

IPIC Intervention Policy

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1 Appropriate Cases for Intervention

1.1 General

The Intellectual Property Institute of Canada (“IPIC”) will intervene as appropriate in cases at the appellate level, preferably in the highest court in which an issue is likely to be finally decided. Accordingly, intervention will ordinarily be before the Supreme Court of Canada or before federal or provincial Courts of Appeal. However, intervention before courts or tribunals of first instance may also be considered.

IPIC 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 a matter of compelling public interest or a matter of special significance to the intellectual property profession.

1.2 Intervention on Leave to Appeal, Appeal, or Reference

IPIC may seek intervention in respect of an application for leave to appeal, an appeal, a reference, or a proceeding before a court or tribunal of first instance.

IPIC’s usual practice will be to intervene in the substantive appeal. However, seeking intervention in or supporting the application for leave to appeal may be desirable if expressing IPIC’s position would likely assist the Court in determining whether the case is of sufficient importance to warrant review.

Seeking intervention in the application for leave to appeal in no way commits IPIC to seek intervention on the merits of the appeal, if leave is granted.

1.3 Joint Briefs

Generally, IPIC will not join in interventions with other organizations. This provision does not preclude IPIC from filing of a joint brief where appropriate.

2 Procedure for Requests for Intervention

2.1 General

Requests for intervention may be made in respect of an application for leave to appeal, an appeal, a reference, or a proceeding before a court or tribunal of first instance.

2.2 Request for Intervention Directed to the Intervention Committee

All requests for intervention must be directed to the Chair of the Intervention Committee.

An electronic copy of the materials described below should be forwarded to the Chair of the Intervention Committee and the Executive Director of IPIC.

The Intervention Committee may also recommend intervention to Council absent a request.

2.3 Intervention Request Letter and Supporting Documentation

In support of a request for intervention, the following materials must be submitted:

- (i) Intervention Request Letter (not more than 5 pages) succinctly outlining the following:
 - (a) Case name(s) and court file numbers in which intervention participation is requested;
 - (b) Statement of relevant facts giving rise to the matter at issue;
 - (c) Statement of each party's position on the issues appealed;
 - (d) Potential material effect of the Court's ruling on the state of the law or the intellectual property profession and practice; and
 - (e) Statement of how the objectives, policies or principles of law warrants IPIC's intervention before the Court; and
 - (f) Any additional information necessary for the Intervention Committee's consideration of the request for intervention;
- (ii) All underlying Orders and Reasons for Order relating to the case in which intervention is requested;
- (iii) Where the request for intervention is in respect of an application for leave to appeal, appeal or reference the request must include:
 - (a) the date or proposed date of filing of the application for leave to appeal, factum of the appellant or proposed date of the Notice of Reference;
 - (b) a brief outline of the argument to be set out in the appellant's or respondent's materials; and
 - (c) in the case of a reference, a copy of the Order in Council authorizing the reference;
- (iv) Names and contact information for all parties and respective counsel of record involved in the proceeding(s) that is the subject of the request for intervention;

- (v) Names and contact information of all other organizations, agencies or otherwise that the requesting party has requested intervention participation;
- (vi) Any material specifically requested by Intervention Committee, Council, or the Executive Officers; and
- (vii) Any other materials (relevant pleadings, motion materials, etc.), essential to understanding the nature of the issues to be addressed on appeal. These materials should be listed in the Intervention Request Letter.

2.4 IPIC Council and Executive Officers

Requests for intervention are evaluated by the Intervention Committee who provides Council with a recommendation.

All requests for intervention must be approved by Council or, if Council cannot act in time, by the Executive Officers.

Council or the Executive Officers may direct that IPIC intervene or seek leave to intervene in the case of a leave to appeal, appeal or reference even absent a request.

2.5 Independence of IPIC's Position

An evaluation of a request for intervention is not an admission that IPIC believes that the Court or agency has made either an error or a correct decision, or that IPIC will eventually decide to seek intervention.

IPIC retains total control and independence over any positions taken in the motion for leave to intervene or in the intervention even if these positions are adverse to that of the requesting party.

2.6 Appointment of Intervention Counsel

Intervention counsel are appointed by Council.

2.7 Intervention Costs

IPIC will pay only necessary disbursements from a specific budget established for that purpose.

3 Intervention Committee

3.1 General

The Intervention Committee shall be designated by Council as an *ad hoc* committee of IPIC, the Chair of which shall be appointed by Council.

3.2 Membership

In addition to the Chair, the other members of the Intervention Committee shall comprise a maximum of four other people to be designated by Council.

3.3 Voting

All decisions of the Intervention Committee are decided by simple majority.

Any committee member who has a conflict of interest shall declare the conflict and shall not vote on that matter. If the Chair has a conflict of interest, an acting Chair shall be appointed by Council.

In the event of a tie, the deciding vote will be cast by the Chair even if she or he has already cast a vote.

3.4 Mandate

The Intervention Committee is responsible for the following activities:

- (i) monitor or identify judicial and administrative decisions which involve significant issues of law or practice which affect intellectual property;
- (ii) make recommendations to IPIC regarding matters in which IPIC may want to intervene;
- (iii) review and evaluate requests for intervention;
- (iv) where a request for intervention has been approved:
 - (a) supervise Intervention Counsel on all cases where IPIC intervention is sought;
 - (b) develop and approve all submissions made before the Court by the Intervention Counsel; and
 - (c) provide status reports to Council on all cases where IPIC intervention is sought.

3.5 Supervision of Intervention Counsel

Where a request for intervention has been approved, unless Council directs otherwise, the Intervention Committee will review the motion for intervention and all supporting material to be filed in support of IPIC's intervention.

The Intervention Committee is responsible for ensuring that all material filed on behalf of IPIC by the Intervention Counsel is of the highest standards, accurately and persuasively representing IPIC's position before the Court or tribunal.

3.6 Timing of Requests for Intervention

While requests for intervention may be entertained, the timing requirements of the Court or tribunal must be taken into account to provide IPIC sufficient time for the preparation of all necessary materials.