

QLS Ethics and Practice Centre

Leadership in legal professionalism

Fidelity | Service | Courage

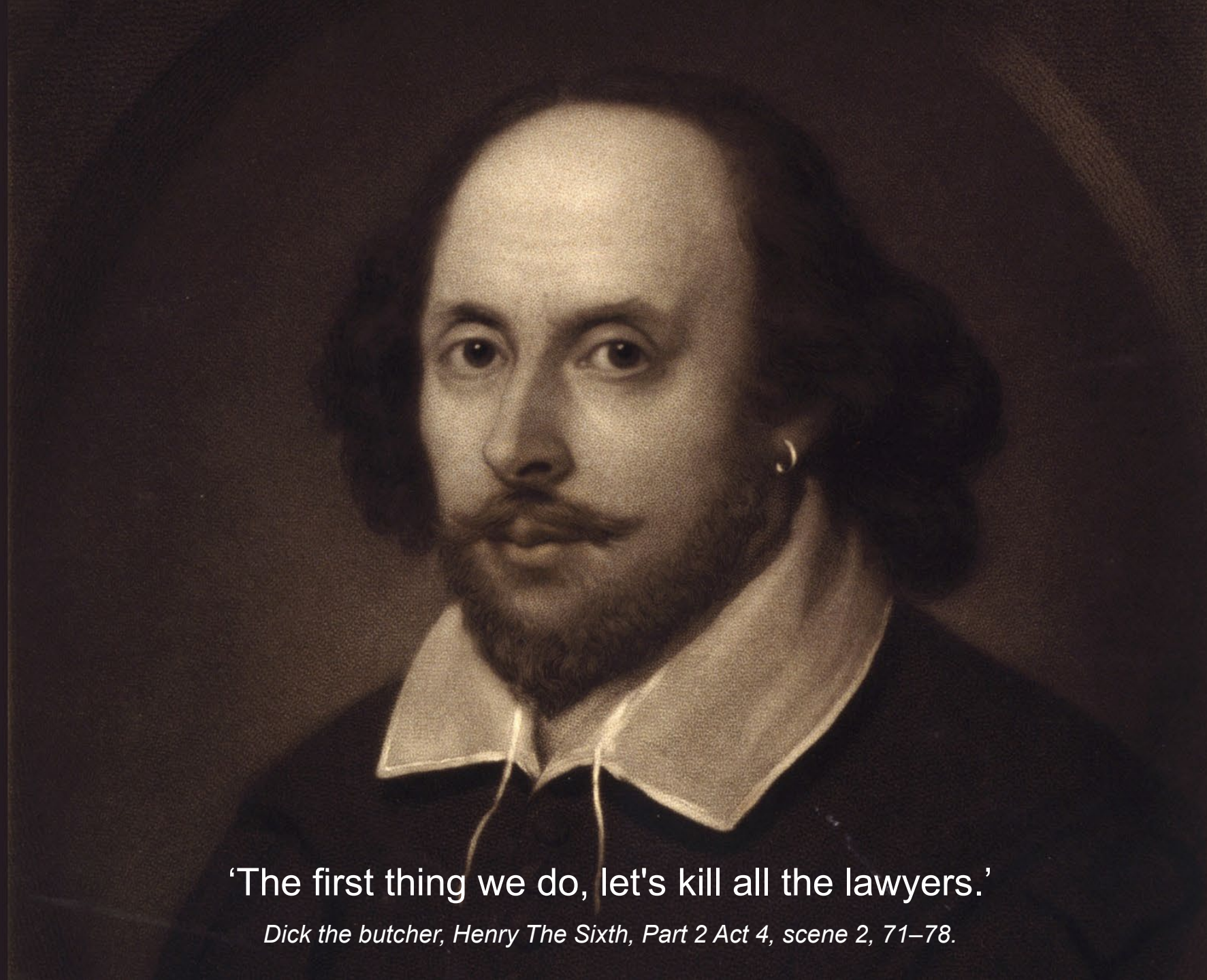


Community Legal Centres Queensland

The Ethics of Supervision in a Changing Workforce

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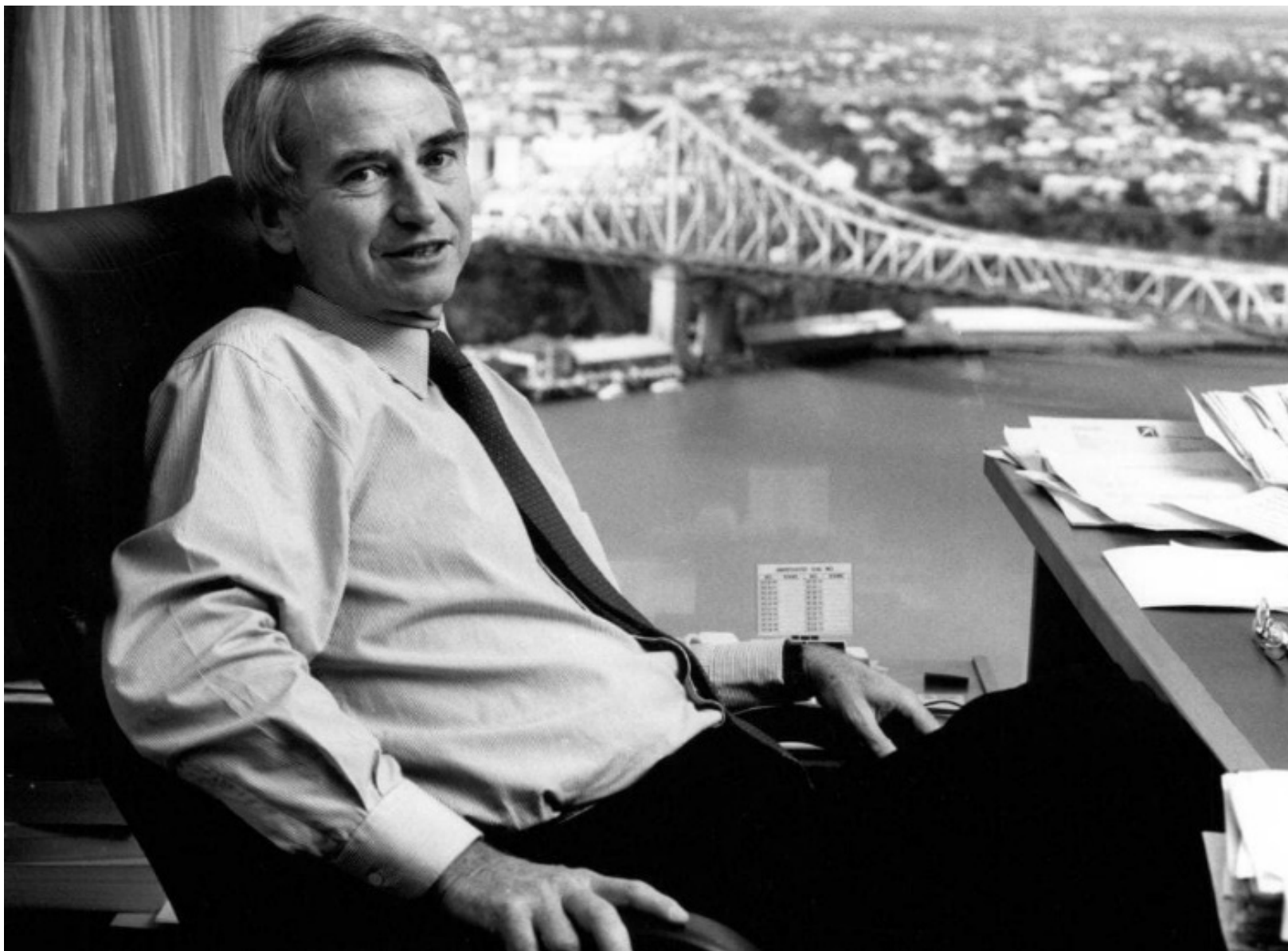
31 May 2023



‘The first thing we do, let's kill all the lawyers.’

Dick the butcher, Henry The Sixth, Part 2 Act 4, scene 2, 71–78.





‘[M]ost thoughtful people would agree that morality in the absence of policing is somehow more truly moral than the kind of false morality that vanishes as soon as the police go on strike or the spy camera is switched off, whether the spy camera is a real one monitored in the police station or an imaginary one in heaven.’

Richard Dawkins, *The God Delusion* (Houghton Mifflin Co, 1st ed, 2006) 262.

