

## Practice Resource

### Did you know that banks can place holds on trust cheques, certified cheques and bank drafts?

Financial institutions can and have placed holds on trust cheques, certified cheques and bank drafts. A hold could be for as little as one day or for four or more days. During the hold, the financial institution seeks to verify that the funds are available from the account at the financial institution from which the financial instrument is drawn. If the financial institution determines that the financial instrument is counterfeit or altered, the institution and the lawyer may be protected from the fraud. However, a hold on a legitimate instrument can cause potential issues with closings and lawyers' undertakings.

Read our five risk management tips below to reduce the risk of a hold on trust cheques, certified cheques and bank drafts.

1. Know your client. Comply with the Law Society's client identification and verification rules. Ask questions to obtain information about the client and the source of funds. Review rules 3.2-7 and 3.2-8 in the *Code of Professional Conduct for British Columbia* regarding dishonesty and fraud.
2. Review your account agreement with your financial institution and its hold policy.
3. Establish a relationship with your account manager.
4. Ask your financial institution what factors it takes into account when placing a hold on an instrument and find out what risks the institution is prepared to assume for any particular transaction. Financial institutions may take a number of factors into account when assessing whether to impose a hold which may include:
  - The size of the firm and credit risk of the lawyer or law firm making the deposit
  - The financial instrument's dollar value
  - Whether the instrument is drawn on an account from the financial institution's branch in Canada
  - Whether the instrument is drawn on an account at another Canadian financial institution in financial difficulty
  - Whether the financial instrument is drawn on a foreign bank
  - Advance notice provided by the lawyer to the financial institution about the transaction and timing
  - Pre-established hold limits on a lawyer's trust account
  - How the item was deposited (in person at a teller's window or other method)

5. Consider whether a wire transfer is preferable. Payments Canada states in its website information on [wire transfers](#) “Businesses choose wire transfers for critical, time-sensitive, or large value payments since the beneficiary can access the funds on the same day the transfer is sent (often in near real-time), with full confidence that the payment will not be reversed for any reason.”

For more information, the Financial Consumer Agency of Canada website has information about [cheque hold periods](#) and access to funds for small and medium sized businesses, including consumer rights. For information on the Canadian payments system see the [Payments Canada](#) website (formerly the Canadian Payments Association).