NON-BINDING ETHICS RULING (2018) 3

NON-BINDING ETHICS RULING OF:	Ethics Committee, Queensland Law Society
PUBLISHED ON:	**10 July 2018**
CATCHWORDS:	NON-BINDING ETHICS RULING – QUEENSLAND LAW SOCIETY – ETHICS COMMITTEE – CONFLICT – CONFIDENTIAL INFORMATION – LAWYERS – INFORMATION BARRIERS – whether Firm B should withdraw from acting for Client B and/or Client D because Solicitor A, who will begin employment with Firm B, was formerly employed by Firm A while Firm A was representing Client A and Client C, the respective opposing parties of Client B and Client D.
LEGAL RESOURCES:	*Rule 10* of the *Australian Solicitors Conduct Rules 2012* *Information Barrier Guidelines* prepared by the Law Society of New South Wales in consultation with the Law Institute of Victoria, and adopted by the Council of the Queensland Law Society *In Re A Firm of Solicitors* [1997] Ch 1 *Kallinicos v Hunt* (2005) 64 NSWLR 561 *Prince Jefri Bolkiah v KPMG (a firm)* [1999] 2 AC 222 *Village Roadshow Ltd v Blake Dawson Waldron* [2003] VSC 505 *Spincode Pty Ltd v Look Software Pty Ltd* (2001) 4 VR 501 *D & J Constructions Pty Ltd v Head* (1987) 9 NSWLR 118

INTRODUCTION

1. This is a non-binding ethics ruling by the Ethics Committee of the Queensland Law Society.

2. The ruling relates to a dispute between Firm A and Firm B as to whether the latter should withdraw from acting in two litigation matters consequent upon the resignation and imminent departure of a solicitor employed by Firm A, and her subsequent joining Firm B. In particular, the issues are whether Firm B is conflicted from continuing to act in the two matters, and whether the information barrier it proposes to implement prior to the solicitor's commencement of employment with it, is effective.
3. The Committee was asked to consider the matter urgently.

FACTS

4. Solicitor A is a solicitor currently employed by Firm A. On 1 June 2018, she gave notice of her intended resignation from that firm on 29 June.
5. Solicitor A is due to commence her employment with Firm B from 2 July 2018.
6. While employed by Firm A, Solicitor A had the primary conduct of a matter in the Supreme Court of Queensland on behalf of Client A against Client B. Firm B acts for Client B in that matter. According to Firm A, an Intervention Notice was recently issued by the court in respect of those proceedings and Solicitor A dealt with Firm B regarding that notice and the future conduct of the litigation. She had also corresponded with Firm B about the matter, engaged in settlement negotiations with Firm B, and provided advice to Client A.
7. The other contentious proceeding is that brought in the Federal Court of Australia by Client C against Client D. Firm A acts for Client C, while Firm B acts for Client D. According to Firm A, Solicitor A would have become privy to confidential information about that matter by reason of her participating in ordinary staff meetings, both weekly Monday morning meetings and the firm's fortnightly professional staff meetings. In particular, it is said that on a number of occasions over the past several months (including the lead ups to directions hearings on 17 April 2018 and 1 May 2018), the conduct of the proceedings and the strategy to be, and being, adopted on Client C's behalf, was discussed openly amongst the firm's professional staff. As a consequence, Firm A says that while Solicitor A may not have conduct of the matter, she is now privy to the strategy that Firm A has adopted in advancing the matter towards a conclusion.

THE PARTIES' POSITIONS

Firm A's demand

8. Firm A contends that once Solicitor A joins Firm B, there will exist the possibility that the information she obtained about the two matters will be used to its clients' detriment (even unintentionally). That, it says, creates a conflict that requires Firm B to withdraw from the proceedings.

