law practice management newsletter

Volume 4 Number 4

Print Post Approved 255003/05838

Regulation and certification — an update

Greg Dwyer COLLEGE OF LAW

Information contained in this newsletter is current as at February 2005

contents

45
Regulation and certification — 2004 in retrospect and 2005 in prospect

47
Dear duncan ...
Dealing with partner issues in a growing practice — lateral hire or rent-a-wreck?

49
Fighting fraud in law firms — systems and culture

51
Letter from London:
Marry in haste, repent at leisure

54
Teaching client consciousness

57
Leave the office on time — just walk out

58
Recent publications

60
Calendar

Perhaps the main change on the horizon in 2005 will be the amendments to legal profession legislation and regulations in the various states in response to the National Legal Professional Model Bill (National Model Bill). Broadly, according to the Law Council of Australia Brief of May 2004, the intention of the Bill is to 'remove barriers to the practice of law across borders and harmonise standards of regulation'. Ultimately, the aim is single admission as an Australian lawyer.

In NSW the *Legal Profession Act 2004* (NSW Act) received assent on 21 December 2004. When it commences (on a date yet to be notified but expected to be July 2005), this new legislation will replace the *Legal Profession Act 1987*. While the NSW Act will provide for the regulation of legal practice in NSW, it will also facilitate the regulation of legal practice on a national basis in conjunction with the National Model Bill.

The NSW Attorney General, Bob Debus, has indicated that the NSW Act may be further amended prior to its commencement, after its terms have been fully considered.

In Queensland the relevant legislation is the *Legal Profession Act 2004* (QLD Act) and the Queensland Law Society journal *Proctor* published a summary of the anticipated main provisions in the June edition and ran a series of articles on the implications of the new regime from July to November 2004.[2]

In Victoria the relevant legislation is the *Legal Profession Act 2004* (Vic Act) which was passed by Parliament in December 2004.

In WA the relevant legislation is the *Legal Practice Act 2003* (WA Act). All of these acts contain, for example, provisions for incorporated practice, which is referred to separately below.

South Australia is still operating under the *Legal Practitioners Act 1981* and is due to introduct a new Act once the National Model Bill is enacted.

Incorporated practice

NSW started the ball rolling in July 2001 by allowing solicitors to operate as an incorporated practice with at least one solicitor director, which could also be a multi-disciplinary practice. The solicitor director had to ensure that the practice operated under 'an appropriate management system' (undefined by the legislation) to ensure that what might be a hybrid non-traditional practice would abide by the usual professional responsibilities of traditional law firms.

One of the changes under the NSW Act is that the current provision that failure to have an appropriate management system amounts to professional misconduct (s 43E LPA 1987) is watered down to 'is capable of being professional misconduct (s 140). The more onerous provision was not welcomed by the regulators because of its inflexibility.

Take up was initially slow, with around 120 practices incorporated when the Legal Services Commissioner, who has the task of auditing them, ran a forum in March

LexisNexis™ Butterworths

2003 to discuss the issue of management systems and regulation. However momentum has increased, with around nine practices incorporating each month since then, putting the number at the end of 2004 at just over 400. Most are still small traditional one or two partner practices, but there are some larger players such as the NSW office of Gadens (see 'Why Incorporation? Gadens' story' by Michael Bradley (2003/2004 3(3) LPM p 33), and commercial practice Cowley Hearne.

An interesting outcome of the legislation was the incorporation and subsequent public listing of National Lending Solutions (NLS), believed to be the first in the common law world. A spin off from innovative Sydney suburban practice Noyce Legal, NLS is a mortgage and documentation processing practice which is looking to expand its activities outside its Sydney base now that incorporation is available outside NSW.

It will be interesting to see what the take up is for incorporation, especially among the larger national practices, once the legislation commences in a number of states. One of the problems at the moment is the apparent dearth of information about the business and financial pros and cons of this model.

Quality certification

A new scheme based on the internationally recognised ISO system came into existence in June 2004. LAW 9000, a blend of ISO and the QL Best Practice scheme, is only available from SAI Global (formerly Standards Australia) and allows certified practices to display the SAI Global 'five ticks' ISO logo with the industry specific logo 'Quality Endorsed Legal Practice'. It supersedes the QL system which ceases on June 2005.

To date, only a small number of firms have gained certification to LAW 9000, which is more rigorous and certainly more expensive than QL certification (albeit with a much bigger and brighter 'brand'), although it is on a par with ISO certification from SAI Global, but apparently more expensive than ISO from other certifiers. Wollongong practice, RMB Lawyers (Russell McLelland Brown) was part of the LAW 9000 trial,[3] and since then Brisbane practice Carter Newell and Sydney firm Carroll & O'Dea have been successful. A number of others are in the pipeline.

In the short term the big question is whether the legal industry will accept the value of certification against a cost for a three year cycle of between $15,000-$20,000 for a single office mid-sized practice, irrespective of discounts on indemnity premiums which may be available as a result (currently only from LawCover in NSW for QL, ISO or LAW 9000).

Regulation and complaints

There are changes to the regulatory regime in both Queensland and Victoria

In Queensland the new Legal Services Commissioner, John Biton, has been responsible for investigating complaints since 1 July 2004, when the Qld Act commenced.

In Victoria the Legal Practice Board and the Legal Ombudsman will be replaced with a legal services commissioner prior to the commencement of the Vic Act in about July. Writing in the *Australian Financial Review* on 21 January 2005, the Victorian Attorney General. Rob Hulls, said that the new scheme, with its single gateway for complaints, 'puts consumers first'.

NSW has of course operated a successful dual regulatory model for some years, with the NSW Legal Services Commissioner, Steve Mark (recently reappointed for a further term), well established in his role as the first port of call for complaints.

UK position

As these changes appear in Australia it is interesting to note the outcome of the *Clementi Report* into the legal profession in England and Wales, which was released in December 2004.

Broadly welcomed by the Law Society of England and Wales, the key recommendations are:

- a new regulatory framework with the Legal Services Board to provide oversight of the Law Society and Bar Council;
- a new complaints system with an Office of Legal Complaints; and
- the establishment of alternative business structures — legal disciplinary practices possibly involving solicitors, barristers and non-lawyers.

It all sounds rather familiar! ●

Endnotes

1. Also see 'Defining legal work: NSW Law Society urges certainty, with clear protection to consumers' *NSW Law Society Journal* June 2004.

2. 'A new disclosure regime for practitioners' *Proctor* 24(6) July 2004.

This is the first in a series of articles on aspects of the *Legal Profession Act 2004*. The following in the series are:

'Supervised legal practice requirements' *Proctor* 24(7) August 2004;

'Interstate practitioners and the Legal Profession Act 2004' *Proctor* 24(8) September 2004; and

'Disciplinary forums in the Legal Profession Act 2004' *Proctor* 24(9) October 2004;

Also see:

'Queensland Law Society right to intervene' *Proctor* 24(8) September 2004 — the External Intervention Chapter of the *Legal Profession Act 2004* commenced on 1 July 2004. This article provides an outline of the Chapter under the *Legal Profession Act*.

