

An abstract painting with a textured, impasto style. The background is a mix of green, blue, and orange. In the center, the words "EQUAL RIGHTS" are written in large, bold, purple letters. To the left, there is a blue triangle with pink dots. Below it, there is an orange shape with pink dots. The overall composition is dynamic and colorful.

Atlantic Insights

Strategic
Litigation

Cover: Mural on a wall in Derry,
Northern Ireland.

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The
Atlantic
Philanthropies

Atlantic Insights

Strategic Litigation

BY SUSAN HANSEN



Atlantic Founder Chuck Feeney
(left) and Christopher G. Oechsli,
Atlantic president and CEO

Foreword

STRATEGIC LITIGATION

CHRISTOPHER G. OECHSLI, PRESIDENT AND CEO, THE ATLANTIC PHILANTHROPIES

The common quest of all who seek to achieve lasting improvements in our communities and in our world—whether we are individual donors, foundations, nonprofits, or government agencies—is to make the highest and best use of our resources. It requires us to ask questions like: *What are our best opportunities to make a difference? What impact can we have and how do we know what impact our grants are having? What are grantee organizations accomplishing? What's working . . . what's not?* Or, as Chuck Feeney, founder of The Atlantic Philanthropies, never hesitated to ask, starting with the foundation's first grants in 1982: *What will we have to show for it?*

As we near the end of our organization's life, and have fully committed our endowment and will close our doors for good by 2020, we're not asking those questions to guide our work. Instead, we're asking what we learned after making more than \$8 billion in grants in Australia, Bermuda, Cuba, Great Britain, Northern Ireland, the Republic of Ireland, South Africa, the United States, and Viet Nam* that might be useful to current and future donors and to leaders and staff of other funders and nonprofit organizations.

That's the purpose of this volume and others in our *Insights* series. From interviews with staff and grantees, a deep examination of records, and case studies of individual projects and initiatives, we've asked journalists and program evaluators to assemble information, reflections, and observations that we hope others can apply to their work.

Each *Insights* volume covers a topic that we believe is distinctive of the work Atlantic has engaged in and that we are well-suited to explore, especially from our vantage point as a limited-life foundation. While we were richly endowed with assets, the fact that we had only a set number of years to deploy them

*For more on Atlantic's global activities, go to: www.atlanticphilanthropies.org/global-reach.

helps explain why we have been fixated, with some urgency, on answering the question: “What will we have to show for our work?”

For nearly the first half of our life, much of where and what to invest in often followed Chuck Feeney’s personal explorations for what he called “ripe opportunities,” especially ones representing a convergence of promising ideas and good people to implement them. After Chuck and the Atlantic Board made the decision in 2002 to commit all grant funds by the end of 2016, the foundation developed a more strategic approach, focusing primarily on four program areas: Children & Youth, Aging, Human Rights and Reconciliation, and Population Health, together with a Founding Chairman’s program that supported Chuck’s entrepreneurial initiatives.*

While these “opportunity-driven” and “strategic” approaches may differ in their framing, both reflected a consistency of underlying values, desired outcomes, and an effort to make a long-term difference that would influence institutions, systems, and governments and, in so doing, multiply the return on the investment.

As a result, Atlantic’s investments helped: Catalyze the advancement of knowledge economies in the Republic of Ireland and Australia. Hasten the end of the juvenile death penalty. Support grassroots campaigns to help win passage of and implement the U.S. Affordable Care Act and reduce the number of children without health insurance in the United States. Bring peace to Northern Ireland. Secure life-saving medication for millions afflicted with HIV/AIDS in South Africa. Reduce racial disparities in destructive zero-tolerance school discipline policies. Enable Viet Nam to develop a more equitable system for delivering health care throughout the country. Change U.S. policy with Cuba.

The approaches, strategies, and tactics we used that contributed to those and other Atlantic achievements over the years are examined, highlighted, and analyzed in our individual *Insights*.

This volume explores how support from Atlantic for strategic litigation enabled the foundation and its grantee partners to secure broader systemic change across a range of issues where disadvantaged and marginalized communities were being treated unfairly.

*For more on the background, history, and grantmaking associated with each of these programs, visit Atlantic’s website: www.atlanticphilanthropies.org

In other *Insights*, we detail how Chuck Feeney’s belief in “Giving While Living” influenced how he approached his philanthropy, what it was like to operate as a limited-life foundation, how we supported groups working to change harmful or unfair laws or public policies through advocacy. We also examine how Atlantic partnered or engaged with governments in different countries over the years to improve public services, and how our more than \$2.8 billion investments in capital projects helped advance our mission of building a better world.

Taken together, our *Insights* reflect the result of the work of nearly 2,000 grantees, 300 Atlantic staff and directors, and hundreds, perhaps thousands, of formal and informal consultants, experts, friends, and inspirational people. We wrestled with whether and how to express this experience without unduly claiming responsibility for insights and successes that represent the contribution of many, both inside the foundation and outside Atlantic. In the end, and with due acknowledgment to and respect for Chuck and for his sense of privacy, modesty, and anonymity, we felt some responsibility to those who wanted to know more about what and how Atlantic did what it did. Our goal for these *Insights* — and for the materials we are collecting on our website and in our archives, which are being housed at Cornell University — is to contribute to the thinking and choices of others in philanthropy and in fields related to our work. We hope that, in some form, our knowledge and experiences will help advance the efforts of others working to improve people’s lives in meaningful and lasting ways.

It’s also important to note that, regardless of the topic of the individual *Insights*, the thread running through them all is the recognition that all that Atlantic accomplished over the years was possible only because of Chuck Feeney’s decision nearly four decades ago to endow his foundation with virtually his entire personal fortune. That action, unprecedented at the time, grew out of Chuck’s basic sense of fairness and his deep desire to improve the lives of those who lack opportunity, who are undervalued, or who are unfairly treated. As Chuck himself once said: “I had one idea that never changed in my mind — that you should use your wealth to help people.”

Helping people — that’s been Atlantic’s work. We hope these *Insights* will inform and inspire others in their own endeavors to deploy wealth effectively to improve the lives of others.



Among other outcomes, Atlantic's support for strategic litigation has compelled the South African government to begin living up to its promise to provide basic education to all school-age children, no matter their economic circumstances.

Introduction

Over the years, The Atlantic Philanthropies has seen that strategic litigation can be a powerful tool for promoting social change. With assistance from Atlantic, advocacy groups in Northern Ireland, the Republic of Ireland, South Africa, and the United States have mounted legal challenges to address a broad range of problems, from race discrimination to poverty and socio-economic inequality, to violations of civil liberties and basic human rights.

Litigation can produce significant payoffs, especially when combined with other advocacy efforts.

That litigation has, among other things, helped reduce racially biased policing practices in New York City, expanded the rights of transgender people in the Republic of Ireland, and compelled the South African government to begin living up to its promise to provide a basic education to all school-age children, no matter their economic circumstances.

Indeed, those sorts of successes clearly show that governments can be held to account—and that a sound, well-executed legal strategy can not only help improve the lives of disadvantaged or marginalized individuals, but can lead to lasting systemic social and economic improvements.

Litigation often requires a major investment of resources and can be a long, time-consuming undertaking. But, as Atlantic has learned, it can also produce significant payoffs, especially when litigation is combined with other advocacy efforts.

“If you can change the law, you can potentially have a much wider impact,” says Martin O’Brien, Atlantic’s former senior vice president for programmes. “If a foundation is interested in making large-scale social changes, litigation can be very effective.”

If a foundation is interested in making large-scale social changes, litigation can be very effective.

The case studies contained in this *Insights* volume seek to highlight the various ways Atlantic grantees have used strategic litigation to help advance social and economic justice. The individual cases draw on the experiences of Atlantic staff, and lawyers and legal organizations the foundation has supported. They provide a detailed look at six high-impact lawsuits and what those suits achieved, as well as lessons learned during the course of the litigation.

The featured cases include two landmark suits that took place in Northern Ireland (NI). The first, a major victory for the movement to promote integrated education, clearly established that the Northern Ireland government has a statutory duty to encourage and facilitate efforts to boost the number of schools serving children of all faiths and backgrounds.

In the second NI case, anti-poverty activists challenged the government’s failure to adopt and implement a strategy to alleviate poverty, as required under the 1998 Good Friday accords and the St. Andrews Agreement of 2006. In a major win for plaintiffs, the court ultimately found that government has a legal duty to put forth clear policies to tackle poverty and patterns of social exclusion and deprivation in Northern Ireland.

The case from the Republic of Ireland involves transgender rights. Originally filed in 1993, the litigation successfully challenged the government’s refusal to allow transgender people to change their birth certificates to reflect their new identities. The lengthy battle finally came to a close in 2015 with the passage of Ireland’s new Gender Recognition Act.

Another case study covers two lawsuits brought by lawyers at the Johannesburg-based Legal Resources Centre to address appalling infrastructure problems at many South African schools. Given that the South African constitution guarantees children the right to a basic education, both suits argued that the government’s failure to provide safe, habitable school buildings and classrooms violated the rights of students. In a clear victory for plaintiffs, the government

ultimately agreed to launch a major school rebuilding and repair campaign, which is currently underway.

This *Insights* also features two cases in the United States. The first was a pivotal class action brought by the Center for Constitutional Rights (CCR) to stop racial profiling in New York. CCR lawyers argued that the city's stop-and-frisk policy violated the rights of Black and Latino citizens. They ultimately won a landmark victory when a federal judge ruled that the practice is unconstitutional.

In another U.S. class action, lawyers at the Center for Medicare Advocacy successfully challenged a Medicare rule that required patients to show "continuous improvement" in order to remain eligible for Medicare coverage for rehabilitative services. The result: A federal court found that Medicare could no longer routinely deny claims for so-called maintenance therapy, and more seniors should be able to get the physical and occupational therapy they need.

Atlantic has used a variety of approaches to supporting strategic litigation. In some instances, such as the Center for Medicare Advocacy's challenge to the improvement standard, Atlantic funding was earmarked for a specific suit. In many other instances, though, Atlantic opted to provide core support for legal advocacy groups, such as the Free Legal Advice Centre in Dublin or the Center for Constitutional Rights in New York, and gave those groups the latitude to decide which cases to pursue.

Over the years, Atlantic gained a wealth of knowledge about the payoffs and potential pitfalls of strategic litigation.

Over the years, Atlantic has gained a wealth of practical experience and knowledge about the payoffs and potential pitfalls of strategic litigation and about different approaches to resourcing it. One lesson, says O'Brien, is that even if a particular case ultimately fails in court, it can still be an effective way to get the issues on the public agenda and help build pressure for reform. "Sometimes you can actually lose in court and still win," he adds.

With these case studies, Atlantic seeks to share what it has learned to inform others in philanthropy about the potential of strategic litigation to bring about social change, and to help interested funders and non-governmental organizations use it to greater effect.



Martin O'Brien, Atlantic's former senior vice president for programmes, now serves as director of the [Social Change Initiative](#), a nonprofit based in Belfast, Northern Ireland, that works to improve the effectiveness of activism for progressive social change.

Making the Case for Strategic Litigation

AN INTERVIEW WITH MARTIN O'BRIEN, FORMER SENIOR VICE PRESIDENT
FOR PROGRAMMES, THE ATLANTIC PHILANTHROPIES

As senior vice president for programmes from 2010 to 2014, Martin O'Brien oversaw much of Atlantic's grantmaking in support of strategic litigation around the world. In the following interview, he discusses why supporting strategic litigation is an effective grantmaking strategy, common misconceptions some funders have about this work, and how it can help advance long-lasting social change.

Why should foundations consider supporting strategic litigation?

If you're a funder looking to bring about large-scale systemic social change, strategic litigation can be a very important tool. The law shapes and influences public policy and practice. It influences people's behavior... it influences the way in which money gets spent. If you can change the law, then you change the way the whole system operates. That can mean major impact. What donors invest in strategic litigation can yield a big result and offer a very good return.

What do you consider a successful outcome in a strategic case?

I think the real test of a successful outcome is whether it makes a change to the lived circumstances of people at a particular time and place.

One of the key lessons we've learned is that legal actions are most likely to succeed when they're intimately linked to and informed by the needs and concerns of the people who have a stake in the outcome.

For example, in the “mud school” case in South Africa (see page 66) you can actually draw a line between the litigation that was brought and the government's decision to release money to build new schools, and the fact that thousands of kids in South Africa now have access to a proper school. While the scale of change is slower than it should be, change has happened. Likewise, litigation that was brought in South Africa in connection with the AIDS epidemic led to thousands of people having access to antiretroviral drugs.*

Those are examples of where litigation has had a very obvious and clear impact on the lives of people. That's it at its most tangible. But you also have cases where litigation helped to put important issues on the public agenda. There was an impact because it created a public debate and influenced public opinion and changed the way in which the issue was viewed.

How can funders help ensure that a strategic suit will succeed?

Obviously, funders want to have the very best legal minds working on the litigation, and a sharp, effective legal team. They also need to ensure that that legal team works closely with the people who are most affected by the case.

One of the key lessons we've learned is that legal actions are most likely to succeed when they're intimately linked to and informed by the needs and concerns of the people who have a stake in the outcome. There needs to be a very close alliance between lawyers and clients.

It's also very important that the litigation be tied into a wider effort to press for reforms and social change. A case in and of itself that's not connected to a broader advocacy campaign is unlikely to succeed in a significant way.

Which types of ancillary advocacy activities have been the most effective?

That depends on the issue, place, and time. Sometimes the complementary work needs to be public-policy-oriented, to get bills or amended laws moving through the legislatures. Sometimes it's about a communication strategy, about how you get this issue into the public domain, how you

* See “The Campaign to Take On the AIDS Crisis in South Africa” in Atlantic's *Advocacy for Impact*, page 37: www.atlanticphilanthropies.org/insights/insights-books/advocacy-for-impact

get it being talked about on radio, how you get the issue into the public narrative. Sometimes it requires significant mobilization of public opinion and of people on the ground. Those are other kinds of strategies that often complement strategic litigation. In our experience, they're often needed to push the issue to the point where you actually get the result you want, which is change on the ground for the people who need it.

Are there certain types of problems or issues that are best addressed by strategic litigation?

Part of what you have to establish is that there is some legal issue, there is some legal right that needs to be litigated, and that there is some precedent that is on your side. In South Africa, strategic litigation became important on particular issues because there was a strong bill of rights. That bill of rights created opportunities for litigation to make progress across a range of issues.

That said, I think it's a good rule to view litigation as a last resort, not as a first resort. I think people's cases are often strengthened by the fact that they can say, "Well, we tried. We met with the government on 15 occasions. The government made all of these promises to us. They failed to deliver on any of them and now, reluctantly, we are going to court."

Litigation often concentrates the minds of powerful people because they realize that they are going to be held accountable.

You've said that even unsuccessful strategic litigation can still have a real upside. Can you elaborate on that?

Litigation often concentrates the minds of powerful people because they realize that they are going to be held accountable. They're going to have to account for unfair or unjust policies and practices. So sometimes just bringing suit or threatening to sue is enough to put the issue on the political agenda and stimulate some kind of policy reform. Even a loss in court can be an impetus for change. That's what happened with one of the lethal injection/death penalty cases in the United States, where a challenge taken to the Supreme Court failed.

The court ruled that a particular cocktail of execution drugs was permissible to use. But two of the justices on the court dissented from that judgment. In their dissent, they basically laid out a path that will allow other lawyers to mount a case challenging the whole death penalty itself.

So out of defeat can come other opportunities. It's not just a binary thing about winning or losing. Sometimes just going to court, even if you lose, can create some strategic advantages and lay the groundwork for long-term change.

What are the main limitations of strategic litigation? How can they be addressed?

I think people need to be realistic about what litigation can deliver. A win in court or a successful settlement does not in and of itself guarantee change is going to happen. There's got to be a focus on implementation. When a funder is looking at an application, for example, to support a piece of strategic litigation, I think it would be wise to ask questions about what's going to happen after the court case. Is the work involved in making sure court decisions are implemented adequately resourced and supported, and what are the plans for that? To think that something can begin and end with a court case is a mistake.

What are the most effective ways to support strategic suits?

There is a whole range of options available to funders who want to support strategic litigation. It depends on who you are as a donor, what your interests are, whether they're short- or long-term, or whether they're related to a very specific topic or more general in nature.

