



Government of Canada  
Privy Council Office

Gouvernement du Canada  
Bureau du Conseil privé

# The Preparation of Legislation

Canada



JUSTICE CANADA

## **THE PREPARATION OF LEGISLATION**

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# **THE PREPARATION OF LEGISLATION**

## **1. INTRODUCTION**

This directive describes the procedures for the planning of the Government's legislative program and for the preparation and approval of the various Bills that comprise it. The directive also deals with aspects of the process whereby Bills are enacted by Parliament and with certain additional matters pertaining to legislation, notably regulations.

It is to be noted that the planning of the legislative program commences up to one year prior to the opening of the Session of Parliament in which the various legislative items are to be introduced. Experience has shown the necessity of spreading the planning and preparation process over the whole year, as opposed to confining it to the short period immediately preceding the Session in question. This stems in part from the established procedure for the approval of individual Bills. As described in more detail in the directive, this procedure involves three separate steps: Cabinet approval of the policy; drafting of the Bill, which in many cases proves to be a lengthy and difficult process in itself; and Cabinet approval of the Bill.

The Cabinet Committee on Legislation and House Planning is charged with preparing the Government's legislative program for each Session, keeping this program under constant review and examining in detail all draft Bills. Accordingly, departments and agencies whose Ministers are bringing forward legislative proposals are urged to keep in close contact with the Secretariat to that Committee and, in particular, to inform the Secretariat of any significant changes in the Ministers' plans.

## **2. PREPARATION OF LEGISLATIVE PROGRAM**

### **(1) Request for Legislative proposals:**

Immediately after the Speech from the Throne at the opening of each Session of Parliament, the Assistant Secretary to the Cabinet (Legislation and House Planning) will write to all Deputy Ministers and some Agency heads asking them to submit a list of the legislation their Minister plans to propose to Cabinet, for introduction in the next Session after the one just commenced.

This list should include necessary technical or administrative amendments to Statutes falling under their Minister's authority.

The response to the request for legislative proposals should be submitted to the Assistant Secretary to the Cabinet within two months of receipt of the request. Each proposal should contain the following information where possible:

- (a) a summary of its principal features;
- (b) whether there is policy approval for the legislation from Cabinet and expenditure approval, where appropriate;
- (c) whether it will constitute
  - (i) new legislation,
  - (ii) a repeal of existing legislation,
  - (iii) a major revision of existing legislation,
  - (iv) an amendment to existing legislation that is simple in drafting terms but would be controversial or would effect a major change, or
  - (v) technical and administrative amendments ("housekeeping");
- (d) its relationship, if any, to the Government's priorities, as enunciated in various policy statements;
- (e) federal-provincial relations implications;
- (f) new Governor in Council positions to be created and their terms and conditions of appointment;
- (g) target date for passage, together with a tentative assessment of its priority, based on the following categories:
  - (i) URGENT (measures for which there is a statutory time constraint or for which a deadline has been announced by the Government)
  - (ii) ESSENTIAL
  - (iii) OTHER.

## **(2) Review by Cabinet**

The responses are brought to Cabinet's attention by the Privy Council Office and a tentative outline of the legislative program for the next session is established, together with the assignment of priorities to the various proposals. From time to time, the outline and priorities are updated by Cabinet.

## **3. PREPARATION OF BILLS**

### **(1) Cabinet Approval of Policy**

After Cabinet has made its initial determination of the legislative program, and as soon thereafter as is feasible, departments and agen-

cies should arrange for the submission for each proposed Bill of the necessary Memorandum to the Cabinet seeking policy approval, together with a Discussion Paper, if appropriate, in accordance with the Guidance Manual for the Preparation and Handling of Cabinet Papers prepared by the Privy Council Office. The Memorandum and Discussion Paper will be submitted in the usual way to the appropriate Cabinet Committee and then to Cabinet or the Cabinet Committee on Priorities and Planning as the case may be. It is to be noted that the Memorandum shall NOT be in the form of, or be accompanied by, a draft Bill. It should also be noted that the granting of policy approval may in fact be delegated by Cabinet to the Cabinet Committee on Priorities and Planning.

The Memorandum should terminate with the sponsoring Minister's recommendation that "the Legislation Section of the Department of Justice be authorized by Cabinet to draft the required legislation in consultation with the sponsoring department or agency (and any other pertinent departments), in accordance with priorities established by the Cabinet Committee on Legislation and House Planning".

A Memorandum to the Cabinet seeking policy approval is not necessary in those cases where the Government has previously introduced the Bill in Parliament, or where the Bill has been approved by Cabinet for introduction, except in those cases where the policy context has changed to an extent that a confirmation of Cabinet's previous decision is called for.