'Fidelity Fund provisions and the Legal Profession Act 2004' *Proctor* 24(10) November 2004. Pt 7 of Ch 2 of the *Legal Profession Act 2004* commenced on 1 July 2004. This article provides an outline of the Chapter under the Act.

'Professional status under the Legal Profession Act 2004' *Proctor* 24(10) November 2004. This article is focused on the parallel arrangements in the corresponding provisions in the Act primarily relating to Queensland practitioners and some consequences of those arrangements.

3. See the author's article in the September issue of this publication 'Law 9000 — a national certification scheme for the legal profession' (2004) 3(10) LPM 2004 p 148. ●

Greg Dwyer,
Solicitor and Director of Practice Development and Consulting,
College of Law, Sydney,
<gdwyer@collaw.edu.au>.

dear duncan ...

Comment by Duncan Hart

Dealing with partner issues in a growing practice — lateral hire or rent a wreck?

This article considers the issues that arise from the impact of lateral hires and 'mini-mergers'.

The most common strategy adopted by firms in pursuing growth is the pursuit of the 'lateral hire'. This is usually an experienced practitioner who is a partner in their present firm and is expected to bring not only a significant client base but also several supporting staff. If it is two or three partners and staff joining a much larger firm it becomes a mini-merger.

Usual scenario

All too often this is an ad hoc decision by the acquiring firm. It becomes known by a partner that 'so and so' might be interested in coming across. There is hurried consultation under the pressure of the partner 'going elsewhere' and an offer is quickly extended. There is no time for a lengthy assessment about whether this is a good idea or not. Partners who don't know the target feel short changed. Even those who know the target often don't know enough to vouch for that partner's income producing potential. Worst of all, there is little thought about what the business case is for the individual or what the guiding strategy is for the acquisition.

Why not plan for it?

If the firm is at a point where the partners collectively consider they will grow by lateral hires as well as by internal means, they need to set out the basis upon which such lateral hires will be sought. It need not be a long document but all partners need to be involved. Following are some of the points that need to be resolved.

- Which area(s) of the practice are seeking such hires?
- What would be the ideal attributes of such a hire?
- Are we looking for partner level people?
- What are we prepared to offer a partner candidate?
- What are we prepared to offer a non-partner candidate?
- What type of clients/value/work would we expect to be introduced?
- What will be the likely impact on the firm's budget?
- What are the priorities in the various areas of the firm?
- Are we looking for more than one, perhaps a team?
- Who will do the looking and make the approach? Define that person's brief and mandate.

This is the barest of checklists. The partners need to have a discussion along these lines well before the first candidate looms out of the mist. Having a broad agreement in place gives partners an understanding of where each stands on the issue and minimises arguments. More fundamentally, there should be a plan in place which will express a view as to the desirability of the firm seeking lateral hires. Among other things, the ability to clearly enunciate the firm's vision for the future may also be useful in attracting the right candidate. Thought will have been given to the possibility of partnership and all that it entails.

Once the partners have decided on their strategy and have an idea of who might fit the bill, a search can begin for appropriate candidates. The emphasis should be on pro-actively seeking a candidate for a specific role rather than an ad hoc review of those who approach the firm.

Once you have a target in the cross hairs ...

Candidates are usually selected because of their reputation in an area. Clients are the key to this and, where possible, your due diligence should traverse the likelihood of the client following the candidate. This is very commonly *not* the case when the move is from a large firm to a smaller firm — there are too many collateral benefits for the client at the large firm.

Enquiries should be made to see if the candidate has been getting as much work from the client(s) as was previously the case. Are some of the candidate's major clients under threat? Are they being taken over? Are there some legislative changes looming? A healthy suspicion is appropriate. The same goes for any staff that might be coming with the candidate. Your junior staff might know what is going on at that level.

On the assumption that you have secured at least preliminary interest from an apparently suitable candidate, how do you make an assessment as to whether they will fit in? Ideally, you might think that administering an extensive set of interrogatories under oath should cover many of the issues you are interested in. From a more practical perspective, your conversation with the candidate should elucidate their attitude to:

- your vision for the firm and their role in it;
- growth;
- new partners and any exiting partner arrangements;
- technology;
- mentoring juniors;
- budget, both top and bottom line;
- time recording;
- fringe benefits;
- debt in the practice;
- holidays;
- appraisal systems and the link to remuneration (that is, accountability); and
- marketing responsibilities and client responsibilities.

This list is not exhaustive but I believe the seeds to most partnership disputes lie within it. There may be no clear view expressed, but don't let it be alleged later you did not make any offer conditional upon an explanation of at least these issues.

Clearly, as many partners as possible should have the opportunity to meet the candidate and form their own impression.

Performance and payment issues

Of all the above, the remuneration question is the most sensitive. It would be easy to say there should be no deviation from the firm's system for anyone. If that is impossible then make sure any deviation is for one or two years at the most before the new hire comes back in line. Even if the appraisal system is not initially applied in a remuneration sense, go through the process anyway so that you don't exempt the new hire from the fact it will apply once the honeymoon period is over.

With the supporting staff who come with the lateral hire, make as few exceptions as possible — preferably none. Special deals for lateral hires and their staff cause enormous resentment which inhibits integration.

The clients a lateral hire is to bring are usually the major benefit sought by the acquiring firm. No one can be categorical about the lateral hire bringing their clients with them but the remuneration package can reflect some downside if they do not materialise. For this reason, it makes good sense not to offer a partnership to a lateral hire immediately on arrival. If it can be delayed for one or two years while an incentive package is in place, it will give plenty of time for you to assess their performance on a number of levels. This approach also has attractions for candidates who may not want to leap immediately into the frying pan of a new partnership.

You often need to pay 'over the odds' to acquire good performers. It is far easier to structure a remuneration/ performance package outside the usual partnership framework and to specify performance criteria which will establish eligibility for partnership. It should be for a fixed period, for example, two years, but it should not be indefinite.

Integration plan

Integration is critical. The circumstance in which the candidate joins the firm sets the tone early on. If the partnership has done its homework and agreed on a strategy before the lateral hire appears, the likelihood of after thoughts is reduced. Thereafter, of course, the job begins. The worst thing to do is to simply let the new hire 'get on with it' — a plan should be insisted upon. This plan should set out the agenda from the new hire's perspective on how they will integrate their practice into your firm. The plan should deal with:

- budgetary targets;
- introducing clients to the firm — meet and greet occasions;
- adaptating precedents — watch copyright issues;
- CLE sessions to educate the broader membership of the firm;
- applying appraisal criteria;
- marketing initiatives;
- participating in team meetings;
- learning sessions — to understand firm systems, library and so on;
- meeting support staff — library, accounts, marketing and so on;
- introducing the firm's existing clients; and
- writing articles to promote the acquisition.

Where the acquisition comes with more than one or two other staff, integration can be more involved. The new hire should be actively discouraged from creating a firm within the firm. For instance, such things as drinks apart from the rest of the firm should be discouraged. Schedule a regular series of meetings with the new hire to ensure that the firm's systems are being adhered to and the support staff are following the firm's processes. The plan should form the basis for the agenda of these meetings.

