

# RISK management QUARTERLY



**Volume 2**  
Issue 2 June 2006

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A quarterly publication of Professional Indemnity Insurance Committee, Malaysian Bar Council in collaboration with Jardine Lloyd Thompson Sdn Bhd (JLT Malaysia)

<http://www.jltecsolutions.com/barcouncil>

## Editorial

### Our Professional Indemnity Insurance – Is It Working?

The Bar Council through the PII Committee has been working to address the shortcomings and weaknesses in the Scheme which has been in place since 1992.

We have, with the changes made to the Scheme in the past two years, greater control and management of the Scheme. We now have access to all claim statistics and information previously unavailable to us.

The “No Claim Bonus” seemed a good idea when it was introduced in 2002. It was intended to punish the “wrong doer” and reward the “good” practices. However, its application in the Scheme has caused too much heartache and too heavy a financial burden on members who have notified the insurer of any impending claim.

Keep in mind that you may have an efficient and well managed practice but one mistake and you could end up as a “wrong doer” tomorrow!

After all, because we are fallible, we equip ourselves with the proper tools for our practice and that includes a PI policy that we can fall back on in times we have been negligent.

Although members suffering claims loading are a small minority, the basic principle of insurance as a tool of insuring your risk (the practice) is seriously compromised if a member facing an impending claim has to pay a “heavy” claims loading, with a real possibility that the member could be driven out of practice because of one negligent act. Every year, our information shows that at least 7 or 8 practices fold up because of the inability to cough up the high premiums imposed on them.

The Bar Council is concerned about the imbalance caused by the excessive loading and the need to have a workable and affordable scheme. These concerns have led the negotiations for the 2007 policy year to revamp the Scheme to remove the No Claim Bonus and also to have a more equitable and simple rating system for all members.

Member currently enjoying the NCB would have to pay 20 to 30% more in premiums and in return we would have in place a more equitable Scheme that would not “punish” a member by merely notifying a claim and more importantly a more equitable loading structure to be imposed only upon payment by the insurance.

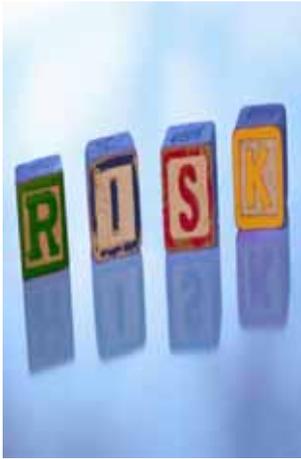
Any significant change and improvement in the Scheme has to be in tandem with an effective Risk Management System. Members must ensure that Risk Management Practices are in place in order to minimize risks in their practices.

*Ragunath Kesavan*  
Secretary  
Bar Council

## Managing Practice Risks

By Bizibody Technology Pte Ltd

Bizibody Technology is a specialist practice management and technology solution provider to the legal industry in Singapore and Malaysia. As consultants to the Law Society of Singapore in the PRIMELAW Standards and an Approved Training Provider for Practice Management under the Continuing Professional Development (“CPD”) Scheme, we conduct Practice Management Workshops and PRIMELAW Consulting for lawyers. You may contact Bizibody at 65 6236 2840 or email [info@bizibody.biz](mailto:info@bizibody.biz)



*In order to succeed, your desire for success should be greater than your fear of failure.*

**Bill Cosby**

In today’s business climate, no law practice can afford to neglect the active management of practice risk. Clients are more educated in their demands, less tolerant of poor service delivery and delays AND they are well aware that lawyers can be sued successfully. While we may adopt a phlegmatic view that as long as lawyers and their staff continue to be plagued by time pressures and human foibles, the threat of negligence claims is a given “constant” in legal practice – in fact, that is why we buy professional indemnity insurance!

However the lessons learnt from the demise of Andersen should not be ignored. A single well-publicised claim can have devastating effects in terms of “reputation collapse” and the actions of a single rogue department or individual can affect the survival of the whole enterprise.

