



REBUILDING AND REVITALISING AUSTRALIA THROUGH CSR AND SOCIAL GOOD
SAY YES TO WELL-BEING
WORKING IN DIFFICULT TIMES: A PATHWAY TO EXCELLENCE



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NEGOTIATION SKILLS FOR
IN-HOUSE COUNSEL

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PRESIDENT'S REPORT



Justin Coss
National President

Since my last report penned at the end of January, the world is a much-changed place with almost every aspect of our lives influenced by the effects of the COVID-19 pandemic.

While Australia has been among the most successful countries in flattening the curve of infections through a series of rapid and far-reaching measures, we are by no means out of the woods yet and considerable sacrifices will continue to be made before life returns to a somewhat normal state.

Throughout this crisis, the ACC Australia Board and staff have been working closely to ensure that the Association delivers two key outcomes:

- **We continue to support you, our members, in delivering our core mission:**
'To advance the knowledge and understanding of Australian in-house practice through the provision of:
- Education for the public and the in-house profession; and
- Advocacy, networking and professional services to its members'
- **We remain financially and operationally sound throughout and beyond this crisis.**

Ongoing Delivery of Our Core Mission

I am pleased to report that ACC Australia has been able to very quickly pivot our operations to accommodate social distancing and other restrictions. This includes the conversion of many of our traditional face-to-face events to webinars and the provision of several new targeted COVID-19 resources to assist our members in their daily practices, all of which are available on the recently relaunched ACC website. I encourage members to visit the relaunched website and familiarise yourselves with the considerable array of resources that are available to you.

Advocacy is a continuing focus of ACC Australia's ongoing efforts in its discussions with regulators on recent topics that are critical to our profession including the scope of entities to whom in-house counsel can provide advice.

Our ability to facilitate face-to-face networking has been significantly hampered by COVID-19;

however, ACC Australia is working diligently to reschedule gatherings at an appropriate time and facilitate online networking opportunities for our members. We have unfortunately had to defer the New South Wales and Western Australian In-House Counsel Days, which were both scheduled to take place in May. However, I did want to note that before the social distancing restrictions came into force, the Victorian In-House Counsel Day held in early March was a huge success, receiving significant positive feedback from delegates. We hope to emulate this success in the other states when it's safe to do so.


In addition, ACC Australia continues to provide the professional services that our members have come to value including, importantly in this difficult time, mentoring, health and well-being resources and a wealth of educational resources including the articles and information contained in this publication, the Australian Corporate Lawyer Magazine.

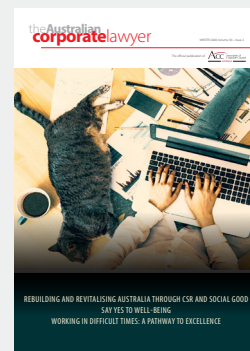
Financial Stability

As a not-for-profit association, ACC Australia operates on the basis that we return to our members the bulk of funds raised from membership fees, sponsorship revenue and other sources of income by way of the services that ACC Australia provides to members, while retaining a modest reserve from year-to-year for contingencies.

Accordingly, ACC Australia, like many not-for-profit associations will potentially face some difficult decisions now and into the future as our financial position will continue to be adversely impacted by COVID-19. However, with the various cost saving strategies that the Board and management have put in place and the continued support of our members and sponsor partners, ACC Australia is well placed to weather this storm. There are still many uncertainties associated with the effects of the pandemic but on the basis of what we know today, I am confident that ACC will continue to be the peak body in Australia representing the in-house profession and that we will continue to be able to provide the valued services that our members have come to expect.

ACC Australia is not at this stage contemplating any staff redundancies or stand downs. We place a high value on our people and will strive to retain all roles throughout this crisis. We are conscious, however, that many of our members have been or might soon face the possibility of themselves being made redundant, being stood down or perhaps taking a reduced salary. If you face any of these or similar circumstances, please feel free to contact our membership team to discuss other options for your membership so that ACC can support you in what may be difficult financial circumstances.

Finally, I want to thank our staff and our volunteer Board and Committee members for all of the extra time and effort they have contributed to ensure that your Association adapts to this challenging new environment and continues to fulfil its mission of serving our members. 



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LEGAL VOICES



Justin Moses

As the in-house lawyer at AIME Mentoring, a not-for-profit striving to close the gap in educational inequality for marginalised youth, Justin is a true believer in the power of industry-based conversations. He is a member of ACC Australia, Corporate Legal Operations Consortium, Justice Connect, the Australian Institute of Company Directors and NSW Law Society's In-House Corporate Lawyers Committee. Justin participates in mentoring programs for young professionals through ACC Australia, UTS, the Westpac Foundation and the NSW Law Society.

BRINGING OUT IN-HOUSE LAWYERS' BEST AFTER COVID-19: FORGET LETTER-SHAPES; LET'S EMOJI!

Each month ACC Australia invites our in-house industry leaders to share their experiences and perspectives on areas of importance to the Australian in-house community.

This piece is being composed during my eighth week of working from home as a result of the COVID-19 global pandemic. My CEO at AIME Mentoring was an early mover when it came to adjusting our business model to accommodate a new way of working, and it was helpful that our relatively dispersed workforce had already embedded communication channels like Zoom and Slack.

By now we have exposed the gamut of big-picture questions that we in-house lawyers have had to face during this truly unique event in our careers: questions of corporate governance; of the responsibilities of employers; of legal and a regulatory compliance; of the commercial and contractual implications of an unforeseen,

uncontrollable event – to name several (but by no means all). Surely anyone who was wishing for more variety in their role has had that wish granted many times over?

Yet thankfully, the tide seems to have turned in many parts of the world and our focus can begin to shift to our collective emergence from notions of distancing and virtual engagement. And now it's natural to wonder about the fundamental changes that have been wrought. How will we be different in the way that we live and work? Which changes will be temporary and which will be permanent? And if we have convinced ourselves that now is the time to make positive change and to fully leverage the opportunity that this existential test has visited upon us, how can we make that change sustainable?

The lawyer alphabet

Over the last few years, some outstanding insights have emerged from thought-leading commentators, describing the aspirational 'shape' of lawyers by reference to selected letters of the alphabet. These insights are invariably focussed on the need for high-performing lawyers to demonstrate more than technical legal skill, knowledge and experience to meet the needs of the modern-day client.

Descriptions like 'T' shaped lawyers and 'O' shaped lawyers spring to mind. These are lawyers who in addition to their 'ticket to the game' traits, have cultivated and can demonstrate a wide array of further attributes. Attributes like a multi-disciplinary focus, business administration capabilities and humanistic mindsets. This well-roundedness maximises the value of their contribution as lawyers because it is less legalistic and more holistic.

As far as I can tell, the coronavirus pandemic does not yet appear to have spawned any new letter-shapes that lawyers might choose to remake themselves in the image of, but that's not to suggest that it can't inspire a different source of typographical comparison!

The case for the lawyer emoji

I want to build a movement for abandoning the notion of using letters to describe the shape of lawyers, in favour of using selected emojis to reflect the way that we should operate in a post-COVID-19 world.

You see I've become something of an emoji fan in my 14 months at AIME Mentoring. I'll admit it took a while to match my millennial

and Gen-Y colleagues in the sophisticated use of these miniature artworks to articulately convey, with a single keystroke, the sentiment that might otherwise take several (if not a thousand) words. And even my use is currently limited to internal communications, I'm never going to say never as a means of engaging external stakeholders.

That's why it strikes me that rather than striving to be a T-shaped, or an O-shaped, or some other letter-shaped lawyer in engaging with the world from now on, I should strive to reflect a pictorial representation of what In-House legal leadership means to me.

As the prime example, post-COVID-19, I want to operate as AIME's in-house lawyer with ❤️.

What does that mean? For a start, it means approaching my role with AIME's values front-of mind. "Don't you do that already?" I hear many of you ask. And if I'm truthful I'd say that while of course I've always been mindful of the need for our corporate deeds to align with our corporate values, those values may not always have been my absolute key driver in all things in-house legal.

Now AIME has many values and in a post-pandemic world those that immediately recommend themselves as our guiding lights are: Kindness, trust, empathy, forgiveness and imagination. Henceforth, as I do my work for AIME with an enormous sense of gratitude for my good fortune when so many around the world have suffered misfortune, I am determined to show:

- Kindness towards those whose current circumstances drive actions (or inaction) that inconvenience AIME.
- Trust that they, like me, are doing all that they can to preserve the integrity of their commitments in a rapidly changing world.
- Empathy for those whose leaders, while essentially good people, are making bad decisions in a crisis.
- Forgiveness towards those leveraging an uncertain and ambiguous environment to gain a position or advantage not otherwise earned, and;
- Imagination, to collaborate and conceive of a different way of moving forward in a 'new normal', that enhances relationships and shares opportunity.

Who knows? I reckon if I can pull it off, then before I know it I might progress to becoming a 🌈 lawyer; or even that most rare of creatures in our in-house profession, a 🦋! 🎉



A DAY IN THE LIFE

NINA STAMELL

General Counsel, The Wiggles



Nina StameLL

As a lawyer with a singer-songwriter background, Nina has found herself in a role that brings together her passion for music and for law - working as the General Counsel for The Wiggles. She rarely has a 'typical' day, with her role spanning a variety of legal and commercial work encompassing brand licensing, rights management, protection of intangible assets, sponsorship, employment & corporate governance.

3.30 am Today, it's an early start, thanks to my 5-month-old daughter! I alternate early morning parenting duties with my partner. Today, it's my turn.

4.30 am The timing has worked well though! When Isobel goes back to bed, I am wide awake and use the opportunity to make a call to a production partner in the US. We have been working on a music video collaboration and the deal requires some final discussion points to be resolved.

5.00 am As a yoga teacher in a former life, I remain a huge advocate of meditation and movement of some kind. I have come to understand that it is an absolute must for me to sustain a healthy and balanced lifestyle. So, I make use of the early morning solo time and fit in a meditation and yoga session.

6.00 am The morning routine is less of a stress nowadays, as, like the majority of other workers, I am currently working remotely every day in a collective effort to reduce the spread of COVID-19. So, this means that I can prepare meals and review meetings and priorities for the day ahead, at what feels like a more leisurely pace than the days where I need to battle with the hour-long commute to the office.

8.00 am Having dropped my daughter off at her grandparents, I am now at my desk and focus on the top three key action items on my list. This helps ensure that I get at least a few things completed before the day takes over with a new set of challenges and priorities. Today, these key items include getting a virtual board meeting set up and ready to go, reviewing new government initiatives announced the night before regarding the support of employers and employees, and reviewing some recommendations in light of this overnight development. It's an intense time that all businesses are facing, requiring a level of flexibility, courage and calm to navigate such an unprecedented time in our lives—both on a personal and professional level.

9.30 am I connect with the lawyer in my team via Zoom, to go through the day's workflow allocation and some unresolved issues on the live touring front. It is unfortunate that we have recently had to cancel all our live shows for at least the next couple of months owing to the introduction of government restrictions on indoor gatherings. This has required an extensive review of all venue agreements and third-party contracts to proactively manage our relationships with our external stakeholders.



10.00 am I review the board papers and a partner agreement that requires discussion during the board meeting. Then, I get set up online early, in case I have any connection issues as online meetings are new to me.

11.00 am Well, this is a first—a board meeting conducted online! Thankfully, technology does not fail us and the meeting is undertaken pretty well. Lots to discuss, of course, in the face of COVID-19, but it is great to still be able to 'meet', thanks to the digital platforms that are available to us.

12.00 am I take a break to pop over for lunch with my daughter. I am lucky enough to have my family close by, so I am making the most of this wonderful opportunity during lockdown! I usually try to have at least a 20-minute break during the workday away from both my computer and phone. It's a unique time at the moment though, with a lot of new challenges to navigate and rapid developments, so my phone remains with me for the duration of the walk today. This was a good choice because I receive a couple of calls about the status of a partnership agreement and an IP infringement issue.

1.00 pm I review two new agreements regarding our merchandise. This is followed by a get together with the consumer products team to discuss some new product developments, our online store presence and discussions with a retailer about a new content initiative. As our brand covers so many different areas, including music, video, artwork and live performance, we have a rich and diverse IP portfolio to draw on in any licensing deal or partnership offering. So, I always enjoy discussing new initiatives and new creative and collaborative ideas that The Wiggles and the team are working on.

As General Counsel, I find it helpful to be actively involved in projects that are occurring and ideas that are being discussed for involving external parties. It helps to give greater context to the contract and negotiation process on my end and also helps me to add value from a broader legal and commercial perspective.

2.45 pm Time to catch up with our PR agent in the US to talk through some of the changes in strategy, given the lack of touring for the next couple of months. Thankfully, we are a creative and agile brand with no shortage of exciting developments. We are doing our best to support children and parents, many of whom are currently homeschooling their children, by providing helpful content to explain concepts such as social distancing in an entertaining and educational way. The creativity of the group never ceases to amaze me and it reminds me of how proud I am to work for a company that contributes to the community in such a meaningful way.

3.00 pm I have a catch up with the production team about changes required to our content creation and distribution strategy now, that we are focussing our time on production in place of the cancelled live shows. Again, I am amazed at how rapidly their creative brains work and love that they involve legal in a meaningful way.

3.30 pm I undertake a quick review of some trademark renewals and notifications of trademarks to be considered for opposition. We hold 300+ trademarks worldwide, so careful management of our portfolio is assisted by being closely involved with the business and having an understanding of creative concepts being developed and trademarks being utilised across all areas.

4.00 pm I review some new prospective broadcast deals. It's a fast-changing area of our business, so it is important to stay across industry updates to understand how content is being consumed. This goes hand in hand with keeping up to date with regulatory developments in the online content environment, which is so crucial in the children's space.

4.30 pm I wrap up the day to pick up my daughter. This has been a long one, with such an early start to the day not always being the norm! However, a lot is happening at the moment as a result of COVID-19. So, I have been taking advantage of the energy levels that showed up for me today!

7.30 pm I usually like to stick to a clear sign-off time from work at the end of the day, especially when working from home, as it's easy for the lines to blur a little too much.

However, from time to time, there are priority tasks that cannot wait until the next day.

Tonight is one of those nights, with overseas times syncing up nicely. So, I go back online to sign off on and send out an NDA for a new production project with a North American partner. With our current focus being on the production arm of our business, this is an area that cannot wait.

I also like to use this quiet time to set my 'musts' for the next day, to ensure that my key tasks are front of mind for early completion when my new day begins. ^a

REBUILDING AND REVITALISING AUSTRALIA THROUGH CSR AND SOCIAL GOOD

Increasing Corporate Social Responsibility (CSR) investment and forging social sector partnerships in a post-COVID-19 recessionary world isn't just the right thing to do, but the smart thing to do, writes Hailey Cavill-Jaspers, DoGoodologist and advisor on Corporate Social Responsibility and Social Good.

Two months ago, I gave a presentation to a roomful of in-house lawyers on how business can be a force for social good—in other words—Corporate Social Responsibility (CSR). My greatest concern? Keeping my audience awake after their delicious lunch. Within a few short days, the world was brutally upended by an invisible enemy. Suddenly, things that concerned us just weeks ago now seem frivolous.

No doubt you're working overtime to help your organisation survive during isolation or perhaps you're one of the rare few who are capitalising on the opportunities it's created. CSR and Social Good may not be a priority. However, we've been given a unique opportunity to rewrite the social contract between business and society; to reshape your company to emerge better attuned to the needs of society. Conversations about CSR are the catalyst for discussing how business and society will collaborate moving forward.

If I were a lawyer, I'd be excited at writing that type of ground-breaking contract.

This crisis has demonstrated that we're not invincible; our economy and society are fragile and we're all intrinsically connected. Increasing investment in CSR and Social Good must be high on the agenda—even though that may seem counter-intuitive with budgets tightening.

Are you working around the clock, reinterpreting contracts with compassion and decency, to ensure your suppliers survive the crisis? Do you continue to support your customers' needs even though it means pivoting the business? Are you retaining rather than retrenching employees—supporting them to work remotely, keeping their family safe and looking out for their mental wellbeing? If yes, then you're already practising CSR.

The evolution of CSR

As we enter a challenging time of economic contraction, the pressure on the For-Purpose sector—those charities and non-profits serving our most vulnerable Australians—is going to be immense. Issues such as domestic violence, mental illness, unemployment and homelessness will skyrocket. This is not the time for companies and brands to just look inward, focussing purely upon how to survive and adapt. Consumers worldwide, including Australia, have been calling for companies and brands to play a central role in solving social problems. Now is the time to step up and answer that call and be a force for good, not just because it's the right thing to do, but because it's good for business.

There are many reasons why you, as in-house legal counsel, are perfectly positioned to be a catalyst for CSR and Social Good conversations within your organisation. First, let's explore where CSR came from and how it has evolved.

The 'Greed is Good' Eighties

During the eighties—the era of Gordon Gekko (Wall Street), the 'yuppie' and punk rock—I was a PR consultant in London. Scandals were rare and, when they occurred, it was possible to control the narrative. Communication was one-way—from TV, radio and newspapers to consumers. Companies and brands with big budgets controlled the message.

Consumers had a high level of trust in institutions—they were respected and any expectation of wrong-doing was low. Technological advancements were about to become a revolution as the first Apple Mac said 'hello' to the world, just as the World Wide Web was gestating.

