



POVERTY AND HUMAN RIGHTS CENTRE

**ADVANCING THE RIGHTS
OF POOR WOMEN**

Strategic legal advocacy initiatives

Summary of research findings

Melina Buckley

APRIL 2010

Introduction

Advancing the Rights of Poor Women (ARPW) is a project of the Poverty and Human Rights Centre. In 2008 and 2009, with the support of the Law Foundation of British Columbia, Gwen Brodsky, Melina Buckley, Shelagh Day, Sharon McIvor, and Pamela A. Murray examined, through consultations and research: 1) some central issues affecting the lives of poor women in British Columbia today; and 2) strategic legal advocacy initiatives in Canada and other countries that provide insights into the determinants of success for innovative human rights work on behalf of poor women.

Findings from this work appear in two reports: *Advancing the Rights of Poor Women – Strategic Legal Advocacy Initiatives*; and *Advancing the Rights of Poor Women – The Vicious Circle*.



**‘SOCIAL RIGHTS’
REFERS TO LEGAL
PROVISIONS THAT
GUARANTEE RIGHTS
TO AN ADEQUATE
STANDARD OF
LIVING.**

Advancing the Rights of Poor Women

The objective of this project is to rethink legal strategies and to assist in designing an innovative, strategic legal advocacy initiative that will advance the social rights of poor women. ‘Social rights’ refers to legal provisions that guarantee rights to an adequate standard of living, including food, shelter and clothing; just and favourable conditions of work; access to education and to the highest attainable mental and physical health; and social security. Such rights are explicitly set out in international treaties to which Canada is a signatory. Arguably, they are also embedded in the *Charter of Rights and Freedoms*, at least to some degree. Social rights are also reflected in legislative schemes and programs, albeit unevenly and incompletely.

For women in particular, the enjoyment of civil and political rights, such as the right to participate in public life and the right to security of the person, cannot be separated from the enjoyment of social rights. A substantive interpretation of the right to equality requires that women’s material conditions be at the centre of attention.

This report focuses on the models and practices of effective strategic legal advocacy that can be employed to advance the social rights of poor women. By strategic legal advocacy we mean test case litigation, related legal research, policy development, law reform, and advocacy and public legal education, with a strong strategic focus.

In addition to consulting with BC public interest litigation organizations, the ARPW Project investigated innovative models for developing and carrying out strategic legal advocacy initiatives in jurisdictions outside of BC with a focus on rights-based litigation, group-based or systemic complaints and impact-based strategies. This investigation involved:

- reviewing websites of a variety of public interest litigation centres in Canada and abroad;
- identifying organizations and coalitions that employ innovative and effective strategic legal advocacy strategies in Canada and selected other countries and ascertaining their approaches and methods;
- reviewing academic literature, public reports and evaluations on strategic litigation; and



**THE RESEARCH
IS SUMMARIZED
HERE IN ORDER
TO ASSIST OTHER
INDIVIDUALS AND
ORGANIZATIONS
INTERESTED
IN PURSUING
STRATEGIC LEGAL
ADVOCACY.**

- reviewing innovations in the delivery of legal aid services more generally and the connection to strategic litigation.

The research is summarized here in order to assist other individuals and organizations interested in pursuing strategic legal advocacy. The research results are provided under three headings: (a) characteristics of effective strategic legal advocacy process models and organizations; (b) specific examples of strategic legal advocacy models; and (c) legal aid providers and strategic litigation. A brief concluding section sets out the major research findings.

(A) Characteristics of Effective Strategic Legal Advocacy Process Models and Organizations

One of the most comprehensive consultations of human rights legal organizations was carried out by the International Human Rights Law Group (now called Global Rights) in 1999-2000. The aim of the consultations was to identify the characteristics, methods and strategies of effective human rights legal organizations. Input was solicited from over 125 human rights legal organizations and analyzed. Eight key findings were made:

- human rights lawyering organizations that have clearly stated and narrowly defined objectives and targets tend to be more effective than organizations with wide-ranging and comprehensive goals;
- the most effective organizations tend to develop individual specializations or focus on thematic priorities or groups. Organizations that think structurally and strategically about the application of limited resources have the greatest impact;
- strategic litigation is an important tool for promoting human rights, but it is most effective when combined with other strategies such as advocacy, education, lobbying and policy work. Amicus interventions were identified as being particularly useful as they tend to be less resource-intensive and do not have the potential adverse costs implications of being party to litigation;
- the most effective human rights legal organizations work cooperatively and collaboratively with non-legal human rights non-governmental organizations;



**ORGANIZATIONS
THAT THINK
STRUCTURALLY AND
STRATEGICALLY
ABOUT THE
APPLICATION OF
LIMITED RESOURCES
HAVE THE GREATEST
IMPACT;**

- the principle and practice of client empowerment is central to effective human rights legal organizations and lawyering;
- successful human rights legal organisations have expertise in the application of international human rights norms in domestic courts and in the use of international human rights complaint mechanisms;
- it is imperative that the corporate governance and management of human rights lawyering organizations be independent, autonomous, flexible, streamlined and responsive. Organizations governed by numerous and diverse stakeholders tend to be generalist in their approach and less able to develop specializations or priorities. As a result, they may be less able to use scarce resources efficiently or to achieve the greatest impact. For example, human rights legal organizations that are largely governed by tertiary institutions (i.e. universities) found that their litigation capacities are compromised by pedagogical commitments. Other research has found that a lack of independence as between universities and law school human rights clinics has resulted in operational difficulties because of the tension between scholarship and advocacy, and the use of university resources for advocacy purposes; and
- the availability of adequate, reliable and recurrent funding is critical to the ongoing effective operation of human rights lawyering organizations. The consultations disclosed that ‘funding is the single most important factor in the ability of human rights lawyering organizations to effectively predict and meet program objectives’.¹

Gwen Brodsky considered the issue of the requirements for an effective strategic test case litigation program in a paper prepared for the Law Foundation of BC in the context of its funding strategies review. She developed the following summary of requirements:

- a strong strategic focus;
- a commitment to building jurisprudential principles;
- case selections that reflect community priorities;



**IDEALLY STRATEGIC
LEGAL ADVOCACY
INITIATIVES ARE
PART OF A BROADER
SOCIAL MOVEMENT.**

¹ Richard J. Wilson and Jennifer Rasmussen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering* (International Human Rights Law Group, 2001); Philip Lynch, “Harmonising International Humans Rights Law and Domestic Law and Policy: The Establishment and Role of the Human Rights Law Resource Centre,” 7 *Melb. J. Int’l L.* 225 (2006).

