



Law Society  
of Ontario

Barreau  
de l'Ontario

# The Bookkeeping Guide

**FOR PARALEGALS**

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Visit *For Paralegals* at [www.lso.ca](http://www.lso.ca) or phone 416-947-3315 or 1-800-668-7380 ext 3315

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# THE BOOKKEEPING GUIDE FOR PARALEGALS

## PREAMBLE

We have written this Guide to help paralegals licensed by the Law Society of Upper Canada and their staff cope with the more common bookkeeping issues in a legal services office and also to better understand the Law Society's By-Law 9 (See the Appendices). While written especially with paralegals practising on their own or in small offices in mind, these recommendations can be used in any size legal services office. **The Guide provides general advice; it does not cover every possible situation that can arise in a legal services office and it is not legal advice.** If you have questions about the By-Laws, you can call the Law Society Practice Management Helpline at 416-947-3315 or toll free in Ontario 1-800-668-7380 ext. 3315. You can also check the Law Society's Web site: [www.lsuc.on.ca](http://www.lsuc.on.ca). If you have specific bookkeeping, accounting or tax questions, we suggest that you consult an accountant or lawyer who practises in these areas.

## INTRODUCTION: WHY KEEP BOOKS AND RECORDS?

*There are several reasons to keep books and records:*

The Law Society sets out in By-Law 9, the *minimum* requirements for books and records to be maintained in a legal services practice. The minimum requirements are aimed at protection of the public and therefore focus on trust records.

General trust law requires trustees, including paralegals holding client funds, to be able to account to beneficiaries at any time. In order to do this, you have to have recorded the money you received from each client, how much money you disbursed for each client, and what the unexpended balance is for each client. You also have to keep your bank statements and deposit slips as independent records (source documents) of your trust transactions.

But the most important reason to keep books and records is because it is in *your* best interest. By maintaining complete, accurate and up to date records, you will have current financial information available so you can make sound financial decisions about your practice. Proper accounting records also help you to meet your statutory obligations in filing reports on time to the Canada Revenue Agency for income tax and HST, and to the Law Society.

## TYPES OF ACCOUNTING SYSTEMS

There are several different kinds of accounting systems: manual double entry, one write, spreadsheet software, general accounting software, and legal accounting software. When choosing an accounting system you should consider what will work best in your practice - the number of transactions you have, whether you maintain your records yourself or hire someone

to do them for you, what you can afford, and how well you understand bookkeeping and computer programs. Please note that the Law

Society cannot make this decision for you. You must determine what system is right for you and your practice.

*Sample:*

<b>TYPE OF SYSTEM</b>	<b>ADVANTAGES</b>	<b>DISADVANTAGES</b>
manual double entry	<ul style="list-style-type: none"> <li>– simple</li> <li>– inexpensive</li> </ul>	<ul style="list-style-type: none"> <li>– time consuming if large number of transactions</li> <li>– does not automatically post to subledgers</li> <li>– arithmetic errors more common</li> </ul>
one write	<ul style="list-style-type: none"> <li>– simple</li> <li>– inexpensive</li> <li>– posts to subledgers</li> </ul>	<ul style="list-style-type: none"> <li>– time consuming if large number of transactions</li> <li>– arithmetic errors more common</li> </ul>
spreadsheet software	<ul style="list-style-type: none"> <li>– inexpensive</li> <li>– automatic calculations</li> </ul>	<ul style="list-style-type: none"> <li>– time consuming if large number of transactions</li> <li>– requires training</li> <li>– errors due to incorrect formulae are more difficult to detect</li> </ul>
general accounting software	<ul style="list-style-type: none"> <li>– automatic calculations</li> <li>– posts to subledgers</li> <li>– produces financial reports</li> </ul>	<ul style="list-style-type: none"> <li>– reports not designed for trust accounting</li> <li>– requires training</li> <li>– customization or additional records may be needed to achieve compliance</li> </ul>
legal accounting software	<ul style="list-style-type: none"> <li>– designed for trust accounting</li> <li>– automatic calculations</li> <li>– posts to subledgers</li> <li>– produces financial reports</li> </ul>	<ul style="list-style-type: none"> <li>– expensive</li> <li>– requires training</li> </ul>

## **BANK ACCOUNTS IN A LEGAL SERVICES PRACTICE**

You may have as many bank accounts as you need to operate your practice, but keep in mind that each bank account increases your record keeping obligations.

Most legal services offices will have at least one general account and one mixed trust account. It is important to understand what money goes into your trust account and what money goes into your general account.

Whenever you receive money:

- on behalf of a client
- for future disbursements
- for future or unbilled legal services
- an overpayment of your billed services

you are receiving trust funds. Once you receive trust funds you must deposit them into a trust account by the end of the next banking day. In the case of an overpayment of your billed services, you must transfer the amount that belongs to you to your general account as soon as practical. Depending on the client's instructions, you could either hold the overpayment in trust for the client for future fees and disbursements or return it to the client.

Whenever you receive money that is entirely:

- payment for completed legal services for which you have sent the client a bill
- reimbursement for proper expenses you have made on behalf of a client
- your or your firm's money
- a general monetary retainer

you are *not* to pay it into your trust account. This money would normally be deposited into your general account.

You cannot rely on section 8(1)(a) of By-Law 9 to deposit funds to your general account. This section requires you to obtain a client's written direction not to put the client's funds in a mixed trust account. It is meant for clients who want their funds to be put in an interest bearing trust account which must be a separate account only for that client's money. Trust money for future fees and disbursements must always be deposited to a trust account. It is not your money and therefore cannot be deposited to your general account.

**A word about general monetary retainers** (referred to in section 8(2)2 of By-Law 9):

Before deciding that a payment is a general retainer, you should be aware that the Law Society has established the following criteria for general monetary retainers:

1. The onus is on you to establish that the retainer is a *true* general retainer.
2. A written agreement between you and your client which describes the payment as a general retainer, will not be accepted as conclusive, and the circumstances surrounding the payment will be scrutinized carefully.
3. It will be concluded that a retainer is a specific retainer which must be deposited in your trust account where your client does not understand the nature of the general retainer agreement and intended the payment to cover specific legal services to be provided, and where the total amount paid by the client, including the general retainer, is comparable to your usual fee for the services provided.

General monetary retainers are extremely rare as clients are likely to expect that any payment to their paralegal is intended to go toward payment of their legal services fees.

## **CASH RECEIPTS**

When you receive cash, whether in trust or for your general account, you must prepare a duplicate cash receipt that identifies:

- the date of receipt
- the person from whom the cash is received
- the amount of cash received
- the client for whom the cash is received and any related file number

and containing:

- your signature or the signature of a person authorized by you to accept cash
- the signature of the person from whom the cash is received.

There is a sample duplicate cash receipt in the Sample Books and Records section of this Guide: document #11.

Please note that you may not accept cash equivalent to \$7,500 CDN or more, from a person with respect to any one client file except as permitted by section 6 of By-Law 9.

### ***1. General Account***

The general account is your firm's operating account. This is the account you use to:

- deposit payments from clients you have billed for completed legal services
- pay your office expenses: rent, office supplies, staff salaries, bank charges, etc.
- pay disbursements on behalf of your clients
- pay yourself.

No money belonging to clients should be in this account.

Try to avoid using a personal account as your office general account. Whatever bank accounts you use for your legal services practice must be produced on an audit. Personal accounts might not have the bank statements, returned cheques and duplicate deposit slips you are required to keep. For convenience it is usually best to have your general bank account at the same financial institution as your trust account.

## **2. Trust Accounts**

The trust account is for your clients' money, so if you do not receive trust funds in your legal services practice you do not need to open a trust account.

Trust accounts are the accounts you use to:

- deposit money you receive from your clients to be paid to another party
- deposit money you receive from other parties on behalf of your clients
- deposit money you receive from clients for future legal services and disbursements
- disburse money as directed by your clients
- reimburse your practice for proper expenses you have made on behalf of your clients
- transfer money to your general account for fees *after* you have sent a bill to your client for completed legal services.

Avoid trust funds languishing in trust accounts. You should review your client trust ledger accounts monthly. Any amounts that you can bill and transfer to your general account or refund to the client should be done promptly. If your trust reconciliation shows cheques that have been outstanding for more than a few months, follow up with the payees to find out whether they received the cheques. Once a cheque is stale dated, (*i.e.* has not been cashed within six months from the date of the cheque), you should stop payment on the cheque, re-establish the liability in the client trust ledger account for the applicable client, and reissue the cheque if appropriate. If you are unable to locate the client, despite having made reasonable efforts to do so throughout a period of two years, you can apply to pay the money to the Law Society's Unclaimed Trust Fund. Information on the fund and the Application Form can be found on the Law Society website.

Whenever you open or close a trust account, you must immediately inform the Law Society in writing of the location and account number of any account into which you have deposited client trust funds: By-Law 8 subsection 4(1)5. A sample Report on Opening or Closing a Trust Account can be found in the Appendices.

There are different kinds of trust accounts:

### **a. Mixed Trust Account**

The most common type of trust account in a legal services office is called a "mixed" or "pooled" trust account. These trust accounts are any bank accounts that hold money for more than one client. When opening a mixed trust account, you must give a written direction to your financial institution to pay any interest on the account directly to The Law Foundation of Ontario. You should send a copy of this letter to The Law Foundation of Ontario. You must report annually on all mixed trust accounts, as well as the opening and closing dates (if applicable) through your Paralegal Annual Report. This information will be shared with The Law Foundation of Ontario. A sample Letter of Direction to a Financial Institution can be found in the Appendices.

Make sure that the agreement you sign when opening a mixed trust account directs the financial institution to deduct any service charges for your trust account from your general account, and does not allow the financial institution to remove any money from your trust account on its own. Note, however, that if you deposit a cheque to your trust account and it is returned “not sufficient funds” or NSF, your financial institution will deduct that amount from your account because your financial institution never received the money. Be careful not to disburse funds from your trust account on behalf of a client until the cheques for that client have cleared; that is, your financial institution has actually received the money from your client’s financial institution. You should check with your financial institution to find out how many days it requires to clear a cheque after you have deposited it.

Whenever you receive trust funds, you must immediately deposit them into a trust account that is in your name or in the name of the legal services practice where you are either a partner or an employee. You should deposit any trust money you receive by the end of the next banking day. If you have your own separate legal services practice but share office facilities in association with other paralegals, you must have your own separate trust account and separate books and records for your trust transactions. Your trust account should be clearly identified as “trust” on your bank statement and cheques.

You should contact your bank branch to update the information on the beneficiaries of any mixed trust accounts as of April 30, by May 30 each year for Canada Deposit Insurance Corporation (CDIC) purposes, as eligible deposits are insured up to a maximum of \$100,000 per beneficiary (*i.e.* client) of the trust account. Please contact CDIC for details or consult the CDIC website for specific information about trust accounts and The Joint and Trust Disclosure By-Law.

***b. Separate Interest Bearing Trust Account***

This type of trust account holds trust funds for only one client. Typical separate interest bearing accounts are passbook accounts, GICs, and Term Deposits. The interest on these accounts belongs to the client and should be recorded in your trust receipt records as it is earned for each client. Similarly, any service charges are charged to the clients and recorded as disbursements for those clients.

If you expect you are going to be holding a large sum of money for a client for an extended period of time, you should discuss with the client whether he or she wants interest on the money. You should get the client’s instructions in writing as required by section 8(1)(a) of By-Law 9, taking care that the client is not looking to you for investment or financial advice.

Not all separate interest bearing accounts are guaranteed by CDIC, so you will want to be sure your client understands the nature of the investment and whether there will be

sufficient funds available when the client needs them before accepting your client's written instructions.

If the client does instruct you to put his or her money in an interest bearing account, consider whether the money will be required on short notice since some investments have reduced or no interest on early redemption. Also, decide how interest will be handled and record the client's S.I.N. and/or corporate number for allocation of interest income. This money, however, must still be recorded in your trust records as it is your client's money and considered trust funds for the purposes of By-Law 9.

If you are asked to hold disputed funds in an interest bearing account, consider getting written instructions from all parties that allow you to charge a monthly fee for administering the funds if the parties have not agreed on the disposition of the funds within a reasonable time, for example, three to six months.

