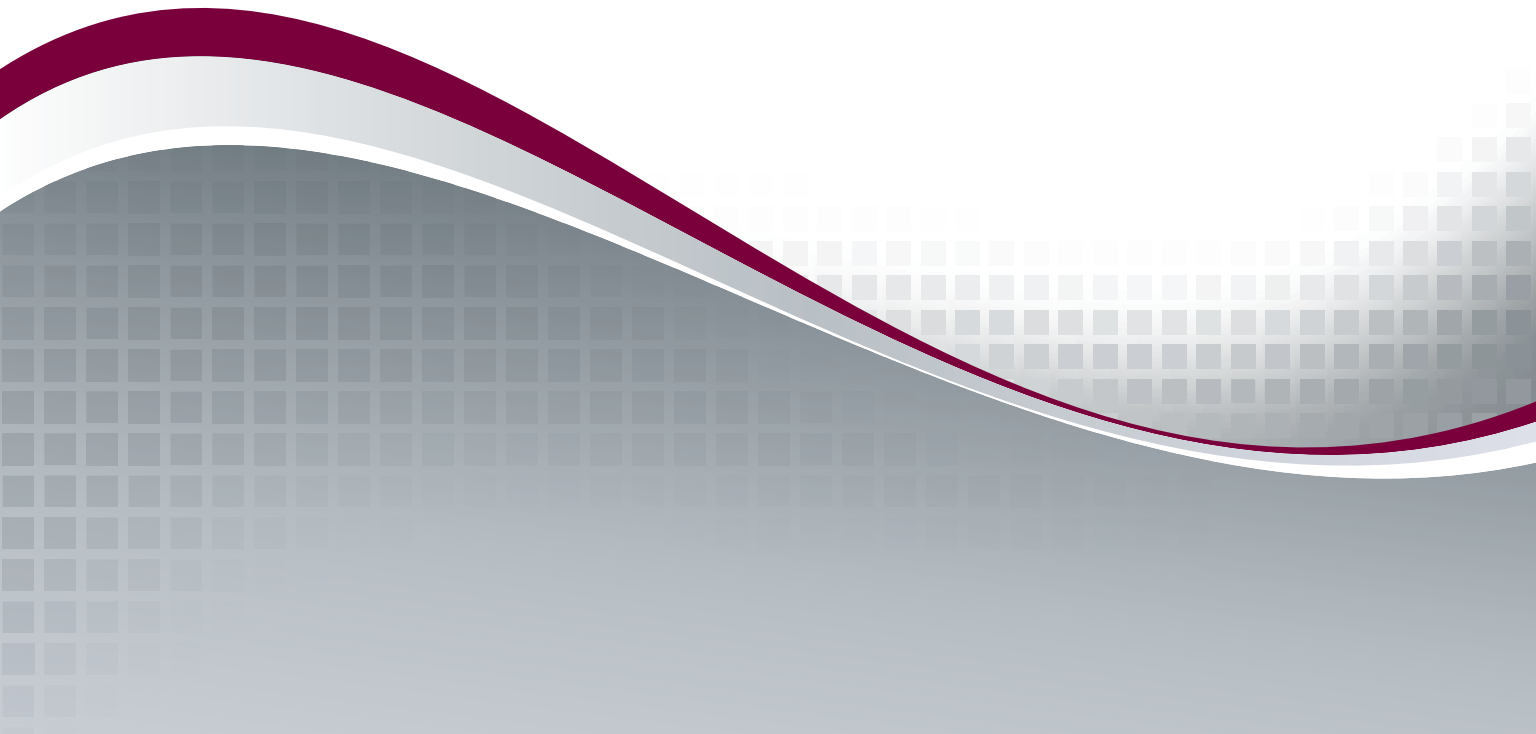


LAWYERS' INSURANCE

ASSOCIATION OF NOVA SCOTIA

ANNUAL REPORT 2015



LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

ANNUAL REPORT 2015

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 its 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 continues to evolve along with the needs of Nova Scotia's lawyers. As with the previous year, we have continued to see an increase in the complexity of claims and that trend is increasing the cost of defending the claims as well as the damages sought. The impact of the changes to the *Limitation of Actions Act* remains to be seen, but it is expected that we will see a distinct increase in claims as a result. Despite these trends, LIANS continues to have a stable and healthy financial position. 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.

