

FRAUD

FACT SHEET

LAWPRO® ...making a difference for the legal profession

How you can avoid being duped

Fraud continues to be a significant and costly problem for LAWPRO. Fraudsters are successfully duping lawyers and law clerks, and it's not just real estate lawyers who are being targeted. Litigation, business, IP and family law lawyers are frequent targets of bad cheque scams involving debt collections, business loans, licensing disputes, and spousal support payments.

Don't be complacent and think you would never be fooled. These frauds are very sophisticated. The matters will look legitimate, the fraudsters will be very convincing and the client ID and other documents you get will look real. The fake cheques have fooled bank tellers and branch managers. There may even be two or more people collaborating on both sides of a transaction to make the scenario more convincing.



What to do if you have a suspicious file

Proceed with caution if you have even the slightest suspicion that the matter you are handling isn't legitimate.

- Look for the red flags of a fraud. See the lists on the following pages.
- Ask questions and dig deeper, especially if the facts don't add up or are inconsistent. See the next page for a list of things you can do.
- Visit the AvoidAClaim.com blog to see email messages and documents from the frauds LAWPRO is seeing. Click on the Confirmed Frauds button to see a full listing of names of confirmed fraudster clients.

If you still aren't sure the matter is legitimate, call LAWPRO. Our experience with multiple frauds can help determine if you are being duped. If the matter turns out to be a fraud and there is a potential claim, we will work with you to prevent the fraud, if possible, and to minimize potential claims costs.

Ultimately, if you aren't completely sure a matter is legitimate, terminate the retainer. Don't be sucked in by your emotions or a strong desire to help. Don't let the lure of a generous fee cause you to ignore your concerns as to the legitimacy of a matter. If it looks too easy or sounds too good to be true, it probably is.

Report obvious frauds to LAWPRO

Help us help other lawyers by sending obviously fraudulent messages or scans of identification and other documents provided to you to fraudinfo@lawpro.ca

Get fraud updates from AvoidAClaim.com blog

For immediate updates on fraud and claims prevention, subscribe to the email or RSS updates from LAWPRO's AvoidAClaim blog.

Bad cheque scams

Fraudsters retain the firm on a contrived legal matter so that they can run a counterfeit cheque or bank draft through the firm trust account and walk away with real money. These contrived

matters will look real. The fraudster will provide extensive and very real looking ID and documents. When the bad cheque or draft bounces, there will be a shortfall in the trust account.

Common types of bad cheque fraud:

Debt/loan collection fraud

- Targets litigators.
- Fraudster will ask for help with a personal or business debt collection.
- Debtor will pay up with little or no pushing.

Spousal support collection fraud

- Targets family lawyers.
- Fraudster will ask you to help with collection from ex-spouse, often further to a “collaborative settlement agreement.”
- Ex-spouse will pay up with little or no pushing.

Trademark and copyright infringement fraud

- Targets IP lawyers.
- Fraudster seeks damages from a breach of a trademark or copyright agreement.
- The company in breach will pay up with little or no pushing.

Business equipment purchase fraud

- Targets business lawyers.
- Fraudster will ask you to handle a purchase (e.g., a dredger).
- Sale proceeds are coming from fake buyer.

Real estate deposit fraud

- Contacts realtors, who put fraudsters in touch with real estate lawyers.
- Overseas client sends lawyer a deposit cheque for a property they saw online.
- Fraudster then backs out of the deal, and asks lawyer to wire the deposit funds back (minus any fees and penalties).

Red flags

These are the common red flags that can indicate that a matter is a fraud. While some of these things may occur on legitimate matters, you should proceed with extreme caution if many of them appear on any matter you are handling.

- Initial contact email is generically addressed (e.g., “Dear attorney”) and BCC’d to many people.
- The name and/or email address in the FROM line is different from the name and/or email address of the person you are asked to reply to in the body of the email.
- Client uses one or more email addresses from a free email service (e.g., Gmail, MSN, Yahoo!), even when the matter is on behalf of a business entity.
- Client raises issues of conflicts or payment of a retainer.
- Domain name used in email address or website was recently registered (check at WhoIs.net).
- Email header indicates sender is not where he/she claims to be.
- Client is new to your firm.
- Client is in a distant jurisdiction.
- Client shows up and wants the matter completed around banking holidays.
- Client says he prefers email communication due to time zone differences.
- Client is in a rush – and pressures you to “do the deal” quickly.
- Client and others involved don’t seem concerned if shortcuts are taken.
- Client is willing to pay higher-than-usual fees on a contingent basis from (bogus) funds you are to receive.
- Despite the client stating a lawyer is needed to help push for payment, the debtor pays without any hassle.
- Cheque or bank draft arrives at your office in a plain envelope and/or without a covering letter.
- Cheque is drawn from the account of an entity that appears to be unrelated (e.g., a spousal arrears payment from a business entity).
- Payment amounts are different than expected or change without explanation.
- Client instructs you to quickly wire the funds to an offshore bank account based on changed or urgent circumstances.
- Some or all of the payment is going to third party who appears unrelated to the matters.

Due diligence on suspected fraudster

Take these steps to cross-check and verify information provided to you by the client.

- Cross-check names, addresses, and phone numbers of the client and other people/entities involved in the matter on Google® and other search engines.
- Tip: To find exact matches, enclose your search terms in double quotes.
- Do reverse searches on phone numbers.
- Look up addresses using Street View in Google Maps.
- Ask your bank or the issuing bank to confirm the branch transit number and cheque are legitimate.
- Call the entity making the payment or loan and ask if they are aware of the transaction.
- Contact the company to confirm it is expecting debtor’s payment or business loan.
- Hold the funds until your bank confirms the funds are “good” by contacting the other bank, and have the bank confirm, in writing, that it is safe to withdraw from the deposit.

