

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

## Withdrawal of trust funds by electronic transfer

THE BENCHERS HAVE rescinded Law Society Rule 3-56(3.1)(a), allowing lawyers to make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer, *even if the dollar amount to be withdrawn is less than \$25 million*. Prior to this change, a lawyer could not electronically transfer funds from trust unless the amount was greater than \$25 million. The rest of Rule 3-56(3.1) is unchanged regarding the conditions that must be met for an electronic transfer from trust to occur.

Lawyers must complete and personally sign the *Electronic Transfer of Trust Funds Form* located on the Law Society website for all electronic transfers from trust (except for payments to the Law Foundation). Note that online payments from a trust account via the internet are not permitted. Also, online transfers to move funds from a lawyer's trust account to his or her general account are not permitted.

Lawyers are cautioned that, although Rule 3-56(3.1) is permissive (use of the word "may") so that a lawyer could theoretically write a trust cheque for an amount over \$25 million rather than withdraw the amount by electronic transfer, financial institutions adhering to the Canadian Payments Association rules and standards governing the exchange of payment items between CPA member institutions for amounts over \$25 million will not accept a trust cheque. The CPA was created by federal legislation to establish, maintain and operate a national system for the clearing and settlement of payments. To find out more about the CPA, visit [cndpay.ca](http://cndpay.ca).

Lawyers who have questions about the electronic transfer of funds are encouraged to contact their banking representative and the Law Society's Trust Assurance Department at 604-697-5810 or [trustaccounting@lsbc.org](mailto:trustaccounting@lsbc.org).

### INTEREST ON POOLED TRUST ACCOUNTS – T5 STATEMENT OF INVESTMENT INCOME

Formerly (and in some cases it still happens), when financial institutions prepared a Statement of Investment Income (T5) for interest paid on lawyers' pooled trust

accounts, the T5s were sent to the individual lawyer or law firm account holders. The Law Foundation of BC (the "Foundation") has informed the Law Society that financial institutions are now consolidating the interest paid to the Foundation on each individual account into one T5, which is sent directly to, and the recipient identified as, the Foundation.

If you or your firm receive a T5 directly from a financial institution for interest that was paid to the Foundation, you can forward the T5 to the Foundation. The Foundation suggests that, before forwarding it, you make sure that Box 22 is blank or, if not blank, does not have your recipient ID number entered in Box 22. If your recipient ID number appears in Box 22, and the interest was paid to the Foundation, the financial institution would need to prepare a revised T5 identifying the Foundation as the recipient.

The Foundation does not require a cover letter if you forward a T5 to it; however, you may wish to provide a letter for your records.

### A LAWYER'S PROFESSIONAL AND PERSONAL CHARACTERISTICS

Alan D. Hunter, QC obtained his law degree from the University of British Columbia in 1961 and recently retired from practice after an illustrious 47-year career. Though he moved to Calgary early in his career, eventually forming the well known Code Hunter law firm and becoming President of the Law Society of Alberta, Mr. Hunter has always maintained ties with BC on a personal level if not in practice.

Recently Mr. Hunter introduced me to a paper that he wrote several years ago, *A View as to the Profile of a Lawyer in Private Practice* (1995), 33 Alta. L. Rev. 831, in preparation for a national conference on the legal profession and ethics. Based on his experience in private practice and as a Bencher, it is Mr. Hunter's view that the public has a right to expect that a lawyer will possess the professional and personal characteristics listed below.

- a thorough understanding of the law;
- a recognition that the law is not

immutable and that there is need to have a continuing interest in changes in the law (indeed the lawyer should continue to be a student of the law);

- a demonstrated analytical ability;
- demonstrated written and oral communication skills;
- conscientiousness and a good understanding of human nature;
- a strong interest in problem-solving before there is a problem, in risk aversion and risk minimization, and after there is a problem, in dispute resolution;
- a good imagination for creative solutions;
- wisdom;
- good judgment;
- diligence;
- efficiency;
- competence;
- honesty;
- candour;
- discretion;
- care and prudence;
- fearlessness;
- the utmost integrity.

Whether just starting out, in the middle or nearing the end of our careers, this list presents an opportunity to reflect on our own characteristics and aspirations.

### CRAIGSLIST – SCAMSTERS PREYING ON LEGITIMATE SELLERS

Lawyers should be aware of yet another counterfeit cheque and bank draft scam. This one involves home sales on Craigslist.

