

DEPARTMENT OF JUSTICE
POLICY STATEMENT AND GUIDELINES FOR PUBLIC PARTICIPATION

“The Government of Canada has recognized that the legitimacy of public institutions, the quality of public policy, and the responsiveness of public services will require new and better mechanisms for engaging citizens and civil society in governance.”

“A challenge of all governments is to find a way to find innovative ways to put citizens at the centre of the governing process, to engage youth in public enterprise, and to give voice to those who find themselves on the margins.”

**The Right Honourable Jean Chrétien,
Speech before the Progressive Governance for the 21st Century
Conference, Berlin, June 2000**

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Summary

The Policy Statement and Guidelines for Public Participation provides a policy tool for all Department of Justice managers and officials to frame the Department's public participation activities. The Policy Statement outlines a commitment on the part of the Department of Justice to involve Canadians in the development of legislation, policies, programs and services through adequately resourced processes that are transparent, accessible, accountable, supported by factual information, and are inclusive of Canada's diversity.

In recognition of the varied nature of issues addressed by the Department, these policy commitments are meant to apply to areas where public input will make the greatest contribution to the policy development process. The Policy assigns various roles and responsibilities for making decisions with regard to which issues are to be addressed through public participation processes and for ensuring that the Policy's commitments are applied as outlined and assigned.

Department of Justice
POLICY AND GUIDELINES FOR PUBLIC PARTICIPATION

POLICY STATEMENT

The Department of Justice Canada is committed to involving individual Canadians and their intermediary organizations in the development, design and evaluation of public policies, programs, legislation and services.

The Department of Justice Canada is committed to undertaking public participation processes that are transparent, accessible, accountable, supported by factual information and inclusive of the broad diversity of Canada. The Department is further committed to reporting back to Canadians on how their views have been considered in the decision-making process.

The Department of Justice Canada is committed to providing resources adequate for effective public participation functions, expanding opportunities for departmental officials to enrich their knowledge and expertise in public participation and supporting the development of new public participation techniques and technologies.

The Department of Justice is committed to promoting a consultative culture across all Sectors, Branches and Divisions of the Department by ensuring adherence to departmental guidelines

SCOPE

The Policy Statement and Guidelines on Public Participation endeavour to frame Justice Canada's public participation activities and supports the strategic direction of Serving Canadians, through a commitment "to make the justice system relevant and accessible to the needs of Canadians."¹ The Department already provides a broad number of opportunities for Canadians to become involved in the public policy process, not all of which call for or require consultation or engagement, such as communications activities that are an

¹ Department of Justice, Strategic Plan 2001-2005, pp. 3-4.

integral part of increasing the participation of citizens in decision-making.² Rather than a broad commitment to public participation on every issue, the Policy Statement supports participation activities only where the issues and timelines are such that public input will make a contribution to the policy development process. Where it is determined that public participation will form a part of the policy making process, the Department commits to ensuring that these activities are open, meaningful, timely and properly resourced consistent with the stated strategic direction of Serving Canadians. Determining the policy areas that will include a public participation component is the responsibility of the appropriate departmental authority.

At a minimum the Department must ensure the transparency of its policy development process through the timely provision of information (including accountability through reporting to citizens on results).

Justice Canada's policy guidelines and principles, although primarily concerned with formal public participation activities, also apply to the informal discussions and exchanges between Justice Canada officials and individuals affiliated with organizations active in the justice sector and individual Canadians.

AUTHORITY

This policy is issued under the authority of the Deputy Minister, Department of Justice.

APPLICATION

The policy statement and guidelines apply to all sectors of the Department of Justice Canada and should be followed in all public participation processes, whether they are targeted to citizens³, stakeholders or the voluntary sector.

