

USE OF CREDIT CARDS IN THE LEGAL PRACTICE

Licensees may enter into agreements with financial institutions that offer credit card services subject to certain conditions.

The definition of “money” in By-Law 9 includes “credit card sales slips” and provides that credit card sales slips like other money received into trust, must be deposited to the licensee’s trust account not later than the following banking day.

CONDITIONS

Accounts from which Discounts and Services Charges are to be Deducted

Any credit card agreement that licensees enter into **must** provide that all service charges, discounts and other fees payable by the licensee to the financial institution are to be deducted from the licensee’s general account and that no such charges are to be deducted from the trust account. Licensees should note that most financial institutions offering credit card services require the opening of accounts at one of their branches. If a trust account is opened with a financial institution to facilitate the use of a particular credit card, the financial institution must be directed to pay interest on the funds held in trust to The Law Foundation of Ontario.

CONFIDENTIALITY

The sales slip may show the name of the lawyer or firm and its address, the necessary code numbers and date. The nature of the legal services provided must **not** be indicated, but only the words “legal services” plus a file number and a dollar amount. Details of the services are to be provided to the client in the usual way.

AMOUNT MUST BE SHOWN

Licensee **must not** accept a charge card sales slip unless the amount of the charge has been inserted at the time the client signs the sales slip.

PAYMENT OF RETAINERS

The words “trust account” must appear on the original credit card sales slip and the credit card sales slip must be presented for deposit in the appropriate trust account in accordance with By-Law 9. Normal accounting procedures are then to be followed in transferring the funds from trust to general. Any refund is to be made by credit card voucher. All service charges are to be deducted from the general account and the client

must receive full credit for the face amount of the credit card invoice. **The credit card company's discount or fee is a cost of carrying on practice and is not to be charged to the client.**

The procedures of some credit card companies place licensees in conflict with provisions in By-Law 9. Some credit card companies require merchants (including lawyers) to designate only **one** account into which credit card payments are to be deposited. Additionally, the discount charged by the company is automatically debited from this account.

This process will not permit licensees to receive by credit card both retainers and payments for billed fees and/or disbursements. Subsection 2(1) of By-Law 9 requires licensees to deposit funds received in trust (e.g. retainers) into an account designated as a trust account. Meanwhile, subsection 8(2) of By-Law 9 prohibits the deposit into trust, funds that are "received by the licensee on account of fees for which a billing has been delivered..." Consequently the use of one account for both purposes is not permissible.

Additionally, as with bank charges, the discount must be withdrawn from the licensee's general account.

Licensees are urged to canvass this issue with credit card companies that they are using or contemplating using. If the company imposes the above restrictions, licensees can only designate their general account and thus may only receive payments for billed fees and/or disbursements.

TELEPHONE AUTHORIZATIONS

We are asked from time to time whether it is acceptable to take a client's card number over the telephone and process payment of the account that way. It could be acceptable provided the lawyer has rendered the account before doing this. It is always preferable to have the best possible paper trail in any financial dealings, and the signature of the client on the sales slip is obviously the best proof one could have of the client's agreement to use this service.

The issue also arises as to whether it would be acceptable to renew a retainer in this way. It is suggested that the firm would not wish to put itself at risk of having the client deny that permission was given for this type of transaction and that if it is contemplated that retainers would be renewed by telephone permission, this arrangement should be

clearly set out in the written retainer. In fact we would suggest having the client specifically initial the paragraph of the retainer that would permit this arrangement. Reference should then be made to the paragraph headed "Payment of Retainers" set out above, and the procedure therein followed. It is emphasized that the "paper trail" is for the protection of the lawyer as much as for the protection of the client, and licensees are urged to take care in their use of credit cards so that misunderstandings do not arise between the firm and the client.