## **(2) Qualification as to the timing of policy approval**

There may be cases where it is appropriate to seek policy approval for a Bill before Cabinet has completed the legislative program review described above. Indeed, where departments are able to formulate their policy proposals this far in advance of the contemplated introduction in Parliament, consideration by Cabinet at such an early stage may serve to reduce the possibility of a bottleneck in the process of drafting and approving the other Bills in the legislative program.

There may also be cases where policy approval by Cabinet may properly be sought respecting a proposed Bill that is not intended to be introduced until a Session subsequent to the Session following the current one.

Finally, there may be cases where items for a legislative program will be identified only after the program has been tentatively settled. In such cases, the necessary Memoranda to the Cabinet seeking policy approval should be submitted as quickly as possible, so that the items can form part of the program. No priority, however, can be assigned except as part of a subsequent review by Cabinet of the entire legislative program, as described in subsection 2(2) above.

### **3) Drafting**

#### **(a) General**

Either during the course of preparation of the policy memorandum in relation to a legislative proposal or following completion thereof, officials should establish contact with the office of the Chief Legislative Counsel in the Department of Justice so that arrangements can be made for the assignment of one or more drafting officers to the project and so that meetings can be held with that officer or those officers to establish what their requirements will be in terms of drafting instructions. In the case of complex or lengthy projects, detailed written drafting instructions may be required to supplement the policy memorandum and supporting Discussion Paper. Except in very rare instances, drafting instructions in the form of proposed draft legislation are not helpful.

Substantial time may be required to assemble the relevant material required as part of drafting instructions. The preparation of drafting instructions may result in some modification or extension of the Memorandum to Cabinet or the Discussion Paper. Discussion at this stage will make possible the development of reasonable estimates of the time likely to be required for drafting of the legislation in the light of the priority established by Cabinet for a particular project and its relationship to other projects on which drafting has been approved.

#### **(b) Official Languages**

It is of primary importance to note that the draft legislation will be prepared in both official languages and that both versions will be equally authentic. It is not acceptable for one version to be a mere translation of the other. For this reason, sponsoring departments and agencies should ensure that they have the capability to instruct in both official languages, to respond to technical questioning from drafting officers in either official language and to critically evaluate drafts in both official languages. It is not sufficient for a drafting officer and his instructing officer to reach full agreement on the technical adequacy of one language version of a draft Bill. Both versions must meet the same standard of technical adequacy in the eyes of those qualified to critically evaluate them. This requirement can be particularly onerous where a legislative proposal is based on a precedent from another jurisdiction where legislation and related information, often of a very technical nature, are available in one language only. In such circumstances, it may be necessary to build into the planning and drafting process a significant time factor to allow for the development, testing and finalization of appropriate terminology for the second language version of the legislation.

It should be noted in this regard that it is the responsibility of the individual department to provide the drafters with as much documentation as possible in the other official language. Such documentation should to the extent possible be original, i.e. not a translation. If

original documentation does not exist, the department should have the accuracy of the translation verified by the Translation Bureau.

**(c) Expenditure Implications**

It is essential that officials of the sponsoring department or agency consult with the appropriate Ministry of State or the Treasury Board Secretariat, as appropriate, in the event that provisions are to be drafted which have different expenditure implications from those of the policy approved by Cabinet.

**(d) Confidentiality**

By tradition, Bills are treated with strict confidence before they are introduced in Parliament. Accordingly, the approval of Cabinet must be obtained before a draft Bill is shown or given to persons other than Government employees who are involved in the drafting.

**(e) Need to Inform Privy Council Office**

The Cabinet Committee on Legislation and House Planning is responsible for keeping the legislative program under constant review. For this reason, it is essential that the Secretariat to that Committee be informed by the sponsoring department or agency as to any significant departures from the approach to the Bill agreed to by Cabinet that may be considered necessary during the drafting process. Examples are that the Bill is no longer to be proceeded with or that the priority assigned to it is to be changed in some way, or that it is recommended that the policy agreed to by Cabinet is to be altered to a significant extent.

**(4) Cabinet Approval of Bill**

Once a Bill has been drafted and approved by the responsible Minister, the Legislation Section of the Department of Justice will arrange for its printing and for copies to be sent to the Legislation and House Planning Secretariat for distribution to Ministers, prior to the meeting of the Legislation and House Planning Committee of Cabinet.

It is the responsibility of the sponsoring department or agency to prepare a brief summary, preferably on one page, in each official language, stating the intent of the draft Bill and highlighting its main provisions. The summary should also mention any provisions in the draft Bill that constitute significant divergences from the policy approved by Cabinet. This summary will be distributed to Ministers together with the draft Bill. Accordingly, the typed original of the summary should be sent to the Legislation and House Planning Secretariat by the sponsoring department or agency to arrive no later than the final printed version of the draft Bill. No particular format for the summary is prescribed; what is essential is that it be clear and brief.

