



**CANADA'S LEGAL TEAM**  
**L'ÉQUIPE JURIDIQUE DU CANADA**

# Demystifying Legislation: Drafting and Research

## Part 1: Government-sponsored Legislation

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# 1. Introduction

- A behind-the-scenes look at how Government-sponsored legislation is prepared
- An introduction to the people who prepare it



# 1. Introduction

- Government-sponsored legislation: legislation introduced in Parliament by a representative of the executive branch (the “Government”)
- In a parliamentary democracy, the decision-makers of the executive branch are also members of the legislature
- For our purposes: the Government means Cabinet, supported by the non-partisan public service



# 1. Introduction

- Majority of legislation passed by Parliament is Government-sponsored legislation

## – 2014:

- Government-sponsored statutes (23): **2,237 pages**
- Other statutes (13): **69 pages**

## – 2015:

- Government-sponsored statutes (26): **1,003 pages**
- Other statutes (11): **61 pages**

## – 2016:

- Government-sponsored statutes (14): **785 pages**
- Other statutes (0): **0 pages**



# 1. Introduction

- Useful resource:

*Cabinet Directive on Law-Making, part of the Guide to Making Federal Acts and Regulations, 2<sup>nd</sup> ed.*

[www.pco.gc.ca/docs/information/publications/legislation/pdf-eng.pdf](http://www.pco.gc.ca/docs/information/publications/legislation/pdf-eng.pdf)

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## **Guide to Making Federal Acts and Regulations**

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## 2. Who We Are

- The Main Players in drafting the text of Government-sponsored bills:
  - Cabinet and Ministers' offices
  - Departmental Instructing Officers
  - Department of Justice (DOJ):
    - Legislative counsel
    - Bi-jural counsel
    - Other DOJ counsel – departmental or specialist
    - Jurilinguists
    - Legistic Revisors



## 2. Who We Are

- All Government-sponsored bills are prepared by DOJ
- All Government regulations are examined (and the vast majority are prepared) by DOJ
- DOJ's Legislative Services Branch is the group charged with preparing/examining legislative texts





## 2. Who We Are

- Legislative counsel (including regulations counsel):
  - Lawyers who transform Government policy into legislative text
    - provide legal advice on the wording and structuring to give legal effect to the policy
  - Manage legal risks with other DOJ counsel
  - “Guardians of the statute-book”
  - Functional specialists, but subject-matter generalists (exception: legislative counsel working on tax bills)

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## 2. Who We Are

- Bi-jural counsel:
  - expert counsel in comparative law – common law vs. civil law
  - review every bill to ensure it addresses common law in English and in French and civil law in English and in French
  - prepare the Federal Law – Civil Law Harmonization bills



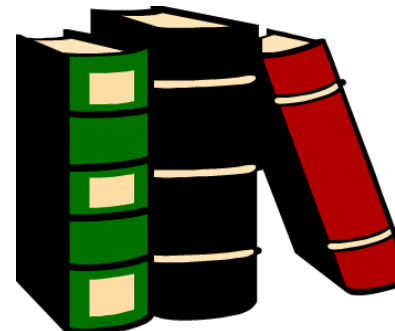
## 2. Who We Are

- Other DOJ counsel:
  - Counsel working in departmental legal service units (e.g., Public Safety Legal Services Unit)
  - Specialist counsel – *Charter* law, other constitutional law, Aboriginal law, commercial law, information and privacy law ...



## 2. Who We Are

- Jurilinguists:
  - ensure that highest possible quality of language used in legislation – style, terminology, phraseology
  - ensure that the English and French versions are parallel in meaning





## 2. Who We Are

- Legistic Revisors:
  - revise legislative texts
  - verify accuracy of text, including cross-references and historical notes
  - oversee printing of Government bills before introduction
  - publish the consolidated and annual statutes on the Laws Website

- ([laws-lois.justice.gc.ca](http://laws-lois.justice.gc.ca))





### 3. What We Do

- Transform policy into legislative text that is
  - bilingual
    - *Constitution Act, 1867*, s. 133; *Constitution Act, 1982*, s. 18(1)
  - bi-jural
    - DOJ's [Policy on Legislative Bijuralism](#)
  - consistent with established drafting standards
    - [Drafting Conventions of the Uniform Law Conference of Canada](#)

“The first obligation of a drafter is to be accurate; the second is to be clear; the third is to be concise.”