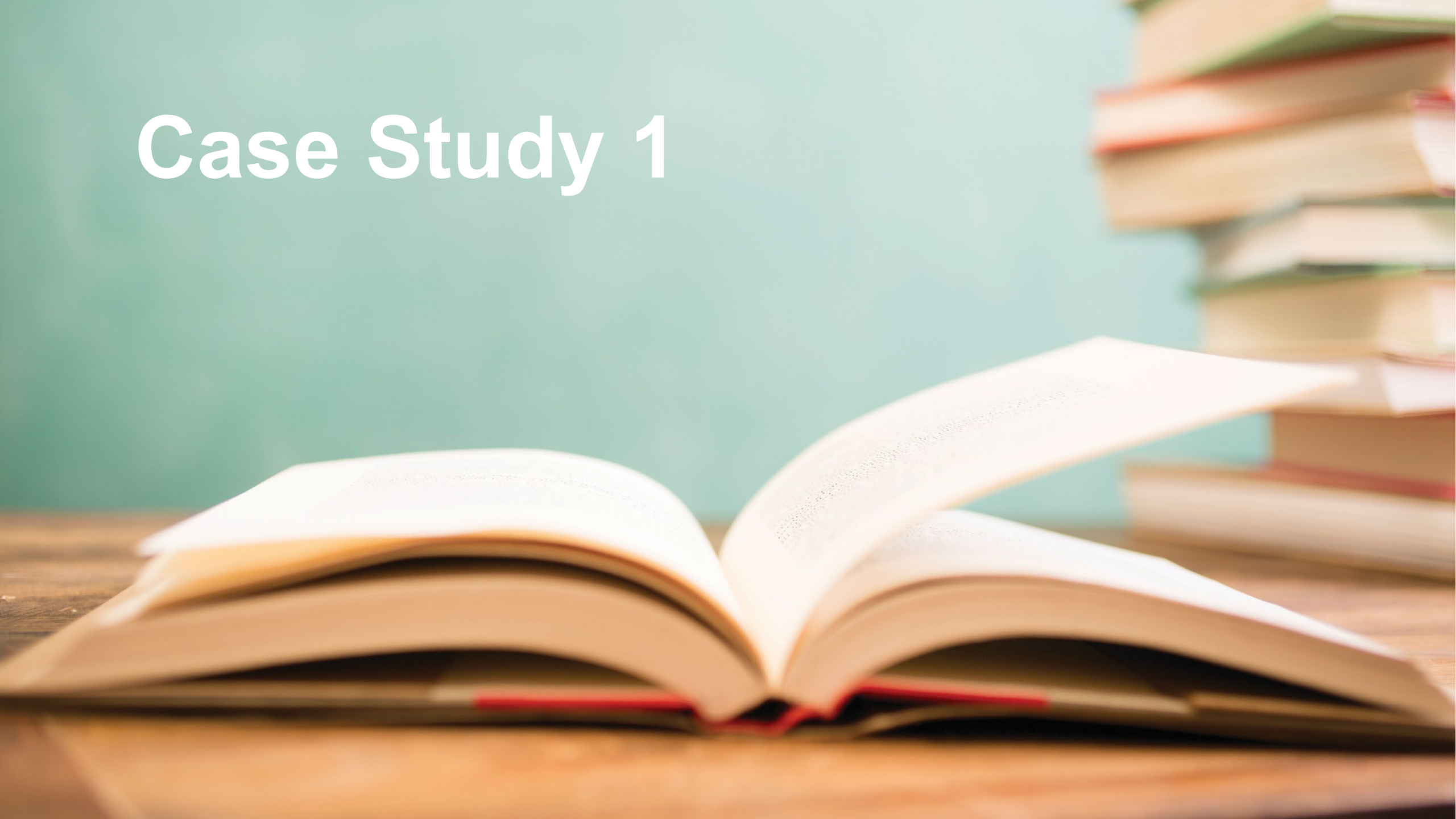
Fundamental Duties

The court and the administration of justice	Best interest of client
Honest and Courteous	Competence
Independence	Integrity
Fit and proper	Maintain public confidence
Not bringing profession into disrepute	Undertakings

Supervision is harder now

- We don't have the cattle
- Graduates, not lawyers
- Inadequacies of PLT
- Unrealistic expectations on both sides
- Working from home/remote appearances

Case Study 1



Case Study 1

Warren is a newly admitted solicitor who has just commenced with a local community legal centre. The centre operates largely on a 'drop-in' basis, providing clients general initial advice on a range of legal matters, from parking fines and disputing government decisions, to family and criminal law matters.

