



Procedural factors

Beyond evidence gathering and the identification of key moments, there are practical considerations that may determine the timing of a particular matter. These are most often aligned to the procedural rules of the particular court or forum in which the litigation is to be launched. It is imperative to know whether there is a statute of limitations, prescriptive period, or time bar placed on the type of matter you want to bring in a particular court. These are considerations that apply to all forms of litigation. Mapping this out early on may save you in the long run – it may even impact the decision to pursue strategic litigation altogether. These considerations should be coupled with considerations around whom the matter is being brought against. For example, litigating against the state may require different processes and time frames to those of litigating against private parties.

Expert tips: cheat sheets and roadmaps

Cheatsheets: Familiarising yourself with the time frames and practical considerations of the courts you are most likely to approach is crucial for all litigators. Along with having easy access to copies of the Court Rules, developing simple “cheat sheets” that reference the days you have to launch particular matters can save time and allow the team to make an informed decision fairly easily and efficiently.

Litigation roadmaps: Timing, dates, and rules are indispensable to litigation. Mapping out the various stages, timeframes for filing particular documents, and timeframes within which the other side has to file can be useful. This is essentially an early case assessment that assists in giving some indication of what lies ahead. While litigation seldom runs perfectly with all timeframes adhered to, being able to identify key procedural moments ensures that the team is operating efficiently and effectively. This will also inform further strategic decisions and allow you to determine when to apply pressure, when to wait, and what moments to mobilise around.

Guideline 27: Key moments should be identified within the litigation process, including filing deadlines and further potential social and political moments. These deadlines and moments should be used to complement the litigation strategy and bolster existing or new advocacy campaigns.