Practice Resource

Law Society of British Columbia

Protecting your firm from employee theft

When you hire new lawyers and support staff, are you thoroughly checking their references? Are their references real? Do you sometimes perform a criminal records check?

You may do all of these things with new employees, however, sometimes it is a long-term, faithful employee — one who is familiar with your accounts, systems and signature — who ends up stealing. Employee theft may include stealing cash, issuing phony invoices, forging cheques, pilfering business equipment and stealing data (e.g., theft of credit card information, client contact and identity information and documents, social insurance numbers).

In addition to the immediate financial loss and stress of dealing with employee theft, your firm can also suffer from negative publicity. Clients or potential clients may feel uncomfortable trusting the firm with their funds and information.

The fraud triangle is often used to talk about three components that contribute to an increased risk of fraud: pressure, rationalization and opportunity. Pressure can come from the need to pay personal debts. Rationalization refers to an individual's justification for committing fraud, such as thinking that they were treated poorly. Opportunity refers to circumstances that allow for fraud to happen. Opportunity is what you can control in your firm.

The following tips may help protect you and your firm from inside threats of theft and fraud.

Red flags

Be alert to red flags such as employees who are living beyond their means, experiencing financial difficulties, bullying colleagues or have a strong sense of entitlement. Being unwilling to take allotted vacation days may also indicate an employee is trying to stay in control of their fraud. Another red flag is when creditors contact the firm about late payments although lawyers instructed that the payments be made in a timely manner. These red flags can be indicators of risks to your clients, firm and employees. See the McDonough Consent Agreement for an example of employee theft. McDonough misappropriated over $8 million from the firm's trust account, resulting in his resignation on an undertaking not to reapply for seven years.

Staffing policies and procedures

Conduct thorough reference checks before hiring lawyers and support staff. Ask a previous employer whether their former employee would be eligible to work for their firm again. If the

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potential employee claims to have a certification, contact the issuing body to confirm it. Consider whether a criminal records check is appropriate if the employee will have access to cash, cheques, credit card information or other sensitive items or information that could easily be stolen.

Lawyers are prohibited from pre-signing blank trust cheques. Such conduct has resulted in disciplinary action (see the Kearns Consent Agreement). Consider making the same prohibition apply to general account cheques too. Store cheques securely. All trust cheques must be signed by at least one practising lawyer authorized to sign. Consider requiring two signatures for cheques over a certain amount.

We recommend that you review your bank statements, the cleared cheques and other supporting documents. Be on the lookout for anything out of the ordinary. Ensure that bank statements are complete and images of cancelled cheques (negotiated cheques) are not missing. Review the statements for any cheque that a lawyer did not sign or authorize.

Segregate office duties so that the employee responsible for opening the mail and deliveries is not the same person who is responsible for accounting, bookkeeping and banking functions. Solo or small firms with limited support staff may not be able to segregate job duties but you may find other approaches to address risk through supervision and even job rotation.

Provide anti-fraud education to employees. Employees should know what to do if someone asks them to do something that is against the firm's policies or feels unethical.

The partners and firm are liable for losses for employee theft. Consider purchasing a crime (fidelity) policy for employee theft or other wrongful or unlawful conduct of an employee. Find out more information about the different insurance policies here. However, if the employee is a lawyer who has stolen trust funds from a client, the client may be entitled to compensation under the trust protection coverage that LIF manages.

See the Sample Checklist for Internal Controls developed by the Trust Assurance department for more details and for other measures to help safeguard your practice.

Be alert to your professional responsibility obligations in Chapter 6 of the *Code of Professional Conduct for British Columbia* ("*BC Code*") with respect to the direct supervision of staff and assistants. See also Top 10 Tips for Lawyers Supervising Staff.

Our Lawyer Well-Being Hub provides information about well-being supports available to lawyers and their families, including easy-to-access resources, videos and tools.

If you have questions about your trust account or general account, please contact the Trust Assurance department (trustaccounting@lsbc.org). If you have questions about your *BC Code* obligations, lawyers can contact a practice advisor (practiceadvice@lsbc.org or 604.443.5797 or make an appointment). If you have questions about this resource, contact Barbara Buchanan, KC at 604.697.5816 or bbuchanan@lsbc.org.