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Supervision of new lawyers

Intro

Poor supervision is a contributing factor in many claims against law practices. Today on Risk On Air, Malcolm Heath, Practice Risk Manager with Lawcover, discusses how much of a difference it can make when supervision is done right.

Julian: Malcolm, welcome.

Malcolm: Thanks, Julian.

Julian: So we're talking about supervision today. Is that something that you notice as an area of need when you go out and visit law firms?

Malcolm: That's right, Julian. It's a key component of practice, quality supervision, but beyond that it comes to the culture of the practice and the leadership skills of the principals within the practice, before we can then look at supervision.

Julian: Has there been much judicial consideration of what's actually required to meet the minimum standards of supervision?

Malcolm: There seems to be quite a significant gap there and also in, I guess, effective guidelines. There's the rules, and the rules are quite clear about supervision and requirements.

Julian: Reasonable supervision, I think, is the phrase.

Malcolm: That's right. There's a great concept about what is reasonable. There are some principals who will think that the employee solicitor should have these skill sets, that they've been to university, that they're now qualified, so therefore they can do the work, and we know that in reality that's not so at all. There's the academic aspects of the degree, which is very important, but then there's the application of the legal concepts to the matters. It's the aspects of understanding the clients themselves and what their objectives are, understanding workflows, timeframes. So, it's very different to only the technical aspects of the work.

Julian: And I suppose there a significant fact is also going to be being conscious of the level of experience of the practitioner that you're dealing with, because obviously there's going to be a need for training and induction when people start, but adequate supervision is something that applies right up the chain.

Malcolm: Exactly right and sometimes the supervising principal or supervising solicitor has been promoted based on fees and revenue earned for the law practice, rather than the management skill sets of the solicitor as well.

And what is effective supervision? Is it purely looking at a file and correcting it and then passing it back to the employee solicitor, or is it the two-way interaction and discussions not only on the work matters but about other aspects of the workplace?

Julian: What do you think the root cause of poor supervision is?

Malcolm: A lack of training in supervision by the principals.

Julian: Supervisors need a bit of supervision by the sounds.

Malcolm: Supervision skills yeah, absolutely. And leadership skills. Good leaders will look at ongoing education, picking up from mentors, and that's one of the best ways to develop good skills is if you have a good mentor. Conversely, we've seen it where the employee solicitor has been in a practice where they've then, after the minimum two years they've qualified with an unrestricted practicing certificate, set up their own law firm and shortly after, run into problems where we see that come through as professional negligence claims. And visiting the practice and this is where we get such a great understanding of what's going on in the practice well or not so well. A simple question is to ask that principal how was your supervision with the firm that you start with? Too often I hear that it was poor, non-existent, I was left to my own devices. So there's clearly those hallmarks that give rise to potential claims.

Julian: And clearly a sense that there's a risk of perpetuating bad practices. And I suppose that comes back to that culture question that if you keep doing things the way that you were taught, that had some errors in it, and then that flows down to others, then you're increasing the risk to your practice.

Malcolm: That's so true, and what happens then is there tends to be a high turnover of staff, and that's a clear indication of problems and poor leadership. When there's a high turnover of employees in a short space of time, often we hear *look, it was the hopeless employee, they were making mistake after mistake*. That may be so, but that tends to be in the minority and actually more rare rather than *let's look at the quality of the leadership, quality of the induction*.

Julian: It's interesting that sense of saying *oh well, it was the problem with an employee*. And this might be a difficult area to go into but do you think, Malcolm, that there can be a reluctance amongst senior practitioners to recognise how supervision as a factor can actually be a cause of a claim, rather than just blaming it on the employee?

Malcolm: Yeah, great point. I think actually it's less of a reluctance than a lack of insight. It takes insight to understand that actually I need to improve my supervision, my leadership skills, and it takes a lot of confidence to actually recognise that. We do hear from some solicitors who have been involved in a claim where they have said I should have been supervising my employee closer, and to me that is great insight. I commend the solicitor for saying that, for being aware of shortcomings and where improvement may need to apply, rather than the blame factor and that's the classic cop-out of it was their fault, their mistake. They kept on making mistakes time after time, so I had to get rid of them.

