

LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

ANNUAL REPORT 2011

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LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

ANNUAL REPORT 2011

Mission Statement

The Lawyers' Insurance Association of Nova Scotia is established and operated pursuant to the *Legal Profession Act* and Regulations, as part of the public protection mandate of the Nova Scotia Barristers' Society.

LIANS conducts the mandatory professional liability insurance program for the benefit of the practising insured members.

REPORT FROM THE CHAIR OF THE BOARD



JOHN W. TRAVES QC

Chair

John W. Traves QC

joined the Board in 2003. He was appointed Chair in 2010. John is the Director, Legal Services Division with the Department of Justice (NS).

On behalf of the Board of LIANS, I am pleased

present the Association's Annual Report for 2011. The full practising levy for the 2011-12 policy year was \$1,152 for private practitioners, \$576 for Nova Scotia Legal Aid lawyers and \$350 for provincial government staff lawyers.

In the coming year, 2012-2013, the full practising levy is \$1,319 for private practitioners, \$659 for Nova Scotia Legal Aid lawyers and \$350 for provincial government staff lawyers.

LIANS continues to be successful in maintaining one of the lowest insurance assessments in the country. This success is due in part to our practice of returning to members the excess surplus held by LIANS and CLIA surplus credits. It is also due in large measure to the hard work, commitment and dedication of your Director, Melanie McGrath, and the dedicated staff, Patricia Neild, Gerri O'Shea, Stacey Gerrard, Christine Smith, Cynthia Nield and Jennifer Curran, who work so diligently to assist members. I am happy to report that I continue to be impressed with the positive results that this group of people continues to deliver to members.

Our actuaries advise us that the true levy necessary to meet our expected liabilities in the coming year would be \$2,031 per private practitioner, 1.55 times the levy actually being charged to private practitioners. In consultation with our actuaries, LIANS continues to make the return of these surplus monies to the members with the expectation that the levy will increase over time until it reaches the true cost of insurance.

As is the case with many similar funds, our investment returns have struggled over the past year to meet the goals established for them by the Board. In the upcoming year, the Investment Committee will continue to monitor performance to ensure the long-term financial viability of LIANS. On the claims side, overall we continue to have a relatively favourable claims experience, however it remains up to each and every member to do their part to contribute to the situation by being careful and claims wise in the way in which we practise.

