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## 20/20 VISION: THE IMPORTANCE OF USING COMPLETE DATES

The year 2020 presents a risk of date alteration not present in 2019.

It involves the use of the commonly abbreviated year such as Jan 6/20.

It is difficult to alter Jan 6/19. The same cannot be said for Jan 6/20. Simply adding “21” at the end will make it read Jan 6/2021.

This could have implications in cheques and documents.

Consider a cheque issued on Jan 6/20 where the drawer intends January 6, 2020 meaning it would be stale July 6, 2020. What if the payee does not deposit the item but in August adds “21” after the “20” making the otherwise stale cheque good but on its face postdated. Then, as they are aware of the fraud, what if that person then assigns the cheque to a third party who has no knowledge of the fraud?

Alternatively, what if a lawyer has their client sign a document with dates written /20 and the other party is obliged to do something, such as repay a loan, by Oct 1, 2020. What if that other person alters Oct 1/20 to read October 1/2021 and this goes unnoticed when the transaction is completed and a dispute ensues?

Given the alteration risk 2020 presents, you should use complete dates in your documents and cheques to reduce that risk.

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## FINDING THE SILVER LINING: RISKS OF CLOUD COMPUTING

As more and more companies and law firms utilize the cloud for data storage and software applications, it is important not to lose sight of some of the risk management issues that should be considered.

Alberta's Auditor General recently issued a report on a cloud-computing audit it did on a Crown Corporation. The Auditor General found that the Crown Corporation

1. did not have an effective information technology risk management process to manage the risks related to its use of cloud computing;
2. its Board's oversight of cloud computing risks was lacking;
3. did not classify its data to identify the level of sensitivity and implement appropriate controls to protect confidential information;
4. did not identify laws that apply to its information hosted outside of Canada and ensure it's in compliance with those laws, as well as with provincial privacy requirements; and
5. needs to do a better job of monitoring contracts with its cloud service providers to ensure contract terms address identified risks and the provider's performance is aligned with expected level of service quality

The report concluded with its worst-case scenario of consequences for not having appropriate processes in place being that without effective risk management processes related to the use of cloud computing, entities are exposed to data loss, privacy breach and business interruption that could threaten its ability to deliver effective and efficient services.

There is nothing wrong in this day with using the cloud for data storage and applications. But, like all things, there are risks that have to be understood and managed. Read Law Office Management Standards [#4: Maintenance and Backup of Electronic Data](#) and [#6: Cloud Computing](#), as well as Law Society of British Columbia "[Cloud computing due diligence guidelines](#)"

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## LIANS CLAIMS REVIEW COMMITTEE SEEKS NEW MEMBERS

LIANS is seeking up to four lawyers to join its Claims Review Committee ("CRC"). The CRC, as LIANS' large loss committee, has two primary functions (i) advise on claims that have a total incurred (indemnity plus defence costs, reserved and paid) greater than \$125,000 and (ii) approve claim settlements that exceed \$100,000.

In appointing members of the Committee, the LIANS' Director and Board endeavour to bring together a group of lawyers who have knowledge and experience in various areas of law and who reflect the diversity of the legal profession in Nova Scotia. Given that most claims before the CRC are in litigation, practice experience as a civil litigator is an asset.

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 CRC. LIANS is committed to equity and diversity and we encourage Members from historically underrepresented groups to apply.

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

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## NEW CHANGES TO CLIENT ID AND CASH RULES IN EFFECT

Effective January 1, 2020, NSBS Council adopted the Federation of Law Societies of Canada's ("FLSC") new No Cash and Client Identification and Verification Model Rules. Here is a link to an [explanation of the changes](#) and the Client ID [Regulation 4.13](#).

In addition, a FLSC [Risk Advisory](#) addresses risks that can arise in five practice areas: real estate, trusts, private lending, shell corporations, and litigation and is meant to assist lawyers in recognizing situations where additional due diligence may be required.

Elaine Cumming at the Society works with FLSC on this project and is a resource for you to call if you have questions. Lawyers remain the targets of fraudsters and criminal elements. Being aware of potential risks and following the new client ID rules may help minimize (though nothing can eliminate) these risks.

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## ONTARIO COURT RECOGNIZES NEW PRIVACY TORT

Of the four privacy torts set out in the American *Restatement (Second) of Torts* (2010) being

1. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs;
2. Public disclosure of embarrassing private facts about the plaintiff;
3. Publicity which places the plaintiff in a false light in the public eye; and
4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness,

all but the third had been recognized in Canada.