- Julian:** So, as you said, not much clear judicial consideration of this concept of supervision within a legal practice, but it does pop up, particularly, I suppose, in disciplinary matters. Could you give us perhaps some examples of cases where poor supervision has been a factor and what you draw from some of those examples?
- Malcolm:** Yeah, there's the case in Victoria. A number of years ago now, Victorian Legal Services Commissioner v Ibidapo Olayemi.
- Julian:** So what was going on in that practice?
- Malcolm:** It was a new graduate solicitor working for a sole practitioner firm. It was the sole practitioner's first graduate employee. The employee was diligent, hardworking and was working on visa application matters and was very effective and fast, was given more work as a result and was given more work and more work until the point was where, through exhaustion, the graduate solicitor with a visa application matter clicked on the wrong category from a drop-down list on the website and the visa application was refused. What's the approach of the employee solicitor? In the right frame of mind, they would go to their supervisor and say look, I've made a mistake. However, in this example, the employee solicitor did a cover-up, fabricated a document, sent it out to the client purporting that the visa application had been approved.
- Julian:** And you can see there that we've started off with a perhaps understandable human error, a drop-down list, something relatively small.
- Malcolm:** Yeah.
- Julian:** But dealing with that has created a much more serious issue and clearly in this situation the responsible solicitor hadn't engaged or hadn't been able to engage in a way that could have perhaps ring-fenced that problem at the earlier stage.
- Malcolm:** That's exactly right. That employee wasn't in a really good mental state, and so you can get that panic, *"I've made a mistake. What should I do?"* And it was such an obvious cover-up. The client contacted the law firm querying the application approval and was then found out that the cover-up occurred and then it was off for a disciplinary matter. And so, it's quite a tragic outcome for a young graduate solicitor who was enthusiastic and working diligently, to the extent that during that hearing the partner said that they would have no hesitation reemploying the graduate solicitor, such was the quality of work.
- Julian:** That's fascinating, Malcolm. Could you give us another example of a case where supervision's been a significant factor?
- Malcolm:** Another case is in Queensland and it was the Legal Services Commissioner v Dingwall in 2017, and it involved quite an experienced solicitor of some seven years' experience working within a law firm. I think it was a four partner firm around that size and was typically taking over matters when solicitors went on leave or maternity leave and the workflow was increasing and increasing, as it can do. But it got to the stage where she'd fallen behind and actually lied to a client saying that the matter had progressed to a particular point when it hadn't. At that point, realising after that conversation what she'd said to the client, she went straight to her partner and confessed her mistake straight away, and that resulted in a disciplinary action made against the solicitor. But what transpired during the hearing was that there was poor supervision in the workplace, poor file reviews and lack of feedback as well, and there was no formal risk management plan in place.

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- Julian:** It's interesting thinking about the aspect there of dealing with solicitors who are on leave, because that can be a scenario where a file is sort of parked with someone, but they don't have a sense of ownership of it. Still, though, the principal solicitor has a supervision obligation at that point and probably needs to be aware of the increased risks in that scenario.
- Malcolm:** Yeah, the gaps that can occur when there is a solicitor who's left the firm or is on leave, and if it's not properly supervised, if there's not a proper transfer that takes place as well, it's very difficult for another solicitor to suddenly pick up the ball and run that matter, unless the file is in extremely good shape and there isn't the same connect with that matter or that client as well. So the priorities may lie with my own matters first and my colleagues' matters second or third or last, and so that's another area that needs to be addressed quite closely, and we see that also in remote working environments as well. If supervision is a problem face-to-face in the workplace, you can see how it can escalate when we're working remotely and how problems can arise there.
- Julian:** And I suppose, as workplace practices change with technology, but also with things like the pandemic, you've got to be aware of the different modes in which supervision might be required. Remote supervision, presumably, is a very tricky area, Malcolm, but one that's becoming more and more essential.
- Malcolm:** Well, that's right. They're flexible workplaces and we saw through the pandemic how rapidly we all had to move into remote workplace situations. But it does take a new approach to supervision, particularly, say, for new graduates and new staff members coming into the workforce. So we've seen some challenges there with claims and near misses with remote workplace practices.
- Julian:** So it's not just working from home. It can actually be between offices and having to supervise a solicitor who's in the workplace, but not the workplace that you're in.
- Malcolm:** Exactly right and that's where the principal must maintain close contact with that employee solicitor in that remote environment. And that can be very difficult for the principal and we've seen this where the principal's work pressures are such that they can't find the time or invest the time to maintain the contact with their employee. And then the oversights may happen where that employee has too much responsibility of a matter, making decisions without referring to the partner who hasn't got time to be involved, and that cascades into a claim.
- Julian:** In busy practices you can see how time is always going to be a factor. But the thing that protects is a good structure. Could you run us through what you think the structural elements of a practice need to be for a good supervision culture to be fostered?
- Malcolm:** Well, it's the culture that you first mentioned just then that needs to be looked at as to what type of workplace do we want, what is the culture of our practice? And that really does require and this is very important for the smaller practices to look at their practice's vision and develop their strategic plan for the practice. Because without the framework of where the practice is going, those objectives, the mission and what the practice's values are, it's likely that's hard to then build effective supervision without that framework.
- Julian:** So you've got to get the big picture right. A strategic plan, a business plan? What about the nuts and bolts of how you go about it on a day-to-day basis? Do you have to be particularly structured about it?

