

# LAWYERS' INSURANCE

## ASSOCIATION OF NOVA SCOTIA

ANNUAL REPORT 2012

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# LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

## ANNUAL REPORT 2012

### **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 lawyers.

### **Vision**

LIANS is recognized by Nova Scotia lawyers and its peers for the superior quality of its professional liability insurance program and for its active risk and practice management (RPM) program that is used and valued by its insured lawyers.

LIANS is managed in a fiscally responsible manner; always ensuring adequate resources are available for the long-term health of the program. Its governance and authorities are clearly specified, and its relationship with the NSBS is exemplary.

LIANS continually meets its goals and objectives and reviews them every three to five years.

# REPORT FROM THE CHAIR OF THE BOARD

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**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).

**The global economic meltdown of 2008 continues** to pose unique and challenging times for the Board of LIANS.

While both the LIANS and CLIA investment portfolios continue to survive the economic turmoil relatively unscathed, we have not had an easy time in meeting the goals established for our investment returns. Investment philosophy of both bodies remains very conservative with a primary mandate of preserving capital, as opposed to seeking growth with the accompanying risks. We have continued however to see an erosion in equities, which is not being made possible by our position in more secure bonds.

While we remain on solid financial ground, the Board of LIANS has taken steps to diversify our portfolio by adjusting our investment policy and investments in the commercial real estate market. This step is being taken after careful consideration and with the input of professional advice respecting the make-up of investment portfolios with a similar risk profile as ours.

For 2013, the full practising levy is \$1,460 for private practitioners, \$730 for Nova Scotia Legal Aid lawyers and \$350 for provincial government staff lawyers.

Historically, the levy for private practice insurance has fluctuated between \$600 and \$1,310. In 1997, the private practice insurance levy was \$1,774. Significant levy credits have been issued to members since 1997, through the result of surplus

from both CLIA and LIANS. The true levy necessary to meet our expected liabilities in the coming year is estimated to be \$2,154 without a return of these surplus monies. As we have advised over the past number of years, these surpluses continue to diminish over time.

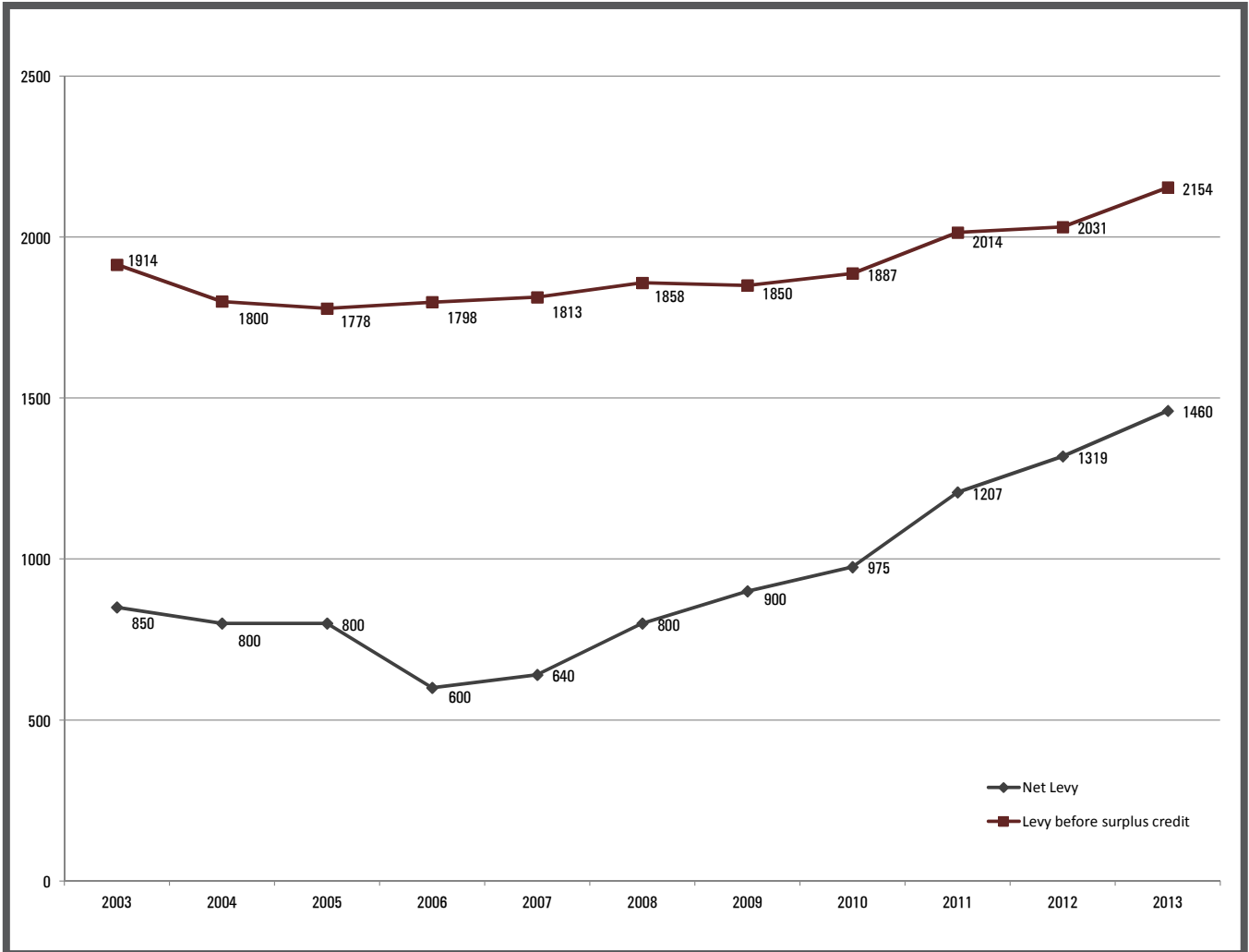
We continue to have a favourable claims experience as compared to other jurisdictions in Canada; however, the increase in claims severity that I noted in last year's report continues. It is a tribute to our members' professionalism and diligence that our insurance levy remains among the lowest of the provinces and territories participating in CLIA.