While law practices may vary in their appetite for embracing risks, the issue at the core is for the management to decide which risks are acceptable and which are not, and not to slide into a risk situation through apathy or ignorance. In fact, the word “risk” has its roots in the latin “risicare” meaning “to dare”.

This article addresses the fundamental principle that risk management is a matter of **Making Choices** about the actions we take.

Risk management encompasses more than accounting for the costs associated with potential negligence claims. Risk Management is a keystone of good law practice management and embodies a formalised set of enterprise-wide standards, policies and procedures designed to minimise exposure to risk.

Effective risk management can be achieved by adopting these basic principles that apply to every commercial enterprise, not merely a law practice –

1. Identify areas of exposure to risk
2. Analyse the causes of specific risk situations as identified
3. Devise solutions that address specific risk situations as identified
4. Implement systems and procedures to manage your general risk exposure.
5. Monitor compliance by lawyers and staff; dealing with change management issues as they arise.

### Types of Risk

The first step in effective risk management is to identify areas of risk exposure. Your analysis will form the basis for formulating policies that actively manage all identified threats to the practice.

Most lawyers, when asked what they consider to be the greatest threats to their practice, limit their replies to missed deadlines and cash flow. If your risk management policy is restricted to avoiding negligence claims and meeting your overheads, then operational and financial risk is all that you need to address.

However, we would like to challenge you to take a much wider view of risk management that includes addressing situations which threaten the “commercial interest or reputation of the Practice”.

The types of risks that any law practice will face can be broadly categorised into the following –

**(a) Operational Risk** – this involves the management of internal business processes. Operational risk management includes processes to ensure that deadlines are kept, work output is monitored and quality standards in client care and service delivery are met. The other main area of focus under this broad categorisation is the threat to business continuation by terrorist activity or natural disaster. To address such risks, your strategies will include IT network redundancy, data backups, off-site storage and disaster recovery plans.

**(b) Quality Risk** – this addresses ignorance of the law and professional rules of conduct relating to terms of engagement, client confidentiality, conflict of interest rules, etc. The aim of managing quality risk is to ensure that your lawyers and staff are fully equipped to perform assigned tasks and their actions meet practice standards. Actions that address quality risks involve staff recruitment and training programmes, fee earner supervision and delegation; and engagement policies (in considering whether or not to accept a new engagement, you will need to consider the skills and experience of your team and the amount of resources available to deliver the service).

**(c) HR or Intellectual Risk** – this addresses succession planning, staff departures and partner defections. The aim of managing HR risk is to ensure that knowledge residing in the heads of key personnel AND the goodwill of your clients is retained by the practice when the key personnel leaves. Addressing staff redundancy requires dedicated efforts to promote an environment that fosters knowledge sharing, mentoring and collaboration within your practice.

Knowledge management strategies in law practices tend to focus on capturing and storing “legal” knowledge while overlooking process-specific knowledge. For example, if your IT administrator is the only person with a working knowledge of your practice’s IT systems and network passwords, his departure is likely to cause severe disruption and loss of efficiency; at least until his replacement is up to speed.



*The beginning of knowledge is the discovery of something we do not understand*

**Frank Herbert**

**(d) *Strategic or Business Risk*** – this addresses the effect of a reduction in engagements from a key client or from any given sector of the economy. While market forces may well be outside your control, its impact can be addressed to a large extent by understanding the level of exposure that the practice has in any given industry or practice area; and if necessary, allocating resources to penetrate new areas.

**(e) *Regulatory Risk*** – the environment in which law practices operate is becoming increasingly regulated. Apart from the professional rules of conduct by the Law Society, non-compliance with national and international directives on money laundering, data protection and records management will have a direct adverse impact on your practice.



