

CBA Advocacy Policy

Purpose¹

1. To maximize the value of CBA's professional and public interest advocacy as a member service
2. To execute advocacy by CBA and its constituent groups in a manner accountable to CBA members
3. To use staff and volunteer resources effectively to achieve results in CBA advocacy

Scope – Definition of a Submission

Submissions are expressions of policy, analysis, recommendation, endorsement or position communicated by CBA or any constituent group to other organizations or individuals, or to the public. This includes expressions represented as the position of the CBA or constituent group and endorsements of a position taken by another organization or individual.

The following kinds of expression constitute submissions:

- formal written briefs or resolutions of CBA, or any of its constituent bodies
- correspondence on CBA letterhead
- correspondence signed by an individual acting on behalf of CBA or in which the writer describes himself or herself as an Association office holder and may by inference be taken to be speaking for the Association
- oral submissions and public appearances on behalf of CBA.

All CBA submissions are governed by this Policy. Interventions are governed by the CBA Public Interest Intervention Policy and are not submissions under the Advocacy Policy.

Setting Priorities

As a voluntary organization, CBA must use limited volunteer and staff resources effectively. This means setting priorities for maximum effect.

Priority will be given to the following issues:

- Issues of importance to the legal profession generally;
- Issues of direct relevance to lawyers in their practice area; and
- Issues addressing the core principles of the profession.²

For these priority issues, precedence will be given to matters within Canada. Submissions on matters outside Canada that are not supported by resolution of Council will be considered when Canadian citizens are treated contrary to our own notions of fairness or legality, or when the Rule of Law and core principles of the profession are threatened, and where the facts can be verified by a reliable source.

¹ Policy approved by CBA Board of Directors, November 2010.

² CBA endorsed an IBA statement in 2006, defining the core principles as follows:
"The legal profession, in the public interest, is committed to these core principles:
1) An impartial and independent judiciary, without which there is no rule of law;
2) An independent legal profession, without which there is no rule of law or freedom for the people;
3) Access to justice for all people, which is only possible with an independent legal profession and an impartial and independent judiciary.
And these core principles shall not yield to any emergency of the moment."

Submissions on matters outside Canada with no direct impact on the legal profession or on Canadians must be supported by a resolution of Council.

Submissions on matters that give rise to significant controversy in the profession should be supported by a resolution of Council.

Preparing Submissions

Submissions on federal matters are the prerogative of the CBA and its national constituent bodies³. Submissions are initiated in several ways:

- L&LR staff sends Bill or discussion paper to interested Sections, Conferences and Committees
- Constituent group identifies issue to address proactively
- External body requests input, to the constituent group or to National office
- Request from the President, Board of Directors or L&LR Committee.

As a first step, the L&LR Staff Lawyer and the Chair(s) of the constituent group(s) must determine whether to pursue a submission, taking into account:

- whether the matter is a priority issue, as listed above
- the relative importance of the issue to the constituent group(s)
- whether CBA is best placed to inform the public debate
- the likelihood of influencing the debate
- whether a written submission is the most effective means to influence the debate
- the time frame in which to prepare the submission
- the available resources and capacity to produce a response.

If the decision is to do a submission, constituent group(s) and L&LR Staff Lawyer agree on:

- constituent group(s) liaison person for the submission
- who will prepare what
- time lines, taking into account writing, editing, constituent group approval, translation, L&LR Committee review, Executive Officers/Board of Directors approval

If the constituent group fails to inform L&LR staff early in the submission development process or fails to respect the agreed time lines, the L&LR Committee may decide that work on the submission will not continue, or recommend that the submission not be approved.

Constituent Group Deliverables

- expertise on substantive issues, including preparation of written submissions
- tracking issues through federal departments and agencies
- input on priority issues for response
- respect for agreed deadlines in preparing and ratifying written submissions
- input and agreement on strategic lobbying plan
- establishing mechanisms to deal with L&LR issues within the group

³ See Federal Submissions Policy

CBA National Office Deliverables

- tracking issues through Parliament and federal departments and agencies
- developing strategic lobbying plan, including media strategy
- assistance in developing effective messages
- assistance in identifying key decision-makers
- finalizing style, format and translation
- guiding submissions through the approval process
- monitoring progress of bill, liaising with Parliamentary Committee, departmental staff, etc. If appearance is indicated, L&LR staff makes arrangements.
- administration of meetings with key decision-makers
- assistance in preparing volunteers for meetings and appearances

Approval of Submissions

CBA effectiveness in law reform is based equally on its reputation for objectivity and independence, its professional expertise, and its national voice. Participation in CBA constituent groups (especially in Sections) gives members an opportunity to influence legislation and public policy, and to ensure that CBA submissions reflect a balanced position on the range of expertise and views within the CBA.