This has now changed with the recent Ontario Supreme Court decision in *Yenovkian v. Gulian*, [2019 ONSC 7279](#). As stated by the Court in *Yenovkian* at paragraph 170 of the decision,

*"...the remaining item in the "four-tort catalogue" of causes of action for invasion of privacy is the third, that is, publicity placing the plaintiff in a false light. I hold that this is the case in which this cause of action should be recognized. It is described in § 652E of the Restatement as follows:*

### ***Publicity Placing Person in False Light***

*One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if*

*(a) the false light in which the other was placed would be highly offensive to a reasonable person, and*

*(b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed."*

The Court added in the next paragraph of its decision:

*"I adopt this statement of the elements of the tort. I also note the clarification in the Restatement's commentary on this passage to the effect that, while the publicity giving rise to this cause of action will often be defamatory, defamation is not required. It is enough for the plaintiff to show that a reasonable person would find it highly offensive to be publicly misrepresented as they have been. The wrong is in publicly representing someone, not as worse than they are, but as other than they are. The value at stake is respect for a person's privacy right to control the way they present themselves to the world."*

The Court's discussion on the tort, including its thought process in recognizing it, begins at paragraph 160 of the decision.

The decision will make an interesting read for those interested in how a Court can come to recognizing a new tort.

Of course, the decision will also be of interest to those who practice in privacy issues and, as the case arises from the actions of a spouse in matrimonial separation, the family law bar may also be interested as the court's recognition of the tort gave rise to a punitive damage award against the offending spouse.

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## OUT THE WINDOW: LEGACY SOFTWARE POSES A DATA SECURITY RISK

As of this month, Microsoft is no longer supporting Windows 7. If you are using this software, you will no longer receive patches, technical support or security updates. The result is that systems using the software will be more vulnerable to security risks and viruses.

Unsupported software is particularly vulnerable to malware and hackers. This vulnerability will increase the risk of a data or cybersecurity breach.

If you are still using Windows 7, it may be time to upgrade to a newer version. If you're currently running a licensed and activated copy of Windows 7, Windows 8 or Windows 8.1 Home or Pro, here's how to get Windows 10 for free:

1. Go to the [Download Windows 10](#) website.
2. Under **Create Windows 10 installation media**, click **Download tool now** and **Run**.
3. Choose **Upgrade this PC now**, assuming this is the only PC you're upgrading. (If you're upgrading a different machine, choose **Create installation media for another PC**, and save the installation files.)

4. Follow the prompts.

5. When the upgrade is complete, go to **Settings Update & Security > Activation**, and you should see a digital license for Windows 10.

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## RENEWAL OF PLEADINGS

In litigation, like tennis, an ace serve can improve the game. As you all know, under Civil Procedure [Rule 4.04](#), a notice of action expires one year after the day it is filed, unless the defendant has received notice pursuant to [Rule 31](#). Lawyers will sometimes issue pleadings, but, in an effort to save costs, will refrain from serving the documents pending negotiations with the defendant. If the negotiations are prolonged, the one-year service period can lapse, unnoticed. This can lead to increased cost and stress for the lawyer and client.

Rule 4.04(2) permits a plaintiff to renew the pleadings for a second year within fourteen months of the day after the pleadings were issued. If you are within the fourteen month period, the renewal application can be made *ex parte*.

Rule 4.04(4) provides that a notice of action that is renewed for a second year expires two years after the day it is filed. This means if you renewed it at the fourteen month mark, you will have six additional months to effect service.

Rule 4.04(5) kicks in if you are beyond the fourteen month period. It provides that:

A judge may renew an expired notice of action more than fourteen months after the day the notice of action is filed only if the plaintiff satisfies the judge on either of the following:



1. reasonable efforts were made to notify the defendant of the action by effecting personal service, service could not be effected personally, and the plaintiff will make a motion for a substituted method of giving notice as soon as possible;
2. inadvertence led to the expiry, the plaintiff will suffer serious prejudice if the proceeding is terminated, and no defendant will suffer serious prejudice that cannot be compensated in costs as a result of the delay in notification.

This is discretionary.

Justice Wood (as he then was) dealt with Rule 4.05(5)(b) in *Thornton v. RBC General Insurance Company*, 2014 NSSC 215 (CanLII). He stated, at paragraph 29, that:

*the threshold requirement for a plaintiff is to show that inadvertence led to the expiry of the pleading. Once that is established, the court must engage in the analysis of the respective prejudice to the parties. In this case, there is no evidence ... explaining why the expiry occurred.*

Continuing at paragraph 31, Justice Wood stated:

*In my view, the absence of any evidence to substantiate inadvertence as the reason for the expiry is fatal to the motion for renewal based upon the clear wording of the Civil Procedure Rules. While it may not be a difficult hurdle to overcome, it is still an important requirement.*



In case he had misinterpreted the “inadvertence” analysis, Justice Wood proceeded to the second stage analysis of prejudice. At paragraph 34, he stated:

*In light of the burden on the applicant for renewal, it is incumbent on them to show the court the lack of any significant evidentiary prejudice. It is not a situation where the onus is on the defendant to establish actual prejudice, failing which the motion must be granted.*

He found that the plaintiff had failed to meet this burden.

Justice Wood declined to grant the renewal.

The background in the decision indicates that the plaintiff had chosen not to pursue this action because he wanted to focus on other avenues of recovery. At paragraph 18 “[the plaintiff] says that he had limited financial means and was not in a position to finance lawsuits.” This is a common and understandable refrain.

