

Strategic Litigation: Advancing health and human rights through the law

Scott Bernstein, J.D., M.S.
Global Drug Policy Program
Open Society Foundations
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Strategic Litigation – What is it?

- **A legal challenge intended to affect parties beyond the specific case**
- **Not just about “winning” the legal arguments in a court**
- **Intended to influence broader change in**
 - Law
 - Policy
 - Practice, or
 - Social discourse

Strategic Litigation – What is it?

Because it's more than just about a legal case and "winning" it is most effective when part of a broader advocacy campaign / strategy that includes:

- Mobilization of affected groups**
- Letters to human rights bodies**
- Engagement and lobbying of government**
- Establishing coalitions**
- Organizing demonstrations**
- Collecting evidence**
- Media engagement and sensitization**

Strategic Litigation – What is it?

Generally underused. Why?

- Health often not seen as a legal matter**
- Litigation viewed as only a tool of lawyers**
- Necessary expertise out of reach**
- Lack of access to funding**
- Often seen as too adversarial**

Strategic Litigation – Why use it?

1. Strengthen grassroots movements

- Example: *Bedford v. Canada* (legal case challenging the criminalization of sex work-related activities)
 - Led to sex work communities across the nation coordinating efforts on a national level
 - Timed efforts across Canada to coincide with key moments in the litigation (e.g. filing the case, the hearing, judgment)



Demonstrations outside the Supreme Court of Canada during *Bedford v. Canada* hearing

Strategic Litigation – Why use it?

2. Raise broader public awareness

- Strategic litigation attracts media attention & brings attention to:
 - Issues that are being litigated
 - Communities that are affected by the issues
 - Allows issues to be framed in the context of human rights
- Example: In Russia – PWUD challenge ban opioid substitution therapy (OST) → educated public

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Supreme Court ruling opens doors to drug injection clinics across Canada

KIRK MAKIN, SUNNY DHILLON AND INGRID PERITZ
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0 Comments

The Supreme Court of Canada has opened the door to supervised drug injection clinics across the country in a landmark decision on Friday that ordered the federal government to stop interfering with Vancouver's controversial Insite clinic.

The Court was persuaded by evidence that drug addicts are considerably safer administering their own injections under medical surveillance rather than in a public place.

One of the many news stories written about the “Insite” supervised injection site case (*Canada v. PHS Community Services Society*)

Strategic Litigation – Why use it?

3. Have positive impact on law, policy or practice

- Example: *The Minister of Health and Others v. Treatment Action Campaign and Others* (Constitutional Court of S.A.)
- Changed government’s policy of denying pregnant, HIV-positive women medication to prevent transmission from mother to child

Strategic Litigation – Why use it?

4. Have a positive impact on health

- Example: “Insite” supervised injection facility (SIF) case (Canada)
 - Over 30 peer-reviewed studies showing efficacy of Insite at promoting life, health and safety
 - SIFs used in many places around the world
 - Federal government wanted to shut it down
 - Case won the right for Insite to continue saving lives



Strategic Litigation – Why use it?

5. Build capacity of Non-governmental organizations (NGOs)

- Builds expertise and experience of NGOs – especially grassroots organizations
- Learn how to use litigation as a strategy
- Learn how to engage media and other stakeholders
- Provides good training opportunities for organizations

Strategic Litigation – Why use it?

6. Build coalitions and partnerships

- Discover allied organizations (and unlikely allies)
- Foster relationships with medical and other experts
- Example – a series of cases in Uganda addressing maternal mortality resulted in a coalition of over 100 local and international organizations working together
 - Coalition still working beyond legal case and judgment

Strategic Litigation – Why use it?

7. Empower marginalized populations

- Give a voice to those usually without political power – restore dignity and agency
- Dispel myths about the people in these groups
- Promote narrative that they are deserving of rights and inspire others
- Solidify experiences of marginalized communities by turning them into objective evidence for the court



People who use drugs advocating for their human rights outside of courthouse

Strategic Litigation – Why use it?

8. Motivate other branches of government to take action

- Create a pressure point for further political change
- A winning case is a tool for lobbying and advocacy for other changes
- Example: in Georgia, individual claims by prisoners seeking hepatitis C treatment led to broader national policy change

Strategic Litigation – Why use it?

9. Strengthen rule of law and access to courts

- Hold governments accountable for their actions
- Enforce rights-protecting laws
- Promote access of marginalized communities to judicial system & demystify the process

Conclusions

Strategic litigation has limitations and risks

- Cost
- May lose case
- May win the case, but not get the policy change you want
- Difficulty in finding suitable plaintiffs
- Difficult for plaintiffs themselves (harassment, challenges of court, etc.)

Conclusions

But – strategic litigation can be an effective tool for advancing individual and community health & human rights, building capacity of NGOs and promoting dignity and agency of marginalized communities.

Thank you!

Scott Bernstein
Global Drug Policy Program
Open Society Foundations
scott.bernstein@opensocietyfoundations.org