Keep your guard up!

More sophisticated cheque scams targeting lawyers

LawPRO continues to get daily emails and phone calls from Ontario lawyers who find themselves the targets of attempted frauds. Attempted frauds involving debt collections are the most common. Family lawyers especially are the targets of bogus spousal support collection matters.

Although they are not as frequent as they were in 2007 and 2008, attempts at real estate fraud are still very much alive. Specifically, we are seeing more identity thefts now, as flip frauds are harder in a slower market when property values are not rising.

The problem is not isolated to Ontario. Large numbers of attempted bad cheque frauds – and some successful ones too – are occurring in other provinces and across the U.S.

While many of the fraud attempts are sloppy and obvious, some are getting more polished and sophisticated. To help lawyers better recognize the red flags of a problem deal, this article highlights some of the changes in fraudsters' tactics and steps you can take to avoid being duped.

Recent fraud attempts

LawPRO has seen several attempts at frauds in the last few months in which the amount involved was relatively small and thus appeared to be more reasonable and realistic. For example, $150,000 on a spousal collection matter looks more reasonable or typical compared to $850,000.

In one series of attempted frauds we have heard about in Oklahoma, the fraudster went so far as to appear to come from a trusted referral source. He contacted a real estate agent and asked for the name of several lawyers in a particular community. The name of the referral source was mentioned in the initial call or email to the lawyer.

In Ontario we have seen three instances in which fraudsters have forged multiple cheques written on law firm trust or general accounts (either from scratch or on cheque stock). Although we are not familiar with all of the circumstances in which these various cheques were tendered, one has to presume that the fraudsters intended to benefit from the fact that a cheque written on a law firm account might receive less scrutiny than one coming from an unknown entity. In one of these attempts, several counterfeit cheques were created in an apparent attempt to take funds from the general account of a law firm's holding company.

Lawyers who have been duped or almost duped frequently tell us how smooth and determined the fraudster was. See an example of this in the "Please deposit my bogus cheque so I can give the money to an orphanage" sidebar.

Steps to avoid being duped

There are several lessons to be learned from the fraud attempts that LawPRO is seeing. Follow these steps to avoid being duped:

- Make sure you are familiar with the common types of bad cheque and real estate frauds that target lawyers, and the red flags that can help you spot the fraudulent matters.
- Educate your staff on the common types of bad cheque and real estate frauds and their associated red flags. We have seen cases where junior lawyers, support staff or law office accounting staff have prevented frauds because they spotted red flags that the lawyer did not see.
- Religiously follow the client identification and verification steps required by the know-your-client rules.
- Carefully check and cross-verify client identification, especially if there are any questions about where the client is or if there is no apparent connection to Ontario. Some of the initial contact emails now provide background that appears to establish a connection to Ontario.
- Initial contacts from the fraudster may not be via an impersonal and badly worded email. We have seen initial contacts by phone and even contacts in person where the fraudster visited the lawyer's office multiple times.
- Carefully gather relevant background facts and information to confirm that the matter is a legitimate one, especially if the information provided by the fraudster is incomplete or inconsistent. If things don't add up, ask more questions and dig deeper.
- Carefully look at the labelling and sender's address on the package or envelope that the cheque was delivered in. Handwritten addresses are common, and it often appears that the packages were sent from a location that has no connection to the people involved in the matter.
- Be cautious and check the validity of certified cheques or bank drafts deposited into your trust account. Ideally, try to have funds deposited in your account by a wire through the Large Volume Transfer System (LVTS).

  Never let your client directly deposit a cheque or bank draft into your account. Cross-check bank and payor information (spelling of name, address, account and transit numbers, phone numbers) on independent sources (e.g., a bank or payor website).

  Take the cheque or draft to your bank to see if they can verify it. If you think you are dealing with an inexperienced teller, ask for a more senior person to look at it. Try calling the branch that holds the account the cheque was written on (and don't use the phone number or address on the cheque as that will just put you in touch with the fraudster – get it from the bank or financial institution's website). Call the payor named on the cheque to see if he or she actually made the payment (and get contact info from an independent source – not off the cheque), especially if the payor doesn't look connected to the matter (e.g., from the example in the sidebar, an insurance brokerage making a spousal support arrears payment).
- Never be in a rush to disburse funds from your trust account – especially if your client is really pushing to get the funds quickly.
- If you want the benefit of LawPRO's enhanced protection for counterfeit certified cheques and counterfeit bank drafts, keep in mind the following conditions and limitations:
  - You must have waited at least eight business days following deposit of the instrument into your trust account before disbursing funds as instructed; or you must have received confirmation from either your financial institution or the drawee financial institution that the drawee financial institution has verified the validity of the instrument. As well, this confirmation must be documented in writing (whether by you or the financial institution) before payment instructions are given.
  - The drawee financial institution indicated on the counterfeit certified cheque or counterfeit bank draft must be a Canadian financial institution, and the instrument must have been inspected and deposited by you, or a partner or employee of yours.
- Always remember, if it looks too good to be true, it probably is.

