



Department of Justice  
Canada

Ministère de la Justice  
Canada

# DEPARTMENT OF JUSTICE

**Annual Report  
1982-83**

Canada

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DEPARTMENT OF JUSTICE  
ANNUAL REPORT 1982-83

Department of Justice  
Canada

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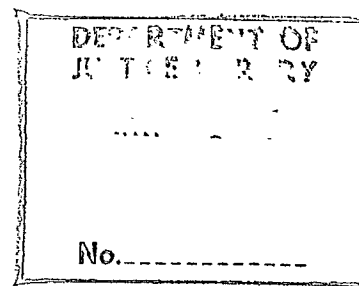
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Minister of Justice and  
Attorney General of Canada



Ministre de la Justice et  
Procureur général du Canada

To His Excellency  
The Right Honourable Edward Schreyer  
Governor General of Canada

May it please Your Excellency:

I have the honour to submit to Your Excellency the annual  
report of the Department of Justice for the fiscal year  
April 1, 1982 to March 31, 1983.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'MacGuigan'.

Mark MacGuigan, P.C., M.P.

The Honourable Mark MacGuigan, P.C., Q.C., M.P.  
Minister of Justice and Attorney General of Canada  
Ottawa

Dear Mr. MacGuigan:

I take pleasure in submitting the first annual report of the Department of Justice. The report pertains to the activities undertaken by the Department for the year ending March 31, 1983.

The year was marked by several important developments in the field of justice. The most significant of these was the proclamation on April 17, 1982, of the *Constitution Act, 1982* and the coming into force on that same date of the *Canadian Charter of Rights and Freedoms*. Other highlights for the Department included our participation in the Constitutional Conference of March 15 and 16, 1983, accelerated progress in the fundamental review of the Canadian criminal law, major studies and consultations in divorce law reform, and the convening of the *People's Law Conference*. In the legislative field, the *Access to Information Act* and the *Privacy Act* received Royal Assent on July 8, 1982 and the *Garnishment, Attachment and Pension Diversion Act* received Royal Assent on June 22, 1982. Amendments to the *Criminal Code* were proclaimed into force on January 4, 1983 and a new *Canada Evidence Act* was introduced in the Senate on November 18, 1982. Another important development was the tabling on December 17, 1982, of Bill C-141, *An Act to Amend the Canadian Human Rights Act*.

These developments occurred during a period of significant restraint upon the level of financial and human resources available to federal government departments and agencies. I am pleased with the manner in which officials and other personnel of the Department of Justice responded to this additional measure of challenge. They personally demonstrated devotion and effort in their work and remained mindful of the necessity for increased efficiency and effectiveness in the discharge of their responsibilities. I appreciated their support and dedication throughout the year.

I should also note that the majority of the studies, initiatives and consultations undertaken by the Department during the year required the cooperation and assistance of many individuals and organizations. I have in mind other federal departments and agencies involved in the administration of justice and social policy, our provincial colleagues throughout the country, special and professional groups and associations who openly shared their experiences and views with us, and members of the general public who took the time to inform us of their understanding and expectations of Canada's system of justice. They made our work much easier and I take pleasure in acknowledging our debt of gratitude to them.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Roger Tassé', with a stylized flourish at the end.

Roger Tassé, Q.C.  
Deputy Minister of Justice and Deputy Attorney General

# Table of Contents

	<b>Page</b>
The Historical Background .....	5
The Department's Roles and Functions .....	8
An Overview of the Year's Activities .....	9
The Organization.....	15
The Deputy Minister's Office .....	20
The Public Law Branch .....	22
The Policy Planning and Development Branch.....	27
The Civil Litigation Branch.....	32
The Criminal Law Branch.....	34
The Tax Litigation Branch .....	41
The General Counsel Group .....	43
The Assistant Deputy Attorney General, Admiralty and Maritime Law .....	44
The Departmental Legal Services Branch .....	45
The Assistant Deputy Minister, Finance.....	48
The Legislative Programming Branch .....	49
The Administration Branch.....	51
 <b>Appendices</b>	
The Department of Justice Act .....	53
Statutes Administered in whole or in part by the Department of Justice .....	55
Departments, Agencies and Other Bodies served by the Departmental Legal Services Branch.....	57

# The Historical Background

As this is the first annual report of the Department of Justice, it was judged appropriate to begin by setting out some of the historical background of the Department. It was felt that this would assist in conveying a greater perspective on the Department's present roles, functions and organization and also serve as a good introduction to a department of government that has been in existence since virtually the beginning of Confederation.

The history of the Department begins at the time the *Department of Justice Act* received Royal Assent on May 22, 1868. This statute, which was one of some forty bills enacted by the new Parliament in its first session after Confederation, assigned responsibilities to the Minister of Justice and Attorney General of Canada in precise terms. Section 2 of that enactment read:

"The duties of the Minister of Justice shall be as follows: He shall be the official legal adviser of the Governor General and the legal Member of Her Majesty's Privy Council for Canada; It shall be his duty to see that the administration of public affairs is in accordance with law; He shall have the superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the Government of the Provinces and composing the same; He shall advise upon the Legislative Acts and proceedings of each of the Legislatures of the Provinces of Canada, and generally advise the Crown upon all matters of law referred to him by the Crown; and he shall be charged generally with such other duties as may at any time be assigned by the Governor-in-Council to the Minister of Justice."

The duties assigned to the Attorney General of Canada were stipulated in Section 3 of the Act which read:

"The duties of The Attorney General of Canada shall be as follows: He shall be entrusted with the powers and charged with the duties which belong to the office of the Attorney General of England by law or usage as far as the same powers and duties are applicable to Canada, and also with the powers and duties which by the laws of the several Provinces belonged to the office of Attorney General of each Province up to the time when the Laws under the provisions of the said Act are to be administered and carried into effect by the Government of the Dominion; He shall advise the Heads of several Departments of the Government upon all matters of Law connected with such Departments; He shall be charged with the settlement and approval of all instruments issued under the Great Seal of Canada; He shall have the superintendence of Penitentiaries and the Prison System of the Dominion; He shall have the regulation and conduct of all litigation for or against the Crown or any Public Department, in respect of any subjects within the authority or jurisdiction of the Dominion; and he shall be charged generally with such other duties as may at anytime be assigned by the Governor-in-Council to the Attorney General of Canada."

The Act also established that the Department was to be under the management and direction of the Minister of Justice who would also, *ex officio*, be the Attorney General of Canada. As a result, the positions of Minister of Justice and Attorney General of Canada have always been held concurrently by one person, and that person has been a member of Cabinet by virtue of being Minister of Justice.

The first Canadian Prime Minister, Sir John A. Macdonald, had previously served as Attorney General for Canada West in the coalition government of Sir Allan McNab

(1854-56) and in later governments preceding Confederation. He retained that office even when he served as joint Prime Minister in the Taché-Macdonald and Macdonald-Cartier Ministries. He chose to retain those duties following Confederation and was, from 1868 until his defeat at the polls in 1873, at the same time Prime Minister of Canada, Minister of Justice and, *ex officio*, Attorney General of Canada.

Regarding his responsibilities as Attorney General of Canada, Sir John A. Macdonald wrote, on June 11, 1868, to the heads of all federal departments setting out his wishes regarding the conduct of litigation involving the Crown or public departments. After drawing the attention of Ministers to the duties of the Attorney General set out in the *Department of Justice Act*, he went on to say:

"...I request that you will forward me a memorandum of all suits or matters in litigation in respect to matters emanating from your department, with the names and residences of the professional Gentlemen in whose conduct they may have been placed, to enable me to see that the same are in proper train.

"I request also that as cases occur in your department, or any of its outside branches, which may require litigation or the institution or defence of suits, you will transmit the same and all necessary documents or instructions to enable me to take such proceedings as may be deemed advisable."

This document written in the hand of and signed by Sir John A. Macdonald remains on file within the Department of Justice.

A comparison of the 1868 *Department of Justice Act* and its modern version reveals that the duties and responsibilities assigned under the Act have remained fairly constant. One area of duty originally included within the Attorney General's functions involved "the superintendence of Penitentiaries and the Prison System of the Dominion". At Confederation, the penitentiaries of the several provinces passed to the control of the federal government and were placed under a

commission known as the Board of Directors. In 1875, the Board was abolished and the administration of penitentiaries was transferred to the Department of Justice. A Penitentiary Branch was created within the Department, though the immediate supervision of penitentiaries was vested in an inspector with broad responsibilities relating to the management and discipline of penitentiaries. Duties in this connection were transferred to the Solicitor General of Canada in 1965 pursuant to the *Public Service Rearrangement and Transfer of Duties Act*.

Another area of responsibility discharged by the Department of Justice from the beginning pertained to policing functions. Even though the 1868 Act did not refer to this responsibility, Sir John A. Macdonald established in 1868 a Dominion Police Force to be directly under the administration of the Department of Justice. He also assumed personal responsibility for the control and management of the North West Mounted Police. Its successors, the Royal Northwest Mounted Police and the Royal Canadian Mounted Police, similarly remained under the administrative jurisdiction of the Department of Justice and successive Commissioners were accountable directly to the Minister of Justice. This situation pertained until 1965 when, pursuant to the aforementioned *Public Service Rearrangement and Transfer of Duties Act*, the Solicitor General of Canada was assigned all duties, powers and functions previously exercised by the Minister of Justice with regard to policing in Canada.

It might be noted that a close association has existed for many years between the Minister of Justice and the office of the Solicitor General. This office was created in 1887 by a statute that established that the Governor in Council could "appoint an officer who shall be called 'The Solicitor General of Canada' and who shall assist the Minister of Justice in the counsel work of the Department of Justice and shall be charged with such other duties as are at any time assigned to him by the Governor in Council". From 1917 to 1966, the general rule was that the Solicitor General was a full member of Cabinet with primary responsibility for advising the Governor General on the exercise of the preroga-



tive of mercy. The Minister of Justice retained this responsibility, however, in regard to cases involving the death penalty. In 1966, the Department of the Solicitor General was created pursuant to the *Government Organization Act, 1966*.

Even though the 1868 *Department of Justice Act* clearly intended that all legal services to the federal government be centralized in the Department, a practice of establishing solicitors and legal branches in individual departments evolved over the years. Many federal departments followed this practice with the result that by the late 1950's a significant amount of legal work was being done for federal departments without the direct involvement or participation of the Department of Justice. In 1962, the Royal Commission on Government Organization (the Glassco Commission) reported several disadvantages to the arrangements that had been permitted to develop in this regard. Consequently, several steps were taken to unify the provision of legal services to government. The *Government Organization Act* of 1966 transferred a number of functions from the Department of Justice to other departments. These included responsibilities over the Parole Service, Combines Investigation, Bankruptcy Administration and, as has already been discussed, the Royal Canadian Mounted Police and the superintendence of penitentiaries and prison systems. This greatly simplified

the administrative functions of the Department and facilitated the centralization of all governmental legal services. Between 1966 and 1970, virtually all government lawyers who were practising their profession within the federal public service were transferred to the Department. The trend since then has been the further consolidation of the centralizing process undertaken in the years following the Glassco Report. Recent examples of this trend include the establishment of departmental legal services units with the R.C.M.P. in October, 1983, and with the Department of External Affairs in January, 1983.

A related development throughout those years was the establishment of regional offices throughout Canada to facilitate the Department's conduct of litigation and prosecutions. Prior to this time, much of this work was assigned to legal agents, that is, lawyers in private practice who act on behalf of the Attorney General. While it is still more efficient to deal with some legal matters in this fashion, the establishment of regional offices has greatly reduced the Department's use of legal agents. The first regional office was established in Montreal in 1965. This was followed by offices in Toronto and Yellowknife (1966), Vancouver (1967), Winnipeg (1969), Whitehorse and Halifax (1970), Edmonton (1972), and Saskatoon (1974).

# The Department's Roles and Functions

The roles of the Minister of Justice and Attorney General, while distinct in law, often merge in practice because the functions of both are discharged by a single Minister. Similarly, the duties of the Department of Justice may involve aspects of each role, depending upon the issue in question and the context in which it arises.

The Attorney General is the chief law officer of the Crown and is accountable to Parliament for the performance of his legal duties as senior legal advisor and representative of the Crown in right of Canada. In advising the departments of government upon all legal matters connected with such departments, he must always have a special regard for the public interest by virtue of the inherent responsibilities of his public office. Similarly, when he conducts litigation for or against the Crown or any department or agency of government, he does so as the highest legal officer of the land and as the primary guardian of Canada's system of law. He must uphold the rule of law at all times, most particularly when he exercises his prosecutorial discretion. He represents the Crown in the courts in all matters in which rights of a public character come into question; he is responsible for miscellaneous duties associated with the legal affairs of the government such as those relating to the preparation of contracts, the collection of debts owing to the Crown, and the searching of titles; and he is responsible for the carrying out of numerous other statutory or common law duties devolving upon his office.

As the official legal adviser to Her Majesty's Privy Council, the Minister of Justice must often give advice in circumstances involving

mixed considerations of law and government policy. His primary concerns are with:

- the policy considerations underlying the substantive law for which he is directly responsible;
- the substantive or procedural content of government bills, regulations or departmental directives which may affect fundamental human rights or freedoms;
- the legal mechanisms which are employed by other Ministers to implement government objectives in their areas of sectoral responsibility.

The Minister of Justice has the statutory duty of ensuring that the administration of public affairs is in accordance with the law, and he also has the responsibility for the superintendence of all matters within federal jurisdiction connected with the administration of justice in Canada. The use of the law as an element of social change or regulation is principally within his purview, and he holds a special responsibility pursuant to the *Canadian Bill of Rights* and the *Statutory Instruments Act* to examine bills and regulations for instances of undue legislative interference with fundamental human rights and freedoms. This latter responsibility is directly related to the Minister's supervision of the legislative drafting process leading to the preparation of government bills and regulations.

In essence, the Department is faced with a complex variety of responsibilities to its client departments and agencies, to the government as a whole, to the courts, and to Canadian society at large.