In closing, my sincere thanks go out to the Board members who provide so much time and effort at both the Board and Committee levels, with such a positive approach to all of the issues with which the Board has to deal. I would also like to sincerely thank our staff led by Melanie McGrath, who works so hard to keep not only our costs down, but our claims experience at a level that is sustainable for the membership.

This is my last report as Chair of LIANS. Cheryl Canning will assume the chair in June, with Michael Power QC as Vice-Chair. I feel very privileged to have served LIANS over the past decade and leave the Board secure in the knowledge that it is in good hands.

***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.

# PROGRAM REPORT

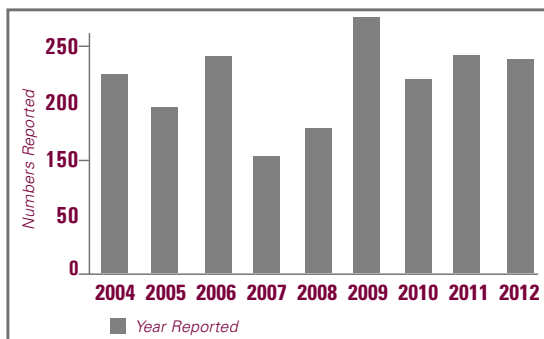


**MELANIE MCGRATH**  
Director

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 2012 did not change significantly but the value of the claims increased. The number of new claims reported was 239, as compared to 243 in 2011, 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 2013.



Claims costs increased in 2012 due largely to the increased complexity of claims processed and inflation.

### Claims Reported Per 100 Lawyers (2001-2012)

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

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 the last number of years is set out in the table.

## Cost of Claims by Area of Law

Area of Law	1998-2007	2007	2008	2009	2010	2011	2012
Real Estate	47%	50%	69%	49%	40%	40%	36%
Bankruptcy/Insolvency/Receivership				<1%	<1%	<1%	
Criminal		3%	4%	<1%	2%	8%	12%
Employment/Labour	3%	0%	0%	3%	<1%	<1%	
Immigration				0%	1%	2%	
Intellectual Property				<1%	<1%	0.5%	1%
Tax				30%	34%	21%	
Civil Litigation	13%	15%	9%	5%	10%	9%	27%
Commercial	11%	6%	3%	9%	3%	4%	6%
Corporate	13%	3%	7%	<1%	3%	2.5%	13%
Matrimonial & Family	5%	6%	2%	<1%	1%	2%	5%
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%	100%

Total Defence, Damages and Administration payments made in 2012: **\$1,451,708.82**

As the chart above illustrates, claims costs arising from the practice areas of real estate and civil litigation account for the highest amount of claims. The

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single tax claim, which had previously accounted for a large percentage of the claims cost, is now beyond the LIANS layer. In terms of numbers of claims themselves, real estate claims continued to be the largest proportion, with 51 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 consistent with claims in 2011, with 18 per cent of claims being made in this area. However, claims costs were significantly increased in this area. Claims with respect to the areas of estate planning/wills were decreased but in family law were 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. Criminal law remains an area of concern for claims. LIANS continues to see 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. LIANS counsel works with lawyers to respond to the allegations appropriately and has been very effective in dealing with these kinds of claims.