If the new candidate is not a partner then one partner (usually the managing partner) should be responsible for overseeing the plan and the meetings that follow. There should also be regular updates at partner meetings.

Existing partners often a bigger problem

Perhaps a greater risk than the new hire failing to integrate quickly might be the existing partners not making the effort to inform themselves about new hires and making them welcome. More importantly, the new arrival should work actively with the partners who promoted them — this, however, should not be assumed.

No partner should be allowed to take a back seat and, if as is probably the case, you wish to do this again, many partners will require prodding on this level.

Can you do it more than once?

If continued acquisition has been selected as a means of promoting growth, this exercise will need to be repeated. Evidence derived from the corporate world indicates that companies which make continual but small acquisitions are ultimately more successful at creating shareholder value.

Lessons are more easily learnt from small acquisitions and can be put in place for the next attempt.

You will need to review your firm's strategy as time progresses and revise the guidelines for lateral hires. Take care to ensure that one faction or team does not always seem to be putting their hand up. Acquisitions, particularly where headhunters are involved, can be very expensive. In addition, questions should be asked about that team's ability to 'grow their own'. The eternal search for the elusive lateral hire who will solve that team's problems should be robustly addressed. Such an attitude often masks more deep seated problems.

Not all stars retain their brightness

Finally, beware of the 'star' being acquired from a much larger firm — they usually come with considerable baggage and may be unsuited to start a practice from scratch. Also, they may not fit in to an existing team unless it has a strong leader.

Further, there will be none of the typical sources of work that they have previously enjoyed; also lacking will be the old firm's brand. As indicated above, it will be unlikely for large clients who have other needs that the old firm will continue to satisfy, to move with the star. ●

Practical points

- A well considered strategy needs to be devised before the hunt begins.
- Once the lateral hire is located, carry out due diligence not only on the individual(s) but also upon the clients that might be involved.
- Have your plan ready and be able to communicate all expectations, and make sure you understand the candidate's motives.
- An integration plan is just as important as the new hire's business plan.
- There is as much need to involve existing partners as there is to monitor and assist the new hire.
- Learn lessons from each attempt, as multiple attempts are likely and more profitable.
- Beware the stars — they may not shine so brightly in your environment if you are considering an acquisition from a much larger firm.

Duncan Hart, Principal,
Duncan Hart Consulting,
<dh@duncanhartconsulting.com>,
<www.duncanhartconsulting.com>.

Fighting fraud in law firms — systems and culture

Warwick Dolman DOLMAN BATEMAN

In my first article (2004/2005 4(3) LPM p 31) I looked at the likelihood of specific types of fraud occurring in law practices and some of the potential indicators for fraud. This article concentrates on how the system areas and cultural aspects of law firms can be addressed to reduce the potential for workplace fraud.

How to manage fraud prevention

Fraud prevention involves monitoring and making changes in two key areas — systems and culture.

Quite often, it is easy for management to ignore the significance of monitoring and making necessary changes to the culture of the firm, however an effective fraud prevention program must address this aspect. Many recent instances of major frauds in multinational companies, including HIH and Enron, can be attributed to underlying cultural problems.

Management of law firms might also find it difficult to implement systems and cultural reviews without disrupting the normal course of business and putting employees offside. One of the best ways to tackle this concern is to conduct the necessary reviews, with outsourced assistance as required, as part of the firm's overall business planning. Law firms typically engage in robust remodelling of systems and procedures, and fraud prevention should be a part of that rather than treated separately.

This approach also facilitates the ongoing management of fraud, rather than an ad hoc approach, which usually results in a firm acting only once it has discovered a major fraud.

Systems review

You should assess the quality of your systems and the extent to which they are fraud proof. System areas, and controls and procedures that should be monitored include the following.

Timesheet systems

Ensure that partners or other staff in supervisory roles monitor the time their staff spend in the office compared to their hours billed. Major discrepancies in this area can indicate practices such as using internal resources to manage personal clients 'on the side', otherwise known as moonlighting.

Purchasing systems

Law firms generally operate large expense budgets, and it is therefore prudent to implement ongoing procedures which monitor the purchase of goods and services and outgoing expense charges to clients. A clear system should be in place which limits authorisation of major purchases to a small number of staff.

Finance systems

Only limited authority should be given to staff members who need to view account details using online banking, which prevents them from accessing funds. It is also possible to limit the amount of funds that each staff member has access to.

Effective password systems with varying levels of access is particularly important in firms with partnership structures, and is especially the case in large law firms with many partners.

Assess and improve culture

While many firms may already have some of the necessary systems in place to combat fraud, which may or may not require improvement, they tend to have less of a grasp on the anti-fraud strength of their culture.

As discussed above, part of the difficulty in this area is understanding how to assess culture without appearing distrustful of your staff. A system of review that regularly screens the corporate culture so that it is perceived as an ongoing business management tool is the most effective. A professional survey of staff attitudes is also valuable for this purpose and can also provide data which will assist in improving productivity outcomes.

In the event that cultural change in law firms is required to guard against the potential for workplace fraud, the firm may consider a range of operational changes. The aim here is to decrease, and hopefully eliminate, any staff disaffection which can lead to a feeling by many staff that stealing from the organisation is all about getting what they are owed anyway. Also, with a strong culture, those few staff who actively seek to defraud will be less tolerated by the majority of employees, who will be more likely to report their activities. A law firm should:

- encourage greater communication between staff or more team work rather than expecting staff to complete tasks without interaction with other lawyers or support staff;
- ensure reward schemes are fair and equitable regardless of which department a staff member is working in or which partner they are reporting to — any disparity must be properly justified and all staff must have a full understanding of how the reward scheme works;
- ensure partners are setting a good example to staff;
- ensure that the overall objectives of the firm are communicated to everyone, from junior lawyers up;
- make clear what standards of behaviour are expected and ensure that the *Law Society Code of Ethics* and the *Professional Conduct and Practice Rules* are properly enforced; and
- involve a wider range of staff in the decision making process.

> ... as many law firms already have advanced business development procedures, implementing a fraud prevention program is also a manageable task that can be performed on an ongoing basis.

Detection as well as prevention

An effective fraud detection system is very important and, in fact, will actually act as a deterrent to potential fraudsters.

Detection of fraud in law firms is not only dependent on executives and partners, but requires the involvement of all staff through a secure 'whistle-blowing' channel. This is particularly important in large law firms with vertical structures, where a more senior staff member is not in regular contact with junior staff. All staff should be able to confidentially report any suspicious or 'red flag' activities.

Red flag activities (mentioned in the previous article), include things such as employees consistently working very long hours without a proportional increase in billable hours, missing records and documents and computer usage outside normal areas.

Conclusion

All frauds in law firms, whether it is a staff member abusing cab charge privileges or a lawyer using company resources to service personal clients, are often preventable if the firm is prepared to make the necessary changes to its systems and culture. An environment that discourages and prevents fraud will not only benefit those with a vested financial interest in profits, but will improve the working conditions of all employees. Furthermore, as many law firms already have advanced business development procedures, implementing a fraud prevention program is also a manageable task that can be performed on an ongoing basis. ●

Warwick Dolman, Director, Dolman Bateman. <www.dolman bateman. com.au>.