# **An Overview of the Year's Activities**

## **The Organization**

### **The Constitution**

By far the most significant event of the year was the proclamation on April 17, 1982, of the *Constitution Act, 1982*. With the coming into force of that Act, Canada attained the full measure of its sovereignty, including the plenary power to enact all its own legislation and the sole authority to amend its constitution. The *Constitution Act, 1982* also introduced as part of Canada's new constitution the *Canadian Charter of Rights and Freedoms*, a comprehensive and authoritative statement of the rights and freedoms constitutionally guaranteed to all Canadians. The *Charter* imposes definitive limitations upon the legislative authority of Parliament and the provincial legislatures by entrenching directly into our constitution specific fundamental rights and freedoms. The *Charter* also explicitly gives any Canadian whose rights and freedoms have been infringed or denied, the right to apply to a court of competent jurisdiction to obtain an appropriate and just remedy. As was fully expected, the *Charter's* judicial interpretation and its implementation at the federal level have been major preoccupations of the Department of Justice in the year under review.

### **The Constitutional Conference**

A related and equally important activity was the Department's participation in the preparation leading to the Constitutional Conference held in Ottawa on March 15 and 16, 1983. This conference was held in compliance with Section 37 of the *Constitution Act, 1982* which required that the Prime Minister of Canada convene a first ministers' conference within one year after the coming into force of the Act. The primary purpose of the

conference was to focus upon the identification and definition of those rights of the aboriginal peoples of Canada to be included in the constitution. This conference marked the first time that the first ministers of Canada and the aboriginal and territorial leaders joined together to discuss the aboriginal peoples in modern Canada and the constitutional provisions required to recognize and secure their status in this country. The Prime Minister appointed the Minister of Justice to lead the federal delegation in the preparatory meetings leading to the conference.

### **The implementation of the Charter**

Adjustment of federal laws and practices to the requirements of the *Charter* has been an important objective of the government. Accordingly, the Department established a Human Rights Law Section with responsibility for coordinating a review of all federal legislation, regulations, administrative and policy directives and guidelines, and federal programmes in order to formulate recommendations to the government for changes required to bring about conformity with the *Charter*. This has been a long and elaborate process which has required the assistance and participation of a significant proportion of the Department's lawyers. A number of problem areas have been identified and work is progressing towards the tabling of legislation intended to ensure conformity between all federal legislation and the *Charter*.

### **The criminal law review**

There has never been a fundamental review of the *Criminal Code* since its introduction in 1892. The last major revision to the *Criminal Code* was in 1953 and it did not involve any

significant questioning of the basic premises of Canadian criminal law. With the numerous amendments that have accumulated since the 1953 revision, the *Code* has become unwieldy, very difficult to follow, and outdated in many of its provisions. In October 1979, federal and provincial Ministers responsible for criminal justice agreed that a thorough review of the *Criminal Code* should be undertaken as a matter of priority. A three-phase review process including the formulation of proposals by the Law Reform Commission of Canada, government decision-making with respect to those proposals, and legislative implementation wherever appropriate was established early in 1980. The management structure of this review process vested overall control and coordination of the review in the Minister of Justice acting in collaboration with the Solicitor General and in conjunction and consultation with provincial officials.

Recommendations deriving from the first major project of the review, dealing with the objectives and principles of the criminal law, received Cabinet approval in July of that year. A policy paper entitled *The Criminal Law in Canadian Society* was published in August. This paper enunciated a statement of the purposes and principles of the criminal law intended to provide guidance for the overall review. The primary principle was that:

"The criminal law should be employed to deal only with that conduct for which other means of social control are inadequate or inappropriate, and in a manner which interferes with individual rights and freedoms only to the extent necessary for the attainment of its purposes".

As a first step in implementing this principle, Cabinet directed that the Department examine the great number of provisions in federal statutes that create offences, with a view to reclassifying those offences that are primarily regulatory or administrative in nature rather than criminal. The Department is also considering alternative means of achieving compliance with federal statutes.

During the year, the criminal law review progressed in the areas of theft and fraud, sen-

tencing policies and practices, the role of the jury, contempt of court, mental disorder, pre-trial procedures, and clemency. The criminal law review remains one of the Department's highest priorities.

## Divorce Law Reform

In May, 1976 the Minister of Justice tabled in the House of Commons the Law Reform Commission's *Report on Family Law*. While this report served as a basis for discussions with the provinces and interested groups, immediate action by the federal government was impossible unless all provinces enacted equitable matrimonial property-sharing legislation; otherwise, the right to obtain a divorce on the basis of marriage breakdown could have left the dependent or non-wage-earning spouse in a difficult financial situation. All provinces have now enacted matrimonial property-sharing legislation which supports the philosophy of equal sharing upon the dissolution of marriage.

Since 1976, there has been a great deal of discussion on the grounds for divorce, the period of separation necessary between a marriage breakdown and the granting of a divorce, the adversarial nature of divorce proceedings, the standards applied by courts in the determination of custody issues, the question of maintenance and its enforcement after divorce, the jurisdictional authority to enact divorce legislation, and procedures for uncontested divorces.

During the year in review, divorce law reform became one of the principal priorities of the Department. Informal consultations were held with professionals in the field of family law and with representatives of interested groups. The Department formulated a series of proposals for divorce law reform. A consultation paper entitled "*Divorce Law in Canada: Proposals for Change*" was published and progress in consultations continued. The Department was able, on the basis of this work, to formulate several policy options for reforming the *Divorce Act*.

## **The People's Law Conference**

In 1971, the Department hosted a national law conference which brought together several individuals and groups interested in a fundamental consideration of Canada's laws and legal processes. This conference has often been seen as the impetus which led to essential law reform initiatives taken throughout the remainder of the decade.

The holding of a second national law conference entitled *The People's Law Conference* was an important priority of the Minister of Justice. The conference was convened on May 25, 26, and 27, 1983. A series of keynote speakers addressed the expectations of various groups within our society, presenting a variety of perspectives which served as the conceptual framework within which several workshops dealing with specific aspects of the law were held.

The conference led to a valuable exchange of ideas and the stimulation of a new appreciation on the part of all participants of the tremendously complex nature of our society's reliance on its legal system. Efforts were immediately undertaken to follow through on the conference's recommendations and give effect to several significant ideas and concepts deriving from the conference.

## **The Access to Information Act and The Privacy Act**

The *Access to Information Act* and the *Privacy Act* received Royal Assent on July 8, 1982, and were proclaimed into force on July 1, 1983. The Department has held the primary responsibility for the legislative and policy aspects of the *Privacy Act* since its inception. During the year, the Prime Minister assigned a parallel responsibility for the *Access to Information Act* to the Minister of Justice. This has entailed a great deal of work leading firstly to the proclamation of the Act and secondly to its efficient and effective implementation at the earliest stages of its operation. In this regard, the Department has cooperated very closely

with the Treasury Board to whom responsibility for the administration of the Act was assigned.

The *Access to Information Act* provides Canadians with a right of access to information held by approximately 140 federal departments and agencies. It represents a significant development in the relationship between Canadians and their government.

The Department assisted in the preparation of a register of information held by government institutions. This register was widely distributed throughout the country at the time of proclamation of the legislation. Its primary purpose is to assist individuals in applying for information under the Act. The Department also played a primary role in the establishment of the regulations issued under the Act and in the development of guidelines and directives provided to government institutions to assist them in applying and interpreting the Act. Another major related task has been to assist in the briefing of public servants with respect to the application and implications of the Act.

The *Privacy Act*, which replaced Part IV of the *Canadian Human Rights Act*, expanded the individual's right of access to personal information held by government. The Act created a code of fair practices regulating the collection, retention, disposal, use and disclosure of personal information by government institutions. The Department was very closely involved in the preparations leading to the implementation of this Act.

A related development was the repeal of Section 41 of the *Federal Court Act* and the enactment of new provisions in the *Canada Evidence Act* dealing with the right to claim exemptions to the disclosure of information in court. The courts are now authorized to determine whether the public interest would be harmed if the information sought to be protected were disclosed. Where the claim to immunity is based on potential injury to national defence, security, or international relations, the Chief Justice of the Federal Court or his designate has the authority to determine the question of public interest. Absolute privileges have been retained only for Cabinet confidences.

These provisions, which were proclaimed on November 23, 1982, formed part of Bill C-43 which also contained the *Access to Information Act* and the *Privacy Act*. As in the case with these two Acts, the Department has special coordinating and policy responsibilities with regard to the application of the new provisions of the *Canada Evidence Act* by government departments and agencies.

## **The Garnishment, Attachment and Pension Diversion Act**

This Act received Royal Assent on June 22, 1982. Part I of the Act dealing with garnishment provisions was proclaimed into effect on March 18, 1983. Parts II to IV of the Act contain the pension diversion provisions and came into force at a later time.

Part I of the Act removes the Crown's immunity to court orders binding Her Majesty's monies and property insofar as the enforcement of family financial support orders and judgment debts are concerned. As a result, salaries paid to federal public servants, judges, members of the R.C.M.P. and others are now subject to garnishment and attachment orders.

Part II of the Act permits the diversion of pension benefits to satisfy family support orders. It applies to pension benefits payable under federal superannuation plans to former public servants, Members of Parliament, judges and others. It does not apply in respect of Old Age Security Pensions, Canada Pension Plan benefits, veteran's pensions, or disability pensions.

The Minister of Justice is responsible for the administration of Part I of the Act. This past year, the Department has worked to finalize and promulgate regulations, distribute information to the public and to public servants who are involved in the detailed administration of the Act. The Department also accepts the service of documents necessary to commence garnishment proceedings.

## **The Young Offenders Act**

Efforts to revise the 1908 *Juvenile Delinquents Act* have been going on since the early 1960's. On February 16, 1982, the Solicitor General of Canada, introduced Bill C-61, the *Young Offenders Act* into the House of Commons. The Bill received Royal Assent on July 7, 1982 but has not yet proclaimed into force. The legislation is intended to strike a reasonable and acceptable balance between the needs of young offenders and the interests of society. The Department of Justice was involved this past year in assisting the Department of the Solicitor General prepare for the effective implementation of the Act once it comes into force.

## **Amendments to the Criminal Code pertaining to sexual and other offences**

Bill C-127 which amended the *Criminal Code* with respect to sexual offences was proclaimed into force on January 4, 1983. These amendments, which reflect extensive study of the law on sexual offences over the past decade, reshaped the structure of offences pertaining to assault and sexual assault. Other important changes introduced by the Bill with respect to the law dealing with sexual assault include:

- a modification of the rule concerning the defence of mistaken belief in consent;
- a limitation on the right of the defence to cross-examine the complainant on prior sexual activity or history;
- the abrogation of the doctrine of 'recent complaint', permitting rules that apply to any other crime to apply to sexual assaults;
- the abolition of spousal immunity, by allowing spouses to be charged by the sexually assaulted spouse;
- the absence of references to gender in the *Criminal Code* provisions dealing with sexual assaults.

The Bill also created specific offences relating to the abduction of children.

## The proposed new Canada Evidence Act

In the Fall of 1981, the Uniform Law Conference of Canada, with the support of all jurisdictions, approved a draft *Uniform Evidence Act* which could serve as a model for new evidence legislation at the federal and provincial levels. This *Uniform Evidence Act* was based upon recommendations of a Federal-Provincial Task Force on Evidence, which in turn relied heavily upon the reports on evidence published by the Law Reform Commission of Canada in 1975 and the Ontario Law Reform Commission in 1976. The underlying purpose of the draft Act was to establish modern, fair and effective evidentiary rules.

In November 1982, the government introduced Bill S-33, the proposed new *Canada Evidence Act*, in the Senate. The Bill was virtually identical to the *Uniform Evidence Act* except for modifications to reflect the requirements of the *Canadian Charter of Rights and Freedoms* and to conform with the evidentiary provisions of the *Access to Information Act* and the amendments to the *Criminal Code* relating to sexual offences. A number of minor amendments were also made to eliminate ambiguities.

The most significant changes proposed in the *Canada Evidence Act* relate to expert evidence, character evidence, hearsay, statements of an accused to a person in authority, illegally obtained evidence, spousal competence as witnesses, cross-examination of the accused on his record, corroboration, documentary evidence, professional privilege, crown privilege, and alibi.

The Senate Committee on Legal and Constitutional Affairs held several public hearings on the Bill. As recommended by the Committee, consultations on the proposed legislation are continuing with the Canadian Bar Association and other legal experts.

## The proposed amendments to the Canadian Human Rights Act

On December 17, 1982, the Minister of Justice tabled in the House of Commons Bill C-141, *An Act to Amend the Canadian Human Rights Act*. The Bill was examined in Committee on December 20 and 21, 1982, and reported back to the House.

The scope of the amendments is:

- to prohibit discrimination on the basis of both physical and mental disability;
- to prohibit harassment, including sexual harassment;
- to prohibit discrimination on the basis of pregnancy or childbirth;
- to prohibit discrimination on the basis of family or marital status;
- to make various other remedial amendments to the Act.

The *Canadian Human Rights Act* applies to matters coming within the legislative authority of Parliament and is applicable to the Crown in right of Canada. The basic aim of the legislation is to prohibit discrimination in the areas of employment and in the provision of goods, services, facilities, and accommodation. The amendments received Royal Assent on March 30, 1983 and came into force on July 1, 1983.

## Charter Litigation

In the first year of its operation, the *Canadian Charter of Rights and Freedoms* was the subject of approximately 600 judgements by courts at all levels of the judicial hierarchy except the Supreme Court of Canada. Although in the early days following its proclamation the *Charter* was not frequently invoked, as counsel became more familiar with its provisions and as news of successful applications for constitutional remedies became known, a steady momentum began to build to the point where a reference to the

*Charter* became almost commonplace in criminal proceedings. In the last few months of the year, six judgements of provincial courts of appeal declared that various legislative provisions fell short of compliance with the standards prescribed by the *Charter*.

The actions of the police and the validity of statutes governing the criminal law process received the greatest scrutiny, particularly in the following areas:

- the statutory imposition of an onus of explanation on an accused, principally with regard to Section 8 of the *Narcotic Control Act* which requires an accused who has been proved to have been found in possession of a narcotic to establish that he did not intend to traffic;
- the right of an accused to be informed of his rights to counsel and of the reason for his arrest;

- the right to be secure against unreasonable search and seizure;
- the right to trial within a reasonable time, usually with respect to fairly minor offences;
- the exclusion of evidence pursuant to Subsection 24(2) of the *Charter*.

