

# Sole Practitioner Seminar

Managing Client Expectations,  
Fulfilling Professional Obligations  
and Achieving Balance in Your life

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## **Managing and Meeting Client Expectations**

Communication is key in managing and meeting client expectations. Claims arise when a client's expectations at the outset are subsequently not met.

Our statistics indicate that poor communication with clients and with others, a failure to confirm or follow instructions, and disputed instructions are major causes for negligence claims in all areas of law.

It is important to communicate effectively with your client from the outset. Take the time to explain, in detail, how the legal process works, what he/she can expect, and how you will communicate as the matter progresses. Discuss your billing procedures and your expectation for prompt payment. Do this verbally, and in writing. By having this information in writing, your client can review it as often as need be, and at times when she/he is less stressed than in your office.

At the commencement of your retainer provide your client with a file or binder and suggestions on how to organize it. Advise your client that you will be copying them with everything you generate or receive, and that this is where this documentation should be kept. This will enable your client to see, at a glance, the progress in the case, and will likely reduce the number of calls you receive to send out duplicate copies of documentation the client has lost or misplaced.

Keep your client informed of the progress in his/her case, and only take action with the express consent of your client. Have letters and pleadings approved, in writing, by your client before they are filed or forwarded to others. Keep this approval on file.

Know who your client is. Is it the parent or the adult child? If it is the parent, take your instructions only from the parent, not the child on behalf of the parent.

Do not make decisions on a case without your client's consent and without explaining to your client the alternatives available and the possible consequences of the alternatives. Satisfy yourself that your client understands what you've told him/her and give him/her time to think before making his/her decision.

Do not make a decision for a client. Give him or her alternatives but make it clear in your discussions that the decision is his/hers to make. Remember your role is not to make the decisions for the client.

## **Effective Client Screening**

Your initial interview affords you the opportunity to screen cases and clients unsuitable to you, thereby greatly reducing your risk of an errors and omissions claim or a professional responsibility complaint.

At this stage conduct an in depth interview to determine if this is a client and a matter that you want to accept. Listen carefully to what the client is saying, and not saying. Ask probing questions to learn more about the client and the matter. Determine the potential client's expectations and assess the reasonableness of those expectations.

Explain the legal process in detail including the range of possible outcomes, time lines, fees, retainers and ongoing payment schedules. Discuss your vacation time policy. (see sample attached)

Before accepting a new matter, evaluate the cost and the risk to you of this client and this matter. Also evaluate if you are qualified to handle the matter. Consider if:

- you have the time and resources to handle the matter, given your current case load and your other professional and personal responsibilities
- the client's expectations are attainable
- the client is willing and able to pay for your services
- the client is someone you want to work with and for

Some clients and some client matters are not the right ones for you. Recognize and listen to that negative gut feeling you sometimes get when you first interview a potential client.

Use your best judgment but generally decline a client who:

- has unreasonable motives or a hidden agenda
- resists paying the required consultation fee or retainer
- has unreasonable expectations about the outcome, cost or time involved
- wants you to guarantee a particular outcome
- has a negative attitude towards lawyers
- doesn't take responsibility for his or her own actions and arrives at your door at the last minute and expects immediate attention
- doesn't want to accept an objective evaluation of the case
- wants to eliminate necessary steps in the presentation of the case to reduce costs.
- advises you that you are the third or more lawyer he/she has retained in matter

This type of client is generally high maintenance and crisis producing. He or she consumes a lot of your time and energy and may be slow in paying if they pay at all. Claims against lawyers are frequently filed by this type of client.

If you chose to represent this type of client use appropriate safeguards to reduce your risk. Be extra vigilant in documenting all meetings and conversations. As with all clients, write detailed letters confirming advice given (including possible outcomes) and instructions received.

If you choose not to represent a potential client make this very clear, and do so in writing, Declination letters are crucial to effective risk management. (See samples attached) Return any documentation received from the client at the end of the interview or with your declination letter. If there is a relevant limitation period advise the client of it and advise them to immediately contact another lawyer if they wish to pursue the matter. Keep the contact information, declination letter and interview notes.

## Client Service Tips

- Listen to your client – ask questions that will help uncover the client’s personal and professional needs and goals
- From the beginning explain the legal process, and procedures to your client. Put yourself in your client’s shoes. If you were the client and in this situation, what would you want to know
- Discuss your communication and vacation policies with your client – when they can expect calls and e-mails to be returned and generally, what time you take off for holidays
- Use detailed retainer agreements and declination letters
- Don't keep clients waiting for their office appointment – be on time, call ahead if you will be late
- Return calls and e-mails in a timely fashion
- Always treat the client and all those you interact with on the file, with respect
- Understand your client's level of sophistication
- Deliver documents, provide answers or advice when you say you will – when you can’t, let your clients know this
- Keep client informed of the progress and status of their matter
- Be professional and courteous in all your communications, including emails
- Learn to recognize high-risk clients. If you choose to represent them recognize the extra time and energy they will require from you and your staff and how this will impact on your ability to meet other clients’ needs on a timely basis

## **The Need for Regular Breaks from the Office**

There are many benefits to being able to take a regular break from the office, whether it's a weekly recreational pursuit, an extra long weekend or a three week holiday. Going years without a regular holiday is counter-productive and a recipe for disaster both personally and professionally. It almost always results in burnout, poor judgment and an increased likelihood of mistakes.

Balance is an essential component of a successful law practice. Too many lawyers find themselves working too hard, drinking too much and with personal lives that are falling apart. While it may be difficult to do, take control of your schedule. Make a commitment to take time off regularly to enjoy family, friends and personal pursuits. It will recharge your batteries.

Strive to represent clients who will respect your right to a balanced life, and those who accept that it is not healthy for you to be on call 24 hours a day, seven days a week, three hundred and sixty five days a year.

The time you take off and how much work you do while outside the office will vary, depending on your life circumstances and stages and the nature of your practice. Sometimes it will make sense to work for part of the "down time" at your favourite recreational pursuit, or at your child's out of town sports tournament or dance competition, if it means you would otherwise miss the event. It may mean that you return emails and phone messages for one hour each morning of a two week vacation (preferably before your travel companions are up). Sometimes it means a complete break from the office to focus just on your holiday and the people important to you.

Regardless of when and how your time off is structured, figure out what works for you, but do give yourself those much needed breaks.

In preparing for this presentation I spoke to many sole practitioners, for suggestions on how they have managed to take time off and still meet their professional obligations.

