



LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

STRATEGIC PLAN, CLAIM PROCESS AND CYBER COVERAGE AND RISKS

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Subjects

1. LIANS Strategic Plan
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3. Some File Handling Tips
4. Cyber Coverage and Risks



STRATEGIC PLAN

Mission Statement, Vision Statement and Strategic Directions

LIANS' Mission Statement

The Lawyers' Insurance Association of Nova Scotia (LIANS) as established by the *Legal Profession Act* conducts the mandatory professional liability insurance program for the benefit of the Members that includes providing risk and practice management (RPM) resources and administering the Society's Lawyer Assistance Program (LAP).

Vision

To be recognized by the Members and similar insurance programs in Canada for the superior quality and management of its professional liability and RPM programs and to continually meet its goals and objectives.

Strategic Directions

To achieve its vision, LIANS is guided by four strategic directions:

- Maintain financial stability and strength
- Oversee the Lawyers Assistance Program and assist Legal Services Support through RPM initiatives
- Ensure member satisfaction with LIANS, both organizationally and with its claim handling
- Develop appropriate governance policies, procedures and controls



CLAIM PROCESS

When it comes to claims:

- Who can report a claim (or who will we accept notice from)?
- When should a claim (or potential claim) be reported?
- What do you have to report?
- How do you report a claim?
- Why is all this important?

Who can report a claim?

- Technically, and preferably, notice should come from the Insured at risk or their firm
- On occasion it will be provided by the claimant or another lawyer. Sometimes we will accept their notice, other times we will advise them to contact the Insured
- If provided by a party other than the Insured and we accept their notice, we will advise the Insured forthwith
- If the person is self represented we will advise that we represent the lawyer
- Either way, the Insured will be directed to complete the Claim Report (our notice of claim form)

When should a claim (or potential claim) be reported?

- Section 4.3(a) of the insurance policy states:

*An **Insured** shall, as soon as practicable after learning of a **Claim** or becoming aware of circumstances that might constitute an **Occurrence** or give rise to a **Claim**, however unmeritorious, give written notice to the **Insurer** at the local address for service shown in the Declarations. This is a condition precedent to the **Insurer's** liability for the **Claim** or **Occurrence** under this Part A.*

What must be included with the notice?

- Section 4.3(b) of the insurance policy states:

*After notification, the **Insured** shall submit promptly to the **person(s)** designated by the **Insurer** all information reasonably required by the **Insurer** that the **Insured** is reasonably capable of providing. In addition, the **Insured** shall immediately forward to the **person(s)** designated by the **Insurer** any demand, notice, summons or other process received by the **Insured** in connection with the **Claim or Occurrence**.*

- The Claim Report includes a detailed narrative of the claim and other information we need such as that required for coding.

What are the potential ramifications of late or incomplete notice?

- Section 4.3 (c) of the insurance policy states:

*If the **Insured** fails or refuses to give notice in accordance with paragraphs (a) and (b) of this Condition 4.3, **LIANS** may, at its sole discretion, assume the **Insured's** responsibility for provision of notice and information. Coverage with respect to any **Claim** reported in the first instance by **LIANS** shall apply to protect the **Insured** only to the extent that the position of the **Insurer** or **LIANS** has not been prejudiced by the **Insured's** failure to give notice.*

- Exclusion 3.12 states:

*The insurance coverage given by this Part A does not apply to a **Claim** arising out of or from...a **Claim** of which proper notice has not been given in accordance with paragraphs (a) and (b) of Condition 4.3*

How do I report a Claim?

- Easiest method – go to our website to complete and submit a Claim Report
- You can also call or e-mail us to discuss the matter but if the matter is a claim, the Claim Report will have to be completed

Initial considerations on receipt of notice

- Coverage
- Can the issue be repaired?
- Should defence counsel be retained?

Coverage - Confirmation and Denials

- There is a difference between denying a claim to a claimant and denying coverage to an Insured. The former is a denial of liability and is more common than the latter. This slide is about the latter.
- An early consideration in all new claims is whether the Insured is entitled to coverage for the matter. Despite this being an initial step, coverage denials are rare.
- Issues addressed when considering coverage include:
 - 1) Was the Insured a practising Insured when the error occurred or an “Insured” pursuant to a definition in Part A, Section I of the policy when the claim is reported?
 - 2) If the answer to (1) is yes, does the claim arise from the rendering of “professional services” as defined in the policy?
 - 3) If the answer to (2) is yes, do the circumstances of the claim invoke an exclusion or breach a policy condition?

