



NOVA SCOTIA BARRISTERS' SOCIETY

## 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 that qualify

- held in trust for at least two years
- reasonable efforts have been made to identify and contact the person(s) to whom the funds belong without success
- amount(s) held in trust can be specifically quantified and some information provided as to the source of the funds, reasons the funds were paid into trust, etc. if known
- lawyers 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 Professional Responsibility Counsel, which contains the following information (see sample attached):

##### a) For Trust Funds to which one or more persons are entitled

- name of client(s)
- name of lawyer who provided the service and received the trust funds
- balance of trust funds currently held
- date funds were received
- date funds were last dispersed, where applicable
- a statement that the funds were or appear to have been received for provision of legal services
- efforts made by you to deliver the funds to the client(s) (i.e., state that you did Property Online or 411 searches or sent X number of letters on X dates to the client(s)' last known address)\*
- a statement that there are no conditions to which the funds are subject



## NOVA SCOTIA BARRISTERS' SOCIETY

- 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

*\* do not provide copies of letters sent to the client(s), trust account ledger(s), the client(s)' last known address, a description of the legal services provided to the client(s) or any other private, confidential or privileged information about the client(s)*

### **b) For Trust Funds that cannot be attributed to any person**

- the amount of unattributable 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 Professional Responsibility Counsel 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 Professional Responsibility Counsel will then provide the Public Trustee with an original Order and enclose members' trust cheques.

20XX

No.

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

Affidavit of LAWYER sworn on DATE

I [make oath/affirm] and give evidence as follows:

- 1. I was the solicitor for [name of client]. I was entrusted with funds for the provision of legal services on [date].
2. I have held the sum of \$[amount] in trust since [date], and have endeavoured to return the said sum to [name of client] without success.
3. I have made several efforts to return the funds to [name of client], which include [sending X number of letters on X dates to the client's last known address, doing Property Online and 411 searches to identify the client's contact information, etc.]
4. There are no conditions to which the funds are subject.
5. 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 [name of client] held in trust by me, to the Public Trustee.

Sworn to/Affirmed before me )
on , 20 )
at , )
)
)
)

Signature

Signature of Affiant