

[Home](#) → [News](#) → [LIANSwers](#)

Issue 76 | July 2022

# LIANSWERS

*This newsletter includes information to help lawyers reduce the likelihood of being sued for malpractice. The material presented is not intended to establish, report, or create the standard of care for lawyers. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate legal research.*

## BUY SOME TIME: VISIT 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.]

[Share 0](#)[Tweet](#)[Share](#)[◀ PREVIOUS](#)[NEXT ▶](#)[Back to LIANSwers: 76](#)

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia



# LIANSWERS

*This newsletter includes information to help lawyers reduce the likelihood of being sued for malpractice. The material presented is not intended to establish, report, or create the standard of care for lawyers. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate legal research.*

## **EMAIL SECURITY AND THE MANDATORY CYBER INSURANCE COVERAGE (PART 2)**

Following up on our July 14, 2022 note on the cyber insurance renewal, we have now heard from some of you that your email providers do not offer Multi-Factor Authentication (MFA) on your accounts.

Since 2017 when we first provided cyber coverage as part of our program, it has been refined and expanded based on lawyer experience and conditions within the cyber insurance market. We have had claims here (as have other provinces) and they are increasing in frequency, sophistication and exposure.

A common form of cyber breach is business email compromise. Regardless of how access is gained - phishing where attackers bait you into providing your password, leaked credentials from previous breaches or through brute force attempts to guess your password - once a criminal has access to your data, they can exploit your clients' trust – and trust funds.

MFA coupled with email filtering and strong passwords has proven to be effective at preventing this form of breach. The three work together, not in isolation:

1. MFA requires you to prove that you are the person attempting to log in by using a second point of contact such as your cell phone or an alternate email address;

2. Email filtering prevents malicious emails from reaching your inbox or leaving your outbox by identifying any that contain potentially malicious attachments and embedded code; and
3. Strong passwords that are critical to online security. Passwords should be unique and difficult for people and algorithms to guess. They should contain upper and lower case letters, numbers and symbols. Given the number of passwords we must keep track of, password managers such as Dashlane, LastPass, or 1Password are useful tools for both personal and business use.

These are now viewed by cyber insurers as minimum standards of protection that businesses, including law firms and lawyers, should have in place.

Accordingly, effective July 1, 2022, the mandatory cyber insurance program now excludes claims that could have been prevented by the presence of either of these key tools. Other claims may still be covered.

If you are using a service provider that does not offer MFA or email filtering, it is strongly recommended that you migrate to a service that does. Services that include and support these features are Microsoft 365 and Google's 'Gmail for Business'.

Other solutions are available so we also recommend that you work with an IT specialist to select an email service that works for you and gives you the necessary cyber protection tools. In addition to helping you migrate to that new system (if that has to happen), an IT specialist will help you to redirect your email to it so that long time clients can still contact you at which time you can advise of your new address.

It is unfortunate that some email providers do not provide these features as some of you may have been using those services (and addresses) for many years. Though they may offer these features in the future, the fact is that over the last few years, the risks to law firms of not having these protections has increased exponentially.

This is not to say that even with these protections you will not suffer a cyber attack or a loss. It is only to say that businesses must take steps to make these attacks as difficult as possible to execute. Given that these protections are now conditions in the policy, it is our responsibility to advise you of them.

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

[Back to LIANSwers: 76](#)

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia



Home → News → LIANSwers

Issue 76 | July 2022

# LIANSWERS

*This newsletter includes information to help lawyers reduce the likelihood of being sued for malpractice. The material presented is not intended to establish, report, or create the standard of care for lawyers. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate legal research.*

## FRAUD ALERT: LAWYERS EVERYWHERE ARE THE VICTIMS OF CHEQUE FRAUDS



This one is from Pennsylvania but could just as well have happened (and has happened) here.

