

# Drawn and Quartered: The Municipal Law Department


By Richard G. Stock, M.A., FCG, CMC, Partner with Catalyst Consulting

This is the forty-third in a series of articles about how corporate and government law departments can improve their performance and add measurable value to their organizations.



The City Solicitor of many local governments often reminds me of Mel Gibson in the movie *Braveheart* – especially the last scenes where he gets pulled in four different directions by horses in front of a crowd. Competing imperatives make it difficult to please anyone for very long. My experience with several dozen consulting engagements to 20 city and regional government bodies tells me that delivering legal service at the local government level is challenging work. And it's changing all the time.

Law firms in cities and towns across Canada have at least one partner serving the municipal sector. A few firms specialize in municipal law, while others focus on the labour and employment elements with work forces that are heavily unionized. At one time, there was been great



turmoil with city mergers and some “de-mergers” in Nova Scotia, Quebec and Ontario. Most initiatives are provincial in nature and those in Ontario were accompanied by a significant devolution of provincial services to the local level, but without the appropriate supplementary funding.

Not doubt, this type of change has resulted in considerable work for law firms representing city interests. Law firms take an active interest in electoral campaigns to ensure their centers of influence for future matters are not disrupted. It will be another few years before the full range of competitive and transparent procurement practices is introduced for legal services at the local level. This has been hurried along in recent times with the injection of

federal and provincial infrastructure funding.

Local government mergers also resulted in more work for members of municipal and regional law departments. But economic activity is by far the greater stimulus for increased demand for inhouse counsel. Robust economic activity, as can be found in Ontario, B.C., Quebec, and Alberta, spurs commercial and residential development activity. Zoning and other by-law changes, followed by requirements for additional infrastructure, and the interest in public-private partnerships for LRTs, arenas and stadiums, highways and other projects calls for new capabilities in commercial law within local government.

Some regions of the country de-regulated their

utilities such that municipal counsel spend more time with regulatory bodies designed to balance public / private interests, or ensure a level playing field for competition, e.g. electricity, transportation, *etc.* This list goes on, but it suggests two trends: that the legal services required by local government are of an increasingly specialized nature; and that some law departments struggle to be “all things to all people.”

Many law departments try in vain to explain to stakeholders that authority to decide, to act on and to pay for many matters is limited at the local level. Provincial laws and regulations mitigate or at least complicate many programs. Bravehearts in the legal department face at least five challenges.

1. Their roles and responsibilities are not defined specifically enough. Too much time is spent in commodity-level work processing real-estate matters, because of poor streamlining among legal, planning, procurement, engineering, and city clerk departments. All the old procedures and rules remain while new demands are added.
2. Lawyers in some law departments are unclear about their accountability – to Council, to the Law Society or to City Management. Too many have been trapped in a losing trade-off of political, financial, ethical, and legal pressures. The result can be a tendency by some cities to involve their in-house counsel as little or as late as possible.
3. Core capabilities for municipal counsel have been municipal / administrative law including municipal hearings, by-law development, and planning / land use matters.

Few law departments have capabilities in labour / employment law, and many others cannot keep up with the need for commercial contracts and expertise in financing. Too few municipal law departments prepare detailed multi-year forecasts for legal services. Skill, stamina and goodwill are not enough to secure and deploy the resources to keep up with changing demand.

4. Larger law departments will carry some litigation capability. Most prefer to refer large, complex files to law firms, but they do so without active litigation management programs. Cities tend to use too many law firms to spread the work around. In the end, they pay 20 % to 30 % more than they should for external counsel because they do not develop long-term partnering agreements with professional firms.
5. Finally, municipal counsel share a fault with many other law departments. They are poor at tracking their activities by type and by importance. That makes it difficult for them to report significant successes on a quarterly basis. Few conduct satisfaction surveys with their primary users on a regular basis. Key performance indicators with an emphasis on non-financial indicators are in short supply.

Municipal counsel must do a better job in defining and restricting their work to higher profile matters. They must become more adept at shedding routine work. Accountability for service and results must be unambiguous. Successes must be regular and reported to survive and thrive.

*Updated from original in Lexpert March 2006*

### **About the Author**

Richard G. Stock, M.A., FCG, CMC is the Managing Partner of [Catalyst Consulting](#). The firm has been advising corporate and government law departments across North America and

around the world since 1996. For law department management advice that works, Richard can be contacted at +1 (416) 367-4447 or at [rstock@catalystlegal.com](mailto:rstock@catalystlegal.com).