

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

## INDEX

- Abel, R. 57–8
- acting for more than one corporate
  - constituent 96–108
  - confidentiality and privilege 107–8
  - conflicts of interest *see* conflicts of interest
  - information barriers 106–7
  - reasonableness of representing joint owners 100–2
    - costs and benefits 101, 102
    - non-waivable conflicts of interest 101
    - risks of harm from joint representation 101–2
  - standing to complain 102–5
    - group interests 104, 105
    - rules on confidentiality 103
- Allen and Overy 9–10, 42, 76, 78
- Allens Arthur Robinson 34–5
- alternative business structure (ABS) 7, 276–92
  - how ABSs might strengthen lawyers' corporate governance role 279–86
  - closing the information and accountability gap 283–4
  - practising to share price 284–6
  - privilege 279–80
  - professional values 280–3
  - how ABSs might undermine lawyers' corporate governance role 287–92
  - conflicts of interest: MDPs 287–9
  - conflicts of interest: outside-owned firms 289–91
  - innovation 291–2
  - practising to share price 287
- Alternative Investment Market 12, 196–7, 230
- American Bar Association 26
  - lawyers as directors 158
  - Model Rules of Professional Conduct 28–9, 249–50, 253–4, 255
  - entity regulation provisions as basis for SRA Code reform 275
  - identifying the client and multiple representation 122
- Arthur Andersen 24, 232–3, 281, 309
- Auburn, J. 268
- Australia 30–5, 304
  - ABS 278, 290, 298
  - corporate lawyers 30–1
    - involvement in corporate scandals 33–5, 304
  - James Hardie Industries Ltd 34–5, 212, 304
  - lawyers as directors 171
  - professional codes of conduct 31–2
- confidential information 121, 142, 278
- regulation 31–3, 35, 273
- retainers and duties to clients 86, 144–5, 157
- supervisory jurisdiction of the courts 146, 157
- Australian Corporate Lawyers Association 33

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

## INDEX

337

- Australian Securities and Investments Commission 32, 34–5
- authority
  - actual 112
  - agents acting without 112–15
  - agents possessing authority but acting in breach of duty to company 117–18
  - apparent authority
    - effect of director's assertions of client's approval 115–17
  - s. 40 Companies Act 2006 111–15
- Bainbridge, S. M. 53, 247
- Bank of Credit and Commerce International (BCCI) 109
- Bank of England 109–10
- Bar Council 276
- Bar Standards Board 6–7
- Barings Group 224
- barristers 11
  - code of professional conduct 1–2, 18, 105, 180, 276, 306
  - money-laundering legislation 220
  - regulation 6–7, 8, 276
  - see also* legal profession; solicitors
- Batson, Neal 23–4
- Berle, A. 13
- Berle and Means corporations 13
- Bingham Inquiry 109
- White, J. 295
- Boon, A. 45
- British American Tobacco 304
- Cadbury Report 1, 14, 224
- Canada 35–8
  - corporate lawyers 36–7, 304
  - in-house 36
  - involvement in corporate scandals 37, 304
  - reporting obligations 249–50, 252, 253–4
  - regulation 35, 36–7, 306
  - see also* Canadian Bar Association (CBA) and Code of Professional Conduct; Law Society of Upper Canada
- retainers and duties to clients 145, 157
- Canadian Bar Association (CBA) and Code of Professional Conduct 36, 93, 104
- fiduciary duties and retainers 145, 157
- identifying the client 122–3
- Canadian Bar Association Task Force on Conflicts of Interest, *Conflicts of Interest: Final Report, Recommendations and Toolkit* (CBA) 36
- Carver, J. P. 65
- case against reform 223–48, 307
  - change is unnecessary 223–32
  - present system of corporate governance is sufficiently strong 223–9
  - reform should focus on other groups 230–2
- reform would be too costly 244–8
  - disclosure counsel and certification 246–8
  - whistle-blowing 244–6
- reform would not work 232–8
  - cognitive bias *see* cognitive bias
  - reputational capital 232–4
  - structural constraints 234–5
- reform would undermine legal professional privilege 238–44
  - arguments defending privilege 238–40
  - whistle-blowing 241–4
- Chan, W. 208–9
- City of London Law Society 48–9
- Clayton Utz 33
- clients *see* corporate clients; corporate lawyer as director; identifying the corporate client
- Clifford Chance 9–10, 65
- Code of the Council of the Bars and Law Societies of Europe (CCBE Code) 43–4, 104–5, 148

