

NATIONAL SURVEY OF LEGISLATIVE DRAFTING SERVICES

2002

FOREWORD

As the foreign assistance arm of the Department of Justice of Canada, the International Cooperation Group provides other countries with advice on legislative drafting services, among other matters. One of our aims within this area has been to supply concrete and practical information on the structure, responsibilities and operations of the organisations in charge of drafting legislation in Canada. This objective led to the development of a national survey — the first of its kind — of legislative services, which was conducted by the International Cooperation Group in 1998. In just the few years that have passed, the ongoing changes in these organisations and the range of information they are able to provide have been so great that it has already become necessary to revise our information.

This new survey provides a comprehensive, detailed and up-to-date picture of the legislative services of the federal, provincial and territorial governments. The survey was conducted over a number of months, from August 2001 to May 2002. It is intended to provide all our colleagues and the wider legislative and legal communities across Canada with a reliable and useful overview, as well as to serve as a firm basis on which the International Cooperation Group can formulate its practical assistance to other states.

The quality of a collaborative work such as a survey depends entirely on the active involvement of its contributors. It is therefore proper to express our gratitude here to the survey's respondents for their full answers to a lengthy and detailed questionnaire. A special note of gratitude is also owed to Christine Landry, of the International Cooperation Group, who collated and analysed the responses and prepared the presentation of the new findings.

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1 REPORTING RELATIONSHIP

Is the legislative drafting office attached :

- *to the Department of Justice?*
- *to the provincial legislature?*
- *to both?*

The majority of the drafting offices surveyed are attached to the Department of Justice or the Ministry of the Attorney General, as the case may be. The Manitoba drafting office is attached to both the Department of Justice and the provincial legislature, and drafters consequently draft both government and private members' bills. The same relationship applies in Ontario, Prince Edward Island and the Yukon, where the office is considered to be a government drafting office that, concurrently, has an independent function as the law clerk of the provincial or, in the case of the Yukon, territorial legislative assembly. In Nova Scotia, the office is similarly responsible for the drafting of both government and private members' bills, but it is attached to the provincial legislature.

In the province of Quebec, the Department of Justice restructured its drafting unit into two services in 2000. The Ministerial Research and Legislation Directorate (*Direction de la recherche et de la législation ministérielle*) performs research and drafts bills and regulations for which the Minister of Justice is responsible. The Government Legislation Directorate (*Direction de la législation gouvernementale*), which also reports to the Department of Justice, does not provide drafting services but reviews bills and regulations prepared by all

branches of the government with the exception of the Department of Justice.

At the federal level, there are three drafting offices : the Legislative Services Branch of the Department of Justice — which includes the Drafting Services Group, the Bijuralism and Drafting Support Services Group, the Advisory and Development Services Group, and the Publishing Services Group — ; the Office of the Law Clerk and Parliamentary Counsel of the Senate ; and the Legislative Counsel Office (within the Office of the Law Clerk and Parliamentary Counsel) of the House of Commons.

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TYPES OF INSTRUMENTS

Is the legislative drafting office responsible for :

- *government bills? All? Or with some exceptions?*
- *private members' bills?*
- *draft bills to be tabled for consultation only?*
- *regulations?*
- *other legislative instruments?*

GOVERNMENT BILLS

All provincial and territorial offices surveyed are responsible for the drafting of government bills with the exception of Quebec, where the *Direction de la législation gouvernementale* is responsible for the review of draft bills and regulations prepared by the different components of the administration. In the Yukon, the drafting office also arranges for the drafting of some bills by private drafters. Due to procedural reforms instituted in the House of Commons in 1994, in Ottawa, bills that have been introduced in the House of Commons may be referred to a parliamentary committee (usually a standing committee) for detailed examination after first reading. As a result, while the initial version of a bill is prepared by drafters in the Headquarters Legislation Section or the Finance Tax Drafting Services Section of the Department of Justice's Legislative Services Branch, subsequent versions are drafted by the Office of the Law Clerk and Parliamentary Counsel of the Senate or by the Legislative Counsel Office of the House of Commons.

PRIVATE MEMBERS' BILLS

Some of the provincial and territorial respondents draft private members' bills or provide drafting assistance. Such is the case in Manitoba, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and the Yukon. In Quebec, private members' bills are reviewed by the legislation service. In the Northwest Territories, the legislative drafting office generally does the actual drafting, but the law clerk to the Legislative Assembly ensures liaison with the private member. Alberta does not draft private members' bills, but it sometimes prepares amendments to them. In the other provinces and territories, private members' bills are drafted by Parliamentary Counsel under the authority of the Law Clerk of the legislative assembly.

In Ottawa, private members' bills to be introduced in the Senate and motions to amend such bills are drafted by the Office of the Law Clerk and Parliamentary Counsel of the Senate, while private members' bills to be introduced in the House of Commons and motions to amend such bills are drafted in the Legislative Counsel Office of the House of Commons.

DRAFT BILLS TABLED FOR CONSULTATION ONLY

The drafting offices of Ontario, British Columbia, Nova Scotia, Manitoba, the Northwest Territories, Nunavut, New Brunswick and the Yukon are involved in the drafting of bills to be tabled for consultation only. In Alberta, the tabling for consultation only is usually followed when it becomes apparent that a policy needs further consultation and refinement. In Manitoba, the tabling for consultation occurs only when time permits. The Yukon generally does not draft bills to be tabled for consultation purposes. In Ottawa,

the preparation of a draft bill to be tabled for consultation usually occurs towards the end of the drafting process, when it becomes clear that the policy needs further consultation and refinement. Thus, the tabling of the legislation in draft format becomes an additional, intermediate step in the drafting process. In the special case of tax legislation, the Department of Finance usually releases draft legislation accompanied by explanatory notes for purposes of consultation and comments before its introduction into the House of Commons.

REGULATIONS

All provincial and territorial respondents except Nova Scotia and Quebec indicated that they are generally responsible for the drafting of regulations. In Ottawa, the Headquarters Regulations Section and the Finance, Transportation, Health and Environment Drafting Services Sections of the Legislative Services Branch of the Department of Justice are responsible for this function. The legal advisory role for the interpretation and legal framework of enabling statutes is the responsibility of the Advisory and Development Services Group of the Legislative Services Branch.

OTHER LEGISLATIVE INSTRUMENTS

Nova Scotia, Ontario, Manitoba, British Columbia, Alberta, Newfoundland and Labrador, the Yukon and the Northwest Territories draft other legislative instruments in addition to bills and regulations. Manitoba, Alberta and British Columbia draft Orders in Council, and Ontario's mandate includes anything that is a regulation within the meaning of the Ontario *Regulations Act*. Nova Scotia drafts a variety of instruments : reports and recommendations for the proclamation of statutes, the message of the Lieutenant Governor with respect to the budget, the Rules and

Forms of Procedure of the House of Assembly, regulations of the Legislative Internal Economy Board and regulations pursuant to the *Members and Public Employees Disclosure Act*. The Newfoundland and Labrador office prepared some resolutions to amend the Constitution. In Nunavut, the drafting office prepares statutory appointments. In Ottawa, the Headquarter Regulations Section and the Finance, Transportation, Health and Environment Drafting Services Sections of the Drafting Services Group are responsible for the preparation of statutory instruments and documents that are required to be published in the *Canada Gazette* by an Act of Parliament, those that are required to be published pursuant to the *Statutory Instruments Regulations* and those that the Clerk of the Privy Council directs or authorises to be published because, in the Clerk's opinion, it is in the public interest to do so.

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RELATIONSHIP TO PARLIAMENT

Relationship between the legislative drafting office and parliament :

- how are legislative priorities set?

- are representatives from the legislative drafting office

consulted? Routinely? On an emergency basis? When priorities need to be shifted?

SETTING OF LEGISLATIVE PRIORITIES

In most provinces, legislative priorities are set by Cabinet. In the Northwest Territories, priorities for bills are established by Cabinet on the advice of the Department of the Executive, in consultation with several Standing Committees of Ordinary Members. In Nova Scotia, priorities on government legislation are set by the Cabinet Committee on Legislation. A ministerial committee is responsible for setting legislative priorities in Quebec. In Saskatchewan, priorities are set by Cabinet and the House Leader's Office. In the Yukon, legislative priorities are normally set by the Executive Council Office of Cabinet. In Nunavut, legislative priorities are set by Cabinet acting on advice from the Cabinet Committee on Legislation.

CONSULTATION

Most respondents indicated that drafters were consulted routinely. In Ontario, the drafting office is regularly consulted by both the Cabinet and the Government House Leader. In Nova Scotia, the Chief Legislative Counsel attends all meetings of the Cabinet Committee on Legislation and is thus able to provide input on the setting of legislative priorities and to advise the Committee on the progress of all drafting. Saskatchewan mentioned that there is close and regular communication between Cabinet, the Legislative

Counsel Office and the House Leader's Office respecting priorities in the introduction of bills. The Legislative Counsel Office sits as an advisor to the province's Legislative Instruments Committee — a subcommittee of cabinet that reviews all bills and regulations and recommends priorities to the full Cabinet ; the House Leader also has a representative at the committee. In Quebec, the legislative services are not consulted. In Ottawa, Parliamentary Affairs staff of the Privy Council Office maintains liaison between Cabinet and both the sponsoring department and the Drafting Services Group of the Department of Justice with respect to the scheduling of government bills. In preparation for weekly meetings with Parliamentary Affairs staff to review the proposed legislative agenda, the Deputy Chief Legislative Counsel routinely consults with drafters in the Group to assess drafting progress and determine whether the drafters consider the proposed tabling dates to be realistic. Parliamentary Affairs staff themselves consult the drafters directly on an ad hoc basis, most often when there may be a difficulty in meeting a tabling date because of outstanding policy issues or drafting problems.

Personnel

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STAFF AND REPORTING STRUCTURE

How many people are employed in the legislative drafting office as :

- *drafters?*
- *paralegals?*
- *registrar of regulations?*
- *managers?*
- *support staff, including :*
 - administrative support (secretarial, management of master copies)?*
 - linguistic support (editors, legislative revisers, translators)?*
 - automation support?*
 - printing and publishing?*
 - statute revision?*

What is the reporting structure?

For instance, at the federal level, the Legislative Services Branch is headed by a Chief Legislative Counsel reporting directly to the Deputy Minister of Justice.

With the smallest drafting office in Prince Edward Island and the largest in Ottawa, the organisation of offices ranges widely in terms of the number of staff and their functions. It therefore seems worthwhile to provide brief individual descriptions within the context of the size of the jurisdictions. The population figure for each province is therefore given. The official name of the section responsible for legislative drafting is also provided.

ALBERTA

(population 2,974,807)

Legislative Counsel Office

The Alberta office comprises eight drafters including the Chief Legislative Counsel and the Registrar of Regulations, one paralegal, one manager, four administrative officers and three printing and publishing staff including editors. The Chief Legislative Counsel reports directly to the Assistant Deputy Minister — Legal Services.

Total staff — 17

BRITISH COLUMBIA

(population 3,907,738)

Legislative Counsel Office

The British Columbia office consists of 12 drafters including the Chief Legislative Counsel, a Registrar of Regulations, one manager in charge of publications, 4.5 administrative support staff, four editors and two staff who are responsible for printing and publishing. The Chief Legislative Counsel supervises staff in the four areas — Drafters, Registrar of Regulations, Publication and Orders in Council and their respective support staff — and reports to the Assistant Deputy Attorney General (Legal Services Branch) administratively and to the Deputy Attorney General on the legislative program.

