

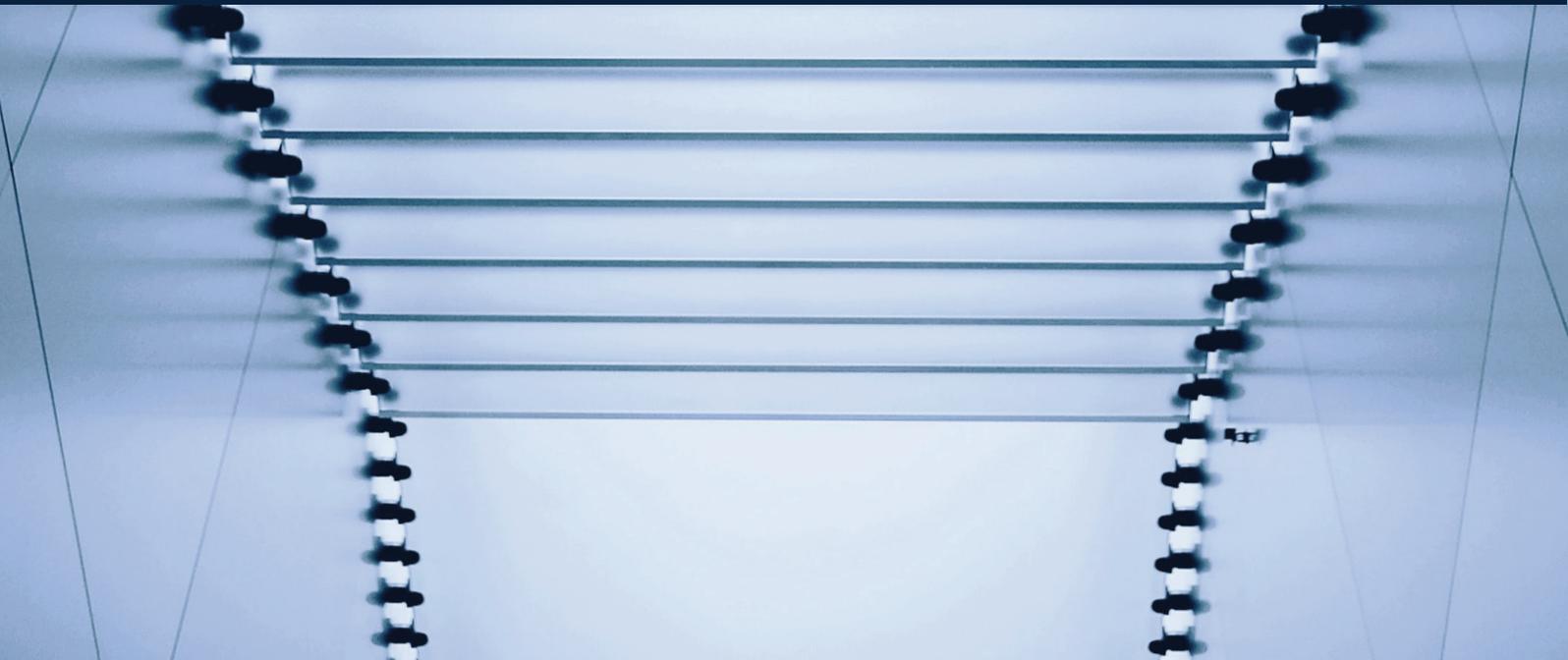


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## **Crisis Counsel: What lawyers truly think of crisis communicators**

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By Dr. Tony Jaques and SenateSHJ



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# THE ROLE OF LAWYERS IN A CRISIS

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**The relationship between communications professionals and lawyers in a crisis is always important, often challenging and sometimes fraught. It is key in protecting an organisation legally and reputationally.**

There is, as a result, a great deal to learn from the perceptions lawyers have about working alongside communication professionals at such times.