For example, you can support organizations that do the litigating, or you can support specific campaigns and give them the flexibility to undertake litigation.

If you are more interested in a particular campaign at a particular time, then you may want to invest on a short-term basis in a particular piece of litigation that's going to run over a specified period of time. You may want to put your money into that. You can support the research that's needed to underpin litigation. You can support the costs of lawyers. You can support the costs of bringing additional experts to support litigation.

If you have an issue that you are institutionally concerned about as a donor, then core support for organizations that have a proven track record in bringing litigation to advance those issues might be an attractive option. If you have a broader interest in promoting the use of

Sometimes just going to court, even if you lose, can create some strategic advantages and lay the groundwork for long-term change.

litigation for social change, then you might decide that you want to support a fund that would support strategic litigation over a longer period of time.

Is the cost of supporting strategic litigation costlier than other types of advocacy work?

I think it's a bit of a myth that strategic litigation is always expensive and always takes a long time. I actually think that if you look closely at this relative to other ways in which foundations invest their funds, investing in strategic litigation can often provide you with good value. Obviously some kinds of cases can be costly and take a great deal of time and effort, but other pieces of litigation can be of a relatively short duration and relatively inexpensive given the return on investment. I think almost invariably the yield is disproportionate to the investment in terms of numbers of people affected and scale of change that it can deliver in terms of influencing the system and how policy is applied, how law is interpreted. Trying to secure those changes through other types of advocacy work may end up taking you a lot longer and may end up costing you a lot more money.

I think it's a bit of a myth that strategic litigation is always expensive and always takes a long time.

What are the main risks for funders who support strategic litigation?

Obviously, a big concern for philanthropy is to do no harm. When you litigate, there is a risk that the outcome may make things worse for people and that you may set things back by backing the wrong case, by not being strategic enough. A donor needs to ask what can go wrong, and what's the likely fallout if it does. That is something that I think every donor should ask about every investment they make.

How much oversight should donors have over litigation they help fund?

Is it better for them to step aside and leave litigation planning to grantees?

I think the role for a donor is to make sure there's an expert, effective legal team in place and that the team is genuinely working with the people who have a direct stake in the litigation and whose lives will be affected by the outcome. I think it's probably a mistake for a funder to be intimately involved in the design and implementation of a piece of litigation unless they have a particular expertise. I would say people should stick to what they know about.

Are there any significant differences in how Atlantic supported litigation in different countries?

Across all of the places where Atlantic worked, you see a range of different ways in which it supported litigation.

For example, in some cases Atlantic provided core support to organizations where litigation was an important feature of their work. Among the groups receiving that support were the Legal Resources Centre in South Africa, the American Civil Liberties Union and the Center for Constitutional Rights in the United States, and the Committee on the Administration of Justice in Northern Ireland.

For those organizations, the foundation's support didn't go toward a particular case. Rather we were supporting institutions that delivered strategic litigation.

It's probably a mistake for a funder to be intimately involved in the design and implementation of a piece of litigation unless they have a particular expertise.

As an example of a different approach, Atlantic supported the Public Interest Litigation Support Project—or PILS Project—in Northern Ireland, which provides money to support particular pieces of strategic litigation. It's a type of revolving fund, where if a litigant is successful and court costs are awarded then the money can be returned to the fund. It's been quite a successful model.

A third example is when Atlantic provided direct support for a particular legal challenge, such as when the Center for Medicare Advocacy in the United States brought a suit to ensure Medicare patients were properly reimbursed for their medical expenses. (See "Making Medicare Care," page 97.)

A fourth example is when donors fund a campaign around a particular issue—for example, to challenge racially biased "stop-and-frisk" practices by police in the United States. Atlantic timed its support for a broad public advocacy campaign, to coincide with arguments in three court cases that resulted in a ruling that found the practice unconstitutional. (See "Stopping Stop-and-Frisk," page 83.)

I think the role for a donor is to make sure there's an expert, effective legal team in place and that the team is genuinely working with the people who have a direct stake in the litigation and whose lives will be affected by the outcome.



Bringing Schoolchildren Together

In 2013, the Public Interest Litigation Support (PILS) Project brought legal action on behalf of Drumragh Integrated College to compel Northern Ireland's Department of Education (DE) to move more quickly and forcefully to support expansion of integrated schools. These schools, which serve a mix of Catholic and Protestant pupils, are an essential step in breaking down long-standing divisions between the two communities and provide an alternative to Northern Ireland's otherwise religiously segregated schools.

In a landmark judgment for the integrated education movement, the court maintained the DE has a clear duty to encourage and facilitate the growth of integrated schools. Ending segregation in Northern Ireland schools will take more advocacy on a number of fronts. But supporters of integrated education say the Drumragh ruling already has provided—and likely will continue to provide—a needed boost for reform.

CASE BACKGROUND

The waves of violence that ravaged Northern Ireland during the last three decades of the 20th century left a deeply divided society. Indeed, though the peace accord signed in Belfast on Good Friday 1998 largely succeeded in eliminating the bloodshed, bringing an end to the still-simmering tensions and mutual suspicion between the country's Protestant and Catholic communities

Proponents of integrated education maintain that putting Catholics and Protestants in the same schools can help overcome deep-seated distrust between the two communities.

has been a much more difficult task. Today, almost two decades after the Good Friday Agreement, miles of walls erected since the start of the Troubles continue to separate rival Catholic and Protestant neighborhoods in Belfast, Derry, Portadown, and elsewhere in Northern Ireland. And it's not just residential areas and public housing that remain divided. The country's primary and secondary education system is also separated along sectarian lines, with nearly 95 percent of pupils enrolled at either state-run, predominantly Protestant schools or at schools maintained by the Catholic Church in what one former top government minister has called a "benign form of apartheid."

Ending segregation in Northern Ireland schools will take more advocacy on a number of fronts. But supporters of integrated education say the Drumragh ruling already has provided — and likely will continue to provide — a needed boost for reform.

The country's primary and secondary education system is also separated along sectarian lines, in what one former top government minister has called a "benign form of apartheid."

Proponents of integrated education in Northern Ireland have long argued that the current system only serves to perpetuate the deep-seated distrust between the two communities. While they admit that putting Protestant and Catholic children in the same schools and classrooms won't defuse all the lingering tensions, they point to the success of the country's still nascent network of integrated schools in fostering greater understanding. And they contend that building on that model is the best way for Northern Ireland to move forward.

"It's an important step in the right direction," says Tina Merron, executive director of the Belfast-based Integrated Education Fund (IEF), a longtime Atlantic grantee that provides financing for integrated schools.

Despite the steep drop in violence since the Good Friday Agreement, Merron adds that the country hasn't had a proactive strategy for bridging the continuing Catholic-Protestant divide. "If we bring children together at an early age, and let them learn about each other in the classroom, it can make a real difference," says Merron. "It gives us a whole new opportunity to rebuild."



Tina Merron, second from right,
executive director of Integrated
Education Fund

The number of children seeking to attend integrated primary and secondary schools, or integrated nursery schools, consistently exceeds the available space.

Calls for integration of Northern Ireland's schools date back to the mid-1970s, during the darkest days of the Troubles. From the outset, Catholic and Protestant parents joined together to lead the effort, paving the way for the opening in 1981 of the country's first integrated post-primary school—Lagan College in south Belfast—as well as a series of integration-friendly education policy reforms.

Chief among these was Article 64 of the landmark 1989 Education Reform Order, which spelled out the Department of Education's (DE) statutory duty to “encourage and facilitate the development of integrated education.”

In the years following the order, the number of integrated schools continued to climb, from just seven in 1987 to nearly three dozen in 1996. Hopes were high that that growth would continue in the wake of the Good Friday Agreement, which also called on Northern Ireland's government to encourage and facilitate integrated education.

The demand for spots in integrated schools was certainly there: As IEF's Merron notes, the number of children seeking to attend integrated primary and secondary schools, or integrated nursery schools, consistently exceeds the available space, and many of those schools are routinely forced to turn away or wait-list applicants.

Likewise, Merron points out that opinion polls in Northern Ireland have consistently shown broad public support for integrated education. In a 2013 survey conducted by LucidTalk, for example, two-thirds of respondents agreed that integrated schools should be the main model for the country's education system, while nearly four-fifths of parents said they would support transforming their children's current school to an integrated school.

Still, despite strong demand and clear public support, Merron recalls that in the decade after the 1998 Good Friday Agreement the government's commitment to integrated education flagged. Integrated schools that wanted to increase enrollments were required to obtain Department of Education approval. School administrators who submitted expansion plans, however, not only faced increasingly long delays by DE decision-makers, but in many

cases their plans and requests for additional funding were rejected, as were proposals for opening new integrated schools.

“Instead of putting money and energy into integrated education, DE’s policies were limiting and capping it,” says Merron. The reason, she adds, was that many state-run and Catholic schools around the country already had more space than they were able to fill due to declining enrollments. The DE feared that integrated schools would siphon off students and make the overcapacity problems even worse. “They were trying to protect the [traditional] schools,” says Merron.

Drawing on its experience elsewhere, Atlantic helped nonprofits in Northern Ireland develop the capacity to use strategic litigation as a tool for social change.

Padraic Quirk, Atlantic’s former country director for Northern Ireland, shared Merron’s concerns. As a longtime funder of IEF, Atlantic had made integrated education a top priority of its human rights and reconciliation program in Northern Ireland, and didn’t want to see that work undermined.

“It was clear that the government was sitting on its hands,” recalls Quirk. He believed that the DE needed to be held accountable, and one way to do that was to take the department to court.

At the time, that kind of public interest litigation was still relatively new in Northern Ireland. But because Atlantic had seen it used effectively in the United States and South Africa, its Northern Ireland office had begun working with nonprofit organizations to both promote the concept and build the capacity of groups to use strategic litigation as a tool for social change. This included a grant in 2007 to fund the launch of the Public Interest Litigation Support (PILS) Project to help local advocacy groups use the courts to advance human rights and social and economic equality in Northern Ireland.

For Atlantic, integrated education was a top priority of its human rights and reconciliation work in Northern Ireland.



Integrated schools play an essential role in breaking down long-standing divisions between Catholic and Protestant communities in Northern Ireland.

LITIGATION TO EXPAND INTEGRATED SCHOOLS

Litigation to end the DE's stonewalling on integrated school expansion seemed like a tailor-made opportunity for PILS. Quirk encouraged IEF to consider partnering with the group to challenge the DE in court.

"It was the only way they could get through the roadblocks," says Quirk, who notes that IEF had tried to mobilize pro-integration parents groups to pressure the DE. It had also used local media to spotlight the DE's stonewalling on growth plans and funding for integrated schools. But by late 2009, it was clear those efforts had failed. "They had tried almost everything they could in terms of advocacy," adds Quirk. "They needed another way to raise the issue and unblock the decision-making process."

After a preliminary meeting with PILS in 2010, IEF concluded that challenging the DE's policies in court was at least worth a try. In Merron's view, there was little risk that litigation would set back the cause of integrated education in Northern Ireland, even if it failed. "The bottom line is we were blocked anyway," she says. And given that PILS had agreed to manage the litigation pro bono and cover all potential costs, IEF saw no real downside to proceeding.

Plaintiffs argued that the Department of Education had a duty to "encourage and facilitate" integrated education.

A TEST CASE

The plaintiff in the case against the DE was Drumragh Integrated College, a post-primary school (for children aged 11 to 18) located about 70 miles west of Belfast in Omagh.

From at least 2008 on, Drumragh had been turning away prospective students for lack of available space. Hoping to accommodate more applicants, in March 2012 school administrators sought the DE's approval for a five-year plan to boost enrollment, from 580 to 750 students. That October, however, the DE rejected that proposal, noting that other local post-primary schools had empty spots available so there could be no increase in Drumragh's student population.

To IEF and PILS, it was a stark illustration of DE's failure to live up to its duty to "encourage and facilitate" integrated education. Drumragh's principal and board of governors concurred and were willing to mount a legal challenge.

The following June, PILS, acting as solicitors in the matter, filed papers with the High Court in Belfast seeking a judicial review of the DE's rejection of Drumragh's expansion plans.

The first hurdle for PILS was to show it had an arguable case, and thus persuade the court to grant leave for the case to go forward. A hearing was scheduled for October 7, 2013. Less than a week before the hearing, however, the DE announced it was willing to reconsider Drumragh's request to boost enrollments and asked PILS to withdraw the case.

At that point, recalls PILS solicitor Melissa Murray, Drumragh could have easily decided to walk away. "Litigation can be stressful and demanding," says Murray. "The school would have been perfectly entitled to say, 'That's it,' and just leave the issue [over the DE's policies] for another day." But because they were invested in that fight, they chose to proceed, adds Murray. "They were looking to get at the root cause of the problem. They saw the potential for making a bigger impact."

In his landmark ruling, the judge strongly reaffirmed the DE's duty to take proactive steps to "encourage and facilitate" the growth of integrated schools.

With Drumragh still on board, the leave hearing took place as scheduled, and High Court judge Seamus Treacy ruled that the case could go forward. The full judicial review hearing at the High Court was held in March 2014. As expected, arguments over the government's obligations under Article 64 of Northern Ireland's 1989 Education Reform Order took front and center in the proceedings.

Representing Drumragh, barrister Steven McQuitty drove home the point that the DE's duty under Article 64 to "encourage and facilitate" integrated education should have been a primary factor in its decision-making on the school's expansion plan. But he argued that DE had manifestly failed to even consider that duty when it rejected Drumragh's proposal. Likewise,



Drumragh Integrated College was selected as the test case to challenge the Department of Education for failing to approve expansion plans for integrated schools in Northern Ireland. Above, Drumragh principal Nigel Frith with some of the top achievers at A-Level.

The barrister representing Drumragh argued that the Department of Education was not living up to requirements spelled out in Northern Ireland's 1989 Education Reform Order.

McQuitty contended that the government had also neglected its obligations under Article 64 in its long-term planning for Northern Ireland's schools. Indeed, he claimed that the law actually requires the government to treat integrated schools more favorably than other schools—and take proactive steps to promote their development and remove obstacles to their growth.

In response, the government's barrister told Justice Treacy that the DE understood and fully accepted its duty to integrated schools under Article 64. Still, he pointed out that the language in that provision refers not just to integrated schools, but to the "education together of Roman Catholic and Protestant pupils" and therefore does not oblige the DE to promote the growth of integrated schools over Northern Ireland's expanding number of shared education initiatives, where Protestant and Catholic students share a common campus or facilities. He also disputed the claim that the Article 64 duty to promote integrated or shared education should be a primary factor in policy-making decisions, noting that the DE is obliged to consider a whole host of factors, including the obligation to avoid unreasonable public expenditures.

A LANDMARK RULING

The DE's arguments apparently failed to persuade Justice Treacy, who issued a decision on May 15, 2014.

In his landmark ruling, the judge strongly reaffirmed the DE's duty to take proactive steps to "encourage and facilitate" the growth of integrated schools. He also made it clear that that obligation applies only to fully integrated schools, and not to mixed schools or shared campuses.

What's more, Justice Treacy sharply criticized the planning model the DE relied on to determine what schools to expand, consolidate, or close as "inflexible." DE officials needed "to be alive to their duty [to Article 64] on all levels, including the strategic level," he said, and should not suppress the growth of the integrated sector in order to bolster enrollments at Catholic and state-run schools.

In an op-ed in the *Belfast Telegraph*, Drumragh principal Nigel Frith hailed the decision for re-emphasizing the importance of integrated education.

“Somehow the urgency of encouraging integrated education was being sidelined,” he wrote. “Somehow the huge, positive potential of integration was being wasted. This ruling sets things straight, for the good of us all.”

The school’s celebration did not last long. As promised, the DE did in fact review Drumragh’s original request to boost enrollments. In March 2015, however, it informed the school that it had again rejected its expansion plans, saying that it feared the plans would negatively impact other schools.

“Somehow the huge, positive potential of integration was being wasted. This ruling sets things straight, for the good of us all.”

Nigel Frith, Drumragh principal

Drumragh and its supporters accused the DE of flouting Justice Treacy’s ruling—and two months later PILS filed a second suit challenging the DE’s rejection of Drumragh’s expansion proposal in Belfast’s High Court. This time, however, government was ready to mount a more robust defense of the DE—and began deploying technical legal arguments to challenge Drumragh’s case. Drumragh and its legal team decided that the most prudent thing to do at that point was to withdraw the second suit. “We decided to let the first decision stand,” recalls PILS solicitor Murray.