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

338

INDEX

- codes of conduct/standards *see*
  - American Bar Association (ABA); Canadian Bar Association (CBA) and Code of Professional Conduct; Code of the Council of the Bars and Law Societies of Europe (CCBE Code); Corporate Governance Code, UK; Law Society of Upper Canada; Securities and Exchange Commission (SEC) (US); SRA Code and Guidance; Takeover Panel and Code; *see under* barristers
- Coffee, J. 29, 71, 223–4, 233, 236, 240, 241, 246, 247, 248, 271
- cognitive bias and corporate misconduct
  - blindness to corporate misconduct 2, 5–6, 180, 236–8, 306
  - certification requirements, and 247
  - cognitive bias, concept of 5–6
  - in-house lawyers 237–8
  - intention, and 182, 192, 194, 195–6, 272
- Cohen, G. 254
- Commerce and Industry Group (C & I Group) 55, 57, 159–60
- companies and intra-corporate litigation
  - company as a past client 137–40
  - derivative claims 149, 150
  - representing alleged wrongdoers 155–6
  - representing the company 150–4
  - representing the company and alleged wrongdoers 154–5
  - company's interests and s. 994 litigation 129–33
  - company's interests at common law 130
  - lawyers representing the majority, and 134–7
  - majority's interest conflicting with company's interests 136
  - representation 133–4
  - shareholder interests comprising company's interests 130–2
- Company Law Reform Steering Group 131–2
- conduct failures of corporate lawyers 2–4, 5
- confidentiality 125
  - company as a past client, and 137–40
  - disclosure to general meetings, and 120–2
  - lawyers' duty to respect 214, 216
- minority shareholder as past client 140
- minority shareholder never a client 140–1
- privilege, and 107–8, 120–2, 214, 217, 239–40, 263–4
- employees, and 240–1
- joint retainers, and 139, 140
- whistle-blowing 218–19, 239, 241–4
- representing alleged wrongdoers 155–6
- rules on 103
- conflicts of interest 44–5, 96–105, 306
  - acting where conflict of interest exists 2, 24, 96–7
  - avoiding 105, 125
  - duty to avoid 190
  - information barriers 106–7
  - limited retainers 105–6
- Canada 36
  - Canadian Bar Association Task Force on Conflicts of Interest, *Conflicts of Interest: Final Report, Recommendations and Toolkit* (CBA) 36
- company as a past client 137–40
- compliance programmes developed by firms 293
- controlling and minority shareholders, between 126
- directors/management and company, between 4, 5
- owner-managed companies 17, 90–1

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

## INDEX

339

- double employment, rule
  - against 191–2
- entity representation 2, 5, 28–9
- fiduciary duty of loyalty 190
- informed consent 96–100, 190
  - authorisation not possible 99, 154
- joint representation and
  - information barriers 106–7
- by management or by
  - shareholders 126
- parents and subsidiaries 99–100
- where lawyer to act for company
  - and controllers 98–9
- in-house lawyers 93, 166, 167, 170
- lawyers as directors 159–63, 166–70
- lawyers overlooking client conflicts
  - of interests 2
- lawyers representing the majority,
  - present clients and 135–7
- lawyers' response to managerial
  - misfeasance, and 6
- lawyers' role in addressing 6, 17
- MDPs 287–9
- minority shareholder as past
  - client 140
- minority shareholder never a
  - client 140–1
- no-inhibition principle 190
- outside-owned firms 289–91
- present clients, and 135–7
- retrospective representation 88–9
- smaller firms complying with
  - rules 53
- SRA Code *see under* SRA Code and Guidance
- standing to complain 102–5
- waiver not possible 99, 154
- whistle-blowing 244–5
- see also* acting for more than one
  - corporate constituent
- corporate clients 12–14
  - obligations to *see* obligations of
    - lawyers to clients and resulting liabilities
- owner-managed companies 10,
  - 13–14, 16–17, 67
  - definition 13
- disclosure of confidential material
  - where misconduct 121–2
- third-party claims against 200–1
- publicly traded companies 12–13
- see also* identifying the corporate
  - client; roles of corporate lawyers
- corporate governance 14–17
  - broader conceptions of 14–15
  - definitions 14
  - lawyers, by *see* regulation of the
    - corporate lawyer; roles of corporate lawyers
  - owner-managed companies 16–17
  - shareholder-oriented approach 15, 75, 192
- Corporate Governance Code, UK 1,
  - 15, 163–4, 224–5, 227, 257, 274
- corporate lawyer as director 158–78
- ABS 290
- arguments against lawyers sitting on
  - board of client
    - companies 163–76
  - board composition and
    - performance and the lawyer-director 163–6
  - conflicts of interests 166–70
  - legal professional privilege 171
  - loss of professional
    - independence 170–3
- arguments for lawyers sitting on
  - board of client
    - companies 159–63
  - promoting interests of lawyers
    - and their firms 161–3
  - promoting the client's
    - interests 159–63
- liability 161–3
- non-executive directors 163–5
- problems with 159–63
- corporate lawyers 7–11
- corporate governance by *see*
  - gatekeepers; regulation of the corporate lawyer; roles of corporate lawyers
- directors, as *see* corporate lawyer as director

