



LIANSWERS

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CLIA VOLUNTARY EXCESS PROGRAM: 2022/2023 EXCESS INSURANCE RENEWAL

With the approach of the July 1st VEP (Voluntary Excess Program) renewal date, this is an opportunity for you to review your risk portfolio and determine if you have sufficient coverage.

It is important that you renew your coverage before the end of the policy year (June 30th) to avoid gaps in coverage that may leave you unnecessarily exposed to the risk of uninsured liability.

The online application process will be open on June 6th, 2022, to ensure that you have time to complete the application and submit premium payments prior to July 1st. CLIA will also be sending a reminder to its current insureds in early June. Visit the [CLIA Excess Insurance](#) page for more information.

As in the past, firms login by using their email address and password from past online applications. If necessary, there is an option to reset your password.

New firms and new retirees are required to register for user access before they can complete the application online.

The renewal period will be open until July 31st and applications submitted after that date will have coverage pro-rated.

You can review additional information about the upcoming 2022/2023 VEP here: [CLIA Excess Liability](#) and [CLIA Cyber Coverage](#)

Please review the [Excess Insurance page on the LIANS website](#) for more information about the current 2021/2022 program.

As always, should you have any questions feel free to contact LIANS' Director of Insurance, [Lawrence Rubin](#) or CLIA directly at service@clia.ca. As well, you can contact:

Renewals: Please contact Alex agreencorn@lians.ca 902 423 1300

New applicants: Contact the CLIA office online at info@clia.ca or by phone at (306) 347-3057

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ERROR: FILE NOT FOUND - FILING YOUR EXPERT REPORTS

Very often in litigation, a party will obtain an expert report on some aspect of the issues in dispute. One of the most common of these reports is when the defence in a personal injury matter obtains an independent medical exam of the plaintiff.

Every now and then, that defence medical report will be helpful for the plaintiff's case. This was the situation in *Aly v. Personal Care Holdings Ltd.*, [2022 NSSC 108](#).

In *Aly*, plaintiff counsel received the defence medical report (because the defence is required to provide it) and it was helpful to the plaintiff's case. It is probably for that reason that defence counsel did not file it with the Court. Nor are they required to – for you only have to file that which you intend to rely on.

Some time after the time had passed for the filing of reports, plaintiff counsel realized that the defendant did not file it. Plaintiff counsel brought an application to have the report filed late and to add the doctor to the witness list. In denying the application, the Court stated:

[31] ...I am not convinced on the evidence before me that it would be unjust in the present circumstances to exclude the evidence... It is the obligation of the Plaintiff to ensure all evidence upon which he intends to rely is properly before the court. He was provided with a copy of the Gross Report in July of 2020 (over 19 months ago).... On July 20, 2021, the Plaintiff received a



copy of the Notice of Filing of Expert Report for the only expert report filed by the Defendant, that of Mr. Sam Kodsi, with certified copies to follow. Conversely, the Plaintiff did not receive a court filed copy of the Gross Report....

[32] Under Rule 21.05(2), a party who receives an IME report has an obligation to deliver the report. There is no obligation on that party to file the independent medical examination report with the court. It is solely the party's choice. It is folly for a Plaintiff to rely on a Defendant to file an IME report with the court, without assurances or an undertaking to do so.

[33] There is no property or ownership in an expert witness (with some very limited exceptions). An expert opinion is for the assistance of the court. The wording of Rule 55.04 setting out the required content of an expert report, highlights this point...

[34] If the Plaintiff wished to rely on [the] opinion, he could have inquired of Defendant's counsel to ensure the report was being filed. When it was not, the Plaintiff could have taken steps to ensure the evidence was properly before the court. He did not do so. The Plaintiff argues the evidence...is crucial as it is not otherwise available from the Plaintiffs other medical evidence. If this evidence was so crucial to the Plaintiff's case, particular attention should have been paid to whether the Defendant would be filing the report with the court. It was not and the Plaintiff cannot now seek to lay the blame at the feet of the Defendant.

Bottom line is this. Follow the rules and if you receive an expert report that you intend to rely on, file it yourself. Do not rely on someone else, especially the opposite party, to do that.

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FRAUD ALERT: FUND TRANSFER FRAUD WARNING FROM BC LAWYERS INDEMNITY FUND

By now you should be very aware of the increase in incidents of fund transfer fraud we have been seeing in this province. We have reported on several.

For those of you who might be wondering if this is a problem anywhere else, what follows is a notice that our friends in British Columbia just issued to their membership. We are not the only insurer talking about these issues as they present significant risks to you and your firms. And we agree with their comments.



Don't Bankrupt Your Firm: A must read for all BC lawyers (May 31, 2022)

About to pay out trust funds? STOP. Last week, two BC law firms – a small firm outside Vancouver and a medium-sized firm in downtown Vancouver – unwittingly paid out funds from trust to cybercriminals. We urge you to read to the end of this bulletin so that your firm does not experience a similar fate.