- proactive case development and client identification;
- a capacity to undertake interventions and to initiate litigation; and
- effective collaborations.²

Brodsky further concluded: “that a litigation strategy can benefit greatly from collaboration among multiple organizations including public policy organizations such as the Canadian Centre for Policy Alternatives, legal and other academics, front line advocacy workers, litigators including co-counsel, working together and with parallel strategies.” Based on her findings, she recommended that the Law Foundation of BC consider allocating resources for a continuing mechanism that can facilitate and support collaborative strategic litigation efforts.

The need for collaboration is particularly strong in “challenging times” which create the need for organizations serving vulnerable communities to come together to discuss their strengths and weaknesses, engage in critical reflection, and develop a strategic roadmap for the future.³ Ideally strategic legal advocacy initiatives are part of a broader social movement. This requires that lawyers be prepared to engage in empowerment processes as well as being sophisticated and well-informed about theories of social change, methods of organizing, and ways of analyzing power relations in a given community or worksite. The legal team must: “be able to envision legal rules and claims that can serve a larger collective strategy, strengthen a given organization, or encourage democratic leadership.”⁴

The ARPW Project has identified four major themes in the literature on effective strategic legal advocacy: (1) documenting the problems/issues and making strong connections to the community most directly affected; (2) strengthening social movements by building networks and coalitions; (3) employing creative actions and communications; and (4) conceptualizing litigation goals and strategies in novel ways.

Some of the more innovative comments, specific recommendations, and noteworthy examples are set out here.



**“IN MY VIEW
POLICY IS ALWAYS
BEST IMAGINED,
WON AND MADE
REAL WHEN THOSE
MOST AFFECTED
BY ITS TERMS ARE
IN MOTION AND IN
FULL VOICE”**

² Gwen Brodsky, *LFBC Funding Strategies Review – Overview of Trends and Themes* (Law Foundation of BC, June 2007).

³ Victor Narro, “Finding Synergy Between Law and Organizing: Experience from the Streets of Los Angeles,” 35 *Fordham Urb. L.J.* 339 (2008).

⁴ *Ibid.*

Documenting problems and connections to community

Legal commentators and practitioners note:

- the need to listen to community members — referred to as “deep preparatory research” — to hear vocabularies, to learn the groups with which they identify and the traditions that draw their loyalty and satisfy their notion of the good and right. One commentator says: “In my view policy is always best imagined, won and made real when those most affected by its terms are in motion and in full voice”;⁵
- the importance of documenting the campaigns carried out, their strengths and weaknesses and results;⁶
- the effectiveness of fact-finding missions. For example, the International Women’s Human Rights Clinic at Georgetown carried out fact-finding missions in Uganda and Tanzania regarding women’s rights. Students carried out research on local conditions and laws and were trained in appropriate interview techniques. This fact-finding work “contributed to a better understanding and documentation of the nature and dynamics of gender discrimination in these African countries.” Benefits included: preparation of in-depth analytic reports that increased understanding of the role of laws in perpetuating discrimination and fed into the advocacy work for legal reform; documentation of human rights violations; putting a “face to victims of discrimination” and documenting key stakeholders’ views on how the discriminatory laws operate and what legal reforms were needed;⁷
- the challenge is to gather enough information to determine how a nominally flexible program is actually being implemented in order to make a strong case for unconstitutionality/need for change.⁸



THE CHALLENGE IS TO GATHER ENOUGH INFORMATION TO DETERMINE HOW A NOMINALLY FLEXIBLE PROGRAM IS ACTUALLY BEING IMPLEMENTED.

5 Frances Ansley, “Doing Policy from Below: Worker Solidarity and the Prospects for Immigration Reform,” 41 Cornell Int’ L.J. 101 (2008).

6 Ibid.

7 Esther Kisaakye, “Reflections on the Contribution of Georgetown’s International Women’s Human Rights Clinic to Advancing the Protection of Women’s Human Rights in Uganda and Tanzania,” 7 The Georgetown Journal of Gender and Law 343 (2006) at 344.

8 Mark Tushnet, “Litigation Campaigns and the Search for Constitutional Rules,” 6 Journal of Appellate Practice and Process 101 (2004).

Building networks and coalitions

Legal commentators and practitioners note:

- the value of establishing a communications network through which organizations working on common/related issues can share information, organizing strategies and ideas for strengthening their movement;
- the insufficiency of individual rights-based litigation as a strategy to bring about social change, but its value as a part of a “mass movement with legislative, regulatory and protest dimensions”;⁹ and
- the importance of litigation that empowers social movements rather than marginalizes them.



**LEGAL ADVOCATES
NEED TO BE MORE
CREATIVE IN
THE USE OF NEW
MEDIA AND OTHER
COMMUNICATIONS
STRATEGIES.**

Employing creative actions and communications

Commentators note here that:

- there is a great deal of creative work for lawyers, and other professionals, as well as intellectuals and artists, in finding information and producing the materials that will help organizations and movements to educate their own members about many things including policy matters. Developing new slogans and vocabularies help frame and define issues;¹⁰
- international norms need to be used to reframe public debate, to formulate a proactive agenda and to demand positive measures. International norms can be used to empower and energize affected communities;¹¹
- success lies in the capacity to shape deliberations in new and fruitful ways. This involves suggesting novel concepts to reframe how we use law to advance the social policies that we desire;¹²

9 Maria Foscarinis, “Advocating for the Human Right to Housing: Notes from the United States,” 30 N.Y.U. Rev. L. & Soc. Change 447 (2005-2006).

10 Frances Ansley, “Doing Policy from Below: Worker Solidarity and the Prospects for Immigration Reform,” 41 Cornell Int’ L.J. 101 (2008).

11 Roderick A. Macdonald, “In Search of Law” (prepared for the Advisory Council of the Law Commission of Canada, 1999) cited in Reg Graycar and Jenny Morgan “Law Reform: What’s in it for Women?” 393 23 Windsor Y.B. Access Just. (2005) at footnote 39.

12 Roderick A. Macdonald, “Does Law Reform Depend Upon Lawyer Reform?” (Speech presented to the Canadian Bar Association, February 1999) cited in Graycar and Morgan, *supra*, at footnote 38.

