



Department of Justice Ministère de la Justice
Canada Canada

Justice

Annual Report 1987-1988

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Department of Justice
Canada



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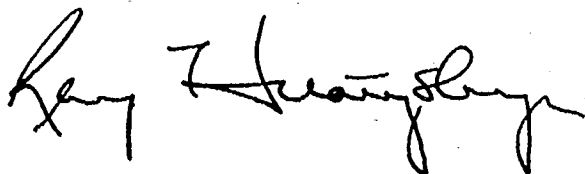
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To Her Excellency
The Right Honourable Jeanne Sauvé
Governor General of Canada

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, 1987, to March 31, 1988.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Ray Hnatyshyn". The signature is fluid and cursive, with the first name "Ray" written in a larger, more prominent script than the last name "Hnatyshyn".

Ray Hnatyshyn

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

August 31, 1988

Mr. Minister:

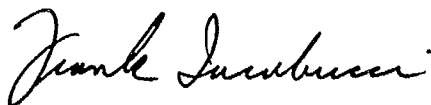
I am pleased to submit the sixth annual report of the Department of Justice for the fiscal year ending March 31, 1988.

This was an important year for the Department. In addition to our extensive involvement in the legal aspects of the Canada - United States Free Trade Agreement and the Meech Lake Accord, our activities included work in reform of the *Criminal Code* and sentencing procedures, on procedures to assist victims of crime and compensate persons wrongfully convicted of criminal offences, and on improving access to government information and protecting personal privacy.

During the year, the Department met growing responsibilities in the conduct of federal litigation. In particular, major challenges arising from the *Canadian Charter of Rights and Freedoms* continued to increase, with cases as diverse as one contesting the use of tax money for military purposes and another challenging the legality of fingerprinting persons charged with indictable offences. As well, the Department continued to provide other federal departments and agencies with legal advice for virtually all their activities.

Throughout the year, the employees of the Department — at headquarters, in legal services units and in regional offices — worked with enthusiasm and dedication. Their high level of commitment was vital to the realization of the Department's objectives.

Sincerely,



Frank Iacobucci
Deputy Minister of Justice and
Deputy Attorney General

Table of Contents

MINISTER OF JUSTICE AND ATTORNEY GENERAL OF CANADA	1
HIGHLIGHTS 1987-88	3
DEPARTMENTAL ORGANIZATION	5
Deputy Minister's Office	7
Committees	8
CORPORATE MANAGEMENT BRANCH	9
LITIGATION SECTOR	13
Civil Litigation Branch	13
Criminal Law Branch	15
Tax Law Branch	18
Admiralty and Maritime Law	19
Chief General Counsel	21
Regional Offices	22
- Halifax	22
- Toronto	23
- Winnipeg	24
- Saskatoon	25
- Edmonton	26
- Vancouver	27
- Whitehorse	28
- Yellowknife	28
POLICY, PROGRAMS AND RESEARCH BRANCH	31
Criminal and Family Law Policy Directorate	31
Criminal Law Review Group and Protection of Life Project	31
Compliance and Regulatory Remedies Project	32
Programs and Policy Directorate	32
Research and Development Directorate	32

ASSOCIATE DEPUTY MINISTER'S SECTOR	39
Public Law Branch	39
- Constitutional and International Law Section	39
- Advisory and Administrative Law Section	39
- Privy Council Office Section (Justice)	39
- Federal-Provincial Relations Office Section	40
- Human Rights Law Section	40
- Native Law Section	40
Legislative Programming Branch	42
- Legislation Section	42
- Statute Revision Commission	42
- Legislative Editing Office	42
Civil Litigation and Real Property Law (Quebec) Section	43
Montreal Regional Office	44
National Program for the Integration of the Two Official Languages in the Administration of Justice	46
DEPARTMENTAL LEGAL SERVICES SECTOR	47
ABORIGINAL LAW	51
DEPARTMENTAL GRANTS AND CONTRIBUTIONS	53
APPENDIX I	
Statutes for which the Minister of Justice Is Responsible in Whole or in Part	58
APPENDIX II	
Departments, Agencies and Other Bodies Served by the Departmental Legal Services Sector	59
APPENDIX III	
Selected Publications, 1987-88	60
APPENDIX IV	
Departmental Legislation Tabled in 1987-88	61

Minister of Justice and Attorney General of Canada

The duties of the Minister of Justice and the Attorney General of Canada are distinct and separate but are traditionally carried out by the same person. The Minister is the legal advisor to the Governor General and the chief legal member of the Privy Council. The Attorney General is the chief law officer of the Crown, representing the Crown in all litigation of concern to the federal government, including that of all departments and agencies of the government.

The Minister of Justice, on the other hand, is concerned with policy considerations underlying the law. The Minister must ensure that our laws are fair and in compliance with constitutional principles. Proposed legislation and regulations must be examined to ensure that they do not infringe fundamental human rights and freedoms.

These two roles yield complex and diverse responsibilities. Under the *Department of Justice Act*, the Minister of Justice and Attorney General:

- ☐ provides legal services to the Government of Canada and its departments and agencies, including the provision of legal advice, the conduct of litigation, the drafting of legislation and the preparation of legal documents;
- ☐ plans, develops and implements all government policies related to the administration of justice; and
- ☐ ensures that the affairs of government are administered in accordance with the law.

Also guiding the Department in fulfilling its responsibilities are the *Canadian Bill of Rights*, the *Canadian Charter of Rights and Freedoms*, the *Statutory Instruments Act*, and the *Statute Revision Act*. A list of statutes for which the Minister of Justice is responsible in whole or in part is contained in Appendix I.

Highlights 1987-88

In a busy and eventful year, the Department of Justice played a direct and significant role in contributing to many of the government's achievements under its major overall goals of national reconciliation, economic renewal, social justice and constructive internationalism.

The Department's work in support of these objectives is reflected by its key involvement in constitutional reform; in the drafting and signing of a landmark trade agreement with the United States; in legislation to provide mutual legal assistance to other countries, to combat torture and to bring war criminals to justice; and, finally, in the formulation and enactment of a number of measures to improve social justice and the quality of life for all Canadians.

■ Meech Lake Accord

The Department advised the Prime Minister and the government on the Meech Lake Accord, and was involved in negotiations leading to the Accord, including drafting of the document and providing advice on the ratification process.

■ Free Trade

The Department provided the Prime Minister and the government with advice on the Canada - United States Free Trade Agreement, as well as on its constitutional implications. The Department also drafted the legislation for the Agreement.

■ Legal Services

Legal advice was provided to the government for the creation of the Atlantic Canada Opportunities Agency, the Western Economic Diversification Office, the Canadian Space Agency and the Manned Space Station, and legal services units were established for the two first-named organizations.

■ Litigation

Cases stemming from the *Canadian Charter of Rights and Freedoms* continued to increase in volume and complexity during the year. Two of the major constitutional challenges were *Jerilynn Prior v. The Queen*, which will determine whether the requirement to pay federal taxes to support the military infringes on a taxpayer's freedom of conscience and religion; and *Twin v. The Queen*, which challenges the validity of amendments to the *Indian Act* that grant Indian status to Indians previously deprived thereof.

■ Criminal Code

Consideration of the Law Reform Commission's Draft Criminal Code continued throughout the year, with emphasis on consultations with the provinces on the General Part of the Report.

■ Victims of Crime

The Department developed comprehensive proposals to assist victims of crime. Bill C-89, an *Act to Amend the Criminal Code (victims of crime)*, was introduced in the House of Commons on November 5, 1987. Federal-provincial criminal injuries compensation agreements were substantially enhanced during the year and a Victim Assistance Fund was established to support development by the provinces and territories of programs and services for such victims. Departmental officials took part in developing a Statement of Basic Principles of Justice for Victims of Crime, adopted by ministers responsible for criminal justice in March 1988.

■ Child Sexual Abuse

Legislation on child sexual abuse, which the Minister introduced last year, became law on January 1, 1988. The legislation creates new offences designed to protect children from sexual abuse and permits children under the age of 14 to appear as witnesses without the need for corroboration.

■ Sentencing

The final report of the Canadian Sentencing Commission was tabled in the House of Commons by the Minister on March 25, 1987. The Department was involved in consultations on the report throughout the year, an activity that will continue into the 1988-89 fiscal year.

■ Pornography

The Minister introduced legislation (Bill C-54) to strengthen and clarify the law against pornography. The legislation, dealing with pornography and erotica, was before the House of Commons at the end of the year under review.

■ Mutual Legal Assistance

The Minister introduced Bill C-58, the proposed *Mutual Legal Assistance in Criminal Matters Act*, on May 13, 1987. This legislation, which received second reading on September 15, 1987, and was referred to a special legislative committee for study, would create the legal framework for implementing mutual legal assistance treaties, including the 1985 treaty with the United States.

■ Proceeds of Crime

Bill C-61 provides for the seizure, restraint and forfeiture of proceeds of crime. It was introduced by the Minister on May 29, 1987, and received second reading on September 15, 1987. The Bill was under review by a special legislative committee at the end of the 1987-88 fiscal year.

■ Wrongful Convictions

A set of guidelines concerning compensation for wrongfully convicted and imprisoned persons was developed during the year and approved by federal and provincial ministers responsible for criminal justice in March 1988.

■ War Criminals

Bill C-71, an *Act to Amend the Criminal Code, the Immigration Act, 1976, and the Citizenship Act*, was passed by Parliament September 15, 1987, and received Royal Assent the following day. It was proclaimed in force on October 30, 1987. The legislation enables Canada to prosecute, deny entry or refuse to grant citizenship to the perpetrators of war crimes or crimes against humanity in other countries.

■ Official Languages

Bill C-72, the *Official Languages Act*, was introduced by the Minister on June 25, 1987. The Act implements the government's official languages policy renewal, ensuring respect for both the letter and the spirit of the official languages provisions of the *Constitution of Canada*, and providing all Canadians with equal opportunity in official languages matters.

■ Torture

Bill C-28, an *Act to Amend the Criminal Code (Torture)* received Royal Assent on April 14, 1987. The amendments implemented provisions of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A new crime, "torture", was included within the Code. As a consequence, Canada ratified the UN Convention on June 24, 1987.

■ Family Law

Parts I and III of the *Family Orders and Agreements Enforcement Assistance Act* were proclaimed in force on November 30, 1987. This Act inaugurated the Department's tracing information service, allowing the release of information to trace missing persons in order to enforce support and custody orders. Part II, which is yet to be proclaimed,* will allow the garnishment of designated federal monies to enforce support.

■ Spouses' Allowances

A federal response to challenges to the *Canadian Charter of Rights and Freedoms* was prepared with respect to spouses' allowances paid under the *Old Age Security Act*.

* Part II was proclaimed in force on May 2, 1988.

Departmental Organization

The Department of Justice employed 1,494 persons in 1987-88. The major occupational group — lawyers — constituted 46 per cent of all personnel. Turnover for lawyers over the period was 6.7 per cent, slightly higher than the previous year.

Departmental staff is divided among regional offices, legal services units and headquarters. The Department's nine regional offices had a total staff of 458 during the year. These offices undertake all forms of litigation and prosecutions on behalf of the Attorney General of Canada and provide legal services to 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., which provided assistance to federal departments and agencies. The size of these units varied from one to 21 employees. In 1987-88, staff in the departmental legal services units totalled 213. In most cases, client departments or agencies provided administrative support staff.

Staff in Ottawa totalled 823. Branches representing specialized fields of law and central services such as public law, policy development, programs and research, legislative programming and administration are located at headquarters. Lawyers in civil litigation, criminal law and tax litigation are responsible for Crown litigation and prosecutions in the National Capital Region.

The Department had a budget of more than \$395 million during the year. For a detailed breakdown, please refer to the Department of Justice table of expenditures below.

Department of Justice Expenditures* Fiscal Year 1987-1988

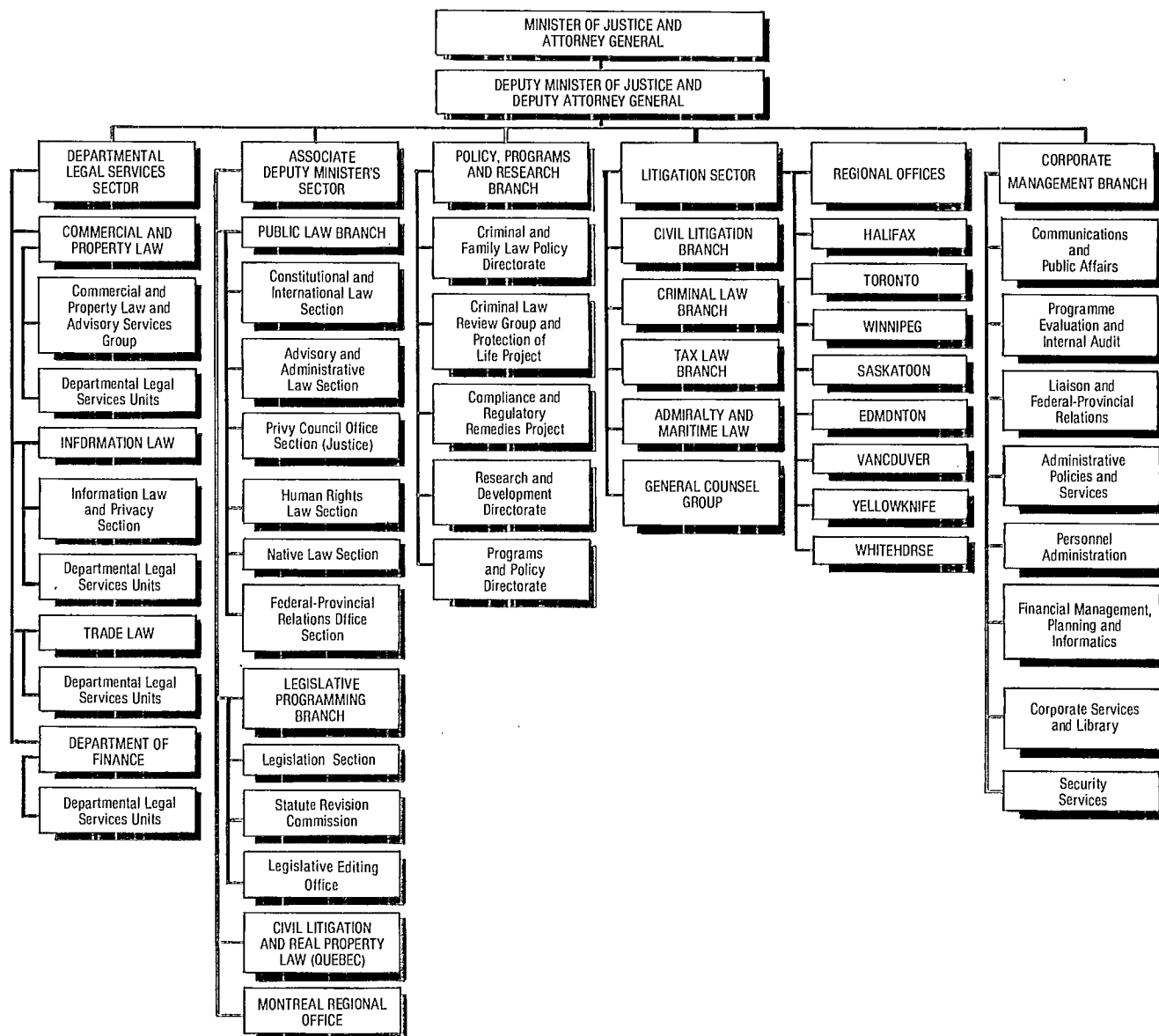
	Personnel Costs \$	Operating Costs \$	Grants and Contributions \$	Total \$
Minister's Office	1,000,473	442,045		1,442,518
Deputy Minister	583,063	90,762		673,825
Associate Deputy Minister	16,025,648	4,503,955	517,920	21,047,523
Associate Deputy Minister, Litigation	27,392,183	8,409,729		35,801,912
Senior Assistant Deputy Minister, Legal Services	18,419,642	630,999		19,050,641
Assistant Deputy Minister, Policy Programs and Research	7,403,215	6,751,342	283,403,726	297,558,283
Assistant Deputy Minister, Corporate Management	11,394,420	8,818,065		20,212,485
Total	82,218,644	29,646,897	283,921,646	395,787,187

* Figures from Public Accounts 1987-1988

Personnel (Person-Year Usage)

	1986-87	1987-88
Headquarters	716	823
Regional Offices	453	458
Legal Services Units	205	213
Total Department	1,374	1,494

Organization Chart



Deputy Minister's Office

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 Deputy Minister's Office provides support services to the Deputy Minister. In conjunction with all the branches and acting closely with the Corporate Management Branch, it interacts with the Minister's Office, other sectors of the Department and with other government departments and agencies.

