Part I: WHAT is strategic litigation?

Summary:
Strategic litigation is much more than simply stating your case before a judge. This section introduces some of the broader goals of strategic litigation, as well as some of the more important considerations that should be addressed before entering the courtroom.

1. Goals. Strategic litigation, sometimes also called impact litigation, involves selecting and bringing a case to the courtroom with the goal of creating broader changes in society. People who bring strategic litigation want to use the law to leave a lasting mark beyond just winning the matter at hand. This means that strategic litigation cases are as much concerned with the effects that they will have on larger populations and governments as they are with the end result of the cases themselves.

Advocacy. Through filing lawsuits, advocates for social justice can use the courts to bring about legal and social change. This is often a part of an overall advocacy campaign designed to raise awareness on a particular issue or promote the rights of a disadvantaged population. Many groups or individuals who bring strategic litigation also seek to convince others to join their cause, or to influence the government to change its laws.

Results. When it is successfully used, strategic litigation can bring groundbreaking results. It can spring a government into action to provide basic care for its citizens, guarantee the equal rights of minorities, or halt an environmentally damaging activity. There are no set limits as to what strategic litigation can accomplish.

Strategic litigation vs. Legal services. It is, however, important to note that strategic litigation is very different from many more traditional ideas of legal services. Traditional legal service organizations offer valuable services to individual clients and work diligently to represent and advise those clients in whatever matters they may bring through the door. But because traditional legal services are client-centered and limited by the resources of the providing organization, there is often no opportunity to look at cases in the bigger picture. Strategic litigation, on the other hand, is focused on changing policies and broader patterns of behavior. Because of this, strategic litigation is not designed to provide
the best services to the largest number of people possible as traditional legal services would.

2. Considerations. Before you bring or help someone else bring strategic litigation, there are many things you should consider. You will need to look at what the legal issues are, what your goals are, who can bring the case, when you can bring the case, where you will bring the case, and how you will see the case through. These issues are discussed in more detail below.

Strategic Litigation and Children. Seeing your rights enforced in the justice system is truly empowering, and strategic litigation can be an exciting and rewarding journey for children. However, it can also be a long, involved and even painful process, and it may prove difficult for children to be taken seriously in court. If you are thinking about bringing a case on behalf of or otherwise involving children, you should thoroughly consider the likely impact this will have on the judicial process and, perhaps more importantly, the ways in which it might affect those children’s lives. Many particular concerns are addressed throughout this guide, although these are by no means the only challenges you may face in bringing strategic litigation to advance or enforce children’s rights.