



GUIDANCE


FOR

IN-HOUSE COUNSEL ON
ETHICAL DECISION MAKING

UPDATED: July 2013

Just as ethical decision making is in constant evolution based on changes to societal and personal values, so will this publication evolve. Each year we will review the content and we welcome feedback for incorporation.

INTRODUCTION



The First Edition of this Handbook (June 2000) was the product of extensive work in New Zealand and Australia, identifying the core ethical issues in-house counsel face. The second edition (2005) recognised the limited literature on ethics for government in-house lawyers. This, our third edition, is a timely reflection on in-house ethics in the fast paced and evolving technology age and against a background of growing community expectation about how organisations behave.

Against this backdrop, the role of in-house counsel has become increasingly important and integral to the organisation. They are part of the organisation, working alongside colleagues for a common goal. Yet unlike most colleagues, in-house counsel are bound by ethical and professional obligations. The nature of this relationship makes ethics for in-house counsel more challenging. This handbook aims to provide some guidance on navigating ethical dilemmas.

It is testament to the quality and timeliness of the original work that content written before Enron and Sarbanes-Oxley were household names is as relevant as ever to in-house counsel. Much of the original content developed in consultation with members and the St James Ethics Centre still remains. We are extremely grateful for the initiative and support of our sister organisation, the Australian Corporate Lawyers Association (ACLA) and its CEO Trish Hyde in producing this 2013 edition of the Handbook. We would also like to acknowledge Dr Simon Longstaff, Executive Director, St James Ethics Centre and Tahlia Gordon, Research & Projects Manager, Office of the Legal Services Commissioner NSW for their expert guidance.

This handbook includes Best Practice Guidelines to assist in-house counsel assess and consider ethical issues. These provide guidance only. They are neither prescriptive nor exhaustive, as ethics must be considered in the context of the ethical rules and principles that govern the legal profession in New Zealand, and in the context of the particular circumstances of a situation. These guides provide assistance for in-house counsel when faced with an ethical dilemma, so that they can assess the facts and exercise individual judgement, informed by ethical values and professional knowledge.

THREE CORE PRINCIPLES:

Before we reflect in detail on ethics and the role of in-house counsel there are three core principles that CLANZ believes are essential for all in-house counsel:


1. Ethics are not based on rules, they are based on values – while this handbook is a guide, the answer to an ethical dilemma will not be found in a book, but from looking internally.
2. Ethical dilemmas are best shared and discussed – in-house counsel will ultimately benefit from encouraging a culture of raising and discussing openly issues that present difficulties.
3. While ethics for in-house counsel may hold more complexities, in-house lawyers should never lose sight of the foundation of ethics for all lawyers - their primary duty is to the Court.

Everyone faces an ethical dilemma at some stage. Along with referencing this handbook, CLANZ encourages in-house counsel to build strong peer networks and seek the guidance of those in the profession. If you face an issue, and would like confidential peer support, please contact CLANZ for a referral to a member of our Wise Heads Panel on a confidential basis.

In-house counsel, can and should be a powerful voice within an organisation promoting discussion and ethical decision making. At its extreme, however, this can be a lonely position and where your in-house peer network can help. At its best, you can affect the behaviour and culture of your organisation so that ethical decision making becomes second nature.

Helen Mackay
Executive Officer, Corporate Lawyers Association of New Zealand

REFLECTION ON ETHICS



In-house counsel occupy one of the most challenging areas of legal practice. Bound by the ethical and professional obligations that are common to the profession, in-house counsel encounter distinct demands and unique challenges flowing from the important fact that they serve a single client who is also the counsel's employer.

This status generates further issues of how to balance expectations of loyalty and teamwork, with the requirement to contribute to the performance of the organisation and with the need to provide impartial, professional advice in the best interests of the client.

