



**Who wins?**



# Focus

This presentation is to focus on experience of a prosecution under WHS law and the lessons that can be taken from that



# Philosophy

Risk Management  
but more particularly  
OHS  
is a peak  
pastoral care function



Every person who comes  
in contact with our  
community should leave  
healthier and happier for  
their experience - each  
student, staff member,  
and member of the  
public.



# Context of my Experience



# WHS Prosecution



# Coroner's Inquiries (x 3)



# **Mediation compulsory conferences for damages claims (5 major ones)**





# **Division of WHS Inspectors Investigations (> 20)**

**Ranging here from sport injuries, glass injuries, falls from height, electric shock, injuries with tools, manual handling, slip, trip and falls, chemical exposure**



# Major Workcover Investigations ( > 20 )



# **Police Investigation Witness Statements (too many)**



Fire, assault,  
offensive  
weapons, traffic  
incidents, theft,  
missing persons,  
child protection,  
kidnap, and more



# Witness Support in legal proceedings (a lot)



# THE CASE



A student falls to their death

Eight months later  
Coroner deems that  
the death is an  
accident



Division of Workplace Health & Safety determine that because it was an accident and it was in a workplace, a prosecution of not ensuring safety is warranted - allowing access to the area





A summons is issued  
only the day before  
the period in which a  
prosecution can be  
brought expires



Many months after the summons, the plaint is heard and the employer, essentially the school, is found guilty. The case takes two months to complete



Three months later, an appeal is heard and dismissed – takes a number of weeks for the judgement to come down after being “set aside”



\* Almost 3 years after the incident, a damages case is brought against the school

\* After almost 2 years hence, the damages are settled in a compensation mediation forum



The community had to cope with the traumatic loss of a student/friend

- \*The dislocation that grief causes

- \*the pastoral process that saps the community

- \*the investigation process

- \*pain beyond understanding for all concerned



# The Witnesses in the Case

1. Prosecution
2. Defence
3. “Hostile  
Witnesses”



# Hostile Witness

One who could reasonably support a side but has been summonsed to support the case of the other side



In the case there were three hostile witnesses that were called by the prosecution





# My Experience



# The legal process works in a very reactive way

- Impossible deadlines
- Effects of trauma slowing responses
- Enormous time between legal events



# What are the Lessons?



Take  
responsibility for  
all who walk  
onto your  
grounds



Look after the  
injured person and  
those associated  
with them.

Keep them close  
and support them.



Make every  
endeavour to not  
end up in court



Keep as much  
active control  
over the situation  
as you can



Treat the legal  
process as just that

...

“A Process”





Identify all those  
who are involved  
and have them  
supported in  
their role



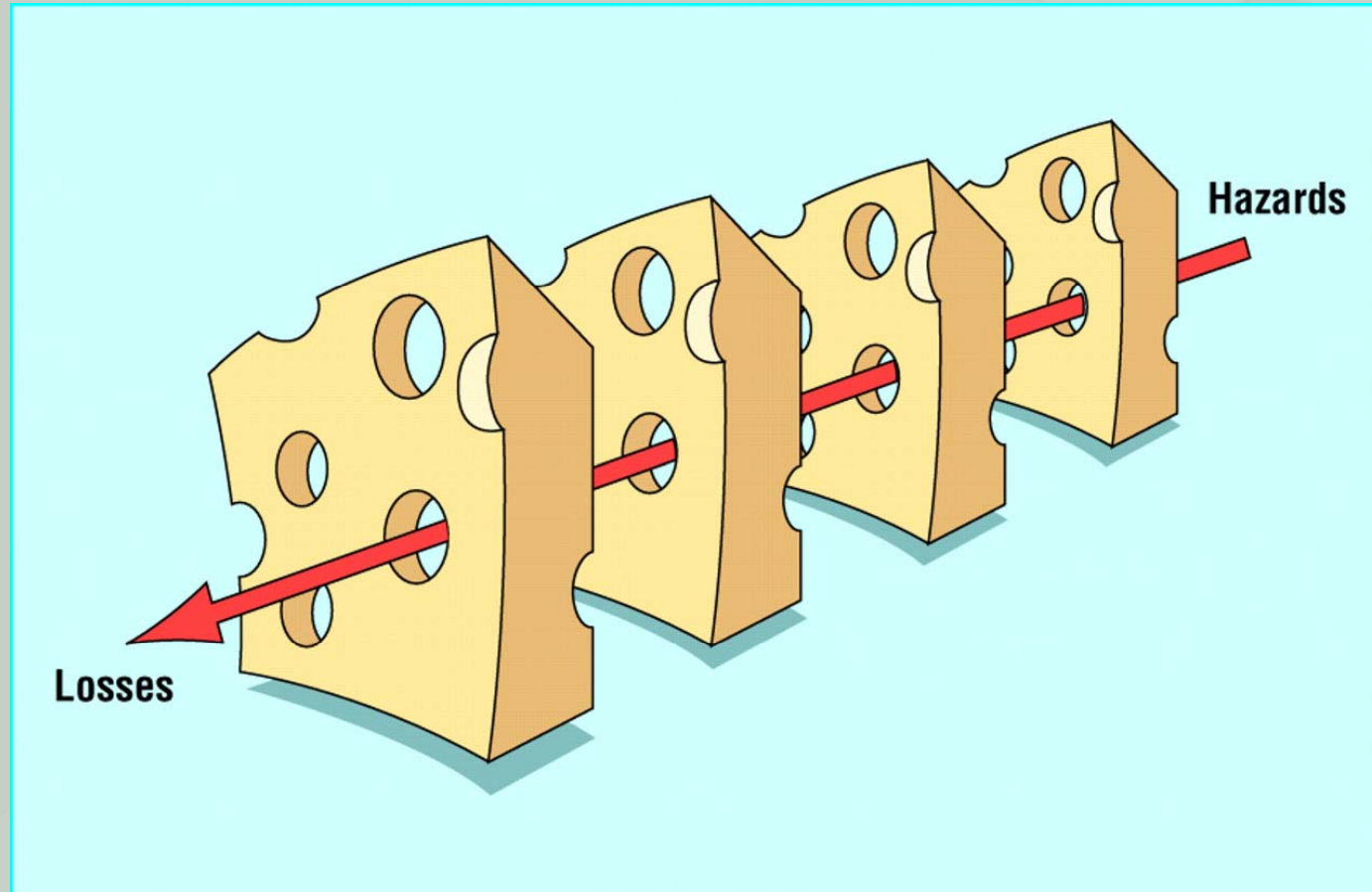
Preparation is  
the key in a legal  
proceeding



# Swiss Cheese Model



# Swiss Cheese Model



Reason, J. *BMJ* 2000;320:768-770





Be conscientious in what you do but if something comes from “left field” and catches you, reflect on the silent good you have attained and how small left field is these days



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