

Press release

Government approves adoption of State Litigation Principles

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The government has approved the adoption of State Litigation Principles which will serve as guidelines in the conduct of litigation by the State.

The 15 Principles (see below) recognise the imperative that the State should act in the public interest, broadly construed, in pursuing litigation and should consider the broader public interest before taking certain procedural steps in litigation. The Principles apply where the State, through the government, a Minister of the government, a Department of State or an agency under its direct control engages in litigation.

In an address today in Government Buildings, Attorney General Rossa Fanning SC said:

"Given the high volume of litigation managed by the State, it is important that we explain the general approach and policy adopted by the State in this domain. These Principles will, for the first time, clearly articulate standards for the State and its lawyers in the conduct of legal proceedings. They will set out how the State can and should behave in its capacity as a litigant, as a party to a given dispute before the courts."

The Attorney stressed that:

"the Principles are not intended to radically change how the State conducts litigation. Many of these Principles are already applied on a daily basis by the officials and lawyers charged with managing litigation on the State's behalf."

The Principles may best be described as a codification and public statement of existing best practice. Quite simply, the State should act in the public interest, broadly construed, in pursuing litigation and should consider this broader public interest before taking certain procedural steps in litigation.

The Attorney General stated:

"in drafting the Principles, I have had regard for the best endeavours that the State must strive to make in fulfilling the very high standards which are expected of its conduct. While the Principles do not seek to radically change existing practice or policy, I believe that they will serve at least three important functions.

"Firstly, by clarifying and explaining existing best practice, they will assist officials in the different government departments, and the lawyers acting on their behalf, in upholding the high standards already expected of the State.

"Secondly, they will assist in explaining the approach of the State to litigation and foster a better understanding of how the State serves the public interest when litigating.

"Thirdly, although the government decision to approve the Principles does not, in itself, apply to litigants other than the government itself and bodies answerable to Government, one of the reasons why it is so important for the government to articulate the standards that it seeks to uphold in litigation is to set an example and to demonstrate best practice to others."

The Attorney General emphasised that:

"fundamentally, litigation is expensive and time-consuming for all involved, including the State. To that end, the Principles explain that the State will take steps to avoid, prevent and limit the scope of legal proceedings, wherever this is possible, a policy that is clearly consistent with the policy intent underlying the Mediation Act, 2017. This does mean a greater emphasis on early engagement to try and avoid unnecessary litigation. Moreover, the State ought to take steps to resolve disputes between public bodies outside of court."

The Attorney General stated that:

"clear channels of communication between officials that will facilitate discussion between public bodies will likely play an important role in avoiding such disputes. This is not to say that there will never be litigation of this type. There are many independent agencies and authorities that conduct litigation independently of central government. It may also be that a public body will have a statutory right to appeal against a decision of an independent authority and in some cases therefore, different considerations will apply. Nevertheless, there will be cases where litigation between State entities should be avoided and other means of resolving the dispute should be found."

The Principles also state that, where litigation is pursued, the range of issues in dispute should be kept as narrow as possible. The State should not require an applicant to prove a matter which the State knows to be true or which the applicant is likely to succeed in proving at trial. This will assist the court in determining the issue at hand and will minimise the costs of the proceedings.

Further, where litigation is being pursued, the State must take steps to ensure that it is dealt with promptly, efficiently and at proportionate cost.

The State will often find itself defending multiple claims on the same or similar questions and in those circumstances, the State should seek to assist the court and other litigants by identifying appropriate lead cases in order to facilitate the efficient and effective administration of justice.

The Principles are intended to act as guidelines to help maintain existing high standards of ethics and integrity in the conduct of litigation by the State. The Principles do not, however, contain rules of law, have any binding legal effect or alter the fact that the State

has the same entitlements as any other party to litigation.

The Principles are:

1. Avoid legal proceedings where possible
2. Deal with claims promptly
3. Deal with litigation efficiently
4. Identify lead cases when multiple sets of proceedings on same legal issue
5. Minimise legal costs for all parties
6. Make settlement offers, tenders or lodgments
7. Act honestly
8. Make discovery in compliance with best practice
9. Be consistent across claims
10. Not to take advantage of the less well-resourced litigant
11. Defend proceedings in accordance with the interests of justice
12. Not to appeal unless there is a reasonable prospect of success or in the public interest
13. Avoid bringing proceedings against another State Department or State body
14. Seek to agree claimant's costs without the requirement for formal adjudication
15. Apologise where the State has acted unlawfully

Notes

By virtue of his role under Article 30 of the Constitution, the Attorney General acts as litigator for the government (the litigant). The government has approved a set of 15 State Litigation Principles which have been authored by the Attorney General in consultation with senior Advisory Counsel in the Office of the Attorney General, the Chief State Solicitor's Office and the State Claims Agency and which are considered to support best practice in the State's conduct of litigation.

The Principles will help clarify and explain existing best practice for officials so that existing high standards are maintained. Benefits are also anticipated to accrue to the State, the Courts and other parties to litigation arising from a more efficient and less costly litigation process.

They will also advance the achievement of an objective in the Office of the Attorney General's Statement of Strategy 2020-2023 that relates to the conduct of litigation involving the State.

Furthermore, they will enhance transparency and help stakeholders and the wider public to better understand the State's approach in conducting litigation.

Further information on the State Litigation Principles is available below.



State_Litigation_Principles

Download (<https://assets.gov.ie/261411/d915cfb8-2344-48a0-ae06-0f3c83216847.pdf>).

View (</pdf/?file=https://assets.gov.ie/261411/d915cfb8-2344-48a0-ae06-0f3c83216847.pdf#page=null>).

Full speech of Attorney General dated 21 June 2023.

(<https://www.gov.ie/en/speech/5268f-speech-of-the-the-attorney-general-rossa-fanning-sc-launch-of-the-state-litigation-principles/>).

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