It is against this background that these guidelines have been produced. The ethical foundations of these guidelines are that:

1. The defining characteristic of every profession is a commitment to place the interests of others before those of its members, individually and collectively, and to act in a spirit of public service.
2. The profession of law is intrinsically tied to a noble ideal of justice as a cornerstone of any good society.
3. The lawyer's professional obligations derive their strength from a commitment to the fundamental principles of justice.
4. The ends of justice cannot be served by unjust means.
5. The primary obligation of a lawyer is to serve diligently and faithfully as an Officer of the Court and to do so in a spirit of public service.
6. Subject only to the principles of justice, a lawyer must act in the best interests of his or her client.
7. A competent lawyer should be able to discern the difference between a client's interests and wants (no matter how directly expressed) and should act accordingly.
8. Lawyers are their client's advisers and not merely their agents.
9. Lawyers owe their clients the benefit of the full range and depth of their knowledge and experience – and not merely their technical expertise in the law.
10. The practice of law requires the exercise of moral courage.

While these guidelines apply to the conduct of in-house counsel working as members of a profession, it is worth noting that their employers are operating in a changing environment in which the need to address the ethical dimension of corporate activity is of growing importance.

This is not simply a matter of organisations wanting to manage their reputations to greater positive effect. The more substantial challenge is to develop the expertise to make better choices and decisions in a complex world of rapid and profound change. It is within this environment that in-house counsel, alive to the ethical (and not just the legal) aspects of life, can make a positive contribution – adding real value to the strategic development of their organisation.

At its heart, a concern about ethics is a concern about finding the best possible answer to the question, ‘what ought one to do?’ In this sense, ethics comes ‘before’ the law – allowing for the possibility of our discerning what is fundamentally good and right as independent standards against which we can assess the law as it happens to be – from time to time. To say that a particular law is ‘unjust’ is to enter a debate about ethics.

However, ethical issues are equally part of the daily life in which we all participate. For example, the way we treat others, the way we conduct our affairs, and the means we employ in order to achieve our ends – all such matters raise ethical issues that should be the subject of our active examination. Indeed, it is the failure to reflect on the ethical dimension of ordinary life that is the cause of so many problems. While greed, dishonesty and the like are the source of much strife, it is unthinking custom and practice that is the greatest threat to ethical conduct.


Given this, we hope that these guidelines will not only act as a source of guidance but also serve to stimulate debate and reflection about the obligations of in-house counsel.

In this, our aim goes beyond any desire to promote a kind of detached interest in the question of what ought to be done in a range of theoretical situations. Instead, we hope that reflection on the ethical dimension of in-house counsel’s

daily work will make a practical difference to the way in which in-house counsel actually work.

Dr Simon Longstaff
Executive Director, St James Ethics Centre

BEST PRACTICE GUIDELINES



This section provides practical guidance for in-house lawyers that can be used to establish procedures and policies or to guide decision making at a particular point in time.

Generally

In-house counsel, like all lawyers, must remain cognisant of their paramount duties to the Court and the client. They:

- must recognise that being in-house counsel does not in any way diminish their professional responsibilities as members of the legal profession
- must act at all times in the best interests of their client
- may, as part of their task, give professional advice and assistance to management and staff
- must not deliberately mislead or obfuscate

The Client

This can sometimes be a frustrating issue for in-house counsel. While the client is the legal entity, who is the person or persons that are the physical representation of the client? Is it the CEO, the Chair, the Board? To fulfill the obligations of in-house counsel, it is vital that this be clearly documented in the position description or employment contract, so that there can be no confusion later.

With the client articulated, in-house counsel have an obligation to disclose and raise issues of concern with that person or persons. There is no possible way to capture all the nuances that may lead to an ethical dilemma in this relationship. In the worst case it may lead to a difficult decision of staying with the organisation and accepting the actions being taken or leaving.

This leads us to the first and only rule of ethics that CLANZ suggests – seek guidance. Do not try to go it alone, especially when there are so many people (peers, professional support groups, helplines) that may be able to help you navigate a tricky situation and avoid the ‘worst case’ scenario.

■ KEY RELATIONSHIPS

This section deals with in-house counsels' ethical obligations in respect of key professional relationships. These are a guide based on external expectations and in-house counsel should also exercise and be responsible for their own considered judgement in managing stakeholder relationships.