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

340

INDEX

- corporate lawyers (*cont.*)
  - in-house lawyers *see* in-house lawyers
  - large corporate firms 7, 8–10, 21
    - global role *see under* international perspective
    - ‘Magic Circle’ 9–10
    - market pressures, and 49–53
  - regulation *see* regulation of the corporate lawyer; regulation of the legal profession
  - roles *see* roles of corporate lawyers
  - smaller firms representing
    - owner-manager companies 7, 10
  - structural constraints and
    - information deficit 234–5
    - UK and US lawyers compared 24–5
- Corrs Chambers Westgarth 34
- counsellors, lawyers as 72–6, 80–1
  - ABA, and 300
  - counselling respect for the law 75–6
  - ethical counselling 4, 6, 66
  - strengthening the counselling
    - role 274–5
  - whistle-blowing, and 79–80
- County NatWest Report 76, 78
- Cramton, R. 254
- ‘creative compliance’ 62, 71, 73, 304
- ABS, and 298, 301
- addressing 258–73
  - SRA Code and spirit of the law *see under* SRA Code and guidance
  - third-party rights of
    - action 268–73
  - withdrawing legal advice
    - privilege 263–8
- Australia, in 35
- concept of 4–5
- difficulty of holding lawyers to
  - account for 180–1, 205–6, 271–2
- lawful means conspiracy 207–8
- unlawful means conspiracy 205–6
- whether legitimate 6, 63–5, 66, 68–9, 78, 80–1
- Daly, M. C. 161
- Davies, P. L. 16–17
- Deakin, S. 14–15, 16
- deceit *see under* economic torts
- deontology *see under* extraterritorial regulation of the corporate lawyer
- Department of Justice (US) 243–4
- derivative claims 126–9
  - role of lawyer in *see under* intra-corporate litigation and the role of lawyers
- Dezelay, Y. 46, 280–1
- directors
  - conflicts of interest *see under* conflicts of interest
  - corporate lawyers as *see* corporate lawyer as director
  - duties 118, 162, 168–9, 184, 240, 290–1
    - liability and legal advice 165–6
    - non-executive directors 163–5
    - shareholder primacy, and 15
  - dishonest assistance of breach of
    - fiduciary duty 193–6, 253–4
  - DTI/public investigations 2–4, 231
  - duties *see* obligations of lawyers to clients and resulting liabilities
  - core duties in SRA Code 258–9
  - directors *see under* directors
  - duty of care in tort *see under* third parties’ causes of action
- economic torts 196, 201–9
  - deceit 196, 201–2
  - inducing breach of contract 196, 206, 208–9
    - directive advice and persuasion 208–9
  - joint tortfeasance 196, 202–3, 206
  - lawful means conspiracy 207–8
  - unlawful means conspiracy 196, 203–7
    - creative compliance 205–6
    - intention 204–6
    - legal professional privilege 207
- Elliott, S. 221

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

## INDEX

341

- Enron 1, 2, 13, 15, 20, 26, 28, 29, 36, 48, 224, 227, 291–2, 309  
 accounting practices and  
   accountants 227–8, 283  
 Examiner's criticisms 23–4  
 motivation of corporate  
   managers 192, 205  
 role of lawyers 23–4, 27, 29, 61–2,  
   63, 64, 70, 76, 83, 225, 231,  
   304  
 reputational capital, and 232–3,  
   284–5  
 entity regulation 276, 292–4  
   conflicts of interest, and *see under*  
     conflicts of interest  
   SRA Code, and *see under* SRA Code  
     and Guidance  
 ethical counselling *see under*  
   counsellors, lawyers as  
 ethical training by lawyers 46–7  
 Europe and European Union (EU) 243  
   CCBE Code 43–4  
   independence of lawyers 19, 38–40,  
     41, 44–5  
   in-house lawyers 38–41  
 European Home Stores Plc 224  
 extraterritorial regulation of corporate  
   lawyers 20–1, 38–45  
   cross-border provision of services  
     and double deontology 20–1,  
     41–5  
   CCBE Code 43–4  
   SRA Code, and 42–4, 45  
 Europe and the in-house  
   lawyer 38–41  
   corporate governance role 40–1  
   legal professional privilege 38–41  
   status of in-house lawyers 38–9  
 Farepak Food and Gifts Ltd. 224  
 Federation of the Law Societies of  
   Canada 145  
 fiduciary duty *see* obligations of  
   lawyers to clients and resulting  
   liabilities  
 fiduciary relationship surviving the  
   end of the retainer 143–6,  
   157  
 financial crisis 15, 217, 224–5, 300  
   causes 165, 225, 226, 248, 262, 309  
   impact on large corporate firms 8,  
     61  
   lawyers involvement in 4–5, 63, 231,  
     262  
 financial markets, safeguarding 70–1,  
   72  
 Financial Services Authority (FSA)  
   (UK) 4, 180, 230, 250, 306  
   failure to identify risks 301, 309  
   legislative controls on lawyers 209,  
     210–11  
   restitution orders 210  
   Principles for Business 259  
   sponsors, and 210  
 Finn, P. 107  
 Flenley, W. 185  
 Flood, J. 42, 45  
 Francis, A. 53  
 fraud, addressing 249–58  
   strengthening the gatekeeper role of  
     in-house lawyers 256–8  
   strengthening the gatekeeper role of  
     lawyers: up-the-line  
     reporting 249–56  
   to whom should lawyers  
     report 252–3  
   to whom should the obligation  
     apply 255  
   triggering the obligation 253–5  
   withdrawal 255–6  
 Freshfield Bruckhaus Derringer 9–10,  
   51, 109–10  
 Garth, B. 280–1  
 gatekeepers 76–8, 80–1, 179–80,  
   268–9, 271, 274  
   ABS, and 300  
   disclosure counsel and  
     certification 246–8  
   costs 247–8  
   failures 224, 225, 227  
   gatekeepers other than  
     lawyers 230–2, 247–8  
   in-house lawyers, as 179–80, 233–4,  
     248  
   strengthening role 256–8

