

LPLC Risk Management Workshop Overviews

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The New Normal

An act of negligence that triggers a claim or allegation does not occur in isolation. Things happen in the lead-up and aftermath and in the wider context of the client relationship and legal services market. There are often several missed opportunities to have prevented the act of negligence or prevented an allegation escalating into a claim.

The New Normal explores client relationship and retainer management as well as the importance of comprehensive documentation of all aspects of the matter in the context of a long-time and demanding commercial client. It is about preventing professional negligence claims by increasing awareness of basic risk factors and warning signs. It is also about paying attention to trends in contemporary legal practice that could impact directly or indirectly on professional liability.

Issues raised

- Changes in legal practice, especially since the global financial crisis
- Client relationship – commercially savvy client
- Retainer management:
 - Limited retainer
 - Changing matter
- Communication issues:
 - Dealing with commercially savvy or sophisticated business people
- Delegation and supervision
- Records management

DVD synopsis

A law practice has a long-standing commercial client so the likelihood of being sued for negligence is the last thing on anyone's mind. But the warning signs are there in the client's changing needs and expectations of the firm, and in a commercial leasing transaction that ends up heading for litigation. In hindsight the risk factors are obvious so why did the lawyers miss them? What could they have done differently to have prevented or reduced the risk of a claim?

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play the DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

Swimming with Sharks – avoid becoming bait for difficult clients

A large part of LPLC's claims cost can be attributed to poor retainer management, ineffective communication or a mixture of both, leading to misunderstandings and clients' expectations not being met. This workshop uses a DVD entitled *Swimming with Sharks* to explore issues relating to retainer/client management and communication in the context of a property transaction that ends up going wrong. It can be run as a one hour session or extended with further discussion to cover in more depth the issues set out below.

Issues raised

- Client selection – pushy/bossy and commercially savvy client
- Matter selection – taking over part of the way through a matter
- Retainer management:
 - Limited retainer
 - Scope of work – commercial versus legal work
 - Multiple advisors
- Communication issues:
 - Dealing with commercially savvy or sophisticated business people
 - Accepting information or assumptions made by clients

DVD synopsis

An experienced property developer retains a new solicitor to take over aspects of a multi-million dollar property development. The site has conditional planning approval. The limited retainer grows, with catastrophic consequences arising from a misunderstanding about the terms of an environmental audit.

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play the DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

Litigation a la Carte – A menu of client and matter selection

This workshop uses a DVD entitled *Litigation a la Carte* to explore issues relating to client selection, retainer and client management in the context of a small businessman with an urgent litigation matter. It can be run as a one hour session or extended with further discussion to cover in more depth the issues set out below.

Issues raised

- Client selection – emotional, unstable bossy client
- Matter selection – taking an urgent matter over part way through
- Matter management of a limited retainer
- Client management:
 - client doing some work himself (or with friend's help)
 - client changing settlement instructions on numerous occasions
- Inadequate documentation:
 - file notes
 - letters of engagement
 - detail in account

DVD synopsis

A new restaurateur client is taken on with a partnership dispute already partly litigated. The client referral comes from his de facto partner, who is already a client of the firm. The archetypal difficult client changes his instructions and when the outcome does not meet his expectations, he refuses to pay his bills.

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play the DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

Managing a retainer with The Three Musketeers – What can go wrong and why

This workshop uses a DVD entitled *The Three Musketeers* to explore issues relating to retainer management and communication in the context of a joint venture lending arrangement. It can be run as a one hour session or extended with further discussion to cover in more depth the issues set out below.

Issues raised

- Client selection:
 - acting for friends and family
 - client due diligence – how much do you need to know about a client?
- Who is the client – acting in a joint venture
- Scope of work – commercial versus legal work
- Conflicts of interest

The communication issues raised by this workshop are:

- Dealing with commercially savvy or sophisticated business people
- Accepting information or assumptions made by clients
- Channels of communication for taking instructions

DVD synopsis

A lawyer is approached by three private lenders to document a short term, high-risk loan to a public company for the purpose of funding a joint venture. All is not as it appears. However, the lawyer gains a false sense of complacency about the clients because of lawyer/friend/existing client connections. As a result, he fails to spot conflict and manages the matter too informally. Despite expressing reservations about various aspects of the deal, the lawyer is railroaded into acting on an urgent basis. The lawyer does not document his retainer or his advice sufficiently to protect himself from allegations of negligence when the high-risk loan becomes unstuck.

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play the DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

Mind the Gap – Multiple clients and lawyers can mean double trouble

This workshop uses a DVD entitled *Mind the Gap* to explore issues relating to acting for partnerships or joint ventures and managing a limited retainer in the context of a complex commercial matter that ends up in litigation. It can be run as a one hour session or extended with further discussion to cover in more depth the issues set out below.

Issues raised

- Acting for partnerships/ joint venturers – clarifying who the clients are
- Managing the limited retainer:
 - Understanding the limit of the retainer
 - Documenting the retainer
 - Retainer creep
- Multiple lawyers acting in the firm but no one person taking ultimate control

DVD synopsis

This scenario covers strategic commercial advice that straddles commercial and litigation practices within a firm.

