



Safeguarding certified cheques

Like all paperwork, certified cheques can and do go missing.

Unlike some other paperwork, the risks associated with a lost certified cheque – and the steps needed to rectify the problem – can be significant.

How can a certified cheque go astray? Carelessness is the usual culprit. The person charged with delivering the cheque to the payee or financial institution – and this can be anyone from a law firm employee to a courier to a conveyancer (in a real estate transaction situation) – simply misplaces the cheque. Banks too can lose certified cheques: The cheque can go missing within the bank, on its way to the bank's own mortgage department or in some other delivery process.

Whatever the cause, the risks are the same: A missing certified cheque is as good as money in the bank if it falls into the hands of the wrong individual: For example, if a rogue comes across the cheque, he or she could forge the endorsement of the payee or alter the name of the payee and obtain payment of the promised sum. Or the payee who claims not to have received the cheque is in fact acting fraudulently, with the intention of obtaining two certified cheques and presenting both cheques for payment.

Regardless of who lost the cheque, the only individual who can replace the missing cheque is the person who drew the cheque on his/her own bank. That person must attend at his/her bank, advise the bank that the cheque has gone missing, provide particulars of the cheque to the bank and execute an indemnity in the form required by the bank.

When a certified cheque goes missing, time is of the essence. It is imperative that the cheque be replaced

as soon as possible since the consequences of delays in replacing the cheque can be significant in terms of lost interest and/or other claims for damages.

The same circumstances apply to cases involving missing bank drafts since bank drafts are the bank's own undertaking to pay and the bank is liable to make payment to the payee. LAWPRO has seen instances where funds that are being distributed from an estate and sent via bank draft to beneficiaries overseas go missing and are untraceable.

Risk management advice

LAWPRO recommends that lawyers and their staff exercise caution when it comes to handling certified cheques/bank drafts.

- In the case of certified cheques, law firms should obtain detailed receipts on delivery of the cheque(s) to the bank. These receipts should set out the particulars of the cheques such as the date, the amount, the cheque number and identity of the drawee bank, as well as the name of the payee. (A photocopy of the cheque acknowledged by bank stamp or signature is sufficient.)
- In the case of bank drafts, or certified cheques that are sent overseas, lawyers should, where possible, arrange for the funds to be wire transferred into the beneficiary's bank account. Where this is not possible, the cheque/bank draft should be sent by registered mail.

Ian Smyth is a LAWPRO Claims Examiner.