EFFECTIVE ADVOCACY OF CONSUMER ISSUES

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INTRODUCTION

This manual is aimed at consumer groups and ordinary people wishing to have a say in government policy, legislative reform and regulatory decisions. It is for people who want to be part of the decision-making process, instead of just passively accepting the results. Whether your concern is with saving a local wildlife refuge, promoting the needs of people with disabilities, or keeping the prices of essential services at affordable levels, this manual should be of assistance.

Take a look at the Table of Contents to see what interests you. The first three chapters are designed to help you form a group and run it effectively. If you have already achieved this, read on. The following chapters canvass various options for action, including lobbying, legislative advocacy, and appearing before administrative tribunals. The references listed at the end of each chapter are intended for your use as well - they include a variety of resources, some of which may be more specific to your concerns.

Advocacy is the art of effective persuasion. What is effective will vary according to the circumstances; there is no single method that works in all situations. For example, an effective cross-examination style in court may be entirely inappropriate before a tribunal hearing evidence from the general public. Faced with a process that puts you at a significant disadvantage from the start, you may be better off using your energies on media events or lobbying. For this reason, we advise a thorough review of options before you take action. Strategizing may be the most important stage of all.

Whatever your concern and whatever your experience, we hope that this manual will be of assistance to you. Good luck in your efforts!

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CHAPTER ONE

GETTING STARTED

Understanding the Issue

In order to be an effective advocate, you need a clear sense of direction and purpose. To begin with, you must develop a clear and comprehensive understanding of the issue. Knowing the facts is crucial to your credibility.

What makes this such a serious problem? Who is affected? How? Are any particular groups disproportionately affected? Whose interests are at stake? What is the nature of those interests? What possible solutions exist? How much would they cost? These are just some questions that you will have to answer.

In answering these questions, you will learn who your constituents are. For example, they could be low income earners (in the case of increasing utility rates or regressive taxation), rural residents (in the case of reduced public transit services to rural areas), women (if you are concerned about reproductive technology), or the public at large (where environmental protection is at stake).

You will also learn about your opponents - who they are, what sort of interest they represent, what experience they have, how seriously they take this issue, what connections they have with the decision-maker, etc. This information will determine to a large extent what strategy you decide to employ. As soon as possible, you should identify what you have in common with the other side, and with what, precisely, you disagree.

Understanding the Context

Once you have learned about your opponents, you will have gone a long way toward understanding the context in which the issue will be decided. Equally important is the government's position on this issue. What has the government policy been to date? What is the likelihood of change, given the current political climate? What sort of influence do your opponents have on government policy? How much do they spend on lobbying? The answers to these questions will give you an idea of what you are up against.

Knowing who is friends with whom is important in choosing how to approach the issue. For instance, it may be that the hearing is a mere charade, and that your energies are better spent exposing the process for what is is. Don't waste time trying to persuade the unpersuadable. On the other hand, a good opportunity should not be missed due to an overly cynical attitude.

Is this issue of interest to the media? If public concern about this issue already exists, you have a head start; there are probably other groups like yours with which you can combine forces, or at least share information. Moreover, the government will probably be more receptive to your suggestions than it would be otherwise.

If you are planning to participate in a regulatory hearing, you should find out how friendly the tribunal is toward public interest intervenors. Ask other groups who have intervened before that tribunal about their experiences. Find out if the opposing party frequently appears before the tribunal, and if you will be the only party new to the process.

Research: Bringing the Issue into Focus

In order to answer all these questions, you will have to do some preliminary research. This will help you to determine if you have a case worth fighting for. More detailed research will be required later, when you analyse the evidence and make your case the best it can be.

Start at your local library. Use the card (or computer) catalogue to locate texts on topic. Use periodical indices (such as the Canadian Periodical Index, Canadian Newspaper Index, and Public Affairs Information Service) to find articles on point in magazines and newspapers. Ask if the library keeps a file of newspaper clippings on your topic. Make note of authors and journalists who seem to share your point of view.

Specialized libraries should be consulted if at all possible. Each government department and agency usually has its own library. Non-governmental organizations may also have libraries or at least reference material that they are willing to share with you. Make good use of the reference librarian, who should be able to direct you to indices, abstracts and other sources that you don't know about.

Groups working on similar issues can be the most helpful source of information. You might even be able to enlist their support (see chapter 2).

Once you have a good handle on the issue, you will be ready to start mobilizing support, setting goals and forming a strategy. However, at some point along the way, more detailed research will be required. You will want to know whether the issue has been raised previously (if so, where, when, by whom?), what evidence exists to support or undermine your theory, who the experts on your side are, what the official government policy is on this issue, and what possible avenues of recourse exist.

To learn about government policy or actions on this point, call the agency concerned and request the information you desire. Be as specific as possible. It may be helpful to have a list of questions. If you are not satisfied with the answers, consider making a formal request under the Access to Information Act (federal) or provincial equivalent (Freedom of Information Act in Ontario). These Acts give you the right to access to government records (other than Cabinet records). Your local library should have the directory and forms needed to make a proper request under this very useful legislation. In areas without public libraries, Access to Information material should be available from municipal offices, post offices, Indian band offices, Native Friendship Centres, or nursing stations.

If the issue falls within the mandate of a government agency, call up the agency and find out who has authority to make the change you are seeking. If you are objecting to a decision already made, find out how the decision was reached and what recourse you have.

Contact the experts that were recommended to you or that you noticed in your research and find out if and how they can help you. Get as much information as possible from your opposition, by using your personal name and address, and by being friendly. If appropriate and feasible, do your own primary research - interview affected persons, conduct surveys, canvass the neighbourhood.

Don't forget to keep your research up-to-date. This can be accomplished by regularly scanning newspapers and journals, getting on mailing lists and keeping in touch with other like-minded groups.

Defining Your Goal

As early as possible you should define what exactly it is that you seek to accomplish. It matters not that this goal changes as you proceed; what counts is that you have a clearly articulated goal at every stage of the process. In the words of the famous New York Yankees catcher, Yogi Berra, "If you don't know where you are going, you might end up somewhere else."

Intermediate goals, leading toward an ultimate objective, can help you measure your progress. They are less daunting for both you and those you are seeking to influence. Create them whenever possible. (This is discussed in more detail in chapters 2 and 3).

If appearing before a court or tribunal, you will soon learn that judges and tribunal members have no patience for wishy-washy intervenors. If you can't state precisely what it is that you want, you will have done more harm than good to your cause. In

the confusion of the moment, don't lose sight of your ultimate objective.

Decision-makers want to hear suggestions, not just criticism. Propose realistic solutions as part of your goal. Being realistic may also require that you have acceptable alternatives, upon which to fall back if your primary suggestion is not accepted.

References

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Andrew Roman, Effective Advocacy Before Administrative Tribunals, (Toronto: Carswell, 1989), ch.6.

CHAPTER TWO

BUILDING A SOLID BASE

Sound research and convincing arguments may not be enough for you to achieve your goal. In virtually every case, the people you seek to influence will want to know the size and nature of your constituency. The larger your group and the broader its base, the more influence you will have. This is particularly true where you claim to represent the public interest.

Efficient use of resources and good organization will increase decision-makers' respect for your work. It will also improve your reputation among potential supporters and allies.

This chapter is designed for individuals or fledgling groups. However, it includes tips which existing organizations may find useful in their continuing efforts to maintain a strong base of support and to thereby influence those in power.

Preliminaries

Your first step should be to find out if there are any existing groups whose interests overlap with your own. Ask around, skim through local newspapers, check bulletin boards in churches and community centres, contact social service organizations or government agencies and ask if they are aware of any such groups, listen to the radio, and take down the names of groups or individuals who might be of assistance to you.

If there are such groups, consider joining (if you can achieve your goal through that organization), reactivating (if the group has lost its motivation or sense of direction), combining forces in a coalition (more on this later), or simply cooperating. At the very least, learn as much as you can from them. Visit existing groups within a certain radius of your home, and ask about their experience. Think in terms of efficient use of resources and effective strategy: don't reinvent the wheel. Be aware also of personal or territorial politics: acknowledge the work of your potential allies and suggest cooperation.

Building Support

Your research should have indicated who your likely supporters are. Now is the time to mobilize them. If they are your neighbours, discuss the problem with them informally, or through door-to-door canvassing. If you have a larger constituency, use your contacts to find a few other similarly concerned and motivated people with whom you can form a core group. They may be friends, members of existing groups whose work is related to

"your" issue, or people responding to a notice you have posted on a community bulletin board.

Once you have a core group (of at least two committed people), hold a public meeting. Advertise it well. Hold it somewhere large enough to accommodate a sizeable group comfortably, and accessible to disabled people. Choose a time convenient for working people (ie: evening). Give a telephone number for those who are interested but can't make it to the meeting. Prepare an agenda, and assign roles (one person to run the meeting, another to present your case, another to take down names of volunteers, for example). Keep the meeting to a maximum of two hours.

Conduct the meeting in a business-like fashion. This may be a good opportunity for public education, especially if you attract a large audience. Be ready with facts and information on the issue for those who don't already know about it. Prepare a script if you are at all unconfident. Encourage debate on how to tackle the problem. Listen to others. Be open to compromise - people will disagree. Finally, try to reach a consensus on your next step as a group (eg: when and where to meet again). Compile a list of volunteers, with relevant information about each.

Advertising your group is key to recruiting new members. Use different media - newspapers, radio, television (through public service announcements), posters, flyers, and anything else you can think of. People won't join unless they know about you.

Distribute publicity materials where potentially interested people are likely to see them. Ask for permission to speak or distribute materials at local schools, universities, churches, community centres, and meetings of like-minded groups. Consider drafting a petition - it can be a good way of approaching people and introducing your group.

Make a special effort to attract support from a broad range of people. An appearance of cliquishness or exclusivity will undermine your effectiveness. For example, if you are a city-wide organization, get representatives from rich and poor areas, different ethnic communities, and other interest groups.

When you have the resources, publish reports, newsletters and/or fact sheets. Sell T-shirts, buttons and bumper-stickers advertising your group and the cause. You might even make some money this way! Form a fund-raising committee, and work on establishing secure sources of funding. (This manual does not address fund-raising).

Maintaining Support

In addition to using publicity to constantly recruit new members, you must make efforts to keep your members happy. Put

new volunteers to work right away, when their enthusiasm is high. Plan activities that are fun, and spend some time just getting to know each other. Give willing volunteers specific tasks and responsibilities, being careful to distribute the drudgery equally. Keep all members informed of what is going on, whether through a phone tree or a newsletter.

Make it a team effort: use democratic decision-making, and don't commit the group to something its members are not committed to. Plan strategy together. Develop clear roles for active members and leaders, taking care to share responsibilities so that the departure of one member does not disable the group. Consider delegating responsibilities to committees, if you have a rapidly growing group. Give credit where it is due, whenever appropriate.

Be organized and business-like: keep good records, so that information can be easily found. People like to associate with groups that appear organized. Volunteers are unlikely to stick around if they feel that their time is being wasted.

Forming a Coalition

A coalition is a loose organization of separate groups with a common interest in a single issue or goal. It is useful when a large and wide-ranging constituency is needed to strengthen clout with decision-makers. Coalitions have many advantages: they allow for the pooling of skills and resources, both intellectual and financial; they can provide new perspectives on the issue; and they help to build up relationships which can be useful in the future.

First, define clearly the coalition's goal. Then, contact all potentially interested groups and organizations. Each member group should have something to gain from the coalition, as well as something to contribute (be it expertise, a large membership or simply money).

Once formed, the coalition should appoint a coordinator to keep each member group informed. Similarly, each group should appoint a single representative, so as to minimize duplication of effort. Collaborate on strategy: this must be a joint effort if it is to be successful. Beware of straying from the specific issue - not all members will support your broader cause, although they are happy to work together on a narrow issue.

An excellent resource on building and maintaining coalitions is:

> The National Assembly of National Voluntary Health and Social Welfare Organizations, <u>The Community Collaboration Manual</u>, (Washington D.C.: The National Assembly, January 1991).

The manual can be obtained from the National Assembly, 1319 F Street NW, Suite 601, Washington D.C., 20004; tel. (202) 347-2080;

fax (202) 393-4517, at a cost of $8.95 US in 1991.

Getting Organized

Assuming that your group continues to grow and flourish, you will eventually want to formalize your goals and structure.

A **mission statement** can provide a clear explanation of the group's existence and a focusing point for decision-making. It should be specific enough to provide direction, yet broad enough to encompass all potential activities of the group. A mission statement is something to spend time on, and to re-evaluate on a regular basis.

Your **goals**, stating the group's general intentions, should be consistent with your mission statement.

Within each goal, specify measurable **objectives**. These will normally include management objectives (such as incorporating the group, hiring a coordinator or raising a certain amount of money) as well as program objectives (such as stopping a proposed development, securing new legislation or establishing a new community service). Be sure that your objectives are consistent with your goals.

A **budget** for accomplishing each goal and objective should be developed early on. Compare needed resources with available resources, and if there is a deficit, decide whether to revise the objectives or seek additional funds.

Finally, a **workplan** will assist the group in achieving results. In the workplan, list the specific tasks needed to accomplish each objective, and assign tasks to willing volunteers. Attach reasonable deadlines to each task so as to create a timetable for achieving the objective.

Because of the inevitable changes both within and outside your group, it's important to evaluate your mission and goals on regular (eg: annual) basis. Monitor your progress regularly, so that timetables, objectives and tasks can be adjusted as required. The more realistic and clear your goals, objectives and workplans are, the less often you will have to make adjustments. The Women's Research Centre in Vancouver, B.C. has published a useful guide for community groups on how to evaluate the group's progress. It is entitled Keeping on Track: An Evaluation Guide for Community Groups (1990, 84pp.) and is available in french.

Once your group has developed a more formal and permanent structure, consider incorporating as a non-profit corporation. You can incorporate provincially or federally; each province has its own governing statute and procedure. Incorporation has several advantages, including the following:

1. **Limited Liability:** Consistent with the separate legal status granted to corporations, individual officers or directors of the corporation are not liable for the corporation's debts, except in unusual circumstances.

2. **Perpetual Existence:** The corporation continues to exist, independent of its individual members or directors, until it is formally dissolved.

3. **Ownership of Property:** The corporation can own property in its own name. Without incorporation, each member is a partial owner of any group property.

4. **Lawsuits:** A corporation can sue (or be sued) in its own name, separate and apart from its individual members.

5. **Funding:** Non-profit corporations tend to have more credibility with public and private funding sources.

On the other hand, there are disadvantages of incorporation. The initial procedure will cost several hundreds of dollars or more in legal fees and disbursements. Once incorporated, the group must comply with statutory requirements as to record-keeping, election of directors, and holding of meetings, and must make annual filings to Consumer and Corporate Affairs Canada.

The decision to incorporate is an important one that should be made in consultation with all active members and a legal advisor. Consult a guidebook to incorporation, or Donald Bourgeois' text on charitable and non-profit organizations for further information on this option.

Efficient Use of Resources

Having formed a group, it's time to set up an efficient organization so as to minimize expenses and wasted time, maximize volunteer effort, speak with one voice, and impress your friends and enemies alike. Clearly delineate responsibilities. Appoint one person to act as the spokesperson for your group. Keep good records, especially financial ones, as the time may well come when you have to report on your financial position.

If you decide to retain a professional (lawyer, accountant, expert witness), have one contact person with whom that professional is to deal, so that his or her time is not wasted.

Where you are participating as an intervenor or party in a public hearing, try to combine forces with other like-minded intervenors. The tribunal won't want to hear repetitive evidence and argument. Moreover, if it has the power to award costs, the tribunal may force you to split the award with other intervenors.

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CHAPTER THREE

FORMING A STRATEGY

Assuming that your goal is broad (eg: eliminating excess packaging or improving public transportation), there are two levels of strategy, each of which should be separately addressed. First, you must choose among the alternative routes available to you. This requires careful balancing of costs and benefits, with a view to your financial and other resources. Second, once a route of advocacy has been chosen, you must craft a more detailed strategy for best achieving your goal through that route.

Obviously, if your goal assumes a certain route being taken, you won't need to address the first level; you presumably will have already considered and rejected alternative options. In this case, you are ready to begin planning your strategy within the chosen route or forum (eg: intervening in a scheduled rate hearing or public inquiry). This second level of strategy is discussed in subsequent chapters.

Canvassing Your Options

Your first step in forming a general strategy is to make a list of all possible routes through which your goal can be achieved. Chapter Four lists various options, all of which you should be aware. Don't confine yourself to this list; use your imagination to think up other possibilities. Be aware of how they relate to each other - are they complementary (such as lobbying and making it an election issue) or mutually exclusive (litigation, for example, may not be compatible with lobbying or aggressive public relations)? Rule out those which are impossible or inappropriate for whatever reason, and come up with a shortlist of realistic options.

Weighing Costs Against Potential Results

List the advantages and disadvantages of each option, with a view to potential results. This will be inevitably speculative, but you can find out a lot of information from other groups doing similar work. Ask to what extent you would be duplicating efforts of other people: would your participation in this forum be unique? Would it make a difference?

Will you be able to properly prepare and follow through to the finish, so as to maintain credibility? It is better not to intervene at all before an administrative tribunal unless you can contribute effectively to the process. For this reason, Andrew Roman suggests observing a hearing or two before intervening for the first time. Similarly, he suggests intervening before initiating a case on your own. There is simply no point in risking damage to your credibility; such damage would effectively

undo all your past efforts and prejudice your future efforts. Credibility is slow to achieve and quick to lose.[1]

Visibility of the forum is another factor to consider. In most cases, the more visible the better. The downside to visibility is that any damage to your credibility is merely amplified, as are your gains. Consider to what extent your involvement can increase the visibility of the forum or process: the involvement of a public interest group in an otherwise standard hearing tends to attract attention.

The cumulative benefits of repeated participation in a given forum should be given significant weight. You will get to know the people involved, be they bureaucrats, politicians, tribunal members, or journalists. A good relationship can take you a long way. Especially in the context of a public hearing, you are more likely to succeed after the Board has become familiar with you and your viewpoints, assuming that they are well-researched and presented.

Any risk associated with a given route should be added into the equation. Litigation, in particular, is a risky affair - one person is bound to lose. On the other hand, parties before administrative tribunals are not faced with the same win-or-lose situation; tribunals can order a modified result, in which case both parties achieve something.

On the other side of the weigh scale are the costs of each route. Again, you will have to speculate. However, some routes are clearly more expensive than others. Litigation, for example, is an extremely costly method of advocacy, and should only be used where ample funding (or free legal work) is available, where the case is likely to succeed, and where the outcome is likely to have an effect on policy or legislation, assuming that is what you seek to change.

Weigh the costs against the net benefits of each option, and discard those options whose costs outweigh their probable beneficial results. Then it is time to decide which of the remaining routes are financially viable.

Assessing Your Financial Capabilities

Once you have determined as best possible the cost of each option, you must identify all possible sources of funding for that option. In addition to your general fundraising efforts, look for funding sources targeted specifically at the forum in which you seek to participate. Courts, for example, often award costs at the end of the day to the successful party, to be paid

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[1] Andrew Roman, Effective Advocacy, p.

by the unsuccessful party. (This is another element of risk in litigation). Some tribunals also award costs, but on the basis of quality of contribution, rather than successful result. (This makes a lot of sense, given that parties before administrative tribunals rarely win or lose). In any case, cost awards are unpredictable and cannot normally be made in advance of the hearing.