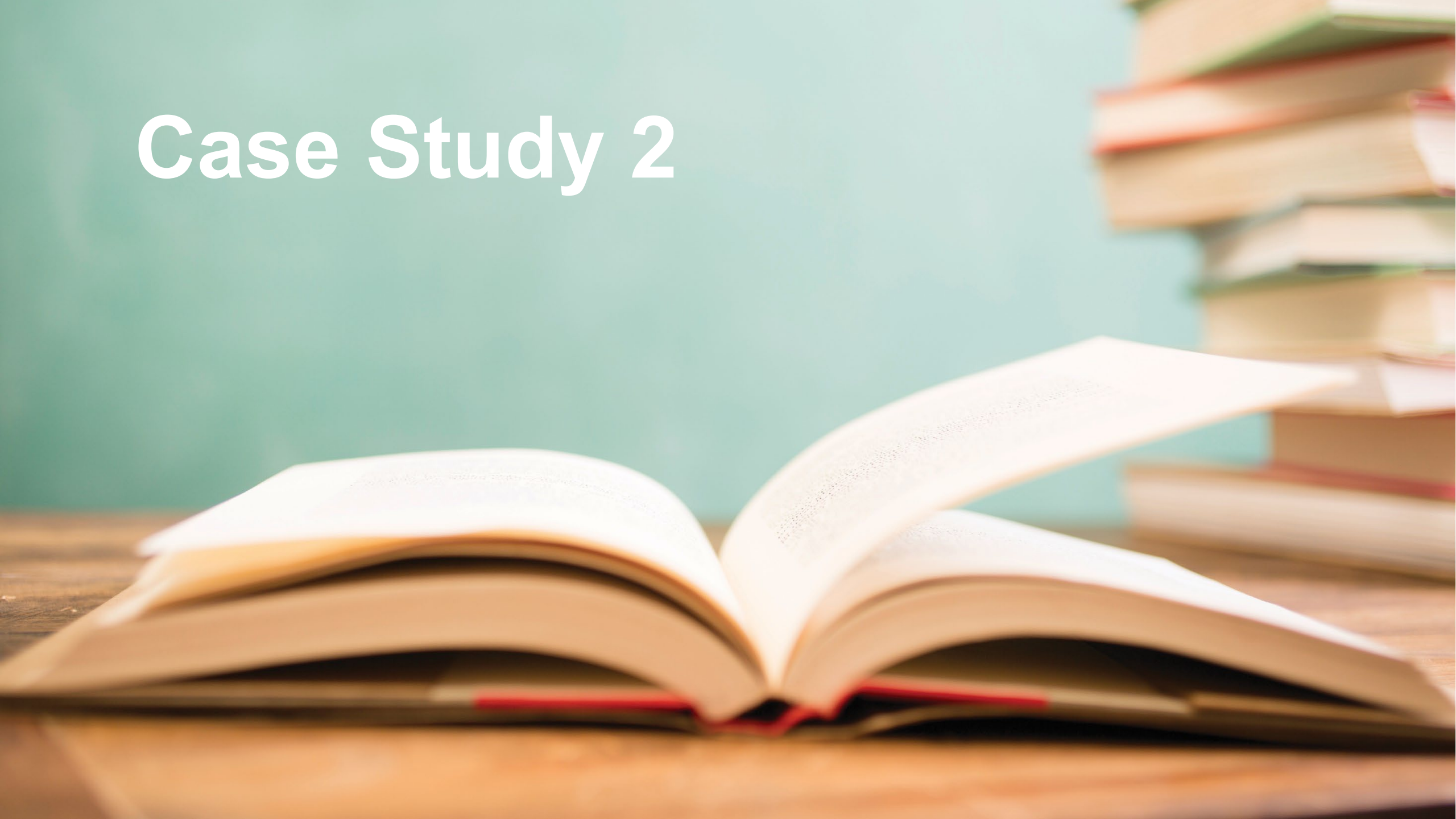
Keira, the director of the ILP, assigns Warren a client whose father has just passed away; he did not have a will. Keira tells Warren that the client simply needs a basic explanation of what happens in an intestacy.

"What's an intestacy?" Warren responds.

The Priestley 11

- Does not include Succession or Family Law
- Is under consideration, and universities would like it abolished
- With juniors, must look to the resume
- Recruitment is the first step in good supervision

Case Study 2



Case Study 2

Harry Amidships is a graduate who worked as a paralegal at Addams Family Lawyers (AFL), during his studies, but on admission he left, because he and Addams Family Lawyers hadn't clicked.

The CLC is a small outfit that generally helps self-represented litigants with the creation and filing of court documents, but which doesn't do the court work. The Director of the CLC is a volunteer with a Principal Practising Certificate, who was a partner in a national firm but runs the CLC as a way to give back to the profession during semi-retirement.

The sole admin support for the CLC is Bella Cose, who was the Executive Assistant to the Director during her private practice days; Bella effectively runs the CLC, with the Director only there three days a week, and is a formidable personality. Harry works full-time and is mentored by the Director on a largely ad-hoc basis.

On one of the director's days off, a client comes in with an urgent matter, an application and affidavit which has to be filed by 4 PM. Harry usually has his work checked by the director before going out, but Bella tells him he will have to 'give it his best shot'. Harry says he doesn't think he can ethically do that, and Bella says that as his boss, she is ordering him to do the work.

Fundamental Duties again

- Court and the administration of justice
- Best interests of the client
- Competence
- Independence