STAKEHOLDERS GENERALLY

In-house counsel should promote ethical corporate behaviour, including the adoption of compliance and other procedures and policies which take account of the legitimate interests of all of the organisation's stakeholders and community expectations.

MANAGEMENT/BOARD

In-house counsel, to effectively manage ethical issues and discharge their duties should:

- report to a senior executive such as the Chairman or CEO
- not proffer legal advice to the Board if they are themselves a Board member
- be wary of advising individual Board members as advice should preferably be to the organisation as a whole

SHAREHOLDERS

In-house counsel must:

- take account of the legitimate interests of shareholders
- avoid any relationship with a shareholder which involves the shareholder wanting to discuss confidential company matters
- disclose any interest held by counsel which could affect counsel's judgment or integrity

COMPLEX ORGANISATIONS WITH SEPARATE LEGAL ENTITIES

In-house counsel must make sure that they and their employer understand who the client is when advising different entities within organisational groups. Where permitted and counsel is asked to act for a member of a group other than their direct employer, there should be documented arrangements between all the

parties setting out which legal entity is being advised and on what basis the advice is being given. This should include how differences in the interests or duties (e.g. to creditors) between the employer and the advised entity will be handled and what counsel's obligations are to each entity should a conflict arise.

BUSINESS PARTNERS

In-house counsel in their relationships with business partners must observe their duty of fidelity as an employee and any applicable obligations of confidentiality/privacy.

COURT AND COMMUNITY

In-house counsel should act with:

- courtesy and consideration
- fidelity and integrity (including disclosure of any interest which may affect counsel's judgement or integrity)
- adherence to confidentiality and privacy requirements

CUSTOMERS

In-house counsel should regard customers just as they would any other member of the community. See COURT and COMMUNITY for details. They must:

- avoid conduct with or statements to customers which could contravene laws or give a customer a right of action against the organisation
- disclose to their organisation any material interest which they have with a customer if that is relevant to a particular transaction
- decline involvement in a customer issue in circumstances where by virtue of their relationship with a customer, involvement could be perceived to be a conflict of interest

EXTERNAL LEGAL AND NON-LEGAL SERVICE PROVIDERS

In-house counsel should observe good commercial practices and demonstrate ethics in the sourcing of legal and non-legal service providers, including:

- basing sourcing decisions on ethical, professional and commercial criteria and discouraging the choice of external counsel or service providers being made on personal relationships

- ensuring that their organisation has formal, written arrangements on appropriate terms with its key legal and non-legal services suppliers. The agreement should evidence an arm's-length relationship and contain clear rules for dealing with conflicts.

REGULATORS/GOVERNMENT OFFICIALS

In-house counsel may seek to get to know and to promote good relationships with regulators/government officials where that is in the interests of their employer and/or will enhance the organisation's reputation as 'a good corporate citizen'. In doing so, in-house counsel must:

- take care that such relationships remain at arm's-length and professional at all times
- ensure that they understand any relevant laws and as far as possible, endeavor to ensure that regulators do not exceed their authority as a result of any personal relationship
- avoid providing them with information which breaches any obligation of privacy or confidentiality.

COMPETITORS

In-house counsel should encourage good relations with competitors but only in an attempt to achieve best legal practice. In particular, in-house counsel must:

- cease and report internally any known activities, direct or indirect, with a competitor that could lead to an actual or perceived anti-competitive practice
- always disclose any interest held in a competitor if that interest could affect counsel's judgement or integrity in a particular transaction.

■ KEY PRACTICE AREAS

Confidentiality

In-house counsel act first and foremost for the organisation, consistent with their duties as a lawyer and an officer of the organisation.

In the course of your role, you may come across confidential information from other sources. In-house counsel must:

- take great care and carefully consider before accepting confidential communications from others, especially where any such communications could create a conflict between the in-house counsel and the client
- advise any person wanting to provide confidential information of your overriding obligation to the organisation
- disclose to the organisation any information received, confidentially or otherwise, that is material to the organisation.

