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Justice Client Services Activity

by Donald Lemaire

Client-Driven Services Secretariat

Our client services objective is simple: to deliver high-quality legal services to the government in the most cost-effective manner possible. The difficult part is doing so in a time of cutbacks and reductions. Since 1990, Justice has faced significant increases in demand for legal services at the same time as resources are shrinking. In response, the Department has sought new ways to conduct our business so that we can meet our service objective. Two of the main strategies are Client-Driven Services and Cost Recovery.

Client-Driven Services

The Client-Driven Services (CDS) initiative developed out of recent Justice exercises, notably Justice in the 1990s and Choices for the Future. These exercises helped us to identify the changes we need to make to strengthen our service orientation, and CDS is our first major effort to put them into practice. We are working in partnership with our clients to examine some key issues:

- determining each client's needs based on their priorities;
- providing legal services that respond to demand, risk management and cost-efficiency criteria;
- making appropriate use of agents and in-house counsel; and
- finding available resources to meet the service demands.

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Building on these results, we will develop a service plan with each client, which will set the levels of service over the coming year according to the client's priorities and available resources. The plans will also identify specific savings

and efficiencies through such means as cost-recovery projects, more creative use of dispute resolution techniques, innovative approaches to managing prosecutions, and replacement of Crown agents with in-house counsel, where feasible.

The service plans will also include commitments to develop service standards and performance measurements and mechanisms to adjust resource allocations as clients' needs and priorities change. Clearly, CDS is an important vehicle for our service reorientation.

Cost Recovery

The Department has also established a cost-recovery pilot project involving three client departments: Industry, Heritage, and Treasury Board. The pilot, to be run over the next three years, has the following key steps:

In 1995 and 1996, we will design the pilot and develop a framework for evaluation. We will also install management information and timekeeping systems, and integrate CDS planning with cost-recovery.



From 1996 through 1998, we will run and assess the pilot.

The point of the pilot is to determine whether cost-recovery of legal services is of net benefit to the government. We will be asking some fundamental questions:

- Does Justice produce the desired results for the lowest cost?
- How good are we at adjusting our services when demand changes?
- Does a user-pay system impose a better discipline on Justice (or on our clients)?

- Does such a system cost more to run than it is worth?

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The pilot has two phases. First, we will be tracking our service effort in terms of time and quality. This will require a timekeeping system as a basis for billing. (Timekeeping will not be used, though, to assess or

evaluate employee performance.) Second, we will implement a user-pay system, whereby clients will pay for the services they receive.

Conclusion

These initiatives are about providing the highest-quality services at the lowest cost, not about downsizing and reducing as such. Combined with other departmental service initiatives, such as the national litigation business strategy, regulatory reform, re-engineering of our legal work processes and our quest to increase the flexibility to re-invest our cost savings, CDS and cost recovery are helping the Department meet its service challenges. ■

The Debt-Collection Project

by
Michèle Gervais
Client-Driven Services Secretariat

The amount of money owed to the federal government has been steadily increasing over recent years. As of March 31, 1994, uncollected tax revenue amounted to \$5.1 billion. Less publicized, but hardly less important, non-tax receivables rose from \$2.1 billion to \$3.9 billion from 1989 to 1994, an increase of 86 percent. These figures represent funds that could help the government finance its day-to-day operations, but only if promptly collected.

Various measures have been taken to deal with the problem, and there has been some success. Where appropriate, departments may use private collection agencies, and charge their costs to a statutory vote. The pilot project to recover defaulted student loans, unemployment insurance overpayments, and immigration passage assistance loans from income tax refunds collected more than \$30 million in 1993-94. But much remains to be done. Treasury Board and the Department of Justice recognized that a more comprehensive approach was needed, and agreed

to create a project to look at recovery practices relating to debts due to the Crown.

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The purpose of the project is to examine the debts that remain uncollected in the various government departments and find the best ways to recover the funds.

The project is being led jointly by Treasury Board and the Department of Justice, and it will also involve the Privy Council Office and departments with large volumes of debt-recovery work, notably Revenue, Human Resources Development, Citizenship and Immigration, Industry, Agriculture and Transport.

There is a steering committee co-chaired by Richard Nevill, Assistant Secretary, Financial and Contract Management Sector, Treasury Board Secretariat, and Richard Thompson, Senior Assistant Deputy Minister, Legal Services, Department of Justice, to provide strategic direction.

To support the work of the Steering Committee, there are five interdepartmental working groups. The groups will explore in detail specific issues involved in identifying and recovering funds.

What factors might discourage a department from collecting its debts?

The first group will analyze the possibility of increasing the use of offset measures both intradepartmentally and interdepartmentally. In this context, the group will ask whether the creation of a comprehensive system of information sharing to locate debtors and sources of payments between government

departments would solve the present problem, and if so, who could act most efficiently as an information clearinghouse.

A second group will determine whether there are adequate resources for the debt-collection function within the government: Is resourcing for the debt-collection function considered an investment? How do we determine the amount of resources required? What factors might discourage a department from collecting its debts, and how can they be removed?

One working group will look into the use of private collection agencies to collect debts

The measurement and reporting of the recovery process will be reviewed by the third working group. The group will examine such issues as how the government should organize to improve collection of outstanding and delinquent accounts receivable, whether through a Central Collection Agency, one or two departments, or privatization.

The fourth working group will look into the use of private collection agencies to collect debts, taking into account the costs and benefits of using private agencies as opposed to departments.

Finally, the fifth group will examine the current framework of legislation, legal service delivery,

and the use of legal expertise. Specific issues to be dealt with here include whether departments are making efficient use of the existing legal expertise, what the current legal service delivery practices are, and what changes could be made to legislation that would improve collections.