The term CSR did not exist. Some companies donated to charities; this was 'philanthropy'. But things were about to change. A woman—selling body lotions from a little shop near my home, offering refills and campaigning against animal testing—intrigued me. Anita Roddick rewrote the rulebook for the beauty industry and showed her peers in all industry sectors that a company could be both profitable and purposeful. Reading her books, my intrigue turned to admiration and I realised she was on to something. I wasn't the only one—she transformed her 'little shop' into a billion-dollar global business, The Body Shop, tapping into the conscious consumer that wanted great products that were free from harm.

The Nineties—the 'Triple Bottom Line'

For me personally, the nineties began backpacking through Africa, India and Nepal, after becoming disillusioned with my superficial life. I met mountain gorillas in Zaire, hiked to Everest base camp and battled malaria and robbers in Nairobi. After a year of adventures, I landed in India to discover the most extreme poverty, but also incredible joy. An epiphany at Mother Theresa's mission saw me return to London with a strong desire to contribute to society, although I had no idea what that might look like.

The concept of a social contract between business and society was beginning to take hold—that companies exist because of public consent and, therefore, have an obligation to contribute to society's needs. The Triple Bottom Line (TBL) acknowledges that, in addition to *Profit*, there are *People* and *Planet* bottom lines that are equally important.

Unfortunately, aside from The Body Shop, I could not find many companies that were embracing this beyond scattergun philanthropy, so I moved into the non-profit sector, transforming transactional relationships with companies such as Tesco into mutually beneficial partnerships. My future career as a corporate matchmaker began to emerge.

The Light-bulb Noughties

In 2004, a documentary called 'The Corporation' was released. Not only did this highlight questionable business practices that were harmful to People and Planet, but it also brought to my attention a new type of leader in Ray Anderson, Founder and CEO of Interface, a carpet manufacturer. Ray spoke honestly of the negative impact Interface was having on the environment. In a most striking interview, he said,

“

The way I've been running Interface is the way of the plunderer—plundering something that's not mine, something that belongs to every creature on Earth. The day must come when this is illegal, when plundering is not allowed, when people like me will end up in jail.”

Ray convened a formidable task force to shape an environmental vision and strategy—to become carbon neutral by 2020—that would become his legacy and one of the most admired and studied case study on CSR.

While environmental laws have evolved to protect the environment, we are still not adapting fast enough, given the compelling evidence for climate change.

Interface

In 1994, inspired by customers, Interface set out to eliminate all negative impacts on the environment. Under founder Ray Anderson's leadership, they set a goal to be carbon neutral by 2020, named Mission Zero®.

A brilliant storyteller, Ray described the journey towards full sustainability like ascending a mountain higher than Everest—difficult, but with careful and attentive planning, possible. His task force created a framework for the climb: Seven Fronts on Mount Sustainability.

Fast-forward to the Summit Goal, 2020. Manufacturing plants in Holland and Northern Ireland are using 90% less carbon and 95% less water. Zero waste is going to landfill and the Netherlands plant has met all its zero targets. All gas is biogas, produced from green waste and purchased from a local fish processing company.

The switch to 100% biogas eliminated all energy-related emissions at the plant, which stood at 8,900 tonnes of CO₂ a year, just six years prior. In 2012, just 33% of their energy consumption came from renewable sources—now it's 95%.

Interface's journey towards Mission Zero® has been applauded by customers and suppliers, it's shielded the company from energy price volatility and saved millions of dollars in wasted water and energy, inspiring change throughout the broader business community.

It took a brave mindset, determined commitment, development of new technology and constant pushing of boundaries to achieve this radical transformation.

Most of all, it took courageous leadership.



Twenty-twenties decade – the tipping point for CSR

Over the past decade, CSR has come of age. It is now considered an essential, holistic strategy encompassing human rights, labour practices, diversity, equality, transparency, privacy, renewable energy, environmental protection and restoration, operating and marketplace practices, governance, safety, risk, legal compliance, community development, staff volunteering and charity partnerships. Gone are the days of ‘ticking the box’ CSR, paying lip-service and when recycling, a bit of philanthropy and some pro bono volunteering would keep the activists at bay.

Those activists are now your customers, your employees, your stakeholders and your shareholders.

CSR is now a multifaceted and sophisticated strategy. What makes it more complex is the never-ending jargon—TBL, CCI, CR, CSV, Sustainability². I prefer simplicity. CSR is minimising your company’s negative impact on society and the planet. Social Good is pro-actively maximising your company’s positive impact on society and the planet.

CSR is the strategy, Sustainability is the goal.

It would be natural, under the current circumstances, to not prioritise something that, only a decade ago, was considered a discretionary, feel-good option. However, this decade is different. Australians believe that business is the only sector with the resources and mindset to solve the many social problems we face—social problems that are only going to increase in the months ahead. Recently, 78% of Australians said that CEOs should take the lead on change rather than waiting for government assistance, a significant increase since 2018³.

We’ve reached a tipping point and corporate Australia must step up. There is a great risk in not doing so. Ignoring CSR makes your company extremely vulnerable to the next challenge—the court of public opinion. Hyper-sensitive consumers will remember how you behaved through this crisis—they’ll never forget how you made them feel.

We have a rare, short window of opportunity to create a new, more resilient, equal and thriving society. A vision such as this will engage and galvanise your investors, employees and customers. This is the type of company that people will want to work for, trade with and invest in. Companies that live and breathe Purpose will be the ones that thrive.

Companies that watch indifferently from the sidelines, trying to return to the previous ‘normal’ will be regarded as irrelevant, out of touch and, ultimately, obsolete.

Here are five key reasons to increase investment in CSR and Social Good:

1 Win back trust, enhance reputation

“Trust in multilateralism and official institutions is crumbling ... the world needs your leadership.”

Larry Fink, Chairman and CEO of BlackRock

When a billionaire with \$6.5 trillion in assets under management talks about trust and CSR in his annual letter to CEOs for three years straight, you know it’s serious. Trust is the glue of all relationships and the single most important factor that drives corporate reputation.

Consumers do not trust corporations. The last decade saw a global uprising against corporate greed, inequality and environmental plundering, resulting in the lowest ever trust levels in business at the start of 2020. Australia is no different and it’s the millennial generation—your current employees and customers—that feel the most let down.

Corporate scandals have eroded trust in the sector—privacy breaches, tax avoidance, animal abuse, exploding devices, the banking Royal Commission, slave labour practices, environmental disasters, #dieselgate, misleading advertising and wage routes, to name just a few.

The annual Edelman Trust Barometer 2020⁴ revealed that a lack of fairness was a fundamental reason for mistrust, with only 24% of Australians perceiving business as ‘serving the interests of everyone equally and fairly’.

The 2020 Ipsos study of most trusted professions rated business leaders at a dismal 17% trusted, with politicians and bankers below this. In a striking new trend, ‘ordinary men and women’ scored 42%. I’ll politely skip how the legal profession fared (it’s not favourable).

2 Enjoy customer patronage and loyalty

“Business must assume moral leadership. It should be about responsibility, about public good, not private greed.”

Dame Anita Roddick

Frustrated and outspoken customers are demanding change and they’re using their voices, skills and wallets to be heard. They’ve had a gutful of scandals and fearing for their future and believe that not enough is being done to address climate change and society’s problems.

The time of the vigilante consumer is here and they’re supported by an army of apps, websites, blogs, podcasts and TV shows exposing unethical behaviour, marketing tricks and corporate hypocrisy.

There is overwhelming global evidence⁵ that embracing—and practising—CSR and Social Good impacts consumer purchasing behaviour—everything from buying a product, advocating on behalf of that product, paying a premium for it and recommending it.

Now that’s the type of customer you want.

It also works in reverse—1 in 5 Australians have actively boycotted companies and brands in the past year, due to bad behaviour⁶. Boycott doesn’t mean clicktivism either⁷—the most common boycotting action was ‘refusing to buy from a company or brand’. ‘Bad behaviour’ includes a multitude of sins—animal cruelty, unethical behaviour, inaction on climate change and avoiding paying tax and managing workers’ rights, to name a few.

3 Attract and retain the best talent

“Customers will never love a company until the employees love it first.”

Simon Sinek

Millennials account for 50% of the workforce. They're innovative, thrive on technology and will work hard for money—but they will work even harder for a Purpose. Out of touch leaders that complain that millennials are difficult, distracted or disloyal simply don't understand the millennial mindset.

The disconnect between what millennials want and what companies are delivering is vast. A total of 67% of Australian millennials rate 'positive work environment' over money when choosing an employer⁸.

Companies that have people clamouring to work for them have a values-based culture and demonstrate a strong, visible commitment to CSR and Social Good—companies such as IAG, Westpac, Lendlease, Atlassian and SEEK.

Just consider the investment your company makes in replacing and retraining employees—how much could you save if you could keep staff? Build a great CSR program and engage employees and they'll be happy, motivated, productive and loyal. Even better, they'll tell everyone.

4 Resonate with consumers through uplifting stories

“A business is simply an idea to make other people's lives better.”

Richard Branson

For many Australians, isolation has caused them to reflect on what's important in life. The chatter on social media is about the opportunity this crisis presents—to create a different society, one where everyone thrives. People who have never experienced unemployment or homelessness, insecurity and anxiety—will experience it. The small army of socially conscious changemakers will become a vast movement. Social issues are high on the agenda and companies that are not interested in the conversation will be left behind.

Consumers want to see action and they are crying out for positive stories that give them hope. CSR and Social Good stories do both. It's a great way to differentiate a company or brand, especially through social media, as Social Good stories cut through all the noise and reach into the heart of the consumer, aligning with their values.

As a former PR consultant, I know that when times are tough, advertising is often reduced. But you must keep communicating. Perhaps it's time to shift from trying to sell products and services and instead sell an inspiring idea, one of co-operation and of business and society coming together to rebuild Australia.

5 Improved performance and cost savings

For public companies, there is growing evidence that CSR and Social Good translate into improved economic performance, plus have a positive impact on a company's market value and stock price. A total of 75% of professional investors evaluate a company's CSR before investing⁹ and the same amount checks sustainability management to mitigate risk in an increasingly disrupted market.

Sustainable investment now dominates the stock market, with almost \$60 trillion managed by more than 1,300 investment firms who have signed onto the UN Principles for Responsible Investment. Respected analysts from Bloomberg and Goldman Sachs agree that sustainability leaders outperform companies that are slow to embrace CSR. Investors are more drawn to stocks associated with strong, corporate citizenship, and reduced exposure to climate risks and public backlash.

Early reports are showing that in the current market meltdown, sustainable funds are faring better¹⁰. McKinsey are predicting that there will be a spotlight on governance, with investors scrutinising dividends, share buyback and executive pay after the immediate crisis is over.

CSR can also reduce costs. In 2019, General Mills reported a \$4.8M saving while reducing its carbon footprint by 6,000 metric tonnes by implementing over 60 energy reduction projects. A study¹¹ of 152 companies implementing sustainability strategies found that 27% benefited from \$5M in sales of recycled products.

GE established a brand in 2004 to solve social and environmental challenges. During the 2008 global economic crisis, their 'Ecomagination' brand was GE's only source of growth.

People, Planet and Profit

The emergence of the TBL conveyed a fundamental belief that companies should be responsible for more than just delivering Profits to shareholders; they also have a responsibility to care for People and Planet. I don't know how the world will look when isolation lifts, but there is one thing of which I'm certain.

Australians have been reflecting on what's important to them and it's their friends, family and colleagues (People). Restrictions have given them a renewed sense of appreciation for our spectacular environment and nature (Planet). Companies that revert to 'business as usual' will be seen as out of touch and irrelevant.

Shift your focus to People and Planet and consumers, investors, suppliers and employees will support you through this recession. Then, Profit will look after itself.

Cotton On

A brilliant example of a company that has CSR and Social Good in its DNA is Australian private company Cotton On, winner of an ACC award for CSR in 2018¹².

In 1988, 18-year-old Nigel Austin started selling denim jackets from his car at a Geelong market. Today, his company has over 1,400 stores across 19 countries, encompassing seven well-known brands.

The culture of Cotton On embraces an unwavering pursuit to meet customer demand, which includes providing ethical and sustainably-sourced fashion.

Cotton On's CSR commitment is woven into every aspect of its business. The Better Cotton Initiative supports cotton farmers, stewarding improved global standards throughout the supply chain, from farm gate to retail store. Cotton On's goal is 100% sustainable cotton by 2021.

The Cotton On Foundation started in 2007 and has raised over \$100M, empowering youth globally through quality education with projects in Uganda, South Africa, Thailand and Australia. The statistics are impressive—13 schools built, 17 million meals served to students, plus 95 water tanks installed, providing 4 million litres of clean water. There have also been 25,000 vaccinations provided and 16,000 kids received quality education.

Local non-profits are also supported, including Carrie Bickmore's Beanies for Brain Cancer in Australia and the Mental Health Foundation in New Zealand.

In 2019, Cotton On partnered with CARE Australia to deliver the *Empowering Women Workers in Bangladesh* program. The partnership, an industry first, advances female workers in the supply chain by developing their life and leadership skills.

The Cotton On in-house legal team guides the business on everything relating to compliance, charity permits and registrations, vendor agreements, ethical sourcing, tax concessions and gender equity, as well as providing pro bono legal advice to the Cotton On Foundation.

One of the most significant documents written by the legal team is the '14 Rules to Trade' agreement, which requires all suppliers to adhere to rules around environmental management, child and forced labour, discrimination, safety, minimum wage, use of raw materials and factory audits.

It's clear that Nigel established a very successful formula in embedding CSR and Social Good into the fabric of his business since day one and it's proved to be exceptionally good for business.

Retail has been severely impacted by the crisis, but I predict that it's companies like Cotton On—with their entrepreneurial spirit, ability to fast-pivot and an undeniable commitment to Planet and People—who will continue to enjoy ongoing customer loyalty. ^a



Footnotes

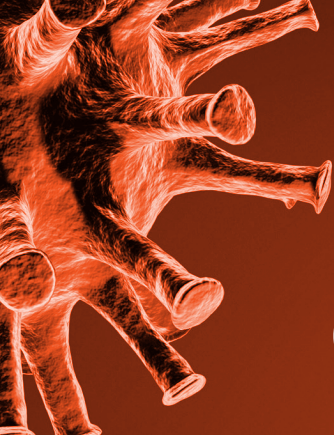
1. Young urban professionals
2. Triple Bottom Line, Corporate Community Investment, Corporate Responsibility, Creating Shared Value, Sustainability
3. Edelman Trust Barometer 2020
4. Edelman Trust Barometer, February 2020
5. Numerous studies cited in Talking the Walk 2019
6. Talking the Walk, July 2019
7. Showing support for a cause on the internet – social media likes or petitions
8. Talking the Walk 2019
9. Responsible Investment Association Trend Report 2016
10. UBS
11. Pure strategies, 2015
12. In the interests of transparency, I must declare that I've not worked with Cotton On—they generously allowed me to showcase their CSR work at the conference and in this article.

Hailey Cavill-Jaspers



As fearless leader of Cavill + Co, Hailey has advised blue-chip companies and brands on CSR and Social Good for over 20 years. She's built over 50 cause partnerships for clients including Disney Australia, Vodafone Foundation, Mondelez Australia and SEEK. Hailey also teaches non-profits how to partner with corporates through her online training program, BePartnerReady.com™

Hailey's 2019 e-book 'Talking the Walk®2' is available free to all readers until 30 June <https://www.cavill.com.au/product/talking-the-walk2-ebook/> and type in TTWACC upon purchase.



Five Top Reputational Management Tips for GCs during COVID-19

Reputational risk inhabits the gap between what an organisation says it stands for and how it behaves in practice towards its stakeholders, internal and external.

In the COVID-19 crisis, the parameters of reputational risk have increased enormously – we are in a fast-unfolding, unpredictable situation with high levels of government direction and intervention.

What can General Counsel and in-house teams do to narrow that gap and reduce reputational risk?

The President of the Victorian Bar, Wendy Harris QC, participated in the ACC's GC100 panel discussion at the end of April, chaired by Betty Ivanoff, Group Director – Legal & Corporate Affairs, Coca-Cola Amatil, with ASX100 Board Chair, Peter Hay, and strategic communications expert, Olivia Brown.

These are her five top tips for GCs to help them guide their organisations and teams through the COVID-19 crisis.

1. Understand and continue to live your values and your culture

These are fundamental to reputation because reputation is derived from the perception of your clients, employees, shareholders, regulators and the community in which you operate. The risk to reputation from not living your values and culture when you respond to a crisis is magnified, because your stakeholders are likely to be in a state of heightened anxiety and uncertainty. They will be looking at how you respond with additional scrutiny.

In crisis situations, when organisations need to respond in real time, having a well-understood cultural touchstone will make the reputationally right responses more intuitive. Your organisation's culture needs to be something that everyone involved in the broader response understands – so that you're not hunting about to find it when you're in that fast-moving environment.

2. Seek out the opportunities ("don't waste a good crisis!")

The counterpoint to magnified risk is magnified opportunity. Organisations that will enhance their reputations during this crisis are those that have demonstrably lived their culture – that have been at least as concerned for their internal stakeholders as their external ones, have sacrificed profit for safety or positive customer and community outcomes, and have shown genuineness in their communications.

