

This newsletter includes information to help lawyers reduce the likelihood of being sued for malpractice. The material presented is not intended to establish, report, or create the standard of care for lawyers. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate legal research.



HOW DO YOU DO A JUDGMENT SEARCH IN THE LRA WORLD?

Remember the days of wandering the stacks at the Registry of Deeds, pulling dusty tomes, unrolling plans and running your finger through the grantor / grantee lists? At the end of your search, you then rushed to the judgment roll, hoping to get there in advance of other searchers so you didn't have to wait in line to search for names similar to your client. The days of running to the Registry for a last-minute search are gone. Now, with the click of a button, both your search when you open the file and subsearch at the time of closing, can be done in the comfort of your office. The judgment search is as easy as typing in your client's name and waiting for the report to print ... or is it?

The *Land Registration Act* specifies that a judgment is a charge as effectually and to the same extent as a recorded mortgage upon the interest of the judgment debtor in the amount of the judgment [s. 66(1)]. The *Act* also specifies that a judgment does not affect a person's interest in any parcel if the person's name is **materially different** from that of the judgment debtor [s. 66(8)]. The question then becomes, "What is meant by materially different and how should you conduct your search to capture all applicable names?" Thankfully, the legislation does give us some guidance in this regard through s. 66A.

So what does that all mean? It means you need to search for judgments the way you always used to, and you shouldn't just search for the exact name. In this regard, you likely do **not** want to use the "exact name" search function when you do your judgment search. You want to check for commonly used variations of the name. Doing an exact name search will mean that for a judgment debtor named Dorothy Jane Smith, you will miss names that are **not** materially different, such as:

Dorothy Smith	Dot Smith
D Smith	D J Smith
D Jane Smith	Jane Smith
J Smith	

You will also want to include "Dorrothy" in your search results. In addition, you should ask your client about variations of their surname – perhaps Dorothy Jane Smith was, until recently, Dorothy Jane Taylor-Smith, which opens up a whole new set of names to search.

You may also wish to turn off the "Grantor/Grantee Index" and "General Powers of Attorney" buttons, especially with names like "Alexander MacDonald."

Printing the list, to allow you to go through the names manually on paper, permits the opportunity for extra careful scrutiny – always a good idea.

If you miss a name in the judgment search that is not materially different, you could open yourself to a claim. Although we are now in the LRA world, judgment searches continue the same as they always did. Be thorough to protect yourself and your client! Additional materials on effective judgment searches as well as a "Material Differences" flow chart can be found at www.lians.ca/realestate.

TECHNOLOGY TRENDS

FREE PUBLIC DOMAIN BOOKS FROM GOOGLE

Sony, in partnership with Google, now offers you access to over a million public domain books for free. You can search, browse and read books preserved by the world's great libraries on your Sony Reader™.

- Step one** Download Reader™ Library software (req.)
- Step two** Register an account by launching the Reader™ Library software and click on 'Register' at the top. Follow the instructions to 'Create an Account.' Just sign in if you're already a registered user.
- Step three** Search for a book by entering your search term, then click "Search Books."
- Step four** Read on the PC or transfer to your Reader™ on the detail page for the title, just click 'Download.' Connect your Reader™ and transfer the book from the library's directory. Happy reading!

VOICE DIALING

Your Blackberry makes compliance with hands-free calling laws incredibly simple and convenient. Voice dialing is an invaluable feature to maintain safety and ease of dialing while on the road. Begin by pressing the 'Voice Dial' button on the left side of your BlackBerry, and wait for the 'Say a command' prompt. When you hear the beep, say 'Call...' and the name

If you want to get notice of all of the new and exciting things happening on the LIANS website, follow us on Twitter at LIANS_2010 and we'll post up-to-the-minute ways that **LIANS.ca** can help to enhance your career and enrich your practice.

or number that you are calling. Add the word 'work', 'home', 'mobile', etc. to the name, and you can further specify how to reach a contact - eg "Call Jane Smith Mobile"

Say the words "Check battery", "Check signal strength", and "Check phone number", and the 'Voice Dial' function will allow you to monitor the status and data of several features.

Go ahead and have fun exploring the numerous personal options available to you with voice dialing - go to 'Device Options' then 'Voice Dialing', and ensure that you're getting the most out of your Blackberry service.

FIRST TIME HOME BUYERS AND HST CHANGES

HIGHLIGHTS ON THE CHANGES TO THE FIRST-TIME HOME BUYERS HST REBATE PROGRAM EFFECTIVE APRIL 7, 2010

This is a provincial rebate program for first-time home buyers of a portion of the HST on the purchase price or construction cost of a new home (primary residence). The program has been administered by the Canada Revenue Agency but, as of July 1, 2010, will be administered by Service Nova Scotia and Municipal Relations. The program itself remains very similar. Eligibility and the rebate allowable remain the same, however for agreements entered after April 6, the rebate is no longer assignable to the builder and must be applied for by the homeowner directly. This means, in practical effect, that the rebate will no longer be available to be used by buyers on closing. Service Nova Scotia and Municipal Relations will not be processing applications until July 1, 2010. Homeowners have 24 months from the closing to apply for their rebate.

