New rules for old friends: The Supreme Court of Canada takes a new approach to interveners

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The Supreme Court of Canada has issued a *Notice to the Profession* (Nov. 19, 2026) announcing a new pilot project for interventions at hearings taking place after April 12, 2027. Under the new approach, interveners will no longer presumptively be entitled to present oral argument at the hearing, but those granted leave to do so will be permitted to appear in person.

Here's what prospective interveners—and parties to the appeal—need to know about the new approach.

1. What is an intervention?

Interventions provide an opportunity for non-parties with an interest in an appeal to participate and make arguments to assist the Court in resolving the legal issues. An intervention may be with leave of the Court—meaning that the interested person must seek the Court's permission to participate—or as of right, meaning that the person has an entitlement to participate. In either case, intervener participation is typically limited to presenting brief written and oral argument to assist the Court with the legal issues raised in the appeal.

To obtain leave to intervene, an interested person must file a motion setting out their interest in the appeal and how the submissions they intend to advance would be useful to the Court and distinct from those of the parties to the appeal. The Notice reiterates the requirements for a motion under Rule 57 of the *Rules of the Supreme Court of Canada* and the expectations for prospective interveners set out in a previous *Notice to the Profession* (Nov. 1, 2021), including that the interveners may not take a position on the outcome of the appeal, challenge factual findings, introduce new issues or expand the scope of the case.

2. What's changing under the pilot project?

The changes announced under the Notice to the Profession relate to whether the intervener will be permitted to present oral argument at the hearing and if so, whether counsel may appear in person.

a. No more presumptive right to make oral submissions

An intervener's ability to present oral argument is a matter of Court discretion under Rule 59(2). However, the default under an earlier *Notice to the Profession* (March 1, 2017) was that an attorney general who filed a notice of intervention on a constitutional question would receive ten minutes to present oral argument, with all other interveners receiving five minutes.

Going forward, interveners will not presumptively be granted permission to present oral argument. Interveners must specifically make that request, either in their motion for leave to intervene or (for interventions as of right) in their factum. Oral argument, if granted, will be in the range of five to ten minutes, and the time allotment no longer distinguishes between types of interveners.

The Notice does not set out the timeline as to when the Court will determine which interveners will be granted permission to present oral argument, which may be done at the stage of determining the motions for leave to intervene, or after all interveners (including those intervening as of right) have filed their written submissions.

b. Intervener counsel may appear in-person again, but only one

Interveners granted the right to present oral argument will now have the option for counsel to appear in person or by videoconference. The option to appear in person is a reversal of the Court's established approach since the onset of the COVID-19 pandemic, during which time counsel for interveners have been permitted to appear by videoconference only. However, under the pilot project, if the in-person option is chosen, only one counsel will be permitted to attend and present oral argument at the hearing.

Counsel appearing in person must certify to the Court that they have advised their clients that appearing in person is optional and that all types of submissions are given equal consideration.

c. No change to written submissions

Although page limits remain subject to the Court's discretion, the Notice does not indicate a change in approach to limits for written submissions under Rule 42(5) of the *Rules of the Supreme Court of Canada*, in which an attorney general intervening as of right may file a 20-page factum and all other interveners are limited to ten pages.

The Notice emphasizes that intervener submissions will be considered equally by the Court regardless of whether they are presented in writing or orally, in person or virtually.

d. Which counsel will be listed on the judgment?

Under the pilot project, up to four names of counsel for interveners will be listed in the judgment, including counsel providing written submissions only. Previously, the Court's practice was to list all counsel who appeared at the hearing.

3. How will this impact my intervention?

While it remains to be seen how the Court will practically implement its new approach to interventions for hearings after April 12, 2027, the changes most likely signal more motions granted but fewer interveners presenting oral argument. That would bring the Supreme Court of Canada closer to the approach followed by the Supreme Court of the United States, in which *amicus curiae* are routinely permitted to file written briefs but not permitted to present oral argument at the hearing.

Fewer interveners presenting oral argument may also mean that those interveners who do present oral argument will receive a longer allotment of time to develop their arguments and answer questions from the bench, up to ten minutes from the presumptive five minutes that applied to non-attorney general interveners. The Notice does not set out criteria to determine which interveners may present orally, but the Court will likely consider whether the issues and arguments raised would benefit from further elaboration in oral argument.

Interveners seeking to make oral submissions should expect an even higher burden to establish that their perspective is distinct and will be useful to the Court. Interveners should also consider at the outset whether written submissions would suffice to put forward their views on the issues, as the Court may be more willing to grant leave to those not seeking to present oral argument.

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