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CAN YOU HEAR ME NOW? SOME MUSINGS ON VIRTUAL HEARINGS

Over the past several months, many (most?) lawyers have participated in virtual meetings and hearings. The following are some of our musings on these, in no particular order:

1. If you are doing an online discovery of deposition, and you are going to show a document to the others in the meeting by sharing your screen, there could be difficulties if a participant in the meeting (especially the deponent) is attending on an iPhone. It may be very difficult for them to properly view the document.
2. There are several virtual platforms being used, e.g. Zoom, Skype, WebEx, etc. Each platform is different as to their functionalities and procedures. If you are unfamiliar with the platform being used, you should practice on it before your meeting so that it is familiar to you.
3. If you are attending a virtual meeting via a wireless connection, make sure you are in a location with a strong, reliable signal and no background noise.
4. Prepare appropriately and recognize that your preparation for a virtual discovery will be different than an in-person discovery. For example, at an in-person discovery, to have the deponent comment on a document, you might pass it to them. You cannot do that in a virtual meeting, and sharing your screen might not be helpful if the deponent is on an iPhone. You

should take steps to make sure everyone has the same listing and copy of documents before them, wherever they might be.

5. You may have to change how you ask questions, make them more succinct and able to be repeated.
6. Be aware that if you are participating in an online public hearing, more people may be watching and listening than would otherwise be had the matter been held in a courtroom. And you will have no idea who those people are.

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CYBER SECURITY AND THE IMPACT OF COVID-19 ON CYBER THREATS

The Canadian Centre for Cyber Security, a federal government agency, has recently released a [bulletin](#) on the impact of COVID-19 on cyber threats. No surprise that with the pandemic, threats are increasing. The key judgments in the bulletin are:

Malicious actors are taking advantage of the pandemic in various areas such as cyberespionage and cybercrime.

The health sector is under extreme pressure to mitigate the pandemic and ransomware continues to target healthcare and medical research facilities.

Cyber espionage directed at Canada is likely to continue particularly attempts to steal intellectual property relating to COVID-19 medical research and classified information regarding government responses.

Online state sponsored operations will increase over the coming year as more traditional espionage activities remain hampered by travel restrictions and social distancing.

Online influence campaigns will continue to erode trust in official statements and figures.

Remote workforces will continue to be targeted by foreign intelligence services and cybercriminals.

It is likely that authoritarian governments will use COVID-19 as a justification to procure and deploy surveillance technologies against their own citizens, expatriates residing in Canada and Canadians living abroad.

FINTRAC has also recently a [bulletin](#) on COVID-19 trends in money laundering and fraud. Included in the bulletin are indicators of COVID-19 Merchandise Fraud and COVID-19 Identity and Emergency Benefits Fraud. The bulletin concludes that as the pandemic continues, there is an expectation that financial hardship faced by Canadians will result in more victimization including increasing loan scams, debt consolidation frauds, and investment frauds. Cyber dependent frauds such as spear phishing, ransomware and phishing campaigns will continue to take advantage of increased online activities such as working from home.

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ENHANCEMENTS TO THE N.S. LAWYERS ASSISTANCE PROGRAM

As part of our continuing support of the profession we have recently renewed our service agreement with Homewood Health™, the service provider to the N.S. Lawyers Assistance Program (“LAP”). With this renewal, we have enhanced the program by adding two new services – 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. Sessions focus on reducing the symptoms of depression and anxiety while building resiliency to assist with staying at work and getting back to life. The program provides up to 20 sessions of individual treatment.

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.

The addition of these two programs will supplement the current assistance programs provided by Homewood to the LAP.

For more information, please go to the LAP website at www.nslap.ca or call the LAP at 1-866-299-1299.

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FRAUD ALERT: BOGUS CHEQUE SCAM CIRCULATING



In the July 2019 issue of [LIANSwers we wrote of a scam](#) whereby a client from out of province (who the lawyer had not personally met or previously known) sent the lawyer funds by cheque and then sought return of those funds when the transaction at issue did not go ahead. But the cheque was fraudulent and in that case, the lawyer discovered the fraud in time. Well here is another one making the rounds. It is not sophisticated. But it works if you are not diligent.

