

A layperson's experiences with legal interventions

By Ken Rubin

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I make no claims to being a lawyer in the intermediate stage or at any stage. In fact, I have never aspired to being a member of that profession. I have only taken one law course and that was by correspondence.

My "regular job" as a public interest researcher and advocate has led me out of necessity to develop a few legal skills. Although I have no formal legal training, I have been active in legal actions for over two decades, from small claims courts to now being involved in initiating a Supreme Court of Canada action.

The legal system, I have discovered over the years, is not always that receptive or user-friendly to lay litigants. Despite setbacks, it is possible for citizens to go to court and to intervene in law-making. Courts and regulatory bodies, I believe, should not just be places for those with resources and for trained lawyers.

First interventions

My first legal interventions were successful personal consumer actions undertaken in small claims court. One case was with a dry cleaning establishment which refused to compensate me for clothes destroyed in their machine. Another case was for compensation from Bell Canada for coming without permission onto my farm property and doing shoddy work installing an underground telephone cable.

Since then, I have been an intervenor in regulatory hearings, a witness urging changes to certain legislation at parliamentary and commission hearings, and a lay litigant fighting government and corporate secrecy.

I picked up invaluable legal experience in a room full of highly-priced lawyers at a dozen Bell Canada regulatory rate hearings in the late '70s and early '80s. I was there as coordinator of a small consumer group called Action Bell Canada, and was usually ignored by the regulators and big-time intervenors. Some of my questions and cross-examination uncovered practices such as thousands of Bell Canada employees getting free phones at a time of numerous rate hikes.

I developed further legal skills by reviewing laws and writing briefs on needed changes from a consumer viewpoint. One such effort where I was well-received was as a witness before the House of Commons' Justice Committee testifying on government secrecy.

My prime legal activities in the last 10 years have been as an intervenor in dozens of cases involving government and corporate secrecy. The courts are a last resort of appeal if a government department, a minister, or an information commissioner do not want to help the cause of open government.

Some of the successes I have had include:

* gaining access to Canada Mortgage and Housing Corporation's Board of Directors' meeting minutes, thus limiting the discretion of government agencies to arbitrarily apply exemptions;

*getting access to meat inspection reports over the objections of Canada's largest meat packing firms and thus limiting vague claims for commercial confidentiality;

*being a party to obtaining, albeit belatedly, the Privy Council Office's 1991 constitutional poll results, thus restricting once again the exemption powers of the government.

One unsuccessful action was not being able to reverse the Privy Council Office's decision to stop giving out the exact per diems of part-time Governor in Council appointees. I am also trying, with the assistance of lawyers, to reverse an appeal court decision that creates a brand new indefinite exemption out of s. 35 of the Access Act. Section 35 is a procedural provision providing for private representations by parties, including the government, during the course of an Information Commission investigation. In seeking leave to appeal at the Supreme Court of Canada, I am the first party to ever try to have an access to information case go to the top court. I had argued this case successfully at the federal Trial Division level for release of such government representations after such investigations are completed. That decision was reversed by the Federal Court of Appeal.

Access to information litigation is very time-consuming and requires a lot of work. It can be expensive, particularly as is typical in my case when no-one has hired you to undertake the case. The outcome is not guaranteed to be a favourable one, and one runs the risk of being liable for government costs as well as your own costs. In the s. 35 case, I have been presented by the Privy Council Office with a bill that is over one thousand dollars.

Disbursement costs

My own disbursement costs in cases have ranged from a few hundred to over a thousand dollars. I have had to seek support to help cover costs. The few times that I have retained legal counsel, I have been fortunate that the lawyers have waived the fees that they normally charge.

I would have dearly liked to have gone to Federal Court more than I have, but the time and costs involved are too much. I had, for instance, wanted to challenge Health Canada's refusal to release the specifics of brand name cigarette additive ingredients.

One special case that I embarked on in Federal Court that unfortunately went nowhere was a Court Challenge-supported case under the s. 15 equality clause of the Charter of Rights. My lawyer argued that non-lawyers be treated equally with lawyers so that lay litigants could be paid at court tariff rates for court time as well as for disbursements.

An example is the 1991 constitutional poll case: I was an unpaid intervenor spending many hours on the case while other intervenors hired counsel and paid out thousands of dollars to fight the case. I was awarded costs and claimed \$185 for disbursements while other intervenors represented by paid counsel were awarded much higher costs, including time spent (at court rates) on the case.

Lawyers, while helpful in some situations, are not always necessary to present your case. Citizen legal interventions by those representing themselves and by those arguing public interest cases and possessing few resources must be made easier.

Citizens representing themselves, though, should know that legal interventions require a great deal of work, and should be very selective in choosing when to undertake legal actions.

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