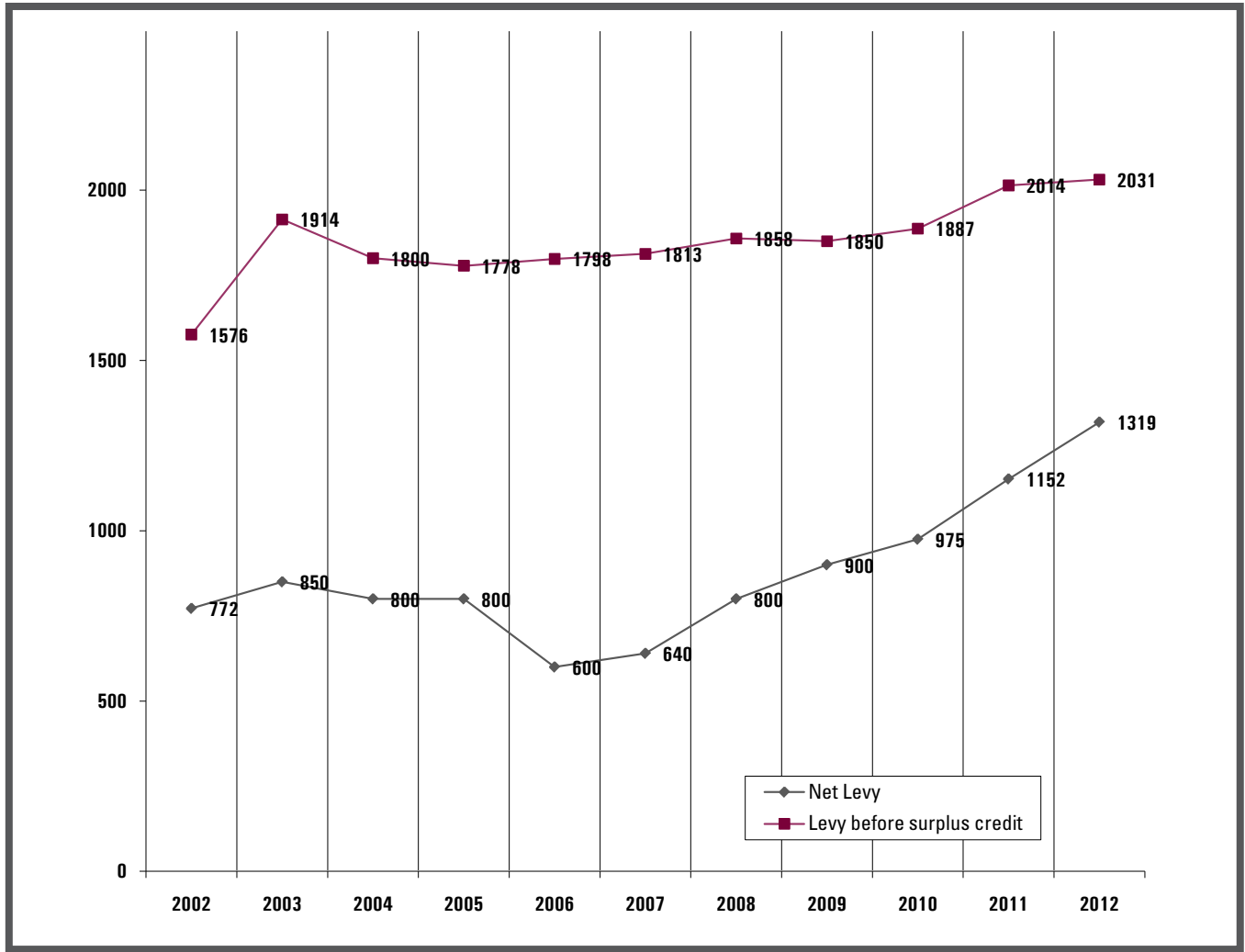
Our claims experience with CLIA (which provides coverage of our liability claims in excess of \$300,000, up to a maximum of \$1 million per occurrence) has once again been impacted somewhat by an increase in claim severity that we have experienced the past year. Based on our excellent results over the long term, the CLIA premium portion of our insurance levy remains among the lowest of the participating provinces and territories.

LIANS is very pleased to continue its activities for the benefit of members. LIANS continues to provide advice on risk and practice management and has had a successful year in providing in-house defence work.

A summary of the past year's financial highlights, taken from the audited financial statements of LIANS, is attached to this report.

John W. Traves QC, Chair

INSURANCE LEVY — 10-YEAR HISTORY



“LIANS continues to be successful in maintaining one of the lowest insurance assessments in the country. This success is due in part to our practice of returning to members the excess surplus held by LIANS and CLIA surplus credits.”

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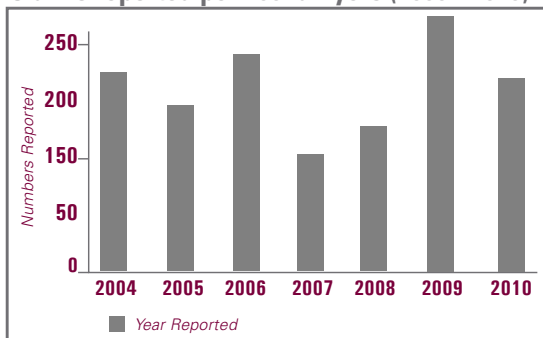
MELANIE MCGRATH
Director

Melanie McGrath joined LIANS in January 2010 as Director after a number of years in private practice and practising in-house at a national insurance company.

Claims Management

The number of claims reported in 2011 increased and the value of the claims increased. The number of new claims reported was 243, as compared to 221 in 2010, 269 in 2009, 183 in 2008 and 153 in 2007. Based on reporting to date, we do not expect to see much change in 2012.

Claims reported per 100 lawyers (2000 - 2010)



Claims costs increased in 2011 due largely to the increased complexity of claims processed.

