



# Payment Methods and the decline of Trust Cheques

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# Use of Trust Cheques

## Quiz: True or False

- a) Cheques drawn on a Lawyers trust account are guaranteed funds, similar to bank drafts.
- b) Trust cheques clear immediately without a hold by the bank.
- c) Payment of trust cheques is guaranteed by the Society through the Lawyers Fund for client compensation.
- d) Law firms are required to accept a trust cheque from another law firm as payment for amounts owing.



## Reality of Trust Cheques

- Trust Cheques are simply cheques. There is no special feature that guarantees settlement.
- Trust Cheques are subject to regular clearing rules.
- Trust cheques will be returned if there are insufficient funds in the account.



## Bank Holds on Trust Cheques

It is becoming more common for banks to hold funds pending clearing of a deposited trust cheque.

- Historically branch managers may have had discretion to override a hold on funds.
- Increasing fraud and increasing automation means that banks are removing this discretion.
- Banks are within their rights to hold funds pending clearing. They are addressing fraud, which is to everyone's benefit.



## Risks involved with Cheques

- If you are relying on having immediate access to funds deposited by cheque, including a cheque from another lawyer's trust account, you are risking that the transaction will not be completed on the expected date, as the bank may put a hold on the funds.
- You are taking the risk if you pay out funds based on receipt of a cheque (including trust cheques) without ensuring the funds have cleared. If the deposited cheque doesn't clear you are left with the shortage
  - Very common fraud is some variant where you receive a cheque and are asked to transfer the money before the cheque has cleared. When the cheque bounces, you are left with the shortage.
  - You may trust the person who gave you the cheque, but they may have had a cheque go NSF in their account and the domino effect could mean their cheque doesn't clear.

## Example of holds and reversals

You have \$50,000 in your trust account. You deposit a cheque for \$100,000 and immediately write a cheque for payment of \$100,000.

- Your payment may be returned NSF because the deposit you made has not cleared the bank.

You have \$120,000 in your trust account, you deposit a cheque for \$100,000 and immediately issue a cheque for \$100,000

- Your cheque should clear, however if the cheque you deposited then gets returned NSF, then it is reversed out of your account. Your payment may have already cleared, and you are left with the shortage.

# The Future (and Present)

- The use of trust cheques is declining and eventually will cease.





## The Future (and Present)

- Electronic payment methods are becoming more common and will continue to grow and evolve.
  - Talk to your bank about options. Not all electronic transfers have the same characteristics.
- Expect firms requiring guaranteed payment methods to become more common.



# Recommendations

1. Lawyers must assess risk when determining whether to accept specific payment methods and when to send related payments.
2. Talk to your bank manager to understand cheque holds and policies.
3. For time sensitive matters, move to guaranteed/irrevocable methods of payment such as Wire transfers through the Lynx system, or Bank Drafts\*.

\* Note: Genuine bank drafts are guaranteed and irrevocable. Fraudulent/counterfeit bank drafts will be reversed. You can contact the issuing branch to verify authenticity.



## Recommendations (Continued)

4. Specify payment methods in contracts and, if using cheques, require clearing before closing/payout. This may make the use of trust cheques impractical for time sensitive closings. (Standard NS Real Estate Contract may no longer be appropriate).
5. After depositing a cheque, verify funds have cleared before paying out.
6. Verify how funds have been received. Not all types of electronic payment are irrevocable and seeing the money hit your account in your electronic banking does not mean it can't be reversed.



# Standard Real Estate Contract

Nova Scotia Association of Realtors:

- 11.1 Any tender of documents to be delivered or money payable may be made upon the Seller or the Buyer or any party acting on their behalf. Money paid, subsequent to the deposit, shall be by lawyer's trust cheque, certified cheque, electronic transfer or their equivalent, drawn on a chartered Canadian Bank, Trust Company or Credit Union.

Ontario Real Estate Association:

21. TENDER: Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.



# Questions?