



Department of Justice
Canada

Ministère de la Justice
Canada

Department of Justice

Annual Report
1985 · 1986

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DEPARTMENT OF JUSTICE
ANNUAL REPORT 1985-1986

Department of Justice
Canada

Pictured on the cover is Truth, one of two larger-than-life figures that flank the front door of the Supreme Court of Canada building in Ottawa. The other is Justice. Both are the work of Toronto sculptor Walter Seymour Allward (1876-1955), whose best-known commission is the Vimy Memorial in France.

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Department of ♦
Justice

Annual Report
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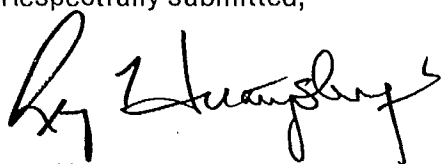
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To Her Excellency
The Right Honourable Jeanne Sauvé
Governor General of Canada

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, 1985, to March 31, 1986.

Respectfully submitted,

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

Ray Hnatyshyn, P.C., Q.C., M.P.

September 30, 1986

The Hon. Ray Hnatyshyn, P.C., M.P.
Minister of Justice and
Attorney General of Canada
House of Commons
Ottawa, Ontario
K1A 0A6

Mr. Minister:

I am pleased to submit the fourth annual report of the Department of Justice for the fiscal year ending March 31, 1986.

The legislative highlight of the year was passage of the *Criminal Law Amendment Act*, which was enacted by Parliament June 20, 1985. This legislation, which came into force on December 4, 1985, created new offences and imposed stiffer penalties for impaired driving; abolished writs of assistance, which permitted RCMP officers to search premises without a warrant; established telewarrants, which allow police officers to obtain search warrants by telephone or other means of telecommunication; and improved court procedures to make the justice system more effective.

As the culmination of a review of Canada's statutes to ensure their compliance with the *Canadian Charter of Rights and Freedoms*, Bill C-27 was passed by the House of Commons and given Royal Assent June 28, 1985. The new Act amends many federal statutes to comply with the *Charter*, especially its search and seizure and equality provisions.

Other significant legislation sponsored by the Department of Justice and enacted by Parliament this year included: a new *Divorce Act*; a new *Family Orders and Agreements Enforcement Assistance Act*; acts to amend the *Criminal Code* with respect to prostitution, lotteries and pari-mutuel betting; and an *Act to Amend the Customs Tariff* which reinstated the powers of customs officials to interdict pornography and hate literature. During the year, your predecessor tabled the Report of the Special Committee on Pornography and Prostitution in the House of Commons. Earlier, the Department published the Report of the Committee on Sexual Offences Against Children and Youths. Officials of your Department subsequently consulted with hundreds of groups across the country in order to develop legislative amendments to deal with these problems.

One of the Department's most important tasks was the publication of *Toward Equality*, the Canadian government's response to the report of the Parliamentary Committee on Equality Rights.

The Department continued to play an important role in international law issues. We participated in preparing pleadings for the arbitration with France concerning fishing rights in the Gulf of St. Lawrence. We also promoted the development of federal and provincial legislation required for Canada to accede to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

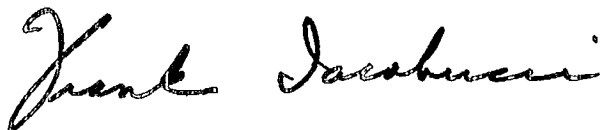
Lawyers at headquarters and in the regions continued to conduct important cases on behalf of the government. Many of these cases are detailed in this report.

As you know, 1985 was International Youth Year. The Department sponsored several projects to celebrate the occasion, including a National Forum on Youth and the Law, held in Ottawa during January 1986.

The Department of Justice also co-sponsored, in coordination with the Treasury Board Secretariat, a National Forum on Access to Information and Privacy.

Finally, I would like to acknowledge the contribution made by all employees of the Department of Justice toward the achievements attained during the year. Legal and support staff throughout the Department demonstrated dedication and exemplary effort in the discharge of their responsibilities and I greatly appreciated their support and assistance.

Sincerely,

A handwritten signature in cursive script, reading "Frank Iacobucci". The signature is written in dark ink and is positioned above the printed name and title.

Frank Iacobucci
Deputy Minister of Justice and
Deputy Attorney General

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Roles and Functions of the Attorney General and the Minister of Justice

The Attorney General is the chief law officer of the Crown while the Minister of Justice is the legal advisor to the Governor General and the legal member of Her Majesty's Privy Council for Canada. Although the duties of the Minister and the Attorney General are distinct and separate in law, they are, by tradition and practice, carried out by the same person.

The two roles yield a complex and varied mandate. The Department is responsible for the legal affairs of the government as a whole and for offering legal services to individual departments and agencies.

The Attorney General represents the Crown in all litigation where rights of a public nature, of concern to the federal government, come into question. As legal counsel for departments and agencies, the Attorney General is responsible for a wide range of duties, including the preparation of contracts,

the collection of debts owing to the Crown and the searching of property titles. As the most senior legal officer of the land and the primary guardian of Canada's system of law, the Attorney General must uphold the rule of law at all times, most particularly when exercising prosecutorial discretion.

The Minister of Justice must take into account considerations of both law and government policy. The Minister must, for instance, be concerned with the policy considerations underlying the law for which the Minister is directly responsible. At the same time, the Minister of Justice is concerned with the legal content of government bills, regulations or departmental directives as they may affect fundamental rights or freedoms. Additionally, the Minister oversees all legal mechanisms used to achieve overall government objectives.

Mandate of the Department of Justice

The mandate of the Department reflects the dual functions of the Minister of Justice and the Attorney General. Under the authority of the *Department of Justice Act*, the Department is responsible for:

- ☐ assuming leadership in the planning, development and implementation of government policies in areas related to the administration of justice and such other areas as are assigned by the Governor in Council;
- ☐ providing a full range of legal services to the Government of Canada and its departments and agencies, including legal advice, the preparation of legal documents, the drafting of legislation and the conduct of litigation; and
- ☐ ensuring that the administration of public affairs is carried out in accordance with the law.

In addition to the *Department of Justice Act*, a number of other major statutes provide direction to the Department. They are:

- ☐ the *Canadian Bill of Rights*, which requires that all government bills introduced in the House of Commons and all regulations transmitted to the Clerk of the Privy Council for registration be examined for inconsistencies with the purposes and provisions of the *Bill of Rights*;

- ☐ the *Canadian Charter of Rights and Freedoms*, which requires the Minister to ensure that all existing statutes, government bills introduced in the House of Commons and regulations transmitted to the Clerk of the Privy Council for registration comply with the provisions of the *Charter*;
- ☐ the *Statutory Instruments Act*, which requires the Department to examine regulations according to criteria set out in the Act; and
- ☐ the *Statute Revision Act*, which provides for the periodic revision and consolidation of the general statutes and regulations of Canada.

Statutes for which the Minister of Justice is responsible in whole or in part are listed in Appendix I.

Overview of the Year's Activities

■ Criminal Law Amendment Act (Bill C-18)

Bill C-18, the *Criminal Law Amendment Act*, 1985 (S.C. 1985, c.19), was enacted by Parliament on June 20, 1985, and came into force on December 4, 1985. The Act contains changes to the *Criminal Code* which:

- ☐ impose stiffer penalties for impaired driving and establish new offences and new provisions for mandatory blood testing;
- ☐ abolish writs of assistance, which permitted RCMP officers to search premises without a search warrant;
- ☐ establish telewarrants in order that police officers can, in certain circumstances, obtain search warrants by telephone or other means of telecommunication;
- ☐ increase the effectiveness of the justice system by improving court procedures, such as allowing judges, prosecutors and lawyers to hold pre-trial conferences.

■ Impaired Driving

To complement the impaired driving amendments in Bill C-18, the Minister of Justice launched a nationwide public legal information campaign. This campaign, coupled with increased enforcement and active programs in the provinces, led to a dramatic drop across the country in impaired driving charges over the Christmas period.

■ Response to *Equality for All* Report

On March 4, 1986, the Minister of Justice tabled in the House of Commons *Toward Equality*, the government's response to the report of the Parliamentary Subcommittee on Equality. The response, coordinated by the Department of Justice, represents a major initiative in the government's commitment to equality and social justice. The Department is now coordinating implementation of this response.

■ Official Languages Act Review

The Department of Justice, in conjunction with a special committee of Deputy Ministers created to review all aspects of official languages policies, has been examining the *Official Languages Act* and related legislation. The government will soon consider new legislative measures.

■ Charter of Rights and Freedoms Statute Amendments

The *Statute Law (Canadian Charter of Rights and Freedoms) Amendment Act* was given Royal Assent June 28, 1985. The Minister introduced Bill C-27 earlier in the year to amend federal statutes to comply with the *Charter*. Approximately 40 Acts were amended to provide *Charter* guarantees in the areas of entry and inspection, entry and search, rights of members of the Canadian Armed Forces, investigations under the *Human Rights Act*, equality rights, and examination of bills and regulations.

■ Badgley and Fraser Reports

The Report of the Committee on Sexual Offences Against Children and Youths (Badgley Committee) was published in August 1984. The Minister of Justice tabled the Report of the Special Committee on Pornography and Prostitution (Fraser Committee) in the House of Commons on April 23, 1985. Officials in the Department of Justice and other concerned federal departments met with more than 200 non-governmental organizations and private sector agencies concerned with children's issues to gather their views about the recommendations of the two committees. Consultations were conducted with the provinces as well. At the end of the fiscal year, legislative amendments were being developed to deal with problems of child sexual abuse, reception of children's evidence, and juvenile prostitution and pornography.

■ Prostitution (Bill C-49)

Bill C-49, an *Act to Amend the Criminal Code* regarding prostitution, was given Royal Assent and came into force on December 20, 1985. The Act makes it an offence punishable on summary conviction for anyone in a public place, or in any place open to public view, to stop any motor vehicle, to impede the free flow of pedestrian or vehicular traffic or to stop or communicate in any manner with any person in order to engage in prostitution or to obtain the services of a prostitute. The Department is currently formulating a research plan to evaluate the impact of this bill. A review by Parliament is required within three years of the coming into force of the legislation.

■ Treaty on Mutual Legal Assistance

On March 18, 1985, Prime Minister Brian Mulroney and President Ronald Reagan signed a Treaty on Mutual Legal Assistance in Criminal Matters between Canada and the United States. This treaty provides for cooperation and assistance between Canada and the United States in the investigation and suppression of crime and law enforcement matters. The treaty is not yet in force; it cannot be ratified until implementing legislation, the proposed *Mutual Legal Assistance in Criminal Matters Act*, is adopted.

■ Sentencing Commission

The Canadian Sentencing Commission was established under the *Inquiries Act* in May 1984 to advise on the feasibility and use of sentencing guidelines in Canada, as well as to investigate and develop model guidelines. The Commission will make recommendations on the relationship between sentencing guidelines and other aspects of criminal justice, such as prosecutorial discretion. The Commission will examine maximum and mandatory minimum sentences in the *Criminal Code* and related statutes. A report is expected in the fall of 1986.

■ Family Law

On May 1, 1985, the Minister introduced the *Divorce Act, 1985* and the *Family Orders and Agreements Enforcement Assistance Act* in the House of Commons. Both Acts received Royal Assent on February 13, 1986. The *Divorce Act, 1985* will be proclaimed on June 1, 1986. The Enforcement Act will be proclaimed in early 1987.

The *Divorce Act* provides a single ground for divorce: marriage breakdown, provable by evidence of adultery or mental or physical cruelty or by separation of at least one year. Factors and objectives relating to child support and custody are provided.

The new *Family Orders and Agreements Enforcement Assistance Act* provides services to help enforce support and custody/access orders and agreements, and *Criminal Code* charges of parent-child abduction. To enforce a support order, the Act allows the release of information from designated information banks to trace a missing person and also permits the garnishment of designated federal monies, such as income tax refunds.

The Department is also supporting research studies of mediation services. Reports are expected in early 1987. Funding for Family Mediation Canada, an independent, national association to promote mediation, has been provided for the last two fiscal years and will continue next year.

■ Lotteries and Gaming (Bill C-81)

Bill C-81, an *Act to Amend the Criminal Code (Lotteries)*, was enacted by Parliament on December 20, 1985, and came into force on December 31, 1985. The new law removes the federal government's legislative authority to conduct lotteries and other gaming activities and clarifies the authority and responsibilities of the provinces and territories concerning lotteries.

■ Federal Statutes Compliance Project

This project was completed in 1985 after three years of research. At year's end, results of the study were being incorporated into a proposed program for reviewing the laws, policies and practices pertaining to compliance with federal statutes. This program will enable the Department to ensure that government policy is applied to regulatory programs. The first measure will be a ticketing procedure for federal infractions incorporating the voluntary prepayment of fines. This will expedite the enforcement of federal regulatory offences and lessen the burden of regulation.

■ International Youth Year

The Department sponsored four major initiatives for Canadian youth during International Youth Year. During the summer, seven youth groups across Canada developed public legal education and research projects for the youth of their province. In August, the Department sponsored the Justice Theatre, a successful set of mock trials, at the Pacific National Exhibition. The Department also incorporated a youth segment in its campaign against impaired driving. In January 1986, the Department convened a National Forum on Youth and the Law in Ottawa, which provided 150 young Canadians with an opportunity to present their views on youth and justice issues to the Government of Canada.

■ La Bretagne

The Department was closely involved, together with the Departments of External Affairs and Fisheries and Oceans, in preparing Canada's pleadings for arbitration with France concerning French vessels fishing in the Gulf of St. Lawrence pursuant to the 1972 Fisheries Agreement between Canada and France. The dispute stems from a French objection to a condition on the fishing licence granted to *La Bretagne*, a vessel registered in Saint-Pierre and Miquelon. Under the licence, filleting on board is prohibited in the Gulf, as it is for Canadian vessels. Canada and France agreed to submit the dispute to an international arbitral tribunal established in accordance with the provisions of the 1972 Fisheries Agreement. Oral proceedings before the tribunal were to have been held in June 1986 and a decision was expected in mid-July, 1986.

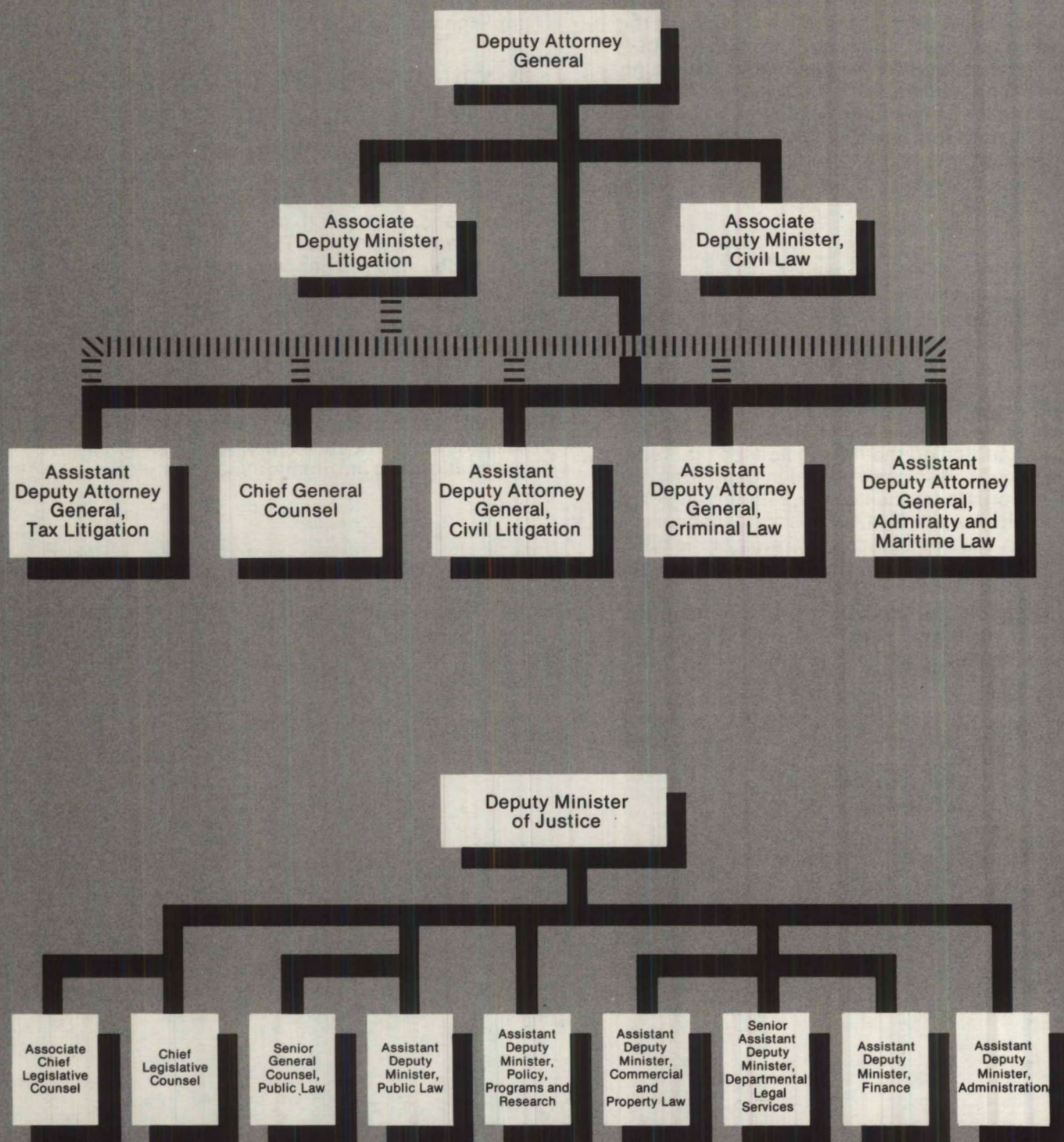
■ New York Convention

The Department coordinated the preparation of federal and provincial legislation required to permit Canada to accede to and implement the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. All provinces concurred with this proposal and agreed to enact implementing legislation.

■ National Forum on Access to Information and Privacy

The Department of Justice and Treasury Board hosted a forum in Ottawa on March 6 and 7, 1986, to provide individuals concerned with access to information and privacy with an opportunity to exchange views and experiences. The forum was also intended to contribute to the impending review of legislation by the House of Commons Standing Committee on Justice and Solicitor General. Participants representing public and private sector organizations, interest groups, media and the general public, discussed a wide range of issues, including user and media perspectives, law enforcement and security, the protection of personal information, OECD guidelines for international exchanges of personal information and information management.

Organization Chart



March 31, 1986

Organization

The Department of Justice employed 1,409 persons in 1985-86, a decrease of 5.4 per cent over the previous year. The two major occupational groups — 650 lawyers and 335 secretaries — constituted approximately 70 per cent of the total personnel complement. The decrease in personnel is attributable in most part to the government-wide restraint program. Turnover for lawyers over this period was 2.9 per cent, slightly lower than in previous years.

Departmental staff are divided among regional offices, legal services units and headquarters. The Department's nine regional offices had a total staff of 487 during the year, including 244 lawyers. These offices undertake all forms of litigation and prosecutions on behalf of the Attorney General of Canada and provide legal advice to offices of federal departments and agencies in the regions.

The Department had 39 legal services units in the National Capital Region and one in Charlottetown, P.E.I., responsible for providing legal services to federal departments and agencies and to the Royal Canadian Mounted Police. These units varied in size from a staff of 18 lawyers and 12 support staff to units consisting of a single lawyer. In total, departmental legal services units employed 199 lawyers and 31 administrative support staff, for a total complement of 230. In most cases, the client department or agency provided administrative support staff.

Headquarters staff totalled 692, including 207 lawyers (or 31 per cent of the total). Branches representing specialized fields of law and central services such as public law, policy planning, legislative programming and administration are located at headquarters.

The legal services units in government departments and agencies are part of the Legal Services Branch, which includes Information Law and Privacy and Commercial and Property Law. With 264 persons,

Legal Services was the largest branch. It was headed by a Senior Assistant Deputy Minister. Of the other branches, Policy, Programs and Research employed 84 persons, Public Law, 68, and Legislative Programming, 97.

At headquarters, Civil Litigation, Criminal Law and Tax Litigation, employing 18, 14 and 16 lawyers respectively, are responsible for Crown litigation and prosecutions in the National Capital Region.

The Assistant Deputy Attorney General, Admiralty and Maritime Law, is responsible for litigation, commercial law, legislation, casualty investigations and international law involving Canadian maritime interests.

While the Department is organized in branches, sections and related units, the carrying out of its mandate is not compartmentalized. Many segments of the Department engage regularly in attaining objectives in common with other groups within the structure. For example, the legislative implementation of a policy developed by another department of government will often involve a number of branches and sections of the Department of Justice. Lawyers from the legal services unit acting for the client department advise on the broad legal aspects of the proposed policy. If the policy has constitutional implications, the Public Law Branch may be requested to analyze these implications and may establish options for a sound legal basis for the policy. In addition, where applicable, the Policy, Programs and Research Branch provides advice on the impact of new policies on the justice system. The actual preparation of the legislation in the form of a government bill is the responsibility of the Legislative Programming Branch and, more specifically, of the Chief and Associate Chief Legislative Counsel. The Legislation Section of that branch also examines draft legislation to ascertain whether any of its provisions are inconsistent with the *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms*.

Similar principles apply to the Attorney General's responsibility for conducting criminal prosecutions and for regulating and conducting all litigation for and against the Crown or any government department. In this context, the Department engages in 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. The Department also prosecutes all

offences under the *Criminal Code* and territorial ordinances in the Territories, pursuant to the Attorney General's special responsibilities in the Northwest Territories and the Yukon Territory. Depending on the precise legal principles at issue, the Associate Deputy Minister or Assistant Deputy Attorney General 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.

