

2 - OUR SPECIFIC LEGAL ENVIRONMENT

2.1 Developments to look for in 1992

CHARTER - TRADE

The trend of increased litigation against government departments based on alleged contravention of the Canadian Charter of Rights and Freedoms will likely continue in 1992. For External Affairs and International Trade Canada ("EAITC"), there are two important cases in which an appeal will be heard in 1992. The first is R v. Martin in which an accused, charged with exporting polar bear hides from Canada without an export permit, contrary to the Export and Import Permits Act ("EIPA"), is arguing that the relevant offence section of that Act is contrary to the Charter. This argument succeeded in the lower court but was rejected in the Ontario Court of Appeal. The accused has appealed to the Supreme Court of Canada; should the offence section be struck down as invalid, there would be no basis for laying charges under the EIPA and controls of exports and imports under the Act would be lost. This "open border" situation would continue until corrective amendments to the legislation are passed.

CHARTER - GENERAL

The second case is Ruparel in which the Federal Court - Appeal Division may determine that the Charter may be invoked before Canadian courts by non-Canadians residing outside of Canada. The repercussions for EAITC of such a determination could be significant; for eg., it would increase the range of legal arguments available to unsuccessful visa applicants, it may also impact on the policies and specific actions of EAITC in respect of locally engaged staff.

PERSONNEL MATTERS

Implementation of the recommendations of PS 2000 will have an impact on every government department, generally in respect of government operations and especially in respect of personnel matters. The proposed Public Service Reform Act was introduced in parliament in 1991 and with or without amendments, may become law in 1992.

A proposed amendment to the Canadian Human Rights Act, resulting from a recent Ontario court decision, will add "sexual orientation" to the list of proscribed grounds of discrimination in section 3 of that Act and will have to be considered in respect of EAITC's posting and other policies.