

Letters to the Editor

Law Society advice on operating trust accounts

I am concerned that the Law Society's message concerning lawyers handling large quantities of cash may have been over-simplified (*Operating Trust Accounts*, LawTalk 839, p24).

The core message appears to be that when a client wishes to deposit cash "of a large or frequent nature" into a lawyer's trust account, the lawyer should "place the onus on the payer to bank the money", after which the lawyer will issue a receipt.

The advice then mentions legislative obligations to report "suspicious transactions" under Financial Transactions Reporting Act 1996.

However, asking the client to deposit monies directly does not necessarily remove a law firm from any obligation to report

suspicious transactions, nor potentially from the risk of facilitating money laundering.

The increasing legislative restrictions on money laundering have made it much harder to conceal the origins of at least \$1.5 billion laundered in New Zealand each year, making lawyers' trust accounts (temporarily exempt from the stricter Anti-Money Laundering and Countering Financing of Terrorism Act 2009) a preferred conduit for "cleaning" dirty money.

The message should be that all unusual financial activities (whether or not cash) should invite further enquiry by the lawyer involved; lest lawyers inadvertently get the impression they might receive a "get out of jail free" card by asking clients to bank their own cash about which lawyers harbour suspicions.

ASHLEY BALLS

Legal Best Practice

Response by the Editor of LawTalk, Frank Neill

The New Zealand Law Society would not at any time suggest that lawyers attempt

to circumvent the provisions of any New Zealand legislation.

The Law Society, in fact, supports the legislative obligation to report "suspicious transactions" under the Financial Transactions Reporting Act 1996 (FTRA).

In the article, lawyers were advised that where there is "some suspicion" about the transaction, then a suspicious transaction report should be made to the Police Financial Intelligence Unit.

The article said that where cash deposits were either large or of a frequent nature, it was "reasonable" for lawyers to put the onus back on the payer to bank the money. This suggestion was made in the context of advice on accurately recording the amount to be banked and that it also removes any potential risk to the firm and its staff in physically taking the money to the bank to be deposited.

There was, and continues to be, no suggestion that lawyers could avoid any FTRA responsibilities by asking clients to bank cash themselves.