Personnel

	1982-83	1983-84	1984-85	1985-86
Headquarters	618	715	744	692
Regional Offices	420	502	504	487
Legal Services Units	280	253	242	230
Total Department	1,318	1,470	1,490	1,409

Committees

In many instances, departmental activities require the concerted efforts of several branches, each contributing its own expertise and perspective. A number of committees has been formed to assist in the administration and coordination of departmental resources and programs, including the following:

☐ Executive Committee

This is the senior departmental management committee providing a forum for discussion and direction on policies, administrative issues, and management. The Committee, chaired by the Deputy Minister, meets several times each month to advise the Deputy Minister on priorities, operational planning and the allocation of resources. Committee members include the Associate Deputy Ministers; the Assistant Deputy Ministers; and the Assistant Deputy Attorneys General for Civil Litigation and Criminal Law.

During 1985-86, the Committee dealt with the policy for communications with the public and media, the compensation and classification system for legal advisors, a new performance appraisal process for lawyers, the use of para-legal support staff and affirmative action. Various reports were received from the Bureau of Programme Evaluation and Internal Audit and action was taken on a number of recommendations. Policies reviewed during the year pertained to timekeeping systems, career transfers for lawyers, official languages, human resource planning, part-time employment and access to information and privacy. A number of practices were changed to streamline the Committee's operation.

☐ Personnel Management Committee

This Committee is concerned with personnel issues such as the redeployment and appointment of legal officers in the Department. It is also responsible for overseeing the application of personnel policies. Its composition is the same as that of the Executive Committee with the Director, Personnel Administration, as secretary.

☐ Senior Staff Committee

This Committee addresses broad policy questions of departmental concern and matters referred to it by the Executive Committee. One of the Committee's major responsibilities is the annual performance appraisal of the law group. It is also concerned with the periodic review and definition of the Department's legal functions and organizational structure. Meetings are called as required and chaired by the Deputy Minister. Members include the Associate and Assistant Deputy Ministers; the Assistant Deputy Attorneys General; the Chief and Associate Chief Legislative Counsel; the Senior General Counsel, Public Law; and the Chief General Counsel.

☐ Management Committee

This Committee includes all senior managers, general and senior counsel responsible for legal service offices and managers of general services at the director's level. It is chaired by the Deputy Minister and meets twice a year to discuss current management issues, policies, practices and legal matters with broad implications throughout government. During 1985-86, the Committee focussed on a departmental resource review, official languages, training and development, a performance review of lawyers, administrative reform and a transfer system for lawyers. The Committee also considered conflict of interest guidelines, the use of legal agents, communications with the public and the media, and management information systems.

☐ Charter Committee

This Committee oversees the conduct of litigation and other matters concerning the *Canadian Charter of Rights and Freedoms*. The Committee recommends interventions by the Attorney General, if required, after considering similar cases and government policy. The Committee is chaired by the Deputy Minister and consists of the Associate Deputy Ministers; the Assistant Deputy Attorneys General, Civil Litigation and Criminal Law; the Assistant Deputy Minister and Senior General Counsel, Public Law; the General Counsel, Human Rights Law; the *Charter* Coordinator and a representative of the Minister's Office.

Among other cases in 1985-86, the Committee dealt with the political rights of public servants (*Cassidy et al. v. The Queen*); mandatory minimum sentences of imprisonment (*Smith v. The Queen*); language rights in the courts (*The Queen v. Paquette*); and the admissibility of evidence obtained in violation of *Charter* rights (*Hamil v. The Queen*).

☐ **Litigation Committee**

This Committee supervises all litigation carried out by departmental lawyers and legal agents, including criminal prosecutions, civil law cases and tax cases. It advises the Minister and Deputy Minister on litigation matters. Chaired by the Associate Deputy Minister, Litigation, the Committee includes the Associate Deputy Minister, Civil Law; the Assistant Deputy Attorneys General, Admiralty and Maritime Law, Civil Litigation and Criminal Law; the Senior General Counsel, Public Law; the Chief General Counsel; the General Counsel, Constitutional and International Law; and the Executive Assistant to the Minister.

☐ **Legal Officers Advisory Committee**

This Committee provides lawyers outside the management group with the opportunity to discuss terms and conditions of employment, financial compensation and benefits, as well as personnel management policies and practices. During 1985-86, the committee examined several issues, including: staffing and promotion process and policies, the Legal Advisors classification system, a salary and non-salary benefits study, Treasury Board policy on the professional liability of lawyers, and possible changes to departmental structure and mandate. The Committee is composed of five members from management appointed by the Deputy Minister and 16 non-management members elected by legal officers throughout the Department. It is chaired by the Associate Deputy Minister, Civil Law.

☐ **Affirmative Action Committees**

There are three advisory committees under the umbrella of the Department's Affirmative Action Program. They are the advisory committees on: Equal Opportunities for Women, Disabled Persons and Indigenous People. Each committee comprises employees who are interested in the concerns of the target groups. The committees recommend policies and procedures to the Deputy Minister and monitor their implementation.

During 1985-86, the Committee on Equal Opportunities for Women drafted a maternity leave policy for legal officers and a part-time work policy. The Committee on Disabled Persons helped implement several recommendations of the Affirmative Action Plan and held an awareness workshop for managers on employing disabled persons. The Committee on Indigenous People implemented the Action Plan recommendations and researched ways to increase the number of native employees in the Department. It also met with native organizations to improve the information available to native persons on departmental and other justice careers.

In January 1986, a steering committee was established to coordinate the Department's Affirmative Action Program and ensure that the Action Plan is implemented as promptly as possible. The Committee, chaired by the Associate Chief Legislative Counsel, includes the presidents of the three advisory committees as well as representatives from other departmental committees.

☐ **Official Languages Committee**

This Committee monitors the implementation of the Official Languages Program within the Department. Specifically, the Committee approves the linguistic designation plan; monitors proficiency levels; organizes language training; coordinates translation; and confirms procedures for the bilingualism bonus. Chaired by the Chief General Counsel, the Committee comprises the Associate Deputy Ministers, Civil Law and Litigation; the Chief Legislative Counsel; the Director General, Bureau of Programme Evaluation and Internal Audit; and the Director of the Official Languages Program.

This year, the Committee approved the appointment of legal counsel to bilingual managerial positions in the National Capital Region; published a brochure entitled *Rights and Responsibilities as Employees*; and approved new policies on official languages and translation.

☐ **Communications Committee**

This Committee works to improve the Department's internal and external communications. It oversees information policies, standards and procedures and offers advice on a wide range of topics, including: communications plans for Cabinet documents; publications; audio-visual productions; exhibits; internal communications; media relations; and the distribution of information. It is chaired by the Director, Communications and Public Affairs,

with the Chief, Program Communications, as secretary. Other members are the Assistant Deputy Ministers, Policy, Programs and Research, Legal Services, Public Law and Administration; the Chief General Counsel; the Director, Corporate Planning; the Executive Assistant to the Deputy Minister; and a representative of the Minister's Office.

During the year, this Committee developed a new policy on communications with the media and public and oversaw the production of a wide range of written documents including the annual report and a number of newsletters.

☐ **Crown Agents Steering Committee**

This Committee advises the Executive Committee and the Deputy Minister on contracting for legal services. It reviews policies concerning agents; designs system requirements, such as letters of appointment and engagement; and accounts for fees and disbursements. The Committee is chaired by the Associate Deputy Minister, Litigation. Its members are the Senior Assistant Deputy Minister, Legal Services; the Assistant Deputy Attorneys General, Criminal Law and Civil Litigation; the General Counsel, Toronto Regional Office; and the Director, Corporate Planning.

☐ **Other Committees**

There are many other committees responsible for specific functions within the Department. These include the following:

- ☐ the French Jurilinguistic Group, composed of francophone lawyers and linguists, standardizes common provisions in federal statutes and improves their French versions as well as publishing a guide to French-language legislative drafting;

- ☐ the Articling Students Committee supervises the hiring, training, evaluation and assignment or rejection of articling students;
- ☐ the Library Services Committee reviews library policies and priorities;
- ☐ the Contract Review Committee oversees arrangements for non-legal services within the Department by reviewing each contract; this year, 116 contracts and 40 amendments were reviewed;
- ☐ the Federal Court Act Amendments Committee considers and recommends proposals for amending the Act and related legislation in consultation with departments, agencies, the Canadian Bar Association and judges;
- ☐ the Information Policy and Systems Committee reviews and coordinates the development of information systems;
- ☐ the Performance Review Committee oversees the performance review system for lawyers;
- ☐ the Projects Assessment Committee administers the Access to Legal Information Fund, the Criminal Law Reform Fund, the Consultation and Development Fund and the Special Projects-Legal Aid Fund;
- ☐ the Union Management Consultation Committee facilitates information exchange between management and union representatives; and
- ☐ the Training and Development Committee recommends employee training policy and plans to the Deputy Minister and Executive Committee.

Aboriginal Affairs

Legal questions abound in native affairs and play a large part in the day-to-day activities of the Department. Departmental lawyers and officials are involved in constitutional discussions; land claims negotiations and litigation; reform of the *Indian Act*; proposals for Indian and Métis self-government; and the administration of programs to ensure that the justice system is sensitive to aboriginal peoples.

The Prime Minister has assigned special responsibilities to the Minister of Justice for aboriginal constitutional matters. In that capacity, the Minister chaired two multilateral meetings during the past year, in preparation for the First Ministers' Conference on aboriginal constitutional matters in 1987.

Self-government, a fundamental goal for many aboriginal peoples, raises difficult legal issues. Departmental lawyers provide advice on these issues to a number of departments, particularly to Indian and Northern Affairs Canada and the Federal-Provincial Relations Office. Departmental officials are involved in both the constitutional process and the legal and policy aspects of self-government proposals for Indians and Métis.

The Department also assists Indian and Northern Affairs Canada in complex negotiations on specific and comprehensive land claims. Departmental lawyers research and help define legal obligations pertaining to land claims and help evaluate related historical findings. In some cases claim settlements require the drafting of specific legislation by the Department.

Land claims negotiations are often influenced by litigation concerning hunting, fishing and other wildlife harvesting rights. The Department's Civil Litigation and Criminal Law Branches have, at any given time, almost 100 active native litigation cases on file. These consist of civil claims against the federal government and criminal prosecutions arising from the enforcement of federal statutes such as

the *Fisheries Act* and the *Migratory Birds Convention Act*. The most significant current native cases are the *Bear Island* case (Ontario Court of Appeal), *Delgam Uukw et. al. v. The Attorney General of B.C.*, *Martin and George v. The Attorney General of B.C.* and *MacMillan Bloedel and Pasco v. Canadian National Railways* (Supreme Court of British Columbia).

Native law and policy matters are handled at headquarters primarily by the Native Law Section of the Public Law Branch. The Senior Counsel, Federal-Provincial Relations Office, provides a range of legal services to the Office and assists in formulating policy for the Office of Aboriginal Constitutional Affairs. He is a member of the Public Law Branch and works in close consultation with the Native Law Section. A Coordinator of Native Affairs Litigation, reporting directly to the Associate Deputy Minister, Litigation, is responsible for overseeing all litigation involving native issues. In addition, the Departmental Legal Services Unit at the Department of Indian and Northern Affairs provides legal advice on departmental operations including the administration of Indian programs and negotiations of native claims.

The Department offers programs and conducts studies on aboriginal affairs through the Policy, Programs and Research Branch. The Branch continues to administer the Native Courtworker Program and the Program of Legal Studies for Aboriginal People. A study on native interactions with the criminal justice system prepared in cooperation with the Quebec Amerindian Police was completed and a report was in preparation as the year came to a close. A study on the needs of aboriginal offenders, witnesses and victims was started in New Brunswick.

Federal Contribution to Native Courtworker Program

	1983-84	1984-85	1985-86 *
		(\$000)	
British Columbia	634.5	591.6	698.8
Alberta	681.5	742.3	888.9
Saskatchewan	449.3	411.7	459.8
Manitoba	196.1	221.5	237.1
Ontario	378.9	420.0	493.7
Quebec	219.7	273.2	454.9
New Brunswick	—	—	—
Nova Scotia	—	—	—
Newfoundland	67.0	70.2	77.1
Prince Edward Island	—	—	—
Northwest Territories	201.6	245.5	320.8
Yukon	45.5	52.8	69.3
Special native projects	17.6	13.6	230.0
Total Federal Contributions	2,891.7	3,042.4	3,930.4

*Estimate

Deputy Minister

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

☐ Deputy Minister's Office

The Deputy Minister's Office 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 coordinates the Department's involvement in various Cabinet and parliamentary processes. The Office is also responsible for the development of departmental statements on policy and procedures.

The Office responds to ministerial correspondence referred to the Department through the Correspondence Unit. During 1985-86, the Unit continued to develop its capacity to respond to ministerial correspondence and to monitor and analyze trends in correspondence. This year, the Office also coordinated responses to 71 requests under the *Access to Information Act* and 55 requests under the *Privacy Act*.

☐ Corporate Planning Section

The Corporate Planning Section is responsible for the development, implementation and operation of management systems. These systems include strategic planning, program development, operational planning and management information. The Section ensures that management issues, problems and opportunities are identified and addressed.

The Section coordinated preparation of the Program Expenditure Plan and assisted in development of the Multi-Year Operational Plan. It also worked closely with senior management to develop plans responding to the government's reduction program, including a review of all programs and activities.

The Section also assisted the Department in developing an approach to information systems including the preparation of policies, procedures and approval processes.

☐ Bureau of Programme Evaluation and Internal Audit

The Bureau, established in December 1982, evaluates and audits departmental operations, including legal services to the government, the conduct of civil and criminal litigation, legislative programming, policy formulation and the administration of grants and contributions programs. The Bureau considers the relevance and impact of departmental initiatives, as well as ways to improve operational performance and controls.

During the year in review, the Bureau evaluated the Human Rights Law Fund, the Canadian Law Information Council, Litigation Services and the Manitoba Legal Aid Plan. It also conducted a number of special studies and internal audits, including audits of the Public Law Branch, the Edmonton Regional Office, the Opinions and Precedents Retrieval Unit and the Department's contracting function.

☐ Communications and Public Affairs Directorate

The Communications and Public Affairs Directorate plans, develops and implements communications policies and activities. It assists the Minister in defining communications goals, develops annual communications plans and budgetary estimates for program areas and develops communications plans to accompany Memoranda to Cabinet. The Directorate also coordinates, guides and animates public information programs and activities, conducts nation-wide public and media relations, participates in the Public Legal Education and Information efforts of the Department, responds to public enquiries, publishes and distributes publications and provides advice and assistance to other branches to meet their individual communications needs.

The functions of the Directorate are shared among its three member divisions: Ministerial Liaison and External Communications, Program Communications and Publishing and Corporate Communications.

The Ministerial Liaison and External Communications Division implements the Department's communications activities with the general public and the media. It also maintains liaison with the Minister's Office and with the regional offices of the Department in communications matters.

The Program Communications Division manages the Department's communications planning, including preparing communications plans accompanying Memoranda to Cabinet, the annual departmental communications plan, financial and administrative reports and environmental analyses. The Division also provides communications advice to senior management on plan formulation, maintains contact with central agencies and coordinates interdepartmental initiatives.

The Publishing and Corporate Communications Division manages and coordinates the Department's publishing activities. It also manages the Department's internal communications programs and liaises with the Administration Branch and the Legal Services Branch to develop plans in internal and interdepartmental communications matters.

Of particular importance during 1985-86 was the development of communications policies, plans and activities for a number of legislative and other initiatives, including amendments to the street soliciting provisions of the *Criminal Code*, the question of capital punishment and federal responses to the reports of the Special Committee on Pornography and Prostitution and the Committee on Sexual Offences Against Children and Youth. The Directorate contributed to a public awareness campaign on amendments to the impaired driving provisions of the *Criminal Code*. It also contributed to the production of *Toward Equality*, the federal response to the recommendations of the Parliamentary Committee on Equality Rights.

The Justice Theatre in the Canada Pavilion at the 1985 Pacific National Exhibition in Vancouver featured two dramatic courtroom presentations by young actors and law students. The trials involved impaired driving and shoplifting charges. These attractions drew more than 20,000 fairgoers, including some 1,000 who served as jurors.

Last year's publications included *The Annual Report, 1984-85; Pornography and Prostitution in Canada* — a two-volume Report of the Special Committee on Pornography and Prostitution; a Discussion Paper of the Committee on Sexual Offences Against Children and Youths; OECD guidelines on the *Protection of Privacy and Transborder Flows of Personal Data: Implications for Canada; Public Interest Advocacy in Canada; The Public Interest Department, Legal Aid Manitoba; Proceedings of the Second International Trade Law Seminar; Equality Issues in Federal Law; Perspectives on the Alcohol/Traffic Safety Problem; Annual Report on Access to Information and Privacy Acts; A Profile of Divorce Mediation and Reconciliation Services in Canada; Prostitution in Canada — A Review; Affirmative Action Guide for Managers; Official Languages — Rights and Responsibilities; Les Jeunes autochtones et la loi pénale; Toward Equality*.

The Directorate distributed more than 225,000 copies of printed material, responded to 3,675 written requests for information and to more than 8,820 telephone enquiries from the public.

☐ Senior Executive Group

Two Associate Deputy Ministers join the Deputy Minister to form the Department's senior executive group. The Associate Deputy Minister, Civil Law, supervises all civil law matters involving the Department in Quebec and is the Department's primary legal advisor in the field of civil law. He has administrative responsibility for the Civil Litigation and Real Property (Quebec) Section and the Montreal Regional Office, and, during the year in review, was also responsible for 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. He chairs the Department's Litigation Committee and has administrative responsibility for the regional offices (with the exception of Montreal).

In addition to chairing several departmental committees, the Deputy Minister chairs the Justice Information Council, a federal-provincial committee of Deputy Ministers of Justice who provide policy direction to the Canadian Centre for Justice Statistics.

The Joint Criminal Justice Committee is also chaired by the Deputy Minister and includes the Deputy Solicitor General, Assistant Deputy Ministers of both departments, the President of the Law Reform Commission and representatives of the Privy Council Office and the Federal-Provincial Relations Office. The Committee meets several times a year to review criminal justice policy, advise on related policies, programs and legislation, and prepare for federal-provincial conferences of Ministers or Deputy Ministers responsible for justice.

The Deputy Minister also chairs federal-provincial meetings of Deputy Ministers. These forums for discussion of broad issues in the justice system are held as often as required in preparation for, or as follow-up to, Ministerial conferences. As a result of the meetings, working groups of federal and provincial officials have been established to study particular issues. This year, the working groups examined the Badgley and Fraser Reports, victims of crime, impaired driving, proceeds of crime, compensation for wrongfully convicted and imprisoned persons, missing children, drug enforcement and the 7th U.N. Congress on the Prevention of Crime and Treatment of Offenders.

Public Law Branch

■ Function

The Public Law Branch provides advice on legal and policy issues in the public law field. It advises on native, constitutional, international, administrative and human rights law as well as on matters relating to the judiciary and to the machinery and operation of government. The Branch works closely with many other government departments and agencies.

■ Organization

☐ Constitutional and International Law Section

This Section provides legal and policy advice on constitutional and international law issues. It takes part in federal-provincial negotiations, the drafting of legislation which implements federal-provincial accords, the development and implementation of instruments in both public and private international law and in litigation involving constitutional and international law questions. The Section also advises the government on the constitutional implications of trade negotiations and on its obligations and rights under international law. The Section is regularly involved in litigation concerning the relationship between domestic and international law. It also represents Canada in various international organizations which develop international law, particularly private international law.

☐ Advisory and Administrative Law Section

This Section is particularly concerned with areas of law relating to the machinery and operation of government. For example, it is actively engaged in developing proposals for administrative law reform, in assisting other branches of the Department on such subjects as amendments to the *Federal Court Act* and in providing legal policy advice on legislative and other proposals to departments and agencies of government. Another major responsibility is the preparation of legal opinions requested by federal departments, agencies, boards and Crown corporations on a variety of administrative and other legal matters.

☐ Human Rights Law Section

This Section gives legal opinions to the government on the interpretation and application of constitutional provisions and federal legislation having human rights implications. It reviews federal laws and regulations, as well as administrative policies and practices, to ensure compliance with the *Canadian Charter of Rights and Freedoms*. The Human Rights Law Section also advises the government on Canada's international human rights treaty obligations and responds to complaints brought against Canada under the Optional Protocol to the International Covenant on Civil and Political Rights.

The Human Rights Law Section provides advice on matters arising in connection with the *Canadian Human Rights Act* and develops policy in the area of human rights generally. Finally, the Section provides advice and legal services related to the protection of official language rights.

☐ Native Law Section

This Section provides legal and policy advice in the area of native affairs. It is particularly involved in the aboriginal constitutional process and the development of initiatives on Indian and Métis self-government. As well, it works on the application and revision of the *Indian Act*, on the development of legal advice on constitutional provisions affecting natives and on native litigation matters.

■ Activities

☐ Trade Negotiations

The Constitutional and International Law Section has cooperated closely with the Trade Negotiations Office in preparing background studies on trade measures for the proposed Canada-United States trade negotiations. It also advises the government on constitutional implications of the Canada-United States trade negotiations and the proposed new round of negotiations at the General Agreement on Tariffs and Trade (GATT).