The policy statement and guidelines supplement the federal government's Policy Statement and Guidelines on Consulting and Engaging Canadians⁴ published under the authority of the Treasury Board Secretariat (TBS). While this policy statement is primarily concerned with the Department's practices in involving Canadians in the public policy process, it also recognizes

² Communications activities are the responsibility of the Communications and Executive Services Branch. Government-wide, these activities are governed by the government communications policy, Treasury Board Secretariat, (1995), Guide IX: Communications, (http://www.tbs-sct.gc.ca/pubs_pol/ojepubs/tb_o/siglist_e.html)

³ The term *citizen* is used throughout in a non-exclusionary fashion to mean all persons, normally resident of Canada, and not just those having the legal status of possessing citizenship

⁴ Treasury Board Secretariat, (2001), Policy Statement and Guidelines on Consulting and Engaging Canadians (Working Draft).

the role of both Parliament and stakeholder groups and voluntary associations in communicating the views of Canadians on public policy.

Given the evolving nature of public participation practices, this policy statement and associated guidance documents will be regularly updated to reflect changes to the government-wide policy statement and guidelines as well as ongoing developments in the area public participation.

RELEVANT POLICIES AND GUIDELINES

The Policy Statement and Guidelines is a key element to ensure the realization of the objective established in the Department of Justice Strategic Plan 2001-2005. In addition, the Policy Statement supplements the Treasury Board Secretariat's policies on consultation and engagement and:

- Policies and guidelines applicable to the legislative and regulatory development process;
- Relevant federal Acts and Statutes such as the *Access to Information Act*, *Official Languages Act* and the *Privacy Act*;
- the Treasury Board Secretariat's *Government Communications Policy*⁵ and the *Client Consultation Policy*⁶; and
- other current or future Acts, Statutes, policies, guidelines or directives of application to the Department or the whole of the federal government.

JUSTICE CANADA'S VISION OF PUBLIC PARTICIPATION

The Department of Justice is responsible for ensuring that Canada is a just and law-abiding society with an accessible, efficient and fair system of justice whose policies and programs that reaches deep into all communities. This unique responsibility to Canadian society and government is included in the elements of the Strategic Plan that address the building of the Department's policy development capacity and the role of public participation as a contributor to this process.

This integration of public participation into the policy process is vital to the success of departmental and governmental initiatives, especially now that Canada is a more diverse, educated and informed society. The Department also recognizes that public participation is an important tool for sharing information about justice policy issues that affect Canadians.

⁵ Treasury Board Secretariat, (1995), Guide IX: Communications, (http://www.tbs-sct.gc.ca/pubs_pol/ojepubs/tb_o/siglist_e.html)

⁶ Treasury Board Secretariat (1995), Guide I: Client Consultation, (http://www.tbs-sct.gc.ca/pubs_pol/ojepubs/tb_o/siglist_e.html)

The results of public participation processes provide the information needed to develop strategies and action on issues of concern to the Department, justice and non-justice stakeholders and, ultimately, to provide the Minister of Justice and Cabinet with an important decision-making tool on matters pertaining to justice issues.

Justice Canada is committed to working with many different organizations in the non-governmental, voluntary and private sector and seeks to encourage the participation of all Canadians and stakeholders in its policy development and operational activities especially where these affect Canadians and the evolution of their justice system.⁷ Public participation mechanisms enable Justice Canada to identify and cope with emerging new areas of law and policy, track new ideas and identify emerging trends in law and policy, as well as define questions and options. In addition, public participation enables the Department to better understand how the Department's mission and activities impact on Canadians, consistent with the strategic direction of Serving Canadians.

The Department of Justice recognizes that meaningful public participation cannot be a one-time process and requires the development of an ongoing relationship between the Department of Justice, Canadians and the many justice and non-justice sector stakeholders. The Department also commits to adequately resource its public participation activities to ensure that these are tailored to the purpose and desired outcomes, the participants involved, and the time available.