Here are some of their suggestions and some of my own:

- Commit to yourself that you will take a vacation every year
- Prepare, prepare, prepare
- Organization and good planning is necessary; time management is very important. You must manage work and paper flow on a regular basis if you are going to take regular time off from the office
- Plan well in advance for time off. Book your time out at that beginning of the year – tell your clients, other lawyers and the court, of your vacation dates
- Time will free up unexpectedly; take the time off when the opportunity presents itself. When something settles, get out of the office - you've already book the time off
- Set boundaries at the outset. Tell clients at your first interview, of your vacation policies and office hours – ( see sample wording attached)

- Before leaving on vacation prepare a detailed memo on the status of your active files. Review it with those persons who will be responsible for your files during your absence
- Consider adding days to all the long weekends so you have more of a break away from the office
- Recognize that at the beginning (probably the first five years) you will have to work long hours – but the flexibility you are afforded makes it worthwhile
- Don't accept matters that will need your attendance at times when you know you will be on vacation; if it can't be rescheduled, refer this matter to a trusted colleague, who will likely refer his/her matters to you when he/she is on vacation
- Arrange with a competent colleague to be the “go to person” on your files if emergencies arise when you are on vacation. Initially try this for even a few days, to see how the arrangement works. If it works, your next break can be for a longer period
- Have documented files – make detailed notes as to “where you are” on any given file at any given time, this makes it easier for whoever has to deal with a file in your absence
- Decide what time off is sacred to you and stick with it – e.g. one lawyer acknowledges working long hours through the week, but refuses to schedule appointments for a Saturday or Sunday
- Plan and deal with issues on an ongoing basis – so that when you go on holiday the likelihood of any “ugly surprises” arising are reduced
- Be selective on what matters and which clients you accept
- Promote civility – Work collaboratively to solve problems – reduce the adversarial stance; without this you are creating undue stress when there are options; represent clients who have the same collaborative mindset
- Hire good support staff and pay them well
- Embrace technology
  - Online Banking
  - Computer and laptops
  - Software
  - Cell Phone
  - Blackberry
  - Voicemail
  - Dragon Naturally Speaking

## **Additional Tips**

- Commit to regular breaks from the office and schedule those breaks into your calendar
- Calendaring – have only one calendar, that details personal commitments as well as your practice ones; book your important personal commitments, including vacation and then plan your practice commitments around those dates
- Coordinate the vacations of your support staff so that you do not have employees critical to your operation absent from the office at the same time
- When deciding to accept a new client or a new matter, consider your current caseload as well your other professional and personal commitments including planned vacations
- Do not schedule court appearances or discoveries for the days immediately following your scheduled return to work
- When leaving for vacation set up your out of office assistant on your e-mail, directing anyone who requires a response during your absence to the person who is handling your files. Leave a similar message on your voicemail, if you will not be checking voice messages
- If you feel you must work while on vacation, and you bring along a laptop, cell phone or Blackberry, limit the amount of time you spend working. Rather than constantly checking for messages, consider dealing with e-mails and phone messages at a particular time each day
- If you are working while on vacation, continue to document advice given and instructions received, and make sure this documentation is saved to the file
- Continue to properly track and record your time. If not, you are working for free
- When your regular assistant is absent from the office be particularly vigilant of work done by his or her replacement
- Use technology to cut costs, improve the quality of your work and timeliness of your responses to clients

## **Trust Accounts**

### *Legal Profession Act Regulations (Part 10 Trust Accounts)*

- S. 10.4.9 Withdrawal by Bank Wire Transfers – (Sample transfer form)
- Applications for Disposal of Undistributed Trust Funds
- Reconciling Trust Accounts
- Computerized Trust Accounting
- Trust Account Checklists
- Frequently Asked Questions

### **Tips**

- Hire a good bookkeeper to do trust reconciliations on a monthly basis instead of trying to do it yourself
- Have a good accountant
- Take business courses – recognize the practice of law is also about running a business
- Be careful of your workload. If you take on too much work and are taxed for time – bookkeeping frequently falls by the wayside.
- Remain current on trust account regulations and make sure staff is well trained on them. Explain the consequences to you, them and the practice, if there is non-compliance with the regulations



## Closing Tips

- Network – get out and meet people.
- Take regular vacations
- Partner with a trusted colleague for those times you will be on vacation or otherwise unavailable to your clients
- Participate in educational offerings
- Get a good bookkeeper and accountant
- Stay on top of expenses and receivables
- Stay current on trust account regulations and make sure your staff is aware of them and the importance of compliance
- Effectively screen clients and matters
- LAP – 1-866-299-1299

## Resources

### Books

How to Start and Build a Law Practice, Jay Foonberg, 5<sup>th</sup> edition, Law Practice Management Section, American Bar Association, 2004  
(available at the Nova Scotia Barrister's Society Library)

Risk Management Survival Tools for Law Firms, Anthony E. Davis, 2<sup>nd</sup> edition, Law Practice Management Section, American Bar Association, 2007  
(available at the Nova Scotia Barrister's Society Library)

The Lawyer's Guide to Balancing Life and Work, George W. Kaufman, 2<sup>nd</sup> Edition  
American Bar Association, Law Practice Management Division, 2006  
(available at the Nova Scotia Barrister's Society Library)

### Trust Accounts

Undistributed Trust Funds Application and sample affidavit  
[http://www.nsbs.org/documents/general/UTF\\_Procedures.pdf](http://www.nsbs.org/documents/general/UTF_Procedures.pdf)

Electronic Transfer of Funds Forms  
<http://www.nsbs.org/documents/forms/trusttransferfunds.pdf>

Part 10 Trust Accounts Regulations made under the Legal Profession Act  
<http://www.nsbs.org/documents/general/CURRENTREGS.pdf>

Trust Accounts Manual  
[http://www.nsbs.org/documents/general/trust\\_accounts\\_manual.pdf](http://www.nsbs.org/documents/general/trust_accounts_manual.pdf)

### Technology

ABA TECHSHOW 2009 – Program Brochure  
[http://www.abanet.org/techshow/docs/2009/TS09\\_Brochure.pdf](http://www.abanet.org/techshow/docs/2009/TS09_Brochure.pdf)

LAP - Lawyers Assistance Program - 1-866-299-1299  
<http://www.nslap.ca/>

# Appendices

## Sample Non-Engagement Letter

Dear *[Name]*:

RE: *[Subject]*

This letter is to confirm that this firm will not be representing you in the matter of

You should be aware of the fact that time limits *[could be]* **(or)** *[are]* involved. We have not researched these time limits and we are unable to advise you on the applicable time limits. We urge you to contact another lawyer immediately if you wish this advice. You should be aware that failure to proceed promptly may result in your legal matter failing because you have missed a time limit for starting your action.

If you wish to have a lawyer represent you and you do not have another lawyer in mind, we suggest you call the Legal Information Society of Nova Scotia. This organization maintains a list of lawyers who may be able to handle your case. You can obtain its number through directory assistance.

Thank you for contacting our law firm. In deciding not to represent you I/our firm am not/is not expressing an opinion on whether you will be successful if an action is started. You should not avoid seeking legal assistance from another firm because of this firm's decision not to represent you in this matter.

Very truly yours,

## **Sample Wording Vacation Policy**

Consider including this wording in your retainer agreement. This is sample wording only and should be amended to reflect your vacation policy, hours of work policy and trial dates policy.

In order to effectively represent you, I and my staff must maintain personal life balance. Our office is closed between Christmas and New Years. I also take one month off each summer and except in exceptional circumstance, do not book trials back-to-back. I work regular hours – avoiding work in the evening and on weekends if at all possible. I am generally not accessible after hours.

