

CROWN LAW LITIGATION – POLICY AND PROTOCOLS

Policy All litigation Crown Law undertakes is to be conducted in accordance with our instructions but at all times:

- in the public interest;
- in the case of civil litigation, in a manner consistent with the Attorney-General’s Civil Litigation Values;
- in compliance with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, the Cabinet Directions for the Conduct of Crown Legal Business, the Cabinet Manual 2017 (and in particular ch 4), the New Zealand Public Service Code of Conduct and the applicable Rules of Court;
- in accordance with the policy and protocols set out below; and
- with due regard to supporting Crown Law guidelines relating to the conduct of Crown litigation.

Applies to The policy and protocols set out in this document apply to all Crown Law counsel employed full-time, part-time or on a casual basis, on a permanent or fixed-term employment agreement.

Rationale Our clients and the courts expect Crown counsel to exemplify the highest standards of integrity and competence.

Adherence to Crown Law’s litigation policy and protocols will ensure consistency in the way we deliver services to the Crown and assist counsel to achieve the high standards our clients and the courts expect, without impinging on the exercise of sound professional judgement.

Alignment with Crown Law Strategy This policy is consistent with the [Crown Law Strategy](#).

Protocols When litigation is conducted on behalf of clients, it is conducted on behalf of the Solicitor-General. All litigation must be conducted within the framework of the principles set out in this policy and supporting guidelines.

Receipt of Documents

- Ensure you are not accepting service in respect of a defendant for whom Crown Law should not properly act or for whom we do not have instructions to accept.
- Before accepting service of any documents that name a Minister of the Crown in his or her personal capacity, notify the Solicitor-General or a Deputy Solicitor-General.

Receipt of Instructions

- Receipt of instructions to conduct litigation on behalf of a client must be acknowledged promptly in writing in line with the Client Relationship Management Protocol. If proceedings are served directly on Crown Law, advise the interested client department(s) immediately and the manager of any other team within Crown Law that may have an interest in the subject matter.
- Unless the conduct of the litigation comes within the terms of any appropriation made directly to Crown Law, the file must be set up as chargeable to the relevant Crown Law client(s).
- If two or more Crown Law clients are named and there is no conflict of interest in Crown Law representing both, or if the Attorney-General is named on behalf of more than one department or agency, agreement must be reached as to which client will be responsible for providing our instructions, and how the costs will be covered.
- If the proceeding raises an issue of particular public importance or sensitivity, the Solicitor-General must always be informed.
- The Solicitor-General must be notified whenever Crown Law is asked to assist on matters of defamation involving Ministers. Refer to the Defamation Proceedings - Guidelines.
- The Team Managers of the Constitutional and Human Rights Team must be notified of any litigation that contains an issue in relation to the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and rights arising under international human rights instruments.
- The Attorney-General must be kept informed of most litigation in which the Attorney-General is the defendant. This can be achieved through the Weekly Report to the Attorney-General.
- Briefing of external counsel or Crown Solicitors must be undertaken in line with the requirements of the Briefing External Counsel Policy and Guidelines.
- All litigation matters must be opened and matter information maintained in line with Crown Law's 3E Matter Creation & Ongoing Matter Maintenance Protocol.

Filing of Proceedings

- Any instructions to issue proceedings (other than appeals) in any court or tribunal must first be referred to and approved by a Deputy Solicitor-General. Refer to Filing of Proceedings Policy.

Appeals

No notice of appeal, or application for leave to appeal or cross-appeal on behalf of any Crown Law client shall be filed without the following authorisation:

Tribunal and District Court appeals to the High Court	Team Managers
Case stated appeals to High Court; appeals against decisions of Associate Judges under s 27 of the Senior Courts Act 2016	Team Managers
Appeals to Court of Appeal	Deputy Solicitors-General (via Team Leader)
Appeals to Supreme Court	Solicitor-General (original authority)

Litigation Management

- A litigation management plan must be completed in all cases other than Habeas Corpus proceedings, abides and criminal appeals to the Court of Appeal. You may use the Litigation Management Plan Template as a guide. Refer to Litigation Management Planning/Debriefing - Guidelines.
- All documents must be signed in accordance with the Signatory Policy: Legal Work.
- Only one file and service letter should be used to cover both file and service requirements of the document. This ensures that there is a record of both filing and service in one place on the file.
- All court documents must be completed using the Crown Law [precedent system](#) and in conformity with the [Crown Law Style Guide](#). [Citations](#) and other references to authorities must conform to the [New Zealand Law Style Guide](#), which Crown Law has adopted for that purpose.
- All court documents that we receive or file must be retained in a pleadings folder that records the date each document was received at Crown Law or filed, as the case may be. Pleadings folders may be maintained in hard copy (either in a separate folder or as a clearly marked section of the correspondence file), but must be stored electronically in pdf. They must be stored in such a manner that any other counsel who is required to refer to the file can readily locate a complete and accurate set of court documents.
- If you are contemplating the use of an expert witness, refer to the Engagement of Expert Witnesses Policy.

