

## 4.

# Strategic Litigation

## Tool 4 Strategic Litigation Pre-Assessment, Mid-Term and Final Review

### I. PRE-ASSESSMENT

#### 1. Case Merits and Alignment with Priorities

##### A. Basic Case Information

**1. The name of the case in question:**

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**2. The Legal Network's role in the case and the stage at which it will be involved:**

- applicant / lower court
- appellant or respondent / appellate court
- appellant or respondent / Supreme Court
- intervener / lower court
- intervener / appellate court
- intervener/Supreme Court
- party or intervener / regional or international court

**3. Is this a favourable venue/judge?**

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**4. What is at issue?**

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**5. What Legal Network strategic priority is this case most relevant?**

**How relevant is it?**

- very
- somewhat
- marginally

**6. What is the gender identity of the relevant party?**

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**7. What is the profile of the relevant party (e.g. defendant, applicant)? (Check all that apply.)**

- Indigenous or other racialized group
- Migrant
- Current or former prisoner
- LGBTQI

- Current or former drug user
- Current or former sex worker
- Experienced gender-based violence
- Person living with HIV
- Other: \_\_\_\_\_

**8. Are there any characteristics of the relevant party that argue against selecting this case?**

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**9. What are the legal and human rights arguments that we might deploy and advance in this case?**

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**10. Does the case have potential to set a positive legal precedent that would affect a large number/class of people?**

- Yes
- No

**11. What bad precedent or other adverse effect might result, if we were to lose the case?**

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**12. How would you rate that risk?**

- (1) Non-existent
- (2) Very low
- (3) Low
- (4) Moderate
- (5) High

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B. Other Aspects of Legal Advocacy

**13. Does this case have the potential to empower affected communities through awareness-raising, capacity-building and making their voice heard?**

- (1) High potential
- (2) Some potential
- (3) Limited potential

**14. If high or some potential, what needs to be done to realize that potential?**

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**15. Will this case help mobilize support from key influential and attract new supporters? If so, whom?**

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**16. Does this case present the Legal Network with any kind of reputational risk (inconsistent with mission and values, controversial, lack of professionalism, etc.)? If so, please specify.**

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**17. Will the case support the work of ally organizations?**

- (1) Yes
- (2) Somewhat
- (3) No

Would they in turn reinforce our work?

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4: Strategic Litigation (three-part form)

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C. Summary Assessment on Merits of Case

18. Overall, how strategic is it to intervene in this case on its merits?

1 2 3 4 5  
not at all very strategic

2. Practical Considerations

A. Characteristics of the case that argue for or against our involvement

19. Is the relevant party's lawyers willing to work with us?

- (1) Yes, definitely
- (2) Yes, with some reluctance

20. Does the Legal Network have a track record of research and/or litigation on this issue?

- (1) Very strong track record
- (2) Solid record
- (3) Limited experience
- (4) This is a new area of litigation

21. What would the Legal Network's role be in the case?

- Lead
- Secondary
- Limited, time-bound support

22. Potential responsibilities (check all that apply):

- Prepare legal arguments
- Review legal arguments
- Coordinate lawyers, coalition partners, etc.
- Engage with the media
- Mobilize support organizations
- Other: \_\_\_\_\_

23. Is there pro bono counsel available to represent the Legal Network?

- (1) Yes, definitely
- (2) Yes, likely
- (3) Unlikely
- (4) Definitely not
- (5) Not needed (explain why)

24. What is the estimated time that research and policy staff would need to dedicate to this?

Please estimate the average \_\_\_\_\_ days per week for \_\_\_\_\_ weeks.

25. Is the Legal Network likely to incur other costs for this case (e.g. fees for disbursements)?

- No, will not incur cost.
- Yes, likely to incur cost. Estimated cost \$ \_\_\_\_\_

B. Organizational capacity, given competing demands

26. What work would/might need to be deferred or dropped by the legal staff to meet commitments for this case?

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27. What would likely be the demands for communications support? For example, press releases, media outreach, etc.

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28. Does the communications team have the capacity to develop and advance a positive message and set the narrative on the case, especially if the Legal Network has limited experience with the issue at hand?

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29. Given other priorities, does the communications team have the capacity to take this on? (Check all that apply.)

- (1) Definitely not
- (2) Very limited capacity
- (3) Some capacity
- (4) Depends on timing

30. Are there NGO or community partners that could assume some of the communications and organizing tasks?

- (1) Yes, definitely
- (2) Probably
- (3) Some limited support
- (4) Not really

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**31.** If yes, who are they and what could they take on?