The Department closely monitors all litigation involving the *Charter* with a view to identifying emerging principles at a relatively early stage. The volume and content of the Notices of Constitutional Questions served on the Department of Justice continuously increased throughout the year, and *Charter*-related litigation became a major preoccupation of the Department.



# The Organization

During the year, the Department of Justice employed 1,370 persons. Its major occupational group was that of its legal officers; there were 608 lawyers employed by the Department. The next largest occupational group comprised secretaries, of which there were 320. These two groups constituted approximately 70% of the Department's total personnel complement.

Departmental staff are divided into three major segments: regional offices, departmental legal services units, and departmental headquarters.

The Department's nine regional offices had a total staff of 420 during the year under review. This was made up of 205 legal officers and 215 other employees. The regional offices undertake all forms of litigation and prosecutions on behalf of the Attorney General of Canada. They also provide legal advice to the offices of federal departments and agencies in their local areas. At least three of the regional offices, the Montreal, Toronto and Vancouver offices, constitute what would be relatively large law firms in the private sector.

The Department had 38 legal services units in the national Capital Region responsible for providing legal services to federal departments, agencies and the Royal Canadian Mounted Police. These units varied in size from a staff of sixteen lawyers and twelve support staff with the Department of Supply and Services to units consisting of a single lawyer. The total strength of Justice personnel in departmental legal services units was 280, comprising 229 lawyers and 51 non-legal staff. In the majority of instances, the client department or agency provided the administrative support staff.

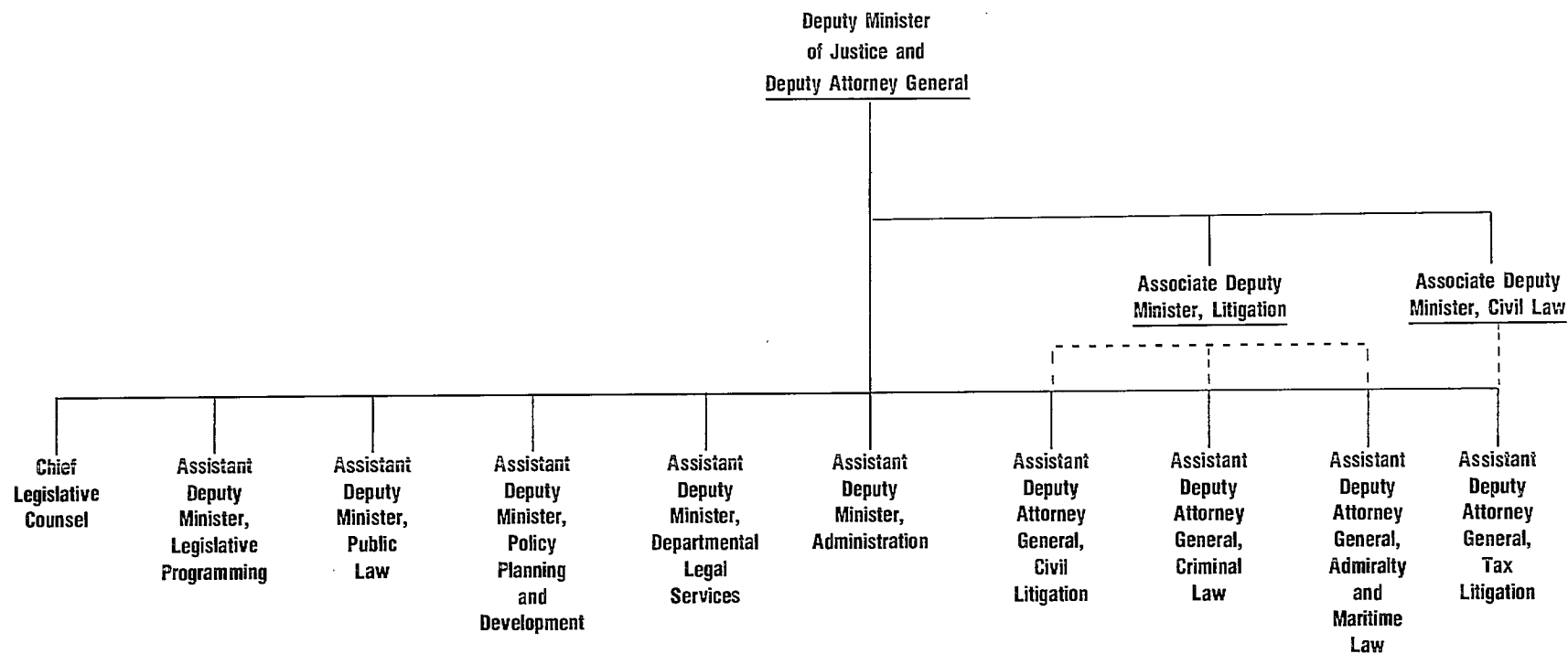
The staff at the Department's headquarters in Ottawa totalled 618 of which 174 (28%) were lawyers. Legal branches representing

various specialized fields of law, central services and functions such as policy planning, legislative programming and administration are located at headquarters.

Over the course of the year in review, the Department increased in number by 12%, an increase largely attributed to the additional workload resulting from the coming into force of the *Canadian Charter of Rights and Freedoms*. The turnover for legal officers over this period was 7.5%, a rate that was slightly lower than that experienced in previous years. Approximately half of this departmental turnover occurred in the regional offices.

The Department's top management consists of the Deputy Minister and the Associate Deputy Ministers. The next line of management are the Assistant Deputy Attorneys General, the Assistant Deputy Ministers, the Chief Legislative Counsel, and the Chief General Counsel.

The largest branch headed by an Assistant Deputy Minister is the Departmental Legal Services Branch comprising 280 persons. The Policy Planning and Development Branch has 63 persons, while the Public Law Branch has 45, and the Legislative Programming Branch has 87. The Civil Litigation, Criminal Law and the Tax Litigation functions engage staffs of 64, 108, and 36 legal officers respectively. All three of these Assistant Deputy Attorneys General have responsibilities relating to Crown litigation or prosecutions carried out throughout the country, whether by legal officers at regional offices or by agents acting on behalf of the Department. The Assistant Deputy Attorney General, Admiralty and Maritime Law, has analogous responsibilities in his speciality of law, though he does not head a separate branch of the Department.



**Other Senior Staff:**

- Assistant Deputy Minister, Finance
- Associate Chief Legislative Counsel
- Chief General Counsel
- Senior General Counsel, Public Law

While the Department's organization is set out in Branches, Sections, and related units, it is important to note that in practice, the carrying out of the Department's mandate is not easily compartmentalized. Many of the different organizational segments of the Department engage regularly in the attainment of objectives that are common to those of several other groups within the Department. For example, the legislative implementation of a policy developed and accepted by another department of government will often involve a number of Branches and Sections of the Department of Justice. Lawyers from the particular department's legal services unit will normally be consulted with respect to the broad legal aspects of the proposed policy, and will be expected to advise upon the extent to which the proposed policy accords with other federal statutes. If the policy has constitutional implications, the Public Law Branch may be requested to assist in the analysis of these and may become involved in establishing various options intended to permit a sound legal basis for the development and later implementation of the policy. The actual preparation of the legislation in the form of a government Bill will be the responsibility of the Legislative Programming Branch, and more specifically of the Chief Legislative Counsel. The Legislation Section of that Branch will also examine the draft legislation pursuant to the *Canadian Bill of Rights* to ascertain whether any of its provisions are inconsistent with the *Bill of Rights*.

A different example could be given relating to the Attorney General's responsibility for the conduct of criminal prosecutions and for the regulation and conduct of all litigation for and against the Crown or any public department in respect of any subject within the authority or jurisdiction of Canada. Under this responsibility, the Department becomes engaged in the conduct of litigation involving civil claims by or against the Crown, references and interventions in constitutional questions, prosecutions for certain offences under the *Criminal Code* and other federal legislation, and defence of the public interest in certain circumstances even when no specific Crown right is infringed. Depending on the precise legal principles at issue, the Associate Deputy Minister or Assistant

Deputy Attorney General primarily responsible for the conduct of the legal proceedings may call upon any of the other departmental branches to participate in the development of the Attorney General's position in particular cases.

In many instances, the carrying out of the Department's major activities, such as the provision of legal services to government, the planning and implementation of legal policy regarding federal laws and the federal system of justice, and the development and administration of programs intended to advance federal initiatives in the justice field, necessarily requires the concerted efforts of several groups within the Department, each contributing from their special expertise and perspective.

A number of committees have been established within the Department to assist in the administration and coordination of resources and programmes:

- *The Executive Committee*

This is the senior departmental management committee. It meets on a weekly basis and provides the primary forum for the discussion of significant departmental issues. The committee is chaired by the Deputy Minister and provides him advice on management objectives, strategies and policies. It evaluates all departmental proposals pertaining to resources allocation and utilization and assists in the development of priorities for the Department. In addition to the Deputy Minister, the committee comprises the Associate Deputy Ministers and the Assistant Deputy Ministers of Public Law, Policy Planning and Development, Departmental Legal Services, Legislative Programming, and Administration.

- *The Personnel Management Committee*

This committee concerns itself with the allocation of personnel and the approval of legal officer appointments. It is also responsible for overseeing the administration of personnel salaries and benefits. Its composition is the same as that of the Executive Committee.

- *The Senior Staff Committee*

This committee addresses broader policy questions of departmental concern and matters referred to it by the Executive Committee. One of its major responsibilities is the departmental performance appraisal system. It also concerns itself with the periodic review and definition of the Department's legal functions, together with the organizational structure of the Department. The committee is chaired by the Deputy Minister and comprises the Associate and Assistant Deputy Ministers, the Assistant Deputy Attorneys General, the Chief and Associate Chief Legislative Counsel, the Chief General Counsel, and the Senior General Counsel, Public Law.

- *The Management Committee*

This committee includes all General and Senior Counsel charged with the management of legal offices. It meets twice a year to discuss current management issues and practices and serves as a valuable link between the senior management of the Department and all legal officers. This committee is also chaired by the Deputy Minister.

- *The Legal Officers Advisory Committee*

This committee is designed to provide legal officers without management responsibilities the opportunity to discuss and advise upon matters relating to terms and conditions of employment, financial compensation and benefits, personnel management policies and practices, and related issues.

The committee is composed of five members from management and fourteen members without managerial responsibilities. The former are appointed by the Deputy Minister while the latter are elected by legal officers throughout the Department. The Associate Deputy Minister, Civil Law, has been selected by the committee to preside its meetings.

- *The Charter Committee*

All major issues pertaining to litigation involving the *Canadian Charter of Rights and Freedoms*, including questions relating to the intervention of the Attorney General of Canada in such litigation, are referred to this committee for consideration and direction. The committee also regularly addresses broader policy issues relating to the federal implementation of the *Charter*. The committee is chaired by the Deputy Minister and comprises the Associate Deputy Ministers, the Assistant Deputy Attorney General, Civil Litigation, the Assistant Deputy Minister, Public Law, the Senior General Counsel, Public Law, the General Counsel, Human Rights Law, and the Charter Litigation Coordinator.

- *The Litigation Committee*

The Department engages in an exceptionally wide variety of litigation in both the civil and criminal fields. It is important that positions and principles advanced in this litigation conform to established policies and standards. It is also necessary that departmental activities in regard to various cases conducted throughout the country be well coordinated. The Litigation Committee discharges special responsibilities in this connection. It also considers the assignment of resources and personnel within the Department's litigation groups and makes recommendations to the Executive Committee on this account. The committee is chaired by the Associate Deputy Minister, Litigation, and comprises the Associate Deputy Minister, Civil Law, the Assistant Deputy Attorneys General, Criminal Law, Civil Litigation, and Admiralty and Maritime Law, together with the Chief General Counsel.

There is also a wide variety of other committees with specific areas of responsibility. The most noteworthy among these are the Union-Management Consultation Committee, the Official Languages Committee, the Equal Opportunities for Women Committee, the Programme Evaluation and Internal Audit Committee, the Performance Review Com-

mittee, the Information Policy and Systems  
Committee, the Training and Development  
Committee, the Management Information

Systems Committee, the Library Services  
Committee and the Legal Opinion Retrieval  
Committee.

# The Deputy Minister's Office

The Deputy Minister of Justice is appointed by the Governor in Council pursuant to Subsection 3(1) of the *Department of Justice Act*. The Deputy Minister is, *ex officio*, the Deputy Attorney General of Canada. The following organizational groups report directly to the Deputy:

- *The Departmental Secretariat*

The Secretariat provides essential support services to the Deputy Minister. It ensures appropriate communication and liaison on policy and operational issues between the Deputy Minister and the Minister's Office, the Department, and other government departments and agencies. It is responsible for coordinating the Department's involvement with the various Cabinet and Parliamentary processes, and it attends to all ministerial correspondence referred to the Department. The Secretariat is also responsible for the development and assembling of departmental statements of policy and procedures.

- *The Communications and Public Affairs Directorate*

The Directorate has three major areas of responsibility. It plans, develops and implements the Department's communications policy. It supports and assists in the development of departmental communications goals and objectives. It manages and coordinates departmental programs and activities relating to public information and public affairs.

- *The Corporate Planning Section*

This section is responsible for the development, implementation and operation of a corporate management system for the Department. This function includes the coordination of the develop-

ment and introduction of a management information system. It also entails the annual preparation of the Department's strategic overview and program expenditure plan as well as assisting with the preparation of a multi-year operational plan. The section also undertakes, at the request of the Deputy Minister, specific projects relating to corporate management.

- *The Bureau of Programme Evaluation and Internal Audit*

The Bureau was established in December, 1982. Its mandate is to undertake evaluation and audit studies of the full range of departmental operations including legal services to the government, the conduct of civil and criminal litigation, legislative programming, policy formulation, and the administration of the Department's grants and contributions programmes. In its review of existing departmental programmes, the Bureau studies their continued relevance and their impact on society. It also examines methods of improving operational performance and the adequacy of controls intended to ensure the appropriate expenditure of public funds.

