



Home → News → LIANSwers

Issue 66 | November 2020

# 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.*

## **A MESSAGE FROM LIANS' DIRECTOR OF INSURANCE, LAWRENCE RUBIN**

With this, our last issue of LIANSwers for 2020, I would like to take a moment to acknowledge your efforts and those of everyone here at LIANS and the Society during what has been a particularly trying year.

I started practicing in 1991 and since then have been through several crises that presented both personal and business challenges. But none has been as pervasive as this. Being in insurance as long as I have, one does develop a pessimistic worldview. After all, insurance is there to resolve issues thus I only see issues. But after this year, even for me, things can only go one way and that is upwards.

So, with that, I would like to wish each of you, your staff and all your families, immediate and extended, a happy, healthy and safe holiday season, new year and 2021.

Best regards,  
Lawrence Rubin



Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

[Back to LIANSwers: 66](#)

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia



Home → News → LIANSwers

Issue 66 | November 2020

# 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.*

## **BILL C-11: AMENDMENTS TO PIPEDA**

For those of you who advise clients on privacy / PIPEDA matters, and for your general information, on November 17<sup>th</sup>, the federal government introduced Bill C-11, the [Digital Charter Implementation Act, 2020](#). The proposed legislation makes significant changes to PIPEDA. Though it is always likely that amendments will be made to a Bill as it proceeds through the legislative process, what is being proposed changes how organizations collect, use, disclose and retain personal information. Review the [First Reading of Bill C-11](#) (November 17, 2020).

One significant proposal changes the enforcement model under PIPEDA by granting the Privacy Commissioner of Canada order-making power and the authority to recommend the imposition of administrative monetary penalties. The Bill also establishes the Personal Information and Data Protection Tribunal to hear appeals from orders issued made by the Privacy Commissioner and impose on organizations administrative monetary penalties recommended by the Commissioner. In addition, individuals will have a private right of action for actual damages suffered.

The Bill also proposes amendments to PIPEDA's consent model and clears up some issues around the transfer of personal information by organizations to their service providers.

Share 0

Tweet

Share

[◀ PREVIOUS](#)

[NEXT ▶](#)

[Back to LIANSwers: 66](#)

[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.*

## FRAUD ALERTS: BE VIGILANT OVER THE HOLIDAYS DURING A PANDEMIC



We've issued numerous fraud alerts this year, and continue to receive daily reports from lawyers around the province. You should always be vigilant to fraud, but particularly during the pandemic, when scammers are targeting distracted staff and impermanent workplaces, hoping that these

vulnerabilities will delay detection of scams. Here is a round-up of the most common scam attempts and red flags that we've been seeing in 2020:

[FRAUD ALERT: Negligence Lawsuit Against Law Firms Highlights Liability Risks of Wire Scams](#) (Nov 24th, 2020)

[FRAUD ALERT: Fake Law Firm "Lawman & Associates"](#) (Oct 26th, 2020)

[FRAUD ALERT: Job Application Email Scams](#) (Sep 21st, 2020)

[FRAUD ALERT: Fake Law Firm Websites Targeting Lawyers](#) (Jul 27th, 2020)

[FRAUD ALERT: Manitoba Firms Fall Victim to Ransomware Scams](#) (Jun 24th, 2020)

[FRAUD ALERT: Bogus cheque scam circulating](#) (Jun 12th, 2020)

[FRAUD ALERT: Scam attempts rampant](#) (May 26th, 2020)

[FRAUD ALERTS: "Request from Boss" Scams; Bogus Invoices; Phony "Canada Post" Deliveries](#) (Apr 28th, 2020)

[FRAUD ALERT: Phony invoice payment request](#) (Feb 24th, 2020)

---

Remember that you must always confirm a prospective client's identification in accordance with the [Client ID Regulations](#) of the Nova Scotia Barristers' Society.

