

The Engagement Habit during a pandemic

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Introduction

- Doing practice management basics on every client file, every time will prevent claims.
- How do you implement good practice management processes and procedures in the changing COVID-19 environment.
- How to apply the LPLC Engagement habit to avoid claims.

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The five underlying causes of claims:

1. Engagement and managing the retainer
2. Getting the law wrong
3. Poor communication
4. No or inadequate systems
5. Insufficient records

Add cyber to the list.

What is changing in the legal practice environment

Recession

- Business failure:
 - allegations of failure or warn to advise
 - review of transactions.
- Clients enter high-risk transactions.
- An increase in fraud and dishonesty.



Expect your work to be subject to scrutiny.

Changes resulting from COVID-19

Remote working arrangements:

- Requires access to all office systems, precedents, document management, client records and technology.
- Supervision.
- Discussion with colleagues.
- Review work and client files to check quality and standards.



New legislation and procedures

- New legislation and regulations.
- New practice directions and procedures.

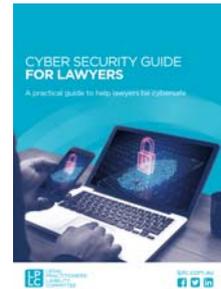


If you take instructions you are expected to **know the law** and **procedure**.

Cyber risk

Fraudsters see disruption as an opportunity:

- Increased fraud activity.
- LPLC **free** online cyber course for insured firms.
- LPLC **Cyber Risk Guide** – Five steps to implement.



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SECURE YOUR TECHNOLOGY

WHY This is the way in for fraudsters. You don't leave the door to your office or your house open or unlocked when you are not there, and you should not leave your computers and other technology, which are linked to the internet, unsecured and easily accessible by any cyber-criminals.

More information

Law Institute Victoria (LIV):
 Cyber security essentials for law firms
 StaySmartOnline website:
 Protect your assets
 Do things safely
 Australian Cyber Security Centre:
 guides
 publications



ESTABLISH POLICIES AND PROCEDURES

WHY Written policies clarify what should happen and how people need to act. It gives you the opportunity to consider the risks and put in place strategies to prevent problems before they happen. Written policies and procedures about cyber risk issues provide clarity on how and what every staff member is expected to do to minimise the risk of a cyber incident.

More information

StaySmartOnline website:
 Protect your assets page
 Law Council Cyber Precedent website:
 - Your firm's data
 - Developing a cyber security strategy document
 - Cyber security essentials
 - Privacy principles and cyber security



CREATE A CULTURE OF CYBER RISK AWARENESS

WHY Many cyber incidents, particularly business email compromise, occur because someone clicked on a link that allowed the cyber-criminal into the firm's computer system. Cyber-criminals use sophisticated social engineering to entice people to click. It is easy to operate at a fast pace and not stop to think about possible cyber risks in routine work. Developing a culture in the office of healthy scepticism and a 'pause before you act' approach for anything internet related is important to avoid getting caught out. Don't become a casualty of a casual attitude.

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WARN CLIENTS ABOUT CYBER RISKS

WHY Clients are equally susceptible to receiving fake emails from cyber criminals and being duped into paying money into the wrong bank account.



HAVE AN INCIDENT RESPONSE PLAN FOR PROMPT ACTION

WHY Cyber-attacks or incidents are now an inevitable reality for everyone, even law practices, as more cyber-criminals see law firms as a soft and lucrative target. It is important to **ACT QUICKLY** to limit any potential damage if you discover you have sent money to a fraudster's bank account or your computer system has been compromised resulting in data breaches and/or your system locked. Having a plan will make taking action faster and easier, reduce some of the stress and may well be an essential prerequisite for making a claim against any cyber insurance policy the firm has.

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Work volume

- Reduced work volume and cashflow.
- Delay or restrictions on processing work.

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Summary of changes

- Recession exposes all legal work to scrutiny.
- Sudden change to remote working.
- New legislation, regulations, practice and procedure.
- Increased cyber risk.
- Reduced volume of work and restrictions by courts and others.

Uncertainty and anxiety for firms, practitioners and clients.

What hasn't changed



- You still have a **duty of care** to every client in every matter.



- You **must** complete your work at the required standard and keep records of what you have done to avoid claims.

The Engagement Habit

- The Engagement Habit:

Right client
Right matter
Right time

- A considered decision confirmed in writing.

Engagement Decision Tool



Can be downloaded from the LPLC website

Right Client

Identify the client:

- Call out who you act for and close off other non clients.
- Is this the right client for you?
- Be alert to red flags and why a client is not the right fit.

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Right Client

Be alert to:

- Previous practitioners, complaints and unpaid accounts.
- Urgency and no time to get full details.
- Family or relationships that compromise your independent role.
- Communication difficulty.

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Right Client

- A client that tells you what the law is and how to do it.
- A client that won't accept advice.
- Incomplete instructions- only part of the story.
- Have **unrealistic expectations** as to cost, service and outcome.
- Is money in trust the answer?

Client assessment

Will the COVID-19 environment make it harder to assess the client risk?

- Meeting in person.
- Video conferencing.
- Email instructions.

Video - A family affair.



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The Work

Claims come when practitioners take work outside usual areas of practice:

- Dabbling – knowledge, precedents, experience.
- What do the courts expect?
- Define and write down your areas of practice.
- Focus on your defined areas and develop support.
- COVID-19 has changed the law and practice - are you up to date?

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COVID risk: 'I need the work'

- Work outside your defined areas is **high risk**.
- Occasional work is rarely profitable.
- If something goes wrong, it will be costly (financially and personally).
- Poor work, even if no claim, damages your reputation.
- In a recession there is a high risk of scrutiny.

Identify all relevant issues

Claims arise when you don't identify a relevant issue:

- Identify issues so the client can make an informed choice.

- Allocate time to get details, prepare, use checklists and prompts.

- COVID risk: is there a temptation to cut corners?

Scope and define the work

Every engagement creates a contract with the client:

- Raise relevant issues and record your instructions in writing.
- Exclude non legal work like commercial and valuation advice.
- Every retainer should have a start and end- dormant files sit on risk.

Little v Price, 2005 1Qd R 275

Is it the right time to take this work

Even if it's the right client and right work it may not be the right time for you and your team:

- COVID-19 risk - can you do the same volume of work?
- Problems arise when volume exceeds capacity.

'I was too busy' is **no excuse** and not a defense.

Confidence to say 'no'

Saying 'no' is basic risk management:

- Relationships can make it hard to say no.
- Remember your role as an independent advisor.
- Step back and think before you say 'yes'.
- Discuss with a colleague or mentor.

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Action



Write down three things that you can implement to improve your client engagement.

Don't waste your time - **implement something.**



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Key take outs

- In changing and unusual times, don't lose sight of the basics for good legal practice.
- Expect that in a recession your work will be subject to greater scrutiny- now is not the time to cut corners.
- Develop your engagement habit and think:

Right client

Right matter

Right time

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Resources

- LPLC Cyber Risk Guide
- Bulletin, 'Video conferencing in the COVID-19 era'
- Bulletin, 'Witnessing wills by audio visual link under COVID-19 Omnibus - what lawyers need to know'
- Cyber risk course to insured practitioners
- Contact LPLC with any questions: lawyersrisk@lplc.com.au

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