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ALL FOR ONE, ONE FOR ALL? CONTINGENCY FEE AGREEMENTS

A 2017 decision from the Ontario Court of Appeal (*Hodge v. Neinstein*, [2017 ONCA 494](#)) upheld a Divisional Court ruling that certified a class action lawsuit against personal injury law firm, alleging that the firm's contingency fee agreement with clients did not comply with the province's *Solicitors Act*.

You should review your contingency fee agreements to ensure that both your agreement and methodology in this area comply with all applicable rules and legislation, beginning with:

[*Costs and Fees Act*](#), RSNS 1989, c 104

[Nova Scotia Civil Procedure Rule 77.14](#)

[Rule 3.6-2 "Contingent Fees and Contingent Fee Agreements"](#) of the Nova Scotia Barristers' Society, *Code of Professional Conduct*, Halifax: Nova Scotia Barristers' Society, 2012

See also:

[LIANS' Model Contingency Fee agreement](#)

Law Office Management Standard #5: [Retention and Billing](#)

["Risk Management in the Retention Process: What Your Role as an "Officer of the Court"](#)

[Does Not Assure"](#) by Gavin Giles QC and Sheldon Nathanson (LIANSwers September 2015)

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CALLING ALL 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.

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.

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.

In “normal” times, we hosted an annual event where you can meet possible matches and learn more about the program. Unfortunately such an event is not possible now but hopefully we can

host one in 2021.

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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FRAUD ALERT: INCREASED SCAM ATTEMPTS IN 2020

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 are the most common scam attempts and red flags that we've been seeing.

While each scam attempt presents slightly different details and scenarios, many of the increased scam attempts reported are bad cheque schemes, where a lawyer is retained by a bogus client and receives funds into their trust account by way of a cheque or bank draft that appears legitimate. A sense of urgency with the transaction is often implied by the client. As a result, within days of receiving the funds and depositing them to the trust account, the lawyer pays out funds from the account before learning (sometimes many weeks later) that the cheque was fraudulent, causing their trust account to be debited. A corollary of this type of scam is that after the fraudulent cheque is deposited but before it has time to clear the supposed client advises that the transaction is not going ahead and seeks return of the funds.

In another type of scam, before wiring the funds to the client, a firm receives an email purportedly from the client, but is actually from the fraudster, directing that the funds be wired to a different bank account. 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, (which could include a wire transfer to a foreign country) are correct.

Scammers are targeting firms because they know that this is a time when offices and staff are distracted or short staffed, and transaction details might not be checked as closely as they might otherwise be, resulting in delays in the return of counterfeit cheque or bank draft to the firm.

Please take a moment to review the other types of scams currently circulating, that we previously reported: [FRAUD ALERTS: "Request from Boss" Scams; Bogus Invoices; Phony "Canada Post" Deliveries](#)

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 or 902 423 1300, x346.

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LIANS AND NSBS SOLO AND SMALL FIRM VIRTUAL CONFERENCE, NOVEMBER 5, 2020



Join us through Zoom online on Thursday, November 5th, 2020 for the 12th annual Solo and Small Firm Conference, hosted by LIANS and NSBS. You may attend the morning (9am-12pm) or afternoon (1pm-4pm) broadcast, or both. 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 does not allow us to have an in person event this

year. But there is one positive – not needing to rent a venue so significantly reduces the cost that we are hosting this year's event at no charge to attendees.

The current session line-up includes (and more will be added):

"Matters Before the (Virtual) Courts: Today and Tomorrow" with Justice Brothers

Ernst and Young session on recent tax rule changes to 'Work in Progress'

Current LRO developments with Theresa Graham, Registrar General

Lawrence Rubin, LIANS Director of Insurance on Claims Process, Office Management and Cyber / the New Cyber Insurance Coverage

Marcelline Madamombe, NSBS Trust Assurance, will speak to new rules addressing the risks associated with holding old balances in trust and Rob McCleave, NSBS Legal Service

Support, will share practical tips for reducing old balances in a manageable way

Elaine Cumming, NSBS Professional Responsibility Counsel and Bernadine MacAulay, NSBS General Counsel will review the new regulations for cash transactions, client identification and verification, and trust accounts – and speak to best practices for remote client ID and

verification via video technology

A Wellness session with Homewood Health™

A panel discussion on current equity issues, including: Angela Simmonds, NSBS Equity & Access Manager, on identifying and mitigating your biases in practice; Michelle Kelly, Chair of the NSBS Gender Equity Committee, on what we've learned from the recent survey of NSBS

members on gender discrimination and harassment; and The NSBS TRC Working Group on resources available to lawyers and firms to build their cultural competence

As this event will be held solely in a virtual webinar format, for those who cannot join online on November 5th, the sessions will be electronically accessible after the event as recorded video.