While a lot has been written about how lawyers contribute to crisis management, this report outlines the findings of the first study of its kind to ask lawyers in different countries about their role in a crisis and how it integrates with that of the communication professional. In order to identify areas for improvement, and to make recommendations to executives, SenateSHJ and Dr Tony Jaques, interviewed senior lawyers

in Australia, New Zealand, Canada, the United States and Britain. The findings also form the foundation of a chapter in an upcoming new book by **Dr Jaques, *Crisis Counsel: Navigating Legal and Communication Conflicts***.\*

The interviews revealed a considerable divergence of opinion, as well as some common attitudes across the profession and across national borders.

It's clear from the responses that lawyers recognise their own shortcomings when it comes to crisis communication. Yet they remain concerned about the lack of legal awareness among communicators. They are also concerned that communicators are too ready to disclose information which may jeopardise liability or future litigation.

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Generally, a lawyer does not have appropriate expertise and experience in communication matters, although they might think they do.

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Lawyer

## Where advice conflicts

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Most lawyers interviewed acknowledged that conflict between legal and communication advice is an issue, but some regarded it as relatively rare. One, for example, thought it resulted from the two professions being “too trenchant and refusing to listen to one another”. But he added that this conflict was not intractable.

Another even suggested that some lawyers simply don't trust communicators and added some litigators went so far as to actually think they made their living “by selling secrets to

journalists to curry favour”. As she added: “Oh my goodness”.

The area identified as the most prone to conflict over advice in a crisis related to the classic hurdle of the lawyers wanting to say as little as possible, and the communicators tending to prefer communicating openly and transparently. This was viewed by the lawyers as creating a legal risk.

**\**Crisis Counsel: Navigating Legal and Communication Conflicts***, by Tony Jaques, Ph.D. is a new book to be released later this year by Rothstein Publishing (<https://www.rothstein.com/product/crisis-counsel/>).

The divergence of opinion reflects two separate but related concerns. First, messaging – what to say and how to say it. Second, disclosure – how much to say, how much to keep back, when to say it, and who to say it to.

Seen as equally challenging are issues of business ethics and professional privilege, ahead of the vexed question of how and when to apologise. At the same time, disagreement and discussion about the exact choice of language and “playing with words” was not identified as a concern.

Some of the lawyers surveyed suggested conflict between legal and communication was not a problem. In large part, they argue, this is

because “... there is general deference to legal, especially when the business is on the back foot”.

Overall, the lawyers believe disagreement is not so much a battle, as a process to arrive at an acceptable position. Most said, given goodwill on both sides, you can work through competing concern for legal and communication in a way that doesn't leave the organisation unnecessarily exposed legally or reputationally.

Litigation was identified as an area particularly prone to conflict because, as one lawyer put it: “There are certain things which will anger the judge yet may be important for your shareholders or the public”.

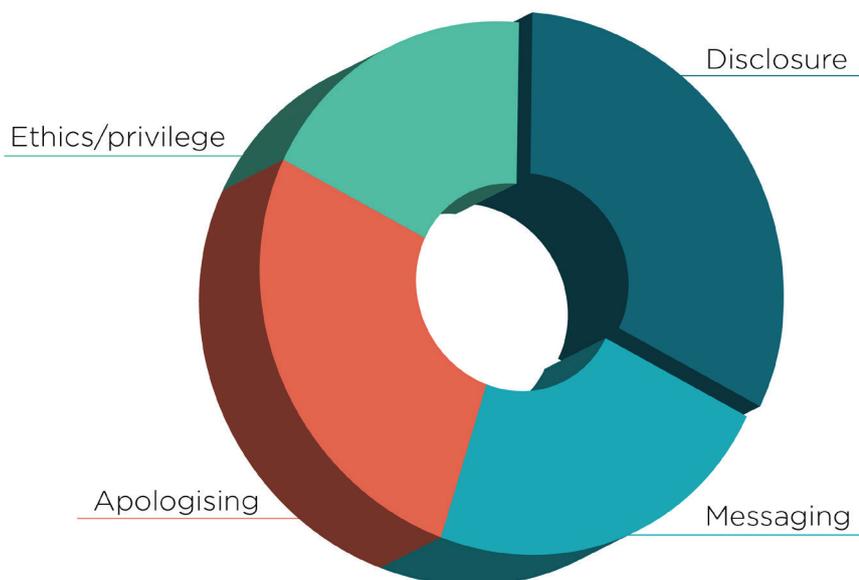


**Explaining or saying sorry creates the potential for conflict. But from a legal point of view, liability alone should not be a bar to doing what's right. That's part of being a values-based organisation.**