This one starts with the lawyer in N.S. being contacted by a potential client in the U.S. in respect of a transaction, in this case a bitcoin transaction. The potential client advised that he had entered into an agreement to purchase bitcoin from another and sent that person half the total purchase price. Then there was an intervening event – a death in the family – such that the potential client could not complete the transaction but the other party refused to return the initial payment. In this case, our lawyer on the initial contact asked to see the contract and advised of his retainer. He also did a conflict check which was, unsurprisingly, clear. He also asked identifying questions and the potential client provided an address, contact details and his passport ID page.

Then a few days later and without doing anything, our lawyer received an email from the individual identified by the potential client as the person who kept his money explaining his side and offering to work with the lawyer to resolve the matter. Even though our lawyer did not reply to that note, a few days after that email, by courier with an Ontario return address, our lawyer received a cheque for USD162,000 from the individual identified as the person who refused to refund the money. The cover letter said the funds were to settle any claims by the potential client. The cheque was drawn on what appeared to be a legitimate bank. In Kentucky.

Rather than depositing the cheque, sensing something odd by this point, including the lack of any tie to this province, our lawyer contacted the drawing bank who advised that the cheque number and the amount on the cheque did not match and that the cheque was not legitimate.

Our lawyer then called the return address on the courier envelop that the cheque came in. It is a lighting store in Brampton, Ontario and the person who answered the call described getting calls from law firms all over North America in the last months who had been couriered a similar cheque.

This scenario discloses several red flags that you have to pick up on. For example, if you get an unsolicited request like this, if you respond, ask how the person got your name. If they say a friend ask who and confirm it. If you do reference checks on new hires, why not on unsolicited new clients from out of province? The odds that they randomly picked you and the matter is legitimate are astronomical. Even for us. And as an insurance program, probabilities are what our business is based on.

But of all the red flags that this scenario sends out, we want to focus on a couple issues related to cheques that could arise in any transaction. The first is cheques drawn on foreign banks. Cheques, even those drawn on a bank across the street, take time to clear. In the case of a foreign cheque, clearing can take weeks if not months. And don't forget that with any cheque, the person or entity on whose account it is drawn has a certain amount of time – it could be 30 to 90 days – to confirm their statements. If you accept funds in this manner and you close a transaction before the item has cleared and before the payor has confirmed their statements, you may be assuming the risk if the item is fraudulent and returned. If these funds are withdrawn from your account because the originating instrument was fraudulent, they may become your problem as the person you sent those funds to will be long gone. A second issue with cheques nowadays is that with modern editing and printing technology, it is relatively easy to scan an existing valid cheque that someone finds, especially given the propensity now to deposit cheques electronically, alter some numbers and print the fraudulent item on cheque-type paper so that it looks legitimate on its face.

Issues with cheques can be mitigated against in various ways. One is that you know your client. Another is that cheques have sufficient time to clear before closing. A third is that you contact the

drawing bank, particularly if the location of that bank or currency seems odd for the transaction.

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LIANS AUDIT COMMITTEE VACANCY

With a term limit retirement, LIANS is seeking expressions of interest to fill the non-Board seat on its three person Audit Committee commencing October 2020. The Audit Committee assists the Board of Directors in fulfilling its oversight responsibilities by reviewing LIANS financial information, internal controls and audit processes.

Interested Members and non-lawyers with relevant experience are welcome to apply. Members are welcomed, and encouraged, to forward this request to anyone they believe would be interested in becoming a member of the Committee. LIANS is committed to equity and diversity and we especially encourage those from historically underrepresented groups to apply.

Part of your expression of interest will include completion of LIANS' [skills matrix](#).

This seat is an opportunity to participate in the management of the not-for-profit association that provides the mandatory professional liability coverage for Nova Scotia's lawyers.

Those interested are asked to submit a cover letter, resume and the completed [skills matrix](#) to LIANS' Governance Committee c/o LIANS Director of Insurance, [Lawrence Rubin](#). Applications are welcome until Sept 8, 2020.

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LIANS BOARD OF DIRECTORS VACANCIES

With term limit retirements, LIANS is seeking expressions of interest to fill two vacancies on its Board of Directors commencing January 2021.

Interested Members are welcome to apply. Members are also welcomed, and encouraged, to forward this request to anyone they believe would be interested in becoming a member of the Board. LIANS is committed to equity and diversity and we especially encourage Members from historically underrepresented groups to apply.

One of those retiring is the sole Board member from Cape Breton so ideally, one of the new members will come from that region.

Part of your expression of interest will include completion of LIANS' [skills matrix](#). Though individual Board members need not have all of the skills being sought, it is hoped that the Board and its committees will, as a collective, have them all. We value the varied opinions, perspectives and experiences all our Board members bring.

