed the matter for your client, and now just need to do the final steps before you can close the file and store it. Your procedures should include:

- Ensuring that you have reported to your client. Often a final letter is used, generally enclosing a statement of account;

- Disbursing all remaining trust money for the matter to the appropriate parties on a timely basis; and
- Placing a copy of the client trust ledger on the file when it is closed **[5-51(1)(b)]**.

Sometimes these steps get put off in favour of working on more active files. Don't let that happen in your practice! The Law Society requires that trust funds must be paid out swiftly once a matter is concluded **[5-43(1)(k)]**. Furthermore, from a practical perspective, the longer a matter remains inactive, the more difficult it can be to take those final steps.

8. Cash

If a client provides funds to you in cash, for either the trust or general account, there are numerous specific requirements **[5-41, 5-53.1(1) to 5-53.3(3)]** that can be summarized as follows:

- Unless the cash is being received for one of the specific exceptions listed in the Rules, you cannot receive \$7,500.00 or more in cash for any one client matter or transaction. Note that this is cumulative over the life of the matter, not just for any one day;
- A book of duplicate receipts must be used to record specific details for the receipt, and the client must also sign the receipt;
- One of the exceptions listed is if the cash is for fees, disbursements, expenses or bail. If you were to receive cash over the limit for this exception *and* you later need to refund some or all of the money to the client, the refund must also be in cash. The signature of the recipient must be obtained at the time the refund is made.

9. Valuable Property (Other than Money)

From time to time, a member may be required to hold their clients' property, which is valuable and negotiable but not money. Examples include jewelry, a stamp collection or a painting, but exclude valuable documents such as a will.

Because the property belongs to the client and is valuable, the member must maintain proper documentation to record the particulars of the property **[5-42(4)]**.

An example of such a form is found in part (iv) of Appendix H.

In addition, the member should take the appropriate steps to ensure the property is properly safeguarded (e.g., in a safety deposit box or vault).

10. Client Identification and Verification (Division 12 of Law Society Rules)

Specific Rules [5-116 to 5-130] were introduced in 2008 for client identification and verification procedures when a member is retained by a client.

Identification and verification are two distinct concepts in the Rules.

Identification involves recording the client's full name, business or home address, etc.

Verification is the process of reviewing, and retaining copies of, client identification.

While identifying is done for every client, verifying is only necessary when a financial transaction is involved.

The Rules include numerous exemptions. The Law Society of Manitoba's website includes a number of resources to assist you with understanding and implementing these Rules, such as Frequently Asked Questions, as well as sample forms you may wish to use as a guideline.

11. Failure to Comply

It is important to understand and follow the rules relating to Division 4-Financial Accountability, as failure to comply may constitute professional misconduct [5-53].

12. Spot Audit Program

The Law Society of Manitoba conducts Spot Audits of every member in Manitoba who maintains a trust account to ensure that they are handling trust funds appropriately and complying with the Rules relating to Financial Accountability. Members are required to keep up to date records at all times to properly account for their clients' funds. Most audits are conducted without a prior appointment so that the member's records can be observed in their usual state.

There are four types of audits conducted:

- **Regular audits:** These are routine audits conducted on a rotational basis;
- **New firm audits:** New firm visits are typically conducted within the first year of a member opening his or her trust account. The aim is to ensure that members have established proper accounting systems and understand all the requirements concerning trust accounts;
- **Priority audits:** Some members are visited more frequently due to a history of trust related problems, or because they are of higher risk; and
- **Closing audits:** Closing audits are conducted when a firm is closing a trust account but has not had an audit recently, has a history of trust account problems or is identified as being of higher risk.

The audit will generally take 1-2 days but may vary depending on the size of the firm and the state of the records. Although the auditor focuses on the trust records, monthly trust reconciliations, and a review of selected client files, a limited review of the member's general account records is also conducted. Typically within a month or so of the audit, the Society's Auditor will send a letter to the member outlining the results of the audit and detailing any necessary changes that are required. If serious concerns and/or contraventions of the Law Society Rules come to light during the audit, the results will be referred to the Complaints Resolution Department for further follow-up.

3.05 Appendices

1. Appendix A – Law Society Rules

(i) Division 4 - Financial Accountability

Division 4 - Financial Accountability

Definitions

5-41 In this division,

"accountant" means

- (a) a person who is a member in good standing of the Chartered Professional Accountants of Manitoba, and who is in public practice,
- (b) another person approved by the chief executive officer;
(AM. 12/15)

"books of original entry" means a book or books recording in chronological order the full details of all payments from trust, all transfers between individual client trust ledgers, and all trust receipts. These books must identify the form in which the trust money is received.

"cash" means current coins within the meaning of The Currency Act, notes intended for circulation in Canada issued by the Bank of Canada pursuant to The Bank of Canada Act and current coins or bank notes of countries other than Canada. (ENACTED 06/05)

"client trust ledger" means a separate record maintained for each client and matter, recording in chronological order, the full details of all trust transactions for that client, and the balance in the client's account;

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them. (ENACTED 06/05)

"investigator" means a person designated to investigate, inspect or audit the accounts, books and records of a member;

"member" includes a firm as defined in Part I but does not include a student;

"money" includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders. (ENACTED 06/05)

"monthly trust reconciliation" means a comparison prepared each month by the member showing the reasons for any differences between the books of original entry, the client trust ledgers and the bank's records;

"pooled trust account" means an interest-bearing chequing account opened at a savings institution by a member for the benefit of a number of clients;

"public body" means:

- (a) a department or agent of Her Majesty in Right of Canada or of a Province;
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them; or

- (c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act or an agent of the organization. (ENACTED 06/05)

“savings institution” means a Manitoba branch of:

- (a) a chartered bank or a trust company that is authorized by law to receive money on deposit and is insured by the Canada Deposit Insurance Corporation,
- (b) or a credit union or caisse populaire incorporated under The Credit Unions and Caisses Populaires Act;

(AM. 02/13)

“specific trust investment account” means a separate interest-bearing account opened by a member in trust for a specific client at a savings institution, and is limited to a daily interest savings account, a term deposit or a guaranteed investment certificate;

“trust bank account” means a pooled trust account or a specific trust investment account as defined herein;

“trust money” means

- (a) all money received by a member in connection with his or her legal practice that
 - (i) belongs in whole or in part to a client of the member, or
 - (ii) is received on a client’s behalf or to the direction or order of a client; or
- (b) money received by a member on account of fees for services not yet rendered or on account of disbursements not yet made, or for which a statement of account has not been rendered;

“trust year end” means the year end date selected by a member with respect to any trust bank accounts maintained for his or her practice, which date must be either December 31st or June 30th;

“valuable property” means anything of value, other than trust money, that can be negotiated or transferred by a member.

Trust records

5-42(1) A member must maintain up-to-date trust records and supporting documentation for all pooled trust accounts and specific trust investment accounts. The trust records must include:

- (a) a book or books of original entry; and
- (b) a client trust ledger for each client and each legal matter.

Monthly trust reconciliations

5-42(2) In order to ensure the accuracy of trust records, the member must produce a monthly trust reconciliation, including all pooled and specific trust investment accounts, no later than the end of the following month, and include the reasons for any differences between the following:

- (a) the amount of money held in the trust bank account according to the member's records;
- (b) the total of the individual client trust ledgers; and
- (c) the amount of money held in the trust bank account according to the bank's records.

Balances in clients' trust ledgers

5-42(3) The reconciliation in subsection (2) must be printed each month, and must be supported by a client list showing the balance of trust money held in each client's trust ledger.

Record of valuable property

5-42(4) A member must maintain a record of all valuable property held in trust.

Electronic trust records

5-42(5) A member who maintains electronic trust records must:

- (a) produce a printed copy of the books of original entry immediately after each month end;
- (b) ensure that the system is capable of producing a printed copy of any individual client trust ledger, showing a full history of all trust transactions for that client;
- (c) maintain a backup copy of the electronic records, which must be updated at least monthly, and stored in a secure manner in an off-site location; and
- (d) print a client's closed trust ledger before it is purged from the electronic file and store it in a central file maintained for purged ledgers.