Within the Department of Justice, the Client-Driven Services secretariat will be the main vehicle for the day-to-day work of the project, since its mandate includes identifying ways to achieve savings and efficiencies. There are also five internal working groups. Each Justice working group will examine an issue being examined by one of the interdepartmental working groups, develop the Justice position, and provide support on legal questions. The Department has lawyers and paralegals with extensive experience in debt recovery, and this project will benefit from their knowledge and experience. ■

Preparing and Implementing the Budget

*By Mary Ellen Cavett,
Counsel, General Legal Services
Division,
Department of Finance*

Budget day has become a media event of the first degree, with lockups, extensive press coverage and political commentary. Although the Department of Finance is the main player in this event, other departments, notably the Department of Justice, also play significant though less well-known roles in budget preparation and implementation.

The budget process can be broken into three stages: the preparation and consideration of policy initiatives; the drafting and tabling of the budget documents in the House of Commons; and the preparation of legislation to implement the budget. The Department of Finance is responsible for the first two stages. The third stage is primarily the responsibility of the two Department of Justice legal services units in the Department of Finance Law Branch — the Tax Counsel Division, which provides advice on tax matters, and the General Legal Services Division, which gives legal advice on non-tax issues.

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Preparing policy initiatives

For several months before the tabling of the budget, the Department of Finance works with Privy Council Office and other departments to identify various policy initiatives that will ensure the sound management of public finances. In recent years, this has meant expenditure reductions through the elimination of programs, reductions in the budgets allotted to departments, and the implementation of various cost-recovery measures. Although the Minister of Finance is traditionally given a wide latitude to develop a comprehensive set of policy initiatives that meet the government's fiscal targets, in practice there is close collaboration with the Prime Minister and Cabinet in deciding much of what will ultimately be included in the budget. We are long past the day when ministers learned how the budget would affect their departments during the budget speech. Indeed, in recent years, the Minister of Finance has expanded the scope of public consultation and debate on budgetary measures before finalizing the government's budget plan.

The Law Branch at the Department of Finance plays an important role in the pre-budgetary policy process by providing advice on the legal implications of various proposals and identifying the various statutes and regulations that might have to be amended or enacted to implement the budget plan. In the

area of taxation, this includes working with Finance officials to prepare ways-and-means motions for new-revenue measures that often go into effect at midnight of budget day, pending the enactment of retroactive legislation later on.

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Preparing the budget documents

Despite the trend toward a more open and inclusive budget-making process, for public policy reasons, detailed budgetary initiatives and documents must be prepared in secret. If taxpayers were to learn of a proposed tax measure before the budget is tabled, they would be in a position to change their business or accounting practices to take advantage of — or to avoid — the proposed tax measure. As well, although there is no statutory requirement that the budget be kept secret, under parliamentary convention, in the event of a major budget leak, the Minister of Finance may be expected to tender his or her resignation.

On budget day, notices of ways-and-means motions are tabled in the House for any measure that

imposes a new tax, continues an expiring tax, increases the rate of an existing tax, or extends a tax to apply to persons not already deemed to be taxpayers.

Preparing legislation

In 1990, the Department of Finance combined the budget's various expenditure-reduction measures into a single omnibus budget bill. Tax measures and the *Borrowing Authority Act* were presented separately. Since then, the Department of Finance has extended the use of omnibus budget bills to cover the enactment of all budgetary measures except taxation and borrowing authority, and the practice is now well established.

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The General Legal Services Division is responsible for preparing the omnibus budget bill. The basic rule is that all provisions in such a bill must relate to measures announced in the budget. There can be no "free riders" in an omnibus bill, that is, measures unconnected to the implementation of the government's budget plan. As well, omnibus budget bills are usually limited to time-sensitive expenditure-reduction measures, so controversial matters that generate debate and could delay the passage of the bill tend to be excluded. (In

1995, the budget omnibus bill did include two controversial items — the repeal of the "Crow rate" for the transport of grain from the prairies and the enactment of the *Canada Health and Social Transfer Act* — but these matters were particularly time-sensitive.) The budget is usually tabled in the House of Commons each February; the government's goal is to enact an omnibus budget implementation bill before summer recess so that the expenditure reductions can be "booked" in the fiscal year during which the budget is announced.

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As for tax legislation flowing from the budget, the Tax Counsel Division works with the Tax Policy Branch of the Department of Finance to draft the necessary amendments to the *Income Tax Act*, the *Excise Act* and the *Excise Tax Act*. Because drafting tax legislation is a very complex process, a bill implementing tax measures is often not introduced until several months after the budget is tabled. However, tax measures take effect retroactively to the date of a ways-and-means motion, so the omnibus tax legislation is less urgent than the omnibus budget implementation bills.

Few actions of the government are as closely scrutinized by the public, business, and the media as the budget — not surprisingly, since it is so central to all the government does and even to how it conceives and presents its role in society. Within the Public Service, we are all acutely aware of the impact the budget has on our departments, especially in times of restraint. An understanding of the budget process and the contributions of the many players involved is essential to government managers. ■

Justice Echo is a quarterly publication of the Departmental Legal Services Sector of the Department of Justice.

Richard Thompson, Senior Assistant Deputy Minister; Jean-Claude Demers, Mark Jewett, and Konrad Von Finckenstein, Assistant Deputy Ministers.

The purpose of this newsletter is to help public service managers keep abreast of legal developments and topics that have broad interest and impact across government. The contents do not constitute legal advice.

Managers seeking further information or additional copies should contact their Departmental Legal Services Unit.

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