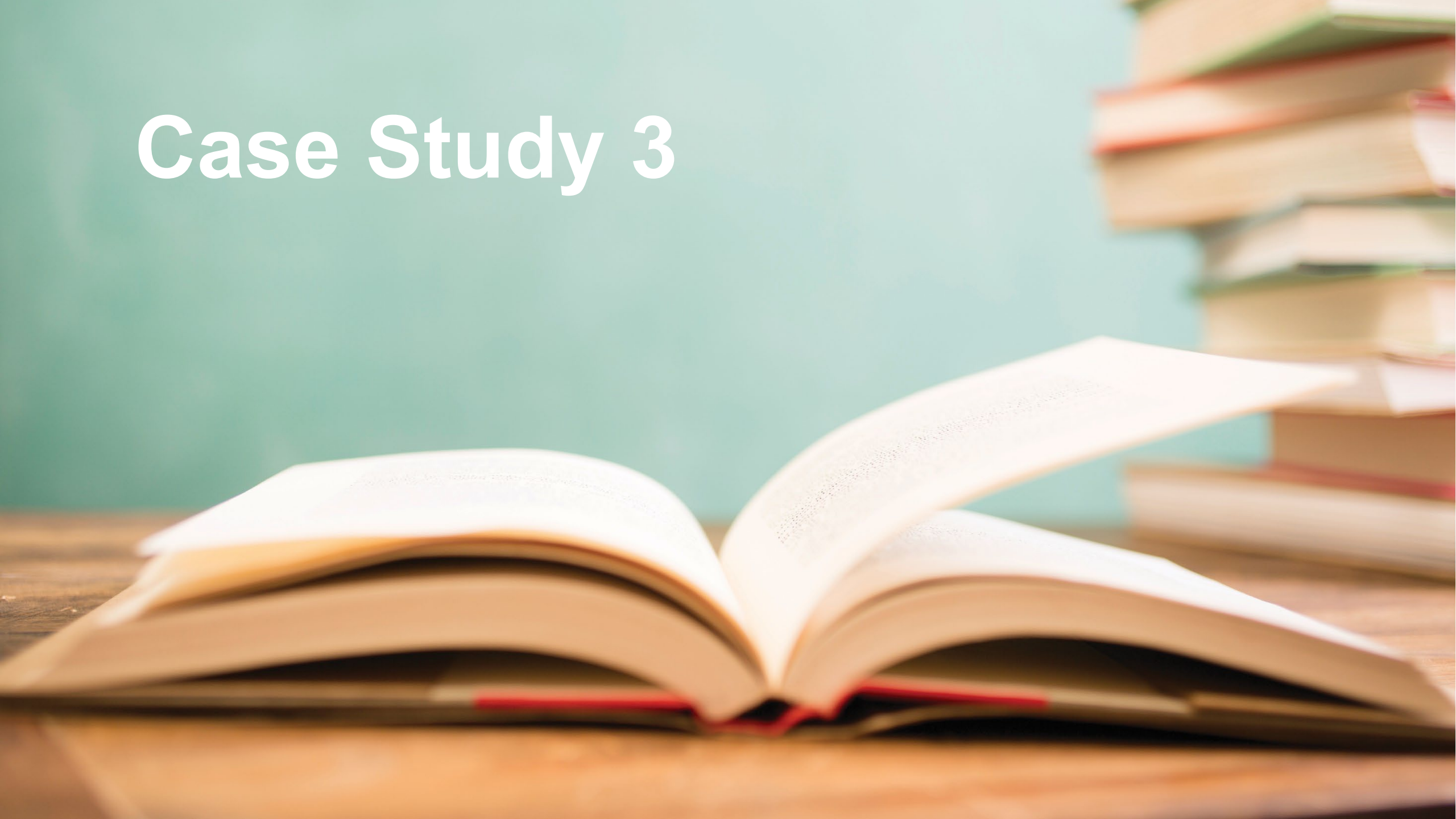
Proper procedures

- Availability of director
- Process for managing up
- Does Barb understand the problem?

‘It applies in any business. Shoemakers should be run by shoe guys, and software firms by software guys, and supermarkets by supermarket guys. With the advice and support of their bean counters, absolutely, but with the final word going to those who live and breathe the customer experience. Passion and drive for excellence will win over the computer-like, dispassionate, analysis-driven philosophy every time.’

Bob Lutz

Case Study 3



Case Study 3

Bill Shock is the Director of a CLC which has three offices, one in a large coastal town and two in the inland regions. The inland offices have one solicitor each, but the service also utilises a network of volunteers who have work from home arrangements with their employers and are allowed to take calls referred by the service as part of pro bono targets.

Bill has in place quarterly meetings by video conference, where each office reports on their activities and any problems are discussed. In the latest meeting one of the branch offices reports that they have been unable to access the volunteer network for several weeks; when Bill asks why they didn't report earlier, the office replies that they tried and could not get hold of Bill, so waited until the quarterly meeting.

Bill digs deeper with his branch offices and discovers that some of the volunteers are keeping records of calls in their office databases rather than in the official CLC database, because access to it is clunky and its security status is unclear.

Bill has his own ILP through which he provides debt recovery templates to self-reps as a side hustle.

Appropriate systems, supervision and training

- Too much on Bill's plate?
- Meetings not often enough
- Procedures and protocols not clear