## **APPLICATION FOR DISPOSAL OF UNDISTRIBUTED TRUST FUNDS**

### **Procedure and Sample Documents**

The Nova Scotia Barristers' Society makes periodic applications on behalf of its members for disposal of members' undistributed or unclaimed trust funds. The *Public Trustee's Act*, Section 28(1), mandates that lawyers apply for disposal of undistributed trust funds that have been held for five years. The Society provides a facilitated process for members to dispose of such funds that have been held for at least two years and reasonable attempts have been made to dispose of the trust funds.

#### **Funds Which Qualify**

- held in trust for at least two years
- reasonable efforts have been made to identify and contact the person(s) to whom the fund funds belong without success
- amount(s) held in trust can be specifically quantified and some information provided as to source of funds, reasons funds paid into trust, etc. if known
- members can certify, if possible, that there are no conditions to which the trust funds are subject

#### **Procedure**

1. You must file an affidavit with the Society's Director of Finance and Administration which contains the following information (see sample attached):
  - (a) **For Trust Funds to Which One or More Persons are Entitled**
    - name of client(s) and last known address
    - balance of trust funds currently held
    - date funds were received
    - date funds were last dispersed, where applicable (attach as exhibit a copy of the trust account ledger)
    - a statement that the funds were or appear to have been received for provision of legal services and a brief description of the legal services which were/were to have been provided

- efforts made by you to deliver the funds to the client(s) (attach as exhibit copies of letters to client(s), newspaper advertisements, etc. if applicable)
- a statement that there are no conditions to which the funds are subject
- if the client entitled to the funds was a corporation, a statement as to whether the corporation still exists according to the official records of the government of the jurisdiction in which the corporation was incorporated or continued
- a statement that you wish the Court to authorize the transfer of funds belonging to (name of client(s)), held in trust by (name of lawyer or law firm) to the Public Trustee

(b) **For Trust Funds That Cannot Be Attributed to Any Person**

- the amount of unattributable trust funds currently held
  - the date the funds were received
  - the reason(s), if known, why the funds were credited to the trust account and why the funds cannot be attributed to any particular client or other person
  - a statement that you wish the Court to authorize the transfer of unattributable funds held in trust by (name of lawyer or law firm) to the Public Trustee
2. You must enclose with your affidavit a \$25.00 administration fee ***payable to the Nova Scotia Barristers' Society.***
  3. The Society will prepare the necessary documentation for a Chambers application and will include your application documents in the next application for disposal of undistributed trust funds.
  4. Once the Society has received the Order granting payment of the undistributed trust funds to the Public Trustee, the Director of Finance and Administration will provide you with a copy of the Order and request that you send a trust cheque in respect of the funds contained in your application to the Society, ***payable to the Public Trustee.***
  5. The Director of Finance and Administration will then provide the Public Trustee with an original Order and enclose members' trust cheques.

**IN THE SUPREME COURT OF NOVA SCOTIA**

**IN THE MATTER OF:**                    **The *Public Trustee Act*,  
R.S.N.S. 1989, c.379**

- and -

**IN THE MATTER OF:**                    **The Application of the NOVA SCOTIA BARRISTERS'  
SOCIETY, on behalf of certain of its members, for an  
Order to have undistributed trust funds transferred to  
the Public Trustee pursuant to s.28 of the *Public Trustee  
Act***

**SOLICITOR'S AFFIDAVIT**

I, \_\_\_\_\_, barrister and solicitor of \_\_\_\_\_,  
in the County of \_\_\_\_\_, Province of Nova Scotia, make oath and say as follows:

1. I was the solicitor for \_\_\_\_\_ whose last known address was  
(name of client)  
\_\_\_\_\_. I was entrusted with funds  
for the provision of legal services in connection with \_\_\_\_\_.  
(describe type of legal service provided)
2. I have held the sum of \$\_\_\_\_\_ in trust since \_\_\_\_\_, and have endeavoured to return the  
said sum to \_\_\_\_\_ without success. Attached hereto as Exhibit "A" are  
(name of client)  
copies of letters and advertisements directed to \_\_\_\_\_.  
(name of client)
3. There are no conditions to which the funds are subject.
4. I have requested the Nova Scotia Barristers' Society to make an application, on my behalf, to  
have the unclaimed trust funds paid to the Public Trustee, pursuant to s.28(1) of the *Public Trustee  
Act*, and I request this Honourable Court to grant an Order authorizing the transfer of the funds of  
\_\_\_\_\_ held in trust by me, to the Public Trustee.  
(name of client)

SWORN to at \_\_\_\_\_, in the County of \_\_\_\_\_ )  
\_\_\_\_\_ Province of Nova Scotia, this \_\_\_\_ day )  
of \_\_\_\_\_, \_\_\_\_\_ before me: )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

A Barrister of the Supreme Court of Nova Scotia

\_\_\_\_\_



Excerpts from Trust Accounts Manual:  
[http://www.nsbs.org/documents/general/trust\\_accounts\\_manual.pdf](http://www.nsbs.org/documents/general/trust_accounts_manual.pdf)

Reconciling Trust Accounts  
Computerized Trust Accounting  
Trust Account Checklist  
Frequently Asked Questions

## RECONCILING

The process of reconciling the trust account ensures agreement between the amount recorded on the Book of Original Entry, the total of the Client Ledger Cards, and the actual Bank Account.

The regulations require that the reconciliation be done at least monthly, and reconciliations are typically done based on the last calendar day of each month.

The closing, or month-end, balance from the Book of Original Entry is often the easiest number to obtain. It would be the balance shown as of the date the reconciliation is being done. The total from the Client Ledger cards is obtained by adding the balance shown as of the date the reconciliation is being done for all the client ledger cards. If these two amounts do not agree, there has been a calculation error, or a recording error made on the part of the Lawyer. The cause of any variance must be determined and corrected as soon as possible.

Reconciling the internal records to the bank statement involves identifying any transactions that have been recorded, but have not yet cleared the bank, or any transactions that have been recorded by the bank, but are not recorded on the lawyer's records. The process involves comparing the bank statement with the book of original entry and "ticking off" those items that appear on both. Typically, there will be cheques that have been written and recorded on the Book of Original Entry that have not yet cleared the bank. Often there may be deposits made on the last day of the month that have not yet been recorded on the bank statement. From the bank statement side, there may be charges applied that the lawyer was unaware of, and needs to deal with.

The reconciliation formula should be The Bank Statement Balance, plus outstanding Deposits, less outstanding cheques, equals the balance shown on the Book of Original Entry. If it does not agree, check for calculation errors or identify any charges levied by the bank that need to be rectified.

It is recommended that the practising lawyer, or managing partner, initial and date the reconciliation. This provides evidence that the lawyer has reviewed the reconciliation.

# COMPUTERIZED TRUST ACCOUNTING

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The Following Software Packages are in use and can be used to account for lawyers' trust accounts. This list is not exclusive and other software packages may exist that meet the minimum requirements set out in the regulations. Software packages on this list are readily available and are in wide use by lawyers in Nova Scotia. In fact these three software packages account for 62% of all computerized packages in use in Nova Scotia.