- law reform activities should be focussed not just on formal legal change, but they should stimulate public debate about a particular issue or develop new ways of thinking about a particular legal concept;¹³ and
- legal advocates need to be more creative in the use of new media and other communications strategies.¹⁴

Conceptualizing litigation goals and strategies in novel ways

Commentators say:

- the goal of most strategic litigation is a simple and easily understood legal rule as opposed to standards, because standards can only be generated through fact-intensive litigation that most public interest litigation organizations cannot afford;¹⁵
- a review of school desegregation litigation leading up to *Brown v. Board of Education* reveals an initial resource-intensive stage invoking a general standard of constitutional law to challenge practices in particular settings; followed by a shift to a strategy of seeking a flat and easily enforced rule that would make it clear that practices in a large number of settings were unconstitutional; followed by a backlash leading to a return to fact-specific litigation (this pattern is also seen in US death penalty and prison reform strategic litigation);¹⁶
- successful promotion of economic, social and cultural rights should always be linked to vigorous social movements and effective advocacy strategies. Human rights practitioners need to “think both creatively and critically about strategies for developing the legal and political architecture necessary for the effective enforcement of economic, social and cultural rights”;¹⁷



AN IMPORTANT GOAL MAY BE OBTAINING JUDICIAL DECISIONS THAT ENABLE THOSE DEFENDING SOCIAL RIGHTS ON THE GROUND TO PROMOTE CONCRETE CHANGES IN STATE POLICY.

13 Greycar and Morgan, *supra*, at 403.

14 Greycar and Morgan, *supra*.

15 Mark Tushnet, “Litigation Campaigns and the Search for Constitutional Rules,” 6 *Journal of Appellate Practice and Process* 101 (2004)

16 *Ibid.*

17 James L. Cavallaro and Emily J. Schaffer, “Less is More: Rethinking Supranational Litigation of Economic and Social Rights in the Americas,” 56 *Hastings L. J.* 218 (2004-2005) at 219.

- those who seek sustainable, structural, transformative changes are best served by adopting a restrained incremental “less is more” approach to expanding these rights. The degree of compliance with judicial decisions is significantly enhanced when cases are accompanied by social pressure on domestic authorities through a variety of other means — level of media and public interest;¹⁸
- specific recommendations include: defend the civil and political rights of leaders of social movements; file and win cases involving a limited set of social rights in conjunction with organized social movements;¹⁹
- an important goal may be obtaining judicial decisions that enable those defending social rights on the ground to promote concrete changes in state policy;²⁰
- the Inter-American Commission on Human Rights developed a range of ways to affect resolution of structural human rights issues, including: observation and reporting on general human rights conditions; publication of reports on specific human rights issues; organization of conferences, seminars and meetings with representatives of various organizations; providing a summary of the status of compliance with its recommendations in its Annual Reports. This range of activities can be replicated by other organizations;²¹
- litigation strategies should include: (1) gradual expansion of the interpretation of human rights; (2) expansion of concepts of discrimination; (3) a focus on hybrid rights — social rights found in established civil and political rights; (4) clearly identifying situations of abuse/violations and the victims; (5) a focus on rights with unquestioned access to courts. Given limited access and resources, it is preferable to look at the justice system not as an arbiter of disputes but as a mechanism for producing jurisprudence with potentially sweeping policy implications.²²



**IT IS PREFERABLE
TO LOOK AT THE
JUSTICE SYSTEM
NOT AS AN ARBITER
OF DISPUTES BUT
AS A MECHANISM
FOR PRODUCING
JURISPRUDENCE.**

18 *Ibid.*

19 Cavallaro and Schaffer, *supra* at 221.

20 *Ibid.*

21 Cavallaro and Schaffer, *supra* at 228.

22 Cavallaro and Schaffer at 270-275.

(B) **Specific Examples of Innovative and Effective Strategic Advocacy Models**

ARPW has identified a number of organizations that have developed innovative and effective strategic advocacy models and/or are engaged in legal advocacy on social rights issues. They have different structures and somewhat different strategic goals.

This section sets out some of the key features of each of these organizations.

Human Rights Law Resource Centre (Victoria, Australia)

The Human Rights Law Resource Centre (HRLRC) is the first specialist human rights law resource centre in Australia using an innovative service delivery model to promote human rights. Established in 2006 by the Public Interest Law Clearing House Inc ('PILCH') and the Victorian Council for Civil Liberties Inc. ('Liberty Victoria').

The model draws together and coordinates the capacity and resources of *pro bono* lawyers and legal professional associations, the human rights law expertise of university law schools, and the networks, grass root connections and community development focus of community legal centres and human rights organisations.

The HRLRC has two primary aims:

- First, it aims to promote, protect and contribute to the fulfilment of human rights in Australia — particularly the human rights of people who are disadvantaged or living in poverty — by contributing to the harmonisation of law, policy and practice in Australia with human rights norms and standards. Through a range of activities, including strategic litigation, the HRLRC seeks to bring to bear the influence of international human rights instruments and standards on domestic law and policy.
- The second aim of the HRLRC is to empower people who are disadvantaged or living in poverty by operating and providing services within a human rights framework, including by: treating people with fairness, dignity and respect; promoting equality and freedom from discrimination; promoting participation and the principle that people should have a say in processes and decisions that affect them; and promoting social inclusion and



THE CENTRE PLANS TO ACHIEVE THESE AIMS BY PROVIDING PRO BONO EXPERT ADVICE, ASSISTANCE, RESOURCES AND SUPPORT.

community development. This aim is informed by research and past practice which demonstrates that a client's relationship with his or her lawyers, together with that client's experience of legal processes, can itself contribute to, or derogate from, the physical, psychological, social and emotional well being and human rights of the client.

The Centre plans to achieve these aims by providing *pro bono* expert advice, assistance, resources and support to community legal centres, human rights organisations, non-profit organisations and marginalised or disadvantaged groups to pursue human rights litigation, policy analysis and advocacy, education, monitoring and reporting.

Its range of planned activities include: supporting, conducting, coordinating, resourcing, facilitating and enhancing the provision of legal services, litigation, education, training, research, policy analysis and advocacy regarding human rights.

The HRLRC is governed by a small board and a larger advisory committee. Initial funding for one year pilot phase was received from a range of philanthropic and corporate sponsors, including the National Australia Bank Legal Department, Aliens Arthur Robinson, the R E Ross Trust and the Victoria Law Foundation.

During the pilot period, the HRLRC sought funding for a comprehensive independent evaluation of the HRLRC. Pending the outcome of the evaluation, recurrent funding for the operation of the HRLRC came from a range of philanthropic, private and public sector sources. The HRLRC expects to obtain funds from the Victorian Government as a component and outcome of the Government's Human Rights Consultation Project, as well as from both federal and state governments through the Community Legal Services Program Fund.²³

Los Angeles Workers Centres

Los Angeles Workers Centres are described as “next-wave organizations”: community-based and worker-led campaigns have confronted issues of worker exploitation and lack of corporate responsibility through creative and unique organizing strategies — including litigation.

²³ See website: <http://www.hrlrc.org.au/>. Philip Lynch, “Harmonising International Humans Rights Law and Domestic Law and Policy: The Establishment and Role of the Human rights Law Resource Centre,” 7 Melb. J. Int’l L. 225 (2006)



THE CENTRES ARE DEALING WITH A HYBRID OF CIVIL RIGHTS AND LABOUR RIGHTS CONCERNS.