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 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 are established to study particular issues. In 1987-88, they examined issues concerning victims of crime, impaired driving, proceeds of crime, compensation for wrongfully convicted and imprisoned persons, drug enforcement, criminal law reform, implementation of Bill C-15 and constructive murder.

☐ Associate Deputy Ministers

Two Associate Deputy Ministers assist the Deputy Minister in providing senior management leadership. One Associate Deputy Minister is responsible for the Public Law Branch, the Legislative Programming Branch and the supervision of all civil law matters involving the Department in Quebec. This official is the Department's primary legal advisor in the field of Quebec civil law, with administrative responsibility for the Civil Litigation and Real Property (Quebec) Section, and for all litigation of the Montreal Regional Office.

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).

Committees

Execution of the Department's responsibilities often requires the combined efforts of several branches. A system of committees has been established, bringing together special expertise and a range of perspectives to bear on important issues. The committee structure is important to the good functioning of the Department. Committees meet frequently to examine policy issues and to make recommendations to the Deputy Minister and senior officials of the Department.

☐ Executive Committee

The Executive Committee is the senior management committee, the most important decision-making forum within the Department. Chaired by the Deputy Minister, it includes the Associate Deputy Ministers, the Assistant Deputy Ministers, the Assistant Deputy Attorneys General, the Chief Legislative Counsel and the Chief General Counsel. The Committee meets twice monthly to consider legal and policy issues as well as administrative matters. It is responsible for the Department's strategic planning, including consideration of the resource needs of various sectors. The Committee considers the impact of central agency initiatives upon the Department, as well as the impact of legislation and major litigation. Considerable attention is paid to personnel issues.

☐ Deputy Minister's Advisory Committee

The Deputy Minister's Advisory Committee is composed of the senior managers from each sector of the Department. It examines policy and management issues to provide advice to the Deputy Minister. The deliberations of this Committee are regularly referred to the Executive Committee for further consideration and decision-making.

☐ Management Committee

The Management Committee is composed of managers from headquarters, regional offices and departmental legal services units. Chaired by the Deputy Minister, the Committee meets twice a year to discuss the entire spectrum of departmental management issues. It also considers legal issues that bear upon government operations. This year, the Committee considered the Department's mission and value statements. Members of the Committee also participated in seminars on free trade, constitutional amendments, official languages and tax reform. Other matters considered during the year included performance review practices, communications priorities and the implications of automation in the justice system.

☐ Other Committees

There are some two dozen corporate committees, which meet either regularly or as need dictates, to consider such issues as the implementation of the Official Languages Program; introduction of automated systems and informatics equipment; internal communications; program evaluation and internal audit; employment equity programs concerning women, disabled persons and aboriginal people; and awards for exceptional performance and leadership.

Corporate Management Branch

The Corporate Management Branch provides a full range of administrative and management support services to the Department. The Branch develops departmental policies, coordinates programs and activities and manages the use of departmental resources, in keeping with governmental policy and central agency directives. It also performs legal functions in specialized areas.

■ Organization

The Assistant Deputy Minister, Corporate Management, reports directly to the Deputy Minister.

The Personnel Administration Directorate is a centralized personnel service, providing advice to managers and administering the position classification system and staffing services. This Directorate also administers and coordinates the human resource and employment equity programs of the Department. As well, it is responsible for the implementation of the official languages program in the Department of Justice.

The Communications and Public Affairs Directorate manages and conducts all aspects of the Department's communications, from daily contact with the news media and the public to the production and distribution of print and audiovisual materials. This Directorate is responsible for strategic and operational communications planning, public environment research and analysis, and the provision of communications advice. The Directorate comprises four groups: the Director General's Office, Program Communications, Ministerial Liaison and External Communications, and Publishing and Corporate Communications.

The Liaison and Federal-Provincial Relations Directorate coordinates and directs the Department's interactions with national and international organizations. It develops and implements departmental policies in federal-provincial relations, including the coordination of federal-provincial conferences and meetings of ministers and deputy ministers responsible for justice.

The Bureau of Programme Evaluation and Internal Audit assesses the effectiveness of departmental programs and the adequacy of controls designed to ensure the economy, efficiency and effectiveness of operations.

The Financial Management, Planning and Informatics Directorate provides financial services to the Department, advises senior management on the deployment of resources, and consolidates the Department's Multi-Year Operational Plan. Among other activities, this Directorate prepares the Department's Main and Supplementary Estimates. The Directorate plans and implements projects to automate departmental work through the use of computers and advises managers on new technology and systems development.

The Administrative Policies and Services Directorate provides the Department with a broad range of administrative services, including contracting and materiel management, records management, mail and messenger services and property management. In addition, the Family Law Orders and Agreements Enforcement Assistance Unit implements the garnishment and tracing provisions of the *Family Orders and Agreements Enforcement Assistance Act*. To help resolve jurisdictional issues relating to divorce, the Central Registry for Divorce Proceedings maintains a record of all divorce reports in Canada. The Legal Contracts Support Unit administers contracts for legal services, including those for all Crown agents engaged by the Department.

The Corporate Services Directorate consists of five units that provide legal, policy, support and general information services to the Minister, Deputy Minister, the Department and the public. The Cabinet Liaison Office works with the Privy Council Office to schedule, review and coordinate departmental items for consideration by Cabinet and is responsible for the preparation of briefings in this regard. The Access to Information and Privacy Unit processes all requests and attends to departmental obligations under the *Access to Information Act* and the *Privacy Act*. The Ministerial Correspondence Unit receives, registers and directs all correspondence addressed to the Minister or his staff and prepares routine and final replies for signature. The Departmental Library provides information services to the Department and on a limited basis to the public, including bibliographic and legal research, and issues a library bulletin. The Ministerial Briefing and Parliamentary Affairs Unit coordinates briefing and speaking materials for the Minister and Deputy Minister, monitors parliamentary proceedings and works with the Minister's office on routine matters involving departmental officials and outside organizations.

The Department's Security Services also come under the Corporate Management Branch.

■ Activities

□ Communications and Public Affairs Directorate

The Communications and Public Affairs Directorate is responsible for informing and educating Canadians about Justice legislation, programs, policies and services. During the year under review, the Directorate conducted communications research relating to specific groups of Canadians: women, youth, the elderly, natives, and victims of crime. Environmental assessments were also developed to gauge public understanding of the administration of the justice system, including the new judicial appointments process, the war crimes initiative, and the access to information and privacy legislation.

Strategic communications plans were prepared to support the various legislative initiatives that are described elsewhere in this report. To keep the public informed on these initiatives, news releases and exten-

sive background information materials were distributed. Directorate participation in inter-departmental communications projects ensured that all Canadians with particular interests and concerns were informed of the government's actions to strengthen and renew the *Official Languages Act*.

Directorate support of the Department's commitment to provide information for the public and for professionals working in the field of justice saw the production of several publications during the fiscal year. These included *Another Way: Mediation in Divorce and Separation*; *Tracing Information Service* (explaining how charges are enforced against persons in default of a support order or agreement); *Access and Privacy: The Steps Ahead*; *An Annotated Bibliography of Maintenance and Custody Literature*; *Divorce and Family Mediation Research Study: Winnipeg*; *An Inventory of Divorce Mediation and Reconciliation Services in Canada*; *The New Sexual Assault Offences: Emerging Legal Issues*. A public service announcement on the law and impaired driving was produced, and work continued on a video presentation on the legal impact of impaired driving on young people and on residents of northern Canada.

□ Bureau of Programme Evaluation and Internal Audit

The Programme Evaluation Section completed the evaluation of the Legal Aid Program in Saskatchewan, the framework study for the Family Law Enforcement Assistance System and the development of a legislative evaluation model. Work began on assessing the Policy Development Function of the Department, a costing study of the Saskatchewan Legal Aid Program and an evaluation of the Interchange Program.

Work continued on a number of projects, including the evaluation of the Public Legal Education and Information Program, the Native Courtworker Program in British Columbia, the *Divorce Act*, the Victims of Crime Initiative and the Young Offenders Initiatives.

The Bureau also conducted a number of follow-up reviews and internal audits, including audits of the Informatics function, the Criminal and Family Law Policy Directorate, Financial Services and Access to Information.

☐ **Financial Management, Planning and Informatics Directorate**

The Financial Management, Planning and Informatics Directorate coordinated the preparation of the Program Expenditure Plan, the Multi-Year Operational Plan, the Multi-Year Human Resources Plan, and Treasury Board submissions.

Work began during the year on the development of a statement of mission and organizational values for the Department. The Directorate also prepared and proposed a new planning framework, conducted a review of management practices, and prepared an organization guide.

Other activities included development of an Increased Ministerial Authority and Accountability initiative and continued support in the development of information systems and the application of new technology to the Department's work.

☐ **Administrative Services and Policies Directorate**

The Contracting and Materiel Management Section automated some of its functions during the year. The Section issued 172 service contracts and processed 2,200 requisitions for materiel.

Work continued on consolidating the number of buildings occupied by the Department in the National Capital Region. An interim headquarters accommodation plan was prepared, as were plans to refurbish the Justice Building. Work began on the development of a strategic accommodation plan in consultation with the Bureau of Management Consulting.

A new records retention and disposal schedule was submitted to National Archives for approval. More than 9,000 records at various Departmental Legal Services Units were reviewed as part of the ongoing records scheduling activity. Records systems audits were performed in 15 DLSUs and two regional offices. In cooperation with the Informatics Directorate, automated records systems were introduced in 10 DLSUs. A micrographics feasibility study to store the opinions and precedents material of the Department on microfiche was completed and implementation was commenced.

A computer program to track Crown agent appointments and cases was developed for the Legal Contracts Support Unit, and a new computer program was developed for the Central Registry of Divorce Proceedings.

Part I of the *Family Orders and Agreements Enforcement Assistance Act* (FOAEA) was put into operation during the year. As a consequence, the FOAEA Unit received 1,826 applications for the release of information on individuals who were in violation of an order or agreement relating to maintenance, support, custody or access.

☐ **Corporate Services Directorate**

The Ministerial Briefing and Parliamentary Affairs Unit prepared and coordinated briefing materials and speeches for the Minister and Deputy Minister throughout the year. There were more than 200 parliamentary requests for information, a tenfold increase over the previous year.

The Access to Information and Privacy Unit received 503 requests for information, 292 for access and 211 for privacy. The particulars regarding the disposition of these requests can be found in the 1987-88 Annual Report on the Access to Information and Privacy Acts, tabled in Parliament.

The Ministerial Correspondence Unit processed 69,299 items of correspondence.

The introduction of INNOVACQ, which provides serials control and acquisitions on-line, improved library services during the year.

Some 570 searches were conducted on the departmental Library's Legal Research Service computer during the year. The automated system is being reviewed to ensure that the database is comprehensive and easily accessible to all legal officers of the Department. There were 1,320 searches on the Library's on-line computers during the year, compared with 550 in 1985-86.

Litigation Sector

Civil Litigation Branch

The primary responsibility of the Civil Litigation Branch is to represent the Attorney General of Canada in civil litigation conducted by or against the federal government in the common-law provinces and in the territories.

Civil litigation lawyers are involved in all phases of litigation, from the initiation of proceedings at the trial level to appeals before the Supreme Court of Canada. Cases range from contract and tort matters arising out of the ordinary course of government business to public law matters involving constitutional and jurisdictional questions. As well, there are many specialized actions in fields such as intellectual property, immigration, human rights, customs and excise, international and commercial law.

Counsel appear before all levels of provincial and federal courts, as well as before federal boards, commissions and tribunals on issues involving the administration and enforcement of federal statutes. In addition, counsel appear before public inquiries and, on occasion, before provincial or international tribunals.

The Branch also provides legal advice and assistance to the government on potentially litigious issues. Opinions are often required on the potential liability of a proposed course of action or on the validity of legislative provisions. Branch counsel also play a role in the development of policy and legislative proposals, particularly in relation to government positions on issues arising from the *Canadian Charter of Rights and Freedoms*.

■ Organization

The Assistant Deputy Attorney General, Civil Litigation, supervises and coordinates all civil litigation, other than income tax and admiralty matters, affecting the common-law provinces and the territories.

Civil litigation sections exist at headquarters and in each of the regional offices. Generally, each section is responsible for litigation arising within its own region. However, other arrangements may be made in cases where counsel having special expertise reside outside the region or if the involvement of a client department's headquarters makes it desirable to have the litigation handled from Ottawa. In addition, there exists a Chief General Counsel's Group at headquarters consisting of senior counsel of particular expertise.

Litigation is conducted by approximately 85 lawyers in the regional offices and at headquarters, who are assisted by paralegal, clerical and secretarial support staff. The Attorney General is also represented by private-sector lawyers acting as agents under the instruction of lawyers in the Civil Litigation Branch.

■ Activities

The volume and complexity of Charter cases continued to increase during 1987-88. Of special importance was *Morgentaler v. The Queen*, in which the Supreme Court held that the therapeutic abortion provisions of the *Criminal Code* infringe a woman's right under the Charter to security of the person. The question of whether an unborn child is entitled to Charter protection had been brought forward as of year's end, in *Borowski v. Attorney General of Canada*.

A Charter-based challenge to the *Maintenance of Ports Operation Act, 1986* was mounted before the Federal Court in *International Longshoremen's and Warehousemen's Union v. The Queen*. The plaintiff claimed that its freedom of association had been infringed by provisions of the Act that imposed a collective agreement and removed the right to strike. This case was in the discovery stage at the end of the fiscal year.

Charter issues were also raised in *The Queen v. Amway Corporation*, a case involving a claim by the Crown for duties, taxes and penalties under the *Customs Act*. The defendant alleged that its right against self-incrimination was infringed by court rules that require it to attend discoveries. The Federal Court of Appeal agreed and reversed the judgment of the Trial Division. The Crown has appealed to the Supreme Court of Canada.

