



# What Belongs in Your Trust Account and What Doesn't

(Or “What you might think is okay to have in your trust account but really shouldn't be there.”)

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Jocelyn McNeil: Trust Auditor



# Pop Quiz



## What is the definition of a General Trust Account and Trust Money?

### Part 10.1- Definitions

10.1.1 (d) “**general trust account**” means a deposit account in a financial institution maintained by a practising lawyer or law firm and designated as a trust account into which the practising lawyer or law firm **deposits trust money**

### Part 1 – Definitions and General

1.1.1 (bb) “**trust money**” includes:

- i. money received in trust belonging in whole or in part to a client, or to be held on behalf of the client, or at the direction or order of a client or another, and
- ii. money advanced to a practising lawyer for fees for services not yet rendered or for disbursements not yet made



## Preventing misuse of trust accounts

Anti money laundering legislation requires reporting to FINTRAC on large cash transactions and suspicious transactions.

- Supreme Court of Canada exemption of the Legal Profession

There are corresponding obligations through Canadian Law Societies

- Must not use a trust account where there is no trust relationship.
- Use trust accounts only for direct purpose of providing legal services.
- Client identification and verification, and source of funds.
- Limits on cash transactions
- Be vigilant and exercise judgement in the use of your trust account.
  - Withdraw from representing a client if they know, or ought to know, that they would be assisting in criminal activity if they continue.



## Requirement for Trust Relationship

10.2.9 A practising lawyer must not use a trust account where there is no trust relationship.

10.2.9.1 A practising lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the practising lawyer or law firm is providing.

10.2.9.2 A practising lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.

# Poll Question Answers

## Example (a)

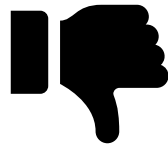
A lawyer representing a client in a criminal matter receives \$5,000 as a retainer.



Okay to deposit into General Trust account

## Poll Question (Answers)

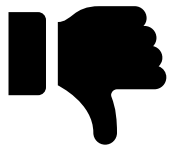
A lawyer is a team coach for a local soccer league. The league asks you to deposit registration fees into your firm's General Trust Account.



Not Allowed in the General Trust Account

# Poll Question Answers

A lawyer acting in a representative capacity as an executor of a \$250,000 estate of a deceased person.



Not Allowed in the General Trust Account

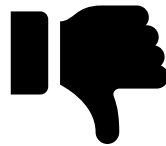
Search “Representative Capacity” on the NSBS Website to view webinar on this topic

Website Link: [Representative Capacity Declaration form](#)



## Poll Question Answers

A client retained a legal advisor for the purchase of a residential property. The client did not come into the office and communicated by telephone and email only. At the outset of the engagement, the client indicated that they wished to pay the total purchase price for deposit into the law firm's trust account before the final agreement was reached. The lawyer receives a \$250,000 cheque in the mail from the client.



Not Allowed in the General Trust Account, based on the information given.

# Poll Question (Round 2) (Answers)

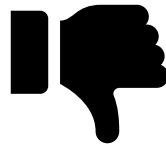
On reviewing the General Trust Account reconciliation, a \$100 overdrawn balance on the client trust listing is noted. The Lawyer immediately transfers \$100 from the operating account to the trust acct



Okay (required) to deposit into General Trust account

# Poll Question (Round 1) (Answers)

A lawyer representing a client in a property matter receives \$10,000 in cash.



Not Allowed in the General Trust Account



## Poll Question (Round 2)

For the following scenarios, select all the examples of money the lawyer is not allowed to deposit into their firm's General Trust Account:

- a. \$7,000 of cash accepted by a lawyer who is acting as a court appointed auctioneer as the required deposit from the successful bidder in a foreclosure sale.
- b. An elderly couple and their adult son met with a legal advisor about the purchase of a home. The son did most of the talking for his parents during the meeting. The parents' income consisted of a modest pension. About half of the purchase price for the new home came from a bank account in the parents' name, which the son helped to set up
- c. A lawyer is acting for the seller in a sale of a property. The funds are received in trust in accordance to the purchase and sale contract. However, the client provides instructions to the lawyer to leave the funds in trust and periodically request to disburse the funds to various third parties unrelated to the transaction.
- d. While reviewing the November Client Trust Listing, the Designated Lawyer noted several balances with a last transaction date of over two years old. Upon further investigation, the lawyer determined the legal services were already complete.
- e. A lawyer is holding a \$2,000 balance in trust that is meant to be returned to the client. Unfortunately, the lawyer has not been able to contact the client for over two years.

# Poll Question Round 2 (Answers)

\$7,000 of cash accepted by a lawyer who is acting as a court appointed auctioneer as the required deposit from the successful bidder in a foreclosure sale.



Not Allowed in the General Trust Account

Acting as an auctioneer is not providing legal services, and there is not a client relationship with the successful bidder.

Lawyers should open separate accounts to hold deposits received in their role as auctioneer.

As you are not providing legal services, and the funds are not permitted in your general trust account, the exemption from the Anti Money Laundering legislation does not apply. You may be subject to other regulatory structures such as FINTRAC.

# Poll Question Round 2 (Answers)

## Round 2 - Example (d)

An elderly couple and their adult son met with a legal advisor about the purchase of a home. The son did most of the talking for his parents during the meeting. The parents' income consisted of a modest pension. About half of the purchase price for the new home came from a bank account in the parents' name, which the son helped to set up. The son turned out to be a career criminal with past drug trafficking offences.

Website Link: [Anti-Money Laundering \(Client ID\)](#)



# Poll Question Round 2 (Answers)

## Round 3 - Example (a)

A lawyer is acting for the seller in a sale of a property. The funds are received in trust in accordance to the purchase and sale contract. However, the client provides instructions to the lawyer to leave the funds in trust and periodically request to disburse the funds to various third parties unrelated to the transaction.

# Poll Question Round 2 (Answers)

## Round 3 - Example (b)

While reviewing the November Client Trust Listing, the Designated Lawyer noted several balances with a last transaction date of over two years old. Upon further investigation, the lawyer determined the legal services were already complete.



# Poll Question Round 2 (Answers)

## Round 3 - Example (c)

A lawyer is holding a \$2,000 balance in trust that is meant to be returned to the client. Unfortunately, the lawyer has not been able to contact the client for over two years.

Website Link: [Application for Disposal of Undistributed Trust Funds](#)



Questions?



- A client retained a legal advisor for the purchase of a residential property. The client did not come into the office and communicated by telephone and email only. At the outset of the engagement, the client indicated that they wished to pay the total purchase price for deposit into the law firm's trust account before the final agreement was reached. The lawyer receives a \$250,000 cheque in the mail from the client.



# Poll Question

For the following scenarios, select all the examples of money the lawyer is **not** allowed to deposit into their firm's General Trust Account:

- a. A lawyer representing a client in a criminal matter receives \$5,000 as a retainer.
- b. A lawyer is a team coach for a local soccer league. The league asks you to deposit registration fees into your firm's General Trust Account.
- c. A lawyer acting in a representative capacity as an executor of a \$250,000 estate of a deceased person.
- a. While reviewing the December General Trust Account reconciliation, the Designated Lawyer noted a \$100.00 overdrawn balance on the client trust listing. The Designated Lawyer immediately transfers \$100.00 from the operating account to correct the shortfall.
- b. A lawyer representing a client in a property matter receives \$10,000 in cash.