Intervenor funding is available in certain proceedings. Such funding awards are made before the hearing, so as to enable participation by financially strapped groups. This is discussed further in the chapters on public inquiries and administrative tribunals.

If you need a lawyer but can't afford one, there are several possibilities. If your case is particularly interesting, you may find a lawyer who will act pro bono (ie: free). Alternatively, a lawyer may agree to take the case on a contingency fee basis (ie: he or she will be paid out of any cost or other awards). Depending on the nature of your case, there may be a specialty legal clinic willing to provide legal services to you. In this case, the clinic will take over the legal aspects of the case, including the retaining of expert witnesses and consultants.

Expert witnesses may also agree to act pro bono for you. Alternatively, you may be able to convince the tribunal or public inquiry to call the expert witness as its own witness, thereby achieving the same effect as if you called the expert, but relieving you of the expense.

Think also of ways to reduce your costs. Can you pool resources with another group? Can you find an expert to assist you for free? Can you get funding for background work - eg: a government grant for a research project which lays the basis for future advocacy?

Setting Priorities

Having narrowed down your choices, decide which will be your primary route and which will be the fall-back alternative, should the primary route fail. If two or more routes are complementary, you may want to use a multi-pronged approach. Be careful, however, not to overestimate your resources; you want to see this issue through to its conclusion, if at all possible. Moreover, it's better to do a good job in one forum than to make half-hearted attempts in several different places.

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CHAPTER FOUR

OPTIONS FOR ACTION

As mentioned above, there are several possible ways to promote a given cause. We have divided these options into three categories according to the approach you decide to take:

(1) Handing It Over To Someone Else
(2) Participating In An Existing Process
(3) Doing It On Your Own

Some of the methods listed below will not apply to your particular issue. As well, you may think up alternatives that are not canvassed here.

(1) Handing It Over To Someone Else

It may be the case that someone else has specific powers to resolve your problem, or at least to assist you in obtaining a satisfactory solution. Certain branches of government may be of great help to you, particularly if your concern is with the enforcement of existing laws. For example, the Ontario Ministry of the Environment investigates conplaints about pollution, and can take corrective action under Ontario environmental protection legislation. Consumers are similarly served by provincial and federal ministries dealing with consumer affairs (see chapter six).

The private sector also has its own "policing" bodies - for example, the Advertising Standards Council, the Better Business Bureau, and professional regulatory bodies. These bodies can be very effective in resolving complaints from the public, as it is in their interest to maintain a good public profile.

Another often neglected source of assistance is your provincial Ombudsman. This official has extensive powers to obtain redress for citizens who have been treated unfairly by their provincial government. There is no ombudsman in PEI or in Newfoundland.

Finally, if what you seek can be obtained through a strictly legal process such as litigation or an administrative tribunal hearing, you could hand the case over to a lawyer trained in the area. By "handing over", we do not mean complete abandonment of control; you will want to and should maintain ultimate control over the way in which the case proceeds (see chapter five). If you can afford a lawyer, great! If, like most of us, you can't, there are other options, discussed in chapter five.

(i) Special Avenues of Redress for Consumers

Some consumer issues such as misleading advertising, unfair business practices, and product safety are dealt with by

government. In these and other areas, you can seek redress through official investigators and enforcement officers. Chapter six outlines federal and provincial avenues of redress for consumers.

Also mentioned as useful routes are the relevant services offered by the Better Business Bureau and other trade or professional associations.

Small Claims Court litigation is discussed (even though it is a "do-it-yourself" option) as a last resort for the consumer who has a small monetary claim against an uncooperative party.

Finally, there is a brief discussion of class actions: their utility and availability.

(ii) **The Ombudsman**

"Ombudsman" is a Swedish word meaning protector of the people's rights. Every province but PEI and Newfoundland has one; there is no such office at the federal level. The following description of the Ombudsman's powers is based on Ontario; other provincial Ombudsmen may have different powers. Check with the office in your province to find out what sort of complaints can be entertained, and how to go about lodging a complaint.

The provincial Ombudsman is independent of government and responsible directly to the legislature. Using an experienced staff (of 122 people in Ontario), the Ombudsman has broad powers to investigate actions, decisions, procedures and practices of government officials. Aside from courts, judges, legal advisors and cabinet decisions, all provincial ministries, agencies, boards and commissions are subject to the scrutiny of the Ombudsman. However, the Ombudsman cannot deal with federal matters (such as postal service or Unemployment Insurance), municipal matters (such as garbage collection or by-law enforcement), nor cases against private bodies.

If unable to help, the Ombudsman will write back explaining why. The Ombudsman's remedial powers are theoretically quite limited: she can only recommend that corrective action of whatever type can be taken. However, her recommendations can (and often do) carry significant weight. Citizens in Ontario have obtained redress through their Ombudsman in a variety of situations: workers' compensation, OHIP, legal aid, litigation, expropriation and retail sales tax are some expamples.

The Ombudsman is also able to get involved in a variety of concerns on her own initiative. Even if you don't have a personal complaint, you can write to the Ombudsman with suggestions about matters of government administration which you believe warrant her attention.

While potentially useful, the Ombudsman will only act if all other possible avenues of recourse have been exhausted. Therefore, you must first attempt to resolve the problem by contacting the person or group concerned. If that fails, try your M.P.P. or any other available appeal route. Only if you cannot obtain redress through these avenues will the Ombudsman normally investigate your complaint.

There is no fee for the services of the Ombudsman. Moreover, all information is kept confidential. The Ontario Ombudsman is accessible through nine regional offices, as well as its central office in Toronto.

(iii) **Finding and Using a Lawyer**

Chapter five gives tips on how to find a good lawyer and how to minimize legal expenses.

(2) <u>Participating in an Existing Process</u>

It may be that a process (such as a hearing) dealing with your issue is already underway. For example, someone may have already launched a legal suit raising an issue in which you are particularly experienced and concerned. You may, subject to fairly stringent conditions, be allowed to intervene in the court hearing. (Such interventions usually require the skills of a lawyer). It is much easier, however, to obtain intervenor status in an administrative tribunal hearing, especially if your group is known for its expertise in the subject-matter before the tribunal.

The government may have already set up some sort of committee to look into your issue. If this is the case, you have a ready-made forum for your concerns, whether it be a public inquiry, a standing committee or a legislative committee. Standing committees are appointed for the life of the government, and generally review the affairs of the various government departments. Legislative committees are set up to examine draft legislation; they can make amendments to the bill before them, based upon submissions made to them by interested citizens.

(i) **Public Inquiries**

Royal commissions, task forces and other panels set up by the government to hear submissions from the public and to report back, are included in the term "public inquiry". These bodies are set up to look into specific issues such as public transportation, reproductive technology or native land claims. They often have little impact, despite vast amounts of money spent, thorough analyses, and some very good final reports. It is possible, however, that the inquiry's report will have an effect on government policy. This will depend to some extent on the

political climate at the time. In any case, your participation in the hearings can help to ensure that the ultimate report is better than it might otherwise have been.

(ii) **Administrative Tribunals**

Administrative tribunals are ongoing, specialized government agencies which perform decision-making functions. There are hundreds of them, at both federal and provincial levels. (See the list in Appendix A to chapter 12). Their powers and practices vary enormously. You can generally identify an administrative tribunal by its title, which usually includes "board", "tribunal" or "commission". Examples of tribunals which regularly hold public hearings are public utilities boards, environmental assessment boards, municipal planning boards, rent review boards, workers' compensation boards and energy boards.

Public interest groups can initiate cases or intervene in existing cases before many administrative tribunals. Chapter 12 explains how to effectively intervene in a public hearing.

(iii) **Legislative Committees**

At both federal and provincial legislatures, public bills must follow a certain path before they become law. Unless a bill is disposed of earlier, it will usually be sent to a legislative committee for consideration in detail. Sometimes, these committees hold public hearings, in which case you and any other interested persons can make representations without special invitation. Watch out for advertisements of such hearings in local and national newspapers.

Even if the committee concerned does not hold public hearings on the legislation in question, you can get involved by simply attending committee meetings and making yourself available to committee members as a resource person. This way, you can influence the shape of the bill presented to the legislature for third and final reading. Chapter 8 discusses legislative advocacy in general, and explains relevant aspects of the federal legislative process.

(3) <u>Doing It On Your Own</u>

Is your concern that nothing is happening? Or is there no forum in which your issue is currently being raised? If the answer is yes, then you need to sit down and carefully review your options. Do you want to mount a public campaign? If so, in what time frame? Emergency campaigns require a different approach than do longer-term campaigns. Do you want to see new legislation introduced? There are special processes for the introduction of legislation by non-government Members of the legislature. Do you have a cause of action against another

person or body? Litigation can be an effective tool, if you can afford it. Finally, the media can be your greatest ally, if properly used.

The following chapters discuss various types of advocacy, from lobbying to litigation.

(i) **Making It An Election Issue**

Don't miss the opportunity to make your cause an election issue. Politicians are more accessible than usual during election campaigns, a fact of which you should take advantage. In her excellent handbook for women, Penney Kome suggests the following:

- target one candidate whose track record on the issue has been less than adequate;
- raise the consciousness of all the candidates on the issue;
- seek private meetings with candidates;
- arrange an all-candidates' meeting on the issue;
- circulate a list of questions, recruit people, and ensure that the questions are raised at every meeting in your ward or riding.

Be careful to ask specific questions, so that a waffling answer is obvious. Try to pin the candidate down if he or she gives you an ambiguous answer. Ask informed questions, to show that you are serious about the issue. Include in your list of questions some basic information or statistics to back up any allegations or assumptions you are making. Keep up-to-date on party positions, and use those positions to your advantage.

(ii) **Lobbying for Policy Change**

According to Ralph Nader,

> a democracy of active citizens recognizes that for elections to have substance and genuine choice, there needs to be a regular stream of citizen activity <u>between</u> elections: Anderson, <u>For The People</u>, p.7.

Lobbying embraces all sorts of activities and styles of persuasion. This chapter looks at lobbying both friendly and unfriendly targets within the government, and suggests useful tactics for the amateur lobbyist.

(iii) **Legislative Advocacy**

Legislative advocacy is simply a specific form of lobbying. Chapter eight explains, in very general terms, how to effect and affect new legislation before Parliament or your provincial legislature. To accomplish this, you need to understand the legislative system, including the operation of legislative

committees. You must also get to know the legislators themselves, and learn how to influence them.

(iv) **Using the Media**

The media - radio, television and newspapers - is perhaps the most effective tool of advocacy. Politicians in particular are highly sensitive to comments by journalists. In fact, what the media says about a politician's position on a given issue can take you further than a thousand submissions to committees and bureaucrats. Publicity through the press should be undertaken carefully, however, so as not to jeopardize your credibility. This chapter discusses various ways of attracting media attention.

(v) **Litigation**

This option is available only if you have a cause of action. Even where a cause of action exists, the expense and inherent risk involved in litigation often make it less attractive than other options.

Nevertheless, litigation can be a powerful way of working within the system for social change. For example, the Morgantaler case has led to a nationwide debate and a proposed new law on abortion. The Rafferty-Almeda Dam case has led to a reappraisal of the federal environmental assessment process and a proposed new law governing it. Lobbying by interest groups on both of these issues now has a clear focus: to affect the content of these new laws. Another example of effective litigation is the 1975 James Bay Hydroelectric Project (Phase I) case brought by the Crees in Quebec. This case resulted in the first comprehensive native land claims settlement in Canada. The resultant agreement provided the Crees with important powers to control development on their lands, and affirmed their traditional rights to hunt, fish and trap.

Litigation is useful when immediate action is required; when there is simply no time to engage the public decision-making process. It can also effectively force a result, toward which lobbying was having no effect. The James Bay case illustrate this point: the Crees, by obtaining an injunction against further development on their lands, forced the Quebec government to the negotiating table. Particularly intransigent decision-makers may respond only to the rather blunt tool of litigation.

This chapter gives an overview of the court system and some basic legal concepts. It should assist you in determining whether or not legal action is appropriate in your case.

(vi) Initiating A Hearing Before An Administrative Tribunal

Although it is relatively rare for citizen groups to initiate hearings, it is quite possible and entirely appropriate in certain situations to do so. Where the tribunal's empowering statute provides for applications by or on behalf of any interested party, you can initiate a hearing as an interested party. Such applications usually complain that a company regulated by the tribunal has failed to do something that it is required to do by law or order of the tribunal, or that the company has done something contrary to law or to an order of the tribunal.

Some (if not most) tribunals have an internal review procedure which can be set in motion by any interested party. This procedure, provided for in the tribunal's empowering statute, generally permits the tribunal to reconsider any decision made by it, or to re-hear any application before deciding it. If you are dissatisfied with a decision of such a tribunal, and if you can argue on firm grounds that the decision was faulty in some respect, consider applying to the tribunal for review (but don't waste any time - there will likely be a time limit of 30 days or so).

CHAPTER FIVE

DO YOU NEED A LAWYER?

One of the aims of this manual is to help you achieve your goals without the assistance of a lawyer. However, there are situations in which you will require the services of a professional. Litigation (other than Small Claims Court) and complex administrative hearings generally require the skills and expertise of trained counsel. Even in what appears to be a simple hearing, unforeseen and complicated issues of procedure or evidence may arise, at which time those parties without knowledge of administrative law will be at a serious disadvantage.

Nevertheless, lay advocates can successfully intervene before administrative tribunals (and have so done), provided that they know the evidence, are familiar with the procedure of the forum, and have developed some advocacy skills (through observing hearings, reading texts such as Andrew Roman's treatise on advocacy before administrative tribunals, and participating in an advocacy training seminar). All of this requires a great deal of time and effort, especially if the hearing involves extensive evidence or if you plan to call any expert witnesses.

If your group is financially strapped, your best bet may be to use a lawyer strategically: for example, to assist you in the preparation of certain documents, to provide a legal opinion on certain issues or to perform the advocate's role during the hearing. Where your resources are limited, the controlled use of a skilled lawyer may take you a long way toward your goal. In any case, legal costs can be significantly cut if you do as much of the background work as possible for your lawyer. Another cost-cutting measure is to have your lawyer attend only the crucial part of the hearing. (The latter can, however, be dangerous, since the lawyer may unwittingly repeat points already made, thereby annoying the panel).

As pointed out in chapter two, there are ways of obtaining legal representation at no or little cost. Some lawyers will agree to act pro bono (free), or to be paid out of any cost or funding awards, only if they succeed. The more interesting or compelling your case (or the higher its public profile), the more likely a lawyer is to donate his or her time. Approach established lawyers for free legal assistance first - they can afford to give it.

Legal aid (a provincial plan) may agree to cover your legal costs, although this is uncommon for administrative law matters. Alternatively, your local legal aid plan office should be able to direct you to a specialty legal clinic which takes cases such as yours (if one exists). A list of specialty legal clinics in Canada is appended to this chapter. If you are lucky, you will find such a group able and willing to take on your case.

How To Find A Lawyer

If you decide to seek the services of a lawyer, do not simply go through the Yellow Pages to find one. You need someone experienced in the relevant area of law and preferably familiar with the particular tribunal. The law has become increasingly complex in recent years, so much so that most lawyers find they must specialize in order to keep up with ongoing developments. Lawyers in Canada don't generally advertise their specialties. Therefore, the only reliable way to find a good lawyer is through referrals from former clients of the lawyer or from people who are familiar with the lawyer's work (eg: groups experienced in this area or university professors in the same field).

When you are choosing a lawyer, be aware that hourly rates vary tremendously, depending on experience: a junior lawyer can cost half as much per hour as a senior lawyer. However, the junior may take twice as long to prepare as the senior lawyer. It is therefore difficult to determine on the basis of hourly rates which lawyer will ultimately cost less. Moreover, even if you retain a senior lawyer, he or she is likely to delegate much of the preparatory work to an associate, for whose time you will be billed appropriately.

Don't be intimidated into hiring the first lawyer you consult. Interview candidates over the phone first, asking what percentage of the lawyer's time is spent handling the kind of work you need done (the more, the better), and how the lawyer bills. If it seems that you have found a willing, experienced and affordable person, arrange an initial consultation at the lawyer's office. Make it clear that this is simply an interview, and find out if
you will be charged for it (many lawyers offer free initial consultations).

At the meeting, explain fully the nature of your organization and what it is you seek to accomplish, both in the short and long term. Try to determine how comfortable the lawyer is with your case. Ask yourself if you respect this person and if you are able to talk easily with him or her. Tell the lawyer exactly what you want in the way of a solicitor-client relationship. (At the least, you will want to know what is happening at all times on your case, be advised of both sides of any issues that arise, and be involved in any key decisions before they are made). If you want to use the lawyer selectively, clarify exactly what tasks the lawyer will and will not take on.

Discuss finances at the initial meeting, after you have talked about the case. Explain your group's financial situation and be prepared to talk about possible billing arrangements. This is the time to ask (if you haven't already) if the lawyer would consider doing <u>pro bono</u> work, or would agree to some other arrangement in your interest. Where finances are a problem,

consider assigning a volunteer from your group to assist the lawyer with menial tasks that arise during preparation (eg: organizing exhibits for the hearing and summarizing transcripts of evidence). Such an arrangement must be with the consent of the lawyer, of course.

Don't make a hasty decision; there is nothing wrong with comparison shopping for a lawyer. Once you have chosen a lawyer, make your arrangement absolutely clear in a written retainer agreement. Ask to be sent fully itemized interim bills, if extensive work is necessary. Set out a timetable, in consultation with the lawyer, describing the tasks to be performed.

Working With A Lawyer

Even if you are not concerned about your legal bill, it is wise to do as much background work as possible for the lawyer. Collect all relevant documents and organize them, with a written summary of the facts and issues. Not only will you reduce the lawyer's work, but you will have more control of the case than if the lawyer (or her clerk) has done all the organizing. Use your expertise to fully brief the lawyer on the subject-matter. Inform your lawyer of new developments as soon as they occur. Then, rely on the lawyer's expertise as to the required evidence and the best way to present that evidence.

Keep notes of all discussions with your lawyer; you never know when they will come in handy.

In order to streamline communications between your group and its lawyer, make one person responsible for dealing with the lawyer, and respect that arrangement. Otherwise, the lawyer may receive conflicting instructions or may end up repeating the same information several times over. Give that person enough authority that he or she can instruct the lawyer without having to convene a meeting to authorize every decision. Your lawyer should not be frustrated by the group's desire for democratic decision-making.

Consult your lawyer about any non-legal action your group is considering, such as lobbying or media events. Not only should she be aware of it, but you may get some good advice on strategy from someone more sensitive to the proprieties involved in legal action. Media coverage in particular can be detrimental to a legal case, if improperly timed or inaccurately reported.

Finally, don't hesitate to ask questions - it's up to you to ensure that you are getting proper representation.

References:

Buyers' Market, vol.2 no.3 (March, 1986), (Wash. D.C.: Centre for Responsive Law).