Lawyer

## WHAT AREAS ARE MOST PRONE TO CONFLICTING LEGAL AND COMMUNICATIONS ADVICE?



# The risk of speed

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**Another perceived area of conflict – related to process rather than each profession’s roles – was how to balance speed and accuracy. Almost every lawyer in the study emphasised what they saw as the need for certainty before communicating in a crisis, and one commented that: “Lawyers are generally not good at reaching a decision too quickly.”**

Many spoke about the importance of a balanced, measured and proportionate approach. As one said: “The desire to respond quickly can conflict with getting the advice you want and need. The first rule is to make sure you have collected enough facts.” Situations where an apology is needed were identified as particularly concerning. “The media often want the company to say sorry before it can know what’s really happened.”

As another warned, organisations can be “paralysed by fear” by the scale of litigation which may arise from a crisis. But she added that you can still express a great deal of human compassion without making an admission of liability,

However, the lawyers’ responses illustrate why the question of prompt action is an area of contention, and some appeared to show little appreciation that in a real crisis it is common that decisions must be made quickly, based on what is known at the time, which is typically incomplete.

Indeed one British lawyer took the unusual position that the need for speed is “seldom a significant issue”. He said that although in the heat of a crisis an immediate response may appear to be required, “in truth it is rare for a company to suffer any long-term damage by taking a little time, particularly where this can be justified”.

Compare this with a New Zealand respondent who argued the best lawyers may welcome a little risk as opposed to seeking to control the whole scenario: “Lawyers who are legally defensive to a fault,” he said, “tend to be tortured souls who agonise over every possible scenario when the risk may be real but very small, while the upside is so obvious.” Another added that legal advice has to be independent and forthright, and providing advice to management should not be regarded as a popularity contest.

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**The communication person asking lawyers questions gets them to explain matters which the clients themselves might not appreciate, because they will often want to ask but may be too scared.**

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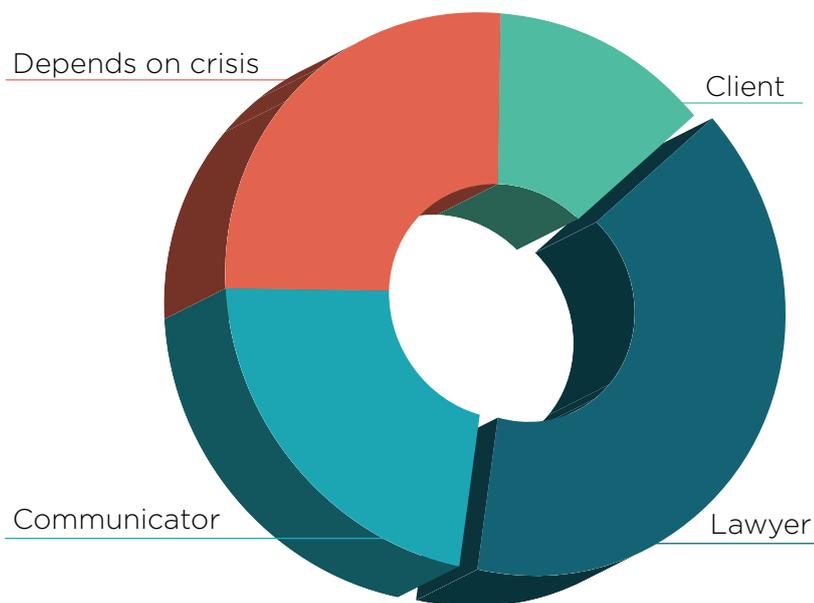
Lawyer

# Who should be in charge?

When asked who should take the lead in a crisis, a majority of the lawyers said it should be them. However, there were several who said it should be the communicator. Others

felt it should be neither the lawyer nor the communicator, but the Client/CEO who takes the lead after weighing up the combined advice and considering the risks.

