

Old balances

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Balances held by lawyers as at December 31, 2019

Old balances	
Category	Dollar amount
2-3 years	4,159,414.55
3 years	3,434,986.14

As protecting the public is the regulatory responsibility of NSBS, we are concerned with the large amounts of client money that continue to be held by lawyers.

There may be valid reasons for client funds being held for an extended period, but there are also large amounts continuing to be held when there is no valid reason to do so.

Regulations

Regulations 10.2.9.1 -10.2.9.2 – came into effect January 1 2020

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.*

Note

You are not operating as a bank. You should not be holding client funds because they requested you keep the funds until they require them, or for possible future transactions.

By holding client funds whilst not providing legal services and paying out the funds later, there is a risk that you may inadvertently be facilitating money laundering.

- Administering funds for a person not capable of doing so themselves is not providing a legal service.
- These funds should not be in your general trust account.
- The funds may be held in a separate account under the individuals name with a power of attorney in place.

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.*

What are “old trust balances”

Old trust balances are funds held in trust for an extended period of time, either because the lawyer has not dealt with them on a timely basis or the trust cannot be fulfilled for some reason. They include, but are not limited to:

- Any funds for filing, registering or recording a document that is in your possession or control but have failed to file, register or record.
- Funds held back for CRA liabilities where no steps have been taken to determine the balance owing to CRA.
- Retainer funds for a client with whom the law firm has lost contact



Why should you deal with old trust balances in a timely manner?

- Old balances take time away from productive activities.
- Regulations 10.2.9.1 and 10.2.9.2 now requires individual lawyers to pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.
- The lawyer has a duty to your client to return funds received that are not required.
- It is frustrating to “get your head back into” an old file only to discover you can’t find the client or something is missing which prevents an easy solution.

What is the problem with carrying old balances?

- An account holding old trust funds is a known temptation for theft: for lawyers, staff and bank staff.
- Less attention is paid to old balances as time passes.
- Old balances are very difficult for the successor in practice to resolve.
- Old balances are an administrative burden

Old balances in context

- 1 Sole practitioner unable to retire until trust accounts are closed
- 2 Death of a lawyer
- 3 Lawyers joining firms with trust balances from previous firms
- 4 Small firm ignoring trust balances for years



Thank you

Questions will be answered after Rob's
presentation