Whistle-blowers

In-house counsel should encourage a robust whistle-blower policy with both internal and external procedures to deal with issues. In-house counsel should avoid taking on the role of being the nominated person whistle blowers come to as this is likely to create conflict. In-house counsel should encourage an environment which enables internal whistle-blowers to come forward without fear of retribution. Protections for whistleblowers are contained in the Protected Disclosures Act 2000.

In-house counsel as whistle-blower

In circumstances where in-house counsel find themselves aware of information regarding wrongdoing by the organisation, in-house counsel must disclose this material information to the organisation. The person within the organisation to whom the disclosure is made may be impacted by the nature of the concern. If there is a legislative disclosure requirement then this must be done and the organisation advised accordingly.

Multi-jurisdictional legal advice

In-house counsel must inform themselves of local rules, ascertain the appropriate legal standards and apply them consistently overall. They should consider cultural differences that may affect communications styles and jurisdictional differences that may affect the rights of the client such as legal professional privilege and directors' duties.

Gifts/Entertainment

In-house counsel should encourage a policy of transparency and open disclosure regarding gifts and entertainment and avoid conflicts of interest.

Conflicts of interests

In-house counsel must avoid conflicts of interests as they compromise the independence of counsel and could impinge on legal professional privilege. When faced with an unavoidable conflict, in-house counsel must be conscious of the conflict throughout their dealings, declare it openly, clarify the capacity in which they are acting and discontinue acting should the conflict become unmanageable.

Risk Assessment

In-house counsel, when acting in relation to a transaction, must exercise caution, balancing legal risk against the desire to facilitate a successful consummation of the transaction.

Use of the employer's property/assets

In-house counsel must exercise the same caution with, and respect for, property as any other employee is required to do.

Social Media

In-house counsel should:

- encourage and actively assist their organisation to have a clearly defined policy on the use of social media both in the workplace and outside of the workplace (where comments by an employee outside the workplace may negatively impact the workplace)
- recognise the impact of social media and counsel their organisation to ensure that its use of it is responsible and fair.

Privilege

In-house counsel should protect the right to privileged communications by educating their business about the potential impact of privilege that can be claimed or lost and making appropriate claims of privilege. They:

- are obliged to ensure their organisation is aware of the conditions under which privilege will apply or could be claimed
- have a duty to advise employees within the organisation that they are not and cannot be their personal legal adviser in any situation where that could conflict with their duty to represent the organisation itself. They should advise such employees to take separate representation

- must always consider the client, who for in-house counsel is the organisation itself
- may make a claim for privilege if a case for privilege exists but not if it is clearly known that the privilege has in fact been lost.

Choice of counsel

In-house counsel must endeavour to avoid choices of counsel being made solely on personal grounds (theirs or others). Relationships with counsel should be arm's-length and based on relevant ethical, professional and commercial criteria.

Opinion shopping

In-house counsel should not selectively represent legal advice obtained to favour a particular business outcome. Rather, they should endeavour to obtain the best available advice in the circumstances and inform the client of all advice obtained, at the same time stating their own view. To facilitate this, in-house counsel:

- must ensure that external counsel, when consulted, are appropriately briefed with all the relevant facts
- must beware of the potential for their client to undertake 'opinion shopping' amongst in-house counsel and/or against external views. Where practical, appropriate opinion shopping prevention controls should be implemented
- must state their views unequivocally, particularly where they have another view from the one obtained
- should record all advice given, particularly if that advice is being ignored by the client

Discovery

In-house counsel should be familiar with their organisation's document retention and destruction policies and proactively guide the business to maintain appropriate records. In the case of discovery, in-house counsel:

- must keep abreast of developments in the law relating to discovery and what advice relating to discovery and evidence retention may be given
- have a duty to inform those concerned within the organisation of an in-house lawyer's and the organisation's obligations in relation to discovery

- must, if they have reasonable grounds to believe that proceedings will commence, strictly comply with the rules of discovery
- must strictly comply with the rules of discovery once proceedings have commenced, including the destruction or potential destruction of documents by others
- must be cognisant of the fact that the public interest may be a relevant consideration in relation to the retention/disclosure decision in a given situation

Use/abuse of legal process

In-house counsel have a duty to inform their client of the existence and significance of the abuse of process rules and to ensure that they are observed. If there is a legitimate business interest at stake, in-house counsel are, of course, entitled to make best use of alternatives offered by various dispute resolution processes.