A Board seat is an opportunity to participate in the management of the not-for-profit association that provides the mandatory professional liability coverage for Nova Scotia's lawyers. With Board membership also comes the opportunity to sit on one (or more) of LIANS' standing committees: audit, investment, governance, claims and the lawyers' assistance program.

Those interested are asked to submit a cover letter, resume and the completed [skills matrix](#) to LIANS' Governance Committee c/o LIANS Director of Insurance, [Lawrence Rubin](#). Applications are welcome until Sept 8, 2020.

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NSLAP WELLNESS: WELLNESS TOGETHER, A FREE ONLINE PORTAL FOR MENTAL HEALTH AND ADDICTION SUPPORT

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

"Homewood is proud to have been selected by Health Canada back in April to be a principal partner in a joint venture with Kids Help Phone and Stepped Care Solutions to build and deliver Wellness Together Canada ([wellnesstogether.ca](https://www.wellnesstogether.ca)), a free online portal for all Canadians impacted by COVID-19 to access mental health and addiction support. These supportive services range from information and resources to self-directed e-mental health apps and peer support to live telephonic or video counselling sessions. Homewood provides many resources in addition to the counselling component. We are pleased to report that nearly 300,000 Canadians have accessed the portal, with thousands having accessed one or more of the supportive tools or resources.

This program is not meant to replace any employee benefits programs like EAP, it's meant to provide additional supports to people in need. It's meant as a temporary program to increase the amount of support available to all people, whether covered by an employee benefits program or not.

About Wellness Together Canada



Wellness Together Canada is Canada's first and only online platform offering immediate mental health support for people of all ages, in every province and territory, and in both official languages. It provides a "stepped care" model where Canadians can be instantly connected to virtual mental health services, from a five-minute self-assessment, to extensive support and resources, to live phone, video or text counselling with a mental health professional or crisis responder. The model is supported by Kids Help Phone and Homewood Health which bring a wealth of knowledge and expertise in providing virtual mental health services. The portal is funded by the Government of Canada.

People are being challenged like never before due to isolation, financial and employment uncertainty, and the emotional dialogue around racial equality. With all of us going through this together, we believe that mental health is a journey, not a destination. And each day we can take a step for our own wellbeing.

Thank you again for your support and your partnership."

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 the Coronavirus, 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

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SAVE THE DATE: LIANS AND NSBS SOLO AND SMALL FIRM VIRTUAL CONFERENCE, NOVEMBER 5, 2020



Join us online on Thursday, November 5th, 2020 for the 12th annual Solo and Small Firm Conference, hosted by LIANS and NSBS from 9am-4pm. 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.

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.

Stay tuned to lians.ca and nsbs.org for additional conference details and registration information.

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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/.

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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TEN COMMON ETHICS PITFALLS AND HOW TO AVOID THEM

An [article](#) in the June 5, 2020 edition of the ABA Journal Weekly Newsletter listed 10 common ethics pitfalls and how to avoid them. The ABA asked legal ethics experts for the most pressing ethics traps they currently see for lawyers and some best practices to avoid them. The issues mentioned follow and we refer you to the article for the best practices and comments:

1. Understanding technology and protecting client data
2. Client neglect
3. Fee shenanigans
4. Creating an accidental client
5. Potentially hostile witnesses in criminal practice
6. Exaggerating credentials
7. Managing negative reviews
8. Big data and confidentiality
9. Personal life affects professional life
10. Lateral moves

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WILL YOU "BRB"? THE PITFALLS OF TEXTING WITH CLIENTS

Beware the pitfalls of using texting as a means of communication with clients. A series of texts can be easily lost forever, through switching either your network provider (e.g. Bell to Rogers) or type of phone (e.g. iPhone to Samsung), through accidental manual deletion, by having your phone hacked, or losing your phone altogether. Also, if you become at all distracted during the quick convenience of sending and receiving important texts, you could be glossing over crucial details and instructions between you and your client. Texting, by its very nature, may lack the specificity needed for certain instructions, matters and advice. More so if acronyms are used.

Protect yourself. Keep a trackable record of all exchanges using screenshots and saving/printing all text exchanges with clients. Be sure to regularly back up all of your data to the cloud.

Or reduce this risk altogether, and avoid using texts to communicate with clients and use email, in-person and/or telephone conversations, and letters.

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