## **FINANCIAL INSTITUTIONS FOR PARALEGALS' MIXED TRUST ACCOUNTS**

Your mixed trust accounts must be kept at one of the following institutions:

- chartered bank
- provincial savings office
- credit union or league subject to the *Credit Unions and Caisse Populaires Act, 1994*
- registered trust corporation.

When opening a mixed trust account, check with the financial institution to make sure:

- it has an agreement with The Law Foundation of Ontario for the payment of interest on mixed trust accounts
- it can provide you with the monthly bank statements and returned cheques, including certified cheques, as required by By-Law 9 (imaged cheques, clearly showing front and back of cashed cheques, which will eventually be provided by all financial institutions, are acceptable).

## **MAINTAINING FINANCIAL RECORDS**

You must keep your financial records available for the time periods set out in section 23 of By-Law 9. This means you must keep the records described in section 18 of By-Law 9 for:

1. *The most recent six (6) full years plus the current year:*
  - record of transfers between clients' trust ledger accounts
  - general account receipts and disbursements journals
  - fees book or chronological file of bills to clients

- book of duplicate cash receipts.
2. *The most recent ten (10) full years plus the current year:*
- trust account receipts and disbursements journals
  - client trust ledger
  - monthly trust comparisons for all trust accounts supported by trust account reconciliations and client trust listings
  - valuable property record
  - bank statements, including GIC, term deposit or other bank confirmations; pass books; cashed cheques, including certified cheques and any imaged cheques; detailed duplicate deposit slips
  - signed requisitions for electronic transfers of trust funds (Form 9A)
  - signed printed confirmations of electronic transfers of trust funds.

While By-Law 9 obliges you to keep your records current at all times, ensuring your financial records are accurate, legible, detailed, and up to date will help you to run your legal services practice more efficiently. It can be very costly both in time and money, and can damage your client relationships to let your records fall into arrears. See the “Sample Books and Records” section of this Guide for examples of how to prepare financial records required by section 18 of By-Law 9.

While section 21 of By-Law 9 permits you to keep your financial records electronically, you must be able to produce paper copies of your records for the Law Society for the time periods described above. We suggest you print your journals and records monthly to avoid the all too common problems with computer crashes, data corruption, and software update incompatibility. If you prepare any of your financial records by hand they must be permanent, for example prepared in ink, or prepared in pencil in draft then photocopied.

Keep in mind that whether you do your own record keeping, assign it to a staff member or retain a bookkeeper or accountant to maintain it, *you*, (and your partners if any), are responsible for ensuring that your office maintains the required records and follows the money handling requirements in By-Law 9. You should ensure that whoever is maintaining your accounting records is familiar with the Law Society’s By-Law 9. Some items you and your staff should be vigilant about are:

- overdrawn or inactive client trust ledger accounts
- uncorrected or unexplained reconciling items on the trust bank reconciliations
- trust receipts outstanding beyond the following banking day
- review of the trust comparison for accuracy by the 25<sup>th</sup> of the following month.

You should ensure that you have control of your accounting records at all times and that they are kept secure and confidential.

Consult the sample Internal Control Self Assessment Guide in the Appendices for these and other internal controls appropriate for your office, especially if you handle client trust funds, to ensure you and your staff are following the correct record keeping and money handling procedures.

## DISBURSING TRUST FUNDS

It is important to have an audit trail, recording each step and preserving original and supporting documentation (source documents), for all transactions in a business, but especially if you handle client trust funds. A trust disbursement must always be initiated in writing by a paralegal licensed by the Law Society, who is permitted to handle trust funds. The signed written authorization, *e.g.* cheque, Form 9A, letter of direction to your financial institution, then becomes part of your accounting records. If you declare bankruptcy you are not permitted to handle or have trust accounts in your name (section 2 of By-Law 9).

Section 9 of By-law 9 allows you to withdraw trust funds you are holding for a client for the following reasons *only*:

- to make a proper payment to or on behalf of the client
- to reimburse your office for proper expenses incurred on behalf of the client
- to pay yourself or your office, fees for legal services for which you have sent a fee bill to the client
- to transfer funds to another trust account for a client
- to withdraw funds that according to By-Law 9 should not have been deposited to the trust account.

You may disburse trust funds by cheque, bank draft, and wiring funds through your bank. You may also use Internet banking if you follow the requirements of section 12 of By-Law 9. If you withdraw trust funds to pay your fees and/or disbursements, section 10 of By-Law 9 limits you to the follow methods: a cheque payable to you or your paralegal firm name, transfer to a non trust account, (*i.e.* general bank account), in your or your paralegal firm's name, and electronic transfer. Withdrawing trust funds in cash is risky and should only be done on the client's written instructions; you should always get a signed receipt from the payee. Always check your clients' trust ledger to ensure you hold sufficient funds in trust for a particular client before disbursing funds for that client. You should confirm your financial institution's holding periods on funds to be sure cheques you have deposited from clients have cleared and will not be returned NSF (not sufficient funds).

If you received fees, disbursements, expenses, or bail in cash, Section 6(e) of By-Law 9 requires that you make any refund of those payments in cash.

### 1. *Cheques vs Bank Drafts*

You should be aware that cheques leave a better audit trail than bank drafts. Cashed cheques, including certified cheques, are your records and you must arrange for your financial institution to return them to you with your bank statements each month. Some financial institutions provide imaged cheques which are sent to you electronically. Bank drafts are the financial institution's records. Financial institutions do not usually retain their original records for the ten year time period that you are required to keep your bank records. Returned cheques confirm that the funds have cleared and have the endorsement details on

the back. Your copy of a bank draft will not confirm any of this information and you may have to spend time and money to obtain a copy of the bank draft from your financial institution to prove payment.

You must not issue trust cheques or bank drafts payable to “cash” or “bearer” (section 11 of By-law 9) and you should withdraw cash from the trust account only when necessary (e.g. refunds of fees, disbursements, expenses, or bail paid in cash as per section 6(e) of By-Law 9), or on the client’s written direction. You should always get a detailed receipt signed by the payee for *any* cash disbursement.

## **2. Internet Trust Disbursements**

If you disburse any funds by Internet banking, you must follow the procedure set out in section 12 of By-Law 9:

- complete a Form 9A for each client transaction (See the Appendices for a sample completed Form 9A)  
*(This Form must be signed by a person who has signing authority on your trust account. Except for exceptional circumstances, this must be a lawyer or paralegal licensed by the Law Society who is entitled to hold trust funds.)*
- one person using a password, enters the transfer data as set out in the Form 9A
- another person with a separate password, authorizes the transfer  
*(A paralegal practising alone without employees may both enter the data and authorize the transaction.)*
- print the electronic confirmation of the transaction that includes:
  - i. your trust account number
  - ii. name, branch, and address of the account to which the funds have been transferred
  - iii. name of the account to which the funds have been transferred
  - iv. number of the account to which funds have been transferred
  - v. time and date the transaction details and authorization were received by your financial institution
  - vi. time and date the confirmation of the transaction is sent to you from the financial institution*(While this confirmation must be obtained by the end of the next banking day, realistically it may not be available unless it is printed immediately.)*
- no later than the close of the second banking day after the transaction, compare the Form 9A with the printed confirmation and verify that the money was withdrawn as specified in the Form 9A
- write the client name, client matter, and any file number on the printed confirmation
- sign and date the printed confirmation.

Both the Form 9A and printed confirmation should be kept in numerical order by requisition number with your financial records. You may want to keep a copy in the client’s file as well.

## **CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS – BY-LAW 7.1 PART III**

As of December 31, 2008, subsection 22(1) of By-Law 7.1 requires that you obtain specific details identifying your clients for all new client matters; and if you receive, pay or transfer funds, or if you give instructions to receive, pay or transfer funds, then you are also required to obtain verification of the client's identification. You should review section 23 of By-Law 7.1 for the specific identification and verification requirements and subsections 22(2), (3) and (4) for exemptions for certain licensees, types of funds, and certain clients. You should familiarize yourself with the definitions in section 20 and also for how long you must keep the client identification and verification information as set out in subsection 23(14) of the By-Law. There are sample completed identification forms for individuals and organizations in the Sample Books and Records and you can find more Law Society resources and further information on the Society web site at: <http://rc.lsuc.on.ca/pdf/kt/clientIDParalegals.pdf>.

### **BILLING CLIENTS**

In every matter, you should send invoices to the client containing a clear statement of what amount is owing, and providing adequate detail of the legal services you provided and any disbursements incurred on the client's behalf. You should always send a final bill, but if the matter is lengthy it might be appropriate to send interim invoices, *e.g.* monthly. The invoice information should be recorded in a Fees Book detailing the fees charged to the client, other billings charged to the client, the date of billing and the client who is billed. Alternatively you can keep copies of the invoices in date order in a Chronological Billings File.

If you have money in trust to pay your invoice, then once you have completed the services you agreed to provide for the client and sent the client an invoice for those services, By-Law 9 section 9(1)(3) allows you to transfer the money to your general account. The invoice should be entered and posted in your financial records before you transfer money from Trust to General for earned fees.

A proper system of invoicing is not limited to practices where an invoice is required to release monies from Trust. When you provide services without having a monetary retainer paid in advance, it is still essential that you have a proper system of invoicing. Your invoices are the foundation upon which your billing and accounting records system is built.

## **CREDIT AND DEBIT CARD PAYMENTS**

If you accept credit or debit card payments from clients, you must make arrangements with your financial institution to have retainers for future fees and disbursements paid directly into your trust account, and payments for your fee bills to clients, paid directly into your general account. You will likely need two merchant accounts to accomplish this. You cannot deposit both retainers and payments into one account, then immediately transfer the funds that do not belong in that account to your other account. If you accept both types of payment by debit card, you will have to use two machines, one for your trust account and one for your general account. See the Appendices for “*Use of Credit Cards in The Legal Practice*”.

If you use your own credit card to make a payment on behalf of a client, you should record the payment details in your general disbursements journal on the day you make the payment.

## **AUTOMATED TELLER MACHINES**

If your financial institution offers ATM access to your trust account, you may use it for deposits only. Ensure that your bank card is encoded for deposit only. Read the financial institution’s agreement carefully and make sure you understand the risks involved in using this method of deposit. In some agreements the depositor is responsible for the funds until they are received by a representative of the financial institution. You should always print a receipt of an ATM deposit and keep it with your deposit book along with a record of the source of the funds and the client reference.

## **CONCLUSION**

We hope you find the information provided in this Guide helpful in maintaining the books and records of your practice. Remember it is *your* responsibility as a paralegal to ensure your practice is in compliance with the *Rules of Professional Conduct* and the Law Society’s By-Laws. Keeping clear, complete, and current financial records not only helps you to stay in compliance with the Law Society’s Rules and By-Laws, it will also make your practice operate more efficiently and allow you to provide better service to your clients. If you have any questions or comments on this Guide, please contact the Practice Management Helpline at 416-947-3315, toll free in Ontario 1-800-668-7380 ext. 3315, or visit the Law Society’s website at [www.lsuc.on.ca](http://www.lsuc.on.ca).

## SAMPLE BOOKS & RECORDS

The following are examples of financial records described in By-law 9, showing how you can record the typical kinds of transactions that occur in a legal services office.

### 1. Trust Receipts Journal: subsection 18(1) of By-Law 9

For each amount you receive in trust for a client, you must record:

- date you received the money
- method by which you received the money
- purpose for which you received the money
- person or institution from whom you received the money
- amount you received
- name of the client for whom you received the money.

*Sample:*

<b>Paula Paralegal Trust Receipts Journal</b>					
<b>Date 2014</b>	<b>Funds Received From</b>	<b>Client</b>	<b>Amount</b>	<b>Method of Payment</b>	<b>Purpose</b>
Jul 12	Jane Piper	Piper - re: small claim court	300.00	Cheque	Retainer
Aug 3	Susan Silver	Silver - re: traffic	100.00	Credit Card	Retainer
Aug 9	Jane Piper	Piper - re: small claim court	125.00	Cheque	Retainer
Aug 16	Ali Said	Said - re: summary charge	600.00	Cert. Cheque	Retainer
Aug 18	David Silver	Silver - re: small claim court	100.00	Cash	Retainer

### 2. Trust Disbursements Journal: subsection 18(2) of By-Law 9

For every payment you make from the trust account, you must record:

- date you made the payment
- method you used to make the payment, for example: cheque, bank draft, electronic trust transfer
- purpose for which you made the payment
- number of the document you used to make the payment, for example: cheque number, bank draft number, electronic trust transfer requisition number

- person or institution to whom you made the payment
- amount of the payment
- name of the client on whose behalf you made the payment.