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

342

## INDEX

- gatekeepers (*cont.*)
  - present system of corporate governance, and 223–4, 227, 231
  - regulation of corporate lawyers, and *see under* regulation of the corporate lawyer
  - structural constraints and information deficit 234–5
  - theory of gatekeeping 232–3
- general meetings, reporting misconduct to 118–22
- Global Crossing 28
- Greenbury Report 1
- Griffiths-Baker, J. E. 53
- Hamdani, A. 272, 273
- Hampel Report 1
- Hannigan, B. 130
- Higgs Report 1, 163–5
- Hollander, C. 101, 102–3, 104, 147–9, 187–8
- Holmes, Oliver Wendell 299
- House of Fraser Inquiry 3
- Hughes, A. 14–15, 16
- human capital 286
- human rights 238–9, 264–5, 268
- Hunt, Lord 276–7, 295–7, 303
- identifying the corporate
  - client 82–123, 305–6
  - client in groups 82–3, 93–6
    - special-purpose vehicles 94–6
  - dispersed share-ownership companies 108–22
    - agents acting without authority 112–15
    - agents possessing authority but acting in breach of duty to company 117–18
    - effect of director's assertions of client's approval 115–17
    - identifying the client 109–11
    - lawyers' response to misconduct:
      - client for up-the-line reporting 118–22
      - s. 40 Companies Act 2006 and apparent authority 111–15
    - failure to identify client 2, 5
    - multiple representation *see acting for more than one corporate constituent*
    - owner-managed companies 82, 88–93
      - majority shareholders and *alter ego* companies 89–92
      - minority shareholders 92–3
    - start-ups 88–9
    - retainers *see* retainers
  - independence of lawyers
    - ABS, and 300
    - impairment of 2–3, 44
    - in-house lawyers 11, 19, 38–41, 54–6, 233–4, 248
    - lawyers as directors 164–5
      - loss of professional independence 170–3
    - market pressures, effect of 49–50
    - meaning and concept
      - Europe/EU 19, 40, 44–5
      - UK/US 19, 40–1, 44–5, 56–7, 59, 60–1
    - public image 298
    - SRA Code, and 40–1
    - subordinate status of employed lawyers 52–3
    - whistle-blowing obligations 246
  - Independent Insurance Plc 224
  - inducing breach of contract *see under* economic torts
  - information
    - closing the information and accountability gap 283–4
    - confidential *see* confidentiality
    - joint representation and information barriers 106–7
    - privileged information, disclosure of 121, 189–90
    - structural constraints and information deficit 234–5, 248
    - withholding from clients 121
  - informed consent *see under* conflicts of interest
  - in-house lawyers 7, 10–11