Further reading

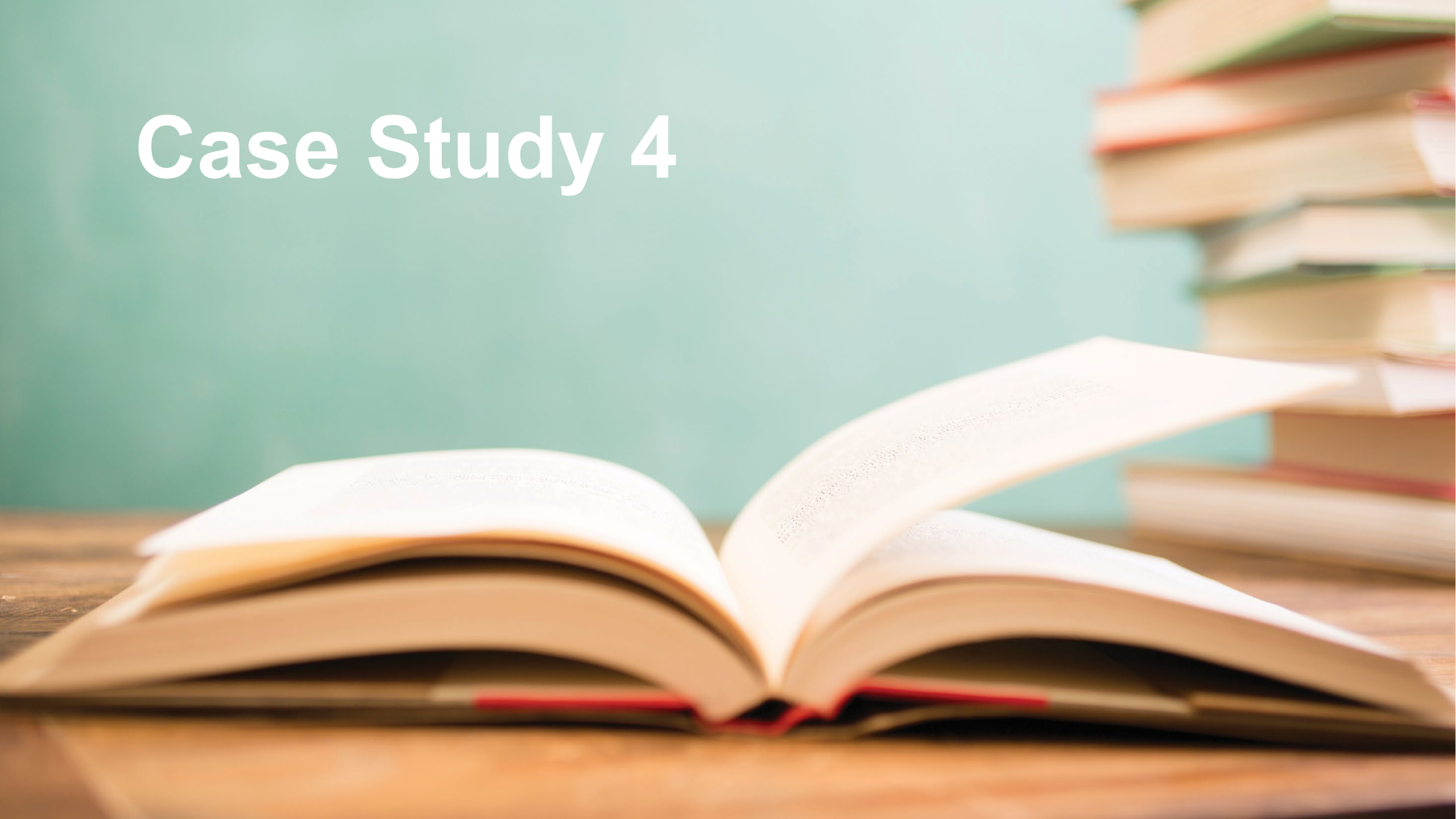
- Queensland Law Society, *Guidance Statement No. 16 – Supervision*
- Queensland Law Society, *Guidance Statement No. 25 – Professional Standards when Appearing in Court Remotely*
- QLS Proctor

Tips for effective policy/procedures

- Ensure policies are clear and unambiguous, and specify the action that will be taken if they are transgressed and the legal consequences for employee and employer.
- Backed up by training that is formal, comprehensive, and regular.
- Ensure training is mandatory and undertaken by all employees.
- Include an assessment process or some other method to ensure that the employees have understood the training.
- Conduct regular, formal refreshers and ensure participants understand the content.
- Review the policy regularly, update if necessary and hold specific training for the updates.

Von Schoeler v Allen Taylor and Company Ltd Trading as Boral Timber (No 2) [2020] FCAFC 13

Case Study 4



Case Study 4

Kay Pubble is a junior solicitor who did her first year out of university at Quick Billem Now & Associates, a large CBD firm. She did mostly research work, including for a wrongful dismissal matter. Quick Billem Now acted for the employer in that matter; the employee, Barb Wire, was self-represented.

Kay was frustrated at being limited to research work, and a bit disillusioned by the firm's culture, and so moved to a CLC which specialised in workplace matters; just before Kay started, Barb became a client of the CLC in regard to the matter Kay had worked on.

When she starts at the CLC, Kay meets with the directors and advises of her previous and minor involvement with Barb's matter. Her new bosses advise that she will not be involved in Barb's matter and the EDRMS will not allow her to access the electronic file for Barb's matter. They also advise Quick Billem Now & Associates of the actions they have taken in this regard. The firm responds with a demand that the CLC withdraw, as Kay's presence puts them in conflict.

Old position:

McMillan and McMillan (2000) 159 FLR 1.

- a firm should be restrained where there was even a ‘theoretical’ risk of misusing confidential material.
- need only swear that confidential information was imparted to someone, but need not particularise it or show any especial relevance to the current dispute.

New position:

Osferatu v Osferatu [2015] FamCAFC 177.

- the Court will act to restrain only where there is a real, if not substantial, risk of misuse.
- the Court accepted information barriers as a reasonable tool to manage the risk.
- the party seeking the restraint must outline the classes of information they feel to be at risk, its relevance, and how misuse would be detrimental to them.