Total staff — 24.5

MANITOBA

(population 1,119,583)

Legislative Counsel Office

Manitoba has six drafters (one of whom serves as Registrar of Regulations), two editors, six

administrative staff and six translators. In addition, there are two managers : the Legislative Counsel and the Director of Legal Translation. The Legislative Counsel reports to the Deputy Minister of Justice with respect to government work and to the Speaker of the Legislative Assembly with respect to private members' bills and general advice provided to the Assembly.

Total staff — 22

NEW BRUNSWICK

(population 729,498)

Legislative Counsel Office

In New Brunswick, 14 drafters, including the Registrar of Regulations, operate as seven teams of two lawyers, one anglophone and one francophone. In addition, three legislative counsels and one jurilinguist are assigned to the Statute Revision Project — a four-year project which started in April 2001. Two lawyers are responsible for the Law Reform Program. Three administrative support officers assist the Legislative Counsel Office. The Legislative Counsel Office also houses the Office of the Queen's Printer, which comprises the Queen's Printer, three editors, three desktop publishers and two support officers. All report to the Director of Legislative Services (and Chief Legislative Counsel), who reports to the Deputy Attorney General.

Total staff — 32

NEWFOUNDLAND AND LABRADOR

(population 512,930)

Legislative Counsel Office

Newfoundland and Labrador has a Senior Legislative Counsel, four drafters (one of whom also acts as Registrar) and two administrative officers. The Senior

Legislative Counsel, who is an Assistant Deputy Minister of Justice, presides over the Office of the Legislative Counsel, which is established under the *Statutes Subordinate Legislation Act* and functions as a division of the Department of Justice. While the statute provides that the Senior Legislative Counsel reports directly to the Minister of Justice, in practice, the reporting is to the Deputy Minister. The drafters are responsible for statute revision.

Total staff — 7

NORTHWEST TERRITORIES

(population 37,360)

Legislative Counsel Office

In the Northwest Territories, there are 4.7 drafters (one part-time), including the director ; one drafter serves as Registrar of Regulations. There is a Manager of Legal (French) Translation and one additional legal translator. In addition, there are four secretaries (two anglophone and two francophone) and an editor/administrator who reviews drafts, superintends the approval and registration of regulations, and prepares and registers the territorial government's appointments. The Director of the Legislative Division reports directly to the Deputy Minister of Justice.

Total staff — 11.7

NOVA SCOTIA

(population 908,007)

Parliamentary and Legislative Counsel Office

Nova Scotia has four drafters, one of whom acts as Chief Legislative Counsel and another as Assistant Clerk, and three support staff. Administratively, the Chief Legislative Counsel reports only to the Speaker of the House of Assembly. But the Chief Legislative

Counsel also reports to the Cabinet Committee on Legislation, the Government House Leader and the Minister of Justice (the latter as Chair of the Law Amendments Committee) on government legislation.

Total staff — 7

NUNAVUT

(population 26,745)

Legislation Division of the Department of Justice

In Nunavut, there are two legislative counsels, one of whom is the Director and also Registrar of Regulations, and the other is Deputy Registrar of Regulations. There is also a Manager for Legal Translations. The office includes one administrative support staff and four linguistic support staff. The Director of the Legislation Division reports directly to the Deputy Minister of Justice.

Total staff — 8

ONTARIO

(population 11,410,046)

Parliamentary and Legislative Counsel Office

In Ontario, there is the equivalent of 12 full-time drafters, including the Registrar of Regulations but not the Chief Legislative Counsel. There are also four translators, five linguistic revisers and two translation counsels, lawyers who review the translated text to ensure French and English equivalency. There are one automation support staff and 16 other officials involved in printing and publishing, including editors and desktop publishing staff. There are also three managers and 12 other support staff engaged in secretarial, clerical and administrative functions. The Chief Legislative Counsel reports directly to the Deputy Attorney General.

Total staff — 56

PRINCE EDWARD ISLAND

(population 135,294)

Parliamentary and Legislative Counsel Office

The office comprises two legislative drafters and three support staff.

Total staff — 5

QUEBEC

(population 7,237,479)

Direction de la législation gouvernementale (Ministère de la Justice) / Government Legislation Directorate of the Department of Justice

In Quebec, there are 10 drafters-revisers, one manager, and three support staff including one language specialist. The Government Legislation Directorate reports to the Department of Justice's Associate Deputy Minister of Juridical and Legislative Affairs (Justice) (*Sous-ministre associé chargé de la Direction générale des affaires juridiques et législatives du Ministère de la Justice*).

Total staff — 14

SASKATCHEWAN

(population 978,933)

Legislative Counsel Office

Saskatchewan has five drafters, one manager (the Chief Legislative Counsel), two administrative support staff, one linguistic support and one person responsible for printing and publishing. The Chief Legislative Counsel is the head of the Office and reports directly to the Deputy Minister of Justice.

Total staff — 10

YUKON

(population 28,674)

Parliamentary and Legislative Counsel Office

There are five drafters (three anglophone, two bilingual), one paralegal (who acts as Deputy Registrar of Regulations) and two administrative support personnel in the Yukon drafting office. The office is headed by the Chief Legislative Counsel, who reports to the Assistant Deputy Minister, Legal Services, who in turn reports to the Deputy Minister of Justice.

Total staff — 8

FEDERAL GOVERNMENT

(population of Canada 30,007,094)

Drafting Services Group — Legislative Services Branch of the federal Department of Justice

The Drafting Services Group of the federal Department of Justice is headed by the Deputy Chief Legislative Counsel, to whom an assistant and six directors report. These directors are heading the Headquarters Legislation Section, the Finance Tax Drafting Services Section, the Headquarters Regulations Section, the Transport Drafting Services Section, the Health Drafting Services Section and the Environment Drafting Services Section.

Headquarters Legislation Section

The Headquarters Legislation Section is headed by a Director and consists of 28 drafters. Approximately one half of this group of drafters is responsible for the English versions of bills and the other for the French versions. There is also one assistant.

Finance Tax Drafting Services Section

The Finance Tax Drafting Services Section is also headed by a Director. The six drafters it includes are physically located at the Department of Finance and draft tax-related ways and means motions, bills, regulations and remission orders.

Headquarters Regulations Section

A Director heads the Headquarters Regulations Section, which includes 32 drafters, approximately one half of whom are responsible for the English versions of regulations and other statutory instruments within the meaning of the *Statutory Instruments Act* and the other half for the French versions. Some of the drafters act as portfolio coordinators by coordinating the work of members of the Section in relation to particular departments or groups of departments. There are nine assistants working in the Section.

Transport Drafting Services Section

The Transport Drafting Services Section is located at the Department of Transport and headed by a Director. The Section also includes 12 drafters, 4 assistants, 2 jurilinguistic revisors and 2 editors. It prepares regulations for the Department of Transport exclusively.

Health Drafting Services Section

Located at the Department of Health, this section is headed by a Director and comprises 13 drafters and three assistants. The section prepares health regulations exclusively.

Environment Drafting Services Section

Headed by a Director and consisting of five drafters and two assistants, this section is situated at the Department of Environment and prepares the regulations of this Department.

The three other Groups of the Legislative Services Branch provide specialised services in support of the work of the Drafting Services Group.

The Bijuralism and Drafting Support Services Group headed by a Senior General Counsel includes a number of specialists. It has a total staff of 69. Bijural and comparative law specialists ensure that Canada's two legal systems, common law and civil law, are equally reflected in both languages versions of federal legislation. The eleven jurilinguists of the Jurilinguistic Services Unit, headed by a Chief Jurilinguist and Legislative Counsel, ensure the linguistic quality, as well as the consistency, of the French and English versions of the statutes and regulations. The 15 paralegals and revisers/editors of the Legislative Revising and Editing Services, headed by the Chief Legislative Editor, review all legislation to ensure the grammatical and technical quality of the texts. Finally, 10 employees are responsible for database management.

The Advisory and Development Services Group is headed by a Director and includes 8 legislative counsels. In addition to providing formal training on legislative drafting to officials of the Department of Justice and, occasionally, to provincial or territorial officials, the Group gives advice on the legislative and regulatory processes, the choice of legislative instruments, the interpretation of legislation and the legal framework of regulation making. The Group is also responsible for special projects, like improving the readability of legislative texts.

The Publishing Services Group, which has a staff of 6, manages the publication of the legislation prepared by the Legislative Services Branch. Currently, it is also developing a new computer environment to facilitate the drafting of legislation as well as the exchange of data with other key partners of the legislative services such as Parliament and publishers.

Total staff — The Legislative Services Branch has a total staff of 236, including five employees responsible for human resources and general administrative services.

Office of the Law Clerk and Parliamentary Counsel of the Senate

The office consists of the Law Clerk, an assistant lawyer, a paralegal, a secretary and the Archivist of the Senate.

Legislative Counsel Office of the House of Commons

The office comprises the General Legislative Counsel and three Legislative Counsels, who are House of Commons employees. Another drafter also works on a part-time contractual basis. Support staff consists of one administrative assistant, one legislative editor, three translators and five word processing operators. The General Legislative Counsel reports to the Law Clerk and Parliamentary Counsel of the House of Commons.

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QUALIFICATIONS OF DRAFTERS

What are the qualifications required of legislative drafters :

- *law degree?*
- *member of the bar of the province or territory?*
- *any formal drafting training or apprenticeship program?*
- *any special skills, such as linguistic capabilities or computer training?*

In all drafting offices, drafters must have a law degree and be a member of the bar of a province or territory. As there is no federal bar, a variety of provinces as well as both legal systems — common law and civil law — are represented in the Legislative Services Branch of the Department of Justice.

Respondents generally neither provide formal drafting training nor require drafters to have received specialised training of this kind. Saskatchewan, however, provides in-house training, and one of New Brunswick's drafters possesses the Diploma in Legislative Drafting offered by the University of Ottawa. Two of the three anglophone drafters in the Yukon are also graduates of the program, and the respondent from the Northwest Territories mentioned that this diploma is regarded as an asset. In Ottawa, the diploma is one of the selection criteria considered in staffing, although it is not a mandatory qualification. Many drafters in the Drafting Services Group have completed this program, and two of the House of Commons drafters have the diploma.

Some respondents highlighted particular skills and aptitudes they seek in a drafter. Ontario tests for an aptitude for drafting. Manitoba looks for excellent writing and communication skills and for computer training. The province of New Brunswick favours drafters who possess superior language, intellectual,

analytical, organisational, decision-making and interpersonal skills. In the Yukon, the two bilingual drafters must demonstrate an ability to translate English into French, and all drafters must be familiar with Microsoft Word software.

In the Legislative Services Branch of the federal Department of Justice, the following skills and attributes are sought in legislative drafters in addition to formal drafting training or relevant experience : knowledge of constitutional and administrative law, the rules of statutory interpretation, the legislative and regulatory processes and federal statute law, including delegated legislation ; computer skills ; and excellent written and oral communication skills in one official language and good written and oral communication skills in the other. Personal suitability — including judgment and tact, interpersonal skills, organisational skills, adaptability to changing circumstances, ability to work as part of a team (important because of the practice of co-drafting) — together with tolerance for stress and a commitment to departmental values were also regarded as very important.

