



LIANSWERS

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FRAUD ALERT: NS LAWYERS WEBSITES, CONTACT INFORMATION "SPOOFED"

New instances of an old website spoofing scam have been reported by Nova Scotia lawyers. The basics are these: individuals are contacted by email or paper mail by what appears to be lawyer looking to complete a transaction or notice of inheritance, who provides a seemingly legitimate website and contact information for their "firm". These letters will often feature logos or other legitimate information in order to appear to be an authentic communication. After "proving" their existence, the scammer from the bogus firm then begins a fraudulent trust cheque, certified cheque, bank draft, "administration fee", or other transaction looking to debit the lawyer's trust account; or simply to have them download a virus to their system.

Ultimately, these sites are discovered to be a duplicate or recreation of a website for a legitimate law firm, and at times even will feature actual lawyers' names and photos. It becomes clear after the fact, however, that the email addresses and/or telephone numbers featured on the mirrored website are phony, and will connect with the scammers – not with the legitimate lawyer(s). We've reported on these types of scams before, the most recent/relevant being:

[FRAUD ALERT: Fake Law Firm "Lawman & Associates"](#) (October 2020);

[FRAUD ALERT: Fake Law Firm Websites Targeting Lawyers](#) (July 2020); and

[FRAUD ALERT: Inheritance Scam Attempt "John Westwood"](#) (April 2016)



If you discover that a website has co-opted your site and/or firm information, the first step is to report it to the web host as a fraudulent representation of your identity (to find out who hosts the website, go to who.is and enter the URL. As the hosting company is listed under the registrar info, run a simple search on the company name to find contact details). Filing a complaint with Competition Bureau Canada for deceptive marketing is also an option. You may also want to report this to the federal Canadian Anti-Fraud Centre for statistical purposes. You may choose to contact the RCMP, but often they will only accept a fraud report if a crime has been committed (e.g money has exchanged hands).

You may also want to update the contact information for your firm with Google, as that information is more reliably verified, while a spoofed website/phony contact information can be posted through any platform. You can begin that process here: [Google: Update your Business Information](#). Essentially, if anyone else has received a similar email or letter, it would be easier for them to cross-reference the phony information from the letter with your verified Google business listing, and therefore prevent them from falling for the scam.

As always, sensitive personal data and/or banking information should never be shared because of an unsolicited communication. **It is best to contact the company, firm or person directly (without responding to that email), in order to independently verify the sender.** Use the [NSBS Lawyer Directory](#) (or relevant law society directory) to verify a lawyer's identity and obtain their contact information to ensure that you are not speaking with an identity thief or scammer. Overall, where possible in transactions, use the [Bank of Canada's Lynx](#) system (formerly the Large Value Transfer System (LVTS)), an electronic funds transfer system that allows large payments to be exchanged securely and immediately.

Finally, remember that links and attachments in unsolicited or unanticipated emails should also not be accessed unless the sender can be positively verified, as they may contain viruses. If a bogus

attachment is opened and the user does not have anti-virus software or firewall programs on their computer, their system could be infected.

For tips to avoid being victimized, and to report or seek advice on dealing with fraud and scam attempts, contact Cynthia Nield at cnield@lians.ca or 902 423 1300, x346.

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LIANS RELEASES ANNUAL REPORT 2020

LIANS' 2020 Annual Report presents an overview of its activities and financial performance over the last year, and outlines our direction for future initiatives.

Read LIANS' [2020 Annual Report](#)

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LIANS SEEKING MENTORS!

Do you have a minimum of nine years of experience and are interested in volunteering your time to provide support and guidance to another member? LIANS is currently seeking Mentors of **all** backgrounds and practice areas for its Mentorship Program, including Family, Civil Litigation, Immigration, and Wills & Estates.

Advantages of being a Mentor:

- renew and revitalize your own practice and strategies;
- stay current with issues and developments in the next generation of professionals;
- expand your own personal network.

The Mentorship Program offers the following advantages and opportunities:

- matching based on the areas of interest and criteria identified by both mentor and mentee
- a mentorship plan created by you and your match, to identify your areas of focus and goals for the upcoming year

If you are interested in participating in the Mentorship Program, please visit: http://www.lians.ca/rpm/mentorship_program/.

In order to participate, fill out the [Mentorship Program Application Form](#) online, or download the fillable [PDF form](#) and save to your desktop then forward to [Cynthia Nield](#), LIANS' Database and Information Officer.

