

LAWYERS' INSURANCE

ASSOCIATION OF NOVA SCOTIA

ANNUAL REPORT 2013

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LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

ANNUAL REPORT 2013

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



CHERYL CANNING

Chair

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

LIANS has had a challenging but successful year.

Changes within CLIA have kept us busy and will continue to do so for the foreseeable future, but the Board, the staff and our colleagues at the Society are up to the task.

From a financial perspective we have done well. The LIANS investment portfolio outperformed benchmark, helping us maintain the healthy financial position that LIANS has enjoyed for many years despite fluctuations in the economy.

The levy for practice insurance had been increasing over time which is a reflection of the true cost of insurance. By carefully managing returned surpluses over the years, LIANS has been able to offset the rising costs to our lawyers to some extent. The levy for 2013-2014 was \$1,623 for private practitioners, \$811 for Nova Scotia Legal Aid lawyers and \$350 for provincial government staff lawyers.

For the upcoming year, there will be another increase in the levy as we attempt to conservatively manage the surplus. Responsible management of our funds will keep us in a position that will allow us to be financially capable of responding to changes that are unfolding in the insurance market and particularly within CLIA.

As CLIA undergoes changes, subscribers will have to adapt along with it. What this will mean for our insurance program and for the members in the long run remains to be seen. Nova Scotia representatives have been and will continue to be vocal and protective of the interests of our members.

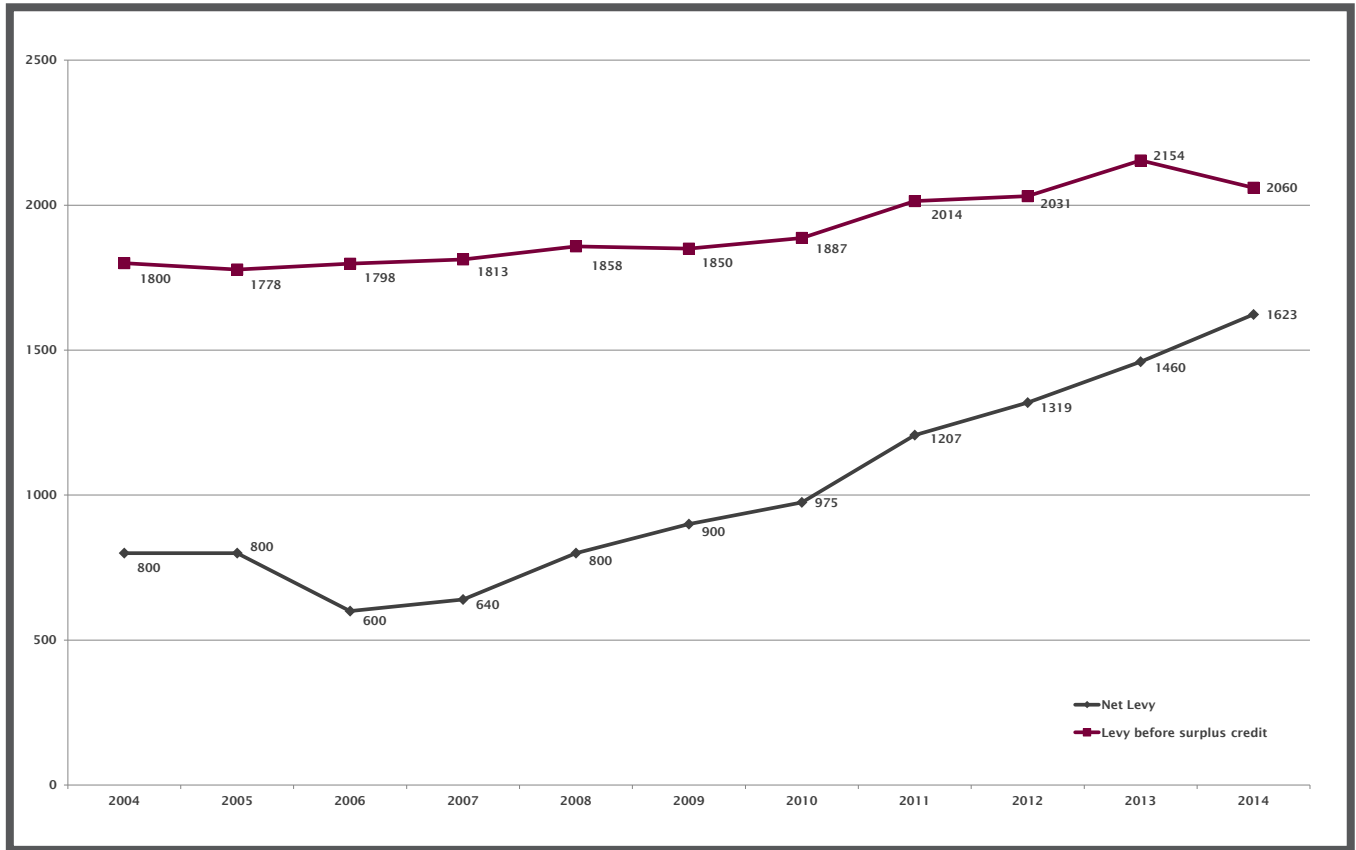
We continue to have a favourable claims experience in comparison to other Canadian jurisdictions. We have reported a trend of increasing claims severity however, which does not seem to be abating. This is being managed by our very capable claims counsel and staff continue to manage expenses well.

