Who is the Lawye
Who is the Client

International Municipal Lawyers' Association Annual Conf

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Who is the Client?

Client – who do we take instructions

1. Council as a whole

2. Staff with delegated authority while exercising the delegated authority

3. Statutory Officers exercising statutory powers

LSO Rules of Professional Conduct

When Client an Organization

3.2-3 Notwithstanding that the instructions may be received from an employee, agent or representative, when a lawyer is employed or r by an organization, including a corporation, in exercising the lawye and in providing professional services, the lawyer shall act for the organization.

Commentary

[1] A lawyer acting for an organization should keep in mind that the organization, as such, is the client and that a corporate client has a personality distinct from its shareholders, officers, directors, and emp **While the organization or corporation will act and give instructions th officers, directors, employees, members, agents, or representatives, lawyer should ensure that it is the interests of the organization that a served and protected**. Further, given that an organization depends persons to give instructions, the lawyer should ensure that the perso instructions for the organization is **acting within that person's actual ostensible authority.**

Reporting Relationship

Marrocco Collingwood Judicial Inquiry Report on the role of Municipal Solicitor: (2020)

Council as a whole, **the directing mind of the municipality**, n
receive legal advice directly from the lawyer retained to pro
The need for direct communication becomes obvious where
a clear understanding that Council as a whole is the municip
solicitor's client. Staff may work with the solicitor to inform C
Still, the solicitor's duties are owed to Council, and Council n
ensure that solicitors retained by the municipality report to it
must ensure that no one Council member or member of staf
leave a false impression that reporting to them is the same a
reporting to Council.

Ontario 2023:
Strong Mayor's Powers



Staff



By-Laws



Matters



Budget

C

Delegation of Authority

Acting for ABC's
Acting for outside parties

Who is the Lawyer?

Relationship between in house and external counsel

Role of In-house Lawyer

Bellamy – Toronto Judicial Inquiry Report Recommendation #93
City departments should understand that the City's Legal Servic
is a valuable team member, dedicated to ensuring that project
conducted according to law at all times.

The Legal Services Division, when working with other departmen
convey whenever possible an ethic of co-operative goal seeki
the law. For example, whenever it is necessary to advise agains
proposed course of action because of legal problems, the neg
impact of that advice can be mitigated by offering alternative

Cunningham – Mississauga Judicial Inquiry Report Recommend
I recommend that the city solicitor be involved in negotiations b
the city and third parties from the outset, and that he or she be
informed at all stages.

In my view, it is imperative for a large municipality to have a cit
involved in major transactions on an ongoing basis. The city sol
should have sufficient information to brief the mayor and city m
regular intervals and when there are major developments in a
transaction.

Role of In-house Lawyer

Ben W. Heineman, Jr. – *The Inside Counsel Revolution*:

3 Fundamental Roles:

1. **Outstanding expert**
2. **Wise counsellor**
3. **Accountable leader**

"I believe that the best way to think about the *prescriptive role*
the General Counsel is to focus on the **risks and opportunities** o
performance – of how to balance commercial risk-taking with
commercial risk management – and the risk and opportunities
integrity (law, ethics, public policy, and employee values)." (p

- Contextualize "commercial" for "public interest/safety
  "reputational" etc. in our world

In-house Lawyer: Outstanding Exp

- Technical expert in the law, policy, and legal risk (Heinem
- Ability to apply the law to particular facts, and come up v recommendations to prevent and solve legal issues (Hein
- Ability and willingness to say definitive "no" when somethi clearly illegal. (Heineman: keeping with integrity)
- Ability to provide **options** while taking into account risks associated with them – **risk management not risk avoidance/aversion**
- Ability to **clearly communicate** advice in a **timely and pe** manner, taking into account clients' **needs and motivatio** (strong understanding of the business, facts of the situatio empathy to struggles and other sources of potential hesit

In-house Lawyer: Wise Counsellor

Moving beyond what is "legal" to what is "right":

- Provide advice on array of choices
- To do so, lawyers need to:
  - Understand if there is consensus or uncertainty in the kn relevant to the decision
  - Understand the nature of institution (i.e. what is the key and strategic goals of municipal government?)
  - Discern policy and personal preferences of decision-ma
  - Weigh the interests and power of opposing parties
  - Gauge interest group and media impact
  - Evaluate impact on stakeholders, corporate reputation

In-house Lawyer: Accountable Leader

- We are often asked to make decisions, not just providing advice and recommendations.
- Our recommendations often lead to changes in courses of action, new initiatives, and provide solutions to issues.

Role of In House Counsel on files v External Counsel

- Provide instructions
- Ensure quality of product
- Ensure timeliness of response
- Connect with other staff at the Municipality to obtain info, c etc.
- **In house counsel is ultimately responsible for the overall deliv services to the Municipality…**so we need to be able to:
  - Present and explain the legal opinion to Council and st
  - Respond to Council and staff inquiries arising from the le
  - Link the legal opinion to how it operates in reality → **App**

Working with Council

- Keep documentation concise and simple critical. Concise reports in plain language effective.

- **Focus on law; not politics:** provide profess advice that demonstrates appreciation f political realities, not provide advice on th of political inclinations. **We are not here t popular with council but are professional advisors.**