No one problem caused LIANS claims experience to rise in 2012. Missed limitations, including statutory limitation periods in other provinces where the cause of action occurred, continue to result in claims now that lawyers are mobile. It is important to remember

that the law in this area varies province to province. Missed judgments on title searches also continued to cause 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 or if there is no consideration for the transfer of title. 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 237 claims files in 2012. Of these files, 84 per cent were closed with no payment of any damages. In addition, 71 per cent closed with no payment of either defence costs or damage. LIANS also conducted a closed file satisfaction survey with respect to files that were closed in 2012, with 97 per cent of respondents indicating they were either satisfied or very satisfied with the handling of the claim.

In 2013, 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. We also encourage attendance at our fall conference to assist you in getting your required CPD hours. Remember that you may also qualify for CPD through mentorships or writing an article for *LIANSwers*. In addition, through Stacey Gerrard, LIANS Counsel, the RPM Program will continue to provide fraud alerts to members. Stacey is also available to offer confidential assistance and help answer specific or general questions with respect to your practice management.

# PROGRAM REPORT

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**CHERYL CANNING**  
**CHAIR**  
**NSLAP COMMITTEE**

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

## Nova Scotia Lawyers Assistance Program

### Over the past year, Homewood Human Solutions

continued to provide intake and counselling services to our members, their staff and families. The rate of new cases is slowing growing, and the demographics continue to show that the majority of users are female, between the ages of 30 and 50. We did see a rise in usage by men over this past year, as well as by family members, though family usage remains minimal in relation to that of the lawyers. Issues related to family and workplace difficulties continue to come up as frequent problems faced by our members, while generalized stress or anxiety are prominent as well.

We also continue to see increased usage of eServices as preventative health and wellness resources, and online counselling and telephonic counselling as alternatives to traditional counselling for those who prefer it.

NSLAP was very successful over the past year in reaching out to Nova Scotia's lawyers. We were fortunate to have the benefit of the assistance of Nova Scotia Barristers' Society President Tim Daley QC in this regard. Mr. Daley personally brought our message to countless meetings and speaking engagements across the province and for that, we thank him.

We provided two lunch 'n' learn sessions: one on "Healthy Eating on the Go" and the other entitled "Finding New Meaning and Satisfaction in the Workplace". Attendance at these sessions,

both in person and via webinar, far surpassed our expectations. Look for more of these sessions in the upcoming year!

Our LIANS staff member, Melanie McGrath, lends such a significant amount of time and energy to the NSLAP that I could not complete a report without reference and thanks to her. As this is my last report as the NSLAP Chair, I also want to thank my fellow committee members, most of whom have been with the committee for many years. Jennifer Glennie, Amy Bradbury, Craig Berryman, Nancy Rideout and Michael Power QC have provided the NSLAP with endless support and dedication. I know I am leaving it in good hands for the future.

***Respectfully submitted,***  
***Cheryl Canning***  
***Chair, NSLAP Committee***



# PROGRAM REPORT

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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 to the LIANS website and material already provided is updated regularly. This includes templates for notes to file, sample retainer letters and checklists.

The RPM Program continues to submit articles every two weeks to *InForum*, the online newsletter of the Nova Scotia Barristers' Society. 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 spring and fall editions of the *Society Record* magazine, one addressing the issue of social networking policies in the workplace and the other missed limitation periods.

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 June, LIANS Counsel was invited to Prince Edward Island to present on the topic of Fraud Prevention and in November, was invited to the Cape Breton Barristers' Society's first annual Professional Development Conference entitled "Bringing it Home" to present on the topic of claim avoidance.

### 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 continue 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.

### Risk and Practice Management Conference

One hundred and eighty legal professionals attended the fourth annual LIANS Solo and Small Firm Conference held November 23 at the Westin

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Hotel in Halifax, to gain knowledge of risk and practice management strategies. Five sessions offered information on the art of negotiation, cultural competence, using technology to avoid claims, workload management and wellness.

Ten exhibitors also attended the conference to promote the use of their products in members' practices. The feedback received from the conference attendees was very positive, with the overall rating between "Very Good" and "Excellent".

## Mentorship Program

The RPM Program continues to accept applicants to its 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 106 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 the members 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 56 members in this way.