The levy for practice insurance will continue to increase as we see it approach the true cost of insurance, but LIANS is conscious of the need to return enough surplus to members so as to make it affordable, yet maintain enough to deal with the increasing cost of claims. Through careful management of the retained surplus, we were able to offset the cost to our lawyers in 2015-2016, with private practitioners paying \$1,900, Nova Scotia Legal Aid lawyers \$950 and provincial government staff lawyers \$350.

The ongoing changes at CLIA have been very encouraging, with significant strides being made to ensure the program reflects the current challenges of its subscribers. The CLIA Board has a new CEO and working groups have been formed to look at the Rules of the Reciprocal, among other things. LIANS is proud to say that our Director of Insurance, Melanie McGrath, has played a prominent role in the work done by the working group.

LIANS was again active over the past year in providing professional development and practice management information to its members. In addition to the other staff, Stacey Gerrard deserves kudos for her hard work and assistance to members with practice management questions.

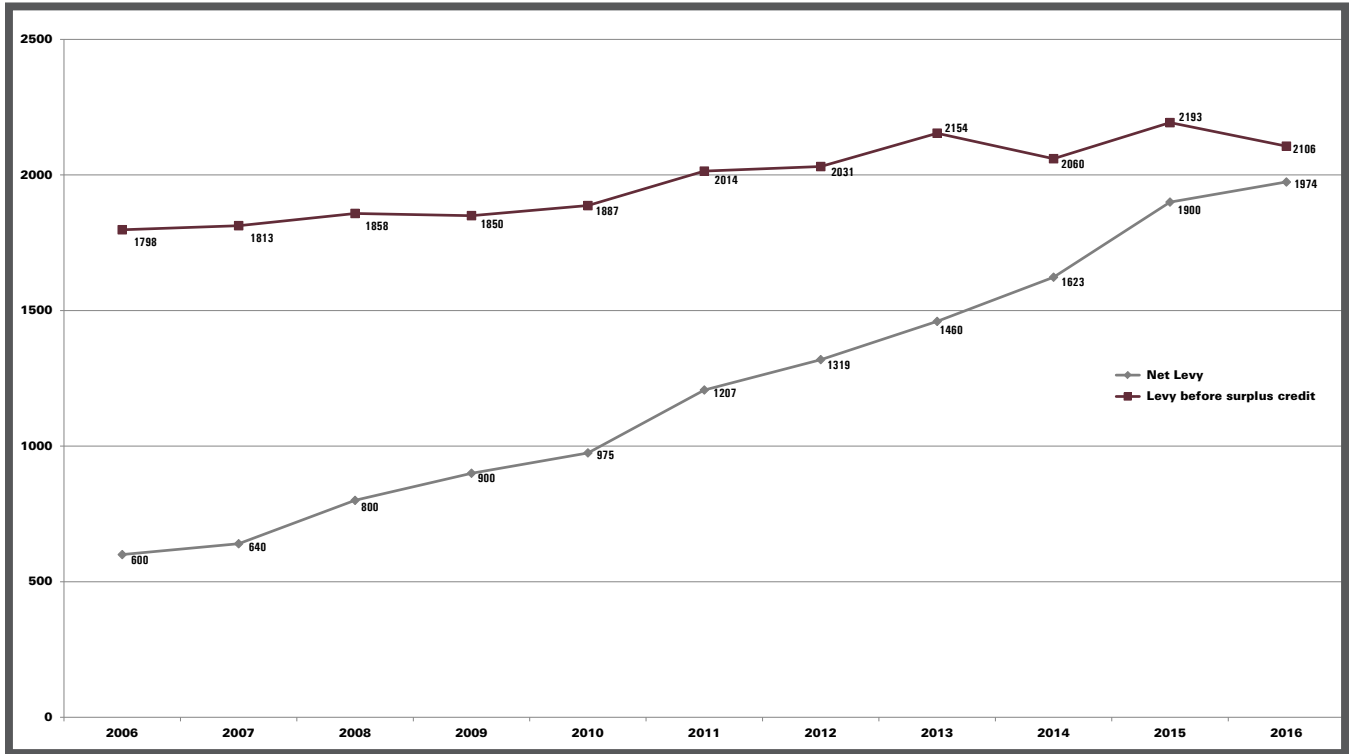
I began this report with a reference to evolution, and that seemed appropriate in light of the extensive changes facing our profession in the form of legal services regulation. As the profession changes, so must the manner in which we insure those within the profession. Top of mind for the Board in the context of these discussions is the need to maintain its mandate of protection of the lawyers. As we adapt, there will undoubtedly be difficult decisions to be made. LIANS and the Nova Scotia Barristers' Society will work together to build a structure that continues to provide exemplary claims management, cost-effective insurance and confidence of confidentiality when reporting.

