



Introduction to the Commissioner Ethical issues for in-house lawyers

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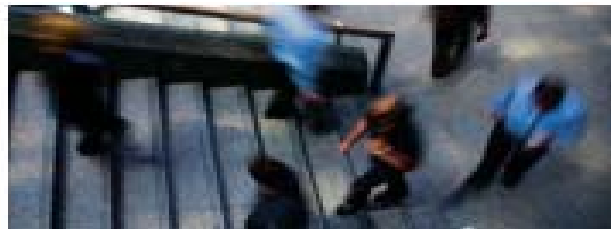
Australian Corporate Lawyers' Association

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Michael McGarvie

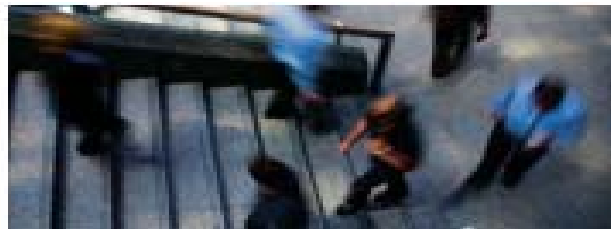
- Solicitor & partner – Holding Redlich 1982-2006
- CEO Supreme Court of Victoria, 2006-2009
- Commissioner and Board CEO, December 2009



Legal Services Board

Level 10, 330 Collins - 25 people + 7 members

- Registry
- Trust accounts (+LIV)
- Fidelity Fund
- Invested funds
- Receiverships (+LIV)
- Certificates (+LIV + Bar)
- Suitability (+LIV + Bar)
- Foreign licences
- CPD (+LIV + Bar)
- ILP's



Legal Services Commissioner

Level 9, 330 Collins - 35 people

- Complaints 2000 pa
- Family
- Probate + estates
- Property
- Small commercial
- Personal Injuries
- Costs v. conduct
- ADR – rapid solve
- Communicate + Educate
- Meet and visit



Q's for LSC

- What disciplinary action against in-house lawyers?
- Has Vic shifted from self-regulation to external supervision?
- Are commercial pressures killing ethics?
- What role does LIV play in professional standard setting?



Regulation History + Future

- 20th century self-regulation
- Self-funding
- Fidelity Fund
- 1996 Leg Prac Act + Leg Ombudsman + RPAs
- 2004 Leg Prof Act – LSB/LSC. Rule-making
- 2013 National Model – principles-based, targeted actions, delegation anticipated



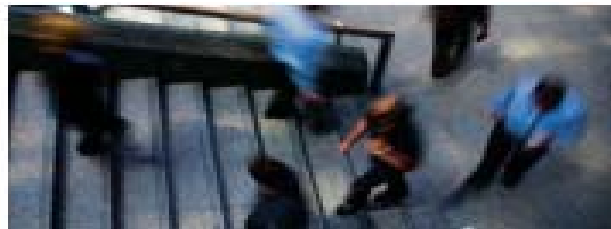
Issues for in-house lawyers

- Harbottle & Lewis – News International
- Complaints data: cf. single client firms
- Offshore & onshore outsourcing risks
- LIV role – CPD, Mentoring, co-regulation, prof support
- Model litigant and CSR principles



Harbottle & Lewis – News International

- Clive Goodman – NotW Royal reporter sacked
- H&B instructed to examine narrow issue of whether, in disputing his dismissal, Goodman could allege broader hacking involvement at NotW
- No crime probe. No good conduct certificate
- J Murdoch now using leg advice as a “cleanser” of News Int’l, suggesting the narrow advice cleared News by declaring Goodman as rogue, lone reporter
- How far can H&L avoid being tainted by their involvement



Complaints about in-house lawyers

- Corp counsel (+others) criticised by disgruntled board member – dismissed
- Complaints rare – cf single/major client law firms
- Andersons with Enron, Clayton Utz with BAT, Allens with James Hardie's asbestos fund



Model litigant and CSR principles

- Fair, consistent, prompt, assess early, pay legit claims, confine scope of dispute, keep costs down, use ADR
- Solak's case: model = more than honesty and compliance with rules
- Corporate world does not have to apply model but may wish to for CSR and reputational purposes
- Conforming with model does not mean you become an easybeat in litigation



Case 1 – allegations (Keough VCAT J115/2009)

- plagiarism

- Practitioner completing his Masters degree
- Practitioner submitted a plagiarised research paper towards his degree and for inclusion in *Journal of Law and Medicine*
- Complaint to LSC by Dr Ian Freckleton, JLM editor
- Practitioner claimed no intention to plagiarise



Case 1 – outcome (Keough VCAT J115/2009)

- plagiarism

- Practitioner did not set out to plagiarise
- However, left insufficient time to prepare paper
- Consciously submitted a plagiarised paper
- Practising certificate cancelled 6 months, costs order
- Conduct doesn't need to be connected to legal practice to amount to professional misconduct



Case 2 – allegations (Moore VCAT J195/2009)

- tax evasion

- Practitioner failed to lodge tax returns or meet other taxation requirements for 17 years
- History of gambling and alcohol addiction
- ATO proceedings claiming over \$1mil in 2007
- Practitioner bankrupted himself in 2008
- LSC commenced own motion investigation in 2008



Case 2 – outcome (Moore VCAT J195/2009)

- tax evasion

- Must conduct yourself in a way that preserves honesty and integrity of profession
- Practitioner must submit 6 monthly doctor's reports confirming fitness to practice
- Approx \$60k of fines and costs
- Regulators now supervising repayments and fitness to practice