Hand posted trust records

5-42(6) Where a member maintains trust records that are entered and posted by hand, they shall be entered and posted in ink. (ENACTED 06/05)

Trust records must be current

5-42(7) A member's trust records must be entered and posted so as to be current at all times. (ENACTED 06/05)

Handling of trust money

5-43(1) A member must

- (a) deposit or cause to be deposited all trust money into a pooled trust account as soon as practicable after receipt of the money;
- (b) subject to paragraph (e) of rule 5-53.3(2) make all withdrawals from a pooled trust account by consecutively numbered cheques drawn to the order of the person to whom the money is to be paid, unless otherwise authorized by the chief executive officer;
- (c) not withdraw money from a trust bank account to pay for the recovery of the member's fees or disbursements unless a statement of account is prepared and sent or delivered to the client at the time the money is withdrawn;
- (d) ensure that all cheques drawn on a trust bank account are signed only by the member or another practising lawyer in the member's firm or by those persons in conjunction with other employees of the firm, unless otherwise authorized by the chief executive officer;
 - (i) not sign a trust cheque in blank or post-date a trust cheque;
- (e) not overdraw a trust bank account;
- (f) not overdraw any individual client's trust ledger account;
- (g) not pay any of the member's personal or general office accounts from a trust bank account;
- (h) at all times maintain sufficient balances on deposit in a trust bank account to meet all of the member's obligations with respect to trust money;

- (i) not make transfers of trust money from one client's account to another client's account unless the member has obtained either:
 - (i) the written authorization of the client from whose account the money is transferred; or
 - (ii) the verbal authorization of the client from whose account the money is transferred, which authorization is subsequently confirmed in writing to the client by the member.
- (j) not retain any money other than trust money in a trust bank account.
- (k) ensure that trust money is paid out expeditiously once a legal matter is concluded, but if there are exceptional circumstances a member may apply to the chief executive officer for permission to retain the funds in trust for a longer period of time.

(AM. 06/05; 06/10)

Members who share space

5-43(2) Where a member who receives trust money participates in an arrangement with other members to share space and certain common expenses but otherwise practises as an independent practitioner:

- (a) the member must open his or her own trust account, in his or her own name; and
- (b) the member must not deposit trust money into a trust account opened by any other member.

Specific trust investment account

5-44(1) A member may, after first depositing trust money into a pooled trust account, subsequently withdraw the trust money or a portion of it and deposit it into a specific trust investment account, provided:

- (a) the specific trust investment account is opened in the name of the member in trust for the person to whom the money belongs; and
- (b) full details of the specific trust investments are recorded in the member's trust records.

Removing funds from specific trust investments

5-44(2) When withdrawing funds from a specific trust investment account, a member must deposit all resulting trust money directly back into a pooled trust account.

New pooled trust account

5-45 A member who opens a new pooled trust account must, within 30 days of opening the account, notify the chief executive officer in writing of the existence of the account, the account number, the name and branch of the savings institution and the date of the member's trust year end.

Change of trust year end date

5-46 A member must notify the chief executive officer in writing within 30 days of a change in the trust year end date referred to in rule 5-45.

Annual trust account report

5-47(1) A member must file an annual report with the chief executive officer as to his or her compliance with the rules in this division.

Type of report

5-47(2) Subject to subsection (3), the annual report filed by a member must include either:

- (a) a report of an accountant, in the form prescribed by the chief executive officer, within four months following the member's trust year end date; or
- (b) a self-report, in the form prescribed by the chief executive officer, within 8 weeks following the member's trust year end date.

CEO may require accountant's report

5-47(3) The chief executive officer may require a member to file the annual report referred to in clause (a) of subsection (2).

Report on termination of practice

5-47(4) Where a member withdraws from the practice of law as a sole practitioner or a firm with which the member practises winds up its practice, the member or firm must file a final report no later than four months after all trust accounts have been closed, in the form set out in clause (a) of subsection (2).

Closure of trust accounts

5-47(5) A member must close all trust accounts within three months after withdrawal from or winding up of a practice, in accordance with rule 2-74(2).

Extension of time to file report, close trust accounts

5-47(6) The chief executive officer may extend the time for the member to file the reports required in subsections (2) and (4) or to close his or her trust accounts as required by subsection (5) and may approve another form of final report.

Failure to file report

5-47(7) Where a member fails to file the report required under this rule within the time prescribed or within such other time requirement approved by the chief executive officer, the chief executive officer may require an investigator to inspect the accounts and records of the member or firm to determine whether there has been compliance with the rules in this division.

Inspection report

5-47(8) The investigator must issue a report to the chief executive officer advising whether or not the member has complied with the rules in this division.

Costs of inspection

5-47(9) Where the chief executive officer authorizes an inspection under subsection (7), the member must pay to the society the costs of the inspection of his or her accounts and records.

Suspension for failure to file

5-47(10) A member who fails to file the report required under this rule within the time prescribed or within such other time requirement approved by the chief executive officer is automatically suspended from practising law. A member must complete and file the report and pay a reinstatement fee in order to be reinstated to practice. (ENACTED 06/11)

Exception to requirement to file annual trust account report

5-47(11) Subsection (1) does not apply to a member if during the practicing year he or she maintained:

- (a) inactive or non-practising status; or
- (b) practising status and:

- (i) used a trust bank account or handled trust money as a member of a firm required to file an annual trust account report;
- (ii) did not maintain a trust bank account or handle trust money at any time; or
- (iii) was employed exclusively by a government body, except the Legal Aid Services Society of Manitoba, and did not practice law outside the scope of that employment.

(AM. 06/11; AM. 12/11)

Exception for practising lawyers

5-47(12) Repealed 12/11

Investigation of accounts and records

5-48(1) The benchers, the complaints investigation committee, or the chief executive officer may, at any time, require an investigator to investigate the accounts and records of a member for the purpose of ascertaining whether there has been compliance with the Act, rules, and the provisions of the code. (AM. 05/08)

Investigation report

5-48(2) Where the investigator determines that there has been non-compliance with the Act, rules or the provisions of the code, he or she must report the particulars of any breach to the chief executive officer. (AM. 05/08)

Report may be treated as complaint

5-48(3) Where the chief executive officer receives a report pursuant to subsection (2) or a report of non-compliance pursuant to rule 5-47(8), he or she may treat the report as if it were a complaint received under rule 5-60.

General records and accounts

5-48.1(1) A member must deposit into a general account only money received in connection with the member's practise of law that is not trust money. A member must maintain at least one general operating account and the following general books and records:

- (a) a general book of original entry recording in chronological order the full details of all general money received and disbursed. These books must identify the form in which the money is received;
- (b) an accounts receivable ledger or other suitable system that records for each client, the accounts rendered, payments made on account, and the balance owing to or from the client;
- (c) all supporting records including bank statements, pass books, cancelled cheques, cash receipts, deposit slips,, bank advices and similar documents and invoices.

(ENACTED 12/03) (AM. 06/05)

Hand posted general records

5-48.1(2) Where a member maintains general records that are entered and posted by hand, they shall be entered and posted in ink. (ENACTED 06/05)

General records must be current

5-48.1(3) A member's general records must be entered and posted so as to be current at all times. (ENACTED 06/05)

Production of records

5-49(1) Subject to subsection (2), a member must co-operate with an investigator and must produce on demand and answer questions about all records, books, files and any other document, in any form, kept by or for the member that may be reasonably required by the investigator to conduct his or her inspection or investigation. (AM. 12/03; 05/08)

Production of general records

5-49(2) An investigator may only demand production of a member's general records and accounts when they are required by the investigator for the purposes of tracing trust funds or determining if trust funds have been deposited into the member's general account. (ENACTED 12/03)

CDIC compliance

5-50 A member who maintains a pooled trust account or a specific trust investment account in a savings institution which is insured by the Canada Deposit Insurance Corporation ("CDIC") must comply with the reporting and disclosure obligations set forth in the Canada Deposit Insurance Corporation Act and the Schedule thereto.

Retention of records

5-51(1) A member must:

- (a) keep the books, records and accounts referred to in this division for at least ten years; and
- (b) on the completion and closing of a client's file, place on the file a copy of the individual client trust ledger.

(AM. 06/05)

Location of records

5-51(2) A member must keep the books, records and accounts referred to in this division pertaining to his or her most recent three-year period at the member's chief place of practice in Manitoba, unless otherwise authorized by the chief executive officer.

Unauthorized appropriation

5-52 A member must not appropriate any money or property of a client held in trust or otherwise under the member's control for or on account of the member's fees without the express or implied authority of the client.

Failure to comply with rules

5-53 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct.

Restriction on receipt of cash

5-53.1(1) A member must not receive or accept from a person, in respect of any one client matter or transaction, cash in an aggregate amount of \$7,500.00 or more Canadian dollars. (ENACTED 06/05)

Recordkeeping for cash receipts

5-53.1(2) In addition to the recordkeeping requirements set out in rules 5-42(1) and 5-48.1(1), where the member receives cash for a client, the member's records must also include a book of duplicate receipts, with each receipt identifying or containing:

- (a) the date on which cash is received;
- (b) the person from whom cash is received;

- (c) the amount of cash received;
- (d) the client for whom cash is received;
- (e) any file number in respect of which the cash is received; and
- (f) the signature of the member or a person authorized by the member who receives the cash and the signature of the person from whom the cash is received.

(ENACTED 06/05)

Foreign currency conversion for cash

5-53.2 For the purposes of rule 5-53.1(1), when a member receives or accepts cash from a person in a foreign currency, the member shall be deemed to have received or accepted the cash converted into Canadian dollars at:

- (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the member receives or accepts the cash; or
- (b) if the day on which the member receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the member receives or accepts the cash.

