

Three-way professional supervision agreements:

a responsible solution for supervision organisations, supervisees, and supervisors

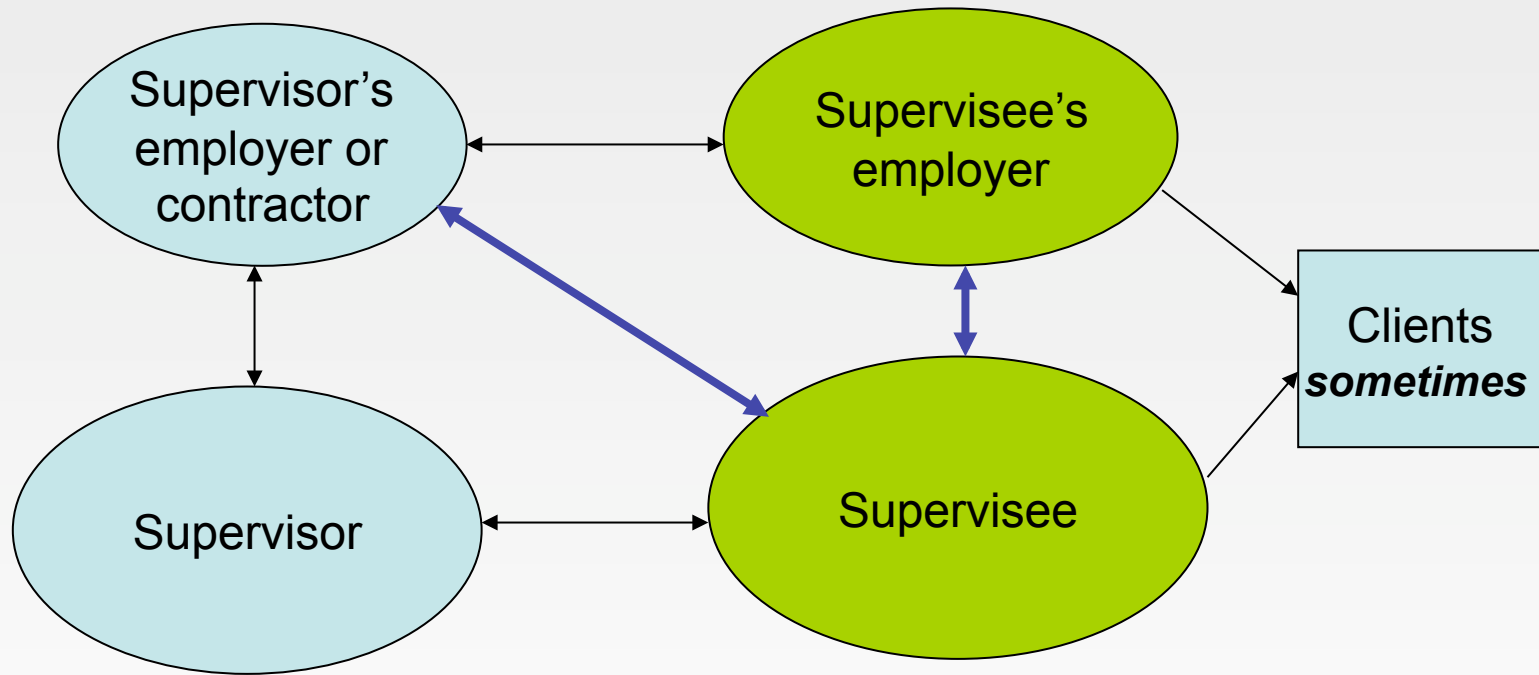
Sean Sullivan

ABACUS Counselling Training & Supervision Ltd

www.acts.co.nz



Who are the parties to supervision?



Who else should be a party to the agreement?



Certainly the supervisee and supervisor. But what about the **employer**?

- There are onerous obligations that it must discharge to employees, and cannot be contracted out of, so may be little point in being a party
- May distance itself to emphasise that it is relying in part upon a health expert to identify stress – ‘doing all it can reasonably expect to do’
- Although the employer may have requirements that the supervisee attend supervision, a 4-way agreement becomes bulky, confusing, and may imply over-control, especially when the supervision attendance can be emphasised elsewhere

Who should be a party to the agreement?



