

What should you do if funds arrive into your trust account with no explanation?

A Halifax law firm called me last week regarding a significant deposit made electronically into its trust account the night before. The firm had received a call from a mortgage processing company saying that it had deposited the funds in error and asking that the firm write a cheque back to the company to remedy the error. The firm refused to do this.

NEVER write a cheque back or otherwise automatically repay a company or individual who calls and tells you that they have deposited monies to your account in error.

Rather, it is recommended that you immediately contact your bank and ask that it fully investigate the deposit and report to you on:

- who originated the deposit;
- how the deposit was made;
- whether the funds came into your account on an irrevocable basis; and
- if the funds came into your account on a revocable basis when, if ever, the deposit is considered irrevocable.

Follow up any verbal communication with a confirmatory letter summarizing your instructions, conversations and advice received from the bank.

Any transfer into your account, other than a wire transfer sent via the LVTS (Large Value Transfer System) www.cdnpay.ca/faqs/lvts.asp#1, is revocable and can be pulled back from your account. Not all electronic deposits are sent via the LVTS. For example, a bank-to-bank transfer (often referred to as a wire) is not normally sent via the LVTS and can be revoked.

If funds have been deposited in error, it should be the sender who deals with the issue through his/her/its bank, with your bank, to remedy any problem.

You do not want to be in the position of having funds withdrawn from your account and then finding out that the deposit was no good. You want to be clear with the bank that if it withdraws the funds from your account based on the deposit, it must be satisfied that the initial deposit was good. This risk and responsibility should be that of the bank, not you. Confirm your discussions with the bank in writing and ask that the bank confirms its advice to you in writing.

Make sure the bank keeps you advised as the investigation progresses and writes a letter to you confirming what has happened. You should keep this letter with your trust account reconciliations and also notify the Nova Scotia Barristers' Society of the incorrect deposit and how the bank dealt with it.

From a risk management perspective, it is also extremely risky to allow clients to deposit cheques or drafts directly into your trust account, as you have no opportunity to assess the authenticity of that cheque or bank draft.

I would appreciate hearing from any lawyers who may have had funds deposited directly into their account, without their knowledge or consent, and who may have been asked to directly reimburse the funds. I would like to monitor any trends that may be developing in this area.