One very significant change LIANS will feel in the immediate future is the loss of its Director of Insurance, Melanie McGrath, at the end of April 2016. While we wish Melanie well as she moves on to new challenges, we will miss her pragmatic but personal approach to the delivery of insurance services to Nova Scotia lawyers. Melanie's skill and knowledge will be very difficult to replace. In the meantime, longtime LIANS staff members, Gerri O'Shea and Patricia Neild, will assume the role of Acting Co-Directors of Insurance. Most lawyers in Nova Scotia will recognize these names as the knowledgeable, strong and compassionate Claims Counsel who are the first to respond when a claim is made or contemplated. Long-term plans for the position of Director of Insurance have not yet been decided.

I would like to thank the Board of Directors for their ongoing dedication and hard work. Thanks are also extended to the NSBS Council and Executive for their part in maintaining open lines of communications between our respective organizations. This relationship will serve us well in the years to come.

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

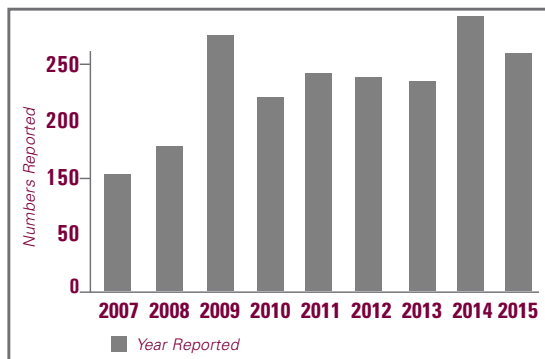
Director

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 2015 decreased compared to the prior year but the overall value of the claims increased and there was overall negative news on claims. The number of new claims reported was 258 as compared to 283 in 2014, 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 2016.

Claims costs increased in 2015 due largely to the increased complexity of claims processed with some factor for inflation.



Claims Reported Per 100 Lawyers (2005-2015)

05	06	07	08	09	10	11	12	13	14	15
12	14	10	11	16	13	12	14	13	15	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	2009	2010	2011	2012	2013	2014	2015
Real Estate	49%	40%	40%	36%	32%	37%	61%
Bankruptcy/ Insolvency/ Receivership	<1%	<1%	<1%		<1%		
Criminal	<1%	2%	8%	12%	<1%		<1%
Employment/ Labour	3%	<1%	<1%		1.5%		
Immigration	0%	1%	2%		<1%		<1%
Intellectual Property	<1%	<1%	0.5%	1%	<1%		
Tax	30%	34%	21%		<1%		<1%
Civil Litigation	5%	10%	9%	27%	24.5%	42%	16%
Commercial	9%	3%	4%	6%	14.5%	11%	2%
Corporate	<1%	3%	2.5%	13%	11.5%	3%	4%
Matrimonial & Family	<1%	1%	2%	5%	9%	3%	9%
Estate Planning & Administration	2%	6%	9%		5%	2%	4%
Administrative/ Boards/ Tribunal	0%	0%					
Environmental					<1%	2%	<1%
All Other	0%	0%	2%				
Arbitration		<1%					
	100%	100%	100%	100%		100%	

