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Winning on Paper, Losing in Practice: The Cost of Choosing Litigation Over Lobbying

Speaking at the Agbiz Congress 2026, during a breakaway panel discussion titled *The Future of Biosecurity in South Africa*, the CEO of the Red Meat Industry Services (RMIS), Dewald Olivier, delivered a stark verdict on the use of courts to resolve policy disputes. “Taking government to court doesn’t help,” he said. “You might win many battles, but the war is lost on trust.”

Olivier, an admitted attorney, was reflecting on a recent legal victory in which farmers won the right to import vaccines, a narrow win under the Animal Diseases Act that ignored other statutes and international guidelines. His point was not that litigation is useless, but that it carries a hidden, often fatal cost. The courtroom may hand you a favourable ruling, but it destroys the very currency of effective governance: trust. And without trust, no industry can sustainably lobby, negotiate, or co-operate with the state.

This tension between winning legal battles and losing relational wars lies at the heart of modern interest representation. To understand why, one must understand the two great instruments available to organised interests: lobbying and litigation. They are not the same. They are often sequential. And when deployed carelessly, as Olivier warns, they can cancel each other out.

The Two Fronts of Influence: Lobbying and Litigation

Lobbying is the professional practice of advocating for private, public, or not-for-profit interests to those with legal authority. It is the day-to-day work of persuasion: direct contacts with legislators (inside lobbying) and public campaigns to shape opinion (outside lobbying). The goal is to get involved early, preferably at the “thinking stage” before a bill is drafted. At its core lobbying is a specialised form of marketing, where the “product” is a policy position and the “purchaser” is the public policymaker.

Litigation, by contrast, is the mobilisation of law. It transforms an interest group from a supplicant into a plaintiff. Instead of asking a minister for a favour, the group demands a ruling from a judge. Ambrose Bierce, the famous American writer, summed up this change very bluntly: litigation is “a machine which you go into as a pig and come out of as a sausage.” The process grinds down relationships, nuance, and trust, extruding a cold, binary outcome: win or lose.

The two strategies are not alternatives but endpoints on a continuum. Lobbying is proactive, flexible, and relational. Litigation is reactive, rigid, and adversarial. The golden rule of public affairs is to exhaust all other options: direct lobbying, media engagement, protest marches, before ever setting foot in a courtroom. Going to court is the public affairs equivalent of going nuclear.

Why Litigation Is the Last Resort

The reasons for this caution are multiple. First, litigation is expensive and unpredictable. You cannot control a judge's interpretation or an opponent's appeal. Second, it is final. Having resorted to the courts and lost, it is very hard to see how any subsequent concessions could be wrung from the government. Third, and most crucially for Olivier's argument, litigation poisons the well.

Consider the classic example from the United Kingdom: The Countryside Alliance's fight against the Hunting Act 2004. Before ever going to court, the pro-hunting lobby did everything right. They lobbied Whitehall and Westminster from Green Paper to Royal Assent. They enlisted large sections of the media. They organised a 400,000-person march through central London. Only when all of that failed did they "go legal." And they still lost. The courts were not a ladder to victory but a dead end.

But what if they had won? Olivier's insight is that even victory would have come at a catastrophic price. The government would have been humiliated. The next piece of rural legislation would have been drafted with defensive, punitive clauses. Informal channels of communication, the quiet phone calls, the technical working groups, the early warnings, would have closed. The war would have been lost on trust, even if a single battle was won.

Lobbying and Litigation in Tension

Lobbying and litigation operate under different logics. Lobbying thrives on compromise, relationships, and the exchange of expertise for access. Litigation thrives on rules, precedents, and zero-sum outcomes. One is a conversation; the other is a duel.

This creates a fundamental strategic problem for interest groups. The very act of preparing for litigation, gathering evidence, hardening legal arguments, preparing for an adversarial confrontation, can erode the trust needed for effective lobbying. Regulators who sense that an industry is about to sue them will stop sharing information. They will refuse access, and without access, informational lobbying [the process of providing policymakers with specialised research, technical data, and expert analysis] cannot function. They will write rules that are legally bulletproof rather than practically workable.

The Indigestible Truth

Bismarck's famous warning that laws are like sausages, best not seen being made, applies equally to the sausage machine of litigation. Both processes are messy, unappetising, and transformative. You go in as one thing and come out as another.

Dewald Olivier's contribution is to remind us that the choice between lobbying and litigation is not merely tactical. It is ethical and relational. Lobbying, for all its flaws, preserves the possibility of trust. Litigation, even when victorious, often destroys it. "You might win many battles, but the war is lost on trust."

For any industry or interest group tempted by the nuclear option, the lesson is clear. Exhaust every other avenue first. Preserve the relationship. Keep talking. Because once you step into that courtroom machine, you may emerge with a legal victory but you will also emerge as a sausage. And sausages do not negotiate.