Prior to the consideration of the Bill by the Legislation and House Planning Committee, the sponsoring department or agency is required

to submit to the Communications Committee of Cabinet a revised or updated communications plan if the original attached to the Memorandum to Cabinet that sought policy approval for the Bill is no longer timely. The strategy should deal with information requirements upon First Reading and during consideration by Parliament. It should include a summary of the Bill, which may appropriately be based on the summary for Ministers described above, amended as necessary for the purpose of public distribution.

When these requirements have been met, the Cabinet Committee on Legislation and House Planning, assisted by the sponsoring Minister, will scrutinize the Bill as to its drafting and as to its consistency with the earlier policy decision taken by Cabinet. The Committee will also consider the Minister's recommendation as to whether the Bill should be introduced in the House of Commons or in the Senate. The Cabinet Committee on Legislation and House Planning reports to Cabinet on the outcome of its consideration of a given draft Bill.

Following Cabinet's approval, the Legislation and House Planning Secretariat submits the Bill in its final form to the Prime Minister for his signature, or, in his absence, to the Acting Prime Minister or the President of the Privy Council, together with the royal recommendation in the case of Bills that require expenditure. The preparation of royal recommendations is taken care of by the Legislation and House Planning Secretariat.

#### **(5) Briefing Material**

Departments and agencies should prepare at an early date, and no later than the date of Cabinet approval of the Bill, briefing material for use in explaining the Bill to Parliamentarians and members of the public and a draft statement to be used by the Minister at Second Reading. This will assist the orderly conduct of Parliamentary business by affording the Minister and President of the Privy Council flexibility in calling Bills for Second Reading and reference to Committee.

Preparatory work in anticipation of the Parliamentary Committee consideration of the Bill can often profitably be done prior to the Second Reading debate. Experience has shown that a background paper describing the Bill and providing a table of contents can be of considerable assistance to a Parliamentary Committee, particularly in the case of lengthy Bills.

Departments or agencies whose Ministers are sponsoring legislation containing regulation-making powers that may be of significant interest to Members of Parliament should prepare an outline of the proposed regulations. Such an outline may prove to be of assistance to the Parliamentary Committee that considers the Bill.

The approach to material described in this section should also be adopted with respect to consideration of Bills by the Senate.



#### **4. INTRODUCTION OF BILLS**

The timing and place of introduction is decided either by the Cabinet on the recommendation of the Committee on Legislation and House Planning or by the President of the Privy Council usually in consultation with the sponsoring Minister. Notice to the Clerk of the House of Commons is given by the Assistant Secretary to the Cabinet (Legislation and House Planning) only when instructed to do so by the President of the Privy Council. The Assistant Secretary notifies the sponsoring Minister that notice is being given. Where introduction is in the Senate, the timing of introduction is decided by the President of the Privy Council in consultation with the Leader of the Government in the Senate. The Assistant Secretary informs the sponsoring Minister in such cases of the timing of introduction.

It is to be noted that, barring unanimous consent of the House, 48 hours' notice is required before the sponsoring Minister may obtain First Reading in the House of Commons and 24 hours must elapse from First Reading before Second Reading may be moved. Timing of the Second Reading debate, Report Stage and Third Reading is also the responsibility of the President of the Privy Council in consultation with the responsible Minister.

The procedure at First Reading of a government Bill in the House of Commons is as follows. After the 48 hours' notice requirement has been met, the Speaker will call the title of the Minister when the time for "Introduction of Bills" is reached at the end of the daily Question Period. The Minister then stands, bows to the Speaker and sits down. The Speaker reads the necessary motions, which are not debatable. The Minister does not therefore say anything at this time. If a Minister does not wish to proceed immediately with a Bill that is ready for First Reading when his title is called, he calls out the word "Stand" and the Bill's introduction is postponed until the next sitting. If a Minister is absent, the President of the Privy Council or another Minister may introduce or stand a Bill, if requested by the sponsoring Minister.

When a Bill is to be introduced in the Senate in the first instance, the necessary steps are taken usually by the Leader of the Government in the Senate. Unlike the introduction of Bills in the House of Commons, there is no requirement for notice.

#### **5. AMENDMENTS AFTER INTRODUCTION**

Where the sponsoring Minister wishes to move an amendment after the Bill has been introduced, the following procedure should be adhered to prior to the moving of the amendment. Amendments that are merely technical may be agreed to by the sponsoring Minister without Cabinet consultation. On the other hand, except in urgent cases, amendments that have an impact on the policy approved by Cabinet or that raise policy considerations not previously considered by Cabinet

will be subject to the same procedure as the initial proposal, namely, the submission of a policy memorandum to the Cabinet for consideration by the original subject-matter Cabinet Committee and approval by the Cabinet, followed by the approval of the draft amendments by the Legislation and House Planning Committee and Cabinet.

