

Episode 53: Summary

Episode name: Mistaken Expectations: Managing and Owning Mistakes in the Workplace

Guest(s): Jennifer McMillan

What area(s) of law does this episode consider?

How to manage and appropriately respond to mistakes in the workplace.

Why is this topic relevant?

Everyone makes mistakes. However, it's not necessarily the act of making a mistake which determines the outcome, but rather how we deal with the situation once we realise a mistake has been made.

Dishonesty as to a mistake exacerbates the consequences. Appropriately managing mistakes and understanding the correct way to respond to them is a key skill for lawyers.

What legislation is considered in this episode?

Legal Profession Uniform Law Application Act 2014 (NSW)

What cases are considered in this episode?

Pitcher Partners Consulting Pty Ltd v Neville's Bus Service Pty Ltd [2019] FCAFC 119

- Neville's Bus Service (**NBS**) engaged Pitcher Partners to assist in the preparation of a tender. A director of Pitcher Partners noticed an error in their work on the tender, but dishonestly indicated to NBS that the tender was accurate. This error led to the contract being \$660,000 a year less profitable. At trial, the director admitted deliberately not telling NBS the full story.

Council of the Law Society of New South Wales v Renfrew [2019] NSWCATOD 63

- A lawyer prepared a will for a client in which the lawyer's assistant signed as the second witness after the testator had died. The lawyer then witnessed an affidavit of the executor that named the two witnesses. On application by the NSW Law Society to have the lawyer removed from the roll, the tribunal instead recommended that the lawyer be publicly reprimanded, have her practising certificate restricted, and that she undertake further legal education.

Victorian Legal Services Commissioner v Olayemi (Legal Practice) [2019] VCAT 1283

- A newly admitted lawyer made a fatal mistake on a visa application and doctored the visa refusal letter, changing the reason for refusal. The client informed the practice that the document was doctored. While the lawyer was eventually sanctioned by VCAT, his supervisor acknowledged in evidence the failures of the practice to provide appropriate supervision and monitoring of the young lawyer's well-being.

What are the main points?

- The most common complaint reported to the OLSC was lawyer negligence. Followed by issues with communication. The third most common complaint was cost disputes for overcharging.

What are the practical takeaways?

- Lawyers have a responsibility to let clients know of a mistake or issue as soon as reasonably practicable. However, it is important not to admit liability to a client where Lawcover has not recommended to do so.
- When you make a mistake, own up to the mistake and notify your supervisor or a trusted colleague as soon as possible to try and rectify the issue before significant harm has been done to the client. It is likely that they will direct you to call Lawcover. You can talk to a Lawcover claims solicitor about what's happened and they will provide advice on the next steps you should take.
- Dishonesty exacerbates mistakes. Do not act dishonestly and try to hide a mistake you have made. This can potentially have significant negative impacts on your client. Be honest and try to rectify the mistake as quickly as possible.
- Supervisors and principals should endeavour to create a working environment that encourages lawyers to admit when they have made a mistake and seek advice on how to rectify this issue.

Show notes

[The Office of the Legal Services Commissioner Annual Report 2020-2021](#)