Newman & Kramer, Getting What You Deserve, ch.27, (New York: Doubleday, 1979).

Public Interest Law Centre, Manitoba, How To Get What You Want, (Winnipeg: PILC, 1986), pp.51-53.

A.J. Roman, Effective Advocacy Before Administrative Tribunals, (Toronto: Carswell, 1989), pp.76-86, 141-145.

APPENDIX

SPECIALTY LEGAL CLINICS IN CANADA
(not a complete list)

National:

Public Interest Advocacy Centre
410-1 Nicholas Street
Ottawa, Ontario
K1N 7B7
(613) 563-0734

British Columbia:

B.C. Public Interest Advocacy Centre
701-744 West Hastings Street
Vancouver, B.C.
V6C 1A5
(604) 687-3063

Sierra Legal Defence Fund
601-207 West Hastings Street
Vancouver, B.C.
V6B 1H6
(604) 685-5618

West Coast Environmental Law Association
1001-207 West Hastings Street
Vancouver, B.C.
V6B 1H7
(604) 684-7378

Alberta:

Environmental Law Centre
201, 10350-124 Street
Edmonton, Alberta
T5N 3V9
(403) 482-4891
1-800-661-4238 toll-free in Alberta

Manitoba:

Public Interest Law Centre
Legal Aid Manitoba
402 - 294 Portage Avenue
Winnipeg, Manitoba
R3C 0B9
(204) 985-8540

Ontario:

Advocacy Centre for the Elderly
902 - 120 Eglinton Ave. East
Toronto, Ontario
M4P 1E2
(416) 487-7157

Advocacy Resource Centre for the Handicapped
225 - 40 Orchard View Boulevard
Toronto, Ontario
M4R 1B9
(416) 482-8255 (voice)
482-1254 (TTY)

Canadian Environmental Law Centre
517 College Street
Toronto, Ontario
M6G 4A2
(416) 960-2284

Justice for Children
405 - 720 Spadina Avenue
Toronto, Ontario
M5S 2T9
(416) 920-1633

PUBLIC LEGAL EDUCATION AND INFORMATION CENTRES

Canadian Law Information Council (clearinghouse for all Canadian 205 - 600 Eglinton Avenue East PLEI centres)
Toronto, Ontario
M4P 1P3
(613) 483-3802

Yukon Public Legal Education Association
c/o Yukon College
P.O. Box 2799
Whitehorse, Yukon
Y1A 5K4
(403) 667-4305

Arctic PLEI Society
Box 2706
Yellowknife, N.W.T.
X1A 2R1
(403) 920-2360

Legal Services Society of British Columbia
P.O. Box 3, Suite 300
1140 West Pender Street
Vancouver, B.C.
(604) 660-4600

Public Legal Education Network of Alberta
c/o Secretariat, Legal Resource Centre
10049-81 Avenue
Edmonton, Alberta
T6E 1W7
(403) 492-5732

Public Legal Education Association of Saskatchewan
210 - 220 3rd Avenue South
Saskatoon, Saskatchewan
S4P 3V7
(306) 787-7872

Community Legal Education Association (Manitoba)
202 - 379 Broadway
Winnipeg, Manitoba
R3C 0T9
(204) 943-2382

Community Legal Education Ontario (CLEO)
618 - 700 King Street West
Toronto, Ontario
M5V 2T5
(416) 941-9860

Community Legal Information Association of P.E.I.
P.O. Box 1207
Charlottetown, P.E.I.
C1A 7N8
(902)892-0853

Public Legal Education and Information Service of New Brunswick
Box 6000
Fredricton, New Brunswick
E3B 5H1
(506) 453-5369

Public Legal Information Association of Newfoundland
P.O. Box 1064
Station C
St. John's, Newfoundland
A1C 5M5
(709) 722-2643

Public Legal Education Society of Nova Scotia
109 - 1127 Barrington Street
Halifax, Nova Scotia
B3H 2P8
(902) 423-7154

CHAPTER SIX

SPECIAL AVENUES OF REDRESS FOR CONSUMERS

This chapter is aimed at those consumers or consumer groups with specific marketplace complaints such as misleading advertising or product safety. Many of these consumer problems have been addressed by federal and provincial legislatures, and are therefore relatively simple and inexpensive for consumers to resolve.

With any marketplace problem, your first step should always be to complain directly to the salesperson or department head. Always get the names of persons you deal with for future reference. This tactic also tends to give the person a greater sense of personal responsibility to respond.

If you fail to get satisfaction from the person you originally dealt with, write a complaint letter to the president of the company or to the head of customer relations. Mark the letter "personal". Explain the problem and the responses that you have so far received. Send copies (not originals!) of sales receipts or other documentation. Firmly, but politely, request prompt attention to the problem, being sure to include your name, address and telephone number. Keep copies of all correspondence.

If that doesn't work, contact the appropriate trade or professional organization: the Better Business Bureau, for small businesses; the Advertising Standards Council, for advertisers; and professional regulatory bodies for lawyers, doctors, engineers, etc., are examples of private associations with consumer complaint mechanisms. Such organizations can be very effective in resolving consumer complaints. Although they represent "the other side", they are usually set up with a view to improving customer relations and eliminating unethical practices by their members.

The Better Business Bureau, for instance, handles complaints against unethical firms, investigates and attempts to resolve problems through informal discussion and arbitration (if both parties agree to submit to arbitration). This can be an inexpensive and expedient way of resolving a problem with a local business, a practical alternative to litigation.

Your problem may be one which falls within federal or provincial consumer legislation. If it does, the government may well take action based upon your complaint.

Consumer and Corporate Affairs Canada (CCAC) is the federal department charged with ensuring the fair and equitable treatment of consumers in the marketplace. The Consumer Services Branch of CCAC, with regional offices scattered across the country, takes complaints and inquiries from the public. When a complaint involves the alleged breach of a federal consumer-related statute, CCAC will investigate and may lay charges and/or make an order for compliance under the applicable legislation. If the complaint falls outside federal jurisdiction, the Consumer Services officer should refer the complainant to the appropriate body (provincial government, private organization or lawyer, for example) for resolution.

The Bureau of Competition Policy, another branch of CCAC, also has regional offices throughout the country, to which consumers can complain. The Bureau enforces the Competition Act, under which misleading advertising and other deceptive marketing practices are made offences punishable by a maximum of five years in jail and/or $10 million in fines. While the Director of Investigation and Research has a great deal of descretion in deciding whether or not to investigate, he must commence an inquiry where any six resident Canadian adults apply, with supporting documentation in prescribed form, for an inquiry into a matter under the Act: s.7.

It should be noted that federal consumer legislation, in general, does not provide personal remedies (such as damages or compensation) to individual complainants. Rather, it seeks to regulate market practices through criminal and quasi-criminal penalties. In order to recover damages, consumers must sue in a court of competent jurisdiction (see below, under "Small Claims Court", and see chapter 11). The Competition Act, however, assists individual consumers wishing to sue by creating a statutory cause of action for violation of the Act: s.36.

Provincial governments provide another level of consumer protection. In Ontario, the Business Practices Division of the Ministry of Consumer and Commercial Relations administers legislation such as the Consumer Protection Act and the Business Practices Act, both of which provide redress for the victimized consumer. Consumer Services Bureaus have offices in eight regional centres, to which offices consumers can complain.

Specific Consumer Problems

(1) Misleading Advertising and other Deceptive Business Practices

The Advertising Standards Council has voluntary codes of conduct, which can be obtained from the nearest ASC office upon request. Use this information when complaining to the business concerned. If you can point to a clear breach of the code, the ASC should be willing to take some action against the wrongdoer.

At the federal level, the Competition Act outlaws bid-rigging, discriminatory pricing, misleading advertising and other unfair trade practices (see the Act for more detail). The Consumer Packaging and Labelling Act, the Textile Labelling Act and the Food and Drugs Act also forbid misleading advertising in the areas they cover. These Acts provide for criminal and quasi-criminal penalties against violators; you must sue privately for individual compensation or other remedies.

Many provinces have enacted Consumer Protection laws and Unfair Business Practices laws, which typically provide for a combination of criminal sanctions, cancellation of prohibited transactions, and compensation for aggrieved consumers. For example, upon investigation of your complaint, a government official may issue or apply for a "cease and desist" order to halt the offending practice. Alternatively, the merchant may be persuaded by officials to compensate victims, or may be ordered to do so by a court, upon application by the government. Ask your provincial government for information on such legislation and services. The applicable Ministry likely publishes pamphlets to inform consumers of their rights and remedies under provincial legislation.

If the government doesn't enforce the applicable Act to your satisfaction, look for ways of enforcing it on your own. Does the Act confirm that you have a cause of action (see chapter 11 for discussion of "cause of action")? For example, s.36 of the Competition Act provides that:

> (1) Any person who has suffered loss or damage as a result of
>
> (a) conduct that is contrary to any provision of Part VI, or
>
> (b) the failure of any person to comply with an order of the Tribunal or another court under this Act, may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

If not, do you have a cause of action in common law (see chapter eleven)? The applicable Act may explicitly preserve such civil rights. Section 62 of the Competition Act, for example, states:

Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of any civil right of action.

(2) Defective Goods and Services

Your remedy for defective goods is, beyond informal attempts to get a refund, to sue in the appropriate court. Unsafe products, on the other hand, should be reported immediately to the pertinent government office (your personal remedy is, again, litigation). Certain goods and services (eg: lotteries, theatres, elevators, fuels, stuffed articles) may be specially regulated - the consumer protection office will refer you to the appropriate Branch of the Ministry if this is so.

In addition to the regional offices of CCAC and provincial or territorial Ministries, the Health Protection Branch of Health and Welfare Canada is concerned with the safety of food, drugs and cosmetics. Problems with vehicle safety should be reported to Transport Canada.

Defective services should be reported to the appropriate licensing authority or regulatory agency (taxis, for example, are regulated municipally; public utilities are regulated provincially; airline and rail service is regulated federally, by the National Transportation Agency). Unfair trade practices should be reported to your local CCAC or provincial consumer protection office, as well as to the relevant professional or trade body. Your provincial consumer protection office should be able to give you the name and address of the appropriate regulatory body.

(3) Credit Reporting Agencies and Debt Collectors

Provincial laws require credit bureaus to act in accordance with applicable law. Examples of common statutory rights are the right to know what is in your file, where it came from and to whom the report has been divulged. The agency is also usually obliged to correct errors in your file. Debt collectors are similarly regulated. Unreasonable collection practices are prohibited under provincial legislation. Contact your provincial consumer protection bureau if you experience problems with a credit reporting or debt collection agency.

(4) Insurance

If your insurance company refuses to reimburse you for a legitimate loss, you can sue it, but only within one year of the date the company refused to pay you. The Insurance Bureau of Canada, with local offices across the country, may provide a less

costly forum for dispute resolution, as does the Better Business Bureau.

With respect to life insurance or health insurance, you should report any problems to the Canadian Life and Health Insurance Association (1-800-268-8099).

The provincial or federal Superintendent of Insurance might also be of help - your local consumer protection office should be able to direct you there.

Small Claims Court

If informal attempts at resolution have failed, and if the matter involves a debt or claim for damages of a relatively small amount, Small Claims Court may be the answer. This forum, often called "the people's court", is set up to help citizens collect money debts or damages without the aid of lawyers. Indeed, lawyers' fees are not recoverable in some provinces, while other provinces limit the amount of legal fees recoverable by successful parties.

There is a limit to the amount you can claim in this court; it ranges from $500 to $3000 (soon to be $5000 in Metro Toronto), depending on the jurisdiction. Check with the local Small Claims Court to determine if you fall within the applicable limits.

As with all other court actions, you will not succeed unless you have a recogized "cause of action" (ie: grounds on which to sue). In most small claims actions, the cause of action is breach of contract or negligence. In either case, you must also prove that the breach or act of negligence caused you some form of injury (usually monetary loss) which can be compensated for by damages (money).

Before you rush out and issue a statement of claim at the Small Claims Court office, try to resolve your problem through other means, such as a demand letter or negotiation. Only if this fails should you resort to litigation. Even though expenses at Small Claims Court are minimal, you will have to pay some court costs.

Your first step should be to contact the local Small Claims Court and find out if it can provide you with the remedy you are seeking. You may, for example, have to lower your claim in order to fall within the monetary limit of the court. This court has only those powers given to it by statute; make sure that it can provide you with the remedy you seek. Many Small Claims Courts issue booklets describing how they work and what you need to do to obtain redress through them. **Obtain a copy of any such booklet and follow the suggestions in it.** Otherwise, ask the

court clerk for guidance. In any case, you should find out immediately:

- how much you can sue for;
- what the filing fee is;
- how notice of the case is served upon the defendant;
- what the normal waiting time before trial is;
- whether there will be a pre-trial conference;
- when and where the trial (and pre-trial, if applicable) will take place; and
- whether lawyers are allowed, and whether their fees are recoverable.

The following is a brief description of some aspects of a Small Claims action from the perspective of a plaintiff. A complete set of instructions and tips is beyond the scope of this chapter. For further advice, consult a booklet or text on topic, or see a lawyer.

On the statement of claim, set out the amount and nature of your claim, as well as the full name and address of the defendant(s), so that the court (or process server) can serve a copy of your claim on them. If you are suing a business, make sure that you have the correct business name. This can be checked through your provincial Ministry of Business or Consumer Relations. Always include the name of an individual to be served - a company officer, in the case of an incorporated business; the partners, in the case of a partnership. If the business you are suing is not incorporated, include the names of both the owner and the business, with addresses for each.

Sue for **all** the expenses that you have incurred as a result of the wrongdoing. These can include long-distance calls, taxi fares, lost wages, etc. Always ask for pre-judgment interest - you may well be awarded interest on the amount claimed from the date of non-payment to the date of judgment. If damages are awarded, interest will be calculated from the date the defendant was notified of your claim. For this reason, keep copies of all correspondence and other relevant documentation.

Put some time into preparing for trial. Contact potential witnesses, interview them and have the court formally summon them if you want their testimony in court.

Preparation for trial will assist you in pre-trial settlement negotiations. Nevertheless, you should attempt to settle the case as soon as possible, in order to save costs. Settlement can occur at any time right up to trial. Indeed, pre-trial conferences are held with the aim of inducing the parties to reach a settlement out of court. Be aware of potential cost consequences of refusing an offer to settle - see the court rules for details.

Courtroom procedure is much less formal than in higher courts, but generally follows the same course: each side presents her case, beginning with the plaintiff. If you want to give evidence, you must do so from the witness stand, after swearing to tell the truth. When you are finished, the defendant may cross-examine you. If you call other witnesses, they will also be subject to cross-examination by the defendant. If you are relying on any documentation, such as receipts or contracts, you should introduce them from the witness stand. They will be taken from you and marked as exhibits, to be returned to you 30 days after the trial is completed.

It's possible to appeal a judgment against you to a higher court if the claim was for more than $500. Appeals must generally be on a point of law, and should therefore be handled by a lawyer. There is a deadline for appealing, usually 30 days. Appeal courts can dismiss the appeal, vary the judgment or order a new trial.

Getting a judgment is often only the beginning of your efforts to recover a debt. Enforcing the judgment can be a time-consuming process, especially if you are dealing with an evasive person. There are several ways of enforcing a debt, including:

- examination of the debtor to find out the extent of his assets and liabilities;
- garnishment of the debtor's wages;
- seizure and sale of personal property; and
- seizure and sale of land.

These options can be explained in more detail by court staff.

Class Actions

A class action is a legal suit initiated on behalf of other people who have suffered similar harm due to the some act or omission. Class actions are of particular interest to consumers in that they allow a large number of individual victims to obtain redress in situations where no single individual could afford to sue on his or her own. In the case of product liability or pollution, for example, the damages are spread thinly over a large number of people, so that there is no economic incentive for victims to sue individually.

The Supreme Court of Canada, in a 1983 judgment called Naken v. General Motors of Canada, made it clear that class actions can only proceed where the legislature specifically authorizes (ie: where a provincial statute expressly allows for them). The only province to enact such legislation to date is Quebec, while the Ontario legislature is currently considering its own class action legislation, in the form of the Class Proceedings Act. Because of the complexity of class actions, it is recommended that you

consult a lawyer before attempting to initiate such an action (a special fee arrangement should be possible, given the nature of the claim).

References:

M. Flynn, Consumer Rights and Responsibilities: A Teacher's Manual, (Toronto: Ministry of Consumer and Commercial Relations, 1984).

Ontario Ministry of the Attorney General, A Guide To Small Claims Court.

Michael J. Trebilcock and Patricia McNeill, The Canadian Marketplace: A Consumer Rights Handbook, (Toronto: CBC Enterprises, 1983).

CHAPTER SEVEN

LOBBYING THE GOVERNMENT

Lobbying is the communication of your interests to a carefully chosen target person, with an aim to influence decision-making. There are many different types and levels of lobbying, some of which are discussed below. All effective lobbying, however, has in common the following steps:

- identifying the appropriate decision-makers;
- approaching them and clearly communicating your interests;
- staying in contact for further influence or follow-up.

Lobbying is a fact of political life in Canada; interest groups of all sorts wield influence through paid lobbyists, many of whom rely upon private connections and political debts (as opposed to specialized knowledge) in their efforts to affect legislation or policy. Such professional lobbyists, who for the most part represent corporate Canada, have tremendous influence on our governments. With their contacts, significant financial backing, and promises of political favours (such as votes or campaign contributions), they are able to influence the shape of legislation long before the public even knows about it.

Without such influential persuaders, public interest groups must rely upon their own credibility and expertise. Although it is easy to become cynical about the lobbying process in Canada, our governments do spend a lot of time consulting pressure groups who have made substantial contributions to policy-formulation in the past. Thus, time spent establishing yourself as an expert upon whom officials can rely for sound facts and opinion will usually pay off.

Traditional lobbying doesn't work well for citizen groups without an existing power base. Upon meeting with a decision-maker, they may get what appears to be agreement or commitment, only to discover later that the politician or bureaucrat failed to keep his or her word. It is for this reason that some seasoned citizen activists advise against closed meetings with officials, suggesting instead public meetings and deputations.

Keys To Successful Lobbying

Effective lobbying depends upon a variety of factors, including the size of your constituency, the reputation of your group, your exhibited knowledge of the issue, and your ability to target the right people at the right time. Other important assets in a lobbying campaign include professionalism, social skills and sheer persistence. All of these factors are important regardless of the type of lobbying you engage in.

1. Size of Constituency

The larger your constituency, the greater your influence. In addition, the broader your base of support, the better. Therefore, efforts put into increasing your membership and attracting people from various sectors of the population will pay off.

When lobbying a legislator (ie: MP, MPP, MLA or city councillor), a large support base is often influential only when it comes from the legislator's own riding. Show the representative that you can affect his or her own seat. Concentrate on those ridings that show promise; consider compiling legislators' scorecards and launching a voter campaign - see below.

Demonstrate your support whenever possible. When meeting with officials on their turf, bring along a delegation of ten or more people to support you. If you can produce an impressive petition, this may be the time to present it. Plan public meetings carefully, so as to maximize turn-out: fill the hall! Mobilize your members to act individually as well, either by letter, telephone or better still, meeting separately with the people you want to influence.