01	02	03	04	05	06	07	08	09	10	11
14	19	16	14	12	14	10	11	16	13	12

The *Cost of Claims by Area of Law* chart illustrates the breakdown of claims costs by areas of law and the percentage of total claims costs, including both damages and defence costs, according to area. The direct comparison between the costs by area of law in 2010 and 2011 is set out.

Area of Law	1998-2007	2007	2008	2009	2010	2011
Real Estate	47%	50%	69%	49%	40%	40%
Bankruptcy/Insolvency/Receivership				<1%	<1%	<1%
Criminal		3%	4%	<1%	2%	8%
Employment/Labour	3%	0%	0%	3%	<1%	<1%
Immigration				0%	1%	2%
Intellectual Property				<1%	<1%	0.5%
Tax				30%	34%	21%
Civil Litigation	13%	15%	9%	5%	10%	9%
Commercial	11%	6%	3%	9%	3%	4%
Corporate	13%	3%	7%	<1%	3%	2.5%
Matrimonial & Family	5%	6%	2%	<1%	1%	2%
Estate Planning & Administration	4%	14%	4%	2%	6%	9%
Administrative/Boards/Tribunal	1%	0%	0%	0%	0%	
All Other	3%	3%	2%	0%	0%	2%
Arbitration					<1%	
	100%	100%	100%	100%	100%	100%

As the chart above illustrates, claims costs arising from the practice area of tax law continue to be significant due to the severity of a single claim. It is expected that this will reduce in 2012. In terms of numbers of claims themselves, real estate claims

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continued to be the largest proportion, with 44 per cent of the number of claims reported being in this area. A number of real estate claims resulted from a failure to record documents, resulting in errors in security priorities. However, such claims have not caused an increase in severity of the damage claims in real property and the overall cost of these claims remained constant.

Claims in the areas of civil litigation were also higher than in 2010, with 19 per cent of claims being made in this area. Claims costs were similar to 2010. Claims with respect to the areas of estate planning/wills and family law were consistent in number but increased in terms of cost. In the area of commercial law, there was no significant change in the number of claims and the costs associated with them.

The largest area of growth of the number of claims and costs associated with the claims was in the area of criminal law. LIANS is seeing an increasing number of claims related to allegations of ineffective trial counsel. Lawyers are reminded to familiarize themselves with the appropriate Court of Appeal Protocol in this regard and to report these claims to LIANS as soon as they become aware of the claim.

No one problem caused LIANS claims experience to rise in 2011. Missed limitations, including statutory limitation periods in other provinces where the cause of action occurred, continue to result in claims now that lawyers are more mobile. It is important to remember that the law in this area varies province to province. Missed judgments on title searches also caused a number of claims. It is

important to remember to search for all possible spellings of a name when searching judgments, and to remember to search for judgments even if no mortgage is going on the property. Other causes, including the failures of office systems, unsupervised delegation, poor communication with clients or others, and general lack of oversight resulted in claims in all areas of law.

It is interesting to note that LIANS closed 264 claims files in 2011. Of these files, 84 per cent were closed with no payment of any damages. In addition, 66 per cent closed with no payment of either defence costs or damages. LIANS also conducted its second closed file satisfaction survey, with respect to files that were closed in 2011, with 97 per cent of respondents indicating they were either satisfied or very satisfied with the handling of the claim.

In 2012, look for additional resources from the Risk and Practice Management Program through the website, the electronic newsletter *LIANSwers*, the mentorship program and other literature, as well as educational webinars. In addition, through Stacey Gerrard, LIANS Counsel, the RPM program will continue to provide fraud alerts to members and Stacey is available to offer confidential assistance to help answer specific or general questions with respect to your practice management.

PROGRAM REPORT



CHERYL CANNING
CHAIR
NSLAP COMMITTEE

Cheryl Canning is
Chair of the Lawyers
Assistance Program.
She is a partner
with Burchells LLP.

Nova Scotia Lawyers Assistance Program

It was a relatively quiet year for the committee.

With Homewood Human Solutions continuing to provide intake and counselling services to our members, their staff and families, the committee had very few problems to address and we were able to turn our attention to health and wellness initiatives.