The goals of the Workers Centres are to: be effective and strategic in building leadership, advance low-wage worker and immigrant rights, and develop successful models for organizing immigrant, contingent and temporary workers.

The Centres are dealing with a hybrid of civil rights and labour rights concerns. Workers face both inadequate laws and lack of effective enforcement of protective workplace laws that do exist.

The Centres are concentrated in geographic areas with high concentrations of workers. Different Centres focus on workers from a particular occupation or industry or ethnic group, but they have some common features:

- they provide services (legal representation, language classes, health care referrals, advocacy, and meeting space);
- they emphasize organizing and leadership development because they see their membership as an integral part of their internal organizational and campaign development;
- they provide case management systems for their members that focus on wage and hour claims and other labour violations;
- they provide workshops on health and safety issues and on access to quality health services;
- they engage in advocacy campaigns on policy issues that affect their members.

The Workers Centres sustain their membership through systematic implementation of leadership and campaign development programs and integration of membership development with case management and other direct services.

The Centres have employed creative public action to inform consumers and to energize boycotts. Workers were consulted at “corner meetings” (i.e. on the street) regarding rights litigation. In one case a huge march and rally of workers took place en route to the courthouse to launch a suit (many local lawyers acted as observers to the march). The interaction between street demonstrations and court decisions has empowered workers. Some reforms have been achieved, and there has been some shift over time toward state-wide and national campaigns based on local successes

Through the campaigns, workers develop leadership skills in areas of public speaking, media communications, delegation visits, public testimony and collective action. Through hybrid apprenticeship and technical



**THE INTERACTION
BETWEEN STREET
DEMONSTRATIONS
AND COURT
DECISIONS HAS
EMPOWERED
WORKERS.**

assistance programs, larger organizations dedicated to advancing the human rights of workers were able to provide workshops and hands-on technical assistance for the community groups that were establishing day-labourer centres or organizing projects.

In 2002 U.S. Supreme Court held in *Hoffman Plastic Compounds v NLRB* that undocumented immigrants who were fired because they participated in union activities were not entitled to back pay under the *National Labor Relations Act*. This disappointing decision created the opportunity to develop a proactive strategy to reaffirm labour protections. It led to a resurgence in coalition building between workers' organizations and governments as well as coalitions between grassroots and national organizations. This activity resulted in important policy changes.

Some court victories have also provided opportunities to establish the strategic analysis and framework for political and community organizing campaigns and created tremendous leverage.

The Centres have been successful in maintaining public debate on the topic of undocumented immigrants. They are a strong voice for the rights of immigrants. They have affected media reports and the way the larger public perceives immigrant and low wage worker issues. Campaigns played a major role in dramatically changing the climate and altering the terms of the debate at the local level.

The strengths of the Los Angeles Workers Centres are creative organizing strategies; emphasis on leadership development; and seeking opportunities for strong political and community alliances.²⁴

Environmental Law Centre – University of Victoria

The Environmental Law Centre at the University of Victoria describes itself as a place: “where local community, environmental groups and First Nations have the legal tools and resources to advocate effectively for the restoration, conservation, and protection of this province’s unique and diverse environment.”

The Centre’s goals are to:

- Inspire and educate students by providing hands-on advocacy experience and direct exposure to the challenges and rewards of public interest environmental law;



**LOCAL COMMUNITY,
ENVIRONMENTAL
GROUPS AND FIRST
NATIONS HAVE
THE LEGAL TOOLS
AND RESOURCES
TO ADVOCATE
EFFECTIVELY.**

²⁴ Victor Narro, “Impacting Next Wave Organizing: Creative Campaign Strategies of the Los Angeles Worker Centers” 50 New York Law School Review 465 (2005-2006).

- Engage and collaborate with local communities, environmental groups, and First Nations through the provision of timely legal information and effective *pro bono* legal representation;
- Advocate for reforms to environmental laws through thoughtful, scientifically sound, and pragmatic legislative proposals;
- Enhance access to justice by producing high quality academic research and participating in administrative and court proceedings.

The Centre also publishes legal critiques; obtains information through Freedom of Information requests; uses theatre workshops to explore intuitive and analytical solutions to the problem of climate change; employs articling students; and has an Associate program for members of the legal profession, through which it sponsors bimonthly conference calls to identify and discuss pressing issues, share knowledge, and collaborate on legal challenges.²⁵

Impact Fund (California)

The mission of the Impact Fund is to provide strategic leadership and support for litigation to achieve economic and social justice. It provides funds for impact litigation in the areas of civil rights, environmental justice, and poverty law. The grant-making program is aimed at facilitating systemic impact litigation across US.

The Impact Fund was established with the idea of helping “smaller” firms and non-profits litigate “big” cases. Over 17 years it has expanded its direct services and programs. Currently the Fund offers innovative technical support, training, and expertise on issues that arise in large-scale impact litigation. It also serves as lead counsel, co-counsel and *amicus* counsel in select class action and impact litigation. The Impact Fund maintains an *amicus* brief docket and publishes frequently on a broad range of civil and human rights issues.²⁶

The Impact Fund’s Equal Justice Litigation Program provides counseling, advice and assistance on procedural and substantive issues that arise in complex litigation. It is also a designated Support Center for Legal Service Projects funded by the California State Bar Association’s Legal Services Trust Fund.



**THE IMPACT FUND
CURRENTLY HEADS
UP A CIVIL RIGHTS
CLASS ACTION
TEAM, TAKING
ON THE WORLD’S
LARGEST EMPLOYER,
WAL-MART STORES,
INC.**

²⁵ See website: <http://www.elc.uvic.ca/>

²⁶ See website: <http://www.impactfund.org/>

Most notably, the Impact Fund currently heads up a civil rights class action team, taking on the world's largest employer, Wal-Mart Stores, Inc., in the largest civil rights class action in history.

Highlander Research and Education Center (Appalachia and the South)

The Highlander Research and Education Center is a place where grassroots leaders from community organizations, labour unions and local movements for change have been coming together across racial lines to participate in educational workshops and strategy sessions for over seventy years.

Highlander describes itself as: “a catalyst for grassroots organizing and movement building in Appalachia and the South. We work with people fighting for justice, equality and sustainability, supporting their efforts to take collective action to shape their own destiny. Through popular education, participatory research, and cultural work, we help create spaces — at Highlander and in local communities — where people gain knowledge, hope and courage, expanding their ideas of what is possible. We develop leadership and help create and support strong, democratic organizations that work for justice, equality and sustainability in their own communities and that join with others to build broad movements for social, economic and restorative environmental change.”

