

Insider Trading: What Does it Mean for In-house Counsel?

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Presented by:
Alexandra Matushenko
Stephen Thiele





Agenda

1. Applicable rules of conduct
2. Insider trading and tipping
3. Lawyers behaving badly
4. Your role as in-house counsel
5. What would you do?

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Applicable Rules of Professional Conduct



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Applicable Rules of Professional Conduct ...cont'd

Lawyers are required to maintain the integrity of the profession

Rule 2.1-1: A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Confidentiality

- Confidentiality
- Rule 3.3-1 of the Rules of Professional Conduct



Reporting Responsibilities


- Rule 3.2-7 establishes the basic rule for all lawyers
- Rule 3.2-8 designed specifically for in-house lawyers

 **Reporting Responsibilities**
...cont'd

- Rule 3.2-8



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 **THE SECURITIES ACT:
INSIDER TRADING AND TIPPING**

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 **The Securities Act:
Applicable Provision**

Section 76(1)
Insider Trading

Section 76(2)
Tipping



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Section 76(1) Insider Trading

Four Basic Elements Of The Offence:

1. Special relationship with an issuer;
2. Purchasing or selling securities of the issuer;
3. Knowledge of material fact or material change;
and
4. Not generally disclosed.


Section 76(1) Tipping

Four Basic Elements Of The Offence:

1. Special relationship with an issuer;
2. Not in the necessary course of business;
3. Informs another of material fact or material
change; and
4. Not generally disclosed.

“Material Fact” vs. “Material Change”



 GARDINER ROBERTS

MISBEHAVING LAWYERS

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 GARDINER ROBERTS

Misbehaving Lawyers

Lawyers as targets of enforcement



Standards applied



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 GARDINER ROBERTS


Misbehaving Lawyers

...cont'd

Lawyers made notorious by security breaches




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 **Misbehaving Lawyers**
...cont'd

THE CASE AGAINST MATTHEW KLUGER

THE CASE AGAINST MITCHELL FINKELSTEIN

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 **BEYOND THE SENSATIONAL:
YOUR ROLE AS IN-HOUSE COUNSEL**

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 **Key Challenges for
In-House Counsel**

Employee Issues

Business Considerations



 **Reputation**

Reputational Risk

The Regulators

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**WHAT WOULD YOU DO?
AN INTERACTIVE DISCUSSION**

FACT SCENARIO #1

The Leak

You are in-house counsel at a pharmaceutical company. The company is in the final stages of releasing a new product to the market. Your colleague advises you that she overheard Billy from HR tell his wife about the upcoming release over dinner.

WHAT WOULD YOU DO?

FACT SCENARIO #2

The Trader

You are in-house counsel at an investment bank. In your role, you are granted access to sensitive information, including any upcoming mergers and acquisitions. Your assistant has unlimited access to your computer. You learn that your assistant has recently purchased shares in a target company of a merger that has not yet been publically disclosed.

WHAT WOULD YOU DO?

FACT SCENARIO #3



The Bad Apple

You are in-house counsel at an asset management company. You receive a call from the Ontario Securities Commission requesting your cooperation in the Commission's investigation of suspicious trading by an employee at your organization. The Commission has requested that you attend for an interview to answer questions about the employee and your organization.

WHAT WOULD YOU DO?

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