During the year in review, the Bureau undertook the evaluation of personnel and security services, legal services to departments and agencies, certain aspects of litigation services, and policy development. It also worked on the evaluation of significant grants and contributions programmes and on the internal audit of administrative services, electronic data processing, the departmental official languages programme, and some legal services units.

Two Associate Deputy Ministers join the Deputy Minister to form the Department's

senior executive group. The Associate Deputy Minister, Civil Law, is responsible for the supervision of all Civil Law matters involving the Department in the province of Quebec. He is the Department's primary legal adviser in the field of Civil Law and has administrative responsibility for the Montreal Regional Office. His other departmental functions relate to overseeing all tax litigation questions involving the government. The Associate Deputy Minister, Litigation, has

general responsibility for all litigation involving the federal government in the common law provinces and, with the exception of taxation matters, in the Federal Court of Canada. He chairs the Department's Litigation Committee and has administrative responsibility for all regional offices, with the exception of the office in Montreal. He also has special responsibility for legal and constitutional matters relating to the aboriginal peoples of Canada.

# The Public Law Branch

## Function

This Branch provides advice on legal and policy issues in the public law field. Specifically, advice is given on constitutional, international, administrative and human rights law as well as on other matters relating to the machinery and operation of government. In the discharge of its responsibilities, the Branch works closely with numerous departments and agencies of government.

## Organization

The Branch consists of the following sections:

### 1. *The Constitutional and International Law Section*

This section advises the federal government on constitutional law matters and plays a vital role in the constitutional law process. This section is also active in public and private international law matters. In this area, its duties include participation through international bodies in the development of private international law, and advising federal departments and agencies on such matters as international treaties and agreements, the effects of international developments on domestic law and the legal implication for Canada of membership in international organizations.

### 2. *The Advisory and Administrative Law Section*

This section is particularly concerned with areas of law relating to the machinery and operation of government. For example, this section is actively engaged in developing proposals relating to administrative law

reform and in assisting other sectors of the Department on such subjects as amendments to the *Federal Court Act*.

Another major responsibility of this section is the preparation of legal opinions requested by federal departments, agencies, boards and Crown corporations on a variety of administrative and other legal matters.

### 3. *The Human Rights Section*

This section was created in March 1982, in anticipation of the coming into force of the *Canadian Charter of Rights and Freedoms*. The mandate of this section is to give legal opinions to the Crown on the interpretation and application of federal legislation having human rights implications. It is responsible for the review of federal laws and regulations, as well as administrative policies and practices, to ensure compliance with the *Charter*. The section advises respecting Canada's international human rights treaty obligations and it is responsible for responses to complaints brought against Canada under the Optional Protocol to the International Covenant on Civil and Political Rights.

## Activities

- *Preparation for the Constitutional Conference:*

The Public Law Branch prepared detailed documentation on additional non-aboriginal matters related to the constitution for use with respect to the conference. The additional topics were: the establishment of unified family courts; the establishment of provincial administrative tribunals; proposals to solve the problem occurring in the event of a sudden vacancy in the



office of Lieutenant-Governor; and entrenchment of property rights.

- *The State Immunity Act:*

The *State Immunity Act* was proclaimed in force on July 15, 1982, establishing definitively the applicability of the restrictive principle of sovereign immunity in Canada. The Act defines more precisely the immunity of foreign states before the courts of Canada and restricts that immunity in certain respects. The restrictive principle of sovereign immunity, established in Canada by this Act, recognizes the large increase in the amount of commercial activity carried on by states in recent years.

- *Discussions with the United States on Extraterritoriality:*

Bilateral discussions took place between the United States and Canada on extraterritoriality. These discussions focused on antitrust laws, corporate nationality and export and re-export controls. Canada was represented in these bilateral discussions by the Deputy Minister of Justice and the Canadian Ambassador to the United States.

Negotiations continued between the United States and Canada on a Memorandum of Understanding as to notification, consultation and cooperation with respect to the application of national antitrust laws and as to mutual assistance in criminal law matters.

- *Extension of the Civil and Criminal Laws of Canada to the Offshore:*

By the terms of the Canada-Nova Scotia Agreement on Offshore Oil and Gas Resource Management and Revenue Sharing of March 2, 1982, the federal government undertook to ask Parliament to extend its laws to activities in the offshore, and to apply to the offshore region off Nova Scotia such provincial laws as may be specified under such legislation. Also, in December 1982, it was announced that customs jurisdiction would be extended over Canada's continental shelf for certain purposes relating

to exploration of the shelf and exploitation of its natural resources. That announcement reiterated that the concept of introducing legislation extending Canadian laws to the offshore for certain purposes was under review.

Within this context, the Public Law Branch reviewed the concept of applying or confirming the application of the civil and criminal laws of Canada to offshore regions adjacent to Canada to the degree permitted by international law.

- *Draft United Nations Code of Conduct on Transnational Corporations:*

Officials from the Branch participated in the drafting of this Code, which sets standards for behaviour of transnational corporations and sets standards which host countries should observe in their treatment of multinational corporations operating within their territories. This Code, when completed, will probably be proposed for adoption to the General Assembly of the United Nations.

- *Gulf of Maine Boundary Adjudication:*

This case deals with the establishment, by a five-member Chamber of the International Court of Justice in the Hague, of a single maritime boundary for the 200 mile fishing zone and continental rights of Canada and the United States off Nova Scotia, New Brunswick and New England. The Gulf of Maine area in dispute includes the valuable fishing grounds of Georges Bank. The single maritime boundary to be established will delimit both the fishing zone and the continental shelf appertaining to each country in this area.

- *Newfoundland Offshore:*

Over a period of several years of negotiations and discussions, the question of jurisdiction over the Newfoundland offshore has remained unresolved, although the two governments agreed in 1976 to refer the matter to the courts. The Public Law Branch was involved in the negotiation of this matter, as well as the court proceedings in the Newfoundland Court

of Appeal and the Supreme Court of Canada.

- *Seabed Jurisdiction in the Strait of Georgia:*

In 1976, the Court of Appeal of British Columbia decided, on a reference to it by the British Columbia government, that the bed of the waters between Vancouver Island and the mainland and in the Strait of Juan de Fuca were within the boundaries of British Columbia at the date of Union in 1871. The federal government's appeal from that decision to the Supreme Court of Canada was heard in October 1982. Judgment was reserved.

- *Law of the Sea Convention:*

The Branch was involved in the implementation of the *Law of the Sea Convention*, studying what must be done before ratification, and participating in a preparatory commission of the proposed International Seabed Authority and International Tribunal on the Law of the Sea. The latter activity involved drafting a Code to deal with finances and various regulations concerning the Authority and the Tribunal.

- *Negotiations regarding St. Pierre and Miquelon:*

The Public Law Branch has been participating in negotiations with France on the delimitation of maritime zone boundaries, of the fisheries zone, and of the continental shelf between Canada and France off St. Pierre and Miquelon. The territorial sea boundary located between Newfoundland and St. Pierre and Miquelon has already been agreed to.

- *Convention on the Civil Aspects of International Child Abduction:*

This Convention proposes a simplified system for solving the problem of child abduction. The chief aim is to ensure that the situation which existed before the abduction is re-established as quickly as possible. The Convention's solution is that where a child is wrongfully removed or retained the person whose right of cus-

tody has been breached applies to the Central Authority of his State, or that of the State where the child is, with a view to obtaining the return of the child, voluntarily if possible, or otherwise by means of a judicial decision.

Canada is designating more than one Central Authority to discharge the duties imposed by the Convention.

- *Negotiations with the United Kingdom on Judgments Convention:*

This is a proposed Convention which would protect Canadians with property in the United Kingdom against the effects of the European Economic Community Judgments Convention. The EEC Convention requires the United Kingdom to enforce, against Canadian residents, judgments by courts of other European countries which are based on exorbitant jurisdictional grounds.

The Branch participated in the negotiation of the Convention with the United Kingdom, and a draft of the Convention is in the final stages of consideration by the U.K. and Canada.

- *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property:*

This Convention, to which Canada is a party, has been implemented by Canada in the *Cultural Property Export and Import Act*. The Branch was closely involved with the prosecution of the first case instituted under the Act for alleged importation into Canada of cultural property illegally exported from another Convention signatory, in this case an ancient Nok sculpture from Nigeria.

- *Convention on the International Recognition of Rights in Aircraft (Geneva, 1948):*

A federal-provincial working group, appointed by the federal and provincial Deputy Attorneys General, prepared draft federal and provincial legislation on a central registry for security interests in aircraft. The draft legislation is quite com-

plex because of the necessity for a close relationship and integration with provincial personal property security legislation. If this legislation is enacted, there will be a Canada-wide priority system for rights in aircraft and Canada will be in a position to become a party to the Geneva Convention.

- *Federal Court Act Review:*

After consultation with the Provinces and the Canadian Bar Association and after considering the report of the Law Reform Commission of Canada on judicial review, the Department developed a number of recommendations for amending the *Federal Court Act*. The major areas of concern were the Court's jurisdiction with respect to the supervision of federal administrative tribunals, actions of a civil nature between citizens and the federal government, and actions of a civil nature between citizens.

- *Administrative Law Reform:*

Based on reports and proposals by such bodies as the Standing Joint Parliamentary Committee on Regulations and Other Statutory Instruments and the Law Reform Commission of Canada, departmental consideration is being given to reforming the *Statutory Instruments Act*, the present system of federal social benefit appeal tribunals, federal administrative procedures, and the special legal regime now pertaining to Crown rights and liabilities.

- *Amendments to the Canadian Human Rights Act:*

The Branch developed proposed amendments to the *Canadian Human Rights Act* to extend the prohibited grounds of discrimination in order to confer greater protection both on physically and mentally handicapped persons and on women and to clarify the application of the legislation.

- *Implementation of the Canadian Charter of Rights and Freedoms:*

A review of all federal legislation, regulations and policy guidelines and directives

was undertaken, with a view to modifications that will ensure full conformity with the *Charter* where required. Policy proposals on a first phase of Charter implementation were prepared for consideration by the government.

- *Intervention in Charter Cases:*

The Department established a committee, chaired by the Deputy Minister, to consider interventions by the Attorney General of Canada and the position to be adopted in litigation involving the *Charter*. The Branch is represented on this committee by the Assistant Deputy Minister, Public Law, the Senior General Counsel, Public Law, and the General Counsel, Human Rights Law. In addition, the Branch has provided advice and assistance in a number of *Charter* cases, including counsel work in the important case of the *Quebec Association of Protestant School Boards v. Attorney General of Quebec*.

- *Federal-Provincial Cooperation in Human Rights Law:*

Ministers responsible for Human Rights have established a Continuing Federal-Provincial Committee of Officials responsible for Human Rights. The Department is represented on this Committee by the General Counsel, Human Rights Law. The Committee meets twice annually to review recent developments in human rights matters at both the domestic and the international level and the Department provides the lead responsibility on all legal issues of concern to the federal government. In this connection a major report on the interpretation of the International Convention on Civil and Political Rights was prepared for the consideration of Ministers responsible for human rights.

- *The Optional Protocol to the International Covenant on Civil and Political Rights:*

A number of communications by Canadians to the United Nations Human Rights Committee are pending. These allege breaches by Canada of its obligations

under the Covenant. The conduct of these proceedings on behalf of Canada are the responsibility of the Branch. The

Human Rights Law Section dealt with three new communications to the United Nations during the year.

# The Policy Planning and Development Branch

## Function

The Policy Planning and Development Branch is primarily responsible for planning, developing and implementing legal policies, programmes, and experimental projects at the federal level. Its major functions are:

- to identify new emerging directions in the field of law at the national level;
- to consider and continuously review the criminal law and its role in Canadian society;
- to conduct studies pertaining to the implementation and appropriateness of federal laws;
- to review and study the working papers, reports and recommendations of the Law Reform Commission of Canada;
- to carry out consultations respecting the administration of justice with other federal departments, provincial governments, professional organizations, private sector associations, and the public;
- to assume primary responsibility for amendments to certain federal statutes not specifically falling within the administrative responsibility of other branches or departments of government;
- to develop and administer most of the Department's grants and contributions programmes, including federal-provincial cost-shared programmes;
- to define, undertake or oversee on behalf of the Department all policy-related research in the socio-legal field;
- to respond to requirements within the Department for information in the justice field;

- to maintain close liaison with research and statistics units in other departments, in provincial governments, and in international agencies.

## Organization

The Branch consists of three sections with particular responsibilities relating to the discharge of the Branch's functions, as well as a *Criminal Law Review Group* and an administrative unit responsible for the coordination of funding.

### 1. *The Policy Planning and Criminal Law Amendments Section*

This section identifies and analyses emerging legal issues of national significance and develops policies designed to address these issues. This involves monitoring developments in the law, conducting legal studies, reviewing recommendations of the Law Reform Commission and the Uniform Law Conference of Canada and consulting broadly in respect of the administration of justice. The section also proposes amendments to specific federal statutes, such as the *Criminal Code* and the *Divorce Act*.

### 2. *The Programmes and Law Information Development Section*

This section is responsible for implementing the Department's policy objectives through programmes and other initiatives. It is responsible for the federal-provincial cost-shared programmes designed to ensure minimum or uniform access to important justice services in the areas of criminal legal aid, compensation to victims of crime, and native courtworker services. The

section is also involved in direct programming in which a federal presence or visibility is required in the community to give effect to departmental objectives such as law information development, civil law/common law exchanges, certain university scholarships, employment of law students with police forces, and native law students programmes. The section is responsible for programme-related policy development. A representative example of this type of policy concerns improved access to justice for disadvantaged persons in the overall context of federal social policy objectives.

### 3. *The Research and Statistics Section*

This section is responsible for defining, undertaking or overseeing the conduct of all policy-related socio-legal research on behalf of the Department. It also monitors and assesses programmes in the justice area which are of relevance to departmental requirements for information in policy formulation or implementation. Much of the work presently undertaken is of direct relevance to the Criminal Law Review, and the principal users of the section's work is the Policy Planning and Development Branch. The section also carries out research in response to requirements for information throughout the Department. Through its close liaison with research and statistics units in other departments, in provincial governments and international agencies, it remains at the forefront of criminal, civil and administrative justice research endeavours across Canada.