The founding principle and guiding philosophy of Highlander is that the answers to the problems facing society lie in the experiences of ordinary people. Those experiences, so often belittled and denigrated in our society, are the keys to grassroots power.²⁷

National Law Center on Homelessness and Poverty (U.S.)

The National Law Center on Homelessness and Poverty focuses on legal research and analysis, producing reports and articles and identifying potential strategies (including litigation, legislative and policy advocacy, community organizing, and engaging international bodies).

The Center initiated the Poor People's Economic Human Rights Campaign — with the goal of applying human rights principles in the organizing efforts of poor and homeless people and their supporters.²⁸



**ALST IS INVOLVED
IN LAW REFORM,
COMMUNITY
ORGANIZING, PUBLIC
LEGAL EDUCATION
AND TEST CASE
LITIGATION.**

²⁷ See website: <http://www.highlandercenter.org>

²⁸ See website: <http://www.nlchp.org/>

Aboriginal Legal Services (Toronto – Legal Aid Ontario Clinic)

Aboriginal Legal Services Toronto (ALST) is one of the Legal Aid Ontario community legal clinics.

Its mission is to strengthen the capacity of the Aboriginal community and its citizens to deal with justice issues and provide Aboriginal controlled and culturally based justice alternatives.

ALST is involved in law reform, community organizing, public legal education and test case litigation. Services include a court workers program; a legal clinic; test case litigation; a Community Council (criminal diversion program); and preparation of reports for sentencing of Aboriginal offenders in Gladue Court (Aboriginal Persons courts).²⁹

Women’s Legal Centre – South Africa

Over its first five years the Women’s Legal Centre (WLC) pursued a strategic approach to advancing women’s rights that integrated litigation with ‘alternative lawyering’ activities. Litigation, advocacy, collaboration and cooperation with other organizations, legal advice, assistance to government agencies and Parliamentary committees, education, and information dissemination were purposefully intertwined. Each strategy added strength and increased the likelihood of achieving substantive goals.

The WLC’s approach to lawyering is unique. Attorneys engage in helping clients with transportation fares, school fees, housing construction costs, and other non-legal problems. All WLC attorneys remark on the extent to which they go beyond what lawyers usually do and “straddle [the line] between being lawyers and social workers”. “You have to be a counsellor when you sit there with the client, sometimes you have to open up your pocketbook. But you get to understand in all of these cases the social factors that intersect with the issue. It contributes to a jurisprudence that takes into account all of these factors that militate against women’s achievement of full equality.”³⁰

Centre for Equality Rights in Accommodation (CERA – Toronto and Ottawa)

The Centre for Equality Rights in Accommodation (CERA) was established to ensure that human rights protections in housing would be effective



**ATTORNEYS
ENGAGE IN HELPING
CLIENTS WITH
TRANSPORTATION
FARES, SCHOOL
FEES, HOUSING
CONSTRUCTION
COSTS, AND
OTHER NON-LEGAL
PROBLEMS.**

29 See website: <http://www.aboriginallegal.ca/>

30 See website: <http://www.wlce.co.za/>

for low income households and to address systemic barriers to accessing affordable accommodation.

CERA's specific objectives are to:

- Promote knowledge and enforcement of human rights in housing among disadvantaged groups and individuals;
- Provide educational materials and programs in housing and human rights to groups whose human rights may have been violated, to landlords, to service providers and to the public at large;
- Provide representation to disadvantaged groups and individuals who believe their human rights have been infringed;
- Encourage and facilitate effective public education and enforcement of human rights by provincial, national and international commissions, agencies, organizations and institutions and by governments; and
- Engage in research into human rights in housing as they affect disadvantaged groups.

To carry out these objectives, CERA has established several programs and engages in various activities, including:

- **Women's Housing Rights Program:** domestic and international in its scope, the Women's Program focuses on advocacy, litigation support, networking and research aimed at investigating and addressing the economic and social conditions that contribute to women's inequality in housing;
- **Human Rights Casework:** over 400 cases a year;
- **Test Case Litigation;**
- **Early Intervention-Eviction Prevention Program:** advocacy services for income supports, housing help, and landlord/tenant mediation; and
- Public Education and Outreach.

Recent projects include:

- targeted human rights advocacy and education focusing on three communities that face particular disadvantage with respect to housing: immigrant and refugee women, homeless and street involved youth, and women who have been victims of violence (workshops, public education materials and one-on-one human



**AN INITIATIVE TO
HELP ENSURE THAT
PEOPLE LIVING
IN NORTHERN
ONTARIO, AND
IN PARTICULAR
ABORIGINAL
COMMUNITIES, ARE
AWARE OF THEIR
HUMAN RIGHTS.**

rights assistance directed at these communities and the agencies that work with them);

- **RightsNorth:** an initiative to help ensure that people living in Northern Ontario, and in particular Aboriginal communities, are aware of their human rights with respect to housing and can access necessary services to protect those rights. CERA also sees RightsNorth as an opportunity to learn how to make advocacy services more relevant for, and accessible to, people living in the North.
- **National Housing and Human Rights Training:** collaborating with others to transfer CERA's model of human rights advocacy in housing to organizations in different parts of Canada (including Yellowknife and NWT). CERA has also created a website on housing rights which is national in scope and incorporates human rights training materials, key cases, and publications related to discrimination in housing (linked to CERA's main site). CERA is also working on a national guide to human rights in housing.

CERA receives funding on a project basis from a mix of governmental and non-governmental sources.³¹

Community Legal Assistance Services for Saskatoon Inner City Inc.

Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) is a recently established student clinic. It has a mandate similar to some other community based law school clinics including Parkdale and Dalhousie Legal Aid.

CLASSIC is a not-for-profit organization governed by a board of directors that includes representation from aboriginal and Metis organizations, community members, law school faculty, Legal Aid, law students and more.

CLASSIC focuses mainly on the provision of free legal services to low income people in the community in areas of law not covered by the Saskatchewan Legal Aid Commission (which does only some criminal and some family law). Thus, the main focus is administrative law — residential tenancies, social assistance, some small claims, wills and estates matters, residential school CEP reconsiderations, and more. Front line legal work is done by law students under the supervision of CLASSIC's supervising



**CLASSIC ALSO
FOCUSES HEAVILY
ON ENGAGEMENT
WITH THE
COMMUNITY
THROUGH PUBLIC
LEGAL EDUCATION.**

31 See website: <http://www.equalityrights.org/cera/>

lawyer. Law students can be involved through the College of Law's clinical program, for credit, or *pro bono*. CLASSIC also has many lawyers involved on a *pro bono* basis, as advisers to students, and also as volunteers for one of the programs that CLASSIC runs, a summary advice clinic where clients meet directly with a lawyer for a guided self-representation session.

