



Lawyers' Insurance
Association of Nova Scotia

ANNUAL REPORT 2009



Lawyers' Insurance Association of Nova Scotia

ANNUAL REPORT 2009

Mission Statement

The Lawyers' Insurance Association of Nova Scotia is established and operated pursuant to the *Legal Profession Act* and Regulations, as part of the public protection mandate of the Nova Scotia Barristers' Society.

LIANS conducts the mandatory professional liability insurance program for the benefit of the practising insured members.

Report from the Chair of the Board



W. DALE DUNLOP
Chair

W. Dale Dunlop joined the Board in 1999. He was appointed chair in 2006. Dale is a partner with Walker Dunlop.

In several respects, 2009 was a watershed year for LIANS. In my last report I noted that in April 2009, long-time Director of Insurance, Deborah Rozee, resigned somewhat unexpectedly to take another position. A search committee comprised of myself, Vice-Chair John Traves QC, Nancy Murray QC and Darrel Pink/Victoria Rees undertook the task of finding a replacement. It was much more difficult than any of us anticipated. The position of Director of Insurance is one that requires some very specific and unusual skill sets that few individuals possess.

I am pleased to report that after a lengthy process over many months and consideration of candidates from other provinces, LIANS found the best qualified person right under our noses in Halifax – Melanie McGrath. Melanie brings LIANS many years of experience in the insurance industry and private practice, as well as personal knowledge of many of our insureds and the vagaries of the practice of law in Nova Scotia. I am pleased to report that Melanie's assumption of the position of Director of Insurance has been virtually seamless and her rapport with other employees of LIANS and the Society immediate.

I would be remiss not to thank Geraldine O'Shea for the excellent job she did as Acting Director. It could not have been easy fulfilling not only the Director's responsibilities, but also her own as Claims Counsel. Gerri, LIANS thanks you for your dedicated commitment to this organization.

Also joining LIANS this year is Cynthia Nield, who was hired as the Administrative Officer effective November 6, 2009. She is responsible for the maintenance of the website and will be a key resource in the launch of the redesigned site and newsletter. Cynthia produces statistical data for LIANS and the required statistical reports for CLIA. In addition, she provides assistance to the Risk and Practice Management program through organization

and maintenance of RPM materials, preparation of presentations and other documents as required.