If a client opts to delay service to negotiate with other parties or pursue other remedies, there is no guarantee a Court will subsequently grant a renewal application. The client has every right to make that decision and take that chance. If a client makes an informed decision to defer service, it is prudent to document your advice and the client’s instructions, just in case the timing of service becomes an issue down the road. However, we suggest that a good practice is to recommend strongly that the client issue and serve the pleadings within the initial 12-month service period. The cost-savings associated with the “wait and see if we can settle” approach may not be worth the risk of intentionally or inadvertently failing to serve the documents within the procedural or statutory limitation periods. Making a “clean serve” up front can spare you and your client the stress and expense of a subsequent motion to renew.

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## 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 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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## THE MANY FACES OF ANXIETY

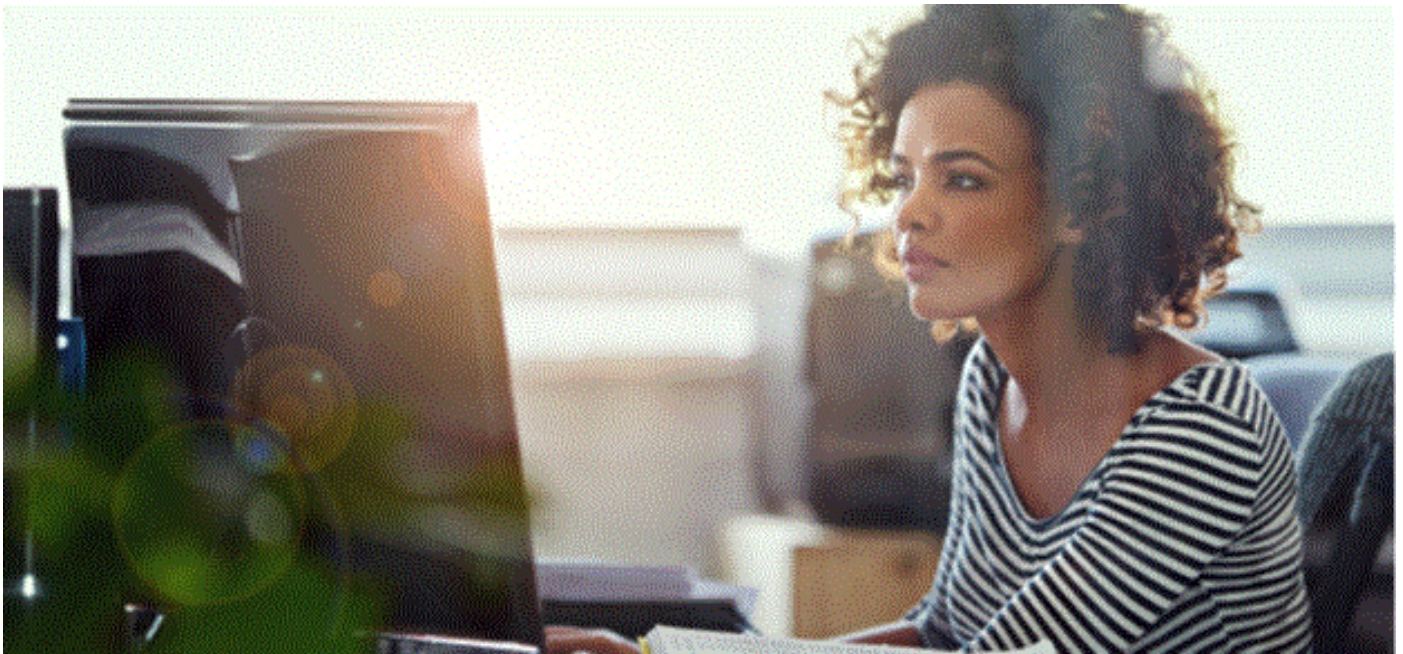


Photo credit: © 2020 Homewood Health™

*"Anxiety, regardless of a person's psychological or biological makeup, is highly common. Although it can be triggered by a specific event, such as a trauma or stressful situation, anxiety can also present as a consistent theme in a person's life, creating challenges in daily activities or interactions. Despite the debilitating symptoms that anxiety can lead to, it is treatable. With the support of friends and family, as well as a combination of counselling, self-care techniques, and a doctor's advice, people with anxiety can lead healthier, happier lives. If you're suffering from anxiety, support from EFAP providers, physicians, and primary care practitioners is crucial. Here are the facts you need to know about the many faces of anxiety, including the signs and symptoms, and what you can do to put yourself on the road to recovery."*

Read "[The Many Faces of Anxiety](#)" from Homewood Health™.

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Visit the NSLAP website at [www.nslap.ca](http://www.nslap.ca). For more information and support for those with anxiety, along with resources and counselling to improve your health and wellness, register with Homewood Health <https://www.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)** | (Visit the NSLAP website for details about [calling from outside Nova Scotia](#)) | 1 866 398 9505 (en français) | 1 888 384 1152 (TTY).

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