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

## INDEX

343

- barristers 11
- CCBE Code, and 44
- cognitive bias 237–8
- see also* cognitive bias
- conflicts of interest *see under*
  - conflicts of interest
- counsellors, as 75, 80–1, 184, 274
- extraterritorial regulation,
  - and 38–41
- gatekeepers, as *see under* gatekeepers
- growth of 160
- independence *see under*
  - independence of lawyers
- intra-corporate litigation 134
- lawyers as directors 166, 167, 170, 177–8
- see also* corporate lawyer as director
- market pressure, and 50–1
- obligation to advise 184, 186
- public service dimension to
  - role 54–6
- reporting misconduct 119, 217, 233–4
  - whistle-blowing 179–80
  - withdrawing 256
- reputational capital 233–4
- reputational intermediaries, as 179, 233–4
- SRA Code, and *see under* SRA Code and Guidance
- status 38–9
- structural constraints and
  - information deficit 234–5, 248
- see also under* Canada; United States (US)
- innovation and ABS 291–2
- insurance 161–3, 254, 269, 285
- Integrated Legal Holdings 278
- international perspective 19–47, 303–5
  - Australia 30–5
  - Canada 35–8
- extraterritorial regulation *see*
  - extraterritorial regulation of corporate lawyers
- global role of UK (and US)
  - corporate lawyers 19–21, 45–7, 246, 262–3, 304–5
- United States 21–30
- ABA Model Rules *see under*
  - American Bar Association (ABA)
- legal profession and corporate scandals 21–6
- legal profession under
  - scrutiny 26–8
- Sarbanes-Oxley Act 2002 29–30
- intra-corporate litigation and the role of lawyers 124–57, 305–6
- corporate governance function of
  - unfair prejudice remedy and derivative claim 126–9
- lawyers representing the
  - majority 134–41
  - company as a past client 137–40
  - interests of company or minority shareholders, and 134–7
  - minority shareholder as past client 140
  - minority shareholder never a client 140–1
  - present clients and conflicts of interest 135–7
- owner-managed companies 10, 17
  - role of the lawyer in unfair prejudice litigation in 129–49
- shareholder litigation 124–5
- problems and possible
  - solutions 141–9
- fiduciary relationship surviving
  - the end of the retainer 143–6, 157
- supervisory jurisdiction of the courts 146–9
- role of the lawyer in the derivative claim 149–56
- representing the alleged wrongdoers 155–6
- representing the company
  - 150–4
- representing the company and alleged wrongdoers 154–5
- role of the lawyer in unfair prejudice litigation in owner-managed companies 129–49
- interests of the company and
  - s. 994 litigation 129–33



Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

344

## INDEX

- intra-corporate litigation (*cont.*)
  - problems and possible solutions 141–9
  - representing the company 133–4
  - representing the majority 134–41
- James Hardie Industries Ltd 34–5, 212, 304
- Johnson, C. 247
- joint tortfeasance *see under* economic torts
- Kaye, Scholer, Fierman, Hays & Handler 23
- Kershaw, D. 227–8
- Kim, S. M. 177, 256–7
- Koniak, S. P. 241–2, 254
- Kraakman, R. H. 232–3, 268–70
- Kraft takeover of Cadbury 283
- Kutak Commission 28
- La Porta, R. 126
- Laby, A. B. 246–7
- Langevoort, D. C. 6
- Law Society 42, 48, 53, 71, 186–7, 218, 264, 276–7
- Law Society of Upper Canada 249–50, 252, 253–4, 255
- lawful means conspiracy *see under* economic torts
- Leech, T. 185
- legal profession
  - reform, and *see* reform of the legal profession and role of corporate lawyers
  - regulation *see* regulation of the corporate lawyer; regulation of the legal profession
  - see also* barristers; solicitors
- legal professional privilege 31–3
  - ABS, and 279–80, 300–1
  - absolute nature of 215, 264–5
  - human rights, and 268
  - client, belonging to 214
  - confidentiality, and *see under* confidentiality
  - disclosure by clients
  - encouraging 239–40
  - disclosure of privileged information 189–90
  - ethical counselling 184
  - European competition proceedings 145
  - human rights, and 238–9, 264–5, 268
  - importance 58–9
  - in-house lawyers 38–41, 173
  - justification for 238–40
  - lawyers as directors 173–6
  - risk of loss, and 159
  - legal advice privilege 307
  - meaning and scope of 109–10, 173–6
  - withdrawing 263–8
  - litigation privilege, meaning of 173
  - MDPs, and 279–80
  - noisy withdrawal undermining 238
  - reform, and 238–44
  - shielding interactions between lawyers and clients 2, 59, 64
  - unlawful means conspiracy 207
  - waiver or loss 215, 216, 240–1
  - whether redundant because of corporate regulatory framework 240
  - whistle-blowing, and 239, 241–4
- Legal Services Board 6–7, 276
- duties on firms 290
- heads of legal practices 282–3
- principles- and outcome-based regulation 276–7, 294–6
- no restrictions on non-lawyers owning law firms 282–3
- risk-based regulation 296–7
- Lehman Brothers 1
- liabilities
  - obligations, and *see* obligations of lawyers to clients and resulting liabilities
  - lawyers as directors 161–3
- Lincoln Savings and Loan 23
- Linklaters 1, 9–10
- litigation privilege *see under* legal professional privilege
- Lomnicka, E. 211

