



Evaluation of Legislative Services

Final Report

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Evaluation Branch
Internal Audit and Evaluation Sector

ACKNOWLEDGEMENT

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ACRONYMS

ALIS	Advisory and Legislative Initiatives Services
CAILS	Constitutional, Administrative, and International Law Section
EWG	Evaluation Working Group
FTE	Full-Time Equivalent
FY	Fiscal Year
GBA	Gender-Based Analysis
IFMS	Integrated Financial and Material System
Department of Justice Canada	Justice Canada
LSB	Legislative Services Branch
LSU	Legal Services Unit
PCO	Privy Council Office
PDA	Pre-Drafting Authority
PLLSS	Public Law and Legislative Services Sector
RBPS	Revision, Bijuralism and Publishing Services
RIAS	Regulatory Impact Analysis Statements
SLSS	Specialized Legislative Services Section



GLOSSARY

The following definitions are used for the purpose of this report:

Cabinet	A body of ministers that makes certain government decisions related to policies and priorities for the country.
Co-Development	In the context of this evaluation, co-development refers to a process where various stakeholders collaborate in the policy development and/or legislative drafting. It is to be distinguished from co-drafting, which involves the drafting of the English and French versions of a legislative text simultaneously.
Governor in Council	The concept refers to the Governor General acting in an executive capacity on the advice of the federal Cabinet. In the context of this evaluation, the Governor in Council has the authority to make most delegated legislation principally regulations.
Incorporation by Reference	A mechanism allowing a document that is not included in the text of regulations to be made a part of that regulation.
Instructing or Sponsoring Department or Agency	The immediate authority that provides instructions or feedback to members of the Legislative Services Branch or the Finance Legal Services Unit as part of a drafting process. In the case of legislation, this may include representatives from central agencies or from a department or agency, which is sponsoring the bill on behalf of the federal government. In the case of regulations, it typically refers to representatives from the department or agency holding the authority to make or recommend making regulations.
Legislative Drafting	Unless stated otherwise, legislative drafting covers both drafting of bills and regulations.



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EXECUTIVE SUMMARY

Introduction

The Evaluation of Legislative Services was part of the Department of Justice Canada (Justice Canada)'s 2021-22 to 2025-26 Integrated Audit and Evaluation Plan, and was conducted in accordance with the Treasury Board's *Policy on Results* (2016). The evaluation examined the continued relevance, effectiveness, and efficiency of legislative services, and focused on activities provided through the Legislative Services Branch (LSB), as well as the legislative work undertaken by the Finance Legal Services Unit (LSU) in support of the Department of Finance.

Program Description

In collaboration with different stakeholders, the LSB and the Finance LSU support the drafting of federal legislation and regulations. This work covers the key milestones of legislative drafting, including the development of instructions, the drafting of legislative text, the revision of that text, and (when adopted) its publication. The range of activities undertaken as part of legislative services includes advisory, drafting, and revision services (i.e., bijural, legistic and jurilinguistic revisions), as well as consolidation and legislative publishing.

In the specific case of the Finance LSU, this work supports the legislative drafting process undertaken internally by the Department of Finance where legal counsel from the Finance LSU collaborate with employees of the Department of Finance to develop legislation and regulations relating to defined areas of taxation.

Findings

Relevance

Offering centralized expertise in legislative drafting has been a critical component of the overall support that Justice Canada provides to the federal government, which promotes quality and consistency in the drafting of federal legislation and regulations. The provision of these services is embedded in the mandate of Justice Canada to provide high-quality legal services.

During the period covered by the evaluation, the demand for legislative services increased in volume as well as in risk and complexity, particularly as a result of the measures adopted by the federal government in response to the COVID-19 pandemic. Other complex initiatives include, but are not limited to, the reconciliation process with Indigenous peoples, the war in Ukraine, and the legalization of cannabis.

A particularly challenging aspect of legislative drafting comes from the demand that this work be completed within shorter timeframes. While this trend precedes the period covered by the evaluation (it was noted in the 2013 Evaluation of the Legislative Services Branch), it was further compounded by the urgency associated with many of the measures adopted in response to the COVID-19 pandemic. The evaluation found no indication that this trend will be any different in a post-pandemic environment.

Design and Delivery

Overall, the design and delivery structure used by the LSB to offer its services has proven to be adaptable, and it continues to meet the needs of the federal government. Also, the division of roles and responsibilities among stakeholders and the LSB and Finance LSU were found to be well established. However, evaluation findings point to a certain degree of tension that occurs at times between the need of the federal government to complete policy development and legislative drafting as soon as feasibly possible, and the commitment of the LSB to implement a thorough legislative drafting process that upholds high standards of quality and rigour. This challenge can be further complicated by other factors, including having to work with partial drafting instructions, having to produce multiple analysis and options, completing some drafting steps simultaneously rather than sequentially, or having limited opportunity to consult.

To help adapt its service delivery approach and respond to the demands placed on them, the LSB and the Finance LSU have been using coordination meetings with central agencies and other stakeholders as applicable, prioritization tools and processes, multi-teams assigned to larger or more complex projects, and an adapted revision process when needed. While these and other similar activities and tools have proven helpful, the long-term sustainability of legislative services requires more comprehensive adaptations to further align the design and delivery structure of legislative services with the requirements and expectations of the federal government.

The capacity of effectively delivering services also rests on adequate levels of human resources. During the evaluation period, additional staff members were added to the LSB to help address the increasing volume of work. While helpful, the impact of these measures is not felt immediately, as the specialized nature of legislative services is such that any new staff person typically requires extended on-the-job training before becoming fully operational. Evaluation findings also point to the need to further promote, where feasible, the use of paralegals to support portions of the drafting process. Finally, LSB members reported being well supported, including through mentoring and training, but the LSB has had limited capacity to fully maintain and update all applicable guidelines and practice manuals.

Effectiveness and Efficiency

The LSB and Finance LSU have a long history of providing quality legislative and regulatory drafting services, and evaluation findings confirm that sponsoring departments and agencies, and LSUs continue to report high levels of satisfaction. This covers the usefulness of the services provided, their timeliness, their quality, and the accessibility and responsiveness of those providing these services.

In addition to drafting specific legislation or regulations, the LSB has also successfully supported the processes related to the *Statutes Repeal Act*, the *Miscellaneous Statute Law Amendment Act*, and the harmonization of federal law with the civil law of Quebec and the common law of other provinces and territories.

The majority of LSB members echo these sentiments, as they consider themselves in a position to deliver high-quality work. However, they did express concerns about the negative impact that comes from having, at times, to face a combination of tight deadlines and limited resources, or having to work with partial or incomplete drafting instructions, which leads to a more tentative and incremental approach to legislative drafting.

While laws and regulations tend to be highly technical documents, the LSB has been pursuing efforts to simplify and enhance the clarity of the language used during the drafting process, by incorporating more lay terms and, as applicable, using wording that better reflects Indigenous values and realities. The clarity of legislative text is also supported by the longstanding practice of the LSB to have both English and French versions of proposed bills and regulations drafted simultaneously, with bilingualism considerations in mind to reflect Canada's two legal traditions.

In terms of accessibility, all consolidated versions of federal legislation and regulations are available in both official languages on the Justice Laws Website, which impacts millions of individuals every year. This website is perceived as reliable, user-friendly, and efficient. The evaluation provided an opportunity to identify further refinements that could be considered moving forward.

Ultimately, the LSB and the Finance LSU have successfully established strong partnerships with sponsoring departments and agencies, and LSUs. This work is seen as client-centric, and is focused on solutions that can enable the federal government to proceed with its legislative initiatives. In this context, the goal is to ensure that these achievements remain sustainable in the long term.

Recommendation

Based on the evaluation findings described in this report, the evaluation offers the following recommendation:

The Legislative Services Branch, in consultation with appropriate parties, should adapt the design and delivery structure of legislative services to further align these services with the requirements associated with the policy development and drafting of federal legislation and regulations. In addressing this recommendation, the Legislative Services Branch should consider human resource requirements, planning and coordination of legislative activities, training, and adaptations of services based on the nature of legislative projects.

1 INTRODUCTION

1.1 Purpose of the Evaluation

This report presents an overview of the findings and recommendations for the Evaluation of Legislative Services. The Evaluation was undertaken as part of the Department of Justice Canada's (Justice Canada) 2021-22 to 2025-26 Integrated Audit and Evaluation Plan and was conducted in accordance with the Treasury Board's *Policy on Results* (2016).

1.2 Evaluation Scope

The evaluation covered a period of five fiscal years (FY) from 2017-18 to 2021-22. The scope of the evaluation was determined based on a review of available information as well as consultations with senior officials regarding key issues and topics related to legislative services.

The evaluation examined the continued relevance, effectiveness, and efficiency of legislative services. Specifically, it focused on all activities provided through the Legislative Services Branch (LSB), as well as the legislative work undertaken by the Finance Legal Services Unit (LSU) in support of the Department of Finance.

The evaluation assessed the overall design (e.g., key changes, structure/organization of teams, and human resource complement and levels) and delivery (e.g., types of services provided to various clients, established work processes and protocols, and roles and responsibilities) of legislative services. This provided an opportunity to identify what is working well, any challenges and potential areas of improvement to enhance the provision of legislative services. Gender-based analysis (GBA) plus and diversity and inclusion were considered when examining the design, delivery and effectiveness of legislative services.

2 OVERVIEW OF LEGISLATIVE SERVICES

2.1 Background

In Canada, the administration of justice is an area of shared jurisdiction between the federal government and the provinces and territories. The Canadian justice system is defined by the coexistence of two legal traditions: the civil law in Quebec, and the common law for the remaining provinces and territories, as well as by the usage of English and French as Canada's two official languages.

In accordance with the Canadian constitution, Parliament adopts, amends or repeals laws that fall within its legislative authority. In turn, federal laws may grant authority to the federal government (Governor in Council), a minister or other assigned entities the power to adopt, amend or repeal regulations. This legislative process involves a wide range of stakeholders including, as applicable, central agencies, federal departments and agencies, Parliamentarians from both the House of Commons and the Senate, and stakeholders from civil society who have a direct stake in the legislative work being undertaken at the federal level.

Justice Canada is situated at the core of this process. While in some instances, the Department may act as the instructing or sponsoring department for legislation or regulations, it is the support that it provides for all legislative or regulatory initiatives that places the Department in a unique position. Put simply, no legislative or regulatory project can proceed without the direct support provided by Justice Canada. This support constitutes the central focus of this evaluation report.

The work undertaken by Justice Canada to support the legislative process is guided by a number of principles:

- Justice Canada supports the Minister of Justice in carrying out their duty to maintain a bilingual and bijural national legal framework, which reflects the two legal traditions and the two official languages of Canada;
- In accordance with the *Department of Justice Act* and the *Canadian Bill of Rights*, Justice Canada examines, on behalf of the Minister, government bills, regulations and other statutory instruments to ensure that they are not inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*;
- Counsel within the LSUs assigned to the various federal departments and agencies are expected to provide advice and support during the legislative process;
- Finally, the LSB is expected to undertake the advisory and drafting work required, as applicable, during the planning, development and publication of legislative initiatives.

While the evaluation focused on the latter point, namely the work undertaken by the LSB as part of the legislative process, it also considers the other dimensions listed above.

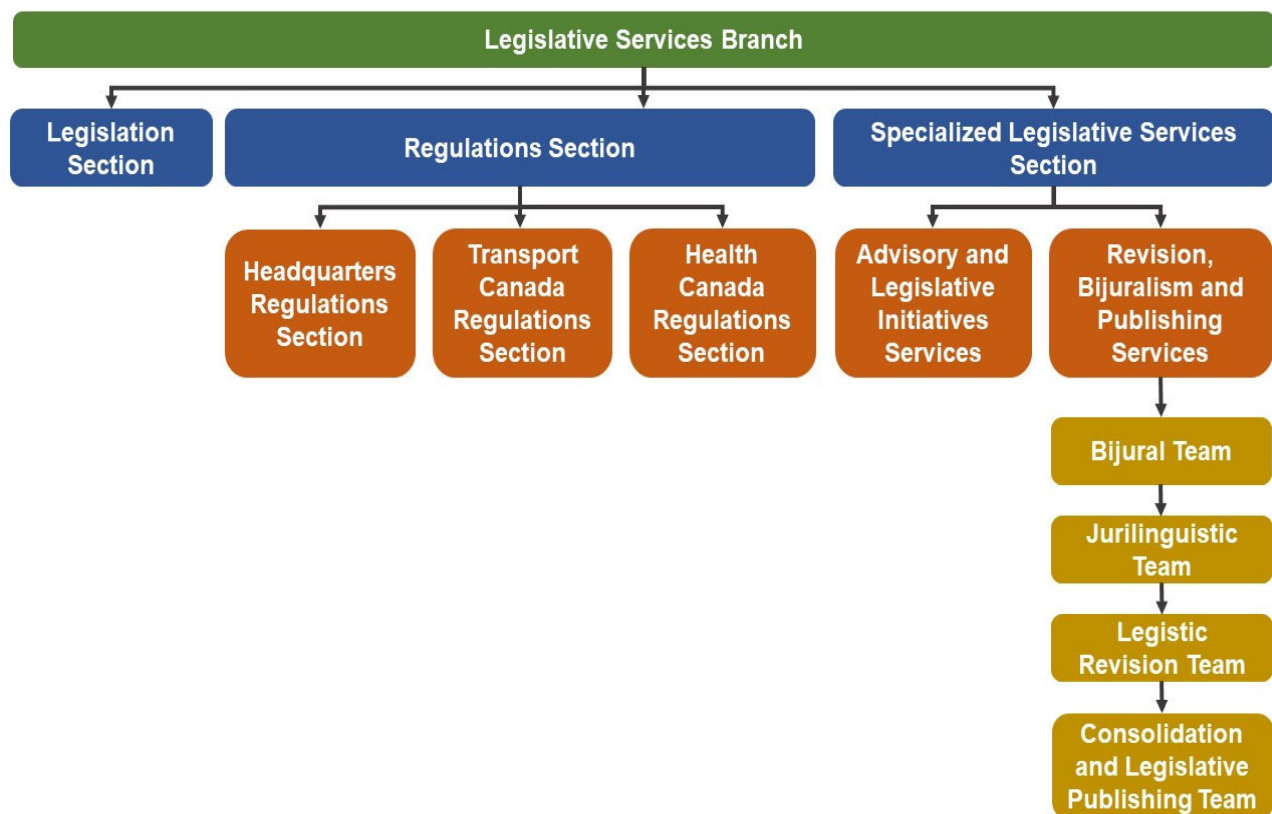
2.2 Nature of Work

2.2.1 Description of the Legislative Services Branch

Overall, the objective of the LSB is to support Justice Canada's strategic outcomes of maintaining and strengthening the bilingual and bijural framework of the Canadian legal system; providing high-quality legal services in relation to legislative services to federal departments and agencies; and making federal law accessible to Canadians.

