

# REFERENCE

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## *Management for potential liability*

In the face of potential liability for the giving of incomplete or mistaken information, what are we as managers of law libraries to do to mitigate possible problems? Is there a risk for us as library managers? Most of us have a contract of employment with our host organisations. These organisations have liability insurance. What is the risk to us of being found liable for information provided? Are we covered by our organisation's insurance? I will confine myself to generalisations from the literature on the meaning of 'professionalism', and talk about some potential problem areas

### *Professionalism*

Firstly there is the question of 'professionalism'. While I have always considered law librarianship as a profession, 'professional liability' means just that. It is 'professional'. Can law librarians be considered as such when we have no formal training in law librarianship? We are not required to formally accept ethical standards. We are not obliged to be members of our professional organisation, or to have our competence tested by that organisation.<sup>1</sup>

### *Management*

We have a duty to our employers to offer reliable, accurate information.

- Should non-librarians (library assistants, technicians etc) be answering queries?

The smaller the library the more likely it is that this will happen. Some librarians I know, would answer a resounding 'no'. I feel that the question depends on the scope of the query. The simple query, that is to locate a case or legislation in current form can be well dealt with by non-librarians, as can other queries of this nature. The problem of that overturned case, or the recently updated statute can be overcome by having good systems in place, and by supervision. Staff should be trained in current research methods and content and coverage of resources, but also be made aware of potential liability that could arise from inaccurate answers

- Extensive research questions

Some librarians limit the type of query that they feel qualified to answer. Some limit by the perceived time that the query may take. This is one way to deal with the problem, but what does it say about our professional expertise? Do we then cease to offer a research service? If the tools are available then shouldn't we use them?

"The librarian's part in the transaction ends when the search results are passed to the client"<sup>2</sup>

1 Arlington, Helga. Towards the formulation of standards - a look at potential law librarian liability *New Zealand Law Librarian* 2 (2) 1996, p66-70 @ p67

2 Marsh, Eric. Duty of care *The Australian Library Journal* 41(3). p219-223 @ p221

Of more concern until we know the coverage of our organisation's liability insurance is the practice of dealing with outside clients.

- Interstate queries

Equivalent statute law in particular jurisdictions has traditionally been difficult to answer. It is certainly easier now that we have two developing encyclopedic works<sup>3</sup> available and also the full text of statutes on disc or online. We can now rely more on reference sources rather than hoping that we have covered all the different applicable statutes and regulations. I tend to check difficult queries of this nature with a subject specialist lawyer.

- Firm's clients, Barristers etc.

There have been times when I have been approached by these types of clients, although usually the request is channelled through a lawyer. I deal through the lawyer rather than direct.

### Advice

There is a difference between finding information, even information which is extremely difficult to find, and giving advice.

"Every law librarian must understand the fine line between finding legal information and interpreting that information"<sup>4</sup> While we can provide information, we cannot give advice.

In the end, we rely on basic reference principles, and how we apply them, such as:

- sourcing the information
- in depth knowledge of coverage / reliability of different reference sources

- knowledge of 'outside' reference sources
- knowledge of search methods
- being adaptive and interpretative, listening to the query
- broadening or narrowing search strategies as the subject requires

If the suggestion arises that we should be liable, perhaps all we have to rely on is our training. We can lobby our professional organisations for a statement of policy on this question. We can demand training for new law librarians and continuing education for ourselves. We can ask that our profession be taken seriously by insisting on a professional code of conduct and standards, with the concomitant disciplinary structure. In the rush to stay ahead of the ever growing information resources, we should remember that we are the trained information professionals, and if we are to be faced with liability, then we need to be both prepared and shielded by our professional organisations.

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### *A trade mark for a smell?*

The first ever Australian trade mark application for a smell was accepted by the Australian Registrar of Trade Marks on 2 January 1997.

The application, in the name of Unicorn Products Ltd of London, is described in the trade mark application as "comprising the strong smell of beer used for flights of darts"<sup>5</sup>

The article goes on to explain that it is unlikely that there will be many registrations for scents, only the truly unique such as the beer smelling darts will qualify. Interesting to research whether a new smell would infringe a trade mark registration - and a bit difficult to do via the electronic media.

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3 *The Laws of Australia* (LBC Information Services) and *Halsbury's Laws of Australia* (Butterworths)

4 Arlington, Helga 'Towards the formulation of standards - a look at potential law librarian liability' *New Zealand Law Librarian* 2(2) @ p68

5 Hall, Michael 'First ever 'smell' trade mark registered in Australia' *Australian Intellectual Property Law Bulletin* 10(1), March 1997, p2