As a strategic policy development tool, public participation processes are best suited when applied to the entire policy cycle from problem identification to option selection and, in some cases, implementation. As such, public participation is best used where the issues and timeframes permit the early inclusion of citizens in the policy development process – preceding, where possible, the selection of options and decisions concerning plans for action.

Public participation involves a two-way communication process, in which all parties listen and contribute views, information and ideas, in a process of critical reflection and dialogue. Both provide opportunities for genuine listening, respectful of all views and opinions.

These statements and guidelines supplement the Government of Canada's Policy Statement that are part of its continuing commitment to involve citizens in government decision-making. The Government of Canada's policy and guidelines apply to all federal departments and agencies

As outlined in the Department's Strategic Plan, the Department is committed to participatory processes based upon openness, trust, integrity, mutual respect,

⁷ Department of Justice, Strategic Plan 2001-2005, p. 4.

transparency, inclusiveness and co-operation thus providing the Department with a direct link to the ideas and concerns of Canadians. Mutual trust and understanding, built up over time through a continuing process of involvement, discussion, decision and follow-through (feedback), are the cornerstones of successful public participation processes.

CONTEXT AND PUBLIC ENVIRONMENT⁸

The Department of Justice has a long history of successfully consulting citizens on its policy, program and legislative initiatives, the context in which participatory processes are organized has changed significantly in the past decade. Democracy in its many forms, including voting, participating in intermediary organizations (also termed stakeholder groups and voluntary associations), and communicating with elected representatives, Ministers and government officials, remains the principal means by which Canadians participate in the development of policies, programs and legislation. However, in recent years various forces have fundamentally transformed Canada's social, cultural and economic landscape. As Canada's population becomes more diverse, reflecting its multicultural make-up, and also better educated, informed and equipped to participate in shaping the policies that affect them, governments need to adapt their means of involving Canadians in the policy-making process.

Canadians want to engage in the process of discussing the values that underlie policy options and the tradeoffs and choices that must be made by decision-makers, without wishing to impose their views on the leaders they have elected to represent them. Citizens, stakeholders, and interest groups are increasingly unwilling to accept the devolution of public responsibilities to lower levels of government and/or individual citizens without the concomitant devolution of responsibility for defining and advancing public policy issues to those same levels.

While Canadians acknowledge that traditional stakeholder groups, such as the institutional and professional bodies, industry and business associations, as well as the voluntary sector have roles to play, they also believe that citizens can also participate in the process as individuals – independently from these groups.

The federal government has responded by committing itself to enhancing the opportunities for input on the part of the general public, interest groups and stakeholders. This commitment was noted in two recent Speeches from the Throne that emphasized the need to instil a stronger consultative culture across the federal government. A critical part of this new focus is the Social Union Framework Agreement (SUFA). The SUFA calls on the federal government and

⁸ Adapted from Treasury Board Secretariat (2001), Policy Statement on Consulting and Engaging Canadians (Working Draft).

provincial governments to “ensure appropriate opportunities for Canadians to have meaningful input into social priorities and reviewing outcomes.”

It is possible to conclude that the current trend towards greater interactive involvement of citizens in policy making is both unavoidable, and highly desirable. Indeed, where citizens are fully engaged in the policy process, their sense of empowerment is increased, their capacity to act as democratic citizens is enhanced, and the policy options available to government actively reflect the emotive and factual motivations of their constituents. The result: better citizens and better policy.

Public participation is, however, not a “free for all” or a panacea. Public participation efforts must be responsive to the needs of the public, consulting agency and the subject of the public participation. It is critical, therefore, to recognize that each public participation process requires a flexible approach which is appropriate to those needs. One size does not fit all.

DEFINITIONS⁹

Public participation has several facets and dimensions ranging from public information and education through to partnerships. In terms of the departmental commitment, public participation primarily refers to processes of public consultation and citizen engagement.

Consultation refers to processes through which governments seek the views of individuals or groups on policies, programs or services that affect them directly or in which they have a significant interest. Consultation can occur at various points in the policy development process and can be used to help frame an issue, identify or assess options and evaluate existing policies. Consultation includes processes such as public meetings, advisory committees, polling and focus groups.