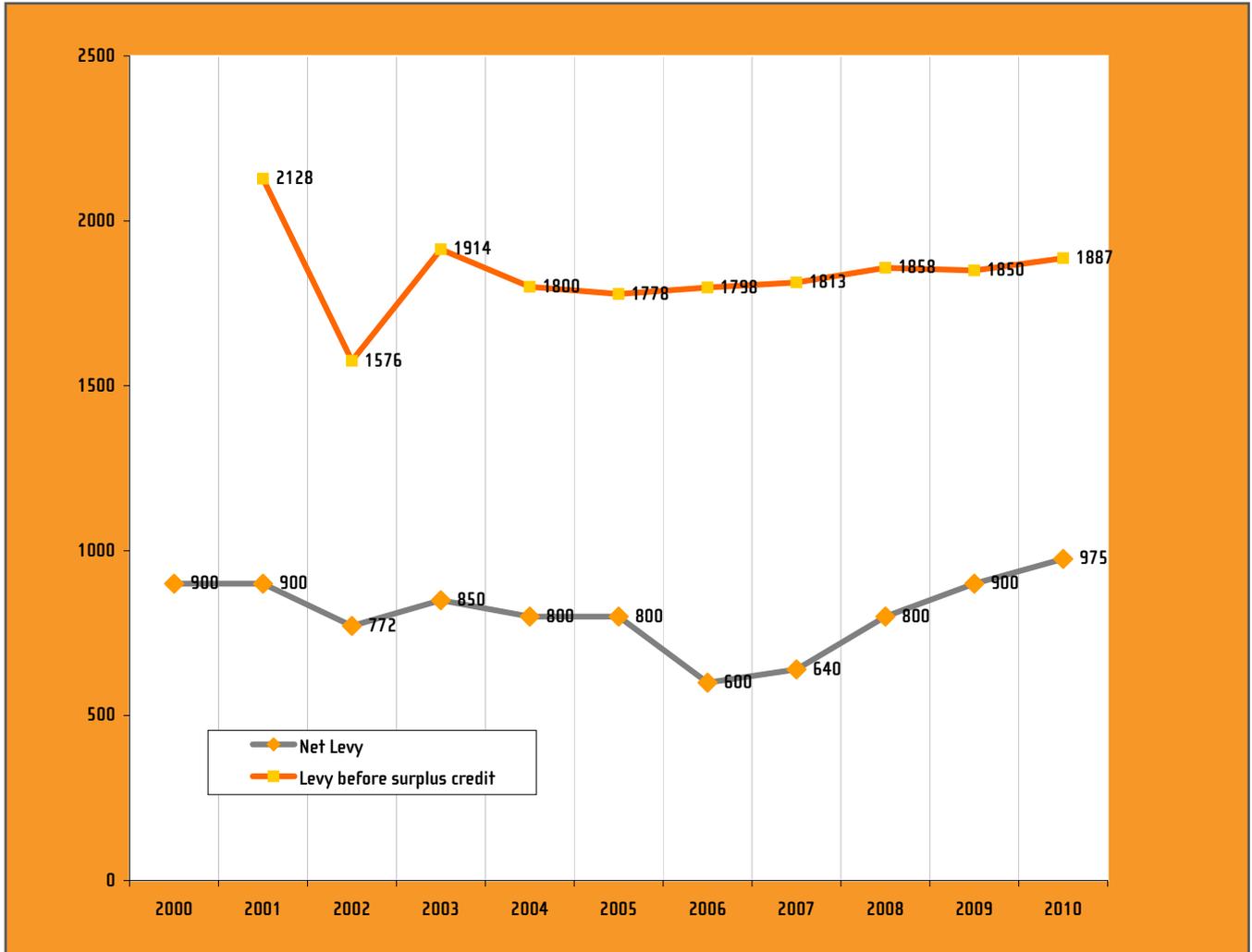
Another big change this past year was the permanent transitioning of the Lawyers Assistance Program to LIANS from the Society and the subsequent issuance of an RFP, which has resulted in a new service provider for LAP. Human Solutions is a Canadian company that specializes in providing employee assistance and work-health solutions. LIANS thanks the LAP Committee and, in particular, Committee Chair Sean Foreman for his work on drafting the RFP and Acting Chair Cheryl Canning, who spearheaded the remainder of this important initiative.

With respect to the levy, significant levy credits have been issued to members since 1997, through the return of surplus from both CLIA and LIANS. Levy credits of \$912 will be applied to the full private practice levy this year. As a result, the levy of \$975 paid by members is significantly less than the true cost of claims, which for the coming year is \$1,887 per member. Nova Scotia continues to have amongst the lowest insurance premiums in Canada and drastically lower than some neighbouring jurisdictions. While some credit for this must go to the manner in which LIANS has been managed in the past, more must go to our members, who have shown the ability to practise law in a safe and efficient manner that reflects well on the Bar of this province.

This will be my last report as Chair of LIANS. John Traves QC will assume the chairmanship in June and Nancy Murray QC will become Vice-Chair. I have very much enjoyed the privilege of serving LIANS over the past decade and look forward to continuing to serve on the Board and several committees.

W. Dale Dunlop, Chair

Insurance Levy — 10-year history



“As the excess surplus is distributed back to the members, it is expected that members will see a steady increase in the annual insurance levy, to the point where the excess surplus is depleted and the annual levy represents 100% of the cost of the coverage.”

Program Report

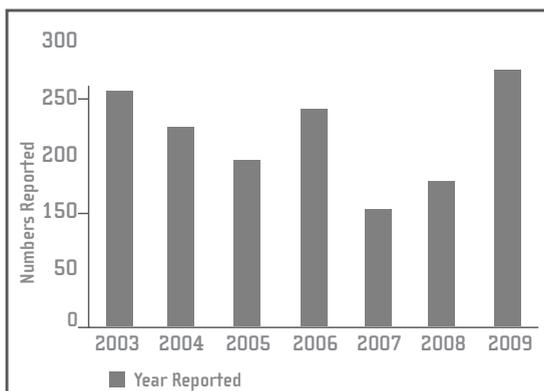


MELANIE MCGRATH
Director

Melanie McGrath joined LIANS in January 2010 as Director after a number of years in private practice and practising in-house at a national insurance company.