## WHO LAWYERS THINK SHOULD LEAD IN A CRISIS



**Legal is only ever one input into the way you deal with a crisis.**



Lawyer

The lawyers were also asked whether there were crisis situations when the communicator should take the lead. Some suggested situations with significant public interest and where communication would not compromise the legal situation. Others indicated this may also be when the news media needed to be “kept at bay”, or when there are human victims and the CEO needs to express compassion without making damaging legal admissions.

One American lawyer described communication as the vessel through which the legal issue

travels: “If the vessel doesn’t hold water or make sense, the legal issues won’t come through with any veracity or practical understanding.”

Another described the relationship as more like a pendulum which swings one way and then the other, with either party taking the lead at different times during a crisis.

Yet many of the lawyers remained firm in their view they could not envisage crisis situations when the communicator should take the lead.

# Relationships and working better together

Throughout this study – despite their differences in some areas – the lawyers broadly recognised the need to work collaboratively with communicators in a crisis. “We just need to work together with mutual respect,” said one. “After good discussion a consensus will result.”

Another pointed out that lack of clarity and understanding of the different roles and what they bring can lead to confusion: “There is a balance which can normally be found – acknowledge rather than ignore, relay fact and address speculation, describe the process rather than judge.”

When conflicting advice arises, several lawyers stressed the importance of what they called a “hand-in-glove” approach. One added: “It’s not so much a question of conflicting advice but the need for alignment of what could, or couldn’t, happen.”

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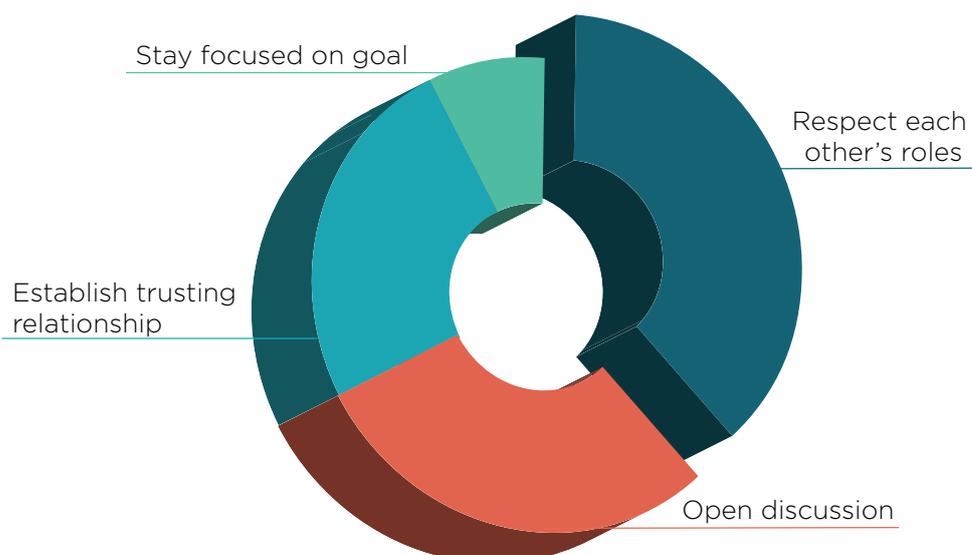
The best outcomes are when the lawyer and communication person respect each other’s role, there is no ego in terms of who leads, and both advisors are focussed solely on their client’s best interests.

” Lawyer

The lawyers were asked what specifically they think could be done to help lawyers and communicators work better together.

Collaboration and mutual respect emerged as strong themes. The most common recommendation was for both parties to respect each other’s roles. This was closely followed by the need for open discussion and the importance of establishing trusting relationships before the crisis occurs.