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QUALIFICATIONS OF LANGUAGE SPECIALISTS

What are the qualifications of the linguistic support staff?

The formal qualifications of language specialists vary widely across Canada.

In Ontario, editors are generally trained on the job, often after working in the office for many years as production assistants. The translators and linguistic revisers are professional translators.

In New Brunswick, editors must have a university degree and pass a language skills test. The jurilinguist has a university degree as well as a background as a professional translator.

In the Northwest Territories, the editor in the English section must have a Bachelor of Arts degree with a background in English, and legal translators must have a law degree with training or experience in translation.

In Nunavut, the French translator must have a law degree. Inuktitut translators must have demonstrated ability as translators.

In Quebec, a Bachelor in linguistics or a Bachelor of Law with linguistics skills is required.

A graduate degree in English or Linguistics is required in Saskatchewan. Although not required, knowledge of French is considered an asset.

The jurilinguists of the Legislative Services Branch of the federal Department of Justice are professional translators who, in certain cases, also have law and linguistic degrees. The legislative revisers have

university backgrounds and a variety of training and experience with specialisation in various related fields, such as teaching, translation and communications. All prospective legislative revisers are given grammar, proofreading and editing tests and must demonstrate an expertise in their first official language and a high level of comprehension and written ability in their second language. The House of Commons translators do not have law degrees but possess many years of experience in the field of legal translation.

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EMPLOYMENT DETAILS

How are staff members employed :

- *as employees of the public service?*
- *on a contractual basis?*
- *full-time?*
- *part-time?*

In most provinces, staff are full-time public service employees. However, New Brunswick occasionally engages drafters on a contractual basis. In Nova Scotia, drafters are appointed by the Governor in Council "during good behaviour" (which means that they are appointed for an unlimited period and can only be removed for a serious fault). In Saskatchewan, drafters are Order in Council appointees but are subject to the rules and provisions of the provincial *Public Service Act*. While most drafters are full-time employees, the Northwest Territories has one drafter employed at 70% time, and several drafters in the Legislative Services Branch of the federal Department of Justice also work part-time. At the Legislative Counsel Office of the House of Commons, one drafter is a contractual employee and the others are employees of the House of Commons.

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PARTICIPATION IN EXCHANGES, SECONDMENTS

Is it possible for drafters and others to go on secondments to, or to participate in exchanges with, other drafting offices within the jurisdiction or between jurisdictions (in Canada or abroad)?

Several provinces mentioned that it was possible for drafters to participate in exchanges and secondments with other drafting offices. But in practice, such exchanges have rarely occurred, mostly because of resource shortages.

Over the years, drafters from the Legislative Services Branch of the federal Department of Justice have provided drafting services as part of other groups under a variety of arrangements, including through secondments to other sectors of the Department of Justice, secondments with the Legislative Counsel Office of the House of Commons and other Canadian drafting offices and assignments to other countries for periods of between several weeks and several years. In addition, Branch drafters have participated in exchanges or as part of special projects in Canada and abroad to provide professional services such as teaching legislative drafting or advising on the establishment of legislative drafting offices.

CONTINUING LEGAL AND PROFESSIONAL TRAINING

What continuing legal and professional training is available to personnel?

Most provinces and territories do not have regular ongoing training. However, many support professional development on an ad hoc basis. In Quebec, the Department of Justice holds seminars in legislative drafting and statutory interpretation. In New Brunswick, British Columbia and Newfoundland and Labrador, drafters may avail themselves of continuing legal education courses offered through the provincial bar association and law society. In Nova Scotia, drafters may attend the continuing legal education courses offered through the Nova Scotia Continuing Legal Education or the Nova Scotia branch of the Canadian Bar Association. In Manitoba, few ongoing courses are directly relevant to legislative drafting, but employees are encouraged to arrange on an individual basis for whatever training they would find useful. Saskatchewan provides in-house training and mentoring of drafters, and its staff participate in various law society programs. In Alberta, training is provided at the request of the drafter. Where possible, the office sends staff to Canadian Institute for the Administration of Justice (CIAJ) conferences and annual meetings of Parliamentary and Legislative counsel. Continuing legal and professional training in the Yukon is limited ; however, members of the office have attended CIAJ seminars, meetings of the Uniform Law Conference of Canada and programs offered through the Law Society of British Columbia. In Nunavut, staff have the opportunity to attend conferences and learn from other personnel. Textbooks are purchased as necessary.

Staff at the Legislative Services Branch of the federal Department of Justice have access to training from a variety of sources. The main provider of drafting tools and training is the Advisory and Development Services Group of the Legislative Services Branch. Three drafters are working full time to develop manuals and tailor-made courses for the drafters of the Branch and other lawyers of the Department of Justice. Staff may attend departmental courses and seminars on various legal topics, computer software applications and other matters that they consider relevant, and also presentations by staff in other sectors on topics of common interest, such as the operation of the *Financial Administration Act* or case law updates in areas such as administrative law, human rights or native law. The Branch may arrange for law professors and other experts, including Branch staff, to speak on subjects of general or special interest to drafters, such as the *Canadian Charter of Rights and Freedoms*, delegated legislation or statutory interpretation. The Department of Justice is currently conducting a pilot project with the Faculty of Law at the University of Ottawa to encourage lawyers to take courses related to the "other" — that is, common law or civil law — legal system. Second-language training may be provided in individual circumstances. The training may be that provided through the Public Service, or staff may be reimbursed for the costs of attending language courses offered at university or by private institutions. The Branch has also recently hired instructors to conduct weekly second-language maintenance seminars on-site for interested employees. The Branch or the Department will occasionally pay for lawyers to attend courses or seminars offered by various institutions — universities, the Canadian Bar Association, the Law Society of Upper Canada, the Barreau du Québec or other professional institutions — if directly related to the employee's tasks, for example, training in taxation law

for drafters in the Finance Tax Drafting Services
Section.

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DRAFTING OF STATUTES AND REGULATIONS

Do the same drafters draft statutes and regulations?

If so, does the same drafter who drafted the bill

draft the regulations?

In most provinces and territories, drafters are responsible for both bills and regulations. But practice varies. In the Northwest Territories, the proportion of the workload for the two tasks varies between drafters. In Quebec, drafters usually draft either bills or regulations. The Nova Scotia office is not involved in the making of regulations. In cases where drafters draft both Acts and regulations, the individual who drafts a bill is usually responsible as well for the corresponding regulations. However, this arrangement is not always followed in Newfoundland and Labrador, Nunavut, the Yukon and British Columbia.

In Ottawa, drafters in the Headquarters Legislation Section generally draft bills while drafters in the Headquarters and Transport, Health and Environment Drafting Services Sections draft regulations ; drafters in the Finance Tax Drafting Services Section are responsible for both. Generally, two teams (one from each specialty) are involved when both an Act and regulations are required. A great variety of exchanges, secondments and other arrangements have been instituted within the Branch and with other sectors of the Department of Justice in order to accommodate specific needs.

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ASSIGNMENT OF FILES

How are files assigned? (On the basis of workload? Portfolios? Special subject-matter expertise or de facto specialisation? Do clients request particular drafters? Conversely, do drafters have any choice in file assignment?)

In most provinces and territories, files are assigned on the basis of a combination of the following factors : workloads, portfolios, special subject-matter expertise or *de facto* specialisation, requests from the instructing department and drafter preference.

In Nova Scotia, Quebec, Alberta and the Northwest Territories, all these factors are considered. In Saskatchewan, drafters are assigned particular departments and agencies. In Manitoba and New Brunswick, file assignment is also based on portfolios but adjustments are made to take workload into account. In the Yukon, files are assigned primarily on the basis of workload, although the availability of special expertise and requests from instructing departments may also play a part. As files are normally assigned at a meeting of all drafters, an individual drafter may also have input into file assignment. In Ontario, a combination of portfolios, workload and subject-matter expertise influences decisions on who will work on a particular file. Though efforts are made to match portfolios to preferences, the shortage of drafters means that there is often little choice in assignment, particularly during busier periods.

In the Headquarters Legislation Section of the federal Department of Justice, drafters individually or in pairs can indicate their preference in response to email notices of bill assignments that are periodically sent to

them by their manager, who will then select drafters based on their preference, workload, expertise (in some cases) and requests from instructing departments for particular drafters. The Regulations files are assigned based on the criteria of workload, portfolios, interest and expertise. At the House of Commons, all of the factors play a role in file assignment, which is done by the General Legislative Counsel.

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SENIORITY OR GREATER EXPERIENCE

Are certain files — for example, urgent files, those with complex subject matter, politically sensitive files — assigned on the basis of seniority?

In New Brunswick and Alberta, and at the House of Commons, seniority is not a factor in file assignment. In Ontario, seniority is seldom a factor as most drafters have at least six years' experience ; however, files that are particularly politically sensitive will be drafted in close consultation with the Chief Legislative Counsel.

In Saskatchewan, Nova Scotia, British Columbia, Newfoundland and Labrador, Nunavut and the Northwest Territories, certain files may be assigned on the basis of seniority. In Quebec, seniority as such is not formally a factor, although senior drafters are often in a better position to handle more difficult files. In the Yukon, seniority is not really a factor as all drafters have sufficient expertise to complete complicated projects quickly ; however, politically sensitive matters have been assigned to particular drafters with whom the instructing department is familiar.

In the federal Legislative Services Branch, seniority may have an indirect effect on file assignment ; thus, an especially urgent or sensitive file is unlikely to be assigned to two junior drafters.

SPECIAL FILES

Are there any special files, for example, those dealing with miscellaneous amendments?

Several provinces have programs in place to correct errors and anomalies in their statutes : British Columbia has a statute correction file that is maintained by the editors ; Alberta has a *Miscellaneous Statutes Amendment Act* ; Newfoundland and Labrador has the *Attorney-General's Statutes Amendment Act* ; Saskatchewan has *Statute Law Amendment Acts* and *Miscellaneous Statutes Repeal Acts* ; the Yukon has a *Miscellaneous Statute Amendment Act* and the Northwest Territories has an active *Miscellaneous Statutes Amendment* program. In Nunavut, a file is kept for miscellaneous amendments, but the territory is too recent a creation to have required a miscellaneous bill.

Counsels in the Headquarters Legislation Section of the federal Department of Justice draft a *Miscellaneous Statute Law Amendment Act* sponsored by the Minister of Justice on an ad hoc basis every few years. Due to the non-controversial nature of the amendments, there is a special parliamentary procedure for these bills. The drafters review proposals submitted by various departments for eligibility, draft the Memorandum to Cabinet and draft the amendments as proposals that are tabled for pre-study by committees of the Senate and House of Commons (the drafters also attend these meetings as witnesses for the Minister of Justice). When the changes requested are simple and non controversial, paralegals prepare the changes and communicate with the department responsible. The package is then reprinted as a bill and is read three times in each House without debate. Almost all drafters in the Section have been involved in drafting the

amendments to be contained in the *Miscellaneous Statute Law Amendment Act* that is currently in progress, but a team of one anglophone and one francophone drafter is responsible for coordination of the file.

HIGH-VOLUME DEPARTMENTS

Are special arrangements made for high-volume clients or clients with particular needs? For example, the dedication of certain drafters from the office to a particular client department, the physical location of drafters from the office on client department premises, the engagement of outside consultants by a client department to draft instructions in the form of a bill.

