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**Trans-Tasman IP Attorneys Board**

# TTIPAB / IPTA / NZIPA Ethics Webinar

May 2025 - 'Inter-attorney communication'

# Scenario 1: Guidelines on Courteous Inter-Attorney Communications

- ▶ Firm A receives opposition notice from Firm B
- ▶ Firm A proposes a coexistence agreement
- ▶ Firm B responds dismissively and combatively
- ▶ Response hinders future negotiations



# Code of Conduct Provisions

- ▶ Courtesy and good faith in communication
- ▶ Acting in best interests of the client
- ▶ Impact of aggressive communication on relationships and outcomes



# Why Do These Situations Arise?

- ▶ Overly Adversarial Approach by Attorneys
  - ▶ Assumption that aggression is necessary to serve clients
- ▶ Preference for Litigation Over Early Settlement
  - ▶ Belief that early settlement discussions are futile
- ▶ High Workloads and Time Pressures
  - ▶ Leads to short, dismissive communications
  - ▶ Unintentional curttness due to time constraints



# Best Practices for Professional & Productive Communication

- ▶ Acknowledge the Other Attorney's Role and Concerns
  - ▶ Recognise their position before rejecting proposals
- ▶ Explain Reasoning Professionally
  - ▶ If settlement is not an option, provide a professional explanation
- ▶ Consider Phone Communication
  - ▶ Phone calls in certain circumstances can convey tone better than emails
  - ▶ Keeping records of the calls is critical

# Strategies for De-Escalating the Situation

- ▶ Responding to Aggressive Emails
  - ▶ Use a measured, professional tone
  - ▶ Avoid matching aggression
- ▶ Reframing the Conversation
  - ▶ Focus on mutual client interests
  - ▶ Avoid attorney-to-attorney friction
- ▶ Involving Principal Attorneys
  - ▶ Refocus on resolution if tensions persist

# The Long-Term Consequences of Unprofessional Communication

- ▶ Harm to Clients
  - ▶ Missed opportunities for settlement
  - ▶ Increased costs
- ▶ Impact on Professional Reputation
  - ▶ Damage to attorney's reputation
  - ▶ Negative perception of the profession
  - ▶ Hindrance in future collaborations
- ▶ Ethical Obligations
  - ▶ Need to maintain professionalism
  - ▶ Importance in highly contested cases



## Scenario 2: Engaging Another Attorney for Work & Presenting This to the Client

- ▶ Client needs a specification drafted for a new invention
- ▶ Invention involves biotechnology and electrical engineering
- ▶ Primary attorney specialises in biotechnology and has limited experience with electrical engineering
- ▶ Client is unaware of attorney's limited experience in electrical engineering
- ▶ Client otherwise has no concerns about additional costs or inefficiencies known to the primary attorney



# Code of Conduct Provisions

- ▶ Duty to act in the best interests of the client
- ▶ Competency requirements
- ▶ Duty to be transparent



# Importance of Appropriate Communication

- ▶ Gaining Insights from Specialist Attorneys
  - ▶ Primary attorney can understand electrical engineering aspects better
  - ▶ Ensures a more comprehensive and accurate specification
- ▶ Introducing Client to Specialist Attorney
  - ▶ Client knows who is working on their project
  - ▶ Specialist attorney understands client's needs and expectations
  - ▶ Client communicating their needs directly to the specialist attorney ensures their IP is correctly specified

# Ethics in Communication

- ▶ Disclosure to Client
  - ▶ Primary attorney must inform the client about involving a specialist
  - ▶ Ensures compliance with the Code of Conduct
  - ▶ Client is aware of who is working on their case
- ▶ Weighing Benefits and Costs
  - ▶ Consider benefits of involving an electrical engineering specialist
  - ▶ Evaluate potential additional costs
  - ▶ Assess client's lack of awareness about attorney's limited experience

## Scenario 3: Challenges of Inter-Jurisdictional Communications

- ▶ Australian-based Trans-Tasman patent attorney handling a case in New Zealand
- ▶ Lack of hands-on experience with New Zealand IP law
- ▶ Pressure to handle the matter instead of referring it out
- ▶ Delay due to conflation of evidence rules between New Zealand and Australia
- ▶ Results in client dissatisfaction

# Code of Conduct Provisions

- ▶ Duty to practice only within areas of competency
- ▶ Ethical considerations around seeking guidance, collaboration, or referral
- ▶ Avoiding unauthorised practice of law or misrepresenting expertise

# Best Practices for Learning & Navigating Unfamiliar Procedures

- ▶ Leveraging mentorship, professional associations, and continuing education
  - ▶ Mentorship provides guidance and support from experienced professionals
  - ▶ Professional associations offer resources and networking opportunities
  - ▶ Continuing education helps in staying updated with the latest knowledge and skills
- ▶ Knowing when and how to seek guidance from more experienced colleagues
  - ▶ Recognise situations where expert advice is needed
  - ▶ Approach colleagues with specific questions and a willingness to learn