Sealing Judgments/Debriefing

- Unless counsel decides that there is a good reason not to seal orders, all orders other than those made by the Supreme Court must be sealed after judgment. Enough copies of the document must be sealed so that the Court keeps one, Crown Law retains one on file and all other parties who have filed an address for service are forwarded a sealed copy of the judgment. Until a sealed order is obtained the judgment is susceptible to being recalled. A sealed order is required in order to enforce a judgement, for example an award of costs.
- Debriefing is required on completion of all litigation. See Litigation Management Planning/Debriefing - Guidelines.
- Precedents in respect of sealing judgments or interlocutory orders can be found under Precedents on the Professional Standards WorkSite page.

Representation

Where Crown Law acts in any proceeding, appeal or application for leave to appeal, the allocation of counsel to conduct the case for the Crown Law client shall be approved as follows:

Any proceeding in or appeal to the District Court or High Court	Team Managers
Appeals or applications for leave to appeal to the Court of Appeal	Deputy Solicitors-General (but in the case of criminal appeals, the Team Managers)
Appeals or applications for leave to appeal to the Supreme Court	Solicitor-General (original authority)

Billing and Reporting

The billing fee earner (responsible counsel assigned to the file) must ensure that the client is kept informed of progress on the file and to ensure timely and accurate invoicing in accordance with the Billing Policy and Billing Process and Guidelines. If an estimate for fees has been given to the client, the billing fee earner must monitor activity on the file to ensure the work will be completed within the estimate and liaise with the client if the estimate will be exceeded.

Guidelines

All counsel must be familiar with the requirements of the following guidelines when conducting litigation to ensure that due consideration is given to the particular subject areas covered by these documents:

- Crown Law Litigation – Appeals and Applications for Review – Guidelines
 - Crown Law Litigation – Defamation Proceedings – Guidelines
 - Crown Law Litigation – Filing of Proceedings – Policy
 - Crown Law Litigation Management Planning – Guidelines
 - Crown Law Litigation – Representation – Guidelines
 - Crown Law Litigation – Service of Proceedings on the Crown – Guidelines
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Forms

Use the following forms to:

- Acknowledge receipt of instructions – [Precedent – Letter of Engagement](#)
 - Complete a [Litigation Management Plan Template](#)
 - Complete a [Memorandum Seeking Approval to Appeal/Review](#)
 - Complete a [Precedent - Discovery Letter](#).
 - Complete a [Precedent - File & Service Letter](#)
 - Complete a [Precedent – Letter of Instruction – Engagement of Expert Witness](#)
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Other References

The following policies, guidelines and resources apply to various aspects of managing litigation files:

- Cabinet Directions for the Conduct of Crown Legal Business 2016
 - High Court Rules rule 5.37
 - Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008
 - the Attorney-General’s Values for Crown Civil Litigation
 - Briefing External Counsel Policy
 - Communicating with the Legal Services Agency Policy
 - Conflicts of Interest When Acting for the Crown Guidelines
 - Engagement of Expert Witnesses Policy and Guidelines
 - Intervention in Proceedings on behalf of the Law Officers Policy and Guidelines
 - Settlements Policy and Guidelines
 - Signatory Policy and Guidelines: Legal Work
 - Crown Law Practice (CLP) seminars provide guidance that will be relevant to the steps taken in Crown litigation.
 - Crown Law Style Guide and NZ Law Style Guide
 - Email Policy
 - File Management – Finalising, Profiling and Saving Documents and Document Security Guidelines
 - File Management – Physical Files for Legal Matters Guidelines
 - File Management – Worksite Pages Guidelines
 - 3E Matter Creation & Ongoing Matter Maintenance Protocol
 - Billing Policy and Billing Process and Guidelines.
 - Client Relationship Management Protocol
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Key Personnel

The following key personnel have responsibilities under this policy.

Position	Role
Responsible counsel assigned to the litigation matter	To ensure all litigation is conducted in accordance with this policy and supporting guidelines.

Policy information

Policy Owner – Convenor, Professional Standards Committee.
 Last reviewed January 2021.
 To be reviewed no later than January 2024.