

Steps to Effective Policy and Legislative Development:

Policy Development and Consultation

Paper submitted by Canada

POLICY DEVELOPMENT

- The normal steps whereby policy becomes law are charted. Detailed information about each step is contained in Chapters 6 through Chapter 11, inclusive:

WORKPLAN APPROVED BY A.G. AND ADM (AND DM IN SOME CASES). RESEARCH, ANALYSIS AND CONSULTATION UNDERTAKEN. POLICY OPTIONS DEVELOPED.

POLICY OPTIONS ARE PRESENTED TO MINISTER VIA SENIOR MANAGEMENT. MINISTER DECIDES PREFERRED OPTION.

MINISTER SEEKS APPROVAL OF PREFERRED POLICY OPTIONS FROM CABINET VIA MEMORANDUM PROCESS (MEMORANDUM TO CABINET).

CABINET DECIDES THE GOVERNMENT'S POLICY AND ISSUES THE AUTHORITY TO DRAFT LEGISLATION; RECORD OF DECISION (RD).

TREASURY BOARD APPROVAL REQUIRED IF MONEY OR HUMAN RESOURCES NEEDED. ANY REGULATION WITH FINANCIAL ASPECTS ALSO NEEDS TB POLICY APPROVAL. TB SUBMISSION IS MADE.

BILL IS DRAFTED BY JUSTICE LEGISLATION BRANCH IN CONSULTATION WITH DIRECTORATE OFFICER, IN ACCORDANCE WITH THE CABINET AUTHORITY.

BILL INTRODUCED, GIVEN FIRST AND SECOND READING IN HOUSE AND REFERRED TO A COMMITTEE FOR STUDY.

AFTER STUDY AND REPORT TO HOUSE BY COMMITTEE, BILL IS GIVEN THIRD READING.

BILL IS SENT TO SENATE FOR SIMILAR PROCESS.

BILL IS GIVEN ROYAL ASSENT AND IS BROUGHT INTO FORCE, BECOMING LAW.

INTERNAL APPROVAL REGULATIONS: COORDINATION BY REGULATORY AFFAIRS; PCO(J) APPROVAL; PRE-PUBLICATION; REVISION, IF NECESSARY; SUBMISSION FOR MINISTER'S OR COMMITTEE OF COUNCIL APPROVAL (AS APPROPRIATE); PUBLICATION IN PART II OF CANADA GAZETTE

POLICY DEVELOPMENT

Preliminary Analysis

Officers may be asked to start work at any stage during policy development on a particular issue. Officers are encouraged, as well, to identify new and emerging issues and to bring them to the attention of their manager.

- Normally, identifying and analyzing the problem is the first part of policy development. Doing some preliminary analysis and research helps to clarify an issue and delineate the scope of the work needed to develop a policy response.
- The following sources may identify work already done, or being done, on the issue:
 - ◆ Departmental files;
 - ◆ Justice opinion retrieval service;
 - ◆ Literature;
 - ◆ Case law;
 - ◆ Available research;
 - ◆ Existing recommendations or work in progress of the Law Reform Commission of Canada, Uniform Law Conference and Canadian Bar Association or other groups;
 - ◆ Briefs produced by interest groups;
 - ◆ Information about existing or proposed solutions obtained from colleagues in other jurisdictions;
 - ◆ Previous Memoranda to Cabinet on the issue;
 - ◆ Colleagues in other directorates or sectors within the Department, or other Ministries or Agencies within the Government.

POLICY DEVELOPMENT

Workplan

The next step is the development of a workplan. The workplan should be approved by the Senior General Counsel and Assistant Deputy Minister. Your supervisor will advise you whether the Deputy Minister needs to approve your particular workplan.

- It is a vital planning tool.
- It helps the Directorate set priorities and manage its workload so it can indicate to the Deputy Minister and Minister when policy proposals will be ready for their review.

A workplan should briefly describe, as appropriate :

- The issue and its background.
- What work has been done by the Department or needs to be done in each of the following areas:
 - ◆ research;
 - ◆ analysis;
 - ◆ policy development;
 - ◆ legislative development;
 - ◆ program development;
 - ◆ regulatory development;
 - ◆ consultation;
 - ◆ implementation; and
 - ◆ monitoring and impact assessment.

