

LEGAL ADVOCACY: PRO BONO NETWORKS & BUILDING CAPACITY

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THE LEGAL ISSUE:

THE CORE ISSUE & THE ORGANISATION'S INVOLVEMENT

In Ireland, North and South, there has traditionally been limited use of the law to secure social change for the benefit of marginalised and disadvantaged people. The high costs of litigation, the restricted scope and availability of legal aid, and the historic lack of public interest litigation have all played a key role in limiting people's access to justice to obtain redress for violations of their rights.² This is combined with the traditional reluctance of legal professionals to engage in pro bono work on a formalised basis. Furthermore, the non-profit sector faces significant financial challenges, limiting its ability to devote resources to litigation and legal advocacy. Within this climate, PILS (the Public Interest Litigation Support project) based in Belfast and PILA (the Public Interest Law Alliance, a project of Free Legal Advice Centres or FLAC) based in Dublin are working to advance the use of the law in the public interest as a tool for building capacity to protect and promote rights in Ireland.

(Note: Between 2004 and 2014, The Atlantic Philanthropies provided funding to organisations in the Republic of Ireland and Northern Ireland to use the law to secure social change. To read a summary report about the lessons Atlantic grantees learned in doing this work, [click here.](#))

THE APPROACHES USED:

WHY THEY WERE ADOPTED, WHAT THEY INVOLVED, CHOICES MADE

These organisations employ a wide range of approaches to overcome the barriers to the use of public interest law and litigation. A primary approach adopted, as demonstrated by PILA, is to act as an intermediary between organisations and legal professionals through the operation of a pro bono referral scheme. This scheme uses a clearing house model to match the unmet legal needs of non-governmental organisations (NGOs), community organisations and law centres to the expertise of private law firms that will provide their services for free. These services can include the provision of legal advice on matters such as employment contracts, data protection and leases. PILS, on the other hand, has developed a register for legal professionals who are willing to undertake work on a pro bono basis for the organisation and its NGO members. This register includes both barristers and solicitors who work alongside PILS to support strategic casework and provide direct legal work, from preliminary legal opinions through to acting in a judicial review or other legal proceedings. Both approaches require relationship-building with law firms to assess their particular areas of expertise and their capacity to engage in pro bono work. There is also collaboration with partner organisations to identify the legal supports required and to facilitate their referral of cases.

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² Public Interest Law Alliance, GRS Template: Grant No. G-22044 "Public Interest Law Alliance" (April 2013 – March 2015) at p. 1 and Public Interest Litigation Support, GRS Template: Grant No. G-15582 "Strategic Litigation Project" (July 2007 – March 2015) at p. 1.

The development of these pro bono networks also facilitates legal professionals to engage in public interest litigation and to achieve, or progress change for marginalised and disadvantaged people. Support is also provided at a pre-litigation stage and can include advising organisations on potential public interest cases and the initial steps that should be taken to explore whether a strong legal challenge exists.³ Furthermore, to support its primary aim of advancing human rights and equality through public interest litigation, PILS offers direct legal and financial backing for strategic casework to its NGO and solicitor members.

Legal professionals on a pro bono register are also facilitated by PILS and PILA to support law reform. They use their legal expertise to support strategic casework and inform advocacy work by undertaking research that can create systematic change. They also collaborate through law reform working groups to use their combined knowledge and influence to advance a particular issue. PILA has convened such working groups on criminalising the purchase of sex, whistle-blowing legislation, the right to care for older people and models of aftercare for children.⁴

A number of other approaches are also adopted to build the capacity of organisations and legal professionals to use the law in the public interest. Firstly, legal education sessions and seminars have been held by both PILS and PILA. These have covered various aspects of using the law to effect change, including third-party briefs, legal drafting and advocacy, making freedom-of-information requests and judicial review. Lawyers on the pro bono register contribute to this approach by carrying out legal training for organisations; building on the latter's capacity to identify systematic issues that require legal analysis and support. The capacity of law students to engage in public interest law and litigation is also being promoted through the development of clinical legal education programmes at university level.

Communications and awareness-raising activities are also being employed to promote public interest law knowledge, information resources and discourse. Both PILS and PILA produce a regular update for legal professionals, NGOs and the public on recent judgements, ongoing cases and other relevant information to promote awareness and understanding of public interest litigation. PILA also uses a bulletin, its website and social media platforms to highlight examples of where the law has been used effectively to disseminate learning. PILS encourages this dissemination of information by convening stakeholder meetings, bringing together a broad range of NGOs and solicitors. These meetings provide space for members to share their experiences of public interest law and litigation, discuss emerging issues and legal developments, and to enhance their capacity to identify test cases.