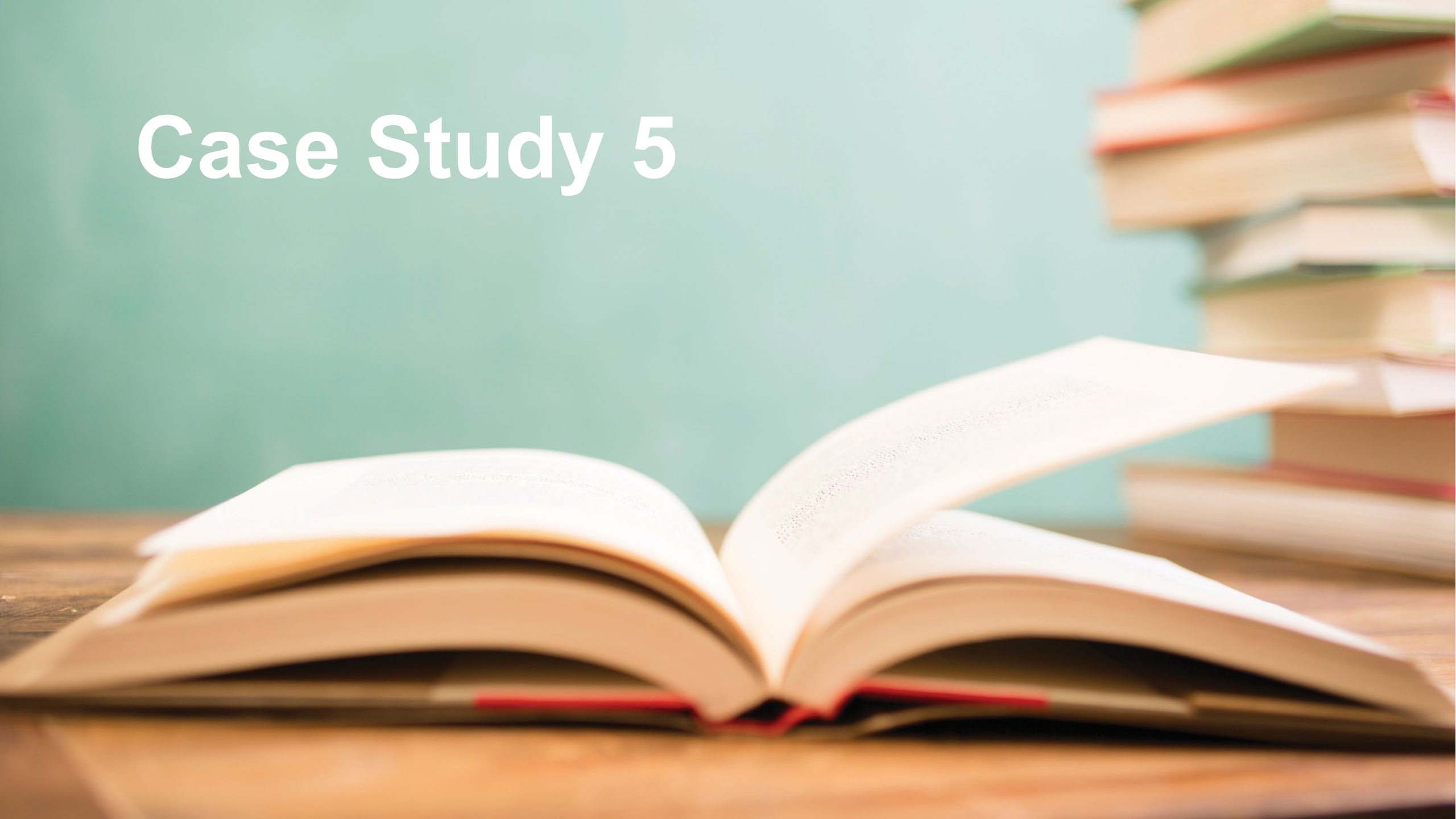
Gavan & Mickell [2021] FedCFamC1F 280

- Solicitors in different offices
- Different supervisors, and information barrier in place
- Undertaking
- Court not satisfied risk of transmission eliminated

ZANI v LAWFIRST PTY LTD trading as BENNETT + CO [2014] WASC 75

- Information barrier in place
- Undertakings given
- Court found no real or sensible possibility of information transmission

Case Study 5



Case Study 5

Bill Bluster works as a solicitor at a CLC which specialises in criminal law. The Centre has become well-known in the community through a jingle it ran for a time on a local radio station:

