

Managing the “What Now?!”

Professionalism Dilemmas for In-House Counsel

Scenario – Whistleblowing

You are the General Counsel and SVP of a global medical devices company. You started 17 years ago as Legal Counsel at the same time as a good friend from University. Over the years, you were both promoted up the ranks and she is now the Chief Compliance Officer.

Several VPs joined the company in connection with an acquisition about a year ago. They have been working closely with the CEO on the company’s expansion strategy into India and China. Since their arrival you have been excluded from several important meetings, and you recently overheard the new VP Sales tell the CEO, “It was all worth it. A little grease goes a long way.”

The VP Finance told you around the same time that she had noticed irregularities in the new VPs’ expenses. When she questioned the VP of Sales she was told there was a new process brought over from the acquired company and that it had been cleared with the CCO. She was told to leave it be and enjoy her bigger bonus this year.

You conduct an initial investigation and discover further irregularities and a number of unusual contracts that suggest illicit payments have been made to public officials in foreign jurisdictions. When both the CEO and the CCO dismiss your concerns and suggest you are looking for issues that aren’t there, you ask to speak at the next board meeting.

The next day, the CEO tells you that you are being let go.

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Scenario – Crossing the Border

The CEO calls you. She’s at Pearson airport on her way to NYC to visit her son for the holidays, and is about to enter into the U.S. customs pre-clearance area. She tells you she has a lot of sensitive information on her iPhone, including those fairly incriminating privileged emails with you about “that latest issue”. She tells you that her plan is to enter her iPhone password incorrectly 9 times before she enters the pre-clearance area, and if the customs agent asks to search her phone she will quickly enter it incorrectly again so that all data on the phone will be automatically erased.

She asks for your thoughts on whether this is a good idea.

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Scenario – Sexual Harassment

Christine just walked into your office and closed the door. She tells you she needs to talk, but asks that you keep what she is about to say completely confidential.

She tells you that a few months ago, she approached HR with concerns about the behaviour of a C-suite executive. She did not name the executive, but advised HR that she had been receiving suggestive text messages and emails from him for a few months, which she was trying to ignore and had been deleting. HR told her that if an investigation was to be done, her concerns could not be kept strictly confidential. Christine insisted that no investigation be conducted at that time.

Christine tells you that last night, during the company’s holiday party, the executive started talking to her. He appeared drunk. Christine excused herself, saying she had to go to the washroom. To which the executive responded, “Sure thing sweetie; you know, you really should loosen up a bit”. When Christine came out from the washroom, she found the executive waiting for her. He asked her if she had loosened up, to which Christine responded “Umm, sure”; at which point the executive leaned in and tried to kiss Christine forcibly on the mouth.

Christine tells you she hasn’t called the police and doesn’t know what to do because she is in the middle of working on a huge (and potentially very lucrative) transaction for the company, set to close in the next few weeks, and in which the senior executive is heavily involved. She doesn’t want anything to jeopardize the success of the transaction and needs your advice on what she should do.