



Media Response & Crisis Management

*Strategic Communications
for Legal Practitioners*

Crisis Communications Series
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Realities of a Digital World

- Information is democratized
- People have a voice
- It is impossible to censor everyone everywhere
- You cannot stop hundreds of people from expressing their opinions online
- Distrust of institutions is at an all-time high
- Controlling the narrative is becoming more difficult
- Communications is now 2-way i.e. top-down and bottoms up

A more strategic and media-savvy approach is required to manage communications risk and exposure in a situation with strong legal or litigation risk sensitivities

Media Relations in a Litigation Context

- **Media Relations is about managing relationships** with media and understanding how to ethically leverage on media platforms to get the best results
- **Understanding the media landscape, traditional and social media** - the intersection; difference between national and state media and how to assess the depth and complexity of media coverage on issues. And respond accordingly
- **Understanding media sensitivity.** When to go on camera and not to. Ensuring you have media training for high-profile situations (all business leaders need to - as well as communications professionals because the court of public opinion is different from the court of law)

In countries where citizens feel powerless against institutions, there will be greater trust in the court of public opinion

Court of Law	Court of public opinion
• The law rules	• Sentiment and prevailing narrative rules
• Jurisdiction applies	• Borderless
• Within the control of the court	• Outside of the control of the court
• Focuses on legal arguments	• Listens to the loudest voice
• Focuses on winning the court case	• Is focused on uncovering “the truth” and getting “justice” for the aggrieved person(s)
• Understanding of legal risk and how to mitigate it	• Focused on ensuring that “might is right” does not win the day
• Focused on issues of court room relevance	• Focused on issues of public interest, sentiment and opinion

Fundamental principles – media relations & crisis communications

Media Response and Crisis Management Context

- **Do** - Advise on legal strategy and manage exposure risk on media-related issues but do not take the lead on complex crisis that require stakeholder engagement and consultation and have potential impact on reputation.
- **Do not** - Take a legalistic issue to matters that require stakeholder engagement and communication e.g. Do not issue cease and desist statements to the general public in a crisis ..
- **Do** - Understand the limits of legal approach to conflict resolution and grievance handling e.g. tomato paste case in Nigeria
- **Do** - Pay attention to tone of voice when communicating on issues that evoke very negative sentiment in the public space. Use a tone that is appropriate for the context from external perspective

Corporate Communications Context

Legal Approvals & Disclosure Protocol

- **Do** - Have a process in place for reviewing and approving all media statements before they are sent out
- **Do** - Ensure there is a signed off approval process in place in collaboration with Communications team
 - This should apply for internal and external communications especially notes to all staff as those should be treated as press releases

Crisis Communication: Working Definition of A Crisis

- A good working definition of how to determine if a situation has escalated to becoming a crisis is if any of the following have occurred:
- **REPUTATION** - reputation is being threatened or has been negatively impacted
- **LOSS OF SOCIETAL SUPPORT** - Society or fence line communities or regulators are calling for sanction of operations or total shutdown
- **STAKEHOLDERS** - A diverse set of stakeholders and interest groups including media, community, NGOs, activists, social media netizens etc are taking interest in the matter in a negative way

- Crisis is a spectrum .. It can be the beginnings of a crisis, an escalating crisis or a full-blown crisis ..

It is important to have a good working definition to guide how to **respond** to a wide spectrum of scenarios not the usual ones but even unusual situations like a social media crisis, malicious campaigns, cyber security attacks, misinformation/fake news campaign etc
And the legal route should not be the default approach. Think and assess holistically



Crisis Communication Planning for Litigation in high-profile cases

Crisis Management Structure

- There needs to be a crisis management structure in place with preferably a best practise framework already signed off and approved
- Crisis management simulations with a trained expert who understands the difference between issues and crisis and why that is important
- Crisis management requires a special leadership/management structure headed by the MD while issues can be handled by operational leaders
- Everyone needs to be proactively trained to manage their crisis management roles - including legal practitioners