The LSB is part of the Public Law and Legislative Services Sector (PLLSS). Its structure has evolved over time, including during the period covered by the evaluation.¹ At the time of this report and as illustrated in Figure 1, the LSB consisted of three main groups.

Figure 1: Legislative Services Branch Structure



- **Legislation Section:** Legislative counsel assigned to the Legislation Section are responsible for the drafting of all federal government bills and for the drafting of government motions to amend any bill. Legislation Section counsel are not, however, responsible for the drafting of taxation legislation. That work is carried out by the Department of Finance.

¹ For instance, in FY 2017-18, the position of Chief Legislative Counsel was eliminated and the Chief Legislative Counsel and Deputy Assistant Deputy Minister now assume those responsibilities. Another important change occurred in FY 2022-23, with the Bijuralism and Advisory Services Section and Legislative Revision and Publishing Services Group transitioning to form the new Specialized Legislative Services Section. In addition, team names changed to the Advisory and Legislative Initiatives Services and the Revision, Bijuralism and Publishing Services with both teams supported by the Liaison and Administrative Services.

- **Regulations Sections:** At the time of the evaluation, the LSB included three Regulations Sections. Reflecting the large volume of regulatory projects in which they are involved, Health Canada and Transport Canada each have their own Regulations Section. The Headquarters Regulations Section serves all other eligible departments, agencies or other regulatory bodies, unless this responsibility is assigned to another group, such as the Department of Finance for taxation-related regulations.
- **Specialized Legislative Services Section (SLSS):** This section provides a range of services that support the drafting of legislation and regulations and the development of legislation such as harmonisation bills:
 - **Advisory and Legislative Initiatives Services (ALIS):** This team offers expert services relating to statutory interpretation, including in respect of the development, interpretation and application of legislation and regulations. It also provides expert advice in the area of legislation and regulatory law to address complex, new, sensitive or cross-cutting legislative issues as well as those relating to comparative private law. This team also advises on and, in some cases, is the policy lead on some of Justice Canada's legislative initiatives such as the *Statutes Repeal Act*, the *Miscellaneous Statute Law Amendment Act* and the *Legislation Revision and Consolidation Act*.
 - **Revision, Bijuralism and Publishing Services (RBPS):** This team provides bijural, legistic and jurilinguistic revisions of legislative texts and manages their consolidation and the publication of reference documents through four teams:
 - **Bijural Team:** This team revises draft legislative texts and drafting instructions with respect to bijuralism so that both linguistic versions respect the rules, principles, concepts and institutions of civil law and common law when it is necessary to apply them. Requests can also be made with respect to any other issue raised by the implementation of bijuralism in a legislative drafting context or in relation to the implementation of a legislative measure or policy.
 - **Jurilinguistic Team:** This team assists legislative counsel in achieving the highest possible quality of language in legislative texts in both official languages, which includes ensuring that the two official language versions are parallel in meaning. They produce jurilinguistic opinions to support the language choices of legislative counsel and offer jurilinguistic workshops for the professional development of legislative counsel.
 - **Legistic Revision Team:** This team provides legistic analysis of legislative texts and revision services to legislative counsel. The team verifies logic, grammar, consistency, punctuation, format, citations and cross-references. The team also provides advice on amending clauses, transitional provisions, coming-into-force provisions and coordinating amendments.
 - **Consolidation and Legislative Publishing Team:** This team is responsible for the consolidation of Acts and regulations and the maintenance of the legislative database. In addition, the team produces a number of publications (*e.g.*, *Table of Public Statutes and Responsible Ministers*, *List of Repealed Statutes*, *Table of Private Acts*). It is also responsible for the preparation of the *Canada Gazette - Part III* and the *Annual Statutes*.

In addition to the work already described, members of all groups within the LSB may be involved in complementary activities, such as the drafting of guides and manuals, or the provision of training.

2.2.2 Description of the Finance LSU

The Finance LSU is part of Justice Canada’s Central Agencies Portfolio and is composed of legal counsel who provide legal advice to officials from the Department of Finance. A number of these legal counsel are specifically providing support to the legislative process undertaken by the Department of Finance. As further described in the next subsections, the drafting of certain legislative and regulatory texts (particularly those relating to tax measures) is undertaken in-house, by employees of the Department of Finance (typically lawyer, accountants and economists), in direct collaboration with the Finance LSU. As such, these legislative or regulatory texts are co-developed by employees of the Department of Finance and members of the Finance LSU.

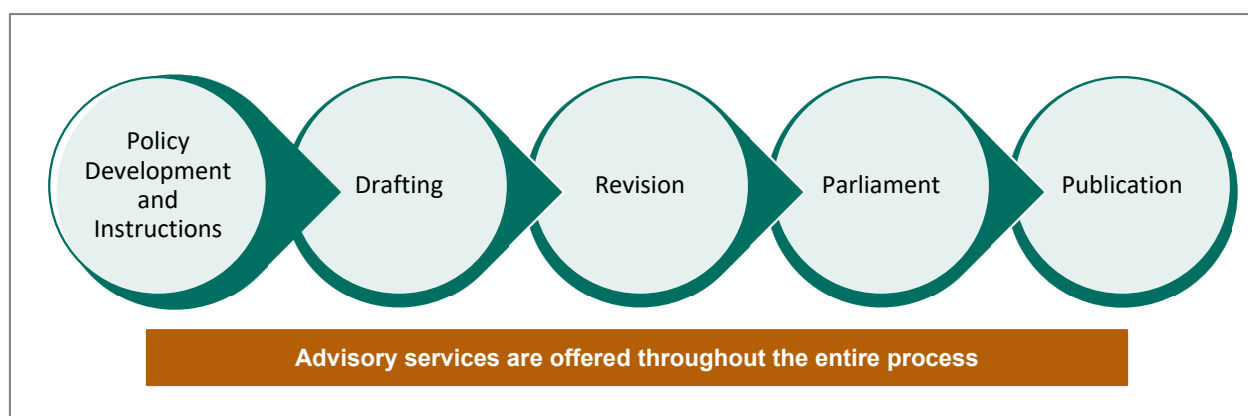
2.3 Overview of the Legislative Process

2.3.1 The Drafting of Legislation

From an operational perspective, the process involved in developing legislation is complex and fluid, due in part to the range of stakeholders involved and the latitude that the parliamentary system provides, allowing the government of the day to tailor its approach based on its vision of policy development. There is no fixed, standardized and linear process that frames the development of legislation, both because it would not suit all projects or circumstances for which legislation is needed, and because the federal government’s needs and requests require legislative counsel to be flexible. Instead, there are a number of key activities to be undertaken, culminating in the creation of legislation. While some legislative initiatives are limited in their scope and complexity (e.g., simple amendments to update an existing law), others raise far-reaching and controversial issues (e.g., legalization of cannabis).

For the purpose of this report, the focus is placed on those activities that involve the LSB, to various degrees, and that are identified in Figure 2.

Figure 2: Key Legislative Services Activities



Policy Development and Instructions

Legislation Section counsel draft government bills and government motions on the basis of the policy development work undertaken and the associated instructions that are approved by Cabinet.² The instructions are prepared by officials from the department or agency that supports the Minister who is responsible for the Act in question (the sponsoring department or agency). They do so with advice from the LSU assigned to that department or agency. The departmental officials and LSU counsel (the instructing team) may seek advice from the Legislation Section, from ALIS, from other legal experts in Justice Canada, and from subject-matter experts in other departments and agencies. In some cases, consultations are held with persons and entities outside of the federal government.

Legislation Section counsel provide advice if the review of the proposed instructions can be carried out without taking resources away from drafting that has been approved by Cabinet. The advice touches on legislative mechanics and any gaps or oversights in the instructions – all with a view to ensuring that the instructions align with the government’s policy objectives and any legal or constitutional constraints. Advice at this stage has the potential to reduce time spent clarifying the instructions if and when drafting begins.

Once instructions are finalized by the instructing team, they are included in a Memorandum to Cabinet. If Cabinet approves the Memorandum, officials at the Privy Council Office (PCO) provide the Memorandum to the Legislation Section managers for assignment.

In cases where timelines are short, instructions may be provided to the Legislation Section in a pre-drafting authority letter (PDA) from the PCO. A PDA authorizes drafting to begin in anticipation of a Memorandum being approved. The instructions may or may not be complete and are subject to what Cabinet ultimately approves.

Drafting

Once the instructions have been provided to the Legislation Section by PCO, the managers assign one or more drafters who draft the English version and one or more drafters who draft French version of the required legislation. Drafting is done with the drafter(s) responsible for the English version and the drafter(s) responsible for the French version who work together to provide parallel original drafts. The legislative project team includes, in addition to the drafters, instructing officers who are subject-matter experts from the sponsoring department and counsel from their LSU.

Depending on the scope and complexity of the proposed bill, a series of drafting meetings are held to review the work done, provide feedback or further instructions, and develop new drafts. This back and forth process lasts as long as it takes to achieve a first full draft of the proposed bill, in both official languages.

The legislative-project team may seek advice during drafting from Justice Canada legal experts as required. If the proposed bill includes regulation-making powers, Regulations Sections counsel are consulted as a matter of course. If the bill

² Private members bills, or bills introduced in the Senate are exceptions to this general rule. Another exception relates to tax policy decision and direction for tax legislation, which is generally obtained from the Minister of Finance.

involves private law matters, the bijural experts are consulted as a matter of course.

It is rare for the legislative-project team to collaborate with persons and entities outside of the federal government during drafting. Draft bills are confidential and any external consultations must be expressly authorized by PCO.

While the drafting process is normally focused on one proposed bill, there may be instances where the federal government will ask for options to be developed (e.g., two or three draft bills being developed simultaneously) for further considerations and decisions.

Revision

The revision undertaken by review counsel³, bijural experts, jurilinguists and legistic revisors, may occur at different stages of the drafting process, based on the specific circumstances of the legislation being developed. Considerations such as the complexity and volume of text, and timeframe requirements, may dictate the approach adopted for the revision process. Ideally, the revision work is done once the full draft of the proposed bill has been approved by the sponsoring department. Normally, the jurilinguists would review the English and French versions of the bill first, followed by the legistic revisors. In the case of regulations, legistic revisors perform their review first, followed by jurilinguists. However, «simultaneous review» can be agreed upon in certain circumstances. In all cases, the legislative counsel have the final say on the changes to be made as a result of the revision process. This activity would also involve the bijural experts who will review the legislative texts and drafting instructions so that both linguistic versions will respect both legal traditions when necessary.

Parliament

Once the sponsoring department and the legislative counsel have produced the final draft of the proposed bill, it is submitted to the PCO for approval by the Government House Leader. This review may lead to more changes, in which case the project goes back to the drafting stage. Once approved by the Government House Leader, the bill is tabled in the House of Commons for first reading.

As the bill proceeds through the various readings and committee processes, in both the House of Commons and the Senate, the work of the LSB is limited to drafting any government motions to amend that may be required and to drafting any legislative text that may be required in a message between the House of Commons and the Senate.

Publication

If the bill is adopted and receives Royal Assent⁴, the SLSS legislative publishing team undertakes the process of adding the legislation into the consolidated corpus of federal laws. Prior to being published in the Justice Laws Website, the bill, as adopted, is available on the LEGISinfo website of the Parliament of Canada. Also, when regulations are made and published in Part II of the Canada Gazette, the SLSS legislative publishing team undertakes the process of adding the regulations

³ Review counsel are Legislation Section counsel who peer review for quality control purposes, to identify legal or drafting issues and, may offer solutions as necessary.

⁴ Royal Assent refers to the approval provided by the Governor General on behalf of the Sovereign of a bill adopted by both the House of Commons and Senate. At that point, the bill becomes an act of Parliament and part of the law of Canada.

into the consolidated corpus of federal regulations. The Justice Laws Website is updated every two weeks.

As these different steps are undertaken, the federal government may, at any point in time, decide to withdraw the proposed bill. As such, the work of the LSB may end at the instructing stage, or at the drafting stage, without ever proceeding to a first tabling. Also, it is possible that the proposed bill will not be adopted by the House of Commons or the Senate. Consequently, the volume of legislation added to the Justice Laws Website only provides a partial picture of the legislative work undertaken by the LSB.

2.3.2 The Drafting of Regulations

The drafting of regulations includes many of the same steps as those described above. To avoid repetition, the following distinctive features are briefly summarized:

Policy Development and Instructions	Regulations must rest on the authority provided through legislation. As such, the sponsoring department or agency that holds that authority, in consultation with its assigned LSU, and the Regulatory Affairs of the Treasury Board Secretariat with respect to regulations made by the Governor in Council, initiates the policy development and instructing process. In doing so, it may reach out to the LSB Advisory Services or other groups within Justice Canada (e.g., centres of expertise) to receive advice on the scope or nature of its enabling authority. On that basis, the applicable Regulations Section of the LSB assigns at least two counsel (one who drafts in English and one who drafts in French) to the project. The instructing officer from the sponsoring department collaborates with these counsel to finalize the instructions.
Drafting	The drafting of the proposed regulations involves the instructing officer, the counsel from the Regulations Sections, bijural experts from the LSB, the LSU, and any other stakeholders as applicable, including the advisory experts of the SLSS. The drafting and feedback loop continues until a final draft is approved by the sponsoring department. This draft also includes a blue-stamp, which is the name given to the stamp placed on draft regulations by the Regulations Section of Justice Canada, confirming that the draft regulations have been examined by Justice Canada as required by the <i>Statutory Instrument Act</i> .
Publication	<p>Unless exempt from pre-publication, once approved by the Governor in Council or, in the case of ministerial regulations, by the sponsoring minister, the proposed regulations are published in the Canada Gazette, Part I, inviting interested parties to provide feedback.</p> <p>Based on the feedback received, the sponsoring department determines if changes to the proposed regulations are required. If so, the drafting and revision work resume.</p> <p>The final version of the proposed regulations is submitted for approval by the Governor in Council or by the sponsoring minister in the case of ministerial regulations. This approved version is then published in the Canada Gazette, Part</p>

II, and the Consolidation and Legislative Publishing Team adds the regulations to the consolidated corpus of federal regulations.

