

ANNEXE : DISPOSITION DACTYLOGRAPHIQUE

Les instructions suivantes s'appliquent aux textes réglementaires*.

DÉCRETS ET FORMULES D'ÉDICTION

Ne pas employer le papier portant l'en-tête du Conseil privé.

Dactylographier les décrets et les formules d'édition à double interligne.

Mettre la première ligne en retrait de dix espaces et commencer les autres lignes à la marge.

Exemple :

Sur recommandation du ministre de l'Agriculture et en vertu de l'article X de la Loi sur la stabilisation des prix agricoles, il plaît à Son Excellence le Gouverneur général en conseil de modifier, conformément à l'annexe ci-après, le Règlement sur la stabilisation des prix des abricots, C.R.C., ch. 55.

REMARQUE : Dans le décret ou la formule d'édition, les titres des lois et des règlements ne sont pas en italique.

RÈGLEMENTS

Centrer les intertitres et utiliser le caractère applicable.

Pour la disposition des articles, paragraphes, alinéas, sous-alinéas, divisions, subdivisions, etc., suivre les modèles suivants :

* Consulter les *Instructions sur la disposition dactylographique des règlements soumis au Bureau du Conseil privé (Justice)*, publiées en février 1988, pour une description plus détaillée de la disposition du texte.

ANNEXE : DISPOSITION DACTYLOGRAPHIQUE (suite)

Nouveau règlement

Exemple :

RÈGLEMENT CONCERNANT LA DISPOSITION DES TEXTES
POUR TRANSMISSION À LA SECTION DU BUREAU
DU CONSEIL PRIVÉ (JUSTICE)

Titre abrégé

1. *Règlement sur la disposition des textes (section du Bureau du Conseil privé (Justice)).*

Définitions

2. Les définitions qui suivent s'appliquent au présent règlement.

«retrait» Renforcement au début de chaque ligne de tout règlement. (*terme anglais*)

«seconde définition» (*terme anglais*)

La première ligne d'une **définition** commence par un mot entre guillemets à la marge, et chaque ligne qui suit commence vis-à-vis de la deuxième lettre du premier mot de la première ligne. Le retrait applicable aux alinéas, sous-alinéas, etc., est compté à partir de la deuxième ligne.

La première ligne d'un **article** et d'un **paragraphe** commence par un chiffre (2. ou (2) ou 2. (1)) et est en retrait de deux espaces; chaque ligne qui suit commence à la marge.

La première ligne d'un **alinéa** commence par *a)*, *b)*, etc., et est en retrait de deux espaces de la marge; chaque ligne qui suit s'aligne à partir de la première ligne.

La première ligne d'un **sous-alinéa** commence par *(i)*, *(ii)*, etc., et est en retrait de quatre espaces de la marge; chaque ligne qui suit s'aligne à partir de la première ligne.

La première ligne d'une **division** commence par *(A)*, *(B)*, etc., et est en retrait de six espaces de la marge; chaque ligne qui suit s'aligne à partir de la première ligne.

La première ligne d'une **subdivision** commence par *(I)*, *(II)*, etc., et est en retrait de huit espaces de la marge; chaque ligne qui suit s'aligne à partir de la première ligne.

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ANNEXE : DISPOSITION DACTYLOGRAPHIQUE (*fin*)

Modification d'un règlement

Exemple :

ANNEXE

1. L'article 2 du *Règlement sur la disposition des textes à l'intention des nouveaux employés* est abrogé et remplacé par ce qui suit :

«2. Le présent article est entre guillemets, la première ligne est en retrait de quatre espaces et les lignes suivantes sont en retrait de deux espaces et se continue ainsi :

a) dans le présent alinéa, toutes les lignes sont en retrait de quatre espaces :

(i) dans le présent sous-alinéa, toutes les lignes sont en retrait de six espaces :

(A) dans la présente division, toutes les lignes sont en retrait de huit espaces :

(I) dans la présente subdivision, toutes les lignes sont en retrait de dix espaces,»

NOTE EXPLICATIVE

La note explicative ne figure que dans les cas où le règlement n'est pas accompagné d'un résumé de l'étude d'impact de la réglementation.