(ENACTED 06/05)

Application of cash restriction

5-53.3(1) Rule 5-53.1(1) applies to a member engaged in any of the following activities on behalf of a client or giving instructions on behalf of a client in respect of the following activities:

- (a) receiving or paying funds;
- (b) purchasing or selling securities, real property or business assets or entities;
- (c) transferring funds by any means.

(ENACTED 06/05)

Exceptions to cash restriction

5-53.3(2) Despite subsection (1), rule 5-53.1(1) does not apply when the member receives cash:

- (a) from a financial institution or public body;
- (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;
- (c) pursuant to a court order or an order of a tribunal;
- (d) to pay a fine or penalty;
- (e) in an amount of \$7,500 or more for fees, disbursements, expenses or bail, provided that any refund out of such receipts is also made in cash.

(ENACTED 06/05)

Acknowledgement of cash refund required

5-53.3(3) When a member pays a cash refund under paragraph (e) of subsection (2), the member must obtain a signed and dated acknowledgement of the payment from the person who receives the refund. (ENACTED 06/05)

(ii) Division 12 - Client Identification and Verification**Division 12 - Client Identification and Verification**

(ENACTED 12/08)

Definitions

5-116 In this division,

"client" includes

- (a) another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and
- (b) in rules 5-120 to 5-124, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction;

(ENACTED 01/09)

"financial institution" means

- (a) an authorized foreign bank within the meaning of section 2 of the Bank Act (Canada) in respect of its business in Canada or a bank to which the Bank Act applies,
- (b) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,
- (c) an association that is regulated by the Cooperative Credit Associations Act (Canada),
- (d) a company to which the Trust and Loan Companies Act (Canada) applies,
- (e) a trust company or loan company regulated by a provincial Act,
- (f) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (g) an organization controlled by a financial institution; (ENACTED 01/09)

"financial transaction" means the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money;

"lawyer" means a member of a governing body who is authorized to practice law in another Canadian jurisdiction; (ENACTED 01/09)

"money" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them; (AM. 02/09)

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

"public body" means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them,
- (c) a municipality incorporated by or under an Act of a province or territory of Canada,

- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the Excise Tax Act (Canada) or an agent of the organization, (AM. 01/09)
- (e) an organization incorporated under an Act of Canada or of a province or territory for a public purpose; or (AM. 01/09)
- (f) an organization controlled by a public body. (ENACTED 01/09)

"reporting issuer" means an organization that is

- (a) a reporting issuer within the meaning of the securities law of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange that is designated under section 262 of *The Income Tax Act (Canada)*, and operates in a country that is a member of the Financial Action Task Force on Money Laundering, or
- (b) controlled by a reporting issuer.

(ENACTED 01/09) (AM. 02/09)

"securities dealer" means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services. (ENACTED 01/09)

Control

5-116(2) In this division, a person controls an organization if the person directly or indirectly, has the power to elect a majority of the directors or equivalent body of the organization by virtue of

- (a) ownership or direction over voting securities of the organization,
- (b) being or controlling the general partner of a limited partnership, or
- (c) being a trustee of or occupying a similar position in the organization.

(ENACTED 01/09)

Application

5-117(1) Subject to subsection (2), this division applies to a member who is retained by a client to provide legal services.

Exemptions

5-117(2) Rules 5-118 to 5-128 do not apply when a member provides legal services

- (a) on behalf of his or her employer,
- (b) that do not involve a financial transaction in the following circumstances:
 - (i) as part of a duty counsel program sponsored by a non-profit organization,
 - (ii) in the form of pro bono summary advice, or
- (c) if another member or lawyer who has complied with rules 5-118 to 5-128 or the equivalent provisions of a governing body
 - (i) engages the member to provide legal services to the client as an agent, or
 - (ii) refers a matter to the member for the provision of legal services.

(AM. 01/09)

Interpretation

5-117(3) In this division, the responsibilities of a lawyer may be fulfilled by any member, associate or employee of the lawyer's firm, including members or employees of the firm conducting business in another Canadian jurisdiction. (ENACTED 01/09)

Client identification

5-118(1) A member who is retained by a client to provide legal services must make reasonable efforts to obtain and, if obtained, record all of the following information that is applicable:

- (a) the client's full name, business address and business telephone number;
- (b) if the client is an individual, the client's home address, home telephone number and occupation;
- (c) if the client is an organization, the name, position, and contact information for individuals who give instructions with respect to the matter for which the lawyer is retained;
- (d) if the client is an organization, other than a financial institution, public body or reporting issuer,
 - (i) the general nature of the type of business or activity engaged in by the client, and
 - (ii) the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number.

(AM. 01/09)

Subsequent identification not required

5-118(2) When a member has obtained and recorded the information concerning the identity of a client under subsection (1), the member is not required subsequently to obtain and record that information about the same individual or organization. (ENACTED 01/09)

Exemption

5-119 Rules 5-120 to 5-125 do not apply

- (a) if the client is
 - (i) a financial institution,
 - (ii) a public body,
 - (iii) a reporting issuer, or
 - (iv) an individual who instructs the member on behalf of a client described in subparagraphs (i) to (iii),
- (b) when a member
 - (i) pays money to or receives money from any of the following:
 - A. a financial institution;
 - B. a public body;
 - C. a reporting issuer,
 - (ii) receives money paid from the trust account of another member or lawyer,
 - (iii) receives money from a peace officer, law enforcement agency or other public official acting in an official capacity, or
 - (iv) pays or receives money

- A. pursuant to the order of a court or other tribunal,
 - B. to pay a fine or penalty,
 - C. as a settlement of any legal or administrative proceeding, or
 - D. for professional fees, disbursements, expenses or bail, or
- (c) to a transaction in which funds involved are transferred by electronic transmission, provided
- (i) the transfer occurs between financial institutions or financial entities head-quartered in and operating in countries that are members of the Financial Action Task Force,
 - (ii) neither the sending nor the receiving account holders handle or transfer the funds, and
 - (iii) the transmission record contains
 - A. a reference number,
 - B. the date,
 - C. the transfer amount,
 - D. the currency, and
 - E. the names of the sending and receiving holders and the sending and receiving entities.

(AM. 01/09)

Verification

5-120(1) When a member provides legal services in respect of a financial transaction, including a non-face-to-face transaction, the member must take reasonable steps to verify the identity of the client using what the member reasonably considers to be reliable, independent source documents, data or information. (AM. 01/09)

Examples of independent source documents

5-120(2) For the purposes of subsection (1), independent source documents may include:

- (a) if the client is an individual, valid original government-issued identification, including a driver's licence, birth certificate, provincial or territorial health insurance card, passport or similar record,
- (b) if the client is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors, where applicable, such as
 - (i) a certificate of corporate status issued by a public body,
 - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence, and
- (c) if the client is an organization, other than a corporation or society, that is not registered in any government registry, such as a trust or partnership, a copy of the organization's

constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

(AM. 01/09)

Identifying directors, shareholders and owners

5-121 When a member provides legal services in respect of a financial transaction for a client that is an organization referred to in rule 5-120(2)(b) or (c), the member must make reasonable efforts to obtain, and if obtained, record,

- (a) the name and occupation of all directors of the organization, other than an organization that is a securities dealer, and
- (b) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.

Client identification and verification in non-face-to-face transactions

5-122(1) This rule applies when a member provides legal services in respect of a financial transaction for a client who is an individual not physically present before the member. (AM. 01/09)

Client present elsewhere in Canada

5-122(2) If the client is present elsewhere in Canada, the member must verify the client's identity by obtaining an attestation from a commissioner of oaths for a jurisdiction in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in rule 5-120(2)(a). (AM. 01/09)

Attestation

5-122(3) For the purposes of subsection (2), an attestation must be produced on a legible photocopy of the document and must include

- (a) the name, profession and address of the person providing the attestation;
- (b) the signature of the person providing the attestation; and
- (c) the type and number of the identifying document provided by the client.

(AM. 01/09)

Permitted guarantors

5-122(4) For the purpose of subsection (2), a guarantor must be a person engaged in one of the following occupations in Canada:

- (a) dentist;
- (b) medical doctor;
- (c) chiropractor;
- (d) judge;
- (e) magistrate or justice of the peace;
- (f) lawyer;
- (g) notary (in Quebec);
- (h) notary public;
- (i) optometrist;
- (j) pharmacist;

- (k) professional accountant (Chartered Accountant, Certified General Accountant, Certified Management Accountant, Accredited Public Accountant, Public Accountant or Registered Public Accountant);
- (l) professional engineer;
- (m) veterinarian,
- (n) peace officer;
- (o) paralegal licensee in Ontario;
- (p) registered nurse;
- (q) school principal.