Firm B's response

9. Firm B does not believe there is any information, confidential or otherwise, that Solicitor A would possess that could give rise to a conflict in the Client A/Client B matter. That matter relates to a notice of charge issued by Client A against Firm B's client pursuant to the *Subcontractors'*

Charges Act 1974 (Qld). To date, Firm B's client has not filed a defence on the basis that it has sought to minimise ongoing losses to subcontractors because there are no funds available to which any subcontractors' notice of claim can attach. Firm B considers it is unlikely that any of the court proceedings will proceed.

10. With respect to the Client C/Client D matter, Firm B notes that it is being handled by a partner in Firm A's Brisbane office, where Solicitor A does not work. Nor has Solicitor A in any way been responsible for the day to day conduct of the matter. Noting that Firm A says that Solicitor A has been privy to discussions concerning the matter at general staff meetings, Firm B concedes that there is potential (albeit limited) for conflict if the content of those discussions were shared with relevant producers at Firm B.
11. Firm B proposes that the provision of undertakings, together with its internal ability to create a digital information barrier, should be sufficient to satisfy Firm A's two relevant clients that no confidential information relating to either of the matters will come to the knowledge of Firm B staff working on them.
12. The terms of two undertakings proposed to be given in the Client C/Client D matter were submitted to Firm A. One was to be given by Solicitor A, and the other, by Solicitor B (the Firm B Senior Associate with the conduct of the Client D matter).
13. In summary, Solicitor A's proposed undertaking is that she will:
    (a) not communicate with Client D or any of his agents, employees or representatives;
    (b) not disclose any confidential information to any Firm B employee, Client D or any person engaged by him or Firm B to provide services in respect of the proceedings;
    (c) not engage with, communicate with, or otherwise deal with, any member of Firm B with respect to the proceedings;
    (d) not engage with, communicate with, or otherwise deal with, any person engaged by Client D or Firm B to provide services in connection with the proceedings; and
    (e) report any breach by her of the undertakings, whether intentional or otherwise, to the Firm B's Compliance Officer immediately upon becoming aware of such breach.
14. Solicitor B's proposed undertaking provides that:
    (a) she will not engage with, communicate with, or otherwise deal with, the "Screened Person" (Solicitor A) with respect to the proceedings;
    (b) she will not seek, or deliberately receive, any confidential information from Solicitor A;
    (c) she will report to the Firm B Compliance Officer if she becomes aware that she has breached either or both of the above undertakings or in any other way received confidential information from Solicitor A; and
    (d) should she receive confidential information from Solicitor A, whether intentionally or not, she will not act further in the proceedings and will give undertakings to the court in the same form as those given by Solicitor A.

Firm A's contentions

15. Firm A does not accept that the proposal put forward by Firm B addresses, adequately or at all, the conflict it faces.

16. It contends that precluding Solicitor A from the Firm B document management system does not cure or address the conflict, in that Solicitor B will possess the confidential information upon her commencement with Firm B and will bring that knowledge to Firm B.
17. While Solicitor A acknowledges that information barriers can be established and maintained in a large practice, it says that such systems cannot operate within the confines of a small regional office of a larger firm (such as the Gold Coast office of Firm B):

    The fact of the matter is that Solicitor A will be working within the confines of a small litigation department within a regional office of your firm. Solicitor A will be but one of seven members of the professional team within that department. Two of the other members of that 7-person team, who are more senior than Solicitor A, have carriage of the matters that we say give rise to the conflicts.[1]

18. Firm A says that the giving of undertakings by Solicitor A and Solicitor B does not cure the identified conflicts; indeed, the offering of the undertakings highlights the extent of the conflict. The compromising of its client's confidential documents will not be able to be undone.
19. It is contended by Firm A that Solicitor B's proposed undertaking to withdraw as solicitor in the proceedings in the event of a breach is unsatisfactory, since it suggests that Firm B would continue to act, notwithstanding the knowledge imputed to it. Even if Firm B were to withdraw in such circumstances, that would delay the proceedings and result in the unnecessary duplication of costs. The costs of replacing lawyers at some future point will be far greater than if Firm B were to cease acting now.