Real estate scams

Identity theft fraud

- Client uses fake ID to assume identity of existing property owner (or by filing Form 1 to become director/officer of corporate owner).
- Client sells or mortgages the property, or discharges mortgage from title, then gets new (often high-ratio) mortgage from another lender.
- Paperwork looks in order; no encumbrances on title, but one or more recently discharged mortgages.
- Client in a hurry and accommodating; may discourage house inspection or appraisal.
- Transaction closes, you pay proceeds to client who makes a few mortgage payments, then disappears with funds.
- Lender sues you for value of mortgage.

Red flags: The client

- Funds directed to parties with no apparent connection to borrower or property. Client changes instructions regarding amounts or payees just before closing, or fails to bring in funds as promised.
- Does not care about property, price, mortgage interest rate, legal and/or brokerage fees.
- Does not appear familiar with property.
- Won't permit contact with prior lawyer.
- Client is "out of sync" with property – e.g., don't appear educated/affluent enough.
- Stranger who appears to control client attends to sign documents.
- One spouse or business partner mortgaging equity in property owned by both.

TIP: BE ALERT

- Avoid having documents executed outside your office.
- Include deleted instruments in title search.
- If Ontario driver's licence used as ID, consider verifying it on the MTO website.

Flip (value) fraud

- Happens on purchase or refinance deals.
- Client says she or he is a real estate agent or in business of buying and selling.
- Client promises high fees, lots of business for quick turnaround on deals. (Short turnaround means proper searches aren't conducted.)
- Once transaction closes, client flips property to accomplice (e.g., appraiser and/or mortgage broker) for much higher value.
- Lender issues mortgage on inflated property value.
- Client uses mortgage proceeds to pay initial purchase price, splits excess funds with accomplices.
- Client makes a few payments, and then disappears with funds.
- Lender sues you for excess/inflated value of mortgage.

Red flags: The transaction

- Repeat activity on single property or for single client. Title shows one or more recent transfers, mortgages or discharges.
- Rental and vacant properties especially vulnerable.
- Client buys and sells often, prefers to deal in cash.
- Property listing expired without sale (i.e., sale may be unregistered).
- Frequent and quick mortgage discharges on property.
- New referral source sending lots of business.
- Transaction area is distant from your office.
- Deposit not held by agent or lawyer.
- May target long time owners (deceased, ill, or elderly who may be less alert to signs their identity is being stolen).
- "Rush" deals, often with promise of more.
- Client produces small deposit relative to price.
- Amendment to Agreement of Purchase and Sale reducing price, deposit, or adding creditors.
- Sale is presented as a "private agreement" – no agent involved, or named agent has no knowledge of transaction.
- Municipality or utility companies have no knowledge of client's ownership.
- Client paying little or nothing from own funds.
- Unusual adjustments in favour of vendor, or large vendor-take-back mortgage.
- Use of counter cheques.
- Use of Power of Attorney.

More information on protecting clients against real estate fraud

TitlePLUS® title insurance provides coverage for your clients when they buy a home. Through the OwnerEXPRESS® program, TitlePLUS insurance also provides fraud protection for clients who may have purchased a property earlier but did not also secure title insurance protection on that purchase.

TitlePLUS insurance provides fraud coverage as follows:

- for frauds that may have occurred prior to purchase (e.g., it turns out that the vendor does not really have the right to sell the property);
- if the property becomes a target of fraud at a later date. This is part of the post-Policy Date protection in the TitlePLUS policy.

There is also a “duty to defend” in the policy, which means that it is our problem, not yours, if someone must contact the government to request that title be restored to your client in the official records. (Please refer to the policy for full details, including actual terms and conditions.)

For more information visit titleplus.ca under our "Products and Services," and "Publications" tabs.

The TitlePLUS policy is underwritten by Lawyers' Professional Indemnity Company (LAWPRO).



Is the fraudster in your office?

Not all fraudsters are strangers. Even partners, associates, law clerks or other employees may turn to fraud because of financial pressures from a divorce, failed business venture, or other personal crisis.

Red flags

- Someone never takes vacation or sick leave, works overly long hours, or refuses to delegate work.
- A firm member undergoes a sudden change in lifestyle or temperament.
- The firm receives mail for a corporation for which no client file is opened or billed, or minute books are kept in the lawyer's office instead of with the corporate law clerk.
- Unusual patterns such as a sudden increase in payments to a person or entity, or complaints about slow payment from suppliers or clients, or an increase in written-off work in progress (WIP).

For more information see “Fraud on the Inside: What to do when partners, associates or staff commit fraud” at lawpro.ca/magazine

More information on fraud

To learn more about what fraud looks like and how to prevent it from happening to you and your firm, go to: practicepro.ca/fraud



LAWPRO's enhanced coverage for counterfeit certified cheques, bank drafts

As of January 1, 2010, the LAWPRO policy provides some overdraft protection to lawyers in relation to their trust accounts where liability for the overdraft results from the handling of a counterfeit certified cheque or counterfeit bank draft in the capacity of a practising lawyer. This enhanced protection is subject to several conditions and limitations. Review the FAQs (lawpro.ca/FAQs) on the LAWPRO website to make sure you understand this coverage and the extra steps you must take to qualify for it.


This information bulletin is published by LAWPRO to provide lawyers and law firm employees with an overview of some common types of fraud, and to provide practical advice on ways to minimize their exposure to fraud-related claims. The material presented does not establish, report or create the standard of care for lawyers. The material is not a complete analysis of the topics covered, and readers are encouraged to conduct their own appropriate legal research. The comments in this publication are intended as a general description of the insurance and services available to qualified customers through LAWPRO. Your policy is the contract that specifically and fully describes your coverage and nothing stated here revises or amends the policy.

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