



NOVA SCOTIA BARRISTERS' SOCIETY

Professional Responsibility Policy

NAME OF POLICY	Reporting Bankruptcies, Consumer Proposals and Judgments		
	<i>*see also Duties of Co-signers on Lawyers' Trust Accounts Policy</i>		
APPLICABLE SECTIONS OF THE <i>LEGAL PROFESSION ACT</i> AND REGULATIONS	<i>Legal Profession Act Regulations 4.4.1 – 4.4.4</i>		
Approved by the Executive Director September 19, 2011	Effective September 19, 2011	Reviewed May 23, 2013	Revised September 25, 2018

Pursuant to subregulations 4.4.1-4.4.4, members are required to report bankruptcies, consumer proposals and judgments to the Executive Director of the Society. These requirements are to ensure that the Society is aware of matters that affect the solvency of its members, and can take necessary steps to ensure that adequate protections are in place for clients' funds in these circumstances.

Information received from members regarding bankruptcies, consumer proposals and judgments will be given to the Executive Director and the Professional Responsibility department. The Executive Director is responsible for ensuring members' compliance with this policy.

Pursuant to subregulation 4.4.4, the Executive Director may require the member to provide additional information.

Bankruptcy or Consumer Proposal

1. In order to ensure that lawyers fully comply with the reporting requirements contained in subregulations 4.4.1 and 4.4.2 in relation to bankruptcies and consumer proposals, a member must:
 - i. Provide a copy of all material filed in the bankruptcy proceedings, including, but not limited to, the Assignment, Petition or Proposal, the Statement of Affairs, the Official Receiver's Report, and Trustee's Reports, the Order of Discharge, and all documents relating to the Orderly Payment of Debts;
 - ii. Provide written information about any relevant financial obligations arising from the member's practice of law;

- iii. Not accept from or on behalf of clients any money or other property, except in payment of cost and fees, without written permission of the Executor Director.
- iv. Comply with any condition imposed by the Executive Director, which may include:
 - a) removing himself or herself as sole signing authority on all trust accounts of the member or firm for the duration of the bankruptcy or consumer proposal and appoint a co-signer. The co-signer will normally be a practising member in good standing with the Society, or may be another person deemed satisfactory by the Executive Director; the lawyer must provide written confirmation that the co-signer agrees to the arrangement, and written confirmation from the financial institution that signing authorities on all trust accounts of the member/firm have been changed;
 - b) filing a Trust Account Report for the period from the date last covered by a previous Trust Account Report and the date of the Assignment in Bankruptcy or consumer proposal;
 - c) filing copies of monthly trust reconciliations.

Judgments

- 2. In addition to notifying the Executive Director and complying with subregulations 4.4.1 and 4.4.2, the member must provide a copy of the judgment(s) and a brief description of the nature of the obligation.
- 3. If there is a lawyer of record for the judgment creditor, the member must copy that lawyer on the notice to the Executive Director.
- 4. If the judgment is practice related, the Executive Director may require additional reports regarding the satisfaction of the judgment.
- 5. In circumstances where there is a judgment against a member or an attachment of the member's account, the Executive Director may impose certain requirements, including but not limited to the following:
 - i. the removal of the member as sole signing authority on all trust accounts of the member or firm for the duration of the bankruptcy, and appointment of a co-signer. The co-signer will normally be a practising member in good standing with the Society, or may be another person deemed satisfactory by the Executive Director;
 - ii. the lawyer must provide written confirmation that the co-signer agrees to the arrangement and written confirmation from the financial institution that signing authorities on all trust accounts of the member/firm have been changed;
 - iii. the filing of monthly trust reconciliations.

Duties of Co-signers

6. Co-signers must consent in writing to acting in this capacity and be approved by the Executive Director.
7. Co-signers are required to co-sign every trust cheque drawn on the bankrupt lawyer's account until the lawyer is discharged from bankruptcy, the consumer proposal has been accepted, the judgment(s) have been satisfied or the period set by the Executive Director or Complaints Investigation Committee expires.
8. In fulfilling this role, the co-signer has a duty to take all reasonable steps to satisfy him or herself as to the propriety of the requested payment, including examination of the nature of the payment, the supporting client trust account data and corroborating documents and/or correspondence.
9. Co-signers may seek guidance concerning their responsibilities from the Professional Responsibility department, and have a duty to report to the Society any problems or concerns they may have regarding the trust activity of the bankrupt lawyer for whom they are acting as co-signer.

Role of Complaints Investigation Committee

10. The Executive Director may refer the bankruptcy, consumer proposal or judgments to the Complaints Investigation Committee if there appears to be evidence of professional misconduct, conduct unbecoming, professional incompetence or incapacity.
11. In the event that the member fails to comply with the Regulations or this policy, or does not cooperate with the Executive Director, the matter may be referred to the Complaints Investigation Committee as a complaint.