THE *AUSTRALIAN SOLICITORS CONDUCT RULES 2012* AND THE LEGAL PRINCIPLES

20. The starting point for a consideration of the present issues is rule 10 of the *Australian Solicitors Conduct Rules 2012* ('ASCR'), which provides:

    10. Conflicts concerning former clients

    *10.1 A solicitor and law practice must avoid conflicts between the duties owed to current and former clients, except as permitted by **Rule 10.2**.*

    10.2 A solicitor or law practice who or which is in possession of confidential information of a former client where that information might reasonably be concluded to be material to the matter of another client and detrimental to the interests of the former client if disclosed, must not act for the current client in that matter UNLESS:

    10.2.1 the former client has given informed written consent to the solicitor or law practice so acting; or

    10.2.2 an effective information barrier has been established.

21. Confidential information is information *"which a) was originally communicated in confidence b) at the date of the later proposed retainer is still confidential and may reasonably be considered*

[1] Brief of material, page 24 (letter, Firm A to Firm B dated 13 June 2018).

remembered or capable, on memory being triggered, of being recalled and c) relevant to the subject matter of the subsequent proposed retainer".[2]

22. The term "former client" is broadly defined in the ASCR to include, among others, a person that has previously instructed the solicitor or the solicitor's former law practice while the solicitor was at that former practice. It also includes a person who has provided confidential information to a solicitor, notwithstanding that the solicitor was not formally retained and did not render an account.[3]
23. There being no suggestion that neither Client A nor Client C has provided their informed written consent to Solicitor A and Firm B acting on the opposing side in their respective proceedings, the question arises as to whether the proposed information barrier is considered to be effective for the purposes of rule 10.2.2 of the ASCR.
24. The leading reference point for such questions is the *Information Barrier Guidelines* ("IBG") prepared by the Law Society of New South Wales in consultation with the Law Institute of Victoria, and adopted by the Council of the Queensland Law Society. It is instructive to highlight a number of the relevant provisions of the IBG.
25. Underlying the IBG is the fundamental principle that the court has an inherent jurisdiction to supervise the conduct of solicitors, as officers of the court, and may, in the interests of justice, restrain a solicitor from acting for a particular client. The relevant test is whether a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires that a solicitor should be prevented from acting, in the interests of the protection of the integrity of the judicial process and the due administration of justice. That jurisdiction is to be regarded as exceptional and to be exercised with caution, with weight given to the public interest in a litigant not being deprived of the solicitor of choice without due cause.[4]
26. In considering whether an information barrier is effective, the Australian courts in commercial cases adopt the "reasonable and sensible possibility" test: the "tainted" individual must be *effectively* screened from the new matter so that there is *no real and sensible possibility* of misuse of the confidential information.[5] Any risk warranting the intervention of the courts "must be a real one, and not merely fanciful or theoretical. But it need not be substantial".[6]
27. The burden of establishing that there is no unacceptable risk is upon the law practice:

    > *Once it appears that a solicitor is in receipt of information imparted in confidence, the burden shifts to the solicitor to satisfy the Court on the basis of clear and convincing evidence that all effective measures have been taken to ensure that no disclosures will occur…*[7]

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[2] *In Re A Firm of Solicitors* [1997] Ch 1, 9-10.
[3] ASCR Glossary of Terms (Definition of 'former client').
[4] *Kallinicos v Hunt* (2005) 64 NSWLR 561 (Brereton J).
[5] IBG, Common Questions, 2.5.
[6] *Prince Jefri Bolkiah v KPMG (a firm)* [1999] 2 AC 222, 237 (Lord Millett).
[7] *Village Roadshow Ltd v Blake Dawson Waldron* [2003] VSC 505, [34] (Byrne J), quoting *Spincode Pty Ltd v Look Software Pty Ltd* (2001) 4 VR 501, 508 [24] (Brooking JA); see *Prince Jefri Bolkiah v KPMG (a firm)* [1999] 2 AC 222 (Lord Millett).

