The Law Society
of British Columbia

Memo

To:	Jeanette McPhee, CFO and Director of Trust Regulation
From:	Eva Milz, Manager Trust Assurance
Date:	April 24, 2017
Subject:	Resources

PURPOSE

The department's mandate is to audit every law firm that maintains a trust account at least once in a six year cycle. We are currently nearing the end of our second cycle (2013 – 2018). At present there are 3,033 law firms maintaining trust accounts, with 68% sole-proprietors and 7% large firms[1]. While most of the lawyers referred to Professional Conduct are sole-proprietors, the large firms also require a significant number of auditor hours even when they are compliant with the rules. With our current resources we are unable to meet our mandate to audit every law firm within a six year cycle.

Please note, the statistics used in this memo is based on our bi-weekly reports as at April 5, 2017 (4 years and 13 weeks of Cycle 2).

This memo will highlight:

- the resources required by the Trust Assurance department;
- explain why they are required;
- the ramifications of not obtaining these resources; and
- list recommendations.

RESOURCES REQUIRED

After conducting a detailed review of the department's processes and procedures and discussion with staff, I have identified two types of resources that require immediate attention: staff and hardware.

Redacted

Redacted We have had a full day retreat with all of the auditors to develop a strategic plan to help set the direction for the department and deal with other issues of concern. We think there has

[1] Large firms are categorized with a complexity index of 60% or more – most of these law firms have 15 or more pooled trust account and general accounts.

been good progress in this area but additional resources are required to perform the program in an effective and efficient way.

STAFF

Currently, this department has one manager, two team leaders, eleven[2] auditors, two assistants and one trust coordinator.

1. Auditors

Currently there are 3,033 law firms with trust accounts. As such, with a six-year audit cycle, we are required to complete at minimum 505 compliance audits annually, not taking into account other resources needs as noted further. Presently the department has conducted approximately 455[3] compliance audits annually. This equates to a shortfall of approximately 50 audits annually. In addition, due to other demands we will be completing even fewer audits than this in future years. We are projecting to only complete 386 audits in 2017. The following are nine reasons why there is a shortfall and a decreasing number of audits being completed:

1. **Increasing Number of New Firms**

The number of new law firms is growing faster than the termination of law firms.

In Cycle 1 (2007 – 2012) we audited 2,439 law firms. In Cycle 2 (2013 – 2018) we have currently audited 2,030 law firms and will need to audit an additional 719 law firm in order to meet the mandate. In other words, at the start of Cycle 2 there were 2,749 law firms requiring compliance audits that need to be completed by December 2018. At present, there are 3,033 law firms filing trust reports with trust accounts. This number will increase prior to the start of Cycle 3.

Taking into consideration that:

- there has been a 12.7%[4] increase in the number of firms between Cycle 1 and Cycle 2;
- at present there is a 10.3%[5] increase between Cycle 2 and 3;
- we have completed at present 70.8% of Cycle 2;
- we can make an assumption that there will be a 3%[6] increase of law firms prior to January 2019 (start of Cycle 3).

The following table lists law firms audited in Cycle 1, projected law firms required to be audited in Cycle 2 and Cycle 3, along with the percentage increases.

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[2] Due to staff turnover not all 11 auditors have been filled over the past year
[3] 2015 – 460 audits were completed; 2016 – 457 audits were completed; 2017 – projection is only 386.
[4] 2,749 / 2,439 = 12.7%
[5] 3,033 / 2,749 = 10.3%
[6] 10.3 * .292 = 3%

Cycle	Law Firms	Annual Audits	Percentage Increase
1	2,439	406.5	
2	2,749	458.2	12.7%
3	3,124[7]	520.7	13.7%

The most recent new position (auditor) added in our department was in 2010 (Cycle 1). Currently we have 11 auditors. With the present increase of new law firms, we need to acquire at least 1.5 new auditors every cycle in order to maintain the demand, not taking into account staff turnover, expanding scope, and other resource requirements listed in the following paragraphs.

2. Expanding Scope and Expectations

The responsibilities of the Trust Assurance department have grown and evolved. We have expanded our audit program to include a detailed review of the client identification and verification rules. In addition, our working papers have been revised twice; they have been revised from very simple spreadsheets to numerous time intensive and detailed spreadsheets to ensure that we have appropriately documented audit findings under Part 3, Division 6, 7, 8, 9, 11, along with various rules under the *Legal Profession Act* and *Code of Professional Conduct for British Columbia*.

The average complexity of audits has also increased. [redacted]

3. Higher Risk Law Firms Require Additional Work

Some law firms that are found to be in non-compliance of the Law Society Rules require additional audit procedures. At times we conduct a follow up visit or a file monitor. Both of which can add several hours or several days to the audit. The follow up visits sometimes require the same amount of time as conducting another full compliance audit.