CLASSIC also focuses heavily on engagement with the community through public legal education, through partnering with other agencies on various projects. For example, CLASSIC worked with several groups as part of the "Residential School Survivors Support Group" to coordinate a major full day information session on the residential school settlement. Recently, CLASSIC worked with anti-poverty groups to put on a full day workshop on human rights.

CLASSIC is in the process of developing a test case mandate and capacity. The approach is to assemble a group of *pro bono* lawyers to take on test cases with assistance from CLASSIC staff lawyers and students.

CLASSIC is funded by the Law Foundation, the University of Saskatchewan, the Provincial Ministry of Justice, the Urban Aboriginal Strategy (a federal source), and a variety of other sources.³²

(C) Legal Aid Providers and Strategic Litigation

Many public interest litigation organizations do not provide legal services to individuals. Nevertheless, there are lessons to be learned from the engagement of legal aid providers with strategic litigation. A recent study on developments in legal aid service delivery found that the most innovative and important trends are: (1) the move toward more holistic approaches that focus on dealing with underlying problems and preventing recurring legal problems and (2) the provision of comprehensive integrated services (i.e. legal, social and health together).³³

Comprehensive and integrated service delivery models involve the establishment of interdisciplinary teams consisting of lawyers, paralegals, social workers and other professionals to assist a client to resolve the often-interconnected legal and non-legal problems she or he faces. This development accords with the insights gained from multi-year research



**COMPREHENSIVE
AND INTEGRATED
SERVICE DELIVERY
MODELS
INVOLVE THE
ESTABLISHMENT OF
INTERDISCIPLINARY
TEAMS.**

³² See website: <http://classiclaw.ca/>

³³ M.Buckley, *Towards A Renewed Canadian Bar Association Legal Aid Policy: A Discussion Paper on Recent Legal Needs Research and Innovative Approaches to Legal Aid Policy and Service Provision*. (Canadian Bar Association: forthcoming 2009).

into the legal needs: poor and vulnerable individuals tend to experience multiple legal problems that aggregate into cluster types which co-occur with other economic, social and health problems.

These developments have their clear roots in the community legal clinic movement, which grew out of a commitment to provide poverty law services in a manner intended to eliminate, not merely alleviate poverty.³⁴ The model was intended to take a different approach to the legal problems of the poor, one that was based on an understanding of their unique legal needs. Rather than the “case by case” approach still used for many family law and most criminal cases, the community clinic model incorporated community education and development, law reform, and locally elected boards of directors and non-lawyer “community legal workers” into a lawyer-based practice.³⁵ This model has been most successful when it was implemented as intended, “which in practice means when it has actually been multi-disciplinary and community-based.”³⁶

One of the key cross-jurisdictional findings is that despite the systemic goals set by community-based clinics, there is a tendency for individual casework to overwhelm more strategic long-term legal work. There is an important but under-exploited dynamic between individual and systemic work. Individual casework highlights instances where local policies and practices are breaking down or failing on the ground. As the British Legal Service Commission has noted: “[T]his knowledge can be used by Community Legal Services partners to work with central and local government and the private sector to help target policies and make them work, ensuring that rights intended by Government are reaching those most in need.”³⁷ Community Legal Service Partnerships have a role to play in bringing patterns of problems or backlogs to the attention of the relevant government authority, particularly in the areas of access to housing, healthcare and education, and the eradication of poverty. The continued development of legal and advice services “is vital to keeping services relevant and able to respond to new and emerging needs in the community.”³⁸

34 Dianne Martin, “A Seamless Approach to Service Delivery in Legal Aid: Fulfilling a Promise or Maintaining a Myth?” Department of Justice Canada, Research Report (2003).

35 *Ibid*, at 1.

36 *Id*.

37 *Legal and Advice Services: A Pathway to Regeneration*, (England and Wales, Department for Constitutional Affairs, 2004) at 38.

38 *Ibid*, at 35.



**THERE IS AN
IMPORTANT BUT
UNDER-EXPLOITED
DYNAMIC BETWEEN
INDIVIDUAL AND
SYSTEMIC WORK.**

Several strategies have been recommended to overcome the tendency to continually focus on individual casework. Clinics must consciously adopt standards based on these broader systemic goals and measure their work against these outcome-based standards.³⁹ Legal assistance providers should measure outcomes against long-term policy objectives such as ameliorating social inclusion or eliminating inequality. In addition, clinics must develop “seamless services” that is deliver legal aid services in a manner that is integrated into overall legal strategic initiatives that incorporate community development, development of strategic alliances with more influential groups; media work; lobbying; law reform and systemic litigation.⁴⁰

The American Bar Association’s Standards for the Provision of Civil Legal Aid includes Standard 2.6 entitled “On Achieving Lasting Results for Low Income Individuals and Communities.” The standard is: *A provider should strive to achieve both clients’ objectives and lasting results that respond to the low income communities’ most compelling legal needs.*⁴¹

The Commentary on Standard 2.6 states:

General considerations

The effectiveness of a provider can be measured by the tangible, lasting results of its efforts on behalf of its clients and the low income communities it serves. Each provider should strive to accomplish meaningful results in all of the legal assistance activities it undertakes. Lasting results can be achieved in several ways: by favorably resolving individual legal problems; by teaching low income persons how to address the legal problems that they face; by improving laws and practices that affect low income persons; and by assisting members of the low income community to become economically self-sufficient.

The legal problems of individual clients often involve the most basic issues of survival. Problems that merely inconvenience persons who have an economic cushion can have enormous long-term consequences for low income persons and can disrupt every aspect of their lives. An unlawful delay or termination of social security benefits may leave a low income person with no money for food, medicine, shelter or utilities. Unlawful repossession of a car may mean a low



THE LEGAL PROBLEMS OF INDIVIDUAL CLIENTS OFTEN INVOLVE THE MOST BASIC ISSUES OF SURVIVAL.

39 Martin, *supra* at 16

40 Id.

41 American Bar Association, *ABA Standards for the Provision of Civil Legal Aid* (2006). Online: <http://www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2006.pdf>

income person cannot get to work or to necessary medical care. The provider should be able to respond quickly with high quality assistance that favorably resolves these individual problems in a substantial percentage of cases.

Strategic focus

A provider should establish a clear focus for its legal work and for what it seeks to accomplish for and with its clients. Having a strategic focus starts with making intentional choices about what legal work it will undertake, how it will deploy its resources and how it will deliver service. The provider should know what it hopes to accomplish with its legal work so that it can measure if it is successfully achieving desired results for clients.