The bottom line: If things don't add up – ask more questions and don't let the client bully you into making a payment on matter that is a real or apparent fraud.

Do I reply if I am not sure the matter is legitimate?

Most lawyers will not send a reply to any email requests for services that is obviously a fraud attempt. However, when the email looks suspicious, but could be legitimate, more caution is required. In this case, most lawyers will send a reply asking for identification and more background information. They will also indicate that they will require a retainer before they will do any work on the matter. Where the matter is a fraud the further identification and information provided will be incomplete or there will be inconsistencies. And be careful: a common reply to a request for a retainer is a promise of payment when the payment comes through, and it just happens to show up a day or two later.

Fraud prevention resources

Use the free fraud prevention resources on the practicePRO Fraud Page (www.practicepro.ca/fraud) to help the lawyers and staff in your firm avoid being duped, in particular the following:

Please deposit my bogus cheque so I can give the money to an orphanage

This example, from an Ontario lawyer targeted in March 2010, shows the tenacity and audacity of a fraudster.

The lawyer was initially contacted by phone (not email) by a woman who wanted to retain him for help with collecting support from her ex-husband further to a collaborative family law agreement they had signed. For the initial identification she provided an Illinois driver's licence (a scanned copy sent by email) that looked legitimate. The client also provided a copy of the agreement. Things looked normal at this point, although there was no apparent connection with Ontario (the two lawyers named in the agreement did not appear in the Law Society member directory). This made the lawyer hesitate, and he asked for further identification so as to verify the identity and location of the woman. At this point the story changed a fair bit. The woman indicated she was actually on assignment in Japan and, you guessed it, her ex-husband was willing to make an immediate payment.

At the time the story changed, there was still no apparent rationale for the ex-husband to be making a payment through an Ontario lawyer's office. This prompted the lawyer to ask some more pointed questions in calls with the woman to get some more background. The woman always had a quick and somewhat reasonable answer to the lawyer's questions, but all the answers fell short of being entirely satisfactory.

Next, without any warning or indication it was coming, the lawyer received by registered mail (in an envelope that had hand-written addresses on it) an uncertified cheque for $198,280. It appeared to be from an insurance brokerage and was written on a Brampton branch of BMO. The cheque looked totally legit to the lawyer. The head teller at the lawyer's bank (not BMO) told him that the cheque appeared to be fine. The lawyer then called the insurance brokerage. A cross-check of the cheque number confirmed that it was a real cheque that had been issued to someone else for $280.

The woman called just after the lawyer got the cheque (Good timing!!) and told him to take his fees from the cheque after it had been deposited. The woman now asked that the remaining funds be wired to an account in China. Her reason was simple – she explained that she had already pledged the funds to a charity there.

At this point the lawyer advised the woman that he would not be acting on the matter, as it was clearly a fraud and that he was returning the cheque to the real issuer. This did not deter her. The woman called back again and pushed hard for the lawyer to cash the cheque – and the explanation got more urgent – please pay up as I have pledged money to an orphanage and they need it to finish a building. The lawyer again confirmed he would take no further steps on the matter.

- Download our Fraud Fact Sheet and give it to the lawyers and staff in your office. It lists the common types of bad cheque and real estate frauds and the red flags that will help you spot a fraudulent matter.
- Listen to the archived LawPRO webinar presentation on what frauds look like and how to avoid them. Access the MP3 (audio) file at http://www.cmcgc.com/DEMO/OBA/09GEN0526T.mp3 and the program PowerPoint and materials at http://www.oba.org/en/pdf/09GEN0526T.pdf

Lastly, call LawPRO if you suspect you have completed or are acting on a matter that appears as if it might be a fraud. Claims staff can talk you through the common fraud scenarios they are seeing to help you spot red flags and ask the appropriate questions of your client to determine if the matter is legitimate. And, if you have been duped, they can help you take appropriate steps to respond and deal with the matter.

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