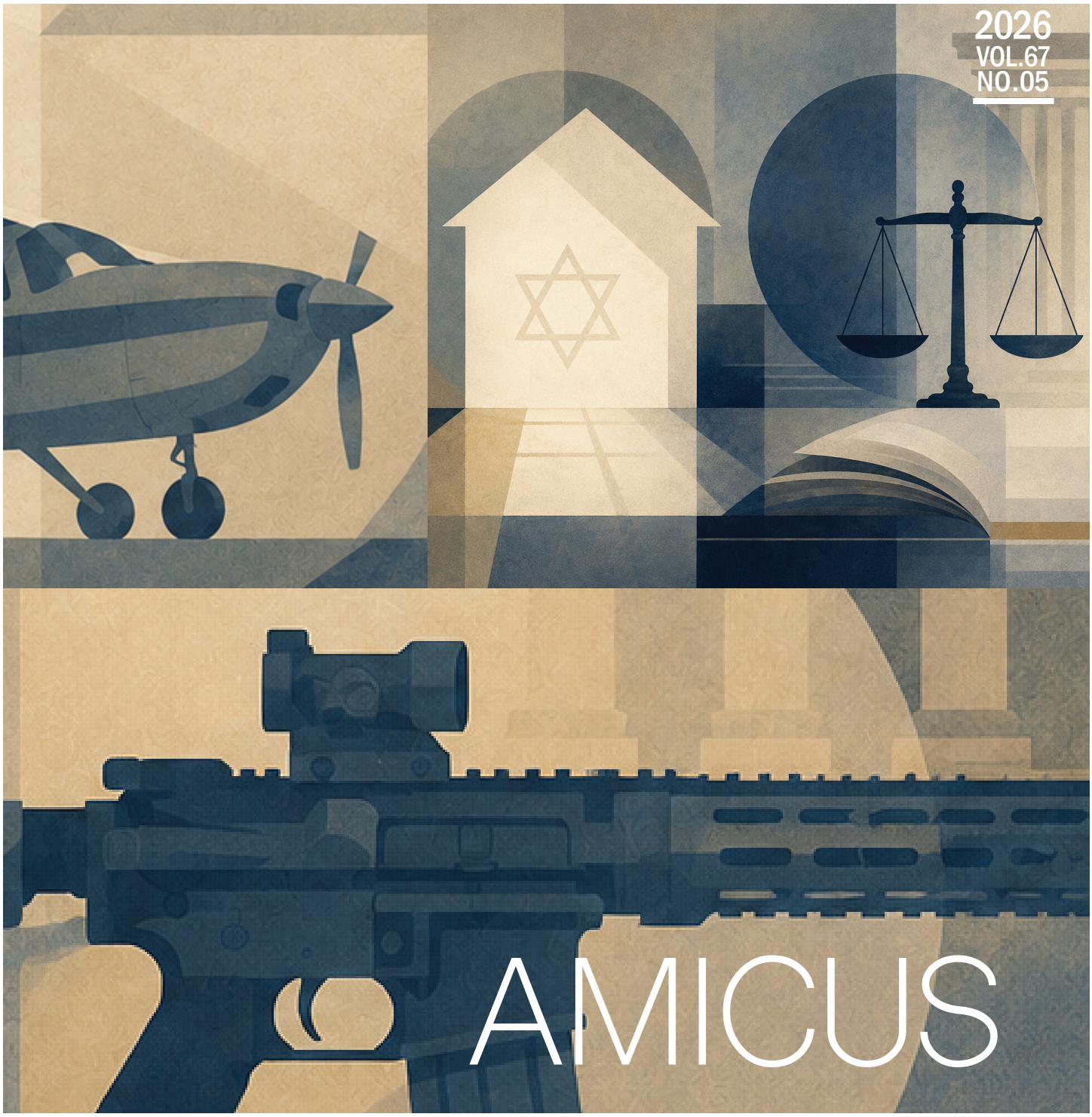
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PRACTICE TIPS

6 Tips for Working with Municipal Councillors

Lessons from 35 Years in Municipal Law—including Nine Years Leading the Legal Department of Canada's Largest City

Contributed by

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I am sometimes asked for advice about working with municipal councillors. Here is what I say. In general, legal counsel can best establish a strong working relationship with members of council by remembering both roles and ethical obligations while being as helpful as circumstances permit. I offer six tips for establishing and maintaining productive, respectful relationships. Let's call the six topics empathy, communication, helpfulness, candour, governance and ethics.

