

Public Interest Intervention Policy for Court Proceedings

(1) Appropriate Cases for Intervention

(a) National Issues

Issues of national concern shall not be undertaken by the Branch, but referred to the Canadian Bar Association (CBA) for consideration. The determination of what constitutes an issue of national concern will be dealt with through the CBA Public Interest Intervention Policy, the Manitoba Bar Association (the "Association") will consider only interventions that the CBA Board has determined through that process to be a regional or local matter.

(b) General

Intervention by the Association will be authorized only at the Manitoba Court of Appeal and Supreme Court of Canada levels.

The Manitoba Bar Association will intervene only where the intervention would constitute a significant contribution to the consideration of the issue or issues involved and only when the position sought to be advanced is:

- (i) consistent with previously adopted policy of the Association;
- (ii) a matter of compelling public interest which the Council then adopts as policy of the Association; or
- (iii) a matter of special significance to the legal profession in Manitoba.

The Association's factums should not merely restate arguments advanced by the parties.

Applications for leave to intervene and factums should explain the nature of the Association's special interest in the case and how its interest differs from that of the parties.

(c) Leave to Appeal and Merits

The Association may intervene after the Court agrees to hear the case on the merits, on the application for leave, or both.

The usual practice will be to intervene in the substantive appeal. However, filing at the leave to appeal stage may be desirable if expressing the Association's position would likely assist the Court in determining whether the case is of sufficient importance to warrant review.

The filing of a brief at the leave to appeal stage does not commit the Association to intervening on the merits.

In appeals where the Association has not decided to intervene, it will not comment in writing to the court or endorse any document to the court on the subject matter or merits of the appeal.

(d) *Intervention on Issues Supported by Existing Canadian and Manitoba Bar Association Policy*

Where Association policy is clear and a matter of record, the policy should be cited and explained in the factum.

The application for leave to intervene and the factum must be reviewed by the Legislation and Law Reform Committee and approved by Executive Committee of the Association.

(e) *Intervention on Issues Not Supported by Existing Canadian and Manitoba Bar Association Policy*

If the factum supports a position which has not been previously adopted as a policy of the Association, the Council must adopt the position as Association policy before authorizing the intervention.

In such cases, the burden is on the proponent of the submission to persuade the Council of the urgency and importance of adopting the policy position to be advanced.

(f) *Joint Briefs*

Generally, the Association will not join in interventions with other organizations.

(2) *Authorization and Responsibilities*

(a) *General*

Interventions in the name of the Association must be authorized by the Council. Authorization is subject to budgetary considerations.

The Council may initiate an intervention or act on a request for authorization to intervene submitted by a Section, Committee, or other Association body ("Association body").

Applications for leave to intervene and factums are to be drafted by the Association body seeking authorization. Other interested Association bodies should be consulted and their position ascertained prior to submission of a request for approval to intervene. The request for approval should indicate the consultations undertaken and the results thereof.

Applications for leave and factums will only be filed in the name of the Manitoba Bar Association and not in the name of an Association constituent body.

In all interventions, the Association President, or the President's designate, will be named as counsel of record, at the Branch office address.

(b) *MBA Council*

The Council must approve the request to intervene.

The Council will seek and consider the recommendation of the Legislation and Law Reform Committee as to whether an intervention should be authorized.

(c) *Legislation and Law Reform Committee*

The Legislation and Law Reform Committee will provide the Council with its recommendation as to whether an intervention should be authorized. The Council will consider, but is not bound by, the recommendation.

Where the Council authorizes a Branch intervention, the Legislation and Law Reform Committee will review the factum on behalf of the Council, suggest modifications if necessary, and advise whether (with any modifications suggested by the Committee) it satisfies the Association's standards. Before the factum may be filed, the Committee must certify that it is of high quality and a fair representation of the policy of the Association.

The Legislation and Law Reform Committee may also monitor judicial developments and identify cases of special interest to the Association.

The Association body wishing to intervene in a matter should contact the Executive Director as soon as it considers the possibility of seeking authorization.

The Executive Director will process the request for authorization. Once the request is approved by Council, the pro bono counsel will keep track of the case's notice requirements and ensure timely submission of the documents to be filed.

The Executive Director will send copies of the request for authorization, application, factum and related material to every Association body which appears to have an interest in the subject matter of the proposed intervention.

(d) Costs

The Association will pay no legal fees relating to interventions. The Association will pay only necessary disbursements from a specific budget established for that purpose.

(3) Requests for Authorization

(a) General

Requests for authorization to intervene in public interest cases should be addressed to the President of the Association and copied to the Executive Director.

Requests for authorization will be sent to the Legislation and Law Reform Committee, which shall make a recommendation to the Council. They will also be sent to the Treasurer regarding any financial implications of the proposed intervention.

Completed requests and any related material will be placed upon the agenda of the next Council meeting. Where time constraints require consideration before the Council's next meeting, the President may call a special meeting of Council to consider the request.

(b) Contents of Request

The request for authorization shall contain the following:

- (i) The style or caption of the case, identification of the last court to render a decision in the case and the court in which it is proposed to intervene. A copy of the decision or order appealed from, any accompanying reasons and other relevant documentation should be attached to the request.
- (ii) The dates, if any, by which the proposed application for leave to intervene and factum must be filed.
- (iii) A full statement of the relevant facts giving rise to the question in issue.
- (iv) A statement of whether the policy or principles of law to be supported has been adopted by the Association and, if so, reference to and full quotation of the relevant resolution or other authoritative action by the Association.
- (v) An explanation of why it is important that the Association address the question in issue.
- (vi) A complete account of the applying body's consideration of the matter, including a description of any dissenting views.
- (vii) Disclosure of any personal or professional interest in the matter on the part of any individual or organization participating in the decision to seek Council's authorization to intervene.

- (viii) The names and firm connection, if any, of those who have written or will write the factum on behalf of the Association.
- (ix) A list of Sections, Conferences, and Committees which might have any interest in the question in issue. These bodies should be consulted and their positions ascertained prior to submission of the request. The request shall state what consultation has taken place and the position, if any, of the other bodies.
- (x) An outline of the argument to be set out in the factum.
- (xi) If there is no Canadian or Manitoba Bar Association policy, the request must be accompanied by a concise statement of why it should be adopted by the Council including an explanation of why the matter is of compelling public interest or a matter of special significance to the legal profession.

(c) *Time of Submitting Request*

Every effort should be made to ensure sufficient time for thorough consideration of requests and factums.

Requests should be submitted to the President and the Executive Director at least 45 days before the application for leave to intervene must be filed in the Court.

Proposed factums must be delivered to the Executive Director no later than three weeks before the factums must be filed. (Three weeks is the minimum time required for review by the Legislation and Law Reform Committee and approval by Executive Committee and printing).