

IQ Governance: A Common Law Perspective

By
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Author's Note: This article is not and should not be construed as legal advice. My intent in writing this article is to draw attention to the parallels between the sound practice of Information Quality Management and what the courts might expect of you. Please consult your legal counsel for their opinion and advice as to the relevance of this article for your specific case. I welcome any comments or corrections you may have.

I also wish to thank Fergal Crehan for contributing to the content of this article.

INTRODUCTION

In last quarter's issue of this newsletter, I promised Part 2 of my series on the impact of poor Information Quality on businesses, based on my experience buying a new laptop. Incredibly, my issues are still unresolved. To date, I've gone through no less than four graphics cards, with another on the way, and a promise of some form of 'compensation' for my difficulties.

I am therefore deferring the second part of my series until the problem has been resolved. In its place, I'd like to share my thoughts on the legal implications of Governance Best Practices.

A STANDARD OF CARE FOR INFORMATION QUALITY

Good quality information does not happen by accident. It is equally true, however, that poor quality information is, in most instances, not the result of accident either. Just like all outcomes in business, good quality information is achieved through the design and execution of a sound governance model and an organisational culture that has a clearly stated goal of achieving and maintaining high standards of information quality.

Much of the focus to date has been on meeting defined statutory criteria. It should therefore not be forgotten that anyone who incurs a loss or injury as a result of poor quality in your information may be owed a duty of care by your organisation and may have grounds to take legal action against you.

If one accepts that you owe a duty of care to someone who has been affected by the quality of your information, the challenge facing you as an organisation is to demonstrate that you have met an adequate standard of care and have taken all reasonable actions to avoid loss or injury to persons to whom you owed a duty of care. In this regard the effective operation of your governance around Information Quality is critically important.

Tom Redman, Larry English, David Loshin, and many others have written extensively about ideal Best Practices for governance and control of Information Quality. This article looks at some potential legal implications.

SETTING THE STANDARD

“Begin with the End in Mind,” says Stephen Covey. In the context of establishing the governance model, framework, roles, and policies for Information Quality, the critical first step is to determine the ‘end’ that you are aiming for. Ultimately, what is the standard of care that you aim to attain?

Organisations usually have two choices – Best Practice or Established Industry Practice. In many cases, the two are the same – the best practice is established in the industry and everyone aims for the same standard of performance and standard of care. This is usually observed in areas that are highly regulated or where there is an established body of case law arising out of failures to meet the Duty of Care.

However, there are times when the established industry practice is simply an agreed-upon compromise – a practice that is acknowledged to deliver sub-optimal information quality and organisational effectiveness. In such cases, the Best Practice is often thought of as the ‘ideal state’ or the epitome of ‘how to do it right’. Everyone may agree that the Best Practice should be the industry standard, but everyone also agrees that Best Practice goals exceed the scope of the industry standard.

THE LAW EVOLVES – SO SHOULD YOU

Common Law, by its nature, evolves. While your adopted standard of Best Practice may be the epitome of how practitioners in the industry think things should be done, there is always the risk that your case will be the one that proves the rule. The word “prove” here means “to test,” not “to evidence or confirm.” Your case may be the one that turns the apple cart on its head.

The law recognises that where all reasonable care was taken, a defendant should not be held liable for losses by others. To be confident of achieving such a position, you should have in place a best practice that takes as its desired standard a constantly evolving level of excellence. Just as the law is constantly evolving, the definition of Best Practice is likewise moving forward.

The absence of a clear and understood best practice for any process will not necessarily lead to a finding of negligence against you. It may well be that a *de facto* best practice has arisen, and on the facts of any particular case, you may well have reached the legal standard of care in that particular instance.

However, in cases where this question is not clear cut, the court will look, not just to the standard of care taken in the case before it, but to more general matters such as the culture of the organisation in matters of quality and best practices. Absence of a clear Governance model or best practice suggests a culture where quality and standards are not taken seriously. This can create the sense of “an accident waiting to happen,” a general sense which can be translated into a more specific finding of negligence in a particular case.