Drumragh instead decided to focus on putting together a new development proposal, and began preparing a third request to the DE to increase enrollments.

A GAME-CHANGER

Even so, Merron contends that the litigation has been a game-changer for the integrated education movement as a whole. According to IEF, since 2014 the DE has approved expansion plans for 22 integrated schools (including primary, post-primary, and pre-schools) while also clearing the way for another three schools that have traditionally catered to Catholic or Protestant students to become fully integrated.

Merron believes that many of those plans might still be stalled if Drumragh hadn't sued. "The litigation broke the status quo," she says. "It has made DE extremely aware of how closely we're watching them ... and made it clear that they can be held to account."

"The litigation broke the status quo. It has made DE extremely aware of how closely we're watching them ... and made it clear that they can be held to account."

Tina Merron, executive director of Integrated Education Fund

In another boost for integrated education, in late 2014 the NI Executive and the British government approved a total of 500 million pounds in funding for capital projects at integrated and shared schools over a ten-year period. Indeed, Merron contends that the integrated education movement now has real momentum, and she's confident that the country's integrated sector, which now includes roughly 65 schools and more than 22,000 students, will continue to grow.

The country's integrated sector includes roughly 65 schools and more than 22,000 students, and will continue to grow.

On the other hand, both IEF and PILS recognize that simply winning in court isn't enough: There has to be a sustained, multi-front advocacy effort to build on that win. Thus, in the wake of Justice Treacy's 2014 ruling, the two groups worked to educate school principals and parents about the judgment and keep up the pressure on the DE to support the growth of integrated schools.

At the same time, IEF continued to try to build public support for its reform efforts with pro-integration editorials and op-eds in the *Belfast Telegraph* and other local news outlets.

On the legislative front, meanwhile, IEF has been campaigning for an overhaul of the DE's long-term planning policies and other pro-integration reforms. As part of that effort, IEF succeeded in gaining the support of the Education Committee in Northern Ireland's Assembly for an independent commission to review integrated education policies and programs. In March 2017, the commission released a 130-page report with 39 recommendations for boosting the growth of integrated education, including speedy approval of capital projects at integrated schools, and a new DE funding package to help integrate schools that have traditionally served Catholic or Protestant students.



Padraic Quirk, Atlantic's former country director for Northern Ireland, says the Drumragh case demonstrates how litigation can "make policymakers stand up and pay heed!"



Bringing children together in integrated schools at an early age so they can learn about each other in the classroom can make a real difference.

The report also calls for expanding the government's current legal duty to not just "encourage and facilitate" integrated education, but to actively "promote" the integrated school model. "Understanding and friendship across our community divisions is strengthened by our young people going together to school," said the report. "Offering parents this choice is in everyone's interest."

Given the recent political crisis in NI, IEF isn't expecting action on the commission's recommendations anytime soon. Indeed, in spring 2017 the NI National Assembly was suspended after the country's two main political parties failed to agree on a new power-sharing deal. At the time of this writing, the situation was still in flux, and Merron of IEF said it would fall to the next Education Minister (once a working government is restored) to respond to the commission's recommendations.

The Drumragh case demonstrated the power of litigation to put pressure on the system and make policymakers stand up and pay heed.

KEY TAKEAWAYS

Despite NI's uncertain political future, it's fair to say that the Drumragh case has given the integrated education movement there fresh momentum. It has also shown that strategic litigation can hold government officials in NI to account, and be a powerful tool in the fight for social change.

Murray of PILS emphasizes that it's essential to remember that litigation is only a first step. "What is important is that change happens on the ground. There has to be follow-up to educate and empower those affected by government inaction and pressure it to do what it is supposed to do."

Quirk, Atlantic's former Northern Ireland country director, agrees. He contends that a strong follow-up effort was especially important in the wake of Justice Treacy's ruling, given that that ruling did not mandate specific changes in the DE's policies.

Even so, he still believes the suit served to establish an important principle, which will help integrated schools continue to grow. "It really demonstrates the power of litigation to put pressure on the system and make policymakers stand up and pay heed."



Ensuring That Promises Are Kept

As part of the 2006 peace treaty known as the St. Andrews Agreement, Northern Ireland's government pledged to develop a strategy to combat poverty and reduce long-standing social and economic inequality between its Catholic and Protestant constituents.

In June 2014, the Committee on the Administration of Justice (CAJ) filed a suit against the government in High Court in Belfast for failing to follow through on that commitment. A year later, CAJ won a groundbreaking judgment against the government.

As the following case shows, however, a court win can only accomplish so much. There also needs to be strong political pressure to achieve meaningful social change.

CASE BACKGROUND

The political conflict that tore Northern Ireland apart during the last three decades of the Twentieth Century had an array of causes and deep historical roots. A chief source of tension was long-standing socio-economic disparities between Northern Ireland's Protestant majority and its Catholic minority. The Good Friday Peace Agreement of April 1998 sought to bring an end to the hostilities with promises of stronger anti-discrimination laws and broader

Both the Northern Ireland Act of 1998 and the St. Andrews Agreement envisioned development of a new anti-poverty strategy.

economic reforms, including a specific pledge to end the sharp differentials in Catholic and Protestant unemployment.

Follow-up legislation and treaties—including the Northern Ireland Act of 1998 and the St. Andrews Agreement of 2006—built on that promise. Indeed, along with ending direct rule under British ministers and introducing a new power-sharing arrangement, the St. Andrews Agreement pledged that the new coalition government would actively “promote the advancement of human rights, equality and mutual respect.” To that end, both the Northern Ireland Act of 1998 and the St. Andrews Agreement also envisioned development of a new anti-poverty strategy.

Anti-poverty advocates in Northern Ireland celebrated the pledge to tackle poverty as a major step forward, especially since the government was committed to using the concept of “objective need” to guide its strategy and would therefore be bound to use neutral criteria such as unemployment rates and income levels to decide how and where to allocate resources. The effect, it was hoped, would be to take politics and long-standing Protestant–Catholic rivalries out of the decision-making process, and help ensure that government assistance would go to those who needed it most.

Fifteen years after the Good Friday Agreement, 16 of the 20 most deprived wards in Northern Ireland were Catholic. On virtually every measure, including on the poverty indices, Catholic families continued to fare worse than Protestants.

Of course, making sure that Northern Ireland’s government actually fulfilled its duty to tackle poverty was a whole other challenge. Indeed, for the Committee on the Administration of Justice, a Belfast-based NGO that’s one of Northern Ireland’s top human rights watchdogs, the fight was just beginning. During the mid-1990s, CAJ had organized the launch of a new umbrella group—the Equality Coalition—to stir public debate on a range of socioeconomic and civil rights concerns and help put initiatives to address those issues higher up on the political agenda.



CAJ, with support from Atlantic, has used strategic litigation to put poverty and inequality on the political agenda in Northern Ireland.

In the wake of the Good Friday and St. Andrews agreements, CAJ, with support from Atlantic, kept up those efforts. CAJ was especially eager for action on the poverty front given the government's promise to put forth an anti-poverty strategy. But by early 2013, the government had still failed to deliver on that pledge.

A report examining poverty levels among Catholics and Protestants that was put out that same year by Northern Ireland's Community Relations Council only underscored the government's lack of progress.

Among other things, it noted that 16 of the 20 most deprived wards in Northern Ireland are Catholic, and that on virtually every measure, including on the poverty indices, Catholic families continued to fare worse than Protestants.

"Fifteen years after the Belfast Agreement held out the hope of equality between Protestants and Catholics, major differentials still exist, with Catholics experiencing much higher material deprivation than Protestants," said the report.

Daniel Holder, CAJ's deputy director, notes that the lack of affordable housing has been a particularly big problem for lower-income Catholics, especially in the Catholic working-class neighborhoods of North Belfast. "It's actually getting worse," says Holder, who points to a steady rise in homelessness in the area. "We're seeing more and more young Catholic children living in homeless shelters."

In June 2013, CAJ began sending letters to officials in Northern Ireland's executive branch seeking an update on the government's anti-poverty strategy.

But despite assurances that the government did indeed have a strategy, the officials provided contradictory information about what that strategy was, when it was adopted, and what it entailed, and CAJ concluded that in actual fact the government still had no identifiable overarching plan to combat poverty.

Likewise, in summer 2013, CAJ also met with government officials overseeing a new £80 million Social Investment Fund that aimed to reduce poverty in some of the region's most economically deprived communities. The officials insisted that all disbursements of those funds would be based on "objective

In the wake of the Good Friday and St. Andrews Agreements, CAJ kept up its efforts to ensure that the government makes good on its pledge to tackle poverty.



Daniel Holder, CAJ's deputy director

need.” But shortly after that meeting, local media sources reported that the government was balking at signing off on particular projects due to local political wrangling over how much of the funding should go to Catholic versus Protestant communities.

To CAJ, it was yet another troubling sign that the government was not fulfilling the commitment it had made to combating poverty. Indeed, as CAJ solicitor Gemma McKeown notes, under the Northern Ireland Act the government has a clear statutory duty to not only devise a clear strategy to tackle poverty, but to base that strategy on “objective needs.”

“Litigation was a last resort. We had exhausted all the other options.”

Gemma McKeown, CAJ solicitor

CAJ believed it was important to hold the government to account. The question was how to proceed. Though the group was initially reluctant to begin legal proceedings against the government, it concluded it had no other choice. “Litigation was a last resort,” says McKeown. “We had exhausted all the other options.”

Insofar as CAJ’s suit might be able to push the government to address poverty and socioeconomic disparities, Atlantic believed it was worth pursuing.

CAJ was well aware that, if the legal challenge failed, it would lose any remaining leverage it had to move a government anti-poverty program forward. Plus, given Northern Ireland’s loser-pays rules for litigation, it also faced potentially steep costs.

The group, however, was convinced that it had strong grounds for bringing a case—and after the Public Interest Litigation Support (PILS) Project, another Atlantic grantee, agreed to support CAJ’s court costs and indemnify it from any financial risks, McKeown and others at CAJ decided there was no reason not to go forward.

Padraic Quirk, Atlantic’s former country director for Northern Ireland, was not quite as optimistic as CAJ that the case could actually succeed. But he notes that Atlantic had always sought to build peace through tackling inequality wherever it existed. Insofar as CAJ’s suit might be able to push the

government to address poverty and socioeconomic disparities, he believed it was worth pursuing. “There’s a narrative here that says peace has been secured, and let’s not rock the boat,” says Quirk. “But inequality is one of the issues that fuels the conflict, and it had gone off the radar.”

With PILS’ assistance, CAJ found a barrister—Gordon Anthony—to handle the case. In spring 2014, on Anthony’s advice, CAJ sent a final round of letters to officials in Northern Ireland’s executive branch reiterating CAJ’s concern over the lack of a clear anti-poverty strategy. It also filed a Freedom of Information request for documents on any government deliberations related to an anti-poverty strategy or “objective need.” But the government replied that it had no such materials.

To Anthony, the response was telling. The government was unable to produce any documents because it had never attempted to formulate an anti-poverty plan. “It was a hugely difficult task, but they weren’t even trying,” says Anthony, who’s also a law professor at Queens University in Belfast. “They basically just sat on their hands and avoided dealing with it.”

“The government basically just sat on their hands and avoided dealing with it.”

Gordon Anthony, barrister and law professor at Queens University, Belfast

In June 2014, CAJ lodged papers with the Northern Ireland High Court seeking permission to proceed with a legal challenge. In late September that year the court granted that request, and a hearing was scheduled for January 2015.

CAJ’s arguments in the hearing were straightforward. Anthony directed the court to section 28E of the Northern Ireland Act 1998. As Anthony noted, the language on the executive branch’s statutory obligations was clear. The government, he said, had a two-part duty.

First, it was required to adopt a strategy setting out how it proposes to tackle poverty, social exclusion, and patterns of deprivation. Second, it was required to base that strategy on objective need.

The government was unable to produce any documents because it had never attempted to formulate an anti-poverty plan.



The lack of affordable housing has been a particularly big problem for lower-income Catholics, especially in the Catholic working-class neighborhoods of North Belfast.

Anthony acknowledged that the government believed it actually did have a strategy—based on the outlines of an anti-poverty program called Lifetime Opportunities that was adopted in 2006 under British direct rule. Anthony argued that simply cobbling the outlines of that program together with a few other piecemeal anti-poverty initiatives, as the government had done, did not add up to a coherent plan.

The government’s barrister rejected CAJ’s claim that it had failed to fulfill its statutory duties under section 28E. He noted that in November 2008 the executive branch had formally adopted “the architecture and principles” of Lifetime Opportunities as the basis of its anti-poverty strategy. Since then, he added, the government has moved to carry out and build on that strategy with the creation of a new subcommittee charged with devising and implementing a range of policy initiatives aimed at helping the government meet its poverty reduction goals.

Likewise, the government’s counsel contended that neither the St. Andrews Agreement, nor section 28E required the adoption of a strict definition of “objective need,” as CAJ had argued.

Despite the existence of numerous initiatives to combat poverty, the judge found that the government had failed to come up with a coherent, long-term anti-poverty strategy.

Indeed, he maintained that relying on a single, restrictive definition would be impractical, and that the law allowed the government far more flexibility and discretion in carrying out its anti-poverty initiatives than CAJ claimed.

The government’s arguments failed to persuade High Court judge Seamus Treacy, who gave judgment on June 30, 2015.

Despite the existence of numerous initiatives to combat poverty, the judge found that the government had failed to come up with a coherent, long-term anti-poverty strategy, as required under section 28E of the Northern Ireland Act.

The law “creates a duty to have an overarching strategy,” he wrote.

The ruling was a clear victory for CAJ. Still, winning in court was one thing. Getting the government to live up to its obligations was a whole other matter.

The government's adoption of the outlines of the Lifetime Opportunities program, he said, did not meet that requirement. "The Oxford English Dictionary defines a 'strategy' as a 'plan of action designed to achieve a long term or overall aim.' In adopting only the 'architecture and principles' [of the Lifetime Opportunities program], the Executive adopted something that was inchoate," wrote Justice Treacy. "There is no evidence before me that this inchoate strategy was ever finalized. There is no evidence that it was ever crafted into a road map designed to tackle the issues" that the law required it to address.

Given his finding that there was no anti-poverty strategy in place, the judge said that arguments about whether such a strategy should be based on "objective need" are academic. Yet he said he believed that "objective need" was a critical component of the law.

"It is difficult to see how the Executive could develop and deliver a section 28E compliant strategy without adopting some agreed definition of 'objective need,'" the judge said, "but that will be a matter for the Executive in due course."

Following the judgment, CAJ organized a series of meetings to try to mobilize Northern Ireland's network of anti-poverty groups to step up pressure on the government to move forward.

The ruling was a clear victory for CAJ. Still, winning in court was one thing. Getting the government to live up to its obligations—and devise and implement a clear, coherent anti-poverty strategy—was a whole other matter.

Following the judgment, CAJ requested a new round of meetings with government officials to push for a clear timetable for introduction of an anti-poverty plan. It also organized a series of meetings to try to mobilize Northern Ireland's network of anti-poverty groups to step up pressure on the government to move forward.

CAJ's McKeown says the ruling has definitely provided a useful new lobbying tool. "We can now point to the judgment and bang our fists on the table about it," she says.



Despite promises by government officials to deliver their long-awaited anti-poverty strategy in 2016, that never happened.

The court's ruling has provided the opportunity to help mobilize Northern Ireland's anti-poverty groups to step up pressure on the government.

Despite promises by government officials to deliver their long-awaited anti-poverty strategy in 2016, that never happened. McKeown attributes at least part of the delay to the shock of England's vote to exit the European Union in summer 2016. "There was a lot of chaos because of Brexit," says McKeown.

Since then, the political landscape in Northern Ireland has only become more uncertain. Indeed, in early 2017 the NI National Assembly was suspended after the country's two main political parties failed to agree on a new power-sharing deal. And at the time of this writing, there was still no acting government and no clear resolution in sight. The result: CAJ's push for a new anti-poverty strategy has remained in limbo.