Do high-volume client departments make financial contributions to this office to compensate for their greater demand on drafting resources?

Most provinces, except Newfoundland and Labrador and Nova Scotia, make some sort of arrangements for high-volume departments, although few of these arrangements are formalised.

In Manitoba, high-volume departments may pay to retain outside counsel, who may assist drafters in the Legislative Counsel Office.

In Quebec, special arrangements are limited to exceptional cases. Instructing departments are not normally asked to contribute financially to drafting services, but certain government agencies other than departments may be asked to do so under certain circumstances.

In British Columbia, outside counsel has been retained on an ad hoc basis to assist with drafting during peak periods.

In New Brunswick, drafting work has been contracted out on occasion. In these cases, the instructing

department will usually make a financial contribution to the cost of these services.

In the Northwest Territories, outside consultants have occasionally been hired as drafters (and paid for by the instructing department), but drafters in the Legislative Counsel Office have never been dedicated exclusively to particular departments.

In Alberta, a department has occasionally hired someone to draft instructions ; however, they work closely with the drafters. Although an uncommon occurrence, in some situations drafters have worked exclusively on one bill until its completion.

Drafters in Ontario may be dedicated to projects in the capacity of consultants in advance of Cabinet drafting approval ; no additional compensation would be sought from the department in a case where drafting precedes Cabinet approval. In Ontario, departments pay an hourly rate for drafting and for translation services provided by the Legislative Counsel Office.

The Saskatchewan office tries to accommodate important and high-priority tasks by assigning a drafter exclusively to a project until its completion. Drafters rarely work outside the office, since there they have access to internal files, library resources and other materials. The high-volume client department makes no financial compensation for the special service.

The Yukon office has, in exceptional cases, assigned a drafter to a department for extended periods of time in order to complete a particularly complex piece of legislation. Such assignments, however, have not been exclusive and have never required the drafter to move to the department's premises. The office has also assisted a department in finding a private-practice lawyer capable of drafting a particular bill. Departments

have occasionally themselves engaged and paid for contract drafters, but no department has made a financial contribution to the Parliamentary and Legislative Counsel Office.

There are no special arrangements for high-volume departments in Nunavut.

At the federal level, lawyers may be engaged on a contractual basis by the Senate or House of Commons, as needed, to deal with high-volume files or clients' special needs.

In the Drafting Services Group of the federal Department of Justice, several sections are stationed on the premises of four typically large-volume departments. These departments reimburse the Group for the costs of the salaries of the various Legislative Services Branch personnel who work there — drafters, linguistic revisers, secretaries and editors. There are also ongoing memoranda of understanding that require drafters stationed at the Legislative Services Branch to dedicate a specified amount of their time to a particular department. Lawyers from Departmental Legal Services Units with experience in drafting regulations — usually former members of the Drafting Services Group — may also, at times, be partnered with a drafter in the Group.

In the Headquarters Legislation Section, drafters are rarely dedicated exclusively to a particular department on an ongoing basis, although they have been dedicated exclusively to a particular bill for the duration of the project. Departments may be asked to make monetary contributions to the Branch in order to compensate for their greater use of drafting resources. In these cases, drafters will still be permanently stationed on Legislative Services Branch premises but may tend to work off-site, attending meetings or policy

consultations more often than would otherwise be the case. Memoranda of understanding may also be entered into under which a department will pay a percentage of drafters' salaries to cover the costs of "speculative drafting" up to the point Cabinet approval is obtained for the project.

18

INSTRUCTING OFFICERS

Who are the instructing officers :

- *departmental lawyers?*
- *policy staff?*
- *senior departmental officials?*

In British Columbia, Saskatchewan, Alberta and the Yukon, instructing officers may be departmental lawyers, policy staff or senior departmental officials, while in Alberta the majority are policy staff.

In Manitoba, New Brunswick and Newfoundland and Labrador, instructing officers are either policy staff or senior departmental officials.

In the province of Quebec, instructing officers are generally departmental lawyers. In some cases, they could be policy staff or senior departmental officials.

In the Northwest Territories, instructing officers are generally senior departmental officials. However, occasionally, policy staff with legal training will instruct.

In Ontario, instructing officers are always departmental lawyers, but policy staff and senior officials regularly attend meetings and may play a significant role in the giving of instructions.

In Nova Scotia, instructing officers are departmental lawyers or, in the case of opposition public bills, caucus staff.

In Nunavut, where the drafting service is still new and there as yet are no set rules, instructions are currently given by policy staff.

At the federal level, instructing officers for bills and regulations may be senior departmental officials, policy staff or departmental lawyers (although, in the case of regulations, they will most often be departmental lawyers). The nature of the file will often dictate what sort of expertise is required : for example, policy staff will most often be involved if the bill is technical ; lawyers, if there are many human rights issues ; and senior departmental officials, if the bill contains high-profile issues or issues of national interest such as world trade. In practice, several instructing officers with a variety of expertise usually participate in the drafting of any given bill. Because co-drafting is practised, there will generally be at least two instructing officers, one who will instruct on the English version of the text and the other on the French version. Increasingly, bills are being co-sponsored by more than one department. In such cases, a representative from each department will be part of the drafting team. In addition, while there may be a primary instructing officer who will act as coordinator, various subject-matter experts may instruct on different aspects or portions of the text. In the case of regulations, there will often be only one instructing officer, who will provide instructions in one language only.

At the Senate and House of Commons, instructing officers are the Senators or Members of the House of Commons, or their respective legislative assistants, who wish to sponsor private members' bills or present amendments to government legislation.

**INVOLVEMENT OF OUTSIDE CONSULTANTS
IN THE DRAFTING PROCESS**

Are outside consultants — such as lawyers from private firms with subject-matter expertise hired by the client department, Bar Association committee representatives, user-groups (lobbyists, native associations) — involved in the drafting process?

If so, are these outside consultants involved solely with the client department, or do they attend drafting meetings and communicate directly with the drafters?

Outside consultants are generally not directly involved in the drafting process, although sponsoring departments may themselves hire lawyers from private firms to review draft legislation, as is the case, for example, in Manitoba. There are exceptions : in Saskatchewan, all bills are reviewed by representatives of the Bar Association on a confidential basis ; in addition, First Nations groups and municipalities are now being consulted by the sponsoring departments or agency with respect to bills that may impact on them. In British Columbia, the Legislative Counsel office has an arrangement with representatives of various Bar Association committees to review individual pieces of legislation on a case-by-case basis with the consent of the department sponsoring the bill.

In Manitoba, Nunavut, British Columbia and Newfoundland and Labrador, and also occasionally in Alberta, where outside consultants are involved, they may attend drafting meetings and communicate directly with drafters. This procedure will rarely be the case in other provinces where consultants usually work only with the instructing department. In Quebec, although outside consultants are rarely hired, there is great flexibility in the arrangements made to ensure their

contribution to the drafting process. In the Yukon, outside consultants — in particular, user-groups and lobbyists, First Nations and Canadian Bar Association representatives — are sometimes involved in the development of draft legislation, but they do not normally attend meetings where the drafter is present nor communicate directly with the drafter.

At the federal level, consultants are hired by sponsoring departments and participate in the drafting of bills and regulations to the extent desired by the departmental representatives. This participation does not usually happen in the presence of the drafters, although consultants do sometimes attend drafting meetings with the instructing officers. Consultants, who are usually lawyers from private practice, will review drafts and offer comments and suggestions that are filtered through the instructing officers for consistency with departmental policy and then passed on to the drafters.

DRAFTING INSTRUCTIONS

How are drafting instructions received?

- in the form of Memoranda to Cabinet?

- Notice of Ways and Means motions?

- request from Parliament, Premier, House Leader?

Authority to draft legislation can take many forms. There is no formal procedure in Quebec and Nunavut. In the Yukon, government bills are authorised by Memoranda to Cabinet, while private members' bills are requested by the member. In Saskatchewan, instructions for government bills come from the Legislative Instruments Committee of Cabinet. In Newfoundland and Labrador and in New Brunswick, drafting instructions are received in the form of a Memorandum to Cabinet which, in the case of New Brunswick, is supplemented by additional material from the instructing department. Similarly, in the Northwest Territories, legislative proposals for bills are approved by Cabinet with the sponsoring department providing detailed instructions. In Ontario, drafting may be authorised by Cabinet minutes or by a memo or phone call from the instructing ministry or a Member of Parliament. In Nova Scotia, the drafting process is initiated by the sponsoring department or the Cabinet Committee on Legislation. In Manitoba, legislative proposals are submitted to Cabinet (Legislative Review Committee), and the drafting instructions come directly to legislative counsel. Both Alberta and British Columbia require the submission to Cabinet of a legislative proposal form accompanied by documentation that sets out all of the policy issues that require resolution.

In Ottawa, authority to draft government bills is ordinarily granted by way of a cabinet document, the

Record of Decision, with the drafting instructions contained in the annex to the Memorandum to Cabinet. These instructions are supplemented with detailed instructions provided by officials in the sponsoring department. Tax legislation may be based on detailed Notice of Ways and Means motions. In some cases of personal interest to the Prime Minister or where urgency is a factor, drafting may be authorised by Prime Ministerial letter to the sponsoring Minister. Private members' bills are initiated at the written request of a Member of Parliament or their legislative assistant. The process for initiating the regulation-making process is very informal. If there is a perceived need in a department for a regulation, a request will be made in writing (by either the Departmental Legal Services Unit or the Department directly) to the manager of the Headquarters Regulations Section or of the Finance, Transport, Health or Environment Drafting Services Sections, the portfolio coordinator or one of the drafters.

SPECULATIVE DRAFTING

Does the legislative drafting office engage in speculative drafting and, if so, is compensation received from the client department for such drafting?

Speculative drafting, that is, drafting without Cabinet authority, is not widely practised in the provincial and territorial offices and, where it is — in British Columbia, New Brunswick, Nova Scotia, Nunavut and Ontario, for example) — compensation is not received from the sponsoring department, except in Ontario where an hourly rate is charged for all drafting services. In British Columbia, speculative drafting will be practised only if an agreement to that effect is reached between the Deputy Attorney General and the Deputy of the client ministry. Manitoba, Saskatchewan and Alberta rarely engage in speculative drafting ; the respondent from Alberta indicated that they will do so only where they are satisfied that there is a reasonable chance the bill will proceed. In Newfoundland and Labrador, departments might request such drafting of a bill if it does not involve sensitive policy issues, but the decision to proceed without Cabinet approval rests with the Senior Legislative Counsel. In the Yukon, it is highly unusual for the office to commence drafting a major project without some assurance from Cabinet that enactment is desired. Drafters in the Northwest Territories try to avoid speculative drafting, but it does occur. It is not practised in Quebec.

In the Headquarters Legislation Section of the federal Department of Justice, speculative drafting may occur with the approval of the Government House Leader. In such cases, a Memorandum of Understanding is entered into with the sponsoring department, which will reimburse a portion of the drafters' salaries for the

speculative drafting period up to the point when Cabinet approval is obtained.