Claims Management

The claims experience in 2009 increased but continued to be relatively favourable. The number of new claims reported increased to 269 in 2009 from 153 in 2007 and 183 in 2008. However, based on reporting to date, we expect the number of new claims to decrease again in 2010.



Claims costs increased proportionately in 2009 due to the increased number of claims processed.

Claims Reported Per 100 Lawyers (2000 - 2009)

00	01	02	03	04	05	06	07	08	09
16	14	19	16	14	12	14	10	11	16

The *Cost of Claims by Area of Law* chart illustrates the breakdown of claims costs by areas of law and the percentage of total claims costs, including both damages and defence costs, according to area. The direct comparison between the costs by area of law in 2008 and 2009 is set out.

Cost Of Claims By Area Of Law

Area of Law	1998-2007	2007	2008	2009
Real Estate	47%	50%	69%	49%
Bankruptcy/Insolvency/Receivership				<1%
Criminal		3%	4%	<1%
Employment/Labour	3%	0%	0%	3%
Immigration				0%
Intellectual Property				<1%
Tax				30%
All Other	3%	3%	2%	0%
Civil Litigation	13%	15%	9%	5%
Commercial	11%	6%	3%	9%
Corporate	13%	3%	7%	<1%
Matrimonial & Family	5%	6%	2%	<1%
Estate Planning & Administration	4%	14%	4%	2%
Administrative/Boards/Tribunal	1%	0%	0%	0%
	100%	100%	100%	100%

As the chart above illustrates, claims costs arising from the practice area of tax law increased significantly. This was largely due to the severity of a single claim. It is expected that this claim will continue to impact the claims cost in this area through 2010. In terms of numbers of claims themselves, real estate claims continued to be the largest proportion, with 65 per cent of the number of claims reported being in this area. A large block of real estate claims resulted from a failure to record documents. However, such claims have not caused an increase in severity of the damage

Program Report

claims in real property and the overall cost of these claims decreased from 2008.

Claims in the areas of civil litigation were also higher than 2008, with 15 per cent of claims being made in this area. However, claims costs were lower. Claims with respect to the areas of estate planning/wills and family law were consistent in number but decreased in terms of cost. In the area of commercial law, however, both the number of claims and the costs associated with them increased.

No one problem caused LIANS claims experience to rise in 2009. Missed limitations, including statutory limitation periods in other provinces where the cause of action occurred, continue to result in claims as do missed judgments on title searches. It is important to remember to search for all possible spellings of a name when searching judgments, and not to use the “exact spelling” option. Other causes, including the failure of office systems, unsupervised delegation, poor communication with clients or others, and general oversight resulted in claims in all areas of law.

In 2010, look for additional resources from LIANS, through the relaunched website and an electronic newsletter, “LIANSwers”. The Risk and Practice Management Program continues to provide valuable resources to our members through information and education. Deborah Gillis QC, the RPM Advisor, will continue to provide fraud alerts to members and is available to offer confidential assistance to help improve specific or general areas of practice management.

Nova Scotia Lawyers Assistance Program

This was another busy year for the Nova Scotia Lawyers Assistance Program. We had approximately 300 calls for assistance by the end of the year, which is an increase of 58 per cent from 2008. Blanche Keats fielded these calls, making referrals where necessary.

According to Blanche, the primary areas of concern for our members continued to include a wide variety of issues including marriage breakdown, family issues, adolescents, children, parental concerns, depression, grief counselling, anxiety, general stress, and alcohol and drug dependency. She also observed a notable spike in the number of calls pertaining to concerns regarding work-life balance and workplace conflicts.