(AM. 01/09)

Use of agent – client not present in Canada

5-123(1) If the client is not present in Canada, a member must rely on an agent to obtain the information required to verify the identity of the client under rule 5-120, which may be attested to in a form similar to that described in rule 5-122(3) provided the member and the agent have an agreement or arrangement in writing for this purpose. (AM. 01/09)

Use of information

5-123(2) A member who enters into an agreement or arrangement referred to in subsection (1) must obtain from the agent the information obtained by the agent under that agreement or arrangement.

Timing of verification for individuals

5-124(1) At the time that a member provides legal services in respect of a financial transaction, the member must verify the identity of a client who is an individual. (AM. 01/09)

When subsequent verification of individual not required

5-124(2) When a member has verified the identity of an individual, the member is not required to subsequently verify that same identity if the member recognizes that person.

Timing of verification for organizations

5-125(1) A member must verify the identity of a client that is an organization within 60 days of engaging in a financial transaction.

When subsequent verification of an organization not required

5-125(2) When a member has verified the identity of a client that is an organization and obtained and recorded information under rule 5-121, the member is not required to subsequently verify that identity or obtain and record that information. (AM. 01/09)

Record keeping and retention

5-126(1) A member must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of rule 5-120(1).

Form of documents

5-126(2) The documents referred to in subsection (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

Period of retention

5-126(3) A member must retain a record of the information and any documents obtained for the purposes of rules 5-118 and 5-121 and copies of all documents received for the purposes of rule 5-120(1) for the longer of:

- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing services to the client, and
- (b) a period of at least 6 years following completion of the work for which the member was retained.

Existing matters

5-127 Rules 5-117 to 5-126 do not apply to matters in respect of which a member was retained on or before the date these rules come into force, but they do apply to all matters for which a member is retained after that time, regardless of whether the client is a new or existing client.

Criminal activity: duty to withdraw at time of taking information

5-128(1) If, in the course of obtaining the information and taking the steps required in rules 5-118, 5-120(1) or 5-121, a member knows or ought to know that he or she would be assisting a client in fraud or other illegal conduct, the member must withdraw from representation of the client. (AM. 01/09)

Application

5-128(2) This rule applies to all matters, including new matters for existing clients, for which a member is retained after the date this rule comes into force.

Criminal activity: duty to withdraw after being retained

5-129(1) If, while retained by a client, a member knows or ought to know that he or she would be assisting the client in fraud or other illegal conduct, the member must withdraw from representation of the client. (AM. 01/09)

Application

5-129(2) This rule applies to all matters for which a member is retained before or after this division comes into force.

Failure to comply with rules

5-130 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct. (ENACTED 01/09)

2. Appendix B – Practice Directions

(i) Practice Direction 84-01 – Interest on Client Trust Funds

84-01: Interest on Client Trust Funds

Reference is made to the provisions of section 30.2 [now section 39] of the Law Society Act respecting interest on trust deposits and more specifically to the exceptions outlined in subsection (5) [now subsection (4)].

Where a solicitor holds or receives monies for or on account of a client upon which, having regard to all of the circumstances, (including the amount and the length of time for which the money can reasonably be anticipated to be held) a client should be entitled to receive interest on such monies. In such event the solicitor should obtain written instructions from the client, or deposit the monies in a separate interest bearing account or deposit or invest the monies in a term plan of a bank or guaranteed term plan of a trust company and shall account to the client for all interest earned thereon.

Each situation will depend on its particular circumstances but the member should consider the cost to the client as a factor in determining the reasonableness of an investment. Depending on the circumstances of each situation, it may be considered unacceptable practice by a member of the society to fail to make arrangements with his client so that interest will be earned by the client on monies held by the solicitor for that client.

(January 1984)

[updated as to section numbers, February 1992]

(ii) Practice Direction 88-02 – Enforcement of Solicitors' Liens

88-02: Enforcement of Solicitors' Liens

The Discipline Committee has recently encountered a number of instances where monies obtained in connection with one file of a client are transferred to cover fees for services provided on another file of the same client. The committee wishes to remind the profession that the transfer of monies between a client's files is not permitted (in the absence of the express consent of the client), and constitutes an improper enforcement of a solicitor's lien. The Discipline Committee ruling of March 29, 1985, provides the correct practice to be followed in enforcing solicitor's liens:

Where a solicitor maintains a client's property pursuant to a retaining or general solicitor's lien as a general rule the solicitor is not obliged to give copies of the material to the client nor to allow inspection of the property. There are, however, limitations upon that general rule. The following are important limitations:

1. Delivery of the property will be ordered where payment of the costs has been secured.
2. Where a solicitor discharges himself in the course of an action he loses his possessory lien over his client's documents for unpaid fees and the client or new solicitor is entitled to delivery of papers in the cause on an undertaking to hold them without prejudice to the former solicitor's lien.
3. Where a client discharges the solicitor without just cause the solicitor is under no obligation to deliver, produce or allow inspection of documents for the benefit of the client unless the interests of third parties would be affected.

The *Code of Professional Conduct* places an ethical Limitation on this right at Commentary 10 of Chapter XI [now Chapter 12, Commentary 11] which provides that generally speaking a lawyer should not enforce his lien if the result would be to materially prejudice the client's position in any uncompleted matter.

Liens claimed on property recovered or preserved can only be asserted for the costs properly incurred in recovering or preserving the specific property in question.

Members are particularly referred to Cordery on Solicitors (7th ed.) at chapter 8, *MacDonald v. Arenson*, [1981] 1 W.W.R. 573 (Man. C.A.) and *Re. Bank of Western Canada* (1969), 67 W.W.R. 568 (Man. Q.B.).

(September 1988)

[updated as to section numbers, February 1992]

(iii) Practice Direction 89-03 – Appropriate Billing Practices

89-03: Appropriate Billing Practices

It has recently come to the attention of the Society that some members of the profession are following incorrect procedures in billing clients, in that trust monies are being transferred to the lawyer's general account before the legal services have actually been performed and/or before a statement of account has been rendered. This improper practice appears to be common in real estate conveyancing, but the comments herein relate to all areas of practice.

The Society reminds members that Rule 129(1)(c) states a solicitor may withdraw monies from trust for the recovery of fees and disbursements provided always that a bill for such fees and disbursements must be rendered to the client before the money is so drawn. Inherent in the rendering of a bill is that the bill must actually be sent to the client and the legal services outlined in the bill must have actually been performed at the time the bill was rendered.

Thus, it is improper for a lawyer to:

- render a bill for prospective services not yet performed; for example, immediately upon retainer prepare a statement of account for the full flat rate fee for a real estate conveyancing matter; or
- prepare an interim bill and transfer monies from trust without delivering a copy to the client at that time; for example, leave the interim bills on file and deliver to the client at the end of the matter only a final statement of account which amalgamates previous billings the client has never received.

With respect to real estate transactions specifically, the Society is of the view that until such time as a lawyer has substantially fulfilled his/her obligations to the client, and is in a position to honour the trust conditions imposed upon him/her, the lawyer is not entitled to receive payment for his/her services out of monies received in trust from other parties. For example, the vendor's lawyer should not transfer trust money to his/her general account until prior encumbrances, taxes and realtors' commissions have been paid. In the case of the purchaser's lawyer, funds should not be transferred until the lawyer is able to provide his/her client with the opinion that title to the purchased property has been or will be registered in his/her client's name free of all encumbrances except for those accepted by his/her client.

Nothing herein prevents a lawyer from:

1. rendering an interim statement of account to a client, provided such a bill is delivered to the client at the time and also that the fee charged is fair and reasonable and accurately reflects the value of the legal services performed to that date; or

2. receiving a general retainer from a client for which the member is not obliged to render services, in exchange for accepting the client.

(May 1989)

[amended October 22, 1998]

[Amendment approved by Benchers December 14, 2000]

[Effective February 15, 2001]

3. **Appendix C – The Legal Profession Act**

PART 1 - DEFINITIONS

Definitions

1 The following definitions apply in this Act.

"articling student" means a person enrolled in the society's bar admission program and registered in the student register as an articling student. (« stagiaire »)

"bencher" means a member of the governing body of the society, except when used in reference to a life bencher or honorary bencher. (« conseiller »)

"elected bencher" means a person, other than the student bencher, elected to serve as a bencher. (« conseiller élu »)

"foreign jurisdiction" means a jurisdiction outside of Manitoba in which the legal profession is regulated. (« autorité législative étrangère »)

"law corporation" means a corporation that holds a valid permit issued under Part 4. (« cabinet d'avocats à responsabilité limitée »)

"law firm" means a sole proprietorship, a partnership, a law corporation or any other joint arrangement or legal entity that provides legal services. (« cabinet d'avocats »)

"law student" means a person enrolled in a law degree program and registered in the student register as a law student. (« étudiant en droit »)

"lawyer" includes a barrister, a solicitor and an attorney-at-law. (« avocat »)

"member" means a member of the society, unless the context requires a different meaning. (« membre »)

"practising lawyer" means a lawyer who holds a valid practising certificate issued by the society. (« avocat en exercice »)

"president" means the president of the society. (« président »)

"society" means The Law Society of Manitoba. (« Société »)

"student" means a law student or articling student. (« étudiant »)

4. Appendix D – Code of Professional Conduct

1.1 DEFINITIONS

1.1-1 In this Code, unless the context indicates otherwise:

“**associate**” includes a lawyer who practices law in a law firm through an employment or other contractual relationship;

“**client**” means a person who:

- (a) consults a lawyer and on whose behalf the lawyer renders or undertakes to render legal services; or
- (b) having consulted the lawyer, reasonably concluded that the lawyer has agreed to render legal services on his or her behalf;

and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client’s work;

Commentary

[1] A lawyer-client relationship may be established without formality.