Holder, the group's deputy director, says CAJ intends to resume its lobbying effort as soon as NI has a fully functioning government again. If that effort fails, it plans to return to court to seek new remedies against the government. NI's judges are well aware that the government officials have been dragging their feet on development of an anti-poverty strategy, says Holder. "They're getting increasingly impatient."

KEY TAKEAWAYS

Given the ongoing political standoff, it's unlikely that a new anti-poverty initiative will be unveiled anytime soon. Still CAJ's case has helped to highlight the problem of inequality in NI, while also demonstrating the power of strategic litigation to hold government officials accountable.

Holder notes that, thanks to the litigation, there is now broad public awareness of the government's failure to put forth an anti-poverty strategy, along with a much stronger consensus that poverty and inequality in Northern Ireland need to be addressed. "Something that was pretty much forgotten about is now much higher on the political agenda," says Holder.

McKeown agrees, noting that getting the issues of poverty and inequality on the public radar has been crucial. Though CAJ won its case against the government, and has been able to use the court decision to press for government action, she points out that combatting poverty ultimately requires political will. And the real impetus for change has to come from citizens and the politicians who represent them. "It's ultimately something the politicians should be doing," she says.



Thanks to the litigation,
there is a much stronger
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Factors Contributing to Successful Outcomes from Litigation

An earlier study conducted for Atlantic identified key elements critical to successful litigation aimed at fostering social change:

Proper Organization of Clients:

Litigation is likely to achieve greater social change when the client is an organization with a direct interest in the matters being litigated. Moreover, litigation is likely to achieve greater social change when the client plays an active and engaged role — rather than allowing legal representatives to make key decisions without proper client input.

Overall Long-Term Strategy: Rarely does litigation achieve maximum social impact by virtue of a single case. Rather, it tends to require a series of cases brought on different but related issues over a substantial period of time. This makes it critical that organizations pursuing litigation to achieve social impact do not attempt to rely on a “one-shot” success. Instead they must develop a coherent long-term strategy that allows them to benefit from the substantial advantage of being a repeat player in the courts.

Coordination and Information Sharing:

In virtually any given area of litigation, there are multiple organizations with similar aims all seeking to achieve success via litigation. Failure to coordinate and share among organizations creates a danger that resources will not be used effectively and, even more damaging, viable cases will be undermined by other conflicting cases being brought by other organizations simultaneously or beforehand. As a result, successful litigation requires organizations to coordinate and share information with all the groups involved so that they can build on each other’s success.

Timing: Litigation should not commence until and unless the climate is right and until the relevant evidence is in place. The damaging effects of running litigation too soon can be disastrous — particularly as an unsuccessful suit could, in practice, permanently foreclose the issue from being re-litigated. It is also very helpful to be able to demonstrate that court action has not been the first (or at least not the first and only) port of call for the persons involved. Where litigation is against government on controversial issues, courts will tend to be far more receptive and sympathetic where it can be demonstrated that the organization has repeatedly sought to engage with government to achieve a solution but that this has not resulted.

Research: A critical, and often neglected, facet of successful litigation is the need for detailed research in advance of and during a case. Legal research is essential if the litigation is to be given a proper theoretical foundation. The need for access to proper factual research, particularly in cases on socio-economic rights, is just as acute. Those involved in running such litigation must have access to relevant research capabilities—either within their own organization or via alliances with other groups.

Characterization: A substantial component of any successful case is the “characterization debate”—that is, ensuring that a case is brought under the appropriate right and is correctly pitched to the court. Any given case can be viewed and perceived in multiple ways by courts and the public. It is thus important for those involved in litigation to demonstrate that the issues at stake are critical, that the assertion of fundamental rights is being used to redress unfairness and inequality rather than perpetuate it, and that there are countless real people being affected on a daily basis.

Follow-Up: Perhaps the most critical factor of all in ensuring that public interest litigation achieves maximum social change is the issue of proper follow-up after the litigation.

Most critically, this involves ensuring that a victory in the litigation is put into effect by the relevant government departments, thus translating the legal success into practical benefits for a large number of people on the ground, including those not directly involved in the litigation. While the use of innovative and wide-ranging remedial powers by the courts is important for achieving social impact, it is arguably less important than the capacity and willingness of the organizations involved to properly follow up and enforce whatever order is granted.

Excerpted from “Public interest litigation and social change in South Africa: Strategies, tactics and lessons,” The Atlantic Philanthropies, October 2014: www.atlanticphilanthropies.org/research-reports/book-public-interest-litigation-and-social-change-in-south-africa-strategies-tactics-and-lessons



Lydia Foy leaves Dublin
High Court with her
solicitor, Michael Farrell,
October 19, 2007.

Winning After a Long Wait

In 1997, Ireland's Free Legal Advice Centres (FLAC) filed suit in Ireland's High Court on behalf of Lydia Foy, an Irish transgender woman seeking a birth certificate in her preferred, female gender.

The litigation lasted nearly two decades. With the assistance of pivotal decisions by the European Court of Human Rights and Ireland's High Court, as well as core support from Atlantic, FLAC ultimately prevailed. But as the following case study shows, in some cases litigation by itself can only achieve so much. It took a broad, multi-front advocacy campaign—and passage of new gender recognition legislation—to bring Foy's case to a successful end.

CASE BACKGROUND

Lydia Foy's long fight for legal recognition as a woman began with a letter to Ireland's Registrar General in 1993.

Foy, born in the Republic of Ireland's Midlands region in 1947 and registered at birth as a boy, had struggled since childhood with gender identity issues. She eventually married and had two children, but after years of emotional and psychological trauma she decided she could no longer suppress what she believed was her true female identity, and ultimately underwent gender reassignment surgery in 1992.

Lydia Foy's long fight for legal recognition as a woman began with a letter to Ireland's Registrar General in 1993. Foy had struggled since childhood with gender identity issues.

The following year, she wrote to Ireland's Registrar General seeking an amended birth certificate to reflect her new name and female gender. The Registrar denied her request, claiming that Irish law governing birth registration in the country, would not permit any such change in gender. Over the next three years, Foy's appeals for reconsideration went nowhere. By 1996, she concluded that legal action might be her only recourse, and contacted Ireland's Free Legal Advice Centres (FLAC) for help.

At the time, public sympathy in Ireland for the difficulties transgender individuals faced was virtually non-existent. Indeed, when Foy approached the group, almost no one in the country had ever heard of transgenderism, according to Michael Farrell, a former senior solicitor at FLAC, or knew anything about transgender issues.

Foy had already paid a high price for her decision to live as a woman.

Since its founding in 1968, however, the non-profit FLAC had handled a broad range of human rights cases and made it its mission to help disadvantaged and marginalized groups and individuals obtain access to justice.

After listening to Foy's plight, FLAC's legal staff decided that she deserved their support. "Lydia needed to be who she was," says former FLAC executive director Noeline Blackwell. "It was important to us that everyone understood that this was an issue of rights."

FLAC solicitor Mary Johnson initially tried to resolve the conflict over Foy's birth certificate without going to court. But correspondence with Ireland's Registrar General proved futile: The Registrar, once again citing Irish birth registration rules, insisted that the gender originally recorded on Foy's birth certificate could not be changed.

FLAC was well aware that litigation on Foy's behalf would be an uphill battle. Not only was there no Irish case law on transgenderism, but the one available precedent—*Corbett v. Corbett*, a 1970 English case in which a wealthy London socialite successfully applied to have his marriage to a transgender fashion model annulled—had dismissed arguments that anything other than physical characteristics could determine gender, and thus seemed likely to undermine Foy's claims.

Moreover, given that Ireland's civil courts operate under "loser pays" rules, FLAC lawyers were concerned that if Foy went forward with a suit and was unsuccessful, she might be at considerable financial risk. "The legal team were fairly confident that no judge would order Lydia to pay costs," says FLAC's Farrell. "But there was no guarantee. She could have gotten a reactionary judge who wanted to teach [transgender] people a lesson."

"Lydia needed to be who she was. It was important to us that everyone understood that this was an issue of rights."

Noeline Blackwell, former FLAC executive director

Foy had already paid a high price for her decision to live as a woman. Indeed, in the years leading up to her sex change operation, her marriage had ended, she was permitted no contact with her two children, and she had lost her job as a dentist with a public health board.

Still, despite the possibility that litigation would bring more financial and emotional hardship, Foy believed that the stakes in her fight for a new birth certificate—and for full legal recognition that she was a woman—were worth the risks. Thus, in April 1997, FLAC began legal proceedings against Ireland's Registrar General and Attorney General in the country's High Court.

The case went to trial in October 2000. During 14 days of hearings, FLAC's legal team argued that Foy had been born a "congenitally disabled woman" and presented evidence from leading medical experts on transgenderism in the United Kingdom and the Netherlands. They testified that some individuals experience a distinct difference between their "brain sex," or psychological gender, and their physical appearance—and said that psychological gender should be regarded as the real gender.

Despite the possibility that litigation would bring more financial and emotional hardship, Foy believed her fight was worth the risks.

In making their case, FLAC lawyers also claimed that the Registrar General's insistence on relying solely on Foy's physical characteristics when she was born to assign the gender on her birth certificate violated her constitutional right to be recognized in her preferred, female gender. What's more,

Judge
McKechnie
noted that
legal opinion
in Europe had
been rapidly
evolving on
transgender
rights.

they contended that the Registrar General's position put it in breach of the European Convention on Human Rights (ECHR), which, among other things, guarantees respect for private and family life.

When the court finally issued its ruling on July 9, 2002, it was hardly the vindication that Foy and her lawyers had hoped for. In his decision, Mr. Justice Liam McKechnie found that the Registrar General's refusal to issue a new birth certificate to Foy was proper—that the Registration Acts did not permit changing the original gender on birth certificates unless there was a clerical error. As for the contention that Foy's psychological gender—and thus real gender—was female, the decision noted that the evidence presented at trial was speculative. Therefore, he said, he was unable to conclude that the failure to recognize Foy's preferred female gender had violated her constitutional rights.

Still, Judge McKechnie expressed clear sympathy for the difficulties that Foy and other transgender individuals face. “[T]he evidence in this case. . . shows without dispute or debate that this is an established and recognised condition,” he wrote, “. . . and that those inflicted suffer greatly, usually for long periods, in relative isolation and frequently without understanding.”

In his decision, he noted that legal opinion in Europe had been rapidly evolving on transgender rights, and that the European Court of Human Rights in Strasbourg had been recently sounding the call for wider recognition of transgender individuals, as well as the many problems they face. Moreover, he pointed to a survey presented by plaintiffs that found that Ireland was part of a tiny minority of European countries that had not moved to recognize transgender people in their preferred gender. And he called on Ireland's Parliament to “urgently review this matter.”

A NEW ERA IN EUROPE

Just how quickly legal opinion in Europe was changing soon became clear.

Just two days after Judge McKechnie's ruling, the European Court of Human Rights issued a pair of groundbreaking decisions in two transgender cases from the UK. In both cases—*Goodwin v. UK* and *I v. UK*—the Strasbourg



Lydia Foy speaking to reporters outside the High Court in Dublin, after a judge rejected her request that her birth certificate recognize her gender as female.



Former Senator Katherine Zappone helped spearhead the fight for transgender rights in Ireland with groundbreaking legislation that proposed a new pathway for legal recognition of transgender people.

court unanimously found that the UK government had breached the rights of two British transgender women by refusing to recognize their female gender and denying their right to marry.

Reflecting a clear shift in the court's thinking, the decisions also emphasized its commitment to maintaining a "dynamic and evolutive approach" to transgender issues in light of changing social attitudes. They also left no doubt that the court was committed to ensuring that transgender individuals in countries that had signed onto the ECHR had the right to legal recognition.

Ireland was part of a tiny minority of European countries that had not moved to recognize transgender people in their preferred gender.

In the wake of Judge McKechnie's disappointing ruling, the Strasbourg court's decisions on the UK transgender cases gave fresh hope to Foy and her legal team, who had appealed the judge's decision. More importantly, they offered a potentially powerful new way for Foy's lawyers to challenge the refusal to grant her a new birth certificate, especially after Ireland's Parliament passed the European Convention on Human Rights Act the following year. The new law, which came into effect at the end of 2003, was aimed at giving the ECHR greater bearing in Irish law. The ECHR could not override domestic legislation. But, according to former FLAC senior solicitor Farrell, who took over responsibility for the case in 2005, it offered Foy's legal team a new opportunity to test Irish law, since in instances where there was a conflict between the ECHR and domestic law, Irish courts could now issue a declaration that the local law was incompatible with the ECHR.

"That gave us a whole new avenue of argument," says Farrell, who notes that while Judge McKechnie was obviously sympathetic to Foy's claims, his ruling essentially stated that "the law is the law."

"Now we were in a position to try something different, and to say the law's not the law."

PARTNERING WITH ATLANTIC

By 2004, FLAC was plotting its strategy for a second round of litigation in the Foy case. That same year, the group received the first of a series of core support grants from Atlantic. As Martin O'Brien, Atlantic's former senior vice president for programmes, recalls, FLAC already had a proven record of bringing cases on behalf of disadvantaged communities. It had also shown that it knew how to pick good strategic cases. "Atlantic's mission was to strengthen FLAC's core capacity," says O'Brien, and help promote the use of strategic litigation in Ireland to bring about more sweeping social change.

While Atlantic had no say in FLAC's decision to take on the Foy case, or in other matters the group chose to pursue, O'Brien notes that LGBT rights in Ireland had been a top priority of the foundation's reconciliation and human rights program since 2002, which made the Foy case a natural fit. "The thinking was that an investment of money over a fixed period of time could help," says O'Brien. "[The LGBT community] was at a significant disadvantage, and something could be done about it."

A COURT VICTORY

FLAC, of course, had been trying to do its part on the issue of transgender recognition. With Ireland's 2003 European Convention on Human Rights Act now on the books, the group decided it was time to test the new law. In 2005, Foy filed a new application for a birth certificate. As expected, her application was turned down—and FLAC proceeded to bring new litigation challenging that decision in light of both the Strasbourg court's decision in *Goodwin* and Ireland's ECHR Act.

In the end, that case was consolidated with FLAC's ongoing appeal of the 2002 decision against Foy, and landed back in Judge McKechnie's court. A new seven-day hearing took place in April 2007.

Five months later, the judge issued his decision. This time the results were different. Given the continuing refusal to allow Foy to obtain legal recognition of her preferred gender, he found that Ireland had breached her rights under Article 8 of the ECHR, which protects private and family life.

LGBT rights in Ireland were a top priority of Atlantic, which made the Foy case a natural fit.

Likewise, he ruled that the relevant sections of Irish law were incompatible with the European Convention, and announced that he would make the first Declaration of Incompatibility under the 2003 ECHR Act.

Judge McKechnie's ruling also pointedly noted that Ireland's government had done virtually nothing on the transgender recognition front since his original 2002 ruling against Foy, in spite of his pleas for urgent action. "This State... has failed or declined to produce evidence of any movement, even at an initiating, debating or investigative level on the plight of transsexual persons in this country," he wrote. "[I]t is very difficult to see how this Court... could now exercise further restraint, grant even more indulgence, and afford yet even more tolerance to this State some five years after [that] judgment."

When the government failed to deliver on legislation to benefit transgender people, FLAC turned up the heat.

A MULTI-FRONT CAMPAIGN

When the Judge's Declaration of Incompatibility was formally issued, in early 2008, the Irish government promptly appealed. FLAC, however, had built strong ties with human rights officials and activists in Europe, as well as with Ireland's transgender community, and it successfully mobilized those contacts and ratcheted up the pressure through June 2010, when the government dropped the appeal.

Likewise, when the government failed to deliver on its promise to introduce legislation ensuring legal recognition for Trans people, FLAC again enlisted its network of contacts—including Nils Muiznieks, the Council of Europe's Commissioner for Human Rights—and turned up the heat.

After a visit to Dublin, where he met with Foy and FLAC, in November 2012, Muiznieks fired off a letter to Joan Burton, Ireland's Minister of Social Protection, imploring her to step up efforts to introduce a bill. "Five years of non-implementation of the High Court's judgment finding Ireland in breach of the ECHR sends a very negative message to society at large," wrote Muiznieks.

FLAC and TONI mounted a comprehensive lobbying and media campaign to educate lawmakers and the Irish public about the challenges transgender people face.

