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Issue 74 | March 2022

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## (DON'T) TAKE IT TO THE LIMIT: REVIEW LIANS' TABLE OF LIMITATION PERIODS

Stay up-to-date with the newest or amended limitation periods passed by the Nova Scotia Legislative Assembly, and view a PDF compiled chart of those previously passed.

[LIANS' Table of Limitation Periods](#)

**[Disclaimer:** You are responsible for ensuring that you are appropriately informed about any legislation or case law that could affect your advice and decisions. You assume responsibility and risk for your use of the information accessed through this website as well as for evaluating the accuracy, completeness and usefulness of the information provided herein. The Lawyers' Insurance Association of Nova Scotia ("LIANS") disclaims all liability of any kind whatsoever arising out of your use of, or reliance on, the information provided on or through this website.]

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## CONVERT YOUR DOCUMENT INTO A TEXT-SEARCHABLE AND COPY/PASTE READY DOCUMENT

Adobe PDF software can access and modify text that would otherwise be trapped as an image within paper-based and PDF documents. Using its OCR (Optical Character Recognition) feature, you can easily convert typed, printed, even some clearly hand-printed text into editable and searchable data. This saves an incredible amount of human-powered reading, searching for keyword(s), and unnecessary retyping.

Take these simple steps to digitally transform a document into one that can be searched for keywords/phrases, or used to easily copy/paste a quotable passage into a new document. **Note:** If you need to preserve a copy of the original, unmodified document, you may want to save a new copy and OCR the new version.

If it is a paper document, you must first electronically scan the pages and save as a PDF document.

Once a PDF version is created using Adobe software, open the document and access the 'Tools' menu (typically in the top right corner or right side panel), and select 'Text Recognition' (for newer versions of Adobe, select 'Scan and OCR' from the Tools menu).

Select 'In This File' > then 'All Pages' > and click OK (for newer versions of Adobe, click 'Recognize Text' in the toolbar above the document > select 'In This File' > then click the



'Recognize Text' button at the top).

You may now use your cursor to highlight and select passages of text to copy and paste into a new document.

To search the document for a keyword or phrase, type "Ctrl F" on your keyboard (or "Command F" on a Mac), and enter the desired text into the 'Find' field', and it will locate and highlight all instances of the word or phrase throughout the document.

Be sure to save the OCR'd version as a new file in order to revisit the document and continue to search/copy-paste

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## DO YOU KNOW WHAT YOU ARE WITNESSING OR NOTARIZING?

As lawyers, many of us make appointments with members of the general public who just want to you witness their signature or notarize a document. Some of us may not necessarily look at what the document is since, after all, you are just swearing a signature and not making any representations as to the content of the document itself. However, it is good practice to take a look at the document.

There is an increase of self represented litigants, and “Organized Pseudolegal Commercial Argument” litigants (OPCA) having lawyers swear their signature, notarize a document, or certify that a copy of a document is a true copy of the original, with these self represented litigants then using these documents to pursue legal avenues and claim the documents are proof of something just because a lawyer’s name appears on it. There is an interesting article on the Law Society of Alberta’s website "[OPCA Litigants – The Phenomenon of Freeman on the Land](#)", and is the subject of an Alberta case *Meads v. Meads*, [2012 ABQB 571](#). Review the [Notaries and Commissioners Act](#), RSNs 1989, c 312; and other relevant information on the [Nova Scotia Commissioners of Oaths](#) page.

Lastly, don’t be afraid to tell someone you will not notarize or swear a document.

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## **FRAUD ALERT: LARGE LOSS SCAM WARNINGS FROM THE LAW SOCIETY OF ALBERTA**

Two fraud alerts recently posted by the [Alberta Lawyers Indemnity Association](#) (part of The Law Society of Alberta) involve scenarios that could also threaten Nova Scotia lawyers:

[Alberta Firm Targeted by Trust Account Scam](#) (January 2022)

[Social Engineering Fraud Results in Large Loss](#) (February 2022)

We've reported on numerous frauds and scam attempts in the past similar to those above:

[Recent Cyber Attack on NS Lawyer](#) (May 2021)

[Negligence Lawsuit Against Law Firms Highlights Liability Risks of Wire Scams](#) (November 2020)

[Protect Yourself and Your Insurance Coverage from Social Engineering Fraud](#) (January 2019)

We bring these to your attention for several reasons.

