

Leadership

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Leadership in the Practice of Law

Leadership takes many forms; this is as true in professional relationships as it is in other areas in life.

Note that the title of this article is **not**: “Leadership in the Legal Profession.” If it were, I could be writing about such leadership examples as:

- some of the managing partners and department heads of law firms;
- Queen’s Counsel (in some cases);
- the top officers in the Law Societies and the Bar Associations;
- the leading experts in various fields of law;
- high profile trial lawyers; and
- prominent legal scholars.

Examining the careers of such lawyers would certainly be a study in leadership, particularly for a profession in which it is difficult to be a leader.

Instead, I am going to comment on a more subtle and less visible kind of leadership: that which should be present, but is often lacking, in the lawyer-client relationship.

A lawyer with a strong character and appropriate legal skills will have the capacity to “lead” his client in the right direction. Let me give you an example of what I mean.

A client may ask his or her lawyer for advice on whether or not to give the other party in a business transaction some accommodation under some commercial agreement. The client may have the right to refuse consent to the other party’s refinancing, for example, or

to an assignment of some right to a third party. The lawyer had earlier been careful, in drafting the agreement for the client’s protection, to include the provision which now gives rise to the request for accommodation.

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The competent lawyer will explain to the client precisely what rights the client actually has in the situation, and will outline the legal risks that might be involved in granting the other party’s request. At this point, a lawyer will often consider that his or her job is now done, and will end with the useful but often overused phrase: “I’ve explained your legal position. What you choose to do now is a business decision for you to make.”

For the client who has the experience and judgment to make a decision like this, or who has other resources to turn to for help, this may well be the best response for the lawyer. What do mere lawyers know about such business matters? This is not what they were being asked to do, so why should they stick their neck out and risk saying something the client could complain about later? Fair enough, and some clients will be happy with such careful, technically

sound, but limited advice. This brings to mind a brief story that illustrates this kind of lawyer-client relationship.

A man is flying in a hot air balloon and realizes he is lost. He reduces height and spots a man down below. He lowers the balloon further and shouts.

“Excuse me, can you tell me where I am?”

The man below says, “Yes, you are in a large hot air balloon, hovering 30 feet above this field.”

“You must be a lawyer,” says the balloonist.

“I am,” replies the man. “How did you know?”

“Well,” says the balloonist, “everything you have told me is technically correct, but it’s of no help to me whatsoever.”

The lawyer below replies, “Well, then, you must be a client.”

“I am,” replies the balloonist, “but how did you know that?”

“Well,” says the lawyer, “you don’t know where you are, or where you’re going, but you expect me to be able to help. You’re in exactly the same position you were before we met, but now it’s somehow my fault.”

Many clients in the situation I described will be just as unsure about their next step as they were before meeting with their lawyer, perhaps because they simply do not have the experience or judgment to draw upon, or anyone else to turn to. Such clients are looking to their lawyer or other professional advisor for some

leadership skills which they themselves lack, at least in the situation at hand. (Of course, one can **lead** a horse to water, but one cannot make it drink. Clients often choose not to follow the advice given, but that is another matter.)

So what are the leadership skills needed in this situation, and how can they be marshalled in aid of the client?

Leadership involves taking some risks, and having the willingness to stick one's neck out when appropriate. Perhaps the lawyer has some personal experience that can be brought to bear on the situation—or professional experience, with examples to offer of when the giving or withholding of consent in parallel situations has led to good or bad outcomes. The lawyer might lead a discussion of various scenarios, helping the client to weigh, for example, some strategic advantage that might exist in refusing the request against the possible future benefit to the relationship of offering cooperation now.

The lawyer willing to go down this further path of offering leadership must be prepared to discuss the subtleties of the relationship between the client and the other party: ask probing questions, and above all, listen carefully to the answers. Done skillfully, this process can lead clients to determine the right course of action themselves. They may or may not recognize the lawyer's leadership role in this process, but this is not about taking or getting credit. The best form of leadership is invisible, where the follower sees a path open up and a clear direction emerge, but without ever noticing that the leader is skillfully pointing the way to a more informed "business" decision through a series of useful questions.

Of course, trite though it sounds, there is nothing like leadership by example. A leader must first strive to "lead" his or her own life with integrity before freely offering advice to others. And despite all the lawyer jokes suggesting the contrary, this applies to lawyers, as well. I was flattered when a

business client once asked for my advice on an employment matter after a recent and unhappy resignation had occurred in his office.

When I explained that employment law was not really my field, and offered a meeting with one of my partners, he said: "No, no. I can see whenever I come into your office that you invariably have competent, devoted employees around, so you obviously know something about successful employment, and that is what I want your advice on." We then had a long general chat (with the meter off) about how to treat employees properly, which proved much more useful to the client than any technical advice on employment law. ▲

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