[2] When an individual consults a lawyer in a representative capacity, the client is the corporation, partnership, organization, or other legal entity that the individual is representing.

[3] For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.

“**conflict of interest**” means the existence of a substantial risk that a lawyer’s loyalty to or representation of a client would be materially and adversely affected by the lawyer’s own interest or the lawyer’s duties to another client, a former client, or a third person;

“**consent**” means fully informed and voluntary consent after disclosure:

- (a) in writing, provided that, if more than one person consents, each signs the same or a separate document recording the consent; or
- (b) orally, provided that each person consenting receives a separate written communication recording the consent as soon as practicable;

“**law firm**” includes one lawyer or two or more lawyers practising together, and may include:

- (a) a sole proprietorship,
- (b) a law corporation or limited liability partnership,

- (c) a partnership or association of lawyers or law corporations or a combination of both,

but excludes arrangements where lawyers share office space and certain common expenses, but otherwise practise as independent practitioners;

“**lawyer**” means a member of the Society as defined in *The Legal Profession Act*, S.M. 2002, c. 44 - Cap. L107;

“**Society**” means The Law Society of Manitoba;

“**tribunal**” includes a court, board, arbitrator, mediator, administrative agency or other body that resolves disputes, regardless of its function or the informality of its procedures.

5. Appendix E – Letter of Direction

Letter of Direction

To the Manager _____ (Date)

 (Name of Chartered Bank, Trust Company
 Credit Union, Financial Institution)

 (Branch)

 (Address)

Re: The Manitoba Law Foundation

Lawyer/Firm _____

Account Name _____

Account No. _____

Date Account Opened _____

In accordance with Section 50(2) of *The Legal Profession Act*, you are hereby authorized and directed, until further notice, to remit interest on the above-noted pooled trust account to **The Manitoba Law Foundation, 701-177 Lombard Avenue, Winnipeg, Manitoba, R3B 0W5**. Remittances must not include interest on any sub-accounts of the above account if the sub-account represents money held in trust for a specific client.

Remittances must be made in accordance with the terms and provisions as from time to time are agreed upon between yourselves and the Board of Directors of The Manitoba Law Foundation. You are also directed to provide written notice of the method of calculation and the full details thereof, if requested by the Foundation.

Per:

 (Signed)

 (Address)

Note: If more than one pooled trust account is maintained, a separate letter of direction must be provided for each account.

C.C.

The Manitoba Law Foundation
701-177 Lombard Avenue
Winnipeg, Manitoba
R3B 0W5
(phone) 204-947-3142
info@manitobalawfoundation.org

The Law Society of Manitoba
219 Kennedy Street
Winnipeg, Manitoba
R3C 1S8
(phone) 204-942-5571
(fax) 204-956-0624

April 2016

6. Appendix F – Trust Accounting Transactions – Bookkeeping Illustration

To demonstrate the trust accounting records that result from some of the various types of transactions, section i) is a narrative of transactions.

Following the narrative, section ii) shows the transactions from section i) entered on a book of original entry (BOOE), as well as the applicable ledgers.

(i) Transaction Narrative

SCENARIO

Assume you have already taken the necessary steps to open your trust account and notify the Law Society.

Your firm's name is Red & Red LLP.

You have decided to use a manual system, with a separate BOOE for transactions for your pooled and specific trust investment accounts.

TRANSACTION 1 – RECEIPT OF BANK DRAFT INTO POOLED TRUST ACCOUNT FOR BLACK ESTATE

On May 1, you receive a draft for \$50,000 from Cambrian Credit Union for the Estate of Brenda Black, file # 001.

This is recorded in the BOOE, and the applicable client ledger.

TRANSACTION 2 – INVESTMENT OF FUNDS FROM TRANSACTION 1

As the funds on the first transaction meet the criteria for a Specific Trust Investment Account (STIA), you proceed to issue your first trust cheque to invest the funds.

You have invested in a three month GIC, as you do not anticipate needing the funds in the short term.

You update the BOOE for the pooled trust account for cheque #1. You also update the BOOE for the STIA for the receipt.

In addition, the client ledger created for transaction 1 is updated (#001). You also need to create a ledger for the STIA (#001 STIA).

TRANSACTION 3 – RECEIPT OF CASH INTO POOLED TRUST ACCOUNT FOR BROWN DIVORCE

On the R. Brown Divorce (File #002), your client provides you with \$2,500 in cash on May 1.

At the time you receive the funds, you issue a receipt from your duplicate receipt book since you are receiving cash, ensuring to record all the required information, including Mr. Brown's signature. He must also receive a copy of the receipt after it is completed.

You also make the necessary entries in your BOOE and Mr. Brown's ledger.

TRANSACTION 4 – RECEIPT OF BANK DRAFT INTO POOLED TRUST ACCOUNT FOR GREEN ESTATE

On May 4, you receive another draft, this time from the Royal Bank. It is for \$5,000 on the Estate of George Green (#003).

Once again, you make the necessary entries in both your BOOE and the Green Estate ledger.

TRANSACTION 5 – ADDITIONAL FUNDS RECEIVED ON THE GREEN ESTATE FOR THE POOLED TRUST ACCOUNT

A cheque for \$35,000 from RBC Dominion Securities arrives May 7, also for the Green Estate (#003). Your BOOE and ledger need to be updated.

TRANSACTION 6 – INVESTMENT OF FUNDS ON GREEN ESTATE

Similar to Transaction 2, you are investing client trust funds, after first depositing them to your pooled trust account. Don't forget to use the correct payee on the cheque "Red & Red LLP in trust for the Estate of George Green". The investment is made on May 8, for \$40,000.

In this case, you are using a daily interest account for the investment, as you anticipate needing to withdraw funds from it shortly to pay various estate related expenses.

TRANSACTION 7 – PAYMENT OF AN INTERIM STATEMENT OF ACCOUNT FROM TRUST MONEY ON THE BROWN DIVORCE

Work has been progressing on the Brown divorce matter (#002), and it is time for an interim billing. You prepare a Statement of Account that totals \$2,300, checking the ledger for the matter to ensure there are sufficient funds in trust to pay for the account.

You provide it to Mr. Brown in your afternoon meeting with him on May 15. After he has left, you prepare a trust cheque for \$2,300.00, updating both the BOOE and Mr. Brown's ledger to reflect the transactions.

By the way, don't forget to that this payment to the firm becomes a receipt in your *general* account – you'll need to update your general account BOOE accordingly.

TRANSACTIONS 8 & 9 – WITHDRAWAL OF FUNDS FROM THE GREEN STIA, AND PAYMENT TO THE RECEIVER GENERAL

In order to pay an income tax liability of the Green Estate, the personal representative has authorized payment of \$850 from trust to the Receiver General. Looking at the ledger for the pooled trust account for this matter, there is no money in the pooled account. However, the STIA ledger has \$40,000. Therefore, instructions were sent to the savings institution to transfer \$1,000 from the STIA account. As there is no cheque stock on an STIA, the instructions to the bank are done in writing, with the correspondence signed by a member of the firm with signing authorization at the bank. The savings institution may issue a draft, or transfer the funds internally directly to the pooled trust account.

From the bookkeeping perspective, the withdrawal from the STIA and deposit to the pooled trust account is now recorded in each BOOE and the ledgers for matter #003 & #003 STIA.

Once verifying the funds have been deposited to the pooled account, a cheque can be written for the disbursement, and the corresponding entries recorded in the BOOE and ledger for matter #003. The withdrawal is done on May 15 and the income tax payment on May 16.

TRANSACTIONS 10 - 14 – SETTLEMENT TRANSACTIONS AND MATTER TO MATTER TRANSFER FOR MR. WHITE

On May 31, settlement proceeds were received on the White matter (#004) by wire transfer directly to the trust account. After confirming with your savings institution that the funds were deposited, you:

- Record the receipt in your BOOE and Mr. White's ledger;
- Write a trust cheque to the Manitoba Clinic to pay for a disbursement on the matter, again updating the BOOE and ledger.

