



## “Intervention in Civil Proceedings”



Author: Jeremy W. McKay

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Many court decisions will impact on broader interests than those of the immediate parties. Non-parties, therefore, often seek to obtain intervenor status. On the other hand, there are also factors which justify limiting intervention opportunities. For example, the potential for undue prejudice to the original parties or the unnecessary consumption of court time and resources.

The writer has assisted clients in both *seeking* intervenor status and *resisting* the intervention of non-parties.

Rule 109 of the *Federal Courts Rules* SOR/98-106 allows the court to grant leave to a non-party to intervene in a Federal Court legal proceeding. The common law list of factors to be considered on a Rule 109 intervention motion are the following:

- **Is the proposed intervenor directly affected by the outcome?**
- **Does there exist a justiciable issue and a veritable public interest?**
- **Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?**
- **Is the position of the proposed intervenor adequately defended by one of the parties in the case?**
- **Are the interests of justice better served by the intervention of the proposed third party?**
- **Can the Court hear and decide the cause on its merits without the proposed intervenor?**

The above-mentioned factors are not meant to be exhaustive. Overall, it must be considered if, under the particular facts of each case, the interests of justice require that the court grant or refuse intervention. A party and its legal counsel when considering a Rule 109 intervention motion should carefully examine the factual or legal issues *raised by the proceeding*. In other words, the proposed non-party intervenor must take the issues as it finds them, instead of transforming the issues into something different or adding to them. Moreover, the proposed intervenor should be able to demonstrate and thoroughly articulate to the court how its participation will assist in the determination of the issue. As such, from the beginning, the proposed intervenor and its legal counsel should thoroughly review the relevant court documents and carefully consider the precise nature of its intervention.

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