Over the last year NSLAP saw 115 new cases opened. The majority of NSLAP users, almost 74% have been female and 71% are between the ages of 30-50. Over half of the overall usage was related to family difficulties or workplace issues. Another large percentage was related to general stress or anxiety. We have all seen numerous studies and reports nationwide about the challenges woman face in their attempts to balance a law practice and a home life, and it is clear that we are facing the same challenges here in Nova Scotia.

We saw increased usage this year in the number of members using eServices, online counselling and telephonic counselling. We are glad that we are able to offer these alternatives to traditional counselling for those who prefer it. If our members have other suggestions for alternative ways the NSLAP can reach out to them, we'd love to hear from them. We may not always be able to accommodate, but we will explore any suggestions.

One aspect of the NSLAP that we feel is underutilized by the members is our peer volunteers program. Our peer volunteer group is always

standing by with empathetic ears. They have a first-hand understanding of the challenges created within the legal culture as well as an understanding of the need for confidentiality. They are willing to listen, support, and refer when appropriate.

In 2012 the members will be asked for input with respect to topics they would like to see presented at lunch-n-learns. These sessions would be hosted by Homewood Human Solutions, and can focus on a wide variety of topics, from "How to balance your time and energy" to "How to help your kids excel in school." We'd like to put on the seminars that our members want the most.

As usual, our committee members and our LIANS staff member, Melanie McGrath, deserve a giant pat on the back for their hard work and dedication to the NSLAP over the past year. While our program has made significant changes to evolve with our members' needs, we are still, at our core, lawyers helping lawyers. I am always heartened to see the way in which busy lawyers are willing to take time away from practice to reach out a hand to others, and the way in which both LIANS and the NSBS provide unwavering support to their ability to do that.

Respectfully submitted,
Cheryl Canning
Chair, NSLAP Committee

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STACEY GERRARD
LIANS Counsel

Stacey Gerrard joined LIANS in October 2010, bringing with her both a common law and civil law degree as well as the ability to practise in both English and French.

Risk and Practice Management

The Risk and Practice Management program had another successful year providing support to the practising members.

Publications and presentations

We continue to distribute *LIANSwerts*, our bimonthly electronic newsletter. The articles and information contained in the newsletter are intended to assist lawyers with the running of their practice and avoiding malpractice claims. It does not provide advice nor is it intended to replace the lawyer's own exercise of professional judgment. We monitor the number of visits per issue and *LIANSwerts* averages approximately 425 readers per issue.

RPM resource material is uploaded regularly and material already provided is updated regularly on the LIANS website. This included templates for notes to file, sample retainer letters and checklists.

The RPM program continues to submit articles to *InForum* every two weeks. These include practice tips from LIANS Counsel and technology tips from the Database and Information Officer. Information regarding the Lawyers' Assistance Program is also included in every edition.

LIANS Counsel submitted articles in the February and October 2011 editions of the *Society Record*, one addressing the issue of file retention and the other cloud computing.

The program also provided education seminars at County Bar meetings throughout the province in an effort to bring the risk and practice management message to the members directly.

In November, LIANS Counsel was invited to Manitoba to present one part of a three-part Succession Planning program to the Manitoba Bar. This presentation was also provided to our membership at the LIANS Solo and Small Firm Conference.

Fraud Alerts

Despite increased publicity and coverage regarding fraudulent email scams, our members continue to be the recipients of suspicious email and mail. LIANS constantly monitors and periodically notifies the membership of new scams as we become aware of them, and continues to receive inquiries from our membership asking whether an email they received might be legitimate. We maintain a database of these fraudulent emails in order to confirm whether we are familiar with that particular scam and maintain a list on the LIANS website as a reference tool for the membership.

Solo and Small Firm Conference

Sixty-one legal professionals attended the third annual LIANS Solo and Small Firm Conference held November 21 at the Westin Hotel in Halifax, to gain knowledge of risk and practice management

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strategies and information tailored towards solo and small firm practitioners. Five sessions offered information on succession planning, fraud, time management and planning, ethical duties and the incoming *Code of Professional Conduct*.