2. Knowledge of Issue

Governments tend to welcome the input of special interest groups who can offer substantial expertise on topic. By providing useful and pertinent information to government (politicians or bureaucrats), you establish yourself as a resource person on your subject. This is a very valuable position to hold, as it opens up lines of communication and ensures that the person at the other end is listening.

But it's not enough to be an expert; you must **demonstrate** your knowledge and do so effectively, so that your target remembers you and the key points that you made. If you don't do this, no one else will. A reassuring point: it's relatively easy to become more knowledgeable than most politicians on a given subject, given the number of issues raised in the legislature on a daily basis.

Even if you are not an expert, you may be a good advocate, with the ability to drum up support and affect the political environment. Don't try to be a resource person if you aren't comfortable in that role. Use other lobbying methods such as voter campaigns or letter lobbies.

3. Targeting the Right People at the Right Time

This is perhaps the most difficult aspect of lobbying, given the complexity of government bureaucracy and the proliferation of unspoken rules and "backroom politicking" in Canada. At no level

of government can you assume that readily apparent information is all that you need to find the appropriate target. Hence, the following words of advice.

(i) Research

Before approaching an organization, learn as much as you can about it. find out who is in charge of what, and how decisions are in fact made. In particular, find out who is reponsible for decisions in your area of interest and how the decision-making process works. Don't expect this research to be easy; it rarely is. There may well be two or more levels of government with responsibility over various aspects of the issue. There may be people behind the scenes who are the real decision-makers. The decision-making process may be complex, with no provision for public participation. **Don't be deterred!**

Use the telephone to figure out who is in charge of what: the Blue Pages are useful; even better are internal government directories, which can be purchased from government publishing centres. The federal government's telephone directory is updated regularly and can be purchased for approximently $20.00 from:

Canadian Government Publishing Centre
Supply and Services Canada
Ottawa, Canada K1A 0S9
(819) 997-2560

or from certain bookstores (including university bookstores). In addition, the federal government publishes a Guide to Federal Programs and Services, which currently sells for $15.50.

The Ontario government has two similar publications: a telephone directory and the companion Kwik Index to Services, which can be ordered from:

MGS Publications Services
5th floor, 880 Bay St.
Toronto, Ontario M7A 1N8
965-6015 (Toronto)
1-800-268-7540 (outside Toronto)
Zenith 67200 (from area code 807)

In addition, the Ontario government operates a Citizens' Inquiry Bureau in Toronto, which provides information and referral on all government programs and services: call (416) 965-3535. From points in Ontario outside Toronto, call collect or ask the operator for Zenith-Ontario. A TTY-TTD (teletype) service is also available for deaf people: call 965-5130 in Toronto, 566-2761 in Ottawa, and 1-800-268-7095 from points in Ontario.

Other provinces should have similar services and publications.

Be prepared to place several calls before you reach the right person; this is where persistence is necessary. If this gets you nowhere, call the highest appropriate office (eg: the cabinet minister) and explain your problem. Once you reach the appropriate person, don't get drawn into a discussion of the issue over the phone; insist on a meeting.

Other sources of information are your local community information centre, your MP, MPP, MLA or city counsellor, their staff, and journalists.

As you go along, prepare a list of people (always ask for names and positions) with information and/or power in your area of interest. You may want to divide this into two lists: apparent allies and those whose minds you want to change (targets). Keep track of where these people stand on the issue; a scorecard of important players can be useful. For example, if you want to influence the Prime Minister, first find out from your resource people (legislators, their staff, journalists) who in cabinet really pulls the strings. Target the few most powerful individuals and their staff members.

(ii) Networking

Based on the information you have gathered about the decision-making process and the people in power, plan a lobbying strategy. Determine whom to target, and how best to approach those people. Determine also **when** the best time to meet is - timeliness cannot be underestimated.

Skilled lobbyists begin well down in the system, recognizing that files are usually handled from the bottom up. By the time a recommendation reaches senior personnel, it may be too firmly entrenched to be altered again. It is therefore important to establish formal and informal links with bureaucrats. When these people need assistance preparing papers or even writing speeches, they may then call you up for advice.

When bureaucrats don't agree with you, it's time to get involved with the legislative process. Don't wait for a bill to be introduced; approach legislators (MP's, MPP's or MLA's) with a view to getting them onside from the beginning.

Develop allies among staff people and others familiar with your lobby targets. These relationships can be invaluable. Keep in touch with your allies, and get what information you can from them while always respecting their confidence. Encourage them to pressure for the kind of change you seek, and offer what assistance you can to them.

You may find allies among opposition MPs. Opposition parties

have their own "shadow" cabinets, usually reflecting government portfolios. Make contact with the critic dealing with your issue, and establish a working relationship with her. Brief these people and their research staff regularly, and especially when an election is approaching. Offer assistance on legislative initiatives that the opposition hopes to take on forming a government. This will achieve two goals: it will increase your knowledge of that party's agenda and may get those legislators thinking along your lines.

In any case, legislators are simply unable to gather and absorb all the information necessary in order to vote intelligently on the various pieces of legislation coming before them every year. Hence, they rely upon their staff, legislative staff researchers, official reports (of public inquiries and parliamentary committees, for example), and lobbyists. By presenting information and argument to your representative (or any other politician), you are assisting that person in doing their job. For this reason, your input will often be welcomed. Again, cultivate good relations with staff.

Use your ability to affect the vote strategically: if your support is concentrated in a certain area, target the representative of that area. Campaign in the ridings of those legislators who are wavering or who oppose you (unless such a campaign would be futile): see voter campaigns, below.

4. Professionalism

Present a unified voice: before meeting as a group with the target decision-maker, work out internal differences so that your group at least appears cohesive.

Know exactly what you want. Clearly formulate a reasonable request in advance.

Don't alienate your audience; dress like they do. It's not worth losing respect by wearing unconventional clothing.

Be honest and straightforward in all your dealings with government. Any loss of credibility will destroy your persuasive powers.

Present your case neatly and concisely. If you feel nervous, rehearse the presentation beforehand. Choose your spokesperson carefully - this person should exhibit firmness and confidence, without being combative or bombastic.

Never make personal attacks on your enemies or on those you seek to influence - word spreads quickly. Be friendly to everyone, especially staff people who can become your best allies. Develop social skills and use them whenever possible to make contacts.

5. Speaking the Same Language

You may feel that you have nothing in common with your target; that his or her priorities are completely different from yours. This is normal for public interest advocates - our system of government is systemically biased in favour of business, in that business and government tend to speak the same language of investment, employment and economic growth. However, all is not lost: you can usually find some way of incorporating economic benefits into your argument. There may, for example, be long-term (or overall) economic gain hidden by short-term (or localized) unemployment. Look as well for other values which should, but are not, incorporated into the traditional economic analysis.

Learn what policies, practices or precedents of the target institution can be used in support of your request, and point to them in your argument. If you can influence the decision not by threats but by emphasis on existing commitments, do so. Be aware also of those policies, practices and precedents that will be used in opposition to your request, and prepare to deal with them along the lines suggested above.

6. Persistence

Often you will be discouraged by the seeming impenetrability of the target institution or by the unresponsiveness of individuals with whom you have met. **Don't give up!** Keep calling to find out who you should be targetting. Keep in touch with your contacts, so as to keep yourself informed of their positions and them informed of your commitment. If you can't get agreement over the phone, arrange a meeting.

7. Other Tips

Get to know the players personally. Attend meetings, conventions or seminars on the subject - meet people and make contacts.

Study both sides of the issue; put yourself into the position of your lobby target and anticipate its arguments.

Go through the appropriate official channels initially, even if you know they will be fruitless. This demonstrates your goodwill and allows you the opportunity to develop useful allies in the bureaucracy.

Set realistic deadlines and inform your lobby target of them. If you have grounds for a court action, consider making that your next step if lobbying proves futile. Threatening to go to the press can also be effective.

Beware of being coopted by your lobby target, especially if

you are engaging in informal lobbying. Stick to your position and your deadlines. Remain cautious; don't be fooled by "niceness".

Never rely on a verbal promise unless it is made publicly.

Keep your group informed of the results of all lobbying. Debriefing sessions are a good idea, and should be held immediately after the meeting.

Types of Lobbying

Lobbying can take many different shapes and forms. Go through the advantages and disadvantages of each approach, and form your strategy accordingly. The following list is by no means exhaustive; you can probably think up other methods.

1. Informal meetings with officials
2. Formal meetings and public meetings
3. Letter lobbies
4. Legislator Scorecards and Voter Campaigns
5. Legislative Advocacy (see chapter 8)

1. Informal Meetings

This is traditional lobbying, the kind that professional lobbyists engage in. It works well when you have bargaining power, not so well when you have little to offer the lobby target other than your own concerns. If you have something to bargain with (such as proof of serious misconduct or negligence, based on which you can threaten media attention or legal action), a private meeting with your target is a good starting point. In any case, when you get the ear of an important person, maximize the opportunity:

Make sure that the person you are meeting with has the authority to do what you want her to do.

Prepare well. Write up a brief outlining your position and your request and present it to the official at the end of the meeting.

Use teamwork, unless you are confident of a positive response. Go in a group of 2-4 and divide up the presentation between your members. (The larger your group, the more defensive the official and the more formal the meeting).

Acknowledge up front any positive actions already taken by the official or her organization; Honest praise can take you a long way.

Emphasize your public support.

Don't ask for advice; you are the expert.

Keep on topic. Don't let your target ramble or deflect the issue, and don't let her defer your request pending resolution of another issue. If deferral can't be avoided, be sure to arrange a follow-up meeting.

Be professional - see above, under Keys to Successful Lobbying.

2. Formal Meetings

Given the reality of politics in Canada, it is unlikely that traditional style lobbying will assist any by the largest and most established public interest groups. Any meetings you succeed in arranging with VIPs are likely to be formal, whether they take place on your turf or theirs. Nevertheless, such meetings can be very effective, by allowing you to make personal contact with an important decision-maker, to show the official that you are a force to be reckoned with, and to bet some idea of where the official is coming from. Formal meetings may be your most effective tool.

As with informal meetings, this type of lobbying is only effective if attempted before you engage in more confrontational methods.

Always try to meet on home ground: invite (in a conciliatory way) the appropriate official to a meeting with your group or community. If this invitation is refused, go in strength to the official, taking as many supporters as you can and thus turning the meeting into a public one.

Follow the advice for informal meetings. Meet only with people empowered to grant your demands, not their assistants. Time the meeting to suit you and your supporters. Set a clear objective and prepare an agenda of specific requests designed to achieve this objective.

If you are going to their offices, consider using a petition as a way of getting your target's attention from the start.

When you succeed in getting the official to come to your meeting, make sure that you will get a good turn out. Meet with your group half an hour before the planned meeting to review the agenda, confirm strategy and reinforce solidarity. If the official arrives early, politely detain him in a separate room until you are ready - he would do the same to you.

Always start on a conciliatory note, thanking the official for coming. In your introduction, emphasize your strengths (no. of members, list of member groups, etc.). Stay in charge, maintain a

calm tone, and keep the discussion on topic. (There are many good books on how to run a meeting). Make your requests clearly and concisely, and resist deferral of the issue.

Immediately afterwards, hold a brief evaluation session with your group. Consider what you achieved, what you learned and how you could improve it next time. Get input from all who participated.

3. Letter Lobbies

When the friendly approach doesn't work, and face-to-face meetings are either impossible or futile, it's time to start mobilizing. Telephone or fax lobbies can be effective in urgent situations or when you want to tie up the target's phone lines. Telegram lobbies are another last-ditch method - Unitel Communications (formerly CNCP) offers special rates for public opinion messages of 15 words or less, addressed to an MP.

Letter lobbies can be very effective. A single letter, unless particularly persuasive and well-timed, is unlikely to influence a legislator. On the other hand, thousands of original letters can have an effect, especially if they come from voters in the legislator's own riding.

Avoid form letters if possible; they carry little weight in comparison with individually written letters. Instead of form letters, distribute information leaflets to your supporters, from which they can draft letters in their own words. Remember that postage is free for letters to MPs, mailed within Canada. (If you want to reach all MPs or MPPs, ask a friendly legislator for a print-out of labels for each legislator; this will make your job much easier).

4. Legislators' Scorecards and Voter Campaigns

This method has been successfully employed by public interest groups in the USA to influence voters (and hence, legislators) on a large scale. It works best when focused on a single issue, so that the positions you take on all bills in question are consistent. Select 5-10 bills before the legislature (or bylaws before council) in which opposing lines are clearly drawn. For example, if the issue is environmental protection, choose bills on which environmentalists all agree to support or oppose. Go through Hansard or city council minutes, and tally the votes, placing each legislator in an approprite category.

Be aware of procedural votes (such as referring to committee) and their significance. If you are unsure, consult someone familiar with the legislative process.

Once a few votes have been tallied on your issue, identify

your supporters and opponents and publicize the results. Target the ridings of those legislators who appear to oppose the public interest, especially those in which the incumbent can realistically be defeated. Where you are working outside your own riding, use local groups to help publicize the scorecards.

In 1970, an American group called "Environmental Action" publicized the voting records of 12 congressmen who had consistently voted against environmental preservation. In the next election, 7 of them were defeated!

Legal Requirements for Lobbyists in Canada

The Lobbyists Registration Act, a federal statute, came into force in 1989. It is based on two principles: that lobbying is a legitimate activity that helps public officials become aware of the views and concerns of individuals and organizations, and that the decision-making process is best served if there is no mystery surrounding the identity of paid lobbyists and their clients.

The Registry is two-tiered, with different reporting requirements for each tier. Tier I lobbyists are professional, paid lobbyists who often represent more than one client at a time. They must register within 10 days of commencing their lobbying activities.

Tier II lobbyists are employees whose jobs involve a significant amount of lobbying for their employer. They must register within two months of the taking on their lobbying activities, and each year thereafter.

Registration is simple and costs nothing. You need only fill out a form and send it to the Registrar of Lobbyists. Failure to do so if you fall within one of the two categories could result in a fine of up to $100,000, up to two years in prison, or both.

Forms and further information are available from:

Registrar, Registry of Lobbyists
Consumer and Corporate Affairs Canada
Place du Portage, Phase II, 4th floor,
165 Hotel-de-Ville
Hull, Quebec
K1A 0C9
(819) 953-7144

Legal Restrictions on Political Activities of Registered Charities

Not all charitable or non-profit organizations are "registered charities" (ie: registered with Revenue Canada). There are advantages and disadvantages to registration, which should be fully

considered before applying for registered status. The major advantages of registration with Revenue Canada are exemption from federal income taxation and permission to issue tax receipts to donors.

If your group is or plans to become a registered charity, you should be fully aware of the applicable provisions of the Income Tax Act. The Act restricts the amount and type of lobbying engaged in by tax-exempt charities. In general,

(1) You cannot engage in partisan politics (ie: the direct or indirect support of or opposition to any political party or candidate for office).

(2) You can devote up to 10% of your financial, physical and human resources over a program cycle (usually one year, but possibly up to five years) to political activities that are "ancillary and incidental" to your charitable activities (ie: naturally connected with and subservient to your charitable purpose).

(3) Certain political activities are **not** restricted by Revenue Canada. Such activities, considered to fall within the ambit of charitable activity, include:

- oral and written representations to the relevant elected representatives (eg: MPs, MPPs, MLAs, Municipal Councillors, the involved cabinet Minister) or a public servant to present the charity's views or to provide factual information;

- oral and written presentations or briefs containing factual information and recommendations to the relevant government bodies, commissions or committees, and

- the provision of information and the expression of non-partisan views to the media,

so long as the activity is intended to allow full and reasoned consideration of an issue rather than to influence public opinion or to generate controversy.

Restricted activities include:

- publications, conferences and other forms of communication which are produced primarily in order to sway public opinion on political issues and matters of public policy;

- advertisements in print or broadcast media to the extent that they are designed to attract support for a sharity's position on political issues and matters of public policy;

- public meetings or lawful demonstrations that are organized to publicize and gain support for a charity's point of view on political issues or matters of public policy; and

- requests by a charity to its members or the public to forward letters or other written communications to the media and government, expressing support for the charity's views on political issues and matters of public policy.

If your group is a registered charity, you must therefore be very careful as to what sorts of lobbying you engage in. You must also keep scrupulous records as to any restricted political activites of your group. For further information, see Revenue Canada's Information Circular No.87-1, entitled "Registered Charities - Ancillary and Political Activities, and any updates thereto. Direct any enquiries to the Charities Division, Revenue Canada Taxation, 400 Cumberland Street, Ottawa, Ontario, K1A 0L8; tel. (613) 954-0410 or, toll-free: 1-800-267-2384.

For an excellent book on the administration of charitable and non-profit organizations (when and how to incorporate, tax considerations, operation of the organization, etc.), see Donald J. Bourgeois, The Law of Charitable and Non-Profit Organizations, (Toronto: Butterworths, 1990).

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CHAPTER EIGHT

LEGISLATIVE ADVOCACY

When your lobbying efforts focus on actual legislation or on proposals for new legislation, you are engaging in legislative advocacy. There are essentially two versions of this kind of lobbying: monitoring and intervening where appropriate, and initiating new legislation.

This chapter describes processes at the federal level only. Parliamentary structure and procedure are similar at the provincial level, but you will have to consult the your provincial legislature for the applicable rules and practices. Municipal bodies have very different practices and procedures, none of which are discussed below. Nevertheless, the general advice which follows should assist legislative advocates at all levels.

Serious legislative advocacy requires a full-time commitment. Much of what is suggested below assumes that you have full-time staff able to devote a significant amount of time to lobbying. Even if you can't do more than sit in on a single committee's meetings at strategic times, however, the following should be useful.

Know the System

A good knowledge of the calendar, the procedures and the people in your legislature is vital. Know when the deadlines are and where to find the information you need. Learn the stages through which a bill must go in order to become law. Get a list of legislators with their current committee assignments, and/or a list of committees with the names of their members. Become familiar with the physical layout of the legislature.

The People: Every legislature has a permanent staff who fulfill various support functions for the legislators. These people can be of invaluable assistance to you. Check for your province's or municipality's equivalent to the following offices:

Bill writers and editors draft legislation and check for compatibility with existing statutes. Each department has its own legal staff who do this. In the House of Commons, the Law Clerk and Legislative Counsel fill this role. Upon request, they can assist a Private Member to draft proposed legislation.

Researchers conduct research for individual legislators and committees. At the federal level, they can be found at the Research Branch of the Parliamentary Library. (Committees also hire outside consultants to do research for them). In addition, each of the three main political parties has its own research staff in Ottawa.

The **procedural administrators** of Parliament are the Clerk of the House and the Table Officers, who sit at a table in front of the Speaker's chair. They advise the Speaker and other MPs on parliamentary procedure, and keep an official record of the proceedings. The Table Research Branch does procedural research for the Clerk, who reports to the Speaker.

The **information-givers** provide information on the status of all bills currently before the legislature. The Public Bills Office of the House of Commons carries out this function.

An easy way to find out about these offices or their equivalents is to browse through a current government telephone directory. Call up any offices you think might be of assistance and ask them what they do. Otherwise, call the general Public Information Office and ask to be referred to the appropriate office.

