

POLICY for HANDLING LEGAL SERVICES COMMISSION PAYMENTS

INCLUSIVE OF UNPAID DISBURSEMENTS

The handling of Legal Services Commission (LSC) payments presents an ongoing problem for practitioners who engage in LSC matters in meeting their trust accounting obligations. Payments made by LSC will generally represent costs due to the practitioner consequent on assignments for multiple clients. In some instances the cheque may also represent payment for unpaid disbursements, including unpaid Counsel fees. The payments are usually handled by practitioners in one of the following ways:

- (a) the entire cheque amount is deposited into the office account in the first instance. Once the cheque is cleared, the amount for unpaid disbursements including unpaid Counsel fees is transferred into the trust account; or
- (b) the entire cheque amount is deposited into the office account and the disbursement is paid directly from the office account; or
- (c) the entire cheque amount is deposited into the trust account in the first instance. Once the cheque is cleared, the amounts owing to the practice are transferred into the office account.

There are problems associated with each of the above methods. In the case of (a) and (b) the practitioner is in breach of section 31(1) of the *Legal Practitioners Act 1981* for failing to deposit the payment into the trust account as soon as practicable after its receipt. As a consequence the practitioner is liable to pay penalty interest pursuant to section 31(9).

In the case of (c), the practitioner is in breach of section 31(6) for permitting trust money to be intermixed with other money.

The Legal Services Commission is unable to alter its method of payment to practitioners.

Therefore in order to address this problem, the Professional Standards Committee has with the approval of the Legal Practitioners' Registrar approved the following methods for handling LSC payments that are inclusive of unpaid disbursements including unpaid Counsel fees:

Method 1 – Split the LSC Cheque

1. This can only occur where the trust banker permits the splitting of cheques.
2. If splitting is permitted, allocate the amounts that are to be deposited into the trust account and the office account. Care should be taken in allocating these amounts so that each amount is accounted for.
3. The amount deposited into the trust account must be receipted in the usual manner and posted to the cash books and the relevant client ledger account.
4. Once the cheque is cleared, the disbursement may be paid directly from the trust account.

Method 2 – Deposit the LSC Cheque into Trust

If the trust banker does not permit the splitting of LSC cheques that include unpaid disbursements including unpaid Counsel fees:

1. Seek written approval of the Legal Practitioners' Registrar pursuant to section 31(6)(a) of the Legal Practitioners Act 1981 to permit trust money to be intermixed with other money pursuant to that section in respect of all payments of this nature made by LSC.
2. Retain the written approval as part of the firm's trust records.
3. Once approval has been granted, deal with each LSC cheque in the following manner:
 - (a) Deposit the entire LSC cheque into the trust account.
 - (b) For those amounts to which the firm is wholly entitled, set up a trust ledger account in the name of the firm.
 - Write out a multi-trust receipt and post it to the cash books and the firm's ledger account. Details of each matter and the corresponding amount must be recorded on the receipt and relevant trust records so that there is a proper audit trail for each payment.
 - (c) For those amounts that are for unpaid disbursements including unpaid Counsel fees, set up a trust ledger account in respect of each individual client matter.
 - Write out a trust receipt for each individual client payment and post it to the cash books and the respective ledger accounts.
 - (d) Once the cheque has cleared, the funds in the firm's ledger account may be transferred to the office account and the disbursement(s) may be paid directly from trust.

If prior to receiving the LSC payment the disbursement has been paid by way of office cheque which has been presented, or by cash or electronic funds transfer from office, the practitioner would be entitled to any payment for that amount and would be entitled to the proceeds of the LSC cheque.

If the LSC payment does not include any unpaid disbursements including unpaid Counsel fees, the entire cheque may be deposited directly into the office account.

Practitioners are reminded that where a client has made a personal contribution into the trust account that contribution must be transferred to the office account within 3 months of being wholly entitled, that is, after the work has been done and a commitment certificate has been signed and lodged with LSC. Otherwise the practitioner is deemed to have permitted trust money to be intermixed with other money (see 2009 Legal Practitioners Regulation 17(2)).