The *Criminal Law Review Group* was established in 1981 for the purpose of carrying out the Department's responsibilities in an accelerated and fundamental review of the criminal law. The group receives direction from an interdepartmental committee comprising representatives from the Department, the Ministry of the Solicitor General, and the Law Reform Commission. The group is specifically responsible for examining all proposals of the Law Reform Commission relating to the criminal law, and for making

recommendations respecting the implementation of these proposals. The group consults extensively with representatives of the provincial Attorneys General, with members of the judiciary and the private Bar, and with many other groups in the public and private sectors.

A special administrative unit reviews and coordinates all proposals and requests submitted in relation to the grants and contributions funds administered by the Branch. These funds include

- the Criminal Law Reform Fund,
- Special Projects - Legal Aid,
- the Consultation and Development Fund,
- Native Information Projects,
- the Human Rights Law Fund.

The unit is responsible for providing administrative support to the Joint Criminal Justice Policy Committee which comprises senior criminal law policy representatives of the Department and the Ministry of the Solicitor General. Representatives of the Law Reform Commission, the Ministry of State for Social Development and the Privy Council Office also participate on the Committee. The unit also arranges and coordinates federal-provincial meetings and conferences of Ministers responsible for criminal justice.

## Activities

Major activities carried out by the Branch during the period reported upon are described in the earlier overview of the Department's activities. These include the Criminal Law Review, Divorce law reform, development of the *Garnishment, Attachment and Pension Diversion Act*, collaborative efforts with the Ministry of the Solicitor General respecting the *Young Offenders Act*, amendments to the *Criminal Code* pertaining to sexual offences, and the proposal of a new *Canada Evidence Act*. In addition, the Branch was largely responsible for coordinating the Department's efforts respecting the People's Law Conference and for ensuring the follow-up to the major recommenda-

tions deriving from the conference. Other activities of note include the following:

- *Sentencing:*

This area was identified as a major priority and a great deal of study and consultation was carried out with a view to developing legislative proposals. Sentencing alternatives such as community service orders, fine options, and restitution and compensation orders were considered in the light of recent developments in the criminal justice field. A number of pilot and demonstration projects throughout the country served as valuable sources of information in these considerations. Alternatives to incarceration, the concerns and needs of victims of crime, and the special problems posed by dangerous offenders were studied particularly closely in the formulation of related policy options. Public concern about crime, particularly with respect to violent or drug-related crime, was addressed as a major factor in this work.

- *Criminal Law Amendment Bill:*

Work continued in the development of specific proposals deriving from discussions with provincial authorities and resolutions of the annual meeting of the Uniform Law Conference, proposals developed in conjunction with other federal departments, and proposals designed to implement Canada's international treaty obligations. The most significant of the proposed amendments include:

- provisions to ensure that an accused receive a trial within a reasonable time;
- limitations on the powers of agents of Attorneys General, especially in regard to the exercise of prosecutorial discretion;
- certain sentencing provisions implementing in part the recommendations made by the Law Reform Commission in its 1976 report, *Dispositions and Sentences in the Criminal Process*;

- greater protection of privacy in the areas of seizure of documents, searches, and pre-trial publicity;
- expanded access to justice through proposals pertaining to language of trial;
- technical modifications to the gun control provisions of the *Code*;
- the creation of new offences relating to the unauthorized use of computers, impaired flying or boating, hostage-taking, and the protection of nuclear materials.

- *Soliciting and obscenity:*

Legislative proposals were developed to expand the applicability of the present provisions of the *Criminal Code* relating to soliciting and obscenity.

- *Victims of Crime*

Departmental initiatives on justice for victims of crime were considerably enhanced. The established objectives of these initiatives are:

- to better assess the needs of these victims and to understand the deficiencies in the delivery of services to them;
- to promote improved services for victims;
- to develop and disseminate information on the needs of victims;
- to undertake policy-directed research projects pertaining to victims.

The Branch participated on an Inter-departmental Committee on Justice for Victims of Crime comprising, in addition to the Department, representatives from the Ministry of the Solicitor General, the R.C.M.P., the Departments of Health and Welfare and National Defence, Status of Women, and the Department of the Secretary of State. The Branch also represented the Department on the Federal-Provincial Task Force on Justice for Victims of Crime. This Task Force was estab-

lished at the Federal-Provincial Conference of Ministers Responsible for Criminal Justice in December 1981 to promote cross-jurisdictional coordination in the victims assistance area. During the year, the Task Force continued in its work towards the preparation of a comprehensive report to Ministers on victims of crime.

In addition, the Branch undertook activities with respect to victims of crime in the following areas:

- the funding of research, demonstration and information projects in several Canadian cities;
- the carrying out of several major surveys on victims' needs;
- updating inventories of victim services in Canada;
- offering continued support to the committee chaired by Dr. Robin Badgley established in 1980 to inquire into the incidence and prevalence of sexual offences against children and youths.

- *Drinking and driving:*

The Branch examined the problem of drinking and driving and developed a number of proposals for consideration. The structure of offences and penalties in federal legislation respecting impaired driving was considered as was the role that the federal government could play in respect to prevention and education. A major object of the review was to develop proposals which would complement provincial legislation and programmes directed to the problem of drinking and driving. A great deal of research, study and consultation was carried out in regard to impaired driving.

- *Federal Offences Conversion Project:*

In the summer of 1982, the government adopted a general policy on the use of criminal law. This policy, as set out in the publication *The Criminal Law in Canadian Society*, stipulates that the criminal law should be used with restraint. In pursuance of this policy, the Branch undertook

the comprehensive examination of offence-creating, sanction and enforcement provisions of federal statutes other than the *Criminal Code* to ensure their conformity with the policy. This work, which was accelerated during the year, is designed to improve the use of the law as a modern instrument of public policy, promote a fair, effective and economical compliance policy, and structure the discretion exercised by federal officials in their enforcement of compliance with federal statutes.

- *Legal Aid:*

Since 1972, the Department has maintained a criminal legal aid cost-sharing program in which all provinces now participate. Pursuant to the terms of a uniform agreement with the federal government, the provinces provide criminal legal services to financially disadvantaged persons in all serious criminal cases. In 1982-83, the federal government contributed \$29 million to this program. This amounted to almost one-half of the total national expenditures on criminal legal aid.

During the period under review, the Department proposed an increase in the federal contribution to help offset increased provincial costs resulting from a greater demand for criminal legal aid services. The Department also entered into negotiations with the provinces respecting improved legal aid services to young offenders under the *Young Offenders Act*. This Act, when proclaimed in force, will require the meeting of minimum standards of legal aid coverage for young offenders.

- *Other activities:*

The Branch undertook a wide variety of other activities apart from the ones listed above. Work continued towards the development of better methods to enforce maintenance and custody orders throughout Canada. The Department continued its involvement with the Federal-Provincial Working Group on a Central Registry for Security Interests in Aircraft leading to the preparation of a draft



legislative scheme to establish such a registry system. The Department continued its cost-sharing with the provinces of four experimental Unified Family Courts located in St. John's, Fredericton, Hamilton and Saskatoon. These four projects were generally successful and

have been the subject of much study and discussion. The Branch also devoted special efforts relating to the study of enterprise crime, computer crime, habitual offenders, and the regulation of motor vehicle traffic on federal government property.

# The Civil Litigation Branch

## Function

The Attorney General of Canada has the regulation and conduct of all litigation for or against the federal Crown. Departmental legal officers therefore act as counsel in proceedings taken by or against Her Majesty in right of Canada at all levels of courts in our judicial system.

Large numbers of actions in both contract and tort law regularly arise out of the ordinary business of government. These frequently involve considerable sums of money as well as important issues of law. In addition, a wide variety of public law questions arise, including the constitutionality of federal and provincial legislation and the administration and enforcement of federal statutes. The *Charter* has led to an increased amount of litigation and has introduced new complexities to much of the regular litigation normally handled by the Department. There is, as well, a considerable number of proceedings in the area of administrative law and in more specialized fields such as admiralty, industrial property, bankruptcy, international and commercial law.

## Organization

This large volume of litigation is handled mostly by counsel in the Civil Litigation Branch. Litigation arising out of the Province of Québec is the responsibility of the Civil Litigation and Real Property Law (Québec) Section under the Associate Deputy Minister, Civil Law. There is a Civil Litigation (Common Law) Section at departmental headquarters. Matters from outside the national capital area are entrusted to the Civil Litigation Sections of the different regional offices. Consequently, officers of the Civil Litigation Branch appear as counsel at all levels of the provincial court system, and before the Federal Court and Supreme Court of Canada. They

also represent the Crown before all federal boards, commissions and tribunals.

## Activities

Some of the noteworthy cases handled by the Branch during the year under review include:

- The *Newfoundland Offshore Resources Reference*, first heard by the Court of Appeal of Newfoundland and later, on appeal, by the Supreme Court of Canada. The case involved a constitutional question as to whether Canada or the Province of Newfoundland has the authority to legislate and exercise other rights in respect of the resources of the seabed and subsoil off Newfoundland's shores;
- *Guérin et al v. The Queen* arose out of a claim by members of the Musqueam Indian Band in respect of a lease of certain lands in the reserve of the Band. One of the questions for determination was whether, in its dealings with reserve lands, the federal Crown owes Bands the legal duties of a trustee;
- *Fulop et al v. The Queen* was launched in the Trial Division of the Federal Court against the Crown in respect of an alleged breach of statutory duty by servants of the Crown. The claim arose out of the destruction of quantities of tobacco crops in Ontario by an infection of blue mould, and the issue was whether the Crown was liable for failure to prevent the infection being introduced in Canada through the importation of infected tobacco plants;
- In the case of *Northland Fisheries Ltd. v. The Queen*, the Federal Court of Canada determined the amount of compensation to which the company and others were

entitled as a result of the enactment of the *Freshwater Fish Marketing Act* in 1969. The companies had carried on fish processing businesses in Manitoba until the enactment;

- The question in *Southam Inc. v. Hunter et al* was whether authority granted under provisions of the *Combines Investigation Act* to enter and search premises was contrary to constitutional principles enshrined in the *Charter*. The Court of Appeal of Alberta heard the case and rendered a decision during the year under review;
- *Re Jurisdiction of the Saskatchewan Human Rights Commission* was a case in which the Attorney General of Canada, in prohibition proceedings, challenged the jurisdiction of the Commission to inquire into the administration and management of the Royal Canadian Mounted Police. The proceedings were launched in the Court of Queen's Bench and the appeal heard in the Saskatchewan Court of Appeal;
- Litigation arising out of the Mississauga railway accident of November 10, 1979 progressed significantly during the year. The Supreme Court of Ontario ordered that all the actions in the Ontario courts against Her Majesty the Queen in Right of Canada, Canadian Pacific Limited, the Canadian Transport Commission and others be conducted and tried together. There were approximately four hundred such cases;
- Litigation arising out of the ban on urea formaldehyde foam insulation involved a very significant number of cases against Her Majesty the Queen, the Attorney General of Canada, and the Canada Mortgage and Housing Corporation. During the year, a number of representative cases were selected by plaintiffs as trial cases to proceed in the Quebec Superior Court and the Federal Court of Canada;
- The civil action against Amway Canada and its American parent, Amway Corporation, continued. The federal Crown claims \$148 million in taxes and penalties under the *Customs Act*;
- *Lubicon Lake Band et al v. The Queen*, an action instituted against the federal and Alberta governments and a number of oil companies. The plaintiffs claimed unextinguished aboriginal title over a large part of north-central Alberta, including the exclusive use of all the natural resources in the areas claimed. They also asked that all resource exploitation permits and leases in the area be declared void. Moreover, in the alternative, they sought \$1 billion in damages for the extinguishment of their aboriginal rights;
- The owners of a private hotel in Winnipeg and the company which leased to them a dish antenna by which signals from a United States communications satellite were received and made available to television viewers in the hotel instituted an action for a declaration that they were not subject to licensing requirements under either the *Broadcasting Act* or the *Radio Act*. The action, *Lount Corporation et al v. Attorney General of Canada et al*, was instituted in the Federal Court of Canada and was to be tried shortly after the year in review. A number of other cases involving regulatory jurisdiction in the field of telecommunications proceeded during the year;
- Litigation arising out of Via Rail cutbacks centred on various attempts to stop the cutbacks in rail passenger service announced by the Minister of Transport in 1981. Actions were initiated in several provinces. Most of the issues were resolved during the year.

# The Criminal Law Branch

## Function

The primary responsibility of the Branch is to discharge, on behalf of the Attorney General of Canada, the obligations, duties and responsibilities imposed upon him by legislation or under the common law with respect to prosecutorial and related advisory services.

- *Prosecutions:*

The Attorney General of Canada has responsibility for the conduct of prosecutions for offences and for conspiracies to commit offences under federal legislation such as drug control, bankruptcy, combines investigation and revenue laws. Some exceptions to this general proposition are prosecutions conducted under the *Criminal Code* and the *Lord's Day Act* over which the provincial Attorneys General exercise prosecutorial authority.

- *The territories:*

In the Yukon Territory and the Northwest Territories, the Attorney General of Canada has the responsibility for the prosecution of all offences under federal legislation, including the *Criminal Code* and the *Lord's Day Act*. The Attorney General also exercises prosecutorial authority with respect to some quasi-criminal territorial ordinances, such as those pertaining to game management, liquor control, motor vehicles and coroner's inquests.

- *Applications for mercy:*

The Minister of Justice has responsibility for responding to applications under the *Criminal Code* for the mercy of the Crown by or on behalf of persons who have been convicted in proceedings by indictment or who have been sentenced to

preventive detention. The Branch reviews these applications and makes recommendations to the Minister as to their disposition. The Minister may direct a new trial or hearing, or he may refer the matter to the relevant court of appeal for hearing and determination. The Minister may also seek the opinion of the court of appeal on any question upon which he desires the assistance of that court. Approximately thirty such applications were dealt with by the Branch during the year, including the case of Donald Marshall who had been convicted of murder at Sydney, Nova Scotia in November 1971 and whose appeal had been dismissed the following year. The Minister, following a review of the Marshall application, referred the case back to the Nova Scotia Court of Appeal for hearing and determination.