DEGREE OF DETAIL OF DRAFTING INSTRUCTIONS

*How detailed are drafting instructions?
Do they comprise general broad policy ideas
or an outline of the specific provisions that
are required?*

In most provinces, the degree of detail of the drafting instructions varies from bill to bill depending on the type of project, the time available and the level of legislative experience of the officials who prepared them. The respondent from Alberta indicated that instructions may range from a narrative to a draft bill. In New Brunswick, instructions are usually quite detailed. The format for instructions varies also in Nunavut, but it usually consists of broad policy ideas.

In Ottawa, instructions for government bills run the gamut from extremely detailed to very general. Detailed instructions may be provided, for example, for technical bills dealing with a large number of minor "housekeeping" amendments. In other cases, instructions may almost have to be deduced from general principles ; an example is where drafters are asked to give effect to a particular court decision or to make the necessary consequential amendments to other legislation in order to give effect to the enunciated policy. Instructions provided to House of Commons drafters generally consist of broad policy ideas.

POLICY ROLE OF LEGISLATIVE DRAFTERS

Do drafters play a role in "pre-instruction" policy development, that is, consultation in developing Memoranda to Cabinet or other formal instructions?

Do drafters have a "post-instruction" policy role, that is, helping to develop or fill gaps in legislative schemes ; identifying or advising on legal problems ; or recommending enforcement regimes?

Where there is more than one client department, what role do drafters play in the resolution of competing policy objectives?

With the exception of Quebec, which does not assist with policy development in the pre-instruction phase of legislative drafting, drafters in most provinces play a limited pre-instruction policy-making role. In the province of Saskatchewan, departments and agencies consult on occasion with legislative counsel before preparing instructions for cabinet requests in order to ensure the reasonableness of the legislative proposals, and in British Columbia the comments of legislative counsel are required on all submissions to Cabinet. In Nunavut and the Yukon, it is not unusual for drafters to become involved in developing Memoranda to Cabinet. Drafters in Alberta tend to become more involved at an earlier stage in the case of legislation that is to be sponsored by the Department of Justice. Drafters in Nova Scotia will become involved if the drafting instructions are not sufficiently precise.

Drafters in the Headquarters Legislation Section of the Federal Department of Justice may become involved in policy development, on an ad hoc, case-by-case basis, as requested and subject to availability ; this usually occurs

when the department is in the process of drafting the Memorandum to Cabinet. An informal request to a drafter for advice on provisions of a draft Memorandum to Cabinet may sometimes be made by a public servant in another department or by lawyers in other areas of Justice, such as specialists in the Human Rights Law Section of the Department of Justice, for example. In other cases, a Memorandum of Understanding may be entered into between the sponsoring department and the Drafting Services Group whereby drafters become involved in the drafting of the Memorandum to Cabinet or in policy discussions leading up to it.

Drafters in the Headquarters Regulations Section and in drafting sections located within certain client departments may become involved in the development of policy at any stage in the regulation-making process.

In general, drafters play a more significant post-instruction policy development role, often identifying policy gaps and arranging for consultation with relevant advisors (for example, experts in the areas of constitutional law, administrative law and criminal law policy).

In the case of competing policy objectives of co-sponsoring departments, virtually all respondents identified their role as that of an informal facilitator or mediator. Drafters often encourage and moderate discussion and may suggest a middle ground, but all indicated that it was not their responsibility to resolve the conflict. It was generally felt that most issues could and should be resolved between affected departments with Cabinet being the final arbitrator. In Manitoba, drafters may occasionally take a more active role by referring contentious matters to the appropriate Assistant Deputy Minister who contact the Deputy Minister or suggest ministerial involvement where necessary.

Drafters also play a facilitative role at the federal Department of Justice. Where matters cannot be resolved by meeting with representatives of the interested departments, drafters will often notify Legislation and House Planning staff of the Privy Council Office — either directly or through the Director, or if need be, the Deputy Chief Legislative Counsel — who will achieve reconciliation at the appropriate departmental or political level.

RESPONSIBILITY FOR QUALITY CONTROL

Who is responsible for ensuring quality control and the legal soundness of the legislative text?

(By quality control and legal soundness are meant compatibility with the legislative style and the precedents used in the jurisdiction or in other jurisdictions ; compatibility with the Charter of Rights and the constitutional division of powers ; rationality of criminal sanctions ; administrative penalties ; compatibility of regulations with the enabling authority ; etc.)

Responsibility for quality control and for the legal soundness of the legislative text is borne by the drafters themselves in most places — New Brunswick, Nova Scotia, Manitoba, British Columbia, Newfoundland and Labrador, House of Commons, the Yukon and Alberta — or with the assistance of departmental lawyers (Ontario).

Drafters act under the supervision of, in the case of British Columbia, the Chief Legislative Counsel and, in Alberta, the Chief Legislative Counsel (for bills) and the Registrar of Regulations (for regulations).

In the province of Quebec, the Government Legislative Directorate of the Department of Justice and, ultimately, the Legislation Committee of the Department of Executive Council, are responsible for quality control.

In Saskatchewan, the responsibility is shared among many people as all drafts of bills and regulations are reviewed by a Legislative Review Committee and are regularly reviewed at earlier stages within the Department of Justice (by the Constitution Branch, Prosecutions Office and Civil Law, for example) until

the Department is satisfied that all issues have been satisfactorily resolved.

The legislative counsel, in consultation with the Legal and Constitutional Division, is responsible for quality control in Nunavut.

At the federal Department of Justice, each of the two drafters ultimately has individual responsibility for the version of the bill or regulation in the language of their specialty. Texts are edited and submitted to jurilinguistic revisers for linguistic review of both language versions of bills and regulations, and for comparison of the two versions for consistency. Bills, but not regulations, are also reviewed by a senior drafter. In addition, bills and regulations are reviewed by specialists to ensure that bilingualism issues, if any, have been properly resolved.

COORDINATION OF DRAFTING ACTIVITIES WITHIN OFFICE

Who is responsible for coordinating drafting activities within the office?

The following individuals are responsible for coordinating drafting activities :

- Newfoundland and Labrador : the Senior Legislative Counsel
- Nova Scotia : the Chief Legislative Counsel
- New Brunswick : the Director, Legislative Counsel Office
- Quebec : the *Directeur de la Direction de la législation gouvernementale du ministère de la Justice* (Head of the Government Legislation Directorate of the Department of Justice) and, ultimately, the *Comité de législation du Ministère du Conseil exécutif* (Legislation Committee of the Department of Executive Council)
- Ontario : the Chief Legislative Counsel (bills) and the Registrar of Regulations (regulations)
- Manitoba : the Assistant Deputy Minister of Justice (in consultation with the drafters)
- Saskatchewan : the Chief Legislative Crown Counsel
- Alberta : the Chief, Legislative Counsel Office
- British Columbia : the Chief Legislative Counsel
- Yukon : the Chief Legislative Counsel (with the assistance of drafters, support staff and Director of Legal Services at weekly meetings)
- Northwest Territories : the Director of the Legislation Division, who serves on an interdepartmental committee that reviews legislative proposals and advises Cabinet
- Nunavut : the Director of the Legislation Division

- Federal Government :

House of Commons : the General Legislative Counsel and the Counsel's assistant

Senate : the Law Clerk and the Clerk's assistant

Department of Justice : the Deputy Chief Legislative Counsel coordinates the drafting of government bills with the assistance of the directors of the Headquarters Legislation Section and the Finance Tax Drafting Services Section, who consult with drafters on an ongoing basis with respect to the progress of files. The Director of the Headquarters Legislation Section meets formally every second week (and, as needed, by telephone on an ad hoc basis) with members of the Legislation and House Planning Committee of the Privy Council who, in turn, ensures liaison with the Prime Minister, the House Leader, members of the various committees of Cabinet, sponsoring Ministers as well as senior officials in the sponsoring departments as required in order to implement the legislative agenda of the government.

The Deputy Chief Legislative Counsel also consults with directors of the Headquarters Regulations Section and the Finance, Transport, Health and Environment Drafting Services Sections, who then consult drafters on an ad hoc basis. The Chief Legislative Counsel and her deputy negotiate with departments responsible for making regulations with respect to drawing up resource agreements and with the Section directors responsible for projects, legislative questions, drafting questions and relations with other departments, as needed.

29 FUNCTIONING OF THE PROCESS

How does the drafting process take place :

- are clients present during drafting? Throughout the process?

At the end only?

- do drafters consult with clients by phone, at meetings or from written comments on drafts?

- does the drafter work alone or as part of a team, that is, are there different drafters for different parts?

- are files assigned to more than one drafter, for example, a team of senior and junior drafters?

Drafters in all provinces and territories consult with instructing officers by phone, at meetings and through the exchange of annotated drafts, as well as — in Alberta, Nova Scotia, the Yukon and the Northwest Territories — by email. In Newfoundland and Labrador and in British Columbia, instructing officers are present throughout the drafting process. In Nova Scotia, they may sometimes be present during drafting. In New Brunswick, the presence of the instructing officers depends on several considerations : the nature, complexity and urgency of the bill ; whether the policy is well defined ; and what stage the drafting is at. In Ontario, the presence of the instructing officers during drafting depends on the drafter's preference. In the Northwest Territories, Nunavut and Alberta, instructing officers are consulted on the drafts and attend meetings to discuss them, although the actual drafting does not occur in their presence. In Saskatchewan, they are regularly consulted and may be present, but most drafting is undertaken by the drafter alone. At the Senate and the House of Commons,

persons giving drafting instructions are not present during drafting.

In the Legislative Services Branch of the federal Department of Justice, the manner in which instructing officers are present during the drafting process and also the degree of their involvement depend on many factors, including the drafters' and officers' preferences, workloads and schedules ; the nature, complexity and urgency of the bill ; whether the policy is well defined ; and the stage that the drafting has reached. Some drafters like to draft on the spot in the presence of their instructing officers in drafting rooms equipped with computers for the drafters and extra monitors for the instructing officers. Other pairs of drafters who prefer to work apart from their instructing officers either co-draft in a drafting room or draft in their respective offices and contact instructing officers by phone as the need arises. Comments are received from instructing officers either orally by telephone or at drafting meetings or in writing in the form of simple annotations to the draft or in longer, narrative form.

In most provinces, drafters usually work alone, sometimes under the supervision of a senior drafter ; in exceptional cases, those involving lengthy or urgent bills, for example, drafters will work as a team with each drafter having responsibility for a particular part of the bill. In New Brunswick and at the Headquarters Legislation Section and Finance Tax Drafting Services Section of the federal Department of Justice, drafters always work in pairs of one anglophone and one francophone drafter. At the federal level, large, complex or urgent files (such as world trade implementation Acts that involve distinct amendments to many different Acts) may be subdivided and assigned to two or more teams of drafters as the need arises. Generally, the original pair of drafters will retain responsibility for file coordination, namely matters such as scheduling of

meetings and consistency of approach. In the Regulations Sections, drafters usually work in pairs but, in cases where resources are limited and the drafter has the required expertise, one drafter may be responsible for both language versions.

Is there a formal regulatory review process in your jurisdiction?