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Malcolm: It helps to be structured, particularly in, say, meetings. Many firms will have it in a more ad hoc style.

Julian: But do you also need a sort of substructure of formal meetings and regular check-ins that underlies that?

Malcolm: We think so. I think it's important that there's file reviews, formal file reviews, done. That's one aspect that, from visiting law firms, file reviews have dropped away as a result of the pandemic. In a way, there was such a focus on restructuring and dealing with remote workplaces that probably, out of priorities, the file review was the one that was put a little bit low down the list.

Julian: So time to get back to basics.

Malcolm: Yeah, and we'd like to see that come up to the top now and be quite a priority, because that's a great way to help identify, learn from the files, the quality of files, but also identify where there could be mistakes and address those promptly as well. And that's a very good, healthy culture if there's good file reviews and not just one of calling out mistakes and doing the blame sharing but encouraging people to raise hands if they've made a mistake, if there is a problem, to speak up openly about it without the blame.

And that can be quite challenging in practices where there's more of an adversarial culture. It can be quite challenging for the younger practitioner to have the confidence, without looking poorly against their peers, to say I think I've made a mistake. But it's a really healthy environment and where you can get the culture developing that is when the principal of the practice will talk about a mistake they've made, a complaint they've had or a claim and normalise it, because it's okay to make mistakes, we all do, we all will. To help normalise that mistakes do occur; there is support in place. There are claims solicitors at Lawcover who will support the solicitor going through sometimes the horrors of a claim. It can be particularly confronting and uncomfortable. But that cultural side is really good within the practice to build that up and normalise it. The good practice is the one that can identify the mistakes before they leave the practice and that's a simple way to define good risk management in terms of minimising claims prone situations.

Julian: And just having that communication and admitting that these sort of things will happen and so making it more possible to talk about when the inevitable does arise. Obviously, we've talked about solicitors at a range of different points of practice, but starting is going to be a critical time in terms of establishing those good practices and a good culture. Lawcover's now got the New Lawyer Accelerator Program. What is that, Malcolm, and how might it assist in developing a good supervision culture?

Malcolm: The New Lawyer Accelerator Program is a fantastic online educational program developed by a 35-year experienced solicitor, Susan Hill.

Julian: From the episode of Lone Wolf Thinking on Risk On Air.

Malcolm: Exactly right. And it helps provide new lawyers with a consistent training in coming into the workplace of a law firm. And it's designed also to assist the principals who are very busy, who often don't have time to focus on those fundamental details of an induction program.

Julian: And I suppose it means that, as you said, the busy practitioner can have the assurance that some of these basics are being covered and that's going to set the right culture for further supervision and implementation of what's learnt in the accelerator program.

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Malcolm: Yeah.

Julian: So how do you find out about the accelerator program, Malcolm?

Malcolm: You can go to Lawcover's website, it's the lawcover.com.au/new-lawyer-accelerator-program.

Julian: Well, it's been fascinating discussing supervision with you, Malcolm. One final thought for anyone out there who's thinking, oh gee, I've really got to get onto this. How am I going to change things in my practice to make sure the supervision culture is right?

Malcolm: Look at a timeframe for it. We can't change within a week. It is a process, but I'd be also looking for the right type of education, leadership skills education, talking with other solicitors, thinking of your mentors that you've had throughout your work career. It may not only be in a law firm could be outside of a law firm and draw upon their experiences and skill sets. And think about formalising what a program may be like for supervising employees.

Julian: Malcolm, thanks very much for joining us on Risk On Air.

Malcolm: Thanks, Julian.

Outro

Thanks for listening to Risk on Air by Lawcover. Join us for the next episode on current risks in legal practice to stay up to date.