- R. Sullivan, *Sullivan on the Construction of Statutes*, 5<sup>th</sup> ed., at 203



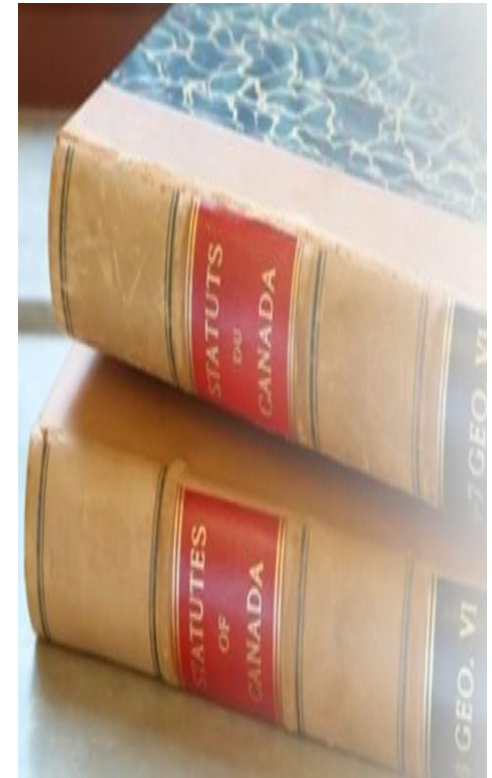
### 3. What We Do

- Legislation Section prepares
  - bills to enact new Acts (to be added to consolidated Acts)
  - bills to enact amending Acts (stay as annual statutes)
  - bills that are hybrid – amending Acts with embedded Acts
  - Government motions to be introduced during the parliamentary process



### 3. What We Do

- Components of Legislation
  - Long title
  - Short title
  - Interpretation (definitions) and Application
  - Substantive Provisions
  - Offences
  - Regulation-enabling authorities
  - Consequential Amendments
  - Transitional Provisions
  - Coordinating Amendments
  - Commencement (Coming into Force) Provisions

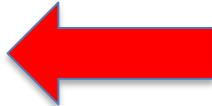
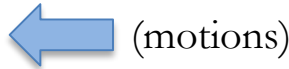






### 3. What We Do

- Overview of the Legislative Process

1. Policy development
2. Presentation of policy to Cabinet
3. **Preparation of bill** 
4. Cabinet approval of bill
5. Consideration of bill in Parliament  (motions)
6. Royal assent and coming into force of Act



### 3. What We Do

- Overview of parliamentary process (example):

1. Introduction into House of Commons and First Reading

2. Second Reading

3. Committee Stage ← (motions)

4. Report Stage ← (motions)

5. Third Reading

6. First Reading in the Senate

7. Second Reading

8. Committee Stage ← (motions)

9. Report Stage

10. Third Reading ← (motions)

11. Royal Assent





## 4. How We Do It

- *Co-drafting*, and not translating, since the 1980s
- Legislative counsel work in pairs – one drafting in English, one drafting in French
- Both receive the same instructions at the same time, and prepare their draft in light of the other version
- Bilingual legislation means better legislation



## 4. How We Do It

- The “Drafting Shuttle”

- the iterative process through which we meet in the *drafting room* with instructing officers and produce successive drafts of the bill
- Each draft incorporates the latest comments received from
  - instructing officers
  - other departmental officials
  - other departments
  - subject-matter experts
  - non-governmental stakeholders, if outside consultations were approved by Cabinet
- More detailed instructions often given in drafting room to supplement Cabinet’s instructions
- Questions on the meaning and scope of Cabinet’s instructions may arise



## 4. How We Do It – The Drafting Room





## 5. Conclusion

- All Government officials strive every day to make legislation as clear, coherent and transparent as possible
- We hope this presentation provides some idea of the processes the Government has put in place to achieve this goal
- Questions?