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November 6, 2025

Managing Conflicts of Interest: A Brief Guide for In-House Counsel

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Conflicts of interest can emerge subtly in corporate settings, particularly where in-house counsel operate across multiple departments and roles. Recognizing and managing these conflicts is not just a matter of good governance, it is a professional responsibility under the Law Society of Ontario's Rules of Professional Conduct, specifically Rule 3.4. For in-house counsel, the challenge often lies in spotting conflicts early and navigating them while maintaining trust and legal integrity within the organization.

A conflict arises when a lawyer's duty to one client conflicts with obligations to another client or with the lawyer's own personal interests. In a corporate environment, this can manifest in various ways, between different departments with competing priorities, between individual officers and the broader interests of the company, or even personally, such as when counsel are asked to advise on decisions that could affect their own position within the organization. These situations require both vigilance and judgment.

One of the most important distinctions for in-house counsel is understanding who the client actually is. Rule 3.2-3 makes clear that the organization as a whole, not any single executive, employee, or director, is the client. This distinction becomes particularly important when advising senior leadership or board members. Counsel must clearly communicate when they are acting in their role as corporate legal advisor and avoid the appearance of providing personal legal advice. In higher-risk scenarios, it is good practice to clearly document the nature of the representation and ensure that internal clients understand the boundaries of that role, especially when dual responsibilities exist, such as serving both as legal counsel and corporate secretary.

When a potential conflict is identified, it may be possible to proceed if the conflict is waivable under the Rules. This generally requires that all affected parties are fully informed, that there is no substantial risk to the lawyer's ability to represent the organization competently and loyally, and that the waiver is documented in writing. Rule 3.4-2 sets out these criteria, and in-house counsel should ensure that such waivers are approached thoughtfully and with clear communication.

Beyond the formal rules, effective conflict management in-house depends on having robust internal processes. This includes having a clear policy for identifying, escalating, and resolving potential conflicts, as well as encouraging a culture of transparency. Silence or delay in dealing with conflicts can exacerbate legal risk and erode trust within the organization. In-house counsel are uniquely positioned to act as both legal guardians and ethical stewards, ensuring that the organization navigates these issues with integrity and foresight.

For any related questions or to suggest a topic, please contact the writer. To see my previous 1-Minute Reads for In-House Legal Counsel, please visit the Blog portion of my profile at <https://www.grllp.com/profile/zevzlotnick>

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If you are in need of legal advice, please do not hesitate to contact [Zev Zlotnick](mailto:Zev.Zlotnick@grllp.com), at 416.865.6601 or zzlotnick@grllp.com.

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