



Law Society of Alberta
Trust Safety:
Responsible Lawyer
& Trust Account
Approval Protocol

Mar 2, 2017

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This Protocol comes into effect on June 11, 2016, at the conclusion of the Bencher Meeting where the related amendments to the *Rules of the Law Society of Alberta* are approved and become effective.

This Protocol is amended as of September 29, 2016, at the conclusion of the Bencher Meeting where the related amendments to the *Rules of the Law Society of Alberta* are approved and become effective.

This Protocol is amended as of March 2, 2017, with the approval of the Executive Director, to update terminology and clarify the standard of review for appeal processes.

Introduction

- 1) Section 126 of the *Legal Profession Act* states that “subject to the Rules, every active member shall maintain an interest-bearing trust account”. This section applies not only to active members but to professional corporations and law firms. The *Rules of the Law Society of Alberta* place restrictions on this section in fulfillment of the Law Society of Alberta’s mandate. It is in the public interest to ensure that members of The Law Society of Alberta do not pose a risk to the public related to the handling of trust money and trust property.
- 2) The Law Society of Alberta (The Law Society or the Society) has the responsibility to set standards for approving members to become a Responsible Lawyer and qualify to open, operate and maintain a Trust Account. Those decisions fall under Part 5 of the *Rules of The Law Society of Alberta* (the Rules).
- 3) This Protocol should be read in conjunction with the relevant provisions of the *Legal Profession Act* (the Act) and the Rules. To the extent any provision in this Protocol appears to be inconsistent with the Act or the Rules, parties should rely on the Act and the Rules.
- 4) This Protocol first describes the Responsibilities, Requirements and Considerations for Responsible Lawyer status and approval to open, operate and maintain a Trust Account. It then discusses the process regarding the approval of the designation of Responsible Lawyer and qualifying to maintain a Trust Account.
- 5) A majority of applications are decided by the Executive Director and/or Manager, Trust Safety upon an initial review. In some cases, an application requires a more thorough review by the Executive Director, Manager, Trust Safety and/or Trust Safety Committee and additional information may be required.
- 6) This Protocol is intended to support decision makers to make effective and consistent decisions. It is also intended to offer information to lawyers and other interested parties to help them understand some of the criteria which may be applied to various applications and to clarify the procedures involved.

Definitions

- 7) Applicant: The term applicant includes an appellant where the applicant is involved in an appeal to the Trust Safety Committee.
- 8) Application: The term application includes an appeal to the Trust Safety Committee where notice has been filed.
- 9) Law Firm: Law firm means
 - (a) a sole practitioner,
 - (b) a professional corporation that is not part of a partnership, or

- (c) a partnership consisting wholly or partly of active members or professional corporations or a combination of both

that owns and carries on a law practice in Alberta, and includes an LLP.

- 10) Responsible Lawyer: Responsible Lawyer means a lawyer designated as a responsible lawyer under Rule 119.4.
- 11) Trust Account: Trust Account means a pooled trust account or a separate interest-bearing account.

Considerations for Approval – Responsible Lawyer Status

Responsibilities

- 12) In accordance with Rule 119.3, a Responsible Lawyer

is accountable for

- (a) the controls in relation to and the operation of all law firm trust accounts and general accounts,
- (b) the accuracy of all reporting requirements of the law firm,
- (c) the accuracy of all filing requirements of the law firm, and
- (d) any of subrule (1)(a), (b), or (c) that have been delegated to another person.

and “[a] lawyer shall not serve as responsible lawyer with more than one law firm unless authorized to do so by the Executive Director.”

Minimum Requirements

- 13) In accordance with Rule 119.4:

To be or continue to be designated as a responsible lawyer a lawyer must

- (a) be an active member of the Society,
- (b) if employed by or contracting with a law firm, be covered by the professional liability insurance program and the trust safety insurance program administered by the Alberta Lawyers Insurance Association or equivalent insurance in another province,
- (b.1) if employed by or contracting with a person other than a law firm and practices solely within the scope of that employment or contract, be covered by the trust safety insurance program,
- (c) reside in Canada,
- (d) make an application for approval as responsible lawyer to the Executive Director, and
- (e) fulfill any conditions in relation to the approval of responsible lawyer.

