

CAN'T FIND YOUR CLIENT, BUT STILL HAVE THEIR MONEY?

Have you ever lost contact with a client? This is unfortunate for both of you. Aside from your obligations to the client, and to the court if you are on the record, you may be holding funds that belong to your missing client. What should you do with that money?

The Code of Professional Conduct in Rule 3.5 requires you to “care for a client’s property as a careful and prudent owner would”. In this case, your first step is to make reasonable efforts to locate the missing client, keeping dated and detailed notes of all actions taken.

When opening any file, it is prudent to obtain comprehensive contact information – including both personal and work addresses, occupation, landline and mobile numbers and email addresses. (See Law Society Rule 5-118(1) for minimum requirements for contact information for individual and organizational clients.) It is also wise to obtain alternate contact information for a family member or friend for use if necessary. If you have lost contact, call, write and email all of these and document your efforts.

Search online databases and court filings. Check land titles and other public records. Review social media, and if you locate an account, send a private message via Facebook Messenger or otherwise. You might also place a newspaper advertisement in the locale where you believe the client might be located. Your reasonable efforts should be proportionate to the amount of money being held. If the sum is very large, your reasonable efforts may extend to employing a private investigator/skip tracer.

With persistence and a little luck, your missing client may be found. *But what if not?*

***The Legal Profession Act* section 51 sets out the procedure when dealing with unclaimed trust money.**

Where trust money has been held for at least 3 years without any activity and your reasonable efforts to locate the client have failed, you may pay the money to the Law Society (s. 51(1)). This includes any interest earned if the funds were invested separately for the client as a specific trust investment account as defined in Law Society Rule 5-41. (See also s. 50 and [Practice Direction 84-01](#).)

Section 51 also applies in the rare case that there is money in your trust account that is not attributed to anyone in your records.

There are circumstances in which the Law Society cannot accept the funds. These include situations where there are existing trust conditions which must first be resolved, and estate matters where the court’s guidance is required, such as where the personal representative cannot be located or has passed away.

If you are unsure whether the Law Society will accept the funds, you may wish to contact the Audit Department (audit@lawsociety.ca) to provide a brief summary of the situation, and to seek guidance with respect to reasonable efforts to locate the missing party or other matters.

The application form to pay unclaimed trust money to the Law Society (Audit Department) is [here](#).

Once accepted by the Law Society, your liability to pay the money to any other person will be extinguished (s. 51(2)). It then becomes the responsibility of the Law Society to continue to hold the funds and pay them to a claimant who establishes their entitlement (s. 51(3), 51(4) and 51(5)). The funds (and any interest) will become the property of the Law Society if unclaimed for 10 years (s. 51(6)).

You cannot withdraw funds from trust to pay your fees and disbursements unless you have rendered and delivered a statement of account to the client (Law Society Rule 5-44(1)(d) and see [Practice Direction 89-03](#)). If you cannot locate the client to do so, any money that would otherwise be owed to you cannot be recovered from funds you are holding. So stay in touch with your client, and render invoices promptly.

Regular communication with your client is good for your professional relationship and reduces the possibility of losing contact. Stay current with all of your files, including reviewing your inactive ones regularly.

For more information, see [Trust Accounting Fundamentals](#) under Professional Responsibilities in the Education Center.