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NEW STANDARDS: WILLS, POWERS OF ATTORNEY AND PERSONAL DIRECTIVES

As you know, Council in 2019 established this new Standards committee and has now approved its first two Standards.

The first discusses Income Tax considerations and the second Revocation. These new Standards can be found here:

[#1 - Income Tax](#)

[#2 - Revocation](#)

The Committee has recently completed its work on three other standards which will be sent to Council for introduction to the Membership and comments in the near future. These discuss capacity, assets in multiple jurisdictions and beneficiary designations.

The Committee continues its work on several other Standards as set out in its work plan including Wills, Powers of Attorney, Personal Directives, and Proctors to name a few.

As more of these standards are finalized there will be cross references between them.



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NSLAP WELLNESS: MENTAL ILLNESS AWARENESS WEEK (OCT 3-9) AND WORLD MENTAL HEALTH DAY (OCT 10)

On behalf of your Nova Scotia Lawyers Assistance Program (NSLAP) provider, Homewood Health™ is pleased to provide the following:

In recognition of **Mental Illness Awareness Week** (October 3rd-9th) and **World Mental Health Day** (October 10th) we will be launching a digital campaign beginning on Sunday, October 3rd. Given the nature of our services, along with the pandemic and the increase (also compared to a tsunami in many articles) of mental health care demands, the objective is to bring additional awareness to the challenges and stigmas facing those with mental illnesses and how to better understand some of the signs and ways to help you, your team or those you care about.

We will share a series of 5 articles through Facebook, LinkedIn, and Twitter, starting Monday, October 4th.

Monday, October 4th – *Understanding Depression*

Tuesday, October 5th – *Postpartum Depression*

Wednesday, October 6th – *When Someone You Care About Has Alzheimer's or Dementia*

Thursday, October 7th – *Supporting Those with Addiction*

Friday, October 8th – *Suicide Prevention*

Mental health care for all: let's make it a reality #WorldMentalHealthDay

Follow us on...

Facebook: <https://www.facebook.com/HomewoodHealth>

Twitter: <https://twitter.com/HomewoodHealth>

LinkedIn: <https://www.linkedin.com/company/homewood-health>

If you have wellness questions, or are looking for wellness information, visit the NSLAP website at www.nslap.ca. For more information and support, along with resources and counselling for mental illness, register with Homewood Health™ <https://homeweb.ca/>. Please note that NSLAP is your “company” name when you register.

Call in confidence, 24 hours a day: 1 866 299 1299 (within Nova Scotia) | (See the website for details about [calling from outside Nova Scotia](#)) | 1 866 398 9505 (en français) | 1 888 384 1152 (TTY).

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ON THE IMPORTANCE OF FILE NOTES AND RECORDS AND CONFIRMING CLIENT INSTRUCTIONS

We often speak of the importance of you making notes of client interactions so when a decision comes down that does the same, we think it worthwhile to quote it. From the recent decision of the Ontario Court of Appeal in [*R. v. Trought*, 2021 ONCA 379](#):

[76] In concluding this ground of appeal, I wish to comment on trial counsel's failure to obtain written instructions from the appellant about the decision to testify. In *R. v. W.E.B.*, [2012 ONCA 776](#), 366 D.L.R. (4th) 690, aff'd [2014 SCC 2](#), [2014] 1 S.C.R. 34, this court recognized that the failure to obtain written instructions is a question of professional prudence, not incompetence, but noted that the failure to do so is "ill-advised and contrary to counsel's best interests": at para. 10. See also *R. v. Shofman*, [2015 ONSC 6876](#), 90 M.V.R. (6th) 257, at para. 48.

[77] The lawyer who fails to obtain written instructions risks exposure to unfounded allegations of unprofessionalism: see Christine Mainville, "Professionally Serving and Managing Clients: Defence Counsel's Role in the Solicitor-Client Relationship", *For the Defence*, 39:3 (13 February 2019), at p. 9. And although not indicative of ineffectiveness itself, the failure to obtain instructions may undercut trial counsel's attempts to defend against claims of ineffectiveness.