Roles & Responsibilities

- **The role of Legal** is to identify, mitigate and manage legal exposure and risk but with the understanding that reputation management is the ultimate goal in crisis management not court victory at all costs.
- The crisis communication strategy should be driven by a communications expert supported by Legal and other experts in the space. With direction and guidance by the Crisis Leader i.e. the MD/CEO
- The communications expert is best positioned to advise on the holistic integrated stakeholder engagement, media response and communication approach required to de-escalate sustainably bearing in mind the nature of the issue as being played out in the public space
- **The Legal expert will help to manage legal risk and exposure but should not drive the communications strategy, especially in a high-profile case. There needs to be active collaboration to ensure one side does not unduly overwhelm the other**
- An overly legalistic approach to a complex crisis may boomerang in a crisis. Having crisis management awareness training and simulation can help identify gaps in the crisis response capabilities in the organization

Crisis Communications – Do's & Don'ts

Do not issue press statements that are likely to aggravate the audience, anger the public and escalate the issue

- Do not take a legal approach to something that could have been handled with stakeholder engagement or a simple factual correction or rebuttal
 - A legal approach may come across as being defensive especially in issues when there is public expectation of transparency
- If a media statement needs to be issued, please bear in mind the 4Cs of crisis communications



The 4 Cs of Crisis Communications

1. **Context** - specify what you are referring to
2. **Care** - show care as relevant or applicable
e.g. fiduciary duty, public citizen, responsible employer or operator etc.
3. **Control** - Action being taken to bring the situation under control
4. **Commitment** - State action being done to ensure a non-reccurrence as applicable

Mind your language and tone. Aggression does not translate well in press releases. It comes across as being arrogant and defensive

Learnings from Examples in the Public Domain

- Issues that can be managed offline should be handled that way
- Stakeholder engagement should be the first-line approach to managing issues
- **A decision to go to court as a corporate entity against an ordinary citizen or consumer should be evaluated in the context of external perspective**
- **Think about what would happen if this story went viral on social media and then decide if litigation is the best approach**

- It is important to think about how the litigation would affect the corporate brand and if it is truly worth it
- Always get the advice from crisis communications experts
- Once a case is high-profile and attracts interest from citizens, civil society, media and community and even employees are agitated, you need to handle with care.
- A hardline legal strategy is not helpful for the brand. Especially if the sentiment against the brand is already negative

Managing Reputational Risks and Public Perception

Reputation is a function of Performance, Behaviour and Communication

- Bad reputation is driven by bad performance, not doing the right thing, erosion of trust, mis-management of relationships, wrongdoing, malpractice, shady practises, weak governance, oppressive practices, lies/misconduct, lack of accountability

- Legal practitioners and professionals have a big role to play in enabling an organization to manage its reputation well *by doing the right thing* and being as transparent as possible in its communication without compromising confidentiality or privacy laws or disclosure policies
- Rely on expert message crafters to do your wordsmithing
- Take an audience-centred approach to public messaging and communication
- **Do not speak to the public as though defending a case in court**

Managing Public Perception

Public perception is a function of:

- What you DO
- How you BEHAVE
- What you COMMUNICATE
- The EXPERIENCE that people have of you (see, hear, feel)
- The prevailing NARRATIVE around your brand
- The SENTIMENT that your brand evokes ..

Legal statements published in the media verbatim without nuance sometime come across as being defensive. They cannot on its own help manage perception. To manage perception, there needs to be an integrated audience and stakeholder communications, and engagement strategy based on credible data and insights into the target audience and how it makes sense to communicate and engage with them or influence perception in a certain direction.

In summary: You need professional communications expertise at a high-level to achieve this in a complex crisis or high-profile media situation with corporate reputation exposure at a nationwide level.