But first, a few general thoughts. Councillors and legal counsel frequently have different perspectives on issues. I often favour the cleanest legal solution, while the member of council is looking for a solution that addresses the interests or concerns of their constituents. Council members must answer to their residents; I don't have to. Problem solving requires that municipal staff, legal counsel and members of council listen to each other. Early in my career I did not appreciate that a better solution is often reached when municipal staff and legal counsel give serious consideration to the councillor perspective even when the councillor suggests something that initially appears impractical. While I believe this now, I also believe that when an idea appears impractical, legal counsel and municipal staff should ensure that the councillor has the advice they require from the appropriate staff. My role is to provide advice about the pros and cons of a proposal from a legal perspective rather than on the underlying policy choice. To encourage members to seek policy advice, I recommend, and in some cases strongly encourage, the councillor to consult municipal policy staff prior to deciding on their preferred path. Conversations with members of council during and prior to council meetings at which decisions will be made can facilitate those decisions. On most issues, however, unless council has delegated authority to an individual member, council rather than the individual member is my client and must be the source of any authority or direction. Members of council, particularly those new to their role, sometimes must be reminded of this.

Empathy

A little empathy goes a long way. The role of a municipal councillor is a difficult one. Early in my career I did not appreciate this, but in my role as city solicitor I have developed a better understanding of that role and keep its complexities in mind when a member requests assistance, especially when I am unable to assist the member in the manner they had hoped.

While I don't provide councillors with anything resembling a legal opinion about constituent concerns, I do try to provide some useful information that is not confidential and can help them decide how they will respond to an issue in an informed manner.

For example, not long ago, a member of council asked me for advice about something that was happening in their ward. Their office had received numerous resident complaints about a structure that was under federal jurisdiction. While the municipality was unable to prevent the actions of the federal government, my staff and I had what I believe was a helpful conversation with the councillor. We explained both the history of the municipality's dealings with the federal government about the structure and the legal framework governing it. We understood that the councillor would continue to receive calls and e-mails from constituents, and we helped him understand the regulatory framework so that he could explain it. While we did not solve his problem, he expressed gratitude for the opportunity to talk the problem through. He also seemed to feel that he would be better equipped to respond to constituent concerns.

2 Communication

Sometimes I feel like a translator. As lawyers we have terms, acronyms and even Latin phrases that we use when communicating with each other. It is easy to slip into this manner of speaking with our clients. I am often reminded of something my mother said to me when I was a girl. She was a fan of Canadian scientist, David Suzuki, a frequent guest on the public broadcaster to which her radio was always tuned. She remarked more than once that she was impressed by his ability to explain complex, scientific concepts for the non-scientist. She said that this was because of his deep understanding and his intellect.

My goal, and I am no David Suzuki, is to communicate law to non-lawyers so that they can understand the legal framework in which they operate. This goal is in the back of my mind when responding to questions at a meeting of city council and in the conversations with clients that are part of my day-to-day work.

As a leader of a large team of lawyers, I often receive feedback about the work of my team. While most of it is overwhelmingly positive, this is one area where clients sometimes feel we could improve. I expect the same is true elsewhere. If we remember first principles and build upon them in our explanations, we can achieve clarity and understanding, and our clients will appreciate it.

Communication should be tailored to the audience. It should not be what the lawyer wants to say about a legal issue; it should be what the client needs to hear. It's easy to get carried away with an explanation, and I am not immune to this when I find a legal issue particularly interesting. I've been asked to "speak English". Considering what the audience requires, is an important step in preparing communication.

3 Difficult Advice/Candour

Honesty is the best policy. We are often called upon to give advice that is difficult to receive. Speaking truth to power is not easy, but it is imperative. As lawyers we must be consistent in this if we are to fulfill our responsibilities as legal counsel.

When explaining that the approach a member of council favours is not aligned with applicable laws, it is important to take the extra step of explaining why the goal cannot be achieved in the intended manner. Saying "no" is not enough. In my experience, when a lawyer provides an explanation of the legal framework and the potential consequences of various options, the explanation is accepted even if it is not embraced. The advice is often followed, and where it is not, at least trust is maintained. When a lawyer doesn't provide a thorough explanation, the councillor is understandably frustrated. This can lead both to a lack of trust that legal counsel genuinely wants to problem solve with councillors to a reluctance to engage legal counsel in the future.

When I am giving unwelcome advice, I am particularly careful about tone, especially when the advice is in writing. I ask myself whether the tone of the advice is such that the recipient will appreciate that the writer understands the recipient's goal and aims to both educate and assist rather than to criticize or scold. Sometimes we can be so concerned about communicating legal concepts clearly that we neglect tone.