FLAC's Farrell recalls that it was clear by then that the government was willing to act. "But they didn't think it was urgent," he says. "We had to make it important, to get it to a point where it was problematic for them not to do anything."

In early 2013, with the government still dragging its feet on the promised transgender recognition legislation, Foy's legal team once again brought suit, this time seeking a declaration that the government had a legal duty to make provisions for Foy to obtain a new birth certificate. They also requested damages for the continuing breach of Foy's rights since the High Court's 2007 decision.

Roughly six months later, in July 2013, the government finally produced a preliminary legislative proposal. The key provisions, including an insistence on medical proof of transgenderism as a condition of legal recognition, were far more restrictive than FLAC and the Transgender Equality Network of Ireland (TONI), a transgender advocacy group supported by Atlantic, had hoped for.

Litigation is clearly most effective when it's linked to other forms of activism.

In response, FLAC stepped up its advocacy efforts, working closely with TONI. Over the next two years, they mounted a comprehensive lobbying and media campaign to educate lawmakers and the Irish public about the challenges transgender people face and to build support for a more progressive transgender recognition bill.

As part of the effort, TONI mobilized parents of transgender children to attend public hearings and meet with journalists and members of Parliament, while FLAC arranged for Dr. Johanna Schmidt-Räntsch, a transgender judge on Germany's supreme court, to speak about the need for transgender recognition at the University College of Dublin law school.

It helped that in early 2015 the campaign for marriage equality in Ireland was also in full swing, and that public attitudes on matters like sexual orientation and same-sex marriage were shifting, with a whole new openness to a diverse range of relationships.



Lydia Foy (third from left) and her solicitor, Michael Farrell (far right), join public officials and community leaders, including Tánaiste Joan Burton (second from left), at a September 2015 event, marking the launch of the Gender Recognition Act in Ireland.

That May, supporters of gay marriage won a decisive victory in a national referendum on marriage equality. The following month, lawmakers in Ireland's lower House of Parliament (the Dáil Éireann) began final debate on an amended Gender Recognition Bill.

Thanks to FLAC's and TENI's lobbying campaign, as well as some key government concessions, the requirement that transgender people be medically certified was gone, along with most of the other provisions opposed by the Trans community.

Indeed, as Blackwell, FLAC's former executive director, notes, the legislation turned out to be far better than Trans supporters had hoped for. The bill won final approval by Ireland's Parliament on July 17, 2015. Two weeks later, Ireland's president, Michael D. Higgins, signed the Gender Recognition Act into law, giving the country one of the most liberal gender recognition regimes in the world.

"It's very progressive legislation," says Blackwell. "It's made Ireland a real trailblazer in this area."

For Lydia Foy, who had settled her last round of litigation against the government in January 2015, it had been a long, difficult journey. In accordance with the new law, in September 2015, she applied for and received a Gender Recognition Certificate from the Irish government, confirming that she was a woman and clearing the way for her to finally obtain the birth certificate she had long sought. In recognition of her long fight for transgender rights, that same year the European Parliament awarded Foy its prestigious Citizen's Prize.

Since then, many more transgender people in Ireland have followed Foy's lead: As of the end of December 2017, almost 300 Trans individuals had received Gender Recognition Certification under the new law.

No question, Atlantic's investment in FLAC,
and in strategic litigation in Ireland as a whole,
has paid off.

KEY TAKEAWAYS

Public awareness of transgender issues has come a long way since Lydia Foy first asked FLAC's lawyers to take her case.

Indeed, along with securing Foy's right to be legally recognized as a woman, the Foy litigation helped win broad public sympathy in the Republic of Ireland for the difficulties transgender individuals face.

Likewise, it has clearly helped advance Atlantic's efforts to expand LGBT rights in Ireland. No question, Atlantic's investment in FLAC, and in strategic litigation in Ireland as a whole, has paid off.

Looking back on FLAC's nearly two-decade fight for gender recognition for Foy, both Farrell and Blackwell say it's clear that litigation played a critical role in their success—indeed, had FLAC and Foy not been willing or able to see the long court battle through, there would have been little impetus for Ireland to enact the Gender Recognition Bill, and Foy and many others might still be without a birth certificate today.

Blackwell notes that it's also clear that the court judgment FLAC won was only part of the solution. "It really illustrates the value of embedding litigation in a broader campaign," says Blackwell. "Litigation on its own is a limited tool. There had to be a multi-front effort."

O'Brien, Atlantic's former senior vice president for programmes, agrees. "Litigation is a potentially powerful tool," he says, but by itself it's unlikely to achieve very much. "You almost always run into issues of implementation. Litigation is clearly most effective when it's linked to other forms of activism."

The Gender Recognition Act gives Ireland one of the most liberal gender recognition regimes in the world.



Education for All Means Just That

In 2010, lawyers at the Legal Resources Centre brought the first of two back-to-back lawsuits challenging appalling conditions at hundreds of schools in South Africa and testing the constitutional right of the country's children to a basic education. The government ultimately settled both cases with promises of sweeping school infrastructure reforms. But as the following case studies show, the lawsuits and settlement deals were only a start. It also takes powerful political pressure and years of perseverance to bring about meaningful social change.

South Africa's primary schools continue to suffer the effects of apartheid-era policies that led to segregation of students by race.

CASE BACKGROUND

More than a quarter-century has passed since South Africa began dismantling the system of white supremacist laws known as apartheid and moved to establish majority rule. With the election of Nelson Mandela as the country's first Black president in 1994, a new era began. Yet nearly five decades under apartheid left South Africa profoundly divided by race and class and harsh socio-economic inequality. Undoing the long, destructive legacy of white supremacy has presented monumental challenges.

That has certainly been true for South Africa's primary schools, which continue to suffer the effects of apartheid-era policies that centralized government

With the end of apartheid, South Africa's new leaders moved to make education reform a top priority. But progress was halting at best.

control of education and imposed strict segregation of students by race. Under the Bantu Education Act of 1953, Black children were steered away from church-run mission schools and into separate, poorly funded state-run classrooms that received a fraction of the resources allocated for white students and offered little or no training in math or science and minimal opportunities for social or economic advancement. Indeed, the government's stated goal was to ensure that the country's Black population would remain "hewers of wood and drawers of water," as one apartheid government minister put it, and continue to provide low-cost labor for the country's white-run economy.

By 2009, more than a decade and a half after the end of apartheid, many schools across the country remained housed in dilapidated buildings, where they struggled to operate without desks, books, and other basic supplies—or adequate numbers of teachers.

With the end of apartheid, South Africa's new leaders moved to make education reform a top priority. Not only was the right to a basic education enshrined in Section 29(1)(a) of the country's new constitution, but South Africa's Constitutional Court later specified that that right should be "immediately realisable" and therefore not constrained by a lack of available resources or dependent on "reasonable legislative measures."

Still, despite the best intentions of the country's post-apartheid leadership, progress in delivering on that guarantee was halting at best. By 2009, more than a decade and a half after the end of apartheid, many schools across the country remained housed in dilapidated buildings, where they struggled to operate without desks, books, and other basic supplies—or adequate numbers of teachers.

Conditions on the Eastern Cape, one of South Africa's poorest provinces and home to hundreds of so-called "mud schools," were particularly bleak: As the name suggests, those schools are typically built with a mix of mud, branches, cinder blocks, and cow dung, covered by corrugated metal roofs. In field visits to the area, education reform activists found that the roofs on



Conditions in so-called “mud schools” on the Eastern Cape, one of South Africa’s poorest provinces, were particularly bleak.



Overcrowding, a lack of electricity and potable water, along with rudimentary sanitation, made many South African schools unfit for learning.

many of the schools were rusted and leaky, making them unusable during heavy rains. Likewise, many of the mud schools lacked electricity and potable water, even rudimentary sanitation.

Leading the push for school infrastructure reform were two South African grantees of Atlantic: the Legal Resources Centre (LRC), which has brought a broad range of public interest litigation aimed at upholding constitutional guarantees of socio-economic rights; and Equal Education (EE), an advocacy group seeking quality education for all South Africans.

LRC and EE have spearheaded numerous advocacy campaigns and legal challenges to help underfunded schools in South Africa secure libraries and textbooks and classroom furniture—and also to fill vacant teaching posts. In actions they kicked off in 2010 through two complementary lawsuits, the two organizations took aim at the infrastructure crisis at many South African schools. The first of the lawsuits focused on the Eastern Cape’s mud schools, and the second on the fight for legally binding standards for school infrastructure.

Leading the push for school infrastructure reform were two South African grantees of Atlantic: the Legal Resources Centre and Equal Education.

Officials at Atlantic had high hopes for both cases. Indeed, as Martin O’Brien, former senior vice president for programmes, recalls, Atlantic had identified education reform as strategically important to its wider efforts in South Africa. As part of that effort, it had provided initial funding and core support for EE, which launched in 2008.

The foundation also supported the launch of a strategic litigation fund to help LRC bring high-impact legal cases—and had a long-standing commitment to trying to use the country’s new constitution, with its strong emphasis on equality and human rights, to bring about social change. “The education system there was failing large sections of the population,” recalls O’Brien. “The Constitution offered a way to do something about it.”

The lawsuit argued that the abysmal conditions at the schools constituted a breach of the South African constitution's guarantee of the right to a basic education.

MUD SCHOOLS LITIGATION

The severe school infrastructure problems in the Eastern Cape were hardly a secret. In the years after the end of apartheid, school reform activists along with parents of children attending “mud schools” had regularly protested that the ramshackle structures were unsafe and unfit for learning. But their pleas and petitions to government officials in the province spurred no action. The government’s repeated response was that there were no funds available to repair or replace the schools.

In 2009, attorneys at Legal Resources Centre decided to join the fight. After conducting site visits and interviews at nearly two dozen mud schools in the Eastern Cape, LRC helped organize infrastructure crisis committees at seven schools where conditions were especially dire. But appeals to the provincial Department of Education for school rebuilding funds went nowhere—and LRC concluded that it had no choice but to take legal action.

In 2010, LRC filed suit on behalf of the seven schools and the Centre for Child Law against the Eastern Cape and national Departments of Education and other government bodies.

Its principal argument: that the abysmal conditions at the schools, including unsafe buildings and the lack of classroom furniture and potable water, constituted a breach of the South African constitution’s guarantee of the right to a basic education.

Cameron McConnachie, LRC’s lead attorney in the case, notes that the group could have easily added more mud schools as plaintiffs. But it decided that limiting the case to a small group of severely under-resourced schools would be more effective. “We said, ‘Let’s focus on the worst of worst and ask for very specific relief,’” recalls McConnachie. “It’s very obvious that children need desks and chairs, and have to have classrooms that won’t collapse on them.”

In the years prior to the suit, numerous government officials had expressed the same sentiments in speeches and policy papers decrying the problems at the “mud schools.” Still, as LRC’s court filings noted, the provincial government had failed to budget even a fraction of the funds needed for school reconstruction. Indeed, it actually had a moratorium in place on new infrastructure projects in the Eastern Cape before LRC brought its case.



Cameron McConnachie (left),
LRC's lead attorney in the mud
schools case, with UN Special
Rapporteur on the Right to
Education, Kishore Singh

Rather than filing a formal answer to LRC's complaint, the defendants quickly called for settlement talks. LRC's legal team, however, insisted on holding off until that answer was filed and on the record, in what turned out to be a smart strategy.

In the end, the answering affidavit contained no substantive defense of the provincial and national governments' failure to address the infrastructure problems at the mud schools. And the settlement LRC ultimately struck in early 2011 was widely seen as a resounding success for plaintiffs.

Under the deal, the government not only promised to begin construction of new school buildings for the seven mud schools in mid-2011; it also agreed to provide temporary mobile classrooms, as well as chairs, desks, and safe drinking water, in the interim.

The terms of the settlement turned out to be far better than plaintiffs expected, but holding the government to the agreement hasn't been easy.

On top of that, the government also made a strong commitment to addressing school infrastructure problems around the country, with a pledge to allocate R8.2 billion over a three-year period on school rebuilding and repairs. Of that amount, R6.26 billion was specifically earmarked for school infrastructure projects in the Eastern Cape.

The LRC's McConnachie recalls that the terms of the settlement turned out to be far better than plaintiffs expected. "We got much more than we asked for," he says. While that was obviously a good thing, he also believes it may have created unrealistic expectations for what public interest litigation can accomplish. "We got so much publicity that there was this sense that litigation was the way to go," he says. "It may have given everyone a false sense of what it can achieve."

Holding the government to the terms of the settlement hasn't been easy. Despite the government's efforts, progress on school rebuilding has been slower than promised, and funds allocated for school infrastructure improvement have gone unused. Moreover government officials have been less than transparent about their plans.



LRC has had to make repeated follow-up trips to court to compel the government to disclose details on the specific schools slated for rebuilding or upgrades, and on construction timetables, and otherwise force government officials to make good on the settlement.

That said, the government has delivered on many of its promises. According to McConnachie, there were roughly 500 mud schools when the settlement was announced in 2011. Since then, roughly 225 schools have been rebuilt, including the seven schools that served as plaintiffs in LRC's litigation, who McConnachie says now boast some of the most beautiful buildings and classrooms in the Eastern Cape.

The vast majority of the remaining mud schools have either been closed or consolidated with other schools, according to McConnachie. And as of July 2017 only about 30 mud schools were still standing. While much more still must be done to address the urgent needs of those schools and many other schools across South Africa, McConnachie says there's no doubt the litigation has led to real progress.

"The impact has been clear," he says.

Just a year after the settlement in the mud schools litigation, LRC brought a second legal action to address school infrastructure problems in South Africa.

NORMS AND STANDARDS LITIGATION

Just a year after the settlement in the mud schools litigation, LRC brought a second legal action to address school infrastructure problems in South Africa. The objective this time was to force the government's Minister of Basic Education to comply with a 2007 amendment to the South African Schools Act and establish binding norms and standards for infrastructure at the country's schools.



Parents and children protesting for infrastructure improvements in their schools.

The plaintiff in the case was Equal Education, a Cape Town-based advocacy group. In EE's view, compulsory infrastructure standards were an essential first step to ensure that all schools, including those in the poorest parts of the country, would have access to electricity and drinking water, and be able to provide desks, chairs, books, and toilet facilities.

EE had launched its lobbying campaign around the issue in 2010. The following year, it organized a march on Parliament of some 20,000 students, teachers, parents, and other protesters to step up the pressure. The Minister of Basic Education promised that a clear set of norms and standards would be forthcoming. EE, however, learned that the standards she intended to issue would not be mandatory. To EE, that meant they would be ignored. Thus, it asked LRC to represent it, and in March 2012 began proceedings in the Bhisho High Court to ensure that the new school infrastructure regulations would be legally binding.

The goal of the new legal action was to force the Minister of Education to establish binding norms and standards for infrastructure at South Africa's schools.

EE's case rested on two main arguments: first, that the appalling infrastructure problems at many South African schools prevented effective learning and teaching, and second, that those problems deprived students of their constitutional right to a basic education. As part of its court filings, EE submitted affidavits from nearly two dozen students describing the substandard conditions at their schools, and showing the disproportionate toll the government's failure to address the problems took on the country's poorest children.

A court hearing in the case was scheduled for November 20, 2012. In the weeks leading up to the hearing, EE took out advertisements in newspapers and on radio and distributed thousands of posters and pamphlets to help educate the public about the need for binding school infrastructure standards. It also organized numerous student marches and demonstrations around the issue, including setting up a camp outside the Bhisho High Court as the hearing date approached.

The high-profile pressure tactics paid off: On the eve of the hearing, the Ministry of Basic Education opted to begin settlement negotiations and ultimately agreed to publish a draft set of school infrastructure regulations for public comment in January 2013 and to adopt binding standards by May 15 that same year.

Under the proposed regulations, all schools would be required to provide electricity, potable water, and sanitation, and safe, manageable classrooms with a maximum of 40 students.

When the draft standards the government proposed turned out to be weaker than EE had hoped, the group organized workshops around the country, where they helped local students, parents, and teachers understand the proposed standards and gathered hundreds of public comments in support of strengthening them.

When the government missed the May 15, 2013, deadline for issuing finalized standards, EE sought a court order forcing it to comply with the settlement agreement. Moreover, it stepped up the public pressure once again with mass marches in Pretoria, Cape Town, and Bhisho protesting the government's delay.