In reviewing agreements entered into after April 6, 2010, there may be some clarification required if the agreement does not reflect the new provisions. REAL ESTATE LAWYERS ARE WELL ADVISED TO REVIEW ALL NEW CONSTRUCTION AGREEMENTS AS SOON AS POSSIBLE WITH CLIENTS TO ENSURE THEY REFLECT THE NEW REQUIREMENTS AND THAT ALL PARTIES TO THE AGREEMENT ARE *AD IDEM*. The buyers may be counting on the credit on closing to meet their financial obligations and the sooner the new rules are understood by all, the better.

For more information, including applications and program details, please visit www.gov.ns.ca/snsmr.

SOME HIGHLIGHTS ON THE NOVA SCOTIA HST INCREASE FROM 13%-15% EFFECTIVE JULY 1, 2010

Effective July 1, 2010, the HST in Nova Scotia will increase from a rate of 13% to a rate of 15%. Transition rules are

required to determine which rate applies for those transactions that straddle the implementa-

tion date. REAL ESTATE LAWYERS ARE WELL ADVISED TO BE FAMILIAR WITH THE TRANSITION RULES AS THEY RELATE TO REAL ESTATE TRANSACTIONS FOR NEW CONSTRUCTION.

Some points of interest to note:

- There are builder disclosure requirements to the buyer for agreements entered into after April 6 about whether the purchase price includes HST at the old rate or the new rate. If there is no disclosure, and the new rate applies to the transaction, the builder is required to remit 15%;
- The information provided to date indicates that the new rate applies if ownership and possession are transferred to a buyer on or after July 1, 2010. What is not stated in the information provided April 7 is whether there is any impact if both do not occur on or after July 1, 2010;
- Agreements entered into prior to April 7 are grandfathered (no longer grandfathered), even though the closing will take place after July 1, 2010.

For more information, please visit www.gov.ns.ca/finance or call CRA's technical GST/HST inquiries line at 1-800-959-8296.

VOLUNTARY EXCESS PROFESSIONAL LIABILITY INSURANCE

Excess insurance provides another layer of security should your defence and indemnity costs exceed the primary mandatory limits. As the value of client matters and transactions increases over time, so too does the need to secure adequate levels of errors and omissions insurance. One large claim could quite quickly erode the primary policy, leaving you or your firm exposed to significant personal liability.

The CLIA Voluntary Excess Program (VEP) has been protecting subscribing firms in the Nova Scotia legal community for over 20 years, and continues to be the leading provider of excess errors and omissions insurance in the province. CLIA offers members an option to purchase excess insurance up to an additional \$9 million in excess of the primary policy coverage of \$1 million. Should a member or firm require additional coverage, alternate insurance markets are available. For limits in excess of \$9 million, please contact your local commercial broker.

This program is proud to be a not-for-profit plan designed by lawyers for lawyers, with stable coverage and rates during both "soft" and "hard" market conditions.

Firm-wide coverage includes partners, employed lawyers, professional corporations and service/management companies, as well as former partners and employed lawyers for services rendered prior to retirement.

Matters you should consider in assessing the adequacy of existing insurance limits for you or your firm:

- the type of transaction and its potential impact on the client;
- the size of the transaction and the frequency of large transactions;
- regarding past employees and partners, the possibility that their present insurance is either inadequate or excludes their past activities;
- the time horizon of the advice, as the impact of the advice may continue to grow over time as may the potential liability; and
- your risk tolerance

PREMIUMS

Premiums vary with the amount of excess coverage purchased. A member can choose the level of excess insurance based on the potential risk exposure.

The total premium is based on the total number of lawyers in a firm. If a member is a partner or associate in a firm and the member requires excess insurance, the excess policy must be purchased for the firm as a whole.

Discounts may be provided to subscribing members in the form of premium credits. Firms that have been with the program for a number of years may be eligible to receive additional credits based on the length of their participation in the excess program.

Discounts and credits for renewals are communicated to each firm in their renewal application, while new applicants receive their credits as a percentage towards their premium calculation.

VEP rates for July 1, 2010 – July 1, 2011 are below. Please keep in mind, there may be further reductions if claims experience at June 30, 2010 allows for a distribution of existing profit sharing coming out of prior years. These reductions, if available, will be applied against these rates:

LIMITS	PREMIUM RATES
\$1M above mandatory limit of \$1M	\$381
\$2M above mandatory limit of \$1M	\$560
\$3M above mandatory limit of \$1M	\$654
\$4M above mandatory limit of \$1M	\$693
\$9M above mandatory limit of \$1M	\$971

RETIRED LAWYERS

It is important to note that lawyers who have retired from practice continue to be responsible for work performed prior to retirement. Now available is the option for retired lawyers to purchase excess coverage on an individual basis, to address any unforeseen circumstances that may develop after retirement, provided they are retiring as a current member of CLIA's VEP, either as a sole practitioner or as a member of a firm.