PRODUCT
PCLaw Pro
PCLaw
Quickbooks – Premier Professional Services Edition 2005
ESILaw

In any event, you should consult with your accountant to determine which method of accounting for your trust account is most appropriate for your practice and to assist with the installation, set-up, and configuration of your system.

# TRUST ACCOUNT CHECKLIST

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Are your books and records kept up to date?	
Do you review Client Trust Ledgers on a regular basis to identify unusual activities?	
Do you prepare (or review) the trust bank reconciliations on a monthly basis?	
<ul style="list-style-type: none"> <li>Do you initial and date the reconciliations?</li> </ul>	
Are your Trust Account Cheques:	
<ul style="list-style-type: none"> <li>sequentially numbered and accounted for?</li> <li>secured in a locked and fire proof vault or safe?</li> <li>clearly identified as Trust Cheques?</li> <li>printed in a different colour than your general (operating) account cheques?</li> </ul>	
Are your Trust Account Deposit book(s):	
<ul style="list-style-type: none"> <li>clearly identified as being for your trust account</li> <li>stored in a different location than your general (operating) account deposit books?</li> </ul>	
If you have a computerized accounting system,	
<ul style="list-style-type: none"> <li>is your software licensed?</li> <li>is your computer protected with a surge protector?</li> <li>is your data backed up and stored offsite on a regular basis?</li> <li>is your computer system password protected?</li> <li>do you change passwords periodically?</li> </ul>	

# F R E Q U E N T L Y   A S K E D   Q U E S T I O N S

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I have decided to open my own practice. Must I open a trust account if I will be receiving funds on behalf of my clients?

**Yes.**

If so, what is a trust account, and what types are there?

**There are specific and general trust accounts. For more information about each, see the definitions.**

What is required to open a trust account?

**You should advise your financial institution that you are a lawyer, open an account in your name AIn Trust,@ and have cheques ordered. Instruct the financial institution to withdraw any service charges from your general account only and pay interest to the Law Foundation**

Who should I advise when setting up a trust account?

**Contact the Nova Scotia Barristers' Society and advise them of the location, account number, and the date opened. Complete an LF1 Law Foundation form which gives the Law Foundation the information necessary and ensure that your financial institution makes interest on general trust account payments to the Law Foundation.**

What are examples of Aother valuable property@ that I can hold in trust on behalf of a client?

**You can hold stock certificates, bonds, T-Bills, negotiable instruments, cash, and jewellery.**

What is required of me or my firm if I am holding valuable non-cash property in trust?

**You have to keep a separate record of other property held in trust which shows the valuable property received and delivered, and the undisbursed portion held in trust. For an example of what a valuable property register is like, see the sample in Chapter 8 — Samples and Examples.**

When do I advise a client of the choice between the two types of trust accounts?

**You must advise a client that its funds may be deposited in a specific, interest-bearing trust account when you have reasonable and probable grounds to believe that the funds will not be required for 30 days or more and the funds are sufficient to justify the expense of opening a separate specific trust account.**

Even if I believe that my client's trust money will be required for less than 30 days, should I advise my client of the different types of trust accounts?

**Yes — there is no statutory duty for this, but it is good business practice. As a professional courtesy, you should always advise your clients what you are doing with the money they are giving you in trust.**

What is CDIC and CUDIC coverage, and what does it provide?

**CDIC and CUDIC is financial insurance which provides coverage protection for up to \$60,000 for each specific trust account and up to \$60,000 per client listed in a general trust account.**

If I didn't request that my client have the deposit cheque certified, and the cheque is returned to me NSF after the closing and after I have disbursed the money on closing, what should I do?

**You should replace the funds from your general account. Remember that any bank service charges for the NSF cheque cannot come out of the trust account; you should make arrangements to pay for those from the general account as well. You should seek reimbursement from the client as soon as possible.**

Can I deposit some of my or my firm's money in the trust account to cover possible bank charges, bank errors, mathematical errors, etc.?

**No. Trust accounts are only to be used for the deposit and retention of CLIENT trust money. No floats are permitted. For more information, see the section on *Deposits in Chapter 2 — Trust Accounts*.**

Is it true that I am liable if a partner or associate misappropriates funds from my firm's trust account?

**Yes, if you knew or reasonably ought to have known of the misappropriation or fraudulent activity. It is the partners' responsibility to review trust records and reconciliations regularly.**

When is it prudent to write trust cheques?

**Only when the funds have cleared the bank. If your client gives you trust funds which are not in the form of cash, certified cheque or money order, you should wait until you are sure that the funds have cleared before you write any cheques on behalf of that client. If you will need to disburse some of the funds reasonably quickly, you should advise your client to provide you with some form of guaranteed deposit funds.**

What should I do when another lawyer asks to have my firm's trust cheque certified?

**Comply. As you wouldn't be issuing a trust cheque without having the funds in your account, there should be no problem in having your trust account cheque certified.**

What are trust reconciliations, how often should they be completed, and why should I do them?

**Trust reconciliations ensure agreement between the book of original entry, the client ledger cards, and the bank statement. You must do a reconciliation of your client ledger to the trust balance, and this must be done monthly within 30 days of month-end. This provides for accurate, current accounting for all client funds and for early detection of bank errors, overdrafts, etc.**

Due to a clerical error following a property transaction, I have \$100.09 in trust for a client and cannot locate the client now to pay over the funds. What do I do?

**You can make application for disposal of unclaimed trust funds with the Society. Detailed procedures can be found the Society website ([www.nsbns.ca](http://www.nsbns.ca)). But you can only do this if you have held the funds in trust for at least two years. If you have held the funds for five years or more, you can apply for disposal of the funds with the Public Trustee pursuant to Section 5.28(l) of the *Public Trustee Act*.**

I am sole practitioner with a busy practice and very little free time. Is it appropriate to have an accounting firm or bookkeeping service complete my trust account records on a regular basis? What are the implications of doing so? Can I delegate the responsibility for maintaining trust records and reconciliation statement to a staff member or bookkeeper?

**Yes, you can delegate the TASK of maintaining and reconciling your trust accounts to someone else, but not the RESPONSIBILITY. You will be ultimately responsible for any errors or discrepancies. If you are really concerned about your ability to maintain the accounting yourself, you certainly have the option of hiring someone. The accounts will be accurately and professionally maintained, but it may be more costly.**

How do I account for interest earned on clients' trust investments which accumulates quarterly?

**You should do this on the client ledger cards in order to track trust liability.**

How long should I maintain my trust accounting records?

**You must keep the records for at least 7 years.**

I am tired of maintaining my accounting records manually and want to acquire a computerized software package to improve my efficiency. How do I decide which software to use, and what are my responsibilities in respect of the trust account regulations?

**The Nova Scotia Barristers' Society doesn't advocate using any particular computerized accounting software; you are free to use whatever software system you like as long as you adhere to the trust account regulations and do regular back-ups. Any computer software must maintain an audit trail of all changes and corrections to accounting transactions. See the section "Computerized Accounting Systems" for a list of systems that meet the Society's requirements.**

If I'm having trouble with my trust accounts, who can I turn to?