*Never interrupt your enemy when he is making a mistake.*

**Napoleon Bonaparte**

### Identification of Risks

To make a sound assessment of the specific risk situations in your practice, you should be prepared to –

#### **1. Initiate Dialogue with Staff & Lawyers** (at all levels and every department)

Engage positively with your support staff in this process and you will receive constructive feedback on how things are being done and how they can be improved.

In your discussions with your partners, do not confine your questions to risks associated with delivery of legal service, but include discussions on business risks and marketing strategy.

#### **2. Study your Practice's Claims History**

This will give you an indication of the areas of weakness in risk management, especially if a pattern of claims shows that they emanate from a particular department or individual. If you are fortunate enough to have avoided being subject to any claims, then an alternative starting point is your Client Complaint / Client Feedback forms. You can learn not only from your mistakes but also from the “near misses”.

#### **3. Study Management Reports of the Practice**

Management Reports will show you how long any file has been opened, movement in your client account ledgers, amount of work in progress unbilled, which clients have not paid your bills. Use these to identify credit / cash flow risks.

#### **4. Undertake Random File Audits**

File Audits involves looking out for evidence of failure to meet the practice's quality standards, eg, inordinate delays, failure to keep client informed on developments, lack of supervision or monitoring, failure to comply with procedures in relation to key dates, giving of undertakings, safe custody of original documents...etc.

These examples are not exhaustive and any practice that is serious about the quality of their service will have devised their own checklist according to the standards they have set for themselves.

When you have completed this process of identifying areas of risk in your practice, you are likely to be faced with a daunting list of risk issues that need to be addressed.

There will be core risks that affect the practice as a whole (eg, Quality or HR risks). To varying degrees, depending on the specific department concerned, you will discover that each department has a different risk exposure. What may be a major risk in one department (such as time limits in bulk transactional work) may not be in another (in commercial practice, greater risk arise from poor communication between the lawyer and the client). Risks can be prioritised according to the likelihood of occurrence or to the consequence or impact if the event does occur.

The next stage is to decide on a course of action aimed at addressing the areas of risk you have identified.

### Management of Risk

An identification of the risks to which the practice is exposed is only half the battle. Your analysis must be followed up by action which is likely to involve imposing more rules, re-engineering current work processes and generally, exacting greater control over the day to day decisions made by support staff and lawyers.

Hopefully some of the more obvious risks will be addressed by existing functions within the practice. For example, the finance partner may have devised credit collection policies, or a more efficient way to issue interim bills for work done. In such cases there may be no need to allocate further resources except to monitor the effectiveness of the risk management activity.

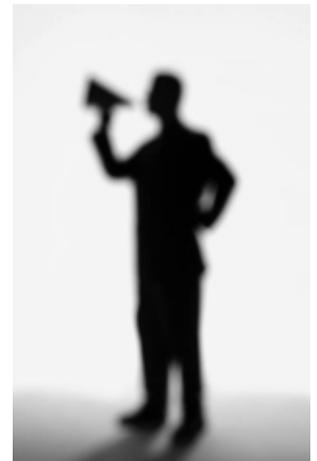
For the other areas not currently addressed, we suggest the following actions—

#### 1. Appoint a “Risk Manager”.

The Risk Manager will take on active responsibility for implementation of appropriate risk management processes and the ongoing monitoring of these processes. His role must be clearly defined and receive sufficient authority and support from the Management.

#### 2. Decide on the Risk Management goals or “standards” for the Practice.

Set up clear objectives and a time table for achieving them; including instituting a regular reporting mechanism to chart the progress of these initiatives. There must be consensus and commitment to these objectives at executive level by the managing heads of the practice.



*Never mistake motion for action.*

*Ernest Hemingway*

### 3. Record Risk Management Procedures and Policies in writing.

This can be your Office Manual, backed up and supplemented by departmental SOPs which may impose more detailed and rigorous procedures for specific work processes undertaken by the department. These manuals will serve as reference points and training guides for the induction of new staff to the Practice.

### 4. Enforce Risk Management Procedures.

This can be done through “remedial action” for persistent breach or flagrant non-observance. However, penalties may not always be effective in all cases. A softer approach involving closer supervision or additional training could be deployed instead.

