

STANDING

The purpose of this brief paper is to examine the issue of standing or locus. This relates to the issue of who has the right to bring an issue to court, and in the specific circumstances of the proposed Bill of Rights for Northern Ireland. To be able to pursue a case, the court must acknowledge that someone has standing, ie that they have a direct right to bring a case because of the effect that it has on them. In presenting this brief paper I acknowledge the assistance that our adviser Catherine has provided in this matter.

Narrow or broad standing

In any human rights case, as with any civil law case, it is accepted that those who are directly affected by the alleged breach of human right can take a case. Thus for example, if a case were brought by a cancer sufferer that their human rights were being breached because the state was denying them direct access to a particular drug, as the obvious victim of the alleged breach, they have clear standing in such a case. This direct or private use of standing rests on the notion of direct victimhood, ie the person directly affected has the standing to take the case. Similarly, it would be generally accepted that this also applies to those acting as power of attorney for the alleged victim eg parents/guardians/ the state acting on behalf of a minor or for example a son or daughter who has power of attorney for an elderly parent or the estate of a deceased person.

The issue over standing is whether standing should be restricted to those who have directly suffered as victims or those acting as their proxy, or whether it should be extended to wider categories of groups who will act on behalf of others. The first may be described as a narrow interpretation of standing, or the latter which leads to a broader definition of standing. If the latter were felt to be more appropriate there is a secondary question of how far standing should be broadened. For example, one alternative would be to restrict standing to direct victims, with the exception that the Human Rights Commission could be given the power to pursue cases on behalf of the public where it was felt that such a case would be in the wider public interest. On the other end of the scale, a wide range of NGOs could pursue cases through a wide definition of standing, indicating that they are pursuing the case on behalf of a widely defined interest group eg prisoners.

Allied to this issue, is the issue of funding. Whatever restriction is placed on standing, the separate option remains of public funding being made available to enable those of limited resources pursuing their rights. This could be looked at by way of provisions on legal aid, or the right of the Human Rights Commission to sponsor cases, even if they are the party pursuing the case.

International Examples of breadth of standing

Not surprising these are varied in their scope

- (a) The ECHR- cases taken in Europe under the ECHR tend towards the narrow interpretation which restricts standing to victims. Whether this is an attempt to ensure that countries sign up to the convention or an attempt to restrict the number of cases brought to a manageable number or are restricted for a number of reasons are open to question
- (b) Human Rights Act (UK) and judicial review- Domestic law in the UK also tends towards the narrow or victim definition, although associational or public interest issues which widen to some extent standing are recognized in judicial review cases
- (c) New Zealand- Generally narrow in interpretation as no one person can claim remedy for a breach which rightfully belongs to another.
- (d) Ireland- Defined by case law rather than the constitution, a flexible approach has been adopted and courts have been prepared to adopt a wider interpretation where the victim is unlikely to emerge but a narrower definition where the victim can be more clearly defined
- (e) Canada- Under the Canadian Charter standing is divided into two categories, first private standing where the individual's interests are affected by the breach, and public interest standing where the breach appears to affect a wider public interest area. This has been a slowly developing area of law.
- (f) South Africa – The SA Constitution takes a broad interpretation of standing and includes not simply those acting on their own behalf, but also those acting on behalf of people who cannot act in their own name, as a member of a class/interest group, an association acting on behalf of its members or in the public interest.

Catherine will be best placed to expand on any of these examples

Pros and Cons of Narrow and Broad Standing

- (1) Broad standing can be argued to hold the Executive to account more strongly, as they are more vulnerable to legal challenge
- (2) There is a great incentive for public institutions to comply with the law under broad standing
- (3) Broad standing would tend to widen the interpretation of rights as it would be easier to show how a group was affected rather than an individual
- (4) Broader interpretation allows greater access to the courts as groups may have more resources than individuals (although it may be possible to detach sponsorship of cases from the issue of standing)
- (5) Broader standing is likely to lead to excessive litigation and potentially more vexatious litigation
- (6) Broader standing will have an impact on the nature of litigation as it focuses on the wider impact on the public rather than the individual and may take judges into unfamiliar territory
- (7) Broader interpretation may lead to a greater expense on the public purse, if NGOs are funded to take cases
- (8) Broader standing may lead to greater uncertainty, as it is less clear cut to which groups or NGOs have the right to take cases, on whose behalf they have the right to take cases and in what circumstances.