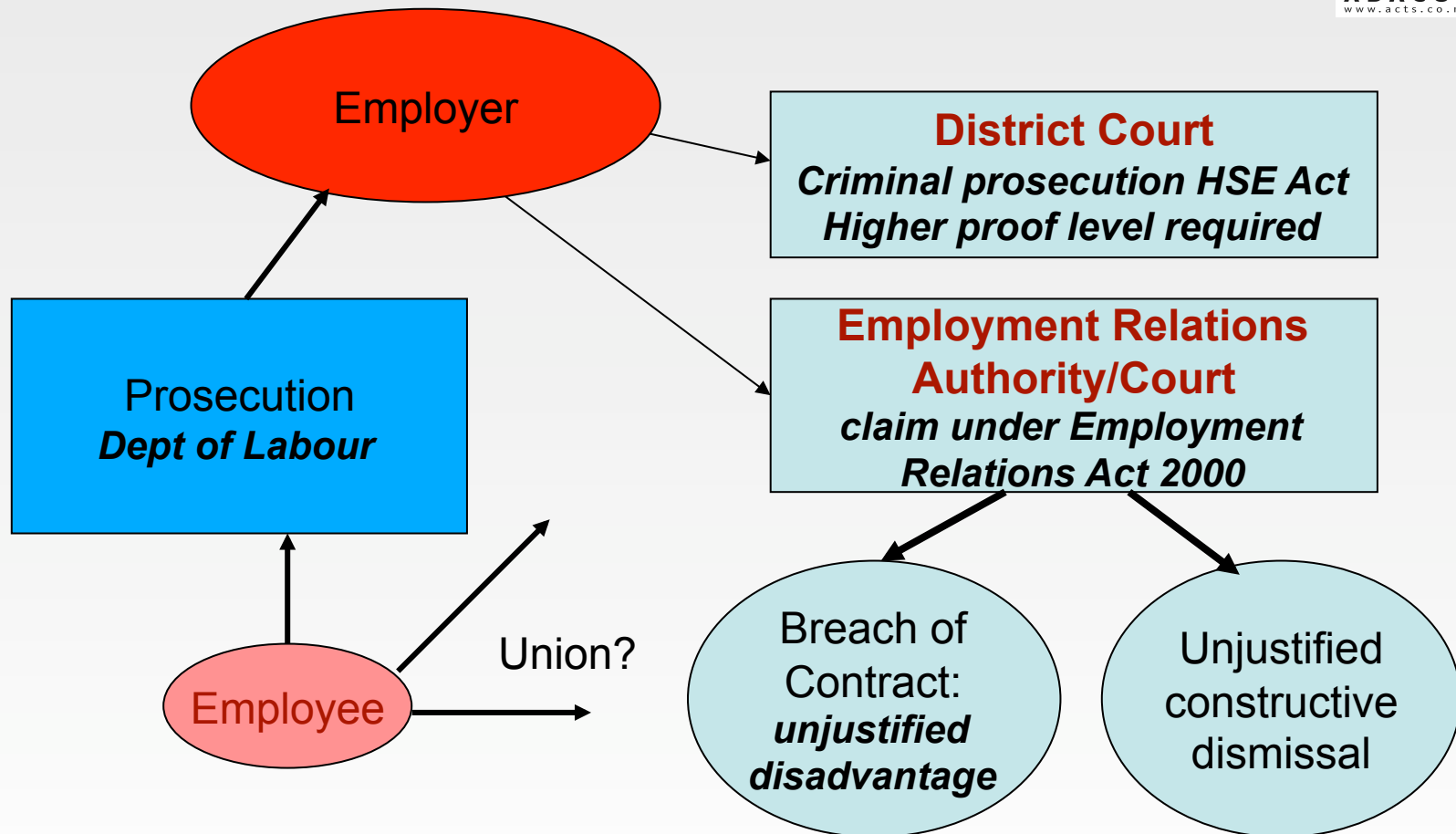
Also, the **Supervision organisation** that provides the supervisor should be a party because

- They hold the contract to supply the supervision
- As offers to the employer a single point of contact as well as continuity of supervision, it should have a direct relationship with the supervisee and not an arms length relationship delegated to, or through the supervisor
- Professional supervision organisations may have more obligations to discharge – over-view, quality control, ‘indemnity’ through processes that reduce employers’ liability, and other add-ons

How professional supervision may assist

What if things go wrong between the employee and employer?

What could go wrong when serious stress or fatigue?



The Legislation



Health & Safety in Employment Act 1992

- In its 2002 Amendment, explicitly stated that stress and fatigue can attract liability
- Although not as yet realised in claims, suicide attributable to work stress may attract substantial claims and negative publicity
- However most claims are brought under the Employment Relations Act because employee gets the claim, whereas under the HSE Act, the State gets the fine (although can order reparation to employee)

Employment Relations Authority & Employment Court under ER Act



- Employee can apply (personal grievance) to the Employment Court where stress either under the ER Act or at common law (breach of implied duty of trust in dealing, provide safety) even causing resignation (constructive dismissal)
- A common claim is for bullying (repeated, desire gain power/dominance, intention cause fear)
- Although employer must be aware of the stress (e.g. bullying), it can be held that it ought to have known
- *The stress trigger in supervision will ensure it is reported promptly, assisting both supervisee and employer*

An example under HSE prosecution

DOL v Nalder & Biddle (Nelson Ltd) 2005



- Employee of an engineering firm – accounting department
- High workload and stress resulted in stress related pain – medicated
- 2 staff had resigned within days of her employment
- After being told employer a solution not found (all practical steps not taken)
- \$10,000 fine/costs + confidential settlement
- *Where would supervision picked this up?*

Example of Employment Court finding

A v The AG for CYFS (2005)



- Employee away with stress, GP sent 2 letters, 'should be removed from frontline duties' and 'suffering stress'
- When returned kept on frontline duties, and GP not contacted for 10 days
- Ct: fair and reasonable actions not taken by employer, unjustifiable disadvantage grievance upheld
- *Supervision may have identified stress earlier and 3-way approach possibly had more influence with the employer through higher level contact*

What do they have to prove?