POLICY DEVELOPMENT

Workplan

- The role other Departmental sectors, federal departments, provinces, territories, individuals or groups should or could play in each area listed above.
- Whether it is appropriate to strike a working group to carry out any of the tasks. If so, what is the proposed membership and mandate of such a group.
- Realistic dates by which each significant task will be done.
- Whether any contracted services are needed.
- A policy development workplan is useful and should be used when officers work alone or as part of a team.
- A checklist designed to help officers develop a workplan is found in the next section of this chapter. *The checklist is not exhaustive. It is not written in stone. It is not meant to replace common sense or creativity.* However, it can be used as a quick reference to help officers and management plan the policy development process.
- All the questions in the *Checklist* should be answered before the Memorandum to Cabinet is drafted.

POLICY DEVELOPMENT

Checklist

- ▣ What is the problem?
- ▣ What is the background of the problem?
- ▣ Who is affected by the problem?
- ▣ What expectations about its solution do affected persons have?
- ▣ Are there *Charter* considerations?
- ▣ Does statistical data on the problem exist?
- ▣ Does empirical research exist?
- ▣ Who has an interest in the solution?
- ▣ Who should be consulted to help formulate a solution?
- ▣ Have party members, Members of Parliament, Provincial Ministers or other such people made public commitments or comments on this issue which must be considered?
- ▣ What possible solutions exist?
- ▣ How have others solved the problem?
- ▣ What are the implications of doing nothing?
- ▣ What criteria should be used to select and rate solutions in order of preference.
- ▣ What action is needed to effect the best solution? Does it require unilateral federal action or steps taken in concert with others?
- ▣ What will it cost the federal, provincial or territorial government to implement the solution?

POLICY DEVELOPMENT

Documents

The following descriptions indicate the general contents of certain types of documents which may need to be prepared during the policy development process.

■ DISCUSSION PAPER ("GREEN PAPER")

It generally discusses the issue and reviews possible solutions. It does not outline how the government intends to respond. It serves as a basis for consultation. If published, it is often described as a "green paper".

■ OPTIONS PAPER

It sets out the problem and provides a detailed discussion of the options available to address the issue. The arguments in favour of and against each option are set out. The results of any consultation are described.

Senior management will indicate whether the document should indicate which option the Deputy Minister recommends to the Minister.

■ POSITION PAPER ("WHITE PAPER")

Occasionally, the government will decide to indicate its policy position on a particular subject or issue in a document commonly described as a "white paper". This may indicate legislative proposals in statute language but without the formal requirements of a bill. "White papers" are normally "tabled" in the House of Commons or Senate prior to their general release.

CONSULTATION

General

- Generally, officers of the Directorate can consult openly with other officers of the Department as needed to advance a file. Sometimes, Legal Services officers will be constrained in what information they can provide due to solicitor-client considerations vis-à-vis their client departments. Sometimes, solicitor-client considerations or similar discretion will constrain what information Directorate officers can provide to officers of other departments; the client of the Directorate is the Minister of Justice. Consultations outside the government will be more or less open depending upon several factors including the nature of the group being consulted, the sensitivity of the issue and the stage in the policy development process at which the consultations are held.
- Consultation is an important aspect of the work done by Directorate officers.
- Planning can contribute to the success of any consultation.
- Directorate officers and support staff should ensure that:
 - ◆ physical accommodation for consultation is adequate, and where possible, booked in advance and confirmed in writing;
 - ◆ translators are present where necessary and feasible (Secretary of State - 996-3346). Generally, translators are provided if requested by the participants or considered important to the success of the project. Translation is always available for senior level meetings, such as of the Deputy Ministers;
 - ◆ authority to extend hospitality during consultations has been received from the Assistant Deputy Minister, prior to the consultations, and hospitality expenditures claims are completed and submitted after the consultations.
- Where possible, agendas and documents to be used as the basis for consultation should be circulated in sufficient time to allow participants time to prepare for discussion.

CONSULTATION

General

- Directorate officers should ensure that where consultations are held for the purpose of formulating possible policy options (for presentation to the Deputy or Minister), the participants are aware that officers formulate policy proposals and do not "make" policy. Directorate officers can convey this point by using phrases such as "... your views will be conveyed to senior management of the Department and the Minister ...".
- In consultations with groups outside the government, officers should not indicate what recommendations have been or will be made to the Deputy Minister or Minister, the fact that policy proposals have been put to the Minister or the time-frame for presenting proposals, nor the decision of the Minister or of Cabinet (unless already public or special approval is obtained).

