



SUBJECT: Information Note on the Trust Account Levy

Members with trust accounts contribute to the NLF through the collection of interest on lawyers' trust accounts. Members without a trust account contribute to the NLF through the \$100 trust account levy.

What is the Nunavut Law Foundation?

The NLF is a non-profit organization created by s. 50 of the *Act*. The NLF is governed by a board of directors (the Board) consisting of five members, including four persons who are members of the LSN and one person who is a member of the public as set out in s. 52 of the *Act*.

The NLF manages a fund which supports important law-related projects and initiatives in Nunavut. The NLF's mandate is statutory, found in s. 51(1) of the *Act*, and includes:

- i. Conducting or contributing to research into and recommending reform of law and the administration of justice;
- ii. Contributing to the establishment, maintenance, and operation of law libraries;
- iii. Contributing to the legal education and knowledge of members and the people of Nunavut and providing programs and facilities for that purpose;
- iv. Awarding bursaries or scholarships for the study of law or related subjects; and,
- v. Providing assistance to legal aid programs, restorative justice programs, and programs of a similar nature.

Funding for the Nunavut Law Foundation.

The funds upon which the NLF relies in order to discharge its mandate consist of interest remitted to the NLF from members' trust accounts in accordance with s. 57(2), the trust account levy, interest accruing from the investment of the funds of the NLF, and any other moneys received by the NLF.

On June 7, 2022, the NLF published a Notice to the Profession (the Notice) asking members to come into compliance with s. 57(2), due to broad non-compliance and the resulting implications on the NLF's funding. For further information please see the Notice ([NLF NOTICE TO THE PROFESSION IOLTA 57\(2\) LPA GM June 16 2022.pdf](#)) as well as the information note on the history of the trust account levy <link to information note on the history of the trust account levy>.

The public-interest nature of the NLF's mandate makes it an important organization for all Nunavummiut. Adequate funding for the NLF is essential to its continued operation.

Member contributions to the Nunavut Law Foundation.

Members with trust accounts contribute financially to the NLF by designating the NLF as the third party to which interest earned on moneys held in trust is remitted.

Members who do not have trust accounts are unable to contribute financially to the NLF in this way. The purpose of the trust account levy for members without trust accounts is to ensure that they too are contributing to the NLF, thereby providing equity and parity of all members' contributions to the NLF.

Financial benefit to members paying the trust account levy.

While the trust account levy has the effect of making membership fees \$105.00 more expensive for members without trust accounts, there are also financial benefits to not having a trust account.

First, to open a trust account a member must have a business bank account. Most, if not all, financial institutions charge a monthly fee for a business bank account, and these yearly fees likely exceed the amount of the trust account levy.

Second, s. 48(1) of the *Act* requires members to deliver both certificates of the member and of a chartered accountant or a certified general accountant to the Secretary of the LSN on a yearly basis. Expenses associated with preparation of a member's certificates as well as certificates from either a chartered accountant or certified general accountant are borne by the member. Section 48(3) of the *Act* provides an exemption to this requirement for members who do not maintain trust accounts.

While members with trust accounts save \$105 on LSN membership fees as a result of not having to pay the trust account levy, it is most likely that they bear expenses in excess of \$105 in relation to maintaining a trust account.

Appendix A

Legislation regarding Trust Accounts:

From the *Legal Profession Act*:

- s. 8(1)(d.1) - The Executive shall make rules for the regulation of the Society, the management and conduct of its business affairs and for the exercise of the powers conferred or the performance of the duties imposed on the Society or the Executive by or under this Act and, without restricting the generality of these powers to make rules, may make rules fixing a levy to be paid by member of the Society for the purpose of funding the Nunavut Law Foundation established under section 50, and exempting a category of members from paying the levy;
- s. 43 - Every member must keep records showing money received or disbursed for each client, including funds held in trust.
- s. 44 - Every member must maintain a clients' trust account at a bank or credit union.
- s. 45 - Members must maintain sufficient funds in their trust accounts to meet gross liabilities.
- s. 46 - Members retain the right to liens or set-offs against money in their trust account.
- s. 47 - Audits can be ordered by the Discipline Committee to verify compliance with the trust account regulations.
- s. 48 - Members must provide annual certificates of compliance with trust account regulations.
- s. 57 - A member must maintain an interest-bearing trust account, and interest earned is the property of the Law Foundation.
- s. 67(2) - Any monies received by the Society pursuant to a rule made under paragraph 8(1)(d.1) are not the property of the Society and shall forthwith be transferred by the Society to the Nunavut Law Foundation established under section 50.

From the Rules of the Law Society of Nunavut:

84: Every member who holds or receives trust money must deposit it into a clients' trust account as soon as practicable.

85: No money shall be withdrawn from a clients' trust account except for payments to or on behalf of a client.

86: Money may be withdrawn if it was mistakenly deposited into the clients' trust account.

86.1: A shortage in the trust account due to bank errors or other issues does not constitute a violation if rectified within three banking days.

87: Money received as an advance on fees or disbursements is deemed to be trust money.

88: Exceptions to sections 84-87 for money that is paid as a fee before it is earned.

89: A member can maintain separate interest-bearing accounts for clients' trust funds.

90: Funds must only be withdrawn via cheque signed by the member or another designated signing authority.

90.1: A forensic auditor may be used in audits related to trust accounts.

91: Annual audits of the member's books and compliance with these rules.

92: The costs of the audit can be paid from the Assurance Fund if necessary.

103. The fees set out in Schedule A are (a) payable in advance to the Society; and (b) exclusive of any assurance fund levy or trust account levy that may apply, and of any federal or Nunavut taxes payable in respect of the fees.