2.3.3 Specificities of the Legislative Work Undertaken by the Department of Finance

In accordance with a series of letters of designation, the Finance LSU counsel and the assigned employees of the Department of Finance are responsible for drafting legislation and regulations that relate to defined areas of taxation. Some of the unique features of this process include:

- **Legislation and regulations submitted simultaneously:** The Department of Finance is responsible for bills introduced in Parliament each year, and they typically represent large pieces of legislation (e.g., omnibus bill⁵ following the budget). In this context, and because of the nature of taxation measures, legislative and regulatory measures are often introduced together, as they are intrinsically linked. The regulatory measures will be adopted through Parliament instead of the process normally used for other regulatory projects.
- **Memo and drafting instructions submitted to the Minister:** The policy work on new tax legislation is normally initiated through a memorandum to the Minister of Finance that provides detailed policy and legislative instructions. The Minister of Finance has delegated authority from Cabinet as it relates to tax matters, which makes it possible for the Finance LSU to proceed with the drafting of taxation measures without a prior decision from Cabinet as a whole.⁶
- **Unique drafting process:** As is the case at LSB, depending on the scope and complexity of the proposed measures, a series of drafting meetings are normally held with the Finance Canada client (Tax Policy Branch) and occasionally representatives of the Canada Revenue Agency. The drafting is fluid given that the client has access to Epic files at any time and can propose changes directly in the text. This collaborative approach allows for the prompt identification of potential issues and the swift preparation of notes seeking further instructions from the Minister of Finance.
- **Specialization of legislative counsel:** Tax legislation is highly complex. For that reason, most legislative counsel have a strong tax background (e.g., master's degree in taxation, or similar designation) in addition to legislative drafting experience. Legislative counsel assist the Department of Finance officials as they draft legislative or regulatory text together in English in combined drafting sessions. The English draft is then sent to a dedicated translator assigned to Tax Policy for translation; and then both review the translation for consistency.
- **Press releases instead of publications in the Canada Gazette:** The Department of Finance regularly releases its regulatory or legislative proposals in the form of draft legislative proposals in order to obtain comments from stakeholders. Because of this practice, the pre-publication of a measure in the Canada Gazette is not always considered necessary and an exemption from pre-publication is regularly sought for regulatory tax initiatives.
- **Internal review process more contained:** As a result of the volume of legislation and regulations, the specialized nature of the work and the time constraints, in particular

⁵ An omnibus bill seeks to repeal, amend or enact more than one Act.

⁶ In accordance with article 15 of the *Financial Administration Act*, the Minister of Finance has the supervision, control and direction of all matters relating to the financial affairs of Canada not by law assigned to the Treasury Board or to any other minister.

surrounding major economic policy announcements (e.g., the annual budget), the internal legislative review process is often more contained. Each legislative counsel is expected to advise on bijural, jurilinguistic and legistic issues. Bijural experts, jurilinguists and legistic revisors are consulted on an ad hoc basis depending on the needs and what the available timeframe allows. This is particularly the case for bijural experts and jurilinguists who tend to be consulted as required, instead of systematically reviewing all the legislative or regulatory texts being developed. Revision of draft legislation and regulation is in the vast majority of cases performed by legislative revisors in LSB.

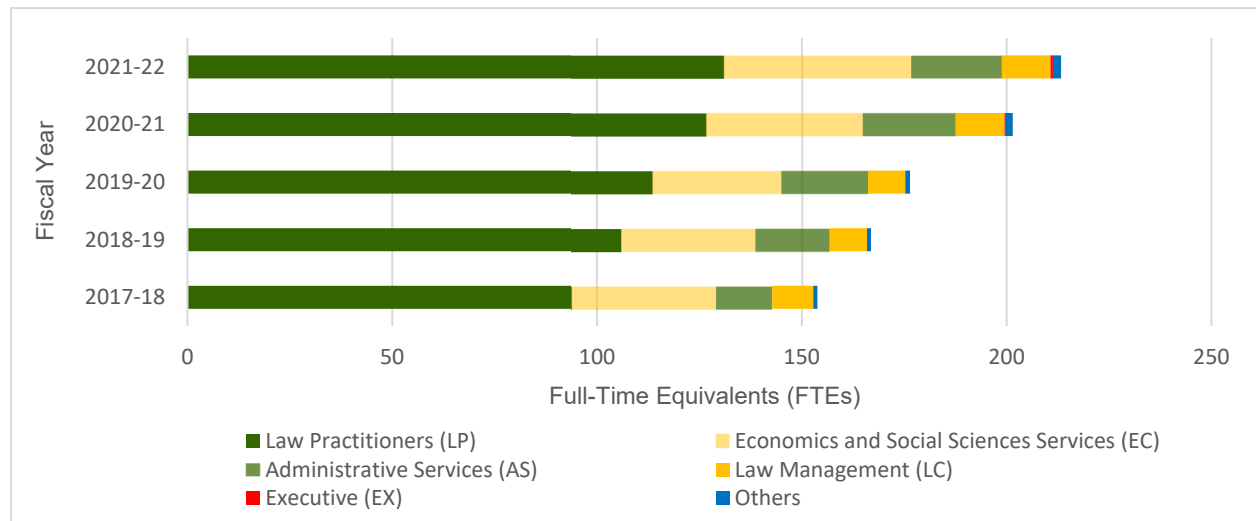
2.4 Human and Financial Resources

2.4.1 Human Resources

The total number of full-time equivalents (FTEs) assigned to the LSB has increased over the evaluation period. As shown in Figure 3, it went from 154 FTEs in 2017-18 to 212 FTEs in 2021-22 due to a series of approvals allowing for increases in FTEs to address demand for services.⁷ The range of positions also reflects the various roles of the sections included in the LSB.

Figure 3: Number of LSB FTEs, FY 2017-18 to FY 2021-22⁸

(Source: PeopleSoft/IFMS)

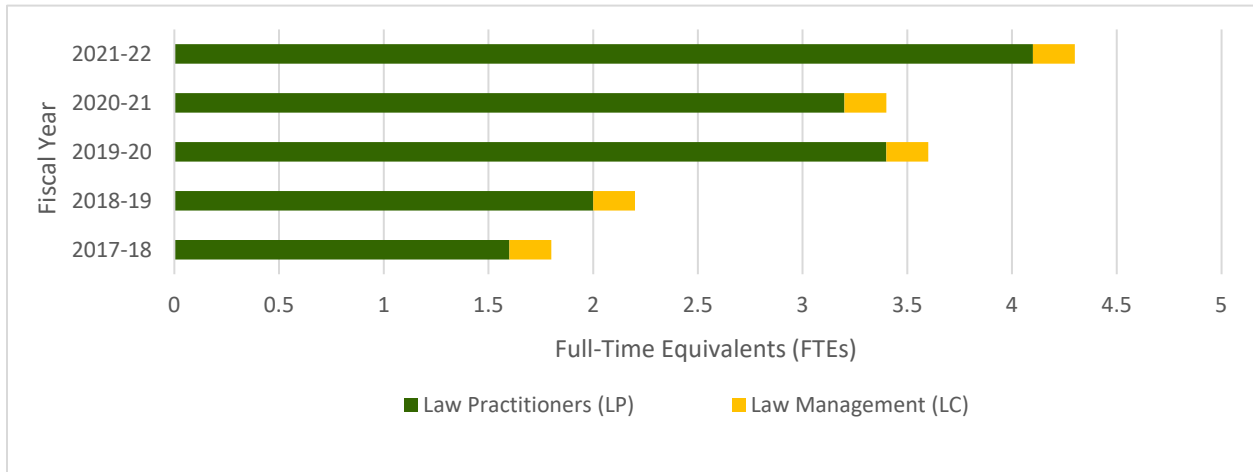


As for the Finance LSU, the total number of FTEs assigned to the legislative drafting process has also increased over the period covered by the evaluation (see Figure 4).

⁷ Starting in FY 2017-18 two business cases were approved to increase FTEs for Health Canada Regulation Section and Transport Canada Regulation Section. In FY 2018-19, approval was obtained to increase FTEs in Headquarters Regulation Section, Legislative Services and the former Legislative Revision and Publishing Services Group. Finally, in FY 2019-20, temporary funding was approved through a Treasury Board submission for additional FTEs to address the demands for services related to the Regulatory Review Modernization process. This funding is set to expire on March 31, 2024.

⁸ The LSB used to have clerical and regulatory (CR) positions, but they have been reclassified as AS in 2021-22. For the purpose of this table, CR and AS are combined. EC positions include individuals who undertake the editing of legislation or the provision of advice on legal problems in specific fields. Other positions include General Technical (GT), Program Administration (PM), and Students (SU).

Figure 4: Number of Finance LSU FTEs, FY 2017-18 to FY 2021-22⁹
 (Source: IFMS)



2.4.2 Financial Resources

Table 1 includes the total expenditures of the LSB and the Finance LSU for its legislative work. The increase in expenditures reflects the trends in the number of FTEs assigned to these groups.

Table 1: Total LSB and Finance LSU Expenditures, FY 2017-18 to FY 2021-22

Description	2017-18	2018-19	2019-20	2020-21	2021-22
LSB expenditures ^a	21,486,308	28,023,035	28,526,120	32,123,940	34,115,840
Finance LSU expenditures ^{ab}	350,681	475,322	798,133	729,252	692,111
a. Expenditures are inclusive of salary costs, non-salary costs (operating and maintenance) and the employee benefits payments. b. The expenditures included only cover the legislative work undertaken by the Finance LSU legal counsel.					
Source: IFMS					

⁹ These numbers only include the FTEs assigned to provide legislative drafting support.

3 EVALUATION METHODOLOGY

The evaluation was guided by an evaluation matrix (evaluation questions, indicators, and data sources), which was developed through the evaluation scoping and design process. Appendix A contains the list of evaluation questions.

An Evaluation Working Group (EWG) composed of Justice Canada representatives from the LSB and the Finance LSU provided advice during the design and implementation of the evaluation. The EWG coordinated access to documents and data, and provided feedback on evaluation products (i.e., the evaluation questions and indicators, preliminary findings and the draft evaluation report).

Multiple lines of evidence were used to address the evaluation questions: a process mapping exercise; a review of documents; a review of administrative data; key informant interviews; and two electronic surveys.

3.1 Process Mapping

To ensure that the evaluation was based on an accurate understanding of the design and delivery of legislative services, process mapping sessions were held as part of the methodology design process. These sessions involved selected representatives from the LSB sections and from the Finance LSU.

The goal of these sessions was to gain a better understanding of the workflows and processes of legislative services. Draft process maps and associated descriptions were developed based on perspectives shared during the sessions and on currently available documentation. Once finalized, these process maps and descriptions were used to inform all other data collection methods.

3.2 Document Review

The document review was initiated during the design phase of the evaluation, and continued throughout the evaluation process, as additional information became available. It provided descriptive information on the various processes and tools used by the LSB and Finance LSU to deliver their services. The range of documents consulted included:

- **Program documents:** Key background documents provided by the LSB and the Finance LSU, such as drafting guides and reference material (e.g., project handbook, orientation guide, description of roles and responsibilities, and internal process flowcharts, directives and policies, etc.);
- **Publicly available departmental and other government documents:** Departmental documents were reviewed (e.g., last evaluation of Legislative Services (2013), and audit reports (2012 and 2017)), along with relevant documents on federal priorities (e.g., Departmental Plans, mandate letters, etc.);
- **Survey:** Justice Canada's Client Feedback Survey is administered by the Corporate Planning, Reporting, and Risk Division as part of its overall performance management agenda. The purpose of the Survey was to obtain feedback on the degree to which Justice Canada legal services respond to the needs of client departments and agencies. Qualitative feedback from Cycle IV (2019-20 to 2022-23) were available for legislation and regulatory services.

3.3 Administrative Data Review

The administrative data review included information obtained from Justice Canada’s Departmental Business Analytics System (i.e., Explore). Data was extracted from Explore’s Data Warehouse via Tableau, which included data from iCase, LEX, the Integrated Financial and Material System (IFMS), and PeopleSoft. iCase and LEX data were extracted during July 2022. The data review focused on files to which LSB and Finance LSU timekeepers recorded time between FY 2017-28 and FY 2021-22. The data review considered the number of hours that LSB timekeepers recorded by file type, client name, activity (i.e., professional development), and risk and complexity rating. For Finance LSU, the data review considered the number of hours that Finance LSU timekeepers recorded by file type, client name, and risk and complexity rating.¹⁰

Administrative data was reviewed from the Justice Laws Website between FY 2019-20 to FY 2021-22. The data review focused on website usage, including the number of visits and time spent per page in a fiscal year.

3.4 Key Informant Interviews

Semi-structured interviews with key informants contributed to the in-depth understanding of legislative services, and the contribution of the LSB and the Finance LSU to that process. A total of 51 interviews were conducted for LSB and Finance LSU involving 109 individuals. Of those, 20 were individual interviews, while 31 were group interviews. A brief description of interviews conducted is provided below and additional details can be found in Appendix B. The following groups were consulted through these interviews:

- Legislation Section;
- Regulations Sections;
- Specialized Legislative Services Section;
- Finance LSU;
- Legal counsel from LSUs who have participated in the legislative process;
- Representatives from sponsoring departments and agencies;
- Other representatives from Justice Canada; and,
- Canada Gazette.

3.5 Electronic Surveys

Two electronic surveys were administered as part of the evaluation.¹¹

- A survey involving middle manager and junior level counsel from the LSB; and,
- A survey of representatives from sponsoring departments and agencies who have received legislative services within the previous year. For the purpose of the survey, this group also included legal counsel from LSUs assigned to these sponsoring departments and agencies.

¹⁰ Finance LSU data excluded “activity” from the analysis given as it was not relevant for this group.