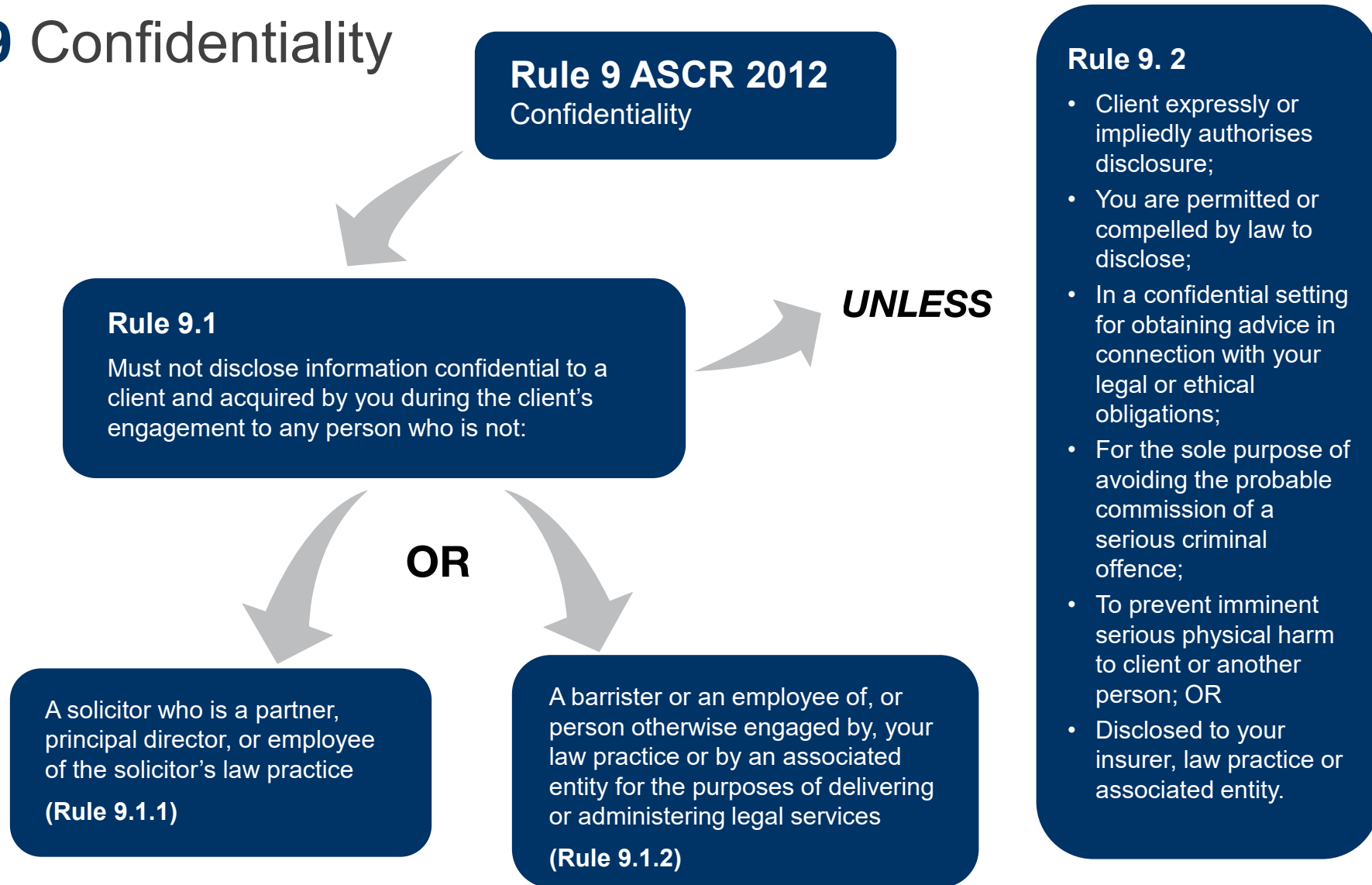
‘Conveyancing, family? That’s not what we’re for;
The only thing we do is criminal law’

One morning Bill is excited because he is representing his musical hero Des Chordant, lead singer of Bill’s favourite band, Des and the Disco Ducks, pleading to some semi-serious drug charges.

After the plea, which sees Des with a fine but no jail time, Bill grabs a selfie with a reluctant Des outside the courthouse, and later posts it on LinkedIn with the caption:

‘Very happy to help the legendary Des Chordant out of a bit of a jam today; enjoy the free air, legend!’

Rule 9 Confidentiality



If you must brag on social media...

- Explicit and informed written consent of client
- All information correct
- Totally de-identified
- Respectful and formal
- Photos: NO! (if you must, never of the client and no way of identifying)
- Never denigrate opposing lawyers or their clients
- Never criticise the bench
- Again: never criticise the bench

Queensland Law Society, *Guidance Statement 24 – Ethical considerations on the use of social media

Making ethical decisions

‘Look son, being a good shot, being quick with a pistol, that don't do no harm, but it don't mean much next to being cool-headed. A man who will keep his head and not get rattled under fire, like as not, he'll kill ya.’

– Little Bill, Unforgiven

- Preparation
- Client management
- Time management
- Independence


“There is no greater evil among mortals than want of counsel”

- Sophocles



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05 APRIL

New website login

Website login change




01 MARCH

QLS granted WGEA employer of choice citation

Queensland Law Society has today been announced as an employer of choice for gender equality for 2022-24 by the Australian Government's Workplace Gender Equality Agency (WGEA).

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**QLS Ethics and
Practice Centre**

 **Queensland
Law Society**



I will now answer
any question you
have...

...unless it is 'what are
you doing on the couch?'

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