There are a number of ways in which a provider may maintain a strategic focus that enhances the results achieved for clients. It calls for deliberative decision-making and intentionality at all levels of the provider regarding what the program's legal work is intended to accomplish. At a program level, the provider may set broad goals for its legal work, such as protecting low income persons' access to shelter, or fostering the stability and safety of the family. Many providers set broad priorities that provide the basis for making more specific choices about the acceptance of legal work and the focus in broad substantive areas affecting its clients.

The focus of legal work undertaken by a provider is sharpened if the provider deliberately identifies the broadly stated results it seeks to achieve in major substantive areas, or through its projects or specialty units. Thus, a domestic violence unit might identify an objective in its work to be to help its clients find and retain a safe environment in which to live. Identifying a longer-term goal than simply obtaining a protective order focuses the unit on more long term results and provides a basis for measuring the success of the work in terms of those results.

In each individual case, the client sets the objective and the practitioner representing the client has a responsibility to pursue that objective. In addition, some providers establish benchmarks regarding what the provider deems to be the most desirable, realistic outcome in cases of a certain type. The benchmarks might vary among offices based on what is realistic, given local circumstances. Experience



**THE FOCUS OF
LEGAL WORK
UNDERTAKEN BY
A PROVIDER IS
SHARPENED IF
THE PROVIDER
DELIBERATELY
IDENTIFIES THE
BROADLY STATED
RESULTS IT SEEKS
TO ACHIEVE.**

suggests that setting benchmarks for results in recurring cases tends over time to improve the results achieved.

All types of legal assistance should accomplish results for clients of the provider. A clear strategic focus on the intended results forms the basis for a periodic evaluation of the success of the efforts, and provides the basis making appropriate adjustments, as necessary. In community economic development, for instance, it is important that the provider clearly articulate the objectives intended for the work. The provider should know whether the intended outcome of the work is to create jobs, housing or goods and services, and if a goal is to foster client self sufficiency and independence. Strategies that employ various forms of limited assistance, such as advice lines, community legal education and assistance to *pro se* litigants should also be examined to determine the degree to which those who are assisted learn how to help themselves and accomplish meaningful results with the assistance offered.

When a provider engages in a periodic evaluation of its operation, it should measure the degree to which it is accomplishing meaningful results for its clients. A provider that has clear objectives for its work has a solid basis for a meaningful assessment of the results it achieves.

Systemic advocacy

In the course of serving its clients, a provider is likely to identify laws, policies and practices that have a detrimental effect on low income persons and that deter it from accomplishing desired results. It will also encounter the efforts of others to change policies and laws in ways that harm the interests of low income persons. A provider should engage, when appropriate, in advocacy that addresses such systemic problems. Advocacy to accomplish systemic change is called for when an issue is likely to recur, affects large numbers of clients and is unlikely to be resolved favorably for individual clients on a one-on-one basis. Advocacy is appropriate to defend the *status quo* when proposed changes will erode the rights of low income persons or harm the interest of low income communities.

Systemic advocacy involves many potential strategies, some of which are relatively low cost and others of which may be costly and long-term:



**A PROVIDER
THAT HAS CLEAR
OBJECTIVES FOR
ITS WORK HAS A
SOLID BASIS FOR
A MEANINGFUL
ASSESSMENT OF
THE RESULTS IT
ACHIEVES.**

- **Non-representational strategies.** There are a number of ways outside of direct legal assistance to clients in which a provider may achieve systemic results for the low income community it serves. It might, for instance, participate in bar and judicial committees to improve the accessibility of the courts to low income persons.
- **Systemic impact in individual cases.** At times, representation in any individual case may have a result which has an impact beyond the interests of the parties, including in matters that are appealed. Systemic advocacy is generally based on a deliberate strategy, however, that targets an offending law, policy or practice. A provider may, therefore, deliberately focus representation in many individual cases on a particular policy or practice, with an eye to bringing attention to a particular issue and to compel a change over time.
- **Informal intervention.** It is not uncommon for a practice that is harmful to clients to result from a failure of an agency to apply the law as it is intended or from it establishing procedures that limit low income persons' access to services offered by the agency. A legal aid provider that is attentive to patterns of decision-making by administrative agencies may be able to identify misapplications of the law or procedures that limit access and bring about a change in the practice by intervening informally with higher placed officials in the agency.
- **Working with coalitions.** A provider might work with a coalition of organizations to address policy issues that affect the low income population. Not all systemic advocacy is adversarial. Providers working with community economic development, for instance, often find that forming alliances with other interests is the most successful way to bring about fundamental economic changes that positively affect a low income community.
- **Media advocacy.** To help create a climate that is favorable to change, some systemic advocacy involves a media strategy that seeks to inform the general public or the low income community of harmful or unfair policies and practices.



**TO HELP CREATE
A CLIMATE THAT
IS FAVORABLE
TO CHANGE,
SOME SYSTEMIC
ADVOCACY
INVOLVES A MEDIA
STRATEGY.**

- **Affirmative litigation.** There are many laws, policies and practices that if unchallenged, rule out positive resolution of clients' legal problems. Sometimes they involve laws that on their face are detrimental to the interests of low income persons. Other times, a law or policy, even one designed to protect the interests of the poor, may not be applied uniformly or consistently in accordance with its terms. Sometimes laws and policies that are favorable to clients' interests are challenged in litigation and need to be defended. To challenge an unfavorable law or to enforce or defend a favorable one on behalf of clients may require complex litigation, sometimes involving complex statutory or constitutional questions.
- **Legislative and administrative advocacy.** Some systemic change can only be accomplished by seeking a legislative change or a change in agency policies, rules, regulations and practices of general application. In addition, many proposed changes in statutes and administrative rules will, if adopted, significantly harm the interests of low income persons and call for advocacy to oppose such changes.

Some legal aid providers concentrate their efforts on broad challenges to legal problems confronting many clients. Such efforts can be the most cost-efficient way to utilize the limited resources available to meet the legal needs of low income persons. Repetitive representation of individuals to obtain a limited remedy that does not ultimately resolve a recurring legal problem can be costly and time-consuming. Representation that addresses the basic cause of such legal problems may, on the other hand, ultimately expend fewer resources with more lasting benefits for large numbers of low income persons.

Nevertheless, some systemic representation requires a substantial commitment of resources. A decision to undertake costly systemic advocacy should be made deliberately by the provider and the client, taking into consideration the potential for success; the resources necessary to proceed, balanced against the potential benefit or risk; and the provider's priorities.

