



Environmental Appeals Board

Legal Education Society of Alberta

Administrative Law & Practice

The Role of Tribunal Counsel

By Gilbert Van Nes

General Counsel & Settlement Officer

Environmental Appeals Board



Environmental Appeals Board

Why does a tribunal need legal counsel?

- Citizens are becoming more aware of their rights and more active in asserting those rights. (e.g. Environmental Issues.)
- Issues and legal arguments are becoming more complex.
- Tribunal members have other specialized expertise.
- Main role of tribunal counsel is to uphold the principles of natural justice and procedural fairness.



Environmental Appeals Board

Chief Cook and Bottle Washer

- The day to day role of tribunal counsel can be quite varied.
- In a large tribunal, your only role could be tribunal counsel.
- In most tribunals, especially small tribunals, you could be responsible for many functions. (e.g. Administrative/Management.)
- Important not to let these other functions interfere with your role as tribunal counsel. Understanding who is your client.



Environmental Appeals Board

Preparing for a Hearing

- Counsel and tribunal staff play an important role in building confidence in the tribunal, that it will treat people fairly.
- Counsel can play an important role in assisting parties:
 - understand how the tribunal works,
 - how the tribunal has decided in the past, and
 - tribunal culture (what is the appropriate way to deal with something).
- Important for parties to understand the counsel is not the Board and that counsel is not providing legal advices.



Environmental Appeals Board

Legal Opinions of Tribunal Counsel

- How and when does tribunal counsel provide advice?
- ***Pritchard v. Ontario (Human Rights Commission):***
 - a communication between solicitor and client;
 - which entails the seeking or giving of legal advice; and
 - which is intended to be confidential by the parties.
- ***Melanson v. New Brunswick (WCB)***
 - Legal opinions given in relation to the interpretation of legislation which is germane to a claim before one of the Board's tribunals is not privileged. (S.C.C. in *Pritchard* said this was *obiter*.)



Environmental Appeals Board

At a Hearing

- What is the appropriate role of tribunal counsel at the hearing?
- Tribunal counsel's role varies from tribunal to tribunal, but in the end it is to ensure the parties are treated fairly.
- Watch the line between tribunal counsel being an advisor and taking an active role or taking control of the hearing.
- Some participation is appropriate. (Unrepresented parties.)
- Role in focusing issues or identifying new issues as they arise.



Environmental Appeals Board

Post Hearing

- What is the role of tribunal counsel in decision-making?
- It is not tribunal counsel's role to decide the case.
- ***Bovbel v. Canada (Minister of Employment & Immigration)***
 - Outside sources involved in the decision making process may cause problems, but "...when the practice followed by members of an administrative tribunal does not violate natural justice and does not infringe on their ability to decide according to their opinion even though it may be influence that opinion, it cannot be criticized."



On Judicial Review

- What is the role of tribunal counsel and the tribunal on judicial review?
- Be cautious about taking your matters to judicial review.
- ***Imperial Oil v. Alberta (Minister of Environment)***
 - The Board should be restricted to comments about its jurisdiction, the standard of review, and its policies and procedures in general, where those are under attack. It is not to justify the correctness of its decisions or to enter the fray on natural justice issues.



Environmental Appeals Board

Conclusions

- **The role of tribunal counsel is to ensure parties are treated fairly.**
- **Do not hesitate to contact tribunal counsel for assistance.**
- **Thank you for the opportunity to speak to you today.**

Gilbert Van Nes
General Counsel and Settlement Officer
Environmental Appeals Board
(780)427-4179
gilbert.vannes@gov.ab.ca
www.eab.gov.ab.ca