The Board spent a considerable amount of time this year examining our governance structure and addressing any changes or updates needed. This led to a critical review and updates to our Terms of Reference, an exercise that will keep us current and functioning optimally.

I would like to thank the Board of Directors for their unwavering dedication and hard work. This is a very engaged Board and they give me confidence in knowing that they are up to whatever challenges come our way. A special thank you to Melanie McGrath, Director of Insurance. I am always in awe of her knowledge and understanding of the insurance market in which we operate. Her assistance is immeasurable. And finally, I would be remiss if I did not thank the Nova Scotia Barristers' Society, in particular Darrel Pink and René Gallant, for their part in maintaining open lines of communications between our respective organizations and for their work to aid our operations.

Cheryl A. Canning, 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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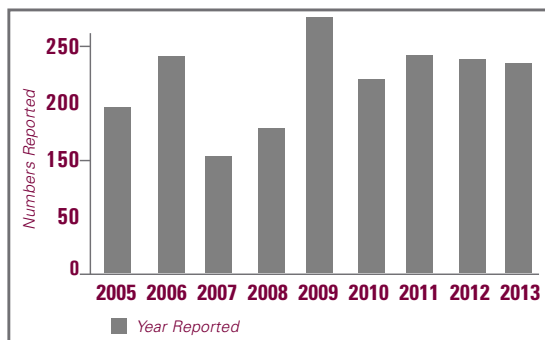


MELANIE MCGRATH
Director

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 2013 did not change significantly but the overall value of the claims increased. The number of new claims reported was 234, as compared to 239 in 2012, 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 2014.



Claims costs increased in 2013 due largely to the increased complexity of claims processed and inflation.

Claims Reported Per 100 Lawyers (2001-2012)

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

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	2007	2008	2009	2010	2011	2012	2013
Real Estate	50%	69%	49%	40%	40%	36%	32%
Bankruptcy/ Insolvency/ Receivership			<1%	<1%	<1%		<1%
Criminal	3%	4%	<1%	2%	8%	12%	<1%
Employment/ Labour	0%	0%	3%	<1%	<1%		1.5%
Immigration			0%	1%	2%		<1%
Intellectual Property			<1%	<1%	0.5%	1%	<1%
Tax			30%	34%	21%		<1%
Civil Litigation	15%	9%	5%	10%	9%	27%	24.5%
Commercial	6%	3%	9%	3%	4%	6%	14.5%
Corporate	3%	7%	<1%	3%	2.5%	13%	11.5%
Matrimonial & Family	6%	2%	<1%	1%	2%	5%	9%
Estate Planning & Administration	14%	4%	2%	6%	9%		5%
Administrative/ Boards/ Tribunal	0%	0%	0%	0%			
Environmental							<1%
All Other	3%	2%	0%	0%	2%		
Arbitration				<1%			
	100%	100%	100%	100%	100%	100%	100%

Total Defence, Damages and Administration payments made in 2013: **\$1,315,139.70**

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. These areas are followed closely by commercial issues and criminal appeals involving allegations of ineffective trial counsel. In terms of numbers of claims themselves, real estate claims continued to be the largest proportion, with

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47 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 decreased slightly in 2012, with 12.5 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 and family law both increased in terms of cost. In the area of commercial law, both claims and the costs associated with them increased. Criminal law remains an area of concern in terms of number of claims reported. 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, as the low cost of these claims reflects.