Additional conference details and registration information will be circulated by email in the coming weeks.

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LIANS RELEASES ANNUAL REPORT 2019

LIANS' 2019 Annual Report presents an overview of its activities and financial performance over the last year, and outlines our direction for future initiatives.

Read LIANS' [2019 Annual Report](#)

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MIS-DIRECTION: PITFALLS OF ACTING ON A BOARD OF DIRECTORS

As a lawyer, you may be asked to join, or on your own decide to join, the Board of Directors of an organization, be it a for-profit company, a not-for-profit organization or even a condominium. Your law firm may ask you to sit on client's Board.

As lawyers, our skills, expertise and insights are often valued by Boards, something to be taken as a compliment. But before accepting these positions, you should understand your potential risks and decide whether you want to assume them. None of this is to say that lawyers should be discouraged from acting on Boards. In fact, the contrary is true, particularly when it comes to community involvement with a non-profit. We simply want to make you aware that you may have potential personal risks in the event you do not have appropriate or adequate insurance sitting behind you. You should also remember the key to avoiding a management liability claim - always exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, recognizing that a higher standard of care might be expected of professionals such as lawyers and accountants in some situations.

The mandatory professional liability insurance that LIANS provides will not cover you if you are sued in your capacity as a director or officer of an organization. As you know, coverage under your LIANS policy is only for errors and omissions that occur when rendering professional services (as defined in the insurance policy) to others. Your LIANS policy is not a management liability policy and does not provide any coverage for claims arising out of an insured acting in the capacity of

director or officer of any enterprise (with the exceptions of LIANS and the Nova Scotia Barristers' Society).

If you are interested in acting as a director or officer of any organization, you should determine if it maintains directors' and officers' (D&O) insurance coverage and if so, its limits, terms, conditions and exclusions. In addition, you should inquire whether the organization is aware of any pending or possible litigation. If it does not have appropriate insurance coverage available, or if there is existing, or knowledge of potential, litigation, you should consider your personal risk before joining.

If you are asked by your firm to join the Board of a client or some other organization, or even if you want to join on your own volition, in addition to inquiring about that organization's insurance coverage, you should inquire if your firm maintains insurance coverage for these activities. In addition, if you find yourself acting on several Boards, you may be able to obtain your own directors and officers coverage in the general insurance market.

One area that presents unique challenges is when a lawyer who is a director is asked by the organization to provide legal advice. If you are a director and are asked to provide legal advice, you should clearly set out the capacity in which you are then acting. If you are then acting as a lawyer, you should make sure you treat this client as you would any other - retainer for legal services you provide, providing advice in writing, memos to file, confirm that your opinion is not offered as a director, and bill the client as a lawyer and not by way of submitting an expense account as you might as a director or officer.

If you act as a director, you will have the same personal obligations, responsibilities and potential liabilities as any other director. Many of these are statutory such as director responsibility for unremitted income taxes, CPP withholdings, and the like.

Lawyers in Nova Scotia who sit on the Boards of non-profit organizations may also be able to avail themselves of the protections provided in the *[Volunteer Protection Act](#)*, SNS 2002, c 14. In order to obtain those protections, you must come within the Act's definition of volunteer. One thing to remember about this Act though is that it does not override any federal legislation relating to directors that imposes statutory liability on them.

