

# LAWYERS' INSURANCE

## ASSOCIATION OF NOVA SCOTIA

ANNUAL REPORT 2014

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# LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

## ANNUAL REPORT 2014

### **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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**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 busy year. Claims are up slightly, but the complexity of the claims is ever increasing.** We are seeing many of the same types of claims we have in the past, but there is an increasing number of claims by self-litigants and in criminal appeals. We are also seeing more negligence claims being addressed in Small Claims Court.

As a result of the increase in complex claims, there were more damages paid over this part year than in the year before it, but from a financial perspective LIANS continues to be stable. This is in part due to the careful management of the claims by LIANS staff, and also due to the successful management of the LIANS investment portfolio.

Once again, the levy for practice insurance has increased, and again we see this as a reflection of the true cost of insurance. As has been the case over the past few years, LIANS has managed its retained surplus so as to help offset the rising costs to our lawyers. The levy set in April 2014 for the policy year July 1, 2014 – June 30, 2015 was \$1,623 for private practitioners, \$811 for Nova Scotia Legal Aid lawyers and \$350 for provincial government staff lawyers. The levy set in April 2015 for the policy year July 1, 2015 – June 30, 2016 was \$1,900 for private practitioners, \$950 for Nova Scotia Legal Aid lawyers and \$350 for provincial government staff lawyers.

CLIA has undergone some fundamental changes over the past year and we believe there are important changes to come. LIANS is watching these changes with a critical eye and is also maintaining an eye on other alternative excess insurance options. Nova Scotia representatives on the CLIA Board have been and will continue to be active participants, looking out for the interests of our members. LIANS' view is to ensure that its members are provided with excess insurance coverage that is both economical and secure.

LIANS continues to have a favourable claims experience in comparison to other Canadian jurisdictions, despite the increases reported above. We do expect to see some changes when the new *Limitations of Actions Act* is proclaimed. In other jurisdictions, claims related to missed limitation periods is as high as 50 per cent. LIANS is spreading the word to its members about the upcoming changes and will continue to provide resources where possible to minimize any confusion. Members will need to be on their toes and attentive to the changes.

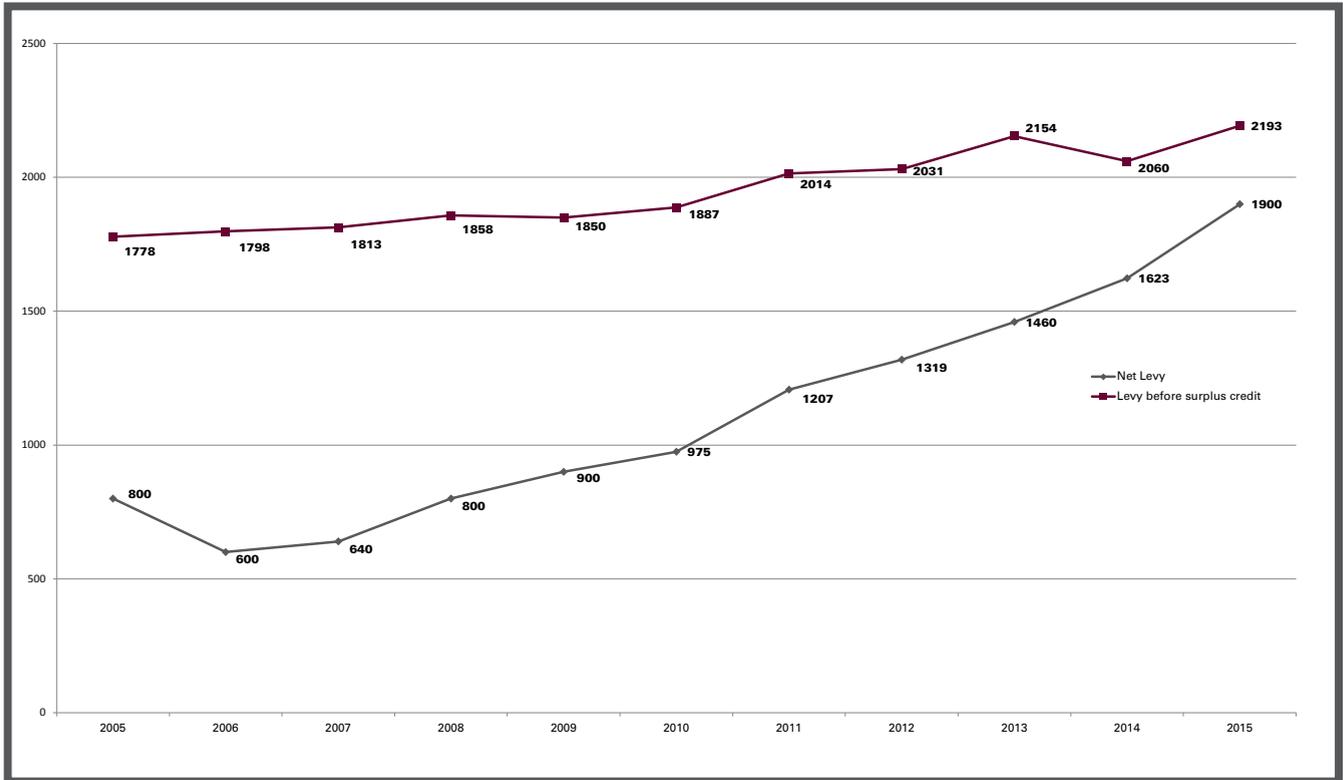
LIANS was very active over the past year, providing professional development and practice management information to its members. The fall conference in November 2014 at the Casino Nova Scotia was sold out with 200 registrants. LIANS also provided webinars on practical topics such as managing email security, the PVSC Capped Assessment Program and "tech tips". Stacey Gerrard is always ready to step in and assist members with practice management questions.