The other, less theoretical problem with not having an effective Governance model or Quality culture is that such an absence *is* in fact an accident waiting to happen.

REACHING THE STANDARD

Once you've determined the standard you intend to achieve, you must now embark on the real work of achieving that standard. The consequences of failing to do so are extremely serious. A dangerous trap is to settle upon a standard, determine a best practice designed to achieve that standard, and then fail to implement that best practice satisfactorily or at all. There is a very real risk of merely paying 'lip service' to quality. To put in terms of Deming's 14 Points, it is a failure to adopt the 'new philosophy' or maintain a 'constancy of purpose'.

By neglecting to achieve the stated standard, you place yourself in the invidious position of handing the court, in its efforts to determine whether or not you were negligent, a yardstick that you cannot hope to measure up to. You may find yourself in a position where you have effectively rigged the game in such a way as to ensure you will lose. Many organisations unfortunately fall into this trap. As Juran noted:

*"They thought they could make the right speeches, establish broad goals, and leave everything else to subordinate... They didn't realize that fixing quality meant fixing whole companies, a task that cannot be delegated."*¹⁰

Two recent Irish cases illustrate the likely thinking of the Court when faced with a model of Governance and best practice that was not actually implemented.

In *The Director of Corporate Enforcement vs Seymour*¹¹, the court was examining the fitness of an individual to serve as a Company Director. This individual had been in charge of a large Irish bank whose transactions enabled account holders to fraudulently evade tax on monies held by the bank. The Court held (amongst other things) that the individual Director was aware of a failure of Bank branches to utilise an internal control system and that he failed to address the problem. As a result he was restricted from service as a Director of any company in Ireland for five years.

In *Murphy v Wexford VEC*¹² (a case decided in Ireland's Supreme Court), a school pupil was hit in the face with a chocolate bar as a result of rowdiness in a common area of the school. The school had implemented a policy of teacher supervision of common areas as a result of prior problems. On the day in question the teacher who was scheduled to cover that area was absent and no supervision was in place.

The Court held that where management recognises that a system of governance is required and where that governance does not operate, then management is in breach of their duty of care and will not have met the required standard of care.

These two court cases are Irish in origin. And while they may not jump out as being 'Information Quality' relevant, such cases are part of an emerging area of litigation worldwide. Readers are advised to check with their local legal advisors as to the precise legal rule that may apply to them, and then seek to meet or exceed that expectation.

¹⁰ Joseph M. Juran, "Made in the USA: A Renaissance in Quality", *Harvard Business Review*, July 1, 1993, quoted in Dr. Tom Redman, "The Body has a Head: Roles and Responsibilities of the Data Council", *The Information and Data Quality Newsletter*, October 2006.

¹¹ [2007] IEHC 102 The Court Service of Ireland: National Irish Bank & Anor -v- Companies Act

¹² [2004] 4 I.R. 202 (SC) The Supreme Court, Kenneth Murphy -v- County Wexford VEC

CONCLUSION

The standard you set for how you manage and control the quality of your information and the diligence with which you pursue that standard and constantly improve on it are crucial to the success of your Information Quality initiative and the success of your organisation.

However, policy documents and best practice memos do not and will not create the changes necessary to improve quality or avoid litigation. Only through the effective and constant application of governance, the development of a 'culture of quality,' continuous improvement, and an active avoidance of the 'Lip Service Risk' can you hope to improve your Information Quality in a sustainable manner that is likely to meet or exceeds the expectation of the Courts.

About the Author

Daragh O'Brien is a Senior Project Manager with eircom, the leading telco in the Irish Republic.

He will be speaking at the upcoming 2007 IDQ Conference in Las Vegas, Nevada.

He has over 8 years experience in Information Management and Project Management, and has direct experience with the problems poor IQ creates in large and small organisations, and the benefits that can be achieved from tackling these

problems in a structured manner.

A regular conference speaker at events in Ireland, the UK, and internationally, Daragh is also the Convenor of the IQ Network, which is run in collaboration with the Irish Computer Society (the ICT professional body for Ireland) and a CoP of the IAIDQ.

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