Be vigilant with every request for services that you receive, not just those received via the Internet. Fraudulent requests for services can be made by mail and courier, as well as by individuals who arrive in person to retain you and to use your trust account to receive and disburse funds. Be cautious with all cheques received, especially if they exceed the agreed upon amount.

If you do decide to proceed with a transaction where the funds are received and are to be paid out within a short period, be sure to go to the bank website to verify branch transit number, address and phone number on the cheque. Wait until the bank confirms that the funds are legitimate and are safe to withdraw from the deposit. Where possible, use 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.*

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

[Back to LIANSwers: 66](#)

[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.*

## LOOKING AHEAD: REDUCE RISK AND IMPROVE CLIENT SERVICE IN 2021

Follow these day-to-day procedures to establish and maintain your best client service in 2021:

Review [LIANS' sample retainer agreements or engagement letters](#) to establish your terms of engagement, and to clearly identify what you have been retained to do.

Communicate with your clients in a timely manner. Whether it's returning a phone call or email, establish a policy where you or your staff return a client's message within a certain period of time (eg within 24 hours, or by the end of the following business day). Review Law Office Management Professional Standard [#2: Client Service](#)

Avoid costly malpractice claims by completing a thorough conflicts search before opening a file. Search for conflicts involving the client and other relevant parties.

Don't dabble in areas of law with which you are unfamiliar. Among others, corporate/commercial, tax, family, criminal and real estate law are complex and diverse – and you may make an error that will result in a claim. If necessary, consider retaining the services of someone who has the requisite knowledge in those areas, or simply refer the client to them directly.

For in-office appointments, keep to your scheduling and avoid making clients wait more than 20 minutes.

During meetings, don't just talk. Rather, ask the client to outline their understanding of what you've discussed so you know that they understand what you've explained to them. Also during meetings, make eye contact and watch for visual cues and body language.

Give the client a realistic indication of how long the matter will take, and identify any possible events that would delay a resolution. Provide the client with a full picture of all costs and disbursements that will or might incur. And be honest – don't quote a lower cost to please them. Review [section 3.2 "Quality of Service"](#), Nova Scotia Barristers' Society, *Code of Professional Conduct*, Halifax: Nova Scotia Barristers' Society, 2012

Avoid missing deadlines – use a tickler system for limitations periods and time-sensitive tasks. Answer all your client's questions to their satisfaction and listen carefully to address any elements that your clients don't understand or that could be another relevant issue you'll need to advise upon. Obtain written confirmation of instructions and advice. Communication errors between lawyers and clients are a key driver of claims. Keep in mind that you have hundreds of files to remember, but your client may have only one – it could be far more difficult for you to recollect what was said than it would be for them.

Immediately highlight for clients any unexpected changes that will change the process, timing, costs or outcome of a matter. This will ensure your client is aware of the change and why it took place. Confirm this advice in writing.

Send a final reporting letter at the end of every retainer to summarize the work that was done for the client. Outline the details of any documents or agreements, the outcome of the matter, as well as any obligations or continuing responsibilities of the client (visit [LIANS' Sample letters](#) page)

And finally, review the NSBS [COVID-19 Legal Profession FAQs](#) relating to society operations, practice management (including trust accounts, working remotely, courts information, financial & business concerns & more), articling information and information related to health and wellness; and keep up-to-date with the [NSBS COVID-19 General News and Updates](#).

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

Back to LIANSwers: 66

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.*

## **NSLAP WELLNESS: DEALING WITH THE HOLIDAYS DURING A PANDEMIC**

*"As we move into the last month of 2020, we know that traditional holiday celebrations will need to be reframed due to COVID-19. We've been living with gathering restrictions and adhering to public health guidelines intended to keep us protected and safe. Many people are used to having full social calendars of holiday-themed events. It's hard to imagine experiencing the holidays in any other way. While some people will embrace creative adaptations, others will struggle. This year especially, it's going to be essential to recognize that feelings of loneliness and isolation can have a significant effect on someone's mental health. We'll share some ideas and information on recognizing signs of loneliness and isolation in ourselves and those we care about, offering tips on what we can do to support one another." Read "[Staying Connected to Combat Loneliness and Isolation During the Holidays](#)"*