Nova Scotia, New Brunswick, Newfoundland and Labrador and the Yukon and the Northwest Territories do not have formal regulatory review processes. British Columbia, Manitoba, Alberta, Quebec, Saskatchewan and Ontario do have such processes. In British Columbia, ministries have been instructed under the Regulatory Reduction Project to identify opportunities to eliminate unnecessary and costly regulations within a 30-day period. These ministries will be asked to prepare detailed plans for undertaking a more comprehensive review, reform and streamlining of regulatory requirements. In Ontario, a cabinet committee reviews regulations before they are made, and in Quebec the Government Legislative Directorate has the review of regulations as part of its mandate. In Saskatchewan, all regulations are screened by the Legislative Instruments Committee of Cabinet before they proceed to cabinet. These regulations will also be subject to an *ex post facto* review by a Special Committee of the Legislative Assembly. In Nunavut, almost all regulations must be approved by Cabinet. The Department of Executive and Intergovernmental Affairs makes recommendations to Cabinet. Also, notice of proposed regulations is given at the regular meetings of Deputy Ministers. In addition, a statutory review of all proposed regulations is made by the Registrar of Regulations and the Deputy Minister of Justice in accordance with Nunavut's *Statutory Instruments Act*. In Ottawa, all statutory instruments stand permanently referred to the Standing Joint Committee on the Scrutiny of Regulations once they are made.

DRAFTING FROM INSTRUCTIONS OR REVIEW

Do drafters primarily draft regulations from instructions, or do they review — with some or much rewriting — regulations drafted by departmental representatives?

In Alberta, Nunavut, the Northwest Territories, Newfoundland and Labrador, New Brunswick and Manitoba, drafters draft regulations primarily from instructions. Drafters in British Columbia and Saskatchewan work from instructions and also review drafts prepared by other ministries. In Quebec, regulations are drafted by departmental officials and submitted to the Government Legislative Directorate for review. In the Yukon, drafting of regulations is often done from instructions, but drafters sometimes review regulations that have been drafted by departmental representatives. In Ontario, the method of proceeding depends on the nature of the project and on the sponsoring ministry.

At the federal Department of Justice, drafters in the Drafting Services Group's Regulations Sections work from instructions, and they also review and, if necessary, rewrite some or all of the regulations prepared by departmental representatives. Special arrangements have sometimes been made by which regulations are drafted by the drafters assigned to sections located in various departments (Finance, Transport, Health and Environment). In some cases, the examination of routine regulations has been delegated to Departmental Legal Services Units.

BILINGUAL JURISDICTION

Is this a bilingual jurisdiction?

Quebec, Manitoba, New Brunswick, and the Northwest Territories are bilingual jurisdictions, and statutes and regulations are published in both official languages. The Yukon is not fully bilingual, but statutes and regulations are published in both official languages. Nunavut is a bilingual jurisdiction and, in addition, Inuktitut translations of bills are produced for the House of Representatives. In Ontario, all bills and selected regulations are produced in both official languages. In Saskatchewan, approximately 10% of the Acts are in bilingual format, with the rest available in English only. Nova Scotia is a unilingual English jurisdiction ; however, it has produced one officially bilingual Act regarding a francophone institution, the Université Sainte-Anne, and an unofficial French version of the *Human Rights Act*. Alberta, British Columbia and Newfoundland and Labrador are unilingual ; legislation in these provinces is available in English only.

For federal statutes and regulations, all these must be published in both official languages, and both language versions are equally authoritative.

DRAFTING OF BOTH VERSIONS

If this is a bilingual jurisdiction, are both language versions drafted simultaneously or drafted first in one language and then translated? By whom?

In most bilingual jurisdictions, a text is prepared in one language — English, except for Quebec, where the original version is drafted in French — and translated into the second. Exceptions are New Brunswick, where the two versions are co-drafted by two legislative solicitors (drafters), the Yukon, where the drafting of the French text often begins before the English text is complete, and Ottawa, for which a description of the co-drafting process is given in the answer to question 29.

While co-drafting is the norm in the Legislative Services Branch of the federal Department of Justice, there are some exceptions. In the Finance Tax Drafting Services Section, texts are prepared in English and translated into French by an on-site translator. Occasionally, depending on the subject and the particular individual's expertise, a drafter in the Regulations Sections may prepare both language versions with the assistance of the linguistic revisers, who are professional translators. In the Headquarters Legislation Section, both language versions are prepared independently by a pair of legislative drafters who are individually responsible for their own versions. The two versions are often prepared simultaneously, but a variety of methods may be employed, depending on the drafters' working styles and respective workloads. The same is true in the Regulations Sections, although simultaneous co-drafting is not as common. In both cases, the two language versions must correspond in substance and legal effect, and they are

therefore closely compared. The comparison is generally made towards the end of the drafting process in the case of bills, but several times throughout the process in the case of regulations.

PRINTING, PUBLISHING AND DISTRIBUTION

Who is responsible for the printing, publishing and distribution of legislative texts?

In most provinces or territories, responsibility for the printing, publishing and distribution of legislative texts is vested in the legislative counsel office (Nova Scotia), the Queen's Printer (Newfoundland and Labrador, Saskatchewan and the Yukon ; in the latter, the legislative drafting office prepares the text in portable document format [pdf] for tabling in the legislature) or a combination of the two. In the Northwest Territories, the Legislation Division performs the function of Territorial (Queen's) Printer. Likewise, in New Brunswick, the Queen's Printer is part of the Legislative Services Branch. The Official Editor of Quebec is analogous to the Queen's Printer.

Manitoba (Legislative Counsel Office) and British Columbia (Regulations and Publications Sections of the Legislative Counsel Office) carry out printing and publishing duties in partnership with the Queen's Printer. In Ontario, these functions are performed by the Legislative Counsel Office in partnership with the Clerk's (of the Legislative Assembly) Office in the case of bills and by the Queen's Printer in the case of regulations, annual statutes and office consolidations. In Alberta, there is a parallel division of duties. The Legislative Counsel Office is responsible for preparation of the printer's copy. The Queen's Printer prints and distributes statutes and regulations while the (Legislative) Assembly is responsible for the printing and distribution of bills.

In Nunavut, bills are transmitted to the House for introduction by the government's legislative co-

ordinator. The House provides certified copies of bills that have been enacted. The Legislation Division is among other things responsible for Annual Volumes and the Gazette.

In Ottawa, the Law Clerk and Parliamentary Counsel of the House of Commons, through the Legislative Counsel Office, is responsible for the printing, publishing and distribution of private members' bills.

In the case of government bills, legislative drafters in the Drafting Services Group of the federal Department of Justice provide the staff in the Publishing Services Group with an electronic version of the final text to ensure that the proper coding of styles, macros and related matters has been used so that the two language versions of the bill will be properly aligned when printed in side-by-side format. The Publishing Services Group then transmits the data to the Canada Communication Group, formerly the Queen's Printer, for the photocomposition and printing of first page-proof, revised page-proof and final page-proof copies. Page-proof copies are distributed within the Drafting Services Group by Legislative Revising and Editing Services staff and then by the drafters to the sponsoring department. Legislation and House Planning staff of the Privy Council Office are responsible for the distribution of final page-proof copies to the Journals Branch of the House of Commons, who make the copies available to the Members of Parliament. Once a bill has been introduced in the Senate or House of Commons, successive printings — such as first reading and reprints, "as Passed" and "Assented-to" versions — will be arranged by, respectively, the Office of the Law Clerk and Parliamentary Counsel of the Senate or the Legislative Counsel Office of the House of Commons.

The Legislative Services Branch is responsible for publishing Part III of the *Canada Gazette* (which

contains the assented-to Acts), the annual *Statutes of Canada* and, periodically, the *Revised Statutes of Canada* (for a description of the Statute Revision process, see nos. 37–38 Periodic Review below). These three sources are considered to be official versions of the law, unlike various commercially prepared office consolidations and annotated versions.

Regulations that are to be pre-published in Part I of the *Canada Gazette* are submitted by the departments or, in the case of regulations to be made by the Governor in Council, by the Office of the Clerk of the Privy Council. The Office of the Clerk of the Privy Council is also responsible for arranging for statutory instruments and other documents subject to the regulatory process to be published in Part II of the *Canada Gazette*.

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SUBSCRIPTIONS
TO STATUTE PUBLICATIONS

Does your office administer subscriptions to Gazettes, statutes?

With the exception of New Brunswick, the drafting offices do not administer subscriptions to provincial or territorial Gazettes or other statute publications. In Nunavut, free Gazettes are sent to a large mailing list until the capacity to administer subscriptions is in place. In the Northwest Territories, subscriptions are contracted out to a private supplier. In Ottawa, subscriptions to the *Statutes of Canada* and to the *Revised Statutes of Canada* (hard copy and CD-ROM) and the *Canada Gazette* are administered by the publishers.

ROLE OF THE DRAFTER AFTER THE BILL HAS GONE TO PRINT

What is the role of the drafter after the bill has gone to print :

- do drafters also draft motions to amend bills that have been introduced?*
- do drafters attend parliamentary committees to serve as witnesses?*

MOTIONS

Drafters in all provinces and territories draft motions to amend bills that have been introduced, although in Quebec this practice is uncommon. In Ottawa, while there is no procedural requirement to do so, drafters in the Headquarters Legislation and Finance Tax Drafting Services sections of the Department of Justice are often called on to draft government-sponsored motions or to review motions that have been prepared by Members of Parliament (or opposition members in cases where the government wishes to adopt an opposition proposal) or by departmental officials on their behalf. Motions to amend senators' private bills are prepared by the Senate drafters. House of Commons drafters prepare motions to amend government bills and sometimes private members' bills.

ATTENDANCE AT PARLIAMENTARY COMMITTEES

Legislative drafters in Newfoundland and Labrador and in Alberta do not attend parliamentary committee meetings as witnesses. Drafters in the Northwest Territories and in Quebec and Saskatchewan do so but, in the latter two places, only on rare occasions. Drafters in other provinces and territories generally attend not in the capacity of a witness but as counsel to the parliamentary committee (British Columbia, Nova

Scotia, Manitoba, Nunavut, Ontario and New Brunswick — where drafters attend at the request of the department in question). In the Yukon, drafters do not attend parliamentary committee meetings except where the whole assembly is sitting as a committee.

In Ottawa, as a general rule, drafters from the Headquarters Legislation Section and the Finance Tax Drafting Services Section do not attend parliamentary sittings. However, drafters are available to prepare and review amendments during the clause-by-clause consideration of a bill in committee and at report stage. Drafters may attend parliamentary proceedings in exceptional circumstances to be determined in consultation with their Director. At the request of the sponsoring department and subject to availability, drafters may attend meetings of parliamentary committees, including meetings with the House leader in cases where cabinet authority to approve a bill has been delegated. The role of the drafter in these cases is generally to serve as counsel to the committee and — either directly or through the senior public servant representing the sponsoring department — to answer technical questions related to the drafting of particular clauses of the bill or to comment on the effect of applying particular provisions to a given factual situation. House of Commons drafters do not attend committee meetings.

PERIODIC REVIEW

Is there a periodic revision of statutes in your jurisdiction?

If so :

- who is responsible and how often is the revision made?*
- what is the extent (if known) of revision? Does it cover the elimination of spent provisions? Non-consolidation of statutes of limited application? Stylistic consistency?*

PERIODIC REVISION

While all the provinces and territories, except Saskatchewan, conduct periodic revisions of their statute bases, in most cases, the length of the revision period varies.

