

INTERVENTION IN PROCEEDINGS ON BEHALF OF THE LAW OFFICERS – POLICY AND GUIDELINES



Policy The Law Officers will seek leave to intervene in proceedings where there is no Crown party when it is necessary in the public interest to do so.

The decision as to whether to intervene in a proceeding and the extent and nature of the intervention that will be sought is made by the Solicitor-General.

Counsel are expected to be proactive in evaluating proceedings where intervention may be necessary.

Applies to This policy applies to all Crown Law counsel including:

- full time staff;
- part time staff;
- casual staff; and
- contractors.

Rationale An important function of the Law Officers is to represent the public interest where public rights are at stake and no-one else is charged with protecting them, or where a question of public policy or the national interest is at issue. The Law Officers may seek leave to intervene in proceedings to which they are not a party where it is necessary in order to fulfil this function.

As a model litigant, the Law Officers will seek to assert the minimum influence over the proceedings they intervene in that is consistent with the fulfilment of the function of protecting the public interest.

Forms Use the following precedents for completing leave to intervene applications:

- Notice of Application for Leave to Intervene
 - [High Court](#)
- Memorandum of Counsel in Support of Application for Leave to Intervene
 - [High Court](#)
- Affidavit in Support of Application to Intervene
 - [Court of Appeal](#)
 - [High Court](#)

Other References For useful guidance on intervention generally see document [#627800](#).

For a synopsis of the Attorney-General's values see [Memorandum to new employees on Attorney-General values](#), memorandum to new employees dated 29 March 2001

Key Personnel The following key personnel have responsibilities under this policy.

INTERVENTION IN PROCEEDINGS ON BEHALF OF THE LAW OFFICERS
– **POLICY AND GUIDELINES**

| Position | Role |
|-------------------|---------------------------------------|
| Solicitor-General | Approval to intervene in proceedings. |

GUIDELINES

1. It may be necessary to seek leave to intervene in proceedings where there are significant issues about the scope or application of the following:
 - 1.1 any Crown prerogative including prosecutorial discretion and relations with foreign states;
 - 1.2 the rights affirmed by the [New Zealand Bill of Rights Act 1990](#) and under international human rights instruments to which New Zealand is a party;
 - 1.3 the principles of the Treaty of Waitangi; and
 - 1.4 the privileges of Parliament.
2. In other cases, the need for intervention could arise because the cases raises significant issues of public policy for the executive government and a submission needs to be made to the Court about their justiciability, or where the Court needs to be made aware of the public policy implications.
3. Intense public and political interest in the case is not itself a basis for intervention but may be an indication that a reason for intervention is present.
4. When the Law Officers intervene, they directly represent the public interest, independent of the immediate interests of any particular department, Minister, or government of the day. Even where a request for intervention originates from or is supported by a particular governmental client, it is the Attorney-General that bears responsibility for the conduct of the intervention and its justification in the public interest. Accordingly, the Attorney-General's values are to be borne in mind when considering whether an application ought to be made in a particular case.
5. The Court expects interveners to minimise their impact on the case. They will possibly be expected to bear their own costs and if the consequence of intervention is to extend the hearing, the costs of other parties in respect of that extension. Consideration must be given to whether the need for intervention can be met by providing a written submission, together with an indication that counsel will be available to appear if required.
6. Intervention is rarely granted on an open-ended basis. The application to the Court will need to identify the issues in the case that the Law Officers wishes to be heard on, and it will be supported by a memorandum of counsel in support that explains the rationale.
7. We should expect to be successful on applications for leave to intervene even where it is opposed. If it is not that obvious, the rationale for intervention is probably lacking.
8. Consider the stage at which leave should be sought. Often this will be more appropriate when the proceedings have reached an appellate level. That is because the questions of law to be determined will fall to be decided on the basis of settled factual findings.
9. If an application for leave to intervene is considered appropriate, counsel ought to:
 - 9.1 provide a memorandum seeking approval to proceed, together with a draft application and supporting documentation, to the Team Leader, for approval;
 - 9.2 forward, the memorandum, endorsed with the Team Leader's approval, to the Group Deputy Solicitor-General, who is to consider the proposal and note his or her agreement with it; and

INTERVENTION IN PROCEEDINGS ON BEHALF OF THE LAW OFFICERS
– POLICY AND GUIDELINES

- 9.3 if approved by the Deputy Solicitor-General, the memorandum is to be referred to the Solicitor-General for final consideration.
10. Once the Solicitor-General has approved an application, the Attorney-General is to be advised. In some circumstances it will be appropriate to engage with the Attorney-General at an earlier stage on the merits of pursuing an application. This will be a matter of judgement in each case.

[END]

Policy and Guidelines Owner – Convenor, Professional Standards Committee.
Published on 31 October 2007. Updated 23 May 2016.
Next review date 23 May 2019.