Eight exhibitors also attended the conference to promote the use of their products in lawyers' practices.

The feedback received from the conference attendees was very positive, with the overall rating between "Very Good" and "Excellent".

Mentorship Program

The NSBS Equity Office and the RPM Program continues to accept applicants to the mentorship program. The program provides the entire membership with opportunities to network, gain knowledge about practice management issues, and receive support from the Risk and Practice Management Program.

We currently have 83 participants enrolled in the program. To qualify as a mentor, the requirement is at least nine years at the Bar. There are no requirements to qualify as a mentee.

This program is ongoing and LIANS emails lawyers on a regular basis to encourage those interested to participate.

Member inquiries

The program continues to provide one-on-one practice advice and assistance to members on topics such as fraud, closing a practice, file retention, Client ID Regulations, the Lawyers' Assistance Program and succession planning. This year the RPM program assisted 87 members in this way.

SUMMARY OF FINANCIAL HIGHLIGHTS

Notes to the Summary of Financial Highlights

LIANS' financial position remained stable at the end of 2011.

Once again this year, surplus was distributed to insured members through a subsidy to the levy charged for the mandatory insurance policy.

LIANS did not receive a return of surplus subscribers' equity from CLIA in 2011.

Total claims and expenses this year decreased by \$274,000 to \$903,000 in 2011, from \$1,177,000 in 2010. The cost of the administration of the program also decreased by \$10,000 to \$924,000 in 2011 from \$934,000 in 2010.

The reserve at the year end was \$8,196,000. This represents a decrease of \$217,000 from the 2010 year-end reserve of \$8,413,000.

Appendix D –Summary of financial highlights

Statement of financial position as at December 31, 2011

	2011	2010
Cash	\$ 89	\$ 44
Accounts receivable	30	188
Levy receivable	544	441
Prepays	341	297
Recoverable unpaid claims and expenses	271	955
Investments	13,361	14,223
Fixed assets	49	27
	\$ 14,685	\$ 16,175
Accounts payable and accrued liabilities	\$ 184	\$ 309
Unearned levy	886	753
Provision for levy deficiency	723	728
Provision for unpaid claims and expenses	4,696	5,972
Professional liability insurance reserve	8,196	8,413
	\$ 14,685	\$ 16,175

Statement of revenue, expenditure and reserve for the period ended December 31, 2011

	2011	2010
Revenue	\$ 2,230	\$ 2,466
Insurance premiums	(630)	(604)
Net revenue	1,600	1,862
Claims and expenses		
Payments	1,889	1,645
Group deductible limit overpayment	(389)	(324)
	1,500	1,321
Increase in provisions for unpaid claims and expenses	(597)	(144)
Total claims and expenses	903	1,177
Administration	914	924
Deficiency of revenue over expenditure before under-noted	(217)	(239)
Return of C.L.I.A. surplus subscriber's equity	-	73
Excess (deficiency) of revenue over expenditure	(217)	(166)
Reserve, beginning of year	8,413	8,579
Excess (deficiency) of revenue over expenditure	(217)	(166)
Reserve, end of year	\$ 8,196	\$ 8,413

2011 BOARD, COMMITTEES AND STAFF

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Darrel I. Pink
STAFF: Melanie McGrath

STAFF

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Christine Smith
Executive Assistant to the Director
Stacey Gerrard, LL.B.
LIANS Counsel
Patricia Neild, LL.B.
Claims Counsel
Gerri O'Shea, LL.B.
Claims Counsel
Cynthia Neild, BA, MLIS
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Amy B. Bradbury
STAFF: Melanie McGrath

LAWYERS' INSURANCE
ASSOCIATION OF NOVA SCOTIA

**LIANS Risk & Practice
Management Fall Conference**

November 23 at the Westin from 9 am – 4 pm

Participants will get six CPD credit hours by attending.

Keep your eye on www.lians.ca for details.



WHAT IS LAP?

Who

Available to members of Nova Scotia's legal profession, their staff and families

What

Through our provider, Human Solutions, short-term counselling and other resources are available for managing personal, family and life events as well as helping you take charge of your health and well-being.

Where

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When

24 hours a day

How

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