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Waking up to ‘woke’ – analysing the MinterEllison email conflict

Controversy surrounding MinterEllison and its decision to advise Attorney-General Christian Porter raises questions about law firms’ client selection processes and the impact those choices could have on recruiting millennial and Gen Z talent in the years to come, writes Trish Carroll.

A lot has been written in recent weeks about the email matter involving now-ex [MinterEllison CEO Annette Kimmitt](#). However, little has been written that considers what the concept of accepting matters through a lens of ‘purpose and values’ could mean in a more ‘woke’ world.

Disclosure first. I worked at MinterEllison for 18 years. It was the most professionally exhilarating time of my career as the firm was evolving from being old and small to market-leading and huge. When the Commonwealth opened up its legal work to the private sector, I worked on those tenders. Even though that’s decades ago now, I remember the sheer delight we felt at being successful in building a Commonwealth practice and the hard work involved in living up to the Commonwealth’s expectations and our promises.

When I first read the firm was advising Attorney-General Christian Porter, I thought ‘well done’. Regardless of my intense distaste for the allegations that were emerging, I felt strongly that the Attorney-General had as much right to access the best legal talent in the country as anyone else. It also signalled that MinterEllison’s Peter Bartlett had ‘trusted advisor’ status – this is the status most lawyers aspire to hold with government, business and community leaders.

Value judgments

After working through my anguish about the obvious causes for concern with the matter, I turned my mind to the CEO’s assertion that the firm’s decision to act for the Attorney-General “did not go through the firm’s due consultation and approval processes. Had it done so, we would have considered the matter through the lens of our Purpose and Values”.

That line, in particular, caught my attention. Does this mean that, had those processes been followed, the firm would have declined to act for the Attorney-General? Put to one side for a moment that the Attorney-General is entitled to seek legal advice and MinterEllison is entitled to give it (acknowledging they are big things to put aside). The former CEO's assertion elevates to a whole new level the priority of social values when deciding which clients and matters to accept.

MinterEllison prides itself on having a culture of inclusion, with its website stating: "We know that our personal background, ethnicity, gender identity, age, faith, sexual orientation, socio-economic background, disability and family structures influence how we think." It also "aspires to create an inclusive, high-performance culture where our people bring their whole selves to work, are at their best, and work to their strengths to provide real value for our clients and deliver a distinctive experience".

Reflecting on these statements and their implications from a client-acceptance perspective makes me wonder whether the CEO believed that MinterEllison should try to avoid taking on matters that are at odds with the firm's and its employees' values. Some commentators accused the CEO of being too 'woke', and that's possibly true given the conservative nature of law firms, but maybe the CEO was on to something.

We know millennials are moving into leadership roles and Gen Z is entering the workforce. They have a strong conviction that a sense of purpose in the workplace is vital. Most of the community and pro bono programs in law firms have helped meet this need by encouraging them to invest time in activities that help them realise their own social values.

Maybe the next wave in the war for talent is that law firms need to be more transparent about client selection and the basis on which those decisions are made because employees will factor this into their decisions about where they want to work.

To act, or not to act

I know it might sound like a crazy notion, but imagine a time when law firms go public about who they will not act for because of the potential harm they cause; for example, companies in the tobacco, gambling, carbonated beverages, alcohol, energy and resources, fashion (the second-largest polluter behind oil companies) or gig-economy sectors.

Speaking with a few law firm CEOs about this possibility, I was met with a sceptical response, except from David Kearney, Founder and Chief Executive Partner at powerhouse national insurance firm Wotton + Kearney. His response was vastly different. David was upfront about the change that has taken place at Wotton + Kearney in the past five years or

so as the firm has dug deep to define its purpose and values and align the firm's culture and investments accordingly.

Wotton + Kearney has chosen four of the United Nations 2030 Sustainability Development Goals to underpin its strong desire to be a 'responsible business', which are vital components of how the firm defines its core purpose. The four goals it has selected are:

- gender equality
- reduced inequalities
- climate action
- peace, justice and strong institutions.

I urge you to click on this link and then on the underlying information about the four goals Wotton + Kearney has chosen

<https://www.un.org/development/desa/disabilities/envision2030.html> because this is powerful stuff. These goals speak directly to the major issues of this century.

David Kearney speaks passionately and with deep conviction about how embracing these goals and putting a social construct around who the firm does business with is core to the firm's client and matter selection. He said, "Using climate action as an example, we can't embrace a goal that requires taking urgent action to combat climate change and its impacts, and then proceed to act for a client defending actions which don't achieve that." This is exactly what having your purpose and values aligned with your actions looks like. "You've got to think beyond pure legal principles. Yes, we're a law firm, but we also have choices about who we do and don't act for, and I want us to be loud and proud about why we do what we do and what we don't do," David said emphatically.

There are so many ways to think about this. Just as organisations have diversity targets and carbon-reduction targets, why couldn't a law firm set some targets for industries or types of work they won't accept. A firm could take a position that, say, gambling and casinos cause so much social harm that the firm will not advise any participants in that sector. Taking this idea one step further, imagine if your firm took such an industry-specific stand and it might then focus its community, pro bono, and outreach programs to help people who had been made vulnerable through their engagement with that sector.

Presently, most firms will mostly act for all comers while simultaneously running community, pro bono and outreach programs to help people or environments negatively impacted by the very clients they advise. It's a conundrum.

Law firms working with government need to adhere to procurement policies that demand compliance, and compliance reporting, on everything from a supplier's workforce diversity

profile covering ethnicity, gender identity, age, faith, sexual orientation and disability, to demonstrating and reporting against the requirements of the Modern Slavery Act. The test for working with government is high and getting higher. It's true of listed and private companies, too.

Disclosure conundrum

As the demand for disclosure and the range of issues being disclosed grows, I can foresee a time when law firms decide it is appropriate to disclose the basis on which they accept clients and work types. That disclosure could also be used in a positive way to attract and retain employees who want to work for a firm that has a social-values position that aligns with their own.

Don't get me wrong, I am in no doubt law firms make decisions every day about not acting for certain clients or taking on certain matters based on ethical and social grounds. They do. What I am saying is that now might be the right time to start exploring the alignment between the type of industry sectors, industry participants and work being done with the firm's values and those of its employees to identify any obvious or emerging causes for disconnect.

As millennials and Gen Z start seriously outnumbering the generations that went before them, it's possible the employee value proposition *and* the client value proposition become synthesised in a transparent way that enables clients and future employees to choose advisors and employers based on value alignment.

This change won't happen quickly, and it may not happen on a grand scale, but my crystal ball tells me that as millennials and Gen Z start moving up the partnership ladder, or start their own firms, this could be a feature that distinguishes one firm from another in not just the employment market but the client market, too. If this is what was running through Minter Ellison's former CEO's mind when she sent 'that' email, then she was more awake to 'woke' than most of us.

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