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**Making a Difference for All: Strategic Litigation**

**By Leonie Graham**

On 18 August 2020, the Young Lawyers Making Change Festival continued with a virtual event titled ‘Making a Difference for All: Strategic Litigation’. The event was chaired by Katy Watts, a solicitor at Liberty, formerly of the Public Law Project. The panel focused primarily on the deconstruction of strategic litigation and recent case studies where strategic litigation has been used effectively, particularly in challenges concerning trafficking and immigration detention.

The first speaker was Shu Shin Luh, a barrister at Garden Court Chambers who specialises in anti-trafficking and the rights of migrants. Shu Shin has been awarded Legal Aid Lawyer of the Year and Junior Pro Bono Barrister of the year in 2019. The aim of Shu Shin’s talk was to demystify the phrase ‘strategic litigation’. According to Shu Shin, litigation is strategic when it aims to achieve an outcome that benefits many people. It is capable of describing all types of litigation, particularly in the public law and human rights sphere where the complaint is directed towards the exercise and abuse of state power.

Shu Shin noted the different types of strategic litigation. The first is ‘traditional’ strategic litigation where organisations apply their expertise to various legal challenges to achieve a greater good. An early example of this is *R (Refugee Legal Centre) v Secretary State for the Home Department*. This was a challenge to the implementation of an accelerated asylum process in immigration detention. Although the case was unsuccessful, it laid down fundamental principles about the requisites for fairness. This was later built upon in 2014 by Detention Action.

The second type is ‘hybrid cases’ where challenges are advanced by both organisations and individual claimants to achieve a common outcome. This relies on the ability for both parties to work together efficiently and can be seen in *Medical Justice v. Secretary of State for the Home Department* which both Shu Shin and Ayesha Christie were involved in. This challenged the Home Office’s adoption of a narrow torture definition which meant fewer detainees in Immigration Detention were recognised as vulnerable and fewer benefitted from the safeguards against detention. Through collaborating and working together, they were successful in their challenge.

The third category is ‘individual cases’ and is the most common type of strategic litigation. These cases have the potential for much wider impact as can be seen in the recent ‘No DSS’ case. The lawyers involved in this case pursued a number of cases over a period of years against landlords who refuse to rent their properties to tenants in receipt of welfare benefits. In a recent landmark ruling, the County Court held that one landlord acted unlawfully and in breach of the Equality Act 2010; a real win for tenants’ rights. Although not binding, this judgment sends a powerful message to landlords to improve their practices.

The second speaker was Ayesha Christie, a barrister at Matrix Chambers who specialises in public law and immigration. Recently, she has been working with Detention Action and Duncan Lewis on safeguarding immigration detainees throughout the COVID-19 pandemic.

Ayesha told the audience that, although the World Health Organisation declared a global pandemic on 11 March 2020, the state continued to detain people subject to immigration control in detention centres, irrespective of the public health emergency. Ayesha worked alongside Detention Action and Duncan Lewis to support vulnerable detainees who were at medical risk in detention. After drafting grounds and building expert evidence and witness statements, judicial review proceedings were issued against the Home Office.

An interim relief hearing was listed and the Home Secretary was ordered to respond to the application within two days. During this time, many detainees had their detention reviewed and approximately 350 people were released. Detention centres were ordered to implement social distancing policies and enact individual care plans for people with underlying health conditions. The interim relief hearing proceeded by video link but was refused because of these policy changes.

Ayesha explained that, although the claim failed, the litigation achieved a much wider impact and the Home Office has continued to release huge numbers of detainees. Thus, as exemplified by Ayesha, the legal challenge forced the Government to amend its policies and practises to achieve positive outcomes for many immigration detainees. Ayesha outlined the importance of collaborative teamwork in attaining this outcome and the willingness of the numerous team members involved in the challenge to pursue strategic litigation in response to the pandemic.

The final speaker was Rebecca Kingi, a New-Zealand qualified solicitor at ATLEU (Anti Trafficking and Labour Exploitation Unit) and a member of the YLAL. Rebecca began by rejecting the myth that junior lawyers cannot be involved in strategic litigation; she said that junior lawyers should be enthusiastic about strategic litigation and the prospect of making a wider impact on the community. Rebecca justified this by exploring the way in which the phrase ‘junior’ has transformed and evolved. Many practitioners enter the profession with a wide array of experience which shouldn’t be undermined.

Rebecca then outlined her various involvement with strategic litigation throughout her legal career. Notably, Rebecca worked within the support sector for victims of human trafficking and witnessed the importance of strategic litigation in allowing clients to access their entitlements. It was fundamental for people to have their rights recognised. Support workers acted as advocates for their clients, unblocking barriers to social justice.

Rebecca highlighted the significance of relationships throughout the legal industry, especially within the sphere of strategic litigation. Rebecca encouraged practitioners to obtain as much client time as possible to build trust and rapport. An approachable demeanour and the ability to build positive relationships is fundamental in securing the best outcome for clients and creating a beneficial wider impact within society.

Rebecca concluded by outlining a case she had worked on with Shu Shin Luh, involving a vulnerable client who required trafficking support after nearly being made homeless. Although the Home Office initially refused to make trafficking support available, the case settled in Rebecca’s client’s favour. This example illustrates the importance of empowering people working on the front line to unlock justice for their clients.