Also on May 31, the following occurs for the same client:

- When you call Mr. White to advise him that the settlement proceeds have been received, Mr. White agrees that \$3,000 of the settlement proceeds can be used for a SOA you had rendered earlier that week on his domestic matter (file #005);
- After your call, you prepare another trust cheque, this one payable to Mr. White, for partial settlement proceeds (BOOE and ledger updated for this too);
- When you meet with Mr. White in the afternoon, you provide him with a reporting letter for the accident, enclosing the cheque for net settlement proceeds, as well as a SOA for \$2,000 for your services related to the matter. Within the reporting letter, you have confirmed his earlier verbal authorization for the transfer to the

- domestic matter (you could have instead chosen to ask him to sign an Order to Pay or Transfer Authorization during the meeting to document his consent); and
- After your meeting, you record the transfer in your BOOE and both affected ledgers.

(Although this is not demonstrated in the example, you prepare two trust cheques the next day (June 1) to Red & Red LLP for the SOA for each of matters 004 and 005.)

TRANSACTION 15 – INTEREST IS EARNED ON THE GREEN ESTATE STIA

As the investment for this matter is a daily interest account, your savings institution has credited \$150 to the STIA on May 31.

Both the STIA BOOE and ledger for the STIA are updated to reflect the transaction.

(ii) Example Book of Original Entry and Ledgers**TRUST BOOKS OF ORIGINAL ENTRY – Pooled Trust Account**

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money; and
- (3) In addition to columns labelled (1), use these columns when you *disburse* money (i.e. write a cheque).

Transfers between client matters can be recorded as a *disbursement* from one client and a *receipt* for the other.

Date (1)	Client Name &/or Number (1)	Description (1)	Source of Funds (2)*	Form of Receipt (2)*	Receipt # (2)*	Cheque Payee (3)*	Cheque # (3)*	Cheque Amount (3)	Receipt Amount (2)	Balance (1)
May 1/13	Black – Estate 001	Estate funds	Cambrian Credit Union	Draft	1				50,000	50,000
May 1/13	Black – Estate 001	Invest in STIA				Red & Red LLP in trust for Estate of B. Black	1	50,000		0
May 1/13	Brown – Divorce 002	Retainer	R. Brown	Cash	2				2,500	2,500
May 4/13	Green – Estate 003	Estate funds	Royal Bank	Draft	3				5,000	7,500
May 7/13	Green – Estate 003	Estate funds	RBC Dominion Securities	Cheque	4				35,000	42,500
May 8/13	Green – Estate 003	Invest in STIA				Red & Red LLP in trust for Estate of G. Green	2	40,000		2,500
May 15/13	Brown – Divorce 002	Fees & disbursements				Red & Red LLP	3	2,300		200

* These columns do not apply for matter to matter transfers.

TRUST BOOK OF ORIGINAL ENTRY – Pooled Trust Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money; and
- (3) In addition to columns labelled (1), use these columns when you *disburse* money (i.e. write a cheque).

Transfers between client matters can be recorded as a *disbursement* from one client and a *receipt* for the other.

Date (1)	Client Name &/or Number (1)	Description (1)	Source of Funds (2)*	Form of Receipt (2)*	Receipt # (2)*	Cheque Payee (3)*	Cheque # (3)*	Cheque Amount (3)	Receipt Amount (2)	Balance (1)
May 15/13	Green – Estate 003	Partial redemption of STIA	Green STIA	Trsf	5				1,000	1,200
May 16/13	Green – Estate 003	Income taxes				Receiver General	4	850		350
May 31/13	White – Accident 004	Settlement	MPIC	Wire	6				20,000	20,350
May 31/13	White – Accident 004	Doctor's report				Manitoba Clinic	5	500		19,850
May 31/13	White – Accident 004	Settlement proceeds				Mr. White	6	14,500		5,350
May 31/13	White – Accident 004	Transfer to domestic matter White #005						3,000		2,350
May 31/13	White – Domestic 005	Transfer from accident matter White #004							3,000	5,350

* These columns do not apply for matter to matter transfers.

TRUST BOOK OF ORIGINAL ENTRY – Specific Trust Investment Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* funds from the pooled trust account or the investment earns interest; and
- (3) In addition to columns labelled (1), use these columns when you *return* money to the pooled trust account (i.e. partial or full redemption of the investment).

Date (1)	Client Name &/or Number (1)	Description (1)	Source of Funds (2)	Destination of Funds Disbursed (3) *	Redemption Amount (3)	Receipt Amount (2)	Balance (1)
May 1/13	Black – Estate 001 STIA	Initiate investment	Transferred from pooled trust account			50,000	50,000
May 8/13	Green – Estate 003 STIA	Initiate investment	Transferred from pooled trust account			40,000	90,000
May 15/13	Green – Estate 003 STIA	Partial redemption		Pooled trust account	1,000		89,000
May 31/13	Green – Estate 003 STIA	Interest	Investment earnings			150	89,150

* Although this must be a firm pooled trust account, this column becomes relevant if the firm has more than one pooled trust account. Otherwise, this column will always contain 'pooled trust account'.

CLIENT TRUST LEDGER – Pooled Trust Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money; and
- (3) In addition to columns labelled (1), use these columns when you *disburse* money (i.e. write a cheque).

Transfers between client matters can be recorded as a *disbursement* from one client and a *receipt* for the other.

MATTER: Estate of Brenda Black		FILE # 001						
NAME: Mr. E. Black								
ADDRESS: 15 Lake City Drive								
Date (1)	Description (1)	Source of Funds (2)	Receipt # (2)	Cheque Payee (3)	Cheque # (3)	Cheque Amount (3)	Receipt Amount (2)	Balance (1)
May 1/13	Estate funds	Cambrian Credit Union - draft	1				50,000	50,000
May 1/13	Invest in STIA			Red & Red LLP in trust for Estate of B. Black	1	50,000		0

CLIENT TRUST LEDGER – Specific Trust Investment Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* funds from the pooled trust account; and
- (3) In addition to columns labelled (1), use these columns when you *return* money to the pooled trust account (i.e. partial or full redemption of the investment).

MATTER: Estate of Brenda Black					FILE # 001 STIA	
NAME: Mr. E. Black						
ADDRESS: 15 Lake City Drive						
Date (1)	Description (1)	Source of Funds (2)	Destination of Funds Disbursed (3)*	Redemption Amount (3)	Receipt Amount (2)	Balance (1)
May 1/13	Invest in GIC	Transferred from pooled account			50,000	50,000

* Although the funds must be returned to a firm pooled trust account, this column becomes relevant if the firm has more than one pooled trust account. Otherwise, this column will always contain 'pooled trust account'.

CLIENT TRUST LEDGER – Pooled Trust Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money; and
- (3) In addition to columns labelled (1), use these columns when you *disburse* money (i.e. write a cheque).

Transfers between client matters can be recorded as a *disbursement* from one client and a *receipt* for the other.

MATTER: Divorce							FILE # 002	
NAME: Mr. R. Brown								
ADDRESS: 31 Cherrylane								
Date (1)	Description (1)	Source of Funds (2)	Receipt # (2)	Cheque Payee (3)	Cheque # (3)	Cheque Amount (3)	Receipt Amount (2)	Balance (1)
May 1/13	Retainer	R. Brown - cash	2				2,500	2,500
May 15/13	SOA #1			Red & Red LLP	3	2,300		200

CLIENT TRUST LEDGER – Pooled Trust Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money; and
- (3) In addition to columns labelled (1), use these columns when you *disburse* money (i.e. write a cheque).

Transfers between client matters can be recorded as a *disbursement* from one client and a *receipt* for the other.

MATTER: Estate of George Green		FILE # 003						
NAME: Martha Green								
ADDRESS: 15 Byron Bay								
Date (1)	Description (1)	Source of Funds (2)	Receipt # (2)	Cheque Payee (3)	Cheque # (3)	Cheque Amount (3)	Receipt Amount (2)	Balance (1)
May 4/13	Estate funds	Royal Bank - draft	3				5,000	5,000
May 7/13	Estate funds	RBC Dominion Securities – cheque	4				35,000	40,000
May 8/13	Invest in STIA			Red & Red LLP in trust for Estate of G. Green	2	40,000		0
May 15/13	Partial redemption of STIA	Green STIA #003 STIA	5				1,000	1,000
May 16/13	Income taxes			Receiver General	4	850		150

CLIENT TRUST LEDGER – Specific Trust Investment Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* funds from the pooled trust account; and
- (3) In addition to columns labelled (1), use these columns when you *return* money to the pooled trust account (i.e. partial or full redemption of the investment).

MATTER: Estate of George Green		FILE # 003 STIA				
NAME: Martha Green						
ADDRESS: 15 Byron Bay						
Date (1)	Description (1)	Source of Funds (2)	Destination of Funds Disbursed (3) *	Redemption Amount (3)	Receipt Amount (2)	Balance (1)
May 8/13	Invest in Daily Interest Account	Pooled trust account			40,000	40,000
May 15/13	Partial redemption		Pooled trust account	1,000		39,000
May 31/13	Interest for May	Investment earnings			150	39,150

* Although the funds must be returned to a firm pooled trust account, this column becomes relevant if the firm has more than one pooled trust account. Otherwise, this column will always contain 'pooled trust account'.