First, and we do not want to scare you, but you should take appropriate steps to confirm, perhaps by phone, that emailed fund transfer instructions you receive from a client, especially if they seem



odd or are significantly different from your original instructions (such as being to wire funds to a foreign country) are correct.

For example, your client is selling their house that has been under agreement for a couple of months. The day before closing they email new bank instructions. Ask yourself who would decide to change their bank the day before closing? It could be that the client had moved to another province and just opened the new account. But if they were always in that other province, or still live here, who would change their bank the day before closing?

Second, social engineering fraud per se is not part of the cyber coverage we offer in our policy and coverage for such a fraud under the professional liability part of your insurance policy will be dependant on the facts. Accordingly, a lawyer who falls victim to such a fraud and who lacks appropriate insurance coverage could be in the position of having to reimburse their trust account for the loss. When there is a deficiency in a trust account, the lawyer has a regulatory obligation to deal with it promptly (see [Regulation 10.6](#)) regardless of any insurance coverage.

As always, sensitive personal data and/or banking information should never be shared based on an unsolicited communication. **It is best to contact the company, firm or person directly (if by email, without responding to that email), in order to independently verify the sender.** 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.

*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](mailto:cnield@lians.ca) or 902 423 1300, x346.*

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## MANAGE YOUR RISK: WHAT TO CONSIDER WHEN DRAFTING AN LSR DOCUMENT

We continue to see more and more lawyers performing work on a limited scope retainer (LSR) or 'unbundled' basis – namely performing only a portion or specific aspects of the work on a larger legal matter. For example, an unbundled approach might see a lawyer reviewing a single document or providing only one piece of advice within a larger legal matter.

Unbundling your services for your clients can be risky. The approach can force clients to make decisions on legal matters with which they are unfamiliar. In addition, unbundling usually limit a lawyer's access to case information along with their general ability to guide the matter toward a successful conclusion on behalf of a client.

### What does the law say?

Rule 3.1-2 [7A] "Competence" of the Nova Scotia Barristers' Society *Code of Professional Conduct* (the Code) states: "When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services."



Lawyers providing unbundled legal services are held to the same obligations of competence, diligence, loyalty and confidentiality that are provided to full-service clients. Not only should you have an appropriate retainer agreement but you should also at the initial stages send a letter to the client setting out exactly what you are retained to do.

### **Room for disagreement**

Failing to establish a proper limited scope retainer with clients may cause them to dispute your fees or to file malpractice suits or bring an ethics-related complaint. Common causes of disputes include unauthorized time spent on a client matter as well as any subsequent fees, and with clients being unsatisfied with how a court has settled the matter.

### **Managing these risks**

Offering unbundled legal services is inappropriate in certain situations. Specifically, rule 3.2-9 (Clients with Diminished Capacity) of the Code states: “When a client’s ability to make decisions is impaired because of minority or mental disability, or for some other reason, the lawyer must, as far as reasonably possible, maintain a normal lawyer and client relationship.”

In addition, you should assess whether your client’s expectations are realistic and if they readily adjust their expectations in response to new information. Should the answer to either of these questions be ‘no’, we suggest you consider the potential risks in accepting work on a limited retainer basis. Furthermore, if your client comes to you for further assistance after the first matter is settled, be sure to draft a new, appropriate, full or limited scope retainer as required.

A written retainer is required for unbundled services (see rule 3.2-1A of the Code). You should draft it in unambiguous language that clearly describes the scope of the work the client is hiring you to do, especially in those instances when the client declines one or more aspects of your service offering or undertaking to handle some aspects independently. Details of these arrangements should be reviewed both verbally and in writing with the client.

Finally, well-documented and clear client communication is the best way to reduce risk when working on a limited retainer basis. Take the time to properly communicate fees and costs, expected outcomes and unexpected contingencies – and to actively listen and ask your client questions. Follow these suggestions and you'll manage both your client's expectations and your own claim-related risk confidently and competently.

The following precedents may be copied and pasted into a Word document as a basis for modification for one's own use.