Communications 101 for Media Engagement

1. **Purpose:** Why are you engaging with the media?
2. **Objective:** What are you hoping to achieve?
3. **Target Audience:** Who is the audience?
4. **Messaging:** What is the message? What do you want the audience to know, feel and do? Why should they listen to you?
5. **Measurements:** What does success look like and how will you measure it?
6. **Voice:** Who is the best spokesperson to deliver the message?
7. **Platform:** When and via which platform?
8. **Time:** What is the trigger or sequence for media engagement?
9. **Risk:** What is identifiable risk and how can it be managed?
10. **Scenario Planning:** If we do not achieve the desired objective - what is the fall-back or next step?

Best Practices for Media Engagement and Press Handling

MEDIA STRATEGY

1. Identify pros and cons before issuing public statements on issues.
2. Ensure you get the balance of tone, content and language right
3. Do not over-react and respond across all platforms. Think about which platform best serves your purpose
4. **Get expert communications strategist advice**
5. Develop an integrated media strategy beforehand. Only talk to the press if there is a prepared script and strategy with scenarios already factored in. Work with a media strategist. Do not aim to DIY. **Respect professionalism especially if you see that your initial efforts are not yielding the desired results**
6. Understand that media is more than just traditional media but also includes social media conversation
7. Set targets based on narrative, sentiment, share of voice, media mentions, public opinion etc

MEDIA TRAINING

1. Ensure that you have had adequate media training
2. **DO NOT GO LIVE INTO A STUDIO EXCEPT IT IS ABSOLUTELY NECESSARY AND NECESSARY SAFEGUARDS ARE IN PLACE**
3. Do not speak on camera outside the court room unless you have an airtight message to do so. Ensure lawyers also do not speak on your behalf unless with prior approval of messaging
4. Monitor coverage and correct mis-reporting with facts.
5. If a high-profile case, ensure you have a toolkit to fall back on. Be prepared for different kinds of questions and have pre-approved responses documented for dissemination as time requires
6. Ensure to carry the public along if it is a high-profile case with high public interest
7. **Managing your reputation is MORE important than winning in the courts.**

Role of the Company Secretary in Crisis and Reputation Management – Best Practice

- Identify and Manage Legal/Regulatory/Compliance risk
- Ensures that external narrative does not outpace proceedings in the court - if applicable
- Ensures that all public statements are pre-approved to ensure de-risking and factual communication
- Does not over-legalize public communication

- Gives advice to the Board in a way that considers the **BIG PICTURE** and not just the specifics of individual cases
- Ensures scenario planning is built into the crisis management response and litigation process
- Carries the communications team along and knows when to ask for strategic communications support to manage communication risk
- Is able to identify communications risk and support expert advice to manage it to the benefit of the business

Regulatory Requirements for Public Disclosures and Corporate Statements

- Company Secretary/Legal Team should ensure that there is an internal corporate disclosure policy in place that ensures that no statements go out without legal approval. (including internal notes to staff on key issues)
- Communications gate-keepers to be adequately trained to always maintain this protocol

- **Protocols for corporate statements should always be adhered to - including in crisis management situations**
- On no account should you disclose information that violates any contractual or regulatory commitments
- Transparency in communication does not mean unauthorized disclosures

Finally ... Ethics, Values, Trust & Reputation

- Company Secretaries and Legal Advisors play a BIG role in ensuring that a company stays true to its values and acts ethically in how it manages an issue or a crisis
- **Beyond the risk to trust – the dynamics of today's whistle blowing world and cyber security vulnerability makes it very dangerous to make misleading or factually incorrect public statements as a corporate entity**

- It is better to not comment than to misrepresent a situation in the public domain.
- Choose your words carefully ..
- **The litmus test of whether your crisis communications strategy is working is as follows:**
 - a. A shift in sentiment of public discourse
 - b. A positive (non-sponsored) shift in media coverage and social media coverage
 - c. A de-escalation of the crisis in a manner that meets the expectations of the public and key stakeholders
 - d. Restoration of societal goodwill and no tangible stain left on corporate reputation