The central issue in *Jerilynn Prior v. The Queen* is whether the requirement to pay federal taxes, a portion of which will be allocated for military purposes, infringes a taxpayer's freedom of conscience and religion, guaranteed under the Charter. The action, by a taxpayer who objects on religious or conscientious grounds to supporting the military, is cast as a "test case" that will probe the scope and content of the fundamental freedoms guaranteed by the Charter [s.2(a)].

Still another important constitutional case was *Twinn v. The Queen*. This action was brought by members of six Alberta Indian bands, challenging the validity of amendments to the *Indian Act* that grant Indian status and/or band membership to Indians previously deprived thereof. The action was at the discovery stage as the fiscal year ended.

Other major cases included *Pioneer Hi-Bred Limited v. Commissioner of Patents*, in which the company appealed a decision of the Commissioner rejecting an application to patent a new variety of plant on the ground that living things cannot be patented. The Federal Court of Appeal dismissed the action and judgment in the Supreme Court of Canada was reserved.

In the area of administrative law, bills proposing to abolish and replace two federal boards raised questions as to the jurisdiction of the boards pending enactment of the legislation. In *Minister of Employment and Immigration v. Sethi*, the question was whether a bill to abolish the Immigration Appeal Board gave rise to a reasonable apprehension of bias such as to deprive the Board of jurisdiction. The Federal Court, Trial Division, agreed that it did. The Federal Court of Appeal overturned the decision and, in a companion judgment, ruled that the Tariff Board was similarly unaffected by first reading of a bill to abolish that Board.

A number of cases reported last year continued during fiscal year 1987-88. These include *The Queen v. Regional Municipality of Peel*, involving the question of whether a municipality can recover monies expended pursuant to federal legislation found to be unconstitutional, and *In Re Gautier*, relating to the policy of the Canadian Armed Forces that excludes women from certain combat-related occupations on the basis of impairment of operational effectiveness.

The *Access to Information Act* and the *Privacy Act* continued to generate litigation, requiring the courts to balance individual privacy and the need for confidentiality in certain government activities against the public's right to know. There was also an increase in the number and size of personal injury suits against the Crown as a result of motor vehicle accidents and air disasters.

Criminal Law Branch

The Criminal Law Branch's responsibilities derive from the obligations and duties imposed upon the Attorney General and the Minister of Justice pursuant to legislation, treaties and the common law.

The Branch prosecutes offences and conspiracies to commit offences under most federal legislation, including the *Criminal Code* but only for crimes against humanity and war crimes. Otherwise, the provincial attorneys general exercise authority over *Criminal Code* offences. In the Yukon and the Northwest Territories, the Attorney General of Canada prosecutes all offences under federal legislation, including the *Criminal Code*. The majority of federal prosecutions are under the *Narcotic Control Act*, the *Food and Drugs Act* and the *Income Tax Act*.

The Branch appears on behalf of the Attorney General of Canada before the Supreme Court of Canada on appeals of its own cases to this court and also as intervenant in other cases that challenge the constitutional validity of federal legislation, including the *Criminal Code*.

The Branch reviews applications to the Minister of Justice for the mercy of the Crown for persons convicted of crimes or sentenced to prison terms. It advises on all extradition matters under the *Extradition Act* and rendition requests under the *Fugitive Offenders Act*, including the negotiation of extradition treaties. It deals with requests for legal assistance in gathering evidence abroad for Canadian investigations and evidence in Canada for foreign investigations. Finally, the Branch is responsible for criminal law policy in extradition, rendition and mutual legal assistance.

The Attorney General of Canada must grant consent prior to certain proceedings under the *Criminal Code* and other federal legislation. The Branch reviews these applications as well as those for the transfer of charges and probation orders from one jurisdiction to another.

Branch counsel are consulted on amendments to the *Criminal Code*, on legislative proposals pertaining to criminal law, and on the development of criminal law policy and programs.

■ Organization

The Assistant Deputy Attorney General, Criminal Law, directs the Criminal Law Branch. Criminal prosecution sections in the Department's nine regional offices and at headquarters in Ottawa employ approximately 100 lawyers. These sections conduct all federal prosecutions and litigation arising in their jurisdictions. In areas not served by regional offices, approximately 550 private lawyers, appointed as standing agents, are responsible for prosecutions.

In addition, the Assistant Deputy Attorney General, Criminal Law, has functional responsibility for all departmental activities respecting prosecutions arising under federal statutes administered by other government departments and agencies, and for legal advice to agencies responsible for security and intelligence matters.

The Assistant Deputy Attorney General, Criminal Law, is also responsible for the War Crimes and Crimes Against Humanity Section, which was established to implement legislation enacted by Parliament in September 1987 to enable Canada to prosecute, extradite or deny entry permits to perpetrators of war crimes or crimes against humanity in other countries. The Section's mandate is to review all files turned over by the Commission of Inquiry on War Criminals (Deschênes Commission) with a view to taking appropriate action. The Section will also deal with new allegations of war crimes and crimes against humanity that may be brought forward from time to time.

■ Activities

☐ Applications for Mercy

The Branch received 35 applications for mercy under the *Criminal Code* during the year.

☐ Extradition and Renditions

Canada filed 29 requests for extradition with the United States in 1987-88 and 21 requests with other countries. Canada received 71 requests from the United States and 14 from other countries.

Four requests were made by Canada for the rendition of fugitives from Commonwealth countries and three requests were made to Canada. During the year, 46 fugitives were returned to Canada and 44 were returned to other countries.

☐ Mutual Legal Assistance

On March 18, 1985, a treaty was signed by Prime Minister Brian Mulroney and President Ronald Reagan to provide for mutual legal assistance in the investigation and prosecution of criminal matters between Canada and the United States. During 1987-88, officials from the Criminal Prosecutions Section at headquarters assisted with the development of Bill C-58, the *Mutual Legal Assistance in Criminal Matters Act*, the legislation that will implement this treaty and those to be negotiated with other countries. Negotiations have commenced with Great Britain, France, Italy and West Germany, and are well advanced with Bahamas and Australia.

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

Canada filed 41 requests for assistance to gather evidence with foreign countries, 26 of which required judicial assistance. Canada received 35 requests for assistance to gather evidence in Canada from foreign countries, 16 of which required judicial assistance. Of all 76 requests, 44 were completed in the year, five were abandoned and 27 were carried over to the next year.

☐ Northern Flying Squad

Members of the Branch's Northern Flying Squad supplemented the work of Crown counsel assigned to northern regional offices in Yellowknife and Whitehorse. The Flying Squad comprises more than 20 experienced prosecutors from regional offices and headquarters. More than 35 circuits in the Northwest Territories and 20 in the Yukon Territory, both territorial and supreme courts, were handled by Flying Squad members. Several jury trials were conducted in Iqaluit and Yellowknife by Squad members from the Montreal Regional Office. The Edmonton Regional Office assisted with cases before the Court of Appeal of the Northwest Territories heard at Calgary and Edmonton.

☐ 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 the courts for permission to intercept private communications in support of special investigations.

☐ Special Prosecutions

The Branch prosecuted 123 tax evasion cases in 1987-88, of which 119 resulted in convictions.

The Criminal Law Branch argued a number of cases before the Supreme Court of Canada during the year, including the following:

In *Beare and Higgins v. The Queen*, the Saskatchewan Court of Appeal held that a provision of the *Identification of Criminals Act*, which permitted fingerprinting of persons charged with indictable offences, was unconstitutional because it violated a section of the *Canadian Charter of Rights and Freedoms*. On appeal from the Crown, the Supreme Court of Canada ruled that this tool of law enforcement did not violate the Charter.

In *Shaklee Canada Inc. v. The Queen*, the Supreme Court of Canada upheld a ruling by the Federal Court of Appeal that a section of the *Combines Investigation Act*, prohibiting pyramid selling, was a valid exercise of federal jurisdiction over criminal law under a provision of the *Constitution Act, 1867*.

In *State of Washington v. Johnson*, the Supreme Court of Canada held that the "double criminality rule", which applies in extradition cases, requires only that the act charged be a listed crime in both countries, not that the necessary elements of each offence be identical.

In *Murray Ross Holmes v. The Queen*, the Supreme Court of Canada ruled that a section of the *Criminal Code* that makes it an offence to possess, without lawful excuse, instruments suitable for housebreaking (under circumstances that give rise to a reasonable inference that they are intended to be used for this purpose), does not violate the presumption of innocence guaranteed by the *Canadian Charter of Rights and Freedoms*.

Two cases were on reserve at the end of the fiscal year. *David Aaron Showman v. The Queen* concerned the issue of whether "entrapment" is a question of law to be determined by a judge or a finding of fact to be made by a jury. This case also involved the question of whether the test for entrapment is objective or subjective. In *Laura Mary Simmons v. The Queen*, the issue was whether a person about to be searched by a customs officer at a port of entry is in "detention", with the consequent right to counsel.

☐ **War Crimes and Crimes Against Humanity**

To carry out the necessary research and investigation of allegations, and to take appropriate action, the War Crimes and Crimes Against Humanity Section assembled a team of researchers and historians, language specialists and prosecutors, which is working closely with the RCMP. Because the alleged crimes with which the Deschênes Commission was concerned were committed more than 40 years ago in foreign countries, the Department of Justice, through the Section, had to negotiate terms with a number of countries for investigating and gathering evidence abroad.

Tax Law Branch

The Tax Law Branch provides legal advice on behalf of the Attorney General of Canada in all matters relating to taxation, and conducts litigation in all civil appeals from income tax assessment. The Branch also handles certain appeals under the Canada Pension Plan and the *Unemployment Insurance Act*.

■ Organization

The Branch comprises three sections and is headed by the Assistant Deputy Attorney General, Tax Law. The Tax Litigation Section is composed of approximately 60 lawyers working in headquarters and in the regions and is responsible, on behalf of the Minister of National Revenue, for all civil appeals from income tax assessments. The Tax Counsel Section provides legal advice to the Department of Finance. Legal advice is provided to the Department of National Revenue - Taxation, and the Department of National Revenue - Customs and Excise, by two distinct legal services units located within the client department.

■ Activities

The volume of income tax appeals before the Tax Court and the Federal Court continued to increase during 1987-88. About four fifths of these appeals were before the Tax Court of Canada. Additional sittings of the Court contributed to an increased rate of disposals.

In *Indalex v. The Queen*, the Federal Court of Appeal upheld the Crown's position on the determination of an appropriate transfer price for aluminum billets between affiliated companies within a multinational group of companies. The Court ruled that discounts for the product, resulting from a pooling of world purchasing power by the group, were earned by affiliates proportionately, according to volume.

In *Irving Oil Limited v. The Queen*, the Federal Court (Trial Division), determined that the cost of the plaintiff's acquisitions of crude oil during the 1971 to 1975 taxation years was not in excess of fair market value. Consequently, they did not unduly or artificially reduce the plaintiff's income. Further, the Court ruled that the plaintiff's purpose in carrying out the series of transactions was bona fide. The decision was appealed to the Federal Court of Appeal.

In *Vanguard Coatings and Chemicals Ltd., v. the Minister of National Revenue*, a trial judge's finding that a section of the *Excise Tax Act* is unconstitutional was appealed to the Federal Court of Appeal.

A number of appeals to the Federal Court of Appeal were heard during the year involving the revocation of registration or the refusal to register organizations as charitable. This is an issue that previously had not been considered to any large extent by Canadian courts. In a majority of cases, the position of the Minister of National Revenue was upheld.

The Branch worked throughout the year on tax reform, drafting many hundreds of pages of legislation.

Admiralty and Maritime Law

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

☐ Litigation

Admiralty and maritime law cases involving the federal government and its agencies frequently arise from claims in which complex questions of fact and law are at issue and where large sums of money are at stake. These cases arise in both federal and provincial courts and in courts outside Canada.

☐ Maritime Commercial Law

Services and advice are provided in relation to cargo claims, the carriage of goods by sea, and other maritime matters, including shipbuilding, ship repairing and underwater diving contracts.

☐ Investigation of Marine Casualties

The Assistant Deputy Attorney General, Admiralty and Maritime Law, ensures that investigations of claims involving the Crown are prompt and thorough. The ADAG also provides advice on shipping casualty investigations and makes recommendations on the appointments of commissioners and commission counsel to act in investigations under the *Canada Shipping Act*.

☐ Marine Legislation

Specialized legal advice is provided on the *Canada Shipping Act* and Regulations as well as on other federal legislation relating to shipping law.

☐ Marine International Law

The Assistant Deputy Attorney General, Admiralty and Maritime Law, advises the Department of Transport on maritime law. The ADAG attends diplomatic conferences on proposed international conventions that are convened on such topics as maritime liens and mortgages.

■ Organization

The Assistant Deputy Attorney General, Admiralty and Maritime Law, supervises the Department's increasing admiralty and maritime law work, assisted by counsel with special skills in these fields. Counsel in the Civil Litigation and Real Property Law (Quebec) Section, and other departmental lawyers in headquarters, legal services units and regional offices, as well as agents of the Minister of Justice, also provide assistance.

■ Activities

Work conducted during 1987-88 included the following:

☐ Advice was provided to the Canadian Dairy Commission on its legal options under a series of contractual arrangements, concerning the delayed delivery of a shipment of evaporated milk to a foreign buyer.

☐ The ADAG continued to supervise the defence of the St. Lawrence Seaway Authority in actions arising from a 1985 incident that occurred in the Welland Canal. The incident gave rise to about \$25 million in claims against the Authority.

☐ The ADAG also coordinated litigation on behalf of the Authority arising from the closure of the Valleyfield Bridge in 1984. Claims valued at \$25 million have been raised in both the Federal Court of Canada and the Quebec Superior Court.

☐ The ADAG continued to provide advice to the Cape Breton Development Corporation, and to supervise marine litigation arising from an explosion aboard a ship carrying the Corporation's cargo. The litigation was conducted in the High Court of England, the Federal Court of Canada and the Supreme Court of Nova Scotia.

☐ The ADAG provided advice to Parks Canada in a trial in the Federal Court of Canada, alleging that Parks Canada had failed to maintain the upkeep on a Canadian Heritage Waterway.

☐ Litigation was conducted on behalf of the Department of National Defence concerning a collision between a minesweeper and a fishing vessel on the West Coast.

☐ The Canadian International Development Agency and the Department of Supply and Services were advised on their legal options concerning a breach of contract threatening the discharge of a valuable cargo in Port Sudan. An agreement was negotiated by the ADAG to ensure discharge of the cargo.

☐ The ADAG conducted litigation on behalf of the Canadian Coast Guard for the recovery of costs incurred as the result of oil pollution arising from shipping casualties.

Chief General Counsel

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

■ Organization

The Group consists of senior lawyers experienced in constitutional, civil, criminal and tax law. It is headed by the Chief General Counsel and consists of three Senior General Counsel and one General Counsel, all of whom are located at headquarters. The Chief General Counsel has Department-wide responsibilities for native litigation issues.

■ Activities

The Group conducted a great many major constitutional cases during the year, including several that involved the interpretation of various sections of the *Canadian Charter of Rights and Freedoms*. Other cases involved administrative law issues, income tax appeals and issues of liability in tort and contract. As well, the Group handled many significant cases involving native issues. Members of the Group also provided advice to other departments on issues that were, or could have been, litigious.