Indemnities

In-house counsel must ensure that the quality of any professional advice obtained or given is not influenced by whether or not an indemnity from the employer exists.

■ PUBLIC SECTOR LAWYERS- ADDITIONAL GUIDELINES

In most respects in-house counsel in public sector agencies have ethical duties which are no different from those of private practitioners. In-house lawyers must always be aware of the provisions of the Lawyers and Conveyancers Act 2006 and the Rules of Conduct and Client Care as they relate to in-house practice. However, identifying the client is not always simple and there are public interest issues to consider.

Lawyers working within Government departments

The sole client of a lawyer working in a government department is the Crown (often in the form of the Minister or the Chief Executive or a representative of the department). The Crown is an indivisible legal entity, so, for example, the Attorney-General has the right to obtain copies of all legal advice provided to the Crown (from whatever source).

Usually this structure does not give rise to ethical issues. However, departmental disagreements may involve legislative interpretation, assessment of legal risk, or demand an in-house legal adviser's "corporate memory". In-house counsel need to take care to ensure that their advice is not affected by a sense of obligation to one department or Minister rather than to the indivisible Crown.

Lawyers working within the wider state sector

The state sector includes entities with legal personality independent of the Crown (for example a Crown entity). In-house counsel working for such entities will have a duty to advise the entity's board as the client. The board is entitled to legal advice separately from the Crown, even if the entity is accountable to the Crown and the responsible Minister has a power to give the entity directions.

Entities that interact with other entities or the public

A public sector entity may have other stakeholders who it may refer to as "clients" or "customers". If in-house counsel interact with these persons as part of their duties, they need to make sure they clearly understand whom they act for. They may need to consider and reaffirm their position when disputes arise.

The Public Interest

State sector in-house counsel are subject to the state sector code of conduct and any entity-specific code of conduct adopted by their employer agency. Other public sector lawyers may be subject to statutory duties as well as an in-house code of conduct. There may be room for conflict between counsel's duty as a lawyer and their duty to the entity they work for. However, it is unlikely that there will be conflict between the duties under a code of conduct and the duty of in-house counsel towards the client. Moreover, codes of conduct often allow flexibility in complex situations. Nevertheless, a public sector in-house counsel may need to prioritise his or her professional obligations, obligations to comply with directions of their employing entity, and (in the case of public servants) obligations to advise the Minister and to be responsive in implementing the Government's policies and programmes.

Conduct of Crown litigation

The Cabinet Directions for the Conduct of Crown Legal Business 2012 identify core Crown legal matters, set out how those matters are conducted by Government, and set out the Attorney-General's and Solicitor-General's oversight of

such legal matters.

The Directions also provide that Core Crown legal matters must be conducted consistent with any applicable values of the Attorney General, as expressed by the Attorney-General from time to time. The Attorney-General's Values for Crown Civil Litigation 2013 apply to all Crown departments, officers and Ministers. The Values impose an expectation, but not a legal requirement, that Crown civil litigation is conducted to a standard of fairness and integrity as befits the Crown including that the Crown will apply a fair and objective approach in the handling of litigation, promoting the just and fair application of the law to all.

Refer also to the Solicitor-General's Prosecution Guidelines 2013 for the conduct of Crown Prosecutions, and to section 4 of the Cabinet Manual and Cabinet Office Circular CO (05) 5 in relation to legal advice and legal professional privilege (including waiver of privilege) for government departments.

Information and Confidentiality and Public Accountability

Many agencies operate in a statutory environment where duties of secrecy are imposed as a matter of law. Lawyers operating in this context must observe the law where it applies.

After reading these guidelines, lawyers in the public sector should inform themselves fully of any additional ethical obligations that may apply to them.