- *Extradition:*

The Minister has the responsibility of determining if a fugitive of a foreign state, who has been committed for surrender following a hearing before an extradition judge, should be surrendered to that foreign state. Under the *Extradition Act*, where the Minister determines that the offence in respect of which the extradition proceedings are taken is one of a political character, he may refuse to make an order for surrender and direct that the fugitive be discharged from custody. In the case of a fugitive from Canada who is in a foreign state with which there is an extradition arrangement, the Minister is empowered under the *Extradition Act* to make a requisition to officials of the foreign state for the surrender of the fugitive.

The Branch deals with all extradition matters. During the year, there were 52 requests made by Canada to the United

States for extradition and 53 such requests made by the United States to Canada. During the same period there were 14 extradition requests made by Canada to other countries and 22 such requests made by other countries to Canada.

- *Rendition:*

Rendition is the surrender by Canada of fugitives from other parts of Her Majesty's Realms and Territories. The procedure for rendition is provided by the *Fugitive Offenders Act*. Under this legislation, the Governor General is responsible for determining whether a fugitive committed to prison for surrender should be surrendered to the place seeking the fugitive's rendition. Under the *Department of Justice Act*, the Minister of Justice is the official legal advisor to the Governor General. The Branch provides legal advice and make recommendations on rendition matters to the Minister.

- *Consultation:*

The Minister of Justice has responsibility for recommending amendments to the *Criminal Code* and for the development and implementation of criminal law policy and programs. While other sectors within the Department are charged with making appropriate recommendations to the Minister in these areas, members of the Branch are consulted from time to time on questions which arise. During the year, members participated in the study of such matters as diversion, gun control, traffic control on federal lands, homicide and theft and fraud. One member represents the Department on the steering committee of the study group on maritime terrorism. Another member acts as Legal Advisor to the Firearms Centre of the Ministry of the Solicitor General.

- *Consent to prosecute:*

Under the *Criminal Code*, the consent of the Attorney General of Canada must be granted prior to the institution of certain proceedings. The prosecution of offences committed on aircraft or against internationally protected persons, for example,

requires the prior consent of the Attorney General in certain circumstances. Other examples are the prosecution of the offence of assisting a deserter from the Canadian Armed Forces, or of offences relating to the corruption or disobedience of judicial officials, or of sending a Canadian unseaworthy ship to sea. The Branch reviews applications for consent and makes recommendations to the Attorney General as to whether the consent should be granted or withheld.

- *Consent to transfer of charges and of probation orders:*

The *Criminal Code* permits an accused person who is charged in one jurisdiction with certain offences and who has signified his intention to plead guilty, to appear, with the consent of the Attorney General of Canada, before a court in a different jurisdiction to have his plea entered and the charge disposed of.

The *Criminal Code* also permits a court that made a probation order against an accused person who subsequently becomes a resident of another province to transfer, with the consent of the Attorney General of Canada in the case of proceedings prosecuted by counsel on his behalf, jurisdiction over the probation order to a court in that other province.

Members of the Branch process the applications for consents which are made by or on behalf of accused persons. During the year, approximately 700 consents to transfer of charges and probation orders were made.

## Organization

The Branch is headed by the Assistant Deputy Attorney General, Criminal Law. There are Criminal Prosecutions Sections in the Department's nine regional offices and at the headquarters offices at Ottawa. These sections have the conduct of all federal prosecutions which arise within their territorial limits. These are generally the cities in which they are located and the surrounding municipalities. The Whitehorse Regional Office exercises prosecutorial responsibility

throughout the Yukon Territory while the Yellowknife Regional Office is charged with the conduct of all federal prosecutions within the Northwest Territories. There are approximately one hundred lawyers employed at headquarters and in the regional offices who are engaged full time in prosecution work.

The Attorney General's prosecutorial responsibility in areas not served by regional offices is discharged by approximately five hundred private legal practitioners appointed as standing agents. In localities where there are no standing agents authorized to conduct prosecutions, *ad hoc* agents are appointed on the basis of specific requirements. The standing agents' authority to conduct prosecutions on behalf of the Attorney General may be limited to certain statutes and within stated localities or areas. In the criminal law sphere, the Branch appoints and replaces agents, establishes and revises the agent fee schedule, taxes agent accounts, and formulates guidelines within which agents operate.

## Activities

- *Special Prosecutions:*

Some special prosecutions, such as tax evasion cases and certain prosecutions under combined legislation, are conducted exclusively by departmental prosecutors. During the year, a total of 158 tax evasion cases were prosecuted, resulting in 145 convictions.

- *Part IV.1 - Criminal Code:*

The Branch arranges with the Ministry of the Solicitor General for the appointment by the Solicitor General of agents to make applications to judges for authorizations to intercept private communications under Part IV.1 of the *Criminal Code* with respect to the investigation of offences prosecutable by or on behalf of the Attorney General of Canada. In addition to certain members of headquarters and regional offices, approximately 65 standing agents authorized to do drug prosecutions also hold appointment as wiretap agents.

- *Northern Flying Squad:*

One of the most interesting and adventurous programs of the Branch is the operation of the Northern Flying Squad. This is a pool of 18 experienced prosecutors who act as relief prosecutors on court circuits scheduled out of the Yellowknife and Whitehorse regional offices. The Flying Squad permits the prosecutors in those regional offices time to prepare their own cases and to obtain some relief from the continuous daily pressures imposed by travelling long distances on court circuit work. These prosecutors, recruited from the Ottawa, Toronto, Winnipeg, Edmonton and Vancouver offices, travel throughout the Arctic with the court party in what is considered by many as Canada's last frontier. They appear in all levels of court, including the Courts of Appeal for the Northwest Territories and the Yukon Territory. During the year, members of the Northern Flying Squad spent over 30 weeks on northern circuits. The area covered by these circuits represents one half of the total area of Canada.

Court circuits in the northern Territories of Canada are quite different than those in southern Canada, mainly because of the time it takes to fly the long distances between court sittings. Thousands of miles are often covered on a court circuit to conduct a case in some isolated settlement in a remote part of the High Arctic.

The Whitehorse office, with a staff of four prosecutors presently services one Supreme Court Judge, two Territorial Judges (Magistrates), the Court of Appeal and coroner's inquests. Court circuits there, because of the smaller area to cover, are not as frequent as in the Northwest Territories, although last year there were seven circuits to the Yukon Territory by Northern Flying Squad members, visiting such historic places as Watson Lake, Mayo, Dawson, Faro, Ross River, Carcross and Whitehorse.

In the Northwest Territories, Northern Flying Squad members were on circuit in the MacKenzie Delta appearing in court in

Inuvik, Tuktoyaktuk, Fort MacPherson and Aklavik. Circuits were also made to Norman Wells, Fort Norman, Fort Franklin, Fort Simpson and Fort Liard on the Mackenzie River. In the southern part of the Territories, court circuits were made to Hay River and to the settlements of Fort Resolution, Fort Smith, Fort Providence and Pine Point. Flying Squad members have also been on circuit to the central and eastern Arctic visiting settlements at Resolute Bay, Coppermine, Spence Bay, Cambridge Bay and the Baffin Island settlements of Frobisher Bay, Cape Dorset, Pangnirtung, Broughton Island and Sanikiluaq on the Belcher Islands. Most of the eastern Arctic trips have been by Ottawa members of the Squad who travel to Frobisher Bay by way of Montreal and meet the court circuit party when it arrives on a scheduled flight from Yellowknife. Two members of the Flying Squad from the Edmonton office have appeared at the Northwest Territories Court of Appeal sittings in Calgary and Edmonton several times during the year.

From the above brief outline it can be truly said that the original objective of the first judge of the north, the Honourable Jack Sissons, when he held court at Aklavik in the Mackenzie Delta on his first Arctic Circuit, has been accomplished and is now a traditional practice of long standing by all members of the Northern Arctic Court Circuits. On the opening of the historic sitting of the Court 27 years ago in Aklavik, the first judge of the far north, "Ekotktogee" (The One Who Listens to Things), pointed out to the first court circuit party "that a fundamental principle of a superior court of common law is that it should go on circuit to every part of the realm, as fast as practical, and carry justice to every man's door".

#### Significant Cases:

During the year under view, the Department's prosecutors were involved in a number of cases in which important legal issues were resolved or which attracted a great deal of public interest. It would be impossible to report upon all such cases,

but it was considered that it might be informative to list examples from throughout the country with a view to illustrating the wide variety of legal work undertaken in the criminal prosecutions field. The following is not by any means intended to be exhaustive in this regard:

- Headquarters Office, Ottawa

The question of the constitutionality of writs of assistance was considered in the cases of *Regina v. Carrière* and *Regina v. Farhat*. The case of *Regina v. Chartrand* involved one of the largest drug importing and trafficking operations in Canada. It was alleged that the several accused headed a trafficking ring that had a cash flow of several million dollars per year. The case of *United States of America v. Susan Helen Schmidt* arose out of a request by the United States for the extradition of an individual who had been charged with the offence of kidnapping by the American federal government and the offence of child-stealing by a State government. Mrs. Schmidt was acquitted on the federal charge and returned to Canada of which she was a citizen. On extradition hearings relating to the State charge, both the doctrine of double jeopardy and the *Charter* right of mobility were unsuccessfully invoked to resist extradition.

- Toronto Regional Office

In *Regina v. Burnett*, the complex financial dealings in a multi-million dollar operation were challenged by revenue authorities in one of the most substantial tax evasion cases ever undertaken. In *Federal Republic of Germany v. Rauca*, evidence was gathered in Germany, Israel and the U.S.S.R. in one of the most significant extradition cases ever brought before the courts in this country. It was alleged that Helmut Rauca was criminally involved in the murder of over 11,000 persons in Lithuania during the Second World War. One of the major issues argued was the extent of the right of a citizen to remain in Canada pursuant to Subsec-

tion 6(1) of the *Charter*. In the case of the *United States of America v. Green*, an Extradition Judge found that the *Charter* right to a fair hearing and the right to not be deprived of liberty except in accordance with principles of fundamental justice entitled a fugitive to cross-examine persons whose evidence was presented by affidavit at an extradition hearing. In *Regina v. Oakes*, the Ontario Court of Appeal concluded that on a charge of possessing a narcotic for the purpose of trafficking, the statutory burden imposed on an accused of establishing that there was no intention to traffic in the narcotic is contrary to a presumption of innocence established in the *Charter*. An appeal was taken to the Supreme Court of Canada. The case of *Regina v. Allied Van Lines et al* was a complex conspiracy case covering many years of alleged price fixing in the storage and movement of household goods.

- Vancouver Regional Office

This regional office was involved in a number of interesting prosecutions during the year. In the case of *Regina v. P.P.G. Industries Canada Ltd.*, five corporations charged with bid-rigging contrary to the *Combines Investigation Act* raised the question of their entitlement to a jury trial. This case eventually reached the Supreme Court of Canada. A number of novel issues pertaining to extradition law arose in the case of *State of California v. John Herbert Meier* in which the person involved was charged with procuring a murder which occurred in California. The right to install listening devices to an authorization granted under the *Criminal Code* was considered in the case of *Regina v. Lyons et al*, another case which reached the Supreme Court of Canada.

- Halifax Regional Office

The accused in the case of *Regina v. Martin and Tanguy* were captains of French fishing trawlers alleged to have falsely reported their vessels' catch. When ordered to sail to a Canadian

port for fuller examination, they sailed directly to the French port of St. Pierre with Canadian fisheries officers on board. They were later successfully prosecuted under the *Coastal Fisheries Protection Act*. In the case of *Regina v. Alex F. Stephen*, the accused was convicted of importing over one million dollars worth of morphine sulphate and sentenced to a term of twenty years in penitentiary.

- Edmonton Regional Office

In a case that received a great deal of publicity, *Regina v. Rankins and Shipsey*, the accused killed a bull elk in Banff and a Rocky Mountain sheep in Jasper. They were charged with violations of the *National Parks Act*, the *Game Export Act* and the *Alberta Wildlife Act*. The success of these prosecutions resulted from extensive co-operation among the park wardens in British Columbia and Alberta and their counterparts in California. In another noteworthy case, *Regina v. Kresanoski*, the accused operated an income tax return business and claimed false expenses in his clients' tax returns without their knowledge or direction. These claims exceeded a half million dollars. The accused was convicted after trial and sentenced to imprisonment of one year. In addition, a number of important drug importation and trafficking cases were prosecuted including *Regina v. Boles et al*, *Regina v. Stanger et al*, *Regina v. Ritch et al*, and *Regina v. Cameron*.

- Saskatoon Regional Office

The case of *Regina v. Marshall* involved the prosecution of a medical doctor for trafficking in a narcotic (Demerol) by writing invalid prescriptions and administering them without medical justification. The Saskatchewan College of Physicians and Surgeons provided valuable assistance through expert testimony in this prosecution. The accused was convicted and sentenced to one year's imprisonment.



- Montreal Regional Office

Certain powers of search and of compelling disclosure under the *Income Tax Act* were considered and upheld in the case of *Rolbin v. Regina*. In a series of cases involving the *TransWorld Mortgage and Acceptance Corporation*, the Superior Court set out several important principles of sentencing in relation to breaches of the *Income Tax Act*. In *The Queen v. Acme Signalisation Inc. et al*, the corporation and its president were charged under the *Combines Investigation Act* with attempting to cause competitors to increase their prices tendered to the Department of Public Works. Upon conviction, the corporation was fined \$30,000 and its president fined \$10,000.

- Winnipeg Regional Office

This office was involved in the prosecution of several drug trafficking cases, the most noteworthy of which was the case of *Regina v. Hayes* involving the seizure of heroin valued at approximately three million dollars. The subject was eventually extradited to the United States where he was sentenced to fifteen years imprisonment and a \$25,000 fine. A stay of proceedings was entered with respect to charges in Canada.