# SUMMARY OF FINANCIAL HIGHLIGHTS

## Notes to the Summary of Financial Highlights

LIANS' financial position remained stable at the end of 2012.

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 2012.

Total claims and expenses this year increased by \$464,000 to \$1,367,000 in 2012, from \$903,000 in 2011. The cost of the administration of the program also increased by \$25,000 to \$939,000 in 2012, from \$914,000 in 2011.

The reserve at the year end was \$8,138,000. This represents a decrease of \$58,000 from the 2011 year-end reserve of \$8,196,000.

### Summary of financial highlights

#### Statement of financial position as at December 31, 2012

	2012	2011
	\$	\$
Cash	573	89
Accounts receivable	64	30
Levy receivable	308	544
Prepays	354	341
Recoverable unpaid claims and expenses	928	271
Investments	13,283	12,361
Fixed assets	57	49
	<u>15,567</u>	<u>14,685</u>
Accounts payable and accrued liabilities	397	184
Unearned levy	1,010	886
Provision for levy deficiency	396	723
Provision for unpaid claims and expenses	5,626	4,696
Professional liability insurance reserve	8,138	8,196
	<u>15,567</u>	<u>14,685</u>

#### Statement of revenue, expenditure and reserve for the period ended December 31, 2012

	2012	2011
	\$	\$
<b>Revenue</b>	<b>2,936</b>	<b>2,230</b>
Insurance premiums	(688)	(630)
Net revenue	<u>2,248</u>	<u>1,600</u>
<b>Claims and expenses</b>		
Payments	1,427	1,889
Group deductible limit overpayment	(6)	(389)
	<u>1,421</u>	<u>1,500</u>
Decrease in provisions for unpaid claims and expenses	(54)	(597)
Total claims and expenses	<u>1,367</u>	<u>903</u>
<b>Administration</b>	<b>939</b>	<b>914</b>
Deficiency of revenue over expenditure before undernoted	(58)	(217)
Return of C.L.I.A. surplus subscriber's equity	—	—
Deficiency of revenue over expenditure	<u>(58)</u>	<u>(217)</u>
Reserve, beginning of year	8,196	8,413
Deficiency of revenue over expenditure	(58)	(217)
<b>Reserve, end of year</b>	<b><u>8,138</u></b>	<b><u>8,196</u></b>

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# 2011 BOARD, COMMITTEES AND STAFF

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## BOARD OF DIRECTORS

John W. Traves QC, *Chair*  
Michael K. Power QC, *Vice- Chair*  
Michael R. Brooker QC  
Cheryl Canning  
Gail Rudderham Chernin QC  
J. David Connolly  
Robert K. Dickson QC  
Elizabeth Haldane  
Charles J. Ford  
Natalie J. Woodbury  
Stephen D. Piggott  
Darrel I. Pink  
STAFF: Melanie McGrath

## STAFF

Melanie McGrath, LL.B., MBA  
*Director*  
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 Nield, BA, MLIS  
*Database and Information Officer*  
Erin McKiel  
*Administrative Assistant*

## COMMITTEES

### Audit Committee

Stephen D. Piggott, *Chair*  
Michael R. Brooker QC  
Natalie J. Woodbury  
STAFF: Melanie McGrath

### Claims Review Committee

Melanie McGrath, *Chair*  
Michael R. Brooker QC  
Cheryl Canning  
Robert K. Dickson QC  
W. Dale Dunlop  
Elizabeth Haldane  
Maurice McGillivray QC  
Stephen D. Piggott  
John W. Traves QC

STAFF: Patricia Neild  
Gerri O'Shea  
Stacey Gerrard

### Investment Committee

Michael K. Power QC, *Chair*  
Gail Rudderham Chernin QC  
J. David Connolly  
John W. Traves QC  
Charles J. Ford  
STAFF: Melanie McGrath

### Lawyers Assistance Program

Cheryl Canning, *Chair*  
Jennifer Glennie, *Vice-Chair*  
Craig R. Berryman  
Amy B. Bradbury  
Michael K. Power QC  
Nancy G. Rideout  
STAFF: Melanie McGrath

**LAWYERS' INSURANCE**  
ASSOCIATION OF NOVA SCOTIA

**LIANS Risk & Practice  
Management Fall Conference**

**November 8, 2013, Casino Nova Scotia – Schooner Room, 9 am to 4 pm**

*Participants will get six CPD credit hours by attending.*

Keep your eye on [www.lians.ca](http://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.

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