CLIENT TRUST LEDGER – Pooled Trust Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money; and
- (3) In addition to columns labelled (1), use these columns when you *disburse* money (i.e. write a cheque).

Transfers between client matters can be recorded as a *disbursement* from one client and a *receipt* for the other.

MATTER: Accident		FILE # 004						
NAME: Mr. White								
ADDRESS: 76 ABC Street								
Date (1)	Description (1)	Source of Funds (2) *	Receipt # (2) *	Cheque Payee (3) *	Cheque # (3) *	Cheque Amount (3)	Receipt Amount (2)	Balance (1)
May 31/13	Settlement	MPIC – wire transfer	6				20,000	20,000
May 31/13	Doctor's report			Manitoba Clinic	5	500		19,500
May 31/13	Settlement proceeds			Mr. White	6	14,500		5,000
May 31/13	Transfer to domestic matter White #005					3,000		2,000

* These columns do not apply for matter to matter transfers.

CLIENT TRUST LEDGER – Pooled Trust Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money; and
- (3) In addition to columns labelled (1), use these columns when you *disburse* money (i.e. write a cheque).

Transfers between client matters can be recorded as a *disbursement* from one client and a *receipt* for the other.

MATTER: Domestic							FILE # 005	
NAME: Mr. White								
ADDRESS: 76 ABC Street								
Date (1)	Description (1)	Source of Funds (2) *	Receipt # (2) *	Cheque Payee (3) *	Cheque # (3) *	Cheque Amount (3)	Receipt Amount (2)	Balance (1)
May 31/13	Transfer from accident matter White #004						3,000	3,000

* These columns do not apply for matter to matter transfers.

7. Appendix G – Monthly Trust Reconciliations

Using the example transactions from Appendix F, a monthly reconciliation for both the pooled trust account and the Specific Trust Investment Accounts (STIAs) will be illustrated in this Appendix.

The basic concept of a monthly reconciliation, as discussed in 3.02(4)(b), is to compare firm records with the savings institution's records. Since every transaction is recorded by the firm in both the BOOE and the client trust ledgers, both records are used as part of the reconciliation.

POOLED TRUST ACCOUNT

If you were using an electronic accounting system, your first step after month end would be to print your BOOE. This usually means the first business day after the end of the month. Since Red & Red LLP is using a manual system, this step does not apply.

For members with manual systems, the first step in the bank reconciliation generally begins after receipt of monthly statement. Firms who use on-line banking (on a 'read only' basis) sometimes log in to obtain their account information so they can reconcile earlier than waiting for the monthly statement to be ready.

When Red & Red LLP's bank statement arrives, the ending balance at May 31 is \$20,315.

Since this is Red & Red LLP's first month of operations, there is no prior reconciliation to reference. Otherwise, the prior month's reconciliation is used for the list of reconciling items that were outstanding that have now cleared, or as is sometimes the case for outstanding cheques, remain outstanding again in the current month's reconciliation.

Now that all necessary records have been gathered, it's time to perform the reconciliation:

1. Account for all enclosures with your statement: Occasionally a cheque clears the bank, but either the original or image is not provided by your savings institution with the monthly statement. Make a note of it. You will need to contact your savings institution to ensure you receive the missing record.
2. Review the bank statement and cleared cheques: All transactions should look reasonable – there shouldn't be any surprises! However, if you see a bank charge that shouldn't be there, you need to make note of it. It will be a reconciling item, as well as something that needs to be investigated further and corrected as part of your follow up after the reconciliation has been completed.

In our example, the bank charged \$35 to the account for cheque printed charges after the account was opened. Since it should not have been deducted from the bank account, you will add it back in the reconciliation calculation.

3. Compare transactions in your BOOE with the bank statement: Your firm should have a record of each withdrawal and deposit in the statement. So, you systematically compare each transaction on your statement with your BOOE.

Anything on your statement that is not in your BOOE? You need to make a note of it. It will be a reconciling item for the month, and needs to be investigated.

There will likely be transactions in your BOOE that are not on your statement. In our example, cheques 5 and 6 have not yet cleared the bank by May 31, so they are outstanding items.

Outstanding cheques are deducted from the bank statement balance in a reconciliation.

After this step is completed, you know which transactions on your BOOE are different from your monthly statement.

4. Make a list of the client ledgers for the pooled trust account with balances at the end of the month: As part of the reconciliation process, you must compile a list of ledgers with balances outstanding at May 31.

In our example, Brown (#002), Green (#003), and White (#004 and #005) had balances at the end of the month. This list will become the third part in the reconciliation.

A completed bank reconciliation for the items noted above is on the next page:

Red & Red LLP**Pooled Trust Account Bank Reconciliation****May 31, 2013**Ending Balance from the bank statement \$20,315 (a)

Outstanding Cheques:

<u>Chq Date</u>	<u>Chq #</u>	<u>File #</u>	<u>Payee</u>	<u>Amount</u>
May 31	5	004	Manitoba Clinic	\$ 500
May 31	6	004	Mr. White	<u>\$14,500</u>

Total Outstanding Cheques \$15,000 (b)

Other Reconciling Items:

Bank charge May 1 cheque printing \$ 35 (c)Reconciled Bank Balance (a) – (b) + (c) \$ 5,350 (PART 1)Balance of BOOE as at May 31 \$ 5,350 (PART 2)

Client Trust Listing:

<u>File #</u>	<u>Client</u>	<u>Matter</u>	<u>Last Entry Date</u>	<u>Amount</u>
#002	Brown	Divorce	May 15, 2013	\$ 200
#003	Green	Estate	May 16, 2013	\$ 150
#004	White	Accident	May 31, 2013	\$ 2,000
#005	White	Domestic	May 31, 2013	<u>\$ 3,000</u>

Total Client Trust Ledgers \$ 5,350 (PART 3)

As Part 1, 2 and 3 are all the same, you are in balance. You reconciled!

SPECIFIC TRUST INVESTMENT ACCOUNT

If a member has activity in more than one STIA during the month, the monthly reconciliation can include all accounts together. In comparison, should the member have more than one pooled trust account, each account must be reconciled separately.

So, in the case of Red & Red LLP, the daily investment account for the Green estate and the GIC for the Black estate can be reconciled together.

A reconciliation of an STIA also starts with the receipt of the monthly statement. As was the case with pooled trust accounts, firms who use on-line banking (on a 'read only' basis) sometimes log in to obtain their account information so they can reconcile earlier than waiting for monthly statements to arrive.

The type of monthly statement you receive will depend both on the type of investment, as well as which savings institution you are using. Furthermore, for GICs with some institutions, you may not automatically receive a monthly statement for transactions. Regardless of these factors, you *must* obtain a monthly statement of balance in some form. In some cases, firm staff request that a teller print the information when they attend to their savings institution on the first banking day subsequent to month end.

As was mentioned for the pooled account, there is no prior reconciliation to reference, as this is Red & Red LLP's first month of operations.

As all necessary records have been gathered, here are some guidelines for performing the reconciliation:

1. Review the monthly statement(s):
 - a. Ensure the savings institution has set up the investment correctly – is the investment for the Black estate in the name of "Red & Red LLP in trust for the Estate of Brenda Black"?

The investment for the Green Estate should be similarly named.
 - b. You should also be reviewing the transactions to ensure they are reasonable.
 - c. Compare each monthly statement with the corresponding STIA ledger.

Since Red & Red LLP has more than one STIA at month end, an additional comparison between the monthly statements and the firm records must be performed. The balance for the Black estate on the GIC statement should be the same as the ledger balance for the Black estate. The same is true for the Green estate.

2. Compare transactions in the STIA BOOE with the monthly statement: As with your pooled trust account, you need to systematically compare each transaction on your statements with your BOOE. Anything on your statement that is not in your BOOE? Equally, is there anything on your BOOE that is not reflected on your statement? You need to make a note of these differences. They will be reconciling items for the month, and need to be investigated in accordance with the guidelines discussed in 3.02(4)(d).
3. Make a list of the STIA client ledgers with balances at the end of the month:

In our example, Black (#001STIA) and Green (#003STIA) had balances at the end of the month. A list of these matters must be prepared, with the total compared with the BOOE balance.

Completing the bank reconciliation for the items noted above, it would look like this:

Red & Red LLP

STIA Reconciliation

May 31, 2013

Ending Balance from the bank statements:

Black GIC	\$50,000	
Green DIA	<u>\$39,150</u>	
Total statement balances		\$89,150
Outstanding Items		<u>nil</u>
<u>Reconciled Bank Balance</u>		<u>\$89,150</u> (PART 1)
<u>Balance of STIA BOOE as at May 31</u>		<u>\$89,150</u> (PART 2)

Client Trust Listing:

<u>File #</u>	<u>Client</u>	<u>Matter</u>	<u>Last Entry Date</u>	<u>Amount</u>
001 STIA	Black	Estate	May 1, 2013	\$50,000
003 STIA	Green	Estate	May 31, 2013	<u>\$39,150</u>
<u>Total Client Trust Ledgers</u>				<u>\$89,150</u> (PART 3)

As Part 1, 2 and 3 are all the same, you are in balance. You reconciled!