The Northwest Territories revises its statute base every ten to fifteen years. In British Columbia, revision is part of an ongoing process established by the *Statute Revision Act*. In Nova Scotia, revisions have occurred as early as the 18th and 19th centuries and, more recently, in 1900, 1923, 1954, 1967 and 1989. In Quebec, Acts and regulations are revised on an on-going basis. In the Yukon, where enabling legislation authorising periodic revision was passed in 1997, a major initial revision is planned for 2002 and is to be followed by ongoing revisions. Prince Edward Island's legislation was last revised in 1988.

In New Brunswick, the most recent revision occurred in 1973 ; April 2001 marked the beginning of a full revision process that is expected to take place over four years. In Manitoba, the statute base as a whole was updated in the course of a re-enactment process in 1987. Ontario has conducted a revision every ten years but plans to move by 2003 to an ongoing revision process that will replace the decennial revision. There

is no set interval between revisions in Newfoundland and Labrador, where the last revision occurred in 1990. Alberta has just completed a revision that came into force on 1 January 2002. Legislation now allows that jurisdiction to revise any of its Acts.

The most recent revision of federal public Acts took place in 1985. Earlier revisions occurred in 1886, 1906, 1927, 1952 and 1970.

PERSONS RESPONSIBLE FOR THE REVISION

In Alberta, Newfoundland and Labrador, Ontario and the Yukon, the respective Legislative Counsel Offices are responsible for revision, while in Nova Scotia and British Columbia responsibility is vested more specifically with the Chief Legislative Counsel. In Quebec, the Statute Revision Branch of the Department of Justice (*Direction de la refonte des lois et des règlements du ministère de la Justice*) conducts the revision. The Statute Revision Commissioner is working on the first revision of the Statutes of Nunavut.

The most recent revision of federal public Acts was conducted by the Statute Revision Commission (now known as the Database management Services) of the Legislative Services Branch in 1985. There are no plans for a further revision. Unofficial versions of consolidated public statutes (since 1985) and regulations (since 1978) will continue to be prepared by Database Management Services and are updated and available electronically on CD-ROM and through the Justice Internet site every four months. Office Consolidations are also available on request. The "official" (paper) versions of statutes, published in Part III of the *Canada Gazette* and in the annual *Statutes of Canada*, and regulations and other statutory instruments

(published in Part II of the *Canada Gazette*) will continue to be available.

EXTENT OF REVISION

During the statute revision process in British Columbia, Quebec, Ontario, Nunavut and Newfoundland and Labrador, provisions that have ceased to have effect are (or, in the case of the Yukon, will be) eliminated and amendments are made to the consolidated statutes (generally all public statutes) for stylistic consistency. In New Brunswick, errors in spelling and grammar will be corrected, stylistic consistency will be achieved and language modernised. An updated electronic method of publication will be implemented. The Northwest Territories consolidates all statutes, except those that have ceased to have effect, and will also modernise the language. Statutes may be reorganised. Manitoba makes only limited modifications. Nova Scotia will renumber statutory provisions, correct spelling and grammar errors, make amendments to achieve gender neutrality and combine or divide Acts and eliminate forms to enhance readability.

No two revisions of the federal statutes have followed the same path. Revisions have consisted of consolidations of public Acts other than those that were spent, improvement of the French versions, production of bound and loose-leaf editions, renumbering of provisions, modernisation of language, standardisation of mode of expression, correction of grammatical or typographical errors and some reorganisation of provisions. While there are no plans for future comprehensive revisions, various initiatives — for example, plain-language drafting, gender neutrality and bijuralism — will continue to be implemented on an ongoing basis as new Acts are drafted or provisions of existing Acts are opened for amendment. Database

Management Services is responsible for updating and maintaining the consolidated statute database.

39 NUMBER OF FILES

How many files does a drafter carry at any point?

How many active files does the drafting section have on average?

In most provinces and territories, the limited data that is available in this area must be viewed with caution as fluctuations in workload volume may be extreme and non-representative and the scope and scale of difficulty may similarly vary and be difficult to quantify.

Manitoba estimates that it produces approximately 800 pages of bills and 1,500 pages of regulations each year.

In British Columbia, there were, at the time of this survey, 93 items on the legislation list. The office processes 35 to 40 regulations per month.

The number of bills passed in Nova Scotia in recent years is as follows : 2001, 27 at the date of the survey ; 2000, 41 ; 1999, 36 ; 1998, 45 ; 1997, 25 ; 1996, 42 ; 1995-1996, 35 ; 1995, 17 ; 1994-1995, 34 ; 1994, 96 ; 1993, 76. Of course, these figures do not take into account bills introduced but not passed and draft bills that did not proceed to introduction. Also, these numbers are a little misleading because of the increasing tendency toward omnibus bills that amend different Acts altogether (7 in 2001, 5 in 2000, 4 in 1999 and 3 in 1998).

In New Brunswick, during the 2000-2001 fiscal year, 78 bills drafted in the Legislative Services Branch were introduced in the Legislative Assembly. Also, 116

regulations drafted in the Branch were filed with the Registrar of Regulations.

Saskatchewan drafters annually prepare, on average, 85 bills and 130 regulations.

At the time of the survey, the Yukon office had approximately 300 active files and estimated that a typical caseload would consist of at least 30 files per drafter.

In the Northwest Territories, there were, at the time of this survey, 41 ongoing bills and 108 ongoing regulations distributed among 4.7 drafters.

At the time of the survey, drafters in Newfoundland and Labrador had caseloads of 15 to 20 legislation files.

Alberta has an average of 40 to 50 bills each session, with a workload of about 5 to 8 bills for each drafter. At any one time, there are over 200 regulations in progress.

The number of files per drafter varies in Nunavut but is still fairly low because of the lack of experienced policy officers.

In Ottawa, in 1997 there were 94 active files, 31 Acts assented to and 38 bills introduced ; in 1998, 78 active files, 40 Acts assented to and 42 bills introduced ; in 1999, 77 active files, 36 Acts assented to and 45 bills introduced ; in 2000, 72 active files, 35 Acts assented to and 24 bills introduced ; finally, in 2001, 34 active files, 41 Acts assented to and 46 bills introduced. In addition, 745 motions to amend were tabled in 1997, 353 in 1998, 578 in 1999, 1073 in 2000 and finally 806 in 2001. Approximately 1,200 regulations are processed, that is, drafted or reviewed, each year.

As of 8 November 2001, the Legislative Counsel Office of the House of Commons had received 428 requests for private members' bills since the opening of the parliamentary session on January 29, 2001. Two hundred and eleven bills arising from the 428 requests had received first reading.

**NUMBER OF LEGISLATION FILES
AND REGULATION FILES**

How many of the files carried by a drafter are :

- legislation files?

- regulation files?

In Manitoba, the proportion of bills files versus regulations files in a typical caseload varies too widely to allow any useful general estimate. In British Columbia, there are also variations in caseload breakdown due to the size and complexity of the file and the fact that individual drafters may specialise in drafting either bills or regulations. In New Brunswick, the workload tends to be divided between approximately 35% for bills and 65% for regulations. In Alberta, each drafter will typically work on 5 to 8 bills and 20 to 30 regulations. Newfoundland and Labrador drafters will have a workload of 15 to 20 bills and 1 to 5 regulations. Drafters in the Northwest Territories manage, on average, 8.7 bills and 23 regulations. Drafters' workloads in the Yukon will comprise at least 5 bills and between 15 and 20 regulations. In Nunavut, drafters carry as many legislation files as regulations files.

In Ottawa, drafters in the Headquarters Legislation Section of the Department of Justice may have 6 to 10 open files, of which 4 or 5 are active. The number of files carried by drafters in the Regulations Sections may vary widely depending on size and complexity. Generally, bills files will remain open longer (an average of a year) while regulations files will be turned around more quickly (an average of two months). Drafters in the Headquarters Legislation Section usually draft only bills, while drafters in the Headquarters Regulations Section and the Transport,

Health and Environment Drafting Services Sections draft only regulations. House of Commons drafters generally have 6 to 12 active files at a time.

41**NUMBER OF FILES BEING DRAFTED AT A TIME**

Do drafters tend to work primarily on one file at a time or on several legislative texts simultaneously?

Drafters in all provinces and territories tend to work on several projects simultaneously. In the Headquarters Legislation Section of the federal Department of Justice, the period of time between the granting of drafting authority by Cabinet and the bill introduction date has become increasingly shorter, with the natural result of a tendency for drafters to work more intensively on one or two files at a time.

In theory, drafters at the House of Commons work on one file at a time on a "first-come, first-served" basis ; in practice, they work on several at a time.

**SEASONAL OR SESSIONAL VARIATIONS
IN THE WORKLOAD**

Is the workload relatively constant, or are there seasonal, sessional variations?

All provinces and territories noted seasonal or sessional variations in workload volume. The volume of work associated with the drafting of bills increases when the legislature is sitting ; as well, there is a decrease in the volume of both bills-related and regulations-related work in the summer due to the fact that many instructing officers are on holidays. The Yukon respondent noted that work volume tends to increase significantly just before and during the fall legislative session.

These phenomena are also experienced by drafters at the Headquarters Legislation Section of the federal Department of Justice ; however, in recent years, there have been more and more larger "omnibus" bills that have required drafters to work intensively even during non-peak periods. There is certainly more pressure on drafters just before Parliament reconvenes or when Parliament is sitting, due, in part, to the last-minute work involved in preparing a text for printing and to the drafting of motions to amend legislation that is being studied by committees of the Senate or House of Commons. In addition, due to a constant shifting of Cabinet priorities, workload may temporarily vary greatly between drafters.

Regulations Sections drafters tend to have steady workloads but may experience peak periods in September, at the end of December and at the end of the fiscal year, which is 31 March.

The volume of work at the Legislative Counsel Office of the House of Commons is heavy and steady in the case of private members' bills. In the case of motions to amend government bills, it is prone to increases in the four to six weeks before the Christmas break and in the six to eight weeks before the summer recess. A similar situation can be observed in the Senate.

PRIORITY OF LEGISLATION OVER REGULATIONS

Where the same drafters draft legislation and regulations, is work of these types of equal priority or does the priority shift depending on whether Parliament is sitting or not?

In most provinces and territories, bills have a higher priority than regulations when the legislature is sitting. However, this is not always the case. Alberta, Ontario and New Brunswick noted that certain regulations sometimes take priority over legislation.

At the Legislative Services Branch of the federal Department of Justice, the question of priority is generally a moot point as an individual drafter's workload will consist of either all bills or all regulations, except in the Finance Tax Drafting Services Section, where drafters specialised in tax legislation are responsible for both. The relative priority of bills to each other can usually be determined by consulting the government's legislative agenda, which is updated at least once a week.

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**TEMPORARY (CONTRACTUAL) ARRANGEMENTS
TO DEAL WITH UNEXPECTED VOLUME INCREASES**

*Are there temporary, contractual arrangements
in place to deal with unexpected volume increases?*

Most jurisdictions do not provide for temporary workload volume increases ; however, Manitoba, British Columbia, New Brunswick, Nunavut, the Yukon and the Northwest Territories make ad hoc arrangements as the need arises. In very exceptional circumstances, Quebec makes such arrangements. The Northwest Territories have ongoing arrangements for supplementary translation services. As to Ontario, it occasionally uses the services of outside counsel to draft legislation.

The Headquarters Legislation Section of the federal Department of Justice has, on rare occasions, contracted drafting work to drafters outside the Legislative Services Branch, who are usually former drafters of the Section. However, for security reasons, such arrangements are rare.