*"The onset of winter typically signifies the beginning of seasonal festivities, family traditions and holidays. This year we face a season of uncertainty, a reprieve of traditions, and social and physical distancing guidelines and mandates to combat the risk of infection and spread of COVID-19. The continuing pandemic in combination with the dynamic changes in weather and a significant decrease in daylight hours can be emotionally overwhelming for many. With the approaching holidays and new year, many individuals are generally on the lookout for a bit of company to help them feel a sense of togetherness and to have some good old fashioned fun with family, friends and colleagues. This year will be different." Read "[When the Next Celebration Isn't](#)"*



## Just Around the Corner"

---

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 available 24/7, along with resources and counselling on dealing with the holidays during a pandemic, register with and visit 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: 66

CLIA

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia



Home → News → LIANSwers

Issue 66 | November 2020

# 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.*

## RESOURCES AND SURVEY FROM THE LIANS & NSBS 2020 VIRTUAL CONFERENCE

As you may know, we held our annual solo and small firm conference on November 5<sup>th</sup>. Our first virtual event and overall, from your comments, quite successful. Assuming in-person events are permitted next year we will look to hosting it both live and virtually.

We have uploaded all PowerPoint presentations and resources from the 2020 LIANS/NSBS Solo and Small Firm (Virtual) Conference to the LIANS website under 'Presentations':

<http://www.lians.ca/resources/presentations>

We are currently reviewing the comments from the attendee survey, some of which ask specific questions or seek clarification. As the survey is anonymous we cannot respond directly so we will aim to do so in a future issue of LIANSwers.

For those who attended this year, thank you for your participation. If you have not completed the survey, please do so here: <https://www.surveymonkey.com/r/79FF5RN>

Share 0

Tweet

Share

◀ PREVIOUS

NEXT ▶

[Back to LIANSwers: 66](#)

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia



Home → News → LIANSwers

Issue 66 | November 2020

# 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.*

## 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 for its Mentorship Program, specifically in the areas of Family law, Corporate/Commercial, Wills and Estates, and Criminal 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: 66](#)[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.*

## UNDER THE RADAR: FOLLOW UP ON UNDERTAKINGS

If you are acting for a purchaser and/or lender on a property purchase/finance transaction and you accept another lawyer's undertaking to complete a step after closing, follow up on that undertaking. You obviously need to accept appropriate undertakings from other lawyers as part of your property conveyancing practice. That isn't the problem. The problem is the lack of follow up after the transaction has closed. If another lawyer's undertaking to you goes unfulfilled, the risk is YOUR risk. If a claim arises because a mortgage for a prior owner hasn't been released and is causing a problem for your clients, it is a potential claim against YOU. It is your certificate of title to your client that is compromised. When you accept an undertaking and close the transaction, don't put the file in the closed file box. Keep it open until you have received confirmation that the Release of Mortgage has been recorded, that the Judgment has been removed, that the CRA certificate of compliance has been issued, etc. Whatever the outstanding issue might be, make sure you are satisfied it has been appropriately addressed before you shelve your file.

For the lawyer giving the undertaking, you have assumed an ethical obligation under the [NSBS Code of Professional Conduct](#). Make every effort to fulfil your undertaking in a timely manner. A failure to do so could give rise to a Complaint to the Nova Scotia Barristers' Society.

Whether providing or accepting the undertaking - follow up, follow up, follow up!

Tweet

Share

◀ PREVIOUS

NEXT ▶

Back to LIANSwers: 66

[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.*

## WHAT'S IN A NAME?: 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: 66](#)

[CLIA](#)

[NSBS](#)

[Disclaimer](#)

[Privacy](#)

[Terms of Use](#)

© 2022 Lawyers' Insurance Association of Nova Scotia