The first firm acted for a purchaser in a conveyance. The firm's paralegal received email instructions from the seller's law firm's paralegal requesting that the purchase proceeds be sent to a certain bank account. The firm sent over \$2 million to this bank account only to discover afterward that the email instructions from the other firm's paralegal were fraudulent. In a sophisticated new twist, the cybercriminal impersonating the paralegal even sent a letter on a mock-up of the firm's letterhead, confirming the fraudulent instructions.

The second firm was returning retainer funds to its client's out-of-province lawyer. Again, a hacker impersonated the out-of-province lawyer, but this time by directly infiltrating the out-of-province lawyer's system when they sent the request to the second firm and the funds were sent to the hacker's bank account.

Any time a payment of trust funds is imminent, assume that a fraudster is aware and monitoring your emails. Once in your system, cybercriminals can lie in wait for an ideal opportunity. **Before paying out funds in any matter, verify that instructions sent by email (and possibly confirmed by letter!) are legitimate through direct phone or in-person contact with the party providing the instructions.** If the instructions are from your client, contact your client directly using the original number in the file or in-person. Even if the instructions are from a bank or another law firm, call to confirm that the transfer instructions are legitimate using the number on your file or from a reliable directory. Never use the contact information provided in the instructing

email (or confirming letter). Implement a firm-wide protocol to make a verification phone call on every payment of trust funds.

Please keep reading...

Verification is also a requirement of your cyber coverage with Coalition. And if you have been or think you may have been a victim of a cybercrime, *immediately* follow the reporting instructions. The sooner you report the more likely that steps can be taken to stop or mitigate the transfer fraud. Any lawyer can be tricked by social engineering. Learn more [tips here](#) and watch this [video](#) to find out how two other BC law firms fell victim to sophisticated social engineering frauds involving millions of dollars.

Finally, note that you are required to report a trust shortage to the Executive Director of the Law Society and to replenish trust funds lost from client accounts.

We know you are busy trying to close conveyances, get proceeds from litigation or matrimonial settlements to your clients, and disburse bequests to beneficiaries when acting for estates. An extra phone call to a person giving payment instructions by email is an irritant. We get that. But that one phone call could save your firm from serious financial consequences.

Would the partners in your firm be able to immediately come up with \$2 million to avoid bankruptcy?

For the latest updates from LIF, follow us on Twitter [@Lifbc](#).

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LIANS' CLAIMS REVIEW COMMITTEE SEEKS NEW MEMBERS

LIANS is seeking Members to join its Claims Review Committee ("CRC"). The CRC, as LIANS' large loss committee, advises on claims that have a total incurred (indemnity plus defence costs, reserved and paid) greater than \$125,000.

In appointing members of the Committee, LIANS' Director and Board endeavour to bring together a group of lawyers who have knowledge and experience in various areas of law as well as litigation as most matters before the CRC are in suit.

Interested Members practicing anywhere in the province are welcome to apply. Members are also welcomed, and encouraged, to forward this request to anyone they believe would be interested in joining the committee. LIANS is committed to equity and diversity and we encourage Members from historically underrepresented groups to apply.

If you are interested in joining the committee, please contact [LIANS' Director of Insurance, Lawrence Rubin](#).

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LIANS' INSURANCE LEVY FOR 2022-2023

The 2022-2023 LIANS Insurance Levy was approved by LIANS' Board of Directors on April 19, 2022.

The net levy for the policy year commencing July 1, 2022 is \$1,938 for each full practising Member, \$1,238 for Nova Scotia Legal Aid staff lawyers and \$350 for Nova Scotia government lawyers.

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LIANS NEEDS 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 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/.

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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NSLAP WELLNESS: LEADING WITH EMPATHY AND SUPPORTING EMPLOYEE SUCCESS

"A top priority for most organizations and institutions is to look beyond traditional strategies for management development and recruitment to empower leaders so they are capable of making the company and the people within it thrive. Besides performance objectives, influential leaders need to have the social skills to empower, motivate and support the employees on their team. One of those skills, perhaps unexpectedly, is empathy. This article focuses on leading with empathy, which is one of the best ways to support employees through their career goal milestones."

On behalf of your Nova Scotia Lawyers Assistance Program (NSLAP) provider, Homewood Health™ is pleased to provide the following newsletter "[Leading with Empathy and Supporting Employee Success](#)"

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 on leading with empathy and supporting employee success, 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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OFFICE OF THE PRIVACY COMMISSIONER (OPC) ISSUES 'INTERPRETATION BULLETIN' FOR SENSITIVE INFORMATION

The OPC has issued an [Interpretation Bulletin](#) on information it considers to be sensitive under the *Personal Information Protection and Electronic Documents Act* (PIPEDA). OPC interpretations are not binding legal interpretations. Rather, they are intended to be a guide for PIPEDA compliance.

Generally, though certain personal information can be sensitive based on context, some personal information is sensitive because of specific risks to individuals associated with the information's collection, use or disclosure. Some examples of the latter type of information are health information, financial data, ethnic and racial origin, political opinion, sexual orientation and religion. Safeguards organizations put in place to protect personal information should be appropriate to the sensitivity of the information.