This scammed law firm is out \$200,000. The firm was scammed after it agreed to collect a \$199,550 debt for what it thought was a tool company in Florida. After the lawyer demanded payment from a person purporting to represent the debtor, the firm received a cheque for the full amount of the debt owed.

At this point there should have been red flags. First, the firm was in Pennsylvania so even if the debtor was in that state, of all the law firms there, why did this company in Florida retain us? It is fair to ask how a client previously unknown to you was referred to you. Second, how often does a debtor facing a demand for that kind of money just write the cheque? Sure it can happen. But what are the odds that they just agree to the amount after receiving a demand letter?

When they received the cheque, the lawyer deposited it through an ATM (as the branch was closed due to COVID). The next day the firm's online bank account said the full amount of the deposit was available. Using wiring instructions received from the purported client, the lawyer wired the money to what turned out to be a bank in another country.

The lawyer did not know that the cheque received was forged before depositing it and wiring the funds to the purported client.

When the deposited cheque was determined to be a forgery, the full amount was deducted from the law firm's operating account making the financial institution whole, the bank holding the law firm responsible for the loss. The law firm sued the bank.

The court agreed with the bank stating that the bank was protected by its deposit agreement which stated that its duty to exercise ordinary care did not require it to examine deposits processed by automated means. The agreement also said that the depositor is responsible when cheques are returned unpaid, even if the funds have been withdrawn. The bank was also protected by an agreement that says it is not liable for damages for processing wire transfers in good faith.

Granted this is from the U.S. but we would suspect that Canadian banking agreements have similar provisions. In other words, and we have talked about this on other occasions, simply because your bank says funds are available does not mean the source of those funds has cleared. In Canada, deposited funds are available under provisional credit. Which means those provisionally credited funds are used at the depositor's peril.

Holding the law firm bound by its banking agreements and thus liable for the forged cheque, the Court stated:

*"The situation in which [the law firm] find themselves is deeply regrettable, stemming from a confluence of unfortunate events...In a sad irony, the admirable efficiency with which they acted to distribute funds to their 'client' contributed to their being victimized. But they have not advanced a theory of recovery for which there is a remedy recognized by law..."*

In other words, had the lawyer waited for the cheque provided by an unknown debtor for a debt owed to a previously unknown client to clear before sending funds to the client, this would not have happened.

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

[Back to LIANSwers: 76](#)

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia





# LIANSWERS

*This newsletter includes information to help lawyers reduce the likelihood of being sued for malpractice. The material presented is not intended to establish, report, or create the standard of care for lawyers. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate legal research.*

## LIANS SEEKS 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/](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.

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

Back to LIANSwers: 76

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia



Home → News → LIANSwers

Issue 76 | July 2022

# LIANSWERS

*This newsletter includes information to help lawyers reduce the likelihood of being sued for malpractice. The material presented is not intended to establish, report, or create the standard of care for lawyers. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate legal research.*

## **LIFE'S A BREACH: HOW TO DETERMINE IF YOUR ONLINE ACCOUNT HAS BEEN COMPROMISED**

Due to rampant security breaches in recent years, most commonly-used services and sites such as LinkedIn, Gmail, DropBox, Hotmail, Adobe, etc. have required you to change your passwords – and for good reason. Most internet users have by now been affected by a site/server breach, and personal information captured on those sites (e.g. email or civic addresses, birthdate, etc.) can be released or used by hackers, putting you at risk for a [Ransomware or Cyber Fraud](#) attack.

Companies are generally quick to recognize a breach, recapture that data, and instruct all of its users to change their passwords after they've re-secured their site. How can you determine whether your credentials have been compromised? Visit "Have I Been Pwned" (<https://haveibeenpwned.com/>) and type in your email. Created and maintained by a Microsoft Security Developer, this site will let you know if your account has been compromised in a data breach, and there is a need to change the password for the indicated website. Law firms and businesses can also do a domain search, to track which email addresses using a certain domain name have been seized in any of the known data breaches.