In the Regulations Sections, special arrangements have been made whereby a drafter (hired by a particular department) has both drafted and reviewed regulations on behalf of the Sections.

The Office of the Law Clerk and Parliamentary Counsel of the Senate and the Legislative Counsel Office of the House of Commons have also, on occasion, hired outside consultants to draft legislation.

45 USE OF COMPUTERS AND INPUTTING

Do drafters compose legislative texts using computers as word processors, or is inputting done by administrative staff?

The trend in this area is clearly toward drafting directly on computers. Nevertheless, a combination of methods for inputting data is employed. Drafters in Nova Scotia, British Columbia and the Northwest Territories may compose text using computers or have their inputting done by administrative staff. Similarly, drafters in the Yukon use Microsoft Word on their personal computers for drafting, but some inputting of data and revision is done by administrative staff. In Newfoundland and Labrador, most drafters compose using computers. In Quebec and Alberta, inputting is generally done by administrative staff. In New Brunswick, Saskatchewan, Ontario, Nunavut and Manitoba, drafters input text directly during the drafting process.

In the Legislative Services Branch of the federal Department of Justice, all drafters draft using computers, and drafters in the Regulations Sections also have the services of support staff for data inputting. All members of the Branch are connected to the same network and may transmit data between themselves. House of Commons drafters use computers for the drafting of private members' bills, while support staff do the keyboard inputting for motions to amend government bills.

**ELECTRONIC AVAILABILITY
OF STATUTES AND REGULATIONS**

Are statutes and regulations in this jurisdiction available electronically?

Do drafters have on-line access :

- to provincial statute databases?*
- to federal statute databases?*
- to the Internet?*

Over the past few years, the legislation of all provinces and territories in Canada has been made available on-line by governments as described below. Many jurisdictions also produce, from time to time, CD-ROM versions of their legislation. In addition, all drafting offices, but one, now provide drafters with access to the Internet (Alberta drafters are expected to have access shortly). As a result, drafters now have almost unlimited access to all Canadian legislation on-line: statutes, regulations, bills and status of bills and official gazettes where useful information is published.

Legislative texts available on-line in provinces or territories and at the federal government :

Alberta — Statutes and regulations, bills, status of bills and official gazettes

British Columbia — Statutes and regulations, orders in council and ministerial orders, bills, status of bills (first and third reading versions)

Manitoba — Statutes and regulations, bills, status of bills

New Brunswick — Statutes and regulations, first reading version of bills, status of legislation (bills), Royal Gazette

Newfoundland and Labrador — Statutes and regulations, Newfoundland Gazette, progress of bills and bills once distributed to the House of Assembly

Northwest Territories — Statutes and regulations, status of bills and bills summaries

Nova Scotia — Statutes and regulations, bills, status of bills, amended versions of bills

Nunavut — Statutes and regulations, bills and gazettes

Ontario — Statutes and regulations, Ontario Gazette, first-reading version of bills, status of bills, proclamations

Prince Edward Island — Statutes, Royal Gazette, first-reading version of bills, status of bills

Quebec — Statutes and Regulations, bills, status of bills, bills as enacted

Saskatchewan — Statutes and regulations, the Saskatchewan Gazette, first-reading version of bills, status of bills

Yukon — Statutes and regulations, the Yukon Gazette, bills and status of bills

Federal government — Statutes and Regulations, the Canada Gazette, bills (legislative summary, first-reading and as-passed by the Senate or House of Commons versions) and status of bills.

UPDATING OF DATABASES

If statutes are available electronically, by whom and how often is the database kept updated?

Each jurisdiction has a slightly different procedure and time frame for updating its database.

In Nova Scotia, there have been three issues of the CD-ROM so far (1997, 1998 and 1999), to which the response from the legal profession has been poor, perhaps because of the existence of a corresponding Web site. The Legislative Counsel Office is in charge of updating the information, but because of legislative priorities there is no dedicated staff responsible for publishing ; thus, consolidations (print, CD-ROM and Web site) are somewhat out of date. Web site and pamphlet copies are the most up to date.

In Manitoba, the Legislative Counsel Office will update the statute base on an ongoing basis, within three months of the coming into force of an enactment.

Since January 2001, Ontario, through the Office of Legislative Counsel and Publications Ontario, has provided 14-day data currency for both its internal and public on-line databases. It plans to provide 24 to 48-hour currency by 2003.

In Newfoundland and Labrador, the Legislative Counsel Office updates the databases as soon as it becomes necessary.

In the Yukon, databases (CD-ROM until the end of 1999, and thereafter on the department's file server) are updated by Legislative Counsel office staff shortly after the end of the parliamentary session in which they were

assented to, in the case of bills, or shortly after they have been made, in the case of regulations.

The Queen's Printer updates the databases for New Brunswick (quarterly) and Saskatchewan.

In British Columbia, databases are updated jointly by the Legislative Counsel and the Queen's Printer.

In Alberta, new CD-ROMs are available quarterly, but the Internet is updated weekly and the office database daily.

The *Société québécoise d'information juridique* (SOQUIJ) updates its database of Quebec legislation once a year, while the Official Editor and the Barreau du Québec update their Quebec legislation databases weekly.

The updating of the statutes and regulations of Nunavut is carried on by the Department of Justice Librarian.

Federal statutes and regulations are available in electronic form on CD-ROM and on the Department of Justice's Internet site. New CD-ROMs are released three times a year and the Internet site is updated at the same interval.

DRAFTING WORK TOOLS

Are tools such as drafting manuals, deskbooks and notes for drafters available to address legislative and linguistic aspects of drafting?

Most provinces and territories have some work tools to assist legislative drafters with the linguistic and technical aspects of drafting. The Yukon office has now started developing its own drafting manual and deskbook, and drafters there make frequent use of Driedger's *The Composition of Legislation* and the standards for bilingual drafting that have been developed by the Drafting Section of the Uniform Law Conference. A style manual, currently being revised, is used by drafters in Alberta. New Brunswick has an English and a French *Drafting Manual* as well as a *Co-drafting Manual*. In light of its Revision Project, New Brunswick is reviewing these manuals. In Nova Scotia, drafting work tools are limited and in Newfoundland and Labrador there are none, but in both jurisdictions the office is small enough to permit informal discussions on drafting issues during which drafters share their ideas and experiences ; in addition, Nova Scotia drafters have their own library and access to three others (Justice Department, Barristers' Society and Law school). In British Columbia, a *Guide to Legislation* is available and the Legislative Style Committee is working on a style manual for drafters. Saskatchewan has developed an in-house drafting manual and, in addition, has an extensive library of drafting texts and legal sources. The Northwest Territories uses a drafting style manual. Ontario has a drafting manual, which is currently being revised, and may also rely on drafting conventions based on the rules for legislative drafting developed by the Uniform Law Conference. In Nunavut, drafters use textbooks

and materials developed in other jurisdictions. With very few exceptions, the House of Commons drafters follow the drafting conventions of the Department of Justice.

Drafters in the Legislative Services Branch of the federal Department of Justice have access to several guides to the making of legislation.

The *Guide to the Making of Federal Acts and Regulations* is available in electronic and hard-copy formats. Primarily intended for government officials who are involved in the legislative or regulatory processes, it gives an overview of the policy-making process and the steps involved in the drafting, printing and enactment of Acts and in the making of regulations. It describes the roles of those involved and addresses concerns related to matters of policy, legal principles and administrative practicality. There is also a publication by the Treasury Board Secretariat entitled *Federal Regulatory Process : Procedures for Submitting Regulations for Ministerial Approval*.

The *Legislation Deskbook* is available in electronic format. Primarily intended for use by drafters in the Headquarters Legislation Section and the Finance Tax Drafting Services Section, it is a comprehensive text containing information on the drafting of statutes, including linguistic and technical aspects and legal issues. It also includes information about the policy development process and the parliamentary process for the passage of a bill.

The *Federal Regulations Manual* is available in electronic and hard-copy formats. It gives an overview of the essentials of the making of federal regulations, including a description of the federal regulatory process, how to give drafting instructions, drafting and format rules, a description of the plain-language

approach to drafting and the basic steps involved in the drafting of regulations. It is intended for anyone involved in the development of federal regulatory texts, whether in the context of policy development, drafting, examination or final review.

The *Guide canadien de rédaction législative française* is available to drafters in the Legislation Services Branch in electronic and hard-copy formats. It contains the results of the jurilinguists and lawyers' research on recurring problems related to the drafting of the French version of statutes.

The legal opinions of the Advisory and Development Services Group are available electronically within the Branch and will shortly be accessible through the Department of Justice's data bank of legal opinions. A database is currently being developed that will contain significant court decisions pertaining to delegated legislation.

Finally, drafters in the Legislation Services Branch receive *Legislative Drafting Conventions* — linguistic guidelines issued by the Deputy Chief Legislative Counsel — and *Drafting Notes* — directives issued by the Deputy Chief Legislative Counsel — on all aspects related to the drafting of bills and regulations. The subject-matter of *Drafting Notes* is often developed into articles that are incorporated in the *Legislation Deskbook* and *Federal Regulations Manual*.

**DEVELOPMENT AND COMMUNICATION
OF DRAFTING TOOLS**

If such tools are available, how and by whom are they developed, amended and communicated? For example, by a policy decision made by the office as a whole? Through committees? In consultation with other offices or jurisdictions?

In most provinces and territories, the impetus for the development and amendment of work instruments comes from within the legislative counsel office.

In Alberta, drafting policy is generally developed through office discussions, with the final decisions made by the Chief Legislative Counsel.

In Nova Scotia, drafting directives are issued by the Chief Legislative Counsel, in consultation with office staff.

In Manitoba, the Deputy Chief Legislative Counsel and the Publication Coordinator and Legal Editor lead the office to consensus on drafting matters ; agreed-upon revisions are then circulated to staff.

In Quebec, work tools are generally prepared by one or two persons and are then circulated to other members of the drafting office for consultation.

In British Columbia, a Legislative Counsel Style Committee sets drafting policy.

Drafting policy in Ontario is developed by the office as a whole, usually based on background papers and committee recommendations.

In the Legislative Services Branch of the federal Department of Justice, any drafter may raise a drafting issue which will then generally be referred to one of the Branch drafting committees. These committees include : the Groupe de jurilinguistique française and the English Legislative Language Committee, which are primarily concerned respectively with linguistic aspects specific to the French version and English version of legislation ; the Plain Language Committee ; the Bijuralism Committee, concerned with the incorporation of common law and civil law concepts into federal legislation ; the *Deskbook* committee, which deals with most matters related to the drafting of bills that are not within the mandate of any other committee ; and the Regulations Sections Drafting Committee. The particular committee will conduct research and make recommendations that will be discussed among staff members (usually drafters in the Drafting Services Group and often in consultation with Legislative Revising and Editing Services or, depending on the issue, the Chief Legislative Counsel) or, in the case of an issue of limited scope, those drafters interested in or affected by it. A decision will then be made and a *Drafting Note* or a *Legislative Drafting Convention* issued. If a drafting policy has been determined but a more detailed written explanation is warranted, an article will be written — usually by members of the appropriate committee, in consultation with the rest of the committee members — and added to the *Legislation Deskbook* or the *Federal Regulations Manual*.