Reference Tools: All legislatures publish regular bulletins, calendars and other documents listing meetings, hearings and information of relevance to legislators. The following is a list of useful publications of Parliament:

Votes and Proceedings: This is the official record of House transactions, including bills read, votes taken, references to committees, etc. It is published daily when the House is in session.

Journals are simply the edited and compiled version of the Votes and Proceedings, and are published with an index at the end of each session.

Debates (or Hansard) is a verbatim account of the House proceedings and is published after each sitting day. At the end of each session, bound corrected volumes entitled Debates are published, each covering approximately 20 days. The Wednesday edition of Hansard appends several useful lists:

- MPs - names, addresses, constituencies, political affiliation, position in government;
- the Panel of Chairpersons of Legislative Committees (for each session);
- Standing Committees and their members;
- Legislative Committees and their members;

- Special Committees and their members;
- Members of Cabinet and Parliamentary Secretaries.

Order Paper and Notices is the agenda of the House for each sitting day.

Status of Bills and Motions provides cumulative information on the current status of all public bills, private bills, and motions before Parliament. It is published and distributed to Members weekly.

Also very useful are private services, such as PUBLINET, which publishes the Ottawa Weekly Update, a weekly bulletin giving a forecast of legislative debate, the public agenda of federal Ministers, the status of bills, the schedule and workplan of Parliamentary Committees, and an indexed summary of press releases. (This service costs $700/year in 1991). PUBLINET also puts out the Committee Guidebook, updated three times per year, with useful information on Commmons and Senate Committees ($250/year); Orders-in-Council, a weekly bulletin on cabinet decisions ($425/year); and Ottawa Calendar, a weekly preview of important public events planned during the next six months ($400/year).

Procedures of the Legislature must be fully understood if you are to use them effectively. Some fundamental questions you should be able to answer are:

- How are bills introduced?
- How are bills referred to committee?
- How are committees structured?
- Are committee meetings open to the public?
- Which committees hold public hearings, under what circumstances, and by what procedure?
- What are the powers of legislative committees?
- If a bill fails to get out of committee, what procedures can be used to get it to the floor?

You should also know when the session convenes and adjourns, what the deadlines are for introduction of bills, and when bills of interest to you are scheduled for debate.

For a description of legislative procedure in Parliament, see Appendix 1 to this chapter. Otherwise, consult one of the texts on parliamentary procedure listed as a reference at the end of this chapter.

Be Properly Prepared

Do as much research as possible beforehand so that you can provide effective counter-arguments to those put forward by special interest groups on the other side. Remember - it's not difficult to become more knowledgable than a given legislator on a given

topic. Try to establish yourself as a resource person on the subject, by coming prepared to answer questions and to volunteer information that might otherwise be ignored. (Up-to-date library research of newspaper clippings on topic is often worthwhile). Appear fair and credible by acknowledging facts that go against your interest.

It's not always easy to identify all the legislation affecting certain subject matter. More than one level of government may have jurisdiction over one aspect or another of the issue. This is often the case with consumer issues, since provinces are empowered to legislate on "property and civil rights" and "matters of a merely local or private nature" under ss.92(13) and 92(16) of the Constitution Act, 1867, while the federal government is empowered to legislate on "trade and commerce", pursuant to s.91(2).

Moreover, a single topic or issue (such as credit cards) may not be the subject matter of specific legislation. Rather, there are likely to be a number of statutes regulating different aspects of the issuance and use of credit cards. If you are to have a full knowledge of the legislation affecting credit cards, for example, you will have to dig up all such statutes. Indexes to the Revised Statutes of Canada (or of your province) can be helpful, as can officials from the appropriate government office or university professors specializing in the area.

Monitoring and Intervening

Using the resources identified above, identify the committees dealing with your issue and monitor their proceedings, preferably by attending their meetings on a regular basis. Introduce yourself and your area of expertise to the committee, being careful not to be mistaken for legislative staff - this can cause resentment.

Get to know the committee - its legislators, staff, other lobbyists and process. Be sociable and approachable, using informal opportunities such as coffee breaks to make contact and get your message across. Be friendly with staff people as well as legislators.

Focus your lobbying efforts on selected legislators and committee chairpersons, who can be powerful allies and formidable opponents. Stress your role as a resource person, a provider of thorough and balanced research. Be alert for opportunities to supply information to legislators who can't possibly keep up with all the issues confronting them. Offer to provide memos for chairpersons, and to work with the research staff. When a legislator relies on you to do his homework for him, you have succeeded. Or, simply provide a memo you have written to committee members at the meeting. Follow up with letters or memos, delivered to each member's parliamentary office.

Make sure all memos that you provide to legislators are factual and objective. Such written tools can be very helpful in getting your message across, and in backing up your discussions with legislators. Make such fact sheets or memos concise and easy to read, avoiding long pages of text which will not be read. Use summaries and headings to catch attention. Conclude with an offer to answer any questions.

Try to get staff people to see you as a colleague, by keeping them well-informed about your research and positions; they will probably do likewise with you. Staff people should never be ignored: they will often determine the type of relationship you have with committee members. Often they control the information line to legislators. Moreover, they can have valuable insights into the process and the players.

Make sure the committee process is open to public participation and scrutiny. Take part in committee activities as fully as possible. Your ability to participate in the formal proceedings of a committee will depend on the rules and customs of your legislature. You may have to wait until asked a question or until hearings are scheduled, but regular attendance may well open up other opportunities for participation.

Regular attendance will also clue you into what is going on behind the scenes. Be attuned to unofficial meetings, at which important decisions may be taken. Be alert also to sudden events, such as the changing of hearing dates or bill numbers, or the defeat of the bill. These will inevitably catch you unaware, and can cause you great frustration if not noticed.

Public hearings offer you (and others) a formal opportunity to intervene without invitation in the formulation of legislation. Begin preparing for these at least a month in advance. Contact other like-minded groups and individuals and encourage them to take part too, either separately or as part of a coalition effort. Members of an affected group (such as disabled persons asking for more access ramps in a public building) can be extremely effective witnesses. Find expert witnesses to testify in support of your position; look for widely-respected people to whom the committee will listen, and line them up well in advance.

Address specific sections of the bill so that committee members can refer to it as you speak. Propose alternative language to correct problems you see in the bill. Stress the benefits of your proposed amendments, and be prepared to answer questions, including those relating to costs and funding. (See Appendix 2 for advice on giving a brief).

Public hearings also provide a means for you to demonstrate your public support: round up your supporters and make sure they attend the hearings, especially when you are giving your

presentation. Contact the media; indeed, you should probably plan your media strategy as carefully as your testimony! If nothing else, a packed hearing room and media attendance will get the attention of legislators.

Initiating New Legislation

If your aim is to amend existing legislation, the amendment must be passed as a separate bill, eg: An Act to Ament the Orchards Act. Amendments to existing legislation are thus treated as new legislation, and must follow the same procedure as any other proposed legislation. Note that amendments which would require increased government expenditure cannot be introduced by private members.

Your first step is to find a sponsor for your proposal. This should be someone with a strong interest in the reforms you advocate, as well as someone with political clout. To find out who would make a good sponsor, ask groups with related interests who have contact with legislators. Examine voting records and campaign statements of legislators. Read through transcripts of debates or public hearings that have been held on the issue. (This information should be available at the legislative library). If you can, get a party leader or a legislative committee chairperson to sponsor your bill. If not, any sympathetic legislator will do.

If you are working at the federal level, try to get sponsors from both houses of the legislature. Federally or provincially, try to get sponsors from different parties, and different wings of the same party.

Once you have a sponsor, arrange a private meeting to discuss the bill. Establish yourself as a resource person on all aspects of the issue by maintaining regular personal contact with the legislator. Always follow up: with written material after a meeting, with a letter after a phone call, or with a phone call after a letter. If you need assistance with drafting the legislation, your sponsor should be able to get help from legislative counsel (the Law Clerk and Parliamentary Counsel, federally). Once you have a bill in draft form, you are ready to go. Lobby!

Every proposal is vulnerable to attack on its alleged fiscal impact. It's therefore important that you be prepared to explain what your bill will cost and where any necessary funding will come from. In addition, you should gain a basic understanding of the budget process in the legislature and how to influence those who control the purse strings. Watch out for opponent's tactics to defeat your proposal in a finance committee.

This is also the time to familiarize yourself with the procedure through which your bill must go if it is to become law. Because private members' public bills are generally subject to a much more rigorous procedure than government bills, you must be fully aware of the various hurdles and deadlines facing your bill.

Each legislature has its own process for the introduction of public bills by private members. The following is a description of the process in Parliament.

Bills sponsored by non-Minister MPs are considered during the hours set aside for Private Members' Business: Mondays 1:00 - 2:00 p.m., Tuesdays and Thursdays 5:00 - 6:00 p.m., and Fridays 2:00 - 3:00 p.m. A private Member's public bill requires 48 hours' notice before the Member can ask for leave of the House to introduce the bill. Then, the bill is read a first time and printed, but two weeks must elapse before a motion for second reading and reference to a committee may be moved during Private Members' Business.

Once the bill is ordered for second reading, it is added to a list of other Private Members' items, which list is called "Items Outside the Order of Preference". The "Order of Preference" is a list of 10 to 20 items of Private Members' Business, established by draw from the "Items Outside the Order of Preference" at the beginning of each session and thereafter whenever the list has been reduced to no fewer than 10 items. Items on the "Order of Preference" appear in numerical sequence (1-20) on the Order Paper of the House. There is thus an element of luck as to when your bill will be considered by Parliament.

Once drawn into the Order of Preference, your bill faces another hurdle: it must be selected by the Standing Committee on Privileges and Elections as a "votable" item. The Committee is empowered to choose a maximum of six such items from the 20 items in the Order of Preference. Before making its final decision (in camera), the Committee may hear the sponsor of the bill. This is obviously a crucial time for you to be actively involved.

Certain criteria for selection have been set out by the Standing Committee on Privileges and Elections. They are summarized as follows:

1. The bill must not be "trivial or insignificant", although it may be of only regional or local significance, and need not be controversial.

2. The bill must not discriminate in favour of or against a certain area or region of the country.

3. Bills regarding electoral boundaries or constituency names should not be selected.

4. The bill should not require obvious amendment because it is substantially redundant with the law, is fundamentally ineffective to implement its own intent, is unclear in its meaning or is otherwise defective in its drafting.

5. The subject of the bill should be different from specific matters already declared by the government to be on its legislative agenda.

6. Depending on the context of political issues and events, the number of times a topic has appeared in the House may be of significance.

7. The Committee will not select bills which are clearly unconstitutional in that they infringe upon provincial legislative authority, the Charter of Rights and Freedoms, or other entrenched constitutional rules, or if they impede or are contrary to normal federal-provincial or international relations.

8. The bill should not relate to a question that is substantially the same as one already voted on by the House in the session.

9. The bill should not relate to a question that is substantially the same as one already contained in an item already selected as a votable item.

With these criteria in mind, it is imperative that you present a draft bill clear of defects. Use legislative counsel for this purpose - that is their role. It is also important that you and your sponsors be aware of other items being considered by the Committee and by the House as a whole. Be prepared to address each of the criteria when you (or your sponsors) appear before the Committee.

Items not selected by the Privileges and Elections Committee are debated for up to one hour and then, if not otherwise disposed of, dropped from the Order Paper. Selected items, if not disposed of after first consideration, are placed at the bottom of the order of preference, moving up the list as prior items are dealt with in order. Once at the top again, the bill is debated a second time, and if not disposed of, returns to the bottom of the list again. This process is repeated until the item has been debated for a maximum of five hours, at which time it must come to a vote.

This vote is taken on second reading of the bill. If negative, the bill is dropped from the Order Paper. If positive, the bill is referred to a legislative committee for clause-by-clause consideration and possible amendment.

As discussed above, your attendance and participation in committee deliberations is essential. Follow the advice set out above, under "Monitoring and Intervening". In contrast to other proceedings, there is no time limit on consideration of the bill in committee. If appropriate, push for public hearings on the proposed legislation.

Use public hearings to tell legislators and the public about your bill. This is perhaps your best chance to get media attention; use it! Try to get a media story focusing on your group and your issue, before the hearing, during it and after if possible. As above, call expert witnesses when appropriate, and bring along as many people as you can to listen. (see appendix 2 for tips on giving a brief)

When the bill is reported back to the House by the legislative committee, it is placed at the bottom of the order of preference and considered at report stage when it reaches the top. If not disposed of at this stage, the bill drops again to the bottom of the order of preference until it reaches the top, at which time is is considered a second time. A vote is then held on third reading, and if it passes, the bill is either sent to the Senate (if it originated in the House) or for Royal Assent (if it originated in the Senate).

Obviously, there are many stages at which vigilence and persuasiveness are required in order for your bill to survive. Effective lobbying is fundamental to the success of your initiative, and it must take place at all stages: Privileges and Elections Committee, the House as a whole, legislative committee, and the House again. Even if your bill is passed by the House of Commons, you will likely have to lobby the Senate for support.

For further information on Parliamentary procedure, consult the Precis of Procedure, published by the Table Research Branch of the House of Commons, and available at the Parliamentary Library or for purchase ($9.95) from the Public Information Office of the House of Commons, (613) 992-4793, or a text such as Beauchesne's Rules and Forms of the House of Commons (see list of references below).

Legislative procedure at the provincial level will be somewhat different from the process described above. In Ontario, Private Members' public bills are introduced using a ballot system conducted by the Clerk. Although they may, in theory, follow the path of a government bill, they rarely do: any 20 MPPs may block such a bill at second reading.

The Final Vote and After

Lobbying the floor is no simple task. However, after all the work you will have put into a bill that has gone this far, the effort is worth it. Decide on a strategy, considering the extent of your existing support, the publicity given to your bill, the positions of the party leaders, and other bills that are before the legislature. Decide whether you want to reach every legislator, or whether you can rely upon a key group of legislators to lobby their colleagues. Remember that talking and providing memos on your bill is the best way to gain support.

Be aware of amendments introduced before and during debate; they may substitute an entirely new bill for the one you proposed. On the other hand, your bill might be voted down without some amendments that you could help to draft on the spot if necessary. For these reasons, you should attend all sessions at which your bill is or might be debated.

After the bill has passed through the legislature, your work is not necessarily over; regulations will likely have to be drafted to implement the legislation. Poor regulations can totally undermine your proposal, so you should be involved with the department that issues the regulations. If you can, draft your own regulations and submit them to the agency. If hearings are held on the regulations, (by the Standing Joint Committee on Scrutiny of Regulations, for example), attend them. Watch out for needless delays and foot-dragging.

Once any necessary regulations are passed, you should monitor government enforcement agencies to ensure that they don't ignore the legislation. Let such agencies know that you are watching them, and complain when appropriate.

Legal Restrictions on Political Activites of Registered Charities

See under this heading in chapter 7 for a discussion of these restrictions.

APPENDIX 1

The Procedure of Legislation in Parliament

Bills, except those involving money, may be introduced into either the Senate or the House of Commons by any Member, whether a Cabinet Minister or a Private Member. (Bills for the appropriation of public revenue or for taxation must be introduced by a Cabinet Minister and must originate in the House). Once approved in the House, a bill is sent to the Senate, where it follows a similar procedure. If first introduced in the Senate, a bill follows the reverse procedure.

There are three types of bills:

(a) public bills introduced by government;
(b) public bills introduced by Private Members; and
(c) private bills introduced by Private Members.

The procedure for public bills introduced by Private Members is described above, under the heading "Initiating New Legislation". The procedure for government bills is described below.

All bills must go through three readings in each House, be passed by a majority of members in each House, and receive Royal Assent by the Governor General, in order to become law. Sometimes bills provide that certain or all of their provisions will become effective on proclamation; if so, the bill does not become law until the date of proclamation.

At first reading, the sponsor of the bill may give a short address explaining the purpose of the bill. No debate or amendment takes place. The bill is sent for printing and is placed on the Order Paper for second reading.

Second reading is the most important stage in the passage of a bill. It is then that the principles and objects of the bill are debated and either accepted or rejected. This can be a lengthy process. Although no amendments to the bill can be made at this stage, one of three procedural amendments may be proposed:
(1) that second reading be postponed for six months;
(2) that second reading is opposed for specific reasons; or
(3) that the subject-matter be referred to the appropriate Standing Committee before the bill is approved in principle.

Once approved on second reading, a bill usually (but not always) proceeds to a legislative committee, where it is examined clause-by-clause. Amendments to the text of the bill are considered at this stage. Those adopted must be in keeping with the principle of the bill as approved on second reading. Before

beginning its study, the committee usually hears the Member or Minister sponsoring the bill. It may also hear from outside witnesses. After the committee has finished its examination of the bill, it reports the bill to the House, with any suggested amendments.

Next is the report stage, at which Members who did not sit on the committee which studied the bill may have their proposed amendments considered by the House. All motions for amendment are voted upon, including those proposed by the committee. It is at this stage that many bills "die on the Order Paper".

When a bill is moved for third reading, the same procedural amendments as at second reading may be proposed: the "six month hoist", the reasoned opposition amendment, or the referral back to committee for further amendment. When third reading does occur, there is rarely much debate, since the subject has been fully discussed by this time.

Once passed by the House of Commons, the bill is sent to the Senate, where it undergoes a similar procedure. Any amendments desired by the Senate are then considered by the House and either approved or sent back for reconsideration. If the Senate still wants the amendments, it sends them back to the House, which can either accept or reject them. In the case of rejection, the House may request a conference, at which representatives of both Houses attempt to resolve the impasse.

When it has been passed in exactly the same form by both Houses, a bill is sent to the Governor General for Royal Assent. The bill comes into force on the day of Royal Assent, unless otherwise stipulated in the bill itself.

APPENDIX 2

GIVING A BRIEF

Always bring neatly type-written copies of your brief along with you, and distribute them to your listeners. Bring copies of any particularly succinct and persuasive background material as well.

Know your audience before you arrive. If you are appearing before a committee, try to sit in on a meeting of that committee before you attend to give your brief. Your style of presentation should be adapted to the audience. For example, people pressed for time won't listen to a lengthy or repetitious argument. People who consider appearances important won't listen well to someone dressed in a manner they consider inappropriate. As well, no one likes to be directly criticized, especially if the criticism is made without supporting evidence (it may be better to give the evidence and leave the audience to come to their own conclusions).

Find out beforehand the limitations within you are acting:

- how much time will you have?
- will you be asked questions?
- who else will be speaking?
- will there be a microphone and/or a podium?
- will you be sitting or standing?
- what audio-visual aids will be provided?

Begin by introducing yourself and your group. Give some background to help the audience place you in context. Emphasize the size of your membership (if impressive) and list some of your accomplishments.

If appropriate, thank your hosts for inviting you or for holding the hearings. Then, tell your audience what you are going to tell them; give them an outline of your brief. People will be less likely to leave during the presentation if their curiosity has been aroused.

Talk to your listeners; don't read from a prepared speech. Be lively and entertaining without coming across as trivial. State your main points in a manner that will make the audience sit up and listen. Use notes in point form, so that you have to say it in your own words. Reading inevitably puts people to sleep, and is far less convincing than speaking in your own words (assuming you know the topic). In any case, maximize eye-contact with the audience.