After a six-month extension of its deadline, in November 2013 the government finally issued its long-promised regulations for school infrastructure. By all accounts, they were a vast improvement on draft regulations published earlier that year. Among other things, schools would now be required to have electricity, potable water, and sanitation along with safe, manageable classrooms with a maximum of 40 students. What's more, under the new standards, all schools would have to provide internet access and eventually libraries, computer and science labs, and recreational facilities. The Ministry of Basic Education also set out a timetable for compliance ranging from three to 17 years (depending on the type of infrastructure improvements involved and the resources required) and said that provincial education departments would be required to submit annual reports on their progress toward meeting the new standards.

It was a monumental victory for EE—and a clear testament to the group’s success in mobilizing broad grassroots support for school infrastructure reform and ratcheting up the pressure on the Ministry of Basic Education.

“It really shifted the discourse,” says LRC attorney Cameron McConnachie, who believes that without that pressure the Department of Education likely never would have agreed to binding standards, and the standards it issued would have been far weaker.

Still, getting new school infrastructure regulations in place was one thing. Making sure that the new standards are implemented and enforced has proven to be an even more difficult challenge.

After the regulations were issued, EE continued to pressure the Department of Basic Education to close various loopholes in the rules and ensure that the promised infrastructure upgrades were on track.

The first deadline for implementation of the new rules was November 15, 2016, by which point all schools were required to have electricity, potable water, and toilets, and schools made out of mud, wood, and other unsafe or inappropriate materials were to be rebuilt.

By early 2016, however, it was clear that the Department of Basic Education had no chance of meeting that deadline. Thus, that May, attorneys in EE’s newly launched legal center filed a follow-up suit. Among other things, the suit, which is still ongoing, seeks to clarify the DBE’s responsibilities for enforcing the regulations, and fix loopholes that limit the number of schools subject to the new rules and undermine their impact and intent. It also asks the court to compel the DBE to publicly release progress reports from provincial education departments on school reconstruction and upgrades.

After the regulations were issued, EE continued to pressure the Department of Basic Education to ensure that the promised infrastructure upgrades were on track.

“We didn’t want to antagonize the Minister. We were very conscious that we needed to give her sufficient space to do what she said she was going to do.”

Lisa Draga, attorney who represented EE

With support from Atlantic, both LRC and EE used strategic litigation to hold the government to account.

Lisa Draga, the attorney who represented EE, notes that the group was initially reluctant to bring a second suit. “We didn’t want to antagonize the Minister,” says Draga. “We were very conscious that we needed to give her sufficient space to do what she said she was going to do.”

Still, the group had already met with the Minister to try to speed up the implementation process. It had also waged another large-scale public campaign to step up the pressure—to no avail. “It really was a case where we had exhausted all the avenues,” says Draga. “We saw litigation as a last resort.”

KEY TAKEAWAYS

While hundreds of schools across South Africa are still in dire need of rebuilding or repairs, the litigation brought by LRC and EE has prompted the Department of Education to begin taking serious steps to address the school infrastructure crisis.

As a result, millions of South African children now have real hopes of attending safer, better equipped schools, and Atlantic’s goal of expanding access to education to all South Africans appears to be bearing fruit.

South Africa’s post-apartheid constitution, of course, had proclaimed that all the country’s children were entitled to a basic education. That in turn provided an opportunity for lawyers at LRC and EE. With support from Atlantic, both groups used strategic litigation to hold the government to account, and force a reluctant DE to begin upholding that guarantee.

Attorney Draga doesn’t expect a neat resolution of that litigation anytime soon. Indeed, it’s been more than five years since LRC and EE filed their original suit to get binding school infrastructure standards on the books, and it’s likely to take much more time and effort to ensure that those standards are enforced.

“It can be very, very frustrating,” says Draga. “It takes a lot of perseverance and a commitment to staying the course.”

McConnachie of LRC agrees. Along with patience, however, he notes that picking winnable cases and not overreaching are key. “We’ve had success



Millions of South African children now have real hopes of attending safer, better equipped schools. These young students eagerly await completion of their new school in the Eastern Cape.

because we've chosen to do bite-size chunks of litigation and gone after low-hanging fruit. We aimed low and kept up the pressure for a long time."

But even when public-interest litigation doesn't produce immediate results, says Martin O'Brien, Atlantic's former senior vice president for programmes, it can still pay off big, just by drawing attention to problems and helping mobilize public support for reforms, as happened in the mud schools and norms and standards cases. "Litigation can be a good way to focus minds," and put important issues on the public's radar, he says, and that alone can be invaluable.

Atlantic's goal of
expanding access to
education to all
South Africans appears
to be bearing fruit.

It Takes More than Litigation to Succeed at Social Change

Litigation alone is rarely sufficient to achieve social change. According to authors of an earlier report for Atlantic, these three strategies should also be used:

Public information: Public information campaigns that inform ordinary people of their rights are an essential component of any effort to achieve social change on rights issues. They are critical if people are to understand the role that law and legal rights can play in achieving social change. Moreover, without such campaigns, those conducting litigation are unable to obtain the required information to launch a successful case, to generate substantial support from ordinary people, or to transform any court victory into concrete progress on the ground.

Advice and assistance: It is essential that there are intermediary organizations that enable people to claim their rights, by giving advice, directing them to the appropriate institutions, assisting them with the formulation of their claims, and taking matters up on their behalf — all of which can be done successfully without necessarily engaging in litigation. This strategy too has substantial benefits for litigation, particularly because it provides an efficient means of identifying the core issues that are affecting large numbers of ordinary persons. It thus allows litigation to be designed effectively and targeted

to achieve maximum impact, while also improving the prospects that a victory in a landmark case actually translates into tangible benefits for people far beyond those directly involved in the case.

Social mobilization and advocacy:

These strategies are most effective when they are linked to social movements. Rights have to be asserted both from outside and inside the courts. Some form of social movement is necessary to identify issues, mobilize support around them, make use of political pressure, engage in litigation where necessary, and monitor and enforce favorable laws and orders by the courts.

While successful litigation must not be seen as an end in itself, it can play a pivotal role when combined with the other strategies set out above. Properly used, it enables poor or marginalized groups to achieve impact and success that would not be available to them if they were limited only to the strategies set out above.

Excerpted from “Public interest litigation and social change in South Africa: Strategies, tactics and lessons,” The Atlantic Philanthropies, October 2014: www.atlanticphilanthropies.org/research-reports/book-public-interest-litigation-and-social-change-in-south-africa-strategies-tactics-and-lessons



Stopping Stop-and-Frisk

In January 2008, the Center for Constitutional Rights (CCR) filed a federal class action on behalf of thousands of African-American and Latino New Yorkers challenging the New York Police Department's (NYPD) widespread use of stop-and-frisk. CCR lawyers alleged that the NYPD was routinely making stops without reasonable suspicion, as well as targeting minority neighborhoods and engaging in racial profiling—a clear violation of the constitution.

CCR did not just rely on legal arguments. With support from Atlantic, it also worked closely with local civil rights activists and community groups to raise awareness about the NYPD's disregard for the rights of minority groups and build public support for its case.

The result was a landmark court decision ordering sweeping police reforms—and a clear example, as detailed below, of the power of coalition-building.

CASE BACKGROUND

In the early 1990s, the New York City police began routinely stopping and searching tens of thousands of young males in low-income, minority neighborhoods as part of an aggressive crackdown on crime.

City officials defended the program, known as stop-and-frisk, as a new model of proactive policing, aimed at reducing the number of guns on New York City streets, stopping a cycle of criminal violence, and driving armed robbery and murder rates down.

African American and Latino communities were most affected by stop-and-frisk, and the majority of those stopped were innocent of any crime.

The problem was that the communities most affected by the program were overwhelmingly African American and Latino—and that the vast majority of the individuals stopped and frisked were innocent of any crime. Young males in the targeted neighborhoods reported being questioned, patted down, and harassed and humiliated by police while standing in front of their homes or walking down the street en route to school or work. Local community activists accused the NYPD of racial profiling. Yet throughout the 1990s the number of police stops in minority communities mounted, and opposition to the stop-and-frisk program grew.

In spite of the new anti-racial profiling policy, between 2003 and 2007, the number of stop-and-frisks in minority communities continued to rise.

With the 1999 shooting of Amadou Diallo, an unarmed African immigrant gunned down by white police officers in the vestibule of his Bronx apartment building, the campaign to end police bias gained momentum. At the request of local civil rights activists, lawyers at the New York City-based Center for Constitutional Rights began preparing a class action challenging the stop-and-frisk program on the grounds that both the police stops without cause and the NYPD's targeting of minority communities were unconstitutional. The suit—*Daniels et al. v. the City of New York*—was brought in late 1999 in federal district court in Manhattan. The city's legal team initially tried to defend the NYPD program. But after failing to persuade the court to dismiss the case, the city ultimately signed a landmark 2003 settlement. Under the agreement, the NYPD was required to adopt a clear anti-racial profiling policy and conduct stop-and-frisk audits, and also provide data on stops to CCR on a quarterly basis through 2007.

CCR had hoped the NYPD would make a good faith effort to comply with the agreement. But the stop-and-frisk statistics it supplied showed otherwise. In spite of the new anti-racial profiling policy, between 2003 and 2007, the number of stop-and-frisks in African American and Latino communities continued to rise.

Armed with that data, in January 2008 CCR lawyers brought a second federal class action—*Floyd et al. v. the City of New York et al.*—on behalf of the thousands of primarily Black and Hispanic New Yorkers stopped and searched without cause by the NYPD.

The lead plaintiff in the case was David Floyd, a medical student in the Bronx, who had been stopped and patted down by police on two separate occasions, in 2007 and 2008. Named defendants included then-New York City Police Commissioner Raymond Kelly and then-mayor Michael Bloomberg.

**“The communities needed legal intervention.
Clearly there was something wrong.”**

Baher Azmy, CCR’s director of litigation

As in the Daniels suit, CCR lawyers alleged that New York City police were routinely violating constitutional prohibitions against unreasonable searches and seizures, and discriminating against Black and Hispanic New Yorkers, who were disproportionately targeted for police stops. With Floyd, however, CCR had even clearer evidence of racial bias—and hoped that a second class action would finally force the NYPD to bring the illegal stops to a halt. “The communities needed legal intervention,” recalls Baher Azmy, CCR’s director of litigation. “Clearly there was something wrong.”

A STRONG PARTNERSHIP

For CCR, the fight to end stop-and-frisk was in keeping with a long tradition of using the courts to protect human rights and advance social and racial justice. Atlantic had been providing core support for CCR before the Floyd litigation was filed. In 2010, however, the foundation had decided to make promoting racial justice a top priority, which made the Floyd case and the racial bias issues it raised a natural fit.

In funding the case, staff in Atlantic’s U.S. Reconciliation & Human Rights Program were well aware that the litigation would likely be a long, expensive process. But, as Annmarie Benedict, former Atlantic senior program executive, recalls, it was seen as the only way to end stop-and-frisk. “The Daniels case didn’t work, police training and police reform didn’t work,” says Benedict. “The only way the NYPD was going to change was if [stop-and-frisk] was found unconstitutional.”

Atlantic had decided to make promoting racial justice a top priority, which made the Floyd case and the racial bias issues it raised a natural fit.

Both Atlantic and CCR were also well aware that the case might not play out the way they wanted, yet given how rampant police stops and searches already were, CCR's Azmy believed there was little risk that a negative decision in Floyd would make the situation worse.

"We didn't see much of a downside," says Azmy, who notes that CCR often brings litigation that it doesn't think it will win just to raise awareness about the issues involved and help spur grassroots engagement. "We thought that if we lost Floyd we would still have helped change the conversation and created space for organizers to continue the fight."

"We thought if we could [end stop-and-frisk and racial profiling] in the biggest city with the biggest police department in the country, it could have a huge impact."

Annmarie Benedict, a former Atlantic senior program executive

On the other hand, if they did manage to win Floyd, both CCR and Atlantic believed the payoff would be huge. "The NYPD is a flagship police department," says Benedict. "We thought if we could [end stop-and-frisk and racial profiling] in the biggest city with the biggest police department in the country, it could have a huge impact. Here was an opportunity to make a real change."

MOBILIZING THE GRASSROOTS

CCR lawyers were hardly alone in their fight to end the NYPD's use of stop-and-frisk. In 2010, the NAACP Legal Defense and Education Fund, another Atlantic grantee, brought a separate class action challenging a surge of police stops and sweeps in New York City public housing complexes, The New York Civil Liberties Union, also an Atlantic grantee and a strong ally, filed its own suit in 2012 over police stops in private apartment buildings. Moreover, there was a robust citywide network of civil rights activists and grassroots groups agitating for an end to stop-and-frisk, racial profiling, and other NYPD reforms.



The lead plaintiff in the case was David Floyd, a medical student in the Bronx, who had been stopped and patted down by police on two separate occasions, in 2007 and 2008.



Public pressure, including high-profile rallies and mass marches demanding police reform, proved to be a critical complement to the Center for Constitutional Rights' suit to end racially targeted police stops in New York City.

Both Atlantic and the Open Society Foundations (OSF) hoped to encourage greater communication among the various groups. In October 2010, the two foundations convened a preliminary meeting and ultimately partnered to fund a new coalition—Communities United for Police Reform (CPR)—to spearhead the campaign against stop-and-frisk. Coalition members included CCR, the NYCLU, the NAACP Legal Defense and Education Fund as well as the Malcolm X Grassroots Movement, Make the Road New York, and more than two dozen other grassroots advocacy groups.

CCR lawyers developed a close working relationship with community activists.

CCR's Azmy says that even before CPR formally launched, he and other lawyers handling the Floyd litigation had tried to be responsive to the concerns of local community groups. Thus in formulating their case against stop-and-frisk, they decided to make the claim that the NYPD was targeting Blacks and Latinos, even though recent U.S. Supreme Court rulings had made it tougher to prove racial bias. "An easier case to bring would have been an unreasonable search claim under the Fourth Amendment," says Azmy. Community groups, however, believed the NYPD was engaged in flagrant racial profiling and wanted that claim before the court.

As a result, he says, CCR "intentionally framed it so that racial disparity would be front and center" in the Floyd case.

Once CPR was formed, CCR lawyers began working even more closely with community activists. Thanks to a determined grassroots organizing effort, opposition to the NYPD's use of stop-and-frisk had mounted after the Floyd case was filed. And grassroots groups continued to ratchet up their protests as the case moved closer to trial. "There was a growing political groundswell over stop-and-frisk," recalls Azmy. "We recognized that the legal strategy had to be integrated with the political and organizing strategy."

HEADING TO TRIAL

The city's defense lawyers had tried to defeat key claims in the Floyd case in a motion for partial summary judgment. But in August 2011, U.S. District Court Judge Shira Scheindlin ruled that CCR's case should go forward. Likewise, the city's defense team failed to block CCR's effort to bring the

suit as a class action. By the summer of 2012, Judge Scheindlin had granted CCR’s motion for class certification, and set a trial date for the case for the following March.

In the lead-up to the trial, CPR members worked to spotlight the issues the Floyd case raised and build popular support for their cause. In June 2012, they helped mobilize thousands of New Yorkers for a silent march down Fifth Avenue protesting the NYPD’s stop-and-frisk program. They also waged a high-profile lobbying and media campaign for passage of sweeping police reform legislation before the New York City Council aimed at stopping unlawful stops and searches and discriminatory policing. “The on-the-ground advocates were trying to make the city feel the heat,” says Atlantic’s Benedict.

When the Floyd trial finally began on March 18, 2013, CPR supporters packed the courtroom—and continued to fill the court each day of the trial as the case proceeded.

Over the next ten weeks, CCR’s lawyers presented a powerful mix of testimonial and statistical evidence. Pointing to the NYPD’s own data, the plaintiff’s team showed that in the preceding decade some five million people had been stopped, including nearly 700,000 stops in 2011 alone. It also showed that the vast majority (87 percent) of those stopped that year were Black or Latino, and that nearly nine out of ten of those stops resulted in no summons or arrest.

CCR lawyers called nearly a dozen minority males who had been stopped by the NYPD to the stand. One witness—Nicholas Peart, an African American man in his early twenties—recalled being on his way to visit his sister on his 18th birthday, when he was stopped by police and forced to lie facedown on the sidewalk, as an officer felt his buttocks and groin. Peart, like others who testified to being stopped and publicly humiliated by police, was released without charges.