☐ **La Bretagne Arbitration**

On October 23, 1985, Canada and France signed an agreement to submit to binding arbitration a dispute concerning fishing by French vessels in the Gulf of St. Lawrence. The dispute arose following the issuance of a fishing licence for *La Bretagne*, a French fishing vessel registered in Saint-Pierre and Miquelon, when France objected to a condition of the licence prohibiting filleting on board while the vessel operates in the Gulf of St. Lawrence. The condition was included on the licence because Canadian vessels are prohibited from filleting on board in the Gulf. According to the 1972 Canada-France Fisheries Agreement, French vessels registered in Saint-Pierre and Miquelon have a right to fish "on an equal footing" with Canadian vessels, and Canadian fishery regulations are to be applied to them without discrimination. The arbitration agreement provides for two stages of written proceedings followed by oral proceedings to be held in June 1986. The decision of the tribunal is expected in mid-July of 1986.

☐ **Maritime Boundary Delimitation**

Negotiations continued with France concerning the delimitation of the continental shelf and fisheries zones off the coasts of Newfoundland and the French islands of Saint-Pierre and Miquelon.

☐ **Offshore Legislation**

Legislation was introduced to ensure that federal and provincial laws extend to installations on the Canadian continental shelf (Bill C-104). A series of related amendments to the *Criminal Code* would ensure, in addition, that Canadian criminal law applies to Canadian ships anywhere in the world, to Canadians outside the territory of any state and to offences in Canada's offshore fishing zones that involve Canadians.

☐ **Atlantic Accord**

The Constitutional and International Law Section participated in drafting legislation to implement the Atlantic Accord between Canada and Newfoundland on the management and sharing of revenues from oil and gas off the Newfoundland coast. Bill C-92, the proposed *Canada Petroleum Resources Act*, received first reading on December 20, 1985.

☐ **International Criminal Matters**

The Constitutional and International Law Section participated in the work and negotiations which led to the signing of a mutual legal assistance in criminal matters treaty with the United States in 1984. In 1985, discussions were held with the provinces to ensure the enactment of appropriate implementing legislation at both the federal and provincial levels.

☐ **Extraterritoriality**

The Constitutional and International Law Section prepared *amicus curiae* briefs filed with foreign courts to express concern when points of international and foreign law affected Canadian interests. It participated in international forums such as the Committee on International Investment and Multinational Enterprises of the OECD to consult on problems arising from conflicting legal requirements in the jurisdictions where Canadian companies carry on business. It cooperated closely with the business community and with the practicing bar to ensure that national jurisdiction was exercised in accordance with the accepted principles of international law.

☐ **International Negotiable Instruments**

The Constitutional and International Law Section participated in the UNCITRAL Working Group on International Negotiable Instruments, which is finalizing a draft Convention on International Bills of Exchange and International Promissory Notes, and in the UNCITRAL Study Group on International Payments, which is preparing a legal guide on electronic funds transfers.

☐ **International Construction Contracts**

The Constitutional and International Law Section participated in the UNCITRAL Working Group that is producing a legal guide on international construction contracts. This is a project of importance to Canada and developing countries because many Canadian firms engage in international construction work.

☐ **Constitutional Amendments: Manitoba-Saskatchewan Boundary and Alberta-British Columbia Boundary**

Federal-provincial boundary commissions have completed work to establish the location of the southern part of the Manitoba-Saskatchewan boundary, which does not follow a meridian, and parts of the Alberta-British Columbia boundary in the areas of Crowsnest Pass, Sunshine Village and Deadman Pass. Section 43 of the *Constitution Act, 1982* requires that the assent of the Senate and House of Commons and of the relevant provincial legislatures be obtained in such cases. Constitutional resolutions drafted under the guidance of the Constitutional and International Law Section have been submitted to the provinces concerned for approval before being adopted.

☐ **International Commercial Arbitration**

The Constitutional and International Law Section has consulted with the provinces and territories to promote their adoption of two international texts relating to international commercial arbitration. All provinces and territories have undertaken to adopt legislation to implement the Convention of the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). Together with federal legislation, this will enable Canada to accede to this international convention.

The United Nations Commission on International Trade Law adopted, in June 1985, a Model Law on International Commercial Arbitration. A Canadian delegation participated in preparing this text. Again, all provinces and territories have agreed to adopt this text, thereby providing Canadians with modern arbitration rules.

The Constitutional and International Law Section was also instrumental in the work of the Uniform Law Conference which adopted, in March 1985, a uniform law to facilitate the implementation of these two international instruments.

☐ **Convention on the Law Applicable to the International Sale of Goods**

A Canadian delegation helped negotiate this convention which was completed by the Hague Conference on Private International Law in October 1985. This convention determines uniform conflict of law rules for the sale of goods and complements a United Nations Convention, known as the Vienna Sales Convention, adopted in 1980.

☐ **International Judicial Cooperation in Civil and Commercial Matters with France**

The Constitutional and International Law Section organized meetings between Canadian and French officials to discuss international judicial cooperation in civil and commercial matters. The Canadian delegation was composed of both federal and provincial representatives. Useful information was exchanged and areas subject to further discussion were identified.

☐ **Aboriginal Self-Government Initiatives**

The Public Law Branch was actively involved in a number of initiatives to develop new arrangements for aboriginal self-government. These included negotiations between the federal government and the Sechelt Indian Band of B.C. leading to the introduction in Parliament of Bill C-93, the *Sechelt Indian Band Self-Government Act*. As well, the Branch supported self-government negotiations with the

Association of Métis and Non-Status Indians of Saskatchewan (AMNSIS), the Manitoba Métis Federation, the Chiefs of Ontario, the Nishnawbe Aski Nation of Ontario and the Saddle Lake Indian Band of Alberta.

☐ **Aboriginal Constitutional Matters**

The First Ministers' Conference on aboriginal constitutional matters was held in Ottawa on April 2 and 3, 1985. The Minister of Justice subsequently chaired two multilateral meetings, the first on June 5 and 6, 1985, in Toronto, and the second on March 20 and 21, 1986, in Ottawa. The Public Law Branch supported these meetings as well as other meetings at the officials' level. This process will culminate in a First Ministers' Conference in early 1987.

☐ **Government Response to *Equality for All***

The Human Rights Law Section coordinated the government response to the report of the Parliamentary Subcommittee on Equality, entitled *Equality for All*. The response, *Toward Equality*, tabled on March 4, 1986, was a major initiative in the government's commitment to equality and social justice. The Section will continue to coordinate the implementation of this response.

☐ **Official Languages Act Review**

In conjunction with a special committee of Deputy Ministers reviewing all aspects of official languages policies, the Human Rights Law Section has been examining the *Official Languages Act* and related legislation in light of the *Canadian Charter of Rights and Freedoms* and many proposals for reform put forward since the Act's inception in 1969. The government expects it will soon consider new and important legislative measures on official languages.

☐ **Mandatory Retirement**

The Human Rights Law Section consulted extensively with other federal departments concerning mandatory retirement, culminating in the government's response in *Toward Equality* to approve in principle the abolition of mandatory retirement in areas of federal jurisdiction. The Section will continue to coordinate the consultations necessary to implement this decision.

☐ International Human Rights Initiatives

The Human Rights Law Section participated extensively in the six-week Meeting of Experts on Human Rights convened in Ottawa under the aegis of the Conference on Security and Cooperation in Europe (the Helsinki Accord) in 1985. A senior officer of the Department was a member of the Canadian delegation.

The Department played an important role in developing and negotiating international human rights initiatives, including a draft Convention on the Rights of the Child, and has the leading responsibility for implementing these instruments at the federal level. A significant initiative in 1985 was the development of legislation to give effect to the U.N. Convention on Torture.

Canada is obliged to report on its implementation of international human rights responsibilities to the U.N. and other bodies. The Human Rights Law Section provided important assistance in preparing and submitting Canada's seventh report under the International Convention on the Elimination of All Forms of Racial Discrimination and in presenting Canada's first Report under the International Convention on the Elimination of All Forms of Discrimination Against Women.

Finally, the Human Rights Law Section is responsible for the conduct of communications or complaints against Canada to the U.N. Human Rights Committee. In 1985, the Section dealt with two communications, made under the Optional Protocol to the International Covenant on Civil and Political Rights.

☐ Federal Court Act Amendments

During 1985-86, the Department prepared proposals to amend the jurisdiction of the Federal Court of Canada and to improve the present provisions of the *Federal Court Act*. Principal areas under consideration are the Court's jurisdiction in civil matters, particularly claims by and against the Crown; the Court's jurisdiction and procedures with respect to judicial review and administrative appeals; and consolidation of parallel Crown procedural provisions in the *Federal Court Act* and the *Crown Liability Act*.

☐ Administrative Law Reform Project

The Department's study of statutory instruments law and practice formed the basis for submissions to the Ministerial Task Force on Federal Regulatory Programs and helped the government prepare its response to the McGrath Committee report on House of Commons Procedures. The statutory instruments study had examined the range of instruments covered by the *Statutory Instruments Act*, concerning the notice and comment procedures in developing regulations and the adequacy of explanatory notes accompanying published instruments. The first phase of a comprehensive analysis of the federal Crown's special privileges was almost completed. A draft report on administrative procedure guidelines for federal regulatory agencies was produced. A final report of the pilot study on rationalization and possible consolidation of social benefits appeals tribunals was also prepared.

☐ Judiciary

The Branch coordinated amendments to the *Judges Act* in two bills. The first adjusted the number of federally-appointed judges, and the second increased the salaries and allowances of all federally-appointed judges.

Under the direction of the Minister, the Branch has been reviewing the present process of appointing federal judges to make it more effective in selecting the best possible candidates.

The Branch is also undertaking, for the Minister, a review of the principles underlying the independence of the judiciary to ascertain any legislative or constitutional measures required to affirm these principles.

☐ Pertinent Cases

On June 13, 1985, the Supreme Court of Canada rendered its decision in the *Manitoba Language Reference Case*. The Court held that section 23 of the *Manitoba Act* imposes a mandatory requirement to enact all Manitoba laws simultaneously in both official languages. Therefore, unilingual Manitoba laws must be re-enacted in both languages. In November 1985, the Court fixed the period of time given to the government of Manitoba to do so.

The Attorney General of Canada was also involved in two important court cases — the *Paquette Case* and the *Saskatchewan Language Reference* — which raised the issue of the status of French in criminal proceedings in Alberta and Saskatchewan. These cases are before the Courts of Appeal of those provinces.

☐ **Other Activities**

The Public Law Branch also

- ☐ organized the third International Trade Law Seminar, October 17, 1985, in Ottawa, which included scholars and lawyers from Canada, the United States and Europe;
- ☐ retained counsel to advise on U.S. countervail proceedings against fresh Atlantic groundfish from Canada; and
- ☐ prepared and conducted seminars on interpreting and applying the equality guarantees of the *Canadian Charter of Rights and Freedoms* for legal officers of the Department and participated frequently in conferences and seminars outside the Department to expand awareness of human rights law and the Charter among the legal community and the broader public.

The Human Rights Law Fund was established in 1982 to provide assistance to activities relating to the protection and development of human rights in areas of federal jurisdiction. This year, 36 requests for funding were received, 15 of which were approved at a total level of assistance of \$390,824. (See Appendix III.)

The fund's priorities for the next year will be equality rights, constitutional protection of human rights, human rights legislation in Canada and international and comparative human rights. Some specific sections of the *Canadian Charter of Rights and Freedoms* will also be considered. For next year, the fund's level of assistance will be \$380,000.

Policy, Programs and Research Branch

■ Function

The Policy, Programs and Research Branch plans, develops and implements government justice policies and administers programs, three of which are cost-shared with the provinces. Its major functions are to:

- ☐ identify new directions in law at the national level;
- ☐ review the reports and recommendations of the Law Reform Commission of Canada in criminal law, family law and the protection of life;
- ☐ analyze significant legal issues in the administration of justice and develop policies to address them;
- ☐ review and evaluate federal laws for which the Minister of Justice is responsible;
- ☐ consult with other federal departments, provincial governments, professional organizations, private sector associations and the public on the administration of justice;
- ☐ assume primary responsibility for amendments to the *Criminal Code* and certain federal statutes not specifically falling within the responsibility of other branches or departments of government;
- ☐ develop and administer most of the Department's grants and contributions programs, including federal-provincial cost-shared programs;
- ☐ define, undertake or oversee, on behalf of the Department, all socio-legal research in support of policy analysis and development;
- ☐ respond to requirements within the Department for legal information; and
- ☐ maintain liaison with research and statistics units in other departments, provincial governments and international agencies.

■ Organization

☐ Criminal Law Policy and Amendments Section

This Section identifies and analyzes emerging criminal law issues and develops policies to address them. It monitors the development of the law; participates in many committees concerned with criminal law issues; and reviews recommendations of the Law Reform Commission of Canada and many other bodies. The Section also develops and evaluates amendments to the *Criminal Code* and other federal statutes involving criminal law.

☐ Family Law Policy and Amendments Unit

This Unit develops and implements policies relating to the *Divorce Act*, the *Family Orders and Agreements Enforcement Assistance Act*, the *Garnishment, Attachment and Pension Diversion Act*, the *Marriage Act*, as well as to common-law spouses, civil legal aid and the status of women. It provides policy advice to other sections of the Department and to other departments on family law matters.

☐ Program Policy and Law Information Development Section

This Section monitors federal laws and policies to improve access to justice, especially for disadvantaged persons. It is responsible for cost-shared criminal legal aid programs, compensation to victims of crime and native courtworker services. As well, it conducts the Public Legal Education and Information Program and is responsible for public information on departmental law reforms.

☐ Programs and Projects Administration Section

This Section conducts the Department's programs and projects. It administers federal-provincial cost-shared programs ensuring access to criminal legal aid, compensation to victims of crime and native courtworker services. A Projects Administration Unit reviews and coordinates proposals and requests submitted for funds administered by the Department.

☐ **Research and Statistics Section**

This Section oversees the Department's policy-related socio-legal research. It monitors and assesses programs, conducts research for other branches and maintains liaison with similar units in other departments, in provincial governments and in international agencies.

☐ **The Criminal Law Review Group**

Since 1981, the Criminal Law Review Group has been engaged in a fundamental review of criminal law. The Group examines all proposals of the Law Reform Commission related to criminal law and makes recommendations on their implementation.

The Review is directed by two interdepartmental committees. The Executive Committee of the Criminal Law Review, chaired by the Deputy Minister of Justice, includes the Deputy Solicitor General and the President of the Law Reform Commission as an observer. This Committee establishes priorities and oversees the Review's progress. The Program Management Group, chaired by the Assistant Deputy Minister, Policy, Programs and Research, directs individual projects and approves reform proposals.

■ **Activities**

There are approximately 50 projects in the Criminal Law Review. During the year in review, activities centred on mental disorder, police powers, hate propaganda, defamatory libel, arson, vandalism, theft and fraud, the jury and contempt of court. Consultations were held with respect to these projects with other federal departments, provincial governments, the bench, the bar, law faculties, police and numerous interested groups and individuals.

Work also progressed on pre-trial procedure, homicide, assault, bigamy, criminal intrusion, offences against peace and public order and offences against the security of the state. The Review also provided advice and assistance to the Law Reform Commission in the preparation of its proposed draft *Criminal Code*.

☐ **Federal Statutes Compliance Project**

The 1985-86 year saw the completion of Phase I of this Project. Studies were done on investigative powers of inspectors, ticketing of federal offences, evaluation of compliance systems and compliance psychology. Results were tested against existing programs in regulatory departments which volunteered to participate. Federally-regulated businesses

participated in a field study of compliance psychology. The project provided advice to departments on compliance and enforcement. At the end of the fiscal year, the project's only remaining role was development of the Federal Infractions Code.

☐ **Criminal Law Amendment Act, 1985**

A major activity of the branch this year was the enactment of Bill C-18, the *Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19, on June 20, 1985. The new law came into force on December 4, 1985. The Act made significant changes to the *Criminal Code*, amended the *Weights and Measures Act* to prohibit fraudulent replacement of a motor vehicle's odometer, amended the *Combines Investigation Act* to clarify provisions prohibiting the sale of goods at prices higher than advertised, and amended the *Narcotic Control Act* and the *Food and Drugs Act* to regulate the prescription of drugs for non-medical purposes.

The Act increased minimum and maximum penalties for impaired driving and created mandatory orders prohibiting driving. Four new offences were created: impaired or dangerous driving causing death and impaired or dangerous driving causing bodily harm. The Act authorized the taking of blood samples by a medically qualified person where breath samples cannot be obtained and where the procedure would not endanger the health of the suspect. As well, provisions on impaired boating were changed to conform with the impaired driving laws and a new offence of impaired flying was created.

After the impaired driving laws were proclaimed, the Minister of Justice launched a nation-wide campaign to inform the public of the new laws.

In cooperation with provincial and territorial officials, community groups and provincial task forces, the Minister travelled to 11 provinces and territories to meet citizens and discuss the new law with the media. Brochures explaining the law for adults and youth and a guide to assist community groups in combatting impaired driving were distributed throughout Canada. The Department also produced and distributed information for health professionals on blood sampling provisions of the new law.

The Act repealed the controversial writs of assistance and created a new scheme for obtaining search warrants by telephone or other telecommunications. Further amendments provided for pre-trial conferences and authorized judges and counsel in jury trials to dispose of preliminary matters before the jury is chosen. The monetary limit in property offences heard before a Provincial Court Judge was increased to \$1,000. The Act includes amendments

allowing a Superior Court Judge to determine bail for all outstanding offences at one time and allowing wiretap evidence at bail hearings. Summary conviction appeals by stated case were abolished and replaced by an appeal on a transcript of evidence or an agreed statement of fact.

The Act establishes a judicial review procedure to protect solicitor-client privilege when documents are seized and prohibits the media from publishing the identity of a person whose premises are searched or the location of the search, unless charges result or the person consents. Amendments also ensure that property seized by police as evidence is returned to the owner as quickly as possible. New offences of unauthorized use of computer systems were created. To fulfill treaty obligations, amendments dealt with offences relating to hostage-takings and nuclear materials.

☐ **Mutual Legal Assistance in Criminal Matters**

During the year, Branch officials consulted with their provincial counterparts on the proposed *Mutual Legal Assistance in Criminal Matters Act*. This legislation will implement the treaty signed on March 18, 1985, between Canada and the United States as well as any other treaties on mutual legal assistance in criminal matters to which Canada may become signatory. Consultations have also taken place in connection with a Federal-Provincial Memorandum of Understanding for the application of the proposed legislation. A Bill was prepared for introduction in Parliament during 1986-87.

☐ **Badgley and Fraser Reports**

The Minister of Justice tabled the Report of the Special Committee on Pornography and Prostitution (Fraser Committee) in the House of Commons on April 23, 1985. There is considerable overlap with the Report of the Committee on Sexual Offences Against Children and Youths (Badgley Committee) published in August 1984, specifically in the areas of child sexual abuse, pornography and prostitution. As a result, the recommendations of these two committees were considered together.

Because the Badgley Committee had not held any public meetings, and public concern had been expressed about some of the recommendations, officials in the Department of Justice and other concerned federal departments met with more than 300 individuals representing more than 200 non-governmental organizations and private sector agencies.

☐ **Prostitution**

Bill C-49, an *Act to Amend the Criminal Code* regarding prostitution came into force on December 20, 1985. The Act replaced section 195.1 of the *Criminal Code*. It makes it an offence punishable on summary conviction for anyone in a public place or any place open to public view, to stop any motor vehicle, impede the free flow of pedestrian or vehicular traffic or to stop any person or communicate with any person in order to engage in prostitution or to obtain the services of a prostitute. A public place includes any place to which the public has access as of right or by invitation and any motor vehicle in a public place. Bill C-49 was intended as an immediate response to a serious and growing problem for municipalities.

Bill C-49 requires a review of the new provisions by a House of Commons Committee three years after their coming into force. The Research and Statistics Section was formulating a plan for evaluating the impact of Bill C-49.

☐ **Federal Law Enforcement Under Review (F.L.E.U.R.)**

The purpose of this project, which involved the Department of Justice, the Royal Canadian Mounted Police (RCMP) and the Ministry of the Solicitor General, was to clarify the roles, responsibilities and powers of the RCMP and other federal law enforcement agencies.

☐ **Enterprise Crime and Proceeds of Crime**

Legislative proposals, based on recommendations of the 1983 *Enterprise Crime Study Report*, were being prepared during the fiscal year. The proposals would provide law enforcement officers with more effective investigative mechanisms, prevent the accused from disposing of illegally-obtained assets before trial and provide the court with the means of depriving criminals of their illicit proceeds.

☐ **Wrongfully Convicted and Imprisoned Persons**

The Branch coordinated the work of a Federal-Provincial Task Force examining the issue of compensation for wrongfully convicted and imprisoned persons. Based on its report, submitted to the Deputy Minister in the summer of 1985, a set of non-legislative guidelines were developed to implement a system of compensation for persons who are wrongfully convicted and imprisoned. These guidelines will be the subject of discussions between the federal and provincial governments on this matter.

☐ Customs Tariff

The Federal Court of Appeal on March 14, 1985, in *Lusher v. Deputy Minister of Revenue, Customs and Excise* struck down the tariff item which allowed Customs officials to prevent the import of material deemed to be "immoral or obscene". The Court ruled that this legislation violated section 2 of the *Charter of Rights and Freedoms* protecting freedom of expression. Bill C-38, an *Act to Amend the Customs Tariff* was given Royal Assent and came into force on April 3, 1985. This is an interim measure to reinstate the powers of Customs officials to interdict, at the border, obscenity and hate literature. Bill C-38 met the Court's requirements by incorporating a reference to *Criminal Code* provisions on obscenity and hate propaganda.