Use audio-visual techniques wherever possible; audiences like variety, and many people have difficulty retaining oral information.

Emphasize your main points without being repetitious; leave minor points for questions. Back up your allegations with facts and statistics, and be sure that those facts are accurate and not misleading.

In your conclusion, summarize your main points just to drive them home again. Offer to take questions - this can be the most productive part of your appearance, if you need to do some persuading.

References

This chapter was adapted from the following sources:

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Public Interest Law Centre, Manitoba, How To Get What You Want: An Advocacy Manual (Winnipeg: PILC, 1986).

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Other References:

Fraser, Dawson and Holtby, Beauchesne's Rules and Forms of the House of Commons of Canada, with annotations, comments and precedents, 6th ed., (Toronto: Carswell, 1989).

Sir John Bourinot, Parliamentary Procedure and Practice in the Dominion of Canada, 4th ed., (Toronto: Canada Law Book, 1916).

CHAPTER NINE

PUBLIC INQUIRIES

As pointed out in chapter four, a public inquiry is a one-time panel established by an Act or an Order-in-Council. Its powers are limited to those set out in the enabling legislation. Public inquiries are also governed by general legislation such as the Public Inquiries Act in Ontario. If you are planning to participate in such an inquiry, it's a good idea to read the applicable legislation - you'll get some idea of where the panel is coming from.

How do you find out what is going on before it happens? The establishment of public inquiries usually receives good press coverage. Moreover, the commission will usually publish notices in the press, inviting submissions from the public. Regular newspaper scanning will therefore usually alert you to the existence of a public inquiry. You can also call the public relations office of the legislature concerned and ask what inquiries are currently planned or in session: the House of Commons Public Information Service telephone number is 992-4793.

Whether to Participate

At the outset, ask yourself whether your participation in the inquiry will be worth the required effort. Is the inquiry likely to have a political impact? Is it simply a tactic to divert the public's attention from government inaction? Is it a political excuse for some action that the government has already decided to take? Does the commission have the time and resources to make a worthwhile investigation and report? In answering these questions, you should speculate as to how the government will benefit from the inquiry. You should also learn about the commissioner's background - is this someone with integrity, or are we talking about a political appointment?

You may decide, on the basis of the answers to these questions, not to lend your credibility to what seems to be a sham process. Or, you might simply decide to use a more effective way of making your views known. If you do decide to participate, make a whole-hearted effort. At the very least, you may raise the profile of your group.

When To Get Involved

Most public inquiries are given a very broad mandate by the legislature (provincial or federal). Hence, one of the first tasks of a commission is to determine in greater detail the scope, timing and procedure of hearings, and the form of public participation. This is an important stage of the process, one at which concerned participants should definitely be involved.

Contact the commission early, and lobby for the kind of procedures that you would like to see. Help to shape the inquiry's terms of reference, so that your research and arguments fall within the scope of the hearings. Once the framework of the inquiry has been determined, you will have to work within it. It can only be to your advantage to help structure the process along lines favourable to yourself. Getting involved early on not only helps to ensure that you will be listened to; it gives you an opportunity to get to know the actors involved and to form potentially useful relationships.

How to Participate Effectively

Once you have requested and obtained participant status from the commission, you should receive all relevant notices and information. Make sure that you are in fact on the inquiry's mailing list (some inquiries are better than others about keeping participants informed). Find out when the important deadlines are for submissions on procedure and scope as well as on the subject-matter of the inquiry. Your contribution must be timely if it is to be effective. Learn as soon as possible what rules and procedures have been adopted, and what your expected role will be. Ask early on about funding, so as not to miss any opportunities.

Get to know the commissioner, inquiry counsel, staff and representatives of key participants. Personal relationships allow you to resolve problems through mutual agreement instead of procedural wrangling during the hearings. Find out what assistance you can expect from the staff with respect to participant funding, calling witnesses and sharing research, for example. There is nothing wrong with informal meetings between the inquiry panel and/or staff and potential participants, before the hearings. Indeed, such consultations are valuable opportunities for both the commission and the participants to increase their knowledge and credibility vis-a-vis the other.

Define your goals within and beyond the confines of the inquiry. Know what recommendations you want the commissioner to make and what practical steps are needed to achieve your objective. Think about how you can use the inquiry to strengthen your position in the wider context. During the hearings, keep your ultimate objectives in mind at all times. For tips on how to present a brief, see Appendix 2 to chapter 8.

Use the inquiry's resources wherever possible. Such resources may include a library, government witnesses and research documents. Identify the positions being taken by other participants so as to determine who your allies and opponents are. If there are other participants with similar interests, consider forming a coalition for the purposes of the inquiry (this may indeed be expressly encouraged by the commission).

Present a written brief or summary with your oral evidence, and consider drafting a set of recommendations for the commission to use in its own report. The commission is more likely to use your input if it is easy to incorporate into a final report or set of recommendations.

Funding

There is no set method of participant funding for public inquiries. Each inquiry will take its own approach. The commissioner may allocate funds to participants from the inquiry budget. Or, you may have to seek funding directly from government. Sometimes, the commissioner will set up an independent funding panel to allocate funds. In any case, you will have to present a detailed budget, and you may have to report at regular intervals to show that funds received are being properly used, or to qualify for further grants. If your interests are similar to those of other participants, you may have to form a coalition in order to receive funding.

References

Russell J. Anthony and Alaistair R. Lucas, **A Handbook on the Conduct of Public Inquiries in Canada**, (Toronto: Butterworths, 1985).

Andrew J. Roman, **Effective Advocacy Before Administrative Tribunals**, (Toronto: Carswell, 1989) ch.3.

CHAPTER TEN

USING THE MEDIA

Media relations are a key part of any advocacy program. It is important, therefore, that you make the most of them. How you use the media will depend upon what other lines of action you are taking. Think carefully about the possible consequences of making your views public, before you contact the media. You may want to hold back on this option until after the hearing in which you are participating has concluded, for example. It's not worth alienating an important decision-maker if you have some chance of influencing him or her in a more friendly fashion. On the other hand, favourable media attention may assist you (in your lobbying efforts, for instance).

Methods of Attracting Public Attention:

1. Letters to the Editor

Letters to the editor are one of the most widely read parts of the newspaper. However, only a small percentage of letters received are actually printed. To increase the chances that your letter is printed, follow these suggestions:

- stick to one issue per letter
- keep it brief (no more than 300 words) and concise;
- refer to the article that prompted your letter (if one did); - send an original, typed or neatly written letter; and
- give your name, address and telephone number.

Similar opportunities exist in the broadcast media - you may reach a large number of people by participating in a call-in show, such as CBC Radio's "Cross-Country Check-up" or the "talk-back" segment of "As It Happens". Local radio or TV may also have shows allowing you a minute or two of careful explanation of your view on an issue previously aired, without any interruption or editing. Don't assume that public affairs programming on local radio stations is not worth looking into because you don't happen to listen to the stations personally. University and co-op radio stations have significant audiences and are likely to be very receptive to your concerns.

2. Opinion Columns

Some newspapers will print articles submitted by citizens, whether it is in the form of an opinion column or an op-ed article. If you are interested, ask the newspaper what its policy is on such contributions. Some radio stations offer their equivalent of an opinion column (eg: Commentary on CBC Radio). This is a great chance to voice your opinion, if the paper or station allows.

3. Editorial Endorsements

The editorial support of your community newspaper can carry tremendous weight. Since such endorsement is unlikely to be given in the absence of a report on the issue, time your approach to coincide with a news report on topic, or provide the editor with a timely press release along with your request. Arrange a meeting with the editor to discuss the issue, if there is a chance that he or she will support you.

4. Weekly Columns

Note columnists who tend to have views similar to yours. Contact them - they may well appreciate the suggestion of an important current topic to write about.

Your local newspaper may be willing to run a well-written guest column. If you have the time and the talent, consider approaching the editor with a proposal. Don't rule out weekly "shoppers'" papers and weekly or monthly community papers - you might be surprised at how many people read them.

5. Guest Shows and Feature Stories

These are the equivalent of a feature article in the newspaper. They provide a good vehicle for reaching a large number of people. If shown live, guest shows allow you to impart lots of information without being edited. This is in contrast to news items, which often distort the issue by what they do and don't show and tell. Feature programs such as CBC TV's Market-place, although highly edited, give the subjects of their stories much more air time than can a news item, and thereby provide fuller and more balanced coverage.

Find out about any such shows that might give you air time. When you request an appearance on the show, be sure to explain who you represent and the importance of what your group is doing. Send an information package about your group and its activities along with your request. Follow up with a telephone call and be ready to "sell" your issue.

If you are asked to appear on a talk show, know the points you want to make and use opportunities in the conversation to make them. There are many techniques to controlling an interview including the following:

1. Expand the question, to add another angle (thus allowing you to make your point). Eg: "Do environmentalists have the right to deny loggers employment?" Answer: "Do loggers have the right to deny the public clean air, recreational opportunities, wildlife preservation, and everything else attached to wilderness conservation?"

2. Change the question, so as to ask your own question. Eg: in answer to the above question, say "The question is not so much one of rights as it is one of social priorities - which is more important to the nation (or the planet) as a whole: short-term employment or long-term environmental health?"

3. Take the lead at the end of an answer. Eg: "There is another important issue that we are neglecting...."

Use these techniques to avoid overt antagonism or hostility. Always keep cool and calm, giving an impression of confidence. Don't let the interviewer annoy or upset you.

Before you appear, find out who your audience is and gauge your message accordingly. Suggest questions to the host, if you wish. In any case, prepare by thinking of likely questions and determining how best to answer them.

7. **Magazines**

Consider writing (or getting someone else to write) an article for a magazine. Magazine editors, like newspaper editors, may be receptive to new ideas for articles.

8. **Public Service Announcements**

Many radio and television stations carry PSAs, which announce events, meetings and the like. You cannot use this service for expressing an opinion.

9. **Reporters and Editors**

An up-to-date and well-organized media list is invaluable if you are seeking media attention. Your list should include editors - print and producers - electronic (the people in charge of content), city editors or news assignment editors (people who assign stories on a day-to-day basis), reporters (who receive assignments and can suggest stories), and freelancers (who sell articles to the media). Don't ignore the wire services, such as CP, AP and Reuters.

Learn the names of the editors and reporters covering your subject-area and contact them directly when you think you have a story. Send news releases to news assignment editors whenever possible. Cultivate good, business-like relationships with these people - they'll be more likely to read your news releases if they already know you.

10. **News Releases**

Called "press releases" when they refer exclusively to the print media, news releases are necessary when you want to publicize a newsworthy item that won't otherwise bring reporters running. As with news conferences, the timing of your release is

crucial: it will get little attention if something more newsworthy is happening on the same day. Think carefully, therefore, about when to send it out.

Your news release should be one or two pages, double-spaced. Write clearly and concisely, referring to your group in the third person, so that the release can be used verbatim. Be thoroughly accurate. Consider establishing a policy on clearing news releases and statements before they are issued to the press.

Use quotations to support your story, if possible. It's a common rule to have at least three quotes per page. Follow the "inverted pyramid" style of journalism, making your major point at the beginning and arranging subsequent paragraphs in order of descending importance (this allows editors to cut out from the bottom, without interfering with the rest). In the fist paragraph, include the who, what, where, when and how of the news. Give a brief description of your group in the final paragraph.

Use letterhead if you have it, otherwise put your group's name at the top. Be sure to include the name and telephone number of your spokesperson. This person should be prepared to respond immediately to media calls. Type in a headline. If you want to delay release to the public until a certain time, clearly mark "EMBARGO", plus the date and hour of release, above the headline. Otherwise, mark the item "for immediate release". Type "(more)" at the bottom if it goes on to another sheet (this is media jargon). A sample release can be found in the appendix to this chapter.

Send the document out to all of your media contacts, as well as other pertinent editors, news directors and columnists. Don't expect the recipient to pass on the news; send the release out to all possible users even within the same bureau (advising them of who else in the office has a copy). The fax machine can save you a lot of effort; otherwise, personal deliveries are the best method of ensuring receipt.

11. Interviews

Do not solicit or agree to an interview until you are prepared to discuss the issue intelligently. As with all other aspects of dealing with the media, it is best to designate one group member as media contact person. That way, you minimize the chance of inconsistent versions being reported. Make sure that your spokesperson is easily available.

In an interview, always assume that everything you say will be quoted. Usually, the first question asked is a general one, eliciting an answer which explains the importance of the topic at hand (eg: "Why are you doing this?" or "What do you want to accomplish by...?"). Be prepared with relevant statistics and

anecdotes, and have a few key points in your mind that you want to make. Don't guess at answers. Be careful with questions which assume information you don't have yourself; expose the assumptions and discuss them if you wish. If you are being asked to make personal criticisms, don't comment.

Should the media contact you unexpectedly, use the opportunity as best you can. If you are unprepared (assuming you are the spokesperson), ask for 15 minutes and call back on the dot. Send out any requested information immediately.

12. News Conferences

News conferences should be limited to important events such as initiating a major project, exposing injustices, calling for a ban on a harmful product or announcing the conclusions of a major study. If not, no one will come.

As with news releases, timing is crucial. Do your best to avoid being upstaged, by choosing a date that doesn't conflict with any other planned events. Don't hold your conference after 3:00 pm if you want coverage on the evening news. Contact the media well in advance and inform them of the time, date and place for the conference (you can do this by news release). Follow up with telephone calls on the day prior to the conference, to ensure maximum attendance.

Location is also important. Choose a place convenient and well-known to reporters, and book it as far in advance as possible.

Form is surprisingly important. Rehearse the speech and get feedback. Choose a central location with adequate space and lots of chairs. Make sure the microphone works, and that it is the correct height for the speaker. Rent a sound system ("board") into which reporters can plug their microphones. Begin with a statement, then field questions. When the time seems right, formally close the conference. Don't forget to hand out news releases as well.

13. Media Events

Other media events include citizen hearings (mock inquiries, organized and run by citizens), demonstrations, marches, and picketing. Be creative in designing such events; they can effectively dramatize an issue. Make the event as visually attractive as possible, with lots of signs and banners, and as wide an array of supporters as possible. Try to get widely-respected experts on your inquiry panel or as speakers at your demonstration. Send out pre- and post-event news releases.

Don't underestimate the time and energy required in organizing a media event. Such events take a great deal of careful

planning and advance publicity if they are to be successful. Also, be alert to applicable laws and regulations: you may need a city permit if you will be blocking traffic, for example. Call the city or the police if you are unsure about such regulations.

14. **Other Tips on Media Relations**

Learn media deadlines and meet them.

Don't beg or coerce editors to use your story; news items are chosen on their merits.

Thank journalists when they give you good coverage.

Save your complaints for serious errors and consider the rest as the price you pay for free publicity.

Keep records of all media coverage and news releases.

Monitor your treatment by the media and try to learn from your mistakes.

Keep your media list up to date, noting those journalists who give you good coverage or do a good job reporting on your event.

SAMPLE PRESS RELEASE

FOR RELEASE: 9:00 a.m.
April 15, 1989

VALLEYVIEW CONSUMERS FORM **ENOUGH!**

Today, a group of Valleyview residents announced the formation of ENOUGH!, a consumer group dedicated to setting limits on rising car repair costs and inadequate repair service in the Town of Valleyview.

The organization plans to "conduct market surveys of car repair establishments, detemine who is giving the consumer a fair deal and who isn't, and act to improve the situation", according to chairperson Tabithia Tinear. "This essential consumer sevice has been a problem here for years", she continued, "and it's time to take action. We've had enough!"

ENOUGH! encourages residents who have had their cars repaired recently to share their experiences with the group.

Members and volunteers are also greatly needed.

ENOUGH! is a membership-based organization with offices at 123 Town Street.

FOR FURTHER INFORMATION, CONTACT: Tabithia Tinear
123-456-7890

References

This chapter was adapted from the following sources:

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Buyer's Market vol.3 no.3, (May 1987), (Washington D.C.: Centre for Responsive Law).

Penney Kome, Every Voice Counts: A Guide to Personal and Political Action, (Ottawa: Canadian Advisory Council on the Status of Women, 1989).

Stephen Newman and Nancy Kramer, Getting what You Deserve: A Handbook for the Assertive Customer, (New York: Doubleday, 1979), ch.29.

Public Interest Law Centre, Manitoba, How To Get What You Want: An Advocacy Manual, (Winnipeg: PILC, 1986), ch.2, pp.48-63.

Other Sourses

Marc Caplan, Ralph Nader Presents: A Citizen's Guide to Lobbying, (New York: Dembner Books, 1983), ch.5.

CHAPTER ELEVEN

LITIGATION

Deciding To Sue in the Public Interest

Sometimes no amount of lobbying or public pressure will convince decision-makers to act in the public good. They may feel constrained by higher-level decisions (as to priorities or budgeting, for example), or they may simply disagree with you. In these situations, litigation may be an effective method of achieving your goal.

There are essentially two types of lawsuits: actions and applications. Actions can become long drawn-out affairs in which each party formally questions the opposing witnesses well before trial so as to narrow the issues and consolidate the evidence (this is called "discovery"). Many actions settle before trial, if only because legal fees and disbursements can surpass potential recovery at trial or make proceeding to trial prohibitively expensive. (In Ontario, lawyers are now advising clients that it is not worth going to trial for anything less than $25,000). Actions generally take two to five years to reach trial.

Applications are expedited actions. They are appropriate where there is no dispute as to facts and where no oral evidence is to be called at trial. Because factual disputes are rare in public interest litigation, applications are the more common route. Applications for injunctions (to prohibit a planned project, to stop a development already commenced, or to order someone to do something he or she is refusing to do) can be heard in a matter of weeks. If the matter is urgent, a court can order interim relief for the period up to the main hearing and decision on the matter. Interim injunctions are particularly useful in environmental cases, where habitat is about to be permanently destroyed by private interests. However, they only provide temporary relief, and may be ultimately ineffective if permanent relief is denied.

Applications for judicial review are potentially useful when you are unhappy with the decision of a government body, and where you can point to a breach by the decision-maker of its statutory or common law duties. Because of the complexity of this area of law, the services of an experienced lawyer are highly recommended.

Some groups are concerned about suing a powerful person (such as a Cabinet Minister) whose cooperation is highly valued. In fact, suing such a person might well increase his or her cooperation in the future. For one thing, your success relieves the official of personal responsibility for an otherwise difficult decision. The defendant (person sued) might therefore actually welcome litigation! Moreover, by demonstrating willingness to use means other than persuasion alone, you will

likely increase your persuasive powers with the decision-maker in the future. As a litigant, you may find yourself being treated more seriously. Finally, you might find that the mere threat of a court action causes the opposing party to change its decision, thus achieving your purpose without the expense of litigation!

A lawsuit can be dropped at any time before it is filed with the court. After filing, the withdrawal procedure is a little more complicated, and may result in you having to pay the costs to date of the defendant(s). Such costs can be avoided if you obtain consent to withdraw (without costs) from the opposing party. In this case, and in all cases in which you reach a settlement with the defendant, your action must be formally dismissed by the court.