Users can also subscribe to their 'Notify Me' service to receive free email notifications for if (or when) their account is compromised.

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

Back to LIANSwers: 76

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia



# LIANSWERS

*This newsletter includes information to help lawyers reduce the likelihood of being sued for malpractice. The material presented is not intended to establish, report, or create the standard of care for lawyers. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate legal research.*

## NAMING NAMES: PPSA REGISTRATION NAME REQUIREMENTS



When registering a security interest against an individual under the *Personal Property Security Act*, [Regulation 20\(1\)](#) **requires the inclusion of the debtor's middle name** as part of the registration. The failure to include a debtor's middle name could compromise the security, particularly if the debtor subsequently declares bankruptcy.

PPSA registrations can be corrected prior to a debtor declaring bankruptcy. If you have done a PPSA registration and you are unsure if you included the debtor's middle name, it would be prudent to check the registration and make any necessary corrections.

Here is Section 20 of the *Personal Property Security Act*, General Regulations, NS Reg 129/97:

### **Debtor (individual) name information**

20 (1) Where the debtor is an individual, the registrant shall enter the last name followed by the first name followed by the middle name, if any, of the debtor.

(2) Where the debtor is an individual whose name includes more than 1 middle name, the registrant shall enter the first of the middle names.

(3) Where the debtor is an individual whose name consists of only 1 word, the registrant shall enter that word in the field for entering the last name of the debtor.

(4) Where the debtor is an individual who carries on business under a name and style other than the individual's own name, the registrant

(a) shall enter, in accordance with this Section, the individual's own name as a debtor (individual); and

(b) may enter, in accordance with [Section 21](#), the individual's business name and style as a debtor (enterprise).

(5) Where the debtor is an individual, the name of the debtor shall be determined, for the purposes of this Section, by the following rules:

(a) where the debtor was born in Canada and the debtor's birth is registered in Canada with a government agency responsible for the registration of births, the name of the debtor is the name stated on the debtor's birth certificate or equivalent document issued by the government agency;

(b) where the debtor was born in Canada but the debtor's birth is not registered in Canada with a government agency responsible for the registration of births, the name of the debtor is

(i) the name stated in a current passport issued to the debtor by the Government of Canada,

(ii) if the debtor does not have a current Canadian passport, the name stated on a current social insurance card issued to the debtor by the Government of Canada, or

(iii) if the debtor does not have a current Canadian passport or social insurance card, the name stated in a current passport issued to the debtor by the government of a jurisdiction other than Canada where the debtor habitually resides;

(c) where the debtor was not born in Canada but is a Canadian citizen, the name of the debtor is the name stated on the debtor's certificate of Canadian citizenship;

(d) where the debtor was not born in Canada and is not a Canadian citizen, the name of the debtor is

(i) the name stated on a current visa issued to the debtor by the Government of Canada,

(ii) if the debtor does not have a current Canadian visa, the name stated on a current passport issued to the debtor by the government of the jurisdiction where the debtor habitually resides, or

(iii) if the debtor does not have a current Canadian visa or a current passport, the name stated on the birth certificate or equivalent document issued to the debtor by the government agency responsible for the registration of births at the place where the debtor was born;

(e) despite clauses (a) to (d) and subject to clause (f), if the debtor changes his or her name after marriage or in accordance with change of name legislation, the name of the debtor is the name adopted by the debtor after marriage, if that name is recognized under the law of the jurisdiction where the debtor habitually resides, or the name stated on the debtor's change of name certificate or equivalent document, as the case may be;

(f) where the law of the jurisdiction where the debtor habitually resides allows a person to use both the name adopted after marriage and the name that person had before marriage, and the debtor uses both names, clauses (a) to (d) continue to apply and both the name of the debtor determined in accordance with those clauses and the name adopted after marriage shall be registered as separate debtor (individual) names; and

(g) in a case not falling within clauses (a) to (f), the name of the debtor is the name stated on any 2 of the following documents issued to the debtor by the Government of Canada or of a province or territory of Canada:

(i) a current motor vehicle operator's licence,

(ii) a current vehicle registration,

(iii) a current medical insurance card.