*Sample:*

<b>Paula Paralegal Trust Disbursements Journal</b>					
<b>Date 2014</b>	<b>Method / Ref #</b>	<b>Paid To</b>	<b>Purpose</b>	<b>Client</b>	<b>Amount</b>
Jul 30	ET # 0081	Paula Paralegal	Agent fee	Piper - re: small claim court	282.50
Aug 5	Cheque # 012	City of Toronto	Set fine	Silver - re: traffic	325.00
Aug 16	Cheque # 013	Minister of Finance	Notice of Garnishment	Piper - re: small claim court	100.00
Aug 23	Cheque # 014	Minister of Finance	Set fine	Said - re: summary charge	500.00
Aug 23	ET # 0082	Paula Paralegal	Process serving fee	Said - re: summary charge	400.00
Aug 27	Cheque # 015	Minister of Finance	Plaintiff's Claim	Silver - re: small claim court	75.00

*Note:* The trust receipts journal and trust disbursement journal can be combined into one journal, often called the “Trust Bank Journal”.

### **3. Clients’ Trust Ledger: subsection 18(3) of By-Law 9**

Every time you record a trust receipt or payment in the trust receipts journal or trust disbursements journal, you must also record the receipt or payment for the specific client in the clients’ trust ledger, and calculate the unexpended balance for that client. This way you always know exactly how much you have in trust for each client.

Record every deposit to your trust account in the name of the client on whose behalf you received it. Do not put any of your, or your firm’s money, such as a float to cover bank charges, in your trust account. There should be no trust ledger accounts in your name, your firm name, or any other name such as “miscellaneous”, “suspense”, or “unknown”, that is not a client’s name. Each client’s receipts, disbursements and balance are listed separately so you know how much you have in trust for each client. For convenience, most firms set up separate client trust ledger accounts for each separate matter for the same client so there will be a separate card or account for each client matter. Together, these accounts make the clients’ trust ledger. You may keep copies of individual client trust ledger accounts for each client in the client files, but you must keep the entire ledger as part of your accounting records.

Sample:

<b>Paula Paralegal Client Trust Ledger</b>				
<b>Account:</b>	<b>PIPER, Jane - re: small claim court</b>			
<b>Date 2014</b>	<b>Particulars</b>	<b>Receipts</b>	<b>Disbursements</b>	<b>Balance in Trust</b>
Jul 12	Retainer - re: small claim court	300.00		300.00
Jul 30	Transfer to general Invoice # 0118		282.50	17.50
Aug 9	Retainer - re: small claim court	125.00		142.50
Aug 16	Notice of garnishment		100.00	42.50

<b>Account:</b>	<b>SAID, Ali - re: summary charge</b>			
<b>Date 2014</b>	<b>Particulars</b>	<b>Receipts</b>	<b>Disbursements</b>	<b>Balance in Trust</b>
Aug 16	Fine advance	600.00		600.00
Aug 23	Fine payment		500.00	100.00
Aug 23	Transfer to general Invoice # 0119		100.00	0.00

<b>Account:</b>	<b>SILVER, David - re: small claim court</b>			
<b>Date 2014</b>	<b>Particulars</b>	<b>Receipts</b>	<b>Disbursements</b>	<b>Balance in Trust</b>
Aug 18	Retainer - re: small claim court	100.00		100.00
Aug 27	Filing defendant claim		75.00	25.00
Aug 30	Transfer from S. Silver	10.00		35.00

<b>Account:</b>	<b>SILVER, Susan - re: traffic</b>			
<b>Date 2014</b>	<b>Particulars</b>	<b>Receipts</b>	<b>Disbursements</b>	<b>Balance in Trust</b>
Aug 3	Retainer - re: traffic	100.00		100.00
Aug 5	Parking ticket payment		90.00	10.00
Aug 30	Transfer to D. Silver		10.00	0.00

#### 4. Trust Transfer Record: subsection 18(4) of by-Law 9

Whenever trust funds are moved from one client's trust ledger account to another client's trust ledger account you must record the transfer and explain the purpose of the transfer.

Sample:

<b>Paula Paralegal Trust Transfer Journal*</b>				
<b>Date 2014</b>	<b>From Client</b>	<b>To Client</b>	<b>Amount</b>	<b>Reason</b>
Aug 30	Susan Silver - re: traffic	David Silver - re: small claim court	10.00	Unused retainer, completed matter; on Susan Silver's written direction

\* In this example, Susan Silver's traffic matter is now over and she has already been fully billed for the services provided. She provided written instruction to Paula Paralegal to transfer her remaining retainer balance from the traffic matter to her son's account for the small claim court matter that Paula Paralegal is also handling. A trust transfer entry is required for transfers between clients but not for matters for the same client, although you should get the client's instructions before transferring the client's funds to another matter for that client.

#### **5. General Receipts Journal: subsection 18(5) of By-Law 9**

For each amount you receive in your practice that is not trust money, record:

- date you received the money
- method by which you received the money
- person from whom you received the money
- amount you received.

Sample:

<b>Paula Paralegal General Receipts Journal</b>			
<b>Date 2014</b>	<b>Funds Received From</b>	<b>Amount</b>	<b>Method of Payment</b>
Jul 2	ACME Bank - re: Bank Loan	2,500.00	Bank Draft
Jul 7	Stephen Bell - re: Inv # 0116	400.00	Cheque
Jul 12	Angela Finelli - re: Inv # 0117	169.50	Cheque
Jul 30	Transfer from trust - re: Piper, Inv # 0118	282.50	ET # 0081
Aug 16	Stephen Bell - re: Inv # 0116	100.00	Cash
Aug 23	Transfer from trust - re: Said, Inv # 0119	100.00	ET # 0082
Aug 30	Stephen Bell - re: Inv # 0116	65.00	Cash

## 6. General Disbursements Journal: subsection 18(6) of by-Law 9

For every payment you make in your practice that is not a trust payment, record:

- date you made the payment
- method you used to make the payment, for example: cheque, bank draft
- number of the document you used to make the payment, for example: cheque number, bank draft number
- amount of the payment
- person to whom you made the payment.

*Sample:*

<b>Paula Paralegal General Disbursements Journal</b>						
<b>Date 2014</b>	<b>Method / Ref #</b>	<b>Paid To</b>	<b>Particulars</b>	<b>Amount</b>	<b>HST Paid</b>	<b>Total Paid</b>
Jul 2	Cheque #51	Lucy Landlord	Rent	1,000.00	130.00	1,130.00
Jul 12	Cheque #52	ABC Office Supplies	Stationary	200.00	26.00	226.00
Jul 26	Debit from account	Acme Bank	Service Fees	20.00	2.60	22.60
Aug 3	Cheque #53	Lucy Landlord	Rent	1,000.00	130.00	1,130.00

## 7. Clients' General Ledger

By-Law 9 does not require this record, but it is useful for keeping track of all the expenses, invoices and payments for each client in one convenient record so you know how much each client owes you. As with the client trust ledger, the details of each separate client matter are usually posted to a separate card or account. We also recommend that you reconcile your general account(s) monthly.

Sample:

<b>Paula Paralegal Client General Ledger</b>						
<b>Account: BELL, Stephen - re: small claim court</b>						
<b>Date 2014</b>	<b>Particulars</b>	<b>Expenses Paid</b>	<b>HST</b>	<b>Fees</b>	<b>Payments from Client</b>	<b>Balance Owed</b>
Jul 2	Fees – Inv # 0116		65.00	500.00		565.00
Jul 7	Client Payment				400.00	165.00
Aug 16	Client Payment				100.00	65.00
Aug 30	Client Payment				65.00	0.00
<b>Account: FINELLI, Angela - re: traffic</b>						
<b>Date 2014</b>	<b>Particulars</b>	<b>Expenses Paid</b>	<b>HST</b>	<b>Fees</b>	<b>Payments from Client</b>	<b>Balance Owed</b>
Jul 2	Fees – Inv # 0117		19.50	150.00		169.50
Jul 12	Client Payment				169.50	0.00
<b>Account: PIPER, Jane - re: small claim court</b>						
<b>Date 2014</b>	<b>Particulars</b>	<b>Expenses Paid</b>	<b>HST</b>	<b>Fees</b>	<b>Payments from Client</b>	<b>Balance Owed</b>
Jul 26	Fees – Inv # 0118		32.50	250.00		282.50
Jul 30	From Trust				282.50	0.00
<b>Account: SAID, Ali - re: summary charge</b>						
<b>Date 2014</b>	<b>Particulars</b>	<b>Expenses Paid</b>	<b>HST</b>	<b>Fees</b>	<b>Payments from Client</b>	<b>Balance Owed</b>
Aug 17	Fees – Inv # 0119		13.00	100.00		113.00
Aug 23	From Trust				100.00	13.00
<b>Account: SILVER, Susan - re: traffic</b>						
<b>Date 2014</b>	<b>Particulars</b>	<b>Expenses Paid</b>	<b>HST</b>	<b>Fees</b>	<b>Payments from Client</b>	<b>Balance Owed</b>
Aug 30	Fees – Inv #0120		6.50	50.00		56.50

**8. Fees Book: subsection 18(7) of By-Law 9**

When you invoice your clients, you can either record the information in a Fees Book or keep a copy of each invoice in chronological (date) order in a billings file. Many legal service firms keep both records. A ringed binder with tab dividers for each month works well for the billings file. If you keep a Fees Book, record the following information:

- fees charged to the client
- other billings charged to the client
- date of billing
- client who is billed.

*Sample:*

<b>Paula Paralegal Fees Book</b>						
<b>Date 2014</b>	<b>Inv #</b>	<b>Client</b>	<b>Fees Billed</b>	<b>Disbursements Billed</b>	<b>HST Billed</b>	<b>Total Billed</b>
Jul 2	0116	Bell - re: small claim court	500.00	0.00	65.00	565.00
Jul 2	0117	Finelli - re: traffic	150.00	0.00	19.50	169.50
Jul 26	0118	Piper - re: small claim court	250.00	0.00	32.50	282.50
Aug 17	0119	Said - re: summary charge	100.00	0.00	13.00	113.00
Aug 30	0120	Silver, S - re: traffic	50.00	0.00	6.50	56.50

\* No trust ledger accounts were created for Angela Finelli or Stephen Bell as no money is being received in trust for them. Paula Paralegal is simply billing these clients as services are being rendered, with no advance of a money retainer.

**9. Trust Bank Reconciliation, Client Trust Listing, and Trust Comparison: subsection 18(8) of By-Law 9**

The trust comparison compares:

- a) your reconciled trust bank balance
- b) your client trust listing total.

These two amounts must be the same. This is one of the most important trust records and you must complete it by the 25<sup>th</sup> of each month for all trust funds you held at the previous month's end. You should correct any trust shortages immediately and correct any bank or posting errors before the next month end.

For the trust reconciliation:

- Check off all of the returned or imaged cheques on the trust bank statement for the previous month, noting any discrepancies in the amounts.
- From your trust disbursement journal, identify any cheques you have issued that do not show as cleared on the bank statement; these are your outstanding cheques.
- List the outstanding cheques by cheque number, date of issue, and amount, then total the amount.
- From your deposit book, check off all deposits on the bank statement noting any discrepancies in the amounts.
- List any deposits for the previous month, by date and amount, that are not recorded on the bank statement; these are your outstanding deposits.
- List any bank errors and/or posting errors individually by date of occurrence and provide a brief explanation; a copy of any supporting documentation, such as a bank memo, should be attached to your reconciliation.
- From the balance on the trust bank statement, subtract the amount of the outstanding cheques, add any outstanding deposits, and adjust for any bank and posting errors to calculate your reconciled trust bank balance.

For the client trust listing:

- From the clients' trust ledger, identify any client for whom you held trust funds at the previous month end.
- List the client names in a logical order, with the unexpended trust balance for each client as at the previous month end.
- Include the last activity date for each client's trust balance on the client trust listing to help you to monitor inactive or dormant amounts.
- Total the client trust listing.

Document the comparison of your reconciled trust bank balance with the client trust listing total. If these two amounts are not the same, you must find and correct the discrepancy.

