

## **Strategies for Promoting Social Inclusion through Public Interest Law**

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In responding to Mel Cousin's comprehensive report on *Public Interest Law and Litigation in Ireland*, I would like to make two points.

#### *PIL and the inevitability of politics*

First, the existence of Public Interest Law (PIL) is a symptom of the failure of the political system to address adequately problems of social exclusion. People turn to the law when they lose faith in politics. Therefore it is not enough for politicians like the Minister for Justice, Michael McDowell, T.D., simply to decry this reliance on the law as a means of securing social change. If he is concerned about the courts becoming embroiled in debate about public policy on social inclusion, he must ensure that the political system effectively addresses the needs of those members of our society who have not benefited from the Celtic Tiger.

The origin of PIL in the inadequacies of our political system has a lesson also for public interest lawyers. The problems that we seek to address are, at their root, political problems and therefore can be comprehensively addressed only through politics. Public Interest Litigation on its own is not capable of promoting social inclusion. Based on my research in this area, I have come to the conclusion that the principal value of Public Interest Litigation is that it can provoke the political system into responding to a problem that the system has hitherto ignored. It follows, therefore, that public interest lawyers working with those seeking social change should not restrict their efforts to the use of litigation only but that they should also be prepared to assist their clients in shaping the political response to the litigation through lobbying, media briefing, etc. I very much welcome the fact that the recommendations made by Mel Cousins reflects this holistic view of PIL and that, in addition to recommendations in relation to the support of public interest litigation, he also advances very useful proposals in relation to law reform, legal education and community legal education.

#### *PIL and the role of the Law Schools*

Second, as an academic working in this area, perhaps I may be forgiven if I address one particular aspect of the Public Interest Law movement that is close to my own heart, namely, the role of the Law Schools.

In considering the future of PIL in Ireland, the following features of PIL in this jurisdiction should be borne in mind. First, PIL is relatively new and underdeveloped here. In particular, there is a relative paucity of superior court judgments and academic analysis of Irish PIL is also in its early stages. Second, there are relatively few practising lawyers dealing with PIL and most of them are employed by the six constituent units of the Independent Law Centre Network. The situation is not much better on the academic side. A quick review of law school websites indicates that PIL is taught in only two Irish law schools (Trinity and Galway), though the cognate subject, Welfare law, is taught at Cork which also has a research cluster on Law, Inequality and Social Exclusion, while Galway also has a strong profile in Disability Law and Housing Law. In all, there would appear to be fewer than a dozen academics spread over three of the country's University Law Schools actively working in PIL and cognate subjects. Third, we know that senior members of the judiciary oppose reliance on the courts in order to compel the legislature and/or executive to formulate new policy for the vindication of socio-economic rights and this attitude throws a shadow over the legitimacy of PIL generally.

This analysis of PIL in Ireland provokes the following comments:

First, Irish lawyers working in this area would benefit from having access to comparative developments in PIL worldwide. This would enable them to draw on a broader base of caselaw and experience when formulating arguments and tactics for use in the Irish context. Exposing members of the judiciary to the experience of PIL in other jurisdictions would also promote its legitimacy at home. However, given the pressure under which lawyers in the not-for-profit sector work, it is unlikely that they could devote much time and energy to research either on PIL in Ireland or in other jurisdictions. This type of research is best carried out in the law schools, where the researcher would have both easy access to appropriate resources

(including colleagues working in cognate fields of study) and, most importantly, the time in which to pursue such research.

Second, as already mentioned, relatively few Irish academics pursue research interests in PIL and there is a pressing need to build up a critical mass of researchers in this area. Such research is necessary in order to assist practising lawyers working in this field and also to provide an ongoing evaluation of the impact of PIL in Ireland.

Third, the development of PIL research in an academic setting would promote the legitimacy of PIL by identifying it as a subject worthy of research and also by exposing future generations of law students to this area of the law. Thus future lawyers would become more comfortable with PIL just as, within living memory, both family law and EU law have become routine areas of legal study and practice.

Therefore, in prescribing a role for law schools in the future of PIL, one would begin by insisting that PIL be provided, at least as an optional subject, on the curriculum offered by every law school in the State. This would ensure that future generations of law students would be exposed to PIL during their academic training and hopefully this would attract some of them to working in this area. One would also envisage more formalised contacts between academics and practitioners working in the area of PIL, especially those working in law centres, with the academics providing a valuable research resource for the practitioners, keeping them informed of national and comparative developments and researching particular issues as the need arises. Such a development would also reinforce attempts at university level to make legal education more accessible to individuals from marginalized communities, many of who would find PIL of particular relevance to their personal experience. It would, moreover, send a clear signal to the profession and the wider community about the legitimacy of PIL.

In this context, I very much welcome the recommendation in the Cousins Report for the establishment of a Centre for Public Interest Law that would engage in research in this area, liaise with PIL practitioners and promote education in PIL for law students, lawyers and local communities. I sincerely hope that this forms part of the important deliberations and planning that should follow this conference.

### *Conclusion*

In December 1968, a law students' conference on legal education was held in Trinity College Dublin. The most significant consequence of that conference (though probably unanticipated by the organisers) was the establishment of FLAC by David Byrne, Denis McCullough, Vivian Lavan and Ian Candy. This marked the beginning of a sustained, systematic attempt over more than three decades to use the law in a strategic manner to tackle social exclusion in Irish society. In the face of overwhelming odds, FLAC and its sister organisation, the Coolock Community Law Centre, made a very significant contribution to the development of Irish law as it affects marginalized individuals and communities in this country. Of late, there are encouraging signs of a growth in the NGO sector committed to a strategic use of the law to promote social inclusion and the present conference is most timely, indeed, to catch the tide of this development and to plot a way forward for this movement. There is every reason to believe that this conference on Public Interest Law will prove to be just as important in harnessing the law to promote social inclusion as was its predecessor on legal education almost thirty seven years ago.

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