3. The crisis is an opportunity for GCs to demonstrate their value as problem-solvers

GCs are essential to identifying and managing reputational risk. During a crisis, it's more important than ever to be working with others in the organisation (the CRO, corporate affairs and communications teams as well as operations), and your external legal and crisis management consultants, to equip management and the board to respond in real time to issues with significant and multidimensional reputational impacts.

GCs have an opportunity to demonstrate their value but also need the courage to challenge existing business models that may be firmly embedded but may not sit comfortably with arriving at the right response for the organisation.

4. Understand the continuous disclosure obligations and their implications

Communications and disclosure: one is a tool and the other an obligation, but both are key to managing reputational risk and both are vital to get right in a crisis. Decisions and disclosures made in good faith and with the best will in the world can be challenged. Markets will respond, and plaintiff class action firms will take their cue.

The key is having a strong understanding of continuous disclosure obligations and a good relationship with advisors who can guide disclosure decision-making – particularly those who can advise on how plaintiff firms build a case. Be disciplined about internal communications that could be relied on to imply that the company "knows" that information it has previously given the market could be wrong.

5. Build the right teams

It's important to bring in those with a diversity of thought and experience. While the COVID-19 situation is quite unique, there will be people in your organisation who have dealt with crises of a similar nature – be it SARS, bushfires or a major operational breakdown.

On the risk side, you need to harness the expertise of those who can avoid the wrong decision being made and lay the foundations for an effective response if you are challenged. This is where the Bar can help – in scenario planning how decisions taken now may play out in litigation in the future.

The Victorian Bar is an association of more than 2200 practising barristers who provide specialist advocacy services, transactional and strategic advice to achieve the best outcomes for their clients.



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HOW TO TRANSFORM THE RELATIONSHIP BETWEEN IN-HOUSE LEGAL AND MARKETING

Every marketing team aims to create and execute engaging campaigns that will attract and retain new business. Meanwhile, every in-house legal team wants the marketing function to be compliant and to support—not damage—the business’s reputation. To achieve this, both teams need to work together to minimise risk and maximise marketing outcomes. But in doing their jobs, sometimes both teams find themselves butting heads—over issues such as missing information and turnaround times.

Does this sound familiar to your business? If so, hopefully your marketing and legal teams have put their heads together and figured out solutions to these common friction points. If they haven't been able to do that yet, this article will help you to transform their relationship by:

- explaining what motivates each team;
- identifying the sources of friction; and
- providing practical solutions to resolve them.

Putting the Shoe on the Other Foot

Before trying to identify the sources of friction, it helps if both teams understand each other's objectives. Does the legal team understand what motivates marketing? Does marketing have insight into legal's role and responsibilities? Understanding each other's motivations makes it easier to navigate towards resolution.

Marketing Team Motivations

The marketing team's primary goal is to grow brand awareness and generate revenue through marketing campaigns designed to appeal to your business's target market. While the campaigns may be planned in advance, once they've launched, the marketing team may need to be responsive to developments as they arise, especially on social media. For instance, if a campaign generates buzz, they may want to build on this with some additional collateral. This means being nimble and creating smaller campaigns quickly to maintain the

momentum. Either way, marketing often needs legal's input to ensure the messaging will not inadvertently put the business at risk.

In-House Legal Motivations

Reviewing marketing campaigns is just one of the many tasks an in-house team must complete on any given day. Their core role is to ensure the business is compliant with regulation and mitigates risk. Meticulous by nature, few lawyers like being rushed, preferring to give a considered response. However, in-house legal teams often serve multiple departments, all of whom may believe their work should take priority. Not wanting to let anyone down, in-house legal teams often work long hours; not knowing what marketing work is coming down the pipeline can be very challenging for them.

And So, Friction Arises Between the Teams

"Legal is taking too long to review my campaign! I need it out today!"

"Marketing keeps dumping reviews on us at the last minute! I've got other priorities!"

If you're hearing these complaints, you're not alone. In our experience, the following issues are the most common friction points between marketing and legal teams, resulting in wasted time, cost and frustration:

Common Issues Faced by In-House Legal	
Issue	Result
Not using previous legal advice to pre-vet campaign collateral and update it to ensure compliance.	Marketing not learning from previous advice and in-house lawyers repeatedly identifying the same issues.
Lack of advance notice regarding imminent reviews requiring legal input.	The pressure to quickly turnaround reviews while juggling competing priorities.
Incomplete or improper instructions from marketing.	Lost time and further delays due to legal having to chase additional information or reviewing the same collateral multiple times.

Common Issues Faced by Marketing	
Issue	Result
Legal does not offer to provide input early in a campaign (or is not invited to do so).	Marketing forced to make last-minute changes to collateral that is already complete or rework entire campaigns, leading to delays.
Legal identifies a campaign or slogan as too risky, without suggesting an alternative approach.	The message is diluted and has less impact or marketing is required to think up alternatives.
Legal does not respond in the timeline requested by marketing.	The messaging is not published at the most appropriate or strategic time.

These problems generally arise when the teams are focussed on their own objectives, without considering ways to help each other. So:

- Marketing needs to help legal understand why they want to use certain types of messages and how it will impact on the results if the message is diluted; and
- Legal needs marketing to understand key messaging risks—why certain claims are denied and what laws or regulations might be influencing their decisions.

The outcome everyone wants is marketing collateral that is both compliant and engaging and turned around in an efficient, timely manner.

Working Together to Identify Pain Points

While you may have a good idea of what's causing headaches for each team, it's important to identify:

- exactly what is causing the problem; and
- at which stage of the process.

A simple way of identifying what is causing the friction is by undertaking 'journey mapping'; literally, mapping the journey of a marketing campaign from its inception. You can do this as a diagram or even Post-It notes in swimlanes on a wall. This will allow you to see at which points in the collateral's life cycle both teams are required to interact. It's at these touchpoints that friction is most likely to occur.

Have representatives from both teams work together to complete the journey map. This is a great way to encourage open conversation, increase transparency and build relationships. It also ensures buy-in and engagement from both teams.

Once the journey map is complete, consider what can be done to improve the workflow to reduce the likelihood of friction. For instance:

- are there any missing touchpoints where legal should be consulted, such as early in a new campaign's development?
- how much advance notice does legal need if marketing wants assets or collateral reviewed?
- how quickly does marketing need legal's review to be completed; for example, is it less urgent when the campaign is in the early stages of development, but more urgent once the campaign has gone live?

Update your journey map with the improvements identified, then document it and share it with both teams, ideally by bringing everyone together in the same room. Have representatives from each team jointly present:

- what the process is currently;
- where the friction points have been and why; and
- how the workflow is being changed to remove these issues.

This approach helps to ensure everyone is on the same page, allows them to ask questions and encourages buy-in to any proposed improvements.

Having mapped the current process and understood the pain points, it's time to identify opportunities to improve the marketing workflow—and then implement solutions.

Implementing Solutions that Remove and Resolve Pain Points

Here are some methods our clients have successfully adopted to transform the relationship between marketing and legal, resolving common friction points. They are all methods you could consider adopting for your organisation.

1. Build a Database of Approved Collateral Which Marketing Can Reference

To save everyone's time, marketing should incorporate the lessons they have learnt from previous legal advice into new marketing campaigns and collateral.

One way to support them in achieving this is by storing all previously approved legal collateral in a central database, which is accessible to all marketing team members. This has several benefits, including that it:

- ensures the business's marketing collateral is stored in one location, rather than in multiple individual's folders, making resources hard to find if someone is away or leaves the business;
- helps provides an auditable trail of both the collateral and approvals; and
- creates a precedent bank that can be drawn on and replicated, helping to provide consistency in messaging and brand. This, in turn, saves both the legal and marketing teams' time and reduces cost.

2. Teach Each Other What Works

Consider having legal run a workshop for the marketing team, informing them on such things as:

- key industry or marketing-related regulation that impacts their decisions;
- examples of words and images that can't be used and why;
- the process legal undertakes when reviewing marketing collateral and the information they need marketing to provide (such as source disclaimers) to complete the review.

Likewise, marketing could use the opportunity to inform legal on such things as the business's target market and why certain phrases and images might appeal to that demographic.

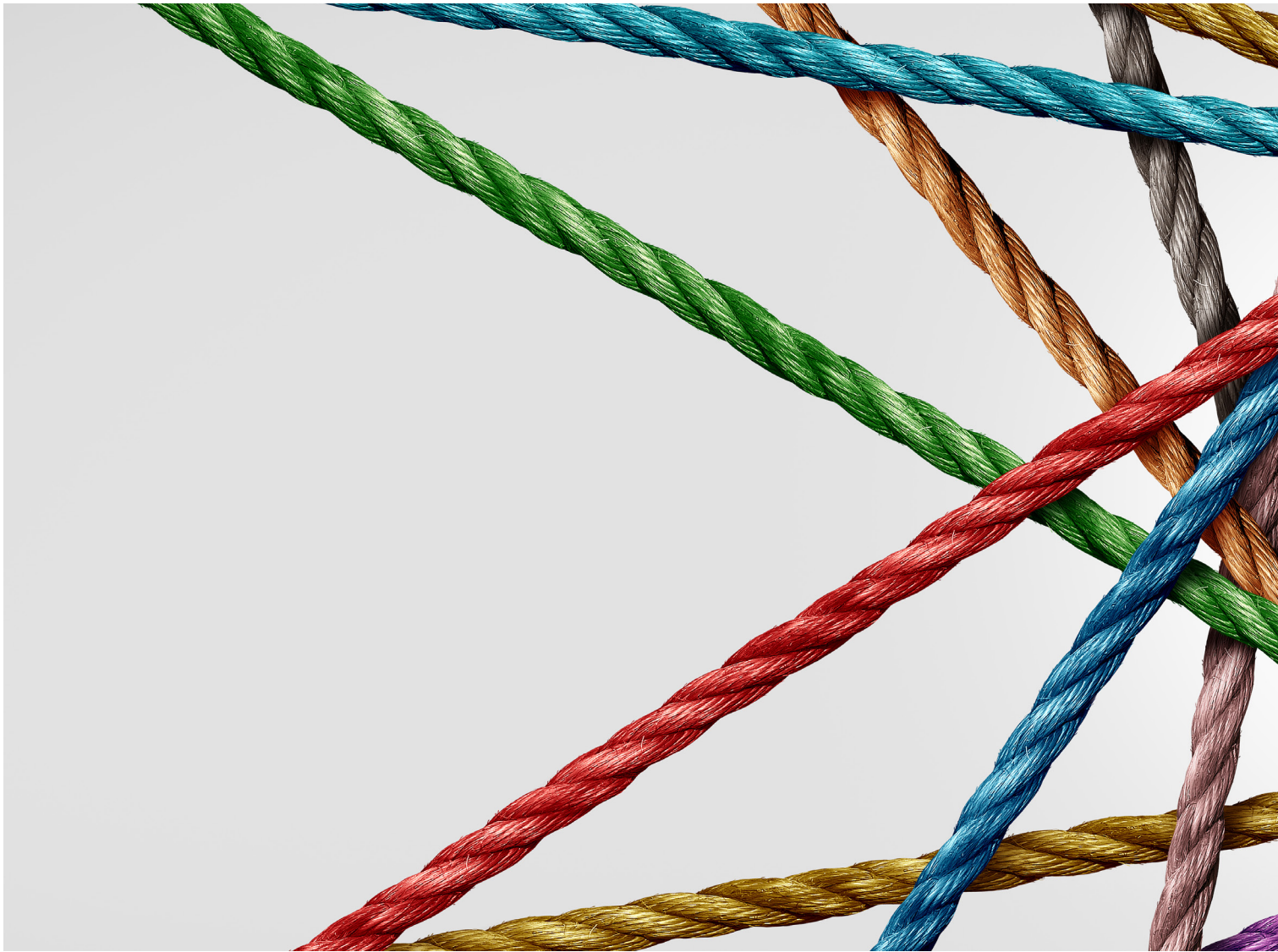
Both the database and workshops are about knowledge sharing and transfer. The more that each team educates the other on their objectives, the easier it will be to work together.

3. Create a Checklist to Save Legal from Chasing Key Information

Every time marketing sends collateral through to legal for review, it invariably results in emails back-and-forth, with legal seeking key information before it can move forward. Save both teams time and speed up approval by having legal create a checklist of key information that marketing must provide every time it wants collateral reviewed. For example, this checklist could include the campaign's:

- purpose;
- duration;
- target market;
- channels to market; and
- approvals for source data.

Try to limit the checklist to one page and only include the essential and most commonly required items. In our experience, if the checklist is too long (we've seen some legal departments supply lists that are over three pages!) it won't be completed by marketing, or won't be completed properly, defeating the point of the exercise and becoming an additional source of friction.



4. Implement Systems That Let Both Teams Know What's Coming

With both teams juggling multiple priorities, it's important to provide visibility on what's in the pipeline so they can manage resources and expectations.

Establish a Weekly 'Legal Hour'

One of our clients finds that inviting a member of the in-house legal team to come to a weekly marketing team meeting is very helpful. The benefits include:

- legal is kept in the loop as to what the marketing team is working on and is available to answer questions on the spot;
- being valuable for relationship-building, as the teams usually don't interact much; and
- involving legal early in the campaign development process reduces the chance of errors being embedded early, saving both teams time and cost and reducing the business's risk.

These meetings also help resolve another potential friction point, which is that in-house legal often doesn't offer to get involved early in a campaign's development (or is not invited to do so); this leads to changes needing to be made late in the marketing process, once a lot of work has already gone into the collateral. This can be particularly challenging for the likes of television commercials or videos, where rework is expensive.

Create a Marketing Priorities Spreadsheet or Dashboard

To provide both legal and marketing with visibility on what marketing

campaigns are underway and where they are in the development and approval process, create a dashboard that both teams can access.

This could be a simple spreadsheet kept in a central location, off-the-shelf software such as Trello or a purpose-built marketing review system like Prism, developed by LegalVision to communicate with our ad review clients.

Whatever form it takes, the dashboard could include such information as:

- campaigns that legal and marketing are working on together;
- each campaign's status (i.e. stage of development); and
- order of priority, which should be set by the marketing team's manager.

The legal team can view the dashboard to see what campaigns are coming, where they're at and which campaigns they will need to prioritise. This communication tool helps them to manage their workload and meet the marketing team's needs.

Similarly, by having the marketing team's manager set the priorities, they are also setting expectations within the marketing team regarding each campaign's importance to the business. This means individual team members won't chase legal for input unnecessarily.

5. Legal Should Provide Alternative Solutions

It irks the marketing team if they receive collateral back from legal, marked up with red lines and no alternative solutions. A more constructive—and collaborative—approach is to instead provide them



with options. Here is an example: "We would advise against claiming 'We will find a home loan right for you.' This is potentially misleading because it could suggest to the consumer that they are guaranteed to get a home loan, regardless of their situation or requirements. Instead, we suggest you amend this to 'We will help you see if there is a home loan right for you.'

Likewise, if the marketing team has used the database of previously approved collateral and realise that a word or image they are proposing might be risky, they too should consider providing alternatives. This gives legal:

- something to work with; and
- reduces the likelihood of the collateral needing a second round of legal approval.

It is also a more collaborative approach and demonstrates that marketing has turned its mind to potential issues.

It's Time to Collaborate

There's much to be gained by transforming the relationship between your marketing and legal teams. By identifying sources of friction and working together to implement solutions, you:

- save both teams' time;
- reduce risk to the business; and
- create a workflow that is productive and delivers results.

The transformation also helps build a strong relationship between the two teams, based on communication and collaboration, setting you up for long-term success.

Key Points

It's important to have marketing collateral reviewed by legal to reduce any risk to the business. However, it's also important that this is done in a timely and constructive manner. The relationship between both teams works best when they collaborate to identify and remove potential friction points.

Start by understanding each team's objectives and what motivates them. Then, take the time to map the journey of a standard marketing campaign and identify at which stages both teams need to interact. This will help you to identify potential pain points for both teams. Having done this, it is time to implement solutions. There is a range of great options, including:

- ▶ creating a database of previously approved marketing collateral on which marketing can draw;
- ▶ having a checklist of information marketing must provide legal to reduce wasted time;
- ▶ inviting a legal team member to join regular marketing team meetings so they are in the loop early and can answer questions;
- ▶ running knowledge transfer workshops to educate each other on key requirements;
- ▶ maintaining dashboards to track priorities and status, providing each team with visibility and setting expectations; and
- ▶ providing alternative collateral options to smooth and speed up the approval process.^a

Laini Bennett



As Head of Content at LegalVision, Laini is responsible for LegalVision's freely available database of articles and publications. LegalVision is a market disruptor in the commercial legal services industry and provides a range of legal solutions specifically directed at large corporates, fast-growing businesses and enterprise clients that have a higher volume of legal needs. The firm was named the 'Fastest Growing Law Firm in the Asia-Pacific' by the Financial Times.

WORKING FROM HOME

As we all navigate the new 'normal' in the post-COVID-19 world, one major adjustment has been the 'new' workplace, A.K.A our homes. We've asked four members to share their experiences of working from home and their tips for getting through this challenging time.



Employment Counsel – APJ Lead, VMware

I wish I could time-travel back to 2019 to tell myself to brace for what's to come. However, the reality is that no amount of warning could really prepare anyone for the intense shock and the fast-evolving fluidity of the months to come. Due to my significant other's work as a public health doctor, the news of human-to-human transmission in China became extremely alarming. As an APAC in-house employment counsel, I have also been working on our company's COVID-19 response since January. The pandemic has fundamentally changed the way we live and work. While the new morning commute from one part of the house to another is not exactly time-consuming, the hours in front of the computer have been stretched and the number of Zoom meetings seems relentless. I often find myself asking the question—how will we get through this—and so here are my tips.