We apologise to Warwick for publishing the wrong photo in his previous article (2004/2005 (4.3) LPM p 31.

Dolman Bateman specialises in the detection, investigation and minimisation of fraud in the workplace.

Letter from London

CO-ORDINATED BY
Caroline Poynton
EDITOR *MANAGING PARTNER* LONDON

Marry in haste, repent at leisure

Frank Maher LEGAL RISK

The business case for merger seems to be there — one plus one equals three, creating a full service firm, plugging gaps in service to key clients, increasing expertise, expanding the client base or achieving wider geographical coverage. Yet how many firms merging or taking on teams and key individuals look at how their suitor manages operational risk?

This article addresses some of the operational risk issues associated with mergers and acquisitions. Lateral hires are also a significant risk issue, see my previous article 'Recruitment can damage your wealth' (2004/05 4.3 p 32), including an example of a firm taking on a niche team and rendering itself almost uninsurable in the process.

It is critical to examine the target firm or team's operational risk management for several reasons:

- post merger integration may be delayed or damaged irreparably if the issues are only discovered later;
- indemnity insurance issues may cripple the firm; and
- failure to do so is the reason many mergers fail to achieve their strategic objectives.

The press speculation which accompanies a merger and the pressure to minimise both firms' exposure in the intervening period result in some mergers being pushed through with considerable haste, even indecent haste. It is important to understand the extent to which the deal may be compromised by doing so.

Pre-merger due diligence on risk

To conduct a pre-merger risk due diligence effectively you, or the advisers who do the exercise for you, will need to understand how risk issues impact on professional firms. And we are not just looking at professional indemnity issues. A useful starting point is the Law Society's Lexcel Standard 2004 which provides an effective checklist for many areas of practice, though there are many other lines of enquiry which can be pursued as well.

A Practical Guide to Minimising Risk[1] explains how the Lexcel standard can form an effective framework for managing risk.

You will want to be sure that risk management is integrated into everything the firm does — that it is a culture, not an event. For example, it is not just about fee earners and time limits, but requires integration into all areas of the practice including its support functions, such as accounts, finance, facilities management, IT, knowledge management and human resources.

A thorough process will involve detailed, structured interviews with those responsible for the various management functions within the firm — heads of departments and support functions including those mentioned above. Others to include will be the money laundering reporting officer, the professional indemnity contact partner and the complaints partner.

Another avenue which can be pursued, and the cost can be quite low, is the use of web based testing systems to obtain a snapshot of the knowledge and attitudes of staff on risk issues — not only to ascertain whether they have the requisite technical knowledge but also to dig beneath the surface and find out how the firm and its culture operate in practice.

The aim will be to find out what systems are in place to give a better understanding of how the target firm manages its operational risk and to help define the systems which will operate in the new, larger firm.

Structure of the merged firm

Will the firm become a limited liability partnership? This is a complex issue which may turn on accounting and tax considerations, particularly if there are annuities for retired partners. Nonetheless, the timing may be right at least to address the issue with a view to future action.

While on the subject of limiting liability — what will the merged firm's policy be to managing risk through its terms of engagement? While commercial obstacles inevitably restrict the extent to which firms can limit liability with some corporate clients, it is an area where some firms are making progress even with larger commercial clients. Even if it is not possible to impose a financial limit, there are other useful practical steps which can be taken through terms of engagement which are unlikely to provoke opposition, such as scope of duty and allocation of responsibilities in the client engagement.

Money laundering compliance

Although this is not the most exciting pre-merger issue on the agenda, firms will wish to be sure that those they are taking under their wing are already compliant. The requirements under the UK *Money Laundering Regulations 2003* [flowing from the requirements of the EC Money Laundering Directive] to have in place 'procedures of internal control' are onerous, and in many firms are currently being honoured in the breach.

Does the firm you are merging with audit itself for compliance? If not, there is little reason to believe it is compliant. Can it produce the identification evidence when required? Have staff been trained? If they have, to what level?

The merger may present an opportunity, and a need, to introduce more advanced systems to ensure compliance. There is much which can be done with existing IT systems to this end. Data mining systems can be implemented at quite low cost which will help raise the standard.

Many firms have aimed for the bare minimum in compliance, and if it results in failings they can expect to face the consequences. Those who aim high are more likely to be compliant and, if something does slip through the net, more likely to avoid prosecution.

Implementing systems appropriate to the larger, merged firm will be an additional cost which should not be overlooked at the planning stage.

People issues

Bringing two firms' people management and supervision systems into line can be a major hurdle.

It is all very well to appoint a partner as head of department in charge of partners from both sides of the newly merged firm, but can they really exercise their new authority, walk into the room of the partner from the other side of the practice and say 'I've just come to audit your files'? Human nature makes the process difficult, yet partner to partner review is recognised by insurers as being important, and file audit must be part of the process.

Can the head of department announce post merger that they are imposing a second signature rule on opinion letters, or will the embarrassment gene strike again and prevent even having a discussion on the subject?

Effective supervision, or lack of it, affects even the largest firms and the ground rules for consistent systems need to be in place from the start. Does the firm you are merging with rely solely on its open door policy for the supervision of assistants? Most firms claim to have an open door culture, and culture is important, but relying on that alone is a recipe for disaster. It is tantamount to a bank opening an unlimited loan account for a customer and asking the customer to monitor the account.

The merging firms need to understand each other's attitude to risk, and matters such as mail signing authority need to be addressed. It will not work if one firm insists on assistants having mail, or certain categories of mail, signed by partners and the other firm lets anyone sign anything. Post merger, it can be practically impossible to impose partner signing rules on those who have not been educated to accept the discipline.

These are issues which have to be tackled at the pre-merger stage so that expectations can be managed. I have seen several incidences where merged firms have failed to meet their objectives because they didn't deal with these issues up front.

This issue also highlights the question of adequacy of supervision — how many firms supervise partners, and how many firms have partner review in place?

Stress is an increasing issue in law firms. It is curious that the same firms which earn fees advising clients on the Working Time Directive seem to apply a policy of a 48 hour working day in their own practices!

Realistic chargeable hours targets and total hours targets play a part in managing stress among staff. Remuneration systems also play a part; for example, do your incentives link to unrealistic performance targets? Enforcing the taking of holidays can play a part too. Do both firms have the same expectations in terms of chargeable and total hours, and other performance targets? If not, the issue needs to be addressed pre-merger. It will not be effective simply to announce to the target firm that from now on their chargeable hours targets have been increased by 200 hours per year.

The problem is that people under stress do not behave in the way expected. Sometimes they can overlook the blindingly obvious, such as missing deadlines, which is a key cause of negligence claims. How, for example, can a well trained lawyer miss a three year time limit for starting personal injury proceedings? The answer can often be found in stress — they see the date in the diary and mean to deal with it later, but have a pile of files to deal with and fail to get round to the

critical one before the court shuts at 4pm.