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**32.** Is there funding available (a) to support staff time (i.e. researchers and communications team) to work on this case and (b) to cover any legal fees and disbursements?

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C. Summary Assessment on Practical Aspects of Getting Involved in the Case

**33.** Overall, how practical is it for the Legal Network to take on this case, without putting at risk other priorities and/or over-extending staff?

1                      2                      3                      4  
Very impractical                      Very practical and manageable

**DECISION:** Reviewing the strategic and practical issues, should the Legal Network

get involved in the case? \_\_\_\_\_ (Keep this form for ongoing use)  
not get involved the case? \_\_\_\_\_ (End of documentation: Store form in the archives)

**Additional comments:**

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## Tool 4 Strategic Litigation Pre-Assessment, Monitoring and Final Review

### II MID-TERM REVIEW

#### 1. Practical Considerations

**1. Partway through case, what is the Legal Network's role in the case?**

- Lead
- Secondary
- Limited, time-bound support

**2. What are our responsibilities currently and in the future? (Check all that apply.)**

- Prepare legal arguments
- Review legal arguments
- Coordinate lawyers, coalition partners, etc.
- Engage with the media
- Mobilize support organizations
- Other: \_\_\_\_\_

**3. What amount of time are research and policy staff dedicating to this currently?**

\_\_\_\_\_ days per week.

**4. Over the next six months, the time dedicated to this case (check all that apply)**

- is likely to increase
- is likely to stay about the same
- will begin to decrease
- will end
- is sustainable
- is barely sustainable
- will compromise other work

**5. What is the estimated time that communications staff are currently dedicating to this case?**

\_\_\_\_\_ days per week.

**6. Over the next six months, demands on communication staff for this case (check all that apply)**

- is likely to increase
- is likely to stay about the same
- will begin to decrease
- will end
- is sustainable
- is barely sustainable
- will compromise other work

**7. Is there funding available to continue to support staff time to work on this case?**

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**8. Have legal fees (if any) and disbursements been as expected? If not, are the funds available sufficient to continue?**

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**9. What have been practical barriers or challenges to supporting this case?**

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**10. Overall, how practical is it for the Legal Network to continue to be involved in this case, without putting at risk other priorities, over-extending staff or exceeding our budget for this case?**

1
2
3
4

Very impractical Very practical and manageable

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## 2. Strategic Considerations

**11.** What have been practical barriers or challenges to supporting this case?

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**12.** Have there been any legal or policy changes that require reassessment of the Legal Network's continuing involvement in this case?

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**13.** Overall, how strategic is it to remain involved in this case on its merits?

1                      2                      3                      4  
No longer strategic                      Very strategic

**14.** Based on the progress to date, in what ways (if any) does the Legal Network need to adjust its strategy, including considering an exit strategy?

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**Summary statement on state of play with the case and adjustments and expectations moving forward:**

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## Tool 4 Strategic Litigation Pre-Assessment, Monitoring and Final Assessment

### III FINAL ASSESSMENT

Be as concrete and specific as possible, and attach any relevant documentation

#### 1. Strategic Litigation and Legal Advocacy Outcomes

1. What was the outcome of the case?

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2. What kind of precedent did it set, if any? (Good, bad, neutral?)

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3. Were our arguments adopted by the court?

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4. What kind of media coverage did the case generate? (Good, bad, neutral?) (Attach or link to any media coverage.)

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5. In what specific ways did the case help empower affected communities through awareness-raising, capacity-building and making their voice heard?

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6. Did this case help mobilize support from key influentials and attract new supporters?

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7. Have there been any other outcomes (anticipated or unanticipated)?

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8. Overall, how helpful was the case in advancing the Legal Network's policy agenda?

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#### 2. Practical Considerations

9. How accurate were our estimates of legal and research staff time needed for the case?

- We underestimated by a lot
- We underestimated by a little
- We got it about right
- We overestimated by a little
- We overestimated by a lot

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**10.** Were we able to give adequate time and resources to communication and media work?

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**11.** Were there unanticipated costs or funding constraints that affected our ability to support the case?

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**3. Next Steps and Lessons Learned**

**12.** Is there any follow-up work that needs to be done as a result of the decision in this case?

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**13.** Are there any lessons learned we need to keep in mind for future cases?

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