Sample:

**Paula Paralegal**

***Trust Bank Reconciliation as at August 31, 2014***

**Mixed Trust Account:**

Balance per Bank Statement		\$ 643.50
Less: Outstanding Cheques (see list below)		575.00
Plus: Outstanding Deposits – 31Aug14		0.00
Plus: Bank Error – 11Aug14		9.00
<i>Chq# 012 cleared as \$99.00 s/b \$90.00, corrected 28Sep14 by bank credit memo</i>		

**Reconciled Mixed Trust Bank balance at Aug 31, 2014** **\$ 77.50**

Outstanding Cheques:

<u>Cheque #</u>	<u>Date</u>	<u>Amount</u>
014	23Aug14	\$500.00
015	27Aug14	75.00
Total Outstanding Cheques:		\$575.00

**Client Trust Listing as at Aug 31, 2014  
(from clients' trust ledger balances)**

<u>File Name</u>	<u>Last Activity Date</u>	<u>Amount</u>
PIPER, Jane	16Aug14	42.50
SAID, Ali	23Aug14	\$ 0.00
SILVER, David	30Aug14	35.00
SILVER, Susan	30Aug14	0.00
Total client funds in trust:		<u>\$ 77.50</u>

**Total trust liabilities to clients at Aug 31, 2014** **\$ 77.50**

**Trust Comparison as at Aug 31, 2014**

**Total Reconciled Trust Bank Balance** **\$ 77.50**

**Total of unexpended balances per Clients' Trust Ledger** **\$ 77.50**

**Date Prepared:** **Sept. 21, 2014**

**Date Reviewed:** **Sept. 25, 2014**

**Signature:** **P. Paralegal**

Regardless of who prepares the trust comparison, you should make it a habit to review the trust comparison and all supporting documentation by the 25<sup>th</sup> of each month to make sure:

- the comparison has been completed on time
- all client trust funds are included: mixed, pass book, GICs, term deposits, etc.
- bank statement, passbook, GIC, term deposit etc. balances are correct
- the arithmetic is correct
- reconciling items, *e.g.* bank errors, posting errors, are cleared each month and are explained and supported by documentation
- stale dated cheques, *i.e.* cheques that have been outstanding for more than 6 months, are reversed, the client liability reinstated in the clients' trust ledger and the cheque reissued if appropriate (*Note that bank clearing rules state that a cheque more than six months old may be cashed so check your financial institution's policy to determine whether you should put a stop payment on a trust cheque before reissuing it.*)
- there are no overdrawn client trust ledger accounts
- the amounts in trust for each client are correct
- any client trust ledger accounts that have not had any activity in the previous 12 months are followed up with a status review.

Keep in mind the trust account is for your clients' money, so if you do not receive trust funds in your legal services practice you do not need to open a trust account. But if you do have a trust account, you must prepare a trust reconciliation and trust comparison every month; even if the trust account has been inactive or if there is a zero balance in the trust account.

You may wish to review "How to Review and Reconcile a Trust Account" <http://www.lsuc.on.ca/with.aspx?id=2147491050>.

#### **10. a) Detailed Duplicate Trust Account Deposit Slip: subsection 18(10) of By-Law 9**

By-Law 9 requires you to deposit any trust money you receive immediately into your trust account. You should record the following information on all your copies of trust deposit slips:

- date you deposit the funds
- your firm's name if it is not preprinted
- your bank account number if it is not preprinted
- source of each receipt
- related client
- amount.

You should also ensure that the teller stamps each deposit slip. If you use an automated teller machine, attach the ATM receipt to the corresponding deposit slip.

Sample:

DEPOSIT SLIP

CREDIT ACCOUNT OF:

BANK OF ONTARIO

Current Account  
Paula Paralegal  
Trust Account

Date:

2	0	1	0	0	8	0	9
---	---	---	---	---	---	---	---

Depositor's

**PP**

Initials

Transit

5	4	3	2	1
---	---	---	---	---

Teller Stamp

Teller's

**ABC**

Initials

Account Number

1	2	3	4	5	6	7	8	9	0
---	---	---	---	---	---	---	---	---	---

Cheques and Credit Card Vouchers			Details		Cash	
<i>Jane Piper</i>			x	\$5		
<i>re small claim court</i>	<i>125</i>	<i>00</i>	x	\$10		
			x	\$20		
			x	\$50		
			x	\$100		
			x			
			x			
				coin		
			Cdn Cash Total			
Total ►	<i>125</i>	<i>00</i>	Credit Card Vouchers and Cheques Forwarded		►	<i>125 00</i>

**10. b) Detailed Duplicate General Account Deposit Slip: subsection 18(10) of By-Law 9**

You should record the following information on all your copies of general deposit slips:

- date you deposit the funds
- your firm's name if it is not preprinted
- your bank account number if it is not preprinted
- source of each receipt
- related client, if applicable
- amount.

You should also ensure that the teller stamps each deposit slip. If you use an automated teller machine, attach the ATM receipt to the corresponding deposit slip.

Sample:

DEPOSIT SLIP

CREDIT ACCOUNT OF:

BANK OF ONTARIO

Current Account  
Paula Paralegal  
General Account

Date:

2	0	1	0	0	8	2	3
---	---	---	---	---	---	---	---

Depositor's <b>PP</b> Initials
--------------------------------------

Transit

5	4	3	2	1
---	---	---	---	---

Teller Stamp

Teller's <b>ABC</b> Initials
------------------------------------

Account Number

2	3	4	5	6	7	8	9	0	1
---	---	---	---	---	---	---	---	---	---

Cheques and Credit Card Vouchers		Details	Cash	
<i>From Trust Account</i>		x \$5		
<i>re Said - inv #119</i>	100 00	x \$10		
		x \$20		
		x \$50		
		x \$100		
		x		
		x		
		coin		
		Cdn Cash Total		
Total ►	100 00	Credit Card Vouchers and Cheques Forwarded	► 100	00

**11. Duplicate Cash Receipts Book: section 19 of By-Law 9**

For each cash receipt you receive in your practice, prepare a duplicate cash receipt with:

- the date you received the cash
- the name of the person who gave you the cash
- the amount of cash received
- the name of the client for whom you received the cash
- the file number if any
- your signature or that of your authorized designate
- the signature of the person who gave you the cash.

It is always advisable to sequentially number any accounting documents so your receipts should be numbered.

Give one copy of the receipt to the person who gave you the cash and keep one copy with your accounting records. You may also want to prepare the receipt in triplicate and keep the third copy in the client file.

By-Law 9 requires you to use reasonable efforts to obtain the signature of the person who gives you the cash. You should be wary of accepting cash from someone who does not want to sign a receipt.

Keep in mind that your staff may be reluctant to accept responsibility for receipt of cash payments. If you decide to make it a policy of your firm not to accept cash, or cash over a certain amount, be sure to notify potential clients in writing before accepting their retainers.

*Sample:*

<b>DUPLICATE CASH RECEIPT</b>	
#0001	
Date _____	
Received from _____	the amount of \$ _____
On behalf of _____	for file # _____
_____ Signature of payor [ <i>person paying cash</i> ]	_____ Authorized signature on behalf of [ <i>name of legal services firm</i> ]

**12a) Client Identification and Verification (individual client) - s 23 By-Law 7.1**

*Sample:*

Paula Paralegal	
VERIFICATION OF IDENTITY (For use where the client or the third party is an individual)	
Name:	<u>Kim Kirby</u>
Address:	<u>456 Avenue Rd Anytown ON Z9Y 4V3</u>
Phone No:	<u>(789) 456-0123</u>
Business Address:	<u>N/A (retired)</u>
Business Phone No:	<u>N/A (retired)</u>
Occupation(s)	<u>Retired real estate agent</u>
Original Document Reviewed – Copy Attached	
<input checked="" type="checkbox"/> Driver's Licence	
<input type="checkbox"/> Birth Certificate	
<input type="checkbox"/> Passport	
<input type="checkbox"/> Other (specify type)	_____
Meeting Date Identity Verified:	<u>Aug 30, 2014</u>
Identity Verified By (Name of Person):	<u>Sandy Secretary</u>
Date File Reviewed by Paralegal:	<u>Aug 30, 2014</u>
Name of Paralegal:	<u>Paula Paralegal</u>

**12b) Client Identification and Verification (organization) - s 23 By-Law 7.1**

*Sample:*

Paula Paralegal	
VERIFICATION OF IDENTITY (For use where the client or the third party is an organization)	
Name:	<u>Peter Piper Pickles</u>
Business Address:	<u>456 Avenue Rd Anytown ON Z9Y 4V3</u>
Business Phone No:	<u>(321) 654-0987</u>
Incorporation or Business Identification No.:	<u>12131415 Ontario Inc</u>
Place of Issue of No:	<u>Ontario</u>
Type of business or Activity:	<u>Produce wholesaler and retailer</u>
Person Authorized to Instruct	
Name:	<u>Peter Piper</u>
Position:	<u>President</u>
Phone No.:	<u>(321) 654-0987 ext 1</u>
Original Document Reviewed – Copy Attached	
<input checked="" type="checkbox"/> Driver's Licence	
<input type="checkbox"/> Birth Certificate	
<input type="checkbox"/> Passport	
<input type="checkbox"/> Other (specify type) _____	
Names and Occupation(s) of Directors	
<u>Peter Piper, farmer</u>	
<u>Jackie Jones, electrician</u>	
<u>Ricky Ricardo, musician</u>	
_____	

Names, Addresses and Occupation(s) of Owners or Shareholders owning a 25% interest or more of the organization or shares in the organization

Peter Piper, 456 County Rd Anytown ON Z9Y 4V3, farmer, 51%

Peter Piper Jr, 456 County Rd Anytown ON Z9Y 4V3, farmer, 49%

Original Document Reviewed – Copy Attached

- Certificate of Corporate Status
- Annual Filings of the Organization (specify type) \_\_\_\_\_
- Partnership Agreement
- Trust Agreement
- Articles of Association
- Other (specify type) Business Names Registration

Meeting Date Identity Verified: Aug 30, 2014

Identity Verified By (Name of Person): Sandy Secretary

Date File Reviewed by Paralegal: Aug 30, 2014

Name of Paralegal: Paula Paralegal

### 13. Valuable Property Record: subsection 18(9) of By-Law 9

This record is required to record trust assets other than money. The record should show, as a minimum, the following details:

- the name of the beneficial owner or owners
- a description of the property
- the date the property came into the paralegal's possession or trust control
- the name of the person who had control of the property immediately before the paralegal took possession
- the value of the property
- the date that the trust was terminated by delivery or transfer of the property to, or on the direction of, the beneficial owner or owners
- the person to whom possession of property given.

#### **Properties to be included:**

Instruments registered in the paralegal's name in trust:

- stocks, bonds or other securities in bearer form
- jewellery, paintings, furs, collector's items or any variety of saleable valuables
- any property that a paralegal can convert, on his/her own authority to cash.

#### **Properties not to be included:**

Term deposits, deposit receipts, savings accounts or similar deposit accounts maintained for individual clients at chartered banks or registered trust companies. These are trust monies and must be recorded in the financial accounting records.

*Sample:*

<b>Paula Paralegal Valuable Property Record</b>						
<b>Client</b>	<b>Description of Property</b>	<b>Date Received</b>	<b>Received From</b>	<b>Value of Property</b>	<b>Given To</b>	<b>Date Given</b>
BELL, Stephen	pearl coloured necklace	01May14	BELL, Stephen	530.00	BELL, Allison	16Jun14
SILVER, Susan	silver coloured jewellery	02Jun14	SILVER, Susan	475.00		
FINELLI, Angela	collector plates	07Jun14	FINELLI, Angela	320.00		

## **BY-LAW 9**

Made: May 1, 2007  
Amended: June 28, 2007  
January 24, 2008  
February 21, 2008  
March 20, 2009 (editorial changes)  
September 29, 2009 (editorial changes)  
April 28, 2011  
May 3, 2011 (editorial changes)

### **FINANCIAL TRANSACTIONS AND RECORDS**

#### **PART I**

#### **INTERPRETATION**

##### **Interpretation**

1. (1) In this By-Law,

“arm’s length” has the same meaning given it in the *Income Tax Act* (Canada);

“cash” means current coin within the meaning of the *Currency Act* (Canada), notes intended for circulation in Canada issued by the Bank of Canada pursuant to the *Bank of Canada Act* and current coin or banks notes of countries other than Canada;

“charge” has the same meaning given it in the *Land Registration Reform Act*;

“client” means a person or group of persons from whom or on whose behalf a licensee receives money or other property;

“firm of licensees” means,

- (a) a partnership of licensees and all licensees employed by the partnership,
- (b) a professional corporation established for the purpose of practising law in Ontario and all licensees employed by the professional corporation,
- (c) a professional corporation established for the purpose of providing legal services in Ontario and all licensees employed by the professional corporation, or

- (d) a professional corporation established for the purpose of practising law and providing legal services in Ontario and all licensees employed by the professional corporation;

“holiday” means,

- (a) any Saturday or Sunday;
- (b) New Year’s Day, and where New Year’s Day falls on a Saturday or Sunday, the following Monday;
- (c) Family Day
- (d) Good Friday;
- (e) Easter Monday;
- (f) Victoria Day;
- (g) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday;
- (h) Civic Holiday;
- (i) Labour Day;
- (j) Thanksgiving Day;
- (k) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday;
- (l) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday;
- (m) Boxing Day; and
- (n) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

“lender” means a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or corporation;

“licensee” includes a firm of licensees;

“money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders;

“related” has the same meaning given it in the *Income Tax Act* (Canada);

“Teranet” means Teranet Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Business Services.