Before deciding to sue, you should be fully aware of the prospects of appealing an unfavourable decision at trial. If you aren't prepared to fight in the appeal courts as well as at trial, you should give second thought the commencing litigation in the first place. Appeals effectively delay the final result and increase the legal expenses of all involved. Even if you win at trial, the opposing party may appeal the decision. The appeal court's decision may be <u>further</u> appealed (only with permission, in most cases) to the Supreme Court of Canada.

You should also have a secure funding base (or fee payment arrangement) before retaining a lawyer. Do not rely on estimates of the total legal cost - there may well be unanticipated expenses that the lawyer simply could not predict. Be aware that lawyers are particularly well-equipped to enforce debts to themselves, and that unless your group is incorporated and it alone has retained the lawyer, you may be personally responsible for the legal bill. (Incorporation may be something your group should consider, as it protects group members from personal liability in the event that the organization is sued or held liable for costs in an unsuccesful court venture. Consult a business lawyer if you want advice on incorporation).

<u>Do you need a lawyer?</u>

Except for Small Claims Court actions, litigation generally requires the expertise of a lawyer. If you attempt to conduct an action (other than small claims) on your own, you will quickly find out why lawyers are necessary: court procedure, legal etiquette, the rules of evidence and other aspects of the practice of law are not easily learned. Indeed, the old saying that "only a fool has himself for a lawyer" is not without truth.

In any case, this chapter is no substitute for professional advice. It is simply intended to give you an overview of litigation, so that you can more intelligently decide whether or not to seek legal advice. Refer to chapter five for a discussion of lawyers.

Prerequisites for a Lawsuit

(a) Cause of Action

"Cause of action" is legalese for "recognized grounds on which to sue". You won't get anywhere without one. Causes of action are found in statutes and in case law.

Statutes and their offspring, regulations, are passed and enforced by all three levels of government (they are called bylaws at the municipal level). Some statutes, such as the Charter of Rights and Freedoms, leave enforcement up to the individual. Always check for applicable legislation and read it carefully to determine whether or not it provides you with a cause of action (keeping in mind the value of professional advice).

An example of a cause of action is that the decision-maker failed to satisfy a statutory requirement, be it procedural or substantive.

Case law accumulated to date (referred to as "common law") is another source of legally enforceable rights. Judges use the cases before them to interpret statutory provisions. Judicial interpretations are binding on lower courts in the same jurisdiction. Many, but not all, judicial decisions may be appealed to a higher court. The final court of appeal is the Supreme Court of Canada, whose decisions are binding on all levels of the judiciary.

Causes of action such as negligence, breach of contract, failure to afford due process of law, and failure to respect the rule of law (by exceeding one's statutory mandate, for example) are well established in the common law. Researching case law is an elaborate procedure in itself, something that lawyers are specially trained to do. If you want to learn about a certain area of the law, find an up-to-date text or journal article on topic - it should refer to relevant case law.

Where a number of people have suffered similar harm due to the same cause, a class action may be appropriate. Class actions are of particular interest to consumers, in that they allow a large number of individual victims to obtain redress in situations where no single individual could afford to sue on his or her own. Unfortunately, the only province as of April 1991 to allow class actions is Quebec, while Ontario is considering similar legislation. If you think that a class action may be appropriate, consult a lawyer (cf. chapter six - class actions).

In any case, the determination of whether or not you have a cause of action is best left to a lawyer trained in the pertinent area of law. If you are considering legal action, but are unsure of your rights, get a written opinion from a lawyer - it will probably be well worth the expense.

(b) Defendant

Assuming that you have a cause of action, who is it against? You can sue individuals, government ("the Crown") or corporations (which have legal status separate from their owners and directors). Identify all those who have done wrong and be sure that you have their full and proper names.

(c) Remedy

What remedy do you seek? Is it known to law? There is no point in launching a legal action if success at trial can't get you what you want.

The most common remedy at law is monetary compensation, also known as damages. Restitution in one form or another is also sometimes available. Injunctions, interim and permanent, can be obtained to prohibit certain conduct or, more rarely, to order certain conduct. A declaration may also be obtained. Declarations have the effect of defining legal issues between the parties, or determining the constitutionality of legislation. Governmental decisions can be reviewed and reversed or sent back for a rehearing. These remedies may or may not be available to you, depending on the case. Again, professional advice is necessary if you are to properly understand your legal position.

Limitation Periods

Limitation periods are deadlines for the launching of a legal suit. They can be as short as 7 days (for notice of a claim against an urban municipality in Ontario re: failure to keep a highway in repair) to 20 years (for the enforcement of a judgement in Ontario). Because of limitation periods, you should seek legal advice as soon as your problem becomes known. Ask your lawyer about any applicable limitation period.

At common law, the doctrine of laches requires you to bring your suit within a reasonable time so as not to prejudice the defendant by delay. Even where no limitation period applies, your suit could therefore be dismissed for undue delay if the facts warrant.

Costs

Litigation is a win or lose game. The risk of losing is compounded by the tendency of courts to order the loser to pay the winner's costs. Normally, "costs" means a portion of the actual legal expenses, limited by a tariff. However, the court can order "solicitor/client costs", which means the entire legal bill, limited only by reasonableness. Generally, this latter order is only made where the court finds that one party acted improperly in bringing the legal suit or in the manner in which it conducted itself.

The making of an awarad of costs is within the court's discretion. Thus, if the winner behaved particularly badly, a judge could order costs against him. More commonly, there might be no order as to costs, leaving each party to pay its own legal bill. In any case, a litigant cannot count on having the opposing party pay its costs and must be aware of the risk of incurring them.

The Court System

Each province has its own court system, which includes a provincial court (usually divided into criminal, family and small claims court), a superior court (usually called "Queen's Bench", "Trial Division" or "General Division"), and a Court of Appeal. Separate from these court hierarchies is the Federal Court of Canada (Trial Division and Court of Appeal), which hears cases involving the federal government and its agencies. The Tax Court of Canada hears cases involving the Income Tax Act; its decisions are appealed to the Federal Court of Appeal. The Supreme Court of Canada hears appeals from the various provincial Courts of Appeal, as well as from the Federal Court of Appeal.

It is not always clear in which court one should seek relief. Again, professional advice may be needed.

Charter Challenges

Enacted in 1982, the Canadian Charter of Rights and Freedoms (see Appendix A to this chapter) has spawned a flood of litigation, prompting the judiciary to take a much more activist role than in the past. Because it forms part of the Constitution (the supreme law of Canada), the Charter overrides all other laws. Moreover, it cannot be amended except through a very onerous process outlined in s.38 of the Constitution. The Charter therefore can be an effective tool of advocacy.

Important Sections of the Charter

(1) Application

Section 33 limits the application of the Charter to government and government agencies. Human rights violations by other parties may be addressed by the Canadian Human Rights Act or by your provincial Human Rights statute.

(2) Remedies

Section 24 states that anyone whose rights or freedoms under the Charter have been infringed may apply to a court to obtain such remedy as the court considers just and appropriate in the circumstances. Such remedy might be damages, an injunction or other relief.

Section 52 declares that any law conflicting with the Charter is of no force or effect to the extent of that conflict. Under this section, courts can strike down legislation (or part thereof) that conflicts with the Charter.

(3) General Limitations

Under section 1, the general guarantee of Charter rights and freedoms, is made subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". This is an important qualification, allowing for infringements of the Charter where such infringements are reasonable, prescribed by law, and shown to be justified in a free and democratic society.

(4) Fundamental Freedoms

Section 2 protects four basic freedoms:
(a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and expression;
(c) freedom of peaceful assembly; and
(d) freedom of association.

(5) Legal Rights

Section 7 states that everyone has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Sections 8 to 12 are illustrative of the meaning of "principles of fundamental justice". They protect against unreasonable search and seizure, arbitrary detention, and interrogation without an opportunity to contact legal counsel, among other things.

(6) Equality

Section 15 guarantees equality before and under the law, as well as the equal protection and benefit of the law without discrimination. It specifically prohibits discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical handicap. Other grounds of discrimination analogous to the above are also prohibited.

Subsection 15(2) specifically allows for affirmative action aimed at improving the situation of historically disadvantaged groups.

Funding

Litigation is expensive, and Charter litigation is certainly no exception. The suggestions made in chapter five, with respect to keeping your legal bill down, apply here. In addition, the Court Challenges Program funds case development proposals for and

litigation of equality and language rights issues. It is therefore wise to contact them early on; they might well agree to fund your initial research. The Court Challenges Program can be contacted at:

251 Laurier Avenue W.,
Suite 902
Ottawa, Ontario
K1P 5J6
tel. (613) 564-6707 fax (613) 564-9554

References:

B.C. Public Interest Advocacy Centre, The Charter and Human Rights: A Training Manual for Community Groups, (Vancouver: BCPIAC, 1987)

Public Interest Law Centre, Manitoba, How To Get What You Want, (Winnipeg: PILC, 1986), ch.1, pp.46-53.

CHAPTER 12

ADMINISTRATIVE TRIBUNALS

Sometimes, the issue that concerns you falls squarely within the mandate of a government agency. If the agency is an administrative tribunal, it may well hold public hearings at which you, as an affected or simply interested member of the public, can make representations. Or, it may simply call for written submissions from interested persons. Consumer groups have provided valuable input to many such decision-making bodies, including public utility boards and energy boards (regulation of utilities and their rates), environmental assessment boards, and the CRTC (broadcasting and telecommunications regulation).

Public interest interventions range from simple written representations to full scale participation as parties in a public hearing. Your choice of approach will depend upon many factors, including your resources, other parties involved, the issue at stake and the type of hearing (some are entirely written; most have written components).

How To Find Out What Is Going On Before It Happens

If you are interested in an issue with which a tribunal regularly deals, get on that tribunal's mailing list. You will then receive notice of all applications and upcoming hearings. If the tribunal is a large one, it may be able to send you notices relating only to the topic in which you are interested. This is by far the best way of finding out what is going on before it happens.

Not all tribunals have mailing lists, however. You may have to rely upon public notices and personal contacts. Notices of public hearings are usually published in the Canada Gazette or provincial Gazette. These Gazettes are very confusing to read. Moreover, they must be checked weekly. This can be a nuisance. It might be easier to simply skim newspapers on a daily basis for notices of upcoming hearings. Tribunals often require regulated industries to post such notices in appropriate media.

Initiating A Hearing

Most applicants are companies subject to regulation by the tribunal. They may require approval for a rate increase or an expansion, for example. Because of the expense involved, public interest groups rarely initiate hearings. Applying is far more costly and time-consuming than intervening. Where your opponent is an established business, you could face enormous resistance from a whole industry.

If you do want to initiate a hearing, it is essential that you be fully familiar with the tribunal, its rules and procedures. (See the sections below on pre-hearing preparation,

etc: many of the same considerations apply to applicants as to intervenors). It is highly recommended that you gain experience with the tribunal in question as an intervenor before attempting to initiate a hearing. (It is further advisable to sit in on some hearings as an observer before intervening).

The Hearing Process

Although each tribunal has its own process, most follow a pattern similar to that outlined below:

1. Application is filed, usually with voluminous evidence in support.

2. Inspection of the Application by Tribunal staff for deficiencies.

3. Notice to the Public of the impending Hearing, requesting submissions on the Application.

4. Intervention Statements are filed by groups wishing to intervene.

5. Interrogatories (or Requests for the Production and Inspection of Documents) are submitted by Intervenors (and Respondents) to Applicant.

6. Pre-Hearing Conference.

7. Hearing: may be conducted in writing or orally, in camera or in public. Assuming that it is public and oral,

   (a) Evidence, of witnesses for the Applicant and Intervenors:
   - examination in chief
   - cross-examination
   - re-examination

   (b) Argument
   - opening statement (before evidence adduced)
   - closing argument

8. Decision (usually reserved and given in writing).

Pre-Hearing Preparation

Assuming that you have found out about a hearing and would like to intervene, where do you start?

The Notice may have been very brief or quite detailed. If you are not sure about intervening, contact the tribunal and request a copy of the application (or call the Applicant directly). You may also need information on tribunal procedure,

deadlines, estimated length of the hearing, issues to be considered, and parties in order to make an educated decision.

Proper preparation cannot be overemphasized. To effectively intervene requires a great deal of time and concentrated effort. Financial assistance may be available from an appropriate government department or from the tribunal itself. Some tribunals award advance costs or intervenor funding - see below, under "Funding".

If public notice of the hearing has been given, the tribunal has probably already reviewed the application and sent out a "deficiency letter" to the applicant. This deficiency letter and the applicant's response thereto are very useful documents - the letter may indicate where the tribunal's main concerns lie, while the response can provide good material for cross-examination (especially if it was hastily prepared). Get copies of these documents from the tribunal and review them carefully.

Learn what deadlines apply to you - for example, by when must Intervention Statements be filed? If you are given a number of days to submit, assume that those days include weekends unless you learn otherwise. If you have missed a deadline, or can't make one, request an extension from the board secretary.

Get to know the tribunal: visit the board offices, if possible, and introduce yourself to the staff. Use the tribunal's resources, both human and documentary. Staff counsel can be very helpful with respect to procedures, if there are none in writing.

In order to understand the tribunal, and its powers, procedures and policy leanings, every new intervenor should carefully read the following:

1. The Act(s) which created the tribunal and which empowers it to make decisions. Get an idea of what the tribunal can and can't do, remembering that it is restricted to the powers specified in the legislation.

2. The tribunal's rules of procedure (or some description thereof). This should tell you what you can and can't do.

3. Past decisions of the tribunal. Look at decisions on issues similar to yours. Try to determine what policies guide the tribunal's decisions, and how favourably disposed the board is toward the kind of argument you seek to make.

Setting Your Strategy

(a) Long Term Strategy

If you plan to intervene before the same tribunal in future cases, you will require a long-term strategy. Tribunals and the hearings they conduct tend to be "clubby", since the same parties (with the same lawyers) appear before them time and time again. Not only does regular intervention before a particular tribunal help you to become a better advocate, but it opens up the door to the "club", thus giving you more credibility with the tribunal. For this reason, it pays off to become a regular participant before a given tribunal.

Even where there is only a possibility of future participation before this board, you should think in terms of those potential future interventions. It is essential that you maintain consistent policy positions from hearing to hearing. Draft a broad strategy statement outlining your long term goals with respect to this board.

(b) Short Term Strategy

Your strategy for this particular hearing should fit within those long term goals. Draft a statement of what you seek to achieve at the hearing - it could be to discourage the board from accepting the application without greater efforts by the proponent to mitigate adverse effects. Or, it could simply be to persuade the board to recognize something as an issue (so that you can argue it in a later case). Be specific.

Once you've decided on a basic position, list all the arguments logically necessary to your position. Then, identify what specific evidence is needed to back up those arguments. Or, if your position is flexible, depending on certain facts of which you are yet unsure, list the questions that you need answered in order to finalize your position, and the evidence that will provide answers.

Note the distinction between evidence and argument - a fundamental distinction in legal proceedings. Evidence is the body of facts (statistics, witness testimony, expert reports, etc.) on which your arguments are based. **It does not include argument.** All evidence is subject to cross-examination; its credibility will be determined by how well it stands up to attack. Because of this inherently vulnerable nature of evidence (vs. argument), you should minimize the evidence you adduce to that which is absolutely necessary to your argument. Moreover, be sure that your witnesses have recognized (provable) expertise in whatever area they are testifying. Don't let expert witnesses give opinions for which they are no better qualified than anyone else to give. Such testimony is easily attacked. In particular, leave value judgments for final argument.

In contrast to evidence, argument is not subject to cross-examination. Final argument is the time to make value judgments, with reference to evidence adduced earlier on in the hearing.

Once you have a clear list of objectives, argument and evidence, it's time to determine your strategy of presentation. There are several options here; it's important that you choose the most effective one, given your resources. Very broadly, the options are as follows:

1. Submit argument only. In this case, you are not relying on any evidence at all; your points are based on policy only. This is far less expensive than calling evidence, but lacks the persuasiveness of an argument well-grounded in independent evidence.

2. Attack a fatal flaw in the applicant's evidence on cross-examination and in final argument. You may or may not want to call evidence of your own - if you succeed in exposing a fatal flaw, it's probably unnecessary to call evidence. (This is usually the best approach for groups without a lot of money, but it is difficult to pull off).

3. Even if you can't find a fatal flaw, concentrate on errors and deficiencies in the applicant's evidence - ie: cross-examine and make final argument, but don't call any evidence of your own.

4. Participate fully, calling expert witness(es) and putting forth a firm position based on your own evidence (in addition to the flaws in the applicant's submissions). This requires significantly more time and money than does partial participation. Moreover, it can backfire if your witnesses' testimony is destroyed on cross-examination.

Whatever route you choose, be flexible. If funding dries up, or if your expert turns out not to be as helpful as you thought, you may be well advised to submit argument only. On the other hand, it's always a good idea to find a specialist who can help you identify flaws in the applicant's submissions, even if you don't intend to adduce evidence. If circumstances change, (eg: you get more funding, or the specialist has a convincing counter-theory), you may decide to call that expert as a witness. In any case, beware of deadlines imposed by the tribunal for the filing of evidence.

<u>Identifying and Ranking Issues</u>

When examining the application, look for all possible issues in the proceeding, in light of your objectives. Be alert to technical issues, or ones that you didn't anticipate before examining the application. Citizen's groups have won in the past on technical points; even though they seem insignificant or irrelevant to your motivation for participating, such issues can

mortally wound the other side. It may useful to have a lawyer or other expert assist you at this stage.

Because you may not yet be able to see the argument within an issue, it's wise to identify all possible issues before beginning to list possible arguments. If there is an interrogatory process, use the information gained by yourself and other parties to refine and rank the issues. Expect this to take some time and several stages of refinement.

Recognize that you can make alternative arguments. Alternative arguments can be fallback positions, in case your preferred argument fails. Or, they can be different points, each of which serves to strengthen your case.

In general, it's better to go with a few strong points rather than many weak ones; that way, you appear more confident of your case. Beware of inconsistent alternative arguments, which can irreparably damage your credibility. If, however, you expect your main argument to fail, be prepared to make submissions on an acceptable alternative outcome. Make it clear that these secondary submissions are just that: secondary to your main argument. Address any apparent inconsistencies, explaining that this is not your preferred result.

Getting Information From the Other Side

After having examined the application and looked at all relevant information in the public domain (eg: through Statistics Canada, government publications, and the tribunal itself), you may still find that you lack certain vital or useful information. Quite often, the proponent has this information but does not want to prejudice itself by releasing it. Business and marketing plans, financial projections, and other economic studies on which the proponent relies are commonly held back by applicants. In such cases, you have may have to request the tribunal to order disclosure.

Some tribunals allow a period of time before the hearing for "production and inspection of documents". Under this procedure, you can request production of any document referred to in the application. Unfortunately, applicants have been known to subvert this process by merely inviting you to attend at their offices to read the produced documents. If this happens to you, formally ask tribunal to order the applicant to provide a copy to you.