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

## INDEX

345

- London Stock Exchange 12, 230  
 Luban, D. 73–4
- McBarnet, D. 4–5, 262  
 ‘Magic Circle’ law firms 9–10  
 managerial misfeasance and the role of lawyers 6, 69  
 ABA Model Rules of Professional Conduct, and 28–9  
 conflict of interest, and *see under* conflicts of interest  
 lawyers’ response to misconduct  
 obligation to report up the line 118–22, 186–90  
 obligation to withhold assistance 190–3  
 SEC standards *see under* Securities and Exchange Commission (SEC)(US)
- Means, G. 13  
 MG Rover Report 4  
 Milbury Inquiry 2  
 minority shareholders 16–17, 90, 92–3  
 intra-corporate litigation 125  
 allegations of corporate misconduct by the majority 136  
 lawyers representing the majority, and 134–7  
 minority shareholder as past client 140  
 minority shareholder never a client 140–1  
 oppression and unfair treatment 126  
 present clients and conflicts of interest 135–7  
 problems and possible solutions 141–9  
 s. 994 litigation 129–33  
 limited retainers, and 105  
 money laundering 84, 180, 253–4, 306  
 compliance programmes developed by firms 293  
 EU money-laundering rules 243  
 monitoring obligations 210, 232  
 reporting obligations 61, 69–70, 79, 218, 219–20, 232, 233
- cognitive bias, and 237  
 competitive costs of 246  
 conflicts of interest 244–5  
 objections to 243, 300  
 multi-disciplinary partnerships (MDPs) 7, 276  
*see also* alternative business structures (ABS)
- Neilsen, L. B. 54  
 Nelson, R. L. 54  
 neutrality, principle of 62, 65–70, 74  
 New Zealand 146  
 Nicholson, D. 67, 72, 76  
 noisy withdrawal *see under* Securities and Exchange Commission (SEC)(US)  
 non-accountability *see* neutrality, principle of  
 non-executive directors 163–5  
 Norton Group Inquiry 2–3
- obligations of lawyers to clients and resulting liabilities 181–96, 290–1  
 courts reluctant to find lawyers breaching duty to clients 273, 306–7  
 dishonest assistance of breach of fiduciary duty 193–6  
 economic torts *see* economic torts  
 nature of fiduciary duties 181  
 obligation of confidentiality 214, 216  
 obligation to advise 182–6  
 in-house lawyers 184, 186  
 retainers 182–4  
 obligation to report up the line 118–22, 186–90  
 privileged information 189–90  
 retainers 187  
 obligation to withhold assistance 190–3  
 conflicts of interest and fiduciary duty of loyalty 190  
 double employment, rule against 191–2

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

346

INDEX

- obligations of lawyers to clients (*cont.*)
  - good faith, duty of 192–3
  - intention 192
- Odby, A. 69–70, 219
- Osiel, M. 58–9
- O’Sullivan, J. 204, 206, 209
- outcomes- and principles-based
  - regulation 276–7, 294–6
- outside ownership *see* alternative business structures (ABS)
- owner-managed companies *see under* corporate client, nature of
  
- Painter, Professor Richard 26
- Parker, C. 292–3, 298
- Paterson, A. 59–60
- Payne, J. 117
- Pepper, S. 69
- Powell, J. 220
- practising to share price 284–6, 287
- Prentice, D. 117
- pro bono work 80
- professional values 280–3
- public-service and professional
  - role 44–5, 48–9, 56–70
- public-service role 56–62
  - privileges of profession 56–60
  - professional bodies’ approach 57
  - social role obligations 60–2
  - traditional concept of professional role 56–7
- standard conception of lawyer’s
  - role 62–70
  - neutrality, principle of 62, 65–70, 74
  - zealous advocacy, doctrine of 62–5
- publicly traded companies *see under* corporate client, nature of
  
- reform of the legal profession and role of corporate lawyers 276–302, 308–10
  - alternative business structures *see* alternative business structures (ABS)
  - entity regulation *see* entity regulation
  - outcomes- and principles-based regulation 276–7, 294–6
  - risk-based regulation 296–300
  - risk and compliance management 299–300
  - types of risk 297–9
  - reforming the role of the corporate lawyers 249–75, 307–8
    - addressing creative compliance *see under* creative compliance
    - addressing fraud *see* fraud, addressing
    - case against *see* case against reform legal profession, and *see* reform of the legal profession and role of corporate lawyers
    - strengthening the counselling role *see under* counsellors, lawyers as
  - regulation of the corporate lawyer 179–222, 306–7
  - civil liability controls and lawyers as reputational intermediaries/ gatekeepers 181
    - obligations *see* obligations to the client and resulting liabilities 181–96
    - third parties’ causes of action *see* third parties’ causes of action
  - disciplinary controls: SRA Code *see* SRA Code and Guidance
  - entity regulation *see* entity regulation
  - lawyers’ performance of corporate governance role, problems with 180–1
  - legislative controls 209–11
    - lawyers as authorised persons 210
    - lawyers as reputational intermediaries or gatekeepers 210
  - whistle-blowing *see* whistle-blowing
- regulation of the legal profession
  - barristers *see under* barristers
  - codes of conduct *see under* barristers; *see* SRA Code and Guidance
  - entity regulation *see* entity regulation

