

Conversations that keep Lawyers away

With Rachel Burt, Employment Barrister



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Stages of addressing employment relationship issues



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Prevention

- Recruitment
- Induction
- Leadership
- Team support

Harm prevention, reduction and restoration

- Early legal advice (privilege)
- Without prejudice conversations
- Restorative interventions

Legal interchange, adjudication

- Focus on technical legal issues rather than impact on the people involved
- May result in third party adjudications and rigid process
- Out of the parties' control
- Harm typically escalates – damage to individuals and wider team
- Cost escalates





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CASE EXAMPLE ONE

Restorative Practice Alternative

Exploring a restorative practice approach as an alternative to a formal investigation



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Legal Privilege

Can you get strategic advice on how to deal with a difficult employment situation without that advice being exposed to Privacy Act requests, OIA's or litigation?



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CASE EXAMPLE TWO

Without Prejudice or “Off the Record” Conversations continued

How you can have an honest conversation about an exit
without risking a personal grievance claim?





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CASE EXAMPLE TWO

Without Prejudice or “Off the Record” Conversations – Audience questions

- What is needed in terms of ‘informed consent?’
 - Does something need to be signed?
- Do you have to invite the person to bring a support person?



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Restorative Practice

Moving from asking “who has done what” to “who has been harmed” and “how do we address that” recognising that typically many people will have contributed to the situation and been impacted.



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CASE EXAMPLE THREE

An Investigation

Where more focus on recruitment and more support and coaching for a manager could have avoided a very unfortunate outcome...



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Final Reflections and Discussion