Regional Offices

Nine regional offices, located in cities across the country, perform a crucial function in the day-to-day operation 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; these agents receive direction from the regional offices.

The regional offices employed 253 lawyers and 229 support staff in 1987-88. (These figures include person-years lent to the Department of Justice by client departments and agencies.) The offices are organized in much the same fashion as headquarters, with sections for civil, criminal and tax law, and commercial and real property law, in most regions. Offices vary in size from a few lawyers to staffs in Montreal, Toronto and Vancouver that would constitute large private law firms.

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

The Halifax Regional Office provides legal services to the departments and agencies of the federal government in the four Atlantic provinces. It has a staff of 23, including 13 lawyers and two paralegals. Of the 13 lawyers employed in 1987-88, four conducted civil litigation, five handled criminal prosecutions, two litigated tax matters and one was responsible for commercial and property law. The office is supervised by a General Counsel. Agents are employed across the

region, as required, under instructions from legal staff in Halifax. Many of these are standing agents, engaged to conduct prosecutions under federal statutes and regulations. During the year under review, 108 lawyers or firms represented the Attorney General of Canada.

The office acquired three computers during the year and steps were taken to automate records management and the supervision of standing agents.

The Civil Litigation Section handled a large volume of contract, tort and administrative law cases during the year. Many of these arose from construction projects, marine activities and personal injury claims. In *Dexter v. The Queen*, a case involving highway construction in Newfoundland, the Crown successfully defended against a claim with a potential liability of \$940,000. At the end of the year, this case was under appeal to the Federal Court of Appeal.

In *Soleiko Ltée v. The Queen*, the plaintiff alleged that a harbour-dredging operation, conducted by the Department of Fisheries and Oceans and the Department of Public Works, destroyed a mussel cultivation project. The plaintiff also alleged that Environment Canada was negligent in issuing an ocean dumping permit. Discoveries were held during the year under review, preparatory for trial.

This Section also advised and represented the interests of the Department of Employment and Immigration in the region, regarding the unlawful landing of 174 immigrants at Charlesville, Nova Scotia. In *Regina v. Jasvir Sing and Castor Lasalle*, criminal prosecution counsel obtained convictions, fines and jail terms against those accused of landing these immigrants in Canada from the vessel *Amelie*.

Regional Office counsel attended sittings of the Royal Commission of Inquiry into the wrongful conviction of Donald Marshall, Jr., representing the interests of the Royal Canadian Mounted Police, the Correctional Service of Canada and the National Parole Board. Government interests included the role of the RCMP under a provincial policing contract, the granting of parole to inmates who maintain their innocence, police and prosecutor disclosure practices, confidentiality of Cabinet documents.

The Criminal Prosecution Section handled a large number of fisheries prosecutions, drug cases, tax evasion prosecutions and appeals involving the *Canadian Charter of Rights and Freedoms*.

The Property and Commercial Law Section represented government interests in property acquisitions and expropriations relating to construction projects.

The Tax Litigation Section represented the interests of the departments of National Revenue - Taxation, Health and Welfare, and Employment and Immigration in hearings before the Tax Court, the Pensions Appeals Board and the Federal Court.

■ Toronto Regional Office

The Toronto Regional Office, with a complement of 63 lawyers, is composed of four sectors and a General Counsel group. The Office is responsible for providing legal services to the Government of Canada in southwestern Ontario. It is the largest regional office, with an active caseload of more than 12,000 files. During the year under review, the office opened almost 5,000 new files and closed a similar number. The value of these cases is several billion dollars. As well, the office oversees the work of more than 300 agents who are primarily engaged in prosecutions. As reported last year, the office continued to automate its records and procedures.

The Advisory, Commercial and Property Law Section is responsible for bankruptcy and insolvency cases as well as commercial and property law and general advisory services to certain federal depart-

ments. Four lawyers in the Insolvency Law Group dealt with 1,221 Revenue Canada - Taxation files, involving claims by and against the Crown in excess of \$856 million. These cases involved legal issues arising from the collection of taxes, bankruptcies and receiverships, disputes arising from various sections of the *Income Tax Act*, scientific research tax credit liabilities, jeopardy assessments, and realizing securities given in respect of tax liabilities.

In *Attorney General v. Wright*, an especially significant case handled during the year, it was confirmed that the Crown has priority, notwithstanding the equality provisions in the *Canadian Charter of Rights and Freedoms*.

The Commercial and Property Law Group handled 537 files during the year, the largest portion of which came from Transport Canada, Public Works Canada and Indian Affairs and Northern Development. This work included dispute resolution, the drafting of leases, the sale and acquisition of real estate, the negotiation of licences and easements, agreements for federal contributions to Indian bands for water and sewer arrangements, and opinions with respect to native education, the collection of loans made to bands or band members and other matters.

The Civil Litigation Section conducts all civil litigation in the region, with the exception of income tax and insolvency cases. Thirteen lawyers, four paralegals and eight secretaries opened 1,374 files and closed 1,271. On average, counsel carried 130 files each, ranging from the collection of Crown debts to challenges to the legislative competence of the Parliament of Canada.

There was continued growth in the public law field during the year, with an increasing number of challenges to federal social programs under administrative law and under the *Canadian Charter of Rights and Freedoms*. In *Schacter v. The Queen*, the plaintiff sought the extension of maternity benefits to fathers. In *Granek v. The Queen*, the widowed spouse's allowance was challenged. Both programs were alleged to be in conflict with the equality provisions of the Charter.

The Criminal Litigation Section conducts prosecutions for all federal offences that do not come under the *Criminal Code*. Twenty-seven counsel and 17 support staff were involved in the investigation and prosecution of more than 5,000 cases during the year. There were 60 wiretap and 95 search warrant applications. The section also processed 350 summary convictions and indictable appeals, and 128 motions in the Supreme Court of Ontario.

Organized crime accounted for a major part of the section's workload during the year. There were 17 extradition requests and five requests for legal assistance from foreign courts. *Regina v. Neeb and Blakeman et al* involved the cooperative efforts of prosecutors and law enforcement agencies to bring forward evidence of a criminal conspiracy involving hundreds of tonnes of marijuana. This cooperation led to the arrest of Canadian importers and traffickers, Mexican suppliers and European money launderers, as well as the freezing of many assets.

In *Regina v. Bragg et al*, a case against members of the Outlaws Motorcycle Club was divided. One trial was successfully completed in the Supreme Court of Ontario. The other was near completion in the District Court. Club members were charged in relation to the distribution and sale of large quantities of cocaine, methamphetamine (speed) and LSD.

The Tax Litigation Section, which advises the Minister of National Revenue, comprises 16 lawyers, two legal assistants and six secretaries. The Section also appeared before the Pension Appeals Board as well as the Tax Court on pension and unemployment insurance matters. During the year under review, there were 59 weeks of sittings of the Tax Court and the Pension Appeals Board in southwestern Ontario. At these sittings, Section counsel represented the ministers of National Revenue and National Health and Welfare. This was additional to cases argued by Section counsel in the Federal Court of Canada, the Supreme Court of Ontario and other provincial courts. The average caseload was 139 per lawyer. The Section closed 1,205 files during the 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 ten lawyers in 1987-88, four in criminal prosecutions, four in civil litigation, one in property and commercial law and a General Counsel responsible for administration and litigation. As in previous years, there was an increase in the number of civil, criminal and commercial cases involving the *Canadian Charter of Rights and Freedoms*.

The office provided legal assistance to the Department of Indian Affairs and Northern Development on arbitration and settlements under the Northern Flood Agreement. This agreement concerns the effects of the Churchill - Nelson River diversion on 2,090 native people in Manitoba. A claim for potable water was settled for \$88 million. Negotiations on other matters continued throughout the year.

In cooperation with the Vancouver Regional Office, the Winnipeg Regional Office advised the Department of Regional Industrial Expansion (DRIE) in a major land exchange involving the Canadian National Railway, the Province of Manitoba and the City of Winnipeg. Canada is a shareholder in a development corporation that is exchanging government property (the former Customs House) in Vancouver to the CNR in exchange for land in downtown Winnipeg and other considerations. The exchange marked the first time the Crown issued letters patent effective on delivery, rather than on issuance.

Among the more important cases handled during the year were the following:

In *U.S.A. v. Swystun*, the United States requested extradition of a Canadian citizen on charges of conspiracy to distribute cocaine in North Dakota. The defendant argued that extradition would violate rights protected under the *Canadian Charter of Rights and Freedoms*. The extradition judge ruled that the extradition was justified, a decision that was appealed to the Manitoba Court of Appeal.

In *Regina v. Rimmer et al*, the accused were charged with delivery of wheat in excess of or without quota, contrary to the *Canadian Wheat Board Act*. The accused challenged the validity of the charge on grounds that the Wheat Board quota orders were issued in English only, contrary to provisions of the *Constitution Act 1867*, the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act*. A conviction at trial was upheld by the Manitoba Court of Queen's Bench. An application for leave to appeal to the Manitoba Court of Appeal was pending at year end.

In *Markestyn v. The Queen*, property owners on the Red and Assiniboine rivers filed a class action suit for damages resulting from the construction and operation of the St. Andrews lock and dam on the Red River. The suit alleges riverbank failure and property loss due to negligence. If liable, the cost to the Crown for corrective measures and damages was estimated at \$400 million.

In *The Clarkson Company Limited v. The Queen*, the plaintiff questioned whether the Crown was entitled to set off funds owed by a company prior to receivership, against funds owed by the Crown to the Receiver. The Federal Court of Canada dismissed the Receiver's Crown right to set off when it took over the debtor company. This decision was appealed by the plaintiff.

■ Saskatoon Regional Office

The Saskatoon Regional Office provides legal services to all federal departments and many agencies for their Saskatchewan operations, and conducts both civil and criminal litigation throughout the province. In 1987-88, the office employed eleven lawyers: two in civil litigation, three in property and commercial law, five in criminal prosecutions, and a Regional General Counsel. The Office also employed an articling student and ten support staff. A sub-office in Regina was manned for two days each week by members of the Property and Commercial Law Group. Prosecuting agents of the Attorney General of Canada in Saskatchewan were supervised by the Saskatoon Office.

Several cases at the court of appeal level during the year involved serious *Canadian Charter of Rights and Freedoms* issues, including alleged unreasonable searches and seizures in narcotic cases and tax prosecutions.

In *Regina v. Glen Arthur Stenstrud and Guy Smith*, the trial judge denied defence counsel unrestricted access to a sealed wiretap packet. Access was sought under the Charter and the right to make full answer and defence. This ruling preceded a similar ruling of the British Columbia Court of Appeal in another case.

In *Regina v. Nipawin District and Satellite T.V. Inc. and Sylvester Zanyk*, a nonprofit corporation and its president were charged under the *Broadcasting Act* for carrying on a "broadcasting undertaking" without a licence, and under the *Radio Act* for operating a radio apparatus without the necessary certificates. The accused were acquitted at the Provincial Court level and an appeal to the Court of Queen's Bench was dismissed. However, the Saskatchewan Court of Appeal found that the term "broadcasting undertaking" does not necessarily connote a commercial undertaking. The accused were subsequently convicted and have applied for leave to appeal to the Supreme Court of Canada.

In *Attorney General of Canada v. Newfield Seeds Ltd.*, an action was commenced in the Court of Queen's Bench, seeking to recover funds granted to the defendant under the *Regional Development Incentives Act*. The Attorney General argued that the company had violated its contract with the Governor in Council and breached regulations pursuant to the Act, by disposing of a facility it acquired with the grant within one year of the date of commercial production. The defendant brought a motion to determine 1) whether the parties were governed solely by the terms of their contract or by the Act and regulations, and 2) whether the regulations were *ultra vires*. The trial judge ruled that the regulations were *intra vires* but that there was no contract. The Attorney General appealed to the Saskatchewan Court of Appeal and the defendant cross-appealed.

The Property and Commercial Law Section of the office was involved in several nonlitigious matters, including a CN/CP rail abandonment program, virtually completed in Saskatchewan during the year. The section also worked on acquisitions of property and negotiations with the Saskatchewan government toward establishment of Grasslands National Park, and was involved in complex negotiations with the province respecting native land entitlement claims, particularly in relation to water rights.

■ Edmonton Regional Office

Thirty lawyers in the Edmonton Regional Office represent the federal government in Alberta. They provide litigation services and advice on property and commercial matters to most government departments and agencies within the province. The office also handles tax litigation and related advisory work in Alberta, Saskatchewan and the Northwest Territories. Most criminal litigation in the Edmonton area, and all court of appeal appearances involving criminal law issues, are handled by the Regional Office. In addition, during 1987-88 the office managed the work of 76 private-sector agents who assisted with criminal prosecutions and civil litigation.

The office comprises four groups: Criminal Prosecutions and Tax Litigation, with nine lawyers each; and the Civil Litigation and Property, Commercial and Advisory sections, with five lawyers each. A General Counsel handles complex criminal and civil litigation as well as constitutional interventions. During the year under review, there were six bilingual lawyers and seven bilingual support persons on staff. Progress was made during the year toward automating the work of support staff.

Criminal prosecution lawyers handled a large number of drug trafficking and drug importation cases. Police action against the leaders of organized crime syndicates led to an increasing number of complex and lengthy trials. Hearings lasting several weeks were common during the year, as were trials extending over several months.

In the *Queen v. Saikaly et al* and *Queen v. Echeverria et al*, the principal participants in schemes to import cannabis resin and cocaine were convicted. Both cases were appealed to the Alberta Court of Appeal. In the *Queen v. Greffe*, the Alberta Court of Appeal ruled that a search, which led to the seizure of heroin hidden within a body cavity, was reasonable. This decision was appealed to the Supreme Court of Canada.

In the *State of Wisconsin v. Blythe* and the *State of Colorado v. Born-With-a-Tooth*, the Criminal Prosecution Section acted on behalf of the Government of the United States. The Alberta Court of Appeal dismissed appeals in these cases, returning both fugitives to the United States. Preparations began during the year for

the proposed extradition of Charles Chitat Ng, wanted by the State of California on 25 criminal charges, 12 for murder. The hearing was scheduled to proceed in the fall of 1988.

Several tax evasion cases were prosecuted during the year, including the *Queen v. Yesmaniski et al*. The Alberta Court of Appeal rejected the defendant's argument that civil assessment and a charge of evasion relating to the same amount was a double punishment, contrary to the *Canadian Charter of Rights and Freedoms*. Leave to appeal this decision to the Supreme Court of Canada was refused.

Counsel in the Tax Litigation Section appeared at 38 sittings of the Tax Court of Canada in Alberta and Saskatchewan and made appearances in the Federal Court (Trial Division), the Federal Court of Appeal and the Supreme Court of Canada. The assessment of tax upon sales of apartment complexes was successfully defended, as was the liability of directors to tax assessments under the *Income Tax Act*.

At any given time during the year, the Civil Litigation Section was working on 750 active files, including about 125 handled by private agents. In the winding up of the Canadian Commercial Bank, the federal government joined with the Alberta government and six chartered banks in an application to the Court of Queen's Bench of Alberta to recover a total of \$225 million. These funds were injected into the bank shortly before its collapse in 1985. The court concluded that the applicants were entitled to share about \$9 million. This decision was appealed by Alberta and the six creditor banks but not by the federal Crown.