Stress can also make people behave in ways which appear to be dishonest, though whether they are capable of causing the necessary degree of intent for criminal action is sometimes unclear. I have investigated many cases of dishonesty which have arisen from people being under financial pressure. One example involved a partner who owed the bank £12 million in connection with his previous firm. While some have cynically and systematically raided client funds for their own purposes — even sponsoring a premiership football team — those who do so solely for personal gain are probably in a minority. Though some who steal when under financial pressure may later decide to exploit system weaknesses they have discovered and then start enjoying the high life.

One particularly poignant example I investigated involved a highly respected litigator who found she was unable to cope. She told a client she had brought proceedings to recover a £100,000 debt when she had not. She forged a judgment and sent the client a cheque for £40,000 on account, saying the defendant was unable to pay more at present but would pay instalments. In fact the £40,000 was from her own money! She then set about raiding client funds to satisfy other clients whose affairs she was unable to deal with in the conventional way.

After the pack of cards came tumbling down, the solicitor was examined by a clinical psychologist who reported: 'The above tests show that Miss X, whilst of superior intelligence, is nevertheless not really intellectually capable of dealing with the demands of her job … She therefore is suffering an enormous amount of stress by attempting to function at or above her ceiling of intellectual ability all of the time and failing to do so.'

When looking at a merger or acquisition, therefore, it is important to look at the target firm's record on managing stress and whether the performance targets are in line with your firm.

Finally on people issues — are there any outstanding disciplinary proceedings against anyone in the merged firm? Have there been any in the past? Are there any partners or staff with conditions on their practising certificates or who are subject to orders of the Solicitors Disciplinary Tribunal?

Indemnity insurance issues

Successor practices

To take an example with some details changed to protect identities, a major law firm looked at acquiring a 10 partner firm which had a number of good clients including international household name companies. However, it thought three of the partners were less of a match, so it offered partnership to seven and left the other three to carry on as they were.

It addressed the insurance issues with its brokers and concluded that both firms were successor practices for these purposes, having regard to the definition in cl 8.18 of the [England and Wales] Law Society's Minimum Terms and Conditions of Insurance.[2]

Some time later it was alleged that one of the three partners who had not joined the firm had been engaging in international prime bank instrument frauds. Even though the large firm had wisely not taken on that partner, it looked as though it was stuck with the consequences and could readily have ended up uninsurable, consigned to the Assigned Risks Pool (ARP) 'sin bin' with insurance costs for the first £1 million cover up 10 fold and top up cover probably unavailable.

Fortunately, on closer examination it appeared that the firm was not the successor practice after all. Nonetheless, with very little variation in facts and structuring of the acquisition, it would be possible to end up with the successor practice being:

- either firm;
- both firms; or
- neither firm.

Successor practice liability is invariably a major business risk which should be considered carefully before undertaking mergers, acquisitions and lateral hires, and particularly when the target firm is splitting in two.

The £3.3 million ARP premium for £1 million primary cover for a £40 million turnover firm should be enough to concentrate the minds of most partners, not just the managing partner and finance partner.

Assessment of premium

There are also other insurance issues to consider. When insurers assess premiums they take account of claims records, the balance of work, geography and any knowledge they may have of the firm with which you are merging. So these are all issues to address with the insurer, through your broker, before committing to the deal.

Choice of insurer

Some insurers will not insure particular work types, so if your current insurer does not wish to cover the work type undertaken by the firm you are acquiring, that is an issue which needs to be addressed from the outset, and the partners should also ask themselves whether it is a risk they wish to accept.

Notification to insurers

Notification to insurers is a particularly important issue where the two firms have different insurers and one insurer will lose the business on merger. The aim will be for the firm whose insurer is coming off risk to notify its insurers before they come off risk of all circumstances which may give rise to a claim. That way, any subsequent claims will be dealt with by the old firm's insurers, perhaps with a smaller excess, and may also have less impact on the future insurance costs of the merged firm.

The notification process needs to be managed. It is not enough to send an email to all partners asking them to notify the firm anything of which they are aware. It is a process which must also involve all members of the support staff, even those in the mail room as well as secretaries — they may, for example, be the only ones who know about a letter being wrongly delivered with possibly catastrophic consequences.

Other insurance issues

You also need to know about past claims and outstanding claims. Are there any which could impact on the financial wellbeing of the incoming

partners or could have an adverse impact on the firm's public image?

The successor practice rules only apply to primary cover. There are important decisions to be made on whether top up should or should not cover a prior practice. Where you are dealing with a straight merger of two firms, you will almost invariably want this cover in place. Where, however, successor practice liability is the undesired consequence of team acquisition, you may be more circumspect.

Multiple successor practices cause problems, not only insurers competing for claims control, but excesses on *each* policy.

Careful thought needs to be given to managing the publicity. If you are taking a team on and are anxious to avoid successor practice liability, you will need to avoid any suggestion of holding out and ensure that all staff know what is expected of them in this respect too. It might only take one stray email from an uninformed secretary to land the firm with an unmanageable bill for indemnity cover and claims.

So, consider the insurance issues *before* doing the deal.

Conclusion

Operational risk issues go to the heart of any merger. It is vital to address them before the deal is done if the merger is to succeed. ●

Frank Maher,
Partner, Legal Risk,
<frank.maher@
legalrisk.co.uk>.

Frank specialises in risk management for professional firms. He is co-author of the Money Laundering Reporting Officers' Handbook 2004 *and author of a booklet* A Practical Guide to Minimising Risk.

Endnotes

1. Published by the Law Society's Lexcel office. Available free of charge by emailing <info@legalrisk.co.uk>.
2. <www.lawsociety.org.uk//documents/downloads/mtc2004.pdf>.

Teaching client consciousness

Frank Astill UNIVERSITY OF SYDNEY and
Geoff Monahan UNIVERSITY OF TECHNOLOGY

Over the past generation lawyering has been profoundly affected by a culture that increasingly protects the client as a consumer of legal services. It has also been affected in various ways by the mediation movement.

Communication skills have become important both in legal practice and in teaching as we realise the primacy of understanding and accurately representing the client's situation, expectations and needs.

In law schools, the balance between analysing reported decisions and identifying client needs is changing. This is obvious in student interviewing and negotiation competitions, where the client is portrayed as a person first, rather than a matter, a file or a billable 90 minutes. Curriculums are also placing greater emphases on particular types of client, such as the child.

It is undoubtedly a good thing that lawyering is becoming more client centred and person orientated, but as with most progress, there is probably a price to pay. It may be too early to identify the dimensions, or even possible negative aspects of client centred lawyering, but that should not prevent us from critically monitoring the changes being effected in lawyer-client relationships.

The increasing necessity to predict the outcome of an action and accurately to quantify costs at a very early stage may entrench conservative, safe, financially dominated strategies at the expense of the client's actual wishes or developments in the law. Ironically, this may also lead to an upsurge in practices that skirt the borders of ethics and codes

of conduct, such as creative contingency arrangements and broad disclaimers.

The characteristics of the competent lawyer may well be redefined by client centred lawyering. Distinctions are not so difficult at the extremities between, say, the dictatorial expert at one end who always knows what is best for the client and embodies the stereotype that once the matter is taken on the client becomes irrelevant, to the benevolent counsellor who puts all decision making back on to the client without any obvious outlay of expertise, and to the impossibly sagacious great communicator cum forecaster. Each extremity has its problems: there is no simple good-bad continuum.

