

## **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. Intervention Committee**

### **2.1. Membership**

The Intervention Committee is a standing committee of IPIC.

The Chair of the Intervention Committee is appointed by Council for a three year term.

In addition to the Chair, the Intervention Committee shall generally comprise a maximum of four other standing members to be designated by Council, each appointed for a three year term.

While recognizing that members may benefit from advocacy experience, the membership of the Intervention Committee should reflect diverse expertise across intellectual property subject areas as well as diverse professional affiliations, and IPIC's commitment to promote equality and diversity in the profession.

The Intervention Committee may include *ad hoc* members appointed by Council. *Ad hoc* members may provide substantive or procedural expertise that is relevant to an intervention proposal, or they may provide additional support and assistance with the responsibilities of the Intervention Committee, as needed from time to time.

## **2.2. Voting and Conflicts of Interest**

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

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

Conflicts of interest may arise where a committee member or his/her company or firm is a party to the case for intervention or is related to a party, has a financial interest in the outcome of the case, represents a party to the case, or in circumstances that would constitute a conflict of interest under the rules of professional conduct that govern the committee member or that apply within the court or tribunal that is seized of the case.

## **2.3. Mandate**

The Intervention Committee is responsible for identifying and evaluating judicial or administrative matters in which IPIC may consider participating as an intervener. The duties of the Intervention Committee include:

- (i) monitoring judicial and administrative decisions which involve significant issues of law or practice which broadly impact intellectual property law, in order to identify potential cases for intervention;
- (ii) reviewing and considering requests for intervention;
- (iii) communicating third party requests for intervention and committee-initiated proposals for intervention to the parties involved in the case, who shall be invited to provide submissions on the proposed intervention within 7 calendar days;

- (iv) identifying any risks of intervening, such as reputational risk and potential liability for costs;
- (v) consulting with other IPIC committees or IPIC members to determine whether intervening would have broad-based support among IPIC members;
- (vi) evaluating whether the position sought to be advanced by IPIC is consistent with a previously adopted IPIC policy; and
- (vii) evaluating the desirability and feasibility of proposed interventions (whether identified by the Intervention Committee or by third party request).

Where the Intervention Committee recommends that IPIC should consider intervening in a particular matter, the Intervention Committee will provide a proposal to Council with the Committee's recommendation, and any declared conflicts of interest or dissenting members. The proposal should attach key documents and explain:

- (i) the material factual and legal issues;
- (ii) the policy or principle that would be the subject of any proposed intervention;
- (iii) the Intervention Committee's conclusions regarding how intervening would significantly contribute to the consideration of the issue or issues involved, and why the position sought to be advanced is a matter of compelling public interest or a matter of special significance to the intellectual property profession that extends beyond the interests of the parties to the dispute;
- (iv) timing requirements and deadlines;
- (v) proposed Intervention Counsel, or a process for selecting Intervention Counsel; and
- (vi) any additional information necessary for IPIC Council's consideration of the intervention proposal.

Where an intervention proposal is approved by IPIC Council, the Intervention Committee is responsible for oversight of the intervention proceeding. The duties of the Intervention Committee include:

- (i) instructing Intervention Counsel;
- (ii) developing and reviewing all material proposed to be filed on behalf of IPIC and ensuring that such material is of the highest standards, and accurately and persuasively represents IPIC's position before the Court or tribunal;
- (iii) submitting the final draft of materials proposed to be filed on behalf of IPIC to IPIC Council for approval prior to filing; and
- (iv) providing status reports to Council throughout the proceeding.

The Intervention Committee will also assist Council with communications to IPIC members about an intervention or a proposed intervention.

### **3. Procedure for Requests for Intervention**

#### **3.1. 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.

#### **3.2. 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.

#### **3.3. Intervention Request Letter and Supporting Documentation**

In support of a request for intervention, the following materials must be submitted as early as possible, preferably at least 60 days in advance of any filing deadlines:

- (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.

Requests must disclose any personal or professional interest on the part of any person or entity who participated in the request.

#### **4. Selection of Intervention Counsel**

Intervention Counsel must provide *pro bono* legal services. IPIC will pay only necessary disbursements from a specific budget established for that purpose.

The Intervention Committee may propose Intervention Counsel or a process for selecting Intervention Counsel for an intervention proceeding, but Intervention Counsel are selected by IPIC Council. In selecting Intervention Counsel to represent IPIC in an

intervention proceeding, IPIC Council will consider the Intervention Committee's proposal, and will have regard to the expertise of counsel, IPIC's commitment to promote equality and diversity in the profession, and the need to avoid conflicts of interest and the appearance thereof.

## **5. Approval of Proposals from Intervention Committee**

### **5.1. General**

The Intervention Committee's proposals to intervene are considered by IPIC Council. Prior to approving or rejecting a proposal, Council may request additional information from the Intervention Committee.

If Council cannot act in time, a proposal may be considered by the Executive Officers.

### **5.2. 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.

### **5.3. Notice to IPIC Members**

IPIC will promptly communicate the approval of an intervention proposal to IPIC members. IPIC members will also receive periodic updates regarding the status and outcome of IPIC interventions.