**You can contact the Nova Scotia Barristers' Society and talk to the Director of Finance and Administration. You may be referred to the Trust Accounts Committee for further assistance or advice.**

If I don't work in private practice (but operate a trust account), do I still have to file a Form 20?

**Yes. ANYONE handling trust accounts for any portion of the preceding fiscal year must file a Form 20 for the year. This applies to government employees, people in private practice, members who practise corporate law, and even professors if they are handling trust funds at all.**

Can I have trust accounts at more than one financial institution?

**Yes. In fact, if you are holding an amount in trust for any client which is more than would be covered by the CDIC or CUDIC protection, it is a good idea to spread the money among several trust accounts so as to provide your client(s) with the maximum protection available. But remember that you must disclose all trust accounts to the Society and report on all trust account activity when filing your Form 20 at your fiscal year end.**

What is an Electronic Funds Transfer?

**Electronic Funds Transfer (EFT) is a transfer of funds from one bank account to another through electronic means.**

Why do I need to get confirmation from my bank that money sent to me by EFT have been received? Isn't it enough to know that the sender has transmitted the order?

**The regulations require the confirmation from your local bank as that is the only way to ensure the funds are received. There have been instances when money was confirmed to have been sent to a lawyer's Trust Account only to be sent to a different account in error.**

My client wants me to return the balance of his retainer to him in cash. Is this ok?

**No. The regulations require that disbursements out of a lawyer's trust account be done only by way of a cheque payable to a named payee (not "Cash") or via electronic funds transfer.**

Can I accept Visa or MasterCard (or any other credit card) for payment into my trust account?

**Yes. You will need to implement a procedure to deal with the service charge charged by the credit card company (1 – 5% of the value of the transaction). Some lawyers transfer the amount of the service charge from their operating account into the trust account and consider it a cost of doing business. Others treat it as a disbursement on behalf of the client.**

Can I use a Bank Card (debit card) to operate my trust account?

**You can use a bank card to allow you to deposit client funds to your trust account. Remember to retain the ATM slip showing the amount and date of the deposit and attach it to your deposit book. Bank Cards must never be used to withdraw funds from a trust account. Your financial institution should be able to set up your bank card to restrict its use to just depositing funds.**

I'm leaving practice, what do I need to do to close my trust account?

**To close your trust account you must ensure that all client funds have been disbursed, either for the purpose you were holding them, to the client, or (with the client's consent) to another lawyer in trust. You must then notify your financial institution that you wish to close your trust account. When the bank account is empty, notify the Society and the Law Foundation. File a Final Form 20 identifying the date the trust account was closed. Questions about dealing with clients should be directed to members of the Practice Assistance Committee.**

I am the executor for my grandmother's estate. Do the trust rules apply to me?

**Yes. If you have sole signing authority or control over the assets of the estate, you must treat the estate as being held in trust. That means keeping the required records, notifying the Society and Filing a Form 20 (which includes having those records subject to a review by a Licensed Public Accountant).**

# MONTHLY TRUST RECONCILIATION

Month November

Balance per Bank Statement	\$	<u>70,964.34</u>	
ADD: Outstanding deposits (per list attached)	\$	<u>-</u>	
Subtotal	\$	<u>70,964.34</u>	
LESS: Outstanding Cheques (per list attached)	\$	<u>23,705.00</u>	
Reconciled Bank Balance	\$	<u>47,259.34</u>	(1)
Balance per Book of Original Entry	\$	<u>47,259.34</u>	(2)
Balance Per Client Listing (per list attached)	\$	<u>47,259.34</u>	(3)

Note: (1), (2), and (3) must be equal

Reviewed by: I.M.A. Lawyer

Date: Early December



Regulations made pursuant to the  
*Legal Profession Act*, S.N.S. 2004, c.28  
Part 10 – Trust Accounts

## PART 10

### TRUST ACCOUNTS

#### 10.1 Definitions

##### 10.1.1 In this Part

(a) “**financial institution**” means a chartered bank, trust or loan company, credit union or *Caisse Populaire* legally entitled to carry on business in the Province; [new def'n]

(b) “**general account**” means a deposit account in a financial institution maintained by a member in connection with the practice of law, other than a trust account; [Reg. 47]

(c) “**general trust account**” means a deposit account in a financial institution maintained by a member and designated as a trust account into which the member deposits money received in trust from or on account of more than one client; [Reg. 47]

(d) “**specific trust account**” means a separate deposit account or instrument in a financial institution, maintained by a member on behalf of a specific client, and designated as a trust account on behalf of that client, into which a practising lawyer deposits money received in trust; [Reg. 46]

#### 10.2 Maintenance of Records

10.2.1 Every practising lawyer or law firm shall maintain, so as to be clearly distinguishable from the record of money received and disbursed in the practising lawyer or law firm’s general account, books, records and accounts to record all trust money and trust property received and disbursed in connection with the practising lawyer or law firm’s practice, and as a minimum requirement every practising lawyer or law firm shall maintain

- (a) a book of original entry or data source showing the date of receipt and source of trust money for each client and identifying the client on whose behalf the trust money is received,
- (b) a book of original entry or data source showing all disbursements out of trust money for each client and showing each cheque number, the date of each disbursement, the name of each recipient, and identifying the client on whose behalf each disbursement is made out of trust money,
- (c) a clients’ trust ledger showing separately for each person on whose behalf trust money has been received all such money received and disbursed and any unexpended balance,
- (d) a record showing all transfers of money between clients’ trust ledger accounts and explaining the purpose for which each transfer is made,
- (e) a book of original entry or data source showing the date of receipt and source of all money received other than trust money,
- (f) a book of original entry or data source showing all disbursements of money other than trust money and showing each cheque or voucher number, the date of each disbursement and the name of each recipient,
- (g) a book, data source or chronological file of copies of billings showing all fees charged and other billings to clients, the dates such charges are made and identifying the clients so charged,

(h) a record showing a comparison made monthly of the total of balances held in all trust accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the books and records together with the reasons for any differences between the totals and supported by

(i) a detailed listing made monthly showing the amount of trust money held for each client and identifying each client for whom trust money is held, and

(ii) a detailed reconciliation made monthly of each trust account in a financial institution,

and such detailed listings and reconciliations shall be retained as records supporting the monthly trust comparisons,

(i) a record showing all trust property held in trust from time to time for all clients, and identifying the client on whose behalf the property is held, and

(j) bank statements or pass books, cashed cheques and detailed deposit slips for all trust and general accounts.

**10.2.1.1** For the purpose of subregulation 10.2.1 (j) “cashed cheques” may include the original cheque or a digital image provided by the lawyer’s or law firm’s financial institution provided both the front and the back of the cheque can be read in their entirety and are capable of being printed.