A few tribunals have set up a more comprehensive pre-hearing interrogatory process so as to facilitate the exchange of information between parties and to thus reduce the time spent at an oral hearing. (The CRTC is one such tribunal). Interrogatories are written questions to the other side. They commonly include requests for detailed financial statements, quality of

service information, company policies and practices not found in annual reports, and various statistical breakdowns.

Before requesting disclosure through whatever process applies, you must know clearly what you want disclosed and why. You should be prepared to justify your request by explaining how it relates to the issues raised in your intervention statement.

Because proponents will undoubtedly give you as little information in response as possible, you must make it difficult for them to dodge the question: **be as specific as possible.** Number and date each interrogatory (question) so that it can be easily referred to. Don't let the proponent get away with evasive techniques such as superficial replies or unnecessary claims of confidentiality. In such cases, formally (ie: in writing) request the tribunal to order further particulars or to make a ruling on confidentiality.

Replies to interrogatories can be used at the hearing, as part of your own evidence or in cross-examination of one of the applicant's witnesses. They can be cited in final argument only if they have already been introduced into evidence. It's helpful to cooperate with other like-minded intervenors in exchanging interrogatories, for mutual benefit. You shouldn't, however, introduce as an exhibit in evidence another party's interrogatory response without the consent of that party.

Another source of information can be evidence from past cases before the same tribunal involving the same party. Use the tribunal library to reseach previous cases. Don't be afraid to ask the Secretary of the tribunal, research staff or tribunal counsel for assistance. They might be able to direct you to some relevant decisions or evidence. Other tribunals regulating the same activity (in other provinces or countries) can also be sources of useful information or evidence. If you are having difficulty getting disclosure from a proponent, for example, it can be helpful to point to another (related) tribunal's practice of demanding full disclosure.

<u>Preparing an Intervention Statement</u>

Each tribunal will have its own requirements for intervention statements; find out how much detail they require and draft the statement accordingly. In general, however, your intervention statement must set out your interest in the matter. It should state concisely whether you support or oppose the application (or parts thereof) and why.

At the top of the document, put the name of the tribunal, and under it, the name of the hearing (from the public notice). Divide the statement into consecutively numbered paragraphs, along the following lines:

1. Name and description of intervenor;
2. Nature of interest in the subject-matter;
3. Whether you support, oppose or seek to modify the application;
4. The reasons for your position; and
5. The decision or order sought (if any).

See the appendix to this chapter for a sample Intervention Statement.

Retaining and Preparing Expert Witnesses

The strategy you take will determine whether or not you need an expert witness. If you are simply there to make a non-technical point, no expert testimony is required. If, however, you want to challenge the applicant's technical analysis (eg: where cost or financial figures are at issue), an expert will usually be required. Be careful not to underestimate the complexity of an issue, and find yourself in need of expert assistance too late. You will need time to find the right person, and that person will need time to prepare evidence.

Because of the level of specialization in all disciplines, there are likely to be very few economists/accountants/biologists/etc. who can help you. The ones who can are usually in great demand and must therefore be retained well in advance. Shop around for the right person, checking out reputation and credentials with other groups. (Remember that tribunals tend to respect people with impressive credentials).

Ask potential candidates where, when and for whom they previously testified. Find out from other sources how their testimony was received. Look for someone who has represented a broad range of clients, and who will correct you where necessary - you are looking for advice, not just reinforcement of your opinions. Don't be afraid to retain someone who has testified frequently for the "company" side; that witness may have even greater credibility with the tribunal in presenting your case.

The cost of expert witnesses varies a lot. Generally, the more expensive a person, the more efficient and useful that person will be. As a public interest group, you may be able to negotiate a special rate. If you have a chance of getting costs at the end of the day, consider negotiating a fee which takes this risk factor into account (eg: the expert assists you at a "discount" rate, which will be increased to his or her normal rate in the event that costs are awarded.

Experts can assist you tremendously in reviewing the Applicant's evidence and drafting interrogatories in technical areas. They are particularly useful in helping you prepare questions for cross-examination of the applicant's witnesses. Make sure,

however, that you understand all of the questions and anticipated answers, if you are going to conduct the cross-examination!

If possible, have a third party check over the expert's prepared testimony for clarity, especially if tribunal members are unfamiliar with the analysis of your witness.

Funding

Each tribunal has its own practice with respect to funding and cost awards - consult the cost guidelines of the tribunal in question, and look at past decisions, if necessary, to find out how the board deals with this issue.

There are several types of funding for which you may apply:

1. Private grants or government grants - various government departments offer funding to NGOs to encourage public participation in decision-making. Funds are available for background research as well as participation in certain proceedings. Have a look at publications put out by the appropriate government on funding sources (eg: the federal government's Guide to Federal Programs and Services).
N.B.: This type of funding must be applied for well in advance; there is usually a long lead time before you will actually get it.

2. Grants from the Tribunal - unusual, but worth a try.

3. Costs - in litigation, costs are a sort of reward to the winner: at the end of the hearing, the court orders the unsuccessful party to reimburse the successful party for the latter's expenses. The point of this practice is to discourage unmeritorious litigation. In administrative proceedings, costs are also awarded, but with a very different rationale. Because it makes no sense to encourage settlement in regulatory and other administrative proceedings, tribunals use cost awards as a way of encouraging helpful input from public interest intervenors. Such costs are based on actual expenses and are adjusted by the tribunal for reasonableness and effectiveness of contribution. They are usually determined only at the end of the proceeding, and are ordered to be paid by the Applicant.

4. Advance (or Interim) Costs - where the proceeding is expected to be very lengthy, you may not be financially able to wait until its outcome for an award of costs. Advance costs are then appropriate, although they will still be assessed at the end of the hearing and may be subject to repayment if not approved at that time. In fact, few tribunals grant costs in advance of the conclusion of the hearing. Unless the tribunal's empowering legislation expressly allows for interim costs, you will likely have difficulty getting them. Check the tribunal's rules of procedure as well to see if such an award is contemplated.

5. **Intervenor Funding** - at the time of writing, there is a process for intervenor funding by proponents under the Ontario Intervenor Funding Project Act. The Act covers interventions before the Ontario Environmental Assessment Board, the Ontario Energy Board and the Joint Board (Ontario Municipal Board and Environmental Assessment Board). It provides for advance funding as determined by a panel set up expressly for this purpose, and subject only to such conditions as the panel specifies. Such funding is deducted from any costs received by the intervenor at the end of the proceeding.

The Hearing:

(a) Motions

Motions are applications within a proceeding. They are usually short and relatively simple, involving requests for disclosure or

procedural questions. They are usually entertained by the tribunal in advance of or at the commencement of the hearing - this is the time to bring your request for production and inspection of documents if no discovery process was provided.

If you need to make a preliminary motion, make sure that you do so before the hearing itself begins. Interrupt the chairperson if he or she forgets to call for any preliminary motions. If your request is for further information, and if it is granted, you will likely have to ask for an adjournment as well, in order to review the information provided. Motions can be used in a variety of situations, not simply those mentioned above.

(b) Opening Statements

It's always a good idea to make an opening statement, outlining to the tribunal what you intend to prove through evidence or argument, who your witnesses will be, and what sort of testimony they will be giving. You should tell the board what order you will be asking it to make, and what conclusions will lead it to make that order. Don't simply repeat the statements in your intervention statement; take a different approach so as to attract the board's attention.

It's also good as an intervenor to get some "air time" with the media, who usually come for the first day only. The Applicant is at centre stage because it presents its case first. An oral opening statement lets the media and everyone in the room know where you'll be heading in your cross-examination and in your evidence.

Unfortunately, some tribunals don't consider opening statements necessary. If there is no time set aside for opening statements, request, either at a pre-hearing conference or as a preliminary motion, that you be allowed to make one. This is an excellent chance for you to speak directly to the tribunal members, familiarizing them with your argument.

You must, of course, have a well-developed case strategy in order to make a good opening statement. Indeed, your opening statement should ideally be an outline of your final argument; in other words, you should at least begin to prepare your final argument before the hearing begins.

(c) Cross-Examination

Cross-examination is the most difficult advocacy technique. It is rarely well-conducted, even by lawyers. Effective cross-examination requires thorough preparation and an alert mind; it does not require legal training. In order to do a good job, you need to know the subject-matter and to have a planned line of questioning. You will, preferably, have practiced the skill of cross-examining beforehand.

The aim of cross-examination is to discredit your adversary's witnesses, alert the tribunal to weaknesses in the applicant's case, and lay a foundation for your own case. The method is to ask leading questions (ie: questions to which the answer is merely "yes" or "no"), with predictable answers. Through cross-examination, you want to accomplish one of the following results:

1. Get the witness to admit to weaknesses in his or her evidence;

2. Get the witness to change his or her evidence, and (preferably) to agree with your version;

3. Get the witness to exaggerate; or

4. Show the witness to be unreliable.

The last result can be obtained by uncovering inconsistencies in the witness' testimony, errors in calculation or methodology, half-truths or non-disclosure of highly relevant facts, or by showing that evidence given was beyond the scope of the witness' expertise. In rare situations, you can point to a questionable background, one which indicates possible bias or self-interest.

There is a limit, however, to what you can accomplish, especially with an experienced or clever witness. All the preparation in the world won't alter a cardinal rule of cross-examination:

Don't do it, unless you have a specific purpose that can't be achieved in final argument.

It's better to make an uncompromised point in final argument than to confront a witness with it, only to receive an explanation that significantly weakens your point.

Irving Younger, an eminent American trial lawyer, taught his students "the ten commandments of cross-examination" as follows:

1. Be brief (make no more than three points).

2. Use short questions and simple language. (You will lose the witness and the tribunal with long, rambling or complicated questions).

3. Ask only leading questions. Never ask a witness for an explanation - it merely gives him a chance to strengthen his testimony.

4. Never ask a question to which you do not know the answer.

5. Listen to the answer. (It might not be what you expect).

6. Don't quarrel with the witness.

7. Don't let the witness repeat his testimony.

8. Never permit the witness to explain his answer.

9. Avoid one question too many. (Let the implied point rest as such).

10. Save the ultimate point for final argument (when the witness can't explain it away).

For an excellent discussion of cross-examination techniques and tips, see chapters 14-17 of Andrew J. Roman, Effective Advocacy Before Administrative Tribunals (Toronto: Carswell, 1989).

Objections

Especially if you are before a bored board or tired tribunal, it's important that you don't let your adversary get away with unfair questioning of your witnesses or with other behaviour which could be prejudicial to your case. By the same token, your own questions in cross-examination must be carefully formulated so as not to incite objections. The following are some common grounds for objection:

1. Asking a leading question of your own witness. (This is rarely allowed, since it suggests an answer).

2. Irrelevance.

3. The question is too hypothetical; it asks for pure conjecture from the witness.

4. Repetition - the cross-examiner is repeating himself or a previous cross-examiner.

5. Badgering or harassing the witness. (The question is repeated several times, even though the witness properly answered it).

6. Refusing to let the witness complete her answer.

7. Quoting the witness out of context.

8. Introducing a document as an exhibit that wasn't disclosed to other parties despite requests for disclosure during the discovery process.

To make an objection, you must act immediately: stand up, address the chairperson (interrupting the proceedings if necessary), and state your objection and the reasons therefor as concisely as possible.

Examination in Chief

Examination in chief is the process of questioning your own witness. In contrast to cross-examination, it requires the use of open-ended questions; indeed, leading questions are forbidden on examination in chief (except with respect to uncontroversial information such as the witness' name, address, occupation, etc.). Your questions should be framed so as to let the witness do the talking; the tribunal should be focused on the witness, not you.

A good examination in chief, like all other aspects of advocacy before administrative tribunals, requires thorough preparation of yourself and the witness. You should go through your questions with the witness at least once in advance, so that there are no surprises. In addition, you must prepare your witness for cross-examination by the other side.

Start off by introducing the witness and establishing her expertise. Give the tribunal a clear explanation of the witness' role and interest in the issue. Make your questions short and simple, and present them in a logical order (chronologically, or from general to specific). The witness can use handwritten notes as an aid, but beware that such aids are subject to inspection by the other side. If you want to introduce a document as an exhibit, you must "prove" the document by asking the witness to identify it, then confirming that the witness prepared or wrote it. Always bring along enough copies for each member of the tribunal and each opposing party.

Each tribunal has its own practice with respect to witnesses. Many require you to submit your witness's evidence in advance of the hearing. If this is the case, the tribunal does not usually allow examination in chief, except to correct errors in the

written evidence, or with permission to update the written evidence. Check the applicable rules to determine what restrictions apply.

Re-examination

Re-examination is not always necessary. Its purpose is to clarify matters obscured by cross-examination, to correct inaccurate impressions left on cross-examination, and to allow the witness to explain. A good re-examination can rectify an apparently successful cross-examination.

No new evidence can be adduced on re-examination. No leading questions are permitted. Because re-examination follows immediately upon cross-examination, you may want to request an adjournment in order to determine what re-examination, if any, is required. Don't be afraid to ask for a ten minute adjournment if you feel the need.

Final Argument

Final argument may be the extent of your active participation in the hearing. In any case, it is your opportunity to convince the tribunal of your view of the evidence and issues. Final argument may be oral or written. In long and complex hearings, it is usually accepted only in written form. Because of the advantages of face-to-face persuasion, try to get at least 15 minutes of time to present your argument orally.

As mentioned above, having your final argument prepared in advance is key to effective participation. It will ensure that you have adequately thought out your position, and that you can make the most of cross-examination.

A good approach to final argument is to try to help the tribunal. Instead of simply identifying problems with the application, suggest ways of solving the problems which confront the tribunal. Make the decision as easy as possible for the board.

Don't automatically accept the applicants' definition of the issues; redefine them if necessary, to your advantage. Concentrate on areas that support your position: in the words of Andrew Roman:

> If the policy is against you, argue the facts. If the facts are against you, argue the policy. [1]

Begin by outlining the points you intend to make, and the result that you hope will be achieved. Then, explain why your position makes sense, with reference to the tribunal's mandate, powers and

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[1] Effective Advocacy, p.162.

existing policies. If you are advocating a change in policy, you will have to make a very persuasive case.

Support your logic with evidence, using the transcript, exhibits and filed memoranda of evidence as sources. When quoting from or referring to statements made during the proceeding, or in an exhibit or filed evidence, specifically cite the document title, page number, and line number. That way, the tribunal can check to ensure that you fairly characterized the evidence. Avoid, however, long recitations of boring statistics or detailed references to technical exhibits - you will inevitably put everyone to sleep.

Wherever possible without damaging your case, make concessions; this will tend to increase your credibility. One good strategy is to agree with the theory on which the applicant bases its proposal, but take issue with the facts either assumed, predicted or determined by the proponent.

In any case, spend some time on your final argument - this is your only opportunity to pull together all the evidence in your favour and to convince the tribunal of your arguments.

Costs

Don't forget to make submissions on costs! These are usually the last submissions to be made, at the end of your final argument. Know the tribunal's rules on costs, so that you can address the relevant criteria. In general, you will have to show that you have contributed to the board's understanding of the issues - ie: that your participation was helpful. If the board agrees, the applicant will be ordered to pay you your reasonable costs incurred for the purposes of the hearing.

Appeals and Judicial Review

If you feel that the tribunal's decision fails to take into account material evidence, is wrong in law, or that the procedure was unfair in some respect, consider an appeal. Before taking any action (other than consulting a lawyer, which is highly recommended), read the tribunal's empowering statute to determine what routes of appeal are provided for. Appeals are available only if statutorily authorized; they are not available as a general right. If no appeal is provided for in the statute, your only remedy will be judicial review (see below). If an appeal is allowed, you must exhaust it before attempting judicial review.

Be particularly alert for time limits - 30 to 60 days is normal for appeals. Even if no such limitation period applies, the sooner you appeal (or apply for judicial review), the better. In any case, a prompt appeal will foreclose any argument of prejudice due to delay.

There may be an internal appeal procedure provided by the agency concerned - consult the tribunal's empowering statute and rules, or a staff person to find this out. If so, your first step should be to pursue this type of appeal, a general rule being that you must exhaust all internal remedies before asking the court for relief.

Section 66 of the National Telecommunications Powers and Procedures Act (NTPPA) is an example of an internal appeal provision. It reads as follows:

> The Commission [CRTC] may review, rescind, change, alter or vary any order or decision made by it or may re-hear any application before deciding it.

There are generally two routes of appeal provided for in administrative law: to Cabinet (or to the Minister), and to court. The former is appropriate where the appeal is on grounds of an error in policy or principle, as opposed to law. Cabinet or Ministerial appeals rarely succeed, given the generally strict test requiring that a "grave and weighty" error of policy be proved.
Although provinces tend to have set procedures for Cabinet appeals, there is no set procedure federally. Consult the relevant Minister's office to determine how you should proceed, or to work out an acceptable procedure.

Section 67 of the NTPPA provides for Cabinet appeals as follows:

> The Governor in Council [Cabinet] may at any time, in his discretion, either on petition of any interested party, person or company or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Commission, and any order that the Governor in Council may make with respect thereto is binding on the Commission and on all parties.

Most empowering statutes provide for an appeal to court on grounds of error of law or jurisdiction. Appeals from federal tribunals go to the Federal Court of Appeal, while appeals from provincial tribunals go to the provincial Supreme Court (in general).

Section 68 of the NTPPA provides for such appeals as follows:

> An appeal lies from the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave therefor being obtained from that Court on application made within one month after the making of the order, decision, rule or regulation sought to be appealed from or within such further time as a judge of that Court under special circumstances allows, and on notice to the

parties and the Commission, and on hearing such of them as appear and desire to be heard.

Note that **leave to appeal** is required under this provision - you must first (within one month) apply to the Court for **permission** to appeal. Once leave is granted, s.68(3) gives you 60 days within which to file an appeal. The Federal Court Rules include all the procedural rules applicable for such appeals; Provincial Court Rules of Civil Procedure should be consulted for rules relating to provincial appeals.

Appeals are to be distinguished from **applications for judicial review**. The latter exist outside the statute; superior courts have inherent (ie: non-statutory) powers to review tribunal decisions for errors of law or jurisdiction, or for procedural errors including denial of "natural justice" or "fairness", and reasonable apprehension of bias on the part of a tribunal member. "Natural justice" and "fairness" are loaded words in administrative law; they have evolved into complex concepts, the effective argument of which requires a sophisticated knowledge of administrative law. For this reason, legal representation is strongly recommended, as it is for appeals.

A brief introduction to the concepts involved in judicial review, along with a list of references, is provided in Supplement 1 of Effective Advocacy Before Administrative Tribunals.

References

This chapter is adapted largely from:

Andrew J. Roman, Effective Advocacy Before Administrative Tribunals (Toronto: Carswell, 1989); and

Andrew J. Roman, Guidebook on How to Prepare Cases for Administrative Tribunals (Ottawa: Consumers' Association of Canada, 1977.

Other useful references include:

B.C. Public Interest Advocacy Centre, Citizen's Guidebook to the CRTC (Vancouver: BCPIAC, 1986.

Robert W. Macaulay, Practice and Procedure Before Administrative Tribunals, (Toronto: Carswell, 1988 - looseleaf service).

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APPENDIX B

COMMON FORMS IN ADMINISTRATIVE PROCEEDINGS - EXAMPLES

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