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REPORT ALL CLAIMS WITHIN THE POLICY YEAR BY JUNE 30, 2022

Your insurance policy requires that you report a claim (or potential claim) to LIANS as soon as practicable after learning of it or becoming aware of circumstances that might constitute an occurrence or give rise to a claim, however unmeritorious. Furthermore, you must report that claim (or potential claim) within the policy period in which you become aware of it. These are conditions of your policy. The current policy period ends June 30, 2022.

Therefore, if you are currently aware of a claim or a potential claim, even if you believe the claim or potential claim to be without merit, you must report it by June 30, 2022.

Furthermore, you should report to your insurer when:

You discover a mistake which has, or may cause, the client damage. This is true even if the client has no intention of advancing a claim against you as the client may advance a claim in the future. Early claim reporting allows investigation and possible mitigation of the problem before it becomes worse or more costly.

You receive any threat or communication of intention to sue from a client or his or her lawyer. You should not second-guess the client's intentions and wait for a clearer indication that the client is serious.

Your handling of a matter is criticized by a member of the judiciary or in a public document.



Another lawyer, on behalf of your former client, requests your file on a particular matter. This action should cause you to be cautious, especially if the former client's lawyer does not give an explanation or expresses concerns about your handling of the matter.

A client expresses dissatisfaction with your handling of a particular matter and there is some indication the client believes he or she has suffered a loss or incurred damages.

Click here to [Report a Claim to LIANS](#)

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UNDER COVER: TITLE INSURANCE PROTECTIONS

Real Estate [Standard 5.5: Title Insurance](#) states, in part, that lawyers must be aware of the existence of title insurance and should have knowledge in broad terms about the protections a policy may provide.

But there is a little more to this. For example, title insurers often have additional coverages that can be added by endorsement to deal with specific issues that your review of the property may disclose.

A title insurance policy is like any other insurance policy. It contains a grant of coverage, exclusions and exceptions to those exclusions. If you see an issue with a piece of property, rather than assuming the title policy will respond to deal with it, you should review the policy or inquire of the title insurer to find out if it does. And if it does not, ask the insurer if coverage is available by endorsement.

In addition, you may also want to inquire if there are coverages available that provide direct protection to you. We mentioned examples of these coverages [in a title insurance article](#) in the September 2021 LIANSwers. These coverages, if available, might not be part of the standard policy, instead being added by endorsement.

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UNRINGING THE BELL: INJUNCTIONS WITH BREACH OF CONFIDENTIALITY OBLIGATIONS

What do you do if your client's confidential information ends up in the possession of an innocent recipient who may not realize that the information is confidential? Can you stop further dissemination? In some cases it may be too late to regain confidentiality. In others, it may be possible if you have the right circumstances and act early enough.

In *Cascade Aerospace Inc. v. AGNL Avionics Abbotsford Nominee, ULC*, Docket S197182, July 30, 2019, an unreported decision of the B.C. Supreme Court, Cascade had to provide confidential financial information to its landlord AGNL pursuant to the lease that also required the landlord to keep the information confidential. One day Cascade learned that the financial information had been circulated by AGNL to third parties as part of a marketing package for the sale of a portfolio of assets.

After AGNL refused to provide a distribution list, Cascade sought an injunction (i) enjoining AGNL and anyone else who received any of the confidential information from dealing with it, (ii) requiring AGNL to disclose the names and addresses of all third parties who were provided with the information, (iii) requiring AGNL to serve all recipients with the order and provide an affidavit of service, and (iv) requiring each person who received the confidential information to serve a copy of the order on any person to whom they provided the information and disclose their names and addresses to Cascade.



The parties agreed that the test to granting the injunction was that set out in *RJR-MacDonald v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#). At page 334:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

On the first question, the Court found that there was a serious question to be tried. Moreover, it went further saying that though in cases of covenants not to disclose confidential information, the required strength of an applicant's case for an injunction is on the lower end of the spectrum only needing to show that the claim is not frivolous, in this case, Cascade had established a prima facie case for breach of the lease by AGNL. On the second question the Court concluded that Cascade would suffer irreparable harm should the injunction not be granted and moreover that the harm was not quantifiable in monetary terms. As to the third question, all aspects of the matter favoured Cascade and thus the Court granted the injunction leaving it to the arbitration pursuant to the terms of the lease to deal with a specific remedy against AGNL.

Of note, the Court stated that the fact that AGNL had alerted all recipients to the disclosure and obtained NDAs from such individuals after the fact did not negate the initial breach. The Court also stated that in assessing irreparable harm, the fact that the precise nature and extent of the damage is unknown does not mean that the damage is speculative. Last it said that the public interest is served by holding parties who wrongfully disclose confidential information to account.

It may be that the key to a remedy such as this is early discovery of the release to permit it to be dealt with before the information becomes widely known.

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