In August 1987, the Section filed a petition for the winding up of the Principal Savings and Trust Company in Edmonton. The order was granted by the Court of Queen's Bench of Alberta and a provisional liquidator appointed. The court subsequently appointed an inspector to investigate the affairs of two affiliates of the company. The investigator sought documents held by the Canada Deposit and Insurance Corporation, an action that was resisted by the Corporation on the grounds of Crown immunity. The Alberta Court of Appeal ruled that the Corporation could produce the documents under subpoena. Leave to challenge this decision was sought in an appeal to the Supreme Court of Canada.

The Property, Commercial and Advisory Section provided advice on a number of major leasing arrangements, property transfers and bankruptcies. Notable among these was a series of disputes that arose during construction of Canada Place, a federal office complex in Edmonton. The disputes concerned acoustics, lighting, exterior cladding and involved building code and sales tax issues. The Section also worked on two important cases involving the use of Canada's scientific research tax credit program: *Attorney General of Canada v. Hol-Sims Farms Ltd.*, 315069 *Alberta Ltd.*, and 321651 *Alberta Ltd.*, and *Montreal Trust Company v. Aage F. Tottrup, Container Port of Alberta Research Corporation et al.*

In the *Queen v. Shaklee Canada Ltd.*, a case conducted by the General Counsel (Litigation), the Supreme Court of Canada accepted the Crown's argument that the defendant's sales plan infringed pyramid selling prohibitions in the *Competition Act*. The Court also ruled that these provisions of the Act were constitutionally valid. In another complicated case, the Federal Court ruled that the financial statements of 10 Alberta Indian bands, held by the federal government, were exempt from disclosure under the *Access to Information Act*.

■ Vancouver Regional Office

The Vancouver Regional Office provides legal advice and services to federal departments and agencies in British Columbia. During the year, the Office was staffed by 61 lawyers, five articling students and 51 support staff in four sections: Civil Litigation, Prosecutions, Property and Commercial Law, and Tax Litigation.

During the year, 14 civil litigation lawyers handled more than 1,100 cases involving a broad range of civil disputes related to government activities. These cases involved immigration issues, maritime accidents, native law, fisheries, income tax collection, personal injury and corrections law. A notable case was *Attorney General of Canada v. Alcan*, which questioned the powers of the Minister of Fisheries and Oceans to regulate water flow over a dam to protect the fish environment.

Civil litigation lawyers handled a number of cases related to the disclosure of information collected for national security purposes. They also provided advice in *Gitskan v. The Queen*, in which Indians asserted jurisdiction over, and ownership of, a large tract of land in north-central British Columbia. In *Apsassin v. The Queen*, the Federal Court dismissed a \$300 million claim by Indians in the Peace River District for lost mineral rights under a former reserve.

In an important ruling, the Federal Court of Appeal struck out a statement of claim in an action brought by the Pacific Fishermen's Defence Alliance. The Court ruled that negotiations with aboriginal people over their claims could continue in private, without representation by or access to knowledge of interested parties. The ruling has application to other government negotiations.

Twenty-two lawyers in the Criminal Prosecutions Section deal mainly with violations of federal laws. Most concern narcotics but the Section also handles cases under federal acts concerning fisheries, extradition, food and drug regulation and aeronautics.

Several criminal cases originating in Vancouver were argued before the Supreme Court of Canada during the year. Two appeals involved the issue of entrapment as a defence. In another, an appellant questioned the right of Revenue Canada to engage in repeated prosecutions against persons who repeatedly refuse to provide required information. In *Regina v. Sparrow*, a ruling by the B.C. Court of Appeal, which established and defined aboriginal rights to fish in British Columbia, was appealed by the accused to the Supreme Court of Canada. Also under appeal at the end of the year was *Regina v. Derch*, in which the B.C. Court of Appeal ruled that an accused could not, without evidence of fraud or nondisclosure, obtain access to material filed in support of an application to intercept private communications.

Thirteen property and commercial law lawyers conducted the government's real estate development and commercial transactions in the province, including negotiations for the transfer of lands for the establishment of South Moresby National Park. Another major project was the transfer of the federal government's Customs House in Vancouver to the CNR for land of equivalent value in Winnipeg. The Section also negotiated arrangements with various landlords at Canada Place, ensuring that they, their tenants and clientele adhered to security measures required to protect the Heads of Commonwealth Nations Meeting at Canada Place.

Eleven tax lawyers handled some 495 appeals against assessments of income tax in British Columbia and Yukon, as well as many excise tax, unemployment insurance and Canada Pension Plan cases. Lawyers in this section appeared before the Tax Court of Canada, the Federal Court (Trial Division), the Federal Court of Appeal, the Supreme Court of B.C., the Court of Appeal of B.C., and the Supreme Court of Canada.

The Queen v. Jim McClurg was a major case in which the Federal Court of Appeal ruled that it is lawful to use discretionary dividends as a tax planning device. Leave to appeal this decision to the Supreme Court of Canada was granted.

■ Whitehorse Regional Office

The Whitehorse Regional Office provides a wide range of legal services to federal departments and agencies throughout the Yukon Territory. Unlike those in other regions, lawyers in the Whitehorse Office conduct prosecutions under the *Criminal Code* and territorial ordinances. Like lawyers in other regional offices, they prosecute offences under other federal statutes.

Four lawyers prosecute criminal cases, one provides solicitor services and prosecutes civil cases. A General Counsel directs the Regional Office and assists other counsel. There were five support persons on staff during the year under review.

During 1987-88, the Office provided legal advice to the Commissioner of the Yukon Territory and the Department of Indian Affairs and Northern Development on a number of matters, including the legitimacy of squatters' rights on certain Crown lands.

Legal services were also provided to the Department of Health and Welfare, which operates a hospital in Whitehorse and nursing stations throughout Yukon. These facilities are owned by the federal government but are subject to territorial legislation.

Prosecutors travelled to 65 court circuits in 11 locations during the year. As well, prosecutors attended sittings of the Territorial and Supreme courts in Whitehorse and the Court of Appeal, which sits occasionally in Whitehorse and regularly in Vancouver.

■ Yellowknife Regional Office

The Yellowknife Regional Office is responsible for all prosecutions under the *Criminal Code* and other federal statutes, as well as territorial ordinances, in the Northwest Territories — an area of 3.2 million square kilometres. As well, the Office conducts all prosecutions under the *Young Offenders Act*, both federal and territorial.

The Office comprised nine lawyers and seven support staff. Eight of the lawyers and the General Counsel travelled throughout the Northwest Territories, along with the circuit courts. One lawyer handled all civil litigation as well as legal services and advice to federal departments in Yellowknife. Another provided these services in Iqaluit (formerly Frobisher Bay).

The opening of the Iqaluit sub-office was approved by the Minister June 15, 1987. This move to improve the delivery of justice in the Eastern Arctic complemented the territorial government's appointment of a full-time resident judge in Iqaluit. The sub-office was officially opened February 1, 1988, providing service to Baffin Island communities as well as Grise Fiord, Resolute Bay, Hall Beach, Igloolik and Sanikiluaq.

In *Regina v. Rogers*, the Court of Appeal for the Northwest Territories confirmed that persons convicted of crimes of violence are prohibited for five years from possessing firearms, as provided in the *Criminal Code*. The Court ruled that the prohibition was not cruel and unusual punishment when applied to persons who derive much of their livelihood from hunting and trapping.

In another case, *Regina v. Emikotailak*, the Court of Appeal reserved decision on whether a mandatory life sentence without parole for 10 years was cruel and unusual punishment, violating the accused's rights under the *Canadian Charter of Rights and Freedoms*.

In a precedent-setting move, the Supreme Court of the Northwest Territories decided to transport a six-member jury from Rankin Inlet to hear a murder trial in Iqaluit. This action was taken in *Regina v. Jopey Atsiataq*, in order to provide a trial in the accused's home community and at the same time satisfy the accused's right to be tried by an impartial jury.

In *Regina v. Chivers*, the Court accepted that evidence of "battered women's syndrome" was a valid basis for a plea of self-defence in a murder trial. This was believed to be the first time that a court accepted evidence of this nature. The accused was subsequently accused of the lesser offence of manslaughter.

In *Sibbeston v. Attorney General of Northwest Territories*, the petitioner sought a declaration that proposed amendments to the constitution were a violation of the *Canadian Charter of Rights and Freedoms*. The plaintiff also argued that the Attorney General had breached constitutional convention by failing to invite representatives of the Northwest Territories to constitutional meetings. The Attorney General's application for an order striking out the petition was dismissed by the Supreme Court of the Northwest Territories but granted on appeal to the Court of Appeal. The petitioner sought leave to appeal to the Supreme Court of Canada.

Policy, Programs and Research Branch

The Policy, Programs and Research Branch is responsible for the planning, development and implementation of government justice policies and the administration of 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 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 falling within the specific responsibility of other government branches or departments;
- ☐ develop and administer most of the Department's grants and contributions programs, including federal-provincial cost-shared programs (see page 53);
- ☐ define, undertake or oversee socio-legal research in support of policy analysis and development;
- ☐ respond to internal requests for legal information;
- ☐ maintain liaison with research and statistics units in other departments, provincial governments and international agencies;
- ☐ identify and develop statistics-related information requirements;

- ☐ provide funding and technical assistance to support provincial and territorial information systems development in areas of departmental priority; and
- ☐ provide statistical services to support departmental decision-making and policy development.

☐ **Criminal and Family Law Policy Directorate**

The Criminal and Family Law Policy Directorate analyzes and advises on legal issues and develops and implements policies related to criminal justice and family law. The Criminal Law Policy Section participates in many committees concerned with criminal law issues and reviews the recommendations of the Law Reform Commission of Canada and other bodies. This Section also develops amendments to the *Criminal Code* and other statutes. The Family Law Policy Section develops and implements policies relating to the *Divorce Act*, the *Family Orders and Agreements Enforcement Assistance Act*, the *Garnishment, Attachment and Pension Diversion Act* and the *Marriage Bill*, providing advice within the Department and to other departments. The newly created Sentencing Project Team provides advice on sentencing issues, assesses the need for broad reform of the sentencing system, and prepares responses to the Report of the Canadian Sentencing Commission.

☐ **Criminal Law Review Group and Protection of Life Project**

The Criminal Law Review Group conducts a fundamental review of the criminal law system, examining and recommending means of implementing all proposals of the Law Reform Commission. The Protection of Life Project develops responses to recommendations of the Commission, and other bodies, relating to medical and environmental law.

□ Compliance and Regulatory Remedies Project

A government-wide initiative, the Compliance and Regulatory Remedies Project was initiated by the Department of Justice and the Office of Privatization and Regulatory Affairs, in concert with 27 other departments. It seeks to ensure that Canada's Criminal Law Policy and the Regulatory Reform Strategy are complementary. Among other things, the Project considers the difference between crimes and regulatory offences, what procedures should be used to encourage or enforce compliance with legal standards, and how to strengthen criminal sanctions and sentencing practices, particularly in relation to corporate offenders.

□ Programs and Policy Directorate

The Programs and Policy Directorate seeks to ensure that the administration of justice is consistent with national priorities. It formulates, initiates and monitors policies in order to constantly improve justice-related programs. The Directorate negotiates and administers major funding programs for provinces, territories, nongovernmental organizations and individuals. These programs are designed to provide equitable access to the justice delivery system in Canada and to support the Department's leadership in criminal and juvenile justice. The Policy Development Section is concerned with particular sectors of the justice system such as crime prevention, and sectors of the population with special needs, such as natives, women and offenders.

The Programs Section (Young Offenders) negotiates and administers cost-shared agreements with provinces and territories under the *Young Offenders Act*. The Programs Section (Access to Justice) negotiates and administers cost-shared agreements with respect to legal aid, victims, native courtworkers, aboriginal self-government and public education. This Section also administers legal scholarship programs and grants to nongovernmental organizations.

□ Research and Development Directorate

The Research and Development Directorate conducts empirical and socio-legal research, identifies statistical requirements, develops demonstration projects and formulates and assesses legal information initiatives. These research and development activities identify, test and implement policies to improve the justice system in Canada.

The Planning and Implementation Section coordinates and plans the implementation of major policy and legislative initiatives undertaken by the Branch.

The Systems Development and Statistics Section identifies departmental information needs, gathering and supplying statistics in collaboration with Statistics Canada. This section also provides advice and service in the Department's funding of, and technical assistance to, provincial information systems. It administers the Young Offenders Act Systems Development Contribution Program and the Family Provisions Enforcement Assistance Fund.

The Research Section comprises four units: Family Law, Criminal Law, Access to Justice and Public Law. It provides empirical research to support legislative and policy development and to assist programs designed to improve access to justice.

The Consultation and Development Section manages programs and projects designed to reform the justice system in Canada. It administers the Criminal Law Reform Fund, the Consultation and Development Fund, the Special Projects Legal Aid Fund, the Access to Legal Information Fund, the Child Sexual Assault Contribution Fund, the Impaired Driving Fund, the Special Projects (Natives) Fund and the Young Offenders Program Development Contribution Fund.

The Law Information Section develops legal information initiatives on laws for which the Minister of Justice is responsible. It develops the public legal information components of communications plans to provide information on law reforms and other policies, and is responsible for the long-range planning and development of legal information strategies.

■ Activities

□ Criminal and Family Law Policy Directorate

The Directorate was involved in consulting on and formulating major legislative and policy initiatives during the year.

- Bill C-58, the proposed *Mutual Legal Assistance in Criminal Matters Act*, was introduced, received second reading and was referred to a special legislative committee for study. This Act will implement a Canada-U.S. treaty and provide a framework for implementing similar treaties with other countries.
- The Branch was involved in several aspects of the government's national drug strategy:
 - It participated in an interdepartmental committee created to study widespread calls for legislation to curb the availability of drug paraphernalia, devices or objects designed for the recreational use of illicit drugs.
 - The Branch took part in negotiations towards the development of a draft convention against illicit traffic in narcotic drugs and psychotropic substances.
 - Bill C-61 was introduced in the House of Commons, containing amendments to the *Criminal Code* that would provide for the seizure, restraint and forfeiture of proceeds of crime. The Bill received second reading and was referred to a special legislative committee during the year.
- Perceived weaknesses of the *Immigration Act* were studied during the year. The Branch participated in the Task Force on Security and Enforcement in the Immigration Act, assisting in identifying problems in immigration law and policy and in preparing recommendations to redress them. New provisions were developed for Bill C-55, amendments to the *Immigration Act*.
- The Branch took a lead role in developing a response to an amendment to the *N.W.T. Jury Act* that permits persons who speak neither English nor French to sit on juries in the Northwest Territories.
- In concert with the Ministry of the Solicitor General, working papers were developed to clarify and articulate a new policy direction in the Canadian correctional system.
- The *Supreme Court Act* (Bill C-53), which streamlined appeal procedures of the Supreme Court of Canada, received Royal Assent November 19, 1987.
- An *Act to Amend the Criminal Code (victims of crime)* was introduced in November and reported back, with amendments, to the House of Commons by a legislative committee at the end of the fiscal year. The Branch was involved in consultations with the provinces on this legislation (Bill C-89) and in the development of a Statement of Basic Principles of Justice for Victims of Crime. The statement was adopted at a meeting of the federal-provincial-territorial ministers responsible for criminal justice.
- New offence and penalty provisions were developed, in consultation with Environment Canada, on the proposed *Canada Environmental Protection Act*, (Bill C-74).
- The Branch advised the Department of Indian Affairs and Northern Development about gaming on reserves and consulted with the provinces on a variety of gaming issues including lotteries, jai alai and computerized gaming. The Branch also advised the Department of Agriculture on the interpretation of the *Criminal Code* with respect to pari-mutuel betting. In consultation with the Department of Agriculture, amendments to the Code were developed to permit the operation of betting theatres by horse-racing associations.

