

RESPONSE TO 19-3-

Experience shows that cases take several years to proceed through all court levels. It is difficult to forecast which cases will reach the Supreme Court level. As well, cases evolve as they move through the courts and at each level the Panels must ensure that the cases still meet the funding criteria. However, the memorandum of agreement will invite the panels to give prior consideration to cases which have already been funded by the Program at a given court level.

RESPONSE TO 19-4-

The Department of Justice's approach to litigation under section 15 brings into play the dual roles of the Minister of Justice and the Attorney General of Canada in the administration of justice in Canada. The Attorney General is responsible for the actual application of the law, represents the Crown in all litigation where rights of a public nature of concern to federal government are in issue, and must at all time uphold the rule of law. Equally, the Minister of Justice is concerned with the policy considerations underlying the law and must ensure that federal laws are fair and in compliance with our constitutional principles.

Moreover, concerned government departments and central agencies must be consulted on litigation decisions, particularly where the outcome of a case will impact not only on the government program in issue in the case, but also on other government programs. This impact can range from the legal/precedential value of the case, to the fiscal/financial burden that can result from a particular outcome. The legal, social, economic and policy concerns of other departments and agencies in relation to a particular section 15 case can be of crucial importance to the Department's decisions governing the case, including the determination of whether a case should be appealed. The Department's litigation strategy in a particular section 15 case can also be governed by the specific facts and circumstances of the case. These influencing factors are not of course peculiar to section 15 litigation, but are often part and parcel of the litigation process generally.