The firm is given a high level strategic overview role by a 'Top 20' corporate client. The subject matter is strategic advice on options in a licensing agreement by joint venture parties. The in-house counsel who is providing instructions is an ex Senior Associate of the firm. The dynamics between the relationship partner and his junior lawyer and with the client underscore poor communications about the scope of this sophisticated limited retainer.

Take 2 offers a more cautionary approach to managing a limited retainer with a valued client.

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play the DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

Fore! Choosing clients and avoiding bunkers

This workshop uses a DVD entitled *Fore!* to explore issues relating to client selection and management in the context of a small businessman with contractual problems who end up in litigation. It can be run as a one hour session or extended with further discussion to cover in more depth the issues set out below.

Issues raised

- Client selection
- Managing the clients' expectations throughout the life of the matter, particularly in relation to costs
- Assessing the clients' needs – commercial reality of what they could achieve
- Differentiating between the needs of two partners in a partnership:
 - Who is the client?
 - Conflict?

DVD synopsis

A litigation partner is confronted with the numerous allegations brought by two unhappy partners in a golf coaching academy.

The complaints surround work the firm did for the partners in a contractual dispute with the golf range management. The partners alleged that there were oral terms, especially about exclusive coaching rights, that needed to be taken into account. The client's passion and naivety together with the firm's litigation strategy and failure to communicate turn out to be a disaster all around.

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play the DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

At the End of the Day – Risks come out late at night

This workshop uses a DVD entitled *At the End of the Day* to explore issues relating to client management and external pressures in a late-night settlement scenario. The lessons learnt could equally apply to the late-night negotiations of a commercial contract. It can be run as a one hour session or extended with further discussion to cover in more depth the issues set out below.

Issues raised

- Managing pressures of mediation
- Senior people leaving before the matter resolved
- Risks of signing documents late at night
- Inadequate documentation - file notes

DVD synopsis

A long drawn out mediation is conducted with one client providing instructions by telephone from abroad and one party present. The two solicitors yield to the views of their respective barristers present. The conflicting agendas of mediator, barristers and the solicitors result in a mediation agreement being drawn up and signed late into the night. A 'subject to tax advice clause' is missed resulting in an outcome against one client's interests. The younger solicitor's reservations about the tax implications of the newly proposed settlement go unheeded.

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play the DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

Managing quality is managing risk – Why supervision is important

This workshop explores the reasons why supervision is important on many fronts, including: reducing risk, the misconceptions about supervision and what constitutes effective supervision. It uses court decisions, claims examples, overseas experience and short DVD scenarios.

The seminar is suitable for both senior and junior practitioners, and support staff (although not suitable for audiences solely comprising support staff). The DVD, *Super Vision*, explores delegation and supervision in a law firm from the perspective of supervisor and person supervised. It could be run as separate sessions for senior and junior lawyers for tailored discussion from supervisor or employee perspective or it would work equally well run as a joint session. It can be run as a one hour session or extended with further discussion to cover in more depth the issues set out below.

Issues raised

- Professional obligations
- Managing staff

DVD synopsis

The DVD scenarios look at common perceptions practitioners of various levels have in relation to supervisions. It then provides a dramatisation of a recent case where a practitioner was left unsupervised and the consequences for the firm. There is also an exploration of the value of good feedback.

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play the DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

A Stitch in Time – Managing risk with effective communication

This workshop explores:

- the ways lawyers communicate with their clients;
- the factors that affect that communication; and
- how lawyers can improve it with the aim of reducing the risk of a claim; but also
- making life easier and less stressful.

We will look at underlying causes for claims, why communicating is so hard and what lawyers do wrong. We will see a DVD, entitled *A Stitch in Time*, which shows how ineffective communication can be disastrous. We will then look at how we can improve our communication skills.

The seminar is suitable for both senior and junior practitioners. It can be run as a one hour session or extended with further discussion to cover in more depth the issues set out below.

Issues raised

- Communication skills

DVD synopsis

The DVD starts as a commercial scenario in which the client, a clothing manufacturer, has won a major customer and goes to the lawyer for advice on the contract. Before long the client is in dispute with her customer and the lawyers launch into litigation, promising the client that the action has good prospects of success. Months down the track, the barrister warns that the client may lose and have to pay the other side's costs. The client is surprised and upset. How could this happen? Someone must be to blame. Is the client angry enough to sue the lawyers? Will the lawyers have to pay or will they get out of this by good management or good luck?

It is clear in the DVD that the lawyers' communication failings have, in large part, contributed to the problems they face.

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play the DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

Introduction to risk management for graduates

This is a two-hour workshop aimed at graduate level lawyers. It discusses where claims occur, why they occur and the concept of risk management for lawyers. It then goes on to give three practical scenarios (based on real claims) in audio-visual form and asks the participants to discuss what went wrong and why as well as what could have been done differently.