- The Branch took part in a study of computer-related crime, undertaken by the Council of Europe. It was active on a number of Council committees that considered justice and family law issues, including proceeds of crime, sexual offences against children and pornography.
- Preparations began during the year for Canada's participation in 1990 in the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders. This is a large-scale undertaking involving the development of Canada's position on many issues and a heavy agenda of preparatory meetings. The work includes consultation and cooperation with the Corporate Management Branch, the Ministry of the Solicitor General and the Department of External Affairs.
- Amendments to the *Criminal Code*, the *Immigration Act* and the *Citizenship Act* (Bill C-71) were given Royal Assent during the year. The amendments enable Canada to prosecute, extradite or deny entry permits to the perpetrators of war crimes, or crimes against humanity, in other countries.
- Another Act to amend the *Criminal Code* (Bill C-28), creating a new crime of torture, was given Royal Assent in April 1987. The amendments provide Canadian courts with the jurisdiction, in certain circumstances, to try persons who commit acts of torture outside Canada. With passage of the legislation, Canada was able to ratify, in June 1987, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The Directorate assisted in developing the Department's response to a decision by the Supreme Court of Canada in *Vaillancourt v. The Queen*, that a paragraph of the *Criminal Code* concerning "constructive murder" contravened a section of the *Canadian Charter of Rights and Freedoms*. This work involved consultation with the provinces and providing advice to the Criminal Prosecutions Section on the handling of similar cases. A project was initiated to review the implications of the decision and to examine the possibility of reform in this area of the law.
- Second reading began in November 1987 on legislation developed by the Directorate to protect Canadians, particularly young people, against the spread of pornography.
- Legislation developed on child sexual abuse (Bill C-15) became law on January 1, 1988. The Directorate continued its liaison with the provinces and with professionals who respond to reports of child sexual abuse and exploitation. Justice officials also represented the Department on an interdepartmental committee on child abuse, established by the Department of Health and Welfare.
- The Directorate assisted in developing a departmental framework for aboriginal criminal justice policy. Advice was also provided on the appointment of justices of the peace under the *Indian Act*, as required by two government studies: the *Review of Policing on Reserves* and the *Administration of Justice on Reserves*. Advice was also provided to several other projects, programs and research studies concerned with aboriginal justice.
- The disposition of impaired driving litigation, conducted under 1985 amendments to the *Criminal Code*, was closely monitored throughout the year. The Directorate supported the development of research studies and law information programs on these provisions of the Code. A number of breath-testing devices were evaluated for approval under the *Criminal Code* and a study on drugs and driving was initiated. As well, the Department cooperated with the Department of Transport in developing amendments to the *Railway Safety Act* (Bill C-105), concerning the operation of trains by impaired persons.

- Funds were provided to Family Mediation Canada to develop a code of practice for mediation and national training standards, as well as for the second National Mediation Conference. Parts I and III of the *Family Orders and Agreements Enforcement Assistance Act* were proclaimed in November 1987, launching a tracing information service. The legislation permits the release of information from designated data banks to trace a missing person in order to enforce a support or custody order.
- The Minister tabled the final report of the Canadian Sentencing Commission in March 1987. The Department was involved throughout the year in consultations on this report with the provinces, territories, nongovernment organizations and the general public. These consultations will lead to a departmental response to the report and assist in defining the need for broad reform of the sentencing system.

☐ **Criminal Law Review Group and Protection of Life Project**

Consultations with the provinces continued throughout the year on Report 30 of the Law Reform Commission's Draft Criminal Code, known as the General Part. This was the major thrust of the work of the Criminal Law Review. Three areas of reform were the object of intense consultation: Principles of Liability, Defences and Involvement in Crime. Consultations were also held, and research conducted, on proposals to reform provisions of the *Criminal Code* relating to mentally disordered offenders. These provisions had been presented by the Minister in the form of a draft bill in the previous fiscal year. Study during the year focused on the cost implications of the proposed legislation.

The legal implications of several medical issues were examined during the year, including AIDS, sexually transmitted diseases in children and youths, prenatal screening, human experimentation and organ transplantation. A World Health Organization Fellowship report on a wide range of medical law topics was completed during the year.

In environmental law, a World Health Organization Fellowship report was produced, analyzing the laws of many countries designed to protect human beings from chemical hazards. This report also studied international conventions and activities on chemical hazards, conducted by the International Labour Organization, the Food and Agriculture Organization, the World Health Organization and the Organization for Economic Cooperation and Development. A presentation was made to the Canadian Council of Resource and Environment Ministers on the recommendations of the Law Reform Commission concerning crimes against the environment. As well, the Project advised Environment Canada on the offences and enforcement provisions of the proposed *Canadian Environment Protection Act*, when the legislation was being studied by a legislative committee.

☐ **Compliance and Regulatory Remedies Project**

The Project was launched in the fall of 1987 by the Deputy Minister of Justice and the Deputy Minister Responsible for the Office of Privatization and Regulatory Affairs. A Project Core Group was established early in 1988, along with a network of liaison officers in federal departments. Orientation sessions were held within the Department to outline regulatory compliance issues and the objectives of the Project.

☐ **Programs and Policy Directorate**

As noted earlier, responsibility for the *Young Offenders Act* and juvenile justice policy was transferred during the year from the Solicitor General to the Department of Justice. The Department therefore undertook several new activities, including an ongoing review of juvenile justice policy, a \$146 million federal-provincial cost-shared program, an initiative to develop young offenders information systems, and a variety of research programs.

The Department subsequently reviewed several provisions of the *Young Offenders Act*, including the admissibility of statements made by young persons to persons in authority; the scheme of judicially determined "open" and "secure" custody placements; the provisions for consensual treatment orders; and the

means whereby young accused are transferred to the jurisdiction of ordinary courts. Research was conducted into the implementation of the minimum age of criminal responsibility, currently set at 12 years. All of this work arose from the Minister's consultations with provincial and territorial ministers responsible for juvenile justice.

The Directorate undertook comprehensive reviews of situations where the criminal law may be applied differentially to certain sectors of the population, including children, aboriginal people, youth and women. This is ongoing work, designed to ensure that all Canadians enjoy the fullest possible access to justice. The Directorate also reviewed crime prevention policies and examined the efficacy of departmental practices that encourage public participation in the development of criminal justice policy.

☐ **Research and Development Directorate**

A large number of research projects were conducted during the year, including:

- identification of qualitative and quantitative information required to support evaluation and research into the *Young Offenders Act*;
- a study of adult criminal court information requirements, as recommended by the Canadian Centre for Justice Statistics and the Canadian Sentencing Commission;
- studies to determine the effectiveness of court-based mediation services in divorce cases in four Canadian cities, including a review of the literature on custody and support and completion of an inventory for divorce mediation and reconciliation services;
- beginning of a research program on the victims of crime, including an assessment of pilot projects to test models for the collection and presentation of victim impact statements in court, and the preparation and publication of the 1986 annual report on criminal injuries compensation programs;
- continuation of a program to monitor legislative changes concerning sexual assault, including the collection of detailed information from six Canadian cities on the handling of sexual assault cases before and after the changes; a review and analysis of case law and a survey of front-line service agencies available to sexual assault victims;
- studies to provide a better understanding of child sexual abuse, including a study to identify problems and gaps in the handling of these cases; a program to provide baseline data for a future review of the legislation; completion of a review and bibliography of the literature relating to children's testimony; evaluation of a child support work project in Vancouver and a child advocacy project in Winnipeg; and the beginning of work on an evaluation of a victim-witness videotaping project in Winnipeg and a child support and training project in Toronto;
- preparation of research reports for the Canadian Sentencing Commission, including a study of cases coming before Toronto courts and the launching of a study on computer-aided sentencing;
- completion of research reports emanating from the Sentencing Alternatives Initiative and beginning of work on a report that will summarize the findings of individual site studies;
- continuation of research in support of the 1985 legislation on impaired driving, including a major project to review the implementation and effects of the legislation's curative treatment provisions, and completion of a review of these provisions in three provinces, along with an analysis of reported case law;
- completion of a synthesis of the findings of a three-year program of research in public legal information; completion of the preparations for publication of individual research reports; and completion of a study on the effectiveness of distribution mechanisms and the satisfaction of those who used the Department's legal information on the *Divorce Act*; and

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- development of law information materials, including books, magazine articles and other materials on child sexual abuse legislation; two videotapes to inform teenagers and north-erners about impaired driving provisions; a booklet explaining the role of divorce mediators; and a poster encouraging young people to find out more about the justice system.

Associate Deputy Minister's Sector Public Law Branch

This Branch provides advice on legal and policy issues in the public law field. In particular, the Branch advises on constitutional law, including the *Canadian Charter of Rights and Freedoms*, and on international, native, human rights and administrative law, as well as on official languages and judicial affairs. It also examines proposed regulations to ensure they comply with the *Statutory Instruments Act*. The Branch works closely with many other government departments and agencies.

■ Organization

□ Constitutional and International Law Section

This Section offers advice on legal and policy matters affecting constitutional and international law. It is involved in negotiating and drafting federal-provincial accords as well as developing and implementing agreements and other instruments in international, private and public law, and in litigation involving questions of constitutional and international law.

The Section also advises the government on its obligations and rights under international law and on the constitutional implications of trade negotiations. The Section is concerned with litigation affecting the relationship between domestic and international law. It represents Canada in various international organizations that 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 assists other branches of the Department on such subjects as amendments to the *Federal Court Act* and in providing legal policy advice related to the drafting of bills, regulations and other initiatives to departments and agencies of government. It also has responsibility for developing proposals for administrative law reform. Another major responsibility is working in conjunction with Departmental Legal Services in the preparation of legal opinions requested by federal departments, agencies, boards and Crown corporations on a variety of administrative law and other legal issues.

□ Privy Council Office Section (Justice)

This Section carries 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 and are authorized. Advice is provided on correcting legal ambiguities, inconsistencies and technical errors in proposed regulations. The Section also ensures that regulations do not contravene the *Canadian Charter of Rights and Freedoms* and the International Convention on Human Rights, and it examines all statutory instruments that are required to be published in Part II of the *Canada Gazette*. The Section examines, pursuant to the *Canadian Bill of Rights*, all regulations that are not examined pursuant to the *Statutory Instruments Act*.

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.

The Privy Council Office Section (Justice) also provides legal and policy advice to the Regulatory Affairs Branch on the implementation of the Federal Regulatory Plan.

☐ **Federal-Provincial Relations Office Section**

This Section provides legal and policy advice to the Federal-Provincial Relations Office, primarily in the areas of constitutional and native affairs. In particular, it is involved in constitutional reform discussions with the provinces, constitutional discussions with aboriginal peoples, and tripartite discussions on Métis self-government.

☐ **Human Rights Law Section**

This Section provides advice on legal and policy issues concerning human rights, especially as they relate to the *Canadian Charter of Rights and Freedoms* and to the *Canadian Human Rights Act*. It is also responsible for legal advice and policy development on official languages and coordinates language litigation. It advises the government on international human rights issues, including existing treaty obligations, and responds to complaints brought against Canada under the Optional Protocol to the International Covenant on Civil and Political Rights. The Judicial Affairs Unit provides legal and policy support to the Minister and the Department on issues relating to the federal judiciary.

☐ **Native Law Section**

This Section provides legal and policy advice on native affairs and northern issues, especially on the development of aboriginal self-government and in support of native litigation issues. It also advises on constitutional and international issues affecting natives, carries out legal and policy research on a wide range of native issues, and acts as a specialist resource to the Minister and the Department. (See the Aboriginal Law Section on page 51.)

■ **Activities**

☐ **Meech Lake Accord**

The Assistant Deputy Minister, Public Law, with the support of the Public Law Branch, advised the Prime Minister and government on the Meech Lake Accord. Working closely with the Minister, the Deputy Minister and the Federal-Provincial Relations Office, the Branch was involved in the officials' meetings that preceded the Accord and the negotiations leading to the Accord, including drafting, providing advice on the ratification process and explaining the Accord to Parliament and the general public.

☐ **Free Trade Agreement**

The Canada - United States Free Trade Agreement was signed by Prime Minister Brian Mulroney and President Ronald Reagan on January 2, 1988. Under the responsibility of the Assistant Deputy Minister (Public Law), the Department provided advice on the Agreement, as well as on its constitutional implications. During March, the Privy Council Office Section examined many proposed regulations dealing with free trade that were required before introduction of the *Canada - United States Free Trade Implementation Act*.

☐ **Official Languages**

In cooperation with the Treasury Board Secretariat and the Department of the Secretary of State, the Branch continued to work on the renewal of legislation and policies on official languages. On June 25, 1987, the Minister introduced Bill C-72, an Act respecting the status and use of the official languages of Canada. The new Act will replace the 1969 legislation with a more comprehensive statute, taking into account developments in policy and case law, particularly since the advent of the *Canadian Charter of Rights and Freedoms* in 1982. The Branch also participated in related work on the Canadian Multiculturalism Bill, introduced by the Secretary of State in December, and in consultations leading to the proclamation in September of the language-of-trial provisions of the *Criminal Code* for Saskatchewan.

Similar consultations, on summary conviction offences, were continued with Nova Scotia and Prince Edward Island. As well, the Branch was involved in preparing the government's position in a number of constitutional language rights cases, and in advisory work on the question of privatization and official languages.

☐ **Human Rights**

The Branch provided advice on a number of Charter issues, including questions concerning equality, search and seizure, the right of life, liberty and security of the person, legal rights and fundamental freedoms. This advice, to the Minister and Deputy Minister, as well as to a number of other government departments, related to both litigation and legislative initiatives. Consultations continued on a review of the *Canadian Human Rights Act*, in response to recommendations from parliamentary committees and concerns expressed by the Canadian Human Rights Commission. Also during the year, the Branch prepared the federal section of Canada's Second Report on the International Covenant on Civil and Political Rights, scheduled for submission to the United Nations in August 1988.

☐ **Canada-France Fisheries and Boundary Dispute**

Throughout the year, the Branch took part in negotiations with France on a dispute over the 1972 Canada-France Fisheries Agreement and the maritime boundary of St. Pierre and Miquelon off the south coast of Newfoundland. Failure to resolve the issue of France's quota entitlement under the Agreement delayed submission of the boundary dispute to a third party for judicial settlement. Negotiations were continuing as the year concluded.

☐ **Judicial Affairs**

The *Judges Act* was amended twice during the fiscal year. Bill C-41 standardized the retirement, supernumerary and tenure provisions of federally appointed judges. Bill C-88 increased federal judicial salaries to levels recommended by the 1986 Commission on Judges' Salaries and Benefits, and made some Charter-related amendments to the *Judges Act*. The Branch also participated in the reform of judicial appointments and the establishment of the Canadian Judicial Centre to coordinate judicial education in Canada.

