



**SUBJECT:** Information Note on the the History of the Trust Account Levy

The Letter also sets out the Executive's decision to adopt a policy requiring that all non-resident members maintain a trust account in Nunavut for funds held for Nunavut clients by the 2007/2008 Law Society year. This policy ultimately came under scrutiny from other Law Societies across the country and was subsequently rescinded.

## **Rationale for adopting the levy.**

The February 2004 Letter states that the approach taken by the LSN Executive in implementing the trust account levy as well as the trust account policy is to balance the concerns of non-resident members with the needs of the law society. In their view, the approach addressed the crucial relationship between Nunavut and its non-resident members while at the same time injecting much-needed funds into the Nunavut Law Foundation.

Concern over funding for the NLF was raised during the LSN's AGM on February 8, 2003. At that meeting, one of the agenda items was the foundation report from the chairperson. The report sets out the history of the NLF as well as its current challenges.

## **Unique funding situation of the Nunavut Law Foundation.**

After the division from the Northwest Territories, the LSN Executive appointed the first board of directors of the NLF, and the board held its first meeting January 2001. The early part of the Foundation's existence was taken up with negotiating the division of assets with the Law Foundation of the Northwest Territories, setting up banking arrangements in Nunavut, and with developing policies for investments and grants.

By spring 2002, the board of the NLF felt reasonably confident that by early 2003 it would be able to begin accepting grant applications. However, due to limited funds, by the February 8, 2003, annual general meeting of the LSN, the board of the NLF advised that they were not ready to consider grant applications and were not sure when they would be ready.

Through discussions with an investment advisor, the board of the NLF came to the realization that the NLF was facing an unusual and very serious situation. The main source of income for any law foundation is the interest earned on clients' funds held by lawyers in mixed trust accounts in the jurisdiction of the foundation; by law, that interest must be turned over by the banks to the jurisdiction's law foundation.

Due to the limited number of trust accounts based in Nunavut, the interest on mixed trust accounts in Nunavut amounted to a few hundred dollars annually. Specifically, in 2001 it amounted to \$552.00, in 2002 it amounted to \$643.00, and in 2003 it amounted to \$306.00. In contrast, the Law Foundation of the Northwest Territories received a little over \$181,000.00 in interest in 2001, and approximately \$87,000.00 in 2002. Law foundations in the provinces received even more in interest payments.

The only other source of income for any law foundation is investment income and in their February 2003 report, the board of the NLF stated that they were advised that it would be prudent to invest all or most of the NLF's funds on a long-term basis to build a proper foundation of capital before making any significant distributions in the way of grants.

### **Alternative funding methods considered.**

As a possible solution, the board of the NLF raised the issue with CEOs of other law societies from across the country and suggested that other jurisdictions should segregate Nunavut clients' funds and remit interest earned to Nunavut.

This suggestion was deemed untenable as it would require an amendment to other jurisdictions' legislation, and also because banks would be unable to adequately manage the parallel trust fund arrangements.

Between February 2003 and February 2004, the LSN Executive body repeatedly received the message from other Canadian law societies that having banks segregate Nunavut clients' funds and remit interest earned to Nunavut was not a viable option.

The trust account levy was introduced in the February 2004 Letter to the Membership as a way to overcome the unique funding hurdle faced by the Nunavut Law Foundation, and it was subsequently adopted at the March 2004 annual general meeting.

### **Recent steps by the NLF and LSN to ensure funding for the Nunavut Law Foundation.**

On June 7, 2022, the board of the NLF issued a Notice to the Profession (the NLF Notice) asking that all members maintaining trust accounts outside of the Territory come into compliance with s. 57(2) of the *Legal Profession Act* prior to membership renewals for 2024/2025.

The Notice states that the request by NLF was being made due to broad non-compliance with the requirements of s. 57(2) and a resulting deficiency in funds available to the NLF. Please see: [NLF NOTICE TO THE PROFESSION IOLTA 57\(2\) LPA GM June 16 2022.pdf](#).

On December 6, 2023, the LSN issued a Notice to the Profession (the LSN Notice) as a follow-up to the NLF Notice. The LSN reminded members of their obligation to come into compliance with s. 57(2) prior to the January 31, 2024, membership renewal date. The LSN Notice also provided additional information about holding money in trust on behalf of clients, including how to request that a financial institution remit interest to the NLF as well

as the option not to maintain a trust account and instead remit the trust account levy. Please see: [Notice to the Profession\\_Clients' Trust Accounts\\_Dec 6 2023\\_Final EN.pdf](#).

At the LSN AGM on June 27, 2024, the chair of the NLF provided a report which included an update on the NLF's efforts to secure funding through the collection of interest on lawyers' trust accounts and the importance of that increased funding to the NLF:

Aside from awarding the regular awards and grants, the focus of my tenure as chairperson has been securing an increase in our long-term, sustainable funding through the enforcement of section 57(2) of the *Legal Professions Act*. That is to say, the collection of interest on lawyers' trust accounts (IOLTA). The Board is hopeful that with additional funds, we will be able to increase the foundation's capacity to fulfill our mandate.

During the 2023 year, we took concrete steps towards being able to collect this additional funding, though barriers continue to present themselves in this process. We are hopeful that we will have the IOLTA collection process finalized with each major bank in the 2024 year.

Please see: [NLF 2023 Annual Report\\_EN.pdf](#).