Finally, as part of a direct approach to advance the use of the law, both PILS and PILA engage in research and lobbying for the removal of barriers to public interest litigation. This has included the publication of research on the issue of costs by both organisations, including the use of Protective Cost Orders as a mechanism for managing the financial risk for an applicant. Such an order will provide protection against the potentially massive costs that a claimant will face if they bring a judicial review claim and lose. PILS, in

³ Public Interest Litigation Support, Progress Report to the Atlantic Philanthropies 2012 at p. 4 and Public Interest Law Alliance, Progress Report to the Atlantic Philanthropies 2013 at pp. 1-2.

⁴ Public Interest Law Alliance, *ibid.*

PILS, in collaboration with the Law Centre NI, the Law Society and the Bar Council, has also engaged in political lobbying and sought the establishment of a Pro Bono Costs regime in Northern Ireland on a legislative level. It also encourages members, who have been provided with support, to reach Protective Costs Agreements pre-court or to make applications to the court to make a Protective Costs Order.

THE OUTCOMES:

THE DIRECT & INDIRECT SUCCESSES OF THE INTERVENTION

Cumulatively, these interventions have enabled PILA and PILS to bring together all of the strands of public interest legal work being undertaken and to support, coordinate and develop this work. This has directly resulted in the growing use of the law as a social justice tool in Ireland. The pro bono networks and capacity-building activities have enhanced the nature of the working relationship between organisations and legal professionals. The reluctance of legal professionals and law firms to engage in structured pro bono work is dissipating and many organisations are now increasingly referring individuals and legal matters to private practitioners who provide their services for free. The developing use of public interest litigation, in both the North and South of Ireland, has increased access to justice, empowered marginalised communities and exerted pressure on public authorities. It has also vindicated the rights of vulnerable individuals, including transgender rights, socioeconomic rights and migrant rights.⁵ Furthermore, there is a broad shift in how organisations are approaching their advocacy and policy work. Their capacity to use the law in the public interest has been increased due to the legal training sessions and their exposure to legal approaches. They are also increasingly recognising the value of such an approach as it strengthens their capacity to use their limited resources more strategically and effectively. As a result, these organisations are progressively using the law as a tool to increase the impact of their work and advance their objectives, ultimately leading to social change for the benefit of marginalised groups.

The sustainability of these developments is supported by the advancement of clinical legal education in Ireland, ensuring that an ethos of using the law in the public interest is being nurtured at university level.⁶ PILS' provision of financial support to public interest litigation is also playing a key role in overcoming the huge issue of litigation costs in Northern Ireland. Furthermore, it has supported a number of cases where Protective Costs Orders have been granted, thereby limiting the applicant's liability for costs in the case. Although such orders have not been granted in the South, this is important progress as a precedent has been created for the use of such mechanisms to break down the barriers to public interest litigation.

⁵ Public Interest Litigation Support, supra note 2 at p. 3 and Public Interest Law Alliance, supra note 2 at p. 5.

⁶ Public Interest Law Alliance, supra note 1.

THE LESSONS LEARNED:

REFLECTIONS TO BE SHARED WITH OTHER ORGANISATIONS & FUNDERS

This short report demonstrates the multi-faceted approaches that can be employed to advance the use of the law as a tool for securing change. It also showcases how an organisation can provide leadership to others by promoting a culture of pro bono work, building the capacity of civil society and legal professionals, reinforcing the importance of shared knowledge and promoting the benefits of working collaboratively on common goals.

A number of key lessons have emerged from the approaches adopted by PILS and PILA. In relation to pro bono networks, both small and large law firms need to be engaged and the delivery of free legal services must be developed in rural areas. Legal professionals can be encouraged to carry out pro bono work by highlighting that it provides them with an opportunity to have a significant impact through litigation and exciting law reform research. Fears of engaging in such work can also be alleviated by the positive media coverage that pro bono initiatives can generate and by increasing the focus on the importance of corporate responsibilities. PILA has also identified that a common definition of pro bono work must be agreed upon to strengthen the credence that is afforded to such work within the legal community and civil society. Furthermore, law firms are particularly comfortable with the use of a referral mechanism, such as the clearing house model, as it entails a structured process that takes their capacity and expertise into consideration. This model is also beneficial for organisations as they are linked with law firms that have specialist knowledge of the legal issue raised. In addition, although litigation support is integral, it is of great benefit for organisations to be able to receive legal advice on lobbying, research and drafting activities on a pro bono basis.

For an organisation that provides a specialist legal service, such as a pro bono referral scheme, communication is key. It must clearly communicate the role of this service and the value of legal mechanisms to secure change so that other organisations and individuals understand its relevance to their work. There is also a need to manage expectations and to be realistic about the potential length of the legal process and what it can actually achieve. This can prevent organisations and individuals from becoming frustrated with the process of being provided with litigation support.

Finally, this report also highlights the specific barriers that can be faced when undertaking public interest litigation. Although Protective Cost Orders have been used in Northern Ireland, they are not prevalent and the legal profession needs to be more aware of the potential to reach agreements on costs or to apply for such an order in the right case. In many respects, the Republic of Ireland is even further behind and this emphasises the importance of ongoing capacity building and communications work to highlight how barriers to using the law have been removed in other jurisdictions.