Additional Considerations

- 14) The minimum requirements, as set out in the Rules, are the starting point for consideration of an application. The following additional information may also be considered. This list is not exhaustive and other information may be considered.
- a) Information provided on the application form, including:
- i. Number of lawyers that will be part of the law firm;
 - ii. Whether the law firm uses accounting software to record their financial transactions;
 - iii. Proposed area(s) of practice; and
 - iv. Answers to the questions on Section C of the application related to the member's disciplinary history and history of offences under Canadian laws.
- b) Practice history, including:
- i. Length of active, practicing status; area of practice; practice setting; previous Responsible Lawyer status;
 - ii. Suspensions, including reason(s) for any suspension;
 - iii. Restrictions imposed on practice, including nature of and reason(s) for any restrictions;
 - iv. Custodianship appointments, including reason(s) for any custodianship appointments;
 - v. Conduct history, including history of complaints, investigations and proceedings and the relevance to the management of the financial records and/or and oversight of trust monies and trust property;
 - vi. Practice Management history, including any reports on the law practice of the applicant prepared by The Law Society Practice Management department, as well as the relevance of the content of the report to the management and oversight of the financial records and/or trust monies and trust property;
 - vii. Any reporting that the member has made pursuant to Rule 119.34 – Notice of Bankruptcy Proceedings or Writ of Execution, including the length of time since the matter(s) has been resolved;
 - viii. Insurance claims history, including the number of claims, the date that the claim was opened, the nature of the claim, and the resolution of the matter, considered in the overall evaluation of risk;
 - ix. Assurance claims history, including the number of claims, the date that the claim was opened, the nature of the claim, and the resolution of the matter, considered in the overall evaluation of risk; and
 - x. Amounts owing to The Law Society, including any delinquencies in paying any dues, fees, insurance levies, or costs and fines, history of late payments or cheques for payments to The Law Society that have been returned due to insufficient funds.
- 15) Prior to approval of an application, the Practice Management department may conduct an assessment of an applicant's practice capacity to properly deal with accounting of trust money and property and the use of an accounting program.

- 16) Consideration will be given to the mandate of The Law Society as a regulator. It is in the public interest to ensure that members of The Law Society of Alberta do not pose a risk to the public related to the handling of trust money and trust property.
- 17) Factors that may indicate risk related to the approval of the member as a Responsible Lawyer are, but are not limited to, a history of:
- a) Complaints from The Law Society regarding failure on the part of the member to follow the Trust Safety Rules;
 - b) Complaints regarding breach of conditions related to handling of trust money;
 - c) Complaints where there were findings or allegations of integrity issues;
 - d) A large number of complaints regarding failure to serve clients;
 - e) Failure to comply with the Trust Safety Rules;
 - f) Failure to properly organize his or her office with respect to financial records; and/or
 - g) Improper or insufficient staffing of the law office with respect to proper completion of financial records and filings.
- 18) Any open conduct proceedings or Practice Management files at the time of the member's application to be a Responsible Lawyer will generally result in a condition that the Responsible Lawyer's status should be reviewed once the conduct proceedings have come to a conclusion.
- 19) Any open files related to financial difficulty at the time of the member's application to be a Responsible Lawyer will generally result in one or all of the following conditions being imposed until the financial difficulty matters have come to a conclusion:
- a) Monthly or quarterly reporting of trust account bank reconciliations;
 - b) A second signatory on the law firm trust account.
- 20) Consideration will be given to the risk of the law firm selected under an approved arrangement under Rule 119.2, whereby "a lawyer approved as a responsible lawyer is permitted to receive trust money that will be held in the trust account of a law firm approved to operate a trust account where he or she is not practicing". Any change to the selected law firm must be reported to the Law Society to maintain approval of such an arrangement and the Law Society can require the selection of a different law firm prior to or to maintain the approval of any arrangement.

Considerations for Approval – Open, Operate and Maintain a Trust Account

Minimum Requirements

- 21) In accordance with Rule 119.8:

Every law firm shall obtain approval from the Society before opening a trust account, and thereafter keep current the approval to maintain and operate a trust account.

- (2) To satisfy the requirements in subrule (1) a law firm must

- (a) have at least one lawyer who is an active member of the Society and is resident in Canada,
- (b) carry on business in Canada,
- (c) include a lawyer who has been designated a responsible lawyer pursuant to rule 119.4, and
- (d) use a Society approved accounting program unless specifically exempted from this requirement by the Executive Director.

