

1.2 Cabinet Support System

On June 21, 1991, the Clerk of the Privy Council wrote all Deputy Ministers to institute a systematic approach to the analysis of the Constitutional implications of new policy proposals. The system is designed to ensure that Charter and other constitutional implications of new policy proposals are identified and assessed before they are considered by Ministers in Cabinet committee.

Under the new system, analyses of the significant constitutional (including Charter) implications of proposals to Cabinet are to be undertaken and included in Memoranda to Cabinet. The analyses are to include an assessment of the risk of successful challenge in the courts, the impact of an adverse decision, and possible costs of litigation. Mr. Tellier's letter indicated that in the many cases where the Charter and other constitutional implications of the proposals are insignificant, a statement to this effect in the text of the Memorandum to Cabinet would suffice.

Legal Services Units are ready to assist departments in giving effect to the new system and in preparing these analyses. They will be supported by the appropriate units in Justice Headquarters, including the Human Rights Law Section.

In order that Legal Services Units may assist departments most effectively and identify significant constitutional implications in a timely manner (i.e. in a way that avoid major surprises after decisions are taken) Mr. Tellier's letter noted that it is important that departments involve their legal advisors early in the policy development process, to the extent that this is not already the case. The job of Legal Services is not to intrude upon the policy responsibilities of their clients but to ensure that as their legal advisors, they are as supportive of client objectives as the law and sound legal policy will allow.

The new system is a recognition of the increasingly policy-oriented nature of court decisions in the Charter era. Just as the role of law in government policy is increasing, so too is the role of policy in government law. The Department of Justice is determined to reflect these two tendencies in all its work, as illustrated by its role under the new system.