Keep it in perspective

Even the 24/7 news cycle and images of mass graves cannot truly capture the full extent of devastation around the world. As many of us are staying at home, I am constantly reminding myself of how lucky we are to have a roof over our head, and access to clean water, electricity, Wi-Fi and food. I think about our friends who have suddenly lost their jobs and have to face a lot of uncertainties. I think about the women and children who experience domestic violence and desperately need a safe shelter. I think about the many asylum seekers, refugees, migrant workers and displaced families around the world who live in squalid and crowded conditions with shared sanitation facilities and cannot practise self-isolation and social distancing. For those of us who can continue to remain productive in the comfort of our own home, we are so lucky. I hope that by keeping things in perspective, we will stay compassionate and help each other get through this difficult period.

"Call it out, even when it's a little bit racist."

Growing up Asian in Australia, I have never seen or heard so many racist sentiments until this year. The truth is, it's never just a teeny-weeny bit racist. Every little bit of racist sentiments can add up and have a significant impact on someone's mental and physical health. Calling out even casually racist comments can be incredibly uncomfortable, but you are not just doing it for yourself. You are doing it for so many others who are too afraid to speak up. This is a scary world and I understand that we are all frightened. Using this fear to justify racism is and will never be okay. As in-house counsel, we are also the thought leaders of our organisations. In these unprecedented times, we have a role to set the tone of inclusion and zero tolerance on racist sentiments and help other leaders do the same. Please, call out casually racist jokes and off-handed comments and don't give racism any chance of survival in your organisation.

Be inclusive all the way

While setting agendas and allocating tasks to different members before a meeting may appear obvious for a productive and efficient meeting,

it is also critical in empowering the shyer members of the team with an opportunity to prepare and contribute to the meeting. In a free-flowing meeting, it is easy to give in to the temptation of letting the more vocal members take over, but we are also missing out on the gems that come from diversity of thoughts and opinions. Where appropriate, a quick round the table will allow different team members to bring different opinions to the meeting.

Lots of working parents are experiencing the challenges of home schooling or caring for their children while working for the first time. During a Zoom meeting with a colleague, I could hear my colleague's baby girl crying and I could see the anxious expressions on my colleague's face, as she worked hard to keep the agenda of the meeting going. I paused and asked her to bring her baby into the meeting. As she held her baby in her arms, I entertained the baby with my favourite turtle toys. I pretended to tell stories with the toys, but I was actually talking to the working mummy about work. We all need to be more empathetic and supportive of working parents because we are all in this together.

Set time for social time

While not being physically at work may mean we miss out on the social interactions, I have experienced and heard lots of stories of people being creative in maintaining that social interaction. From cloud karaoke, virtual cafes to virtual trivia, there are so many ways to stay in touch socially with colleagues and even foster new connections. With that social time set aside, this also means that work meetings can be structured, productive and efficient. Be receptive to new ideas and adopt technology to stay connected. You never know, you might be the next big creator of resilient innovation.

Go forth and remember...

As we live and breathe the instantaneous news feeds, we are also victims of short memories. I hope we will never forget the lives lost and the bravery of the many on the frontline. I wish you the courage to maintain the strength and resilience to get through this tough time with your organisation and I hope you stay safe and well.



General Counsel, Quest

In the current economic environment of business hibernation where many people have lost their jobs, those of us who are fortunate to have retained our roles are busier than ever. Crisis management lends itself to a lot of legal input! This is an incredibly interesting time to be working as an in-house lawyer as we navigate what the pandemic means for our businesses, the economy and how to plan for recovery. With the government direction to work from home wherever possible, the workplace is being reinvented in real time, forcing us to think differently about ways of working and to actively embrace change.

My experience of working from home prior to COVID-19 was limited. I have always worked in traditional corporate environments where the expectation

has been to work in the office. Then suddenly, here we are, 'all in this together' with everyone navigating the new normal of working from home with varying degrees of acceptance and success.

For me personally, the transition to working from home has been a relatively smooth one. Although I am currently working longer days than ever, paradoxically, I have more control over my time because meetings are largely by design rather than drop in so I find I can better plan my day. I also feel like my team is working together exceptionally well.

Here's what's been working for me.

Daily communication

We all know that no matter what you do for a living, being part of a healthy, high-functioning team is vital if you want to feel fulfilled at work. A key element of maintaining a high-functioning team is ongoing, constructive, face-to-face communication. That does not mean that everyone needs to be in the same location. The technology we all have at our fingertips makes daily communication super easy. We're using Microsoft Teams for video conferencing, calls and instant messaging throughout the day and the workflow functionality on Microsoft Teams so everyone can see each other's priorities and capacity. We are also embracing picking up the phone with colleagues across the business rather than sending emails to stay connected and visible.

Keeping rhythm

Where previously the team and I would have a short meeting twice a week, we now have a daily 8.30am team video meeting to start each day. This ensures we are connected and can check in with each other, run through our key priorities for the day and share key information and learnings.

Trust

If you don't trust your team to work when you're not looking over their shoulder, you don't have the right team. I'm lucky to work with a great team who I trust to work autonomously and efficiently. It's not four walls that get results—it's a shared commitment to common goals. However, because we are no longer all in the same place at the same time, we need to take more care to ensure that everyone understands priorities and the workflow is spread properly so we can meet our commitments to the business and each other. It all comes back to open and honest communication—much the same as when we're face-to-face in the office. The morning meetings have been essential in maintaining lines of open communication and trust in our team. If you're not already doing this, I would strongly encourage you to start.

Creating boundaries

Now, more than ever, it's very easy to be working all the time when the office is at home and we are online all the time. There's a temptation to keep working far beyond usual business hours. It's important to be mindful of maintaining some separation from work and know when to call it a day. I've found that when I work late into the night, I don't sleep well, which impacts my performance the next day. I've found the simple technique of writing my action list for tomorrow and then closing the computer and saying "I am finished for the day" is effective.

One of the best things I did to have some boundaries was re-arrange the house to create a separate office space that I now share with my husband. (My daughter whose bedroom I now work from might disagree.) Having a physical boundary definitely helps with separating work and non-work.

Running to schedule

I'm also trying to maintain a routine and keep up with the things that work. For me, that's waking at the same time every day, meditation and exercise each morning before the rest of the house wakes up, taking a break to have lunch and get some fresh air when the kids have their lunch break and dinner every night with my family. As a mum of three, the shift to working from home has intensified as I, like many parents, now have kids schooling from home. The kids are old enough to know what's expected of them and we all know that this is temporary. I've accepted that much like they never seem to

hear me when I ask them to clean up their rooms, there will be times when they completely ignore the schedule. Occasionally the wheels will fall off... but that's OK!



Lawyer, University of Tasmania

For a while there, the coronavirus or COVID-19 situation didn't seem like that big of a deal—"it's just a bit of a cold" some people would say. Others said that it was only likely to affect old people, so for me as someone in my 20s, I didn't think it was really a problem.

But it all felt real when, in early March, I was packing my notebooks, documents and laptop into a box. My team decided it would be best for ourselves, our families and public health to simply start working from home. It made the situation feel real. This truly was a pandemic and society as we knew it was going to change forever.

At the time of writing this, I've been working from home for about six weeks. It was strange at first, but it has become my new normal and the new normal for so many of us across the country. I've been able to successfully work from home and it was a relatively easy transition to do so. Here are some tips to optimising your work from home station and situation for success.

Have a workspace

Having an office or your own desk in an open-plan space was critical for getting work done in the pre-coronavirus world. This is something that hasn't changed. For the best chance to get work done, setting up a personal space is vital. I was fortunate that I had a home office space to myself already. I have created a workspace that is a similar set up to what I had at work—two screens, my laptop and enough light. For those who cannot have an office to themselves, having a quiet space with relatively few distractions is a great start.

Having a proper chair is also important. I considered taking my chair from my work office, as it is really comfortable. The chair I have at home is pretty good though, so decided against it. Working in an ergonomic environment is important for your health and a good chair is the gateway to comfort. So, if you're working on the dining room table, make sure you've got your desk chair to support you.

Set a routine

I'm a routine kind of guy. On a regular day, most mornings would look the same: have a shower, eat breakfast, get ready, grab a coffee, get to the office. Now that work and home are the same things and for many there is no need to commute anywhere or drop the kids off to school, the routine we once knew is gone. Something that has worked well for me was creating a new routine to make this situation feel a bit more normal for me.

As tempting as it is to wake up at 8.59am and roll to my home office and kick off at 9.00am, it is more rewarding to get up early, walk to the nearest coffee shop for a takeaway and get back home and then crack on with my day.

Having a new isolation routine has provided me with a way to create some separation between my home time and work time, as well as providing some structure to the day.

Stay connected

As an extrovert, my favourite thing about work is chatting with my colleagues and clients. I've always loved going to make a cup of tea and having interesting conversations in the staff kitchen about what we think might be hiding in someone's lunch box. Now, when I go to the kitchen in my home,



the only thing that entertains me is my thoughts (no one is home with me throughout the day). Setting up regular (but not overbearing) catch-ups over Zoom, Microsoft Teams, Skype or phone is critical. Working from home doesn't mean you're not accessible.

Technology has allowed us this amazing opportunity to continue doing what we do but from a distance. Maintaining the same level of contact with your clients and business partners will help demonstrate to the organisation that you can work from anywhere and that the level of service is at the same high standard as it was before.

For the next little while, working from home will be our new normal. Making sure we have an optimum set up will make this time a little bit more bearable. Staying connected with our peers is going to be more important than ever, as well as setting some structure and boundaries about when it's home or work in our blended worlds.



**Senior Counsel,
Philip Morris**

Just over a month ago, I returned to work after 7 months' maternity leave. Two days before I recommenced work, our COO sent a note to the organisation strongly recommending that those in office-based roles work from home. And so, my first day back at work was spent at my dining room table, on VC calls with colleagues (most of whom I hadn't

seen for months), juggling work with the needs of my 6-year-old daughter and 8-month-old son. Even though I only worked three days that first week, it was a disaster and I was left mentally and physically wrecked.

But I also learnt some valuable lessons that could you help too!

Working from home during a pandemic does not equal remote working

The normal rules just don't apply.

When I've worked from home in the past, I had childcare, grandparents and/or school to keep my daughter busy. Now, I need to help my daughter with her schoolwork and at the same time keep my 8-month-old fed, cleaned and well rested, which means constant disruptions. Rather than working a linear day from 9 to 6, I must work in blocks of time because that's the only way I can work.

We need to speak up about our personal juggle(s) and how they might impact availability for calls AND extend that same courtesy to our team and colleagues

The first week back, we had a 5-hour long management team meeting because that's what we would have done had we been in the office. I remained connected for the entire meeting, despite having to move from the dining room into the kitchen and then back again as I fed the kids (and myself) and having to twice take my son upstairs to sleep and back down again when he awoke.

Unsurprisingly, my son's normally predictable naps turned into short, disturbed periods of sleep, my daughter got bored and proceeded to tell me that fact every few minutes and I slowly but surely lost my mind.

Although calls are no longer that long, I now speak up if call times don't work for me and let people know beforehand if I'm going to need to dial off for certain periods. Working from home in these circumstances requires a careful balancing exercise. Work cannot automatically take precedence over our other needs.

Schedule, schedule, schedule!

Not having a plan for my daughter that first week and trying to make things up on the fly was a mistake as she'd inevitably interrupt an important call asking what she should do next.

So, I sat down and researched educational resources and created a timetable for Week 2 that fit in around my calls. Combining that with an at-home workout that we could sweat and giggle through together first thing in the morning and a common lunch break made Week 2 a remarkably more pleasant experience!

I'm not the only one in the boat – we're all struggling together!

Initially, I tried to not let my kids appear in too many video calls and was constantly telling my daughter to be quiet. But trying to pretend I could work in the same way I would at the office was exhausting.

After all, we're all dealing with distractions at home and background noise and cameos by colleagues' kids, pets and other halves have become the 'new normal'. Instead of asking others to mute themselves because of background noise, we are now displaying a level of empathy and understanding towards each other that is unprecedented.

So, although I might still shush my daughter from time to time, I'm trying to embrace the change, no longer apologising for background noise and letting my daughter say hello.

We need to build different ways to share information and remain connected to our teams

Having not seen my team for a long time, I knew I needed to set up some meetings upon my return. But I quickly realised those meetings needed to occur more frequently as the automatic information flow that comes with working in an open-plan office no longer existed.


These meetings have also become something to look forward to, a time for us to build stronger, more personal connections with each other, something we are all craving and need right now.

My oxygen mask comes first!

Initially, my time was either taken up by work or kids, with very little time for me.

By building in time for exercise or mindfulness, ensuring I had planned out my meals and generally looking after myself, I have become a happier, healthier person. By starting with the right frame of mind, I am now better able to deal with the challenges of the day.

With boundaries between work and home blurring beyond recognition, I'm also trying to ensure I take a break from being 'online' and spend quality time with my family as well as empowering my team to do the same.

Each day is a challenge. No one day has been perfect. But there's comfort in the fact that I'm not alone—we're all along for the ride. Learning and adapting together. Day by day. 

Kelly Xiao



As the lead employment lawyer for the Asia Pacific region at VMware, a global software company, Kelly provides advice and training to both the HR department and managers across 15 countries, in both English and Mandarin. 'Made in China and manufactured in Australia', Kelly is passionate about leading with integrity and was honoured to be the winner of the 2019 ACC Australia Young Achiever Lawyer of the Year.

Kirsty Harvison



As General Counsel for the leading provider of serviced apartment accommodation in Australasia, Quest Apartment Hotels, Kirsty is currently navigating working from home and leading a remote team, all while managing the demands of supporting three kids learning from home while schools are closed. Quest has more than 170 hotels in Australia, New Zealand and the UK.

Theo Kapodistrias



As a lawyer at the University of Tasmania, Theo has been recognised extensively for his legal skills across a range of award programs. He has also been recognised for his community work, being selected as a Finalist at the Tasmanian Young Achievers Awards in 2019. Theo is the Tasmanian Divisional President and a Director of ACC Australia, Keynote Speaker, Ambassador for World Idea Day and a Tasmanian Ambassador and Industry Champion with Business Events Tasmania.

Niti Nadarajah



As Senior Counsel for Philip Morris in Australia, New Zealand and Pacific Islands, Niti advises on a variety of legal issues in a heavily regulated environment, often having to balance legal risk with reputational and strategic considerations. She is a member of the company's local management team and advocates strongly for the company's values on diversity and inclusion and is passionate about empowering others through authentic leadership. Prior to joining Philip Morris, Niti spent a decade working on M&A and Equity Capital Markets transactions in law firms in Melbourne, Sydney and London.

THE ROLE OF PERSONALITY IN CHOOSING OUTSIDE COUNSEL

There are countless articles outlining the best ways to evaluate outside counsel. Many of them gloss over one major characteristic—the personalities of the lawyers and companies they represent. This article addresses the role of personality in outside counsel selection.

The article explores several perspectives including:

1. Personality of businesses and the variation between and within industries and companies;
2. Approaches to systematically analysing personality;
3. Personality of lawyers and law firms;
4. An organisation dealing with a single matter and paying for several counsel simultaneously; and
5. When the organisation changes its personality.

Individual lawyers, law firms and businesses have personalities. Usually referred to as ‘company culture’, we will refer to these characteristics as ‘personality’ for simplicity’s sake, whether discussing an individual or an organisation¹.

Consideration of personality harmony between candidate and company for both the hiring of CEOs and other senior executives² and the hiring by CEOs³ is increasingly popular. The variety of questions CEOs ask during hiring, as reported in *Fortune*, tells us a lot about different corporate cultures. This approach should similarly apply to retaining counsel.

Model Rule of Professional Conduct 1.16 (a)(3) recognises the common law rule that, as a professional, a lawyer may be discharged by a client at any time for any reason or no reason. The intimate relationship—including sharing confidential material—between a lawyer and his or her client requires personalities that can work together. It requires mutual trust and confidence. As with our fellow professionals, doctors, whom their patients must trust, the personality fit between lawyers and clients is worth spending time and attention on at the beginning of the relationship.

CHEAT SHEET

• Personality.

Lawyers, law firms and businesses all have specific company cultures or ‘personalities’. These personalities vary within industries and even within companies at the department level.

• Assessments.

Two widely used personality assessments and classifications are the Myers-Briggs Type Indicator (MBTI) and OCEAN (also known as CANOE, Five Factor or BIG Five analysis).

• Research.

You can determine a lot about a law firm’s personality by how they present themselves on their website, gathering anecdotes from other clients, conducting in-person interviews and referring to evaluations such as MBTI and OCEAN.

• Perfect match.

In-house counsel must be aware of their company’s personality to best assess which law firm or lawyer personality will be the best match—whether because of similarities or complementary differences.

Organisational personalities

It is no surprise that companies in different industries are likely to have different personalities. Who would expect a startup cannabis business to have the same personality as a regulated public utility? On the risk-taking front, the people in those organisations, and thus the organisations, are likely to have vastly different risk tolerances.