### 5. Encourage a Culture of Ongoing and Open Communication.

This is the best way to instil ownership of programmes and personal responsibility in your staff and lawyers. Changing the way people work will not be achieved overnight. But you will face less resistance if you explained the reasons for the change and the objectives you wish to achieve.

### 6. Provide In-house Training

Use these training sessions to disseminate policies and process changes. This will ensure that the staff know what is expected of them.



*Words are, of course, the most powerful drug used by mankind.*

**Rudyard Kipling**

### Using PRIMELAW Standards as Risk Management Goals

The Risk Manager will need some guidance on the risk management goals for the Practice.

An effective and useful checklist is the PRIMELAW standards. PRIMELAW is the quality mark awarded by the Law Society of Singapore to law firms in recognition of their efforts and commitment towards achieving and maintaining excellence in practice management standards.

PRIMELAW sets out the objectives for sound risk management in the following areas –

1. Business Planning – to address structural and business risks.
2. General Management – to ensure that back office administrative functions (including HR and communication policies) are functioning optimally.
3. Financial Management – to address financial risks and to set the standards for effective management of budgets and cash flow.
4. Case Management – to address operational risk such as meeting deadlines, supervision of work output of staff and client care.

### Changing Attitudes

Adopting a prescriptive approach in a law practice where the lawyers enjoy a high level of autonomy, particularly in relation to the client-partner relationship, is not going to be easy as no one enjoys having their actions monitored or their discretion fettered.

Change management in any organisation is uphill enough, but take an organisation as large and unwieldy as a law practice managed by autonomous “fee-earners” and your task is monumental. Individuals will recognise the need for change when they are in a crisis. The greater challenge is to exact that very change before the crisis occurs and so avert it.

Risk management policies that are enforced solely by prescriptive rules may be seen as an administrative hassle; at worst, a diversion from fee earning activity that is unproductive and inefficient. We propose that you tie desired behavioural change to the practice’s stated Risk Management targets or Practice Standards; thereby making it a virtue to demonstrate these characteristics. This can go a long way to reinforcing key messages, and over time, creating a risk-aware culture within your practice.

An alternative to the prescriptive approach is to increase the individual’s ability to make the right decision in any given circumstance. What you hope to achieve is a “comfort” zone for risk taking so that potential consequences of failure arising from straying outside the zone becomes more severe than the potential satisfaction to be gained from its success.

Individuals are likely to make decisions about what risks they will take, conscious or otherwise, based on their past experiences or perceptions. By increasing their awareness of the consequences of failing to address specific risk situations, you will be able to influence their decision making process. You may discover that sharing “horror” stories and other cautionary “real life” experiences exert their influence far more persuasively than any number of prescriptive rules.

Your ultimate goal is to introduce a **Culture of Risk Awareness** within your practice. For this, visible and active support from the management is crucial as success can be fundamentally undermined if messages become confused or are not supported by the actions of the leaders. “Leadership by Example” is key to the success of any enterprise-wide change management initiative.

### Conclusion

There is no single turnkey solution for successful risk management in any enterprise, let alone the legal profession with all its diversities in practice areas and management styles. To implement an effective risk management programme, you must first address your current risk exposure by analysing the risk to which the practice is exposed. Following that analysis, you can then devise a methodology for changing the day to day decision-making processes of your lawyers and staff.