5.0
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and 2013

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To prove that Black and Hispanic New Yorkers were deliberately targeted for stops, CCR lawyers presented audio tapes of police supervisors that had been secretly recorded by patrol officers. In one, the supervisor was heard telling officer Pedro Serrano to make stops of “the right people,” which he later describes in the tape as “male blacks 14 to 21” years old. When asked why he chose to make the recording and testify, Serrano said, “As a Hispanic living in the Bronx, I have been stopped many times. I just want to do the right thing.”

CPR supporters packed the courtroom — and continued to fill the court each day of the trial as the case proceeded.

Another key witness — New York state senator Eric Adams, a retired NYPD captain — testified that the decision to target New Yorkers of color came directly from the top. After taking the stand, Adams recalled a July 2010 meeting he attended with then-governor David Patterson and New York City Police Commissioner Kelly. According to Adams, Kelly explicitly said that the NYPD’s stop-and-frisk practices were designed to “instill fear” in minority communities. “[He] stated that he targeted and focused on that group because he wanted to instill fear in them that every time that they left their homes they could be targeted by police,” Adams testified. “How else would we get rid of guns?” Adams said Kelly asked him.

In a landmark 198-page decision, the judge ruled that the NYPD’s use of police stops without reasonable suspicion were illegal under the Fourth Amendment and that its targeting of minority communities violated the Equal Protection Clause of the Fourteenth Amendment.

The trial ended on May 20. Nearly three months later, on August 12, 2013, Judge Scheindlin found that stop-and-frisk as carried out by the NYPD was unconstitutional.

In a landmark 198-page decision, the judge ruled that the NYPD’s use of police stops without reasonable suspicion were illegal under the Fourth Amendment, and that its targeting of minority communities violated the Equal Protection Clause of the Fourteenth Amendment.

In spite of complaints dating back to 1999 that the stops violated the Fourth Amendment, Judge Scheindlin noted that the NYPD “deliberately maintained and even escalated” its stop-and-frisk program and “repeatedly turned a blind eye to clear evidence” of constitutional violations.

As part of her decision, the judge said the court would appoint an independent monitor to oversee a series of immediate reforms to NYPD policing practices. She also ordered a Joint Remedial Process to bring about longer-term structural reforms at the department, based on input from the communities most directly affected by policing and other stakeholders.

The city immediately sought to overturn the ruling in the Second Circuit of the U.S. Court of Appeals. Initially, plaintiffs were confident that the city’s appeal would go nowhere. In November 2013, however, a three-judge panel on the Second Circuit stayed Judge Scheindlin’s ruling and ordered the Floyd case to be reassigned to another district court judge. Azmy and other CCR lawyers began to worry. “There was a real risk they might reverse,” says Azmy, who recalls that during oral arguments on the appeal two of the judges on the Second Circuit panel were obviously hostile to the plaintiff’s claims. If the court did reverse, the result would have been devastating, says Azmy. “There would have been no legal compulsion for the NYPD to change.”

Grassroots organizers were also well aware of the stakes. With the New York City mayor’s race heating up in early fall of 2013, they pushed candidates to take a stand on the city’s appeal of Floyd and succeeded in making it a key issue in the campaign.

With prodding from CPR supporters, New York City mayoral hopeful Bill de Blasio promised to drop the appeal. A few weeks after his inauguration, in January 2014, he made good on that pledge, and the city announced plans to withdraw its appeal.

CCR was forced to fight one last battle when New York City police unions attempted to mount their own challenge to the Floyd ruling after the city abandoned the appeal. But both the district court and the Second Circuit denied the unions’ request to intervene, thus clearing the way for the reforms ordered by Judge Scheindlin.

CCR was forced to fight one last battle when New York City police unions attempted to mount their own challenge to the Floyd ruling after the city abandoned the appeal.



A key witness in the case—New York state senator Eric Adams, a retired NYPD captain—testified that the decision to target New Yorkers of color came directly from the top.

THE IMPACT

In the wake of the Floyd decision, the number of New York City police stops has declined dramatically, from nearly 700,000 in 2011 at the height of the stop-and-frisk program to just over 12,400 stops in 2016.

While police stops have declined sharply, CCR's recent court filings show that Black and Latino New Yorkers are still being stopped in disproportionate numbers.

Moreover, the independent monitor overseeing the post-Floyd reform process at the NYPD has won court approval for strict new guidelines on police stops and racial profiling, new training programs for patrol officers and supervisors, and a revised curriculum for New York Police Academy cadets with a primer on constitutional strictures against race discrimination and searches without cause.

Other changes include a revised form requiring patrol officers to supply a clear written explanation when they conduct stop-and-frisks, regular review of those forms by police supervisors, and a program to test the use of police body cameras.

The reform effort still has a long way to go. In June 2017, CCR lawyers submitted new court filings showing that Black and Latino New Yorkers are still being stopped in disproportionate numbers, and criticized the independent monitor for playing down the problem.

While progress has been slower than hoped for, CCR lawyers and staffers continue to believe that the Floyd ruling provides an unparalleled opportunity to make transformative changes at the NYPD.

“While it is true that overall stops have decreased, the same disparities between stop-and-frisks of Black and Latino New Yorkers and whites remain, even after controlling for higher crime rates in certain parts of the city,” said CCR senior staff attorney Darius Charney in a press release.

Still, while progress has been slower than hoped for, CCR lawyers and staffers continue to believe that the Floyd ruling provides an unparalleled opportunity to make transformative changes at the NYPD, and they plan to remain actively engaged in the effort.

“This is precedent-setting,” says Nahal Zamani, who manages CCR’s advocacy programs. “We’re asking how do you shift a whole organization and roll out a new way of policing and meaningfully change police departments.”

“The fact that there were thousands and thousands of people protesting stop-and-frisk found its way into the media and courtroom, and legitimated the call for change. They were a critical part of our success.”

Nahal Zamani, CCR advocacy program manager

KEY TAKEAWAYS

Both Zamani and Azmy contend that CCR’s suit wouldn’t have been nearly as successful if local community groups had not gotten behind it. Indeed, in Azmy’s view, the key lesson of the litigation is the importance of building alliances with local activists.

“They fed the legal work,” he says. “The fact that there were thousands and thousands of people protesting stop-and-frisk found its way into the media and courtroom, and legitimated the call for change. They were a critical part of our success.”

The Floyd case also clearly demonstrates the role funders can play in coalition-building. Atlantic’s former senior program executive, Annmarie Benedict, though, believes that while funders can help bring grassroots groups together, it’s also important to get out of the way and let them take the lead. “You need to give groups the time and space for a plan to come together,” she says. “When you can step aside, sometimes that’s the most effective way to get things done.”

The key lesson of the litigation is the importance of building alliances with local activists.



Making Medicare Care

In January 2011, the Center for Medicare Advocacy (CMA)—with support from Atlantic—sued the U.S. Department of Health and Human Services, seeking to challenge use of the so-called “improvement standard” to deny therapy and skilled nursing services to chronically ill and disabled Medicare beneficiaries. In their complaint, attorneys with CMA and co-counsel Vermont Legal Aid (VLA) pointed out that the laws and regulations governing Medicare state that coverage should be available for “reasonable and necessary” health care and therapy services, based on a Medicare recipient’s individual needs.

Instead of following the law, however, contractors reviewing Medicare claims were basing coverage decisions on whether patients seeking medical services were able or likely to show improvement. As a result, millions of Medicare recipients who needed therapy or skilled nursing care to maintain their ability to perform everyday tasks or prevent their conditions from becoming worse were denied coverage.

As part of a landmark settlement in January 2013, Medicare officials promised to clarify coverage guidelines to comport with Medicare law. But, as the following case study shows, while the settlement brought significant reforms, getting the government to implement the changes it agreed to has been harder than expected. Thus the case offers a valuable lesson about the need to prepare for a long haul in litigation, even after an ostensible victory.

This case offers a valuable lesson about the need to prepare for a long haul in litigation, even after an ostensible victory.

CASE BACKGROUND

Since its founding in 1986, the nonprofit Center for Medicare Advocacy (CMA) has led the charge to help older Americans and people with disabilities obtain fair access to comprehensive Medicare coverage and quality health care.

During that time, CMA attorneys have handled the appeals of thousands of chronically ill and disabled Medicare beneficiaries who were denied therapy or skilled nursing care on the grounds that their conditions were “stable” and “not improving” or that their recovery had “plateaued.” Medicare subcontractors responsible for making ground-level benefits decisions routinely determined that the medical services requested were for “maintenance only” and thus not eligible for coverage.

Since 1986, CMA attorneys have handled the appeals of thousands of chronically ill and disabled Medicare beneficiaries who were denied therapy or skilled nursing care on the grounds that their conditions were “stable” and “not improving” or that their recovery had “plateaued.”

The decisions to deny coverage were based on a loose rule of thumb known as “the improvement standard,” which requires that Medicare beneficiaries with chronic conditions or disabilities show that they’re improving or are likely to improve in order to continue to qualify for skilled therapy and nursing services.

The result, according to CMA founder and executive director Judith Stein, was that thousands of Medicare beneficiaries were being denied access to necessary treatment and care. She notes that seniors suffering from Parkinson’s, multiple sclerosis, Alzheimer’s, and other degenerative diseases or chronic health issues may have limited prospects for recovery. But in many cases, physical and occupational therapy can help them maintain their ability to perform everyday tasks and slow the progression of their disease.



Judith Stein (right), founder and executive director of the CMA, in a meeting with Jocelyne Watrous, a benefits consultant.



Glenda Jimmo, the lead plaintiff,
lost the home nursing services
she relied on to manage serious
complications from diabetes after
her condition was deemed stable
and her Medicare benefits were cut.

Because of the widespread use of “the improvement standard” in Medicare coverage decisions, however, seniors who could clearly benefit from therapy or skilled nursing care were precluded from receiving it.

The problem, as Stein and other CMA attorneys had long argued, was that federal laws and regulations governing Medicare contain no reference to the improvement standard and in no way sanction its use. To the contrary, they point out that the relevant statute and rules explicitly state that Medicare coverage is available for “reasonable and necessary” health care and therapy services and that decisions about specific benefits should be based on a Medicare recipient’s individual condition and needs.

In their appeals work, CMA lawyers continued to argue that the repeated use of an “improvement standard” in coverage decisions was improper—and that Medicare beneficiaries were being refused necessary care and services to which they were legally entitled.

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CMA found a natural ally for that cause at Atlantic. Not only was serving the needs of older individuals a top funding priority, but Atlantic also had a long-standing commitment to improving seniors’ access to quality health care.

Despite CMA’s best efforts, however, the number of Medicare coverage denials based on the improvement standard continued to climb. After seeing a further spike in such denials starting around 2006, CMA decided it was time to mount a more serious effort to eliminate it and force Medicare to comply with its own regulations.

CMA found a natural ally for that cause at Atlantic. Not only was serving the needs of older individuals a top funding priority, but Atlantic also had a long-standing commitment to improving seniors’ access to quality health care, along with a particular interest in assisting those with chronic illnesses and disabilities.

Indeed, Stephen McConnell, the foundation's former U.S. Country Director, says he and his colleagues had grown increasingly concerned that the American health care system was overly focused on people with acute illnesses. "Our goal was to elevate the importance of chronic care," recalls McConnell. "We wanted to change health care so that it works better for people with chronic conditions."

McConnell believed that ending Medicare's use of the improvement standard would be a monumental first step toward that goal. The question was how to proceed. Both Atlantic and CMA recognized that litigation might ultimately be the only way to get the U.S. Department of Health and Human Services, which oversees the Centers for Medicare and Medicaid Services (CMS), to drop the standard.

Still, as part of its initial \$500,000 grant from Atlantic in 2009, CMA agreed to explore a range of options, including but not limited to litigation, to do that.

Over the next year, CMA attorneys held a series of discussions with officials at CMS to try to negotiate an end to the improvement standard. In addition, CMA, based in Willimantic, Conn., enlisted the help of U.S. Rep. Joe Courtney, a member of Connecticut's congressional delegation, to step up the pressure on CMS. In a May 2010 letter to the agency, Courtney and 17 other members of Congress called on CMS to conduct "an expeditious review and [eliminate] the 'erroneous' Improvement Standard in all care settings."

Those efforts, however, went nowhere. CMA executive director Stein recalls that the Medicare officials the group met with understood the concerns CMA raised, and seemed sincere in their desire to address them. But they refused to agree to the reforms that Stein and other CMA attorneys wanted, including a change in Medicare's Benefit Policy Manual and formal instructions from CMS to health care providers and claims administrators stating that a lack of improvement or ability to improve was not a reason to deny coverage.

"There was much good will," says Stein, "and we had very good discussions, but they couldn't do what was needed to solve the problem. It really required a systemic overhaul."

Medicare officials understood CMA's concerns, but refused to agree to the reforms that Stein and other attorneys thought were needed.

THE LITIGATION OPTION

By the fall of 2010, Stein and other CMA attorneys concluded that getting the systemic changes they sought required litigation. It would not be the first time the group challenged Medicare's use of the improvement standard in court. As far back as the mid-1980s, Stein had brought a successful statewide class action in Connecticut on behalf of local nursing home residents who were being routinely denied Medicare coverage for physical therapy on the grounds that that therapy was only for maintenance. That case—*Fox v. Bowen*—ended with a 1987 decision that prohibited the use of broad rules of thumb in Medicare coverage determinations. Moreover, the court found that Medicare rules entitled the nursing home residents to an individual assessment of their particular needs to determine if physical therapy was appropriate.

To get the broader policy changes they wanted, CMA decided to bring a class action to end the improvement standard nationwide.

In the ensuing years, CMA, VLA, and other attorneys proceeded to win several additional court challenges to the improvement standard on behalf of individual Medicare beneficiaries in Pennsylvania, Vermont, and other states.

But as in the *Fox v. Bowen* litigation, the U.S. Department of Health and Human Services chose not to appeal, so the court rulings were not binding on the government or precedential beyond the individual plaintiffs or class members.

To get the broader policy changes they wanted, CMA's legal staff decided that simply continuing to try cases for individual Medicare beneficiaries wasn't enough. The plan, finalized in late 2010, was to bring a national class action against HHS that would end the improvement standard nationwide. "We thought a class action was the only way to resolve the problem," recalls Gill Deford, CMA's director of litigation. "Short of that, if you win a case for an individual Medicare beneficiary, only that individual gets relief. There's no controlling legal precedent to tell government they can no longer use the improvement standard."

CMA and its co-counsel knew that winning the case would be a monumental challenge.

In October 2010, CMA and VLA had won a strong decision in federal district court in Vermont challenging the cut-off of home nursing services to Sandra Anderson, a 60-year-old Medicare beneficiary who had suffered two back-to-back strokes. Based on that decision, the attorneys were hopeful that judges on that court might be equally sympathetic to the claims in a class action, so, since several plaintiffs were Vermont residents, they opted to bring the case there.

Both CMA and co-counsel VLA knew that winning the case would be a monumental challenge, especially since Medicare regulations contained no explicit reference to any “improvement standard” and CMS officials had never formally acknowledged that such a standard even existed. CMA lawyers were confident that they had clear proof based on hundreds of Medicare coverage denials that it did in fact exist—and that it violated Medicare’s own regulations and statutes. But they were well aware they were still waging an uphill fight.

“I knew that if they did succeed, the payoff would be huge. I also thought that even if they didn’t succeed, they would put HHS on notice.”

Stephen M. McConnell, Atlantic’s former U.S. Country Director

Atlantic’s McConnell had full faith in CMA’s lawyers, but still thought that defeating the government in court was a long shot. He recalls telling them that he “didn’t think they could get it done.” Even so, he firmly believed that Atlantic’s funding for the suit, in the initial grant in 2009 and in a second one in 2011, was a sound investment.

“I knew that if they did succeed, the payoff would be huge,” recalls McConnell. “I also thought that even if they didn’t succeed, they would put HHS on notice and send a signal to providers and build awareness and set the stage for future reforms. ”

CMA lawyers also saw little downside to proceeding with their class action. “Like doctors, we always want to make sure to do no harm,” says CMA executive director Stein. “We decided we couldn’t make the situation worse. The [improvement standard] was already being applied all the time.”