¹¹ Due to the small participant numbers from the Department of Finance and the Finance LSU, additional key informant interviews were conducted instead of administering an electronic survey.

For each of the two surveys, a questionnaire was developed in both English and French, based on the relevant evaluation issues and questions. It included mainly closed-ended questions, with a few open-ended questions.

The survey involving representatives from the LSB proceeded with a sample of 163 individuals who received an invitation to participate. A total of 107 individuals completed the survey questionnaire, for a response rate of 66%.

The survey involving representatives from sponsoring departments and agencies proceeded with a sample of 80 individuals who received an invitation to participate. A total of 47 individuals completed the survey questionnaire, for a response rate of 59%. This included 25 respondents from sponsoring departments and agencies, 21 respondents from LSUs, and one respondent from a sector of Justice Canada.

3.6 Consideration of GBA Plus and Diversity and Inclusion

In accordance with the *Policy on Results*, the evaluation included considerations related to Gender-based Analysis (GBA) Plus. In particular, the evaluation issues and questions, and the data collection process, explored issues related to the accessibility of federal legislation, covering both the approach to drafting legislative text (vocabulary used) and the accessibility of the Justice Laws Website.

3.7 Constraints, Limitations and Mitigation

Table 2 describes the main limitations related to the proposed methodology, along with the mitigation strategies that were implemented. Overall, the evaluation process did not encounter constraints or limitations that prevented its ability to adequately address all evaluation issues and questions.

Table 2: Summary of Limitations, Challenges and Mitigations Strategies

Line of Evidence	Limitation or Challenge	Mitigation Strategy
Electronic surveys	The main limitation encountered as part of this evaluation related to the sampling procedure for interviews and surveys. This sampling procedure may have introduced bias, particularly as a result of the fact that participation in these data collection activities was voluntary.	For the electronic survey of counsel from the LSB, this risk was mitigated by taking a census approach (i.e., inviting all counsel within the targeted categories to participate). While this approach could not eliminate all forms of bias (most notably, self-selection bias among those who choose to complete the survey), it removed the possibility of introducing bias at the sample development stage.

Line of Evidence	Limitation or Challenge	Mitigation Strategy
Key informant interviews and electronic surveys	The key informant interviews and electronic surveys also had the possibility of introducing self-reported response bias and strategic response bias. Self-reported response bias occurs when individuals are reporting on their own activities and so may want to portray themselves in the best light. Strategic response bias occurs when the participants answer questions with the desire to affect outcomes.	This risk was mitigated by using multiple lines of evidence, including objective sources of data, such as documents and administrative data to arrive at the overall evaluation conclusions.
Administrative data review	Justice Laws Website data was only available from November 2019 forward due to migration to a new system.	We used the information that was available and data collected from other lines of evidence to confirm results.

4 FINDINGS

This section of the report synthesizes the evaluation findings. The analysis is based on information that emerged from all lines of evidence. It begins with an assessment of the relevance of the legislative services offered by the LSB and the Finance LSU, including trends in the demand for these services. It also explores the design and delivery of the current service delivery structure, the effectiveness of the services delivered, including their quality, as well as the efficiency of the services.

4.1 Relevance

4.1.1 The Provision of Legislative Services Aligns with Departmental Priorities

The provision of legislative services is anchored in the mandate of Justice Canada. These services enable the federal government to proceed with its legislative priorities.

One of Justice's core responsibilities is to provide high-quality legal services. As noted in the overview of legislative services (see section 2), having a centralized group with expertise in legislative drafting has been a critical component of the overall support that the Department provides to the federal government, and to each department and agency engaging in legislative initiatives. An overarching benefit of this approach is ensuring consistency in drafting federal laws and regulations.

While this evaluation focuses specifically on the contribution of the LSB and of the Finance LSU, the role of Justice expands beyond these activities and includes, among other things, all the legislative support that LSUs provide, along with the advisory work provided by centres of expertise or other groups within Justice.

In this context, legislative services are not only aligned with the departmental priorities of Justice, they are directly embedded in the mandate of the Department. These services are also a key enabler that allows the federal government to advance those initiatives and priorities that require legislative or regulatory support.

4.1.2 The Demand for and Complexity of Legislative Services have Increased

During the period covered by the evaluation, the demand for legislative services increased in volume and complexity. At the same time, the timeframe allocated to complete the drafting process has decreased.

In exploring the trends that emerged in the demand for and the risk and complexity of legislative services, this evaluation covers a unique period that includes the COVID-19 pandemic. Responding to this public health crisis required unprecedented legislative and regulatory measures that shaped many of the findings presented in this sub-section. In addition to these priorities, the federal government pursued other significant initiatives that also had an impact on the demand for legislative services.

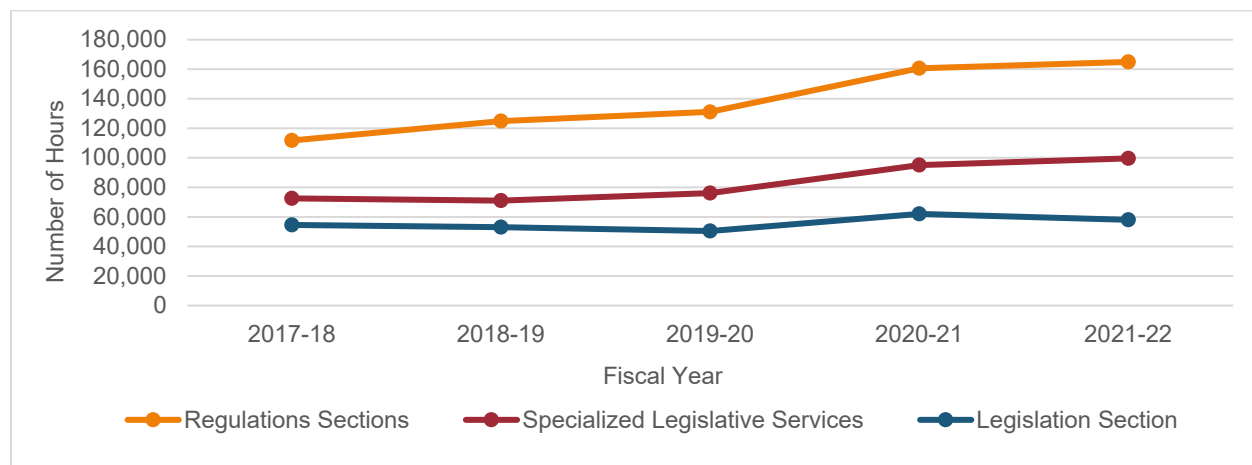
Trends in the Volume of Demand for Services

Trends within the LSB

As illustrated in Figure 5, the number of hours recorded by the three main LSB groups has trended upward during the evaluation period, with a sharper increase occurring during the FYs marked by the COVID-19 pandemic.

Figure 5: Number of Recorded Hours, by LSB Groups, FY 2017-18 to FY 2021-22

(Source: LEX)



The data shows a 37% increase in the number of hours recorded between FY 2017-18 and 2021-22 for the SLSS, followed by the Regulations Sections (48% increase). As for the Legislation Section, there was a 6% increase in number of hours recorded during the evaluation period, with a notable increase of 23% between FY 2019-20 and 2020-21.

Survey findings reflect these trends. Just over two-thirds (67%) of respondents from the LSB noted that the volume of requests for services had increased over the period covered by the evaluation. This view was even more predominant among respondents who had been with their respective LSB sections for more than 15 years, as 79% of those respondents noted an increase in demand over the past five years. Considered from the perspective of representatives from sponsoring departments and agencies, the views are largely the same, as 72% of survey respondents from that group noted that they had been involved in an increasingly higher number of requests for legislative services.

Interviews provided an opportunity to further define the factors behind the increase in demand for services. Respondents first confirmed the predominant impact that the COVID-19 pandemic has had, which affected more directly those involved in public health and other associated initiatives that dealt with the pandemic. However, other significant events were noted, such as the initiatives related to the reconciliation process with Indigenous peoples, the war in Ukraine, the legalization of cannabis, or the disruptive protests related to pandemic-related measures.

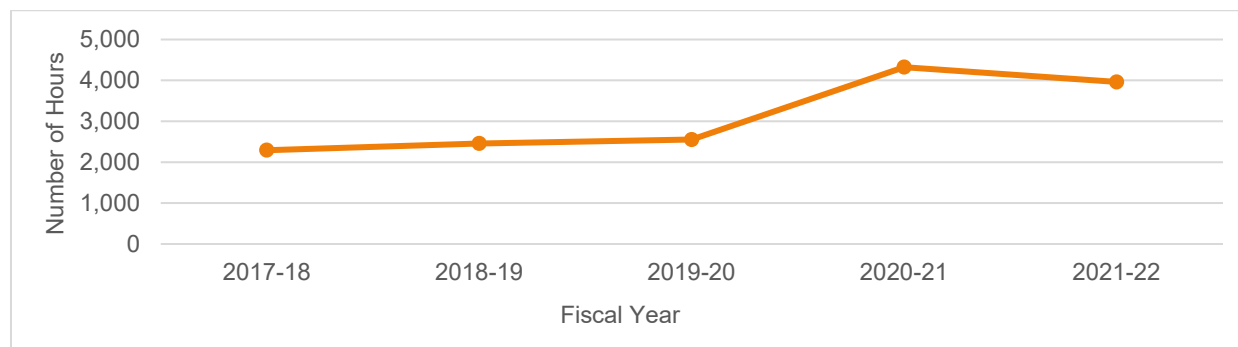
More generally, interview findings suggest that, during the evaluation period, the federal government has been pursuing a wide range of priorities simultaneously, particularly those included in respective mandate letters issued to each federal minister, which led to a steady and increasing number of requests for services.

Trends within the Finance LSU

The demand for legislative support from the Finance LSU also increased by 73% during the period covered by the evaluation with a surge that coincided with the COVID-19 pandemic (see Figure 6).

Figure 6: Number of Recorded Hours for Legislative Drafting Work, by the Finance LSU, FY 2017-18 to FY 2021-22

(Source: LEX)



During interviews, representatives from the Department of Finance emphasized that many of the pandemic relief initiatives have involved taxation measures, which had to be promptly established. In addition, uncertainties around the economic impact of the pandemic have led to several significant fiscal measures. Finally, the work on other fiscal initiatives that had to be set aside during the peak of the pandemic has also resumed, further contributing to this increase in requests for legislative services. As previously noted in the description of the process used by the Department of Finance, this increase in the legislative work has involved both Department of Finance drafters and the Finance LSU.¹²

Trends in the Risk and Complexity of Demands for Services

The LSB and the Finance LSU are involved in a wide range of legislative services whose scope and nature vary significantly, ranging from relatively simple amendments to legislative projects of high risk and complexity.

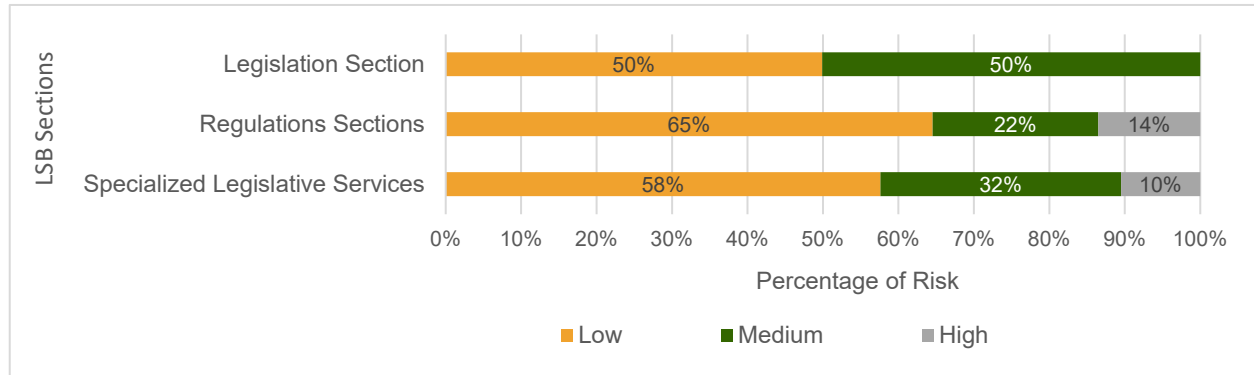
Using the FY 2021-22, Figure 7 illustrates the distribution of risk and complexity levels associated with files in which a risk and complexity assessment had been completed.¹³ It indicates that the vast majority of time spent by LSB involves work on files of low risk but medium to high complexity. The Finance LSU also demonstrated a similar trend in terms of complexity; however, they spent more of their time on higher risk files relative to the LSB. As part of the previous Evaluation of the Legislative Services Branch (2013), a recommendation was included to consider options to collect risk and complexity information on all drafting files. At the time, LSB did not record risk and complexity data in iCase and trends could not be assessed. The LSB has taken action on this recommendation, which included the development of guidance materials, in consultation with LSB managers, in order to assist legislative counsel in determining a file's appropriate risk and complexity level. This has allowed the current evaluation team to identify trends in risk and complexity.

¹² Note that an increase in the legislative work involving the Department of Finance also has impacts on LSB, mainly SLSS (i.e., legistic revisors and jurilinguists) who provide revision services to drafters.

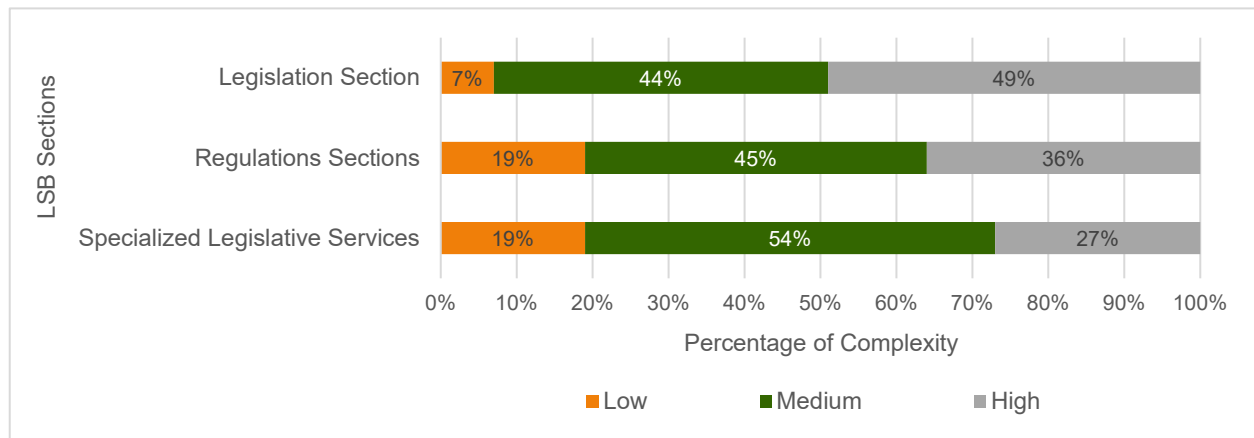
¹³ Risk and complexity ratings reflect the most recent legal risk and complexity assessments identified on a file in the legal case management system. For more information, see the [National Protocol on the Single Approach to File Management](#).