CONSULTATION

Departmental Legal Services Sector

- Where a difference of legal opinion between a Departmental Legal Services officer and a Directorate officer cannot be resolved, senior management should be advised. Then, discussions can take place to reconcile opposing legal views so that the Department of Justice does not give conflicting advice.
- Senior management should also be advised when the matter involves: a matter of national or international importance; a sensitive issue likely to attract a significant degree of public attention; a novel course of legal action is being considered; where a proposed course of action conflicts with the Attorney General's duty to uphold the letter and spirit of the law.
- *Canadian Government Programs and Sciences* provides detailed information about other federal departments and agencies. It is published by CCH Canadian Limited. It is located in the Reference Section of the Library.

CONSULTATION

Departmental Legal Services Sector

- The Justice Department delivers legal services to federal departments and agencies through the Departmental Legal Services Sector. Officers of that Sector provide a full range of in-house legal services and policy advice to client departments.
- Directorate officers should be familiar enough with the general mandate of each federal government department to determine if that department's interests, legislation, programs or policies may be affected by Directorate policy initiatives. Direct consultation among officers of the Directorate and Departmental Legal Services is encouraged.
- Officers of the Departmental Legal Services Sector are free to exchange information, including background information, when they are consulting with Directorate or other officers on matters of common concern. However, Departmental Legal Services officers cannot disclose background information when there is a statutory prohibition against disclosure, when an apparent conflict of interest between the client department and another government department exists, or where the client department has specifically requested that disclosure not be made. Departmental Legal Services officers are in a solicitor-client relationship with respect to their client departments.
- Occasionally, it may be necessary to seek a formal legal opinion on how Directorate policy initiatives may or do affect another department's policies, programs, or legislation. The legal opinion should be sought from counsel providing legal services to the department that is responsible for administering the statute or matter in question.
- Differences may arise as a result of differing policy objectives of government departments, or differing legal opinions among Directorate and Departmental Legal Services officers.
- Departmental Legal Services officers have a duty to preserve the confidentiality of the solicitor-client relationship. All officers have a duty to resolve legal conflict as expeditiously as possible.

CONSULTATION

Key Associations

- At some stage during the policy development process, it may be useful to consult with particular associations to obtain their views.
- The External Liaison Unit, of the Corporate Management Sector, coordinates liaison with key national associations. The personnel of this Unit put Directorate officers in contact with the appropriate persons in the following organizations :
 - ◆ Canadian Association of Chiefs of Police;
 - ◆ Canadian Bar Association;
 - ◆ Canadian Judicial Council (Chief Justices of the Superior Courts across the country);
 - ◆ Canadian Judges Conference (most of the judges appointed under Section 96 of the *Constitution Act, 1867*);
 - ◆ National Associations Active in Criminal Justice.
- It is essential that consultation with the Canadian Judicial Council, the Canadian Judges Conference and the Association of Provincial Court Judges be undertaken when a policy proposal being developed affects the administration of the courts.
- When the assistance of the External Liaison Unit is needed, a memorandum to that effect should be prepared for the signature of the General Counsel (Criminal) or Senior Counsel (Family) or Sentencing Project Director.
- Consultation will often be necessary with other organizations and interest groups. This is usually arranged directly by the Directorate, after approval by Senior Management.