[redacted]

[7] 3,033 * 3% = 3,124

Redacted

4. **Increased Referral Memos to Professional Conduct in Numbers and Complexity**

From 2008 to 2015, on average each year, 7.5% of the compliance audits conducted resulted in a referral to Professional Conduct. In 2016, that percentage increased to 10.3% and in 2017, to-date it is approximately 18.9%. Please note, the percentage increased may be partially attributed to the department's acquired responsibility to conduct a comprehensive review the law firm's client identification and verification (CIV) procedures. Lawyers that were not in compliance with the CIV rules during Cycle 2 were immediately referred to Professional Conduct. In Cycle 1, the department did not refer any lawyers on exceptions with CIV rules as it was dealt with at an operational level.

The complexity of the issues that referral memos deals with have also increased. Redacted Redacted Redacted Drafting these complex and numerous referral memos takes time and resources away from conducting compliance audits.

The hours spent per audit and drafting referral memos has steadily increased. As such fewer compliance audits have been completed by each Auditor. In Cycle 1, the average Auditor conducted 50 compliance audits in a calendar year. At the start of Cycle 2, the average Auditor conducted 45 audits in a year. This amount has declined to 42 audits per year and it is anticipated by the start of Cycle 3, the audits completed will be approximately 40 audits per year for each auditor.

5. **New Audit Working Papers and Procedures**

As noted prior, we recently revised our audit working papers requiring additional time for our Auditors to learn and navigate through these procedures. Documentation is now far more robust and detailed then prior, which also adds to the number of hours spent on a compliance audit. The documentation required to substantiate results letter to members and referrals has become more important to support the audit work. Redacted Redacted Redacted Auditors that are assigned to assist with projects such as this also get reduction in their audit workload in order to provide them with the time needed to perform this additional work to improve the program.

6. **Large Firm Audits**

[8] 75 * .292 = 22

Compliance audits with a complexity index greater than 60% require an audit team, as opposed to one auditor. There are approximately 200 law firms that fall into this category. Typically these teams consist of two to three auditors that require at minimum a five-day audit. Therefore, these large firm audits are equivalent to approximately 600 average sized audits, increasing the number of audits in the cycle by 400 audits.

7. Additional Tasks

In addition to conducting compliance audits and drafting referral memos, Auditors are also required to:

- Review trust reports – each law firm is required to submit an annual trust report, approximately 9% of those require accountant's reports that involve additional time to review.
- Review trust shortage letters, as per Rule 3-74 a lawyer is required to provide a written report of trust shortages greater than $2,500.
- Respond to law firms' queries on trust accounting, either via email or phone.
- Review storage modification requests of records.
- Draft letters in response to trust reports filed, written reports on trust shortages and storage modifications.

Auditors are not always able to keep up with the demand and at times there are delays in responding to law firms. In 2017, we changed the outgoing voice message on the Trust Assurance phone line and auto-reply on the Trust Assurance email to indicate that we will respond within two business days. Previously, we were responding within one business day.

8. Staff Turnover

Since January 2015, there has been more turnover than in the past, [redacted]

[redacted]

[redacted] The recruiting process is time consuming and on average takes three months to fill a position. In addition, training new auditors has been a drain on our resources. Auditors require at least two to three months of training before they can conduct a compliance audit independently. After this, their team leader will also have to carefully review their work and field many questions as each audit is unique. [redacted]

Since November 2015, we have trained six new auditors. [redacted] Therefore, with our current department of 11 auditors and 2 team leaders, we can anticipate an average turnover of at least 2 auditors or team leaders annually. It is estimated that the recruitment time and training process impacts the department of approximately 12 months[9] of lost audit productivity annually, which is the equivalent of one auditor per year.

9. New Firms Visits

New firm visits is a proactive educational initiative provided to new practices to help promote trust compliance processes from inception of the law firm. Each new firm visit takes approximately one day plus preparation and administration time. In Cycle 1 we conducted 29 new firm visits and to-date in Cycle 2, we conducted 24 new firm visits. New firm visits are conducted at the request of the law firm. [redacted]

Furthermore, the department would also like to explore other proactive initiatives such as updating the Trust Accounting Handbook and increasing the trust accounting education a student receives through PLTC. These initiatives are vital to our long-term strategic vision of increasing lawyer's compliance with the rules.

Audit Projections for Cycle 2 and Cycle 3

The following is an analysis of the auditors required to complete our mandate for Cycle 2 and Cycle 3.

1. Cycle 2

As noted prior, currently there are at least 720 law firms requiring compliance audits in order to complete our mandate for Cycle 2. With our current Auditors we should be able to complete our mandate. However, there is not available resources to conduct second priority compliance audits, for those lawyers that were not found in compliance and require an additional audit within two years, nor do we have resources available for large firm audits and new firm visits. There will be

[9] This estimate would increase in correlation with department growth

no time to complete the projects to improve the audit program and processes. Furthermore, if the department experiences further staff turnover or problematic audits requiring additional resources to complete the audits and draft referral memos, we will not be able to meet our mandate for Cycle 2.