Coverage Counsel

- When the circumstances surrounding the reporting of a claim (e.g. late reporting) or the allegations being advanced (e.g. fraud, lawyer acting as a corporate director) put an Insured's coverage in issue, we may retain outside counsel to review the issue and provide us with an opinion on whether the claim is within or outside coverage. Coverage counsel take instruction from, consult with, and provide advice to, LIANS
- If Coverage Counsel cannot make a clear coverage determination they may recommend that LIANS extend coverage subject to a reservation of rights or Non-Waiver Agreement
- If coverage is extended under a reservation of rights or non-waiver, Coverage Counsel's retainer may continue throughout the claim until sufficient facts are established to permit a clear determination.
- As Coverage Counsel is retained for LIANS' benefit, the retainer is at LIANS' expense and does not erode the policy limits or trigger the deductible

Repairs

- We or external counsel can complete remedial or repair work to avoid a claim or mitigate damages
- In this context, external counsel are considered “repair counsel” though retained as Defence Counsel.
- In appropriate circumstances and with our consent, the Insured may be permitted to carry out remedial or repair work.
- Repair costs will trigger the deductible if they exceed \$1,000.
- But to do a repair, prompt notice is crucial

Defence Counsel

- Defence counsel is not appointed in every case as LIANS handles most files internally
- Consideration of the following factors will determine whether defence council is appointed:
 - Has a claim been made or is the Claim Report notice of a potential claim only?
 - Can the issues or allegations raised be handled internally by Claims Counsel?
 - What is the potential quantum of the claim? If the exposure is considerable, Defence Counsel may be retained even if the notice is of a potential claim only.
 - Is there a potential for remedial work to be undertaken to minimize the loss and if the Insured is doing this work, do they need assistance?
 - Does the Insured require expert or specialized legal advice now?
 - Does a Statement of Defence or affidavit have to be filed?
- Defence costs erode policy limits but do not trigger the deductible.

What if the Insured is unavailable?

- An Insured who is the subject of a claim may be deceased, retired, in receivership, non-practicing or disbarred
- If the Insured cannot be contacted or located, the claim will, of necessity, be handled without their input or information
- Other members of their firm (if they practiced in a firm) or a person who may have taken over their practice or files may have relevant information and will be contacted when necessary

All of which brings us to...

- The handling of the claim, each of which is different and presents different issues
- Some of the issues we see that impact claim handling, for better or for worse, include:
 - Represented v. unrepresented claimants
 - Reasonable v. unreasonable expectations
 - Claims that are based on financial loss v. those that are not
 - Well documented v. not well documented files
 - Insureds who are responsive and cooperative v. those who are not

Why is all this important?

- What all this should demonstrate is that insurance claim handling is process driven – from the time notice of a claim is provided through resolution
- Throughout the process we ask and answer a series of questions and strategize
- Though we take a consistent approach, our processes also allow for variation as we recognize that each claim has unique issues that may require different approaches
- For example, some claims lend themselves to proactive handling, others more reactive

Surcharges and Deductibles

- The individual deductible and surcharge only apply to damage payments, not defence costs
- From May 1, 2000 through September 1, 2018, LIANS replaced the individual deductible with a levy surcharge. Surcharges first levied in 2019 resulting from claims paid in 2018 will run through 2023.
- The individual deductible of \$5,000 was reinstated for claims paid after September 1, 2018.



SOME FILE HANDLING TIPS

- If the client advises that they intend to tell you things on a 'need to know' basis don't hesitate to tell them you can't take the retainer. The fact that someone else would doesn't make this any better.
- Always document your file, especially if operating under a limited or qualified retainer
- Always confirm instructions
- Treat ILA files seriously. Do them well or not at all and charge an appropriate fee.
- Your client is not the lawyer, you are
- Don't be afraid to call a friend or us for advice if an unfamiliar issue comes up – they often do
- Don't forget the value of common sense and fairness
- If taking a legal aid certificate, assess the file and if you think more time will be needed then what has been provided, go back to legal aid and ask for it
- Don't assume that the laws and rules in another jurisdiction are the same as here. They rarely are.
- Don't wait until the last minute to do something

And for property transactions in particular:

- Check / double check documents, adjustments and disbursement prior to closing
- If purchasing, if funds were provided by cheque, make sure, to the best you can, that they have cleared
- Include in your retainer a consent clause of what is required to be filed at the land registration office to complete the transaction. For example, “We authorize LAWFIRM to file any documents with the Land Registration office that, in the opinion of our lawyer LAWYER are required to complete this transaction on our behalf, including any amendments or rectifications that may be necessary or appropriate prior to or after the closing date of the transaction”. If nothing else this could help in a claim where the solution is a repair.