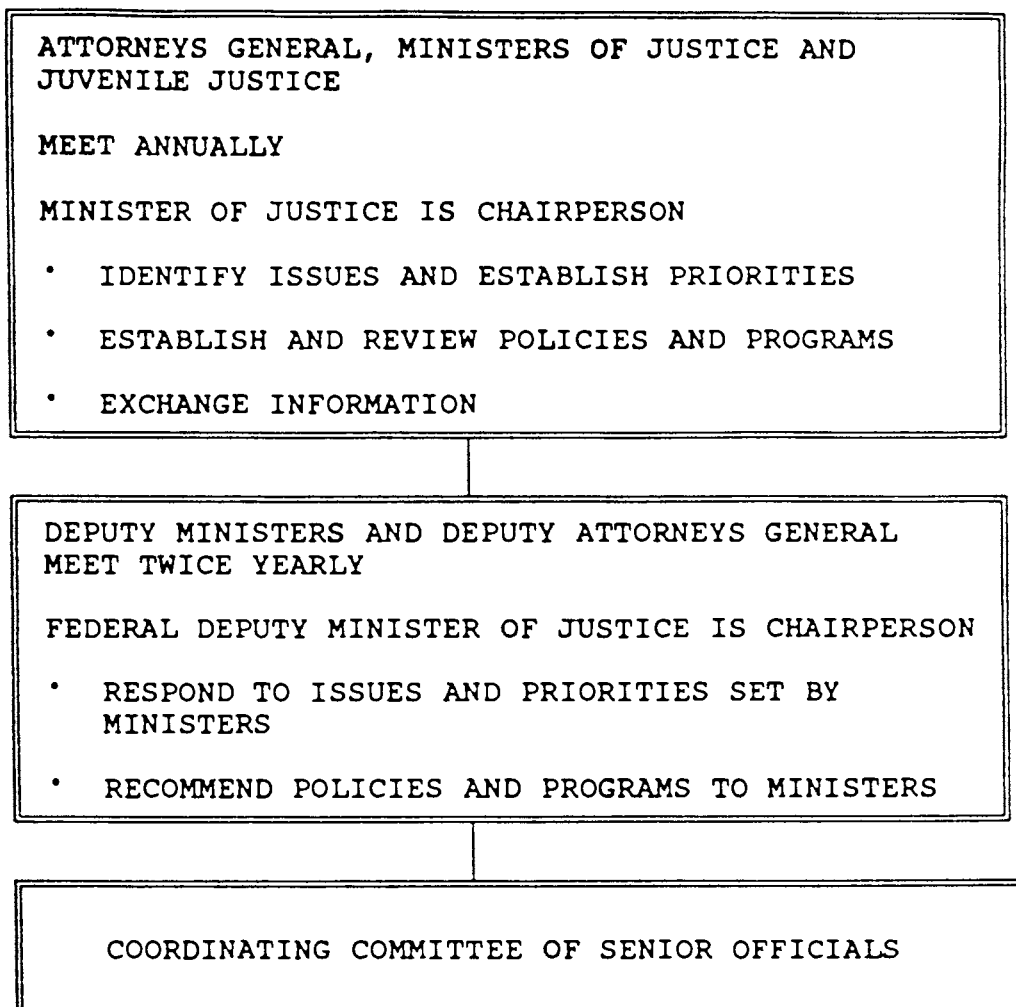
CONSULTATION

Federal-Provincial-Territorial

- The federal government is responsible for legislation in many areas that directly impact on provincial and territorial services and facilities. Consultation among federal, provincial and territorial officials is an integral and essential part of most policy initiatives of the Directorate.
- Directorate officers foster working relationships with provincial and territorial counterparts that recognize the priorities, restraints and capacities of each government.
- Directorate officers anticipate concerns, issues and trends so that pro-active strategies can be devised to deal with such matters.
- Ministers of Justice and Attorneys General meet to establish priorities, policies and programs, and, to provide direction to their Deputies and senior officials.
- Federal, provincial and territorial Deputy Ministers of Justice and Deputy Attorneys General meet to coordinate and consult. These meetings allow them to provide timely advice to Ministers and guidance to senior officials regarding policies and programs.
- Talking points, briefing notes, face sheets, information notes, status reports, or conference documents may be needed for these meetings. See the format section for instructions.
- Preparations for meetings of the federal, provincial and territorial Deputy Ministers of Justice are the responsibility of the federal/provincial/territorial Coordinating Committee of Senior Officials (CCSO), chaired by the Assistant Deputy Minister, Policy, Programs and Research Sector.

CONSULTATION

Federal-Provincial-Territorial



CONSULTATION

Uniform Law Conference

- The Uniform Law Conference (ULC) is an independent organization set up to promote uniformity of legislation on civil and criminal matters.
- It has a Uniform Law Section (civil), a Criminal Law Section and a Legislative Drafting Section.
- Its membership includes federal, provincial and territorial government officials, academics, practitioners, and members of Law Reform Commissions. It does not answer to any government or other authority but has close links to the Canadian Bar Association which sponsored its formation.
- Members of the ULC and the Canadian Bar Association may bring matters to the ULC for consideration.
- Governments are not bound by the recommendations, resolutions or model statutes of the conference.
- Delegates to the ULC are selected from the Criminal and Family Law Policy Directorate and other offices by the Department.
- The ULC affords the Directorate an opportunity to obtain the views of its diverse members on criminal and family law issues. When the Directorate is developing criminal or family law policy, it may consider the resolutions adopted by the ULC.
- The Directorate may submit criminal and family law issues for ULC consideration provided the Deputy Minister has approved the submission.
- Ask the Secretary of the ULC Criminal Law Section or the Secretary of the ULC Uniform Law Section to place the approved item on the ULC agenda.
- Any document submitted to the ULC for discussion by Directorate officers must be approved by the Deputy Minister.
- The conference usually meets the week before the annual August meeting of the Canadian Bar Association.