2. Cycle 3

As noted prior, we project at the start of Cycle 3 (January 2019) we will have 3,150 law firms that require compliance audits. We also need to consider the additional factors requiring resources:

- an estimate of 200 large law firms - equivalent of additional 400 audits;
- non-compliant law firms requiring additional resources for file monitors, follow up visits or priority second compliance audits – equivalent of additional 100 audits;
- staff turnover – equivalent of 240 audits[10] (i.e. one year lost productivity annually); and
- proactive initiatives such as new firm visits – equivalent to 30 audits.

Therefore, the department would be required to complete equivalent of approximately 3,900 compliance audits in the Cycle 3. Our mandate requires that law firms are audited at least once every six years, requiring the department to audit an estimate of equivalent to 649 compliance audits annually.

In January 2018, due to the increased scope and audit expectations we estimate that an auditor will only be able to complete 40 audits annually. As such, in order to complete 649 audits, we will need at least 16 auditors. We currently have 11 auditors and in order to maintain the current demand we will need to hire an additional 5 auditors prior to January 2019. Please note, these calculations do not consider the additional tasks currently performed by auditors as noted under section 7. This will be addressed under trust coordinator. To summarize:

	Audits	Annually	Auditors Required
Law Firms - Jan 2019	3,124	521	13
Large Firm Audits	400	67	1.7
Non-Compliant Law Firms	100	16	.4

[10] 40 audits annually * 6 years = 240 audits

Staff Turnover	240	40	1
Proactive Initiatives	30	5	.1
Total	**3,894**	**649**	**16.2**

2. Team Leaders

The responsibilities of the team leaders include:

- reviewing compliance audit files;
- drafting results letters of the audit findings to the law firms;
- reviewing the lawyer's written response to the results letters and closing files when appropriate;
- providing guidance and feedback to auditors for rule interpretation and when issues arise;
- approving timesheets and reviewing expense reports; and
- monitoring the auditor's workload and ensuring files are completed promptly.

Currently the department has two team leaders, each with a team of five to six auditors. In addition, team leaders will conduct priority audits when their schedule permits. Priority audits are audits which have been identified as having serious rule breaches and requires an audit within 6 months. Due to staff turnover and the training involved with new auditors, team leaders have not been able to perform priority audits.

If the department were to hire an additional five auditors, we would also have to consider hiring an additional team leader so that there would be adequate coverage.

3. Trust Coordinator

The trust coordinator has in this past year acquired additional tasks. She has assumed:

- the termination correspondence from the two assistants, mostly because they were unable to keep up with the workload;
- expanded bi-weekly statistics and reports, which now include detailed reports on referral memos and possible referrals, and also includes the audit progress report of each auditor;
- monitoring possible suspensions and drafting suspension notices; and
- record-keeping work assigned by the Custodianships department (trust entries and reconciliations), mostly to free up the time of an auditor.

The trust coordinator had already maintained a busy workload and with the assignment of these additional tasks she is unable to keep up with her work.

If we hired a second trust coordinator that also assumed the auditor's tasks listed under section 7 – Additional Tasks, we would benefit from:

- alleviating some of the workload of the trust coordinator;
- alleviating the administrative tasks performed by auditors;
- ensuring that trust reports are reviewed in a timely manner;
- responding to law firm queries in a timely manner; and
- ensuring there is an appropriate back-up for the trust coordinator.

4. Administrative Staff (Assistants)

We currently have two assistants who support 11 auditors and 2 team leaders. Their tasks include preparing audit working papers, introduction letters and all audit supporting documents for their teams, in addition to preparing or editing the department's numerous correspondence, and managing department filing for both hard copy files and LEO. The current ratio of assistant to auditor is 1:6.5. The assistants have frequently said they cannot keep up with the heavy workload and with the possibility of hiring additional auditors they will fall further behind. They feel that a ratio of one to five may be reasonable, although this ratio is still high in comparison with other LSBC departments.

If the department hired an additional five auditors, one team leader and one trust coordinator, we would have to hire an additional two assistants for appropriate coverage. The assistant workload would need to be reviewed once the new staff are in place to determine if this is ratio of assistants to auditors provides adequate support for the auditors.

EQUIPMENT

The auditors, team leaders, assistants and trust coordinator have advised that the following equipment is necessary in order to complete their jobs and tasks in an efficient and effective manner.