Figure 7: Distribution of Recorded Hours, by Level of Risk and Complexity, FY 2021-22^{14,15}
 (Source: LEX; includes only LSB hours that were attributed a complexity level)

Risk



Complexity



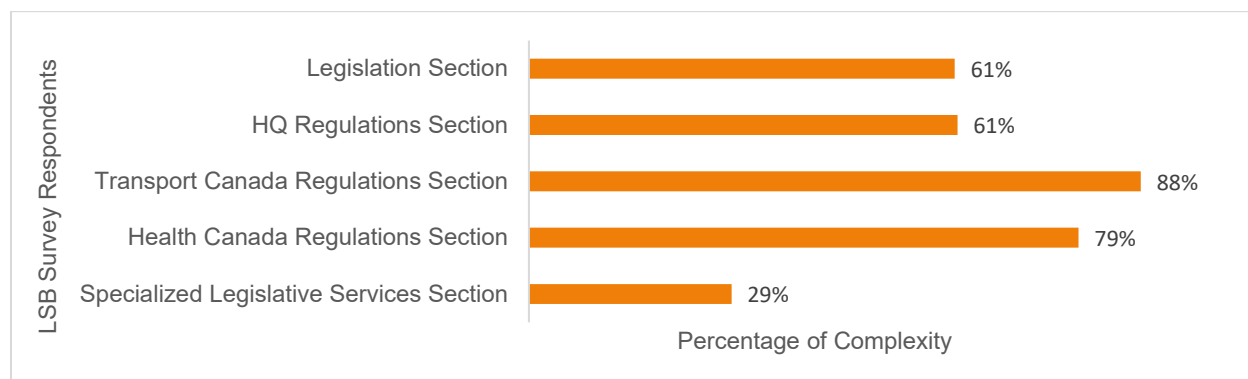
As for the trends over the evaluation period, findings point to a number of areas where the complexity in demands has increased. For instance, over half (56%) of LSB survey respondents were of the opinion that the level of complexity of the files they have been involved in over the past five FYs has increased. As illustrated in Figure 8, this trend was more pronounced in some of the sub-groups, including the Transport Canada and the Health Canada Regulations Sections that have been particularly engaged in measures adopted in response to the COVID-19 pandemic.

Figure 8: Percentage of LSB Survey Respondents who Reported an Increase in the Complexity of Demands in which They Have Been Involved Over the Past Five FYs

¹⁴ FY 2021-22 was used to assess complexity ratings due to a high percentage (i.e., 22%) of files not assessed at the beginning of the evaluation period. This made it difficult to assess trends over time, since we cannot assume how the distribution of files not assessed would have resulted.

¹⁵ Note that risk and complexity ratings are based on legal risk assessments conducted by the file owner.

(Source: LSB survey, 2022)



Representatives from sponsoring departments and agencies who participated in the survey also echoed this overall trend. Close to half of them (48%) noted an increase in the complexity of the demands for legislative services in which they had been involved over the past five FYs, whereas 36% indicated that it had remained about the same and 16% did not provide an assessment.

Interview findings indicate that the COVID-19 pandemic raised challenges that have contributed to the complexity of the work undertaken by many members of the LSB. For instance, the Health Canada and Transport Canada Regulations Sections have been involved in over 200 interim and emergency orders issued since February 2020. Legal counsel noted that the initiatives pursued in response to the pandemic have required innovative and unprecedented uses of statutory instruments to establish and enforce these measures.

Beyond the pandemic-related initiatives, the federal government has also pursued complex initiatives that often involved new areas of the laws and that engaged a wider range of stakeholders within and outside of the federal government. During interviews, key informants discussed the complexity of a number of projects. It concerns, for example, those legislative projects related to the environment (e.g., implementation of the carbon tax), the reconciliation process with Indigenous peoples, where a collaborative drafting approach involving Indigenous partners has been used to develop and amend relevant laws and regulations, the legalization of cannabis, the overhaul of the *Official Languages Act*, or the harmonization of international tax rules across members of the Organisation for Economic Co-operation and Development.

Shorter Timeframe Allocated to Complete the Drafting Process

As illustrated in Figure 9, the vast majority of LSB survey respondents indicated that the timeframe allocated to complete the drafting process has decreased over the past five years. This view was also reflected to some extent in the results from the survey involving representatives from sponsoring departments and agencies, and from LSU legal counsel, where 40% and 38% respectively of respondents expressed a similar view (23% of respondents from the sponsoring departments and agencies and LSUs combined were not in a position to express an opinion).

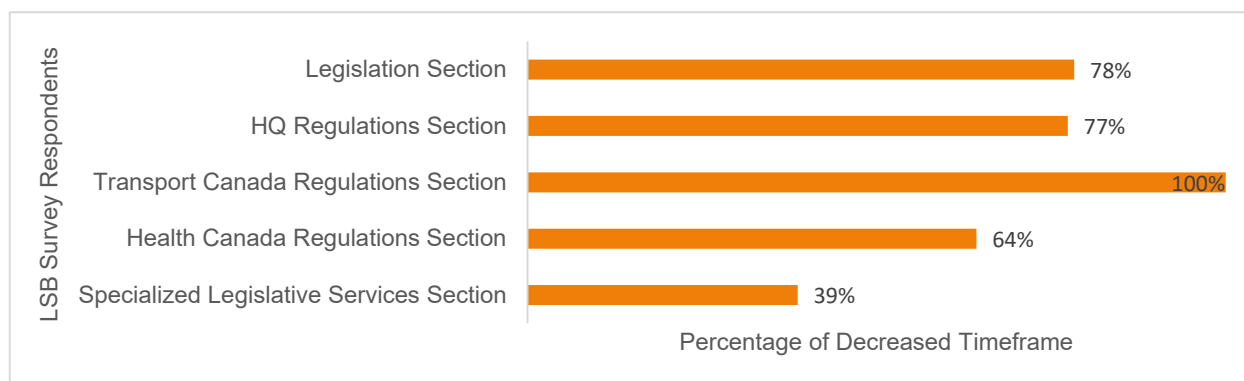
As noted during interviews, these trends were significantly compounded by the requirements associated with the COVID-19 pandemic. Those involved in the implementation of the wide range of federal measures designed to respond to the pandemic had to produce the required advice, drafting and revision work within exceptionally short timeframes. This meant working after business hours, and during weekends, placing considerable stress on employees, professionally and personally. This also

involved producing all that work in a radically shifting office environment, as work from home arrangements were being implemented to meet public health restrictions on in-person gatherings.

While the COVID-19 pandemic created extraordinary circumstances, the expectation that legislative work be produced within a shorter timeframe is a longstanding trend that predated the pandemic and is expected to continue in a post-pandemic environment. Back in 2013, the previous Evaluation of the Legislative Services Branch reported that “there was broad agreement across lines of evidence that timelines for drafting projects are decreasing”.¹⁶ Findings from this evaluation indicate that the trend will not be any different moving forward.

Figure 9: Percentage of LSB Survey Respondents who Reported that the Timeframe Allocated to Complete the Drafting Process has Decreased Over the Past Five FYs

(Source: LSB survey, 2022)



4.2 Design and Delivery of Services¹⁷

Findings from the evaluation indicate that the design and delivery structure for legislative services has successfully supported the overall implementation of the federal government’s legislative agenda. However, evaluation findings also point to issues around the sustainability of this design and delivery structure, particularly on the demands placed on LSB and the Finance LSU, which are further explored in the following sub-sections.

4.2.1 The Design and Delivery Structure has been Adapted but its Sustainability in the Long Term Poses a Risk

The design and delivery structure used by the LSB has proven to be adaptable to continue to meet requests for services. This happened in a shifting policy environment where legislative initiatives had to be drafted more expeditiously, triggering challenges for the provision of these services. There is an opportunity to explore a more sustainable design and service delivery structure that can be implemented in the long term to mitigate risks.

The Changing Nature of Demands for Legislative Services

¹⁶ Department of Justice. (2013). *Legislative Services Branch Evaluation: Final Report*, p. 43.

¹⁷ This section focuses primarily on the LSB, and less on the Finance LSU, as data collection activities related to the design and delivery of services were addressed predominantly in relation to the work of the LSB.

The broader context in which legislative services are delivered has a significant impact on the ability of LSB and the Finance LSU to successfully deliver their mandate. This environment is shaped by factors such as the specific approach or organizational culture of the federal government to implement its policy or programming agenda, and by external dynamics or forces that shape the actions of the federal government. For legislative services, this requires, among other things, being capable of successfully operating in an environment that involves both proactive and reactive measures, along with the unpredictability that comes with the latter. The evaluation provided an opportunity to explore the extent to which the current design and delivery of legislative services delivery are aligned with the requirements associated with this larger setting.

Evaluation findings point to a certain degree of tension between the frequent desire on the part of the federal government to complete policy development and legislative drafting as soon as feasibly possible, and the commitment of the LSB to implement a thorough legislative drafting process that upholds high standards of quality and rigour. This tension has not arisen on every project involving the LSB, particularly not on the ones dealing with fairly contained measures responding to an operational need that is not time-sensitive. Through interviews and surveys, it has nonetheless been indicated to be a recurring concern.

The Impact of the Current Context

Representatives from sponsoring departments and agencies, and legal counsel from LSUs, have both emphasized during their interviews that the LSB and the Finance LSU responded very well to the challenging demands placed on them during the evaluation period, including at the peak of the pandemic-related work.

For their part, LSB representatives expressed concerns that the exceptional approach adopted during that period is further entrenching expectations that legislative drafting in general can be delivered within shorter timeframes and more open processes. On the latter point, LSB representatives identified the following trends as being particularly challenging:

- **Working with partial instructions:** Instead of proceeding with detailed instructions, the LSB must regularly work with very little or partial instructions that reflect evolving policy development, sometimes provided in only one language. Further, the instructions may continue to change and shift as the drafting proceeds. This leads to more tentative work that requires significant refinement as the process evolves.
- **Producing multiple versions:** In order to inform policy decisions, the LSB is sometimes required to prepare multiple versions of a draft bill or regulation, which may require additional analysis. This provides flexibility for the federal government to select the most relevant one in due time.
- **Completing steps simultaneously:** In order to meet specific timeframe requirements, the LSB may complete some steps of the drafting process simultaneously rather than sequentially. For instance, this may involve asking both the jurilinguists and the legistic revisors to complete their review at the same time and reconcile that work after, or having legal counsel do some of the revision work to accelerate the process. As the drafting steps may be repeated to adapt to the evolving policy changes, some of the revision work on revised drafts may be skipped to meet timeframe requirements.

- **Less ability to consult:** LSB members may not be in a position to consult colleagues within the Branch or in other sectors of Justice Canada when the work must be completed in a tight timeframe.

The role of Justice Canada, and LSB in particular, is to adequately support the legislative drafting process. At the time of the evaluation, it appears that the design and delivery structure was regularly challenged to adapt to some of the requirements and expectations placed on it. While evaluation findings indicate that the LSB successfully overcame these challenges, it remains a point of tension that, left unaddressed, will continue to raise issues of a systemic nature.

Current Design and Delivery Structure

The LSB has implemented a service delivery structure that has responded to the needs of those who directly engage with it. During interviews, representatives from sponsoring departments and agencies, and LSU legal counsel expressed a strong level of appreciation for the capacity of the LSB to deliver its services. Being “phenomenal”, capable of “meeting our expectations on all aspects”, being “very efficient, trusted and excellent collaborators” are some of the terms used to praise the capacity of the LSB to deliver its services. Some of the more specific comments provided during interviews with sponsoring departments and agencies, and LSU legal counsel, include the following:

- **Early engagement:** Sponsoring departments and agencies appreciate the ability to proceed with pre-drafting authority to initiate the legislative work in a timely manner. As for potential improvement on the engagement process, representatives from departments and agencies that do not undertake legislative work frequently noted that clearer directions could be provided on how to actually initially engage the LSB.
- **Drafting process:** The drafting process varies based on the nature and complexity of legislative projects. Representatives from sponsoring departments and agencies, and LSU legal counsel generally described their experience as collaborative and effective. One area for improvement that emerged from interviews would be to have a more consistent approach when it comes to marking or identifying modifications to a proposed legislative or regulatory text, so that the review of these changes by the instructing authority could be facilitated.
- **Revision process:** The revision process is undertaken internally within the LSB and, as a result, representatives from sponsoring department and agencies, and LSU legal counsel, had a fairly limited understanding of what it entailed. It was noted that additional information about where a legislative project stands in the revision process could prove useful, as well as proposed timelines for completing this task.

The Ability to Adapt to Change

The LSB has successfully modified some of its processes to adapt to the increasing volume of work and the shorter timeframes to deliver this work, including all legislative initiatives related to the COVID-19 pandemic, and to the shifting work environment that restricted access to offices. The following key changes were highlighted during interviews:

- **Coordination meetings:** To help manage the demands for legislative services, the LSB has a well-established practice of meeting regularly with the PCO (Legislation and House Planning) on legislative projects, with the Treasury Board Secretariat on regulatory projects, and with other stakeholders as applicable. Particularly during the pandemic, this was seen as a critical

process to help forecast the demand and the range of support required based on both the volume and the complexity of the upcoming projects. One limitation of the current approach is that there are no meetings involving the PCO and the Treasury Board Secretariat to plan and coordinate the demands placed by both legislative and regulatory projects.