28. While the courts may take into account commercial factors such as the inconvenience to a client who is forced to change solicitors mid-case, the ability to instruct a solicitor of choice, and the need for mobility of lawyers, those factors cannot alter the fact that a proposed information barrier is found otherwise to be ineffective.[8]
29. It is also clear from the IBG that the guidelines are intended to apply to all law practices. That said, it is acknowledged that it may be extremely difficult for a small firm to demonstrate compliance with the IBG as a question of fact, particularly the requirement to keep staff and files physically separate. Any resulting hardship is but one factor, but does not outweigh the importance of confidentiality.[9]
30. Guideline 1 provides that the law practice should have established, documented protocols for setting up and maintaining information barriers. Such protocols, which incorporate the IBG, should be part of the practice's ongoing risk management and complaint prevention process.
31. The law practice should nominate an experienced practitioner with appropriate knowledge of the rules relating to conflicts as its compliance officer. He or she is to oversee each information barrier, monitor compliance and deal with any possible breach of an information barrier.[10]
32. Guideline 3 provides that the law practice should ensure that the client in the current matter acknowledges in writing that the law practice's duty of disclosure to the client does not extend to any confidential information which may be held within the practice as a result of the earlier matter, and consents to the law practice acting on that basis. In other words, the new client would have to join in such an arrangement and give up his or her right to the information.[11]
33. The screened person should be clearly identified, with the compliance officer keeping a record of all screened persons.[12] Guideline 5 sets out the matters which the screened person's undertaking should address:
    (a) that they will not have, during the existence of the current matter, any involvement with the client or personnel involved with the current matter for the purposes of that current matter;
    (b) that they have not disclosed, and will not disclose, any confidential information about the earlier matter to any person other than to a person in accordance with the instructions or consent of the client in the earlier matter, a screened person, or the compliance officer; and
    (c) that they will, immediately upon becoming aware of any breach, or possible breach, of the undertaking, report it to the compliance officer, who will take appropriate action.
34. Personnel involved with the current matter should not discuss the earlier matter with, or seek any relevant confidential information about the matter from, any screened person. Such personnel should provide undertakings confirming that:

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[8] IBG, Common Questions, 2.8.
[9] Ibid 2.10.
[10] Ibid Information Barrier Guidelines, Guideline 2.
[11] Ibid Guideline 3; see *D & J Constructions Pty Ltd v Head* (1987) 9 NSWLR 118, 122 (Bryson J).
[12] IBG, Information Barrier Guidelines, Guideline 4.

(a) no confidential information about the earlier matter has been disclosed to them;
(b) they will not have, during the existence of the current matter, any involvement with a screened person for the purposes of the current matter;
(c) they will not seek or receive any confidential information about the earlier matter from a screened person or in any other way; and
(d) they will, immediately upon becoming aware of any breach, or possible breach, of the undertaking, report it to the compliance officer who will take appropriate action.[13]

35. Guideline 7 provides that contact between personnel involved in the current matter and screened persons should be appropriately limited to ensure that the passage of information or documents between those involved in the current matter and screened persons does not take place. The commentary on that guideline notes:

> *The simplest way of complying with this guideline is by physical separation of offices and staff, whether on separate floors, separate buildings, or even different States. It must always be combined with appropriate separation or restriction of access to electronic information.*
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> *In D & J Constructions Pty Ltd v Head (1987) 9 NSWLR 11, Bryson J (at 123) pointed out that "wordless communication can take place inadvertently". Without enforced physical separation, staff may communicate inadvertently "by attitudes, facial expression or even by avoiding people one is accustomed to see. In MacDonald Estate, Sopinka J at 269 referred to the likelihood of inadvertent disclosure at "partners' meetings or committee meetings, at lunches or the office golf tournament, in the boardroom or the washroom"…*
>
> *Where geographic separation is not possible, offices containing relevant files should be locked and/or signs should be placed on doors limiting access. In any event, all files should be clearly labeled* (sic.) *indicating restricted access.*
>
> *The law practice should implement an appropriate system for the use of facsimile machines, photocopiers and printers. For example, the law practice may offer undertakings that separate machines will be used for the current matter; that documents relating to the current matter will not be left unattended on those machines; and that any unwanted copies of documents will be appropriately destroyed.*[14]

36. Guideline 10 requires the law practice to have an ongoing education program in place. That should involve education for all personnel about the law practice's protocol for protecting confidential information and for setting up and maintaining information barriers. Additional education should be provided for individuals involved in matters affected by an information barrier, especially as to the arrangements in place for the particular case and sanctions for non-compliance.