### **Posting of Books, Records and Accounts**

**10.2.2** The entries in the books, records, data sources and accounts required to comply with subregulation 10.2.1

(a) shall be entered and posted forthwith, and the trust comparison required by subregulation 10.2.1(h) shall be made monthly within thirty days from the effective date of each comparison,

(b) shall be entered and posted in ink or a duplication thereof, or electronically, and shall be preserved for at least seven years from the most recent fiscal year end of the practising lawyer or law firm. **[Reg. 47B(3) amended]**

### **10.3 Deposits in Trust Accounts**

**10.3.1** Subject to subregulation 10.3.6, a practising lawyer or law firm who receives money in trust for a client shall forthwith, but no later than the first banking day following receipt, pay it into an account which

(a) is designated as a trust account,

(b) is kept in the name of the practising lawyer or law firm,

(c) is kept at a financial institution, and

(d) bears interest which is computed and payable in accordance with the

requirements applicable to the Society, except as payable to the client on money deposited in specific trust account.

**[Reg. 47A(2) amended]**

### **Electronic Transfer**

**10.3.2** Notwithstanding subregulation 10.3.1, trust money received by means of an electronic funds transfer is deemed to be deposited in a trust account when the practising lawyer or law firm receives written confirmation from the financial institution providing details of the electronic funds transfer. **[Reg. 47A(2A) amended]**

### **Confirmation of Electronic Transfer**

**10.3.3** A practising lawyer or law firm shall seek the written confirmation referred to in subregulation 10.3.2 no later than the close of the banking day immediately following the day on which the practising lawyer or law firm was notified of the electronic funds transfer into the practising lawyer or law firm's trust account. **[Reg. 47A(2B) amended]**

### **More Than One Trust Account**

**10.3.4** A practising lawyer or law firm may keep more than one trust account. **[Reg. 47A(3) amended]**

### **Money To Be Put Into Trust Account**

**10.3.5** A practising lawyer or law firm shall only pay into a trust account

- (a) trust money,
- (b) money which has been drawn inadvertently from the trust account in contravention of this section, and
- (c) money received by the practising lawyer or law firm representing, in part, money belonging to a client, and in part, money belonging to the practising lawyer or law firm if it is not practicable to divide the payment, provided that money belonging to the practising lawyer or law firm shall be drawn from the trust account without delay. **[Reg. 47A(5) amended]**

### **Money Not Required To Be Put Into Trust Account**

**10.3.6** A practising lawyer or law firm need not pay trust money into a trust account if

- (a) in the ordinary course of business, upon its receipt, it is paid forthwith in the form in which it is received to or on behalf of the client,
- (b) the client in writing requests the practising lawyer or law firm to pay the trust money into a specific trust account opened in the name of the client, a person named by the client, or the authorized agent of the client, provided the practising lawyer or law firm shall keep a record of the receipt and disbursement of such money, or
- (c) the money is received by a practising lawyer or law firm under escrow conditions whereby the money is required to be held without deposit. **[Reg. 47A(6) amended]**

### **Money Not To Be Put Into Trust Account**

**10.3.7** A practising lawyer or law firm shall not pay into a trust account

- (a) money which belongs to the practising lawyer or law firm unless intended for payment to a third party for the purpose of completing a personal transaction being handled by the firm on behalf of the practising lawyer or law firm, or
- (b) money received by the practising lawyer or law firm
  - (i) for fees for which a billing has been delivered,
  - (ii) for services already performed for which a billing is delivered forthwith thereafter, or
  - (iii) to reimburse the practising lawyer or law firm for disbursements made or expenses incurred on behalf of a client. **[new]**

## **National Mobility Agreement**

**10.3.8** Money held in trust for or on account of a client with respect to the practice of law in a specific province shall be maintained in compliance with the National Mobility Agreement or such other mobility agreements as apply to the Society, unless instructed otherwise by the client in writing. **[new]**

## **10.4 Withdrawals and Transfers from Trust Accounts**

**10.4.1** Subject to subregulation 10.4.2, a practising lawyer or law firm who becomes entitled to money in a trust account shall withdraw it as soon as reasonably possible after becoming entitled. **[Reg. 47A(9) amended]**

### **Withdrawal of Money from Trust Account**

**10.4.2** A practising lawyer or law firm shall not withdraw or transfer money from a trust account except

- (a) money properly required for payment on behalf of a client,
- (b) money required to reimburse the practising lawyer or law firm for money properly expended or for expenses properly incurred on behalf of a client,
- (c) money properly required for or toward payment of the practising lawyer or law firm's fees for which a billing or other written notification has been delivered to the client,
- (d) money that is directly transferred into another trust account and held on behalf of a client, or
- (e) money that has been deposited inadvertently into a trust account in contravention of these Regulations,

but in no case shall withdrawals or transfers exceed the balance of the money held in trust for the client.

**[Reg. 47A(7)]**

### **Authorization by Society**

**10.4.3** Other than allowed by subregulation 10.4.2, money shall not be withdrawn or transferred from a trust account unless a person designated by the Society specifically authorizes its withdrawal or transfer in writing. **[new]**

### **Form of Withdrawal from Trust Account**

**10.4.4** A practising lawyer or law firm shall only withdraw money from a trust account

- (a) by a cheque made in compliance with subregulation 10.4.5, or
- (b) by means of an electronic funds transfer completed in accordance with subregulation 10.4.6, or
- (c) by means of a bank wire transfer completed in accordance with subregulation 10.4.9

### **Cheques Drawn on Trust Account**

**10.4.5** A cheque drawn on a trust account shall

- (a) be marked as a trust cheque, **[Reg. 47A(8) amended]**
- (b) be payable to a named payee, **[Reg. 47A(8) amended]**
- (c) not be payable to cash or to bearer,
- (d) be signed by at least two persons,

- (e) not be signed by a person who is not a practising lawyer except where the cheque is co-signed by a practising lawyer,
- (f) not be released from the practising lawyer's office or the law firm until the lawyer or law firm is in possession of funds for the credit of the client on whose behalf the cheque is drawn. **[new]**

### **Sole Practitioner Exception**

**10.4.6** Notwithstanding subregulation 10.4.5(d), a practising lawyer may be the sole signatory on a cheque drawn on a trust account if that lawyer practises alone and without another practising lawyer who is;

- (i) a partner or an employee of the practising lawyer or that practising lawyer's law corporation,
- (ii) associated in the practice of law with such practising lawyer or law corporation; or
- (iii) represented or held out to the public to be a partner or person associated in the practice of law with such practising lawyer or law corporation whether or not there is in fact a partnership or association

### **Withdrawal by Electronic Transfers**

**10.4.7** A practising lawyer or law firm shall only withdraw money from a trust account by means of electronic funds transfer if the following conditions are met:

- (a) the electronic transfer system used by the practising lawyer or law firm does not permit an electronic transfer of funds without a password or access code to authorize a financial institution to carry out the transfer;
- (b) the practising lawyer or law firm retains the password or access code referred to in paragraph (a);
- (c) the electronic funds transfer system will produce, no later than the close of the banking day immediately following the day on which the electronic transfer of funds was authorized, a written confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer was received;
- (d) the confirmation referred to in paragraph (c) contains
  - (i) the number of the trust account from which the trust money is drawn,
  - (ii) the name, branch name and address of the financial institution where the account to which the money is transferred is kept,
  - (iii) the name of the person or entity in whose name the account to which money is transferred is kept,
  - (iv) the number of the account to which money is transferred or such other identifying reference as may be required to confirm the payment on account of the client as requested,
  - (v) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and
  - (vi) the time and date that the confirmation from the financial institution was sent to the practising lawyer or law firm;
- (e) before any data describing the details of the electronic funds transfer or authorizing the financial institution to carry out the transfer is entered into the

electronic funds transfer system, an electronic funds transfer requisition in a form approved by the Society is completed and signed by the practising lawyer or law firm; and