No one problem caused LIANS claims experience to rise in 2013. 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 and a missed easement or right-of-way on the title search 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. It is also important to remember the specific rules around corporate name judgment searches (e.g., do not search the full name, do not search "a" or "the" etc.) Other causes, including the failures of office systems, unsupervised delegation of work to staff, 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 233 claims files in 2013. Of these files, 89 per cent were closed with no payment of any damages. In addition, 71 per cent closed with no payment of either defence costs or damages. LIANS also conducted a closed file satisfaction survey with respect to files that were closed in 2013, with 98 per cent of respondents indicating they were either satisfied or very satisfied with the handling of the claim.

In 2014, 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. Connect with us on LinkedIn and follow us on Twitter @LIANS_RPM or @PreventLoss for more loss prevention information. 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 participation in the mentorship program 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 to help answer specific or general questions with respect to your practice management. Watch for a new look to the LIANS website in 2014 as well.

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JENNIFER GLENNIE

*Chair
NSLAP Committee*

Jennifer Glennie is Chair of the Lawyers Assistance Program Committee. She is a solicitor with the Nova Scotia Department of Justice..

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 number of active cases is higher this year, and members are using counselling services, Plan Smart services as well as e-services, with counselling services being the most used by far. Members are taking advantage of the ability to get counselling services in person, by phone and electronically.

The demographics continue to show that the majority of users are female, and that the majority of users, whether male or female, are between the ages of 30 and 50. Family members are using the service, but the vast majority of usage continues to be by our members. Again this year, issues related to marital and relationship difficulties are common, as well as psychological issues such as anxiety, depression and stress. Workspace difficulties continue to come up as frequent problems faced by our members, such as work stress, workplace conflict and change in the workplace.

NSLAP was very successful over the past year in reaching out to Nova Scotia's lawyers. We were fortunate to continue to have the benefit of the assistance of Tim Daley QC in this regard, in his position as Special Advisory on Mental Health Awareness for the Nova Scotia Barristers' Society. Mr. Daley personally brought his important message about depression to our members, and I had the privilege of speaking at two engagements with him to emphasize to our members how NSLAP is there

to help. We thank Tim for his passion to help and his honesty in delivering his message.

We provided two lunch 'n' learn sessions, one on "Effective Communication in Groups" and the other entitled "When Negativity Strikes: Communicating Despite Negative Behaviour". We also delivered, through Homewood Human Solutions, a session to the CBA Young Lawyers Section called "Managing Your Time and Energy", and another to Nova Scotia Legal Aid called "Care – Conflict Resolution in the Workplace." Attendance at all sessions, both in person and via webinar, continues to be very impressive.

A huge thank you, as usual, to our LIANS staff member, Melanie McGrath, who dedicates a significant amount of time and energy to the NSLAP, and to her Executive Assistant, Tammy Yule, who keeps us all organized. Thanks also to my fellow committee members, Amy Bradbury, Craig Berryman, Nancy Rideout, Michael Power QC and our newest member Jonathan Saumier. While Cheryl Canning is no longer with the Committee, she is a presence on the national stage with the Legal Profession Assistance Conference of the Canadian Bar Association and continues to assist NSLAP by her involvement at that level. Our thanks to Cheryl for her continued contribution.

***Respectfully submitted,
Jennifer Glennie
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

another successful year providing support to the practising members.

Publications and presentations

We continue to distribute LIANSwrs, 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 LIANSwrs averages approximately 362 readers per issue.

RPM resource material is uploaded regularly to the LIANS website and existing material 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 and fraud 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 electronic data protection and the other retainer agreements.

The program also provided education seminars throughout the province in an effort to bring the risk and practice management message to the members directly. These included:

- On February 1, 2013, LIANS Counsel presented at the Canadian Bar Association's Mid-Winter Conference on the topic of succession planning;
- On February 22, 2013, LIANS Counsel presented a Canadian Bar Association Webinar on the topic of technology tips;
- On June 15, 2013, LIANS Counsel presented at the Nova Scotia Barristers' Society's Annual General Meeting on the topic of 'Using Technology to Avoid Claims';
- On August 23, 2013, LIANS Counsel conducted a risk and practice management workshop for the Pictou County Bar on the topic of retainer agreements;
- On September 13, 2013, LIANS Counsel presented at the Public Prosecution Service Fall Conference on the topic of ineffective trial counsel as a ground of appeal;
- On October 10, 2013, LIANS Counsel presented to the Kings County Bar on the topic of disaster planning;
- On December 2, 2013, LIANS Counsel presented "Tech Tips and Tricks" at the RELANS Conference.

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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.