HYPOTHETICALS



The following examples are provided as thought starters and are ethical issues that can arise in everyday in-house legal practice. They were also designed to assist in further consideration of the issues identified in the best practice guidelines set out in this handbook.

The situations that follow are illustrative, and by no means exhaustive, of some of the issues that may confront in-house counsel in a variety of situations.

They can also lead to differences of opinion as to what precisely is an 'ethical issue' – and equally importantly, what is its proper resolution in particular circumstances.

For that reason, we have not endeavoured to provide model answers to the examples. Rather, we suggest that when reading them you reflect on the guidelines and the possible scope and dimensions of the ethical issues and considerations. You may even want to discuss them with business colleagues so that they better understand your ethical obligations.

You are never too old to face an ethical dilemma and no one is so wise that they can handle every situation. To assist members, each year CLANZ will seek to include in its CPD programme ethics sessions that discuss topical ethics issues and situational nuances that affect decision making.

DISCOVERY

You are told by the company's marketing manager that a distributor called to say that he has contacted the Commerce Commission, alleging breaches of the resale price maintenance provisions of the Commerce Act by the organisation. He says that some marketing department files contain material that 'would have been better not written' about communications with this distributor of the company's products. The company has a document management policy that requires periodic review and destruction of non-current material.

The Commerce Commission has not contacted you or anyone in the company. The marketing manager plans to bring forward her review of the files and destroy the material in question. What do you do?

You go to talk to the marketing manager about the matter and she advises that she has already destroyed the material as set out in the policy. What do you do?

PRIVILEGE

The operations manager is investigating a workplace accident that might expose the company to prosecution under workplace health and safety laws. He wants to compile a report for the CEO and Board. He asks you for legal advice on the report and to label it subject to legal professional privilege.

You know the report is not being prepared for the sole or dominant purpose of obtaining legal advice, although that is one of the purposes for which it may ultimately be used. What do you do?

You bump into the Chair at a function and he says he is worried about the accident and suggests it is in everyone's interest to ensure that internal communications are protected and asks for confirmation that you are ensuring privilege applies to the report being prepared. What do you do?

CHOICE OF EXTERNAL COUNSEL

You're General Counsel in a large business and are an avid fan of the Wellington Hurricanes rugby team. A law firm offers you corporate box hospitality for every club home game at Westpac Stadium. They say this is simply on the basis that you can become better acquainted with the firm's people and there are no expectations for any commercial relationship. What do you do?

Your organisation has an existing panel, and you are not in the process of or planning to change the panel. Does this change your decision?

You are not the ultimate decision maker for panel firms, so you know that they will not influence the business' activities. Does this change your decision?

You mention the offer to the CEO of your company, and as she is also an avid fan, she asks if she can also be invited. Does this change your decision?

OPINION SHOPPING

You are extremely excited to have been invited to be the in-house counsel and a team member of a special project group developing a strategic high profile global acquisition plan. You know this role will bring you to the attention of the senior executive and is likely to lead to a promotion. The project director explains to you that this project is extremely important to the business, and therefore she would like you to filter your legal advice to 'accentuate the positives'. Do you agree?

The project director later says to you that if you discover a significant legal impediment that this must be discussed 'off-line' and nothing put into writing until after it has been discussed. Do you agree?

You find a possible legal impediment and as you are investigating it, you mention it to the project director. She says it does not need to be investigated and if you are not up to the challenge of working with the commercial team, you may want to return to your old role. What do you do?

USE/ABUSE OF LEGAL PROCESS

You have just joined a business as General Counsel. In your first week you are briefed on a commercial dispute with a customer involving a potentially significant product liability. You are told that the company can not afford to lose the case as it will open up a flurry of cases that could sink the business. The CEO asks you to develop a legal strategy to defend the company's position at all costs. How do you respond?

The CEO and Chair are adamant that you must do whatever it takes, including maximising the use of claims for legal professional privilege, seeking extensive discovery of the other side's documents and generally extending interlocutory processes and other legal procedures. They add that it is up to the other side or the court to change the available procedures if they have a problem. What do you do?