Within a single industry, different organisations may have different personalities. IBM’s organisational personality still bears some influence of its early leaders, the father and son team who shared the name Thomas Watson. (Indeed, the software that won Jeopardy!—Watson—and is being used in other areas, is named for IBM’s early chairs, not for Sherlock Holmes’s sidekick.) Apple still bears the personality stamp of Steve Jobs.

“*It is no surprise that companies in different industries are likely to have different personalities. Who would expect a startup cannabis business to have the same personality as a regulated public utility?*”

The Watsons of IBM and Jobs of Apple had very different worldviews and these two companies in the computer industry have different personalities. The Watsons were so customer centred they made their salespeople dress like their customers—the uniform dark suit and white shirt of bankers, their largest customers in the 1950s and 1960s⁴. Jobs, on the other hand, famously relied on a quote attributed to Henry Ford that, if he asked the customers what they wanted, they would say a faster horse⁵. That is, he did not trust his customers to come up with innovative ideas.

These attitudinal differences towards customers manifest themselves both in negotiating agreements and in resolving the inevitable disputes.

So, too, within a single organisation, business units may have different personalities. A given business organisation may be a parent to operations in different industries. CBS includes broadcast TV—and within it, news, sports and entertainment—as well as streaming and publishing, such as Simon & Schuster. Would one necessarily expect these diverse businesses to have the same personalities? And after the reunification with Viacom, the diversity of personality types manifested within the corporate umbrella will only multiply or perhaps grow exponentially.

Businesses often distinguish between ‘front office’ (revenue producing) and ‘back office’ (support people). Salespeople and accountants (much less lawyers) in the same company are typically thought of as having different personalities. How often have you heard the legal department described as a cost centre?

Legal problems sometimes occur at the organisation's parent company where the personality of the board and C-Suite matter. But sometimes the problems are at the business unit level, involving other personnel. Contracts with vendors to supply goods and services to salespeople and those to supply accountants might both produce documents and disputes. The businesspersons responsible for the matter—salespeople and accountants, respectively—likely have vastly different personalities and the choice of counsel should reflect this.

Personality attributes

One of the earliest widely used personality assessment and classification systems for people is the MBTI, also known as the Myers-Briggs⁶. This instrument does not capture all personality traits, but because MBTI was available early and is well known, it has remained popular for 70 years. MBTI has been criticised by newer professionals in the field who often favour OCEANS (explained further below).

Briefly, Myers-Briggs looks at and classifies in its own nomenclature four characteristics:

1. Focussed on the world (extroverted) or inner self (introverted);
2. Focussed on information taken in (sensing) or interpreting and adding meaning to it (intuitive);
3. Focussed on logic and consistency (thinking) or looking at the people and special circumstances (feeling);
4. Focussed on deciding and moving on (judging) or preferring to stay open to new information and keeping options open (perceiving).

The modern academic standard in the field of personality classification, now more widely used than MBTI, is variously known interchangeably by the acronym OCEAN (sometimes transposed as CANOE) or Five Factor or BIG Five analysis⁷. The five traits differ in some respects from MBTI, but there is a correlation. The traits are:

1. Openness to experience
2. Conscientiousness
3. Extraversion-introversion
4. Agreeableness
5. Neuroticism

Companies and law firms can use these tests during the hiring process—or use aspects of them informally during interviews. Some HR professionals are familiar with this; if not, there are consultants who can help. Companies have personalities that reflect the people

in them. Attitudes vary widely depending on the business setting. Approaches to risk (on a scale from avoidance to encouraging), aggressiveness (from competitive to cooperative), and change (from receptive to hostile) vary, among many others. The MBTI and OCEAN tests are not exhaustive.

In the entrepreneurial context, for example, where the consequence of failure may be the loss of money, failure may be regarded differently in, for example, the aviation industry, where the consequence of failure may result in the loss of many lives. In the business world and legal profession, a personality attribute called ‘grit’, usually synonymous with perseverance, is favoured and is sometimes regarded as more significant than IQ⁸.

The personality of law firms and lawyers

To illustrate the breadth of law firm personalities, let's look at a few firm (and in one case, barristers' chambers)⁹ mottos or slogans garnered from their home webpages:

- ‘Commitment to Client Service. Industry Experience. Collaboration.’
- ‘Creative. Aggressive. Relentless.’
- ‘Our attorneys combine exceptional insight with resourcefulness to help our clients efficiently meet their goals, especially when they face issues of unusual difficulty and complexity.’
- ‘GT [firm initials] Means go-to.’
- ‘Legal excellence. Dedication to clients. Commitment to public service.’
- ‘Advancing Legal Services Through Collaboration, Connectivity and Innovation.’
- ‘We Act on What Matters.’
- ‘A law firm built around people.’

Several major firms do not have mottos. Instead, they post on an inside webpage their principles, thoughts and information on their culture ranging from a paragraph to a page. Several English barristers' chambers listed all the awards they had received instead of mottos.

While self-description is not guaranteed to be accurate, the first two mottos are unlikely to represent the same or even similar cultures. ‘Collaboration’ and ‘Relentless’ probably represent very different cultures¹⁰.

Following Marshall McLuhan's insight that “the medium is the message”¹¹, the firms that avoid short mottos on their home page in favour of fuller descriptions on an inside page may reflect more personality differences than the actual variation among mottos.

“IBM is at least 50 years older than Apple. In its early days, was it more of a risk taker than after it had some success and something to lose? Has Apple's risk tolerance changed as it has matured?”

Lawyers within a firm are not clones. To the extent that companies select lawyers, not firms, it seems likely that the descriptions represent the median personality, with some distribution above and below. Put another way, even at the ‘collaborative’ first firm above, some lawyers may be more ‘aggressive’ (but perhaps not ‘relentless’). And at the

second firm, some lawyers are likely to be more collaborative than others at that firm. There may even be overlap in personality types among some individuals at each of the two firms.

Law students develop impressions about the personalities of firms during recruitment, but those impressions are from the perspective of employees, not clients. There seems to be remarkably little published systematic research about firm personality¹².

A tale of three counsel

Consider litigation where the organisation will need to pay for three senior courtroom counsel. The case involves a suit by a competitor complaining about a team moving to your company from the competitor. This hypothetical occurs in England (where senior barristers are not members of law firms and practise by themselves)¹³.

One counsel will represent the company and its president. The second will represent a senior officer who led the recruitment and, for a variety of reasons, needs their own counsel. The third will be counsel to the team of employees who moved to your company from the competitor. All defendants will be represented at company expense.

You've decided on the three counsel who will populate your 'dream team', but you must decide how to allocate them among the three groups of defendants.

The first lawyer is described by one of the directories as "a fierce courtroom advocate, who will fight tooth and nail for his clients." By reputation and prior experience, you know this advocate is as likely to fight tooth and nail with their clients as well as *for* them.

The second is an advocate described by the lawyer directories as "having an extremely analytical mind and technical excellence (with) commercial awareness and a client-friendly manner." Their personality is characterised as modest.

The third is an advocate described by the directories as "very good to work with, very responsive and very inspirational; they are incredibly user-friendly and seriously knowledgeable in the area of team moves." They have a comforting personality. They wrote one of the two leading books on this particular type of litigation.

As the reader may well have deduced in this hypothetical case, the assignment of the first advocate is to the company, the second is to the separately represented executive and the third is to the relocating team.

Hypothetically, on the morning of the last day of trial, in-house counsel bumps into the leader of the movers and this conversation ensues:

In-house: What did you think of your counsel?

Leader: They're quite nice. The judge treats them much more respectfully than any other lawyer, whether it's ours or theirs. Probably because they wrote the book. But they're not the best questioner; we even had a little mix-up on direct examination.

In-house: Do you remember how you felt just after the move and when you were sued within days?

Leader: Yes—quite upset and nervous. I'd never changed jobs or been sued before. I was quite stressed.

In-house: And how did your counsel make you feel?

Leader: They were quite calming. Like my grandparent. I felt much better after meeting them.

In-house: How do you think you would have felt if your counsel at that meeting had been the company's counsel?

Leader: I would have left the meeting and jumped in the Thames.

In-house: Now you know why they were assigned to you. All three were in the courtroom and worked as one team. Our side got the brilliant cross examiner, but you and your movers got the gentle personality who was also the author of the book.

Leader: I see that. Thank goodness.

The times they are a-changin'

Personality is not an immutable characteristic. To survive, organisations must grow and learn from their experiences. As we heard in *The Godfather*:

Hagen: Mike, why am I out?

Michael: You're not a wartime consigliere. Things may get tough with the move we're trying¹⁴.

IBM is at least 50 years older than Apple. In its early days, was it more of a risk taker than after it had some success and something to lose? Has Apple's risk tolerance changed as it has matured?

Uber is perhaps the leading recent example of an organisation seeming to change its personality. Under its founder, its philosophy seemed to be to ask forgiveness, not permission¹⁵.

After its upheaval, its new CEO and GC seem to have adopted a strategy of trying to work things out with regulators, proving they are responsible players¹⁶. This seems to result in a lower profile. It would be interesting to learn what percentage of outside counsel survived this organisational personality metamorphosis.

Returning to the CBS example, the very public shift from Les Moonves's leadership to Susan Zirinsky's leadership after Moonves was accused of sexual misconduct almost certainly changed the personality at the top and may have had knock-on effects in other positions¹⁷.

Law firms can also change personalities. For example, market pressure has changed partner compensation from classic 'lock step' to a merit-based or 'eat what you kill' system—even at some classic New York white-shoe or London 'magic circle' firms. This change in firm compensation seems likely to change firm personality, resulting in a more entrepreneurial atmosphere.

Summary

As earlier noted, in general, salespeople and accountants have different personalities. Likewise, transactional lawyers and litigators generally have distinct personalities. Because each category can contain multitudes¹⁸, an aggressive transactional lawyer may be more direct than a low-key litigator. Justice Kagan advised incoming law students that what makes lawyers great varies with what type of lawyer they are and discussed the American style of practising law as being a 'problem solver'¹⁹.

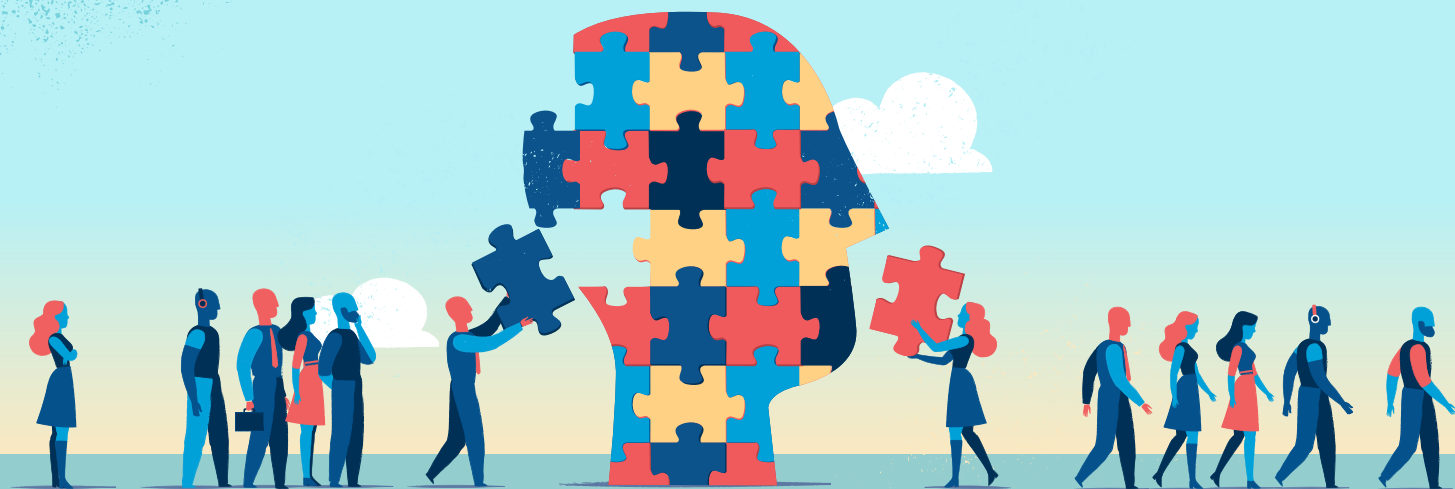
There is a notion, for example, about using separate counsel to litigate a case on one track and try to settle it on a parallel track²⁰. Even if equally qualified and capable in the subject of the dispute, personality would surely strongly influence the choice of who goes on which track.

What to do

Inside counsel needs to be sensitive to these attributes in their company's personality and the personality of firms. Moreover, the personality attributes of in-house counsel, who will likely manage the legal matter, should not be ignored.

In choosing outside counsel, personality is entitled to consideration, just like quality, price and expertise are weighed as factors. The scales above (e.g. OCEAN, etc.) provide a checklist of attributes to consider when assessing both outside counsel and the client's personality.

Researching firm and individual personalities by seeing how they present themselves on the web, hearing about the experience of other in-house counsel who have used the firm and conducting in-person interviews, or using the evaluative instruments described earlier, may



help. Likewise, involving the senior businesspeople who will be affected by the legal matter in the selection process is useful.

From the outside counsel's perspective, a wise outside counsel will select a lawyer whose pitch will include not only the expertise and experience of the firm, but also how the firm's personality gels with the client's temperament.

Matching personality characteristics will often be the best course. But it has been said of marriage that opposites attract. Sometimes a synthesis between the organisation's personality and its law firm antithesis will produce better results. Personality analysis may also apply to arbitrators and mediators.

In any event, making these judgments is part of an in-house counsel's job. Whether formally using an evaluative instrument, such as the framework of OCEAN or Myers-Briggs, or other factors identified in this article, or that occur to you, a systematic approach should be considered. Whether applying a systematic structured approach or a less formal approach, consideration should be given to the role personality plays in outside counsel selection.¹²

Footnotes

1. Ben Heinemann in Chapter 4 of *The Inside Counsel Revolution* uses the word culture to discuss the 'integrity culture'. This article assumes basic integrity and uses personality (or culture) to mean the characteristics laid out in the following text and similar factors.
2. www.apa.org/monitor/feb06/success.
3. <https://fortune.com/2017/03/26/ceos-ideal-job-candidates/>.
4. www.nytimes.com/1995/02/07/nyregion/black-jeans-invade-big-blue-first-day-of-a-relaxed-ibm.html.
5. <https://hbr.org/2011/08/henry-ford-never-said-the-fast>.
6. See, e.g., www.myersbriggs.org/my-mbti-personality-type/mbti-basics/home.htm?bhcp=1.
7. Psychology Today, *Goodbye to MBTI, the Fad That Won't Die*, www.psychologytoday.com/us/blog/give-and-take/201309/goodbye-mbti-the-fad-won-t-die; *Big 5 Personality Traits*, www.psychologytoday.com/us/basics/big-5-personality-traits.
8. Quast, *Why Grit Is More Important Than IQ When You're Trying To Become Successful*, *Forbes*, March 6, 2017, www.forbes.com/sites/lisaquast/2017/03/06/why-grit-is-more-important-than-iq-when-youre-trying-to-become-successful/?utm_source=LINKEDIN&utm_medium=social&utm_term=Malorie%2F#4f6b5667e45c; ABA, *The Grit Project*, www.americanbar.org/groups/diversity/women/initiatives_awards/grit-project/.
9. [en.wikipedia.org/wiki/Chambers_\(law\)](http://en.wikipedia.org/wiki/Chambers_(law)).
10. That's been my experience with the two different firms.
11. Marshall McLuhan, *Understanding Media: The Extensions of Man*, web.mit.edu/allanmc/www/mcluhan.mediummessage.pdf.
12. The leading published source of insight about structure for analysis of firm personality (albeit somewhat academic) is Sarat, A (Ed), Special Issue – *Law*

Firms, Legal Culture, and Legal Practice (Studies in Law Politics and Society, Vol. 52, 2010). Two articles have relevant insights. E. Chambliss, *Measuring Law Firm Culture* includes a discussion of a book about the fall of a well-known lawyer in the context of his firm's transition "from a bastion of the social elite to an aggressive entrepreneurial enterprise" (at 8). The article also discusses the personality differences between litigators and transactional lawyers, and notes differences within each group (at 10). It reports on some studies of law firms asking, "what holds this firm together?" (at 13). Firms differ in their tolerance for aggressive behaviour of rainmakers and this affects culture (at 21). In the same Special Issue, R. Rosen, *Rejecting the Culture of Independence: Corporate Lawyers as Committed to Their Clients*, discusses variation among firms, and over time at the same firms, with respect to transactional lawyers viewing themselves as independent voices, to keep the client within the rules, and viewing themselves as serving those clients.

13. Technically in chambers, where expenses and some governance, but not income, is shared.
14. www.dailyscript.com/scripts/The_Godfather.html.
15. www.nytimes.com/2017/03/03/technology/uber-greyball-program-evade-authorities.html.
16. www.uber.com/newsroom/2016-data-breach-settlement/.
17. www.nytimes.com/2018/12/04/business/media/les-moonves-cbs-report.html.
18. A small nod to honour the 200th anniversary of Whitman's birth.
19. Interview of Justice Kagan by (former) HLS Dean Minnow, start of 2019 academic year: https://youtu.be/pW-DfdSI0_Y?t=1675 (ending with Dean Minnow saying "All right").
20. See, e.g., McRae and Scolnick, *Case Assessment and Evaluation* (Practical Law Company) www.gibsondunn.com/wp-content/uploads/documents/publications/McRaeScolnick-CaseAssessmentandEvaluation.pdf (in "Early Settlement Considerations" section).