Risk and Practice Management Conference

Two hundred and thirty-eight legal professionals attended the fifth annual LIANS Risk and Practice Management Conference, held November 8 at the Casino Nova Scotia in Halifax, to gain knowledge of risk and practice management strategies. Six sessions offered information on Client Service, Cultural Names, Civility, Succession Planning, Communication in Groups, and Marketing. We also included a brief lunch hour presentation entitled "A Look at Lingo."

Five 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 122 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 46 members in this way.

SUMMARY OF FINANCIAL HIGHLIGHTS

Notes to the Summary of Financial Highlights

LIANS' financial position remained stable at the end of 2013.

Once again this year, surplus was distributed to insured members through a subsidy to the levy charged for the mandatory insurance policy. As a result of increased volatility and structural changes at the CLIA level, the decision was made by the Board to return a lower amount of the surplus than they have in the past. This permitted internal surplus growth with minimal impact on lawyers, while still practicing prudent fiscal management.

LIANS did not receive a return of surplus subscribers' equity from CLIA in 2013.

Total claims and expenses this year decreased by \$70,000 to \$1,297,000 in 2013, from \$1,367,000 in 2012. The cost of the administration of the program also increased by \$104,000 to \$1,043,000 in 2013 from \$939,000 in 2012.

The reserve at the year end was \$8,676,000. This represents an increase of \$539,000 from the 2012 year-end reserve of \$8,138,000.

Summary of financial highlights

Statement of financial position as at December 31

	2013	2012
	\$	\$
Cash	441,461	573,148
Accounts receivable	418,620	7,618
Government remittances receivable	85,978	56,218
Levy receivable	338,720	307,986
Prepaid expenses	403,397	353,631
Recoverable unpaid claims and expenses	804,171	927,858
Investments	13,745,192	13,283,460
Property and equipment	40,605	57,263
	16,278,144	15,567,182
Accounts payable and accrued liabilities	236,002	397,684
Unearned levy	1,123,551	1,010,155
Provision for levy deficiency	415,309	395,798
Provision for unpaid claims and expenses	5,827,054	5,625,980
Professional liability insurance reserve	8,676,228	8,137,565
	16,278,144	15,567,182

Statement of revenue and expenditure for the year ended December 31

	2013	2012
	\$	\$
Revenue	3,633,923	2,936,178
Insurance premiums	(755,144)	(688,213)
Net revenue	2,878,779	2,247,965
CLAIMS AND EXPENSES		
Payments	1,000,086	1,426,543
Group deductible reimbursement	(47,144)	(5,626)
	952,942	1,420,917
Increase (decrease) in provision for unpaid claims and expenses	344,272	(53,890)
Total claims and expenses	1,297,214	1,367,027
Administration	1,042,902	939,186
Excess (deficiency) of revenue over expenditure before undernoted	538,663	(58,248)
Return of C.L.I.A. surplus subscriber's equity [note 9]	—	—
Excess (deficiency) of revenue over expenditure	538,663	(58,248)
Professional liability insurance reserve, beginning of year	8,137,565	8,195,813
Excess (deficiency) of revenue over expenditure	538,663	(58,248)
Professional liability insurance reserve, end of year	8,676,228	8,137,565

2013-2014 BOARD, COMMITTEES AND STAFF

BOARD OF DIRECTORS

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Robert K. Dickson QC
Elizabeth Haldane
Charles J. Ford
Stephen D. Piggott
Lee Anne MacLeod-Archer QC
Darrel I. Pink
Tara Miller
David Reid
STAFF: Melanie McGrath

STAFF

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Tammy Yule
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
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Michael K. Power QC
Nancy G. Rideout
Jonathan Saumier
STAFF: Melanie McGrath

LAWYERS' INSURANCE
ASSOCIATION OF NOVA SCOTIA

LIANS Risk & Practice Management Fall Conference

November 28, 2014, Casino Nova Scotia – Schooner Room, 9 am to 4 pm

Sessions include: "Let's Talk About Tax" with Daren Baxter QC and a motivational session with two-time kayaking World Champion and two-time Olympian Karen Furneaux.

Participants will earn CPD hours by attending.

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



Nova Scotia Lawyers Assistance Program

Confidential Referral and Short Term Counselling Program

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

Through our provider, Homewood 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.

Call in confidence from anywhere in Nova Scotia, **24 hours a day:**

1 866 299 1299

1 866 398 9505 (en français) | 1 888 384 1152 (TTY)

Or log on to our website to access online wellness resources. Remember that your company name is NSLAP:

www.nslap.ca