- Whitehorse Regional Office

In a decision rendered in the case of *Regina v. Michel and Johnson*, the Supreme Court of the Yukon Territory found that the Kluane Game Sanctuary was occupied Crown land and that aboriginal people were therefore not entitled to hunt on lands within the sanctuary. The case of *Regina v. John Rolls* involved the retrial of the accused for the murder of Mr. Al Kulan, the discoverer of the Cyprus Anvil ore body. The accused pleaded guilty to second degree murder. In the course of the proceedings, a motion for mis-trial was presented as a result of an article written in a local newspaper. The newspaper was subsequently found guilty of contempt of court in relation to the

offending article. The case of *Regina v. Bayer and Lindsay* was a comparatively controversial case in which the accused were charged with killing two Dall sheep in the Kluane Game Sanctuary. The total penalty imposed, including the fine and the value of forfeited rifles and equipment, amounted to \$14,000 and should serve as a useful deterrent for protecting the wildlife in this region.

- Yellowknife Regional Office

In *Regina v. Panarctic Oil Ltd*, the accused company was fined \$150,000 for an offence under the *Ocean Dumping Control Act*. The company had been charged with dumping assorted waste materials through the ice in the spring of 1980. In addition, the company was ordered to submit a detailed plan to prevent recurrences of the dumping incident. The regional office also prosecuted cases involving the unlawful diversion of a watercourse contrary to the *Northern Inland Waters Act* and the unlawful possession of Gyr Falcon eggs contrary to the *Export and Import Permits Act*.

The Branch argued several important cases before the Supreme Court of Canada. Among the most important of these were:

- *Attorney General of Canada v. Canadian National Transportation Ltd et al* involving the prosecution of a number of trucking companies under the *Combines Investigation Act* on charges of conspiracy to prevent or unduly lessen competition in the inter-provincial transportation of certain merchandise. The companies argued that the federal Crown did not have the constitutional authority to prosecute the offences;
- *Attorney General of Canada v. Kripps Pharmacy Ltd* involved issues parallel to those of the *Canadian National Transportation* case. The accused argued that the federal Crown lacked the constitutional authority to prosecute under the *Food and Drugs Act*;

- *The Queen v. Eldorado Nuclear Ltd* and *The Queen v. Uranium Canada Ltd* in which the question for determination was whether these companies, being Crown agencies, were immune from prosecution under the *Combines Investigation Act*;
- *The Queen v. C.B.C.* in which the corporation was charged with having broadcast an obscene film. The

Supreme Court held that the corporation was not entitled to Crown immunity in the circumstances;

- *The Queen v. Robert James Carter* in which the Court decided what evidence directly implicating an alleged conspirator is required before the acts and declarations of other alleged conspirators can be considered in the case against that conspirator.

# The Tax Litigation Branch

## Function

The principal function of this Branch is to act on behalf of the Attorney General of Canada in all civil litigation involving tax matters. The Branch also offers related legal advice to the government and officers of other departments and agencies, particularly officials of the Department of National Revenue. During the year, the Branch had the responsibility for the conduct of all appeals arising under the *Income Tax Act* before the Tax Review Board, the Trial Division and Appeal Division of the Federal Court, and the Supreme Court of Canada. In addition, the Branch is responsible for the conduct of legal proceedings instituted pursuant to the *Unemployment Insurance Act, 1971* and the *Canada Pension Act*.

## Organization

The work of the Branch is divided between Tax Litigation Sections at Headquarters, and at the Halifax, Montreal, Toronto, Edmonton and Vancouver regional offices. Proceedings before the Tax Review Board are assigned by region whereas the conduct of litigation before the Federal Court or Supreme Court of Canada are assigned on the basis of the nature and complexity of the action, the current workload of the various offices, and proximity to officials of the client departments.

## Activities

The past few years have seen a large and steady increase in the number of tax appeals before the Tax Review Board and the Trial Division of the Federal Court. There has also been a considerable increase in the complexity of litigation as well as in the number of cases involving amounts of tax over one million dollars. The following is an outline of

some of the more noteworthy cases involving the Branch during the year:

- In *Irving Oil Limited v. The Queen*, the plaintiff appealed to the Trial Division of the Federal Court from its income tax assessment for the years 1971 to 1975. The total amount at issue in this litigation was approximately \$200 million dollars;
- *James Richardson & Sons Limited v. The Queen* raised the question of whether the Department of National Revenue is entitled pursuant to the *Income Tax Act* to request general information from corporations respecting their clients or whether this sort of request amounts to an unreasonable search and seizure. The applicant was granted leave to appeal to the Supreme Court of Canada;
- *Canadian Javelin Limited v. The Queen* involved the business of mineral exploration and development. The various issues in question pertained to income received under royalty contracts, the deductibility of royalties paid to provinces, exploration and development expenses, and depletion allowances.
- *Chevron Standard Limited v. The Queen* raised the question of the interpretation of an important section of the Canada-United States Tax Convention and the issue of the taxation of non-resident corporations carrying on business in Canada. The amounts in dispute were in excess of \$530 million dollars. This litigation could potentially involve billions of dollars because of other appeals dependent upon the resolution of the issues in this case.
- *Midwest Oil Production Ltd. v. The Queen* related to the Alberta petroleum and gas royalties and their taxability under the *Income Tax Act*. A further issue was

whether the Alberta Drilling Incentive Credits payable by the province to producers could be netted against Alberta royalties payable by producers. The total taxable income in dispute amounted to

approximately \$120 million, and as in the *Chevron* case noted above, the potential financial effect because of related litigation is substantially higher than the amount directly involved in the case.

# The General Counsel Group

This group comprises senior litigation counsel who are widely experienced in the civil, criminal and tax litigation fields. The group is headed by a Chief General Counsel and is composed of seven General Counsel.

Among its most important activities during the year, the group engaged in major tax evasion and combines investigation prosecutions as well as several important constitutional cases. In general, the larger repre-

sentative cases are assigned to this group and during the year litigation involving jurisdiction over pay-TV, the Petroleum Incentives Program, major airplane accidents and the use of urea formaldehyde foam insulation occupied a significant proportion of the group's time and efforts. In many cases, the group has been responsible for coordinating the federal government's response to related cases arising throughout several parts of the country.

# **The Assistant Deputy Attorney General, Admiralty and Maritime Law**

The responsibilities of this office pertain to the following areas:

- *Admiralty litigation:*

Admiralty cases very often involve the federal Crown as a party before the Federal Court of Canada. By their nature, these cases concern large amounts of money and are technically very complicated. During the year, approximately forty admiralty cases required direct departmental involvement. Claims against the Crown in these cases ranged up to \$20 million.

- *Maritime legislation:*

The *Canada Shipping Act* is a major piece of legislation that often requires specialized legal advice. This was particularly so in 1982 when Bill C-92 amending the Act received Royal Assent. Work is also underway in respect of the development of a Maritime Code to encompass most federal legislation in matters of shipping and navigation.

- *Maritime commercial law:*

The drafting of charter parties and other commercial documents relating to marine

transactions constitutes a specialized area of law. The Canadian Patrol Frigate programme was the principal concern in this regard during the year and will clearly demand intensive attention for some considerable time.

- *Marine casualty investigations:*

The Department plays an important role in relation to these investigations. They are conducted pursuant to the *Canada Shipping Act* which authorizes the Minister of Transport to appoint judges to conduct formal investigations into serious shipping casualties. The Department of Justice, in consultation with the chief judge of the court, recommends suitable judges and selects and supervises commission counsel. During the year, the Department was heavily engaged in the legal work relating to the Royal Commission on the sinking of the Ocean Ranger.

- *Marine international law:*

The Department advises the Department of Transport and the Canadian Transport Commission on existing and proposed international conventions in the maritime law field. The Department also participates in diplomatic conferences that are convened to consider these conventions.

# The Departmental Legal Services Branch

## Function

The provision of legal services by the Department of Justice to other federal departments and agencies was recommended by the Royal Commission on Government Organization (the Glassco Commission) in its report of 1962. The Commission recommended the integration of departmental solicitors and legal branches into a common legal service within the Department of Justice. This recommendation was realized between 1966 and 1970 by bringing approximately one hundred government lawyers then in departments and agencies under the aegis of the Department of Justice. Legal services units were concurrently established in most federal departments and agencies.

The primary functions of the Branch are:

- to provide a wide variety of in-house legal services to federal departments and agencies, calling upon, whenever necessary, other sections of specialized law within departmental headquarters;
- to provide specialized legal advice concerning property law, commercial law, and the law of privacy and access to information.

## Organization

The Branch consists of:

1. Thirty-eight departmental legal services units of various sizes which provide in-house legal advice to individual departments and agencies. Twelve of these units are headed by General Counsel who report directly to the Assistant Deputy Minister, Legal Services. The remainder are headed by Senior Coun-

sel who report to the General Counsel in the office of the Assistant Deputy Minister.

2. The *Property Law Section* which provides specialized legal advice on property matters, including the purchase and expropriation of land on behalf of the Crown and necessary legal work involved in the development of existing public lands.
3. The *Commercial Law Section* which provides a focus for commercial law activities within the Department, including the provision of expertise to departmental legal services units.
4. The *Information Law and Privacy Section* which deals with a wide range of legal issues relating to information held by the government. The section is a center of expertise in respect of access to information, privacy legislation and related areas.

There are 280 lawyers and support staff including secretarial, clerical and para-legal staff in Departmental Legal Services.

## Activities

The Branch is involved in providing legal advice with respect to most of the government's activities. It would therefore be difficult to present a comprehensive overview of the Branch's extensive dealings in all aspects of these activities. The following list represents typical undertakings that have occupied the Branch during the year under review:

- acquisition by purchase in respect of the proposed Canada Place Project at Edmonton;

- foreign acquisitions, including the site of the new Canadian Embassy in Saudi Arabia;
- negotiations and legal documentation in connection with the Rideau Centre Project in Ottawa;
- resource development in the north, including the Northern Pipeline right-of-way through the Yukon Territory;
- contract development concerning new bilateral projects of the Canadian International Development Agency;
- support in the negotiations of specific and comprehensive native lands claims;
- development of proposals for amendments to the *Broadcasting and Radio Act*;
- participation in the review of the *Copyright Act*;
- involvement in updating the 1972 Canada-United States agreement on trans-border satellite communications;
- involvement in the Canada-United States Pacific Salmon Atlantic fishing industry;
- involvement in the study on the state of the Atlantic fishing industry;
- involvement in the reorganization of the administration of the fisheries in Quebec;
- involvement in the development and preparation of CANAGREX and applicable legislation;
- involvement in the Crow-rate initiatives;
- lengthy involvement in the development of the National Energy Program and related legislation;
- involvement in the Klondike National Historic Park and the acquisition of land for park purposes;
- development of arrangements with the United States with reference to forest fire protection;
- drafting of forestry research and other similar agreements with provinces;
- substantial involvement in policy considerations and legal issues related to amendments to the *Financial Administration Act*;
- involvement before the Restrictive Trade Practices Commission with respect to a more competitive supply of motion pictures to independent Canadian exhibitors;
- appearance before the Canadian Radio-Television and Telecommunications Commission in the Bell reorganization matter;
- appearance before the Air Transport Commission on Deep Discount Fares and on the application of Federal Express;
- conduct of examinations under the *Combines Investigation Act* of officials of the National Hockey League and NHL clubs in connection with the St. Louis Blues franchise;
- involvement in prosecutions under the *Weights and Measures Act*;
- involvement in the development of the *Urea Formaldehyde Foam Insulation Act* and regulations;
- involvement before the Ontario Securities Commission in connection with the role of financial institutions in the brokerage business;
- preparation of agreements entered into with China and Thailand pursuant to the General Agreement on Development Cooperation;
- legal input with respect to the *International Development (Financial Institutions) Continuing Assistance Act*;
- drafting of major amendments to the citizenship regulations;
- drafting of a form contract containing Federal/Provincial protocol conditions with respect to the financing of official languages in education;
- involvement in transactions and contract issues on behalf of Supply Administration



including many multimillion dollar CF18A follow-on contracts, such as Basic Ordering Agreements with the supplier; a large number of international transactions, such as the GMC/LAV contract and the Indonesian Railway Project; the Frigate Replacement Program; and the Radar Modernization Program of Transport Canada;

- legal advice on matters relating to and arising from the Budget and the Financial Statement, including Ways and Means motions;

- analysis of tax proposals from various groups including the Canadian Bar Association, and participation in the drafting of Bill C-139;
- involvement in policy considerations and legal advice relating to the development of a White Paper dealing with proposed new legislation establishing an excise tax at the wholesale level;
- legal involvement in Crown Corporation issues primarily related to control and financing, and the reviewing and approving of documents relating to borrowings by Crown Corporations.

# The Assistant Deputy Minister, Finance

This Assistant Deputy Minister acts as Counsel to the Department of Finance to advise with respect to the numerous and extremely complex fiscal, monetary and economic legal issues that arise in that department. Such issues include:

- the development of taxation systems based on income tax, commodity and wholesale tax, customs and excise taxes, and resource taxes; the preparation of statutes, agreements and other legal instruments for the implementation of these systems;
- the development, negotiation and drafting of tax treaties, trade agreements and other international financial and economic agreements;
- the development and implementation of various fiscal and economic measures relating to the national economy or more specifically to certain regions, sectors and industries;
- credit and borrowing arrangements in respect of Canada's requirements;

- the development of federal-provincial fiscal relations and their implementation through legislation, agreements and other arrangements.

The Assistant Deputy Minister, Finance, is a member of the Senior Management Committee of the Department of Finance. A departmental legal services unit at Finance reports directly to him. Particularly significant activities during the year under review include:

- advising with regard to the Budget and Financial Statement;
- involvement in the development of Bill C-139 and other income tax legislation;
- addressing policy and legal issues respecting the Natural Gas and Liquids Tax and Petroleum and Gas Revenue Tax;
- providing policy and legal advice on the government programme of salary restraints and administered prices;
- reviewing several major statutes for possible revision including the *Financial Administration Act*, the *Bank Act*, the *Currency and Exchange Act*, and the *Bretton Woods Agreements Act*.