☐ Extradition Law

Officials developed an extradition of witnesses treaty to serve as the basis for negotiations Canada plans to commence with several countries. The treaty is largely the result of a review of Canadian extradition law, leading to amendments to the *Extradition Act* and the *Criminal Fugitive Act*.

☐ Seventh U.N. Congress on the Prevention of Crime and the Treatment of Offenders

One of the United Nations' primary activities in the field of criminal justice is the convening of quinquennial United Nations Congresses on the Prevention of Crime and the Treatment of Offenders. The Branch developed Canada's position and advised the Canadian delegation for the Seventh Congress, held in Milan, Italy, in the summer of 1985. Canada played a major role at the Congress in a number of areas including victims, guiding principles for crime prevention and criminal justice in the development context, the Milan Plan of Action, the independence of the judiciary, juvenile justice, organized crime, drug abuse, terrorism and alternatives to imprisonment.

☐ Supreme Court of Canada Amendments

A bill containing amendments to the *Criminal Code* and *Supreme Court Act* to streamline procedures for appeals to the Supreme Court of Canada was drafted during the year and was expected to receive passage through Parliament in 1986-87.

☐ Proposed Uniform Rules of Procedure For Pre-Trial Conferences

A new section 553.1 of the *Criminal Code* concerning pre-trial conferences, enacted by the *Criminal Law Amendment Act, 1985*, S.C. 1985, c.19, had not yet been proclaimed into force. A committee of the Canadian Judicial Council has been struck to develop uniform rules of procedure pursuant to section 553.1 of the Code. Members of the Criminal Law Policy and Amendments Section participated in the drafting of a set of uniform rules of procedure to implement this new section.

☐ Proposed New Canada Evidence Act

The Branch continued to work on developing a new *Canada Evidence Act* which would be the federal component of a scheme of Uniform Evidence Acts under the aegis of the Uniform Law Conference of Canada. Adoption of uniform legislation would mean that the same rules of evidence would apply across Canada, regardless of whether a proceeding was civil or criminal. During the year, consultations took place with a joint committee representing the Canadian Bar Association and the provincial Attorneys General, and amendments to Bill S-33 (1984), proposed by the committee, were circulated to the provinces and to experts on evidence.

☐ Lotteries and Gaming

Bill C-81, an *Act to Amend the Criminal Code (Lotteries)*, was enacted by Parliament on December 20, 1985, and came into force on December 31, 1985. The new law removed the legislative authority for the federal government to conduct lotteries and other gaming activities and clarified the administrative authority and responsibilities of the provinces and territories concerning lotteries.

☐ Pari-mutuel Betting

In cooperation with the Department of Agriculture, the Branch assisted with Bill C-77, an *Act to Amend the Criminal Code (Pari-mutuel betting)*, S.C. 1985, c.44, enacted on November 1, 1985. The amendments permit pari-mutuel betting on selected foreign races approved by the Department of Agriculture, facilitate the operation of telephone account and inter-track betting and provide greater control over the integrity of races.

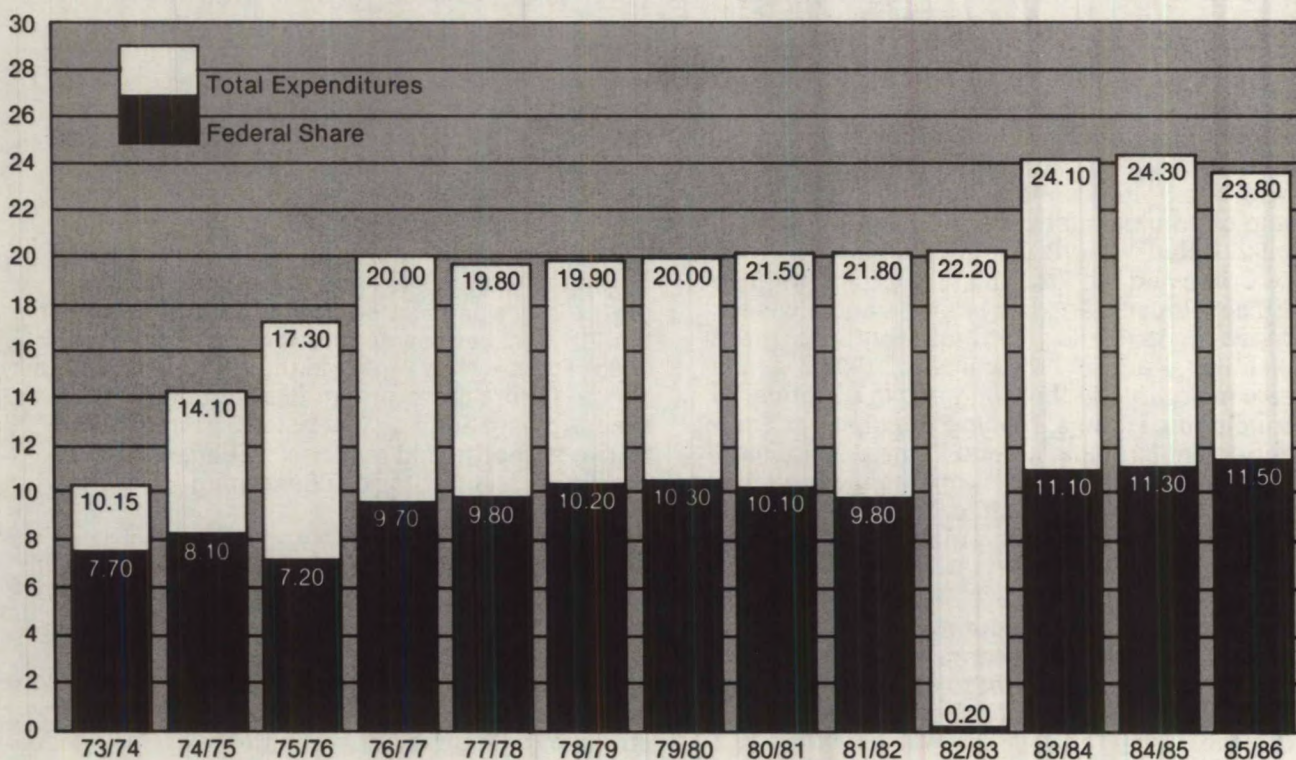
Legal Aid

The young offenders legal aid agreement took effect April 1, 1984, with the proclamation of the *Young Offenders Act*. Its purpose is to ensure that uniform standards of legal representation are available to all young offenders, regardless of their status. On April 1, 1985, the uniform maximum age provisions of the Act took effect, under which "young offenders" are defined country-wide as those under the age of 18, raising the maximum age in eight provinces and both territories. The impact of this change has not yet been fully assessed, and costs under the young offenders agreement have not yet stabilized. The federal contribution for the second year of the agreement is approximately \$5.9 million.

The adult criminal legal aid agreement, negotiated with the provinces in 1983-84, provided for a cost-sharing arrangement over two years ending March 31, 1985. A federal-provincial working group reviewing administrative matters related to the criminal legal aid agreement tabled its report in the fall of 1985. In late November, the Department circulated to the provinces an Issues Paper raising a number of matters requiring discussion before longer-term agreements can be reached, including accountability, cost-effectiveness and eligibility criteria. Late in the year, tentative agreement was reached with the provinces to conclude a two-year agreement covering 1985-86 and 1986-87.

Total Expenditures on Criminal Legal Aid with Federal Contribution

Constant Dollars (in Millions)



Under the Legal Aid Agreement signed with the provinces except Quebec in 1984, federal payments to the provinces for the legal aid expenditures changed from a lag year basis to a current year basis starting in 1983-84. As a result of this agreement the provinces were not paid for the 1982-83 expenditures. During 1983-84, they were paid only for the 1983-84 expenditures. However, Yukon and the Northwest Territories did receive payment for 1982-83. If the cost-sharing agreement were to be terminated any time before 1994, provinces would receive payment for the 1982-83 expenditures.

☐ **Public Legal Education and Information**

To improve public access to justice, the Department provided start-up funding for Public Legal Education and Information (PLEI) organizations in four provinces and both territories and supported the national network of PLEI organizations through the Canadian Law Information Council's Legal Information Secretariat. Contributions were approved under the Access to Legal Information Fund to community associations providing legal information for disadvantaged groups.

The Department also undertook a number of studies on the state, techniques and impact of PLEI, and on ways to make laws more understandable. Legal information for the public on impaired driving and sexual assault was prepared and a national legal information program on divorce reform begun.

☐ **International Youth Year**

The Department provided funding to youth groups in five provinces for public legal education and research projects in their communities. Youth in Edmonton produced a docudrama dealing with the *Canadian Charter of Rights and Freedoms*. Saskatchewan youth produced legal information videos for distribution in northern Saskatchewan. Ontario youth groups produced public service announcements, posters, newspaper articles and videos and held workshops on the law for disadvantaged youth. University of Sherbrooke law students researched youth attitudes to justice issues. Newfoundland youth produced a legal guidebook for young people.

Communications and Public Affairs and the Vancouver Public Legal Education Society produced two mock trials concerning shoplifting and impaired driving at the Justice Theatre at the Pacific National Exhibition. Young actors and law students filled the roles and the public served as jurors. Twenty thousand people saw this dramatic portrayal of the justice system.

Young Canadians were a principal target of the impaired driving campaign. A special pamphlet for teens outlining the offence and the process and penalties under the *Young Offenders Act* was distributed across Canada.

The highlight of International Youth Year was the National Forum on Youth and the Law held in Ottawa in January 1986. One hundred and fifty youths reflecting Canada's cultural and regional diversity attended. During the five-day event, delegates,

panelists and speakers exchanged views on youth and justice issues, including youth and crime, youth access to justice, human rights, family law and cultural minorities. A Report of Forum Proceedings is being published.

☐ **Victims of Crime**

Representatives of the Department participated in the Federal-Provincial Working Group on Victims of Crime which completed a report in December 1985. During the year, departmental officials took part in the Federal Interdepartmental Committee on Victims, chaired by the Assistant Deputy Minister, Policy, Programs and Research. Officials also took part in the Federal-Provincial-Territorial Working Group on Wife Battering.

The Department continues to support demonstration projects of victim impact statements, victim/witness court services and information to victims and witnesses. During the year under review, the Department continued an evaluation of the sexual assault provisions of the *Criminal Code*. Also studied were guidelines for prosecutors dealing with spousal assault in the Northwest Territories and the evaluation of the impact of similar guidelines studied in some of the provinces where they have been implemented.

☐ **Protection of Life Project**

The Protection of Life Project comprises projects on Medical Law and Environmental Law. It considers recommendations by the Law Reform Commission and others on medical-legal and environmental issues, carries out additional research, analysis and comparison and develops responses to recommendations.

Medical issues were examined during the year in the following areas: human experimentation, infanticide, cessation of treatment (including determination of death), sterilization and competency. Extensive research was required when the Attorney General of Canada intervened in a Supreme Court of Canada case to defend the right to due process under the *Charter* of a mentally disabled woman who was to have been sterilized.

The medical law project chief, on a World Health Organization fellowship, met with experts in Israel, the United Kingdom, the Netherlands and the United States. At the request of Health and Welfare Canada, the medical law project chief also assisted on committees dealing with medical law, including the National Advisory Committee on AIDS and working groups on vital organ transplant centres and on guidelines for organ and tissue donations in hospitals.

During this year, consultations were held with governments, organizations and individuals on the impact of the Law Reform Commission's recommendations on environmental issues. The Environmental Law Project Chief was awarded a WHO Fellowship to consult with European and U.S. experts in 1986-87.

☐ Other Activities

Among other activities this year, the Branch:

- ☐ assisted the Canadian Judicial Council in drafting rules, pursuant to section 672 of the *Criminal Code*, for applications for judicial review of parole ineligibility; the first such application may be brought by October 1986;
- ☐ participated, with the Ministry of the Solicitor General, in consultations on, and drafting of, amendments to the *Young Offenders Act* as well as resulting amendments to the *Criminal Code*;
- ☐ provided legal advice concerning the winding up of the federal sports pool;
- ☐ developed amendments to implement the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- ☐ participated in studies on computer crime conducted by the Organization for Economic Cooperation and Development and the Council of Europe;
- ☐ participated in a Federal-Provincial Study on the Legal Protection of Trade Secrets and Commercial Information;
- ☐ assisted in legislative proposals to clarify Canada's jurisdiction over the offshore and the continental shelf;
- ☐ developed arrangements with the provinces and territories to implement fine option programs;
- ☐ participated in panels and lectured on Bill C-18, the *Criminal Law Amendment Act, 1985*; and
- ☐ assisted in education and attitudinal change programs concerning impaired driving.

■ Research

The following are areas in which studies were conducted during 1985-86, along with a record of some of the reports and publications issued as a result. Other reports are listed in Appendix IV.

☐ Sexual Assault

At a federal-provincial Deputy Ministers' meeting in June 1983, a consensus was reached on the need to evaluate the impact of Canada's new sexual assault legislation. A program of research was developed including field studies in six sites on experiences, attitudes, practices and procedures associated with rape and sexual assault cases. Work continued during the year on these studies. Those completed to date include: *The Experience of the Rape Victim with the Criminal Justice System Prior to Bill C-127*, *The New Sexual Assault Offences: Emerging Legal Issues* and *The Availability and Delivery of Legal Services in the Northwest Territories*.

☐ Victims and Witnesses of Crime

A research program on victims, initiated in 1981, included studies on the needs of victims, alternative funding for victim services, proposed models for the use of a victim impact statement in court, and victim-assistance programs. The following studies were completed in 1985-86: *Evaluation of the Ottawa Witness Management Program*, *Review of Court-Based Victim/Witness Projects*, *Evaluation Assessment of Treatment Groups for Men who Batter*, *The Legal Response to Wife Assault in the Northwest Territories*, *Criminal Prosecutions in 1984*, *A Report on Family Violence in the City of Halifax*, *Evaluation of the Victim-Witness Projects in Campbellton and Saint John, New Brunswick*, *Victim Legal Information Needs Survey* and *Criminal Injuries Compensation in Canada 1985*.

☐ Public Legal Education and Information (PLEI)

In 1985-86 the Research and Statistics Section conducted studies concerning PLEI and plain language in the law. Researchers examined the extent, nature and implications of PLEI in other countries and ways to evaluate the Canadian public's PLEI needs. Studies completed in 1985-86 were: *Plain Language and the Law*, *An Inquiry and a Bibliography*, *International and Comparative Review of Public Legal Education and Information Programs*, *Legal Education and Information, Exploratory Study*, *An Evaluation Resource Book for Public Legal Education and Information Organizations*.

☐ Pornography and Prostitution

A research program was conducted in co-operation with the Special Committee on Pornography and Prostitution (Fraser Committee). Eighteen reports were published in 1985-86. The Section also prepared a research plan for evaluating the impact of the new *Criminal Code* provisions in Bill C-49. Work this year included: international comparative

studies, research studies on prostitution and pornography, and opinions and perceptions of pornography and prostitution. (For a complete list, see Appendix IV.)

☐ **Natives**

Several studies were conducted during the year on native affairs, particularly native young offenders and their needs.

☐ **Sentencing**

A national study on sentencing practices and trends in Canada was conducted to assist the Canadian Sentencing Commission in preparing a final report. Research also considered the shortage of information on criminal court activity. A feasibility study was completed on collecting data on dispositions of *Criminal Code* offences in Toronto-area courts. A full-scale study, in several jurisdictions, is planned. Studies conducted in 1985-86 included: *Initial Assessment of Potential Applications of FPS/CPIC Data Base to Meet Statistical Requirements of the Department of Justice (Canada)*, *Detailed Research Design and Workplan for Study on Dispositions of Criminal Code Cases* and *P.E.I. Sentencing Trends 1978-1983*.

☐ **Sentencing Alternatives**

The Department has undertaken a three-year program to help the provinces and territories implement community-based alternatives to imprisonment. In particular, the Department studied fine options, and community service and restitution programs. Studies conducted were: *Reparative Sanctions, Manitoba Fine Option Program - Evaluation Design*. Three *Fact Books on Sentencing Alternatives* were also prepared and released.

☐ **Divorce Mediation**

The Section is carrying out studies of court-based mediation services in St. John's, Montreal, Winnipeg and Saskatoon to determine the effectiveness of mediation in resolving divorce disputes. These projects are expected to be completed in March 1987. A study to determine the cost-effectiveness and social benefit of providing mediation as part of a legal aid program is being jointly sponsored by the Department, the Laidlaw Foundation and the Ontario Ministry of the Attorney General. As well, the Section is preparing an Inventory of Divorce Mediation and Reconciliation Services intended for use by family lawyers, legal aid offices, legal information agencies and family service organizations. An interim research report, *A Profile of Divorce Mediation and Reconciliation Services in Canada* based on a preliminary list of mediation services, was published and distributed this year.

☐ **Compliance and Decriminalization**

A research program was developed for a compliance and decriminalization project planned by the Department. Work will begin in 1986-87.

☐ **Protection of Life: Environment**

Research into the use of criminal sanctions for environmental protection was being planned during the year. Work will continue in the coming year.

☐ **Maintenance and Custody Enforcement**

In November 1985 the Section began the development and implementation of a system to administer the *Family Orders and Agreements Enforcement Assistance Act*. The system will permit the garnishment of federal monies payable to judgement debtors and the release of some types of personal information from federal information files to trace individuals named in custody and access actions.

The Research and Statistics Section issued a statistical factbook on family breakdown, compiling U.S. and Canadian information on divorce, marriage, separation, conciliation counselling, child custody and support enforcement and the impact of marriage breakdown on the family. The new *Divorce Act* requires changes in the Divorce Registry form. In consultation with the provinces and other departments, the Section revised the form and prepared an instruction booklet for court clerks.

Two research reports were prepared on support and custody order enforcement, an annotated bibliography of the literature on support and custody order enforcement and an evaluation of the *Garnishment, Attachment and Pension Diversion Act*.

As well, a research report on multidisciplinary intervention in community legal services at the University of Moncton was completed.

☐ **Impaired Driving**

The Section conducted research to support the implementation of the new legislation. Research was conducted on the problem of young drivers and alcohol; on forensic testing of breath sample containers; and on international comparisons of legislation.

The following studies were completed during the year: *The Societal Costs of Impaired Driving*; *Impaired Driving in Foreign Jurisdictions: Penalties and Statutes*; *Impaired Driving: A Summary of Public Opinion*; *Impaired Driving: Canadian Statistics and International Legislative Comparisons*; *Youth, Alcohol and Traffic Accidents: Past Research and Future Directions*; and *An Analysis of the Collision Involvement of Young Male Drivers at Low Blood Alcohol Concentrations*.

☐ Mental Disorders

In support of the Criminal Law Review's Mental Disorders Project, the Section conducted research on hospital orders and persons held on warrants of the Lieutenant Governor. A feasibility study was completed on establishing a database for persons held on warrant. Studies completed were: *Persons Held on Warrants of the Lieutenant Governor in Canada; Feasibility of Establishing a Canadian Data Base for Forensic Psychiatric Patients Held Under a Warrant of the Lieutenant Governor; and Criminal Recidivism of a Cohort of Persons Found Unfit to Stand Trial and/or Not Guilty by Reason of Insanity in the Province of Quebec.*

Grants and Contributions

The Policy, Programs and Research Branch administers most of the Department's grants and contributions programs.

☐ Adult Criminal Legal Aid

This Program ensures a minimum level of legal aid in criminal matters across Canada. Provincial and territorial governments provide legal aid to all eligible persons for indictable offences, some summary conviction offences and some federal statutes. The federal contribution in 1985-86 remained at approximately 50 per cent of national shareable criminal legal aid costs.

☐ Young Offenders Legal Aid

A cost-sharing arrangement with the provinces under the Young Offenders Legal Aid Program provides for a federal contribution of 50 per cent of provincial expenditures (90 per cent in Atlantic provinces) or 40 cents per capita, whichever is less. The estimated contribution for 1985-86 was \$5.9 million.

☐ Compensation to Victims of Crime

This Program compensates innocent victims, particularly of violent crime. Agreements exist between the federal government and all provinces (except Prince Edward Island) and territories to cost-share the program. The federal contribution in 1985-86 was approximately \$2.5 million.

☐ Native Courtworkers

The Program is cost-shared with the provinces and territories on a 50-50 basis. It assists status and non-status Indians, Inuit and Métis in understanding their legal rights and obtaining legal assistance. (New Brunswick, Nova Scotia and Prince Edward Island do not participate in the program.) The federal share of the 1985-86 budget is \$3.2 million.

☐ Civil Law/Common Law Exchange

This Program fosters a better knowledge of the civil law and common law systems through a law student exchange involving 48 students from across Canada. It promotes bilingualism by holding the civil law course in French at the University of Sherbrooke and the common law course in English at Dalhousie University. The budget for 1985-86 was \$242,000.

☐ Duff-Rinfret Scholarship

The Duff-Rinfret Scholarship Program offers seven scholarships to Canadian law graduates for study at the Master's level in Canadian law schools. Scholars must complete a thesis on an area of law within federal jurisdiction. Total budget in 1985-86 was \$95,550.

Contributions to Programs Cost-shared with the Provinces 1983-86

	83-84 \$	84-85 \$	85-86 \$
Legal Aid-Adult	40,759,513	40,264,534	40,264,534**
Legal Aid-Young Offenders	—	2,713,668	5,872,966*
Native Courtworker	2,891,151	3,020,560	3,226,363
Crime Compensation	2,440,981	2,445,800	2,667,500*
Total Contributions	43,491,645	48,454,562	52,031,363

*Estimated amounts based on provincial budgets.