MEMORANDUM TO CABINET

General

- A Memorandum to Cabinet (MC) is primarily an advocacy document. The Minister uses it to present Cabinet with an overview of the issue, options to deal with it, the recommended solution, its cost and the principle arguments in support of the recommended solution. It also analyzes the background of the issue, the factors considered in arriving at the possible options and the cost of implementing each option.
- Rules on format, length, notice and submission deadlines are set out in the Privy Council Office publication, *Memorandum to Cabinet - A Drafter's Guide*. They must be followed when drafting a Memorandum to Cabinet.
- Officers should read the Drafter's Guide early in the workplan development stage. Consult it often.
- Support staff must follow the rules regarding format, margins, spacing, paper size, pitch and typeface. These are also set out in *Memorandum to Cabinet - A Drafter's Guide*.
- Pay particular attention to the description of the proposed legislation as it will be used as the basis for the drafting authority issued by Cabinet.
- Officers usually review the Communications portion of the Memorandum to Cabinet, prepared by Communications and Public Affairs, to ensure that the substance and effect of the policy proposal are accurately reflected.
- In some rare cases, you may consider requesting authority in the Memorandum to Cabinet to consult on a draft bill.
- When the draft Memorandum to Cabinet is reasonably advanced, send a copy of it to Translation.
- The Department's Cabinet Liaison Officer works with PCO and Directorate counsel to ensure that consideration of the MC by Cabinet and its Committees goes smoothly.

MEMORANDUM TO CABINET

General

- The Cabinet Liaison Officer is part of the Executive Services Secretariat of the Department's Corporate Services Directorate.
- The Cabinet Liaison Officer is a key player. Consult the Cabinet Liaison Officer for guidance as you draft the Memorandum to Cabinet.
- When the Memorandum to Cabinet is approved by senior management and signed off by the Minister(s), it will be sent to one of Cabinet's policy committees for consideration (usually Justice and Legal Affairs). The Communications Plan will be reviewed by the Communications Committee or may be approved by the Chairman of the Policy Committee.
- Presently, there is an ad hoc Cabinet Committee on Justice and Legal Affairs which reviews the Minister's legislative initiatives. The Minister of Justice is the Chairperson. Initiatives which intersect with other those of other Departments may also be discussed at Cabinet's Human Resources, Income Support and Health Committee.
- The Memorandum to Cabinet is sent to the Operations Committee if there are major policy issues needing resolution or resource implications. It is then listed on a Cabinet or Priorities and Planning Agenda, for discussion.
- Keep in touch with the Cabinet Liaison Officer during the process. Officers may be required to prepare additional material such as talking points or briefing notes for the Minister to use at Cabinet Committee and elsewhere.

LEGISLATIVE PROCESS

Drafting Bills

- Usually, the Legislation Section of the Department will not start drafting a bill until Cabinet has issued its Record of Decision.
- When the Record of Decision is issued, write a memorandum to the Chief Legislative Counsel for the signature of the Directorate Senior General Counsel. The memorandum should ask that drafters be assigned.
- Officers meet with drafters to provide oral or written drafting instructions. The role of the Directorate officers and drafters is to ensure the bill conforms to the Cabinet approved policy. The legislative drafters are also responsible for the quality of drafting itself. As well, they must ensure it conforms to the *Canadian Bill of Rights* and the *Charter of Rights and Freedoms*. This process requires a dynamic interaction between the involved officers, with each being respectful of the others roles and knowledge.
- The draft legislation is prepared by a team of one anglophone and one francophone drafter, and must be reviewed by an anglophone and a francophone Directorate officer.
- It is important to note that the french and english version of a bill or statute have equal standing in law. Further, they are drafted as original versions; one is not a translation of the other.
- If issues arise and their resolution is not covered by the drafting authority given by Cabinet, it may be necessary to seek additional Cabinet authority through another Memorandum to Cabinet.
- Legislation and House Planning (LHP) is the present Cabinet Committee charged with planning the introduction of government legislation in the House. If it is not meeting, Cabinet or Priorities and Planning (P&P) can delegate authority to the Chairperson of LHP to approve the bill on the Committee's behalf.