# The Legislative Programming Branch

## Function

This Branch prepares, in both official languages, all Bills the government plans to introduce in Parliament. The Branch, on behalf of the Minister of Justice and pursuant to the *Canadian Bill of Rights*, examines all Bills introduced in Parliament to ascertain whether all of their provisions are consistent with the purposes and provisions of the *Canadian Bill of Rights*. The Branch also carries out, on behalf of the Clerk of the Privy Council and the Deputy Minister of Justice, the examination of all proposed regulations. This examination, which is required pursuant to the *Statutory Instruments Act*, is to ensure that each regulation

- is authorized by the statute pursuant to which it is to be made;
- does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;
- does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Bill of Rights*;
- is of a form and draftsmanship in accordance with established standards.

The Statute Revision Commission also falls under the administrative responsibility of the Branch. Established in December 1974 pursuant to the *Statute Revision Act*, the Commission is engaged in the process of revising and codifying all federal laws.

## Organization and Activities

The Branch is administered by the Assistant Deputy Minister, Legislative Programming. It

comprises the Legislation Section, the Privy Council Office Legal Section, and the Statute Revision Commission.

### 1. The Legislation Section

This section attends to the legislative drafting responsibilities of the Branch as well as the examination of proposed legislation as required under the *Canadian Bill of Rights*. The section also oversees the printing of the sessional volume of statutes, Part III of the Canada Gazette (which includes Acts that have received Royal Assent) and prepares the Tables of Public Statutes.

Within the Branch, responsibility for the preparation of the government's legislative programme rests with the Chief Legislative Counsel to the government who holds the rank of an Assistant Deputy Minister. During the year, the Chief Legislative Counsel was assisted by an Associate Chief Legislative Counsel, a General Counsel (Legislation), three senior counsel and twelve other legislative drafters.

Among the more notable bills introduced or passed in Parliament during the year were the *Access to Information Act*, the *Privacy Act*, the *Young Offenders Act*, legislation implementing the *National Energy Program*, and the *Canada Post Corporation Act*, amendments to the *Criminal Code* regarding sexual offences, the *Statute Immunity Act*, and the *National Training Act*.

### 2. The Privy Council Office Legal Section

The major function of this section is in regard to the Branch's responsibilities under the *Statutory Instruments Act*. An important aspect of this work is the

redrafting of proposed regulations that do not fully conform to the criteria set out in that legislation. The section provides extensive assistance of this nature to departments and agencies who do not have experienced legal drafters on their own staff or that of their departmental legal services unit. In addition, advice is provided with regard to the rectification of any legal difficulties inherent in the policy sought to be advanced through regulation and any ambiguities, inconsistencies, and technical errors in the proposed regulations.

Counsel in the section also serve as legal advisers to officers of the Privy Council Office and in particular to the Assistant Clerk responsible for Orders in Council. The section is also responsible for the preparation of certain proclamations, commissions under the *Inquiries Act* and commissions under the Great Seal, including those for the appointment of judges.

The section is under the direction of a General Counsel and during the year, had a staff of eleven counsel.

### 3. *The Statute Revision Commission*

The Commission is chaired by the Assistant Deputy Minister, Legislative Programming, and comprises the Chief Legislative Counsel and the Associate Chief Legislative Counsel. The Commission has a staff of fourteen persons, including five legal officers.

The Commission, apart from engaging in the revision and codification of all federal laws, has also undertaken the consolidation and indexing of federal laws and regulations of wider public interest. The preparation of administrative consolidations of federal laws is closely linked to the development of data processing systems intended to facilitate access to federal laws.

The Commission has devoted special efforts towards the detailed revision of the French language text of federal legislation. In the course of revising federal laws, the Commission has reformulated major parts of our laws to modernize the use of both official languages in existing federal legislation. A number of consultations with outside counsel have been held for the purpose of assisting the Commission in its work.

# The Administration Branch

The Branch discharges within the Department the administrative support functions which are common to all government departments. These functions relate to finance, personnel, library services, accommodation, personal and physical security, communications and all the normal elements of logistics. During the year in review, special efforts were made by the Branch to restrain rising costs and reduce overhead. This included restrictions on travel, hospitality and conference costs. This was in addition to the implementation of the statutory restraints imposed on salaries during the year.

The administration of personnel is an essential responsibility of the Branch. The *Personnel Administration Section* attends to the normal duties pertaining to the pay and benefits of legal officers and others employed by the Department and organizes and coordinates the recruitment and selection of all departmental employees. The section also plays a leading role in organizing training and development courses and seminars. Of particular note is that the process of recruitment and selection of legal officers for the Department is a continuous activity, and applications for employment are received from members of the Bar on a constant basis.

During the year in review, over six hundred applications for employment in a legal capacity were received and ninety-eight lawyers were appointed to positions within the Department. Nearly 47% of the officers appointed were women, and 29% of the appointees were francophone.

In cooperation with provincial law societies, the Department accepts a limited number of law students who serve all or part of their articles of clerkship at headquarters or in one of the regional offices. The articling programme assures the articling clerk of assignment through several different areas of legal

work in close association with experienced departmental officers. During the year, thirty-five articled clerks served with the Department.

In common with other departments, special attention is given to ensuring equal opportunities for women, and the prevention and deterrence of personal harassment in the workplace. While the establishment and implementation of policies with respect to equal opportunities for women, the handicapped and minority groups is a departmental responsibility, the coordination of special employment programmes relating to these concerns is the responsibility of the Branch.

Another function assigned to the Administration Branch is the implementation of governmental and departmental policies pertaining to official languages. A special group established within the Branch to direct the Department's Official Languages Programme also administers all translation activities and language training.

During the year, the percentage of francophone employees within the Department rose slightly to 31.6%. The percentage of francophone lawyers was 26.5%. Of the legal officer positions in the Department, 48% required ability in both official languages; 78% of the legal officers occupying these positions met the language requirements of the position, while the remainder were either receiving language training or awaiting an opportunity to receive training. Twenty-four employees received full-time language training at various times during the year.

Records management is another important function of the Branch. The File Registry includes case files, opinion files, and various other files dating back as far as 1868 when the Department first came into being. Many

of the older files are stored in the Public Archives, and some of these are of interest only for historical purposes. However, there is also a great deal of legal information, accumulated through research, to be found in these files, particularly in the opinion files. The giving of legal advice is a daily occurrence in the Department and this advice is often in the form of written opinion. Many of these opinions contain materials of significant precedential value and in a sense, these files may be regarded as a usable resource available to the Department.

In the year under review, major initiatives were undertaken to collect and index these opinions in such a way as to enable departmental officers to refer more easily to previous opinions which might be relevant for current purposes. An *Opinions and Precedents Retrieval Unit* has been organized to ultimately provide an automated, departmental-wide, bilingual system for the storage and retrieval of legal opinions generated within the Department. It will take several years to review all the files which may contain useful information of this nature as it is estimated that there may be as many as 55,000 legal opinions already within departmental files. These opinions will eventually be accessible

through computer terminals located throughout the Department.

Another important element of the Branch's support services is the law library. An automated legal information retrieval system consisting of the Quick Law system for Canadian cases and statutes and WESTLAW for American materials is in operation. Access terminals for this system are situated at headquarters and the regional offices in Montreal, Toronto, Winnipeg and Vancouver.

The *Central Divorce Registry* is the only element of the Branch which does not provide direct support services to the remainder of the Department. This unit administers a computerized register for all petitions for divorce filed in Canada. The principal objective of the registry is to ensure that courts in different parts of the country are not dealing with the same matter concurrently. The registry was established in 1968 when the *Divorce Act* was passed. As an incident of its primary purpose, the registry serves as a vehicle to collect data which is passed on to Statistics Canada. During the year, the registry received 80,573 petitions as compared to 80,798 the previous year. The number of petitions had risen steadily from 42,833 in 1972.

# APPENDIX 1

## The Department of Justice Act

### Revised Statutes of Canada 1970, Chapter J-2

1. This Act may be cited as the Department of Justice Act.
2. (1) There shall be a department of the Government of Canada called the Department of Justice over which the Minister of Justice of Canada appointed by commission under the Great Seal shall preside.  
(2) The Minister of Justice is *ex officio* Her Majesty's Attorney General of Canada, holds office during pleasure, and has the management and direction of the Department of Justice.
3. (1) The Governor in Council may appoint an officer called the Deputy Minister of Justice to hold office during pleasure.  
(2) The Deputy Minister of Justice is *ex officio* the Deputy Attorney General.  
(3) The Governor in Council may appoint two Associate Deputy Ministers of Justice, each of whom shall have the rank and status of a deputy head of a department and as such shall under the Deputy Minister of Justice exercise and perform such powers, duties and functions as deputies of the Minister and otherwise as the Minister may specify.
4. The Minister of Justice shall
  - (a) be the official legal adviser of the Governor General and the legal member of Her Majesty's Privy Council for Canada;
  - (b) see that the administration of public affairs is in accordance with law;
  - (c) have the superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the governments of the provinces;
  - (d) advise upon the legislative Acts and proceedings of each of the legislatures of the provinces of Canada, and generally advise the Crown upon all matters of law referred to him by the Crown; and
  - (e) be charged generally with such other duties as are at any time assigned by the Governor in Council to the Minister of Justice.
5. The Attorney General of Canada shall
  - (a) be entrusted with the powers and charged with the duties that belong to the office of the Attorney General of England by law or usage, so far as those powers and duties are applicable to Canada, and also with the powers and duties that, by the laws of the several provinces, belonged to

the office of the attorney general of each province up to the time when the *British North America Act, 1867*, came into effect, so far as those laws under the provisions of the said Act are to be administered and carried into effect by the Government of Canada;

- (b) advise the heads of the several departments of the Government upon all matters of law connected with such departments;

- (c) be charged with the settlement and approval of all instruments issued under the Great Seal;

- (d) have the regulation and conduct of all litigation for or against the Crown or any public department, in respect of any subject within the authority or jurisdiction of Canada; and

- (e) be charged generally with such other duties as are at any time assigned by the Governor in Council to the Attorney General of Canada.



## APPENDIX 2

### Statutes Administered in Whole or in Part by the Department of Justice

Following is the list of federal statutes for which the Minister of Justice and Attorney General of Canada has administrative responsibility in whole or in part.

- Access to Information Act*, S.C. 1980-81-82-83, c. 111 (Schedule I)
- Annulment of Marriages (Ontario) Act*, R.S.C. 1970, c.A-14
- Anti-Inflation Act*, S.C. 1974-75-76, c.75
- Bills of Lading Act*, R.S.C. 1970, c.B-6
- Canada Evidence Act*, R.S.C. 1970, c.E-10
- Canada Prize Act*, R.S.C. 1970, c.P-24
- Canadian Bill of Rights*, S.C. 1960, c.44
- Canadian Human Rights Act*, S.C. 1976-77, c.33
- Criminal Code*, R.S.C. 1970, c.C-34
- Crown Liability Act*, R.S.C. 1970, c.C-38
- Department of Justice Act*, R.S.C. 1970, c.J-2
- Divorce Act*, R.S.C. 1970, c.D-8
- Escheats Act*, R.S.C. 1970, c.E-7
- Extradition Act*, R.S.C. 1970, c.E-21
- Federal Court Act*, R.S.C. 1970, (2nd Suppl.) c.10
- Food and Drugs Act*, R.S.C. 1970, c.F-27
- Foreign Enlistment Act*, R.S.C. 1970, c.F-29
- Fugitive Offenders Act*, R.S.C. 1970, c.F-32
- Garnishment, Attachment and Pension Diversion Act*, S.C. 1980-81-82-83, c.100
- Identification of Criminals Act*, R.S.C. 1970, c.I-1
- Interpretation Act*, R.S.C. 1970, c.I-23
- Judges Act*, R.S.C. 1970, c.J-1
- Law Reform Commission Act*, R.S.C. 1970, (1st Suppl.) c.23
- Lord's Day Act*, R.S.C. 1970, c.L-13
- Marriage Act*, R.S.C. 1970, c.M-5
- Narcotic Control Act*, R.S.C. 1970, c.N-1
- Official Secrets Act*, R.S.C. 1970, c.O-3
- Permanent Court of International Justice Act*, S.C. 1921, c.46
- Postal Services Interruption Relief Act*, R.S.C. 1970, c.P-15
- Privacy Act*, S.C. 1980-81-82-83, c.111 (Schedule II)
- State Immunity Act*, S.C. 1980-81-82-83, c.95
- Statute Revision Act*, S.C. 1974-75-76, c.20
- Statutory Instruments Act*, S.C. 1970-71-72, c.38

*Supreme Court Act*, R.S.C. 1970, c.S-19

*Tobacco Restraint Act*, R.S.C. 1970, c.T-9

*Tax Court of Canada Act*, S.C. 1980-81-82-83, c.158

*War Measures Act*, R.S.C. 1970, c.W-2

## **APPENDIX 3**

### **Departments, Agencies and Other Bodies Served by the Departmental Legal Services Branch**

Agriculture	Health and Welfare
Atomic Energy Control Board	Indian and Northern Affairs
Canadian Commercial Corporation	Insurance
Canadian Dairy Commission	Inspector General of Banks
Canadian Deposit Insurance Corporation	Labour
Canadian International Development Agency	Ministry of State for Economic and Regional Development
Canadian Pension Commission	Ministry of State for Science and Technology
Canadian Sports Pool Corporation	Ministry of State for Social Development
Communications	National Capital Commission
Consumer and Corporate Affairs	National Defence
Crown Assets Disposal Corporation	National Parole Board
Defence Construction (1951) Limited	National Research Council
Employment and Immigration Commission	Northern Pipeline Agency
Energy, Mines and Resources	Public Service Commission
Environment	Public Works
External Affairs	Regional Industrial Expansion
Finance	Revenue Canada (Customs and Excise)
Fisheries and Oceans	Revenue Canada (Taxation)
Foreign Investment Review Agency	

Royal Canadian Mint

Royal Canadian Mounted Police

Secretary of State

Solicitor General

Statistics Canada

Status of Women

Supply and Services

Transport

Treasury Board

Veterans Affairs

War Veterans Allowance Board