*Hope and fear cannot alter the seasons.*

**Chögyam Trungpa**

## EMBRACING TECHNOLOGY WITHOUT STUMBLING: EMAIL AND THE LAWYER

THE PROBLEM	CLAIMS PREVENTION
1. <b>Client Expectations Increase</b>	<b>1. Meeting Clients' Expectation</b> <ul style="list-style-type: none"> <li>◆ Always acknowledge receipt of the client's email. Give the client a realistic time frame within which you will reply in full.</li> <li>◆ Do not feel pressured to send a hasty yet incomplete reply.</li> <li>◆ If you are out of the office, ensure that the out of office assistant is switched on.</li> <li>◆ Remember to assign someone else within the firm to check your inbox at least twice a day in your absence.</li> <li>◆ Reply acknowledge receipt of the email to the client.</li> </ul>
2. <b>Prone To Hastiness</b>	<b>2. Formal Email Usage &amp; Procedures</b> <ul style="list-style-type: none"> <li>◆ Establish a written email policy that also addresses the firm's policy regarding storage, retrieval and deletion of emails.</li> </ul>
3. <b>Failure To Check &amp; Balance</b>	<b>3. Check &amp; Balance</b> <ul style="list-style-type: none"> <li>◆ Check and double-check the contents of the email you are about to send and to whom it is addressed.</li> <li>◆ Avoid typo errors - Always have your spell check turned on when sending emails.</li> <li>◆ Scroll down &amp; check the whole message to prevent the inadvertent release of confidential information.</li> </ul>
4. <b>Breach Of Confidentiality</b>	<b>4. Exercise Caution</b> <ul style="list-style-type: none"> <li>◆ Use extreme caution when sending matters via email and the Internet containing "secrets" which would be harmful to client, in the event of interception or if the intended recipient pool is large and could create secondary harmful situations.</li> </ul>
5. <b>Generation Gap</b>	<b>5. Induction For Seniors</b> <ul style="list-style-type: none"> <li>◆ Interestingly, 'e-errors' are far more prevalent among senior staff than junior staff. A technology 'induction course' for senior staff may be a valuable addition to the firms' risk management plan.</li> </ul>
<b>6. Others</b> <ul style="list-style-type: none"> <li>◆ Circulating inappropriate Internet content</li> <li>◆ Harassment claims arising from email 'joke'</li> <li>◆ Sending a virus to a client</li> </ul>	<b>6. Contingency Plan</b> <ul style="list-style-type: none"> <li>◆ Use Good Judgment - Email is a great communication tool, but it is not right for every occasion.</li> </ul>

# PII & RM DEPARTMENT 2006 CALENDAR

**January 2006**

- ✓ 19: Ethics Lecture: RM Session in Johor Bahru
- ✓ RMQ, December 2005

**February 2006**

- ✓ 15 & 16: Ethics Lecture: RM Session in KL
- ✓ 18: Ethics Lecture: RM Session in Penang
- ✓ 8: JLT/ PII Committee 3-Year Plan Workshop
- ✓ 13-15 & 27: Joint Claims Committee (JCC) Hearing 2

**March 2006**

- ✓ Audit of Open Claims Files: 2001 - 2005
- ✓ 6: JCC Hearing 2(a)
- ✓ 17: JCC Hearing 3

**April 2006**

- ✓ Audit of Open Claims Files: 2001 - 2005
- ✓ 13: Seminar: Risk Management for Practitioners
- ✓ RMQ, March 2006

**May 2006**

- ✓ Audit of Open Claims Files: 2001 - 2005
- ✓ 3 & 4: Ethics Lecture: RM Session in KL
- ✓ 19: PII Committee Meeting
- ✓ 30: JCC Hearing 4

**June 2006**

- 2: ISO 9001: 2000 Internal Audit for PII & RM Dept.
- 16 & 30: PII Committee Meeting
- 15: Ethics Lecture: RM Session in Johor Bahru
- 21 & 22: Ethics Lecture: RM Session in KL

\*\*Brochure: Everyday Risk Management for Lawyers

**July 2006**

- 14: PII Committee Meeting
- 26 & 27: Ethics Lecture: RM Session in KL
- RMQ, June 2006

\*\*Seminar

**August 2006**

- 4: PII Committee Meeting
- 23 & 24: Ethics Lecture: RM Session in KL

\*\*Seminar

**September 2006**

- 8: PII Committee Meeting
- 20 & 21: Ethics Lecture: RM Session in KL
- Annual PII/ RM Survey