Towards the end of 2009, the committee’s focus was on the future of the program. An RFP was issued seeking both an LAP advisor and a health and wellness initiative that would meet the increasing demand, as well as help us focus on the issues affecting members the most. This process extended into the beginning of 2010, when a decision was made to continue NSLAP under a new model in association with Human Solutions. While the earlier model had worked quite well for us in previous years, the committee was extremely impressed with the range and breadth of services that could be provided by Human Solutions. It is our sincere hope that in retaining the services of this company, NSLAP will help lawyers reach their full potential in ways that were not previously possible.

NSLAP continues to operate with its traditional philosophy of providing coverage for short-term counselling and offering complete confidentiality. As with the earlier model, NSLAP continues to provide a 24-hour



CHERYL CANNING
Acting Chair
NSLAP Committee

Cheryl Canning is Acting Chair of the Lawyers Assistance Program. She is a partner with Burchells LLP.

Program Report

hotline (1-866-299-1299) that conducts intake services and matches members' needs with traditional resources such as in-person psychological counselling. Members also now have further options in the form of e-learning courses, telephonic counselling and Plan Smart™ services, including elder and childcare, career planning, pre-retirement, health coaching, smoking cessation and nutritional and weight management. The online health management tools offered by Human Solutions allow members to take control of health and wellness with professional guidance at their own pace and on their own schedule. It is our hope that these resources will enhance our members' experience in using the program.

Human Solutions has offered to assist the committee in providing orientation and training for our peer volunteers. We have long been searching for ways to make better use of the peer volunteers who have been so eager to donate their time. We are hoping to make significant strides in this direction over the years to come, so we can continue our tradition of lawyers helping lawyers.

A working relationship with Human Solutions seemed like a natural fit for us. Human Solutions takes a preventive approach to health and wellness issues, which is a concept that was adopted by NSLAP during its focus on strategic direction for development in 2007. An association with Human Solutions brings with it research, professionals and resources that are needed to address the growing needs of the members but simply could not have been achieved with our previous model.

With change comes a need for understanding, patience and accommodation. We on the committee invite feedback from the members regarding their experiences with Human Solutions. If there are problems, we need input from members to help us work with our new provider

to fix them. Similarly, we are always happy to hear any success stories. We would also ask that all members ensure that their staff and family know about NSLAP and the services provided.

Finally, it is with bittersweet feelings that I take over the role of chair of the NSLAP Committee for the 2010-2011 Society year. While I am excited by the new challenge, I am sad to see Sean Foreman step down from the position, and to say goodbye to Blanche Keats as the LAP advisor. Sean and Blanche's longstanding involvement and tireless commitment to the program leave a strong legacy and solid foundation as we go forward. On behalf of all of the committee members, I want to offer a sincere thanks to both Sean and Blanche for everything they have each done for the program.

As the incoming chair, I am glad to be surrounded by a dedicated and hardworking group of committee members and to be provided with the diligent support of Melanie McGrath as our LIANS staff member. The work that we have done over the past year also could not have been achieved without the assistance of LIANS and NSBS administration. I look forward to the continued cooperation over the next year.

Respectfully submitted,
Cheryl Canning
Acting Chair, NSLAP Committee

Program Report



**DEBORAH
GILLIS QC**
Risk and Practice
Management
Advisor

Deborah Gillis
joined LIANS in
November 2005,
bringing with her,
26 years experience
in private practice.

Risk and Practice Management

A significant undertaking this year for the Risk and Practice Management Program and its Advisor was the Solo and Small Firm LIANS RPM Conference offered in Halifax in November.

In planning the first conference hosted by LIANS RPM, we opted to focus on solo and small firm practitioners, a group we believed would be eager to take advantage of risk and practice management sessions that were relevant to them.

Eighty-four legal professionals from solo and small firms from all regions of the province took time from their busy practices to attend the full-day conference. Thirty-eight per cent of the participants who attended were from outside Halifax Regional Municipality. Dates of call to the Bar for attendees ranged from 1958 to 2009.

The six sessions offered included seminars on the business of law, e-discovery, human resources and technology, as well as practical tips and ideas for improved client service, marketing, practice management and claims prevention. We featured 11 vendors whose products and services related directly to the successful functioning of solo and small firms.

The response from participants confirmed our assumptions that solo and small firm practitioners are committed to lifelong learning and eager to take advantage of risk and practice management offerings. This encourages us to continue to offer similar conferences for this group.