Citizen engagement refers to processes through which governments seek to encourage deliberation, reflection and learning on issues at preliminary stages of a policy process, often when the focus is more on the values and principles that will frame the way an issue is considered. Citizen engagement approaches include study circles, deliberative polling, citizen juries, and public dialogue.

Citizen engagement differs qualitatively from consultation in a number of ways, including: an emphasis on in-depth deliberation and dialogue, the focus on

⁹ Drawn from Treasury Board Secretariat (2001), Policy Statement on Consulting and Engaging Canadians (Working Draft).

finding common ground, greater time commitments and its potential to build civic capacity. In this regard, citizen engagement processes should be used selectively.

Many public participation processes will involve elements of both consultation as well as citizen engagement mechanisms.

Operationally, public participation requires the allocation of financial and staff resources adequate to fulfil the commitments outlined in this policy statement.

ROLES AND RESPONSIBILITIES¹⁰

Building a culture of public participation in the Department of Justice is a shared responsibility. Within this context, a variety of players have a direct or catalytic role in supporting and implementing this policy statement and guidelines:

The **Minister of Justice and Attorney General of Canada** often in consultation with Members of Parliament and Senators, provides leadership by setting policy direction, fostering and participating in public participation initiatives and in considering the outcomes of these processes when making decisions. As a member of Cabinet and Member of Parliament, the Minister of Justice and Attorney General of Canada uses the results of public participation processes to make decisions on policy and legislative directions affecting the justice sector.

The **Deputy Minister** is responsible for ensuring that public participation is an integral part of the design, delivery, and evaluation of public policies, programs, and services. The Deputy is accountable to the Minister and the Clerk of the Privy Council for the effective implementation of such processes in the department as reflected in the establishment of clear lines of responsibility and accountability; the allocation of adequate resources; provision of training and professional development; and, given the increasingly cross-cutting nature of public policy issues, providing support to horizontal processes. The Deputy Minister is also responsible for ensuring that the outcomes of departmental public participation processes are integrated into the decision-making processes, and that these processes are evaluated.

¹⁰ Adapted from Treasury Board Secretariat (2001), Policy Statement on Consulting and Engaging Canadians (Working Draft).

Sector, Branch and Divisional Heads have a key responsibility for determining which issues require public participation processes, as well as a responsibility for the planning, undertaking, and evaluating public participation initiatives. They are further responsible for ensuring collaboration in this area, both within the Department and, where required, between federal departments and agencies and other levels of government.

In promoting a consultative culture in the department, Sector, Branch and Divisional Heads must ensure that public participation skills are considered in staffing and performance evaluations.

In addition, the following have a particular functional responsibility to support and assist the Department's public participation activities:

Consultations Unit, Intergovernmental and External Relations Division is responsible for assisting departmental public participation processes through the provision of advice and support for the development of consultation plans and strategies and logistical support. The Unit is also responsible for ensuring that adequate training opportunities are available for departmental officials and for maintaining a database of key justice sector stakeholders and contacts.

Regional Office Heads (including the regional offices of the National Crime Prevention Centre) may be called to assist in the execution of public participation initiatives in the regions, and when appropriate, suggest how collaboration could be achieved with other levels of government within their region.

Communications and Executive Services Branch is responsible for the provision of communications support for departmental public participation activities that include strategic communications advice and planning, the development of public information materials, and environmental scanning and analysis.

Evaluation Division is responsible for carrying out independent assessments of the Department's public participation processes and providing advice and assistance to managers on self-evaluations, performance measures and results reporting relating to these public participation activities. The Division is also responsible for ensuring adherence to the Treasury Board's guidelines for evaluating public participation processes.

Other Sectors or Divisions may assume particular roles and responsibilities at particular times.