### **Time for doing an act expires on a holiday**

(2) Except where a contrary intention appears, if the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

### **When deemed in trust**

(3) For the purposes of subsections 9 (1), (2) and (3) and section 14, cash, cheques negotiable by the licensee, cheques drawn by the licensee on the licensee’s trust account and credit card sales slips in the possession and control of the licensee shall be deemed from the time the licensee receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day.

## **PART II**

### **HANDLING OF MONEY BY BANKRUPT LICENSEE**

#### **Handling of money by bankrupt licensee**

2. (1) Subject to subsections (2) and (3), a licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) shall not receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

#### **Exception**

(2) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the licensee for the person or group; or
- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

## Same

(3) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may apply in writing to the Society for permission to receive from or on behalf of a person or group of persons any money or other property, other than as permitted under subsection (2), or for permission to handle money or other property that is held in trust for a person or group of persons, and the Society may permit the licensee to do so, subject to such terms and conditions as the Society may impose.

## PART II.1

### HANDLING OF MONEY BY LICENSEE WHOSE LICENCE IS SUSPENDED

#### Interpretation

2.1 In this Part,

“suspended licensee” means a licensee who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

#### Handling of money by suspended licensee

2.2 (1) Subject to subsection (2) and section 2.3, a suspended licensee shall not, during the suspension receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

#### Exception

(2) A suspended licensee may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the suspended licensee for the person or group; or
- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

#### Trust account

2.3 (1) A suspended licensee shall, within 30 days of the beginning of the suspension,

- (a) withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, and, as required, pay to the appropriate person,
  - (i) money properly required for payment to a person on behalf of a client,
  - (ii) money required to reimburse the suspended licensee for money properly expended, or for expenses properly incurred, on behalf of a client,
  - (iii) money required for or toward payment of fees for services performed by the suspended licensee, and
  - (iv) all other money that belongs to the suspended licensee or to a person other than a client;
- (b) after complying with clause (a), withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, all money belonging to a client and pay the money to,
  - (i) the client,
  - (ii) another licensee to whom the client has directed the suspended licensee to make payment, or
  - (iii) another licensee who has agreed with the suspended licensee to accept payment in the event that the suspended licensee is unable to comply with subclause (i) or (ii); and
- (c) after complying with clauses (a) and (b),
  - (i) close every trust account that was kept in the name of the suspended licensee, and
  - (ii) cancel or cause to be cancelled the suspended licensee's signing authority on every trust account that was kept in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

Compliance with clause (1) (b) not required

(2) A suspended licensee is not required to comply with clause (1) (b) if the client's file is transferred, in accordance with Part IV of By-Law 7.1, to another licensee in

the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

#### Application of sections of Part IV

(3) Subsection 9 (3) and sections 10, 11 and 12 apply to the withdrawal of money from a trust account under this section.

#### Report to Society on compliance

(4) A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this section.

#### Permission to be exempt from requirement

2.4 A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

### **PART III**

#### **CASH TRANSACTIONS**

##### **Definition**

3. In this Part,

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

“public body” means,

- (a) a department or agent of Her Majesty in right of Canada or of a province;
- (b) an incorporated city, metropolitan authority, town, township, village, county, district, rural municipality or other incorporated municipal body or an agent of any of them; and
- (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* (Canada) or agent of the organization.

### **Cash received**

4. (1) A licensee shall not receive or accept from a person, in respect of any one client file, cash in an aggregate amount of 7,500 or more Canadian dollars.

### **Foreign currency**

(2) For the purposes of this section, when a licensee receives or accepts from a person cash in a foreign currency the licensee 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 licensee receives or accepts the cash; or
- (b) if the day on which the licensee 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 licensee receives or accepts the cash.

### **Application**

5. Section 4 applies when, in respect of a client file, a licensee engages in or gives instructions in respect of the following activities:

- 1. The licensee receives or pays funds.
- 2. The licensee purchases or sells securities, real properties or business assets or entities.
- 3. The licensee transfers funds by any means.

### **Exceptions**

6. Despite section 5, section 4 does not apply when the licensee,
- (a) receives cash from a public body, 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* (Canada) applies, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act, an association that is regulated by the *Cooperative Credit Associations Act* (Canada), a company to which the *Trust and Loan Companies Act* (Canada) applies, a trust company or loan company regulated by a provincial Act or 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;

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

## **PART IV**

### **TRUST ACCOUNT**

#### **TRUST ACCOUNT TRANSACTIONS**

##### **Money received in trust for client**

7. (1) Subject to section 8, every licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation, to be kept in the name of the licensee, or in the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, and designated as a trust account.

##### **Interpretation**

(2) For the purposes of subsection (1), a licensee receives money in trust for a client if the licensee receives from a person,

- (a) money that belongs in whole or in part to a client;
- (b) money that is to be held on behalf of a client;
- (c) money that is to be held on a client's direction or order;
- (d) money that is advanced to the licensee on account of fees for services not yet rendered; or
- (e) money that is advanced to the licensee on account of disbursements not yet made.

### **Money to be paid into trust account**

(3) In addition to the money required under subsection (1) to be paid into a trust account, a licensee shall pay the following money into a trust account:

1. Money that may by inadvertence have been drawn from a trust account in contravention of section 9.
2. Money paid to a licensee that belongs in part to a client and in part to the licensee where it is not practical to split the payment of the money.

### **Money to be paid into trust account: money received before licence issued**

(3.1) If a licensee who holds a Class P1 licence receives from a person, prior to being issued the licence, money for services yet to be rendered to a client and the licensee does not perform the services for the client by May 2, 2010, the licensee shall on May 3, 2010 pay the money into a trust account.

### **Withdrawal of money from trust account**

(4) A licensee who pays into a trust account money described in paragraph 2 of subsection (3) shall as soon as practical withdraw from the trust account the amount of the money that belongs to him or her.

### **One or more trust accounts**

- (5) A licensee may keep one or more trust accounts.

### **Money not to be paid into trust account**

8. (1) A licensee is not required to pay into a trust account money which he or she receives in trust for a client if,
- (a) the client requests the licensee in writing not to pay the money into a trust account;
  - (b) the licensee pays the money into an account to be kept in the name of the client, a person named by the client or an agent of the client; or
  - (c) the licensee pays the money immediately upon receiving it to the client or to a person on behalf of the client in accordance with ordinary business practices.

### **Same**

- (2) A licensee shall not pay into a trust account the following money:

1. Money that belongs entirely to the licensee or to another licensee of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, including an amount received as a general retainer for which the licensee is not required either to account or to provide services.
2. Money that is received by the licensee as payment of fees for services for which a billing has been delivered, as payment of fees for services already performed for which a billing will be delivered immediately after the money is received or as reimbursement for disbursements made or expenses incurred by the licensee on behalf of a client.

### **Record keeping requirements**

(3) A licensee who, in accordance with subsection (1), does not pay into a trust account money which he or she receives in trust for a client shall include all handling of such money in the records required to be maintained under Part V.

### **Withdrawal of money from trust account**

9. (1) A licensee may withdraw from a trust account only the following money:
  1. Money properly required for payment to a client or to a person on behalf of a client.
  2. Money required to reimburse the licensee for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client.
  3. Money properly required for or toward payment of fees for services performed by the licensee for which a billing has been delivered.
  4. Money that is directly transferred into another trust account and held on behalf of a client.
  5. Money that under this Part should not have been paid into a trust account but was through inadvertence paid into a trust account.

### **Permission to withdraw other money**

(2) A licensee may withdraw from a trust account money other than the money mentioned in subsection (1) if he or she has been authorized to do so by the Society.

### **Limit on amount withdrawn from trust account**

(3) A licensee shall not at any time with respect to a client withdraw from a trust account under this section more money than is held on behalf of that client in that trust account at that time.

### **Manner in which certain money may be withdrawn from trust account**

10. A licensee shall withdraw money from a trust account under paragraph 2 or 3 of subsection 9 (1) only,

- (a) by a cheque drawn in favour of the licensee;
- (b) by a transfer to a bank account that is kept in the name of the licensee and is not a trust account; or
- (c) by electronic transfer.

### **Withdrawal by cheque**

11. A cheque drawn on a trust account shall not be,

- (a) made payable either to cash or to bearer; or
- (b) signed by a person who is not a licensee except in exceptional circumstances and except when the person has signing authority on the trust account on which a cheque will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all the trust accounts on which signing authority has been delegated to the person.

### **Withdrawal by electronic transfer**

12. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.

### **When money may be withdrawn**

(2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

- 1. The electronic transfer system used by the licensee must be one that does not permit an electronic transfer of funds unless,
  - i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and

- ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.
2. The electronic transfer system used by the licensee must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.
3. The confirmation required by paragraph 2 must contain,
  - i. the number of the trust account from which money is drawn,
  - ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,
  - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
  - iv. the number of the account to which money is transferred,
  - v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and
  - vi. the time and date that the confirmation from the financial institution is sent to the licensee.
4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic trust transfer system, an electronic trust transfer requisition must be signed by,
  - i. a licensee, or
  - ii. in exceptional circumstances, a person who is not a licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

### **Application of para. 1 of subs. (2) to sole practitioner**

(3) Paragraph 1 of subsection (2) does not apply to a licensee who practises law or provides legal services without another licensee as a partner, if the licensee practises law or provides legal services through a professional corporation, without another licensee practising law or providing legal services through the professional corporation and without another licensee or person as an employee, if the licensee himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

### **Same**

(4) In exceptional circumstances, the data referred to in subsection (3) may be entered by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

### **Additional requirements relating to confirmation**

(5) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (2) is sent to a licensee, the licensee shall,

- (a) produce a printed copy of the confirmation;
- (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

### **Same**

(6) In exceptional circumstances, the tasks required by subsection (5) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

## **Electronic trust transfer requisition**

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 9A.

## **Definitions**

13. (1) In this section,

“closing funds” means the money necessary to complete or close a transaction in real estate;

“transaction in real estate” means,

- (a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the *Land Titles Act* and a mortgage, but excluding a rent charge, or
- (b) a conveyance of freehold or leasehold land, including a deed and a transfer under the *Land Titles Act*, but excluding a lease.

## **Withdrawal by electronic transfer: closing funds**

(2) Despite section 12, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.

## **When closing funds may be withdrawn**

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

- 1. The electronic transfer system used by the licensee must be one to which access is restricted by the use of at least one password or access code.
- 2. The electronic transfer system used by the licensee must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.
- 3. The confirmation required by paragraph 2 must contain,
  - i. the name of the person or entity in whose name the account from which money is drawn is kept,
  - ii. the number of the trust account from which money is drawn,
  - iii. the name of the person or entity in whose name the account to which money is transferred is kept,

- iv. the number of the account to which money is transferred, and
  - v. the date the transfer is carried out.
4. Before the electronic transfer system used by the licensee is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,
- i. the licensee, or
  - ii. in exceptional circumstances, a person who is not the licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

**Additional requirements relating to confirmation**

- (4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the licensee shall,
- (a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);
  - (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
  - (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
  - (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

**Same**

- (5) In exceptional circumstances, the tasks required by subsection (4) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the

maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

### **Electronic trust transfer requisition: closing funds**

(6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 9C.