Succession Planning

Succession planning for lawyers continues to be an RPM focus. A comprehensive package of Succession Planning resources including articles, checklists, forms and sample precedents has been developed and continues to be updated by the RPM Advisor and distributed to lawyers requesting information on this topic.

The RPM Advisor co-presented at two succession planning sessions at the NSBS Annual Meeting in June. The first session was for solo and small firm practitioners. Follow-up sessions with solo and small firm practitioners continue. The second session was for larger firms, and was designed to help firms learn about meaningful succession plans that retain key people at all stages of their professional development and careers.

Presentations on succession planning were also made by the RPM Advisor to five County Bars this year.

Fraud

Lawyers continue to be the target of fraud. This results in huge losses in other jurisdictions and remains a concern to LIANS and our practising lawyers. The RPM Advisor continues to educate and alert lawyers on remaining vigilant to fraudulent schemes that are circulating. Lawyers are responding to these alerts and educational pieces. Lawyers regularly advise the RPM Advisor of suspicious inquiries for representation that they receive. This partnering of lawyers with the RPM Advisor allows the RPM Advisor to continue to keep our lawyers aware of the types of requests for legal services that others are receiving, thereby increasing the vigilance of all.

The RPM Advisor also co-presented at a Fraud session at the NSBS Annual Meeting in June, bringing fraud prevention education to our lawyers.

Program Report

Client ID Regulations

Our lawyers must comply with Client ID regulations enacted under the *Legal Profession Act* in November 2008. The RPM Advisor continues to respond to lawyers' inquiries about the implementation of these regulations into their office processes and systems. The Advisor also provides educational sessions on the regulations for lawyers.

LRA Audit Regulations

LRA audit regulations were approved by Council in April 2009. Enforcement of the regulations began September 15, 2009. These regulations set out requirements regarding foundation documents that must be maintained by real estate practitioners and/or firms. The RPM Advisor developed and circulated to law firms and real estate practitioners a Practice Advisory/Memo regarding the obligations created by these regulations.

Professional Standards Committee (Real Estate)

The RPM Advisor is coordinating the development of Real Estate precedents and "how to's" in collaboration with other Professional Standards Committee members. It is anticipated that these precedents and other real estate resources will be added to those already posted to the LIANS website so that lawyers will be able to easily access all relevant real estate resources from one site.

Other Activity

During the past year the Risk and Practice Management Advisor continued to present at the Bar Admission Skills Course, and presented at CBA-sponsored educational sessions on Independent Legal Advice and Client ID Regulations. Our risk and practice management messages continue to be delivered "in-house" to new associates of individual law firms. One-on-one practice advice is

also offered to our lawyers. The RPM Advisor contributes regularly to the *Society Record* and to *InForum*.

Outside Involvement of the RPM Advisor

During this year the RPM Advisor served as an editorial board member and issue editor (August 2009) for *Law Practice Today*, an American Bar Association webzine. This webzine, found at www.lawpracticetoday.com, is distributed to more than 25,000 people, including members of the ABA Law Practice Management section. In January and July, the RPM Advisor was a contributing author to the webzine and provided articles on file management and fraud.

We are pleased that our lawyers are increasingly accessing the RPM program and its risk management, claims prevention and practice management resources. In 2010, we are committed to continuing to provide them with top quality resources and tools.

Summary of Financial Highlights

Notes to the Summary of Financial Highlights

LIANS' financial position remained stable at the end of 2009.

Once again this year, surplus was distributed to insured members through a subsidy to the levy charged for the mandatory insurance policy.

During 2009, LIANS received a return of surplus subscribers' equity from CLIA of \$127,000. This return of subscribers' equity is in accordance with the rules of the reciprocal and reflects the non-profit nature of CLIA.

Total claims and expenses this year decreased by \$15,000 to \$1,297,000 in 2009, from \$1,312,000 in 2008.

The reserve at the year end was \$8,579,000. This represents an increase of \$115,000 from the 2008 year-end reserve of \$8,464,000.