☐ **International Aboriginal Matters**

The Branch advised the government on the 1987 session of the United Nations Working Group on Indigenous Populations, on the International Labour Organization's revision of a Convention on Indigenous and Tribal Populations, and in connection with the 1987 Commonwealth Heads of Government Meeting in Vancouver.

☒ **Other Activities**

The Public Law Branch also:

- ☐ organized the fifth International Trade Law Seminar held on October 15, 1987, in Ottawa;
- ☐ administered a segment of the Department of Justice Consultation and Development Fund, and reassessed the priorities of the Human Rights Law Fund;
- ☐ provided 147 opinions on regulations, under the *Statutory Instruments Act*;
- ☐ examined some 1,700 Orders in Council, acting as legal counsel to the Privy Council Office; examined some 1,236 regulations to ensure compliance with the *Canadian Charter of Rights and Freedoms*; and prepared approximately 130 documents issued under the Great Seal;
- ☐ conducted broad consultations on a series of proposals to amend the jurisdiction of the Federal Court of Canada and to improve the *Federal Court Act*;
- ☐ in cooperation with the Regulatory Affairs Branch of the Treasury Board, held the second annual Seminar on the Regulatory Process for government lawyers and officials; and
- ☐ offered government lawyers the fourth and fifth in a series of annual administrative law seminars.

Legislative Programming Branch

The Legislative Programming Branch prepares all government bills and motions to amend those bills. The Branch periodically revises and consolidates statutes and regulations. It also oversees the publishing of annual volumes of statutes and Part III of the *Canada Gazette*.

■ Organization

The Branch, headed by an Associate Deputy Minister, consists of the Legislation Section, the Statute Revision Commission, and the Legislative Editing Office.

□ Legislation Section

This Section is under the direction of the Chief Legislative Counsel, holding the rank of an Assistant Deputy Minister. Assisting him are a Deputy Chief Legislative Counsel, a General Counsel (Legislation), five senior counsel and 10 legislative drafters. In addition, one senior counsel and three drafters are attached to the Tax Counsel Unit in the Department of Finance to draft and review 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 bills introduced by ministers into the House of Commons. This is required under the *Department of Justice Act* in order to ascertain whether any provisions are inconsistent with the *Canadian Charter of Rights and Freedoms* or the *Canadian Bill of Rights*.

□ Statute Revision Commission

The Statute Revision Commission revises and consolidates the statutes of Canada. It maintains data bases for all federal statutes and regulations of general public interest. Chaired by the Assistant Deputy Minister (Public Law), the Commission comprises the Chief Legislative Counsel and the General Counsel (Legislation). The Secretary of the Commission, also a General Counsel, supervised a staff of 15 persons during the year, including three lawyers.

□ Legislative Editing Office

The Legislative Editing Office provides editing services to the Legislation Section and to the Privy Council Office Section (Justice). It prepares draft proclamations, commissions and other instruments issued under the Great Seal for review by legal officers of the Privy Council Office Section (Justice). It also maintains master copies of federal statutes and regulations, and prepares and oversees the printing of the Table of Public Statutes and Table of Acts and Responsible Ministers, Part III of the *Canada Gazette* and the annual volumes of the Statutes of Canada.

■ Activities

The government introduced 77 bills drafted by the Legislation Section in 1987-88. During that period the Section also prepared a number of motions to amend bills for use in Parliament and commenced work on many other bills. Notable among these was the legislation required to implement the Canada - United States Free Trade Agreement, the *Canadian Environmental Protection Act* and the *Official Languages Act*, and acts to amend the *Immigration Act*, the *Copyright Act* and the *Canada Elections Act*.

The Section continued to carry out a large amount of work for the committee established to draft the official French version of certain constitutional acts. The first report of this committee was tabled in Parliament at the end of 1986. The Section also provided assistance to the Government of Saskatchewan in the preparation of French versions of some urgently needed provincial statutes.

The Department once again contributed to the Common Law and Civil Law faculties of the University of Ottawa to support legislative drafting courses, a part of the university's graduate studies program. Eight fellowships were awarded to students enrolled in this program, a major source of legislative drafters for both the federal and provincial governments.

The *Revised Statutes of Canada Act (1985)* was passed at the end of 1987. Printing of the Revised Statutes, in bound volumes and loose-leaf editions, was completed during the year.

Civil Litigation and Real Property Law (Quebec) Section

Under the supervision of the Associate Deputy Minister, the Civil Litigation and Real Property Law (Quebec) Section represents the Attorney General of Canada in civil litigation by or against the federal government and its agents in Quebec. (For civil litigation conducted elsewhere in the country, see page 13, Civil Litigation Branch.)

Eight lawyers, two notaries and one paralegal in the Section handle general litigation, as well as real property and commercial law matters in all regions of Quebec except Montreal. The Section dealt with all public and private law matters except criminal litigation, tax litigation and immigration.

Significant cases during the year included the following:

In *Attorney General of Quebec v. Régent Sioui et al.*, four members of the Huron Band in Lorette, Quebec, were convicted of having camped in the Jacques Cartier Provincial Park, contrary to a regulation under the *Parks Act* prohibiting the destruction of plants and the setting of fires, despite defendants' pleas involving, inter alia, arguments under the Charter pertaining to freedom of religion and aboriginal rights. The Quebec Court of Appeal overturned the convictions, stating that Section 88 of the *Indian Act* superseded regulations drafted under the *Parks Act*, and prevented the provincial law from infringing on defendants' treaty rights as they appeared from a "document" signed in 1760 by the Hurons and General Murray. The Attorney General of Quebec appealed to the Supreme Court of Canada, whereupon the Attorney General of Canada intervened.

In *Commission de transport de la communauté urbaine de Québec v. National Battlefields Commission*, the Quebec Court of Appeal reversed a judgment at trial, holding that all carriers traversing property managed by the National Battlefields Commission must hold permits issued by the Commission des transports du Québec, under the terms of the provincial *Transport Act*. The Attorney General of Canada appealed the decision.

In *Johnny Alashua et al v. Northern Quebec Inuit Association et al*, the plaintiffs applied to the Quebec Superior Court for a declaration that the James Bay Agreement (and the various acts and regulations adopted subsequently) are ultra vires, null and void and of no effect. The plaintiffs alleged, in particular, that a) the Agreement violates a section of the *Constitution Act, 1867*, b) that the Northern Quebec Inuit Association has no authority to represent them for purposes of the Agreement, and c) that the plaintiffs therefore retain rights granted them under the *Quebec Boundaries Extension Act, 1912*, as amended. The Crown defended this action. Proceedings were continuing at the end of the fiscal year under review.

■ Montreal Regional Office

The Montreal Regional Office prosecutes criminal cases on behalf of the Attorney General of Canada, brings or defends against civil proceedings to which the Crown is a party and represents the Minister of National Revenue in matters involving taxpayers in Quebec. It also provides legal advice and consultation to federal departments and agencies in Quebec. The Office is responsible for all these matters in all districts under the jurisdiction of the Court of Appeal in Montreal, including the city itself and outlying areas.

The Office had 52 counsel on staff during 1987-88, 24 in civil litigation, 14 in criminal prosecutions and 11 in tax litigation. There were three General Counsel. In addition, there were five articling students and five students on staff.

The Civil Litigation Section handled more than 6,000 cases during the year, including actions arising from the application of statutes in immigration, correctional services, income tax, unemployment insurance and customs. A major portion of this work consisted of cases involving the *Canadian Charter of Rights and Freedoms*.

The Criminal Prosecutions Section dealt mainly with prosecutions involving narcotics, food and drugs and economic crimes. They also handled cases involving extradition, the interception of private communications and the judicial review of actions by penitentiary representatives. A major portion of the Section's work resulted either from applications for search warrants and objections thereto, or from cases brought under the Charter.

The Tax Litigation Section handled more than 3,200 cases, representing the Department of National Revenue in cases before the Tax Court of Canada and both divisions of the Federal Court.

In *Government of Canada v. Joseph John Kindler*, the Federal Court of Appeal ruled that an inquiry under the *Immigration Act*, concerning an American fugitive, did not amount to a de facto extradition. The Court also ruled that the decision on the need for an inquiry did not deprive the defendant of any rights under the Charter.

In an action arising from the bankruptcy of Construction Taragon Inc., the Quebec Court of Appeal held that the *Bankruptcy Act* did not nullify a deemed trust created for Her Majesty's benefit under a section of the *Unemployment Insurance Act*. The ruling affirmed a section of the *Bankruptcy Act* that property held by a bankrupt in trust for another person is not included in the assets of the estate.

In *Lasalle v. Le Marier*, the Quebec Court of Appeal partially reversed a decision of the Quebec Superior Court, permitting a class action against the Solicitor General of Canada and the warden of Archambault prison. The suit arose from the cancellation of the prisoners' regular activities because of measures taken to repair the prison after a riot in the summer of 1982. The Court of Appeal allowed the appeal in part, granting leave for a class action against the warden but not the Solicitor General.

In *The Queen v. Les Habitations Périgord Inc. et al*, the accused contested a certificate signed by an official acting for and in the name of the Minister in order to counter the prescription. The Quebec Court of Appeal confirmed previous decisions in ruling that the Minister of Revenue must personally take notice of evidence used to prosecute an accused under the *Income Tax Act*.

In *The Queen v. Francesco Dellacio and Domenico Franco Sciullo*, the Superior Court reversed an earlier decision to grant a release with surety for the accused, after they had been indicted on charges of conspiracy to import, importing, and possession of a narcotic for the purpose of trafficking. The Attorney General of Canada applied for a review of the case by another Superior Court Judge, who ordered that the accused be imprisoned until after their trial.

In *U.S.A. v. Allain Allard and Jean-Pierre Charette*, the Supreme Court held that a Superior Court Judge, acting as a Commissioner under *Extradition Act*, was not a court of competent jurisdiction under a section of the Charter. At the same time, the Court ruled that delays occasioned by foreign governments to bring an action under the *Extradition Act* cannot be used to calculate the time limit provided under a section of the Charter.

In *U.S.A. v. Cotroni* and *U.S.A. v. El Zein*, the Quebec Court of Appeal held that it is contrary to a section of the Charter to extradite a Canadian citizen when that citizen can be tried in Canada for the offence under question. Both cases were submitted to the Supreme Court of Canada; the decision was still under consideration at the end of the year under review.

In *Robert Collin v. Jean-Paul Dallaire et al*, and other cases, the Superior Court ruled that a prisoner has recourse to habeas corpus only if the prisoner has exhausted all of the administrative remedies provided by the law, and if the application contains a plausible ground for review, equivalent to a loss or want of jurisdiction.

In *Laurentide Rendering Inc. v. The Queen*, the Federal Court of Appeal ruled that Revenue Canada was right in considering that the amount receivable as a result of an expropriation was income for the year in which the indemnity was agreed upon in 1975, and not for the year 1969 when the expropriation was made. In reaching this conclusion the Court decided that under the circumstances, paragraph 44(2) of the *Income Tax Act*, applicable to amounts receivable after May 1974, had no retroactive effect.

In *Placements Bourget Inc. v. The Queen*, the issue was whether the profit from a disposal of securities was capital gains or business income. The judgment was in favour of the Department of Revenue. The taxpayer appealed this case to the Federal Court of Appeal.

■ National Program for the Integration of the Two Official Languages in the Administration of Justice

The National Program for the Integration of the Two Official Languages in the Administration of Justice is designed to promote the use of French and English in legislation, in the legal profession and in the courts. The Program, established in 1981, supports the production of glossaries, vocabularies, forms and practitioners' guides for lawyers, law students and teachers, and training courses in French legal terminology for lawyers, interpreters and judges.

The Associate Deputy Minister is responsible for the Department's participation in the Program and chairs the management and steering committees for the Program. Also represented on the steering committee are the Department of the Secretary of State; the attorneys general of Ontario, New Brunswick, Manitoba and the Northwest Territories; the Quebec Department of Justice; the bar associations of Ontario and New Brunswick; associations of French-speaking lawyers in common-law provinces; the University of Ottawa, the University of Moncton, and McGill University; the Office of the Commissioner for Federal Judicial Affairs; the Canadian Law Information Council; the Canadian Bar Association.

Since 1984, standardized bilingual vocabularies dealing with the law of evidence and the law of succession have been published by the Program, as well as volumes I and II of a vocabulary of property law. Work continued on a bilingual lexicon of legal terms found in the *Revised Statutes of Canada, 1985*.

Departmental Legal Services Sector

The Departmental Legal Services Sector provides a variety of in-house legal services to federal departments and agencies as well as specialized legal advice on property, commercial, access to information, privacy and trade law matters. It is also responsible for the development of policy in relation to access to information, privacy and related issues.

■ Organization

During 1987-88, the Sector comprised 280 lawyers and support staff. (This figure includes person-years lent to the Department of Justice by client departments and agencies.) The Sector was reorganized during the year, establishing four branches headed, respectively, by a Senior Assistant Deputy Minister, Commercial and Property Law; an Assistant Deputy Minister, Information Law; an Assistant Deputy Minister, Trade Law; and an Assistant Deputy Minister, Finance Law.

☐ **Commercial and Property Law Branch**

The Senior Assistant Deputy Minister, Commercial and Property Law, is responsible for the overall direction and coordination of the Sector and for the legal units serving the following departments and agencies.

- ☐ Canadian Commercial Corporation
- ☐ Canadian International Development Agency
- ☐ Environment Canada
- ☐ External Affairs
- ☐ Indian and Northern Affairs
- ☐ National Capital Commission
- ☐ National Defence

- ☐ National Research Council
- ☐ Office of Privatization and Regulatory Affairs
- ☐ Public Works
- ☐ Royal Canadian Mint
- ☐ Supply and Services
- ☐ Transport
- ☐ Veterans Affairs

The Senior ADM also has functional responsibility for all commercial and property law matters handled by the Department, as well as management of the Commercial and Property Law and Advisory Services sections.

☐ **Information Law Branch**

The Assistant Deputy Minister, Information Law, is responsible for the management and coordination of legal service provided to the following departments and agencies:

- ☐ Canadian Security Intelligence Service
- ☐ Communications Security Establishment
- ☐ Correctional Services
- ☐ Employment and Immigration
- ☐ Fisheries and Oceans
- ☐ Health and Welfare
- ☐ Labour
- ☐ National Parole Board
- ☐ Public Service Commission
- ☐ Royal Canadian Mounted Police
- ☐ Secretary of State

- ☐ Solicitor General
- ☐ Treasury Board

This official is also responsible for the direction and supervision of the Information Law and Privacy Section and for legal advice and policy matters relating thereto.

☐ **Trade Law Branch**

The Assistant Deputy Minister, Trade Law, is responsible for the management and coordination of legal services provided to the following departments and agencies:

- ☐ Agriculture
- ☐ Atlantic Canada Opportunities Agency
- ☐ Atomic Energy Control Board
- ☐ Canadian Dairy Commission
- ☐ Communications
- ☐ Consumer and Corporate Affairs
- ☐ Energy, Mines and Resources
- ☐ Regional Industrial Expansion
- ☐ Revenue Canada (Customs and Excise)
- ☐ Revenue Canada (Taxation)
- ☐ Trade Negotiations Office
- ☐ Western Economic Diversification Office

In addition, this official is responsible for the management of the Trade Law Section and providing advice and guidance on all matters relating to trade law.