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

## INDEX

347

- extraterritorial *see* extraterritorial regulation of corporate lawyers
- failure of regulators to take action against corporate lawyers 2
- global law firms 46, 47, 262–3, 304–5
- outcomes- and
  - principles-based 276–7, 294–6
- reform, and *see* reform of the legal profession and role of corporate lawyers
- reputation of firms, and 68
- review of 6–7
- risk-based *see under* reform of the legal profession and role of corporate lawyers
- self-regulation 56–7, 58, 59
- solicitors regulatory body *see* Solicitors Regulatory Body (SRA)
- see also* regulation of the corporate lawyer
- regulatory bargain theory of professionalism 59–60
- remuneration and fees 25, 51, 68–9
- renegotiating the professional role 70–80
  - counsellor *see* counsellors, lawyers as
  - gatekeepers 76–8, 80–1
  - social functions of corporate lawyers 70–2
  - whistle-blowers 78–81
  - see also* whistle-blowing
- reporting *see up-the-line* reporting;
  - Canada; in-house lawyers;
  - money laundering; retainers;
  - SRA Code and Guidance;
  - United States (US);
  - whistle-blowing
- reputational capital 232–4, 284–5
- reputational intermediaries 76–8, 80–1, 179, 263, 284–5
  - regulation of corporate lawyers, and *see under* regulation of the corporate lawyer
  - reputational capital, and 233–4
- retainers 83–8
  - express and implied retainers 83–6, 89–92
    - implying a retainer: relevant facts 86–8
  - fiduciary relationship surviving the end of the retainer 143–6, 157
  - limited 105–6
  - obligation to advise, and 182–6
  - obligation to report, and 187, 250, 251
  - owner-managed companies 84, 85, 89–92
  - privilege and joint retainers 139, 140
  - SRA Code and disclosure 213
- risk-based regulation *see under* reform of the legal profession and role of corporate lawyers
- roles of corporate lawyers 48–81, 305
  - counselling clients to behave ethically *see* ethical counselling by lawyers
  - directors, as *see* corporate lawyer as director
  - global role of UK (and US) corporate lawyers 19–21, 45–7, 246, 262–3, 301
  - intra-corporate litigation *see* intra-corporate litigation and the role of lawyers
  - issues relating to 1–7, 303
  - legal services business 49–56
    - client needs and norms, influence of 51–2
  - in-house lawyers, independence and role of 54–6
  - market pressures on large firms 49–53
  - market pressures on smaller firms 53–4
  - pressures on individual lawyers 52–3
- managerial misfeasance *see* managerial misfeasance and the role of lawyers
- public service, and *see* public service and professional role

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

348

## INDEX

- roles of corporate lawyers (*cont.*)
  - reform, and *see* reform of the legal profession and role of corporate lawyers
  - renegotiating *see* renegotiating the professional role
  - reporting obligations *see* reporting
- Roosevelt, Theodore, US president 26
- Salzedo, S. 101, 102–3, 104, 147–9, 187–8
- Sargent, M. 2
- Schwarcz, S. L. 27, 64
- Securities and Exchange Commission 247
  - investigations 4, 23, 24
  - professional conduct standards/ reporting 26–7, 29–30, 186
  - noisy withdrawal 29–30, 48, 238, 239–40, 241
  - ‘voluntary’ waiver 243–4
- Serious Organised Crime Agency 218
- shareholders
  - conflicts of interest *see under* conflicts of interest
  - dual representation of majority and the company 134–7
  - litigation, and *see under* intra-corporate litigation and the role of lawyers
  - majority ordered to sell shares to minority 132
  - minority *see* minority shareholders
  - power of 225–6
  - representing the majority 134–41
  - shareholder interests comprising company’s interests 130–2
  - shareholder-oriented approach *see under* corporate governance
- Shell Group 4, 224, 227, 234–5
- Simester, A. P. 208–9
- Simon, W. 130–2
- Slater and Gordon 278, 290
- Smedley Review 65, 276–7, 295–7, 298–9, 300, 303, 309
- Smith Report 1
- social functions of corporate lawyers 70–2
- solicitors *see* corporate lawyers; legal profession; Solicitors Regulatory Body (SRA)
- Solicitors Regulatory Body (SRA) 6–7
  - Code of Conduct *see* SRA Code and Guidance
  - entity regulation 276, 293
  - heads of legal practices 282–3
  - monitoring smaller firms 53
  - principles- and outcomes-based regulation 276–7, 294–6
  - risk-based regulation 296–7
- special-purpose vehicles 94–6, 225, 228
- sponsors 210, 230
- SRA Code and Guidance 1–2, 18, 180, 211–13, 276, 306
  - confidentiality 216–17
  - conflicts of interest 97, 211–12, 306
  - double deontology, and 42, 44
  - lawyers as directors 166–9
  - past clients, and 137–8
- core duties 258–9
- creative compliance and new
  - principle of respect for spirit of the law 258–63, 308
- detering legitimate innovation and creating competitive disadvantage 262–3
- lawyers will ignore it 263
- principle is too uncertain 258–60
- proposal offenses against the rule of law 260
- proposal requires lawyers to impose moral views on client 261–2
- double deontology, and 42–4, 45
- duty to disclose and up-the-line reporting 213, 250
- entity representation 211–12
  - amending 275
- firms’ response to 10, 46
- gatekeeping 212–13
- identifying the client 123
- independence of lawyers *see under* independence of lawyers