(f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer is as specified in the electronic funds transfer requisition. **[Reg. 47A(8B) amended]**

### **Printed Copy of Confirmation**

**10.4.8** No later than the close of the banking day immediately following the day on which the confirmation referred to in subregulation 10.4.7(c) is sent to a practising lawyer or law firm, the practising lawyer or law firm shall

- (a) produce a printed copy of the confirmation,
- (b) compare the printed copy and the signed electronic funds transfer requisition relating to the transfer to verify whether the money was withdrawn from the trust account as specified in the signed requisition,
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which trust money was withdrawn from the trust account, and
- (d) after complying with paragraphs (a) to (c), sign and date the printed copy of the confirmation. **[Reg. 47A(8C) amended]**

### **Withdrawal by Bank Wire Transfers**

**10.4.9** A practising lawyer or law firm shall only withdraw money from a trust account by means of a bank wire transfer if the following conditions are met:

- (a) Written instructions are delivered to the lawyer's or law firm's bank which contain:
  - i. the number of the trust account from which the trust money is drawn,
  - ii. the name, branch name and address of the financial institution where the account to which the money is transferred is kept,
  - iii. the name of the person or entity in whose name the account to which money is transferred is kept
  - iv. the number of the account to which money is transferred or such other identifying reference as may be required to confirm the payment on account of the client as requested,
- (b) the written instructions referred to in paragraph (a) must be completed and signed by the practicing lawyer or, in the case of a law firm, a practising lawyer with signing authority on the trust account of that firm and, in either case, subject to regulation 10.4.9(f), by one other person;
- (c) the written instructions referred to in paragraph (a) must be delivered to the financial institution that will be making the wire transfer and the original or a true copy of the signed requisition must be retained on file by the practising lawyer or law firm;
  - i. for the purposes of paragraph (b), the requisition may be delivered to the financial institution by means of facsimile or as a scanned file attachment to an email.
- (d) the practising lawyer or law firm must have arrangements in place whereby, no later than the close of the next banking day immediately following the day on which the wire transfer of funds is made, a written confirmation is provided to the practising lawyer or law firm by the financial institution making the transfer confirming the matters referred to in paragraph (a) of this Section 10.4.9; and

- (e) the confirmation referred to in paragraph (d) must contain:
  - i. the number of the trust account from which the trust money is drawn,
  - ii. the name, branch number and address of the financial institution where the account to which the money is transferred is kept,
  - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
  - iv. the number of the account to which money is transferred or such other identifying reference as may be required to confirm the payment on the account of the client as requested,
  - v. the date that the requisition from the practising lawyer or law firm requesting the transfer was received by the financial institution, and
  - vi. the date that the confirmation from the financial institution under this paragraph (d) was sent to the practising lawyer or law firm.
- (f) No later than the close of the banking day immediately following the day on which the confirmation referred to in subregulation 10.4.9 (d) is sent to a practising lawyer or law firm, the practising lawyer or law firm shall
  - i. produce a printed copy of the confirmation, which shall be retained on file by the lawyer or law firm;
  - ii. compare the printed copy and the signed wire transfer requisition relating to the transfer to verify whether the money was withdrawn from the trust account as specified in the signed requisition,
  - iii. indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which trust money was withdrawn from the trust account, and
  - iv. after complying with subparagraphs (i) to (iii), sign and date the printed copy of the confirmation.
- (g) Notwithstanding subregulation 10.4.9 (a), a practising lawyer may be the sole signatory of the wire transfer requisition required by subregulation 10.4.9 (a) if that lawyer practises alone and without another practising lawyer who is,
  - i. a partner or an employee of the practising lawyer or that practising lawyer's law corporation,
  - ii. associated in the practice of law with such practising lawyer or law corporation; or
  - iii. represented or held out to the public to be a partner or person associated in the practice of law with such practising lawyer or law corporation whether or not there is in fact a partnership or association.

#### **Debit Card Withdrawals Not Permitted**

**10.4.10** For greater certainty, a practising lawyer or law firm shall not make cash withdrawals from a trust account by means of a debit card or similar instrument. **[Reg. 47A(8F) amended]**

#### **Maintain Sufficient Balance**

**10.4.11** At all times a practising lawyer or law firm shall maintain sufficient balances on deposit in trust to meet the practising lawyer or law firm's obligations with respect to money held in trust for clients, and all shortages shall be restored immediately by the practising lawyer or law firm. **[Reg. 47A(10) amended]**



## **10.5 Reporting Overdrafts**

**10.5.1** Subject to subregulation 10.5.2, the practising lawyer or law firm shall report immediately to the Executive Director any overdrafts in the practising lawyer or law firm's trust account, which report shall include a full explanation for how the overdraft occurred. **[new]**

### **Shortage in Trust Account**

#### **Shortage in Trust Account**

**10.5.2** A transaction which creates an overdraft in a trust account below an amount sufficient to meet all of the practising lawyer or law firm's obligations shall not be a violation of these Regulations and does not have to be reported if the transaction which caused the overdraft resulted from:

- (a) a debit memo for financial institution charges or service charges,
- (b) an error on the part of the financial institution,
- (c) a delay by the financial institution in posting a cheque deposited to the account, or
- (d) a cheque deposited to the account being returned by the financial institution it was drawn upon,
- (e) an error on the part of Service Nova Scotia,

provided the practising lawyer or law firm, within three banking days of notification of the error, deposits sufficient money in the trust account to offset the shortage. **[Reg. 47A(13) amended]**

### **Shortage Not to be Reported on by Accountant**

**10.5.3** An accountant shall not be required to report an incident referred to in subregulation 10.5.2 if the overdraft in the trust account was less than one hundred dollars. **[Reg. 47A(14)]**

## **10.6 Investigation by Executive Director**

**10.6.1** The Executive Director may initiate an investigation or audit of the books, records, accounts and transactions of a practising lawyer or law firm or former practising lawyer or law firm to determine compliance with these Regulations. **[Reg. 48(1) amended]**

### **Unannounced Investigations**

**10.6.2** For the purpose of ensuring that all practising lawyer or law firms comply with these Regulations, the Executive Director may implement and direct a continuing program of unannounced investigations or audits of the books, records, accounts and transactions of practising lawyer or law firms, in accordance with general directions of Council. **[new]**

### **Process of Selection**

**10.6.3** The Executive Director may conduct a program referred to in subregulation 10.6.2 by randomly selecting practising lawyer or law firms whose accounts are to be investigated or audited or by dividing the practising lawyer or law firms into categories and, within each category, randomly selecting members for investigation or audit. **[new]**