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As a former deputy general counsel of a global financial services company, Michael has extensive international experience in dispute resolution, intellectual property, employment and other fields. He is a fellow of the Chartered Institute of Arbitrators, a mediator certified by the Centre for Efficient Dispute Resolution and serves on the panels of several arbitration and mediation providers. Michael also teaches 'The Law and Role of In-house Counsel' at Hofstra Law as an adjunct professor.

PRACTICAL TIPS WHEN LOOKING FOR YOUR NEXT ROLE

When the Global Financial Crisis (GFC) hit back in mid-2007, many countries went into a deep recession as markets, companies and jobs fell worldwide. I was in London at the time, managing interim placements for a global legal recruitment company. I saw firsthand the impact such an upheaval had on employees—not just professional and financial effects, but also personal and emotional impacts.

Even though I have since moved back to Australia—a country that was largely unscathed by the GFC—I’ve never forgotten those times and experiences of the GFC in London.

In speaking with lawyers during the current crisis, many welcome hearing the range of useful steps they can take if they are currently looking for work or anticipating that they may soon need to be looking—so I would like to share them with you too, in case you or someone you know may need them in the months ahead.

Cut Yourself Some Slack

Job loss ranks among one of the highest in stress on a list of life-altering events such as a death in the family, divorce and serious illness.

As with grief, people who have lost their job typically experience four stages: denial, anger, frustration and, eventually, adaptation. You will know you are ready to start looking when you no longer view the job loss as a negative experience, but rather one to be embraced as an exciting opportunity.

A Chance to Demonstrate Resilience

Unlike previous ‘commercial’ recessions, this is a ‘government engineered’ recession and people are losing their jobs through no fault of their own, the company they worked for or the industry they worked in. The changes have been indiscriminate and everyone knows this, including the person reviewing the job applications.

How you manage your job loss is an excellent opportunity to demonstrate your resilience, fortitude and adaptability—skills that are always in high demand.

Starting the Process

Treat the job search like a project that your best friend is paying you to undertake

The task of looking for a role is often ‘too close and raw’ that it is not treated with the importance or discipline it warrants—structure is paramount; set objectives, time frames, KPIs and milestones. Excel spreadsheets are excellent for tracking timelines, jobs applied for and follow-up dates.

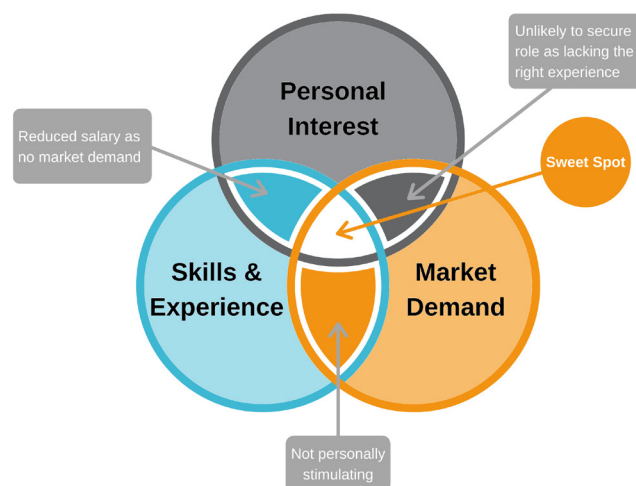
While job hunting is a serious business, it does not have to be boring—give the project a cool name, like ‘Project Wild Falcon’, have a logo, a motto and a theme song ... ‘It’s a Beautiful Day’ – U2, ‘Feeling Good’ – Nina Simone, are two that I have used.

Know What you are Looking For

Define the role you are looking for

Determine what are the factors that are important for you in your next role, e.g. salary, leadership, short commute. Rank and weight each of the factors, determining those that are deal breakers and those that would be nice-to-haves. To identify which elements are important, look at job advertisements and highlight different aspects that appeal to you. You will need to weigh up a range of factors such as what you would like to do, what you can do and what the market wants to be done. Find where each of them overlaps to determine your perfect role (Figure 1).

Figure 1: How to Identify your Perfect Role



Finding the Roles

- **Use online job platforms:** LinkedIn, Seek and the ACC Careers Board are some of the most popular online portals for lawyers. Set up job alerts on these sites so you are emailed about new jobs and the job market daily—become an informed consumer. Remember, job ads are employers’ wish lists, you do not have to meet all the criteria to apply.
- **Engage with and expand your personal network:** communicate with people in your network. Have coffee with them or a videoconference and ask them about the market and what they are seeing. Engage with the ACC, attend their events and get to know the movers and shakers in your profession.
- **Recruiters:** Connect with and meet the recruiters to find out more about the market and see whether they have any suitable jobs. Ensure they don’t send your details to any organisation without your consent. Stay front of mind with them, contacting them every two weeks to check in. Do not assume that recruiters put all the roles online, at a guess I would say only 20% are posted.

Applying for Roles

Your CV must be impeccable

- If you are wondering where to start, Microsoft Word has excellent CV templates and has a 'Resume Assistant'
- Use colour—CVs are more often viewed on colour screens, rather than just printed out
- Use subheadings, bullet points and formatting to make it accessible and easy to navigate
- Think of it as your personal marketing brochure
- Do not have any blank time gaps in your CV as they arouse suspicion—the reader will not assume you're working on your Nobel Prize speech, rather that you have been languishing in a South American prison...
- Your CV will be used as an example of your drafting ability—it must be perfect
- No more than four pages—and don't even think of reducing the font size below 11
- All verbs should be in the past tense
- No photos—the reader may form a conscious or subconscious bias before you even meet; you want to be in control of your narrative
- Do not put a street address on the CV—just an email and mobile number
- Use the job ad and/or job description to tailor your CV to the role specifications
- Have someone you trust review your CV and give you honest feedback
- Send your CV in pdf format

LinkedIn profile

- Yes, you need one. And if you think you don't, think again
- This must be as polished as your CV
- Do not put your work email address or phone number as the contact details
- Do your CV first and use those details to populate your LinkedIn profile
- The photo must be professional and recent—do not have a drink in your hand or your arm around someone
- Update all the back-end settings on LinkedIn. There are over 50+ settings to adjust. Grab a coffee, sit down and work through them one by one

Cover letters

- No—don't do one, unless specifically requested to. If you are asked to include a cover letter, make it unique, human and honest—something that will make the reader smile and remember you

Online social networks

- Potential employers will search for you on Facebook, Instagram and any other online social network that you may have a presence on. Ensure you have configured your privacy settings appropriately to avoid having potentially embarrassing content visible
- It may be helpful to Google yourself—it is often surprising what Google will find

Apply for roles simultaneously

- Do not apply for one role and see that process through before applying for the next. Rather, apply for many roles in parallel

Interim roles

- It is far better to have an interim role on your CV than to have a blank space. This demonstrates adaptability, flexibility and transferable skills and it also expands your network and provides income

While you Wait

You could sit on your couch and watch re-runs of your favourite Netflix program or you could:


- Undertake the Legal Practice Management course for sole practitioners that would allow you to consult directly to clients—it takes three days and costs around \$1,600
- Complete one of the excellent short courses offered by the Australian Institute of Company Directors

- Work on your interview technique
- Practise psychometric testing by completing practice tests online
- See a voice coach and undertake workshops on your presentation skills
- Network, catch up with friends and former colleagues
- Make sure you stay healthy—exercise and meditate

Interviews

- A little bit of practice goes a long way
- The skills you learn practising for interviews will be useful throughout your career
- You only need to be 1% better than the other candidate, so every little advantage counts
- Take the time to read books and watch videos on the power of:
 - body language
 - voice
 - clothing
- Interviews for interim roles are different from interviews for permanent roles, there is typically only one interview before a decision is made and all information for both parties to make that decision needs to be exchanged, thus it is more like speed dating than a long interview, so be ready and aware for this
- Do your research on the interviewer and the company and demonstrate this in the interview
- Use examples and the power of storytelling to illustrate your experience and skills
- Laugh, smile and enjoy the interview—people want to work with people that have a happy disposition
- Do not arrive more than five minutes early to the interview
- No one buys from a desperate salesperson—play it cool and stay relaxed
- If you are a coffee drinker, ensure you are caffeinated prior to attending
- Do not schedule an interview over lunch—the interviewer may try to wait until after the interview before eating and they could become 'hangry'
- Do not take notes during the interview as this is a time to form rapport—you can take notes after you have left
- If they ask you if you would like a drink, have water, do not order a decaf, soy, frappe, with caramel ... they may have to make it themselves
- Send a follow-up email thanking the interviewer

Summary

- Take control of the situation and treat it like a project—there are lots of practical steps you can take to get ready and be best placed when the right role becomes available.
- Never has there been so much information or so many people available to assist each of us in achieving our job goals—use this. Read the books, meet the people, expand your network, watch the videos.
- There is always room for improvement; remember you are just looking to be at least 1% better than the other candidates. Practise your interview technique and have someone you trust review your CV.
- Persistence and perseverance pay dividends.
- Stay positive and view the period of change as an exciting opportunity. 

Andrew Murdoch



As Managing Director at Dovetail Legal Solutions, Andrew is passionate about the legal profession and its need to innovate and show value. Having previously worked as a lawyer both in Australia and in the UK, Andrew's legal experience also includes several years working in in-house legal recruitment. Since 2012 he has worked within 'new law' and later co-founded Dovetail Legal Solutions in 2015.

WORKING IN DIFFICULT TIMES: A PATHWAY TO EXCELLENCE

Faced with the COVID-19 pandemic since January 2020, the resulting health, social, business and economic impacts have tested the metal of many organisations worldwide. However, are the lessons learned confined to the experience of a pandemic, or can they be more broadly applied to crises facing businesses across the board? This article explores the role of the General Counsel/Chief Legal Officer (GC/CLO) in guiding an organisation through times of crisis or turmoil.

To begin with, it is becoming more and more widely recognised that the role of the GC/CLO is no longer confined to the black letter law. Those in the GC/CLO role are called upon for their strategic view, their honed risk management skills and their ability to combine a depth of understanding of business with the law. Highly valued GCs extend their risk management prowess to being able to spot difficulties before they even emerge. In this way, the GC/CLO brings great value to the business/organisation, which can help it form a solidness, or a steadiness, that will be its backbone when an unexpected crisis hits.

Looking at business

Let's look at the business as a lake. When a crisis hits, there is unsettlement (which is to be expected) in the top layer of the lake. A business without a foundation to deal with such things, experiences this unsettlement right down to its core. All the waters in the lake are now moving with and in that unsettlement. When this occurs, it is very difficult to iron out the waters, so to speak, as the disruption has permeated right to the depths.

However, it does not have to be this way.

If the foundation of the business is very steady and unified, then when a crisis hits (and examples are given below), the ripples on the top of the surface do not permeate to the depths of the lake. They stay on the surface and, within time, the steadiness of the underlying waters is what brings the surface waters back into uniformity with the whole.

So, that all sounds great right, but how can this be achieved?

The importance of purpose

To start with, your organisation must beat to the same drum. Across your organisation, there needs to be a unified purpose. A unified purpose is not one that is dictated or governed from on high (the upper echelons of the business to the rest of the staff). It is something that is connected to and adopted as a commonality, across all aspects of the business. Why is the business in business? Do the people feel part of that purpose? Do they feel valued as staff?

You may dismiss this as not having any relevance in the hard-core world of business, but it does. In fact, really great businesses achieve their greatness by seeing people as their best asset—for indeed they are.

So, how does it work?

In other words, how does purpose relate to steadiness in the waters?

First, how solid and steady your staff feel within the business is going to affect how supported they feel during a crisis. They will either feel like individuals, who need to protect themselves, or they will feel that the team they already knew they were/are a part of is facing this (whatever

the crisis may be) together. Whichever it is will depend on the preparation undertaken beforehand, i.e. before the crisis hits.

And the GC/CLO's role in this?

Starting to get a feel for this, you may say, well that is great—but how does it relate to a GC/CLO? The answer is, it has a lot to do with that role. Perhaps more than many of us have realised.

The GC/CLO is called upon to provide all types of services to the business, in good and bad times. From small advice to advice on large and significant matters, a highly regarded GC/CLO is part of every important decision made by the business—because of the breadth and depth of view that the GC/CLO brings.

In days of old, a lawyer was termed a 'trusted advisor' or 'wise counsel'¹. In the modern day and age, the GC/CLO can be asked to take the seat to the right of the MD/CEO as a needed contributor to every major action the business takes.

Before we start to explore the role of the GC/CLO in steadying the waters during a time of crisis, we need to further explore what it means to play such a strategic role beside the MD and CEO and how a GC/CLO achieves this.

Steps to becoming a 'trusted advisor'

First, a GC/CLO will not achieve becoming a trusted advisor by muscling in. Such a position needs to come by way of invitation, through the earning of respect. That respect is won not just by legal expertise (although that is of course necessary—and for the purposes of this article it is considered a given) but by a depth of understanding of the business and an ability to combine legal and business acumen to foresee and help guide the business during difficult times.

Alongside that, a GC/CLO of great value is also deeply people-motivated. Such a GC/CLO does not sit at their desk on the top floor and deliver definitive statements of 'yes' or 'no', reinforced by pages and pages of legal justifications that really say, 'do not question me; I am your lawyer'. A GC/CLO wanting to truly serve the business and be right up there in decision making must first prove that they are an invaluable asset.

Interestingly, being an invaluable asset comes first from a demonstrated, consistent equalness. A GC/CLO's ability to stand beside commercial decision makers and offer their insight and views, as an equal contributor and not as a dictator, is far more likely to be respected than one who just brings the legal views, without the equalness part. The term 'interestingly' is used because not all GCs/CLOs do this, but they *could*.

Third, a GC/CLO, to be truly effective and value-adding to the extent that they can be, needs to have a steadiness that does not waver when tension rises around them. Hmmm, you might say—that sounds great, but how do you actually achieve this?

Some people think they do this well, but they don't really and inside they are still as stressed out as everyone else. But there are some who commit to not taking things on around them—by not personalising things and putting purpose before self. What does this mean? It means that the GC/CLO is deeply committed to the purpose of the business and working together with the entire team to achieve that. When something arises and there is tension, the purpose is greater than any personal reaction. Therefore, the personal reaction is dealt with, quite simply, so that what is stepped forward is the organisational purpose that the GC/CLO is so embedded within and is a representative of.

The above is no mental feat. We are not talking about saying “oh yeah, I'm calm; nothing affects me” but the mental activity and movements of the person and the way they treat others say exactly the opposite.

If you get a sense of the description of the lawyer of old, ‘wise counsel’ and ‘trusted advisor’, you might start to get a feel for it. That description saw lawyers held close, as valued ‘right-hand men or women’ who were there to support, back and guide others through difficult times.

This is where you start to see the relevance of all of this—to helping steer an organisation in a crisis.

This means that the GC/CLO is not there to serve their own needs. They are not there for the pay packet or the reputation-building or the ability to ‘advise’ and be above others. They are there for the purpose of the organisation as a whole.

A GC/CLO who brings that purpose and steadiness is going to be one of the ones people turn to in a crisis. The GC/CLO's presence alone, in just being there and offering steady, common-sense guidance, can do much to ‘settle the waters’.

So how would this work in a crisis? And is it just restricted to the current situation with the COVID-19 pandemic? The answer to the latter is, not at all.

Examples of crisis in today's business world and how the GC/CLO can help

Let's take some other, sadly commonplace, examples from current times.

First, let's look at reputation management. What happens in the case of mismanagement that then becomes a media focus? This would no doubt be most MD/CEO's worst nightmare. So, say there has been an internal decision made that, in hindsight, was a mistake. Perhaps it was not known to everyone at the executive level or perhaps the ramifications of the decision were not foreseen. What does an organisation do, including in response to media coverage?

First, the tone of the business's response can very much be set and led by the GC/CLO. Conveying a steady, solid approach, the GC/CLO can bring the matter to practicalities and help coalesce a working-together attitude that leaves aside bickering and blame and replaces it with the common purpose.

The GC/CLO is well trained for this, through years of legal training and, hopefully, years of experience in seeing things that can go wrong in business. That experience lends a solidness. It is a “I've seen crises before and I'm not going to get all up in arms over it” attitude. It further says, “OK, let's come together and discuss this as a team.” Without emotion, without a skerrick of blame, the GC/CLO can step in as an advisor who

very greatly respects the business and common purpose everyone in it shares and speaks to the team as one. The attitude and approach are very much an adoption of responsibility for what has occurred (so any attempts to scapegoat are removed) and there is a practical steering towards sensible action. From this example, the value of the GC/CLO can begin to be felt, as an actuality.

As a further example, let's look at cyber-attacks, i.e. data security breaches. This is also a commonality in today's business world, where so much of business is conducted and data is stored electronically. This is so much so that, under an attack, a business can become so thwarted that it may not be able to operate. A GC/CLO can be a true resource to the business at such times. The GC/CLO's role, as above, is particularly played before the event arises. Knowing that these risks exist, the GC/CLO can ensure that a robust Business Disruption Plan is in place so that the full extent of risks and measures to ensure adequate and timely back-up are instituted.