### **Requirement to maintain sufficient balance in trust account**

14. Despite any other provision in this Part, a licensee shall at all times maintain sufficient balances on deposit in his or her trust accounts to meet all his or her obligations with respect to money held in trust for clients.

## **AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS**

### **Authorizing Teranet to withdraw money from trust account**

15. (1) Subject to subsection (2), a licensee may authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client=s real estate transaction.

### **Conditions**

(2) A licensee shall not authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client=s real estate transaction unless Teranet agrees to provide to the licensee in accordance with subsection (3) a confirmation of the withdrawal that contains the information mentioned in subsection (4).

### **Time of receipt of confirmation**

(3) The confirmation required under subsection (2) must be received by the licensee not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the licensee.

### **Contents of confirmation**

- (4) The confirmation required under subsection (2) must contain,
- (a) the amount of money withdrawn from the trust account;
  - (b) the time and date that the authorization to withdraw money is received by Teranet; and

- (c) the time and date that the confirmation from Teranet is sent to the licensee.

### **Written record of authorization**

(5) A licensee who authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client=s real estate transaction shall record the authorization in writing.

### **Same**

(6) The written record of the authorization required under subsection (5) shall be in Form 9B and shall be completed by the licensee before he or she authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client=s real estate transaction.

### **Additional requirements relating to confirmation**

- (7) Not later than 5 p.m. on the day immediately after the day on which the confirmation required under subsection (2) is sent to a licensee, the licensee shall,
- (a) produce a paper copy of the confirmation, if the confirmation is sent to the licensee by electronic means;
  - (b) compare the paper copy of the confirmation and the written record of the authorization relating to the withdrawal to verify whether money was withdrawn from the trust account by Teranet as authorized by the licensee;
  - (c) indicate on the paper copy of the confirmation the name of the client and any file number in respect of which money was withdrawn from the trust account, if the confirmation does not already contain such information; and
  - (d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.

### **Special trust account**

- 16 (1) The trust account from which Teranet may be authorized by a licensee to withdraw money shall be,
- (a) an account at a chartered bank, provincial savings office, credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a registered trust corporation kept in the name of the licensee or in the name of the firm of licensees of which the licensee is a partner, through which

the licensee practises law or by which the licensee is employed, and designated as a trust account; and

- (b) an account into which a licensee shall pay only,
  - (i) money received in trust for a client for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client=s real estate transaction; and
  - (ii) money properly withdrawn from another trust account for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client=s real estate transaction.

### **One or more special trust accounts**

(2) A licensee may keep one or more trust accounts of the kind described in subsection (1).

### **Payment of money into special trust account**

(3) A licensee shall not pay into a trust account described in subsection (1) more money than is required to pay the document registration fees and the land transfer tax, if any, related to a client=s real estate transaction, and if more money is, through inadvertence, paid into the trust account, the licensee shall transfer from the trust account described in subsection (1) into another trust account that is not a trust account described in subsection (1) the excess money.

### **Time limit on holding money in special trust account**

(4) A licensee who pays money into a trust account described in subsection (1) shall not keep the money in that account for more than five days, and if the money is not properly withdrawn from that account by Teranet within five days after the day on which it is paid into that account, the licensee shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

### **Interpretation: counting days**

(5) In subsection 16 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 16 (1) for more than five days.

### **Application of ss. 9, 11, 12 and 14**

17. Sections 9, 11, 12 and 14 apply, with necessary modifications, to a trust account described in subsection 16 (1).

**PART V**  
**RECORD KEEPING REQUIREMENTS**  
**REQUIREMENTS**

**Requirement to maintain financial records**

18. Every licensee shall maintain financial records to record all money and other property received and disbursed in connection with the licensee's professional business, and, as a minimum requirement, every licensee shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the method by which money is received, the person from whom money is received, the amount of money received, the purpose for which money is received and the client for whom money is received in trust.
2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed, the purpose for which money is disbursed and the client on whose behalf money is disbursed.
3. A clients' trust ledger showing separately for each client for whom money is received in trust all money received and disbursed and any unexpended balance.
4. A record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.
5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the method by which money is received, the amount of money which is received and the person from whom money is received.
6. A book of original entry showing all disbursements of money, other than money held in trust for a client, and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the amount of money which is disbursed and the person to whom money is disbursed.
7. A fees book or a chronological file of copies of billings, showing all fees charged and other billings made to clients and the dates on which fees are

charged and other billings are made to clients and identifying the clients charged and billed.

8. A record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparisons:
  - i. A detailed listing made monthly showing the amount of money held in trust for each client and identifying each client for whom money is held in trust.
  - ii. A detailed reconciliation made monthly of each trust bank account.
9. A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the licensee took possession of each property, the person who had possession of each property immediately before the licensee took possession of the property, the value of each property, the client for whom each property is held in trust, the date on which possession of each property is given away and the person to whom possession of each property is given.
10. Bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.
11. Signed electronic trust transfer requisitions and signed printed confirmations of electronic transfers of trust funds.
12. Signed authorizations of withdrawals by Teranet and signed paper copies of confirmations of withdrawals by Teranet.

### **Record keeping requirements if cash received**

19 (1) Every licensee who receives cash shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received and any file number in respect of which cash is received and containing the signature of the licensee or the person authorized by the licensee to receive cash and of the person from whom cash is received.

### **No breach**

(2) A licensee does not breach subsection (1) if a receipt does not contain the signature of the person from whom cash is received provided that the licensee has made reasonable efforts to obtain the signature of the person from whom cash is received.

### **Record keeping requirements if mortgages and other charges held in trust for clients**

20. Every licensee who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A mortgage asset ledger showing separately for each mortgage or charge,
  - i. all funds received and disbursed on account of the mortgage or charge,
  - ii. the balance of the principal amount outstanding for each mortgage or charge,
  - iii. an abbreviated legal description or the municipal address of the real property, and
  - iv. the particulars of registration of the mortgage or charge.
2. A mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,
  - i. all funds received and disbursed on account of each mortgage or charge held in trust for the person,
  - ii. the balance of the principal amount invested in each mortgage or charge,
  - iii. an abbreviated legal description or the municipal address for each mortgaged or charged real property, and
  - iv. the particulars of registration of each mortgage or charge.
3. A record showing a comparison made monthly of the total of the principal balances outstanding on the mortgages or charges held in trust and the total of all principal balances held on behalf of the investors as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparison:
  - i. A detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding.

- ii. A detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.

### **Financial records to be permanent**

21. (1) The financial records required to be maintained under sections 18, 19 and 20 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

### **Paper copies of financial records**

(2) If a financial record is entered and posted by mechanical or electronic means, a licensee shall ensure that a paper copy of the record may be produced promptly on the Society's request.

### **Financial records to be current**

22. (1) Subject to subsection (2), the financial records required to be maintained under sections 18, 19 and 20 shall be entered and posted so as to be current at all times.

### **Exceptions**

(2) The record required under paragraph 8 of section 18 and the record required under paragraph 3 of section 20 shall be created within twenty-five days after the last day of the month in respect of which the record is being created.

### Preservation of financial records required under ss. 18 and 19

23. (1) Subject to subsection (2), a licensee shall keep the financial records required to be maintained under sections 18 and 19 for at least the six year period immediately preceding the licensee's most recent fiscal year end.

### **Same**

(2) A licensee shall keep the financial records required to be maintained under paragraphs 1, 2, 3, 8, 9, 10 and 11 of section 18 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

### **Preservation of financial records required under s. 20**

(3) A licensee shall keep the financial records required to be maintained under section 20 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

### **Record keeping requirements when acting for lender**

24. (1) Every licensee who acts for or receives money from a lender shall, in addition to maintaining the financial records required under sections 18 and 20, maintain a file for each charge, containing,

- (a) a completed investment authority, signed by each lender before the first advance of money to or on behalf of the borrower;
- (b) a copy of a completed report on the investment;
- (c) if the charge is not held in the name of all the lenders, an original declaration of trust;
- (d) a copy of the registered charge; and
- (e) any supporting documents supplied by the lender.

### **Exceptions**

- (2) Clauses (1) (a) and (b) do not apply with respect to a lender if,
  - (a) the lender,
    - (i) is a bank listed in Schedule I or II to the *Bank Act* (Canada), a licensed insurer, a registered loan or trust corporation, a subsidiary of any of them, a pension fund, or any other entity that lends money in the ordinary course of its business,
    - (ii) has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge, and
    - (iii) has given the licensee a copy of the written commitment before the advance of money to or on behalf of the borrower;
  - (b) the lender and borrower are not at arm's length;
  - (c) the borrower is an employee of the lender or of a corporate entity related to the lender;
  - (d) the lender has executed the Investor/Lender Disclosure Statement for Brokered Transactions, approved by the Superintendent under subsection 54 (1) of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, and has given the licensee written instructions, relating to the particular transaction, to accept the executed disclosure statement as proof of the loan agreement;

- (e) the total amount advanced by the lender does not exceed \$6,000; or
- (f) the lender is selling real property to the borrower and the charge represents part of the purchase price.

**Requirement to provide documents to lender**

(3) Forthwith after the first advance of money to or on behalf of the borrower, the licensee shall deliver to each lender,

- (a) if clause (1) (b) applies, an original of the report referred to therein; and
- (b) if clause (1) (c) applies, a copy of the declaration of trust.

**Requirement to add to file maintained under subs. (1)**

(4) Each time the licensee or any licensee of the same firm of licensees does an act described in subsection (5), the licensee shall add to the file maintained for the charge the investment authority referred to in clause (1) (a), completed anew and signed by each lender before the act is done, and a copy of the report on the investment referred to in clause (1) (b), also completed anew.

**Application of subs. (4)**

- (5) Subsection (4) applies in respect of the following acts:
  1. Making a change in the priority of the charge that results in a reduction of the amount of security available to it.
  2. Making a change to another charge of higher priority that results in a reduction of the amount of security available to the lender's charge.
  3. Releasing collateral or other security held for the loan.
  4. Releasing a person who is liable under a covenant with respect to an obligation in connection with the loan.

**New requirement to provide documents to lender**

(6) Forthwith after completing anew the report on the investment under subsection (4), the licensee shall deliver an original of it to each lender.

**Requirement to add to file maintained under subs. (1): substitution**

(7) Each time the licensee or any other licensee of the same firm of licensees substitutes for the charge another security or a financial instrument that is an

acknowledgment of indebtedness, the licensee shall add to the file maintained for the charge the lender's written consent to the substitution, obtained before the substitution is made.

### **Exceptions**

(8) The licensee need not comply with subsection (4) or (7) with respect to a lender if clause (2) (a), (b), (c), (e) or (f) applied to the lender in the original loan transaction.

### **Investment authority: Form 9D**

(9) The investment authority required under clause (1) (a) shall be in Form 9D.

### **Report on investment: Form 9E**

(10) Subject to subsection (11), the report on the investment required under clause (1) (b) shall be in Form 9E.

### **Report on investment: alternative to Form 9E**

(11) The report on the investment required under clause (1) (b) may be contained in a reporting letter addressed to the lender or lenders which answers every question on Form 9E.