[13] Ibid Guideline 6.
[14] Ibid Commentary and Examples, Guideline 7.

CONSIDERATION

37. As mentioned earlier, the test applied by the Australian courts is whether the “tainted” individual (in this case, Solicitor A) is effectively screened from the new matter (that is, from the two matters in which Firm B acts) so that there is no real and sensible possibility of misuse of the confidential information. The burden of establishing that there is no unacceptable risk is on the law practice (in this case, Firm B).
38. In applying the test, one looks to the entirety of the arrangements put in place by the law practice. That includes, amongst others, the effectiveness of the separation or screening (be it physical, electronic, geographic, or a combination) from the current matter and the content and breadth of the undertakings offered.
39. Before considering the efficacy of the arrangements proposed by Firm B, it is useful to first examine the objections raised by Firm A in correspondence.

Firm A’s objections

40. First, Firm A contends that precluding Solicitor A from the Firm B document management system for the matter does not cure or address the conflict, as Solicitor A will nevertheless possess the information on her commencement with Firm B and bring it with her. While it is true that Solicitor A is already possessed of the relevant information and that precluding her from the Firm B document management system will not, of itself, cure or address the potential conflict, it is necessary to look at the totality of the arrangements proposed and not just individual aspects. Precluding Solicitor A from the document management system will simply serve to lessen the opportunity, and diminish the risk, of the matter being discussed with, or by, her (which in turn is addressed in the proposed undertakings).
41. Firm B says that information barriers are effectively the domain of larger firms and that such measures cannot operate within the confines of a smaller firm (such as Firm B’s Gold Coast office). Although it is acknowledged that smaller firms may find it more difficult to demonstrate compliance with the Guidelines, the clear intention is that the Guidelines apply to all law practices regardless of their size. It is also important to remember that Firm B is a large firm, with an office in Brisbane. It therefore has greater flexibility as to how it implements the information barrier. For example, in the interests of securing separation, it could assign Brisbane based staff to work on the matter.
42. It is said that the offering of undertakings by Solicitor A and Solicitor B does not cure the identified conflict. As mentioned earlier, the test to be applied looks to the entirety of the proposed arrangements; the relevant undertakings are but one factor to be considered.
43. Finally, Firm A says that Solicitor B’s undertaking to withdraw in the event of a breach of her undertaking is itself unsatisfactory, in that it leaves open the prospect of Firm B continuing to act through another solicitor. Solicitor B’s undertakings are personal to her. While she can speak for herself as to the consequences of a breach of her own undertakings, it is not for her to make commitments in advance on behalf of Firm B. That is a separate matter for consideration by that firm at the appropriate time. Faced with a breach of undertaking and the withdrawal of Solicitor B,

the question would inevitably re-emerge for Firm B as to the efficacy of its information barrier. It having the onus, it would be up to it to put forward a compelling explanation as to how the information barrier was breached and what steps would be taken to prevent a recurrence.

44. It follows from what has been said that the Committee is not persuaded by Firm A's objections to the information barrier arrangements proposed by Firm B. That is not to say, however, that the Committee is automatically satisfied with Firm B's current proposal. It needs to be reviewed on its own merits.

A threshold question – does Solicitor A possess confidential information?

45. Before considering the efficacy of the information barriers proposed by Firm B, it is important to address a threshold issue, namely whether Solicitor A in fact possesses confidential information in respect of each of the Client A/Client B and Client C/Client D matters, for the purposes of rule 10.2 of the ASCR.