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 cost of real estate claims climbed to 61% in 2015. These areas are followed closely by matrimonial and family law issues, corporate & commercial issues and estate planning issues. In terms of numbers of claims themselves, real estate claims continued to be the largest proportion, with 43% of the number of claims reported being in this area (down from 51% in 2014, but the cost of these claims was significantly higher). 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

PROGRAM REPORT

time to repair these claims increases with the complexity of the situations involved. Failure to note a benefit on a parcel as a result of failure to perform subsearches has also been a claims theme.

Claims in the area of civil litigation were consistent with 2014, with 20% of claims being made in this area. However, claims costs were significantly decreased 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 reported 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 2015. 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 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 256 claims files in 2015. Of these files, 90% were closed with no payment of any damages. In addition, 69% 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 2015, with all but three respondents indicating they were either satisfied or very satisfied with the handling of the claim.

In 2016, 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. New resources for opening a law office are now available on the LIANS website. Resources for succession planning are coming soon. Also take advantage of the new online forums for real estate assistants, family law lawyers and sole and small firm lawyers.

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. The RPM Program will continue to provide fraud alerts to members and Stacey Gerrard, LIANS Counsel, is also available to offer confidential assistance, and to help answer specific or general questions with respect to your practice management.

PROGRAM REPORT



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. I reported last year that the number of active cases was higher than the year before, and this year I can say the same. Once again, use of the Lawyers Assistance Program has increased. Since a focus of the Program is on prevention, increased usage is a sign of success; lawyers, staff and families are taking advantage of the Program to prevent small issues from becoming large ones.

While as in past years most members using NSLAP obtain face-to-face counselling, over the past year there has been a small increase in use 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 also continue to take advantage of programs and resources online, including wellness articles, e-courses, podcasts and videos, and the eldercare and childcare resource locators.

Similar to last year, the statistical information NSLAP receives from Homewood Health continues to show that the majority of users of the program are female. While in past years the majority of users, whether male or female, were between the ages of 30 and 50, the past year shows an increase in usage by the 51-60 age group. 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.

NSLAP provided four education sessions over the last year: "Conflict resolution in the workplace", "Foundations of positive parenting", "Building working relations" and, at the annual LIANS conference, "Dealing with difficult behaviour in the workplace".

Continued thanks needs to be given to our LIANS staff member, Melanie McGrath, for her work and dedication to the NSLAP. Thanks also to my fellow committee members Amy Bradbury, Craig Berryman, Nancy Rideout, Natalie Woodbury and Michael Power QC.

***Respectfully submitted,
Jennifer Glennie
Chair, NSLAP Committee***

PROGRAM REPORT



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 *LIANsWers*, our bimonthly electronic newsletter. The articles and information contained in the newsletter are intended to assist lawyers with the running of their practices 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 325 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:

- January 29: LIANs Counsel presented at the Canadian Bar Association's Mid-Winter Conference on the topic of Technology Apps;
- February 27: LIANs Counsel presented at the Judge Advocate General's Office on the topic of document management and retention;
- March 3: LIANs Counsel presented at the Kings County Bar Association's Meeting on the topic of Technology Apps;
- April 18: LIANs Counsel presented at the American Bar Association's Tech Show on the topic of Blackberry Tips and Tricks;
- June 15: LIANs Counsel presented at the *Children and Family Services Act* Professional Development Day on the topic of allegations of ineffective assistance of counsel in child protection matters ;
- September 11: LIANs Counsel presented at the Pictou County Bar CLE Day on the topic of Risk and Practice Management Tips;
- October 23: LIANs Counsel presented at the Canadian Bar Association's Family Law CLE day on the topic of Divorce and Estate Planning;

PROGRAM REPORT

- October 24: LIANS Counsel presented at the Lunenburg County Bar CLE Day on the topic of Risk and Practice Management Tips; and
- November 13: LIANS Counsel presented at the Cape Breton Bar Association's Annual General Meeting on the topic of the new *Limitation of Actions Act*.

