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.

Coming Up...

Sports law symposium

The Australia and New Zealand Sports Law Association (ANZSLA) will hold a one-day New Zealand Sports Law Symposium in Auckland on 16 May. The symposium will take place at Minter Ellison, 88 Shortland St. ANZSLA’s inaugural New Zealand symposium, the theme is Key Legal Challenges for New Zealand Sport. See http://anzsla.com/content/new-zealand-sports-law-symposium.

Sports law writing award

Entries are open for the Paul Trisley Award, which will be presented at the 2014 Australian and New Zealand Sports Law Association’s conference dinner in Adelaide on 23 October. Paul Trisley was a highly regarded sports lawyer and one of ANZSLA’s most dedicated members for many years. Paul died in 2001 and this award acknowledges his tremendous contribution to ANZSLA and the area of sports law generally. Entrants must email their paper in MS Word format to ANZSLA’s Executive Manager, anzsla@anzsla.com by 5 September. See www.anzsla.com.

Litigation forum

The IBA Annual Litigation Forum will be held in Montreal from 14 to 16 May. The conference theme is International Litigation: Crossing the Great Divide. See www.ibanet.org/conferences/conferences_home.aspx.

Criminology congress

The 17th World Congress of Criminology will be held in Monterrey, Mexico, from 10 to 13 August. Organised by the International Society for Criminology, the congress has the theme Gangs, Trafficking and Insecurity: Empowering the Community. See http://criminology2014.com.

ABA seasonal meeting

The American Bar Association (ABA) 2014 Fall Meeting will be held in Buenos Aires from 21 to 25 October. This will be the first ABA seasonal meeting in the southern hemisphere and it is shaping up to be one of the best. See www.americanbar.org/groups/international_law.html.

Changing your LawTalk delivery address

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The LawTalk address labels are generated from the Registry database. If you change your address with Registry, it automatically changes your LawTalk delivery address.

There is a form on the Law Society website to do this. It is at www.lawsociety.org.nz/for-lawyers/change-your-details. You can contact Registry at registry@lawsociety.org.nz.

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