Additional Considerations

22) The minimum requirements, as set out in the Rules, are the starting point for consideration of an application. The following additional information may also be considered. This list is not exhaustive and other information may be considered.

- a) Information provided on the application form;
- b) Practice history of the law firm and its members, including
 - i. Compliance with the Trust Safety Rules, including any deficiencies noted in the law firm Trust Account, which must be reported pursuant to Rule 119.24(3);
 - ii. Trust Safety annual filing history, including the accuracy and timeliness of filings, and the history of ratings;
 - iii. Compliance with conditions recommended in conjunction with approval to operate a Trust Account, including the accuracy and timeliness of compliance with conditions and all reports issued to the Responsible Lawyer in this regard;
 - iv. Audit history, including all audits performed by Society staff pursuant to the Trust Safety Rules and the results of those audits, which are rated based on the number of findings or exceptions noted;
 - v. History of other reporting to the Trust Safety department; and
 - vi. Relevant information from all Law Society departments.

23) As part of the information considered,

- a) Trust Safety filings are vetted and rated for compliance with the Rules and indications of risk; and
- b) Information submitted to the Trust Safety department in conjunction with conditions recommended is vetted and rated for compliance with the Rules and indications of risk.

24) Prior to approval of an application, the Practice Management department may conduct an assessment of an applicant's practice capacity to properly deal with accounting of trust money and property and the use of an accounting program.

25) Consideration will be given to the mandate of The Law Society as a regulator. It is in the public interest to ensure that members of The Law Society of Alberta do not pose a risk to the public related to the handling of trust money and trust property.

26) Consideration will be given to the risk associated with any approved arrangements under Rule 119.2 whereby "a law firm approved to operate a trust account is permitted to hold trust money received by a lawyer approved as a responsible lawyer, who is not practicing with that law firm". The Law Society must be notified of any change to an

approved arrangement to maintain the approval, including when a lawyer ceases to hold trust money with the law firm or when a lawyer begins to hold trust money with the law firm.

Process

Initial application – Decision by Executive Director or Manager, Trust Safety

- 27) Applicants must submit an application in the form and prescribed filing method designated by the Executive Director.
- 28) All applications will be reviewed. Reviews will assess minimum requirements and may use the additional considerations for approval listed above, as well as other relevant information.
- 29) Applications may:
 - a) be approved, with or without conditions, or
 - b) be deniedby the Executive Director or Manager, Trust Safety.
- 30) The Executive Director or Manager, Trust Safety, may require the applicant to answer any inquiries, furnish any records, and/or provide further information or documentation beyond that requested in the application form.
- 31) An applicant may appeal a decision of the Executive Director or Manager, Trust Safety, to the Trust Safety Committee.

Appeal to Trust Safety Committee

- 32) An applicant can appeal a decision of the Executive Director or Manager, Trust Safety, regarding an application or revocation to the Trust Safety Committee.
- 33) Notice of intention to appeal must be provided in writing to the Executive Director no more than 14 days after notice of the decision of the Executive Director or Manager, Trust Safety, is provided to the applicant.
- 34) A panel of the Trust Safety Committee will be convened to determine the matter. The applicant must be served with a Letter of Appointment of the Trust Safety Committee panel and notice of the materials to be provided to the panel.
- 35) Panel decisions will be based on **written materials** unless a specific request by the panel for an oral submission from the applicant is made. In accordance with subrules 119.15(2) and (3),

the Trust Safety Committee panel shall make its decision on a matter on the basis of

- (a) the materials that were before the Executive Director or Manager, Trust Safety, and
- (b) the written reasons for the decision of the Executive Director or Manager, Trust Safety.

and

the Trust Safety Committee panel may also consider either or both of the following

- (a) any additional materials that may be requested by the panel from the applicant or the Society; and,
- (b) any additional materials provided to the panel by the applicant or the Society.

36) In accordance with subrule 119.13(3), the Trust Safety Committee will deal with all appeals based on the record.

37) In accordance with subrule 119.15, the panel deciding the matter shall determine the process to be followed in accordance with the Act, the Rules, the principles of natural justice and the circumstances of the matter.

