

Legislative Drafting in a Crisis Environment - Real Life Tips

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Donald Revell, Chief Legislative Counsel in Ontario, has worked with me on several “crisis” situations in which a legislative response was demanded by the “Government of the Day”.

I generally worked in a client capacity, representing the instructing Ministry.

In preparation for this seminar, Don asked me certain questions:

How do you know something is a crisis?

What advice can be given to clients, drafters or to those with central government responsibilities in a crisis situation?

What would be on a five point preparation checklist for a drafter who wants to survive a crisis?

The attached material is all from a client perspective. It is pragmatic, not theoretical. Some points may be seen as facetious. But, as I hope to explain orally, they are grounded in real life experiences. And they work.

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The “bottom line” is that a crisis can be managed. Because the average legislative drafter may see more legislative crises in his/her career than the average client, I think a well-prepared drafter can have an important role in pulling order from chaos. And this alone is exemplary public service!

Its not a Crisis if

1. The client will not name an authoritative spokesperson.
2. You are the only person who is willing to work overtime.
3. The “process police” refuse any shortcuts.
4. The deadline is undefined (as soon as possible but no date).
5. No one knows why it is a crisis.
6. You have never read an article in any newspaper about the issue and it has never been raised in the House/Legislature.
7. No one will buy you a coffee.
8. Everyone thinks you should talk to your client’s lawyer who will receive instructions from the client and pass it on to you.
9. The client’s lawyers will not do follow-up opinions within a short period.
10. Your client hasn’t had a chance to read the first draft.

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11. No work can be displaced by the crisis work.

12. Status briefing notes are needed.

13. Your boss is not sure what you're working on.

14. It is not possible for your client to give a five page explanation of the policy and intent of the legislation.

Centre: Suggested Crisis Management Tools

15. Have priorities and know what they are—identify a real government “crisis” as opposed to a Ministry/Department crisis.
16. Understand your own processes, what processes do or don’t matter in what situations and facilitate the right “shortcuts” in these situations. Regular approval processes exist to manage various risks and government workload. In a crisis, some of these processes hinder rather than help manage a crisis.
17. Give the client an authoritative contact person at the centre to check on policy details arising in drafting and on any timing issues for the government. If you don’t, there will be surprises.
18. Be willing to accept oral updates. Understand what a time waster those status briefing notes can be. Show them substance is more important than process.
19. Know who can manage a crisis—the person on the spot may not be the right one. Act quickly, unless you want to fail.

Clients: Suggested Crisis Management Tools

1. Don't expect your drafters to do your job and don't do theirs (specialization is efficient).
2. Be responsible for details and logistics (so drafters can draft).
3. Know who can help, what you need and when. Run interference. Provide realistic risk assessment. Know who needs to know what risks.
4. Allow reasonable time to drafters for sleeping, eating and laughing. Putting things in perspective shows you are in control and prevents time wasting "second guessing" by others. And you may need that drafter again.
5. Know your policies. Communicate. Be decisive. Be willing to be blamed. Every crisis has either a leader or a scapegoat. Which one do you want to be?

Drafters: Suggested Crisis Management Tools

1. Know all the processes for legislative approval, introduction and revision and every person and telephone number on the way. If you do not know, talk to your boss. He or she should use her experience and knowledge to help (and even protect you).

2. Communicate to the client what is needed: e.g.
 - authoritative spokesperson
 - logistics manager
 - real deadlines
 - priority setting
 - good explanations
 - possible technical materials or drafts

- a. And what is not needed e.g.:
 - confusion as to who is in charge
 - dealing with someone else's drafting
 - threats.

1. Ensure you get enough to eat and sleep.

2. Do what you can—don't let anxiety and uncertainty derail you. Put it on paper. Even a tentative first draft will force your client to respond.

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3. Have a backup to review, edit, and on prevail upon you from not doing what is set out in 3 and 4. Let your boss help; they should help you, especially in respect to points 1 - 4.

Legislation Crisis — Checklist for Drafters

1. Before the crisis, have a document with all the correct processes right down to the number of copies and all the possible shortcuts, have key telephone numbers, charts of processes, samples of documents such as orders-in-councils, motions for introduction. Make a point of knowing who does what. Process knowledge is power! You do legislation every day. Your client only rarely.
2. Insist on a client spokesperson who can make on-the-spot decisions, “push the system”, confirm deadlines, get follow up opinions, and provide written explanations of the policy and content of the legislation. Encourage your client to share the crisis management burden.
3. Have a logistics resource and let them take over “care and feeding” of the team (everything from booking a boardroom on Sunday to arranging for copies and chocolate). Concentrate on what you do best—drafting.
4. Set priorities and do not be sidetracked; point out the consequences to meeting deadlines. Only clear goals get reached.
5. Be calm, confident and good humored. Don’t waste time on anxiety and don’t give your client the impression she/he needs time-wasting double checking of your work. There is only time for productive work.