1. Portable Monitors for Auditors

There is an increasing number of lawyers maintaining a paperless office. As such, they are providing their books and records electronically to the auditors during a compliance audit. It is challenging for auditors to view electronic records and document the audit findings on a single laptop screen without the aid of a second monitor. We are requesting a portable monitor for each auditor to carry in their audit bag. The team leaders have indicated that second monitors were deemed an essential tool at KPMG ten years ago and were provided to all staff who had to work out of the office. Initial research indicates these portable monitors are fairly inexpensive with the cost as low as $100 and are light weight and mobile.

2. Portable Scanners and Printers for each Auditor

Auditors require a portable printer in order to print Summary Reports so that they can deliver the report to the lawyer at the completion of the compliance audit. Auditors who do not have a portable printer must ask the law firm to print the report or return to the office to print a copy. This latter option adds time to the compliance audit.

Scanners are required when auditors need to collect supporting documentation for their audit findings. [redacted] All the information gathered is easily saved into Leo and accessed by the Professional Conduct department during their investigation. [redacted]

For some reason, not every auditor is given a printer and scanner. Auditors have been sharing equipment and at times, sufficient documentation was not collected as a scanner was not available. Ideally, every auditor should be equipped with a portable scanner and printer.

3. Second Monitors for Administrative Staff

As noted prior, administrative staff have a heavy workload requiring them to multi-task. They need to draft correspondence while opening and closing screens in LSIS to extract the data required to import it into the document. It is inefficient and time-consuming, not to mention a strain on their wrist to constantly maneuver their mouse.

4. Connectivity Limitations

There are times when auditors need to upload their current working papers onto Leo and check out the new audit working papers. [redacted] We are hopeful that the iPhone will offer a more stable hotspot and VPN connection. However, auditors are somewhat skeptical since they have experienced issues when they try to use an ethernet cable using their home internet service.

5. Operating Systems Crashing

Auditors spend time working in the field, or at times in their home office[11] or hotel room. In addition to dealing with connectivity issues auditors also contend with operating systems (i.e. Word and Excel) either freezing or crashing. At times when this occurs the unsaved work is lost and they have to restart their laptops. Auditors find this both time-consuming and frustrating. Excel, has become problematic with the development of our new working papers. The new Excel working papers

[11] Auditors will return to their home office when the audit has ended early and it is not convenient to return to LSBC.

contains conditional formatting and macros to assist with better documentation and highlighting the exceptions noted by the auditors. However, auditors have found that these spreadsheets can be cumbersome to navigate when the operating system stalls, freezes or crashes. Some auditors have found that it's beneficial to do a periodic shut-down (morning and afternoon) to refresh the system and prevent it from crashing. Others have complained that this preventative measure does not assist and only causes additional delays with their audit.

SUMMARY OF RECOMMENDATIONS

1. Staff

Auditors / Team Leaders

The analysis indicates to complete our mandate of auditing every law firm within six years, the department needs to hire an additional five auditors and one team leader prior to January 2019 (Cycle 3).

We recommend the following to ensure that we complete our mandate for Cycle 2:

- hire one additional auditor immediately;
- hire one additional auditor in 2018; and
- hire one additional team leader in 2018.

Optionally, we could hire two auditors in 2018, instead of one auditor and one team leader. However, there may not be appropriate coverage to mentor auditors and review their compliance audits, resulting in delays in sending out results letters to law firms.

Prior to or after Cycle 3 commencing, we will then analyze and assess whether and when it is necessary to hire the remaining auditors / team leader.

During Cycle 3, we should monitor the program and if the rate of new law firms continues to steadily increase then we should assess if it is necessary to hire additional auditors prior to commencement of Cycle 4 (2025).

Administrative Staff

If we added an additional five auditors, the assistants would fall further behind with their workload. In order to reduce the ratio to 1:5, we would have to hire two additional assistants.

We recommend to add one assistant now and one assistant in 2018.

This solution does not take into consideration of the numerous tasks the trust coordinator has acquired, as listed above. We recommend to immediately hire a second trust coordinator to alleviate some of the tasks assigned to the trust coordinator in addition to assist with the following tasks currently completed by the auditors:

- review trust reports;
- review trust shortage letters;
- respond to law firms queries; and
- draft correspondence.

By assigning the aforementioned tasks to a second trust coordinator, the work would be completed in a timely manner and would allow auditors to devote their time and effort into conducting compliance audits. In addition, the department would have increased flexibility and stability with appropriate back-up.

2. Equipment

Immediately purchase portable monitors for auditors and team leaders and second monitors for assistants. Each auditor should also have portable scanners and printers and should not be required to share.

We will require further research by the Information Services department to determine the solution to our:

- connectivity issues with using cell phone hotspots and VPN; and
- intermittent crashing or stalling of operating systems, particularly with Excel which appears to be unstable.

Without intervention, the auditors' productivity will be negatively impacted. It is prudent that this be completed in 2017.