Law Society of Ontario | Barreau de l'Ontario

Misuse of Trust Funds: Case Study

Abandoned transaction and transfer of funds without substantial legal work done

Current to July 2021

The Facts

Your law firm was approached by a new client seeking legal services on some asset purchases. The firm assigned the matter to you, a junior lawyer, who was keen to grow their client list and help bring new work into the firm. The new client also seemed eager to retain you and your firm.

At the client's request, you gave the client the law firm's trust account details before the client identification and verification checks on the client were completed or the engagement letter was signed.

The client quickly deposited funds in your law firm's trust account. Following the deposit of funds, the client did not immediately respond to your requests or communications to attend at your office, and she did not give any further instructions.

When the client responded to you a few days later by email, the client explained that she no longer intended to purchase the assets and asked for the deposited funds to be returned; however, she requested they be sent to a third party, rather than to the original account.

NOTE: *While the legal services described in this case study are outside of the paralegal scope of practice, the red flags and best practice recommendations apply, with appropriate modifications, to the provision of legal services by paralegals.*

Red Flags

- Urgency on the part of the client to deposit funds
- Transaction is abandoned shortly after the funds are deposited
- Client initially appears keen but becomes difficult to reach following the deposit of funds
- Client requests the deposited funds be returned before any substantive legal work has commenced
- Client requests that deposited funds be sent to a new account or a third party, rather than returned to the same account
- Client avoids personal contact without good reason

What Should You Have Done?

Completed your due diligence and risk assessment of the client before client funds are deposited into your trust account.

This includes:

- Carrying out the required client identification and verification steps as set out in By-Law 7.1
- Establishing the details of the transaction, including its purpose
- Obtaining information about the source of funds, if required
- Satisfying yourself that there is no reasonable risk that acting for the client or on the transaction will involve assisting in or encouraging any fraud or other illegal conduct, including money laundering

Best Practice Recommendations

You should also:

- Avoid providing clients with the details of your trust account, or at least refrain from doing so until you have completed your due diligence and risk assessment of the client and satisfied yourself that there is no reasonable risk of fraud or other illegal conduct

- Return any unused client trust funds to the client or the original payor, depending on the circumstances

- At a minimum, seek an explanation for any direction from a client to pay out funds to a third party

- Return the funds to the original source if you have concerns about the proposed payment and consider whether you can continue to act for the client

Supports and Resources

- **Guidance Documents:** For more information, consider consulting the Client Identification and Verification Requirements webpage and the Red Flags Worksheet.

- **Practice Management Helpline:** Lawyers or paralegals who have questions about their professional obligations relating to client identification and verification, fraud, money laundering, terrorist financing, or other illegal activity may wish to contact the Practice Management Helpline.