The CEO confides to you that if the business loses the case, there are going to be many more and it will send the business bankrupt. He is worried about the 1000 employees losing their jobs. What do you do?

DEALINGS WITH MANAGERS/EMPLOYEES

You are directed to investigate an apparent breach of the exclusive dealing provisions of the Commerce Act. Preliminary enquiries suggest the Sales Manager authorised the improper termination of a distributor's account. You believe legal proceedings by the distributor and investigation by the Commerce Commission are imminent. The company has a competition compliance program, which you are responsible for maintaining and presenting to management and staff. You are asked to prepare a list of recommendations to management that address the following issues:

1. minimise the exposure of the company under the 'aid and abet' provisions of the Commerce Act
2. getting relevant information from the Sales Manager and his staff
3. advise the Sales Manager of his legal position.

What ethical and professional considerations do you apply in compiling the report to management?

BOARD DISCLOSURE AND MINUTES

You are the general counsel and company secretary of a listed company. You have recently commissioned a report about a potential acquisition from a consulting firm.

The report is extremely detailed with over 300 pages of material. You are advised by the CEO that the Directors are expected to have read papers before arriving and therefore it is being tabled for noting only. He specifically asks you not to talk to the report as he doesn't want the Board to get side tracked in discussing the report's assumptions and detailed analysis. You know that the Board will be using this report to determine whether or not to make the acquisition. What do you do?

You are at dinner with the directors the day before the meeting and several have complained that they are yet to read their papers and one director says 'I wouldn't bother if I was you – the acquisition report is full of jargon and is incomprehensible. You raise this with the CEO and he says that it will be OK. What do you do?

At the Board meeting a couple of directors raise questions about the report and assumptions. You are providing the answers to these, while taking minutes. The conversation splits and you are drawn into a side conversation. The Chair says that the report speaks for itself and that the Board can rely on you and the consultants to have looked at the detail. The Chair has silenced discussion and calls a vote. The Board approves the acquisition. Do you do anything?

You prepare the minutes and send to the Chair immediately after the meeting. The Chair returns the minutes the day the next board pack is due and you notice that he has amended them to read that you recommended the acquisition to the Board. With time passed, and the acquisition a success, what do you do?

SOCIAL MEDIA

Your company is involved in an industry in which there has been public debate and differing views regarding the health benefits of a new product that you've launched. In recent times the debate appears to have changed for the better with a significant amount of media that the potential health benefits are justified.

In the course of a regular meeting with the marketing manager of your company, they mention in passing that they are buoyed by the success of various blogs they have written under pseudonyms which have commented in support of the health benefits of the product. The blogs have been picked up and read by many resulting in a large number of "likes". This has also resulted in increased sales volumes. Given this information what, if anything, do you do as in-house lawyer for the company?

ABOUT CLANZ

CLANZ is the representative body for in-house counsel in New Zealand and is a Section of the New Zealand Law Society. CLANZ was established more than twenty-five years ago by in-house lawyers for in-house lawyers.

The in-house profession continues to grow and is estimated to account for at least 21% of the legal profession in New Zealand.

Because the role of in-house counsel is different to other parts of the profession, CLANZ recognizes the need for tailored in-house education and resources. We are pleased to provide this Guidance on Ethics for In-house Counsel. We welcome feedback on this and our other initiatives.

WHO TO CALL

If you need to talk, there are a number of options to choose from. You certainly don't have to go it alone. Here are just some of the options.

1. Your in-house peers
2. CLANZ Wise Heads: Call 04 463 2966 or visit www.clanzonline.org and CLANZ will connect you to an appropriate and experienced in-house counsel.
3. The New Zealand Law Society Friends Panel is made up of New Zealand lawyers who are willing to be contacted on a confidential basis by fellow lawyers with questions or concerns. Go to <http://my.lawsociety.org.nz/practising-well/national-friends-panel> or call your local NZLS branch for assistance.



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IN-HOUSE LAWYERS

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