The Client A/Client B matter

46. Solicitor A had the day to day conduct of the Client A/Client B matter and, according to Firm A, dealt with Firm B concerning the Court's intervention notice and the future conduct of the litigation. She also engaged in settlement negotiations with Firm B. Those facts do not appear to be disputed by Firm B. Rather, the focus of its response is that the matter has not advanced for some considerable time with no defence having been filed. That lack of activity is apparently deliberate due to the absence of funds available for subcontractors' claims to attach. Firm B considers that it is unlikely that any of the proceedings will proceed. It says that it does not see that there is any information, confidential or otherwise, that Solicitor A would possess that could give rise to a conflict on that matter, although no explanation is given for that statement.

47. Consistent with that approach, Firm B has not proposed the implementation of information barrier arrangements with respect to this particular matter. That is curious, given the apparent undisputed involvement of Solicitor A in the matter as outlined by Firm A and Firm B's earlier commitment to put in place information barrier arrangements in respect of other matters in which Solicitor A might have had involvement and in which both Firm A and Firm B were involved. It also appears at odds with the following statement by Firm B, which appears later in the same letter in the context of the Client C/Client D matter:

> *We would suggest that the provision of undertakings and our internal ability to create a digital Chinese Wall should satisfy your* ***clients*** *that no confidential information relating to* ***either of these matters*** *will come to the knowledge of our staff working on these* ***files.*** *It would also overcome the cost that our* ***clients*** *will be put to by having to engage new firms of solicitors to act on their behalf having regard to time and expense already incurred in respect of* ***each matter****.*[15]

48. The Committee considers that, given Firm A's description of the work undertaken by Solicitor A in this matter, it seems inconceivable that she is not in possession of confidential information.

[15] Brief of material, page 16 (letter, Firm B to Firm A dated 11 June 2018). Emphasis added.

Absent informed consent from Client A, it would appear that the implementation of an effective information barrier would be the appropriate course to adopt.

49. Firm B's approach to this aspect clearly requires clarification. However, given the urgency of the ruling, the Committee is reluctant to delay a consideration of the remainder of the issues. Hopefully, its ruling on those issues will inform Firm B's response to the Client A/Client B matter.

The Client C/Client D matter

50. It appears that Solicitor A had no direct involvement in the matter, although she was privy to discussions about it during general staff meetings. Firm B accepts, however, that there is potential for conflict if the contents of the discussions were shared with its producers. On the basis of that concession, it has proposed the implementation of an information barrier.
51. There is no suggestion that Client C has provided his informed consent to Firm B continuing to act for Client D. That then raises the question as to whether the proposed information barrier is considered effective for the purposes of rule 10.2.2 of the ASCR.

The adequacy of the proposed information barrier

52. The arrangement proposed by Firm B reflects the conventional approach to such matters, employing electronic barriers reinforced by undertakings given by those on either side of the proposed barrier.
53. From the correspondence, it appears that Firm B already has established protocols for the implementation of information barriers and that this case is not novel. One gathers that the Firm B staff are not unfamiliar with such arrangements. Such familiarity assists in reducing the risk of breach.
54. Significantly, the undertakings have been offered early, well ahead of Solicitor A's commencement with the firm. Presumably, the current Firm B staff will be briefed on the specific arrangements before she commences, and will be very much alive to the issue. The arrangements will no doubt be advised to Solicitor A during the course of her induction. As a new recruit and having been at the centre of this controversy even before joining her new employer, one would expect the issue to be "front of mind" for Solicitor A.
55. It is also significant that the scope for potential breach is relatively narrow in this instance. Solicitor A is the only identified screened person; the arrangements do not concern a team of screened people. As noted above, the Client A/Client B matter appears to be in abeyance and may not proceed. It is not the subject of the proposed information barrier. The Client C/Client D matter, which is the subject of the proposed arrangements, relates to proceedings in which Solicitor A has not been directly involved. Her only association with it appears to be what she may have learned at team meetings.
56. Firm A notes that Solicitor A is a close personal friend of Solicitor B, she having previously been Solicitor B's personal nanny. It also points out that Solicitor B moved Solicitor A's admission as a legal practitioner. However, those matters have not been taken further by Firm A.
57. Having regard to the various factors as a whole, the Committee is of the view that the "real and sensible possibility" of misuse of the information that Solicitor A possesses is capable of appropriate management by means of an effective information barrier. In reaching that view, the