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 thirty-six legal professionals attended the seventh annual LIANS Risk and Practice Management Conference held on November 6th at the Casino Nova Scotia in Halifax, to gain knowledge of risk and practice management strategies. Five sessions offered information on how to build your practice; tips from the trenches; network security with an RCMP Senior Computer Forensic Analyst; top ten things learned from a law coach; and dealing with difficult behaviour in the workplace. 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 136 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 62 members in this way.

SUMMARY OF FINANCIAL HIGHLIGHTS

Notes to the Summary of Financial Highlights

LIANS' financial position remained stable at the end of 2015.

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 an increased self retention, a lower surplus and negative claims experience, the decision was made by the Board to return a lower amount of the surplus than they have in the past. This permitted conservative surplus growth with minimal impact on lawyers, while still practicing prudent fiscal management.

LIANS received a return of surplus subscribers' equity from CLIA in 2015 of \$580,545.

Total claims and expenses this year increased by \$1,154,300 to \$3,546,365, from \$2,392,065 in 2014 largely as a result of negative claims experience. The cost of administration of the program increased by \$1,331,176 to \$2,377,745, from \$1,046,569 in 2014 as a result of a tax accrual which LIANS hopes to recover over time.

The reserve at the yearend was \$6,134,230. This represents a decrease of \$2,097,800 from the 2014 year-end reserve of \$8,232,030.

Summary of financial highlights

Statement of financial position as at December 31

	2015	2014
	\$	\$
Cash	517,760	601,114
Accounts receivable	454,107	216,588
Government remittances receivable	23,347	45,278
Levy receivable	588,071	516,743
Prepaid expenses	283,064	357,555
Recoverable unpaid claims and expenses	1,048,387	536,381
Investments	15,256,646	14,447,432
Property and equipment	9,472	21,816
	18,180,854	16,742,907
Accounts payable and accrued liabilities	1,437,669	150,518
Unearned levy	1,454,742	1,257,412
Provision for levy deficiency	249,464	204,143
Provision for unpaid claims and expenses	8,902,749	6,727,104
Professional liability insurance reserve	6,136,230	16,742,907

Statement of revenue and expenditure for the year ended December 31

	2015	2014
	\$	\$
Revenue	3,720,029	3,583,687
Insurance premiums	(643,964)	(760,952)
Net revenue	3,076,065	2,822,735

CLAIMS AND EXPENSES

Payments	1,837,531	1,611,010
Group deductible reimbursement	(126)	(175,619)
	1,837,405	1,435,391

Current period expense	1,708,960	956,674
Total claims and expenses	3,546,365	2,392,065
Administration	2,377,745	1,046,569
Deficiency of revenue over expenditure before undernoted	(2,848,045)	(615,899)
Return of C.L.I.A. surplus subscriber's equity	580,545	343,401
Excess (deficiency) of revenue over expenditure	(2,267,500)	(272,498)

Professional liability insurance reserve, beginning of year	8,403,730	8,676,228
Excess (deficiency) of revenue over expenditure	(2,267,500)	(272,498)
Professional liability insurance reserve, end of year	6,136,230	8,403,730

2015-2016 BOARD, COMMITTEES & STAFF

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**LAWYERS' INSURANCE
ASSOCIATION OF NOVA SCOTIA**



Save the Date for LIANS'
**Risk and Practice Management
Fall Conference**

**October 20, 2016
Casino Nova Scotia, Halifax**

Sessions may be eligible as CPD Hours



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