Client centred teaching

One way of charting the growing importance of developing lawyer skills in relating to clients is by looking at the history and purpose of law school interviewing and negotiating competitions. The most elaborate of these are run under the auspices of the Law Student Division of the American Bar Association (ABA). In Australia, following the establishment of the national Client Interviewing Competition, and later the Australian Negotiation Competition, law schools, and particularly students and their associations, have embraced local competitions. Australian teams have enjoyed a high profile internationally, which has reinforced the value of what often began as an extra-curricular activity.[1]

Interviewing and negotiation are two areas in dispute resolution teaching that are central to developing skills to satisfy five criteria that are fundamental to client centred lawyering. These five criteria are identifying the client, gathering relevant information from the client, informing the client of options, representing the client's wishes and reporting to the client.

In a simulated law office, two law students interview a client for 35 minutes and then debrief for 10 minutes in front of a panel of three judges. The lawyers begin with scant information on the nature of the client's problem and are judged under a series of categories designed to highlight the attention paid to the client's situation.

In a negotiation competition, two students act for a client in a 50 minute negotiation with two other students. Each team has been given a set of general facts and a set of confidential information. As with the interviewing competitions, there is a 10 minute reflection in front of three judges.

Recurring themes in negotiation competitions are the articulation of the scope of the authority a client has given the negotiator and the questions: 'What will you report to your client, and how will your client react?'. In preparing for a negotiation, just these matters can focus the mind admirably. The educational potency of these competitions is reflected in the reactions of judges and clients. Universally, their reactions are: 'That was good for us as well as, hopefully, good for them'. Practitioners enjoy sharing their insights with students and the simulated interviews and negotiations allow a great deal of mutually productive reflection to take place.

> The increasing necessity to predict the outcome of an action and accurately to quantify costs at a very early stage may entrench conservative, safe, financially dominated strategies at the expense of the client's actual wishes or developments in the law.

In large part, the following common questions can be put.

- What is this thing called a client?
- Who is my client?

A concrete way of pushing these questions further is to identify various 'species' of client, such as the child.

Child client

When is a child a client? Lawyers certainly 'act' for children in both civil and criminal matters. In addition, they invariably represent children in family law disputes between their parents and in care and protection matters. Yet do children have the same characteristics and rights as an adult? Are lawyers being client centred when they represent children? The answer to these questions seems to depend on the type of legal dispute and the tribunal that may need to determine it.

International law now recognises that children can and do have the capacity to participate in legal processes to enforce their rights. Various models for the legal representation of children and young people have emerged, ranging from a 'direct representative' model (where the lawyer acts upon the instructions of the relevant child or young person), a 'next friend'/'guardian *ad litem*' model (where the next friend/guardian instructs the lawyer on the relevant child or young person's behalf), and a 'best interests' model (where the lawyer does not act upon the instructions of the relevant child, but rather acts separately upon their assessment of the best interests of the child or young person).[2]

In response to a recommendation by the Australian Law Reform Commission, the Children's Legal Issues Committee of the Law Society of New South Wales developed guidelines for the representation of children and young people. Following a year long process of consultation and consideration of overseas developments, in particular by the ABA and the (US) National Association of Children's Counsel (NACC), the NSW Law Society developed its *Representation Principles for Children's Lawyers.* The Law Society favours the direct representative or 'direct instructions' model for all jurisdictions.

The *Representation Principles* are framed on the basis that in all cases and in all jurisdictions the child's right to be heard should be respected. Adults frequently underestimate the knowledge, understanding and communicative ability of children. The *Representation Principles* encourage the development of

skills in legal representatives to discern through careful questioning those aspects that are important to the child.

Even in those jurisdictions where the direct instructions model does not apply, the *Representation Principles* recommends that legal practitioners should take the time to carefully record the wishes of the child where possible and seek to present those views in court.

Teaching by scenario

A potent approach to teaching children's law is to use the scenario strategies from the competitions discussed earlier. The 'direct instructions' model assumes competence on the part of children, but it is a big leap to assume it on the part of lawyers. Students and practitioners alike can bring to life the complexities of a scenario involving taking instructions in a matter where mother and child are being interviewed. The question of how to conduct the interview has many layers.

Negotiation scenarios can be made to represent the cutting edge of professional ethics. The potential is well summarised by the book: *Negotiation Strategies for Lawyers: Scores of Effective Strategies You Can Use to Out-maneuver your Opponents and Gain the Advantage in Virtually Every Kind of Legal and Business Negotiation.*[3] What is the difference between an ambit claim and deception? When is an oblique answer to a question culpably misleading rather than smart strategy? And what if the oblique answer is the only way to protect the client's interests?

Client rights and lawyer responsibilities

Our focus in this article has been on the changing nature and needs in lawyers' skills out of the court room. Legal education has tended to focus on court procedure and cases, but most of the lawyers' work is consultation and negotiation. There is a client to represent, but the other often competing duty a lawyer lives with, their duty to the court, is not as obviously present as it is in litigation related settings.

In seminars with teachers and practitioners we have sought views on the changing priorities in practice and, in particular, client rights. We identify several. They are the right to:

- information;
- value;
- expertise;
- informed action; and
- rights.

The last 'right' sparks queries, debate and usually strong support as we question whether the current emphasis on settlement erodes the pursuit of rights, but the biggest impact at a recent workshop came when one participant added 'the right to respect' to our list. If one concept typifies the implications of these discussions, that must be it. ●

Frank Astill, Director of the Law Extension Committee, University of Sydney, <fastill@mail.usyd.edu.au>.

Geoff Monahan, Associate Professor in the Faculty of Law at the University of Technology, Sydney, <geoffm@law.uts.edu.au>.

This article is based on workshop papers presented to the 2004 International Bar Association (IBA) and Australian Professional Legal Education Council (APLEC) Conferences.

Endnotes

1. A comprehensive introduction to the competitions, and the rules and judging criteria that are used internationally and generally nationally, is available at the 2004 competition websites <www.ggsl.strath.ac.uk/iccc/index.html> and <http://culaw2.creighton.edu/negotiation>.

2. *Seen and Heard: Priority for Children in the Legal Process*Australian Law Reform Commission Report 84. Ch 13: 'Legal representation and the litigation status of children' may be downloaded from <www.austlii.edu.au/other/alrc/publications/reports/84/13.html>.

Law Society of New South Wales, *Representation Principles for Children's Lawyers* 2nd ed March 2002 is available at <www.lawsociety.com.au>.

3. Frascogna X M and Hetherington H L, Prentice-Hall Englewood Cliffs New Jersey 1984.

Leave the office on time — just walk out

Cindy Tonkin
CONSULTANTS' CONSULTANT

So you'd like to leave the office on time — at least two or three times a week? Perhaps your loved ones are waiting for you, you have another life to live, or you're interested in finding that other life. Here are eight strategies for getting out that door when you would like to.