Cambridge University Press

978-0-521-76255-7 - Corporate Lawyers and Corporate Governance

Joan Loughrey

Index

[More information](#)

## INDEX

349

- in-house lawyers 211–12, 213, 257
- lawyers as directors 159, 166–9
- joint representation 100–1, 105
- principles- and outcomes-based regulation 276–7
- public-interest role of lawyers 57
- refusing assistance 212–13
- whistle-blowing 216–17
- withholding information from clients 121
- SSL International Plc 224
- stakeholder theory 14–15
- supervisory jurisdiction of the courts 146–9
- Takeover Panel and Code 259
- third parties' causes of action 196
  - creative compliance, addressing 268–73
  - duty of care in tort 198–201
    - indeterminate liability, risk of 200
  - owner-managed companies 200–1
  - tests for 198–9
- economic torts *see* economic torts
- misstatements in corporate disclosures, actions for 196–8
- Torys LLP 37
- Transtec Plc 224
- Turnbull Guidance on Internal Control 1
- Turner, Lord 226
- Tyco 28
- unfair prejudice remedy 126–9
- United States (US)
  - conduct codes *see* American Bar Association; Securities and Exchange Commission
  - conflicts of interest 88–9
  - corporate governance compared with UK 223–9
  - corporate lawyers 21–2, 71, 75
    - commercialism, public anxiety about 26
    - corporate scandals, and 1, 22–6, 61–2, 64, 224, 304
    - debate on role 1, 19–20, 26, 29–30
    - ethics as compulsory subject 26–7
    - global role 45–7
    - identifying the client and multiple representation 122
    - in-house lawyers 11, 22
    - lawyers as directors 177
    - legislative controls on 209–10
    - litigation against 26, 27–8, 226
    - reporting obligations 1, 20, 24, 246–7, 306
    - addressing fraud 249–51, 252–4
    - see also* American Bar Association; Securities and Exchange Commission
    - scrutiny of profession 26–8
    - types of lawyer failure 2
    - UK lawyers compared with 24–5
  - legal professional privilege and 'voluntary' waiver 243–4
  - publicly owned firms, possibility of 278
  - regulatory authorities 1, 22, 23, 26, 27
  - retainers 86
- unlawful means conspiracy *see under* economic torts
- up-the-line reporting 118–22, 186–90, 213, 249–56
- Vinson & Elkins 24, 61–2, 233
- Wald, E. 29
- Walker Review 1, 14
- Watergate 20, 22–3, 26, 28
- Webb, J. 67, 72, 76
- Wendel, W. B. 69
- Whelan, C. 4–5, 25, 60–1
- whistle-blowing 62, 78–81, 179–80, 214–20
  - Australia 33, 121
  - common law 214–16, 250, 251
  - confidentiality, and *see under* confidentiality
  - conflicts of interest 244–5
  - costs of 244–6

whistle-blowing ( <i>cont.</i> )	legislative controls 217–20
disciplinary controls: SRA	money laundering reporting
Code 216–17	obligations <i>see under</i> money
disclosure of privileged	laundering
information 121	US <i>see</i> reporting under United States
independence of UK lawyers,	(US)
and 246	Wilkins, D. 270
lawyers as sponsors under UK	WorldCom 28
Listings Rules 210	
legal advice privilege, and <i>see under</i>	zealous advocacy, doctrine of
legal professional privilege	62–5