



Strategizing Together Effectively:

Exploring how legal,
communications and investigative
teams align for better outcomes.

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Introduction

When legal and communications professionals fail to coordinate and develop sound strategies based on the facts, firms collapse, cases crumble, and reputations disintegrate. Public relations firm [Bell Pottinger's](#) racially divisive campaigns destroyed the firm within months of exposure. Fabricated evidence in the Chernukhin-Derispaska dispute undermined entire legal strategies and professional reputations. The [December 2023](#) congressional hearings on campus antisemitism saw Harvard, Penn, and MIT deploy elite legal counsel alongside crisis communications experts, yet their presidents' legalistic responses created "one of the most disastrous public relations moments in modern memory," resulting in resignations and hundreds of millions in lost donations.

In today's litigation landscape, clients increasingly demand integrated strategies that protect both their legal position and public standing. Clients with disputes work alongside legal, investigative, and communication teams, each of whom bring expertise, experience, and professional obligations, along with distinct strategies and processes for achieving success. When tensions between these teams go unrecognized, ignored, or unresolved, they can create catastrophic failures that destroy cases, careers, and client trust. This article explores these professional fault lines and provides practical advice to help guide litigation cross-functional teams.

UNDERSTANDING THE PROFESSIONAL DIVIDE

While all teams aim to protect the client, fundamental differences in objectives, timelines, and professional cultures can create friction that undermines outcomes.

Communications teams develop and direct clear, purposeful messaging to advance an entity's mission. Consistent alignment across channels drives perception, behavior, and results with target audiences including the public, stakeholders, employees, media and in many cases government authorities. Litigators prepare for an adversarial process. They focus on learning the facts, winning in pending or expected litigation, and addressing possible government inquiries and investigations.

These different perspectives create inherent tension. Communications professionals advocate for transparency to establish narrative control before opposing voices dominate public discourse. They operate on the principle that first impressions stick, and that delayed responses appear evasive. Lawyers prioritize fact finding, which can sometimes be difficult and time-consuming, depending on the individuals and institutions involved; protecting information learned in this fact-gathering process under applicable privileges; and avoiding prejudicial disclosures that could harm their client's legal position.

Communications crises develop within hours, with the first hour often determining the narrative trajectory. Legal processes unfold over months or years with deliberate analysis and strategic patience. What constitutes prudent legal caution can appear to be an undue or even suspicious delay to audiences demanding immediate explanations.

HIERARCHICAL CULTURE AND DISSONANCE

The most fundamental barrier to effective collaboration lies in the intersection of legal practice's traditional caution and hierarchical structure with communications' more message-oriented and collaborative approach. Legal training emphasizes factual and legal analysis, precedent, and risk mitigation — skills that create natural caution when integrating external perspectives into strategic decision-making. This methodical approach, while essential for legal success, can inadvertently treat communications advisors as service providers rather than strategic partners, despite communications professionals possessing specialized expertise in public perception, stakeholder management, and reputational risk assessment. As Professor Verwey [notes](#), this hierarchical dynamic can reduce communications professionals to what she terms “hired guns,” operating at a “technician level” that prioritizes client loyalty over broader strategic considerations, potentially limiting the collaborative dialogue necessary for effective crisis management. See Sonja Verwey and Clarissa Muir, “Bell Pottinger and the Dark Art of Public Relations: Ethics of Individuality Versus Ethics of Community.”

To maximize client success, the challenge ought to be accepted, embraced, and managed because both professions bring valuable but different strategic perspectives. Legal teams excel at identifying long-term risks and protecting client interests through established procedural safeguards. Communications teams excel at understanding immediate public reaction and managing stakeholder relationships. When these perspectives are not properly balanced and integrated, teams lose critical insights into how legal strategies will be perceived publicly and how to maintain stakeholder confidence during protracted investigations and litigation.

The ethical frameworks governing each profession create additional complexity. Lawyers operate under strict professional conduct rules enforced through disciplinary mechanisms with significant consequences. These rules require protecting client confidentiality, avoiding conflicts of interest, and maintaining legal proceeding integrity — obligations that create necessarily conservative approaches to information sharing and public engagement. Communications professionals face a different regulatory landscape. As Professor Verwey articulates, many communications professionals limit their role to brand stewardship, operating without equivalent formal ethical oversight. Whilst many communications professionals maintain high ethical standards, the lack of uniform regulatory structure means some may prioritize client satisfaction over accuracy, craft messages designed to obscure rather than illuminate, or pursue short-term reputational gains without considering long-term credibility implications.

These different ethical frameworks can create conflict over substance and coordination. Lawyers, bound by strict professional obligations, may appropriately withhold information necessary for comprehensive communications strategy, whilst communications professionals may propose tactics that lawyers recognize as ethically problematic or legally risky. Neither approach is inherently wrong, but without proper coordination, these different professional standards can undermine overall client protection.

PRIVILEGE: THIRD-PARTY COMMUNICATIONS MAY BE AT RISK

Collaboration between lawyers and communications teams raises complex privilege issues that can expose confidential information. Lawyer-client

privilege protects confidential communications between lawyers and clients for legal advice purposes. Extension of this privilege to third parties requires that their function be essential to the lawyer-client relationship — a standard rarely met in communications contexts.