LEGISLATIVE PROCESS

Drafting Bills

- Presently, when there is a page proof of the bill ready, a copy of the print goes through the Privy Council Office to LHP Secretariat. When a close to final version of the bill is ready, officers should contact PCO or the Department's Cabinet Liaison Officer to ask whether LHP is meeting. If LHP is not meeting, the LHP Secretariat, which knows the status of the draft bill, will seek delegated authority.
- If LHP is meeting, officers should prepare a bilingual summary of the bill's contents for the Committee Members. Officers should also prepare briefing notes and talking points for the Minister to use when the bill is presented to LHP or P&P.
- Consult the Department's Cabinet Liaison officer and the Minister's staff to determine the schedule for the bill's introduction.

LEGISLATIVE PROCESS

Passing Bills

- *Before* the Minister introduces any bill in the House, a Legislation Briefing Book must be prepared.
- The columns of text on the left hand, below, set out the legislative process. The text in the right hand column indicates the work done in the Directorate. The material identified in the right hand column with an ♦ must be prepared and inserted in the Legislation Briefing Book *before* the bill is introduced.
- The other notes in the right hand column indicate material which may be required as legislation progresses.
- See the format section for details about the Legislation Briefing Book.

FIRST READING

Bill introduced. First reading takes place without amendment or debate.

Bilingual press release and any other explanatory material for public consumption is released.♦

Bill is placed on Order paper for Second Reading.

Bilingual, comprehensive Questions and Answers which cover all aspects of the Bill are used by the Minister to reply to media questions.♦

Bilingual lists of recommended witnesses or departmental officials who should appear before Committee are given to the Minister.♦

Bilingual list of departmental officials who will accompany Minister to Committee are given to Minister.♦

LEGISLATIVE PROCESS

Passing Bills

Minister usually sends letter to his provincial colleagues advising of Bill's introduction.

SECOND READING

The principle and object of the Bill are debated and either accepted or rejected. If accepted, the Bill is referred to a Committee for study. The clauses of the Bill are not discussed in detail in the House at this time. No amendment may be made to the Bill at this stage. However, an amendment to refer the subject matter of the Bill to a Committee may be introduced before the principle of the Bill is approved.

At least three short bilingual speech modules are needed. Each covers a different point of the Bill. These are used by MPs to support the initiatives identified in the Bill.♦

COMMITTEE HEARINGS

A Legislative Committee is appointed on an ad hoc basis to examine the bill. A Committee is usually authorized to send for persons, papers and records it wishes. During Committee's study of the Bill, the Minister or the Minister's Parliamentary Secretary speaks. Outside witnesses may be heard.

Bilingual Opening Statement of Minister to Committee presents Bill's purpose and contents.♦

LEGISLATIVE PROCESS

Passing Bills

Each clause of the Bill is studied in detail. Committee may amend the Bill so long as changes do not affect the main principles of the Bill as agreed to at Second Reading. Departmental officers may be called to appear before the Committee. See details on officer's role before Committee at page 51.

Reference will be made to the bilingual Clause by Clause Analysis. This sets out the present law, the proposed amendment, the effect of the amendment and reasons for the change.♦

Officers monitor the Bill's progress through Committee. They provide notes on witness statements or analyze witness presentations to help identify potential problems and recommend solutions.

Department or Minister may require bilingual amendments to the Bill (to be developed with Legislation Branch).

REPORT STATE

Committee reports the Bill back to the House, as is or with amendments.

Bilingual responses to amendments proposed by MP's may have to be prepared.♦

At Report stage, the House reviews the Bill. Further amendments may be proposed-including ones discussed but not recommended in Committee or those aimed at restoring the original text. The Speaker may select and group proposed amendments to avoid possible pointless repetition. The Speaker also rules on whether each motion to amend should be dealt with separately or as part of a group.

