

Counsel to Counsel: Beware of approaching council

February 1, 2012

It may come as a surprise to some lawyers and municipal staff that it is not appropriate for a lawyer to contact a municipal councillor, or staff vested with decision-making authority, where that lawyer represents an opposing party, or even a party in common interest. This prohibition applies if the municipality is represented by a legal practitioner.

The commentary to the Law Society of Upper Canada's Rules of Professional Conduct (RPC) was amended in November 2010 to make clear that such contact without the consent of the municipality's legal practitioner is improper. There are a plethora of adversarial situations to which this could apply: court proceedings, Ontario Municipal Board hearings, licensing hearings, and other quasi-judicial processes or matters where legal practitioners are involved. This also includes standard municipal work such as real estate transactions or other corporate work. It is important for both legal practitioners and municipal officials to be aware of the existence and scope of this prohibition, since the negative consequences flowing from a misstep could cause prejudice to the parties or result in unnecessary costs.

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