**Until the revised adult legal aid agreements are executed, the federal contribution for 1985-86 is limited to the federal contribution paid in 1984-85.

☐ **Legal Studies for Aboriginal People**

This Program encourages native students to enter the legal profession by defraying the costs of obtaining a degree or gaining admission to a provincial or territorial bar. It is granted to 10 Métis or non-status Indian students annually. The budget for 1985-86 was \$256,000.

☐ **Criminal Law Reform Fund**

This fund supports the development of demonstration projects to assess the impact of proposed legislative and non-legislative reforms in criminal justice. With an established budget in 1985-86 of \$1,009,700, the fund enabled the Department to consult with a variety of professionals, organizations and groups to obtain advice on legal reform issues. The Fund also supports conferences and seminars as well as the production of legal information materials in criminal justice areas of particular interest to the Department. In 1985-86, projects on assistance to victims and on alternatives to incarceration were among the priorities of the Fund.

☐ **Human Rights Law Fund**

This program provides financial assistance to groups and individuals who inform Canadians about the *Charter of Rights and Freedoms*, human rights legislation and Canada's international human rights obligations. The budget for 1985-86 was \$500,000.

☐ **Special Projects - Legal Aid**

This program encourages experimental and research work in the delivery of legal aid. The budget in 1985-86 was \$125,000.

☐ **Consultation and Development Fund**

This fund assists individuals and organizations with legal research and publication projects, consultations in the area of civil and administrative law and non-governmental conferences of specific interest to the Department. The budget for 1985-86 was \$165,000.

☐ **Access to Legal Information Fund**

To extend and develop the Public Legal Education and Information (PLEI) organizations in the country, the Fund provides start-up funding to sole-purpose PLEI organizations in provinces and territories where none exist. New PLEI organizations must meet the legal information needs of the public, especially disadvantaged groups. The Department now has start-up funding agreements with Newfoundland, Prince Edward Island, New Brunswick, Manitoba, Yukon and the Northwest Territories. The Fund also provides some project funding to community organizations and existing PLEI organizations to provide legal information to particular groups (the disabled, natives, youth, women, visible minorities, the elderly, immigrants and the poor), and to provide information to the general public on federal laws. The 1985-86 budget was \$485,000.

Contributions for Projects in 1985-86*

Funds	Budget	Amounts Expended
Criminal Law Reform Fund	\$417,500	\$140,190
• Victims Fund	352,200	313,930
• Sentencing Fund	240,000	88,551
Human Rights Law	500,000	390,824
Consultation and Development	165,000	109,165
Access to Legal Information	485,000	395,021
Special Projects - Legal Aid	125,000	41,000

*In 1985-86, some contribution funds were unused, partly because of a freeze on discretionary expenditures. Additional information on grants and contributions appears in Appendix III.

Civil Litigation Branch

■ Function

The primary responsibility of the Civil Litigation Branch is to represent the Attorney General of Canada in civil litigation taken by or against the federal government and its agents. The Branch comprises civil litigation groups at headquarters and in the regional offices.

Its legal officers are involved in all phases of litigation, from the initiation of pleadings at the trial level to appeals before the Supreme Court of Canada. Cases range from simple contract and tort matters arising out of the ordinary course of government business to specialized actions in the admiralty, industrial property, bankruptcy, international and commercial law fields. In addition, departmental counsel are frequently involved in hearings on the constitutionality of federal and provincial legislation and on the administration and enforcement of federal statutes.

Counsel appear before all levels of provincial and federal courts as well as before federal boards, commissions and tribunals. On occasion, they also appear before the International Court of Justice at The Hague and other international tribunals.

The *Canadian Charter of Rights and Freedoms* has increased the volume of litigation and added a new dimension of complexity.

The Branch also provides legal advice and assistance to the Crown on issues that may become the subject of litigation. Departmental legal officers are often called upon to give an opinion on the potential liability of a proposed course of conduct or piece of legislation. The Branch also plays a role in policy and legislation development.

The Branch administers the government's Garnishment Registry under the *Garnishment, Attachment and Pension Diversion Act* at headquarters and in most regional offices.

■ Organization

The Associate Deputy Minister, Litigation, and the Assistant Deputy Attorney General, Civil Litigation, supervise and coordinate all litigation in the common law provinces. The Associate Deputy Minister, Civil Law, supervises and coordinates all litigation in the province of Quebec. In addition to the

Civil Litigation and Real Property Law (Quebec) Section and the Civil Litigation (Common Law) Section at headquarters in Ottawa, civil litigation groups exist in each regional office. Generally, each regional office conducts the litigation within its territorial area of responsibility. Other arrangements may be made if counsel having special expertise reside elsewhere or if involvement of a client department's headquarters makes it desirable to have the litigation handled from Ottawa. The Attorney General may be represented by private lawyers acting as his agents under the instruction of the Civil Litigation Branch.

The Branch's workload is handled by approximately 60 lawyers in the regional offices and at headquarters, assisted by para-legal, clerical and secretarial support staff. Members of the General Counsel Group, located at headquarters and in some regional offices, conduct civil litigation as well.

Six lawyers, three notaries and one legal secretary in the Civil Litigation and Real Property Law Section (Quebec) handle civil litigation and property matters. The Section generally serves all regions of Quebec, except the Montreal area, and assumes all public and private law matters except criminal litigation, tax litigation and immigration. From time to time, cases require the involvement of counsel from both the civil and common law sections, for example, the litigation arising from the crash of Air India Flight 182. There has been a significant increase in the number of Quebec cases dealing with *Charter* issues as well.

■ Activities

Some of the noteworthy cases handled by the Branch during the year under review are as follows:

□ Civil Litigation (Common Law) Section

Winterhaven Stables v. The Queen was a case argued in December 1985 in the Alberta Court of Queen's Bench. The authority of Parliament to spend monies on conditional grant programs and to make transfer payments to the provinces was challenged in the case. The decision, which had not yet been rendered, will be useful in *Canadian Medical Association et al v. The Attorney General of Canada* which deals with federal spending power in relation to health care.

In *Export Development Corporation v. Credival S.A.*, counsel successfully obtained orders for the seizure and sale of two Challenger jet aircraft owned by Venezuelan financial institutions as security for a loan granted by the Export Development Corporation to encourage the sale and export of Canadian goods. Over \$8 million was realized on the sale of the aircraft.

Three cases dealing with section 2 of the *Canadian Charter of Rights and Freedoms* were tried together in March 1986. The cases, *Millar v. The Queen*, *Osborne v. The Queen* and *Cassidy et al v. The Queen* all raise the issue of whether partisan political activities of public servants may be restricted and, if so, to what degree.

In *Gold v. the Attorney General of Canada*, the plaintiff alleges conspiracy on the part of Crown servants to interfere with his employment by the government. The litigation raised questions concerning the production of documents pertaining to national security and necessitated, for the first time in a civil action, the filing of a certificate under section 36.2 of the *Canada Evidence Act*. The action also raised questions concerning the interaction of the *Privacy Act* and the *Canada Evidence Act*.

In *Alberta Government Telephones v. CNCP, CRTC and the Attorney General of Canada*, counsel represented the federal interest in the question of whether provincial telephone companies were subject to federal legislative jurisdiction. The Federal Court of Appeal found in favour of Parliament.

In *Aerlinte Teoranta et al v. The Queen*, argued in the Federal Court of Canada, 14 international air carriers asked for a declaration that the transoceanic landing fee charged at Canadian airports was discriminatory and invalid. They further requested reimbursement of fees already paid.

Counsel from this Branch represented the government's interests before the Deschênes Commission of Inquiry on War Criminals.

Litigation arising from the Air India disaster has been commenced by the estates of the victims and by Air India's insurers. Many complex issues were raised by this action.

Many cases continued from the previous fiscal year, including extensive litigation with respect to the ban on urea formaldehyde foam insulation. Similarly, litigation with Amway Corporation regarding liability for duty and penalties under customs and revenue legislation was continuing.

☐ Civil Litigation and Real Property Law Section

La Commission de la santé et de la sécurité du travail commenced an action by way of subrogation before the Federal Court of Canada. The plaintiff was seeking damages exceeding \$500,000 in compensation paid by the plaintiff to the victims of a shooting incident in the Parliament Buildings in Quebec City in May 1984. The victims were shot by a firearm obtained by Corporal Denis Lortie from Canadian Armed Forces Base Carp. The claim was based on the military authorities' alleged negligence in the possession, regulation and control of the weapons taken by Lortie.

In an action which raises the effect of ecclesiastical legislation on civil law, the l'Ange-Gardien parish demanded that National Museums of Canada return sacred objects allegedly sold by the parish priest to a merchant several years ago. The case was to be heard by the Quebec Court of Appeal.

The union representing Gulf refinery workers in Montreal appeared before the Federal Court of Appeal to challenge the Minister of Regional Industrial Expansion's approval of the sale of Gulf's assets in Quebec and the Maritimes to Ultramar. The Court upheld the Crown motion for dismissal on the ground that the decision was of an administrative nature, not reviewable on any legal basis.

The Section also dealt with an action for damages brought by an individual discharged from the Canadian Armed Forces solely because of her sexual orientation. A request was made by the Crown to dismiss the action based on the established jurisprudence that a soldier does not have the right of action against the Crown before common law courts in any matter concerning military service. This motion was rejected. The Federal Court of Appeal decision on whether sections 7 or 15 of the *Charter* can be applied in this case will have repercussions not only for the Canadian Armed Forces, but for other institutions as well.

More than 200 ship owners submitted claims for damages against the St. Lawrence Seaway for alleged losses resulting from a 20-day interruption of navigation following the rupture of a counterweight sheave shaft of the vertical lift bridge at Valleyfield, Quebec, on November 21, 1984. Residents in the bridge area were also seeking to launch a class action against the Seaway. The Crown has filed claims for indemnities, as well as for repairs to this and similar bridges, against the manufacturer and designer of the bridge.

On September 9, 1985, an appeal was heard from a decision of the Sessions Court of Gaspé, dismissing charges under the *Criminal Code* against the ship *Sea Sheppard II* for lack of jurisdiction. The charges were dismissed because the acts were committed in the Gulf of St. Lawrence, near the Magdalen Islands, in waters which the Court held to be outside Canada's territorial sea or internal waters as contemplated by s. 433 of the *Criminal Code*. The Sessions Court found that these waters were international waters to which the *Criminal Code* did not apply. The Court rejected a certificate signed by the Secretary of State for External Affairs stating that the waters of the Gulf were historically considered internal Canadian waters by the Government of Canada.

In 1983, approximately 1,000 Quebec residents, whose land had been expropriated in 1969 for construction of the Mirabel Airport, instituted an action in the Federal Court of Canada against the Crown and others. They sought a declaration in nullity of expropriation on the ground that 80,000 of the 97,000 expropriated acres were not required and were thus expropriated through an unconstitutional exercise of powers. The Section has been involved in counselling the government on legal matters pertaining to an agreement for the sale of a portion of the expropriated lands, as well as on all legal and procedural aspects of the transfers.

In the *Devine* and *Brown* cases, plaintiffs challenged the signs and commercial advertising provisions of Quebec's Bill 101 on constitutional grounds related to the division of powers and on the basis that they are inconsistent with the *Charter of Rights*. Appeals were heard by the Quebec Court of Appeal in March 1986 and were taken under advisement.

The town of St-Denis de Brompton sought an injunction from the Quebec Superior Court to enforce a by-law prohibiting motor boats in Lac Montjoie pursuant to Section 413(12) of the Quebec Municipal Code. The Quebec Superior Court dismissed the petition, holding that Section 413(12) of the Municipal Code conflicted with federal power over navigation and shipping. The appeal was heard on January 15, 1986, and judgment was reserved.

In the case of *Association des Pêcheurs de Pabos Mills et al v. The Minister of Fisheries and Oceans*, a Superior Court decision held that a Superior Court has jurisdiction to grant an injunction against the Crown in spite of s. 18 of the *Federal Court Act*. The Quebec Court of Appeal granted the Crown leave to appeal on February 20, 1986. The injunction dealt with herring fisheries in the Baie des Chaleurs. Section 24 of the *Charter of Rights* was also at issue.

Criminal Law Branch

■ Function

The Criminal Law Branch discharges obligations, duties and responsibilities under legislation and the common law on behalf of the Attorney General of Canada and the Minister of Justice.

Specifically, the branch prosecutes offences and conspiracies to commit offences under most federal legislation. The majority of prosecutions are under the *Narcotic Control Act*, the *Food and Drugs Act* and the *Income Tax Act*. The exception to this general rule is the *Criminal Code*, over which the provincial Attorneys General exercise authority. In the Yukon and the Northwest Territories, the Attorney General of Canada prosecutes all offences under federal legislation, including the *Criminal Code*.

The Branch also reviews applications to the Minister of Justice for the mercy of the Crown for persons convicted of a crime or sentenced to a prison term. It also deals with all extradition matters under the *Extradition Act* and rendition requests under the *Fugitive Offenders Act*, including the negotiation of extradition treaties.

The consent of the Attorney General of Canada must be granted prior to certain proceedings under the *Criminal Code*. The Branch reviews these applications, as well as applications for the transfer of charges and probation orders from one jurisdiction in Canada to another.

Branch counsel are consulted on amendments to the *Criminal Code*, on new legislation of a criminal nature and on criminal law policy and programs.

■ Organization

The Branch is headed by the Assistant Deputy Attorney General, Criminal Law. Criminal prosecution sections in the Department's nine regional offices and at headquarters in Ottawa employ about 100 lawyers. These sections conduct all federal prosecutions and related litigation arising in their jurisdictions. Prosecutorial responsibility in areas not served by regional offices is discharged by approximately 500 private lawyers appointed as standing agents. Where there are no standing agents, *ad hoc* agents are appointed for specific cases. All agents are supervised and assisted by regional office counsel.

■ Activities

☐ Applications for Mercy

The Branch handled approximately 34 applications for mercy under the *Criminal Code* during the year. None was found to warrant intervention by the Minister or Governor in Council to rectify alleged miscarriages of justice.

☐ Extradition and Rendition

Canada filed 43 requests for extradition with the United States and 13 requests with other countries in 1985-86. Canada received 69 requests from the United States and 14 from other countries. Five requests were made by Canada for rendition of fugitives from Commonwealth countries and three such requests were made to Canada. During the year, 22 fugitives were returned to Canada and 23 fugitives were returned to other countries. Requests to Canada for the return of fugitives increased by 50 per cent over the previous year.

☐ Mutual Legal Assistance

On March 17, 1985, a treaty was signed by Prime Minister Mulroney and President Reagan to provide for mutual legal assistance in the investigation and prosecution of criminal matters between Canada and the United States. During the year, the Criminal Prosecutions Section assisted with the development of legislation to implement this treaty and others to be negotiated with other countries. The legislation is expected to be introduced in the House of Commons in the fall.

In addition, discussions were held with officials of the provincial Attorneys General to develop a framework for federal-provincial cooperation in implementing mutual legal assistance. Once legislation is enacted, the treaty with the United States can be ratified, enhancing Canada's ability to gather evidence to assist U.S. criminal investigations and to receive similar assistance in return.

During the year, the Branch assisted foreign countries with their applications for the execution of letters rogatory in Canada to gather evidence for criminal investigations and prosecutions. Similar assistance was received from foreign countries for Canadian investigations and prosecutions.

☐ Northern Flying Squad

Members of the Branch's Northern Flying Squad provided considerable relief to Crown Counsel in Yellowknife and Whitehorse Regional Offices. This relief is required because of increasing court workloads in the territories. The Flying Squad comprises more than 20 experienced prosecutors from the Department's regional offices and headquarters. Over 45 circuits in the Northwest Territories and 25 in the Yukon Territory, in both Territorial and Supreme Courts, were handled by Flying Squad members. Several jury trials in Frobisher Bay and Yellowknife were conducted in French by squad members from the Montreal Regional Office. The Edmonton Regional Office assisted in cases heard at Edmonton and Calgary before the Court of Appeal of the Northwest Territories.

☐ Criminal Code Part IV.1

Specially designated staff at headquarters and in the regions, as well as certain standing agents, were authorized to apply to intercept private communications in support of special investigations.

☐ Special Prosecutions

The Branch prosecuted 148 tax evasion cases in 1985-86 of which 141 resulted in convictions. The Branch also argued a number of cases before the Supreme Court of Canada this year, including the following.

In *Edwin Dewey Smith v. The Queen*, the issue was whether the seven-year minimum sentence for importing narcotics violates *Charter* rights not to be arbitrarily imprisoned and not to be subjected to cruel and unusual punishment. Judgment was reserved.

Jack Edward Mannion v. The Queen dealt with whether cross-examination of the accused at a new trial, on testimony he gave at a previous trial on the same indictment, violated his *Charter* protection against self-incrimination. Judgment was reserved.

The Republic of Argentina v. Hector Mellino dealt with whether the *Canadian Charter of Rights and Freedoms* applies to the actions of a foreign government in extradition proceedings. The fugitive asserted that he should not be extradited because the requested state had violated his *Charter* right to trial within a reasonable time. Judgment was reserved.

In *Wayne Petere Morozuk v. The Queen*, the accused had been charged with possession of cannabis marihuana, for the purpose of trafficking, but the substance was proved at the trial to be cannabis resin. The Supreme Court of Canada held that the gravamen of the offence was possession of cannabis for trafficking. It amended the charge to eliminate the inaccurate description and upheld Morozuk's conviction.

Martin Chambers v. The Queen and *Kurt Grabowski v. The Queen* dealt with the admissibility of wiretap evidence. Chambers argued *inter alia* that a wiretap authorization was vitiated because the Crown failed to disclose a tax investigation against him when it sought authorization to conduct a wiretap in a *bona fide* drug investigation. *Chambers* is on reserve. In *Grabowski*, the Supreme Court of Canada held *inter alia* that a defective portion of the wiretap order could be severed from the rest, so that interceptions under other portions could be admitted.

Eric Fleming, Administrator Ad Litem of the Estate of Ernest Roland Maria Gombosh, Deceased v. The Queen dealt with an application for the return of monies seized in a narcotic investigation. The Supreme Court of Canada held that when the Crown alleges that property is the proceeds of crime and should not be returned, on the principle that a person should not benefit from his wrongdoing, the Crown must prove its assertion beyond a reasonable doubt either at antecedent criminal proceedings or, where charges cannot be pursued because the accused has died, at the restoration hearing.

Selected Criminal Law Branch Activities 1983-86

	1983-84	1984-85	1985-86
Applications for Mercy	35	35	34
Extradition and Rendition Requests			
• by Canada to other countries	50	57	56
• by other countries to Canada	59	56	83
Special Prosecutions (Tax Evasion)	177	163	148

Tax Litigation Branch

■ Function

The Tax Litigation Branch acts on behalf of the Attorney General of Canada in all civil appeals from reassessments to income tax and provides legal advice to the officials responsible for administering the *Income Tax Act*. The Branch represents the Federal Government in all appeals arising under the *Income Tax Act* before the Tax Court of Canada, the Trial and Appeal Divisions of the Federal Court of Canada and the Supreme Court of Canada. In addition, the Branch acts for the government in appeals pursuant to the *Unemployment Insurance Act, 1971* and the Canada Pension Plan.

■ Organization

The Branch's work is divided between tax litigation sections at headquarters and at the Halifax, Montreal, Toronto, Edmonton and Vancouver Regional Offices. Appeals before the Tax Court of Canada are assigned by region whereas litigation before the Federal or Supreme Court is assigned on the basis of the action's nature and complexity, the current workload of the offices and the proximity of client departments.

In response to the increasing volume of work, the number of counsel in the tax litigation sections increased from 42 lawyers across Canada in 1984 to 65 in 1985. During 1986, the number decreased to 59.

■ Activities

The volume of tax cases before the courts remained high during 1985-86. As well, the issues were complex and the decisions substantial. A number of high profile cases were dealt with this year.

Irving Oil Limited v. The Queen involves section 245 of the *Income Tax Act*. The Minister of National Revenue's position is that the taxpayer artificially reduced income by overstating the expense of acquiring crude oil from its wholly-owned subsidiary in the tax-free jurisdiction of Bermuda. Approximately \$120 million is involved. Trial dates are expected in the fall of 1986.

In *The Queen v. Paul Graham*, the Federal Court of Appeal reviewed the interpretation of section 31 of the *Income Tax Act* concerning the deduction of farming losses. More particularly, the Court reviewed whether the farming losses may be deducted in full or must be restricted to \$5,000. The Court found that the taxpayer fell within the first class of farmers defined in the case *Moldowan v. The Queen* [1978] 1 S.C.R. 480 and was entitled to deduct full farming losses. Leave to appeal to the Supreme Court of Canada was refused.

Tax Evasion Cases Referred to the Department of Justice by the Department of National Revenue – Taxation

Fiscal Year	82-83	83-84	84-85	85-86*
Number of cases referred to Justice	176	198	172	97
Number of cases disposed of in the Courts	159	177	178	109
Number of incomplete cases in Justice inventory	195	199	212	182

*Figures are from April 1, 1985, to January 9, 1986.

In *The Queen v. McBurney*, the Federal Court of Appeal concluded that payments by taxpayers to their children's schools, where these schools were registered charities and the children received both secular and religious education, were not "gifts" within the meaning of section 110(1)(a)(i) of the *Income Tax Act*. Leave to appeal to the Supreme Court of Canada was refused.