(6) For the purposes of subsection (5), the name of the debtor shall be determined as of the date of the event or transaction to which the registration relates.

(7) In addition to entering the name of a debtor who is an individual determined in accordance with this Section, the registrant may enter any other name of the debtor of which the registrant has

knowledge as a separate debtor (individual) name.

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

Back to LIANSwers: 76

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia





Home → News → LIANSwers

Issue 76 | July 2022

# LIANSWERS

*This newsletter includes information to help lawyers reduce the likelihood of being sued for malpractice. The material presented is not intended to establish, report, or create the standard of care for lawyers. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate legal research.*

## **NSLAP WELLNESS: CREATING A HEALTHY WORKPLACE [POST-PANDEMIC]**

*"After the quick COVID-19-related pivots that many organizations experienced during the pandemic, employers have gradually invited employees back to work on-site. But that doesn't mean a return to the way things were in 2020, just before many businesses went remote ... Employers should embrace the chance to re-imagine the roles they play in creating and fostering healthy work environments." Benefits can include increased productivity and engagement, lower absenteeism, and overall healthier employees.*

On behalf of your Nova Scotia Lawyers Assistance Program (NSLAP) provider, Homewood Health™ is pleased to provide the following newsletter "[Creating a Healthy Workplace](#)"

---

If you have wellness questions, or are looking for wellness information, visit the NSLAP website at [www.nslap.ca](http://www.nslap.ca). For more information and support, along with resources and counselling on creating a healthy workplace, 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).

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

Back to LIANSwers: 76

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia



# LIANSWERS

*This newsletter includes information to help lawyers reduce the likelihood of being sued for malpractice. The material presented is not intended to establish, report, or create the standard of care for lawyers. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate legal research.*

## THE IMPORTANCE OF NOTES: IT'S NOT JUST FOR LAWYERS, IT'S GOOD BUSINESS PRACTICE

In the recent Manitoba decision of *Funk et al. v. Aviva Insurance Company of Canada et al.*, 2022 MBQB 149, the Court granted the defendants' summary judgment motion and dismissed the claim. The Court held that the defendants exercised the appropriate standard of care and as such there was no genuine issue for trial.

Essentially, the action was against the insurance broker for negligence. In granting summary judgment, the Court said this about the broker's business practice:

[39] *First, I note that the [broker] maintained a contemporaneous log of discussions and correspondence with the plaintiffs as part of their regular business routine. There was nothing special about these clients that caused these notes to be taken – it was simply a good business practice. The plaintiffs did not keep notes.*

Moreover, on an issue for which the broker did not have a specific note, there is this:

[42] *In reference to the Questionnaire, [the broker] deposed that she specifically asked about the heat sources in the outbuildings (at para. 10):*

*... Although my notes do not specifically refer to there being no woodstove in any of the*



*outbuildings, it was, and is, my general practice to ask whether any of a client's buildings contains a woodstove or any other source of heat. I did that in my discussion with Mr. Funk. He advised me that there was no heat in the garage. He did not advise me that there was a woodstove in the garage.*

We have often said that notes contemporaneously made during your handling of a file certainly help in defending a claim. But it is also true that that lack of notes will not make a matter indefensible. When there are no notes on specific issues, evidence of your regular practice is equally helpful.

In the end, the Court held that the broker met the standard of care by (i) asking the client appropriate questions to obtain material facts relevant to the matter, (ii) asking the client to read the insurance application to confirm its accuracy (similar to sending your client a retainer letter confirming what you will be doing and a reporting letter confirming what you did), and (iii) based upon the information and instructions received properly assessed the risk, gave appropriate advice and placed appropriate insurance.

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

[Back to LIANSwers: 76](#)

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia