

## READING FOR CRISIS LEADING

***Keeping the wolves at bay requires an understanding of the law. It is not what you do; it is how you do it!***

### LEGAL PROFESSIONAL PRIVILEGE VERSUS DISCOVERABLE DOCUMENTS

**Evidence.** Courts allow certain documents to be kept confidential so that clients and legal advisers can communicate frankly. While some parts of a Crisis Team's deliberation could attract legal privilege, it will be hard to justify blanket coverage of a complete log. It is better to assume you will not be granted privilege.

**Apply the Reasonable Person test.** To minimize potential liability for communications made during a team's deliberations, discoverable writings should show that given the training, resources and information at hand at the time of the activity, a reasonable person would likely have done what was done, and had avoided doing what was not done.

### COUNSEL VERSUS COMMUNICATIONS

Lawyers must be prepared to work openly, quickly, and in a team with Communicators who advocate **telling it all, telling it fast and telling it truthfully** in the court of public opinion. **Saying nothing, doing nothing and admitting nothing** can slow down the

Crisis Management agenda. Take advice but avoid being completely gagged on disclosure. Like accountants, lawyers are inclined to seek the known position, and give advice, which often takes account of even the remotest possibility of something going wrong.

### LEGAL & FINANCIAL LIABILITY VERSUS REPUTATION STRATEGY

Successful control of crises often involves an admission of liability sooner rather than later. If at fault, often times the best strategy is to accept a degree of blame and commence managing consequences. If reputation is a primary issue in a compensation case, one proven measure is to facilitate appropriate interim payments, to assist plaintiffs as the naturally right thing to do.

### DIRECTOR'S LIABILITY VERSUS BUSINESS CONTINUITY PLANNING

**Question.** How much planning is enough? Is it real or just another management fad that will disappear in time?

**Answer.** Apart from traditional in-house reasons for comprehensive planning, further risk can evolve from partnerships and contractual dependencies to the point where Business Continuity clauses may and should feature in contracts. Even if there is no plan in place yet, there should be some active and documented analysis that justifies the executive's and board's position in the event of legal action. Directors could be liable if they knowingly neglect this exposure. BCP must be considered at the executive and board level, and not just left exclusively to specialists.

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