Urgent major amendments need not follow the full procedure referred to above, but may be approved by the Prime Minister and the President of the Privy Council together with other interested Ministers.

It is to be noted that all amendments moved by the Government should be drafted by the Legislation Section of the Department of Justice.

## **6. PROCEDURE IN STANDING COMMITTEE**

During a Standing Committee's consideration of a Bill, the sponsoring Minister or his Parliamentary Secretary attends the Committee's meetings, so as to assist the deliberations by ensuring that the Government's position may be expressed. This is of particular importance in situations where amendments to the Bill may be proposed. In such cases the Minister or Parliamentary Secretary should ascertain that any amendments to be accepted are approved in form by the appropriate draftsman of the Legislation Section of the Department of Justice.

## **7. ROYAL ASSENT**

The timing of Royal Assent ceremonies is arranged by the President of the Privy Council. Normally, Royal Assent ceremonies are held before an adjournment or prorogation or when a Bill of particular urgency requires Assent. It is to be noted that except where an Act is stated to come into force upon proclamation, Royal Assent has the effect of bringing it into force.

## **8. PROCLAMATION**

Where an Act or any provision thereof is expressed to come into force on a day to be fixed by proclamation, a proclamation is issued at the request of the Minister responsible for the administration of the Act, in accordance with the following procedure. Upon deciding when the Act or any provision thereof should come into force, the Minister submits a recommendation to this effect to the Governor in Council, requesting that a proclamation be issued and setting out the date the Act or any provision thereof is to come into force.

In preparing the documentation for the submission, officials should follow the Privy Council Office manual entitled "Directives on Governor in Council Submissions and Statutory Instruments".

The date on which the Act or any of its provisions is to come into force is determined in the light of a number of factors. The date chosen

may be as early as that of the Order in Council authorizing the issuance of the proclamation, or it may be any subsequent date that is specified. Proclamations are required to be published in the Canada Gazette in order to provide formal public notice. It can take up to one month from the making of the Order in Council for the proclamation to be published, because of the numerous steps involved. The Department of Justice drafts the proclamation after the Order in Council is made, the draft proclamation is forwarded to the Deputy Registrar General who prepares it in final form and arranges for its signing and sealing, and the proclamation is then sent to the Privy Council Office for publication in the Canada Gazette.

Accordingly, wherever feasible, departments or agencies should endeavour to arrange for the necessary submission to the Governor in Council to be made well in advance of the proposed date for the coming into force of the Act or any of its provisions.

## **9. REGULATIONS**

In the preparation of proposals for legislation, departments and agencies should observe the following principles respecting regulation-making powers:

- (1) When bestowing the power to make regulations upon a person or a rule-making authority, care must be taken to ensure that the statute is not couched in unnecessarily wide terms.
- (2) Specifically, certain powers are not to be granted unless the Memorandum to the Cabinet requesting the authority for preparation of the legislation by which such a power would be conferred specifically requests authority for the power and contains reasons justifying the power that is sought. These powers include the following:
  - (a) power to make regulations that might substantially affect personal rights and liberties;
  - (b) power to make regulations involving important matters of policy or principle;
  - (c) power to amend or add to the enabling Act or other Acts by way of regulation;
  - (d) power to make regulations excluding the ordinary jurisdiction of the Courts;
  - (e) power to make specific regulations having a retrospective effect;
  - (f) power to subdelegate regulation-making authority;
  - (g) power by regulation to impose a charge on the public revenue or on the public other than fees for services;
  - (h) power to fix by regulation, rather than by the statute itself, the penalties for breach of a regulation.

The drafting, making and scrutiny of regulations are governed by the Statutory Instruments Act and the regulations made thereunder. The Privy Council Office has prepared a manual which deals with these requirements, entitled "Directives on Submissions to the Governor in Council and Statutory Instruments".

#### **10. LEGISLATIVE ITEMS IN ESTIMATES**

In the past, the Speaker of the House of Commons has asserted the principle that the Estimates procedure is not to be used to seek new legislative authority. Pursuant to this principle, the Speaker has on occasion struck out items from the Estimates on the ground that they purported to amend legislation other than Appropriation Acts. Accordingly, normal legislation, prepared in accordance with this directive and subject to the regular Parliamentary procedure for passage, should be employed in preference to an item in the Estimates where an amendment to legislation other than an Appropriation Act is sought.

In cases of doubt as to the propriety of including an item with legislative implications in the Estimates, departments should consult at an early stage with the Program Branch of the Treasury Board.