Government-wide, the **Privy Council Office (PCO)** and the **Treasury Board Secretariat (TBS)** and **Canadian Centre for Management Development (CCMD)** have been given particular responsibilities to promote and support a consultative culture across the federal government and in the public service.

PUBLIC PARTICIPATION GUIDELINES¹¹

Operational considerations

Costs to participants:

In planning public participation processes, it is important to be aware that individuals or groups may incur costs arising from their participation. In selecting the appropriate method of participation, these costs must be weighed against the intended purpose and outcome. Where relevant to achieving the goals and objectives of the public participation, Justice Canada will consider whether cost to participants is an impediment to participation. In such circumstances, the Department may make provisions to defray some or all of these costs, subject to the relevant Treasury Board Secretariat guidelines.

Providing time for stakeholder participation:

In planning public participation processes it is important to recognize the resource constraints which affect citizen or stakeholder representatives ability to reply to departmental requests for input. As a consequence, participants are to be given sufficient time to adequately consider, internally consult, and respond to the consultation within time frames which strike a reasonable balance between the Department's needs or exigent circumstances to get something accomplished expeditiously and the need for participants to be involved in a meaningful way.

Sharing knowledge and Information:

Unequal access to information, or inaccurate assumptions about the knowledge base of participants can negatively impact on the effectiveness of a public participation exercise. As a result, Justice Canada shall endeavour to provide complete and factual background information material to all participants equally.

In recognition of the above noted operational considerations the Department of Justice shall ensure, wherever possible, that the following guidelines are respected:

Approval and Planning:

¹¹ These guidelines supplement the relevant Treasury Board Secretariat guidelines and policies. For additional information, please refer to the Department of Justice Public Participation Guide.

1. All formal public participation activities shall require the approval of the relevant departmental authority;
2. Policy plans and Memoranda to Cabinet should, where relevant, include a section addressing what public participation activities are envisaged and, if any, a summary plan included;
3. Public participation plans shall be submitted for comment and approval by the relevant departmental authority;

General Operational Guidelines:

1. Ensure that public participation activities are inclusive of the broad spectrum of Canadians and not limited to traditional justice sector stakeholders;
2. Provide to participants a clear context for which public participation is undertaken and decisions will be made. Ensure that participants are informed of existing or potential linkages with other policy initiatives, issues or public participation activities;
3. Ensure that financial and staff resources correspond to the nature and scope of the public participation. Where resources are limited this should be communicated;
4. Ensure that sufficient staff resources are available to carry out the process and trained adequately for this task;
5. Ensure that clear and reasonable timelines are established for participant input and comment and that these timelines are communicated;
6. Ensure that the public participation device used is appropriate to the nature of the issue, the target groups affected and the staff and resources available;
7. Ensure that feedback to participants is built into the process and that participants have opportunities to bring forward additional comment or input as a result of this feedback;
8. Ensure that an evaluation framework is developed and built into the public participation plan;
9. Ensure that participants, affected groups, and stakeholders are informed of the results of the policy process and how their input was used in devising the policy;

10. Ensure that public participation processes adhere to the relevant legislation, regulations, policies or guidelines affecting the rights and responsibilities of individual Canadians, departmental or other officials, or other participants.

PRINCIPLES¹²

Public participation processes undertaken by the Department of Justice should respect the following guiding principles:

- Commitment:** all Sectors, Branches and Divisions share in Justice Canada's commitment to the process of public participation and its integration into the policy-making process;
- Clarity:** Justice Canada shall ensure that a clear mutual understanding of the objectives, purpose and process of participation and feedback exists and that the parameters of the public participation activity are established in advance and communicated to participants;
- Trust:** Justice Canada shall ensure that open lines of communication and working relationships are established and respected;
- Inclusiveness:** Justice Canada shall ensure that the participation of the broadest possible range of groups or individuals who have an interest in or who may be affected by a government decision is encouraged;
- Accessibility:** Justice Canada shall ensure that appropriate measures to ensure that all Canadians, regardless of their linguistic, regional, ethno-cultural or socio-economic background or physical capabilities, are able to participate;
- Mutual respect:** Justice Canada shall ensure that departmental officials and stakeholders share joint responsibility and commitment to ensuring respect for the legitimacy and views of all participants;
- Responsibility:** Justice Canada shall ensure that the Department and participants share in the responsibility for ensuring that