All providers should be alert to areas in which they can have a positive impact on policies and practices that have a detrimental impact on the low income communities they serve. Not all providers are organized, however, to undertake complex — and potentially costly



**THE PROVIDER
SHOULD
PARTICIPATE IN
REGIONAL AND
STATEWIDE
SYSTEMS TO HELP
ASSURE THAT
ALL TYPES OF
REPRESENTATION
ARE AVAILABLE.**

— representation that involves broad constitutional challenges, or to engage in administrative and legislative advocacy. Even for those that are able to, resource limitations will preclude undertaking every major case which is presented.

A provider that does not engage in costlier forms of systemic advocacy should, nonetheless, assure that its practitioners undertake adequate research and investigation to advise and counsel their clients regarding the options open to them under the law, and to refer them to other sources of representation, if necessary. The provider should participate in regional and statewide systems to help assure that all types of representation are available and to be aware of the appropriate place to refer clients it is unable to assist.

The Legal Aid Ontario (LAO) community-based clinics take the strategic litigation aspect of their mandate seriously and have the funding and support to do so. These initiatives are further supported by LAO's Clinical Resource Office (which provides legal research and other forms of strategic support and by the LAO Group and Test Case Certificate Fund, which provides additional funding for test cases. In its most recent Annual Report, LAO highlights two recent court cases brought through the clinic system that have had an important role in shaping law and protecting rights.⁴² Similarly, the Manitoba Public Interest Law Centre, which is a division of Legal Aid Manitoba, focuses on strategic litigation on behalf of disadvantaged groups.⁴³ At present, legal aid in British Columbia is severely underfunded and unable to meet the most basic legal needs of low income people in this province; it does not have a strategic litigation component.

A study on poverty law services carried out by SPARC, and funded by the Law Foundation of BC in 2004, found that without specific, targeted funding for poverty law, there is limited capacity to pursue test case litigation, which was seen as an essential piece of the poverty law service continuum.⁴⁴ Questions concerning access to, or the adequacy of, various state supports or benefits frequently involve constitutional questions. The



**QUESTIONS
CONCERNING
ACCESS TO, OR
THE ADEQUACY
OF, VARIOUS
STATE SUPPORTS
OR BENEFITS
FREQUENTLY
INVOLVE
CONSTITUTIONAL
QUESTIONS.**

42 The most recent landmark Supreme Court cases in which the appellants were represented by clinics are the Supreme Court's rulings in both *Tranchemontagne v. Ontario (Director, Disability Support Program)* and *Hilewitz v. Canada (Minister of Citizenship and Immigration)*; *De Jong v. Canada (Minister of Citizenship and Immigration)*. These cases created greater protection for the human rights of the poor and vulnerable, especially for those with disabilities.

43 Online: <http://publicinterestlawcentre.ca/>

44 Andrea Long and Anne Beveridge, *Delivering Poverty Law Services: Lessons from BC and Abroad*. BC: Social Planning and Research Council, 2004.

Online: <http://www.sparc.bc.ca/resources-and-publications/doc/60/raw> at 33.

capacity to launch *Charter* litigation is crucial, but virtually impossible without additional funding given that existing public interest advocacy organizations are already overburdened. In particular, the SPARC report identified the need for one constitutional law specialist in any core group of poverty law lawyers.⁴⁵ In their view, creating a funded position in this area would provide some public capacity for carrying out test case litigation, as well as a resource for others with respect to understanding the application of the *Charter* to administrative regulations.

The research on and experience with the provision of legal aid underscores the importance of a separate mandate, funding and support for strategic litigation in support of the rights of poor people. Strategic legal initiatives provide an important additional dimension to comprehensive, integrated and holistic approaches to legal assistance. A strategic legal initiative to advance the rights of poor women must ensure that the multidimensional character of poor women's problems are addressed, while at the same time not becoming overwhelmed by the sheer volume of demand for legal assistance from this under-served community. This conclusion echoes the solution that emerged from many aspects of our research and consultation program — the need to create a distinct organizational structure within a strong, collaborative multidisciplinary network.

Key Findings

Our research and interviews provided us with an array of possible approaches and specific concrete ideas for action that can be drawn into a legal advocacy strategy tailored to advance the social rights of poor women. On an organizational level, the clear consensus is that the ideal is to build a specialized organization that has clearly stated and narrowly defined objectives and targets with expertise in both the application of international human rights norms in domestic courts and in the use of international human rights complaint mechanisms. The corporate governance and management should be independent, autonomous, flexible, streamlined and responsive and the availability of adequate, reliable and recurrent funding is of central importance.

Four key findings can be highlighted by way of conclusion, although readers may find other comments or examples to be helpful in developing or revitalizing their own strategic legal advocacy initiatives.



THE FIRST KEY FINDING IS THE IMPORTANCE OF DOCUMENTING THE PROBLEMS/ ISSUES AND MAKING STRONG CONNECTIONS TO THE COMMUNITY MOST DIRECTLY AFFECTED.

⁴⁵ *Ibid*, at 83.

The first key finding is the importance of documenting the problems/issues and making strong connections to the community most directly affected. This requirement can be framed as the need to carry out deep preparatory research that involves identifying community priorities and building the case, without becoming overwhelmed by the legal needs of individual clients. The community connections should both ensure that any litigation, law reform or legal advocacy strategies are fully informed and rooted in the community, and that legal strategies empower community organizations, and help to develop leadership capacity within the marginalized community.

The second element of the framework for effective strategic legal advocacy initiatives is the need to strengthen social movements by building networks and coalitions. This aspect can involve both building teams to carry out specific actions and developing ongoing networks. At one level this is about the way we carry out our work, but at another level this involves creating the space to encourage broader networks and creative and expansive thinking about what is possible.

The third key sets of findings relate to conceptualizing litigation goals and strategies in novel ways. Insights here are being developed based on decades of experience with strategic litigation and with both successes and failures. While there is no single lesson to be learned, we do know that it is important not to waiver from a strong strategic focus and a commitment to building jurisprudential principles. Litigation gains are incremental and they involve the gradual expansion of human rights concepts and understandings.

Our fourth finding, and the one that emphasizes innovation most clearly, is the requirement to employ creative, innovative action and communication. The literature surveyed, together with our discussion with legal strategists, provide many concrete examples of novel and effective approaches and activities.

Strategic legal work is challenging. We are continually reminded that “justice is not handed out on a platter but must be fought for”.⁴⁶ Our research and consultation process has provided a source of inspiration and innovation to guide the struggle to advance the social rights of poor women in British Columbia.



**WE ARE
CONTINUALLY
REMINDED THAT
“JUSTICE IS NOT
HANDED OUT ON A
PLATTER BUT MUST
BE FOUGHT FOR”.**

46 Chandra Kangasabi, Secretary General of Malaysia, cited in the forward to *Promoting Justice*, *supra*.