## HOW CAN LAWYERS AND COMMUNICATORS WORK BETTER TOGETHER?



The value of a proper working relationship was captured by one lawyer who spoke of the need for gentle diplomacy. He said it is essential that the lawyer does not erode trust by being critical of the communicator in a personal way:

“In the end the lawyer simply needs to be clear about their advice and the consequences of not accepting it – and the client needs to make final decision.”



Ordinarily the value of being authentic and honest is significantly greater than the legal risk involved.



Lawyer

## We asked lawyers, what would be your single message to CEOs?

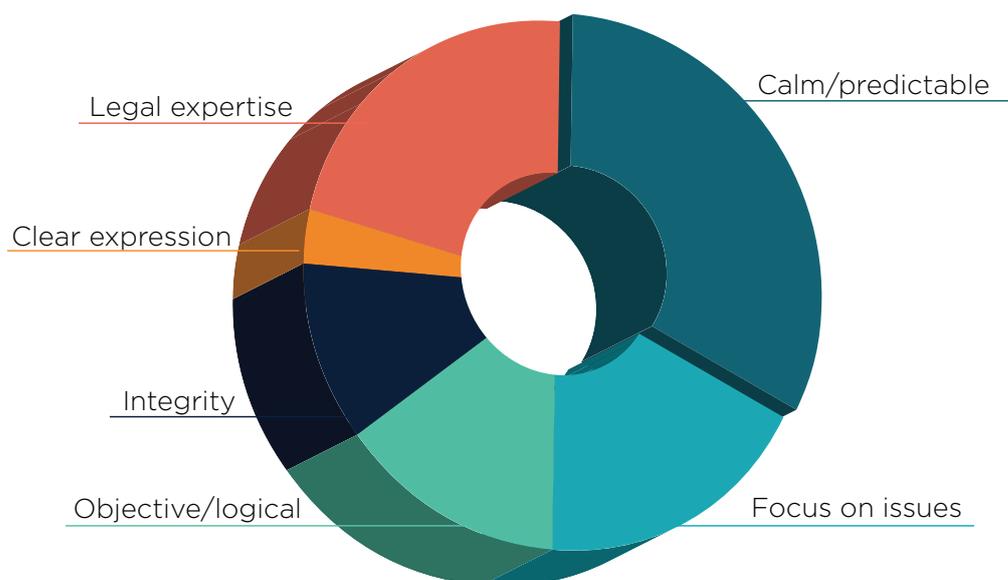
1. Act in accordance with your **governing principles and values**.
2. **Maintain confidentiality** in a crisis and don't breach it, despite the stress.
3. If the lawyer says the communications advice will jeopardise your position, **take the legal advice**.
4. Always **focus on key stakeholders** and the end game.
5. Understand whether there is **greater legal or communication risk** to help allocate resources.
6. Weigh up the advice but remember you are going to have to **make tough calls**.
7. **Work co-operatively**. Get a well-prepared team ready in advance and bring everyone to the table.
8. Get lawyers and communicators together to **reach common understanding** and engage with both.
9. **Take the advice and think about it**. Your plan must be detailed, well thought through and considered.
10. Have **regard for the full life cycle of risk** associated with your decision, not just the short-term.
11. **Don't use lawyers and communicators who don't understand** you and your business.
12. Trust your instincts but **think about your own people first** and foremost.
13. Follow the advice you are given by the **people you trust the most**.
14. **Trust your team or get new team members** - but probably not mid-crisis.

# Perceptions of value

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Lawyers were asked what strengths they think their profession brings to a crisis. The most frequently mentioned strength – ahead of legal expertise – was calmness and predictability.

## WHAT STRENGTHS LAWYERS THINK THEY BRING TO A CRISIS



One respondent said: “Lawyers bring calm, taking it step by step, knowing there is no good path and doing it carefully, monitoring all of the implications.” Another added: “We are good at identifying the risk and getting people to understand the manifestation of the risk, where it’s likely to go and the consequences.”