CYBER COVERAGE AND RISKS

2020 – 2021 Cyber Renewal Coverage

1) Security and Privacy Liability

- SECURITY LIABILITY covers damages and claims expenses associated with lawsuits alleging the unauthorized access to, degradation of, or disruption to the insured's network, failure to prevent transmission of malicious code or viruses, and use of the insured's network to perform a denial of service attack (DDOS).
- PRIVACY LIABILITY covers damages and claims expenses associated with lawsuits alleging the unauthorized collection, disclosure, use, access, destruction, or modification of personal protected Information.

2020 – 2021 Cyber Renewal Coverage

2) Data Recovery and Loss of Business Income

- DATA RECOVERY covers cost to restore the network and data to the point it was at before the event occurred.
- LOSS OF BUSINESS INCOME covers loss of income as a result of a breach on the insured's computer systems. This loss of income can be caused by decreased productivity, inability to deliver products or services, or inability to access data.

2020 – 2021 Cyber Renewal Coverage

3) Event Management Expenses

- BREACH COACH SERVICES covers the costs of a breach coach to provide advice in responding to and assisting you in responding to a security or privacy breach, including determining your legal obligations to provide notice of a security breach, privacy breach or breach of privacy regulations.
- NOTIFICATION COSTS covers costs associated with letting all those affected by the breach (including individuals, entities, and regulators) know that it has occurred, regardless of whether this notification is required by regulators or voluntary. This would include costs such as: mailing campaigns, credit monitoring, and call centres to handle questions.

2020 – 2021 Cyber Renewal Coverage

3) Event Management Expenses (cont'd)

- FORENSIC INVESTIGATIVE COSTS covers costs associated with hiring a professional third party to determine where, when, and how the breach occurred; also, to ensure that no future problems occur as a result of that particular system issue.
- CRISIS MANAGEMENT COSTS covers costs incurred in hiring a professional public relations team to help prevent reputational harm to your business.

2020 – 2021 Cyber Renewal Coverage

4) Data Extortion

- DATA EXTORTION covers ransom costs when there is a demand for compensation to stop a cyber attack, such as ransomware.

5) Bricking

- BRICKING covers costs to replace computer and network hardware rendered useless after a cyber related event.

2020 – 2021 Cyber Renewal Coverage

Good data, computer and network hygiene is critical for any business and the following minimum standards are necessary for coverage to respond:

1. Weekly backups of data, stored offsite, and tested at least annually.
2. Installation of critical patches, anti-virus software, and anti-spyware must be made within two weeks of release.
3. Installation and maintenance, and active monitoring within reasonable business practices, of firewalls and endpoint protection.

Factors Currently Influencing the Cyberthreat Landscape*

1. COVID-19 has opened the door to opportunistic threats including social engineering opportunities
2. Cyberthreat actors are targeting systems (e.g. Microsoft Exchange, Outlook) and their vulnerabilities
3. Creative abuse of readily available tools complicates detection of cyber attacks
4. New ransomware business models – steal data, demand ransom and notify media that you have the data
5. Consequences of connectivity – using unpatched and untested systems, not updating software, accessing office systems with old home computers

And there is always social engineering and other old-style frauds

- Not a cyber risk per se as receiving and acting on an email is akin to receiving and acting on a letter or voice message as opposed to a cyber issue which is when someone accesses or does something that affects your systems
- But the information the person uses may have come from a hack of someone else's system
- Social engineering frauds are becoming more common as email and other online processes make them easier to carry out
- And with modern printers it is easy to create a document that looks like a legitimate cheque
- There is no substitute for diligence and asking questions if something seems odd

Q3 Cyber Risk Stats*

- The number of records disclosed so far this year – 36 billion – is twice that of records disclosed in all of 2019
- Hacks – being unauthorized access to networks, systems and services – account for 64% of all breaches
- But sensitive information available online due to publishing errors, programming flaws or database misconfiguration is the breach responsible for exposing the most records – 95%
- Meaning hacking is generally not for the purpose of releasing information. Rather it is to obtain information such as passwords, the use of which facilitates future social engineering fraud (e.g.)
- With the prevalence of hacking, it follows that most breaches – 77.5% - originate from outside the organization
- Of the 17% of breaches known to originate from within the organization, 67% are from errors such as misconfigured databases
- The most exposed data are names and access credentials (e.g. e-mail and passwords)



THANK YOU.
QUESTIONS?

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