CLAIMS-MADE POLICY

Excess insurance policies are generally claims-made, which means that it is not when the work was done that triggers coverage but when the claim was known to the insured and reported to the insurer that triggers the policy. If you have stopped carrying excess insurance at the time the claim is made, the excess policy will not respond.

APPLICATIONS/RENEWALS

Although new business applications can be accepted at any time, the **deadline for renewals is June 15.**

To apply for excess insurance offered by CLIA, download the 2010-2011 Volunteer Excess Insurance Application, or the 2010-2011 Renewal Application Form for Excess Insurance.

For more information on the CLIA VEP program and/or excess coverage for retired lawyers, please contact us at the Lawyers' Insurance Association of Nova Scotia, and visit www.clia.ca.

LAWYERS ASSISTANCE PROGRAM (LAP)

Effective March 19, 2010 Human Solutions became the Nova Scotia Lawyers Assistance Program (LAP) provider for health, wellness and counselling services to members.

The program provides counselling and resources for managing personal, family and life events and issues that may be impacting you, your family or staff, as well as resources to help you take charge of your health and well-being.

Access to a variety of online health and wellness services are available through the LAP website at www.nslap.ca. Please note that **LAP** is your "company" name when you register.

When you call the LAP number at **1-866-299-1299**, your call will be answered any time, day or night, 365 days per

NEW LIANS WEBSITE COMING SOON

LIANS staff are working diligently on a re-design of our website that should be ready to launch later this summer. Watch for our new and improved site and then give us your feedback at info@lians.ca - we'd love to hear from you.

Loss Prevention eBytes is a loss prevention tool developed by the Canadian Lawyers Insurance Association to provide time strapped lawyers with quick links to online information and tools that can help reduce the risk of legal malpractice claims. Subscriptions are free and are available through the CLIA website at www.clia.ca.

year by professional intake counsellors (both official languages are available). You will have to tell them you are calling for the Lawyers

Assistance Program (or LAP). In an emergency, face-to-face consultation can be arranged within hours. Instant support is available by telephone, and internet resources are continually updated. As always, the program is completely confidential.

Here is just one example of the type of health and wellness program offered through Human Solutions:

12 WEEKS TO WELLNESS

12 Weeks to Wellness is a comprehensive self-directed program that provides people with up to three hours of life coaching, nutritional counselling, a health risk assessment and personal training—all taking place over a 12-week period. The program is for people who know they need to make changes in order to feel better but don't know where to begin. It is also for anyone who needs help with a specific area such as weight loss.

WHEN SHOULD YOU REPORT A CLAIM TO LIANS?

As soon as practicable! There is no downside to reporting a claim to LIANS. Our claims counsel are experienced in assisting members through the claims process and will be able to provide you with guidance on completing the claim form, copying your file and walking you through the claim process. We want to hear from you as soon as you learn of a claim or become aware of circumstances that might give rise to a claim, even if you think the claim has no merit. For more details on the process or to find a claim form, please visit our website at www.lians.ca.

ARE YOU ON A BOARD OF DIRECTORS? (PART I)

Your training and expertise as a lawyer and your good judgment are skills that organizations want in a director. Law firms often encourage their lawyers to sit on client corporate boards. Because your liability as a director could possibly extend to liability for the firm, you and your firm should understand the legal obligations and risks involved, decide whether you both

want to assume these risks and plan on how these risks might be offset by liability insurance.

INSURANCE COVERAGE

As a lawyer practising in Nova Scotia, your

professional errors and omissions policy will not cover you if you are sued in your capacity as a director. Coverage under this policy is only for professional errors and omissions that occur when rendering professional services to others.

The Policy defines "professional services" as:

- services normally provided or supervised by a lawyer within the scope of a usual lawyer-client relationship;
- services rendered in alternative dispute resolution as an arbitrator or a mediator or in equivalent role; and
- incidental services that are substantially related to services described in paragraph (a), but do not include Ancillary Activities.

The Policy also states that the insurance coverage does not apply to a claim arising out of an insured's acting in the capacity of director or officer of any enterprise other than LIANS or the Nova Scotia Barristers' Society (clause 3.9).

D&O INSURANCE COVERAGE

Before agreeing to act as a director, you should determine if directors' and officers' (D&O) insurance coverage is maintained by the organization and if there is any litigation pending. If D&O coverage is maintained, ask about the scope, limits, exclusions and reporting requirements of the policy. Get and keep a copy of the policy if you join the board. If coverage is not maintained, think carefully before joining the board.

Getting your own D&O coverage is also something you might consider. The Canadian Bar Insurance Association (CBIA) offers coverage designed to sit above the company's primary directors' and officers' liability insurance policy and a corporations' indemnification, if any. The local CBIA representative is John Bardsley. Contact him at 902-468-4676 or j.bardsley@barinsurance.com.

IF YOU DO GIVE LEGAL ADVICE TO THE BOARD

During your tenure as a director, an issue for which your legal expertise is well known may arise, and you may be asked to provide legal advice to the board. When doing so, be clear that you are giving advice as a lawyer (if that is the case), so as to avoid insurance coverage issues.