LEGISLATIVE PROCESS

Passing Bills

THIRD READING

After Report stage, a motion is moved that the Bill (with any amendments) be concurred in. If there are no amendments, reporting becomes a formality and Report and Third Reading stages take place on the same day. An amendment to refer the Bill back to the Committee for further consideration of a clause(s) may be made. If there are no amendments the Bill is read a Third time and passed.

Bilingual summary note identifying issues that have arisen since introduction may need to be prepared. Bilingual Minister's speech summarizing the debates and including the rationale for any amendments made since introduction may be needed. An updated bilingual Communications Plan may be needed.

SENATE STAGE

The Bill is then sent to the Senate, where procedures for passage are similar to those in the House. If the Senate passes the Bill without amendment, it is not returned to the House. If the Senate amends the Bill it is sent back to the House for consideration of the Senate amendments only (further amendments cannot be made in the House at this stage, unless consequential on the Senate's amendments). If the House agrees to the amendments the Bill is returned to the Senate for Royal Assent. If the House does not agree to the amendments, and an impasse is reached, members of both Chambers may meet to resolve the impasse.

Material required varies depending on the procedure. Senator introducing Bill has to be briefed. Officers should be ready to provide the same materials for the Senate processes as are outlined for the House of Commons process.

LEGISLATIVE PROCESS

Passing Bills

Royal Assent is required for any Bill to become law. It is given to a Bill passed in exactly the same form by the House of Commons and the Senate. A Bill comes into effect on the day of Assent unless the Bill says otherwise. A Bill can state a certain day upon which it will come into force. It can also state it will come into force on a day to be fixed by Order of the Governor-in-Council. Parts of Bills may be brought into force at different times.

Orders-in-Council or Regulations may have to be prepared. Implementation tasks may have to be undertaken.

- When the House recesses (or takes a long adjournment) all proceedings remain alive.
- Prorogation ends a session of Parliament but does not dissolve it. Prorogation, like dissolution, abolishes all pending legislation and quashes further Committee activity. The bills are said to have "Died on the Order Paper".
- If there is unanimous consent, bills can be introduced in the new session at the same stage they had reached in the old. Committee work can be revived in a similar manner.
- Dissolution (automatic after a five year term) terminates the Parliament and is followed by a general election.

LEGISLATIVE PROCESS

Passing Bills

THE FOLLOWING MATTERS REGARDING IMPLEMENTATION OF THE LAW
MAY HAVE TO BE ADDRESSED:

- On which dates could the Act come into force fully or partially?
- Should consultation on possible dates of coming into force be held?
- Are the required training or resources in place for implementation?
- If the Act is to come into force by Order-in-Council, is the Order-in-Council ready? Follow the rules in *Directives on Submissions to the Governor-in-Council and Statutory Instruments*, produced by the Assistant Clerk of the Privy Council.
- How will the provincial and territorial governments be notified of the coming into force?

LEGISLATIVE PROCESS

Appearances Before Committees

- Officers may have to appear before a Parliamentary Committee examining a bill. Officers have a duty to appear if informally asked by the Clerk of the Committee or formally by summons.
- When you receive an invitation or summons, immediately contact your supervisor so that the Assistant Deputy Minister can inform the Minister's office.
- Departmental officers provide legal advice to the government of Canada. Departmental officers do not provide legal advice to Parliament or its Committee's because to do so would place them in a conflict of interest.
- An officer's task before the Parliamentary Committee is to provide explanations on the *legal aspects* of a government bill and to explain the *adopted government policy* as represented in the bill. It is not, however, an officer's task to *defend* policy or to discuss alternative policies.

OFFICERS MUST NOT:

- Defend policy.
- Engage in debate as to policy alternatives.
- Speculate on related legal issues.
- Provide legal advice.
- Disclose that a legal opinion or advice has been given to the government on a matter.
- Quote from a legal opinion that has been given to the government.

LEGISLATIVE PROCESS

Appearances Before Committees

- Before taking an oath, officers should seek the Chairperson's understanding on the need to avoid questions that would put them in conflict with their duty to their Minister and their oath of office.
- Committees rarely ask persons appearing before them to provide information under oath. Hearings are usually conducted in a relaxed and congenial atmosphere. Although oaths are rare, officers should be prepared to take them after making the following observations to the Committee in a courteous and co-operative manner:
 - ♦ inform the Committee that counsel appears on behalf of the Minister of Justice to convey factual information the Minister could not be expected to personally provide;
 - ♦ indicate that if the Committee is concerned about the truthfulness of the answers to be given on the Minister's behalf, the Committee might prefer to question the Minister directly.

