

# DON'T STRESS RISK MANAGEMENT

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## Stress as an Underlying Cause of Claims?

Saying that incorrect or inappropriate legal advice can lead to claims against lawyers and law firms is stating the obvious. It might be surprising to note however, that the actual underlying cause of most claims is not related to legal advice – Olivia Burren from St. Paul Travellers Professional Risks Ltd. observes that about 90% of all claims arise from an underlying administrative error.<sup>1</sup>

Claims statistics for the Malaysian Bar PII Scheme seem to corroborate Burren's observations – between 2001 and 2008, only 13% of all claims resulted from incorrect advice and/or ignorance of the law – majority of claims appear to have arisen from oversight, forgetfulness, and/or carelessness.

Although nobody is above such human errors, it is quite another story if such oversights and mistakes occur with alarming frequency as a result of work stress. Although stress is difficult to define because it is a highly subjective phenomenon that differs for each individual, it is clear (from a range of surveys and studies) that stress at work is negatively correlated to performance at work – something that personal experiences and anecdotal evidence will attest to. In a way, it is analogous to *common mode failure* - where one event causes multiple systems to fail.

## Stress and Lawyers

It is common knowledge that the practice of law is often incredibly stressful. Lawyers often deal with people or organisations in trouble. They also often work with interpersonal conflict in circumstances that invite moral discomfort, in a profession that can be aggressive, adversarial, competitive and combative... and we haven't even talked about the hours yet.

Some, or perhaps all, of the following might sound familiar:

- Inheriting 200 files in your first week and being expected to handle the files with minimal guidance/supervision from bosses.
- Working 16-hour days for long stretches during peak periods.
- Perpetually being on call – After office hours (even if it was a 16-hour day), over weekends, during personal leave, public holidays and when you are overseas.

Although stress seems to be a defining trademark of being a lawyer, it seems that little is being done to address the issue – The Survey on Working Conditions conducted by the Bar Council National Young Lawyers Committee in 2007 shows that almost 50% of young lawyers are not satisfied with work related pressures in practice and over 66% are considering leaving the profession within the next 5 years.

## Effects of Stress

A report by HR consultancy, Cubiks<sup>2</sup>, notes that high employee stress levels can have a major negative impact on the individual and organisational performance and that most employers either don't fully appreciate the risks associated with stress or are taking a calculated gamble that stress won't affect them. This supports Burren's observations that the underlying causes of most claims against lawyers result from the immense pressure lawyers are under.<sup>1</sup>

Maybe it's time to take a deeper look at stress as a very real underlying cause of negligence/claims. This might include instances such as, failure to appear at hearings, appearing in the wrong court, mistakes in pleadings, forgetting to file cause papers/appeal notices or records, failing to carry out a land search, failing to file a caveat once a purchaser has paid a deposit and glaring mistakes in letters which may amount to defamation.

It is clear then that a part of managing your risks as a law firm should include managing stress-related risk factors. This not only has implications for claims, but would also drive positive effects in areas such as talent attraction, retention and succession planning, thereby contributing towards positioning your firm for long-term success.

## What to do

Relieve stress with tips on our Centrespread (Page 6 & 7)

## Conclusion

Whilst it is vital for lawyers to pay close attention to the legal advice being given to clients, let's not ignore other factors that might be important in helping to manage claims. **Manage your risks... Don't stress.**

1. Olivia Burren, Risk Management in Solicitors' Professional Negligence Claims, St. Paul Travellers Professional Risks Ltd, 2004.
2. Cubiks, 'Hot Under The Collar: How Stress Is Impacting On The 21st Century Business Environment', November 2002.
3. Raggett, A New Human Factors Risk Management Program for Qantas, 11 November 2006.