3 stage test

- Is the job the problem?
- If job a risk to employee's health, did the employer know it was (or ought to have known)
- Is was a foreseeable risk, did the employer take all reasonable steps to manage the risk? (supervision?)

No definition of harmful stress



- Harmful stress is not defined in the HSE Act nor in Courts (District, Appeal or Employment)
- When harmful stress occurs in the workplace, it must be addressed – personal issues may be compounded by the work
- Can be due to excessive workload, bullying, or the type of work
- Court cases will set a precedent that may/will change over time as to whether a person's stress is harmful, and whether suitable steps were taken to address it
- Processes set around cause, expectations, investigations, promptness, and disclosure



How does a 3-way professional supervision approach help address this risk?

Stress is the trash of modern life - we all generate it but if you don't dispose of it properly, it will pile up and overtake your life. ~Terri Guillemets

The Abacus approach

An ABACUS approach



- Health professionals with supervision experience as professional supervisors
- Annual training, monthly contact, immediate debrief if serious stress
- Identification of stressors has a process
- EAP where moderate stress, and employer strategies where serious stress
- Anonymous survey of employees as to satisfaction with service

Themes of supervision



- Supervisors record the dominant and secondary themes of the individual or group supervision on an interactive Abacus website (within 48 hrs)
- If the supervisor has not notified Abacus of the serious supervision theme an automatic email is sent to Abacus
- Employer notified of the condition of the employee (as stated in the 3-way agreement) and other support identified
- Employee often referred to EAP, work conditions adjusted as required, and additional professional supervisions sessions commonplace

Supervision and stress



- An employee should take advantage of assistance to reduce stress offered by their employer

Koia v the Attorney-General in respect of the Chief Executive of the Ministry of Justice 2004

- Supervision, in respect of stress, can be preventative, minimising, and following development of stress, supportive
- The 3-way approach may provide additional opportunities and consultation for all parties

Advantages of 3-way agreement



Supervisor has clarity of process

- Aware supervisee has knowledge of process when serious stress, and that Abacus is involved
- Aware stress disclosure a priority for supervisee, and that others will be involved, and why
- Aware the supervisee understands the role of supervision from the beginning
- Usual prioritisation of attendance by both
- Support from supervisor organisation when an issue arises – often liaise at high employer level – this also benefits supervisee

Advantages of 3-way agreement



Abacus as supervision provider has clarity

- Aware that all parties are aware of the boundaries and processes involved
- Retains the control over the delivery of the supervision
- Ensures that stress/fatigue is highlighted
- Has acknowledgement that the employer is a stakeholder (but not a party to this agreement)
- Acknowledges to the supervisee that complaints will be treated promptly and seriously
- Enables Abacus to immediately provide another opinion (serious?) and promptly address

Advantages of 3-way agreement



Supervisee has transparency and choice

- On-line list of Abacus supervisors in area
- Supervisee can change without approaching supervisor if prefer to
- Can discuss with Abacus any concerns
- Abacus undertakes to provide replacement supervisor if their supervisor unavailable
- Emphasis upon early disclosure of stress, and process explained if serious stress or risk identified
- Terms set out in a brief, clear language agreement – signed copy held by them

Dept of Labour statements

<http://www.search.dol.govt.nz/>



- Technological innovations have resulted in a number of workplace health and safety hazards being minimised or eliminated
- Other stressors, such as **stress and fatigue, are rising**
- The workforce is becomingly **increasingly prone to work related psychological illness**, stress related illness, and musculoskeletal disorders
- The focus on work related health issues is increasing. In the past the emphasis was more on safety related issues

Summary



- 9% of NZ employees work more than 60 hours per week (DoL)
- As safety issues reduce, health (stress fatigue) issues are increasing
- With the statutory obligation to manage stress
 - Is it the job?
 - Ought the employer have known?
 - Were all practical steps taken to manage the risk?
- Supervision has a strong role to play, **especially where work is of a stressful nature per se**, where the 1st two requirements for liability are readily met

Summary: 3-way agreement



- The importance of stress as an issue to be addressed and disclosed is emphasised to all
- Transparency and choice for supervisee
- Issue not left with the supervisor – moderate stress is discussed with Abacus as part of the contract process to fully assess if the decision is correct (remember Tarasoff)
- There is no definition of ‘stress’ in the HSE Act – it is developed through case decisions in Court
- With this uncertainty a **strong safety process** around health will help employers to meet their obligations, and with the growing issues of stress, encourage supervision for their employees

One of the symptoms of an
approaching nervous breakdown is
the belief that one's work is terribly
important

~Bertrand Russell