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**Form 9A**

**ELECTRONIC TRUST TRANSFER REQUISITION**

Requisition *(number)*

Amount of funds to be transferred: *(Specify amount.)*

Re: *(Specify name of client.)*  
*(Specify file reference number.)*

Reason for payment: *(Give reason for payment.)*

Trust account to be debited:

Name of financial institution: *(Specify name.)*  
Account number: *(Specify number.)*  
Name of recipient: *(Specify name.)*

Account to be credited:

Name of financial institution: *(Specify name.)*  
Branch name and address: *(Specify name and address.)*  
Account number: *(Specify number.)*

Person requisitioning electronic trust transfer: *(Print the person's name.)*

*(Date)* *(Signature of person requisitioning electronic trust transfer)*

Additional transaction particulars:

*(This section should be completed by the person entering the details of the transfer, after he or she has entered the details of the transfer, and by the person authorizing the transfer at the computer terminal, after he or she has authorized the transfer.)*

Person entering details of transfer:

Name: *(Print person's name.)*  
*(Signature of person entering details of transfer.)*

Person authorizing transfer at computer terminal:

Name: *(Print person's name.)*  
*(Signature of person entering details of transfer.)*

**Sample Completed Electronic Trust Transfer Requisition Form:**

[sample]  
FORM 9A

**ELECTRONIC TRUST TRANSFER REQUISITION  
Requisition #ET0081**

Amount of funds to be transferred: **\$282.50**

Re: **PIPER small claim court**

Client: **Jane Piper**

File No.: **08-47**

Reason for payment: **Fees (\$250.00) and HST (\$32.50) billed to client**

Trust account to be debited:

Name of financial institution: **Bank of Ontario**  
Account number: **123456789**  
Name of Recipient: **Paula Paralegal, General Account**

Account to be credited:

Name of financial institution: **Bank of Ontario**  
Branch name and Address **20 Downtown St., City, ON Z9Y 2T2**  
**Account number:** 987654321

Person requisitioning electronic trust transfer: **Paula Paralegal**

**Jul 30, 2014**

Date

**Paula Paralegal**

Signature

Additional transaction particulars:

Person entering details of transfer:

Name: **Sandy Secretary** **Sandy Secretary**  
Signature

Person authorizing transfer at computer terminal:

Name: **Bobby Bookkeeper** **Bobby Bookkeeper**  
Signature

# SAMPLE LETTER OF DIRECTION TO A FINANCIAL INSTITUTION

## Sample Letter of Direction

To: The Manager

Name of Bank:

(Name of chartered bank, provincial savings office, registered trust company, credit union or  
caisse populaire)

Branch: \_\_\_\_\_

Address: \_\_\_\_\_

Re: Account No. \_\_\_\_\_

Direction to Pay Interest to The Law Foundation of Ontario

The above account is \_\_\_\_\_ in my name  
\_\_\_\_\_ in the name of the firm with which I am associated

In accordance with Section 57 of the Law Society Act, I direct you, until further notice, to compute the amount earned by applying to the balance in the above account the rate of interest approved from time to time by the Trustees of The Law Foundation of Ontario. Please pay into an account held in your main office in Ontario in the name of The Law Foundation of Ontario amounts so calculated and give written notice to me at the address shown on the above account and to The Law Foundation of Ontario, 20 Queen Street West, Suite 3002, Box #19, Toronto, Ontario, M5H 3R3, when each such payment is made. This notice should show, as applicable as per the terms of the interest agreement between the LFO and your financial institution, the amount of the payment, the amounts of the daily/monthly balances, and the rates of interest used in computing the payment.

Dated: the day of \_\_\_\_\_, \_\_\_\_\_, 20

(Signed)

Licensee Name:

Firm Name:

Address:

cc: Law Foundation of Ontario

# REPORT ON OPENING OR CLOSING A TRUST ACCOUNT



The Law Society of Upper Canada | Barreau du Haut-Canada

Osgoode Hall  
130 Queen Street West  
Toronto, ON M5H 2N6  
Telephone: 416-947-3315  
Toll Free: 1-800-660-7000 ext. 5515  
Fax: 416-947-3408  
Email: [bylawadmin@lsuc.on.ca](mailto:bylawadmin@lsuc.on.ca)

By-Law Administration Services  
Client Service Centre

## Report on Opening or Closing a Trust Account (Subsection 4(1)5 of By-Law 8)

A licensee must immediately report to the Law Society any change of information with respect to a trust account (new or existing) into which the licensee pays or paid money received in trust for a client.

Name of financial institution where account was opened or closed:

\_\_\_\_\_

Branch address of financial institution:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Transit number:

\_\_\_\_\_

Account number:

\_\_\_\_\_

Account type:

Mixed trust

Trust

Name of account holder:

\_\_\_\_\_

Date account was opened or closed:

\_\_\_\_\_

Open

Closed

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

Law Society Number

\_\_\_\_\_

### Notes:

1. You must direct your financial institution to pay to The Law Foundation of Ontario, in accordance with subsection 57(1) of the *Law Society Act*, interest on all mixed trust accounts. A mixed trust account is a trust account holding, or intended to hold, trust funds for more than one client.

## INTERNAL CONTROL SELF-ASSESSMENT GUIDE

*Internal Controls are processes you put in place to help you run your practice more efficiently by reducing the risk of errors and fraud.*

This guide is designed primarily for paralegals who operate independently with a small number of staff and may not have the resources to implement a formal control structure. However, many of these suggestions can be used in a firm of any size. Even with limited resources, you can reduce the risks by:

- knowing how your firm's accounting system works
- being familiar with the Law Society's record keeping requirements in By-Law 9
- knowing how to set up and maintain proper books and records
- being aware of the Law Society's money handling requirements in By-Law 9
- being actively involved in the financial activities of your firm
- supervising the accounting and finance functions of your firm.

You can easily implement many of the following recommendations in your firm. Please note that while many of these recommendations are offered as suggestions, some are Law Society requirements and must be implemented. You should be familiar with the Law Society's By-Laws and the *Paralegal Rules of Conduct* to ensure your firm's record keeping and money handling procedures are in compliance with them.

### TRUST RECORDS

#### ***Goal:***

To ensure clients' money is promptly and accurately recorded in your firm's financial records in accordance with By-Law 9.

#### ***Risks:***

- You are unable to meet your client trust obligations.
- Trust transactions are allocated to the incorrect client trust ledger account.
- Transaction errors go undetected.

#### ***Recommendations:***

1. Are your trust receipts and disbursements always up to date?
2. Do you ensure that the trust comparison, which compares the reconciliation of the trust bank account and the client trust listing, is prepared within 25 days of each month end?
3. Do you review the trust comparison, trust bank account statements, reconciliations and the client trust listing each month?

4. When you review the monthly trust comparisons do you ensure that:
  - the reconciliations have been prepared by the 25<sup>th</sup> of the following month
  - reconciling items are listed individually and each one is clearly explained and can be traced to the bank statement
  - the deposit book confirms any outstanding deposits listed on the trust bank reconciliation were deposited the next banking day
  - reconciling items, except outstanding cheques, are cleared promptly and do not recur the next month
  - uncashed cheques that are outstanding for more than two months are followed up?
  - stop payments are requested on stale dated cheques over six months old, the cheques are reversed, the client trust liability reinstated in the clients' trust ledger, and the cheque reissued if appropriate
  - the balance held in trust for each client on the client trust listing is correct
  - there are no overdrawn client trust ledger accounts
  - funds in trust for completed matters have been billed to the proper clients, and the funds either transferred to your general account or returned to the client as appropriate
  - you have followed up on all client trust ledger account balances that have had no activity in the past twelve months
  - all funds in the trust account are allocated to a client and that there are no miscellaneous or suspense accounts or accounts in your name or the firm's name?
5. Do you periodically check the clients' trust ledger looking for unusual or incorrect items?
6. Do you ensure that you have adequate documentation, for example, the client's written instructions, to support the transfer of trust funds from one client's trust ledger account to another client's trust ledger account?
7. Are all transfers of funds between client trust ledger accounts recorded in a trust transfer journal as required by section 18(4) of By-Law 9?
8. Does your trust bank statement clearly indicate that it is a trust account?
9. Have you given a written direction to your financial institution to pay all interest on your mixed trust account directly to The Law Foundation of Ontario as required by section 57.1 of the Law Society Act?
10. Have you advised your financial institution in writing to deduct any service charges for your mixed trust account from your general account?
11. Have you immediately submitted a Report on Opening or Closing a Trust Account to the Law Society to report on any change of information with respect to a trust account into which you pay or paid money received in trust for a client?
12. If you make automatic banking machine (ABM) deposits, do you always print out the ABM deposit receipts, attach them to your deposit book, and record the details of the deposit (*i.e.* source of funds, client reference and amount) in your deposit book?
13. Are credit card and debit card receipts from clients paying retainers for future fees and disbursements always deposited directly to your trust account and the details recorded in your trust deposit book?
14. Are credit card and debit card receipts from clients paying your invoices always deposited directly to your general account and the details recorded in your general deposit book?

## SEGREGATION OF DUTIES AND HANDLING OF MONEY

### ***Goal:***

To ensure cash and cheque receipts are properly controlled and safeguarded.

### ***Risks:***

- Funds received are lost.
- Funds received are not recorded.
- Funds received are stolen.

### ***Recommendations:***

1. Do you ensure that the individual who opens and reviews your firm's mail, stamps each cheque with a restrictive endorsement such as "deposit only" to reduce the likelihood of fraud?
2. If opening mail and depositing funds is assigned to staff in your firm, do you ensure that one person opens the mail and a separate person deposits funds?
3. If a staff member deposits the cash and cheques, does another person enter the receipts in the accounting records?
4. Do you ensure cash and cheque receipts are deposited by the end of the next banking day and if they are not deposited immediately that they are locked in a safe location?
5. Do you review the stamped deposit slips to ensure each cheque is listed by source, client reference and amount?
6. Do you issue pre-numbered receipts to clients with a copy to accounting staff for all cash and cheques received to:
  - provide clients with proof of payment
  - ensure funds are posted to the correct client's account
  - reduce the risk of theft?
7. Does a person, other than the person who issues receipts for cash or cheques, verify the numerical sequence of receipts to ensure that all funds receipted are also recorded in the accounting records and deposited in the bank?
8. If you are in a partnership, do you have management controls in place to monitor the handling of money to:
  - scrutinize your firm's trust and general bank account statements and returned cheques for any unusual transactions
  - assess the reasonableness of the trust bank account balance(s)
  - review the monthly trust account reconciliation and list of outstanding items and follow up on items over two months old and any stale-dated cheques over six months old
  - review the client trust listing for overdrawn and inactive accounts and any accounts not in the name of a client?

***Petty Cash:***

9. If your firm uses petty cash, have you established a reasonable dollar amount for your firm as petty cash?
10. Do you require pre-numbered written requests supported by original receipts for petty cash?
11. Does the sum of petty cash on hand, plus the amounts in the written requests/receipts, always total your firm's established petty cash amount?
12. Do you ensure the petty cash account is reconciled monthly to the requests and receipts for petty cash by a person independent of the person who handles the petty cash?
13. Does your firm have a policy setting out what types of expenditures are acceptable for petty cash disbursements?

**DISBURSEMENTS**

***Goal:***

To ensure that all withdrawals of money from the trust and general bank accounts are for goods and services properly billed and authorized and that trust money is properly disbursed in accordance with By-Law 9.

***Risks:***

- Money could be erroneously or fraudulently withdrawn from bank accounts.
- Funds could be withdrawn from the incorrect client trust ledger account.
- Trust accounts could be overdrawn.
- Payments could be made twice.

***Recommendations:***

*A) Cheque Preparation Policies*

1. Are original copies of invoices stamped "paid" to prevent invoices being paid more than once?
2. Are only original invoices, and not photocopies, required as backup for cheques?
3. Are your trust account cheques clearly marked "trust" and your general account cheques marked "general"?
4. Are your trust cheques and general cheques different colours to avoid confusion?

*B) Cheque Signing Policies*

1. Do you review the validity and reasonableness of cheques before signing them?
2. Do you check that there are adequate trust funds available for the related client before signing cheques?
3. Do you review the supporting documentation prior to signing cheques to ensure the service was provided and billed, or the disbursement is proper?
4. Do cheques issued on behalf of clients include a client reference to ensure the disbursement is allocated to the proper client in your disbursement journal and client ledger?
5. Do cheques made payable to financial institutions include details of the transaction, for example, a file number?
6. Do cheque stubs have sufficient detail to provide a trail to supporting documentation?
7. Are trust cheques always signed by at least one paralegal or lawyer licensed by the Law Society who is permitted to hold trust funds?
8. Do you have a practice to never sign blank cheques?
9. If you are in a partnership, do cheques above a certain dollar limit require more than one partner's signature?
10. If you are a sole practitioner, have you made arrangements with another paralegal or lawyer licensed by the Law Society who is entitled to hold trust funds, to sign cheques on your trust account if you are unable to do so?

