



# S.M.A. NEWSLETTER DEC. 2022

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## ***Managing Client Expectations & Helping Clients to Move Forward from Undesirable Outcomes***

*Merry Christmas to all our valued clients!*

*It has been a wonderful year for SMA clients this year. Through patient negotiation, we have achieved some great financial settlements for clients and we thank you for the testimonials so many of you have posted on Google Review or on our website.*

*Whilst here at SMA we have a great reputation for achieving good outcomes for our clients, sadly not all matters go to plan or get the result the client may have thought possible before obtaining legal advice. Many clients are misled by American television and Netflix shows about civil litigation. Unfortunately, the kinds of outcomes from class action litigation in other countries do not reflect the law in Australia, especially the huge payouts that are achieved. Managing client expectations is not an easy task but it is necessary because it keeps the client grounded in the reality of what is achievable. From time to time, we find we have to remind clients of the limitations of the Australian court system especially around limitations on remuneration ceilings, depending on the relevant court or commission involved and further depending on the client complaint and available evidence. We have observed on rare occasions that some clients become so fixated on an issue that they do not hear the advice being given because it is not what they want to hear. We understand that our clients are invested in their claims and a great outcome. We understand that litigating generates a significant level of anxiety. Nevertheless, solicitors are not trained psychologists and managing these clients expectations requires understanding, respect, patience and skill. We attempt at all times to provide model care and accuracy to our clients. We welcome your queries.*

*Recently the Queensland Law Society's issue of Proctor contained an article by Shane Budden, Special Counsel, Ethics, with the Queensland Law Society Ethics and Practice Centre that expressed some views of that author on this subject, much of which certainly rang true to our ears.*

*This article is well worth the read for both clients and fellow solicitors.*

*The following is an excerpt:*

*"Clients can become obsessed with past setbacks, decisions or outcomes, and that obsession cannot be left to fester. A client constantly stewing over past indignities, imagined or otherwise, is a client who may not be able to give their solicitor useful or coherent instructions. Getting clients past these points is arguably not a legal issue, but it is a practical necessity.*

*Some practitioners might think this is limited to areas like family law or litigation, where interim decisions can cause much angst, but it is a broader problem than that. Clients can become fixated on an unfavourable lease condition, the price of a property or an interim distribution from an estate. In every case, getting the client to accept what has happened and move to the next phase of the matter is essential to ensuring the best outcome for them, and for that matter, the practitioner. The ability to move a client past a setback and on to the next phase of a matter will depend largely on the relationship the practitioner has with the client, and the practitioner's general people skills. There are, however, some tips which will likely assist in all such circumstances.*

### **Manage expectations:**

*Hardly a new concept in the realm of solicitor-client relationships, but it is much easier for a client to get past a setback or bad outcome if they were always genuinely aware that it might occur. This means having a full and frank discussion with a client to ensure they truly appreciate the possibility of a poor result, and the issue is even more acute if the chances of a good result are very low.*

It is important to note that this is an ongoing obligation, not something that can be dealt with at the outset of an engagement and then forgotten about. Clients often overestimate the merits of their position and need regular reality-checking, especially if they have adopted an approach inconsistent with their solicitor's advice.

### **De-brief bad results, and let the client speak:**

Clients look to lawyers for advice, guidance and assistance, and as a result it is easy for lawyers to adopt a lecturing style, explaining results and dictating future steps with little space for client feedback. When delivering bad news to a client, there is a natural desire to get it out of the way. However, the client will need time to process it, and part of that processing will need to involve a proper discussion.

Clients should be encouraged to ask questions about the result, and practitioners should answer those questions clearly and without judgement. Studies about vaccine resistance have revealed that dealing with such attitudes non-judgementally, and via answering questions, can reduce the fixed mindset of those who are hesitant to vaccinate children<sup>2</sup>. It is likely that a similar approach could assist in moving clients through fixed mindsets.

De-briefs should also take place as soon as possible after the result; while the day of the outcome or setback may be too soon if emotions are high, things should not be left to fester.

### **Don't confront resistance head-on:**

While frank and fearless advice to the client is an ethical obligation of all solicitors, it needs to be kept in mind that clients have high levels of emotional investment in their matters, and often a great deal of tangible investment as well.

Moving more subtly towards a conclusion – in dialogue with the client rather than simply dictating to them – will be a more effective way of reducing resistance; and openly arguing with a client may well entrench their views.

### **Provide options, not ultimatums:**

There will usually be several ways to move forward with a matter, some more advisable than others. Allowing the client to think over the options, while making the consequences of each choice clear, will help them get past a bad result, as they will have some ownership of the problem.

### **Solicitors aren't psychologists:**

While it is likely that practitioners will be able to assist most clients to move on from a setback or undesirable outcome, it may be that a client's inability to move forward is more deep-seated than usual, and largely intractable. In these cases it is important for solicitors to recognise the limitations of their expertise, and guide the client towards professional help.

Psychologists often employ a technique called 'motivational interviewing' to assist people to get past fixed positions and views of the world, but becoming skilled in that process requires significant training in the discipline. Few solicitors would be able to easily add this to their toolkit, and the best that can be done in such situations is to identify the problem and direct a client to professional help should they need it.

How clients deal with adverse outcomes and setbacks will largely be a function of their personality, and assisting them to move forward will depend on how well a solicitor knows the client. As always, preparation is key – in addition to preparing clients properly for all possibilities, it is worth taking the time to consider how each client will respond if things go poorly.

Being on the lookout for signs of a client struggling to get over things is also a worthwhile investment of time – the earlier these issues are noted and addressed, the better.”

#### **“Footnotes**

<sup>1</sup> *So Long, and Thanks for All the Fish*, Douglas Adams, 1984.

<sup>2</sup> *Impact of a vaccination promotion intervention using motivational interview techniques on long-term vaccine coverage: the PromoVac strategy*, Lemaitre T, Carrier N, Farrands A, Gosselin V, Petit G, Gagneur A. *Hum Vaccin Immunother.* 2019;15(3):732-739. doi: 10.1080/21645515.2018.1549451. Epub 2019 Jan 4. PMID: 30457421; PMCID: PMC6988881. “