Summary of financial highlights

Statement of financial position as at December 31, 2009

	2009	2008
Cash	\$ 43	\$ 979
Accounts receivable	18	32
Recoverable unpaid claims and expenses	177	-
Levy receivable	397	347
Prepays	311	273
Investments	14,554	13,390
Fixed assets	16	16
	\$ 15,516	\$ 15,037
Accounts payable and accrued liabilities	\$ 184	\$ 98
Unearned levy	688	621
Provision for levy deficiency	597	333
Provision for unpaid claims and expenses	5,468	5,521
Professional liability insurance reserve	8,579	8,464
	\$ 15,516	\$ 15,037

Statement of revenue, expenditure and reserve for the period ended December 31, 2009

	2009	2008
Revenue	\$ 2,692	\$ 1,294
Insurance premiums	(578)	(533)
Net revenue	2,114	761
Claims and expenses		
Payments	1,263	1,110
Group deductible limit overpayment	-	6
	1,263	1,116
Increase in provisions for unpaid claims and expenses	34	196
Total claims and expenses	1,297	1,312
Administration	829	814
Deficiency of revenue over expenditure before under-noted	(12)	(1,365)
Return of C.L.I.A. surplus subscriber's equity	127	590
Excess (deficiency) of revenue over expenditure	115	(775)
Reserve, beginning of year	8,464	9,239
Excess (deficiency) of revenue over expenditure	115	(775)
Reserve, end of year	\$ 8,579	\$ 8,464

2009 Board, Committees and Staff

BOARD OF DIRECTORS

W. Dale Dunlop *(Chair)*
John W. Traves QC *(Vice-Chair)*
Sandra B. MacPherson Duncan QC
Michael R. Brooker QC
Robert K. Dickson QC
Gail Rudderham Chernin QC
John Kulik QC
Nancy I. Murray QC
Cheryl Canning
Stephen D. Piggott
Darrel I. Pink
Michael K. Power QC
STAFF: Melanie McGrath

STAFF

Melanie McGrath, LL.B., M.BA.
Director
Christine Smith
Executive Assistant to the Director
Deborah E. Gillis QC
Risk & Practice Management Advisor
Patricia Neild, LL.B.
Claims Counsel
Gerri O'Shea, LL.B.
Claims Counsel
Cynthia Nield
Administrative Officer
Jennifer Curran
Secretary

COMMITTEES

Audit Committee

Stephen D. Piggott *(Chair)*
Nancy I. Murray QC
John Kulik QC
STAFF: Melanie McGrath

Claims Review Committee

Melanie McGrath *(Chair)*
Robert K. Dickson QC
Michael R. Brooker QC
W. Dale Dunlop
John W. Traves QC
Maurice G. McGillivray QC
Stephen Piggott
Cheryl Canning
John Kulik QC
STAFF: Gerri O'Shea
Patricia Neild

Investment Committee

John W. Traves QC *(Chair)*
W. Dale Dunlop
Gail Rudderham Chernin QC
Nancy I. Murray QC
Michael K. Power QC
STAFF: Melanie McGrath

Lawyers Assistance Program

Sean M. Foreman *(Chair)*
Cheryl Canning *(Acting Chair)*
Jennifer Glennie
Nancy G. Rideout
Craig R. Berryman
Terri A. Lipton
STAFF: Melanie McGrath



Lawyers' Insurance
Association of Nova Scotia

Save the date for Lawyers' Insurance Association of Nova Scotia

2010 SOLO AND SMALL FIRM CONFERENCE

November 29, 2010

Valuable education sessions and interactive exhibits

Registration coming soon. Keep your eye on www.lians.ca for details.



WHAT IS LAP?

Who

Available to members of Nova Scotia's legal profession, their staff and families

What

Through our provider, Human Solutions, short-term counselling and other resources are available for managing personal, family and life events as well as helping you take charge of your health and well-being.

Where

Anywhere in Nova Scotia

When

24 hours a day

How

1 866 299 1299 - Completely confidential

Log on to our website to access online wellness resources. Remember that your company name is LAP.



Helping lawyers reach their full potential.
Call in confidence. Anytime.

1 866 299 1299

1 866 398 9505 (en français) | 1 888 384 1152 (TTY)

www.nslap.ca