*C) Internet Banking and Automated Banking Machines (ABM)*

1. If you use Internet banking to transfer trust funds, do you ensure your firm is following the procedure set out in section 12 of By-Law 9?
2. Do you prepare a proper audit trail for electronic transfers, for example:
  - does each electronic transfer start with a properly numbered, completed, and signed Form 9A - Electronic Transfer Requisition
  - do you print the bank confirmation for each electronic transfer, compare it to the requisition details for accuracy, then sign and date the confirmation?
3. Do you keep all electronic transfer requisitions (Form 9A) and bank confirmations in numerical sequence with your accounting records?
4. If your financial institution offers automatic banking machine (ABM) access, have you carefully read the ABM agreement and made sure you understand, and are willing to accept, the risks and liabilities involved before signing the agreement?
5. Have you confirmed that the ABM agreement for your trust account does not allow any funds to be withdrawn unilaterally by your financial institution?
6. Do you ensure that trust funds are never transferred or disbursed from an ABM?
7. Is the ABM access card for your trust account encoded for deposits only?
8. Do you keep your passwords to access and authorize ABM and Internet transactions confidential?

*D) Cash Refunds*

1. Do you prepare a proper audit trail when making cash refunds (such as when required by section 6(e) of By-Law 9), for example:
  - always obtaining a detailed receipt from the payee
  - if using a withdrawal slip, requesting a duplicate copy of the withdrawal slip for your records
  - if issuing a cheque payable to yourself or your firm, noting the client file number and that it is a cash withdrawal?
2. Do you obtain written instructions from the client on the method of refunding?

## **BILLINGS**

### ***Goal:***

To ensure that billings to clients for services rendered, are prepared promptly and accurately, and are properly recorded in your books and records.

### ***Risks:***

- Services provided not billed.
- Invoice delivered to client but services not provided.
- Errors in invoices to clients.
- Revenue recorded in incorrect period.
- Invoice to client posted to incorrect client ledger account.

### ***Recommendations:***

1. Do you discuss the fees for services and the expected disbursements with your client at the start of a matter?
2. Do you confirm all fee arrangements in writing for all services in easy to understand language?
3. Do you bill work-in-progress within a specified time frame and according to your agreement with the client?
4. Do you review the appropriateness and accuracy of invoices to clients?
5. Do you bill disbursements on a regular basis to maintain cashflow and prevent allocation of personal disbursements to client ledger accounts?
6. Do you check the original documents for accuracy before authorizing a request to transfer a disbursement from one client ledger account to another client ledger account?
7. Do you ensure invoices for fees are mailed or delivered to clients before transferring the fee amount from your trust bank account to your general bank account?
8. Are invoices to clients promptly recorded in your books and records as to date, client and amount?

9. Do you review the accounts receivable monthly to identify any credit balances which may indicate that invoices to clients have not been prepared, mailed to the client and entered in the client's ledger account?

## **PROTECTION OF CLIENT ASSETS**

### ***Goal:***

To protect physical assets, important documents and financial records from loss.

### ***Risks:***

- Misappropriation of clients' assets.
- Inability to fulfill your financial obligations.

### ***Recommendations:***

1. Do you maintain an up to date inventory of valuable items and negotiable documents held on behalf of clients in a Valuable Property Record as required by section 18(9) of By-Law 9?
2. Do you periodically check the physical existence of the valuable items, to ensure items have not been lost, stolen, taken for personal use or used as collateral?
3. Do you keep all unissued cheques locked up and ensure they are all accounted for?
4. Are all issued cheques numerically accounted for in your trust and general disbursement journals and do you follow up on any missing cheques?
5. Do you print hard copies of your trust and general bank journals on a regular basis, at least monthly, and store them in a secure, fire proof location so that you can reconstruct your records in the event your computer crashes or your data is corrupted?
6. Do you print a hard copy of the client trust ledger account and review it for accuracy whenever you bill the client?

## **PERSONNEL POLICIES**

### ***Goal:***

To ensure you and your staff conduct yourselves in a professional manner and identify and address conflict of interest situations.

### ***Risks:***

- Inappropriate activities or conduct by other paralegals or staff.
- Errors and omissions and/or Compensation Fund claims.
- Fraudulent transactions are not identified or prevented.
- Decline in revenue.

***Recommendations:***

1. Do you have an adequate conflicts checking system, and does everyone in your firm know how to use it?
2. Do you conduct thorough reference checks before hiring staff?
3. Do you ensure all staff are aware of, and respect, the requirements for client confidentiality?
4. Does your firm conduct periodic reviews of work to identify:
  - a paralegal or staff member who is consistently too busy to take holidays
  - a paralegal or staff member who appears to be living beyond his or her means, including any sudden significant increase in advances of entertainment expenditures, or large increases in unbilled disbursements
  - a paralegal whose production has fallen off for no apparent reason, or a paralegal who appears withdrawn or nervous
  - a paralegal or staff member who often makes last minute requests for funds?

**SMALL BUSINESS COMPUTER CONTROLS**

***Goal:***

To ensure financial data is protected and to ensure you will be able to continue to practice in the event of a disruption.

***Risks:***

- Misappropriation of funds.
- Unauthorized access to your financial records.
- Loss of data.
- Loss of clients and income during the recovery of operations after a disaster.

***Recommendations:***

1. Do you deal with a reputable software dealer to ensure that updates, service and support are available?
2. Do you have appropriate licenses for all the software on your firm's computers?
3. Do you back up your computer data daily so that when your hard drive crashes you will lose only one day's data?
4. Do you have surge protectors for all your computers and modems?
5. Do you know how to operate your computer and accounting systems?
6. Do at least two people know how to operate your firm's systems?
7. Has your firm implemented segregation of duties in using the various functions in your computer system?
8. Are your computer systems password protected?
9. Do you safeguard your system's passwords to ensure client confidentiality?

10. Do you change passwords periodically?
11. Do you have adequate firewalls to prevent unauthorized access to your computer through the Internet?
12. Does everyone in your office scan for viruses prior to installing or using software or copying any file to the hard drives on your office computers?
13. Do you restrict access to your clients' and your firm's accounting information to authorized personnel?
14. Do you have adequate insurance, including business interruption insurance and insurance on records in storage?
15. Do you have a business recovery plan and procedures in place to ensure that:
  - your hardware and software are safeguarded from loss or damage
  - electronic files are regularly backed-up and kept off-site
  - important financial documents and files are copied and stored off-site?
16. Do you periodically test your business recovery plan to ensure it is effective?

***And a final word of advice...***

A system of internal controls will work only if it is understood, accepted and implemented by everyone in your firm. We suggest you use this guide as a basis for discussion with your partners, employees, staff, and accountants to set up appropriate internal controls that will work for your practice.

## USE OF CREDIT CARDS IN THE PARALEGAL PRACTICE

Paralegals may enter into agreements with financial institutions that offer credit card services subject to certain conditions.

The definition of “money” in By-Law 9 includes “credit card sales slips” and provides that credit card sales slips like other money received into trust, must be deposited to your trust account not later than the following banking day.

### CONDITIONS

*Accounts from which Discounts and Services Charges are to be Deducted.*

Any credit card agreement that you enter into **must** provide that all service charges, discounts and other fees payable by you to the financial institution are to be deducted from your general account and that no such charges are to be deducted from the trust account. You should note that most financial institutions offering credit card services require the opening of accounts at one of their branches. If you open a trust account with a financial institution to facilitate the use of a particular credit card, the financial institution must be directed to pay interest on the funds held in trust to The Law Foundation of Ontario.

### CONFIDENTIALITY

The sales slip may show your name or your firm name and your address, the necessary code numbers, and date. The nature of the services provided must **not** be indicated, but only the words “legal services” plus a file number and a dollar amount. Details of the services are to be provided to the client in the usual way.

### AMOUNT MUST BE SHOWN

You **must not** accept a charge card sales slip unless the amount of the charge has been inserted at the time the client signs the sales slip.

### PAYMENT OF RETAINERS

The words “trust account” must appear on the original credit card sales slip and the credit card sales slip must be presented for deposit in the appropriate trust account in accordance with By-Law 9. Normal accounting procedures are then to be followed in transferring the funds from trust to general. Any refund is to be made by credit card voucher. All service charges are to be deducted from the general account and the client must receive full credit for the face amount

of the credit card invoice. **The credit card company's discount or fee is a cost of carrying on practice and is not to be charged to the client.**

The procedures of some credit card companies place you in conflict with provisions in By-Law 9. Some credit card companies require merchants to designate only **one** account into which credit card payments are to be deposited. Additionally, the discount or fee charged by the company is automatically debited from this account.

This process will not permit you to receive by credit card both retainers and payments for billed fees and/or disbursements. Subsection 2(1) of By-Law 9 requires you to deposit funds received in trust (e.g. retainers) into an account designated as a trust account. Meanwhile, subsection 8(2) of By-Law 9 prohibits the deposit into trust, funds that are received by you on account of fees for which a billing has been delivered. Consequently the use of one account for both purposes is not permissible.

Additionally, as with bank charges, the discount or fee must be withdrawn from your general account.

You are urged to canvass this issue with credit card companies that you are using or contemplating using. If the company imposes the above restrictions, you can only designate your general account and thus may only receive payments for billed fees and/or disbursements.

## **TELEPHONE AUTHORIZATIONS**

We are asked from time to time whether it is acceptable to take a client's card number over the telephone and process payment of the account that way. It could be acceptable provided you have rendered the account before doing this. It is always preferable to have the best possible paper trail in any financial dealings, and the signature of the client on the sales slip is obviously the best proof one could have of the client's agreement to use this service.

The issue also arises as to whether it would be acceptable to renew a retainer in this way. It is suggested that you would not wish to put yourself at risk of having the client deny that permission was given for this type of transaction and that if it is contemplated that retainers would be renewed by telephone permission, this arrangement should be clearly set out in the written retainer. In fact we would suggest having the client specifically initial the paragraph of the retainer that would permit this arrangement. Reference should then be made to the paragraph headed "Payment of Retainers" set out above, and the procedure therein followed. It is emphasized that the "paper trail" is for your protection as much as for the protection of the client, and you are urged to take care in your use of credit cards so that misunderstandings do not arise between your firm and the client.

## MONTHLY FINANCIAL REVIEW CHECKLIST

<b>Month reviewed</b>	
<b>Date reviewed</b>	
<b>Reviewed by</b>	
<b>Notes/Reminders in tickler</b>	

Records Reviewed:

- Bank Issued Trust Account statements OR Personally verified accuracy of copies against online bank records
- Reconciliation of Trust Account Bank Balance to trust bank journal balance
- Client Trust Listing as at month end – including balance held and last activity date
- Record of Comparison of reconciled trust account bank balance and client trust listing total
- Bank issued General Account statements OR personally verified accuracy of copies against online bank records
- Reconciliation of General Bank Balance record
- Cancelled Cheques.

Records confirmed to be appropriate in form and content:

- trust reconciliation was prepared by the 25<sup>th</sup> day of the month
- math was correct (not necessary if prepared using accounting software – but re-check if excel based)
- balances on reconciliation agree with supporting documentation
- balance held in trust as per the books and records, match the trust account bank statement adjusted for outstanding cheques, deposits and posting/bank errors (if any)
- bank errors and posting errors are cleared each month and supporting documentation was attached to reconciliation and comparison
- no trust or general cheques are outstanding for more than 6 months. If trust, stop payment if necessary, client liability reinstated in clients' trust ledger, cheque re-issued if appropriate. If general, ascertain why cheque still outstanding and reverse
- no overdrawn client trust ledgers found (if so, immediate repayment is necessary, even if out of licensee's own funds)
- no overdrawn general account, without appropriate overdraft coverage found
- amounts held for each client are correct
- no client trust ledgers found where no activity for more than 12 months (if so, consider if funds are held for legitimate reason, take steps to either bill or return to client – conduct a file review to ascertain status).

#### Work in Progress Review:

- any unbilled disbursements for clients with trust fund balance (if so, transfer and bill in due course)
- any unbilled disbursements (if so, consider sending an interim account)
- any WIP (if so, consider sending an interim account)
- any client files with no activity for over 30 days (if so, conduct a file review and consider providing a status report to client)
- any client files that should be closed
- any negative unbilled disbursements – effectively these are amounts to the credit of the client and should be applied against billings or sent to trust – sometimes they are caused by account write offs that have been posted incorrectly, but they need to be looked at.

#### Accounts Receivable Review:

- any accounts receivable over 30 days
- initiate reminder notices or phone call to client according to office policy – enter reminder in tickler system for follow up
- any accounts that should be written off or listed as doubtful debts – (get your HST back!)
- any accounts that should be assessed
- any negative balances – same as negative unbilled disbursements above.

#### Budget Review:

- income reviewed and compared to budget
- expenses reviewed and compared to budget
- consider need for adjustment to proposed expenses
- unexpected expenses considered.