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PROFILE

David Estrin: a name synonymous with environmental law

By John Jaffey, Toronto



In a career that has spanned 3 1/2 decades, David Estrin has raised environmental law from obscurity to mainstream by focusing his practice on such things as fighting pollution, managing natural resources and waste, and developing effective environmental impact assessment.

From the outset, the University of Alberta law graduate was a pioneer. While articling in Toronto in 1970, he co-founded the Canadian Environmental Law Association (CELA). Its first general counsel, he stayed in the position three years before becoming Canada's first private environmental law practitioner.

He has an impressive list of firsts. In 1971, he won the first private prosecution for air pollution under Ontario's new *Environmental Protection Act*. Two years later, he won the first noise prosecution under the same Act.

Perhaps his most ground-breaking case happened in the late 1970s, when, as counsel for the Inuit of Baker Lake in the Northwest Territories, he took on the mining companies whose reconnaissance planes were interfering with the caribou migration. In a "an overlap of environmental and aboriginal law" he won an interim injunction to stop the next season of exploration by plane, and then brought action against the federal government for a declaration that his clients had aboriginal title to the land around Baker Lake. In 1979, for the first time, a Canadian court recognized that the Inuit had aboriginal rights.

The following year, Estrin represented the City of Mississauga in a dispute with a company that wanted to burn PCBs in a cement kiln. "Hazel [McCallion] didn't like the idea of importing PCBs into Mississauga", he said. He advised the mayor to pass a bylaw that banned burning PCBs in the city.

Challenged by the Ontario Ministry of the Environment, the bylaw was upheld in Divisional Court but quashed by the Court of Appeal.

"But though we lost the battle, we won the war", he said. "St. Lawrence Cement did not like all the adverse publicity and decided not to proceed with its plans."

This case set the stage for a series of cases that deal with how far bylaws can go to regulate the environment.

In 1990, Estrin gave up his idyllic office in Eden Mills, Ont., to become head of the Environmental Law Group at Gowlings in Toronto, where he continues to act in high-profile cases. He is currently special counsel for the City of Windsor in a cross-border traffic controversy, which he describes as: "How to solve the problem of Canada's busiest border crossing and to prevent trucks from continuing to thunder through central Windsor in the face of competing private sector proposals by CP Rail and Ambassador Bridge."

In addition, he acts for the towns of Markham and Aurora against Hydro One, in a fight he describes as "a David-and-Goliath battle of the towns and their residents against the Hydro monolith" over a proposal to build a new transmission line.

And then there's the long-running case of Hamilton's Red Bill Creek Expressway. Having established in Federal Court that "you can't use environmental assessment to stop a project that has already been approved and is under way," he's suing Environment Canada and others for \$75 million on behalf of the city over the delay in completing the last eight kilometres of the roadway.

(After opponents of the expressway persuaded the federal government to become involved, a federally appointed panel asked the city to justify the need for the expressway and provide alternatives. After a 99-day hearing, the project was approved, but then there were delays in construction. By 1999, new people had moved in, and they tried to keep the opposition going.)

"In a judicial review, we argued it was a misuse of environmental assessment to try to overturn a project that was already under way. We said the federal bureaucracy was misusing its statutory authority and

knew it." The federal court agreed, holding that the government lacked the constitutional authority "to stick their noses into a local matter."

And Estrin should know. By his own admission he is "one of the people who helped to have environmental assessment enshrined in law in Ontario in 1975. Its purpose is to know what you're doing before you leap."

He sums up his work in the environmental field quite simply:

"Any litigation that invokes environmental issues is important – whether you win or lose – because it illustrates a need for change in the law.

"For the first 20 or so years, I'd lose more than I'd win. Private property rights were more important than the environment. But that began to change in the '90s. Now the pendulum has shifted; most judges want to be responsive to environmental concerns. The Supreme Court of Canada has gone very far forward in trying to say environmental issues need every consideration. We've seen a complete shift".

He encourages young lawyers to enter the environmental arena.

"When I first started, cases were brought by individuals and interest groups, and there was not much money involved. Young lawyers looking to go into environmental law today can either work for citizens groups and keep their overhead low, or get into a large firm and do work for municipalities. In either case, you can be sure it's money-producing work. The practice isn't seen to be as sexy as it was 20 years ago, but it's still a fascinating area to practise."

Writer or co-author of five books plus numerous articles and research studies, he's currently updating his *Business Guide to Environmental Law* with a new chapter on greenhouse gases and Kyoto. It's due out early next year.

For recreation, he sings in the Royal Conservatory Choir and attends the opera. He's father of a 14-year-old daughter and two university-age sons, one of whom is interested in environmental issues.