The Board is continuing the work started last year on our governance structure in an attempt to stay current, efficient and effective. The importance of this work to the health of a Board and the organization it oversees can't be overstated. I am grateful to the very knowledgeable Board members contributing to this project.

I would like to thank the Board of Directors for their ongoing dedication and hard work. A special thank you to Melanie McGrath, Director of Insurance, whose commitment and competence never fail to impress. Finally, a thank you the NSBS Council and Executive 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.

# PROGRAM REPORT

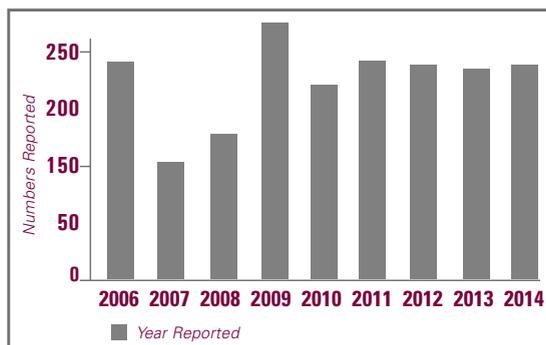


**MELANIE MCGRATH**  
Director

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 2014 increased significantly and the overall value of the claims increased. The number of new claims reported was 283 as compared to 234 in 2013, 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 2015.



Claims costs increased in 2014 due largely to the increased complexity of claims processed and inflation.

### Claims Reported Per 100 Lawyers (2004-2014)

04	05	06	07	08	09	10	11	12	13	14
14	12	14	10	11	16	13	12	14	13	15

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.

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

## Cost of Claims by Area of Law

Area of Law	2008	2009	2010	2011	2012	2013	2014
Real Estate	69%	49%	40%	40%	36%	32%	37%
Bankruptcy/ Insolvency/ Receivership		<1%	<1%	<1%		<1%	
Criminal	4%	<1%	2%	8%	12%	<1%	
Employment/ Labour	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	9%	5%	10%	9%	27%	24.5%	42%
Commercial	3%	9%	3%	4%	6%	14.5%	11%
Corporate	7%	<1%	3%	2.5%	13%	11.5%	3%
Matrimonial & Family	2%	<1%	1%	2%	5%	9%	3%
Estate Planning & Administration	4%	2%	6%	9%		5%	2%
Administrative/ Boards/ Tribunal	0%	0%	0%				
Environmental						<1%	2%
All Other	2%	0%	0%	2%			
Arbitration			<1%				
	100%	100%	100%	100%	100%		100%

Total Defence, Damages and Administration payments made in 2014:	<b>\$1,728,084.74</b>
Admin	\$12,736.17
Damages	\$766,446.43
Defence	\$948,902.14

These areas are followed closely by commercial issues. 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. These claims have increased in severity over the last year as the

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time to repair these claims increases with the complexity of the situations involved.

Claims in the areas of civil litigation increased in 2014, with 21 per cent of claims being made in this area. In addition, claims costs were significantly increased in this area. Claims with respect to the areas of estate planning/wills, family law, commercial law and criminal remain relatively consistent. Criminal law remains an area of concern with respect to 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 2014. 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. With the amendments to the *Limitation of Actions Act* being passed (but not yet proclaimed) it is more important than ever to properly diarize and commence your client's action on time. 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. Use of retainer agreements and setting out the limitations on the scope of work you are going to provide is also critical.