☐ **Finance Law Branch**

The Assistant Deputy Minister, Finance Law, is Chief Counsel to the Department of Finance and is responsible for the management and coordination of legal services provided to Finance and to the Superintendent of Financial Institutions.

■ **Activities**

This Sector provided legal advice to the government for virtually all of its activities. During the year under review, the Sector:

- ☐ assisted in the privatization of the Northern Canada Power Commission.
- ☐ provided legal advice in the creation of the Atlantic Canada Opportunities Agency, the Western Economic Diversification Office, the Canadian Space Agency and the Manned Space Station;
- ☐ participated in the drafting of amendments to the *National Parks Act*, and enactment of the *Canadian Environmental Protection Act*;
- ☐ provided legal advice in the sale of public lands and construction by Museums Canada;
- ☐ negotiated refining contracts with Canadian and foreign mines and contracts for the supply of coins and blanks for Canada and foreign countries;
- ☐ provided corporate secretariat services to the boards of directors of several federal agencies;
- ☐ participated in major Crown projects, including the Canadian Submarine Acquisition Project, Phase II of the Ship Replacement Program and the North-warning System;
- ☐ participated in revisions to the *Canada Shipping Act*, the *Marine Atlantic Act*, the *National Transportation Act, 1987*, the *Shipping Conferences Exemption Act* and construction of Terminal Three at Toronto's Pearson International Airport;
- ☐ participated in the development of policy and the drafting of immigration bills C-55 and C-84;
- ☐ negotiated a Federal-Provincial Memorandum of Understanding with Newfoundland, allowing that province to license aquaculture schemes on behalf of the federal Crown;
- ☐ dealt with legal issues relating to the transplant of human organs and tissues, in vitro fertilization and surrogate motherhood;

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- ☐ advised on the government's response to the report of the Standing Committee on Justice and Solicitor General on the *Access to Information Act* and the *Privacy Act*;
 - ☐ prepared the federal response to challenges to the *Canadian Charter of Rights and Freedoms* with respect to spouses' allowances paid under the *Old Age Security Act*;
 - ☐ assisted in the preparation of amendments to the *Royal Canadian Mounted Police Act*, in relation to the establishment of the External Review Committee and the Public Complaints Commission;
 - ☐ conducted litigation relating to discipline and interpretation of collective agreements;
 - ☐ assisted in the formulation of a framework for the Canadian Telecommunications Policy;
 - ☐ assisted in the development of legislative initiatives relating to lobbying, the Patented Medicine Prices Review Board, and the Workplace Hazardous Material Information Commission;
 - ☐ participated in the restructuring and reorganization of the Canadian shipbuilding industry;
 - ☐ developed legislation to implement the international convention of the Harmonized System Customs Tariff;
 - ☐ provided advice on legislative reform of financial institutions; and
 - ☐ participated in the development of legislation creating the office of the Superintendent of Financial Institutions and amendments to the *Trust and Loan Companies Acts*.

Aboriginal Law

The Department of Justice provides general legal advice to the government on aboriginal issues. The Department also conducts research and administers programs to ensure that the justice system has a clear perspective of the special circumstances of aboriginal peoples.

Departmental lawyers provide advice on self-government-related issues to several government departments, particularly to Indian Affairs and Northern Development and the Federal-Provincial Relations Office. Justice officials are involved in both the constitutional process and the legal and policy aspects of proposals for aboriginal self-government.

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

■ Organization

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 legal services to that Office, which includes the Office of Aboriginal Constitutional Affairs. The Civil Litigation Branch and Senior General Counsel are responsible for all litigation involving native issues. The Assistant Deputy Attorney General, Criminal Law, supervises criminal prosecutions involving native rights. At the same time, the Legal Services Unit at Indian Affairs and Northern Development provides legal advice on all aspects of departmental programs and activities including the application of the *Indian Act*, the administration of Indian programs and the negotiation of native claims.

■ Activities

Native issues and their litigation continued to make great demands upon the litigation sections of the Department across the country, particularly in British Columbia, Alberta, Ontario and Quebec. Constitutional protections in the *Constitutional Act, 1982*, raised major new issues in most of the cases handled during 1987-88.

Land claims negotiations are often influenced by the outcome of litigation concerning Indian lands, and hunting, fishing and other wildlife harvesting rights. At any given time throughout the year, the Department General Counsel Group and the Civil Litigation and Criminal Law sections had more than 100 active cases on file.

These cases consisted 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 Civil Litigation Section, in concert with the Legal Services Unit at Indian Affairs and Northern Development, also analyzed and negotiated land claims based on the alleged failures of the Crown to fulfill or discharge its treaty and other legal obligations towards the native peoples of Canada.

The Department administered programs and conducted studies throughout the year, through the Policy, Programs and Research Branch. This Branch continued to administer the Native Courtworker Program and the Program of Legal Studies for Aboriginal People.

Departmental Grants and Contributions

The Policy, Programs and Research Branch administers most of the Department's grants and contributions programs; the remainder are administered by the Public Law Branch. In general terms, the purpose of these grants and contributions is to promote and maintain basic standards in the justice system and to improve the delivery of justice services to the public.

The Programs Section - Access to Justice develops and manages major federal-provincial program financing arrangements in three areas: legal aid, native courtworkers, and compensation to victims of crime (see tables on pages 56 and 57).

The Legal Aid Program ensures that, in serious criminal matters (criminal and civil in the territories), legal aid is available to economically disadvantaged persons across Canada. The Native Courtworker Program is cost-shared with the provinces and territories on a 50-50 basis. It helps status and non-status Indians, Inuit and Métis understand their legal rights and obtain legal assistance. The Compensation to Victims of Crime Program compensates victims of violent crime. The provinces and territories and the Department negotiated a new Memorandum of Agreement during the year — a step towards implementing the recommendations of the Federal-Provincial Task Force on Justice for Victims of Crime. Under the agreement, the federal government would more than double its contribution to criminal injuries compensation awards. As well, the agreement will establish a Victim Assistance Fund.

In addition to these cost-shared programs, the Section also manages agreements to support public legal education and information, grants and contributions to national criminal justice organizations, and a variety of funding programs to support the participation of students in advanced legal studies.

The Young Offender Programs Unit administers the Juvenile Justice Services Cost-Sharing Program (see table on page 57), a responsibility that was transferred to the Department of Justice from the Department of the Solicitor General in April, 1987. This program provides for a federal contribution of 50 per cent of provincial contributions for post-adjudication custody services as well as certain non-custody services and alternative measures programs.

Miscellaneous Grants and Contributions 1987 - 1988

Program	Purpose	Amount
Legal Studies for Aboriginal People	Grants to assist native students in entering legal profession	\$ 225 579
Civil Law/Common Law Exchange	Student exchange	224 166
Duff-Rinfret Scholarship	Six scholarships for law graduates at Master's level	76 950

Recipient	Amount
Uniform Law Conference of Canada	\$ 5 946
International Commission of Jurists	17 575
Institut international des droits d'expression française	1 500
Driedger-Pigeon Fellowships in Legislative Drafting	78 120
Canadian Association of Chiefs of Police	16 150
British Institute of International and Comparative Law	9 500
Hague Academy of International Law	11 400
Canadian Association of Provincial Court Judges	66 500
Canadian Society of Forensic Science	17 086
Manitoba Métis Federation	30 000
University of Ottawa Legislative Drafting Program	92 455
Canadian Judicial Centre	50 000
Canadian Law Information Council	380 200

Other Funding Programs 1987 - 1988

Fund	Projects	Amount
Access to Legal Information Fund	16	\$ 866 363
Family Provisions Enforcement Assistance Fund	6	208 622
Young Offenders Systems Development Contribution Program	11	1 758 236
Young Offenders Program Development Contributions	22	655 886
Young Offenders - Custodial Facilities	1	262 597
Human Rights Law Fund	28	292 224
Criminal Law Reform Fund - General	39	584 551
Criminal Law Reform Fund - Child Sexual Abuse	9	176 754
Impaired Driving Fund	45	1 039 814
Consultation and Development Fund - General	8	135 003
Consultation and Development Fund - Public and International Law	19	115 959
Consultation and Development Fund - Family Law	5	49 530
Special Projects - Legal Aid	5	100 572
Other Native Projects	2	9 463
Aboriginal Self-Government Fund	4	401 073

Native Courtworker Cost-Sharing Program

PROVINCE/TERRITORY	Federal Contributions	
	1986-87	1987-88
British Columbia	\$ 585 094	\$ 580 857
Alberta	782 530	803 439
Saskatchewan	409 115	170 193
Manitoba	184 950	248 230
Ontario	458 706	478 028
Quebec	444 510	457 390
Newfoundland	73 965	76 275
Northwest Territories	306 120	294 968
Yukon	58 950	100 752
Total	\$ 3 303 940	\$ 3 210 132

Adult Criminal Legal Aid and Young Offenders Legal Aid Cost-Sharing Program

PROVINCE/TERRITORY	Federal Contributions	
	1987-88	
Newfoundland	\$ 1 121 202	
Prince Edward Island	209 759	
Nova Scotia	2 841 061	
New Brunswick	1 121 646	
Quebec	12 840 474	
Ontario	26 624 347	
Manitoba	2 881 264	
Saskatchewan	2 125 402	
Alberta	5 864 002	
British Columbia	5 966 667	
Yukon	962 255	
Northwest Territories	995 647	
Total	\$ 63 553 726	

Juvenile Justice Services Cost-Sharing Program

PROVINCE/TERRITORY	1987-88	Retroactive Prior Years	Total 1987-88
British Columbia	\$ 14 187 000	\$ 3 355 298	\$ 17 542 298
Alberta	11 596 000	0	11 596 000
Saskatchewan	6 329 506	363 630	6 693 136
Manitoba	5 286 000	620 238	5 906 238
Ontario	50 796 000	1 042 599	51 838 599
Quebec	28 536 162	66 149 340	94 685 502*
New Brunswick	3 619 474	141 076	3 760 550
Nova Scotia	3 553 230	71 826	3 625 056
Prince Edward Island	1 030 390	781 701	1 812 091
Newfoundland	2 384 000	334 275	2 718 275
Yukon	978 905	1 443 945	2 422 850
N.W.T.	0	3 975 064	3 975 064
Totals	\$128 296 667	\$78 278 992	\$206 575 659

* This total includes payments for four fiscal years.

Compensation to Victims of Crime Cost-Sharing Program

PROVINCE/TERRITORY	Federal Contributions 1987-88
British Columbia	\$ 290 590
Alberta	238 950
Saskatchewan	102 100
Manitoba	107 860
Ontario	918 191
Quebec	662 720
New Brunswick	72 203*
Nova Scotia	88 380
Newfoundland	18 955
N.W.T.	33 678
Yukon	88 728
Total	\$2 622 355

* Includes retroactive payments of \$7,425.

Appendix I

■ Statutes for which the Minister of Justice was Responsible in Whole or in Part as of March 31, 1988

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, 1984, S.C. 1984, c. 32

Canadian Bill of Rights, S.C. 1960, c. 44

Canadian Human Rights Act, S.C. 1976-77, c. 33

Commercial Arbitration Act, S.C. 1986, c. 22

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, 1985, S.C. 1986, c. 4

Escheats Act, R.S.C. 1970, c. E-7

Extradition Act, R.S.C. 1970, c. E-21

Family Orders and Agreements Enforcement Assistance Act, S.C. 1986, c. 5

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.)

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)

Revised Statutes of Canada, 1985 Act, S.C. 1987, c. 48

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

United Nations Foreign Arbitral Awards Convention Act, S.C. 1986, c. 21

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

Young Offenders Act, S.C. 1980-81-82-83, c. 110

Appendix II

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

Agricultural Products Board
Agricultural Stabilization Board
Agriculture
Atlantic Canada Opportunities Agency
Atomic Energy Control Board
Canadian Commercial Corporation
Canadian Dairy Commission
Canadian Grain Commission
Canadian International Development Agency
Canadian Pension Commission
Canadian Security Intelligence Service
Canagrex
Communications
Communications Security Establishment
Consumer and Corporate Affairs
Correctional Service Canada
Defence Construction (1951) Limited
Employment and Immigration Commission
Energy, Mines and Resources
Environment
External Affairs
Finance
Fish Prices Support Board
Fisheries and Oceans
Fishing Vessels Insurance Plan
Fitness and Amateur Sport
Fresh Fish Marketing Board
Health and Welfare
Indian Affairs and Northern
Development
Investment Canada
Labour
Labour Adjustment Review Board
Livestock Feed Board
Medical Research Council
Merchant Seamen Compensation Board
Ministry of State for Multiculturalism
Ministry of State for Science and Technology
Ministry of State for Youth
National Archives of Canada

National Battlefields Commission
National Capital Commission
National Defence
National Farm Products Marketing
Council
National Film Board
National Library
National Museums of Canada
National Parole Board
National Research Council
Natural Sciences and Engineering Research
Council
Northern Canada Power Commission
Northern Pipeline Agency
Office of Privatization and Regulatory
Affairs
Office of the Superintendent of
Financial Institutions
Patented Medicine Prices Review Board
Prairie Farm Rehabilitation
Administration
Public Service Commission
Public Works
Regional Industrial Expansion
Revenue Canada (Customs and Excise)
Revenue Canada (Taxation)
Royal Canadian Mint
Royal Canadian Mounted Police
Secretary of State
Solicitor General
Statistics Canada
Status of Women
Supply and Services
Textile and Clothing Board
Trade Negotiations Office
Transport
Treasury Board
Veterans Affairs
Veterans Appeal Board
War Veterans Allowance
Western Economic Diversification Office

Appendix III

■ Selected Publications, 1987-88

☐ Divorce and Family Mediation

An Annotated Bibliography of Maintenance and Custody Literature

An Inventory of Divorce Mediation and Reconciliation Services in Canada

Another Way: Mediation in Divorce and Separation

☐ Firearms

Gun Control in Canada

☐ Sentencing

Research Reports of the Canadian Sentencing Commission
(a series of 25 reports)

☐ Sexual Assault

The Experience of the Rape Victim with the Criminal Justice System Prior to Bill C-127

The New Sexual Assault Offences: Emerging Legal Issues

☐ Victims

Criminal Injuries Compensation in Canada, 1986

Appendix IV

■ Departmental Legislation Tabled in 1987-88

An Act to amend the Supreme Court Act and to amend various other Acts in consequence thereof (C-53).

An Act to Amend the Criminal Code and other Acts in consequence thereof (C-54).

An Act to provide for the implementation of treaties for mutual legal assistance in criminal matters and to amend the Criminal Code, the Crown Liability Act and the Immigration Act, 1976 (C-58).

An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act (C-61).

An Act to amend the Criminal Code, the Immigration Act, 1976 and the Citizenship Act (C-71).

An Act respecting the status and use of the official languages of Canada (C-72).

An Act to amend the Criminal Code (victims of crime) (C-89).

An Act to bring into force the Revised Statutes of Canada, 1985 (C-94).

An Act to correct certain anomalies, inconsistencies, archaisms and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada (C-104).