Committee had also had regard to “discretionary factors”, such as avoiding the inconvenience and cost of a party being forced to change solicitors part way through a matter; supporting the ability of a client to instruct the solicitor of their choice; and not discouraging the mobility of lawyers.

58. That said, the Committee considers that there are several matters that should be addressed in order to satisfy this requirement and to enhance the effectiveness of the proposed information barrier.
59. First, in accordance with Guideline 3, Firm B should, if it has not already done so, ensure that Client D acknowledges in writing that Firm B’s duty of disclosure does not extend to any confidential information which may be held by Solicitor A, and has provided his informed consent to Firm B acting on that basis. In other words, Client D needs to effectively join the arrangement and surrender his right to that information. The provision of such consent should also be in the context of Client D have been informed by Firm B as to proposed arrangements for the protection of Client C's confidential information and of the risks inherent in a challenge by Client C to the adequacy of these arrangements.
60. Second, for completeness, Solicitor A’s proposed undertaking should also contain an acknowledgement that she has not disclosed any confidential information about the particular matter.
61. Third, again for completeness, Firm B should confirm that its compliance officer, Ms P, is appropriately qualified to occupy that role and is charged with the responsibility to oversee the information barrier arrangements and to monitor compliance with them.
62. Fourthly, whilst noting that Firm B operates a paperless office, arrangements should also be put in place with respect to the secure filing of hard copy material that might be, or has been, produced, such as file notes, correspondence and briefs. Similarly, arrangements may need to be made with respect to the use of common printers and copiers. That is aimed at minimising the risk of prompting discussions about the matter, contrary to the undertakings.
63. Finally, as provided in Guideline 7 it should be recognised by Firm B that the effectiveness of the proposed information barrier requires that contact between personnel involved in the matter within Firm B and Solicitor A should be appropriately limited to ensure that the passage of information or documents between personnel and Solicitor A does not take place. Such limitation of contact is desirable and important so as to manage the risk of inadvertent disclosure through the proximity of the affected personnel and is commonly achieved by the physical separation of offices and staff. The Committee observes that, in the particular circumstances, a physical or geographic separation might be implemented by:
    (a) moving the conduct of the matter to the Brisbane office of Firm B; or
    (b) moving Solicitor A to the Brisbane office of Firm B until the matters are concluded.
64. The Committee wishes to emphasize that, as will always be the case in circumstances such as these, the appropriateness and efficacy of an information barrier will depend upon a consideration of the particular circumstances and discretionary factors earlier referred to.

65. In the event that Firm B agrees with the Committee that an information barrier in the Client A/Client B matter is warranted, the above comments are equally apposite to that matter.

CONCLUSION

66. Whilst the Committee is satisfied that the "real and sensible possibility" of the misuse of confidential information is capable of management in respect of the Client C/Client D proceedings by means of an effective information barrier, it is not the role of the Committee to be prescriptive as to the requirements for implementing such a barrier. That is a matter for Firm B, and the Committee has identified at paragraphs 59 to 63 matters that the Committee considers should be addressed. However the Committee does note the particular challenges identified in the Commentary to the Guidelines, especially as regards the Guideline for limiting personal contact between the affected personnel, which are inherent in effecting a suitable separation arrangement within a smaller office.
67. The Committee seeks further clarification from Firm B as to what arrangements, if any, it proposes in respect of the Client A/Client B proceedings in the Supreme Court of Queensland.