### **Production to Investigator**

**10.6.4** Where an investigation or audit is to be conducted under this section, the practising lawyer or law firm shall produce to the person conducting the investigation or audit all

evidence, books, records, papers, accounts, vouchers, files, clients' files and explanations which may be required for the investigation or audit, and failure of the practising lawyer or law firm to cooperate constitutes professional misconduct. **[Reg. 48(2) amended]**

#### **Investigator's Report to be Provided**

**10.6.5** The Executive Director shall provide a copy of the report of an investigator or auditor to the practising lawyer or law firm whose accounts have been investigated or audited. **[new]**

#### **Maintenance of Confidentiality**

**10.6.6** An accountant conducting an investigation or audit under this section shall, before doing so, complete and file with the Executive Director an undertaking to maintain strict confidentiality with respect to all matters connected with the investigation or audit, including compliance with section 77 of the Act. **[new]**

#### **Non-compliance with Regulations**

**10.6.7** If the investigator or auditor reports that these Regulations have not been complied with, the Executive Director

(a) may order the practising lawyer or law firm in writing to take all necessary steps to comply with these Regulations as specified in the order and within the time fixed for doing so, and

(b) may initiate whatever action is appropriate under Part III of the Act, in which case the investigator's or auditor's report may be used as the basis for the complaint as well as being used as evidence.

**[Reg. 48(7) amended]**

#### **10.7 Preservation of Rights**

**10.7.1** Nothing in these Regulations deprives a practising lawyer or law firm of any recourse or right, whether by way of lien, set-off, counter-claim, charge or otherwise, against money standing to the credit of a client in the practising lawyer or law firm's trust account or with respect to trust property. **[Reg. 47C(1) amended]**

#### **10.8 Service Nova Scotia Trust Account**

**10.8.1** A practising lawyer or law firm may establish a General Trust Account for the purpose of paying document registration fees and deed transfer tax to the Government of Nova Scotia. **[new]**

#### **Name of Account**

**10.8.2** The Trust Account referred to in subregulation 10.8.1 must be named "*The Practising Lawyer (or Law Firm) In Trust for Service Nova Scotia and Municipal Relations.*" **[new][amended September 23, 2005]**

#### **Use of Account**

**10.8.3** The trust account established under this regulation shall be an account into which the practising lawyer or law firm shall pay only:

- (a) Money received in trust for a client for the purpose of paying document registration fees and deed transfer tax, if any, related to a client's real estate transaction; and
- (b) Money properly withdrawn or transferred from another trust account for the purposes of paying the document registration fees and the deed transfer tax, if any, related to a client's real estate transaction; and
- (c) Money transferred from the practising lawyer's or law firm's general operating account as a disbursement to be charged to the client in connection with the client's real estate transaction.

[new]

#### **Only Enough Money for Transactions**

**10.8.4** For greater certainty, a practising lawyer or law firm shall not pay into the trust account established under this regulation more money than the practising lawyer or law firm expects to be required to pay the document registration fees and deed transfer tax, if any, related to a client's real estate transaction. [new]

#### **Government May Withdraw Funds**

**10.8.5** Subject to subregulation 10.8.6 and notwithstanding subregulation 10.4.4 the practising lawyer or law firm may give permission to the Government of Nova Scotia to withdraw those funds from the account established under this regulation by electronic funds transfer. [new]

#### **Notification of Withdrawal Required**

**10.8.6** A practising lawyer or law firm shall not authorize the Government of Nova Scotia to withdraw from the trust account established under this regulation money required to pay registration fees and deed transfer tax unless the Government of Nova Scotia agrees to provide to the practising lawyer or law firm advance notification of the amount to be withdrawn in accordance with subregulation 10.8.7. [new]

#### **Content of Notification**

**10.8.7** The notification referred to in subregulation 10.8.6 must:

- (a) Be provided to the practising lawyer or law firm on or before the time of the withdrawal;
- (b) Provide a statement of the amount of money to be withdrawn from the trust account; and
- (c) Provide the time and date the notification is sent to the practising lawyer or law firm. [new]

#### **Electronic Trust Transfer Requisition**

**10.8.8** Before authorizing the Government of Nova Scotia to withdraw from the trust account established in subregulation 10.8.1, an electronic trust transfer requisition as required by subregulation 10.4.7(e) and 10.4.7(f) must be completed.

#### **Requirements on Receipt of Notification**

**10.8.9** No later than the close of the banking day immediately following the day on which the notification referred to in subregulation 10.8.6 is sent to the practising lawyer or law firm, the practising lawyer or law firm shall;

- (a) produce a printed copy of the notification;
- (b) compare the printed copy with the signed electronic trust transfer requisition referred to in subregulation 10.8.8 relating to the transfer to verify whether the money was withdrawn from the trust account as specified in the signed requisition;
- (c) confirm whether or not the amount shown on the notification was the amount withdrawn from the account and, in the event of any discrepancy, immediately notify the Government of Nova Scotia of the discrepancy;
- (d) indicate on the printed copy of the notification, the name of the client, the subject matter of the file and any file number in respect of which trust money was withdrawn from the trust account;
- (e) after complying with clauses (a) to (c), sign and date the printed copy of the notification; and

the notification and the electronic trust transfer requisition must be maintained with the practising lawyer or law firm's trust accounting records. **[Reg. 47A(8C) amended]**

#### **Delegation of Authority**

**10.8.10** The tasks required to be performed by the practising lawyer or law firm pursuant to subregulation 10.8.9 may be performed by a person other than the practising lawyer or law firm if the person has signing authority on the practising lawyer's or law firm's trust account. **[Reg. 47A(8D) amended]**



NOVA SCOTIA  
BARRISTERS' SOCIETY

## Electronic Transfer of Funds from a Lawyer's Trust Account

Re: \_\_\_\_\_  
\_\_\_\_\_

Amount to be transferred: \_\_\_\_\_

Date: \_\_\_\_\_

**Trust Account to be debited:**

Name of Financial Institution: \_\_\_\_\_

Account Number: \_\_\_\_\_

Payee: \_\_\_\_\_

**Account to be credited:**

Name of Financial Institution: \_\_\_\_\_

Branch Name and address: \_\_\_\_\_  
\_\_\_\_\_

Account Number: \_\_\_\_\_

Lawyer's Authorization

I have reviewed the particulars of this transaction and authorize this transaction to be processed.

\_\_\_\_\_



NOVA SCOTIA  
BARRISTERS' SOCIETY

# SAMPLE

## Electronic Transfer of Funds from a Lawyer's Trust Account

Re:	
Client Name:	_____
File Reference Number, etc.	_____
Amount to be transferred:	\$\$Amount _____
Date:	Date transfer initiated _____

Trust Account to be debited:	
Name of Financial Institution:	Name _____
Account Number:	Account Number _____

Payee: Name	_____
Account to be credited:	
Name of Financial Institution:	Name _____
Branch Name and address:	Branch Name and Address _____ _____
Account Number:	Payee's Account Number _____

### Lawyer's Authorization

I have reviewed the particulars of this transaction and authorize this transaction to be processed.

Lawyer with signing authority on trust account  
\_\_\_\_\_