\*\* Seminar

**October 2006**

- RMQ, September 2006
- 6: PII Committee Meeting

\*\*Calendar: A to Z of Risk Management

\*\* Seminar

**November 2006**

- 3: PII Committee Meeting
- 8 & 9: Ethics Lecture: RM Session in KL

\*\*Seminar

**December 2006**

- 1: PII Committee Meeting
- 13 & 14: Ethics Lecture: RM Session in KL

\*\*Brochure: Guide for New Practitioners

\*\* Seminar

\*\* Seminar: Risk Management for Practitioners (available upon request for legal firm's in-house training)  
 Subject to approval & confirmation

## 7 WAYS TO PROMOTE EFFECTIVE COMMUNICATION WITH YOUR CLIENT



*Give every man thy ear, but few thy voice - (1564 - 1616), 'Hamlet,' Act I, Scene iii*

[William Shakespeare](#)

- I. **Keep your client constantly advised** of the status of the case, analysis of the case, expected and incurred fees or expenses, and all clients' options.
- II. **Prior to client representation, obtain enough information about the matter so that you can identify potential conflicts of interest.**
- III. **Never promise more than you can deliver.** Listen to the prospective client! Determine whether he/she has reasonable expectations regarding the ultimate result and the time in which those results can be achieved.
- IV. **Confirm in writing**
  - the terms of the prospective solicitor/client relationship
  - declination of representation (if applicable)
  - all terms of settlement, offers and demands both with the client and opposing counsel.
  - the termination of services upon completion of a matter, including appropriate billing details (professional fees/expenses incurred).
- V. **Use a docket or calendar management system** to ensure timely compliance not only with filing requirements but also for client communication.
- VI. **Document, document, document.**
- VII. **Maintain a systematic approach to file organisation.** Use a filing system which permits the entire file to be made available on short notice, and store active files in the same consistent place.

## Practice Support Staff: Their Role in Risk Management

By Ronwyn North

**Risk Manager's Note:** Whilst this article provides examples of the Australian experience, universal similarities are abundant in practice management for the legal profession around the world. We hope that you will use such examples to better your practice and incorporate risk management efforts to include your practice support staff as well.

*Professional liability claims don't stem just from lawyers, writes Ronwyn North, and ignoring the actions of practice support staff when framing a risk management programme can be a very ill-conceived strategy*

When you think of 'practice support staff' and 'risk management', does your chain of thought run more along the lines of fraud controls, workers' compensation claims and other business interruption risks, or do you think more about poor client service, complaints and other professional liability risks?

If your firm's main focus is on practice support staff and business risks then you might like to give some more thought to professional liability issues and practice support staff.

Some firms don't seem to realise there is a small but significant group of professional liability claims that arise from 'negligent' acts or omissions by practice support staff – hence, the potential for negligence by practice support staff often receives inadequate attention in claims prevention programmes.

Any firm that characterises professional liability as a 'lawyer only' problem could be in for a nasty surprise and find itself vulnerable to claims involving practice support staff.

### Negligence claims involving practice support staff

When you take into account the heavy responsibilities and workloads of many practice support staff, it is probably remarkable that there are not more claims involving 'errors or omissions' by them.

While in some cases poor delegation or supervision by the lawyers may well be an additional factor, the kinds of claims and claims prone situations involving practice support staff, particularly secretarial staff, include giving legal advice and undertakings without authority, ignorance of the significance of deadlines and statutory time limits and a variety of procedural failures involving documents, files and communications. Following are some examples.

