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# The Legal Practitioners Complaints Committee

## Conduct of Legal Practitioner

The Committee recently enquired into the conduct of a legal practitioner who received the settlement proceeds of a client's personal injuries claim and obtained a written authority from the client to deposit that sum into the practitioner's general account. At that time the practitioner did not maintain a trust account. The practitioner did not advise the client to obtain independent legal advice before signing such an authority.

The Committee resolved not to take this particular matter further on the basis of mitigating circumstances put forward by the practitioner. However, the Committee was of the view that strict compliance with s34(1) of the *Legal Practitioners Act*, namely a written direction from the client to deal with the funds

in this manner, does not abrogate a practitioner's overall fiduciary duty to deal with trust monies in a proper manner or to provide proper advice in relation to matters affecting trust moneys. It noted that the client would not have been protected if the general account had been overdrawn.

The Committee's view is that it is extremely unsatisfactory for any practitioner to give advice to a client that trust monies can be deposited into a general account and the circumstances are rare, if any, in which it is appropriate to request a client to authorise a practitioner to do so. Any such authority should be the subject of proper advice and the client should be advised to first obtain independent legal advice.

There are practical alternatives; for example, the cheque could be provided to the client and the client requested to provide a cheque in return for outstanding fees. Alternatively, a practitioner may be able to arrange two separate cheques, one to meet his account for professional costs and disbursements and another for the balance of funds to the client. Advice to the effect that trust moneys be deposited in a practitioner's general account necessarily involves a potential conflict between a practitioner's personal interest and duty. Practitioners must ensure that their fiduciary duties are properly discharged.

*Legal Practitioners Complaints Committee*  
*April 2003* ■