Phase 2: Thinking strategically about how we litigate: the practical considerations

Funding: how to stay the course

Litigation can be expensive, and the timeframes are often uncertain. Funding strategic litigation and assessing the cost — both in terms of capital and human resources — is, therefore, a prerequisite in the determination of any litigation strategy. As a point of departure, the nature of the case may assist with assessing costs: does it require a large legal team and is it expected to take time and go on appeal? Thereafter, what fee do the lawyers charge, are they prepared to work at a reduced rate, or pro-bono? Finally, what are the anticipated disbursements such as printing court documents, experts’ fees, and travel?

Guideline 9: Funding strategic litigation and assessing the cost — both in terms of capital and human resources — is a prerequisite in the determination of any litigation strategy.

Funding strategic litigation is often not as difficult as it is made out to be. Outside of traditional funding routes such as applying to foundations or charitable organisations, contemporary models such as crowdfunding are becoming increasingly popular.

Capacity: structuring a “dream team”

Litigation takes time and resources but, often, strategic litigators are not hard to find. Strategic litigation has two benefits for strategic litigators: (1) it allows litigators to use the law as an instrument for justice and positive change; and (2) it assists litigators to establish themselves as experts within a field. Often, strategic litigators may be willing to work on a case pro-bono or at a reduced rate, alongside paying work, if the case has merit and there is a possibility of strategic impact. It may also help if they form part of a broader team, where they can delegate some of the work. In structuring a “dream team”, seek out lawyers who are already working in the areas relevant to your case and ask for their assistance, or a referral. Importantly, structure and consult with your legal team as soon as possible, they may have experience not only in strategic litigation but broader advocacy efforts as well.