Jean-Paul Gagnon v. The Queen involved the deduction of amounts remitted to the taxpayer's ex-wife for repayment in capital and interest of two mortgages and property taxes. The Supreme Court of Canada found that the amounts paid by the taxpayer were "allowances" within the meaning of section 60(b) of the *Income Tax Act* and were accordingly deductible from the taxpayer's income.

In *The Queen v. Imperial General Properties*, the Supreme Court of Canada interpreted the meaning of "control" in determining the tax status of a corporation within the context of the association provisions of section 256 of the *Income Tax Act*.

A number of tax avoidance cases dealt with whether an activity or transaction by a taxpayer is designed to unduly or artificially reduce income. A number of decisions have been rendered during the year, including *Consolidated Bathurst Limited v. The Queen*. Other actions before the Courts may implicate more than 1,000 taxpayers.

Inventory of Income Tax Appeals 1980-85

	80-81	81-82	82-83	83-84	84-85
Tax Court of Canada	2821	3084	3979	5375	5570
Federal Court - Trial Division	792	875	1024	1136	1212

General Counsel Group

■ Function

The General Counsel Group conducts, on behalf of the Attorney General of Canada, complex and high profile litigation which requires counsel of particular seniority and expertise.

■ Organization

The Group consists of senior counsel experienced in the constitutional, civil, criminal and tax litigation fields. It is headed by a Chief General Counsel and comprises ten General Counsel, of whom four are located at headquarters, three in the Toronto Regional Office, two in the Montreal Regional Office and one in the Edmonton Regional Office.

■ Activities

During the year, the Group conducted major constitutional cases concerning interpretation of the *Canadian Charter of Rights and Freedoms* in the areas of search and seizure, equality rights, voting rights of inmates and whether collective bargaining is protected under freedom of association. Other major cases during the year involved administrative law, access to information, criminal prosecutions, income tax, communications law and tort and contract liability of the federal Crown.

Members of the Group participate in continuing legal education, such as panel discussions and seminars arranged by the Department and by provincial and local bar associations. They also appear as lecturers at bar admission courses in English and French.

This year the Group represented the government of Canada in: continuing actions before the Quebec Superior Court for damages brought against the Canada Mortgage and Housing Corporation by owners of homes containing urea formaldehyde foam insulation; hearings before the Indian commission investigating the causes of the Air India crash; law suits against the government of Canada resulting from the crash; as well as hearings of the Commission of Inquiry on War Criminals (the Deschênes Commission).

The following are examples of litigation now under the charge of General Counsel members:

□ Headquarters

In the case of *Public Service Alliance of Canada v. The Queen*, heard by the Supreme Court of Canada in October 1985, the *Public Sector Compensation Restraints Act* (federal 6 and 5 per cent program) was challenged on the grounds that it offended both the freedom of association protected by section 2(d) of the *Canadian Charter of Rights and Freedoms* and the right to equality before the law protected by section 1(b) of the *Canadian Bill of Rights*. The Federal Court of Appeal had held that the freedom of association protected by section 2(d) of the *Charter of Rights* did not include any constitutional guarantee of collective bargaining rights. The judgment of the Supreme Court of Canada was reserved.

Pêcheries MPQ Ltée et al v. The Attorney General of Canada involved actions now before the New Brunswick Court of Queen's Bench and Court of Appeal, in which the plaintiff fishermen have challenged Department of Fisheries and Oceans restrictions on snow crab licences. The licences prevented the New Brunswick crab fishermen from fishing in an exploratory zone off P.E.I. which the federal government had restricted to P.E.I. crab fishermen. The restrictions were challenged on constitutional grounds as being either *ultra vires* Parliament to regulate or contrary to the mobility and equality rights under the *Canadian Charter of Rights and Freedoms*. Also, the Crown's challenge to the Provincial Superior Court jurisdiction to hear the matter was upheld by the Court of Queen's Bench and is under appeal to the Court of Appeal.

Dominion of Canada General Insurance Company v. The Queen, a \$10 million test case decided by the Federal Court of Appeal, upheld the assessments of the Minister of National Revenue under the *Income Tax Act* provisions dealing with the calculation of insurance corporation reserves.

The case of *Hertz v. The Queen*, decided by the Federal Court Trial Division and presently under appeal, rejected a \$5 million claim for loss of anticipated profits with respect to car rental operations at Canadian airports. The case raised important questions about the tendering process.

Total appeals heard by the Supreme Court of Canada and appeals in which the federal Crown was represented

	1982	1983	1984	1985*
Crown Represented	36	39	49	16
Total	129	89	96	62

* Figures are from January to the end of June 1985.

Matters heard by the Federal Court of Appeal and those in which the federal Crown was represented

	1982	1983	1984	1985**
Crown Represented***	650	1,138	983	326
Total	722	1,264	1,092	362

** Figures are from January to the end of September 1985.

***These are approximate figures.

Miller Bros. Ltd. v. The Queen was an action before the Federal Court by a Saint John, New Brunswick, nursery which imported shrubs and trees from Massachusetts and Rhode Island. Department of Agriculture tests had discovered gypsy moth larvae on the plants which were then ordered destroyed under the *Plant Quarantine Act and Regulations*. The Court held that the *Canadian Charter of Rights and Freedoms* was violated by the seizure and destruction of the shrubs and it awarded damages. Important questions affecting administrative and regulatory schemes of inspection and seizures vis-à-vis the Charter are raised. The Crown's appeal was heard by the Federal Court of Appeal in January 1986, and was under reserve.

In *Turmel v. CRTC* the Federal Court Trial Division heard and dismissed Mr. Turmel's action charging that his rights to equal protection under section 15 of the *Canadian Charter of Rights and Freedoms* had been violated because the Canadian Broadcasting Corporation and other radio and television stations did not grant him the free broadcast time granted to candidates of major political parties during election campaigns.

☐ Toronto Regional Office

International Fund for Animal Welfare v. The Queen concerned a challenge under the *Canadian Charter of Rights and Freedoms* against the *Seal Protection Regulations* which govern Canada's annual seal hunt off the Magdalen Islands and the coast of Newfoundland. Judgment has been reserved by the Federal Court, Trial Division.

The lengthy criminal tax evasion trial of *Regina v. Burnett and Ruthbern Holdings Ltd.* relating to alleged unreported income exceeding \$4.5 million was commenced in October 1984, before the Supreme Court of Ontario, and continued during 1985 and 1986 with the Crown's presentation of voluminous documentary and factual evidence respecting more than 30 complex business transactions in which tax was allegedly evaded.

☐ Edmonton Regional Office

In *Organizational Society of Spouses of Military Members v. The Queen*, military spouses commenced an action against the Attorney General of Canada and the Minister of National Defence for a declaration that the Queen's Regulations and Orders infringed upon O.S.O.M.M. members' right to freedom of expression under section 2(b) of the Charter. The regulation in question provides that no officer in command of a base shall allow a political meeting to be held or a political speech to be delivered at his base. The activities of the O.S.O.M.M. included distributing a newspaper and campaigning for military spouses to sign a petition to the Prime Minister demanding a dental plan for military families.

The accused in *Regina v. Read* was acquitted in March 1986 by a Provincial Court Judge of Alberta of charges under the *Income Tax Act* for failing to file an income tax return after a requirement to do so was served upon him. The Judge concluded that a requirement in the income tax form that a taxpayer estimate the tax payable by him infringed upon the citizen's right to freedom of expression under the Charter. The case is under appeal.

Assistant Deputy Attorney General Admiralty and Maritime Law

■ Function

The Assistant Deputy Attorney General, Admiralty and Maritime Law, is responsible for the Department's activities in the following areas:

☐ Admiralty Litigation

Admiralty cases often involve the Crown as a party before the Federal Court of Canada, in complex litigation concerning large amounts of money.

☐ Maritime Legislation

The *Canada Shipping Act* is a major piece of legislation that requires specialized legal advice.

☐ Maritime Commercial Law

The Assistant Deputy Attorney General, Admiralty and Maritime Law, is responsible for drafting of charter parties and other commercial documents relating to marine transactions.

☐ Marine Casualty Investigations

Marine casualty investigations are conducted pursuant to the *Canada Shipping Act*. This Act authorizes the Minister of Transport to appoint judges to conduct formal investigations into serious shipping casualties. The Department, in consultation with the Chief Judge of the Court, recommends suitable judges and selects and supervises commission counsel.

☐ Marine International Law

The Assistant Deputy Attorney General, Admiralty and Maritime Law, advises the Department of Transport on maritime law and participates in diplomatic conferences on proposed international conventions on maritime law.

■ Organization

The Assistant Deputy Attorney General, Admiralty and Maritime Law, supervises and coordinates the admiralty law work throughout the Department with the aid of departmental lawyers in headquarters, legal service units and regional offices and agents of the Minister of Justice.

■ Activities

During 1985, the principal responsibilities of the Assistant Deputy Attorney General, Admiralty and Maritime Law, included:

- ☐ providing legal advice to the government concerning the Part II recommendations of the Royal Commission into the *Ocean Ranger* marine disaster;
- ☐ chairing a task force dealing with legal issues arising out of Bill C-75, an Act to amend the *Canada Shipping Act*;
- ☐ coordinating litigation against the St. Lawrence Seaway Authority and the Crown in the Federal Court of Canada and in the Quebec Superior Court stemming from the temporary closure of the Valleyfield Bridge in November 1984;
- ☐ investigating the closure of the Welland Canal in October 1985 and providing related legal advice to the St. Lawrence Seaway Authority; and
- ☐ supervising litigation by the St. Lawrence Seaway Authority and the Crown arising out of a November 1985 incident in which the St. Louis Bridge was struck by the Indian flag ship *Jaladovari*.

Departmental Legal Services Branch

■ Function

The Departmental Legal Services Branch provides a wide variety of in-house legal services to federal departments and agencies as well as specialized legal advice on property, commercial, access to information and privacy law. The Branch is also responsible for planning, developing and implementing legal policies on access to information, privacy and related issues.

■ Organization

During 1985-86, the Branch comprised 264 lawyers and support staff. It is organized in four sectors headed by the Senior Assistant Deputy Minister, Legal Services; the Assistant Deputy Minister, Commercial and Property Law; the Assistant Deputy Minister, Finance; and the General Counsel, Legal Services. These officials form a senior management committee responsible for Branch operations and effective use of resources.

The Senior Assistant Deputy Minister, Legal Services, is responsible for the overall direction of the Branch, the management of the Information Law and Privacy Section and the departmental legal services units in the following departments and agencies: Employment and Immigration; Health and Welfare; Indian Affairs and Northern Development; Revenue Canada (Taxation); Treasury Board Secretariat; as well as the Ministry of the Solicitor General, which includes the Correctional Service of Canada, the Royal Canadian Mounted Police, the National Parole Board and the Canadian Security Intelligence Service.

The Assistant Deputy Minister, Commercial and Property Law, is responsible for the overall direction of commercial and property law matters. Further, he manages the Commercial Law and Property Law sections and the departmental legal services units serving the following departments and agencies:

Consumer and Corporate Affairs; Energy, Mines and Resources; Public Works; Regional Industrial Expansion; Supply and Services; Transport; Canadian Commercial Corporation; Canadian Dairy Commission; Canadian International Development Agency; National Capital Commission; Investment Canada; National Research Council; and the Royal Canadian Mint.

The Assistant Deputy Minister, Finance, is counsel to the Department of Finance, the office of the Inspector General of Banks and the Department of Insurance. He manages two departmental legal services units serving the Department of Finance.

The General Counsel, Legal Services, manages the departmental legal services units serving the following departments and agencies: Agriculture; Communications; Environment; External Affairs; Fisheries and Oceans; Labour; National Defence; Revenue Canada (Customs and Excise); Secretary of State; Veterans Affairs; Atomic Energy Control Board; Canadian Pension Commission; Public Service Commission; and the War Veterans Allowance Board.

■ Activities

The Branch provides legal advice for virtually all of the government's activities. Among its major undertakings during 1985-86, the Branch:

- ☐ participated in developing the May 1985 and February 1986 Budgets and the related taxation, pension and other legislative initiatives;
- ☐ provided legal services in preparing for free trade negotiations;
- ☐ participated in all major developments concerning federal financial institutions, including the Estey Commission, litigation and legislation concerning the failures of the Canadian Commercial Bank and the Northland Bank, and the subsequent preparation of financial regulatory control legislation;

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- ☐ participated in the privatization of DeHavilland, Canadian Arsenal Limited and the Canadian Development Corporation;
 - ☐ provided legal advice respecting the Crown's interests following the Air India accident;
 - ☐ assisted in the review of federal legislation related to the coming into force of the *Charter* equality provisions and in the examination of complex interpretations of section 15;
 - ☐ assisted in developing *Indian Act* amendments to eliminate discrimination on the basis of sex;
 - ☐ participated in the comprehensive review of environmental legislation and regulations, the drafting of the new *Customs Act* and regulations, and the review and consolidation of the Atomic Energy Control Regulations; and
 - ☐ organized the National Forum on Access to Information and Privacy, held in Ottawa, March 6 to 7, 1986, and attended by approximately 250 participants from the public and private sectors, including members of organizations, interest groups, the media and the general public.

Legislative Programming Branch

■ Function

The Legislative Programming Branch prepares all bills the government plans to introduce in Parliament and motions to amend those bills. It also examines proposed regulations to ensure they comply with the *Statutory Instruments Act*. The Branch is responsible for the periodic revision and consolidation of both statutes and regulations. As well, the Branch prepares the Table of Public Statutes and oversees printing of annual volumes of statutes and Part III of the *Canada Gazette*.

■ Organization

The Branch is administered by the Assistant Deputy Minister, Legislative Programming, and consists of three sections.

☐ Legislation Section

This Section is under the direction of the Chief Legislative Counsel of the government, who holds the rank of an Assistant Deputy Minister. To assist him in the preparation of the government's legislative program, there is an Associate Chief Legislative Counsel, a General Counsel (Legislation), two senior counsel and 12 legislative drafters. In addition, there are four drafters attached to the Tax Counsel Unit in the Department of Finance for the purpose of drafting and reviewing amendments to the *Income Tax Act* and regulations under that Act.

Under delegation from the Deputy Minister of Justice, the Chief Legislative Counsel examines all government bills introduced in the House of Commons as required under the *Canadian Bill of Rights* and the *Department of Justice Act*.

☐ Privy Council Office Legal Section

This Section is responsible for carrying out the duties of the Deputy Minister of Justice under the *Statutory Instruments Act*. This Act requires that all proposed regulations be examined to ensure that they meet specified criteria. Advice is provided on rectifying legal difficulties and ambiguities, inconsistencies and technical errors in the proposed regulations. The Section is also responsible for ensuring that regulations do not contravene the *Canadian Charter of Rights and Freedoms* and the International Convention on Human Rights and examines all statutory instruments that are required to be published in Part II of the *Canada Gazette*. The General Counsel examines, pursuant to the *Canadian Bill of Rights*, all regulations that are not examined pursuant to the *Statutory Instruments Act*.

The Section consists of 31 employees, of whom 16 are lawyers, under the direction of the General Counsel and three senior counsel.

Counsel in this Section serve as legal advisors to officers of the Privy Council Office, particularly to the Assistant Clerk of the Privy Council (Orders in Council). The Section prepares proclamations as well as commissions and other instruments issued under the Great Seal, including those for the appointment of judges.

☐ Statute Revision Commission

The Statute Revision Commission revises and consolidates the statutes of Canada for publication in 1987. It also maintains data bases for all federal statutes and regulations of general public interest. Chaired by the Assistant Deputy Minister, Legislative Programming, the Commission comprises the Chief Legislative Counsel and the Associate Chief Legislative Counsel. It had a staff of 15 persons during the year, including four lawyers.

■ Activities

The number of bills drafted by the Legislation Section rose to 75 in 1985-86 from 64 in 1984-85 and 52 in 1983-84. Among the more notable bills were the *Divorce Act, 1985*, the *Canada-Newfoundland Atlantic Accord Implementation Act*, the *Employment Equity Act*, amendments to the *Excise Tax Act*, the *Financial Institutions Depositors Compensation Act*, the *National Rail Passenger Transportation Act*, the *Pension Benefits Standards Act, 1985*, amendments to the *Royal Canadian Mounted Police Act*, the *Sechelt Indian Band Self-Government Act* and the *Statute Law (Canadian Charter of Rights and Freedoms) Amendment Act*.

In 1985-86, the Branch received 2,017 regulations for examination as compared with 1,840 in 1984-85.

The Department made its annual contribution to the University of Ottawa to help meet the costs of the legislative drafting program given in both the Common Law and Civil Law Faculties.

Eight fellowships in legislative drafting are also given annually to Canadian law graduates, enabling them to take the program. The program is the main source for legislative drafters and has provided legislative drafters to a number of provincial governments as well. The total budget in 1985-86 for both the contributions to the university and the fellowships was \$183,600.

Administration Branch

■ Function

The Administration Branch provides administrative support services relating to finance, personnel, library, legal information retrieval, accommodation, security, computer systems, telecommunications and all other logistical elements common to government departments. For example, the Personnel Administration Section deals with staffing, staff relations, pay and benefits, training and development and human resources planning. As well, lawyers are recruited, classified and placed throughout the Government of Canada. The Branch administers the Department's law student articling program, originates affirmative action and official languages policies and administers translation activities and language training.

Records Management provides an essential service for the Department. Files dating from 1868, when the Department was established, are used by legal officers preparing for court and providing legal advice.

The Legal Contracts Support Unit was established in 1984 to administer contracts with outside legal practitioners engaged to provide legal services on behalf of the Crown.

The Central Divorce Registry administers a computerized register of all petitions for divorce in Canada, to ensure that courts in different jurisdictions are not dealing with the same matter concurrently. All Statistics Canada data on divorce is provided by the Central Divorce Registry.

The Branch maintains an extensive library service to meet the special requirements of the Department. Libraries in the regional offices and working satellite collections throughout the Department complement the main library. In addition to traditional legal research methods, the library offers a wide range of online information systems.

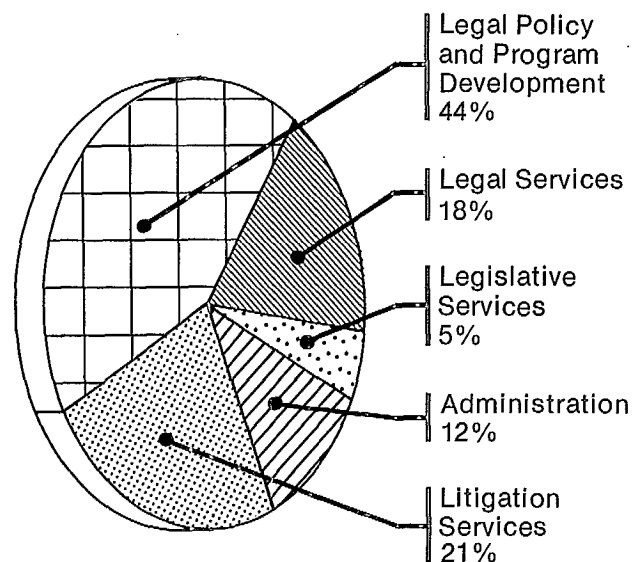
■ Activities

The Branch continued to be concerned with restraint in spending and reduction of overhead. All staffing and spending requests were subjected to a critical examination.

The Personnel Administration Section received more than 800 applications for legal employment during the year; 63 lawyers were hired. Approximately 49 per cent of the officers appointed were women and 28 per cent were francophone. Thirty-four students served articles of clerkship in the Department in 1985-86.

The departmental Affirmative Action Plan, containing 38 recommendations, was approved by Treasury Board on July 3, 1985. A number of the recommendations for promoting equitable treatment of women, indigenous people and disabled persons have since been implemented. A departmental steering committee on affirmative action monitors implementation, identifies problems and recommends solutions to the Deputy Minister. As well, individual branch action plans containing both numerical and operational objectives were submitted by each Assistant Deputy Minister and Assistant Deputy Attorney General for the respective branches.

1985-86
Gross Expenditures by Activity
(Percentage Distribution)



The percentage of francophone employees within the Department rose to 34.2 per cent during the year, up from 33 per cent in 1984-85. Francophones accounted for 27.3 per cent of the Department's lawyers, while 52.6 per cent of the legal officer positions required ability in both official languages (91.2 per cent of the officers in these positions met the language requirements, while the others were receiving or awaiting language training). Twenty-two employees received full-time language training during the year.

Automation played a major role in the Administration Branch this year. In July 1985, Records Management started to automate an estimated 200,000 files. This project, scheduled for completion in 1986-87, will not only save space but provide the Department with an efficient records system.

During 1985, the Central Divorce Registry received notice of 74,895 petitions for divorce.

Department of Justice Expenditures*

Fiscal Year 1985-86

	Personnel Costs \$	Operating Costs \$	Grants and Contributions \$	Total** \$
Minister's Office	950,818	599,443	—	1,550,261
Deputy Minister	2,350,607	1,034,769	—	3,385,376
Associate Deputy Minister, Civil Law	4,796,929	852,507	1,500	5,650,936
Associate Deputy Minister, Litigation	16,929,010	5,075,764	—	22,004,774
Assistant Deputy Attorney General, Tax Litigation	1,096,758	166,048	—	1,262,806
Assistant Deputy Attorney General, Criminal Law	1,014,821	145,789	—	1,160,610
Assistant Deputy Attorney General, Admiralty and Maritime Law	302,895	27,628	—	330,523
Assistant Deputy Attorney General, Civil Litigation	1,837,091	312,093	—	2,149,184
Senior Assistant Deputy Minister, Legal Services	14,463,979	402,205	—	14,866,184
Assistant Deputy Minister, Legislative Programming	4,490,363	2,154,932	175,986	6,821,281
Assistant Deputy Minister, Policy, Programs and Research	4,219,753	2,581,973	49,285,052	56,086,778
Assistant Deputy Minister, Public Law	3,268,959	1,010,577	342,000	4,621,536
Assistant Deputy Minister, Administration	6,742,762	4,280,993	—	11,023,755
Total	62,464,745	18,644,721	49,804,538	130,914,004
Canadian Sentencing Commission				787,104
				131,701,108

*Figures from Public Accounts, August 1986.