### Giving legal 'advice' and undertakings

Sometimes practice support staff overstep their role and provide advice or counsel that turns out to be wrong. This can happen if staff have a misplaced



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*The five steps in teaching an employee new skills are preparation, explanation, showing, observation and supervision.*

**Bruce Barton**

belief in their own ability or scope of authority, or if they are trying to be helpful or are under pressure from a client, especially if the lawyer is not available for long periods. Examples could include:

- advice to a purchaser that 'yes, it's OK to exchange contracts today without the pest report', when later the pest report shows the property is riddled with white ants;
- advice to more than one purchaser to buy as joint tenants when a tenancy in common is more appropriate;
- giving undertakings on settlement without lawyer/client instructions that are not capable of being performed by the firm or which the client then refuses to honour; or
- advice to family and friends based on what staff have heard the lawyers say to clients.



*The one great enemy of employee morale is boredom-monotonous, humdrum work.*

**James Cash Penney**

### Ignorance of the significance of deadlines

The difference between 'negotiable' and 'drop dead' deadlines is not always readily apparent to support staff, with the result that deadlines can pass without being brought to a lawyer's attention. Examples could include:

- telling a plaintiff that 'yes, it's OK to return the documents next week', when the documents need to be filed the next day;
- telling the mail room that 'if you are short staffed today then I guess it's OK if you file the documents tomorrow', when in fact today was the last day for filing; or
- giving low priority to 'unclaimed mail' so that a time limit passes before the internal reference is identified.

### Poor document management, admin failures and short cuts

Many little things can have big consequences when routines and controls are inadequate or practice support staff don't follow procedures.

Client interests can be damaged in a variety of ways from seemingly minor events such as:

- incorrect photocopying (for example, double sided originals copied single sided and annexed to contracts with pages missing);
- miscommunication (for example, a letter in the wrong envelope, faxes and emails sent to the wrong person);

- document processing errors (for example, typographical errors and inadequate version control);
- failure to request, follow up or check certain searches and inquiries;
- giving out confidential information to the other side;
- deciding there is no need to do a conflict check;
- forgetting to send out costs disclosure documentation; and
- poor file management (for example, not keeping copies, slow filing, lost paperwork and sloppy file archiving).

However, it is not only secretarial staff who can get the lawyers into trouble with clients, as can be seen by the following.

- Accounts staff have been known to expose a firm to liability by converting funds into the wrong currency.
- Marketing staff have been known to be overzealous in touting a firm's expertise and capabilities, exposing it to 'misleading and deceptive conduct' allegations.
- Technology staff have been known to prematurely delete email addresses and directories of people who have left the firm, resulting in incoming instructions going into cyberspace and depriving the firm of potentially important records.
- Knowledge management/library staff have been known to be slow in updating legal information, with the risk that lawyers use out of date material.



*An employee's motivation is a direct result of the sum of interactions with his or her manager.*

**Bob Nelson**

### **Preventing negligence by practice support staff**

Given that so many areas of practice support can expose a firm to professional liability risk, here are some questions you can ask yourself to check whether you are involving your practice support staff effectively in your claims prevention efforts.

### **Risk induction and orientation for new practice support staff**

Do you adequately induct staff who are new to the legal environment (for example, induction about special legal obligations and their impact on day to day practice such as fiduciary duties of loyalty/good faith, confidentiality, conflicts of interest, duties to the court, trust accounts, costs disclosure and so on, and how these translate into dealings with the client and office procedures)?

Do you adequately orient staff who have previously worked in a law firm to your

particular approach and work practices with regard to managing professional risk?

### Risk management communication about preventing negligence

Do you adequately inform and educate practice support staff about negligence traps that involve them, such as the risks mentioned earlier as well as new risk trends?

Do you adequately inform and educate the lawyers and practice managers about the risks of practice support staff negligence?

### Risk controls relating to practice support negligence

Do you have in place adequate controls to address potential practice support negligence (for example, documented policies and procedures, and quality assurance processes to make sure policies and procedures are being followed in relation to the risks mentioned earlier or risks you have identified as specific to your firm)?

Do you have in place adequate controls relating to lawyer behaviour that increase the potential for support staff negligence (for example, controls to deal with abrogation or poor delegation and lack of supervision)?