The advice that is most difficult for municipal councils to receive is often given in closed session or in confidential reports, and for obvious reasons, I won't offer an example of that. I'll offer a slightly different example. I recently had a request from a member of council who had received many phone calls and e-mails from constituents complaining about a business that was ignoring obligations under a municipal by-law. The councillor wanted me to meet with the business owner to both explain the by-law and convince the business owner to comply. As city solicitor, I did not have a solicitor/client relationship with the business owner so could not comply with the request. At the same time, my staff and I appreciated that the situation was a problem for the municipality and should be addressed.

I explained to the councillor that I would not be meeting with the business owner. Rather than simply telling the councillor that such a meeting was outside the scope of my role, I explained the solicitor/client relationship, my role, law society rules, and insurance issues. This sounds like a lengthy explanation, but it took only a few sentences, and the explanation was accepted.

4 Helpfulness

This leads me to my next point which may seem an obvious one; however, it is the source of much of the constructive feedback that I have received about legal work in general over the years. When legal counsel can't do what a council member asks, we should still try to be helpful. I often say that when we cannot get those seeking our advice from "Point A" to "Point B" as directly as they'd like, we should find an indirect path to a place as close to "Point B" as possible. This is true when dealing with members of the public service, legislative bodies and agencies of the municipality as well.

In the example where the member of council had hoped that I would explain the law to a business owner, a member of my staff and I discussed an alternative with the member. My staff wrote a letter for the enforcement agency to send to the business owner. The letter set out some of the things the councillor had hoped I would communicate directly, and I believe it did help to resolve the problem. Creative problem-solving builds trust by reinforcing the perception that, while unwelcome advice is sometimes given, legal counsel is genuinely trying to be of assistance.

5 Governance

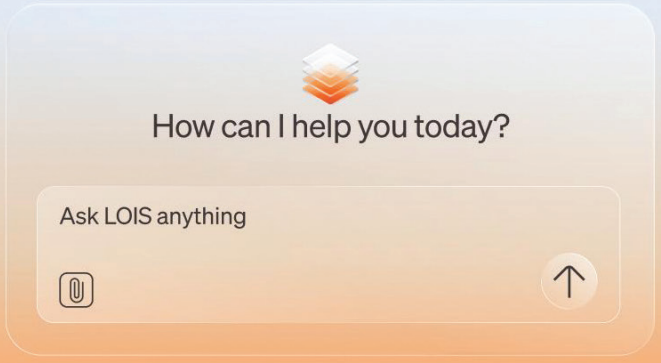
I never forget that I am a lawyer. As legal counsel, we must be mindful of the governance structure of the municipal government and the roles of those involved. This includes the lawyer's role, the role of the municipal council, the role of individual members, the head of council, various statutory and non-statutory officials and agencies. Sometimes members of council and municipal staff less familiar with these roles will assume their own role is larger than it is or will ask you to step out of yours. While it is sometimes difficult to hold my ground, I never step outside of my role, and I expect that if I did, it would be difficult in future to reinforce the boundaries of my role with others.

Throughout my career, whenever I have felt uncomfortable in a situation, I can say that without exception, and regardless of the subject matter, it has been because of pressure to take steps that are not aligned with the proper governance structure.

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Ethics

My employer has a "public service by-law" that sets out various rules, duties and processes pertaining to public service ethics. As a lawyer licensed in my jurisdiction, I am also required to comply with law society rules of professional conduct. I expect that most legal professionals have something similar that they can point to and by which they are guided.

We should remember the first principles which form the basis of these policies and rules, concepts like our duty to serve our clients well, to serve the public well, to act with integrity, to maintain confidentiality, to maintain political neutrality, and to use good judgement which. These are the common denominators.

We should remember that when ethical dilemmas arise, we are not alone. Law societies have practice advisories; some employers have ethics executives or other officials with whom we can consult. We can also consult the person to whom we report or a colleague whose opinion we respect. Talking an issue through with someone who has the appropriate background to understand and advise can assist us in making the right decision in a complex situation. It is important to disclose an ethical dilemma or potential conflict of interest. This is the first step to resolving the dilemma to which it gives rise.

In writing this I deliberately chose examples about situations in which I was unable to assist a member of council in the manner the member had hoped. I did so because, it is in those situations that we are most challenged to foster a positive and respectful relationship, stay in our own lane and, on occasion, stand firm on ethical principles.

I have not addressed the importance of legal counsel ensuring that they consistently remain familiar with recent developments in the law and do what is required to provide excellent legal advice. While this is imperative, it is not the focus of what I have written.

In closing...

I offer again the six points that have been immensely helpful to me throughout my career: having some empathy for those seeking my counsel, making clear communication a priority, being candid about why I sometimes must give advice that is difficult to receive, finding a way to be helpful when I do, being consistently mindful of the governance structure within which I operate and the ethical obligations that accompany it. These have served me well. **ML**