¹² Adapted from Treasury Board Secretariat (2001), Policy Statement on Consulting and Engaging Canadians (Working Draft).

public participation processes are held in good faith and that adequate resources and time are allocated to the process;

Accountability: Justice Canada shall ensure that feedback on the outcomes of public participation processes is provided to participants and demonstrate how these outcomes have been considered in the policy-making process;

Co-operation: Justice Canada shall ensure that provincial and territorial governments, as well as other federal departments and agencies, are involved where relevant and practicable, consistent with the principles set out in the Social Union Framework Agreement.

CABINET DIRECTIVE ON LAW-MAKING

In March 1999, Cabinet issued a directive on law-making in relation to consultations where draft legislation itself would be part of the consultation documents. This directive outlines the process to be used to obtain authority to consult on what is otherwise considered to be a Cabinet confidence (i. e. a bill before tabling). If a draft bill is intended to be used in consultation before it is tabled in Parliament, the MC should state that intention and ask for Cabinet's agreement. In the case of a draft bill involving changes to the machinery of government, the approval to consult should generally be sought in a letter to the Prime Minister from the sponsoring Minister.

PUBLIC PARTICIPATION WITH OTHER DEPARTMENTS AND GOVERNMENTS

Where possible, Justice Canada will make every effort to co-ordinate with other federal departments and agencies and, to the extent feasible, with provincial and territorial governments, to address the major issues that impact on Canada's system of justice through:

1. Joint public participation when topics are related;
2. Planning public participation activities so that individuals and organizations affected or interested in justice issues are not forced to address several requests for participation during the same time period;
3. Ensure that, wherever possible, Justice Canada's Public Participation Policy and Guidelines are applied to joint processes.

As a joint partner in a public participation process, or as a participant, Justice Canada will ensure that adherence to the basic principles of commitment, clarity, trust, inclusiveness, accessibility, mutual respect, responsibility, accountability, and co-operation are maintained.

PUBLIC PARTICIPATION WITH THE SOLICITOR GENERAL¹³

The Department of Justice has at different times been involved in the public participation activities of most federal departments and agencies. It is, however, with the Department of the Solicitor General that these activities have mostly been undertaken. As a result of their respective mandates the two departments share many of the issues of interest. For this reason, it is expeditious to work in partnership to develop a policy to engage Canadians so that duplication and overlap is avoided and to ensure the best use of resources.

The Department of the Solicitor General is responsible for protecting Canadians and helping to maintain Canada as a peaceful and safe society. The Department's role encompasses policing and law enforcement, national security, corrections and conditional release.

In all public participation exercises jointly conducted with the Department of the Solicitor General of Canada, Justice Canada will ensure that adherence to the basic principles of commitment, clarity, trust, inclusiveness, accessibility, mutual respect, responsibility, accountability and co-operation are maintained.

When the Department of Justice engages in joint exercises with the Department of the Solicitor General, the conflicting departmental positions on policy will be made clear to participants to enable them to make informed decisions. The aim of the process will not be to choose one course of action over another, but to simply find common ground and suggest a workable solution.

In practical terms, communication between the Department of Justice and the Department of the Solicitor General will be ongoing. It must also be recognized that there will be instances when one department or the other will have issues for public participation which are of no interest to the other.

¹³ Including the Agencies reporting to the Solicitor General of Canada: Royal Canadian Mounted Police; Correctional Services of Canada; Parole Board and, Canadian Security and Intelligence Service.