38) In accordance with subrule 119.13(5), “the Trust Safety Committee shall have the discretion to order the applicant to pay the costs of the appeal, in whole or in part, regardless of the outcome of the application (including where the application is withdrawn). Unless a date for payment of costs is specified, the costs shall be payable immediately.”

39) In accordance with subrule 119.13(4),

Upon determining an appeal, the Trust Safety Committee may

- (a) uphold the original decision to approve or deny an application, without modification,
- (b) uphold the original decision to approve an application but add, remove or amend conditions,
- (c) reverse the original decision to approve an application, or
- (d) reverse the original decision to deny an application and determine any conditions for approval.

40) The standard of review that the panel will apply is reasonableness.

41) The panel will provide a written decision and written reasons for the decision. These will be provided to the applicant.

42) A decision of the panel is final.

Potential Conditions

43) Conditions that could be recommended in conjunction with approval of an application are, but are not limited to, requiring the Responsible Lawyer or law firm to :

- a) Convert to approved accounting software;
- b) File the Trust Safety Accounting Upload annually, quarterly or monthly;
- c) Submit monthly trust and general bank reconciliations, usually for a period of 3 months or 6 months;
- d) Hire qualified accounting staff;
- e) Complete education or training;
- f) Get a second signatory for the law firm trust account; and/or
- g) Pay for an annual field audit.

44) Compliance with conditions is mandatory. Failure to comply with conditions may result in the revocation of the approval to be a Responsible Lawyer or open, operate and maintain a Trust Account.

Resignation of a Responsible Lawyer

45) In accordance with Rule 119.7, a minimum of 14 days before the date that a lawyer ceases to be a Responsible Lawyer, that individual must:

- (a) advise the Society of
 - (i) the intention to cease to be the responsible lawyer, and
 - (ii) the effective date of the responsible lawyer's departure (the "responsible lawyer departure date");
- (b) ensure the preparation of a final Law Firm Self-Report;
- (c) comply with any outstanding audit requirements;
- (d) ensure a replacement responsible lawyer by confirming
 - (i) the necessary application has been filed with the Society, and
 - (ii) the necessary steps have been taken to enable the transfer of the responsible lawyer designation to another qualified member of the law firm.

46) Within 14 days of the responsible lawyer departure date, a law firm must file a Law Firm Self-Report.

47) An approved replacement Responsible Lawyer must be in place to assume the responsibilities of and to be accountable as the Responsible Lawyer for the law firm to continue to operate a Trust Account. If a replacement Responsible Lawyer is not in place by the responsible lawyer departure date or a date specified by the Executive Director or Manager, Trust Safety, approval to operate a Trust Account may be revoked.

Revocation of Responsible Lawyer Status

48) In accordance with subrule 119.7(5),

if at any time, the Executive Director or Manager, Trust Safety, is of the opinion a responsible lawyer does not continue to be suitable to fulfill their duties, the Executive Director or Manager, Trust Safety, shall do any of the following:

- (a) attach conditions to the responsible lawyer approval; or

- (b) revoke the responsible lawyer's status as a responsible lawyer.

49) All of the above noted considerations for approval of Responsible Lawyer status may be considered in a decision to revoke status.

Revocation of Approval to Open, Operate and Maintain a Trust Account

50) Timely and adequate steps must be taken to comply with Rule 119.7 upon the resignation or revocation of status as a Responsible Lawyer in order to continue to operate and maintain a Trust Account.

51) Approval to open, operate, and maintain a Trust Account may be revoked upon the resignation of a Responsible Lawyer if an approved replacement Responsible Lawyer is not in place by the responsible lawyer departure date or a date specified by the Executive Director or Manager, Trust Safety.

52) In accordance with subrule 119.10(2),

if at any time the Executive Director or Manager, Trust Safety,

- (a) has received a notice pursuant to rule 119.34 [Notice of Bankruptcy Proceedings or Writ of Execution], or
- (b) is of the opinion a law firm or responsible lawyer is failing to
 - (i) comply with these rules, and/or
 - (ii) actively assess and/or respond to risks to trust accounts,

then the Executive Director or Manager, Trust Safety shall do any of the following:

- (c) attach conditions to the approval to open, operate and maintain a Trust Account; or
- (d) revoke the approval to open, operate and maintain a Trust Account.

53) All of the above noted considerations for approval to open, operate and maintain a Trust Account may be considered in a decision to revoke approval.