Now that more legitimate homeowners are advertising their homes for sale privately on the internet, fake buyers are approaching the sellers directly rather than going through a realtor. Fortunately, when some of the unwary sellers have received what they thought were legitimate offers, they sought legal counsel with respect to their conveyances and astute lawyers recognized the earmarks of a scam before it was too late.

The fake buyers usually say that they live in a foreign country (the United

Kingdom is common) and are willing to buy the property quickly and without actually seeing it. They typically use one of the many free web-based email addresses, such as Hotmail, Yahoo or Gmail. The fake buyer usually sends an amount over the asking price.

If a lawyer gets involved, sometimes the fraudster disappears, or they may send the lawyer a genuine-looking but fake bank draft or certified cheque drawn on a Canadian bank for more than the asking price. The fraudster wants the seller or the seller's lawyer to electronically transfer the excess funds before learning that the bank draft or certified cheque is counterfeit.



What can you do to protect yourself and your client from illegitimate purchasers?

1. Confirm the buyer's addresses and telephone number by checking for published addresses and numbers to see if they match.
2. Ask your financial institution to contact the bank issuing the certified cheque or bank draft to confirm that the funds have cleared.
3. Wait for the funds to clear before paying out from your trust account. This reduces the risk but may not eliminate it completely.

For more tips on protecting yourself, consult the Notice to the Profession issued on May 14, 2009 and the Summer 2009 edition of *Practice Watch*.

#### NEW TWIST ON PHONY DEBT COLLECTION SCAM

Be on the look-out for a new counterfeit cheque and bank draft scam that has surfaced in Alberta.

A new client retained an Alberta lawyer, who acted for the client several times. The client became a tenant of the lawyer so that the lawyer got to know the client well. Eventually the client asked the lawyer for assistance in collecting a debt. A fake cheque arrived for the amount of the debt purportedly from a Quebec law firm. The client was in a rush for the money and asked the Alberta lawyer to write the client a cheque right away for most of the money, but to hold back enough to pay some creditors. Although the name of a lawyer on the fake cheque was a real Quebec lawyer, the address and phone number on the cheque were incorrect.

Fortunately, the Alberta lawyer looked up the telephone number for the Quebec lawyer who was the apparent signatory of the cheque, and the Quebec lawyer informed him that the law firm cheque was phony. Not all of the details are available yet from Alberta, but the name of a deceased lawyer may have also been on the Quebec cheque.

#### PROVIDING CLIENT FILES IN ELECTRONIC FORM

Chapter 10, Rule 8(e) of the *Professional Conduct Handbook* requires a lawyer, on withdrawal from a matter, to take all reasonable steps to assist in the transfer of a client's file. Recently, the Ethics Committee considered what a lawyer's duty to a client is when the client requests documents in electronic form.

A lawyer has an ethical duty, on the request of the client, to provide a client with documents in the possession of the lawyer that the client is entitled to have at law. Where a client requests a lawyer to provide documents in electronic form, a lawyer has an obligation to provide copies of the documents in the same electronic form in which the lawyer holds them at the time of the client's request. To read the full decision, see the annotation in Chapter 10, Rule 8 of the *Annotated Professional Conduct Handbook* on the Law Society website.

#### FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604-697-5816 or [bbuchanan@lsbc.org](mailto:bbuchanan@lsbc.org) for confidential advice or more information regarding any items in *Practice Watch*. ❖

## Notices from the Court

THE PROVINCIAL COURT has issued two practice directions:

1. August 12, 2009 for the Fort St. John – Cariboo Northeast District, "Criminal Caseflow Management Rules – Arraignment and Trial Confirmation Hearings, Compliance and Administrative Court Sitings."

This direction has three objectives:

- expand judicial assignments for Judicial Case Managers;
- provide a simplified and efficient means of scheduling breach matters;
- enforce compliance with Criminal Caseflow Management Rules.

2. October 1, 2009 for the Victoria Youth Justice Court, "Criminal Caseflow Management Rules – Arraignment and Trial Confirmation Hearings and Administrative Court Sitings."

This direction has two objectives:

- expand judicial assignments for Judicial Case Managers;
- enforce compliance with Criminal Caseflow Management Rules.

Visit the court's website at [provincialcourt.bc.ca](http://provincialcourt.bc.ca) for the complete text of the practice directions.



The Supreme Court has issued the following practice direction:

Commencing October 1, 2009, the court will adopt a new procedure to facilitate the recording of appearances on applications in certain civil proceedings. This new procedure is being implemented to assist court clerks in accurately recording the appearances of parties, counsel and others.

Visit the court's website at [courts.gov.bc.ca](http://courts.gov.bc.ca) for the complete text of the practice direction. ❖