- **Priority setting:** During the evaluation period, the Headquarters Regulations Section implemented a prioritization tool that has proven effective. When a new file is opened, representatives from the sponsoring department or agency must complete a form that includes objective criteria to assess the priority level that should be assigned to the project. It allows both the sponsoring department or agency and the team assigned to the project to have a common understanding of the approach required in terms of timeframe.
- **Working remotely:** The requirement to work from home for an extended period during the pandemic has proven to be effective. It has somewhat mitigated the negative impact of having to work extra hours during evenings and weekends, particularly during the implementation of COVID-19 pandemic measures, as LSB members were at least in contact with their immediate families. It has also demonstrated the advantages of using virtual meeting technologies to work on shared documents and to involve individuals from various locations. While working on screens requires adjustments and is not the favourite option for all those involved, this is a model that many would like to retain, as opposed to resuming in-person drafting sessions, once the hybrid work model is fully implemented.
- **Multi-team approach:** In larger projects, the LSB has assigned multiple teams that can each draft a section of new legislation or regulations. This has allowed the projects to progress faster. However, this approach also raises some challenges in maintaining consistency and in coordinating the feedback and the review processes. This model, when selected, requires careful planning and implementation to avoid inefficiencies. A similar challenge related to project consistency was noted in the previous Evaluation of the Legislative Services Branch (2013), which recommended options be considered to minimize the re-assignment of legislative counsel from one project to another to ensure high-quality services and products are provided. To address this recommendation, the LSB reviewed and implemented improvements to project management tools, with training also provided to legislative counsel. In addition, LSB managers minimized the re-assignment of legislative counsel to ensure consistency, where possible. Therefore, consistency within projects remains an area where challenges may be experienced.
- **Adapted revision process:** On occasion, to accommodate time constraints, the required revisions to be done by legistic revisors or jurilinguists have been modified, by focusing the revision on specific sections of a draft text, or by engaging other colleagues (e.g., other legislative counsel) to undertake the review. The obvious drawback of this approach is that it does not ensure the highest standard of quality, but it has been used to accommodate exceptional circumstances.

These adaptations illustrate the ability of the LSB to incrementally adjust its service delivery approach to adjust to various circumstances. What has yet to be fully articulated, however, is the extent to which more comprehensive changes to the service delivery structures will be implemented to respond to the requirements placed on the LSB to deliver legislative products within a shorter timeframe. The ability to meet shorter timeframes, which has proven to be a longstanding trend, cannot rest on having LSB personnel work overtime when needed, or on having temporary and not fully fleshed-out adaptations to the drafting process, which have created uncertainties and frustrations among some LSB members,

along with retention challenges. These issues pose risks to the sustainability of the services going forward.

The Model of Finance Canada

While the Finance LSU operates with a different drafting model, it also faces issues triggered by the need to operate within short timeframes, and having to respond to surges in the level of work, particularly around the tabling of federal budgets. During the period covered by the evaluation, the Finance LSU also had to deal with complex initiatives implemented in response to the COVID-19 pandemic. Keeping this context in mind, evaluation findings have not identified systemic difficulties with the drafting model in place, which provides a level of flexibility associated with a number of its components. For example, the work on drafting instructions is largely done internally; the drafting proceeds in one language before being translated; the legislative project team includes a combination of employees of the Department of Finance and the Finance LSU, and the revision process may be more contained if required.

The Integration of GBA Plus and Diversity and Inclusion Considerations in the Delivery of Services

Evaluation findings indicate that there has been some integration of GBA Plus and diversity and inclusion considerations in the service delivery structure of the LSB. For instance, all members of the LSB are expected to complete the online training on GBA Plus offered by the federal government. Also, for a number of years, the LSB has been using gender-neutral language in its drafting, and has established a working group to support these efforts.

More recently and as applicable, policy development process has also more readily engaged Indigenous organizations in accordance with the co-development vision reflected in the United Nations Declaration on the Rights of Indigenous Peoples, some legislation relating to Indigenous rights, and the inclusion of Indigenous languages (e.g., referring to an Indigenous community by using the name in the applicable Indigenous language).

During interviews, representatives from the LSB, the sponsoring departments and agencies, and the LSUs have emphasized that the integration of GBA Plus considerations in the actual content of new or amending legislation and regulations is essentially done in the earlier stage of the policy development process, rather than the actual drafting of the bill or regulations.

Delivery of Special Programs

As part of its mandate, the LSB is involved in activities related to the *Miscellaneous Statute Law Amendment Program*, the *Statutes Repeal Act*, and the harmonization of federal law with the civil law of Quebec and the common law of other provinces and territories. To support these efforts, the LSB has implemented a number of processes, which are led by the SLSS:

- For the *Statutes Repeal Act*, an annual process addresses the requirement of that Act to repeal certain laws and regulations that have not come into force within a defined period. During interviews, those involved in this process reported that it was proceeding efficiently.
- For the *Miscellaneous Statute Act Amendment Program*, whose purpose is to correct anomalies, inconsistencies, outdated terminology or errors in federal statutes, the process is undertaken every three to five years. Interview findings indicate that the main challenge with

this process relates to the need to successfully engage a multitude of departments and agencies in preparing the Memorandum to Cabinet required to implement these corrections. Other priorities among these departments and agencies have tended to limit the ability to proceed with these changes.

- Finally, the harmonization of federal law with the civil law of Quebec and the common law of other provinces and territories requires the engagement of a multitude of departments and agencies. To date, three Federal Law-Civil Law Harmonisation Acts have come into force in 2001, 2004 and 2011. A fourth act (Bill S-11) has been tabled in October 2022 and is still proceeding through the parliamentary process.

4.2.2 Division of Roles and Responsibilities is Generally Clear

The division of roles and responsibilities among the sections of the LSB and with other stakeholders is clearly established, but suggestions for further improvements have been identified.

The Division within the LSB

The successful achievement of the LSB's mandate requires all teams within the Branch to work in a complementary fashion, each providing essential support to the drafting of legislation and regulations that meet the needs of the federal government.

In the complex and fluid environment in which the LSB operates, having a clear division of roles and responsibilities is critical. Evaluation findings indicate that LSB members are generally satisfied with the current framework. This is the view that was expressed by 79% of LSB survey respondents. During interviews, LSB members emphasized the collegial environment within the LSB where communications are open, including addressing issues related to the division of roles and responsibilities. A best practice that emerged from the findings is to have sufficient coordinators and team leaders, who are typically senior counsel who can provide guidance and mentoring to oversee the daily activities and operational requirements of each group within the LSB, particularly in light of the shifting demands that may require a reallocation of priorities and associated resources.

The Division between the LSB and Other Stakeholders

Evaluation findings also reported high levels of satisfaction when it comes to the distribution of roles and responsibilities between the LSB and the other stakeholders. Survey findings indicate that all respondents from sponsoring departments and agencies, and 95% of respondents from LSUs were satisfied with the division of roles and responsibilities between themselves and the LSB. As for the survey respondents from the LSB, 79% were also satisfied, with consistent results among respondents from the various groups within the LSB.

When asked about potential improvements to the distribution of roles and responsibilities between the LSB and other stakeholders, the following insights emerged from the interviews. Addressing these issues would further enhance the efficiency of service delivery.

- **Consultations within Justice Canada:** It would be helpful to clarify who should lead consultations with other sectors within Justice Canada, in cases where consultations are needed. At this point, LSB representatives may lead them, while in other cases legal counsel from LSUs lead them. Clearer guidelines would enhance the efficiency of this process.

- **The work of the Constitutional, Administrative, and International Law Section (CAILS):** Particularly as it relates to clarifying and confirming the enabling authority for proposed regulations, sponsoring departments or agencies, through their LSU, may seek legal advice from advisory services within the SLSS of LSB, or from the CAILS. It would be helpful to have clearer guidelines on when to engage either or both of these two groups.
- **Incorporation by reference:** At the time of this report, various approaches were used to review documentation incorporated by reference. For instance, the Transport Canada Regulations Section reviews such documents. In other cases, it is up to the LSU associated to the sponsoring department or agency to review this documentation. During interviews, suggestions were made to review the current strategy, and ensure that the most efficient approach is retained.

A similar recommendation to clarify the role between LSB and respective clients and key partners to ensure the quality and completeness of requests was included within the previous Evaluation of Legislative Services Branch (2013). The LSB addressed this recommendation by undertaking steps to provide training sessions in a number of key areas such as the preparation of drafting instructions, information regarding the legislative and regulatory process, exemptions from the *Statutory Instruments Act* and incorporation by reference. Training materials were also made available on the Justice website. Although actions were previously taken to address the issue related to clarity of roles, evaluation findings note that it remains an ongoing challenge.

4.2.3 Internal Processes are Working Well, but Some Improvement is Needed

The processes in place within the LSB are working well, but there is a need to update foundational documents and to enhance the process to open and allocate files.

The work within the LSB and with other stakeholders in the drafting process is guided by a number of processes. Overall, and as illustrated in Figure 10, evaluation findings point to a high level of satisfaction with the current processes. In particular, 96% of survey respondents from sponsoring departments and agencies indicated that they were satisfied with these processes. Among survey respondents from LSUs, the level of satisfaction stood at 76% (with an additional 19% who could not provide an opinion).

While survey respondents from the LSB were generally satisfied with the current processes in place (73%), 21% reported that they were not satisfied. During interviews, representatives from the LSB made suggestions on how to improve the current processes:

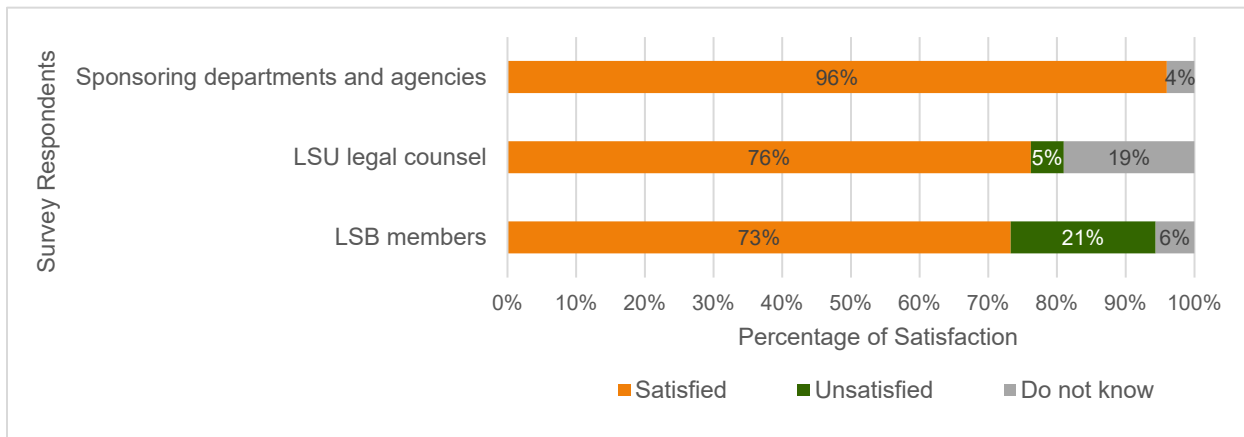
- **Maintaining updated manuals:** The LSB produces a series of guidelines and practice manuals (such as deskbooks, guides and handbooks). While these are important tools, evaluation findings suggest that the LSB have had limited capacity to regularly update them. Portions of these documents are updated when feasible, but a more systematic approach is needed to ensure that the full range of guidelines and manuals are kept updated.
- **A more consistent approach to opening files:** At the time of the evaluation, the various groups within the LSB were using different processes to open new files. To help with the monitoring of these files, it was suggested that a more consistent approach be used. In particular, it was noted that the current file opening form used in the Headquarters and Health Canada Regulations Sections was helping to streamline the process for both the LSB and the

representatives from the sponsoring department or agency who must provide the relevant information.

- **Clarifying the process to assign files:** Another suggestion was to confirm and communicate more clearly the process used internally within the LSB to assign files, to ensure that availability, expertise and subject-matter interests may be considered when feasible.

Figure 10: Level of Satisfaction with the Processes in Place at the LSB

(Source: LSB and client surveys, 2022)



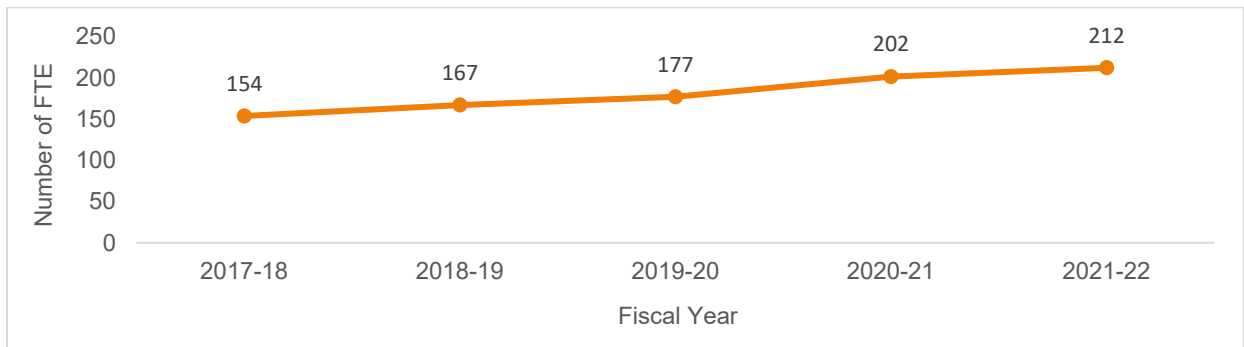
4.2.4 Human Resources Levels Raise Challenges

During the evaluation period, the level of human resources allocated to the LSB has increased, but there is a need to further enhance the capacity of the LSB in order to meet the demand for its services.

As summarized in Figure 11, the number of FTEs assigned to the LSB increased by 38% during the evaluation period, and these additional resources have been distributed across all the occupational groups (see Figure 3 on page 10 for more details).

Figure 11: Total Level of FTEs in the LSB, FY 2017-18 to FY 2021-22

(Source: IFMS/Peoplesoft)



Despite having a larger team in place, the LSB experienced challenges at times to meet the demands for services. For instance, 62% of survey respondents from the LSB were of the opinion that there was an inadequate balance between the level of resources required to deliver services and the demand

for these services. This sentiment was also expressed during interviews with LSB members, as well as with representatives from sponsoring departments and agencies, and LSU legal counsel. The current teams within the LSB are stretched, and concerns were expressed on the risks of overextending individuals (including risks of burnout), which can affect the ability of the LSB to recruit and retain its personnel.