One of Atlantic's goals was to elevate the importance of care for people with chronic conditions.

A SPEEDY SETTLEMENT

CMA and VLA filed *Jimmo v. Sebelius* along with a motion for certification of a nationwide class action in federal district court in Burlington, Vt., on January 18, 2011. The lead plaintiff was Glenda Jimmo, a then-76-year-old Vermont resident who had lost the home nursing services she relied on to manage serious complications from diabetes after her condition was deemed stable and her Medicare benefits were cut. Additional named plaintiffs included Medicare beneficiaries from Rhode Island, Pennsylvania, and Maine, as well as the Paralyzed Veterans of America, the Alzheimer's Association, the Parkinson's Action Network, the National Multiple Sclerosis Foundation, and other national advocacy groups.

The settlement CMA struck with Medicare officials was widely hailed as a major victory for plaintiffs.

Plaintiffs received an early bit of good news when federal district court judge Christina Reiss, who had issued the decision on behalf of Vermont Medicare beneficiary Sandra Anderson, was assigned to the *Jimmo* case.

But they still had to defeat the government's motion to dismiss. In July 2011, Judge Reiss heard oral arguments on that motion. The government's key contentions were that the court lacked jurisdiction in the case, and that plaintiffs had failed to state a proper claim for relief.

In late October, however, Reiss rejected those arguments and ruled that *Jimmo v. Sebelius* could proceed.

With a trial in the case slated for spring 2012, the government moved to settle. Negotiations took place through most of 2012. By that October, the two sides had struck a tentative deal, and in late January 2013, a final settlement, which included certification of a nationwide class of Medicare beneficiaries, was formally approved by Judge Reiss.

When news of the proposed deal was first announced, it was widely hailed as a victory for plaintiffs. The *New York Times* ran an editorial noting that the settlement "should make it easier for tens of thousands of disabled and chronically ill people to qualify for Medicare coverage." That, added the *Times*, was "clearly the humane thing to do."

The deal contained several key provisions. First, CMS agreed to revise relevant portions of the Medicare Benefit Policy Manual to remove any suggestion that a beneficiary must show a potential for improvement. The determining factor was to be the need for skilled care.

Second, CMS agreed to conduct a national education campaign to ensure that health care providers and Medicare benefits contractors and adjudicators clearly understood the corrected coverage standards. Moreover, it pledged to do random samplings of Medicare coverage decisions to make sure the amended standards were being adhered to, and also schedule regular follow-up meetings with opposing counsel so plaintiffs could air any continuing concerns.

To help ensure that those terms were met, the agreement also stated that Judge Reiss would retain jurisdiction over the settlement (and any necessary follow-up enforcement actions) through at least the end of 2016.

CMA lawyers did not get everything they wanted under the settlement. During the negotiations, they had pushed hard to get CMS to issue a formal ruling that clearly stated that the improvement standard no longer applied—which in their view would carry greater weight. The government's side refused to commit to publishing a ruling, however, and ultimately plaintiffs lacked sufficient leverage to force the issue.

Three years after the settlement, CMA continued to hear reports from around the country that health care providers and Medicare benefits contractors were still using the improvement standard to deny coverage.

Still, initially at least, CMA was optimistic that the agreement would produce genuine reforms—and make it far easier for Medicare beneficiaries with chronic illnesses and disabilities to get the therapy and nursing services they need. Once the deal was done and CMS began implementing the settlement, however, CMA's hopes began to fade.

In CMA's view, Medicare officials were doing the bare minimum required to comply with the settlement.

40
percent

of Medicare
beneficiaries
who qualified
for skilled
therapy were
not getting it

In CMA's view, Medicare officials were doing the bare minimum required to comply with the settlement. And though they had revised the agency's benefits policy manuals, as required, CMA believed that in large part the efforts to get the word out about the changes had not been effective.

As a result, three years after the settlement, CMA continued to hear reports from around the country that health care providers and Medicare benefits contractors were still using the improvement standard to deny coverage. Moreover, according to CMA, random sampling of Medicare coverage decisions confirmed that the problem persisted: In roughly 40 percent of the cases examined, Medicare beneficiaries who qualified for skilled therapy were not getting it.

CMA repeatedly urged Medicare officials to step up their communications effort. At one point, it went so far as to draft a Frequently Asked Questions section for the CMS website, but, according to Stein, Medicare officials refused to post them.

In the end, CMA concluded that all its complaining and cajoling were futile. In March 2016, the group returned to court to file a motion against Medicare officials for non-compliance with the settlement. CMA further detailed its complaints against CMS at a hearing before Judge Reiss and asked the court to compel Medicare officials to make good on the changes they had promised under the agreement.

In an August 2016 decision, the judge found that the effort to inform Medicare contractors and providers about the amended coverages standard was indeed inadequate, noting that at least some of the information provided as part of CMS's communications campaign was "inaccurate" and "nonresponsive."

"Plaintiffs bargained for the accurate provision of information regarding the maintenance coverage standard, and their rights under the Settlement Agreement would be meaningless without it," wrote Judge Reiss.

In a subsequent ruling, the judge ordered Medicare officials to implement a "corrective action plan" to prevent any misunderstanding or misreading of the *Jimmo* settlement. As part of the plan, CMS was required to publish a new web page on the settlement, along with a statement disavowing the improvement standard, and also develop a new training program for health care providers and those making Medicare coverage decisions.

Despite the challenges CMA has faced in enforcing the settlement, the case clearly established that Medicare beneficiaries with chronic health conditions or disabilities are entitled to long-term therapy.

KEY TAKEAWAYS

Despite the challenges CMA has faced in enforcing the settlement agreement, the *Jimmie* litigation has helped establish that U.S. seniors with chronic health issues or disabilities are entitled to long-term therapy under Medicare.

As such, it has clearly served to advance Atlantic's goals of improving seniors' access to quality health care and making Medicare more responsive to those with chronic conditions.

The case also offers a model for how donors can provide direct funding for specific pieces of litigation to achieve their objectives. For that model to succeed, partnering with the right organization is critical. The Center for Medicare Advocacy not only had unparalleled knowledge of and experience with the issues at stake in the *Jimmie* suit, it also had expert litigators on staff.

In hindsight, CMA executive director Stein says the settlement the group negotiated would likely have worked out far better if CMA had insisted on the right to conduct periodic evaluations of Medicare's education campaign. "The lesson is, build in an evaluation process and ongoing monitoring," says Stein.

Winning a settlement with the government is only the first step. Actually making it work is a far bigger job.

The bigger point, according to CMA litigation director Deford, is that parties that agree to a settlement can't be too careful. "There's not much guarantee a settlement will work out the way you expect," he says. "We thought we had touched all the bases. But you can't just dot all the i's and cross the t's. You have to put in semicolons and dashes as well."

Atlantic's McConnell also sees a lesson in this case for funders. While winning a settlement with the government is almost never easy or quick, he notes that actually making it work is a far bigger job, and that both litigants and their funders need to be prepared for the long haul. "The lesson is, recognize that getting a settlement is only the first step," he says. "Implementing it and protecting it and improving it and adjusting it are a lot tougher."

Striking a settlement is often just the first step. Public interest lawyers and their funders need to be prepared for the long haul.



Conclusion

Trying to predict how courts might rule in any major lawsuit is never easy. Litigation is inherently unpredictable, and that's certainly true of litigation that seeks to protect human rights, advance social and economic justice, and bring about large-scale social change.

There is no surefire way to forecast how many years a given court battle might last or cost, and no guarantee that it will succeed.

Still, as the cases presented in this *Insights* illustrate, a commitment to strategic litigation can yield powerful results, from groundbreaking new legal protections for transgender people in the Republic of Ireland to sweeping reforms of abysmal school conditions in South Africa and of race-based police profiling in New York.

Support for strategic litigation often requires a major investment. For funders seeking to make a large-scale impact, however, it can be a highly cost-effective way to promote social and economic change.

"I think almost invariably the yield on strategic litigation is disproportionate to the investment in terms of numbers of people affected and scale of change that it can deliver in terms of how law is interpreted and policy is applied," says Martin O'Brien, Atlantic's former senior vice president for programmes. "If you look closely at litigation relative to other ways in which foundations invest their funds, it's clear it can be very good value."

Strategic litigation can yield powerful results and serve as a highly effective tool for challenging unjust laws and government policies.

Strategic lawsuits often draw wide attention to social problems and can help mobilize and build public support for sweeping reforms.

That said, funders who support strategic litigation need to be prepared for a potentially long haul. Obtaining a landmark ruling or settlement can take years or even decades, as the lawyers who spearheaded Lydia Foy's 18-year fight for transgender recognition can attest. And in many instances, winning a favorable court decision or settlement can be just one step in a much longer fight. Attorneys for plaintiffs in the cases profiled in this volume often had to make repeated follow-up trips to court to ensure that the rulings and settlements they secured were actually enforced and implemented. As Lisa Draga, the attorney who represented Equal Education in South Africa, noted, strategic litigation requires patience and perseverance. Funders who support that litigation may need to be prepared for a long haul.

“If you look closely at litigation relative to other ways in which foundations invest their funds, it's clear it can be very good value.”

Martin O'Brien, Atlantic's former senior vice president for programmes

Equal Education ultimately succeeded in winning new regulations for school infrastructure in South Africa. But while the norms and standards litigation it brought was central to that effort, the outpouring of public support it received from tens of thousands of students, parents, teachers, and other protesters around the country helped ratchet up pressure on the government, and played a crucial role in compelling the Minister of Basic Education to finally issue the new school infrastructure standards.

Public pressure, including high-profile rallies and mass marches demanding police reform, also proved to be a critical complement to the Center for Constitutional Rights' suit to end racially targeted police stops in New York City. The thousands of demonstrators who turned out to protest the NYPD's stop-and-frisk policies made it clear that those policies had to change, and gave far greater legitimacy to CCR's legal challenge.

As in the norms and standards litigation, the stop-and-frisk suit underscores the need for building alliances with local activists and using litigation as part of a broader, multi-front media and lobbying campaign. As O'Brien notes,

litigation can be a highly effective tool for directly challenging existing laws and government policies.

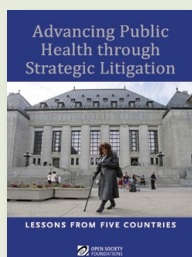
Likewise, strategic lawsuits often draw far wider attention to social problems and can help mobilize and build public support for change.

O'Brien and others, however, caution that litigation by itself can accomplish only so much. As the cases profiled here clearly show, ensuring that court decisions and settlements are enforced and implemented can be a whole other battle. And for that fight, it's essential that community activists and citizens get engaged and hold governments accountable. "What is important is that change happens on the ground," says Melissa Murray of PILS in Belfast. "There has to be follow-up to educate and empower those affected by government inaction, and pressure it to do what it is supposed to do."

While litigation can require a major commitment of resources, it's also proven to be a cost-effective way to promote social and economic change.

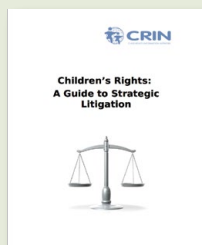
Appendix

For additional reading on the topic of strategic litigation, the following reports and case studies are available to be read online or downloaded.



Advancing Public Health through Strategic Litigation

This Open Society Foundations publication presents six case studies from different parts of the world, focusing on various health rights issues and the concerns of affected communities. These studies reveal lessons for practitioners interested in pursuing this work and for funders concerned about justice and health. www.opensocietyfoundations.org/reports/advancing-public-health-through-strategic-litigation



Children's Rights: A Guide to Strategic Litigation

This guide from the Child Rights Information Network is designed to help those working toward the advancement of children's rights to understand what strategic litigation is, and to consider using the law in the courtroom as an option for effective advocacy. www.crin.org/en/docs/Childrens_Rights_Guide_to_Strategic_Litigation.pdf



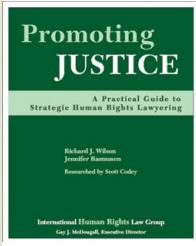
From the Streets to the Courts to City Hall: A Case Study of a Comprehensive Campaign to Reform Stop-and-Frisk in New York City

This case study explores how Communities United for Police Reform successfully campaigned to end stop-and-frisk abuses in New York City. Stop-and-frisk is a practice of police officers stopping individuals they deem suspicious, questioning them, and frequently frisking them for weapons and other contraband. www.atlanticphilanthropies.org/case-studies/from-the-streets-to-the-courts-to-city-hall-a-case-study



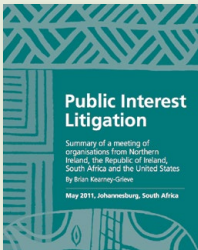
Hassan v. NYPD

Produced by Flatbush Pictures, *Hassan v. NYPD* tells the dramatic story of how 10 New Jersey plaintiffs — a group of imams, college students, business owners, school teachers, and a U.S. Army sergeant — came together to stand up to the NYPD in a critical fight for equal protection under the Constitution and how they won. www.atlanticphilanthropies.org/videos/hassan-v-nypd



Promoting JUSTICE: A Practical Guide to Strategic Human Rights Lawyering

This report from the International Human Rights Law Group explores the strategic methods and practices employed by legal service organizations from more than 50 countries around the world to promote and support democracy, human rights, and access to justice. http://pdf.usaid.gov/pdf_docs/Pnadf477.pdf



Public Interest Litigation: Summary of a Meeting with Atlantic Reconciliation & Human Rights Grantees

Public interest litigation can be fraught with challenges, but a summary of a meeting in May 2011 of Atlantic grantees working in this area offers practical tips to help organizations make the best use of this important tool. www.atlanticphilanthropies.org/research-reports/public-interest-litigation-summary-of-a-meeting-with-atlantic-reconciliation-human-rights-grantees



Public interest litigation and social change in South Africa: Strategies, tactics and lessons

This book covers the field of public interest litigation in South Africa. www.atlanticphilanthropies.org/research-reports/book-public-interest-litigation-and-social-change-in-south-africa-strategies-tactics-and-lessons



Short Guide: Strategic Litigation and Its Role in Promoting and Protecting Human Rights

This legal guide from Advocates for International Development provides a short overview of what strategic litigation is, under what circumstances it might be appropriate to pursue it, and what must be considered before embarking on it. www.a4id.org/publications/strategic-litigation-and-its-role-in-promoting-and-protecting-human-rights/



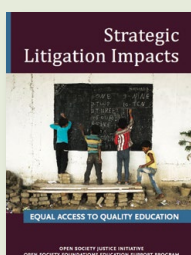
Social Change Initiative: Strategic Litigation Resources

The Social Change Initiative website features a collection of case studies, research reports, and practical guides that explore the use of strategic litigation to advance human rights and social change. www.thesocialchangeinitiative.org/strategic-litigation-resources/



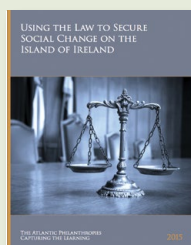
Stepping into the Fight: Legal Advocacy for Funders and Nonprofits

Legal advocacy — also known as advocacy through the courts — uses the judicial system to advance social change goals. These publications and a short video are designed to help inform funders, legal advocates, non-legal advocates, and evaluators about the field of legal advocacy. www.atlanticphilanthropies.org/research-reports/stepping-into-the-fight-legal-advocacy-for-funders-and-nonprofits



Strategic Litigation Impacts: Equal Access to Quality Education

Based on scores of interviews in Brazil, India, and South Africa, this Open Society Foundations study examines the innovative ways that education advocates and social movements are harnessing the power of the judiciary to demand adequate basic education for all. www.opensocietyfoundations.org/reports/strategic-litigation-impacts-equal-access-quality-education



Using the Law to Secure Social Change on the Island of Ireland

This report discusses lessons Atlantic grantees have learned about using the law to secure social change in the Republic of Ireland and Northern Ireland. www.atlanticphilanthropies.org/research-reports/using-the-law-to-secure-social-change-on-the-island-of-ireland



Using the Law to Secure Social Change: Case Studies and Briefs on Legal Advocacy

This collection of short case studies and briefs provides insights into how Atlantic grantees used the law to secure social change in the Republic of Ireland and Northern Ireland. www.atlanticphilanthropies.org/case-studies/using-the-law-to-secure-social-change-case-studies-and-briefs-on-legal-advocacy

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