The [*Catalyst Capital Group Inc. v. West Face Capital Inc.*](#) 2023 ONCA 381, case, in Canada, demonstrates these risks. The court refused to recognize litigation privilege over documents shared between Catalyst and its public relations consultant, finding that the dominant purpose was managing public images rather than advancing litigation objectives. When privilege protection fails, previously confidential strategic communications can become admissible evidence, potentially damaging both legal positions and public standing.

This narrow view of privilege, however, fails to reflect the realities of modern litigation and crisis management. In high-stakes matters, protecting a client's position in the court of public opinion is often as critical as defending them in a court of law. Communication professionals are frequently engaged not as peripheral actions, but as essential partners in shaping and executing legal strategy. Yet, the absence of privilege protection for these communications exposes clients to reputational harm and undermines the integrity of their broader defense. When strategic discussions become discoverable, the cost is not only legal: it is public, personal, and enduring.

In Canada, France and the United States, lawyers routinely engage communications professionals, like other experts, pursuant to written agreements that treat their communications as privileged. The privilege has been upheld in some but not all cases, and the law is not well developed. This provides a modicum of comfort for frank sharing of information between lawyers and communications professionals, but does not eliminate the legal risk, and it does not bridge cultural gaps that may exist amongst these different professionals.

INVESTIGATIVE COMPLICATIONS

Private investigators add additional complexity to multi-disciplinary legal teams. In Ontario, private investigators must comply with the [*Private Security*](#)

[and Investigative Services Act](#) and its associated Codes of Conduct requiring integrity, honesty, and legal compliance. However, regulatory gaps exist for investigators operating from other jurisdictions.

The investigative aspects of *Catalyst Capital Group Inc. v. West Face Capital Inc.* illustrate these risks. Investigators conducted covert operations to record a retired judge making potentially compromising statements. The court condemned this conduct as an affront to justice, and the law firm representing Catalyst ultimately ceased representation. The case demonstrates how investigative overreach can expose both clients and their legal counsel to professional and reputational damage.

PRACTICE POINTS FOR LAWYERS: DEALING WITH COMMUNICATIONS TEAMS

As discussed above, collaboration between lawyers and communications teams is crucial to success in the litigation context, but the professional divide as well as potential loss of privilege put these parties in a difficult situation when dealing with one another. Below are some useful practice tips that can help lawyers navigate these issues:

- **Support strategic collaboration between legal and communications:** use detailed agreements to define roles and ensure alignment, enabling both disciplines to operate effectively and within their distinct professional objectives, mindful of privilege boundaries.
- **Safeguard privilege through careful collaboration:** be wary when sharing confidential information with anyone outside the lawyer-client relationship, limit communication to when and what is strictly necessary, educate communications teams on privilege risks and confidentiality protocols.
- **Coordinate crisis response across disciplines:** develop joint protocols for rapid decision-making that balance legal caution with reputational urgency. The absence of protection can burden clients publicly.
- **Prioritize the court of public opinion:** recognize that public perception can shape litigation outcomes, regulatory scrutiny, and long-term brand health—subject to taking necessary precaution to base communications

on a sufficiently thorough understanding of the facts, expressly caveated as appropriate.

PRACTICE POINTS FOR LAWYERS: DEALING WITH INVESTIGATORS

The presence of third parties when advising clients poses specific challenges. Lawyers at all times should be sensitive to their professional obligations and issues that the presence of third parties may raise with respect to those professional obligations. The Catalyst case above is an example of a situation where investigators conducted their operations in a manner that shocked the court and counsel considering their ethical obligations and withdrawing. Lawyers should consider the following practice points when dealing with investigators:

- 1. The validity of the evidence and the methods used by investigators:** lawyers should remain constantly vigilant over the methods that investigators use to obtain evidence to ensure that it has been obtained in a legal and authorized method.
- 2. Consider drafting a separate undertaking for the investigators:** lawyers may consider drafting a special undertaking to be signed by investigators that contains language assuring the lawyer and client that they will abide by the Act that regulates them and holding them strictly to their Code of Conduct.
- 3. Understand the scope and limitations of the retainer and legal expertise:** lawyers should remain aware of the scope of the retainer they have signed with their clients and their own limitations with providing legal advice as it pertains to investigators if it falls outside of their scope of legal competency.
- 4. Know when to consider disengagement:** lawyers should remain apprised of what investigators are doing and how they are doing it and should know when it may become necessary to end their representation of a client if their conduct places the lawyer in a position that may cause them to be in breach of the Rules of Professional Conduct.

CONCLUSION

The integration of legal, communications, and investigative professionals in high-stakes litigation creates opportunities for comprehensive client protection but generates significant risks when professional differences are not properly managed. The culture of legal practice and differing ethical standards between professions creates the most substantial coordination challenges.

Positive outcomes require recognizing that effective communications strategy is not subordinate to legal judgment but operates within constraints established by legal requirements. When legal strategy, public messaging, and evidence gathering are properly coordinated, clients receive protection across multiple fronts. When these functions operate in isolation or conflict, the results include failed cases, professional discipline, and reputational destruction.

The rise of AI-generated content and synthetic media further intensifies the reputational stakes, making coordinated legal and communications strategy not just advisable, but essential.

The solution involves structuring coordination processes that respect professional boundaries whilst achieving integrated strategic objectives. In contemporary litigation, legal and reputational risks are interconnected, requiring legal leadership that can effectively manage multi-disciplinary teams whilst maintaining professional standards and client protection.

This shift is reflected in the emergence of integrated legal-communications firms, which signal a broader recognition that legal and reputational risks are no longer separable in sophisticated litigation.

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