**Totals rounded

Regional Offices

Regional offices located in nine cities across Canada play a vital role in the daily operations of the Department of Justice.

These offices conduct all forms of litigation on behalf of the Attorney General of Canada and provide legal advice to the regional offices of federal departments and agencies. In areas not served by these offices, the Department hires private sector lawyers to handle its cases and these agents receive direction from the regional offices.

The regional offices employed 244 lawyers and 243 support staff in 1985-86. The offices are organized in much the same way as headquarters, with sections for civil, criminal and tax law, and commercial and real property in most regions. Offices vary in size from a few lawyers to what would constitute large private law firms in Montreal, Toronto and Vancouver.

The responsibilities and activities of each regional office are detailed below, accompanied by selected cases handled by each office during the year. It should be noted that the regional offices handle much of the Department's litigation and prosecution, which is discussed in the Civil Litigation, Criminal Law and Tax Litigation sections of this report.

■ Halifax Regional Office

In 1985-86, 11 lawyers working out of the Halifax Regional Office, with the assistance of a network of legal agents, conducted civil litigation, property litigation and criminal prosecutions in Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador. Tax work was also handled in these provinces, with the exception of New Brunswick. The Office also provided legal advice to federal departments and agencies in all four Atlantic provinces.

During this fiscal year, the Office's civil litigation section handled *MacKinnon v. The Queen* and *Munroe v. The Queen*, two cases in which the Department of Fisheries and Oceans' sector management and fishery management for socio-economic purposes was challenged *inter alia* under sections 6 and 4 of the *Charter*.

The criminal litigation section successfully prosecuted *Regina v. Sunila, Salayman* and six other members of an organization involved in importing 13.2 tons of cannabis resin — the largest drug seizure ever in Canada. All but one accused were convicted. This case also further developed the law dealing with Canada's right to pursue vessels and arrest individuals on the high seas.



■ Montreal Regional Office

This Office covers all judicial districts under the Court of Appeal in Montreal, including the city and outlying areas. Within this area, the Office is responsible for criminal prosecutions on behalf of the Attorney General of Canada, acts as plaintiff or defendant in civil proceedings to which the Crown is a party and represents the Minister of National Revenue in Quebec tax matters. It also provides legal advice and consultation to federal departments and agencies in Quebec.

The Office has 95 employees, including 48 legal counsel, 21 of whom are in the civil litigation section, 13 in the criminal prosecutions section, 11 in the tax litigation section, and three general counsel.

In 1985-86 the civil litigation section was responsible for 5,770 cases, most of them involving administrative law, civil actions against the federal government exceeding \$57 million and civil actions on behalf of the federal government totalling over \$52 million.

As in past years, the *Canadian Charter of Rights and Freedoms* generated an increase in the number of administrative cases handled by staff lawyers. This trend became more noticeable this year as a result of the coming into force of section 15.

Among the cases handled by the civil litigation section last year, in *Lévesque v. the Attorney General of Canada et al*, an inmate in a federal penitentiary sought a Federal Court order entitling him to vote in provincial elections. The Federal Court decided that, in view of the provisions of the *Quebec Election Act* and section 3 of the *Charter*, the inmate was entitled to vote.

Gérard Blais v. the Minister of National Revenue concerned the sale of the inventory of St-Louis Textiles Ltée by a trustee in bankruptcy. Because the goods had been purchased by the bankrupt company with a tax exemption under a licence issued pursuant to the *Excise Tax Act*, the trustee argued that the sales tax on their sale was a claim provable under the *Bankruptcy Act*. The Supreme Court of Canada, however, held that the sales tax was not a claim provable and that, therefore, the trustee was required to pay the sales tax.

In *Piperno v. the Minister of Employment and Immigration et al*, the plaintiff had applied for refugee status under the *Immigration Act, 1976*. Two questions were raised: whether the Minister should

inform the applicant why the Minister believed the person was not a refugee, so as to allow the applicant to refute the evidence before a final decision; and whether the applicant has the right to know the Minister's evidence before the Immigration Appeal Board hearing. The Federal Court of Appeal, in its September 19, 1985, decision, found that the plaintiff did not have a right to either an explanation or evidence prior to a hearing. Leave to appeal to the Supreme Court of Canada was dismissed.

The plaintiff in *Vachon v. Employment and Immigration Commission* owed the Commission about \$900 in overpayments from unemployment insurance payments due to administrative error. He then made an assignment of his property under the *Bankruptcy Act* and, before receiving a discharge, again became entitled to U.I. benefits. The Commission decided to make a set-off between the benefits payable to him and his \$900 debt. After receiving his discharge, the plaintiff brought an action in the Federal Court for a ruling on whether the Commission was entitled to such a set-off. After a decision was handed down against Vachon by the Federal Court, he later appealed the judgment to the Supreme Court of Canada. The Supreme Court held that section 49(1) of the *Bankruptcy Act* prohibits any type of judicial or administrative recovery from a bankrupt's assets, regardless of whether assets have enured to the trustee or remain the property of the bankrupt, as is the case with U.I. benefits.

In 1985-86, counsel for the criminal prosecutions section handled 2,232 cases including appeals, extradition applications, applications for interception of private communications and drug trafficking prosecutions. Section lawyers also handled prosecutions in the area of economic crime and in the area of prison law, which has expanded considerably since the *Charter*.

Among cases the section handled this year was a U.S. government application for the extradition of a respondent who had been sentenced to death in Pennsylvania for first-degree murder. It was argued that, under article 6 of the Canada-U.S. Extradition Treaty, extradition could be denied where the offence was subject to the death penalty, unless the State guaranteed that the respondent would not be executed. It was further argued that, because the life of the accused would be in danger if he were returned to the U.S., he should be protected under sections 7 and 12 of the *Charter*. The extradition judge did deny the extradition.

Two cases dealt with the validity of authorizations to intercept private communications. In *Regina v. Bujold, Goyette et al*, the accused challenged an authorization because it was issued by an agent designated by the Attorney General of Quebec although the offence came within the federal *Narcotic Control Act*. The Court of Sessions of the Peace interpreted section 178.12(1)(a) and (b) to indicate that the authorization was valid even though the prosecution was brought by the Attorney General of Canada.

In *Kurt Grabowski v. The Queen*, the appellant argued before the Supreme Court that an authorization to intercept private communications was not in accordance with the *Criminal Code* and amounted to a blanket authorization. The Court ruled that the omnibus clause authorizing interception of communications of persons unknown, together with places unknown, means that anyone can be intercepted anywhere; hence, this clause is unlawful. However, when this clause can be deleted without affecting the substance of the authorization, and there were no interceptions under the offending clause, the authorization is still legal.

During 1985-86, the 11 counsel in the tax litigation section represented the Crown before the federal tribunals and the Supreme Court of Canada in 2,724 cases involving tax and unemployment insurance matters. The number of cases involving farm losses continued to be high and cases involving multi-unit residential buildings (MURBs) increased. A total of 672 unemployment insurance cases were argued before the Tax Court of Canada and the Federal Court of Appeal.

In *Dominion Metal Inc. v. The Queen*, the Crown challenged the appraisal of an asset. The taxpayer's appraiser considered that in determining the market value of an asset a "special purchaser" should be taken into account although such a person did not appear to exist at the time of the appraisal. The Tax Court of Canada ruled in favour of the Minister. An appeal was heard by the Federal Court in February 1986 and judgment was pending.

The question at issue in *The Queen v. Bronfman Trust* is whether a trust can deduct interest on loans paid to a lending institution under the *Income Tax Act* when the trust had borrowed to pay benefits to one of its beneficiaries. This case is awaiting appeal to the Supreme Court of Canada in 1986.

The judgment of the Supreme Court was pending in the case of *Canadian Pacific Ltd. v. the Attorney General of Canada*. It involves the question of whether a hotel should deduct unemployment insurance premiums from controlled tips. The case arose after the hotel had organized banquets for several groups and added a service charge to the cost of the banquets for later distribution to service employees. The Federal Court of Appeal initially found in favour of the Crown.

■ Toronto Regional Office

This Office represents government legal interests in southwestern Ontario including criminal prosecutions under federal statutes other than the *Criminal Code*, tax and civil litigation, bankruptcy, insolvency and commercial and property law matters. As well, the Office provides opinions and legal advice for government offices and agencies in the region.

The Office employed 69 lawyers in 1985-86, of whom 14 handled civil litigation, 25 handled criminal prosecutions, 15 litigated tax matters, eight worked in advisory, commercial and property law, and four worked as General Counsel. In addition, the work of more than 300 lawyers retained as Crown agents was managed by the Office.

The Advisory, Commercial and Property Law Section dealt with a range of bankruptcy and insolvency cases with international ramifications. The Section also handled a number of disputes with the potential effect of disrupting airport operations in Ottawa and Toronto. As well, legislation concerning pension diversion and garnishment of Crown debts created a large volume of proceedings. Among the legal services provided to government departments and agencies, the Section negotiated and drafted commercial agreements and leases and was involved in court proceedings related to the winding-up of Northumberland Insurance and Continental Trust.

The Criminal Litigation Section is responsible for conducting prosecutions on behalf of the Attorney General throughout southern Ontario, as well as criminal appeals, wiretap applications, search warrant applications, extraditions and advice to investigative agencies. Cases involving the *Charter of Rights and Freedoms* continued to occupy an increasingly large proportion of the Section's time.

Two of the largest and most complex prosecutions this year involved charges under the *Income Tax Act*. The *Joseph Burnett and Ruthbern Holdings Ltd.* trial, in which tax evasion in excess of \$2 million is alleged, continued in the Supreme Court of Ontario since October 1984. The preliminary hearing continued into an allegation that *Frank Mauro et al* conspired to evade more than \$1.5 million in taxes. Evidence in this case has been heard in the United States, Italy, France, Great Britain, Belgium, the Netherlands and Germany.

There were many narcotic and drug cases prosecuted during the fiscal year. Among them was one in which *Paul Vidotto et al* were accused of a conspiracy to traffic in cocaine and to manufacture \$16 million worth of methamphetamine. The case was proved, resulting in sentences of up to 14 years. *Regina v. Marsh et al* concerned an alleged conspiracy to traffic in a number of drugs involving 39 members and associates of the Outlaw Motorcycle Club. Twelve of the accused were to have faced trial in the Supreme Court of Ontario in May 1986.

There were many appeals during the year. In *Regina v. Finlay and Grellette*, the Ontario Court of Appeal concluded that the wiretap provisions of the *Criminal Code* did not offend the *Charter*. Decisions were also handed down in a number of cases argued in the Supreme Court of Canada.

This was a particularly busy year for extradition prosecutions. Of particular interest was *U.S.A. v. Golitschek*, an extradition to the United States of an Austrian arms dealer who had allegedly conspired with others in Austria and West Germany to deceive the U.S. Government into issuing licences to export military hardware destined for Iran by submitting false documents showing the destination as Spain. Golitschek was arrested in Toronto on an extradition warrant shortly after he arrived here to sign a purchase agreement with U.S. undercover agents posing as international arms dealers. The fugitive was committed for surrender and has now been tried and convicted. The Golitschek case is the first successful one of its kind.

The Tax Litigation Section advises and appears on behalf of the Minister of National Revenue in taxation matters, as well as providing legal opinions to local offices of Revenue Canada and appearing before the Pension Appeals Board and Tax Court on pension and unemployment insurance benefit matters.

This year, the section handled *The Queen v. Imperial General Properties*, a landmark decision of the Supreme Court of Canada. The case involved the meaning of "control" within section 256(1) of the *Income Tax Act*, used to determine the amount of income subject to the low rate of tax for small business.

Several search and seizure cases were handled this year. In the *Attorney General of Canada v. Pica*, the Ontario Court of Appeal found that there was no basis for quashing the seizure of the taxpayer's documents under section 231(1)(d) and, more importantly, that the taxpayer should not have been permitted to challenge the seizure after the trial had commenced.

A serious *Charter* challenge to the *Income Tax Act* arose in the *Gerol* case in which provisions establishing the RRSP program were alleged to discriminate on the basis of age and to deny the taxpayer freedom of conscience and religion and the right to life, liberty and security of the person guaranteed in sections 15, 7 and 2 of the *Charter*. The Supreme Court of Ontario upheld the Act.

The Civil Litigation Section has made significant changes in the nature and conduct of its practice by integrating Regional Office services with Departmental Legal Services Units in a more productive way and by increasing specialization, consultation and information-sharing with client departments. The emphasis in civil litigation is shifting to the fields of public law, charter litigation and aboriginal claims.

Two cases typify the imaginative challenges to federal legislation. In *Parkdale Tavern v. Her Majesty the Queen*, the plaintiff unsuccessfully challenged provisions of the *Canada Elections Act* prohibiting the sale of alcohol on Election Day as interfering with his right to do business. And in *Pinkus Bregman v. The Attorney General of Canada*, currently under reserve by the Supreme Court of Canada, a Russian World War II veteran challenged the 10-year residency requirement to qualify for war veteran's allowances as unjustifiably discriminatory.

Other cases included the successful defence of two Ministers charged with contempt of court after their officials failed to comply with the terms of a court order, and the successful defence of an injunction application in *Weizfield v. Her Majesty the Queen* in which peace campers attempted to enjoin their removal from Parliament Hill after having maintained a camp there for more than a year.

■ Winnipeg Regional Office

The Winnipeg Regional Office represents the Attorney General of Canada in Manitoba with recourse to agents in certain circumstances. It also supervises agents in northwestern Ontario. The Office employed 11 lawyers in 1985-86, four in criminal prosecutions, four in civil litigation; one in property and commercial law, one with the Department of Indian Affairs and Northern Development and a General Counsel responsible for administration and litigation.

There has been a notable increase in *Charter* issues during the year in civil, criminal and commercial work.

Among the more important cases were *Stepp v. Her Majesty the Queen*, which raised the issue of whether the Federal Crown should be vicariously liable for an act of negligence committed by an RCMP officer at a remote northern posting. The officer had driven a snowmobile into a tree at high speed while giving a nurse a ride home after a party. The plaintiff nurse argued that RCMP officers posted at isolated one-man detachments should be considered on duty 24 hours a day within the scope of their employment. The Federal Court Trial Division dismissed the action against the Federal Crown, holding that the officer had stepped outside the scope of his employment.

In *Collins v. Stocks*, a motion was made in the Manitoba Court of Queen's Bench by a trustee in bankruptcy for a declaration that a veteran's "interest" under an Agreement of Sale of land was part of the estate in bankruptcy or that the trustee was entitled under the Agreement to pay out the outstanding balance and request title. The motion was dismissed.

The Manitoba Court of Appeal upheld the Court of Queen's Bench decision in *Regina v. Guberman*. The decision upheld evidence obtained as the result of a search of the passenger of a motor vehicle. The motor vehicle had been stopped on an ALERT check. Due to the odour of marijuana and the discovery of a small bag of marijuana hidden in a common area of the car, the passenger and driver were taken to the police station where the passenger was subsequently searched. Issues of unreasonable search, and delay of the right to obtain and instruct counsel, were raised. The Court of Appeal upheld the validity of the search and thereby distinguished the Supreme Court decision in *Regina v. Therens*.

The *ICG Utilities (Manitoba) Ltd.* matter involved a major intervention in a rate case on behalf of the Department of National Defence. The Department successfully argued that the applicant's capital structure and rate of return on equity were unfair and unreasonable. The decision resulted in a saving to all customers of approximately \$1 million annually.

Regina v. Genser involved an appeal to the Manitoba Court of Appeal from a dismissal of a charge of conspiracy to traffic in cocaine. In allowing the appeal and ordering a new trial, the Manitoba Court of Appeal clarified the law relating to "buy-sell" conspiracies. This case is being appealed to the Supreme Court of Canada.

■ Saskatoon Regional Office

The Saskatoon Regional Office provides legal services to all federal departments for their Saskatchewan operations and conducts civil and criminal litigation throughout the province. These services are provided by nine lawyers, three law students and seven support staff. A sub-office in Regina is staffed for two days each week by members of the Property and Commercial Law Group. Other lawyers are assigned to civil litigation or criminal prosecutions. Legal services are also provided part-time to the Department of Indian Affairs and Northern Development Regional Office in Regina. Twenty-five prosecuting agents of the Attorney General of Canada in Saskatchewan are supervised by the Saskatoon Office.

Members of the Office were involved in several important cases during the year. In *Regina v. Nelson*, the Provincial Court dismissed tax evasion charges after finding the seizure of documents from the accused to be contrary to the *Charter*. The Court of Queen's Bench upheld that decision. The Federal Crown, in an appeal to the Court of Appeal, argued that even if the evidence was obtained unconstitutionally, it nonetheless meets the *Charter* test of admissibility because it can be used at trial without bringing the administration of justice into disrepute. A decision is pending.

The plaintiff in *Borowski v. the Attorney General of Canada* contended that *Criminal Code* provisions on abortion were contrary to the *Charter*. The Court of Queen's Bench dismissed the case, which was then appealed to the Court of Appeal for Saskatchewan. The decision was reserved.

The accused in *Regina v. Bouclin, Jackson and Nienhuis* were all charged with conspiracy to traffic in a narcotic in February 1982. The trial was delayed 26 months, by agreement with defence counsel, to await the result of an appeal in a similar case. It was then delayed a further 22 months because the court was unable to schedule time for the case. Hence, the trial was delayed a total of four years. The Court of Queen's Bench held that the delay was a denial of the accused's right under the *Charter* to be tried within a reasonable time and dismissed the charges. The decision was appealed to the Saskatchewan Court of Appeal.

In *Regina v. Avet Electronics Ltd. et al*, the accused were charged with operating a television broadcasting system without a licence. The defendants brought a preliminary motion to quash search warrants to obtain the broadcasting equipment seized. The motion was dismissed as the equipment was seized pursuant to valid search warrants. The case was to proceed to trial.

The Office has been involved in several important non-litigious matters, including the settling of certain Indian land claims which had been in abeyance for 100 years. As well, the Property and Commercial Law Group worked on the subdivisions and land exchanges required to establish Batoche National Historic Park.

■ Edmonton Regional Office

The Edmonton Regional Office represents all government departments and most government agencies in Alberta in prosecutions under all federal statutes other than the *Criminal Code*. This includes civil and tax litigation as well as commercial and property law. Tax litigation services are provided for Saskatchewan and the Northwest Territories. In addition, the Office manages the work of private sector agents retained to assist with criminal prosecutions and civil litigation.

The number of employees decreased in the fiscal year 1985-86 from 32 to 29 lawyers, including one devoted exclusively to tax collection work. Nine were engaged in criminal prosecutions, five in civil litigation, five in property and commercial law, advisory and opinion work and nine in tax litigation.

Progress was made in implementing the Department's Affirmative Action Plan, with four women advancing to the officer category.

The Civil Litigation Section handled a number of significant cases in contract, tort and administrative law. By far the most important was its joint involvement with headquarters staff in *Winterhaven Stables Limited v. the Attorney General of Canada* in which the plaintiff sought a declaration that the *Income Tax Act* was *ultra vires* Parliament on the ground, *inter alia*, that it imposes a direct tax to raise revenue in the provinces. In addition, the plaintiff challenged the constitutional validity of the *Canada Health Act*, the *Canada Assistance Plan* and the *Federal-Provincial Fiscal Arrangements and Post-Secondary Education and Health Contributions Act*.

The Property and Commercial Law Section was counsel for the Canada Deposit Insurance Corporation in application for the order winding up the Canadian Commercial Bank and other litigation arising from the liquidation of that bank. As well, counsel obtained an order enjoining the CCB Mortgage Investment Corporation from making payments to depositors, pending reorganization discussions between the Corporation and the Minister of Finance.

Cases handled by the Criminal Prosecutions Group include *Federal Republic of Germany v. Gruener*, an extradition under the Canada-Federal Republic of Germany Extradition Treaty. A convicted felon, who fled from West Germany and was arrested in Calgary on mischief charges, was subsequently extradited.

In *The Queen v. 264544 Alberta Ltd. and Charles Fix*, the accused were charged under the *Aeronautics Act* with operating an unlicensed air charter service. They contended that their service was not unlicensed because they had been authorized to operate under an agreement with a third party, to whom a licence had been issued. The conviction was reversed on a summary conviction appeal but restored on further appeal to the Alberta Court of Appeal.

The accused in *The Queen v. Reed* was charged with failing to file income tax returns and refusing to comply with requests for information about his income. The accused contended successfully that the request for information, because of its compulsory features, amounted to a violation of his right to freedom of expression guaranteed in section 2 (b) of the *Charter*. An appeal from this decision was pending.

In *McGill v. the Minister of National Revenue*, a taxpayer sought an order extending the time within which to serve a notice of objection to an assessment under section 167 of the *Income Tax Act*. The taxpayer argued, in effect, that he was unaware of a time limit within which such an objection must be filed. His application was refused by the Tax Court. On appeal to the Federal Court of Appeal, pursuant to section 28 of the *Federal Court Act*, the Court dismissed the case stating that ignorance of the law was irrelevant to the determination of whether such an order could be granted, and affirming the conditions on the tests to be met laid out in section 167. The Supreme Court of Canada refused to grant leave from this decision.