Several lawyers noted they are “officers of the court” and accordingly have a duty to maintain integrity, look to the truth and honestly represent the law. A Canadian respondent identified one of their strengths as being able to see beyond the strict letter of the law: “A strength we bring is knowing what is appropriate and good judgement, not just what is legally possible.”

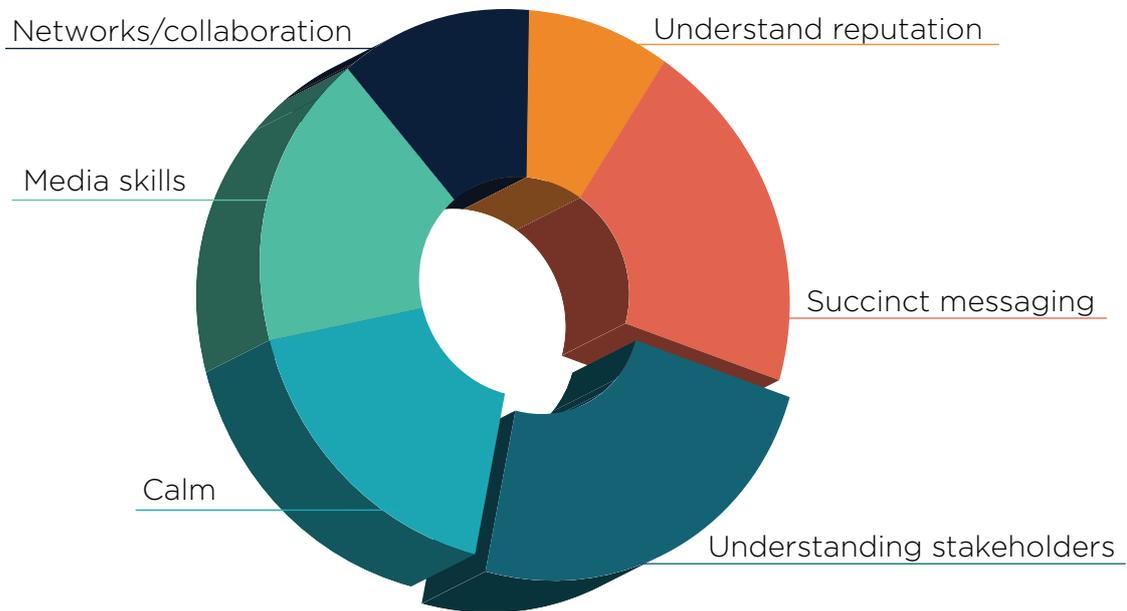
Another participant emphasised that clients “don’t want the lawyer to give legal advice”. Instead they want the lawyer to solve their problem and get them out the other side. One even suggested that lawyers are never

trained formally to consider the communication aspects or the commercial reality or the business consequences. He said those wider considerations are “trained out of us through law school” and had to be gradually picked up in the first few years of legal practice.

The lawyers were also asked what strengths communicators bring to a crisis. Their focus was not on tactical skills. Instead the most common response was about communicators’ being able to bring an understanding of stakeholders and of all communication channels, including social media. Some lawyers conceded they tended to be over-analytical and don’t have the same capability to deal with the public and the media.

“Communicators understand better than the lawyer how stakeholders are likely to receive a particular message, how they will respond, and how the company may be able to prepare for that response.”

## WHAT STRENGTHS LAWYERS THINK COMMUNICATORS BRING TO A CRISIS



In that respect the lawyers also identified the communicator's ability to develop succinct messaging. The lawyers commonly noted that they are inclined to over-complicate messaging and that communicators can simplify the message – be it an offensive or defensive form of communication.

One said communicators have an ability to take the big picture and distil that into core propositions or messages that resonate with stakeholders, that sound authentic, that are factually correct and don't create other legal risks: "That is a real skill."

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Sometimes you need to put your PR hat on, or your business hat, and let the lawyer in you just settle down.”

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Lawyer

Another praised the ability of communicators to deal with things quickly and react immediately. And added: "They understand the imperfections of human nature better than lawyers. They understand the gladiatorial nature of media better than lawyers."