LSB management recognized that employees required support during the evaluation period and undertook efforts to ensure workplace wellness and mental health. For instance, the PLLSS Wellness and Mental Health Committee, which was established in 2021, implemented several initiatives, such as the development and distribution of best practices to improve team morale; having management receive mental health training to better support employees; and promoting activities provided by the Mental Health Sector Committee (e.g., participation in listening circles, distribution of a monthly newsletter regarding training, tips and resources to improve well-being, etc.).

During interviews, representatives from the LSB indicated that new staff members are required in all sections of the LSB. They also noted that having more paralegals could relieve some of the pressures currently placed on legal counsel. For instance, paralegals are already used in Regulations Sections to help draft some of the proposed regulations. They are also used by advisory services to undertake some legal research.

Acting in a timely manner to add new personnel to the LSB is seen as particularly important, as any new member of the LSB requires extensive on-the-job training before they become fully operational. In the case of jurilinguists and legistic revisors, since there are no college or university degrees that directly prepare someone for such specialized positions, the specialized training is essentially done on-the-job. Interview findings suggest that, at the time of the evaluation, Justice Canada was already exploring options to add new personnel to the LSB, which would address the concerns described in this sub-section.

Enhancing the human resource capacity of the LSB would complement any adaptation to LSB's service delivery model to better respond to the ongoing pressure to complete legislative drafting within a shorter timeframe, as discussed in sub-section 4.2.1.

4.3 Effectiveness

4.3.1 High Levels of Satisfaction with the Services Received

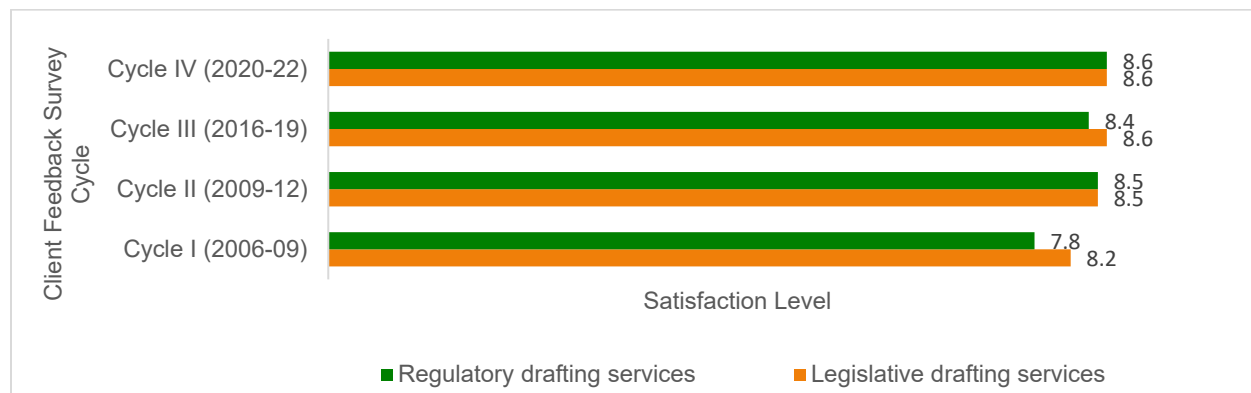
Sponsoring departments and agencies, and LSUs, report high levels of satisfaction with the work provided by the LSB and the Finance LSU. LSB representatives were somewhat less satisfied with the quality of the work they produce.

The Perspective of Sponsoring Departments and Agencies, and LSUs

The LSB and Finance LSU have a long history of providing quality legislative and regulatory drafting services. As illustrated in Figure 12, the results from the cyclical client feedback surveys that Justice administers point to high rankings since 2006. Except for one case in the first cycle (2006 to 2009), these results have systematically exceeded the departmental target of 8.0 out of 10.

Figure 12: Satisfaction with the Overall Quality of Legislative and Regulatory Drafting Services (2006 to 2022)

(Source: Justice Canada Legal Services Client Feedback Survey, 2022)



These cyclical client feedback surveys cover the usefulness of the services provided, their timeliness, the quality of legal risk management, and the accessibility and responsiveness of those providing these services. On all these dimensions, both the legislative and regulatory services scored above 8.0 during the last cycle.

The complementary data collected through surveys conducted as part of this evaluation directly echoed these trends. As illustrated in Figures 13 and 14, both representatives from sponsoring departments and agencies, and LSU legal counsel, reported high levels of satisfaction with the services provided by the LSB. Of note, when asked about the overall quality of the work provided on both legislative and regulatory projects, all respondents from sponsoring departments and agencies reported that they were satisfied. For all dimensions covered by the survey, results always exceed 80% in satisfaction levels, which mirrors the target set by Justice. As for the services provided by the SLSS, only a few survey respondents were in a position to provide any feedback, but those who did consistently report a high level of satisfaction with the quality of the services provided.

Figure 13: Satisfaction Ratings for Legislative Drafting Services (2006 to 2022)

(Source: Client Survey, 2022)

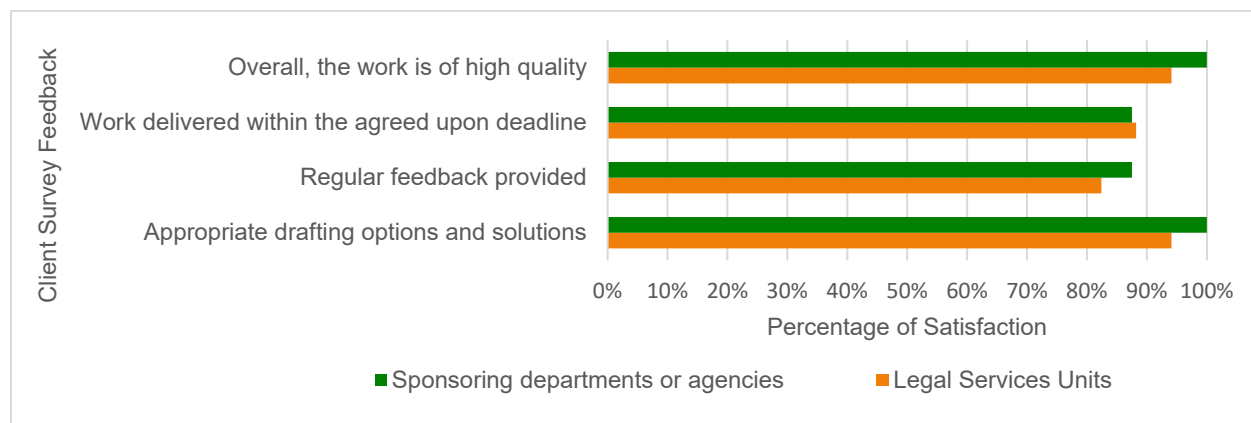
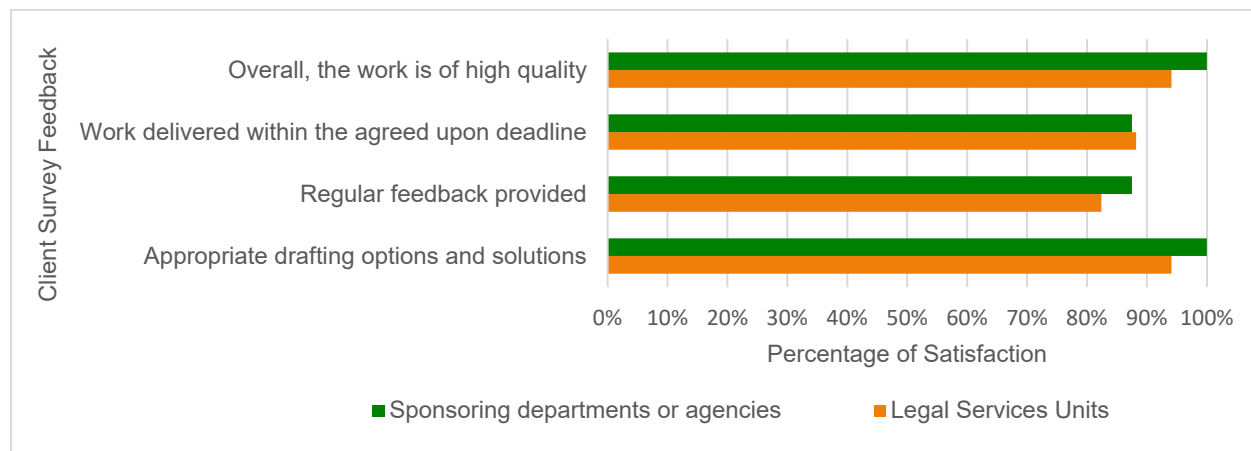


Figure 14: Satisfaction Ratings for Regulatory Drafting Services (2006 to 2022)

(Source: Client Survey, 2022)



During interviews, representatives from the sponsoring departments and agencies, and from LSUs, emphasized that the LSB often goes “above and beyond” to deliver a good product. There was also an acknowledgement that, when timeframes are too tight, the LSB cannot be expected to achieve the same results in terms of quality. As such, they noted that the LSB is systematically delivering the best that can be expected within the constraints they are given.

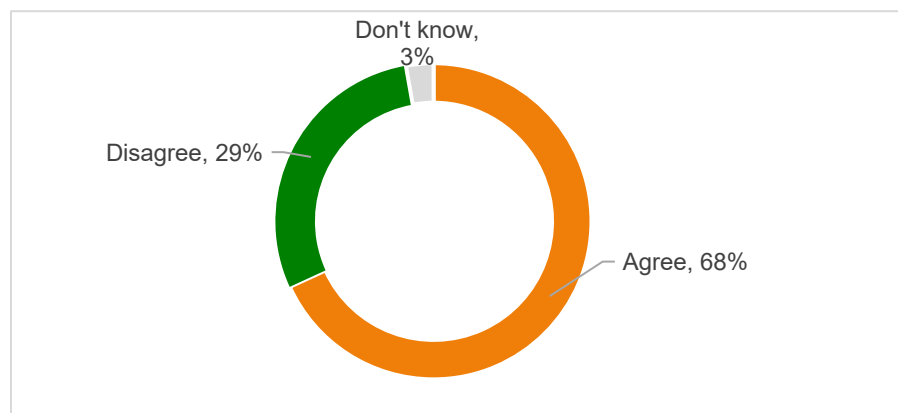
As it relates more specifically to the support provided by the Finance LSU, interview findings from representatives from the Department of Finance also reported a high level of satisfaction. The experience of the Finance LSU in the parliamentary process, and on the requirements associated with legislative and regulatory drafting, plays a highly complementary role to the subject-matter expertise that Finance internal drafters bring to the task.

The Perspective of LSB Representatives

When asked whether they were generally in a position to deliver work that they consider to be of high-quality, LSB survey recipients provided a perspective that was not as favourable as the one provided by those who actually receive the work they produce. As illustrated in Figure 15, 29% of survey respondents disagreed with that statement.

Figure 15: Extent to which LSB Members Consider Themselves to be in a Position to Deliver High-Quality Work

(Source: LSB Survey, 2022)



In both survey and interview findings, LSB members provided further insights on those challenges perceived to have had an impact on the quality of their work. It is predominantly the combination of tight deadlines and limited resources that have, at times, limited the ability of LSB members to complete a process that is as thorough as what they would have liked. They also noted that the option of proceeding with partial instructions, while providing flexibility for sponsoring departments and agencies, leads to a more tentative and incremental approach to drafting that can limit the ability of the LSB to optimize both the resources allocated to the project and the quality of the work delivered.

4.3.2 Adequate Support and Training

Members of the LSB are provided with helpful support and they have access to training opportunities. They also provide training on the legislative process, which is highly valued.

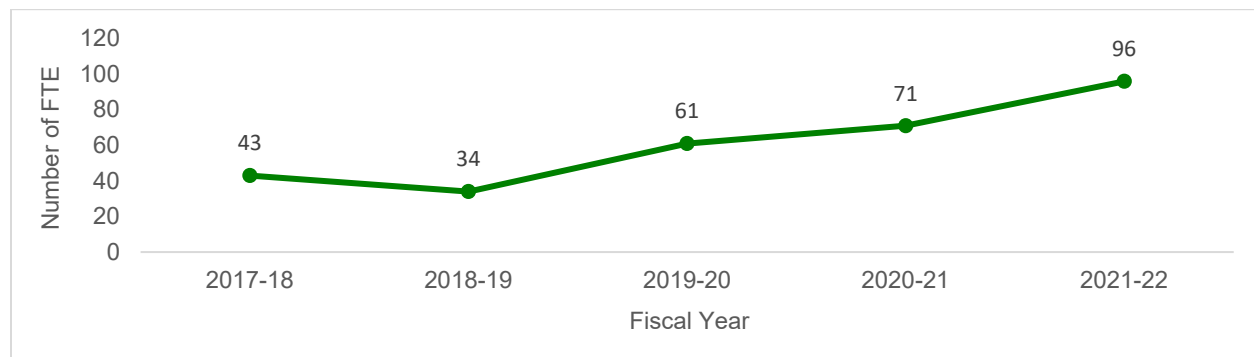
Support and Training Offered to the LSB and Finance LSU

Through formal and informal training, members of the LSB generally perceive the support they receive as being adequate. For instance, 82% of LSB survey respondents indicated that they have access to the training they require, and 74% noted that the training opportunities available to them were appropriate and relevant to their work. What is particularly valued is the direct support provided through mentorship or practice groups. During interviews, Finance LSU representatives also emphasized that they offer ongoing training to any new member of the team.

The administrative data confirms that the relative level of training provided to LSB members has increased over the evaluation period. As indicated in Figure 16, it went from 43 hours of training received per FTE in 2017-18 to 96 hours in 2021-22.

Figure 16: Total Recorded Hours of Training Received per FTE in LSB, FY 2017-18 to FY 2021-22

(Source: LEX)



In terms of potential improvement to the support currently provided, the following suggestions emerged from both the survey and interview findings:

- Ensuring that the workload of team members can accommodate the participation in relevant training opportunities, as well as the provision of training to other stakeholders.
- Enhance the administrative support currently provided to practice groups to facilitate their learning activities;

- Further promote mentoring opportunities;
- Enhance the use of online training when appropriate, including in-house recordings that can be used to provide the foundational training required by new members.