■ Vancouver Regional Office

The Office provides a full range of legal advice and services to federal departments and agencies in respect of their operations in British Columbia.

Twenty-one of the Office's 57 lawyers were engaged in prosecuting violations of federal laws in 1985-86. Most prosecutions concerned illegal dealings in narcotic drugs. Almost 3,000 cases of possession, trafficking and possession for the purpose of trafficking or importation were handled this year. Lawyers from the Office travelled throughout the Yukon and the Northwest Territories prosecuting federal, territorial and *Criminal Code* offences.

Eleven tax lawyers defended more than 400 income tax assessments in British Columbia and the Yukon Territory. Fourteen lawyers in the Civil Litigation Section defended claims against the Crown totalling more than \$300 million.

The 11 property and commercial law lawyers conducted the government's real estate development and commercial transactions in B.C., including the sale of federal Crown properties totalling some \$15 million. These included the former B.C. Penitentiary site and the Alvin Building, each worth \$5.2 million. Lawyers in this group also prepared leases required for the \$37 million restoration and development of four historic federal buildings, now known as the "Sinclair Centre", covering one block of prime land in downtown Vancouver. Members of the group also saw to the conveyancing of federal land to British Columbia for a new residential and commercial development on the Songhees Peninsula in downtown Victoria.

The *Derrickson* and *Paul* cases were argued before the Supreme Court of Canada. In these cases, the court decided that provisions of the B.C. *Family Relations Act* which empower the B.C. Supreme Court to order the sale of a matrimonial home, or to order that possession of the home be given to one of the spouses, do not apply when the matrimonial home is on an Indian reserve. This decision means that other measures must be taken to protect Indian spouses' claims to reserve lands in matrimonial disputes.

The office's tax litigation section handled the *Western Technologies Corporation* and *Bechtold Resources Limited* cases this year. At stake was the ability of the Department of National Revenue to collect taxes arising from the scientific research tax credit scheme. During 1985-86, the problem of collection became acute as it appeared that large sums of taxes were put in foreign accounts, beyond the reach of the government. These cases were before the Federal Court of Appeal.

Lawyers in the prosecutions group successfully argued the case of *Transpacific Tours v. The Director of Investigation and Research* before the B.C. Court of Appeal. The court upheld the constitutional validity of a section of the *Combines Investigation Act* allowing the Restrictive Trade Practices Commission to examine persons and documents which might provide evidence of an illegal conspiracy to lessen competition unduly. The Commission's ability to secure evidence of violations would have been seriously impaired had the Crown not been successful.

■ Whitehorse Regional Office

Because section 2 of the *Criminal Code* defines the Attorney General of the Yukon Territory as the Attorney General of Canada, the Whitehorse Regional Office is charged with tasks and responsibilities unique within the Department. In particular, the Office conducts all *Criminal Code* prosecutions as well as all prosecutions under other federal statutes. The Office also retains a supervisory role in the conduct of prosecutions pursuant to Yukon territorial legislation. Finally, the Office conducts all prosecutions under the *Young Offenders Act* (*Criminal Code* and other federal statute offences) and the *Children's Act* (territorial offences).

As of 1984, the former Whitehorse Crown Attorney's Office attained Regional Office status when responsibility for all civil litigation was transferred from the Vancouver Regional Office. The Whitehorse Regional Office now has one full-time lawyer handling all civil litigation and providing legal services and advice to federal departments and agencies in Yukon.

During 1985-86, the civil side of the Office was chiefly involved in providing legal advice to the Commissioner of the Yukon Territory and the Department of Indian and Northern Affairs with respect to mining claims pursuant to the *Yukon Quartz Mining Act* and the *Yukon Placer Mining Act*. The Office also continued as legal advisor to Health and Welfare Canada in relation to applications under the *Mental Health Act*.

One of the Office counsel sits on the Board of Directors of Yukon Public Legal Education. The Regional Director is involved in the Ad Hoc Committee on Child Sexual Abuse, the New Courthouse Users' Committee, the Justice Steering Committee and the Court Liaison Committee, and acted as a special advisor to the 1985 Task Force on Family Violence. Members of the Whitehorse Regional Office also participate in training programs for Justices of the Peace. Finally, counsel are involved in community-based diversion programs for young offenders.

Among noteworthy cases this year, in *Regina v. Kenneth James Bailey*, the accused challenged the *Criminal Code* provisions which authorize a jury of six persons in the Yukon Territory. Mr. Justice H.C.B. Maddison of the Yukon Supreme Court held that the *Code* provisions violate section 15 of the *Canadian Charter of Rights and Freedoms*.

In the aggravated assault case of *Regina v. Darlene McGinty*, the defence argued that the victim (the accused's spouse) was a competent but not compellable witness for the Crown when he did not want to testify. The Territorial Court of the Yukon Territory held that the spouse was indeed both a competent and a compellable witness. The matter was pending before the Court of Appeal for the Yukon Territory.

In *Regina v. Mazur and Taylor*, the defence brought an application before the Territorial Court to join two separately-charged accused in a single information. While the application was successful at first instance, the Crown obtained *mandamus* compelling the Territorial Court to proceed with the charges as presented by the Crown. The defence was unsuccessful in an appeal to the Court of Appeal and has sought leave to appeal to the Supreme Court of Canada.

■ Yellowknife Regional Office

This Office comprises eight lawyers who provide legal services to federal departments, agencies and commissions in the Northwest Territories, prosecute all offences under the *Criminal Code*, federal statutes and territorial ordinances, and conduct inquests under the Coroner's Ordinance. Six lawyers and the Senior Counsel travel with circuit courts throughout the five time zones and 3.2 million square kilometres of the territories. One lawyer provides civil litigation, property and advisory services from Yellowknife.

The most significant development in the administration of justice in the Northwest Territories this year has been in connection with jury trials.

In *Regina v. Punch*, the Northwest Territories Supreme Court struck down section 561 of the *Criminal Code* which provided for a jury of six persons in the Territories. The Court followed a similar ruling from the Yukon Supreme Court, relying on equality provisions in section 15 of the *Canadian Charter of Rights and Freedoms*.

Since the October 1985 ruling, juries of 12 persons have heard trials in Fort Rae, Yellowknife, Inuvik, Hay River, Cape Dorset, Coppermine, Fort Smith, Rankin Inlet, representing communities ranging in population from 13,000 in Yellowknife to 800 in Cape Dorset. This record confirms the continued ability of the northern courts to bring justice to everyone's door.

In Yellowknife, two trials by juries of 12 persons were held in French pursuant to Part XIV.1 of the *Criminal Code* (language of trial provisions). While French-language jury trials have been held in the Territories in the past, these were the first with 12 jurors. Appeals in these cases, pending before the Northwest Territories Court of Appeal, were expected to be the first appeals heard and argued in French before this Court.

Appendix I

■ Statutes for Which the Minister of Justice is Responsible 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
- Canada-United Kingdom Civil and Commercial Judgments Convention Act*, S.C. 1984, c.32
- 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, c.10 (2nd Supp.)
- Food and Drugs Act*, R.S.C. 1970, c.F-27
- Foreign Enlistment Act*, R.S.C. 1970, c.F-29
- Foreign Extraterritorial Measures Act*, S.C. 1984, c.49
- 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, c.23 (1st Supp.)
- 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
- Tax Court of Canada Act*, S.C. 1980-81-82-83, c.158 (Part I)
- Tobacco Restraint Act*, R.S.C. 1970, c.T-9
- War Measures Act*, R.S.C. 1970, c.W-2

Appendix II

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

Agricultural Products Board	Ministry of State for Multiculturalism
Agricultural Stabilization Board	Ministry of State for Science and Technology
Agriculture	Ministry of State for Youth
Atomic Energy Control Board	National Battlefields Commission
Canadian Commercial Corporation	National Capital Commission
Canadian Dairy Commission	National Defence
Canadian Grain Commission	National Farm Products Marketing Council
Canadian International Development Agency	National Film Board
Canadian Pension Commission	National Library
Canadian Security Intelligence Service	National Museums of Canada
Communications	National Parole Board
Consumer and Corporate Affairs	National Research Council
Correctional Service Canada	Northern Canada Power Commission
Defence Construction (1951) Limited	Northern Pipeline Agency
Employment and Immigration Commission	Prairie Farm Rehabilitation Administration
Energy, Mines and Resources	Public Archives
Environment	Public Service Commission
External Affairs	Public Works
Finance	Regional Industrial Expansion
Fish Prices Support Board	Revenue Canada (Customs and Excise)
Fisheries and Oceans	Revenue Canada (Taxation)
Fishing Vessels Insurance Plan	Royal Canadian Mint
Fitness and Amateur Sport	Royal Canadian Mounted Police
Fresh Fish Marketing Board	Secretary of State
Health and Welfare	Solicitor General
Indian Affairs and Northern Development	Statistics Canada
Insurance	Status of Women
Inspector General of Banks	Supply and Services
Investment Canada	Textile and Clothing Board
Labour	Transport
Labour Adjustment Review Board	Treasury Board
Livestock Feed Board	Veterans Affairs
Medical Research Council	War Veterans Allowance Board
Merchant Seamen Compensation Board	

Appendix III

■ Grants and Contributions — 1985-86

Recipient	Project	Contribution
<input type="checkbox"/> Human Rights Law Fund		
Business and Professional Women's Association of Yellowknife (Yellowknife)	Northwest Territories Conference on Equality Rights in the <i>Charter</i> and the Northwest Territories Human Rights Code	\$20,000
Canadian Association of Children and Adults with Learning Disabilities (Ottawa)	Development of a position on the federal government discussion paper on equality rights and presentation to the Subcommittee of the House of Commons on Equality Rights	\$ 5,405
Canadian Ethno-Cultural Council (Ottawa)	Submission on multicultural component of section 15 to the Subcommittee of the House of Commons on Equality Rights	\$33,000
Canadian Human Rights Foundation (Montreal)	Human rights and indigenous self-government research project to examine the relationship between human rights exercised by indigenous people and collectivities	\$ 9,600
Canadian Human Rights Foundation (Montreal)	Seventh annual summer course on human rights	\$40,000
Coalition of Provincial Organizations of the Handicapped (Winnipeg)	Preparation and presentation of a brief to the Subcommittee of the House of Commons on Equality Rights	\$30,000
Comité Logement Rosemont (Montreal)	Inquiry into women and housing concerning rights and freedoms in the area of housing	\$ 5,115
Committee for Racial Justice (Vancouver)	Brief on minority rights to the Sub-Committee of the House of Commons on Equality Rights	\$ 4,500
Delos Davis Law Guild (Toronto)	International conference of black lawyers and jurists	\$ 7,500
Faculté de droit, Université Laval (Quebec)	Fourth international constitutional law conference on state sovereignty and fundamental rights and on security, order and rights, June 1986	\$55,000
Faculty of Law, University of Toronto (Toronto)	Constitutional litigation program on <i>Charter</i> issues	\$ 5,000
Law Related Education Group, University of British Columbia (Vancouver)	Charter Watch Project to develop an introductory list on Charter decisions, a manual and guide for teachers/animations in the field of human rights	\$10,000

Recipient	Project	Contribution
Maloney, Peter	Submission on sexual orientation to the Subcommittee of the House of Commons on Equality Rights	\$ 5,700
National Association of Women and the Law (Ottawa)	Publication of an issue of the Canadian Journal of Women and the Law on human rights	\$20,000
National Association of Women and the Law (Ottawa)	Brief on women's issues to the Subcommittee of the House of Commons on Equality Rights	\$10,000
National Association of Women and the Law (Ottawa)	Feasibility study to develop a Canadian Journal of Women and the Law	\$10,000
Phoenix Rising Magazine (Toronto)	Special issue of the Phoenix Rising Magazine regarding the <i>Charter</i> and the psychiatric system	\$18,660
Public Legal Education Society of B.C. (Vancouver)	Production of a 30-minute video about the <i>Charter</i> and the rights and freedoms it protects	\$15,000
Simon Fraser University, Faculty of Education (Burnaby)	Research study on the equal benefit of the law and the constitutional implications for education for disabled children	\$13,000

☐ **Consultation and Development Fund**

Association des professeurs de droit du Québec (Montreal)	Annual meeting of the association on "Legal Research and the Teaching of Law: New Approaches"	\$ 1,000
Canadian Arbitration, Conciliation and Amicable Composition Centre (Ottawa)	Publication of the proceedings of an arbitration seminar	\$ 1,451
Canadian Council on International Law (Ottawa)	Fourth annual Conference on International Law entitled "Regulation and Deregulation: Emerging Trends and Issues"	\$ 4,000
Canadian Environmental Law Research Foundation (Toronto)	Research project on citizen intervention across the international border and preparation for the general public of a handbook on legal methods of cross-border intervention	\$ 9,443
Canadian Institute for the Administration of Justice (Edmonton)	Judicial seminar on family law, Halifax	\$10,000
Faculté de droit, Université Laval (Québec)	International colloquium on commercial arbitration	\$15,000
Faculté de droit, Université d'Ottawa (Ottawa)	National conference on the Supreme Court of Canada, including the division of powers, civil and common law, penal law, structure and function, the <i>Charter</i> and other countries	\$18,000

Recipient	Project	Contribution
Faculty of Social Sciences, Carleton University (Ottawa)	Production of a pamphlet entitled, "The Crime of Movement: The Pass Laws in South Africa" by Professor Kevin Boyle and a video of his lectures	\$ 1,108
Family Mediation Canada (Toronto)	Training session in family mediation, Halifax	\$ 3,114
International Youth Year Conference on Law, Inc.	Research and preparation of materials and final report on international youth year conference on law	\$15,000
National Association of Women and the Law (Ottawa)	Publication of an information booklet on federal and provincial laws for women in P.E.I.	\$ 2,000
Professor David J. Mullan, Faculty of Law, Queen's University (Kingston)	Report on Birmingham Colloquium on Comparative Law dealing with government liability, compensation and the law of civil wrongs	\$ 679
Union internationale du notariat latin (Montreal)	Eighteenth Conference of l'Union internationale du notariat latin, to be held September 21-27, 1986	\$10,000
<input type="checkbox"/> Criminal Law Reform Fund		
Calgary Police Service (Calgary)	Model victim impact statement to be administered by the Victims Services Unit	\$28,606
Canadian Council on Children and Youth (Ottawa)	Development of a private sector mechanism to follow up the concerns of the Badgley and Fraser reports	\$25,482
Canadian Criminal Justice Association (Ottawa)	1985 Congress on Criminal Justice	\$ 5,000
Canadian Criminal Justice Association (Ottawa)	Seminar on victims' rights and the judicial process to address issues being considered by the Federal-Provincial Working Group on Victims	\$10,000
Canadian Institute for the Administration of Justice (Edmonton)	Publication of the proceedings of the Institute's annual conference dealing with many issues raised by the <i>Charter</i>	\$10,000
Chairman of the Yukon Compensation to Victims of Crime Board	Funding to allow a representative of the National Association of Directors of Compensation to Victims of Crime Boards to participate in the Federal-Provincial Task Force on Victims of Crime	\$ 5,093
Child Protection Centre (Winnipeg)	Child advocacy demonstration project to provide public legal education to native groups and training to Crown counsel and, with native organizations, to implement approaches to improving service to victims on reserves	\$68,750

Recipient	Project	Contribution
Community Justice Initiatives (Waterloo)	Promotion of new activities of the Community Justice Resource Centre and development of a national network and newsletter	\$34,238
Community Law Program of Windsor (Windsor)	Publication of a volume of Canadian Community Law Journal on victims' rights	\$ 9,923
Community Services Council of Newfoundland (St. John's)	Printing and distribution of 200 copies of reports of the Working Group on Child Sexual Abuse	\$ 2,800
Manitoba Victim-Witness Advisory Board (Winnipeg)	Development of victim impact statements and their introduction into the court system	\$43,725
Metro Toronto Chairman's Special Committee (Toronto)	Study to develop initiatives aimed at improving community responses to child sexual abuse victims	\$ 9,500
National Associations Active in Criminal Justice (Ottawa)	Criminal Justice and Victim Offender Community Reconciliation Seminar to discuss overview of reconciliation paradigm and programs, obstacles to reconciliation in the community, role of institutions and structural changes	\$ 1,300
Prince Edward Island Department of Justice	Feasibility study to implement a fine option program in Prince Edward Island	\$14,000
Simon Fraser University (Burnaby)	Northern Youth in Crisis: A Challenge for Justice conference and workshops on native issues in northern Canada	\$ 1,900
Society Against Family Abuse (Yellowknife)	Conference on family violence	\$14,967
The Battleford Prosecution Unit (North Battleford)	Demonstration project for gathering and delivering victim impact statements	\$43,821
The John Howard Society of Manitoba	A series of four workshops on community service orders and fine options in various Manitoba locations	\$36,604
The Legal Information Research Group (Quebec)	Publication of French and English versions of a manual entitled "Crime Victims Compensation in Quebec"	\$ 452
University of Toronto	Two-day conference on the implications of the Badgley Report for British Columbia	\$ 333
Vancouver Incest and Sexual Abuse Centre Society (Vancouver)	Support to victims through the criminal justice system and liaison with criminal justice officials about specific problems of child abuse	\$57,026

Recipient	Project	Contribution
<input type="checkbox"/> Special Projects - Legal Aid		
Legal Services Society of B.C. (Vancouver)	Delivery of legal services in the Fort Nelson area using a satellite service to the regional office in Fort St. John	\$54,414
<input type="checkbox"/> Access to Legal Information Fund		
Arctic Public Legal Education and Information Society (Yellowknife)	Public legal information program in the Northwest Territories	\$30,000
B.C. Public Interest Advocacy Centre (Vancouver)	Training sessions to intermediaries and compensation workers on legal information about the family court system	\$14,766
Canadian Legal Advocacy, Information and Research Association of the Disabled (CLAIR) (Ottawa)	Production of an issue of "Just Cause/En toute justice" magazine on the disabled and the courts	\$ 9,000
Community Legal Education Association of Manitoba Inc. (Winnipeg)	Public legal information program in Manitoba	\$60,000
Community Legal Information Association of P.E.I. (Charlottetown)	Public legal information program in Prince Edward Island	\$53,240
Community Legal Education (Manitoba) (Winnipeg)	Development of "Youth and the Law" series to provide information to youths about the law and the role of youths in the legal system	\$14,000
Community Legal Education Ontario (Toronto)	Production of a multimedia legal education publication entitled "Street Level Magazine" and development of four computer legal games for youth	\$17,985
Public Legal Education Society of Nova Scotia (Halifax)	Production of a film "In Trouble with the Law" directed at junior high school youth	\$20,000
Public Legal Information Association of Newfoundland (St. John's)	Public legal information program in Newfoundland	\$60,000
Services juridiques communautaires (Moncton-Dieppe)	Funding to develop a public legal education and information program	\$45,000
Yukon Public Legal Education Association (Whitehorse)	Public legal information program in Yukon	\$60,000

Appendix IV

■ Publications of the Research and Statistics Section — 1985-86

☐ Victims and Witnesses of Crime

Criminal Injuries Compensation in Canada, Department of Justice.

Evaluation Assessment of Treatment Groups for Men Who Batter, Abt Associates of Canada.

Evaluation of the Ottawa Witness Co-ordinator Project, Abt Associates of Canada.

Evaluation of Witness Assistance Programs (Saint John and Campbellton), Robert P. Mullaly.

Legal Response to Wife Assault in the Northwest Territories, The: Criminal Prosecutions in 1984, Catherine J. Borrie.

Report on Family Violence in the City of Halifax, A, Dr. E. Jane Campbell.

Review of Court-Based Victim/Witness Projects, Abt Associates of Canada.

Survey of Victims' Legal Information Needs, Department of Justice.

☐ Working Papers on Pornography and Prostitution

Agreements and Conventions of the United Nations with respect to Pornography and Prostitution, D. Sansfaçon.

Canadian Newspapers' Coverage of Pornography and Prostitution — 1978-1983, M. El Komos.

Canadians' Attitude Toward and Perceptions of Pornography and Prostitution, Peat Marwick and Partners.

Content Analysis of Sexually Explicit Videos in British Columbia, A, T.S. Palys.

Development of Law and Public Debate in the United Kingdom in Respect of Pornography and Obscenity, The, Ian Taylor.

Impact of Pornography, The: An Analysis of Research and Summary of Findings, H.B. McKay, D.J. Dolff.

Ladies (and Gentlemen) of the Night and the Spread of Sexually Transmitted Diseases, The, M. Haug and M. Cini.

Pornography and Prostitution in Denmark, France, West Germany, the Netherlands and Sweden, J. Kiedrowski, J.M. van Dijk.

Pornography and Prostitution in the United States, D. Sansfaçon.

Prostitution and Pornography in Selected Countries, C.H.S. Jayewardene, T.J. Juliani, C.K. Talbot.

Prostitution in Canada: A Research Review Report, D. Sansfaçon.

Report on Prostitution in Ontario, A, J. Fleischman.

Report on Prostitution in Quebec, R. Gemmè, A. Murphy, M. Bourque, M.A. Nemeh and N. Payment.

Report on Prostitution in the Atlantic Provinces, A, N. Crook.

Report on Prostitution in the Prairies, A, M. Lauth.

Sexuality and Violence, Imagery and Reality: Censorship and The Criminal Control of Obscenity, N. Boyd.

Survey of Canadian Distributors of Pornographic Material, A, B. Kaite.

Vancouver Field Study of Prostitution, J. Lowman.

☐ Divorce Mediation

Profile of Divorce Mediation and Reconciliation Services in Canada, A, Department of Justice.