Documenting your file with your recommendations and your client's instructions not only helps LIANS defend a claim against you, but sometimes helps to avoid the claim all together.

It is interesting to note that LIANS closed 223 claims files in 2014. Of these files, 89 per cent were closed with no payment of any damages. In addition, 67 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 2014, with all but one respondent indicating they were either satisfied or very satisfied with the handling of the claim.

In 2015, look for additional resources including information on a Locum Project from the Risk and Practice Management Program. As well, the program will continue to provide checklists and other practice management tools through the website, the electronic newsletter *LIANSwers*, and other literature as well as educational webinars. If you have not done so already, consider participating in our Mentorship program.

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.

# PROGRAM REPORT

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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 Health continued to** provide intake and counselling services to our members, their staff and families. The number of active cases is higher again this year. Most members using NSLAP obtain face-to-face counselling with a small number taking advantage of phone and web counselling. These additional methods of counselling are an important aspect of LAP's service; getting members the assistance they need in the most convenient and easy-to-access format means members will use the service and get the help they need as early as possible.

Members are also taking advantage of programs and resources online. A visit to the Homewood Health website reveals the many valuable resources available to members online, including wellness articles, e-courses, podcasts and videos, and even an eldercare and childcare resource locator.

The statistical information NSLAP receives from Homewood Health continues to show that the majority of users of the program 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 over 80 per cent of usage continues to be by our members. Within counselling services, the highest category of use is for psychological issues, with the highest subcategories being anxiety, depression and stress. The second highest category of use is for marital and relationship issues. Workplace difficulties continue to come up as frequent problems faced by our members. A small number of people are also reaching out with addiction issues.

While there are no statistics related to the peer volunteer program that is part of NSLAP, there continues to be a group of people who are willing to be another resource

to members of our legal community. Peer volunteers are there to listen and understand. While peer volunteers are not counsellors, sometimes lawyers simply need another lawyer to talk to. We hope members know that resource is always available; the list of peer volunteers is on our website, [www.nslap.ca](http://www.nslap.ca).

NSLAP provided three lunch 'n' learn sessions, "Building Emotional Intelligence"; "Helping Your Child Succeed in School"; and "When Negativity Strikes: Communicating Despite Negative Behaviour". We also delivered, through Homewood Health, a session to the CBA Young Lawyers Section called "Managing Your Time and Energy", and another to Nova Scotia Legal Aid called "Conflict Resolution in the Workplace." Attendance at all sessions, both in person and via webinar, continues to be very impressive.

Another year requires another big thank you, to our LIANS staff member, Melanie McGrath, who dedicates a significant amount of time and energy to the NSLAP. Thanks also to my fellow committee members, Amy Bradbury, Craig Berryman, Nancy Rideout, Michael Power QC and Jonathan Saumier.

***Respectfully submitted,  
Jennifer Glennie  
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 another successful year providing support to the practising members.

### Publications and presentations

We continue to distribute *LIANsWers*, 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 LIANsWers averages approximately 323 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. LIANs also developed a new more user-friendly website to assist our membership with the distribution of valuable risk and practice management information.

The RPM Program continues to submit articles every two weeks to *InForum*, the online newsletter of the Nova Scotia Barristers' Society. These tips are also published on the LIANs website.

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 proper documentation of files and the detailing what the Risk and Practice Management program has to offer and introducing the new LIANs website.

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:

- February 7: LIANs Counsel presented at the Canadian Bar Association's Mid-Winter Conference on the topic of Succession Planning;
- March 19: LIANs Counsel presented at the Canadian Bar Association's Family Law Section meeting on the topic of Retainer Agreements;
- April 25: LIANs Counsel presented at the Colchester County Bar on the topic of Succession Planning;
- August 22: LIANs Counsel presented at the Pictou County Bar meeting on the topic of Tech Tips;
- September 20: LIANs Counsel presented at the Kings County Bar meeting on the topic of Ineffective Assistance of Counsel;
- October 24: LIANs Counsel presented at the Pictou County Bar CLE Day on the topic of Tech Tips;
- November 28: Director of Insurance and LIANs Counsel presented at the LIANs Conference on the topic of claim avoidance.

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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 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

Two hundred and twenty-six legal professionals attended the sixth annual LIANS Risk and Practice Management Conference held November 28 at the Casino Nova Scotia in Halifax, to gain knowledge of risk and practice management strategies. Six sessions offered information on tax law; claims and claims avoidance; conflicts of interest; using technology to streamline your practice; a Lawyers Assistance Program presentation on “Addictions at work: Alcohol, Drugs, and Gaming”; and a presentation by two-time Olympian, Karen Furneaux on “Five Keys for Activating Your Life Performance”.