REGULATIONS

Types and Powers

There are four types of regulations. They are:

- Regular Governor-in-Council (GIC) regulations.
- Ministerial regulations.
- GIC or ministerial regulations involving Treasury Board.
- Regulations respecting transactions undertaken by Crown Corporations.

The difference between GIC and ministerial regulations depends on the authority provided in the relevant statute, whether the regulation-making power resides with the Governor-in-Council or the Minister. Regulations involving Treasury Board are those with financial implications.

The proposed power to make regulations should not be unnecessarily wide. Cabinet directives on *The Preparation of Legislation* (April, 1981) state that the following powers cannot be included in proposed legislation unless specifically authorized by Cabinet:

- Power to make regulations that might substantially affect personal rights and liberties.
- Power to make regulations involving important matters of policy or principle.
- Power to amend or add to the enabling act or other acts by way of regulation.
- Power to make regulations excluding the ordinary jurisdiction of the courts.
- Power to make specific regulations having a retrospective effect.
- Power to subdelegate regulation-making authority.
- Power to impose, by regulation, a charge on the public revenue or on the public, other than fees for services.

REGULATIONS

Types and Powers

- Power to fix by regulation, rather than by the statute itself, the penalties for breach of a regulation.

REGULATIONS

Federal Regulatory Plan

- There is a federal regulatory process counsel must follow. The policy was developed to make the regulatory process more efficient, to improve public access to and involvement in the regulatory process and to subject it to greater ministerial control.
- Each year the Department must forecast the regulatory initiatives it will introduce in the next calendar year. These forecasts are published annually in the Federal Regulatory Plan. It is usually published in December. The Plan gives the public early notice of the intention to regulate in the next year.
- Privatization and Regulatory Affairs usually requests input into the Federal Regulatory Plan at the beginning of the summer for the coming calendar year.
- The Executive Services Branch of the Corporate Services Directorate coordinates the preparation of a reply for the Department.

REGULATIONS

Drafting and Processing

- The regulatory process involves the following steps:
 - ◆ planning and public notice in the annual Federal Regulatory Plan;
 - ◆ submitting the regulations and documentation to the Deputy Minister, who in turn submits them to the Office of Privatization and Regulatory Affairs (which reviews and approves the RIAS);
 - ◆ simultaneous review and approval of the regulation by PCO(J);
 - ◆ submitting the regulation to the Minister responsible for Regulatory Affairs for approval by the Special Committee of Council for pre-publication;
 - ◆ pre-publication in Part I of the Canada Gazette and revision if necessary after public comments received;
 - ◆ submitting the regulation to the Minister responsible for Regulatory Affairs for final approval by Special Committee of Council;
 - ◆ registration and publication in Part II of the Canada Gazette.
- Draft regulations following the rules in the *Manual on the Drafting of Regulations* in English, produced by PCO(J).
- Process Regulations using the rules in *Federal Regulatory Process - Documents and Guidelines*, produced by Office of Privatization and Regulatory Affairs, and *Directives on Submissions to the Governor-in-Council and Statutory Instruments*, produced by the Assistant Clerk of the Privy Council.

SUBMISSIONS TO TREASURY BOARD

Process

- Treasury Board is a committee of Ministers with statutory responsibility for:
 - ◆ expenditure management;
 - ◆ administrative policy;
 - ◆ organization of the public service;
 - ◆ financial management;
 - ◆ personnel management.
- Treasury Board Secretariat officers analyze the submissions and inform the Department of the recommendations they will make to Treasury Board.
- As neither Ministers nor senior departmental officials normally appear before the Board to support their submissions, Treasury Board Submissions are advocacy documents.
- A Treasury Board Submission will be required if an initiative :
 - ◆ requires more personnel to implement policy, manage programs or do research;
 - ◆ needs money for grants or contributions to support the legislative initiative;
 - ◆ requires money to plan, implement, administer or evaluate the legislation or program;
 - ◆ will involve a fee or other money paid to or collected from the federal government.
- Early and continuing consultation with officials of other departments is important, if the resources of more than one department or agency are involved.
- The Department's Director of Strategic Resourcing Section (Corporate Management Policy, Systems and Services Directorate) coordinates the preparation of all Treasury Board submissions. This Director must be consulted about costing, content and format of Treasury Board Submissions.