Issues discussed

- Claims occur in nearly every area of practice, every size firm and most often partners make mistakes.
- We look at five underlying causes of claims.
- We talk about three contributing factors to claims.
- Risk Management is defined as recognising and responding to the real causes of claims in an organised way, with the aim of reducing the risk of a claim to the satisfaction of both client and practitioner, i.e. getting to 'Yes' safely.

DVD synopsis

Audio-visual scenarios:

- *The Free Lunch* – explores the issues of when is a retainer created, how to communicate with a client about what they want you to do, how to avoid the 'free legal advice' situations where nothing is documented.
- *Good Counsel* – explores the issues of communication within the legal team, how to speak up when you are concerned, what to do when the expert/barrister is not doing what they are supposed to, the importance of communication with the client and appropriate resolution strategies and more.
- *Business is Business* – explores the difficult client trying to impose a solution on a lawyer which the lawyer feels uncomfortable about. What strategies can you use to deal with that client or client representative, understanding who the client is and what your obligations are as a lawyer.

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play three DVDs.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

Risk is everyone's responsibility – Risk management for support staff

This is a one-hour workshop aimed at support staff, especially legal executives/paralegals/clerks and PA's/secretaries. It discusses how your insurance works, where claims occur, why they occur and the concept of risk management for support staff. It looks at the areas where claims involving support staff are most common. Some underlying causes are illustrated with a short DVD.

Issues discussed

- Claims occur in nearly every area of practice, every size firm and most often partners make mistakes.
- We look at five underlying causes of claims.
- We talk about three contributing factors to claims.
- We look at some themes of claims involving support staff, including:
 - being left in the deep end
 - not keeping a useable trail
 - poor systems and attention to detail
 - making assumptions about a matter.
- We discuss effective delegation and supervision and how this is crucial to managing risk. The discussion features a short DVD, *Out of Time*.

DVD synopsis

A client had 30 days from Tuesday 20 November (Thursday 20 December) to object to the Financial Ombudsman Service recommendation before it became final.

The draft objection was prepared by the firm and sent to the client the week before the deadline. The junior practitioner who was handling the matter seriously injured his ankle and did not come back into the office for several months.

The client said she rang the law firm and instructed them to lodge the objection. The matter was not actioned and slipped below the radar in the rush to the end of year break

Equipment and room arrangements

The workshop has a PowerPoint presentation that helps signpost where the session is going. It also requires a screen and equipment to play a DVD.

Ideally the room should be big enough to accommodate the participants sitting at tables of 6 to 8 people to facilitate group discussion.

Non-video workshops

Professional obligations in mediations and settlement negotiations

Using practical scenarios, this interactive workshop looks at the legal and ethical obligations of lawyers in mediations and other settlement negotiations. We will discuss client instructions and other aspects of the lawyer-client relationship in the context of these obligations.

This session can be broadened to include discussion on the increase in personal cost orders against practitioners since the introduction of the *Civil Procedure Act 2010* (Vic).

Section 32 statements done better

This session looks at conveyancing claims where practitioners get caught out with defective disclosure under the *Sale of Land Act 1962* (Vic).

Attendees will get to spot the mistakes in a defective section 32 statement to see how many errors they can find.

The session will conclude with risk management tips for preparing better section 32 statements and avoiding conveyancing claims.

Caveat practitioner

This session explores the different claims we see involving caveats and what practitioners can do to better manage dealing with caveats.

PEXA and electronic lodgment risks for practitioners

Client identification, fraud by clients and allegations of fraud against practitioners.

New capital gains tax withholding regime

The new CGT withholding regime, which commenced on 1 July, affects more than just foreign residents.

This seminar provides an overview and specific details of the impact on direct acquisitions of Australian land and indirect acquisitions. An example of an indirect interest is the purchase of shares in a company. The session will also include practical examples and exercises to highlight high risk areas.

VOI – why, when, how

Verifying the identity of your client is just as important as considering the issue of your client's capacity and verifying their authority to act. This workshop focuses on the practical process to identify clients face to face. It also guides practitioners through some trouble areas they may encounter and provides a checklist of the information a client needs to bring to a face to face interview.

Prior to attending this seminar it is recommended that practitioners familiarise themselves with the identification requirements in clause 6.5 and schedule 8 of the ARNECC Model Participation Rules.

Risk management and GST

In this session we consider some GST claims, cases and tips on avoiding a claim.

Personal Property Securities Act 2009 (Cth)

In this session we look at details of claims, cases and practitioner enquiries to the LPLC PPSA hotline.

Sue for costs receive a counterclaim

Practitioners sometimes get it wrong when it comes to sorting out costs issues with clients. It is also not uncommon when a practitioner sues a client for unpaid costs to receive a counterclaim alleging that the practitioner has been negligent. In this one-hour session we will look at examples of where practitioners get it wrong, causes of costs disputes and attitudes of practitioners who don't have costs disputes.

Risk management for family lawyers

This session looks at the recent trend in claims in the family law area and we look more closely at some claims and how to avoid making those same mistakes.

Solicitors certificates – sign off with certainty

This session looks at a common scenario for providing a solicitor's certificate in a mortgage scenario and then explores why clients don't hear what their lawyers told them and what to do about it.