Plan for once a week first

Depending on the size of your habit, consider going home on time one day a week for a few weeks, then ease yourself into two days. Don't beat yourself up if some days you have to work longer. The reality is that sometimes you'll have to break your own rules. But make sure it's only because you have to, not because you can't be bothered sticking up for yourself or prioritising.

Just get up and walk out

It sounds simple, but just get up and walk out at the right time. It's the most effective strategy. Much of the ritual of leaving work (logging out, shutting down, putting things away and saying goodnight) just keeps you there longer. As you tidy, you pick up a matter, thinking 'just 10 minutes more', and suddenly it's 8pm. The same problem will be there tomorrow morning, but you will be fresher and able to deal with it more quickly.

Get a watchdog

Enlist the help of a colleague or friend. Get them to remind you to go home and pay attention to them when they do.

Prepare for it

If you have a clean desk policy, two hours before you're ready to leave make your 'to do' list for the next day. Clear your desk and work on just one thing at a time. When it's time to leave put the one thing you're working on away, log off, and leave. Do not take appointments for the last hour of the day you want to leave on time. If people have questions or ideas in that time, let them know you must leave at an appointed time.

Punish or reward yourself

Too many people say: 'Yes, yes, I'm off,' but they're still around three hours later. Take it one step further. Offer yourself a reward for leaving, or a punishment if that suits you better. Drink instant coffee instead of filtered coffee if you transgress. Book a massage to celebrate adherence.

Make it important enough

If you're still not doing it, make the reason you're leaving more important — if you don't leave now, you may not meet that big client who will help your career. If you do leave now, you will get a chance to make a few phone calls to friends who may be that next big client. You're more likely to have a life, a loving network and interesting ideas coming into your life.

Be realistic on what you can get done

It's also important not to kid yourself that you can get everything done if you can't. If you think that working an extra 30 minutes (or three hours) is what it will take to move the mountain of work you have to do, then start tracking how long it actually does take. If you're attempting to do 18 hours of work in a 10 hour day, then perhaps you had better prioritise or let yourself off the hook. Accept that it's 18 hours, stay at work to complete it or split it into two days. None of us is superhuman. If it's 18 hours don't kid yourself you can do it in 10 hours.

It's also important not to kid yourself that you can get everything done if you can't. ... If you're attempting to do 18 hours of work in a 10 hour day, then perhaps you had better prioritise or let yourself off the hook.

Realise what you know

Of course we make tasks bigger by over preparing, double checking and examining every alleyway of opposition. You will never have enough information so listen to your inner voice. What do you need to do to satisfy it, to see or feel that you're prepared enough?

Your entire lifetime has brought you to where you are now. You can call on your track record and your experience. No amount of preparation will equal this. Realise what you know and just get up and walk out at the right time! ●

Cindy Tonkin, Consultants' Consultant, <www.consultants consultant.com.au>.

recent publications

Colin Fong
ATAX, UNIVERSITY OF NEW SOUTH WALES

Babcock, L and Laschever, S *Women Don't Ask. Negotiation and the Gender Divide* Princeton University Press 2003. The authors investigate the critical question of whether women are less inclined than men to negotiate in the first instance. This provides a critique of the institutional and interpersonal forces that limit women's achievement and access to economic advancement.

Beaton, G and Sergeant, M 'A new kind of legal jargon' (2004) 194 *Ethos* 14-15. Discusses de-coding the language clients use when evaluating lawyers.

Birch, D 'A new business morality' (2004) 56 *Keeping Good Companies* 603-7. Discusses a new economics, different forms of capital investment (social, natural, cultural and intellectual) and repositioning trust as a major business driver.

Catanzariti, J 'Blowing the whistle on the private sector' (2004) 42(11) *Law Society Journal* 44-45. Discusses whistleblower statutes which cover corporations, unions and employer organisations, but which do not protect whistleblowers in unincorporated associations and the not for profit and charitable private sector.

Curran, S 'When is a duck not a duck?' (2004) 26(10) *Law Society of South Australia Bulletin* 23-26. Examines the employee/independent contractor dichotomy.

Duncan, B 'Extent of a solicitor's retainer to advise on contract' (2004) 19 *Australian Property Law Bulletin* 49-51. Discusses the Queensland Court of Appeal decision of *Littler v Price* [2004] QCA 383, which illustrates the full extent of the duty of a solicitor to advise a purchaser in relation to all aspects of a contract for the purchase of investment property.

Duncan, N 'Gatekeepers' training hurdlers: the training and accreditation of lawyers in England and Wales' (2004) 20 *Georgia State University Law Review* 911-45. This article reviews the structure of the requirements for the education, training and accreditation of lawyers in England and Wales. It also provides a detailed discussion of the requirements of the different stages and explores the quality of the experience for trainees. It also examines critical issues in this jurisdiction which may assist the current debate about accreditation for the bar in US jurisdictions.

Emerson, J 'Women in the legal profession' (2004) 26(10) *Law Society of South Australia Bulletin* 22-23. Provides an historical review of women in the legal profession in Australia and overseas.

Fleming, D; Daly, A and Lewis, P 'Changes in the legal professional labour market' (2004) 194 *Ethos* 10-12. Examines the changes in supply and demand for the legal services industry.

Gardiner, J and Saunders, D 'Human rights, it's time' (2004) 78(12) *Law Institute Journal* 40-44. Discusses a Charter of Rights and how it would play a valuable role in reconnecting Australian law with international human rights jurisprudence.

Gely, R and Bierman, L 'The law and economics of employee information exchange in the knowledge economy' (2004) 12 *George Mason Law Review* 651-85. Examines the notion of the new 'knowledge economy' and the need for new doctrines of employment law, particularly in respect of employee rights to exchange information in today's workplace.

Gibeaut, J 'Telling secrets' (2004) 90(11) *ABA Journal* 38-44, 73. Discusses the topic of when inhouse lawyers sue their employers and how they find themselves in the middle of the debate on client confidentiality. How much may inhouse lawyers reveal to assert wrongful discharge claims?

Gorton, M; Saunders, D and Carroll, M 'Dealing with systemic discrimination' (2004) 78(12) Law *Institute Journal* 46-49. Discusses overseas schemes to combat systemic discrimination and argues the Victorian Government can learn from these schemes.

Henry, A *Leadership revelations — an Australian perspective* CCH North Ryde NSW 2005. This book provides insights into the leadership contributed by key business and organisational leaders in the Australian community. Over 100 contributors share their favourite quotation on leadership, and what it has taught them about the qualities and values of leadership. Summaries to each chapter highlight common strategies, fundamental principles and key issues.

Hudson, A 'The Australian Capital Territory leads the way with its bill of rights' (2004) 78(12) *Law Institute Journal* 36-39. Examines the ACT's *Human Rights Act 2004* and how this will have wide ranging implications on the way statutes are interpreted in the ACT.

Irving, W 'Are you demonstrating value to your clients?' (2004) 2(11) *Australasian Legal Business* 34-35. Provides an inhouse perspective on how law firms best demonstrate value.

Joseph, S *Corporations and Transnational Human Rights Litigation* Hart Publishing Oxford 2004. This book examines the role of human rights litigation in challenging the actions of transnational corporations.