8. Appendix H - Templates

(i) Book of Original Entry

BOOK OF ORIGINAL ENTRY – Pooled Trust Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money; and
- (3) In addition to columns labelled (1), use these columns when you *disburse* money (i.e. write a cheque).

Transfers in the pooled trust account between client matters can be recorded as a *disbursement* from one client and a *receipt* for the other.

Date (1)	Client Name &/or Number (1)	Description (1)	Source of Funds (2) *	Form of Receipt (2) *	Receipt # (2) *	Cheque Payee (3) *	Cheque # (3) *	Cheque Amount (3)	Receipt Amount (2)	Balance (1)

* These columns do not apply for matter to matter transfers.

BOOK OF ORIGINAL ENTRY – Specific Trust Investment Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money from the pooled trust account; and
- (3) In addition to columns labelled (1), use these columns when you *return* money to the pooled trust account (i.e. partial or full redemption of the investment).

Date (1)	Client Name &/or Number (1)	Description (1)	Source of Funds (2)	Destination of Funds Disbursed (3) *	Redemption Amount (3)	Receipt Amount (2)	Balance (1)

* Although this must be a firm pooled trust account, this column becomes relevant if the firm has more than one pooled trust account. Otherwise, this column will always contain 'pooled trust account'.

(ii) Client Trust Ledger

CLIENT TRUST LEDGER – Pooled Trust Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* money; and
- (3) In addition to columns labelled (1), use these columns when you *disburse* money (i.e. write a cheque).

Transfers between client matters can be recorded as a *disbursement* from one client and a *receipt* for the other.

MATTER:								FILE #
NAME:								
ADDRESS:								
Date (1)	Description (1)	Source of Funds (2) *	Receipt # (2) *	Cheque Payee (3) *	Cheque # (3) *	Cheque Amount (3)	Receipt Amount (2)	Balance (1)

* These columns do not apply for matter to matter transfers.

CLIENT TRUST LEDGER – Specific Trust Investment Account

Not every column will be used for every transaction. Each column is labelled with a number:

- (1) Use these columns for every transaction;
- (2) In addition to columns labelled (1), use these columns when you *receive* funds from the pooled trust account or the investment earns interest; and
- (3) In addition to columns labelled (1), use these columns when you *return* money to the pooled trust account (i.e. partial or full redemption of the investment).

MATTER:						FILE #
NAME:						
ADDRESS:						
Date (1)	Description (1)	Source of Funds (2)	Destination of Funds Disbursed (3) *	Redemption Amount (3)	Receipt Amount (2)	Balance (1)

* Although the funds must be returned to a firm pooled trust account, this column becomes relevant if the firm has more than one pooled trust account. Otherwise, this column will always contain 'pooled trust account'.

(iii) Monthly Reconciliation

(firm name)

Monthly Trust Reconciliation

Pooled Trust Account _____
(savings institution name and account number)

Month of _____, 20__

Balance per bank statement \$ _____ **(A)**

Outstanding Deposits:

Date recorded in BOOE	\$ Amount
Total	

ADD: \$ _____ **(B)**
(insert total outstanding deposits here)

Outstanding Cheques:

Chq date	Chq #	File #	Payee	\$ Amount
Total				

DEDUCT: \$ _____ **(C)**
(insert total outstanding cheques here)

Other Adjustments:

Date	Full details	\$ Amount
Total		

ADD OR DEDUCT: \$ _____ **(D)**
(insert total other adjustments here)

- 1. Reconciled Bank Balance = (A)+(B)-(C)+/-(D) _____

- 2. Book of Original Entry Balance at Month End: \$ _____

- 3. Client Trust Ledgers, list attached: \$ _____

I have prepared the above reconciliation, and observe that the balances for category 1, 2, and 3 above all agree.

Prepared by:

Name: _____

Date: _____

Reviewed by:

Name: _____

Date: _____

(iv) Other Valuable Property

Guidelines for using this table:

- (1) Be as specific as possible;
- (2) Where a quantity and value can be assigned it should be noted in the description (e.g. 5 x \$100 Canada Savings Bonds, serial numbers 123, 124, etc.); and
- (3) Where applicable, a separate line should be used for each separate item (e.g. multiple pieces of estate jewellery which may be released at separate times).

RECORD OF VALUABLE PROPERTY

RECEIPT OF PROPERTY					RELEASE OF PROPERTY		
Receipt Date	Nature/Description of Property	Client Name and Matter #	Location of Property	1. Signature of Depositor	Date of Release	To Whom Released	1. Signature of Recipient
				2. Signature of Receiving Staff Member			2. Signature of Releasing Staff Member
				1.			1.
				2.			2.
				1.			1.
				2.			2.
				1.			1.
				2.			2.
				1.			1.
				2.			2.

9. Appendix I – “What You Should Know About Stale-Dated Cheques and Stop Payments” (December 2010 Communiqué)

What You Should Know About Stale-Dated Cheques and Stop Payments Sherri Jack, Director of Audit

(From the Law Society of Manitoba’s December 2010 Communiqué)

The Law Society has recently learned some surprising information about stale dated cheques and “stop payments”. Did you know that a stale dated cheque can actually clear your bank account? Did you know that even if you have place a “stop payment” on a cheque, there is still a risk the cheque may clear? Here are some things you should know about these items and some tips to reduce the risk of a shortage in your trust account.

Are Stale dated cheques really non-negotiable?

The Canadian Payments Association (CPA) considers a cheque to be stale dated or non-negotiable after 6 months. This means there should be no risk in re-issuing the cheque since the original cheque won’t clear your bank. However, the Law Society recently learned that this may not always be the case. According to the CPA website, although a stale dated cheque may be returned as non-negotiable, it is not a requirement and your financial institution (FI) may decide to cash it. This occurs more commonly with cheques deposited through an ATM because the dates are not typically checked. If a stale dated cheque does clear, some FIs will take responsibility and correct the item if brought to their attention. Other institutions will only fix the error if notified within a certain time frame. This can vary from 24 hours after the cheque clears, to 30 days, depending on the financial institution. Regardless of their own procedures, a bank’s decision to “make good” on an item may also depend on the relationship with their banking client. You should also be aware that bank drafts, money orders, certified items and government cheques are never stale dated.

Are “Stop payments” guaranteed to stop a cheque?

If you wish, your FI can place a “stop payment” on a cheque you wrote to prevent it from clearing your account. This will cost in the range of \$10-\$13. Stop payments are within the control of each FI rather than the Canadian Payments Association. However, it recently came to the Law Society’s attention that in certain cases there may be no guarantee that the cheque will be “stopped”, for instance if it is already in the clearing process, if you did not provide accurate information about the cheque or if a certain time frame has elapsed”. Similar to stale dated cheques, each institution has their own procedures and policies. It has been noted that some banks have no time limit on a stop payment contract and if presented, the cheque should never clear. However, other banks have a 6 or 12 month contract after which time the cheque might clear. If you wish to extent the time limit on the stop payment you must contact your FI, enter into another contract and pay a further fee.

Some Tips to reduce the risk of a shortage in your trust account

- Since there are differences in the banking world, verify policies and procedures with your own financial institution and branch. Make sure to monitor your bank accounts carefully and on a timely basis to identify errors and cheques clearing your account. This includes timely completion of your monthly trust reconciliation;
- Report errors to your FI right away, including stale dated cheques or stop payments that have incorrectly cleared;
- If you are concerned about an especially large trust cheque that has been “lost” or misplaced, the only real guarantee that the cheque will not clear is to close the bank account. While this is an extreme measure, if the dollar value is high, it might be an option;
- Another option in the case of a large cheque is to have the payee sign an indemnity agreement so that they would cover the shortfall if both cheques were to clear;
- While the FI may ultimately correct the error, you may have to personally come up with the money in the interim to cover the shortfall;
- Prior to re-issuing a stale dated cheque, ask your bank if they will clear the original stale cheque. You may not need to re-issue the cheque after all;
- One bank suggests noting “*void if negotiated after 6 months*” on the face of your cheques. While not legally binding, it may draw the attention of the payee or teller and may prevent a stale dated cheque from clearing;
- Proactive management of issued cheques can help prevent lost or stale dated cheques. For example, instead of giving a trust cheque directly to your client, consider getting their written instructions to allow you to send the cheque to their FI for direct deposit to their bank account. Also, have a staff member contact payees for cheques older than three months and ask them to cash the cheque. This may prevent a cheque from becoming stale in the first place;
- When placing a stop payment on a cheque provide accurate and complete information about the cheque, otherwise the FI will not identify and return the cheque;
- When initiating a stop payment verify with your FI how long it will remain in effect.