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 129 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 66 members in this way.

# SUMMARY OF FINANCIAL HIGHLIGHTS

## Notes to the Summary of Financial Highlights

LIANS' financial position remained stable at the end of 2014.

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 received a return of surplus subscribers' equity from CLIA in 2014 of \$343,401.

Total claims and expenses this year increased by \$1,094,851 to \$2,392,065, from \$1,297,214 in 2013 largely as a result of an increase in the provision for unpaid claims. The cost of the administration of the program increased only by \$4,277 to \$1,047,569, from \$1,043,292 in 2014.

The reserve at the yearend was \$8,232,030. This represents a decrease of \$444,198 from the 2013 year-end reserve of \$8,676,228.

### Summary of financial highlights

Statement of financial position as at December 31

	2014	2013
	\$	\$
Cash	601,114	441,461
Accounts receivable	216,588	418,620
Government remittances receivable	45,278	85,978
Levy receivable	516,743	338,720
Prepaid expenses	185,855	403,397
Recoverable unpaid claims and expenses	536,381	804,171
Investments	14,447,432	13,745,192
Property and equipment	21,816	40,605
	<b>16,571,207</b>	<b>16,278,144</b>
Accounts payable and accrued liabilities	150,518	236,002
Unearned levy	1,257,412	1,123,551
Provision for levy deficiency	204,143	415,309
Provision for unpaid claims and expenses	6,727,104	5,827,054
Professional liability insurance reserve	8,232,030	8,676,228
	<b>16,571,207</b>	<b>16,278,144</b>

### Statement of revenue and expenditure for the year ended December 31

	2014	2013
	\$	\$
Revenue	3,583,687	3,633,923
Insurance premiums	(932,652)	(755,144)
<b>Net revenue</b>	<b>2,651,035</b>	<b>2,878,779</b>
<b>CLAIMS AND EXPENSES</b>		
Payments	1,611,010	1,000,086
Group deductible reimbursement	(175,619)	(47,144)
	<b>1,435,391</b>	<b>952,942</b>
Increase (decrease) in provision for unpaid claims and expenses	956,674	344,272
<b>Total claims and expenses</b>	<b>2,392,065</b>	<b>1,297,214</b>
Administration	1,046,569	1,042,902
<b>Excess (deficiency) of revenue over expenditure before undernoted</b>	<b>(787,599)</b>	<b>538,663</b>
Return of C.L.I.A. surplus subscriber's equity	343,401	—
<b>Excess (deficiency) of revenue over expenditure</b>	<b>(444,198)</b>	<b>538,663</b>
Professional liability insurance reserve, beginning of year	8,676,228	8,137,565
Excess (deficiency) of revenue over expenditure	(444,198)	538,663
<b>Professional liability insurance reserve, end of year</b>	<b>8,232,030</b>	<b>8,676,228</b>

# 2014-2015 BOARD, COMMITTEES & STAFF

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## BOARD OF DIRECTORS

Cheryl Canning, *Chair*  
Charles J. Ford, *Vice-Chair*  
Michael K. Power QC  
Michael R. Brooker QC  
J. David Connolly  
Elizabeth Haldane  
Darrel I. Pink  
Tara Miller  
David Reid  
Glen Campbell  
Margot Ferguson  
Jennifer Palov  
STAFF: Melanie McGrath

## STAFF

Melanie McGrath, LL.B., MBA  
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Donna McDermott  
*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*  
Alex Greencorn  
*Administrative Assistant*

## COMMITTEES

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Michael R. Brooker QC  
Rob Miedema  
STAFF: Melanie McGrath

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David Reid  
Tara Miller  
STAFF: Melanie McGrath

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Cheryl Canning  
Charles J. Ford  
STAFF: Melanie McGrath

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Dennise Mack  
Tara Miller  
Darlene Willcott  
Margot Ferguson  
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Gerri O'Shea  
Stacey Gerrard

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Craig R. Berryman  
Amy B. Bradbury  
Michael K. Power QC  
Nancy G. Rideout  
Jonathan Saumier  
STAFF: Melanie McGrath

# LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

Save the Date for LIANS'

## Risk and Practice Management Fall Conference

November 6, 2015  
9 am - 4 pm  
Casino Nova Scotia  
Halifax

Sessions may be eligible as CPD Hours



Follow **Lawyers' Insurance Association  
of Nova Scotia** on Facebook and  
**@LIANS\_RPM** on Twitter 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 Health** 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](http://www.nslap.ca)