Speaking on behalf of the CBA or a constituent group carries a responsibility to other CBA members. The approval process ensures that statements are consistent with CBA policy, and that CBA speaks with one voice. This ensures CBA credibility and ability to influence change, as well as accountability to CBA members.

The approval process is governed by CBA Bylaw articles 82 and 83. **Only approved submissions reflect CBA policy. No unapproved submission may bear the name of the CBA or its logo.**

All participants are subject to the Conflict of Interest Policy.⁴

The L&LR Staff Lawyer coordinates the three stages of review and approvals:

1. approval by the constituent group (or its executive)
2. review by the Legislation and Law Reform Committee
3. approval by the Executive Officers or Board of Directors.

Factors for consideration in reviewing and approving submissions

- does the submission accurately reflect the law
- is it consistent or compatible with existing CBA policy
- does it reflect a commitment to the rule of law, the *Charter of Rights* and fundamental human rights
- does it represent the range of interest in the topic amongst CBA membership (even when considering a statement on behalf of a Section, views of other constituent groups with an interest in the subject matter should be sought or a joint submission considered)
- have all aspects of an issue been canvassed thoroughly and considered in a balanced manner, and does the resulting conclusion either represent a consensus or acknowledge differing opinions
- have both official language versions of legislation been considered

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CBA Bylaw s. 84

- is the submission expressed in language and in a form that will be understood by its intended audience, in particular:
 - it describes background and purpose
 - it can be understood without reference to other documentation
 - all conclusions are supported by clearly expressed reasons
 - all conclusions and reasons are well supported by fact, law and policy
 - tone is dispassionate and objective, avoiding a defensive or antagonistic approach
 - recommendations reflect constructive ways to improve, not just criticism
 - quality of appearance and style consistent with CBA standards
- does the format reasonably follow the spirit and intent of the drafting guidelines, with no grammatical or typographical errors

Drafting Guidelines

This is a guide to the form and content of submissions prepared by CBA or its constituent groups for distribution to external bodies such as government departments and parliamentary committees. Sample submissions are available on CBA.org.

1. Table of Contents

List the topic headings in the submission, with page numbers.

2. Preface

This is prepared by L&LR staff at National Office. It describes the Association and the constituent group, and indicates that the submission has been approved as a statement of CBA or its constituent group.

3. Executive Summary

Longer submissions should include an executive summary conveying an overview of key points and the essence of the recommendations.

4. Introduction

Set out the scope of the submission, including the terms of reference. Set out the general approach and philosophy used in the analysis. Summarize the current law on the subject and, if appropriate, how the current or proposed law is inadequate. Briefly identify the major issues considered in the submission.

5. Analysis and Recommendations

Analyze the subject matter, issue by issue. Each issue should be in a separate section and the sections should be ordered in a logical progression. Recommendations should be set apart from the discussion, either at the beginning or end of each section.

6. Citations

- All citations should follow the most recent edition of Canadian Guide to Uniform Legal Citation.
- Case citations should be to one reporting service (preferably to a publicly available source such as CanLII), in footnotes to the text.
- Citations to unpublished material should indicate the source of the material and where it can be obtained.

- References to statutory sections should include the full citation and, where possible, the full text of the provision, either in the text or in a footnote.

7. Summary of Recommendations

List the recommendations in a separate section at the end of the submission.

8. Letters

Shorter submissions may take the form of a letter. Letters should follow the drafting guidelines to the extent appropriate for a shorter document.

Authorities

CBA Bylaw 1

Part X: Sections and Conferences

Part XI: Resolutions

Part XV: Public statements on behalf of the Association

CBA Regulations

s. 8(6): L&LR Committee mandate

s. 10: Branch Action