### Decision making about practice support resources

Are you adequately resourced with regard to practice support staff (for example, do you have adequate support staff numbers and skills)?

Do you consider professional liability risk in decisions about future practice support staff resources, training and so on (for example, do you properly balance commercial imperatives to contain or cut costs with maintaining 'safe' service levels and do you consult staff or is it purely a numbers game)?

### Healthy risk culture

Do you actively promote a healthy risk culture between practice support staff, lawyers and practice managers where the norms of behaviour include:

- inclusiveness, not 'them and us';
- compliance with policies and procedures, not wilful non-compliance or short cuts;
- 'confession' not 'cover up' of mistakes;
- solution orientation, not blame, when mistakes occur; and



*You can delegate authority, but you cannot delegate responsibility.*

**Byron Dorgan**

- openness and responsiveness to concerns and suggestions by practice support staff about risk issues, not dismissive or punitive behaviour if people speak out?

You can't tackle every risk at once, but by making yourself more aware of the potential for claims involving practice support staff and actively including them in your risk management agenda you can be more confident you are reducing your professional liability exposure.

Safe practice!

Ronwyn North is managing director of Streeton Consulting and can be contacted on [rjnorth@streetonconsulting.com.au](mailto:rjnorth@streetonconsulting.com.au). This article first appeared in Law Practice Management (Vol 3 No 1, October 2003). For further information on this title call LexisNexis customer relations on 1800 772 772.

21 November 2003

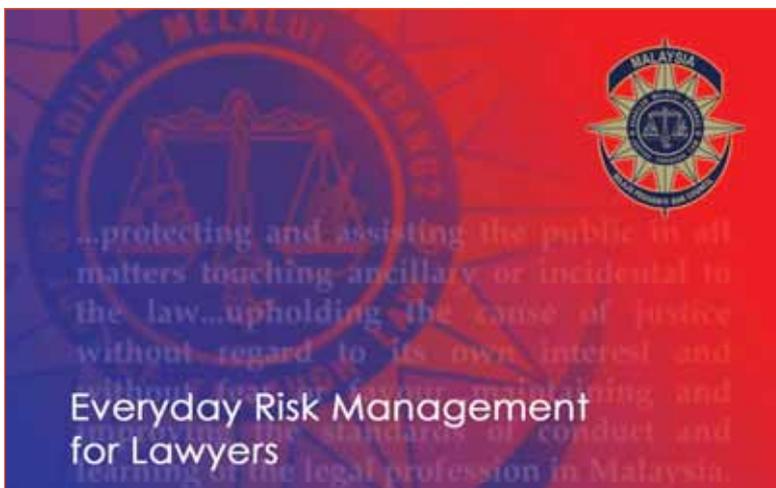
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## Next edition

- **Contingency Planning**
- **Dealing With Complaints**

## Coming soon

- **Brochure: Everyday Risk Management for Lawyers\*\***



\*\*Subject to approval & confirmation



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*Surround yourself with the best people you can find, delegate authority, and don't interfere as long as the policy you've decided upon is being carried out.*

[Ronald Reagan](#)



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### Disclaimer:

In compiling the information contained in this newsletter, the Malaysian Bar Council and JLT have used their best endeavours to ensure that the information is correct and current at the time of publication. We do not accept any responsibility for any error, omission or deficiency.

Material in the newsletter is intended to provide general information and should not be considered a substitute for the applicable PII Master Policy and Certificate of Insurance together with its Schedule. We strongly advise that you refer to the applicable Master Policy and Certificate for the full terms and conditions.

For more details and information, please contact JLT – Bar Council PII Department at 03 - 2723 3388.

### Footnote:

*We are always looking at ways to improve this newsletter and work towards ensuring that any areas of interest which concerns Risk Management will be highlighted in this newsletter. We therefore welcome hearing from you on matters relating to this newsletter and the PII Scheme.*



*Nature knows no pause in progress and development, and attaches her curse on all inaction.*

[Goethe](#)

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