Meyer, D 'Understanding and meeting client expectations' (2004) 33(4) *Brief* 66-70. Discusses how a defence lawyer establishes a lasting relationship with insurer clients.

Nemeth, M 'Document retention obligations: when can a document be destroyed?' (2004) 56 *Keeping Good Companies* 657-61. Discusses the roles and obligations of businesses and their record managers, the current law and application of that law in practice. It also provides guidance for company officers and legal counsel about what sorts of questions they should be asking themselves.

'New Zealand firms. A test of endurance' (2004) 2(10) *Australasian Legal Business* 26, 28, 30-32, 34-35. Provides an annual checkup on the cutthroat New Zealand legal market and suggests 2004 was a healthier year than 2003.

Pippel, C 'The lawyer as gatekeeper: Is there a need for a whistle blowing securities lawyer? Recent developments in the US and Australia' (2004) 16(2) *Bond Law Review* 96-140. Promotes the view that lawyers who shy away from the obligation of providing candid and independent judgment to their client fail more than their own conscience — they fail to fulfill their professional responsibility.

'Playing by the rules' (2004) 2(11) *Australasian Legal Business* 36-38, 40. Discusses competition regulation and the evolving rules played in the context of politics.

Pudig, C 'Putting relationships first' (2004) 2(10) *Australasian Legal Business* 22-23. Discusses a managing partner's view on managing client relationships.

Scott, L 'Lagarde bids Bakers au revoir' (2004) 2(10) *Australasian Legal Business* 24-26. An interview with Christine Lagarde, Baker and McKenzie's global chairman, and the legacy she leaves the firm.

Scott, L 'The next top tier?' (2004) 2(11) *Australasian Legal Business* 26-28; 30. Discusses four firms that are making headway against their competitors.

Tonking, A 'Solicitors' obligations to pay counsel' (2004) 25 *Australian Bar Review* 161-74. Discusses the problem, the law, the statutory regime, professional misconduct and remedies.

Webster, C 'Dealing with complaints and notification requirements under the *Legal Profession Act 1987* (2004) Summer 2004/2005 *Bar News* 55-64. This article considers three aspects of 'professional conduct':

- the procedures that apply to conduct complaints;
- matters to bear in mind in responding to conduct complaints; and
- the procedures that apply to notification matters

'Women taking the lead in law and law firms. Panel presentation by Columbia Law Women's Association, March 29 2004 (2004) 13 *Columbia Journal of Gender and Law* 354-69. A panel of leaders in the legal profession speak about how women are taking the lead in law and law firms. ●

contributions

Contributions to **LAW PRACTICE MANAGEMENT** are welcome.
Please submit articles or notes (between 500 and 1000 words) for publication to:

PUBLISHING EDITOR: Kerrie Tarrant
LexisNexis Butterworths
Locked Bag 2222 Chatswood Delivery Centre NSW 2067
Ph: (02) 9422 2222 Fax: (02) 9422 2404
kerrie.tarrant@lexisnexis.com.au

Copy should preferably be presented as an email with an electronic copy of the submission attached.

calendar

College of Law

Legal practice management course

Sole Practitioners Course
5, 6 and 12 February
20, 21 and 22 May
3, 10 and 17 September,
26, 27 November and 3 December

Partners Course (2-9 and 10-34 partner firms)
11, 12 and 19 March
24, 25 and 26 June
21, 28 and 29 October

Partners Course (35+ partner firms)
25, 26 Feb and 4 March
22, 23 and 29 July

Corporate/Government
1, 8 and 9 April
12, 19 and 26 August
4, 11 and 18 November

Law 9000 — Legal Best Practice
As a result of a recent collaboration between QL Inc and Standards Australia (SAI), the Centre for Best Practice is offering training for LAW 9000.

Understanding and Implementing LAW 9000 — Legal Best Practice
17 and 18 February
2 and 3 June
This course will assist participants with the co-ordination and implementation of LAW 9000. It examines the impact of management systems on the organisation and how the process approach to management provides structure to such a system.
It will enable participants to understand the structure and intent of LAW 9000, the challenges of implementation, the road to certification, change management issues and the benefits of implementing LAW 9000.
It is suitable for participants who wish to begin the process of implementing the LAW 9000 system.

The Australian Legal Practice Management Association

The journey to high performance
Speaker, John Urbano, Director of Executive Programs at the AGSM
A recurring theme in today's management literature and data from CEO's and executives is the need to develop your firm's intellectual capital through people.
This workshop looks at:
- current trends in management;
- how high performance teams create value for the firm;
- growing the skills for high performance; and
- developing a pipeline of high performance people as a competitive advantage.

8:45am to 12:45pm
Adelaide: Tuesday 1 March
Melbourne: Wednesday 2 March
Brisbane: Friday 4 March
Sydney: Thursday 18 March

For more details phone 03 9432-0335, email <k.billings@alpma.com.au> or visit <www.alpma.com.au> .

Beaton Consulting leadership program

Learning to lead
Research by Beaton Consulting confirms that leadership is a key determinant of those firms that have mediocre performance and those that consistently outperform their peers.
'Learning to lead' has been specifically designed for practice group and team leaders in firms facing the challenges of:
- rapid growth;
- strategic repositioning;
- succession planning;
- building for the future;
- driving profit improvement;
- getting the best out of their people; and
- building a team based culture.

Techniques including emotional intelligence assessment, 360º feedback and coaching to build participants' capabilities will address:
- leading yourself and others;
- creating trusting client relationships; and
- managing for commercial success.

Sydney: 17 March –19 March , AGSM city campus.
Melbourne: 13 —15 October, The Westin.

For more details phone Lynda Dean on 03 9829 0000, email <lynda@beaton.com.au> or download the brochure from <www.beaton.com.au/LearningToLead.html>.

PUBLISHING EDITOR: Kerrie Tarrant BA, MBA **MANAGING EDITOR: Elizabeth McCrone** BA/LLB(Hons) MLitt **PRODUCTION: Christian Harimanow SUBSCRIPTION INCLUDES:10 issues per year plus binder SYDNEY OFFICE: Locked Bag 2222, Chatswood Delivery Centre NSW 2067 Australia TELEPHONE: (02) 9422 2222 FACSIMILE: (02) 9422 2404 DX 29590 Chatswood www.lexisnexis.com.au kerrie.tarrant@lexisnexis.com.au**

ISSN 1445-7946 Print Post Approved PP 255003/05838 Cite as (2004) 4(4) LPM

This newsletter is intended to keep readers abreast of current developments of interest to law practice managers. It is not, however, to be used or relied upon as a substitute for professional advice. Before acting on any matter in the area, readers should discuss matters with their own professional advisers. This publication is copyright. Except as permitted under the *Copyright Act 1968* (Cth), no part of this publication may be reproduced by any process, electronic or otherwise, without the specific written permission of the copyright owner. Neither may information be stored electronically in any form whatsoever without such permission. Inquiries should be addressed to the publishers.

LexisNexis™ Butterworths

Printed in Australia © 2005 Reed International Books Australia Pty Limited trading as LexisNexis ABN: 70 001 002 357