[Limited Scope Representation Agreement - Sample Form](#)

[Limited Scope Agreement - Sample Checklist](#)

[Limited Scope Retainer - Sample wording for inclusion in a Fee Agreement](#)

You may also wish to review:

Law Office Management Standard #7: [Limited Scope Retainers](#);

Family Law Standard #11: [Scope of Representation](#); and

Real Estate Standard 4.5: [Limited Scope Retainers](#) for further LSR-related resources

## **Guide to Limited Scope Retainers from CBA-Alberta**

The following publication from the Canadian Bar Association-Alberta Branch provides resources and discussion regarding the opportunities and challenges presented by the LSR:

*“Many litigants are choosing to represent themselves, believing they either do not need, or cannot afford, full service legal representation by a lawyer. Self represented litigants may not earn enough to hire a lawyer, but earn too much to access Legal Aid.*

*Limited scope retainers, or unbundling, can help alleviate, not only the strain on families and individuals, but the strain on our justice system. They are a viable option for those who cannot afford full legal representation because a one-size-fits-all approach is not going to provide the best legal representation possible.”*

Read [“Limited Scope Retainers – CBA Alberta”](#)

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## NEW DEED TRANSFER AND PROPERTY TAX RATES FOR NON-RESIDENTS

The Province of Nova Scotia has announced a new [Provincial deed Transfer Tax and Property Tax for Non-Residents of Nova Scotia](#), effective April 1, 2022. Members should be aware of this development.

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## NSLAP WELLNESS: STRESS AWARENESS MONTH

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

"*Stress Awareness Month* has been recognized every April since 1992, but this year it seems particularly important.

Learning to cope with our stress and finding healthy ways to deal with these situations can go a long way in living a healthy and positive life.

So, what does stress mean to you and how does it impact your daily life?

To recognize the importance of this month, we will be launching a digital/online campaign.

**Beginning on Monday, April 4th**, we will be sharing a series of tips on how to keep stress at a manageable level which we'll be releasing on Facebook, LinkedIn, and Twitter.

### Follow us on ...

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

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

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

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## SEEKING MENTOR VOLUNTEERS

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 for its Mentorship Program, specifically in the areas of Immigration law, Wills & Estates, Real Property, Corporate/Commercial, Administration, and Municipal law.

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:

- a semi-annual event (if permitted) where you can meet possible matches and learn more about the program
- 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/](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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## TAX ISSUES – KNOW WHAT YOU DON'T KNOW!

The ever-changing and fast-paced world of real estate transactions usually involve a flurry of activity and short timelines. Tax implications to your client may not always be obvious but it is important to spot transactions that may involve tax issues (Real Estate [Standard 5.4: Harmonized Sales Tax](#)). Even if you are not sure, you should be able to point out the possibility to your client and recommend they seek tax advice. And, as always, you should be putting this in writing to the client.

One issue LIANS has seen recently is the sale of property by a non-resident and the withholding requirements by CRA ([Income Tax Act](#), part XIII). Another issue that has come to our attention is Assigning an Agreement of Purchase and Sale for a new build (or extensively renovated existing residence) to another buyer, which could affect tax payable on any profit by the seller, or affect who is eligible for the HST rebates, among other things ("[Assignment of a Purchase and Sale Agreement for a New House or Condominium Unit](#)", *Canada Revenue Agency*. Accessed March 31, 2022).

For example, Consumer 1 purchases a not yet built condominium from the developer, and before completion and closing Consumer 1 has circumstances change and can no longer reside in the condo. Consumer 1 then sells to Consumer 2 – the Assignment of the Agreement of Purchase and Sale with the Developer. If Consumer 1 was credited already with the HST rebate but is no longer eligible for it since there was no residence in the condo, it could be that Consumer 2 may



not now be eligible for any rebate. And if Consumer 1 is selling at a profit, does Consumer 1 pay tax on that profit? There is an article out of Ontario that illustrates how complicated an Assignment may be (Fong, Victor. "[Take Caution When Selling or Purchasing a Condo Assignment – GST/HST Issues](#)", *Starting Over Toronto*. Accessed March 31, 2022).

While LIANS is making no representations to the content of that article or its accuracy, it is being provided merely to point out just where issues may exist. So, whether representing the seller in the assignment or the purchaser, know what you don't know and if necessary recommend the client obtain tax advice!

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