Putting this in place, the GC/CLO can also help create a culture where the understanding of the need to implement and monitor such policies/procedures is simply part of the fabric of the business. Documents are not just put in place to tick boxes, but there is a well-established understanding, across the entire organisation, of the purposes that such documents serve. Therefore, having such procedures in place, and following them, well before a crisis event arises, becomes part of the everyday known responsibility of all staff, who know they are all part of the engine that drives the cogs of the entire business.

In conclusion

In summary, a GC/CLO is well-positioned to play a guiding and supporting role, both in preparation for a crisis and during a crisis itself. It all starts with the way the GC/CLO approaches their job, every single day. Perhaps we could summarise this by asking:

1. Is there a consistency in the way the GC/CLO is with others, not just in the legal team but throughout the business at all levels? If there is, then people are likely to respect the GC/CLO during times of crisis. If not, then all those examples of when that steadiness was not there or when there was personalisation or reaction will be remembered.
2. Does the GC/CLO make it about themselves or are they unwaveringly there for the purpose of the business as a whole?
3. Does the GC/CLO operate at a higher level than everyone else or are they part of the team?
4. Can the GC/CLO bring it back to practicalities and common-sense, informed by their legal skills, business acumen and years of experience to offer a steady guiding hand?
5. Is the GC/CLO not only brilliant at their job technically, but obviously in line with the business as a whole, caring for both it and its people?

The above are indicators of a GC/CLO who can help guide a business through times of crisis. ^a

Footnotes

1. See Anthony T. Kronman (former Dean of Law, Yale University), *The Lost Lawyer*, (1993) 5.

Serryn O'Regan



As Executive Manager Governance and General Counsel at Evolve College, a national Registered Training Organisation, Serryn draws on her 25 years' corporate experience, including working at two top tier law firms in Australia. She is also the former Worldwide Director of a prominent charity in the USA, where she forged and managed relationships with the United Nations as well as coordinating 10,000 member groups in 190 countries. Serryn was a finalist for the 2018 Corporate Counsel of the Year award.

SAY YES TO WELL-BEING: HOW DAILY INCREMENTAL CHANGES CAN TRANSFORM OUR LIVES

The life of an in-house lawyer is filled with pressure coming from all directions. From client requests, circumstances you can't control, tight deadlines, pressures to be more efficient and agile—the list can go on. A 2016 study of approximately 13,000 practicing lawyers revealed that 28 percent of those polled were struggling with depression, 19 percent had anxiety, 23 percent were experiencing stress and between 21 and 36 percent had harmful alcohol-dependent drinking habits¹. Other studies have indicated that lawyers experience pressures from tight deadlines, perfectionism issues, lack of concentration, control issues, eating disorders and insomnia/sleeping disorders². The bottom line is that our profession is drastically falling short when it comes to well-being.

Enter the life of an in-house lawyer, where daily pressures are real. Numerous demands on your time, client requests coming from every direction, circumstances you cannot control, tight deadlines, pressures to be more efficient and agile—the list can go on and on. And that's just at work. Friends and family have their own expectations regarding your time and facing their disappointment if you can't meet those expectations can be especially stressful. To add to that, as a lawyer, you may feel under pressure to be perfect, stay on top of things, maintain your professional and personal brand and, overall, have all your

affairs in order. Who has time to think about their well-being? You feel lucky if you get five hours of sleep a night. To make matters worse, your colleagues seem to be doing just fine—successful in dealing with the daily pressures of their professional and personal lives. So, you feel like you are all alone in this—convinced that opening up about your challenges may be viewed as a sign of weakness. As a result, you may be internalising your struggles, perhaps becoming more stressed and anxious by the day and maybe even turning to alcohol, food or other substances to cope with this pressure.

CHEAT SHEET

• The problem.

Lawyers are at increased risk of struggling with stress, depression, anxiety, alcohol abuse and eating and sleep disorders.

• Corporate solutions.

Corporate legal departments working towards creating a healthy work environment should create wellness programs that have buy-in from leadership, focus on reducing mental health stigmas, are incorporated into many practises and help team members 'own' their well-being.

• Individual solutions.

Lawyers can increase personal well-being by taking time to pause and reflect, focussing on their physical health daily, valuing their meaningful connections, establishing boundaries and asking for help.

• Getting started.

There are various vendors and platforms that can offer training on well-being for individuals or companies, but first ask about what programs or assistance your organisation already offers.

Of course, you may not be feeling quite like that, but many of us have experienced the weight of daily pressures and some level of burnout and stress. In fact, even those of us who try to prioritise wellness sometimes get off track and need readjustment. Although our busy lives may often get in the way, the basic truth is that to be a good lawyer, you must be a healthy lawyer. There is simply no way around this. There may be temporary fixes to your stress, but the only way to have a healthy long-lasting career is to be making healthy choices every day.

“The bottom line is our profession is falling short drastically when it comes to well-being.”



The Association of Corporate Counsel (ACC) global has been involved in the discussion on in-house well-being for several years now as well, with the most recent annual meeting in Phoenix, AZ, as well as the most recent ACC Australia National Conference featuring several sessions on mental health and mindfulness, including case studies of effective efforts. Below is one case study of how an ACC chapter is making the well-being of its members a priority.

ACC Southern California Chapter makes strides in well-being

Jill Kalliomaa and Jeff Compangano, active members of ACC's Southern California Chapter, had noticed that the general stress level of their corporate counsel colleagues appeared to be escalating. The reasons for this are unique to each person, but there is no argument that the ubiquity of smart electronic devices in our professional lives gives new meaning to the traditional workday and this constant accessibility only escalates the many stressors associated with our work. Kalliomaa and Compangano also noticed that the legal events they attended typically included unhealthy food, emphasised alcohol consumption and provided little or no healthy options.

Although they each approached stress management and well-being from different perspectives—Compangano has a 36-year background in fitness and nutrition and Kalliomaa has an interest and practise in mindfulness, meditation and mind-body connection—they both sensed that there would be great support for this initiative among corporate counsel in Southern California. They proposed that the chapter create a committee dedicated to well-being for its members and the chapter board approved the initiative.

In May 2019, ACC's Southern California Chapter formally launched the in-house Well-Being Committee, recognising that while our work as corporate counsel can be exceptionally rewarding, it is often challenging to find effective, healthy ways to manage the stress inherent in the fast-paced in-house law practice with myriad clients. The new committee has seen great momentum and support in its first year, now with over 25 active committee members. The committee's mission? To provide activities, information and resources that are focussed on managing stress and work-life balance, increasing resilience and creating and maintaining healthy lifestyles. After assessing their members' interests and needs, the committee selected three focus areas:

1. Mindfulness/meditation and related activities as a stress reduction tool;
2. Fitting physical fitness activities into our busy days as corporate counsel; and
3. Making choices that support high-quality nutrition.

Highlights of the committee's activities so far include chapter email blasts providing well-being tips to chapter members, mindfulness presentations and exercises at board meetings and CLE presentations 'Mind Over Matter: Mindfulness, Communication, and the Workplace' and 'Managing Stress and Burnout in the Legal Profession'.

What's next for this committee?

Future planned activities include a yoga class, with complimentary healthy smoothies afterwards; an early morning hike followed by a healthy breakfast and a group session at a bootcamp fitness centre (including healthy green juices) with proceeds benefiting a local pro bono legal services organisation. Refreshment at events will emphasise healthy nutritious food and drink and deemphasise alcohol consumption.

Critical to well-being is the support of loved ones, so family members and significant others are invited to participate in these events as everyone navigates their wellness journeys.

Are you a legal department or ACC chapter leader and don't know where to start? Check out these resources.

WHIL is the leading well-being platform, offering live and digital training programs to help improve employees' mental well-being and performance, develop their emotional intelligence and get the most out of their lives. Type in 'attorney' on www.whil.com to find content specifically mapped out for legal professionals. WHIL's customised courses cover a wide range of topics—for example, ways to unlock positive thinking as a default mode, how to build concentration, tips on overcoming mental hurdles and managing depression, and many others.

Joe Burton, the founder of WHIL and the author of *Creating Mindful Leaders* (a must read!) and his team have worked extensively with lawyers. He says, "Legal service providers are being impacted not only by the constant change and disruption in their own business, but by the domino effect of all of their clients going through rapid change and needing legal expertise to help manage the new norm. It doesn't matter how good you are at client service or your job. If you can't manage your thoughts and emotions and relax your nervous system, it's hard to have sustained success in the legal profession."

Not sure where to start? Sign up at www.whil.com to get on their mailing list and attend one of their free monthly webcasts on well-being and performance.

Interested in launching a well-being program for your legal department?

In 2019, several international law firms and corporate legal departments became the frontrunners in the well-being by establishing well-being programs for their employees. 3M was the first in-house employer to sign the ABA well-being pledge, inspiring several other in-house teams to follow their lead. Ready to take the next step? Here are some ideas for inspiration.

Build foundation with commitment from the top

Your department leadership must recognise that lawyer well-being is a priority and should be willing to allocate resources to this initiative.

Formalise your commitment

Establish an internal well-being committee or consider hiring a wellness consultant dedicated to carrying out wellness initiatives. Don't have the appropriate resources within your department? Check whether your company already has an existing well-being program. You may be in luck. Or explore resources available through your local ACC chapter.

Start the conversation with your team

Internal resources

A good place to start is to offer a session for your team on the already existing wellness resources and benefits available to your employees (e.g. employee assistance program, medical benefits for mental health counselling, meditation classes). You can also invite your team members to share their well-being tips amongst themselves. These simple conversations will help spike interest in your well-being initiative and create the momentum you need to build a flourishing program.

External resources

Once you are ready to magnify your efforts, consider bringing in external presenters on various well-being topics such as work engagement versus burnout, stress management, substance abuse issues, suicide prevention, etc. Make sure to tap into resources from your outside counsel contacts or ACC chapter.

Focus on reducing stigma around mental health and substance misuse issues

One of the goals of the well-being program is to encourage an open and transparent conversation about mental health and substance misuse issues. Acknowledge that the mental health problem is prevalent in our profession and emphasise that seeking help is a sign of strength, not weakness. Finally, make sure to offer your team members a way to reach out for help in a confidential way.

Crystallising the framework for your well-being initiatives

Look for ways to incorporate well-being into your team's daily practices (e.g. starting practice group meetings with a 'mindfulness minute'—taking deep breaths for a minute or sharing wellness ideas).

Send out wellness email reminders/tips to the team (e.g. focus on physical exercise, proper nutrition, taking time to decompress, ways to be more engaged at work, etc.).

Encourage your team to make commitments to wellness practices, perhaps creating a 'wellness wall' where they can write down their commitments.

Create more opportunities for healthy social and community engagement.

Urge your department leaders to have periodic 'well-being check-ins' with their team members, asking questions like "how is your workload?", "are you feeling overwhelmed?" or "how can I better support you?"

Inspire your team members to get accountability partners

The ultimate goal of your department's well-being program is to

get your team members to 'own' their well-being and for wellness to become an essential part of who they are. Accountability partners can help each other get there.

Ready to start or elevate your personal well-being journey? There is an app for that! There are many great user-friendly apps to choose from, but here are a few of our favourites:

For mental well-being:

HEADSPACE is a popular app, offering a series of guided and unguided meditations.

INSIGHT TIMER promotes itself as 'The largest free library of guided meditations on Earth'.

CALM promises to help you 'Sleep More. Stress Less. Live Better'.

CHILL provides daily mindfulness quotes and reminders.

AURA targets stress, anxiety and depression. It customises meditation sessions to your current mood and redirects you to focus on gratitude and positivity.

For physical well-being:

TABATA TIMER – Tabata Stopwatch Pro

7-MINUTE WORKOUT (by Wahoo Fitness)

MYFITNESS PAL for calorie counting and nutrition

MYPLATE (by Livestrong)

Six ways to increase personal well-being

As individuals, what we do every day matters. In fact, every choice we make during the day either positively or negatively impacts our well-being. Should you take your colleague's comments personally? Will you spend your lunch break browsing on social media or will you focus on your food and take a moment to close your eyes and breathe? Will you take occasional breaks to get up and stretch or will you stay glued to your desktop for hours? Will you go to bed earlier or stay up to watch the football game? The choice is yours. Below are some tips to steer you in a healthy direction—be kind to yourself and consider what well-being practices you can start today. Simply incorporate small, incremental changes daily to create true, lifelong well-being.

1. Inquire about your workplace resources

Find out what well-being programs your employer is offering. Does your company offer mindfulness training or an employee assistance program? Be proactive about learning what's available to you and your family members and take advantage of these resources, as needed.

2. Find time to be quiet

Take the time to just 'be'.

We spend our days busy, yet we are 'human beings' and not 'human doings'. For 10 to 15 minutes each day, give yourself the gift of simply being in the present moment. Silence your devices and sit

comfortably with your eyes closed. Observe your breath and your thoughts—you don't need to sit cross-legged or 'empty' your mind.

Just breathe.

Feeling stressed and overwhelmed by your ever-growing to-do list? Take three slow, deep breaths, closing your eyes and feeling the breathes and sensations in your body.

Try meditation.

We know it may sound intimidating, but it really does work. And, no, you don't have to be perfect at meditation for it to be beneficial. Brief, informal sessions will work, especially at the beginning. So, don't overthink it and just start. Download a meditation app or watch a how-to video on meditation. Then, simply try it—at home, sitting at your desk, anywhere, in any comfortable position.

Practise gratitude.

Take a few moments each day to think about everything you have in your life. Focus on the simple things in life and the people you love. Gratitude leads to contentment and contentment is the first and most essential step on the journey towards happiness.

Do regular self-checks.

Schedule (literally put these in your calendar) periodic self-checks and be frank with yourself. How have you been feeling lately? What's causing your anxiety? Are you taking things too personally? What is missing from your life? Jot down your responses and then brainstorm ways to address these issues.

3. Focus on physical health daily

Get outside.

Fresh air does wonders, so make it a habit to spend at least 15 to 20 minutes each day outside—even if it means simply sitting on your patio or walking around your building. Want to take this to the next level? Join a local hiking group for motivation or plan a hike for your local ACC chapter.

Stop those exercise excuses.

Don't succumb to the excuse that there is no time to work out—just 'fit it in' by doing regular, short workouts ranging from four to 30 minutes each. In back-to-back meetings and then rushing home? Consider making a few of your meetings walking meetings.

Feed your body.

Consider nutrition with each meal and don't seek perfection. Just make better choices.

Limit alcohol consumption.

Be smart about what, how much and when you drink. If you keep on making wrong decisions once you start drinking, do your best to avoid events where alcohol is free-flowing. If you find yourself reaching for alcohol to cope with stress, anxiety or depression, it is time to seek assistance. Your state bar association's lawyer assistance program is a great confidential resource. While alcohol may seem like a reasonable solution in the short run, alcohol dependency can be devastating and potentially career-ending.

Work on your 'sleep hygiene'.

It's no secret that the benefits of regular, adequate sleep are staggering and that the lack of sleep can literally break us down. Try to prioritise sleep over no-value activities—is that television show so important that you can't wait to see it? Create a pre-sleep routine for yourself and your loved ones and stick to it to yield significant health benefits.

“Fresh air does wonders, so make it a habit to spend at least 15 to 20 minutes each day outside—even if it means simply sitting on your patio or walking around your building.”

4. Value meaningful connections

Check in with your family members, friends and colleagues.

Next time you are walking by your colleague's desk, stop by and have a conversation. Inquire how they've been doing and take a mental note if you notice any changes in your colleague's mood or attitude. Do the same with your family members and friends. We need to be checking on each other; try to do this in person on occasion as emails or texts are not a substitute for eye contact and a smile.

Be an active listener at work and at home.

Stop talking and start listening. Really listening—where you look into the person's eyes and fully focus on the conversation. Not only will you learn something new and make a deeper connection, but you will also allow your mind to relax and become invigorated.

Get involved.

Lonely is a tough state to be in. Even when you are surrounded by people, you can still feel lonely. Getting involved in the community through volunteering or pro bono work (check out your ACC chapter's pro bono program for opportunities!) brings special purpose to your life and allows you to become immersed in serving a cause that's bigger than you are. Such experiences can also put your seemingly bad situation into perspective—when serving those who are less fortunate, you may realise your circumstances are not as gloomy as they once seemed.

5. Establish priorities and boundaries

Reflect on what's really important to you at the moment. This will help you set your priorities. Need to be there more for your ageing parents? Perhaps that means spending a little extra time at home and working with your boss to find ways to cut excessive travel from your schedule. Your company may even be embracing remote work and flexible schedules. Empty-nested and have more time to focus on your career? Again, have a chat with your management and be vocal about your career aspirations. Of course, your priorities can evolve with time, so stay attuned to what's important to you at any given moment.

Set boundaries and manage expectations. If you don't create boundaries between your work and personal lives, nobody will. It is your responsibility. Good news—your boss and clients will likely understand and respect your boundaries if you clearly communicate them, but they will not create them for you. This also applies to being mindful about the use of your devices. Being 'on' all the time is not healthy and likely not necessary, so establish clear boundaries when it comes to your virtual availability.

“Your department leadership must recognise that lawyer well-being is a priority and should be willing to allocate resources to this initiative.”

Get rid of one (or two) of your goals. Most lawyers are overachievers. If you are one of those people who come up with a long list of self-imposed goals for each year or month and then stress out struggling to achieve them, maybe it's time to shorten your goal list. Have an honest chat with yourself and find at least one goal to eliminate.