[78] The failure to obtain written instructions also makes it more difficult for an appellate court to adjudicate claims such as the one advanced on this appeal: see *R. v. Hamzehali*, [2017 BCCA](#)

[290](#), 350 C.C.C. (3d) 71, at para. [76](#), leave to appeal refused, [2017] S.C.C.A. No. 380, and *R. v. Wells* (2001), [2001 CanLII 24130](#) (Ont. C.A.), at para. [61](#). Written instructions may resolve competing claims on appeal. In *R. v. Archer* (2006), [2005 CanLII 36444 \(ON CA\)](#), 202 C.C.C. (3d) 60 (Ont. C.A.), Doherty J.A. observed, at para. 143, “The largest hurdle faced by the appellant in trying to convince the court that the decision to testify was made by trial counsel is the direction signed by the appellant during the trial.” Similarly, in *Faudar*, at para. [82](#), Tulloch J.A. referred to a reporting letter sent by trial counsel about the perils of constructive possession. The same approach would also have been helpful in this case, avoiding the necessity of dueling affidavits and cross-examinations.

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SAVE THE DATE: LIANS AND NSBS SOLO AND SMALL FIRM VIRTUAL CONFERENCE, NOVEMBER 24TH, 2021



Join us online on Wednesday, November 24th, 2021 for the 13th annual Solo and Small Firm Conference, hosted by LIANS and NSBS from 9am-4pm. Sessions may be eligible to count towards your annual CPD. We know that many attendees at past conferences also use this event to see old friends and meet new ones. Regrettably, the pandemic still does not allow us to have an in-person event this year and so, like last year, we are hosting this year's event at no charge to attendees.

But that is not to say you cannot attend with friends. For example, and if permissible, feel free to watch the event in your boardroom with others from your firm or with friends from across the street.

Stay tuned to lians.ca and nsbs.org for additional conference details and registration information.

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STANDARD FORM RELEASES AND CONFIDENTIALITY CLAUSES (AND OTHER TERMS)

A question.

When settling a matter out of court, if confidentiality is important to you, and your standard form of release contains a confidentiality clause, is it enough to simply agree or assume that the parties will sign your standard form of release?

It would seem that the answer to that question is no.

We refer to the recent Nova Scotia Supreme Court decision in [McMillan Estate v. Booth, 2021 NSSC 284](#).

In *McMillan*, the parties through counsel agreed to a settlement of their dispute. There was no express agreement on the inclusion of a confidentiality clause. Counsel for the Defendant then forwarded a form of Final Release to counsel for the Plaintiff, which form included a confidentiality clause. Counsel for the Plaintiff responded that there had been no negotiated agreement to provide for confidentiality or non-disclosure of the settlement or any terms of a release for that matter and moved for an order approving the settlement on the terms that were agreed.

In so moving, plaintiff counsel argued that a confidentiality or non-disclosure clause is not a standard or implied term of a final release. Defendant's counsel argued the contrary position.

The Court concluded that there was no express or implied condition that the release contain a confidentiality clause and that none was negotiated when the settlement was reached. The Court added this at paragraph 53 of its decision:

... This matter evidences that even senior counsel can fall into the trap of presumption. Parties negotiating settlements ...whether at a JSC, a mediation or directly, should be careful to clearly state any terms and conditions of settlement, including ... specific terms to be included in any consent orders or releases that are required to conclude the settlement ...

Speaking for ourselves we can say this. Any settlement reached in any matter that we are involved in as your insurance program will require our standard form of release which includes, amongst other terms, a confidentiality and non-disclosure clause.

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TITLE INSURANCE: AVAILABLE ADDITIONAL COVERAGE FOR PROPERTY PRACTITIONERS

Property practitioners often recommend Title Insurance to clients purchasing property, it often being a requirement for lenders in any event. Though for the protection and benefit of the purchaser, Title Insurance also benefits the lawyer as the claims often arise from alleged errors or steps taken (or not taken) by the lawyer that affect title.

But what does a lawyer do if there is a Title Insurance policy in place, but the client declines to make a claim under it choosing instead to bring the claim against the lawyer directly?

Title Insurance policies generally define Insured as the property owner. The lawyer is not included as a named or additional Insured and thus cannot make a claim for something that might otherwise be covered by it. Moreover, it may be a conflict for the lawyer to make a claim directly to the title insurer without the client's consent.

So where does that leave the lawyer? It results in a claim to LIANS, potentially triggering the lawyer's deductible if damages are paid or repair costs exceed a certain amount (we note that this situation is not common as most will make the title insurance claim if appropriate to do so).

Title insurers often have available coverage (perhaps at a small additional premium) for such things as the lawyer's deductible owed to LIANS if damages are paid, hassle-free payment to

settle claims under certain amounts and miscellaneous coverage not covered by the purchaser or lender policy. Property practitioners may want to speak with their preferred Title Insurance provider to discuss whether these or other additional coverages are available with the title insurance policy then being issued to the client.

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