Many lawyers also believed communicators can bring calm to intense situations. One lawyer said: "They are calm, they bring down the temperature. They calm the nerves of senior executives and board members and collaborate well."

While disagreement between legal and communication advice in a crisis is undoubtedly very real, this study shows that lawyers recognise and value the role and contribution of communicators. It also validates that co-operation and better mutual understanding are key to delivering the best possible outcome when a crisis strikes.

## We asked lawyers, what would be your single message to communicators?

1. **Respect each other's roles** and work out early what those roles are.
2. **Work with the lawyers to identify the end goal** and work together to achieve it.
3. Stay in your lane and **focus on the client**. Showing off doesn't work.
4. **Help me understand** what you need to achieve so I can help you and you can help me.
5. **Question to understand** and appreciate that there are legal constraints.
6. Don't worry, we are not trying to eat your lunch. We can **work together** to make each other look good.
7. **Listen to all perspectives**, develop a communication strategy informed by assessing the legal risks.
8. Ask lots of questions, even if you know they are pretty simple. **Make the lawyers explain their advice**.
9. **Be patient, understand the law**, the process and the immediate and long-term risk.
10. Always **challenge a legal view which is so constrained** that it will damage the client's reputation.
11. Have patience. **Make sure the lawyer understands the stakes** and don't assume they do.
12. **Respect the lawyer's advice**. Don't see them as a "black hole".
13. **Trust the lawyer** your employer has hired to have the company's best interests in mind.
14. **It isn't a battle of wills** - for either of us.



# SUMMARY OF FINDINGS

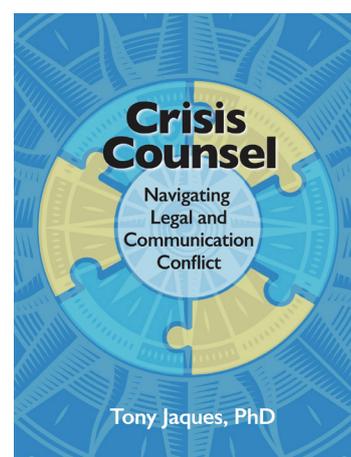
- Most lawyers believe that they, not communicators, should lead in a crisis.
- Lawyers are concerned about a perceived lack of legal awareness among communicators.
- The areas most prone to conflicting legal and communications advice relate to disclosure and apologising.
- Lawyers believe communicators are too ready to disclose information and that conflict between disclosure and potential legal liability is a concern.
- Making decisions in a crisis under time pressure with inadequate facts is seen as a major challenge for lawyers.
- Lawyers strongly support face to face meetings with communicators to reduce conflict and achieve optimal crisis strategies.
- Although some lawyers believe conflict with communicators is not common, many still don't trust communicators to do the right thing when a crisis strikes.
- Lawyers believe the main strength they bring to a crisis – ahead of legal expertise – is being calm and predictable.
- Lawyers believe the main strengths communicators bring to a crisis are understanding stakeholders and the ability to develop succinct messaging.
- Better understanding and respect for each other's roles is identified as the single most important factor in working better together.

**\*Crisis Counsel: Navigating Legal and Communication Conflicts**, by Tony Jaques, Ph.D. is a new book to be released later this year by Rothstein Publishing (<https://www.rothstein.com/product/crisis-counsel/>).

This book is designed to provide hands-on, practical guidance for senior executives, lawyers and public relations professionals to navigate crises and to balance conflicting advice from lawyers and communication professionals while promoting open communication and protecting legal liability.

It includes a wide variety of global case studies and examples while analysing how legal and communications advice was managed and the impact on reputation. Crisis Counsel also includes interviews with four of the leading global experts on crisis management and the conclusions of a focused, unique global survey of senior lawyers.

Tony Jaques is a Melbourne-based consultant and author of three other books on issue and crisis management.



Acknowledgement: For data collection, thanks to SenateSHJ's PROI network partners, Lansons in the UK, The Vandiver Group in the US, and Brown & Cohen in Canada. Thanks also to the lawyers who contributed their expertise and insights.



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