Be kind to yourself. If you don't take care of yourself, who will? You don't have to be perfect or 100 percent at everything you do.

Allow yourself to just be 'good' or 'OK' at something. Striving to be 100 percent in every aspect of your professional and personal lives is not only unhealthy but it is also unsustainable. Remember that your career is a marathon, not a sprint, and that you are enough. This also includes forgiving yourself when you fail.

6. Know it's OK to ask for help

Allow yourself to be vulnerable. There is nothing more rewarding than being yourself—in the open without having to put up a front. Vulnerability is a sign of maturity and strength and not of weakness. Being vulnerable means showing your human side; it frees you from having to portray an image of perfection and helps you build more meaningful connections with others.

If nothing is working, **seek help!** If you feel like you are losing control over what's going on in your daily life and hope is slipping through your fingers, we urge you to seek help. Whether you prefer to talk to your employer, employee assistance program representatives, a medical professional, your state bar association's lawyer assistance program or another external resource (e.g. **Lifeline** at **13 11 14**), do seek help. You are not alone.

The bottom line

The in-house practice of law is stressful, but to be a trusted and effective counsel to your clients, you must first take care of yourself. After all, a good attorney is a healthy attorney. We—as an in-house legal community—need to start paying attention to the well-being of our members and commence taking steps in the direction of long-lasting well-being. By making adjustments in your own life, you can inspire the change in your legal department and our in-house community. 🧡

In-house In health

In recognition of the extreme pressure and stress levels experienced by In-house Lawyers, along with the higher rates of mental health concerns within the profession compared with the general public, the Association of Corporate Counsel have prioritised health and wellness initiatives in 2020.

On a global level, wellness programs and resources can be found at acc.com/acc-house-wellness-support while in Australia the **In-House In Health** Committee has been established to ensure we are:

- conducting **research** to keep abreast of the current health and wellness status for the in-house legal profession
- developing a **resource library** to enable articles, on-line courses and links for members to privately and confidentially access the information they need to inform and inspire them to address and improve issues in their lives
- ensuring **programming** includes content that supports the wellbeing of the in-house legal profession

If you have suggestions for the committee or wish to find out more, email programdevelopment@accglobal.com.

Footnotes

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Olesja Cormney



As managing counsel in the labour and employment group for Toyota Motor North America, Inc., a mobility company headquartered in Plano, TX, Olesja is a strategic counsel and proactive problem solver. She offers an innovative perspective and agile approach based on her prior business experience. Olesja is honoured to be on the board of the ACC Dallas Fort-Worth chapter.

Jill Kalliomaa



As senior legal counsel for GNF in La Jolla, CA, a drug discovery research institute for Novartis Pharmaceuticals, one of the world's largest healthcare companies, Jill has a broad range of experience in creating solutions and relationships for innovative industries including biotech and telecommunications. Her practice has included contracts, compliance and intellectual property. Jill has been serving on the ACC Southern California Chapter Board since 2016 and is a co-creator and co-chair of the chapter's newly formed Attorney Well-Being Committee.

Jeffrey Compangano



As the general counsel and vice president for the Word & Brown Companies, a leading California provider in health insurance and benefits administration products, Jeffrey manages all legal matters for his organisation's corporate divisions, including complex contract negotiations, intellectual property and mergers and acquisitions. He served on the board of the ACC Southern California Chapter from 2010 to 2016 and remains active by participating on numerous committees and as a co-creator and co-chair of the chapter's newly formed Attorney Well-Being Committee.

What to look for in a mediator

ANYONE CAN CALL THEMSELVES A MEDIATOR. THE QUESTION IS - WHAT SHOULD YOU LOOK FOR TO ENSURE A QUALITY APPROACH?

Conflict can cause irreparable damage to a business and its stakeholders. However, when managed well, conflict can become the catalyst for positive change. Organisations and industries are recognising this potential and are increasingly turning to mediation as a first and often preferred port of call.

However, the absence of any legislative or compulsory standards governing mediation professionals means finding quality mediators can be problematic.

"If you're not using an accredited mediator, you can't be certain that they have been trained in the principles of effective mediation, or that they are covered by insurance and a complaints handling procedure. This is often to the detriment of the process."

– Bianca Keys, Chairperson - MSB

How do you find a good mediator?

Australia's Mediator Standards Board (MSB) provides the following suggestions for any in-house counsel looking for mediators. Look for mediators with

1. a preliminary process (sometimes referred to as intake) that assesses process needs and suitability, as well as early identification of any conflict of interest,
2. accountability – check that they are insured and that they have a complaints mechanism they can refer you to, and

3. a demonstrated commitment to ongoing training and experience.

The easiest way to ensure this is to look for a mediator who is accredited under the National Mediator Accreditation System (NMAS). NMAS mediators are required to practise in accordance with the above, as well as a comprehensive set of ethical and procedural standards.

It is common for in-house counsel to find a mediator by 'word of mouth' referral and to develop a shortlist of trusted professionals. Take this a step further – check that they are NMAS Accredited. If you're not sure, search the **National Register at msb.org.au/mediators**

Why should in house counsel use NMAS Accredited providers?

Using NMAS Accreditation as a guide for choosing your mediator means you can expect consistent adherence to a multi-industry-backed set of standards.

1. **Competence.** All NMAS mediators are trained and assessed in accordance with a comprehensive set of processes, skills and ethical requirements.
2. **Credibility.** NMAS mediators commit to best practice standards, including independence and impartiality, which may assist with convincing parties to opt-in to the process.

3. **Experience.** To maintain accreditation, NMAS mediators are required to meet training and practical experience requirements each accreditation period.
4. **Accountability.** An established, effective complaints mechanism is in place for all NMAS mediators. Accreditation bodies can independently receive any complaints and discipline where appropriate.
5. Adequate **professional indemnity insurance** and evidence of good character are also requirements of accreditation.

Next Steps

ASK Is your mediator accredited?

CHECK Look for a National Mediator Accreditation System (NMAS) logo or check the national register at **www.MSB.org/mediators**

Is your Mediator nationally accredited?

Mediation matters - accreditation counts



National Mediator
Accreditation System

Find out here - National Register of Accredited Mediators
www.msb.org.au/mediators

NEGOTIATION SKILLS FOR IN-HOUSE COUNSEL

When lawyers think of negotiations, they generally think of a small room with professionals huddled around a table late into the night until the other side is worn down or beaten into submission.

The reality is, particularly for in-house counsel, we are always negotiating. And it's not only in small rooms. "When two or more parties need to reach a joint decision but have different preferences, they negotiate."¹ In any bureaucracy, as in a big company, it can be about the use of resources, sizes of offices, dealing with suppliers, agreeing on a budget or, the most important negotiation of all, their own salaries. It can be face-to-face but more often it's on the phone, by email or text message. Given how critical a skill it is, it's hard to understand why lawyers receive so little formal training in negotiations or, to put it bluntly, bargaining.

While there is no set of rules to guarantee success in commercial negotiations, there are some guidelines that provide a useful framework. Some of the guidelines we have set out here are the outcome of experimental research. They have an empirical base derived from the reality of the bargaining table. We have formulated these guidelines following more than 40 years of experience working with large organisations who were struggling to find practical solutions to very real and pressing negotiation problems.

We have found that, in practice, negotiators continually fall back upon familiar and psychologically comfortable techniques and fail to exercise initiative and enterprise.

So, here are some guidelines that should be useful during the actual process to help you become a better negotiator.

Identify the important points

Highlight the points in the list below you feel are the most important in the pending negotiation. At intervals during the negotiation, review the highlighted points to see whether you have kept each point in mind and whether you are bringing each point to bear in the way that you planned. This act of review means that the negotiation not only achieves the commercial objective intended but also becomes a learning experience.

Companies usually have strategic myopia when it comes to negotiations. "Companies don't make purchases: they establish relationships."² Both sides must win, but it is eminently possible for one of the parties to win more than the other. While this is likely, good negotiators will consider the effect that the outcome will have on the relationship that exists with the other party.

Negotiators operate in a shifting sands environment, which is distinguished by its tremendous freedom of movement. What can actually be achieved is a function of the negotiator's sense of opportunity and enterprise, with the only constraint being their critical point—that is, the point beyond which the negotiator cannot go. These critical points should be determined before the negotiations proceed. However, they aren't set in concrete because they may change as the shape of the deal evolves.

Preparation is critical

It sounds obvious but the better prepared you are for a negotiation, the better you will do. This is because the better prepared you are, the more confident you will be during the process.

Start by thinking about what your CEO really wants from the negotiations. Many legal and other actions in a company invoke strong negative emotions. Your job is to ensure the CEO and/or the Board have realistic expectations of what you and your team can achieve.

Make sure you explain to your CEO and/or Board how negotiations run, the costs involved and that the outcome will likely be a compromise. The resolution of differences involves the process of adjustment and compromise and the distance that separates the parties to a negotiation will only be eliminated when each party makes adequate concessions to admit enough of the other's views for an agreement to occur. The final agreement will lie somewhere between the original positions of the parties involved, although a straight compromise is unlikely.

It is also important to consider options such as alternatives to negotiation. What are the critical, good and 'nice to have' outcomes? Is there a good 'non-legal' outcome such as an apology or a deal?

Gather all the information your company has on the matter. Research the other parties. Work out the three hardest questions you will be asked. Do a simple analysis of your case and their case including what they expect out of it.

Knowledge of the seller's costs is crucial for buyers because, in most cases, the price is not a dominant consideration in commercial negotiation. The important factor is the concept of the total cost. Price conceals the various cost components that go to form that price and there may be no relevance between the costs involved and the price that the seller requests.

Often it appears that one of the parties has superior bargaining strength and ought to 'win' the negotiation. Yet, the outcome of a negotiation seldom reflects the bargaining strength of either side and the skill of a particular negotiator can produce outcomes that commercial reality would suggest are improbable.

Establish and get signed off on the critical point or points beyond which the company is not prepared to negotiate. Establish a range of fallback positions ranging from very minor concessions, through to major concessions, up to any established critical points beyond which you are no longer interested in negotiating.

Good negotiators complete their agreements in a way that leaves the other parties believing they have obtained a great deal as a result of the negotiation process.

During negotiation

The differences separating the parties will be expressed in the form of issues or agenda items. These issues will have differing degrees of importance for each of the parties involved. The extent to which each issue is of importance to each party is referred to as the hidden agenda.

The issues of importance to each party are seldom ever of equal importance to the other. A single issue is unimportant in the overall context of a negotiation. If a single issue is presenting problems, then it should simply be set aside to be dealt with at a later stage.



Generally, the larger the number of issues involved, the more room there is for compromise and manoeuvring.

A willingness to negotiate does not necessarily mean a willingness to arrive at an agreement. Negotiation may simply be a means of exploring attitudes as part of a fact-finding exercise.

Issues are exchanged through the process of concession trading. Since conceding an issue may be interpreted by the other party as a sign of weakness, the concession granted must be conditional to offset this possibility. Concession trading has an important psychological value in that it builds a climate of trust and mutual obligation.

In general, the structure and scope of any negotiation will be a function of the type of issues that are involved. Issues can be either convergent or divergent. Convergent issues favour the interests of both parties to the negotiation, whereas divergent issues provide one party with an advantage at the expense of the other. It seems obvious that the divergent issues need a greater spirit of compromise than the convergent issues. The task of the negotiator is to identify those issues where the interests of both parties have something in common. Once common ground has been established, it can be emphasised and stressed to minimise the disruptive impact of the divergent issues.

Treat each negotiation as a unique event. A particular negotiation should be treated as a novel transaction, even though it may be part of an ongoing relationship and, in so doing, precedents should be disregarded.

Past precedents are often tendered in an ongoing relationship as justification for a current demand. Such a demand by the other party should be treated entirely on its merits and past precedents ignored. Past precedents, however, may be a useful ploy to win you points.

The cost impact of each concession must be calculated in advance. Concessions must never be granted without the cost and impact of the concession being known before it is made. Critical points and fallback positions should never be established during a negotiation. If unexpected options or unexpected opportunities occur during the negotiation, then call a recess to re-think your position. Critical points and fallback positions should never be formed because of the persuasive skills of the other party.

The best negotiating stance appears to be firm but friendly: firm in rejecting unacceptable propositions, but friendly in suggesting that an agreement can be reached. In essence, "No, I'm sorry: I can't accept that proposal. But let's keep talking as I'm sure we can reach agreement."

People prefer a series of wins rather than just one, but prefer one loss. Make concessions, issue rewards and deliver good news in

stages rather than all at once, but convey bad news in one big chunk⁴.

If all else fails, create deadlines by which time decisions must be reached.

Always be ethical

The ultimate bottom line is to always be ethical. Negotiations come and go but your reputation doesn't. There is one thing more important than being known as a tough negotiator and that is your reputation for fairness and doing the right thing. ^a

Footnotes

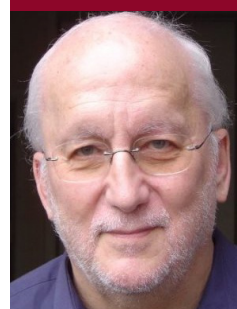
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John Connolly



As one of the world's most experienced public relations professionals, John has worked with the world's largest companies and organisations for over 40 years. His work in public affairs and investor relations is recognised internationally with clients including the world's largest resource company, the world's two largest media companies, major financial institutions and retailers.

Stan Glaser, PH.D., M.A.P.S



As an academic with a background in psychology and marketing and extensive business experience in Australia and the United Kingdom, Stan spent some years in universities as a Professor of Management. He consulted and taught primarily in Europe and the Asia-Pacific and is currently a director of Blaser Pty Ltd, a Sydney based start-up developing web-based technology for remote device monitoring. Stan is also a senior advisor to John Connolly and Partners.



ACC GLOBAL UPDATE

ACC responds to COVID-19

In response to the COVID-19 pandemic, ACC has launched a special **resource centre** and regularly updated **COVID preparedness** news page. These resources and updates offer valuable information to ACC members, in-house lawyers generally and the community at large.

"As the impact of this virus evolves, you can be assured that ACC will do everything possible to provide you with the necessary resources to serve and advise your in-house client in the best possible way," said Veta T. Richardson, ACC president and CEO, in a letter to members. "Our thoughts are with everyone who is being affected by this outbreak and we certainly hope for a swift end to the epidemic."

ACC releases COVID-19 flash poll results

COVID-19 has impacted businesses and governments worldwide. To gauge how legal departments are dealing with this challenging situation, ACC fielded a member flash poll on topics ranging from working from home to the supply chain.

The responses illustrate the ability of law departments to transition to working from home and to carry out their day-to-day functions to help their organisations adjust to this new business environment.

"In-house lawyers possess the necessary skill set and knowledge to best guide companies through volatile business landscapes and unpredictable times," said Veta. "It's not surprising that under their leadership, law departments continue to carry out their functions while helping organisations adapt to this new normal."

"It bears repeating: a seat at the executive table for the GC or CLO is no longer

optional. ACC stands with the in-house and broader legal community around the world and will do everything possible to keep the in-house profession informed and connected."

The poll found that over 68 percent of respondents felt that their department was 'very well prepared' to transition to working from home schedules. Just under 27 percent reported that their department was 'somewhat prepared'.

In addition, when it comes to labour and employment issues, just over 54 percent reported that while work volumes had increased due to COVID-19, they had no plans to change policies or procedures. Just over 31 percent reported no change in procedures or work volumes and approximately 15 percent reported that they were either outsourcing more work or looking into other external services.

This poll opened on 25 March and closed on 29 March, with 277 randomly selected ACC members providing answers. It is the first in a planned series of informal polls designed to elicit informal feedback from in-house counsel on a variety of topics. The full results are available on the **ACC website**.

ACC announces partnership with the Next 100 Years to promote women in law

ACC is proud to announce its partnership with the **Next 100 Years**, the new project from the team behind the First 100 Years, which is dedicated to achieving equality for women in law.

The First 100 Years project was created to chart the journey of women in law during the first 100 years since they

were permitted to become lawyers for the first time. The Next 100 Years will be continuing this work and is supported by the Law Society of England and Wales, the Bar Council, CLEEx and now ACC.

In March 2020, the Next 100 Years founder Dana Denis-Smith (also founder and CEO of Obelisk Support) spoke at the opening of ACC's London office. That same month, ACC's Washington office hosted one of the photo pop-ups that contributed portraits to the Next 100 Years' #FacetheFuture campaign, celebrating women lawyers through photography.

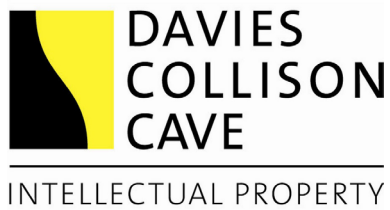
ACC will support the Next 100 Years' efforts to feature more women in-house counsel from around the world in its films interviewing pioneering women lawyers, as well as collaborating on events and projects such as #FacetheFuture.

"ACC is proud to join the Next 100 Years project as an official partner in this important endeavour examining the history, current face, and future of women in the law," said Veta. "As a global organisation with a diverse group of women in our membership, we fully support Dana Denis-Smith's international efforts to celebrate the contributions of all women to the legal profession."

"ACC has already shown itself a dedicated advocate for women in law," said Dana. "By working closely with a global organisation for the first time, we will be able to involve women lawyers across the world in the project, celebrating their achievements, learning from other jurisdictions about how they are breaking down barriers to inequality and working together to drive change."^a




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