



1. **Litigation** generally proceeds to remedy a wrong or to settle a dispute. At its core are the interests of the parties and the settlement of the dispute. It may be that during the litigation process, strategic considerations are introduced, and a broader public interest outcome is achieved. But this is ancillary to the primary aim.
2. **Strategic litigation** generally proceeds to remedy a wrong or settle a dispute and seeks to achieve a broader strategic aim, such as setting precedent, aiding a law reform process, bringing a rights issue to the fore, or transforming the opinion of authorities, the media, and the public. Therefore, settlement of the dispute and a strategic or public interest outcome are both primary aims of the litigation.

Guideline 4: Do not conflate success and impact. The effective strategic litigator may seek to achieve both in a litigation strategy.

While being successful and impactful is often the ideal to strive for, it is important to recognise that it is not always possible. Sometimes you may succeed and get a judgment in your favour, but this may have limited impact: the remedy may fall short of achieving positive change or implementation may be untenable. By the same token, you can lose a case (not getting the judgment you want) but still have a substantial impact: it may result in the reframing of narratives, gaining access to new information, highlighting an injustice, or promoting public pressure on authorities.⁵ It may also be the case that a “lost” judgment lays the foundation for subsequent litigation or advocacy. Therefore, when considering the success and impact you are striving for, think about the outcomes holistically, and in the longer term. Moreover, and of critical import, your client’s instructions and expectations must inform your conceptualisation of success and impact.

⁵ Batros and Khan, above n 3.