

Short Minutes Transcript: (Over)Reliance on Counsel

Solicitors accepting instructions, to act in matters where they lack knowledge of the law or its application, account for 13% of claims. It is not uncommon for those solicitors to have relied on Counsel's advice in the conduct of the matter.

A solicitor cannot necessarily avoid responsibility completely by relying on Counsel's advice. It is rare where reliance on counsel has been a complete defence. In [Boland v Yates Property Corporation](#), the High Court clarified the extent of a solicitor's duty to the client when briefing Counsel.

In the words of Justice Kirby:

"The solicitor must exercise independent judgment to the extent that it is reasonable to demand this having regard to the solicitor's reputed knowledge and experience, the complexity of the case and the skill and experience of the barrister who has been retained. If the solicitor reasonably considers that the barrister's advice is obviously wrong, it is the solicitor's duty to reject that advice and to advise the client independently, including as to the wisdom of retaining a fresh barrister."

When briefing Counsel:

- Always exercise independent professional judgment and don't just rely on Counsel
- Disclose to Counsel your own level of expertise
- Don't abdicate responsibility to Counsel on the conduct of the matter and settlement offers
- Specifically refer Counsel to matters of concern
- Question Counsel's advice when it appears doubtful
- A brief to advise generally will not be sufficient. Be specific as to the advice or drafting required
- Request advice on any other matters required to protect the clients' interests
- Confirm with Counsel that the brief has been accepted

The Law Society's guide to Working with Barristers can be found at the link below.

<https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/026515.pdf>

I'm Malcolm Heath