For more detailed information and additional resources, review LIANS' 'Directors and Officers' page: <https://www.lians.ca/resources/risk-and-practice-management/directors-and-officers>

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NSLAP WELLNESS: NAVIGATING LIFE IN MENTAL HEALTH RECOVERY

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

"For many people, 2020 has been surreal, challenging and upsetting. There has been no other time in recent history where so many significant events, from natural and man-made ecological disasters to political, cultural and social upheaval, have felt like shared experiences with people from all over the world. Each of these can build anxiety and contribute to stress that affects our mental health ... Access to resources that help people work through their mental health challenges has been one of those evolutions. In-person supports such as therapists, meetings and support groups, and social gatherings with friends and family may have moved to telephonic or digital mediums. Embracing alternate treatment methods and accepting both the positive and negative aspects is important for you to be able to adapt. You need to bring in tools that will continue to support how you recover."

Read "[Navigating Life in Mental Health Recovery](#)" from Homewood Health™.

We have also recently enhanced the LAP program by adding two new programs from Homewood Health™ – Depression Care and Trauma Care. Depression Care provides mid- to longer-term, work focused treatment for individuals with moderate to severe anxiety and/or depressive

symptoms. Trauma Care provides specialized treatment for individuals struggling with acute, or long-term, trauma symptoms. The program offers treatment and resiliency training for PTSD, mood, and anxiety disorders. These programs supplement the current assistance programs provided by Homewood to the LAP.

If you have wellness questions, or are looking for wellness information, visit the NSLAP website at www.nslap.ca. For more information and support with mental health recovery, along with resources and counselling to improve your health and wellness, 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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SCRUB HIDDEN SENSITIVE DATA (METADATA) FROM WORD DOCUMENTS

Potentially privacy-compromising metadata such as hidden comments from reviewers, revision marks from tracked changes, details about the author, date when a document was created, headers, footers, watermarks, hidden text, or even custom XML data can easily be cleared from a document. Before sharing electronic copies of files, it is a good idea to remove hidden data or personal information that may be stored in the document or the document properties.

Microsoft offers a free "Document Inspector" for removing hidden data or sensitive information before you share a Microsoft Office file. To remove metadata, simply open the Word document you want to share.

If you use Microsoft Word 2019, 2016, 2013, or 2010:

1. Select the 'File' tab and click 'Save As' to save a new copy of your original document (use the Document Inspector on a copy of your original document, as it is not always possible to restore the data once it is removed).
2. In this new copy of your original document, select the File tab > Info > Check for Issues > Inspect Document.
3. Click to select the types of hidden content you want to be inspected, and press the 'Inspect'



button.

4. Click 'Remove All' next to each type of metadata that you want to remove from your document.
5. Use this newly inspected copy of the document to share – do not share the original.

If you use Word 2007:

1. In the copied file, click the start button (top left corner), Prepare > Inspect Document.
2. You will be prompted to save a copy of your file since you will not be able to restore hidden information after deleting.
3. If metadata is found, simply click the 'Remove All' buttons next to each type of metadata, resave your 'cleaned' document, and share this version, not the original.

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SMALL BUT MIGHTY: REDUCING RISK IN DAILY TRANSACTIONS



Of the claims opened in 2019, almost 60% were caused by either Communication or System/Procedural/Administrative errors. The remaining 40% are a combination of a Failure to Know/Apply the Law; Conflict of Parties; Delegation/Supervision of Staff; and Fraud by a Client/Other Party.

Here are some pitfalls that have been shown to increase risk in your practice:

1. Sending emails to the wrong person. Double-check the “To” line in emails to ensure it’s going to the right person. Auto-correct or automatic fill-ins for emails can cause the wrong person to be in the “To” line resulting in a breach of your client's privacy and confidential information.
2. Delaying registration of documents in the land registry like mortgages or judgments. Ensure documents are filed expeditiously to avoid a priority issue later if someone registers a mortgage or judgment before you “get around” to registering yours. Timing is everything. It’s not the date of the document that counts, it’s the date of registration that will determine priority.
3. Unless there is a dual retainer, ensure the “unrepresented” party knows that you do not represent them and make sure to recommend they either get their own lawyer or obtain ILA before signing documents unrepresented. Moreover, this should be done in writing so there’s no mistake or misunderstanding. There is often confusion by parties on who the lawyer represents. Take a moment to review LIANS' [General](#) Sample Letters, Precedents, and Checklists; as well as those pertaining to [Real Estate](#).

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