As previously noted in subsection 4.2.3, the guides and manuals currently available to LSB members could also be improved, by being more effectively centralized and systematically updated.

Training Offered by the LSB

Representatives from the LSB offer training on legislative drafting to representatives from sponsoring departments and agencies, and to LSU members. The administrative data indicates that the number of hours of training delivered by the LSB has steadily increased during the period covered by the evaluation, from 3,554 hours in 2017-18 to 3,901 hours in 2021-21.¹⁸

Survey and interview findings converge in emphasizing the relevance and quality of that training. Those who had an opportunity to attend the training described it as clear and concise, and well tailored to the needs of participants. The topics that were seen as the most useful are the training on developing drafting instructions, and the overview of the legislative drafting processes. As it relates more specifically to the needs of LSU legal counsel, some of the topics mentioned include training on how to use specific forms to submit requests, or on the incorporation by reference process.

The suggestions to enhance the training currently offered by the LSB are to first raise the awareness about these offerings, and to ensure that LSB members are available to provide that training.

4.3.3 Accessible Federal Laws

Efforts have been made to enhance the accessibility of the language used in drafting legislation or regulations. Also, the Justice Laws Website provides efficient access to the consolidated versions of all federal laws and regulations.

For the purpose of this evaluation, the concept of accessibility when it comes to federal laws is addressed from two perspectives: the clarity of the drafting itself, and the extent to which the federal laws are easily accessible to any stakeholder.

Accessibility of the Language Used

By their very nature, laws and regulations tend to be highly technical, and typically require formal legal training to be fully understood. Within this framework, evaluation findings confirm that the LSB has been pursuing efforts to simplify and enhance the clarity of the language used during the drafting process, by incorporating more lay terms. Efforts are also underway to better reflect Indigenous values and realities, as applicable. The goal is to maximize accessibility, while simultaneously maintaining precision.

Another important achievement in clarity comes from the current approach within the LSB to have both French and English versions of proposed bills and regulations drafted simultaneously, with bijuralism considerations in mind to reflect Canada's two legal traditions.

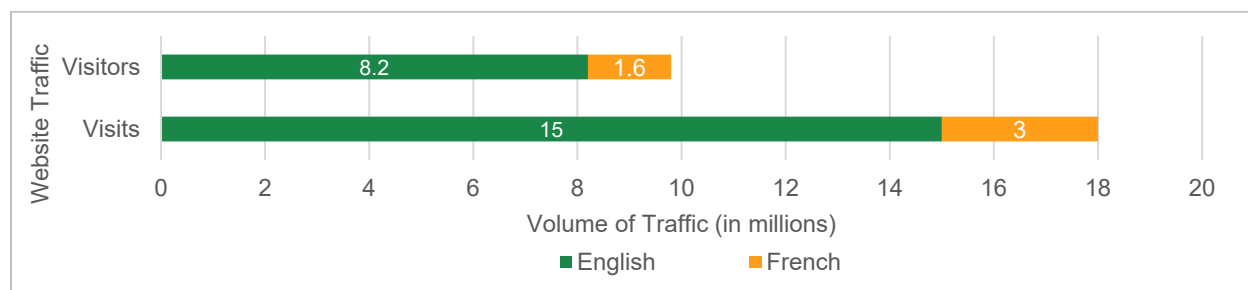
¹⁸ Training delivered includes legal and non-legal training.

The Justice Laws Website

The Justice Laws Website provides access to the consolidated versions of all federal laws and regulations, and it experiences high volumes of traffic. As illustrated in Figure 17 and using the FY 2021-22 as an example, close to 10 million users completed approximately 18 million visits to the website, including both the English and French versions of its content.

Figure 17: Statistics on the Justice Laws Website, FY 2021-22

(Source: Justice Laws Website via Communications Branch)



The list of the Acts that were consulted the most during the evaluation period includes the following:

- *Criminal Code;*
- *Income Tax Act;*
- *Immigration and Refugee Protection Regulations;*
- *Access to Information Act;*
- *Canada Labour Code;*
- *Immigration and Refugee Protection Act;*
- Constitutional Laws from 1867 to 1982;
- *Canadian Aviation Regulations;* and,
- *Food and Drug Regulations.*

Through both surveys and interviews, representatives from sponsoring departments and agencies, LSU, and the LSB all praised the website, which represents a significant achievement in consolidation. When it comes to accessing the current federal legislation and regulations, the website is perceived as reliable, user-friendly, and efficient.

The proposed improvement to the website essentially came from those who use it extensively, including advanced searches related to the current and historical versions of federal laws and regulations. The following key suggestions for improvement were made:

- Enhance the search function for more advanced searches, to a level comparable to what other tools such as CanLII or Quicklaw offer;
- Provide access to the historical versions of legislative texts prior to 2001;
- Restore the toggle function between the English and French versions;
- Make the site more accessible on mobile phones; and,
- Include definitions of key terms available by placing the cursor over them.

4.3.4 Partnerships are in Place

The LSB and the Finance LSU have established strong partnerships with sponsoring departments and agencies, and LSUs. The goal is to ensure that this achievement will remain sustainable in the long term.

As documented throughout this report, the work and contribution of the LSB and of the Finance LSU are highly valued. When asked how they were rating their overall partnership with the LSB, 98% of survey respondents from sponsoring departments and agencies, and from LSU, indicated that it was good or excellent.

The same sentiment was expressed throughout the interviews with sponsoring departments and agencies, and LSUs. The partnership was described as strong, collaborative, efficient, responsive, accommodating, and driven by a strong commitment to the projects in which the LSB or the Finance LSU is engaged. It was also noted that the approaches of the LSB and the Finance LSU are client-centric, and focus on solutions that can enable the federal government to proceed with its legislative initiatives.

LSB representatives are also pleased with the partnerships they have established as part of these projects. There were, however, concerns expressed around the sustainability of the current approach. In other words, results have been achieved, but this has regularly been done at the cost of dealing with challenging deadlines, and the need for extended overtime, which was not always conducive to the quality of products that was hoped for. By extension, this has also had a human cost for a team that has become stretched and apprehensive about the outlook for the future. Should such an approach become the “new normal”, evaluation findings suggest that it could have an impact on the retention of some employees. In considering this, however, the COVID-19 pandemic remains a critical and somewhat unknown variable. At the time of the evaluation, it was still difficult to assess fully the extent to which the peaks in demands that resulted from this public-health crisis have receded, and what legislative drafting post-pandemic will require.

4.4 Efficiency

The service delivery model used by the LSB prevents systemic duplications of services. The main challenge in relation to efficiency comes from the need to have sufficient resources to deliver the required services.

Duplication of Efforts

In assessing the overall efficiency of legislative services, this evaluation considered the issue of potential duplication in the work performed. In this regard, evaluation findings indicate that the current service delivery structure is preventing instances of systemic duplications. The roles and responsibilities are clearly assigned, each group within the LSB has a well-defined mandate and role to play, and the communications within the LSB are such that issues are typically discussed and addressed as they occur.

However, as noted during interviews, the approach adopted in relation to a specific legislative project may trigger some duplication or waste of resources. This occurs outside of the control of the LSB in

cases when policy directions are partial or shifting, or in which multiple avenues are being considered simultaneously. In such a context, certain tasks around drafting or revision may proceed through several rounds before the final direction is settled. This, however, relates more to the nature of the projects undertaken than the overall design and delivery structure of legislative services. Also, the evaluation did not identify this to be recurrent to a point that would trigger a systemic issue.

Level of Resources Available

The other key issue in relation to efficiency that this evaluation considered is the extent to which results were achieved using an adequate level of resources. As already noted, despite the increase in resources that it experienced over the evaluation question, the demands placed on the LSB triggered the need for regular and, at times, extended overtime to deliver the legislative support required. This approach is likely unsustainable over time, and does not reflect the commitment of Justice to provide a working environment that supports a healthy work-life balance. At the time of the evaluation, the Department had undertaken a process to add new resources to specifically address that issue.

Beyond the issue of human resource levels, evaluation findings indicate that close collaborations among all stakeholders will continue to play a critical role in ensuring that legislative drafting can be done within the prescribed timeframe requirements determined by the federal government, while also maintaining a high level of quality work that has been achieved over time.

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

The LSB and the Finance LSU provide ongoing drafting services that enable the federal government to proceed with the implementation of its legislative priorities. The work of all sections of the LSB and of the Finance LSU, in collaboration with all other stakeholders engaged in the legislative drafting process, has led to the creation and maintenance of a comprehensive and consolidated body of federal laws and regulations that impact millions of individuals. This directly relates to the goal of Justice in supporting an efficient access to justice.

During the period covered by the evaluation, the need for legislative services has experienced significant increases in volume and complexity, partly in response to the series of measures required to address the COVID-19 pandemic. Beyond the pandemic, a number of other federal priority-related areas such as the environment and climate change, the reconciliation process with Indigenous peoples, economic growth, or public safety have also required complex legislative responses.

Sponsoring departments and agencies, and the LSUs associated with them, have expressed a high level of satisfaction with the quality of the legislative services provided, and the ability of the LSB and the Finance LSU to deliver these services in challenging circumstances, particularly during the pandemic. The LSB is perceived as a trusted partner, who effectively delivers solution-driven support.

In delivering these services, both the LSB and the Finance LSU have operated within a structure that rests on an efficient distribution of roles and responsibilities, and on well-established processes. The LSB and the Finance LSU have also demonstrated their ability to respond to significant changes in the work environment in which all stakeholders have had to operate as a result of the pandemic restrictions on access to workplaces.

While the overall design and delivery of legislative services have been adapted to meet the legislative drafting requirements within the current context, the evaluation identified areas for improvement. Those relate to the need to more systematically adapt to a more fluid and open policy development process and shorter timeframes to complete the legislative drafting process, and ensuring an adequate level of resources to accomplish this work without overextending the current resources both legal professionals as well as non-legal professionals. It appears particularly important to address the current tension between the desire on the part of the federal government to proceed expeditiously with legislative projects and all existing requirements of the drafting process to ensure a high level of quality.

5.2 Recommendation

Based on the findings described in the report, the evaluation is offering the following recommendation:

The Legislative Services Branch, in consultation with appropriate parties, should adapt the design and delivery structure of legislative services to further align these services with the requirements associated with the policy development and drafting of federal legislation and regulations. In addressing this recommendation, the Legislative Services Branch should consider human resource requirements, planning and coordination of legislative activities, training, and adaptations of services based on the nature of legislative projects.

The main goal of this recommendation is to support the sustainability of legislative services, ensuring that the quality of services is achieved efficiently and systematically, avoiding situations where the legislative project team is over-extended or operating within parameters that are at odds with their established practices. Further aligning the drafting process with the policy and legislative development process used by the federal government will help to set appropriate expectations and avoid tensions.

Appendix A: Evaluation Issues and Questions

Relevance

1. How has the need for legislative services evolved over the evaluation period (2017-2018 to 2021-2022)?
 - How does legislative and regulatory work align with government and departmental priorities?
 - Has there been a change in demand over the evaluation period?

Design and delivery

2. To what extent is the design and delivery of legislative services functioning according to established frameworks? The following aspects will be considered:
 - Design: key changes to legislative services, structure/organization of teams, human resource complement and levels.
 - Delivery: types of services provided to various clients, established work processes and protocols, and roles and responsibilities.
3. How effective is the design and delivery structure for legislative services?^{*19} The following aspects will be considered:
 - How has legislative services responded to potential changes in service demand over the evaluation period (2017-2018 to 2021-2022)?
 - Are there alternatives to the design and delivery approach used to deliver legislative services that would improve its effectiveness?

Effectiveness

4. To what extent has the Department provided high-quality (e.g., timely, responsive, useful) legislative services?*
5. To what extent do legislative professionals have the expertise and structures to support the delivery of legislative services (e.g., practice groups, committees, training, mentoring)?
6. To what extent has legislative services contributed to the creation of federal legislation that is accessible to Canadians?
7. To what extent effective partnerships are in place with various groups (e.g., internal to legislative services, other Sectors/Portfolios in the department, client departments and agencies)?

Efficiency

8. To what extent has legislative services been delivered in an efficient and economical manner? Are there alternatives that would improve its efficiency or economy?

¹⁹ (*) indicates that GBA Plus considerations may be particularly relevant to these specific evaluation questions. However, GBA Plus may also be considered for other evaluation questions if identified during the planning phase.

Appendix B: Details on Key Informant Interviews

The following table includes the distribution of key informants for the purpose of the interviews.

Table 3: Distribution of Key Informants Interviewed

Categories	Number of Interviews	Number of interviewees
Legislation Section	3	9
Regulations Sections	4	9
Specialized Legislative Services Section	9	10
Finance LSU	1	3
Departmental LSU (excluding Finance LSU)	14	35
Sponsoring Departments and Agencies	15	38
Other Justice Representatives	3	3
Other Organizations or Groups	2	2
Total	51	109

Representatives from Departmental LSU were assigned to the following departments and agencies:

- Canada Border Services Agency
- Canadian Heritage
- Crown-Indigenous Relations and Northern Affairs Canada
- Department of Finance Canada
- Employment and Social Development Canada
- Environment and Climate Change Canada
- Global Affairs Canada
- Health Canada
- Innovation, Science and Economic Development Canada
- Transport Canada

Representatives from sponsoring departments and agencies included:

- Canada Border Services Agency
- Canadian Heritage
- Crown-Indigenous Relations and Northern Affairs Canada
- Department of Finance Canada
- Department of National Defence
- Employment and Social Development Canada
- Environment and Climate Change Canada
- Global Affairs Canada
- Health Canada
- Immigration and Refugee Board of Canada
- Natural Resources Canada
- Privy Council Office
- Public Health Agency of Canada
- Public Safety

- Transport Canada
- Treasury Board Secretariat of Canada

Other Justice Representatives that participated in key informant interviews included:

- Constitutional Administrative International Law Section of Justice Canada
- Criminal Law Policy Section of Justice Canada
- Human Rights Law Section of Justice Canada

Other groups or organizations that participated in key informant interviews included:

- Canada Gazette
- College of Patent and Trademark Agents