Exemple :

NOTE EXPLICATIVE

(La présente note ne fait pas partie du règlement [du décret, de l'ordonnance, etc.].)

La première ligne du texte de la note est en retrait de deux espaces et les lignes suivantes commencent toutes à la marge, sauf si la note comporte des alinéas. Ceux-ci sont en retrait de deux espaces.

REMARQUE : Le titre «NOTE EXPLICATIVE» est inscrit au centre, en majuscules et n'est pas en italique.

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REMARQUES :

1. Les titres indiqués [---]
n'ont pas d'équivalent dans
la version anglaise.
2. Les titres suivants de la
version anglaise n'ont pas
d'équivalent dans la
version française :

Dates
"Due to"
Ellipses
"Greater of X and Y"
Proviso

**Pages 265 to / à 551
are withheld pursuant to section
sont retenues en vertu de l'article**

23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

**Pages 552 to / à 838
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sont retenues en vertu de l'article**

23

**of the Access to Information Act
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Federal Regulations Manual

Drafting and Advisory
Services Group

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Department of Justice
Canada

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68(a)

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Manuel de la réglementation fédérale

Groupe des services
rédactionnels et consultati

Manual can be located at the following Internet site: <http://www.justice.gc.ca/eng/dept-min/pub/legis/rm-mr/>



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23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Federal Regulations Manual

Drafting and Advisory
Services Group

Également disponible en français sous le titre Manuel de la réglementation fédérale

© Minister of Public Works and Government Services Canada 1998
Printed in Canada

Canadian Cataloguing in Publication Data

Canada. Dept. of Justice. Legislative Services Branch. Regulations Section
Federal Regulations Manual

Issued also in French under title: Manuel de la réglementation fédérale.

Includes bibliographical references.

ISBN 0-662-26392-8

Cat. no. BT22-57/1998E

Revised version (Part 2 in 2003, Appendix B to Part 2 in 2011, and Part 4 in 2008, 2010, 2011 and 2012)

1. Law — Canada. 2. Administrative regulation drafting — Canada. 3. Delegated legislation — Canada. 4. Legal composition. I. Title.

KE1589.C32 1998 808'.066342 C98-900031-1

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* * * * *

INTRODUCTION

This manual is intended for everyone involved to a greater or lesser extent in developing regulatory texts within the framework of federal legislation, whether this involvement consists in developing policy, drafting a text, examining a text as a lawyer of a regulatory department or agency, or conducting the final review. It covers all aspects of the process whereby federal regulations are developed.

The manual has been prepared by members of the Regulations Section, Legislative Services Branch, Department of Justice. In particular, we would like to acknowledge the contribution made by the legislative editors and jurilinguistic revisors of the Section in sharing their linguistic and drafting expertise with respect to regulations.

The manual is divided into five parts:

- PART 1:** Federal Regulations and the Regulations Section — An Overview
- PART 2:** The Regulatory Process
- PART 3:** How to Give Drafting Instructions
- PART 4:** Drafting and Format Rules
- PART 5:** Developing Regulations: The Basic Steps and the Plain Language Approach

Part 1 discusses federal regulation-making in the context of federal legislation, and explains the role played by the Regulations Section in this regard. It also lists the services that the Section provides to regulatory departments and agencies.

Part 2 discusses the regulatory process as it was established by the *Statutory Instruments Act*. This Act, which came into force in 1972, is the framework legislation that makes the examination, registration and publication of regulations mandatory. The various stages of the process are reviewed, and practical examples and explanations of exceptions are provided.

The information in Part 3 is for regulatory departments and agencies that choose to give instructions to Regulations Section drafters instead of drafting regulations themselves. On the basis of such instructions, drafters can draw up texts that will have the desired effect.

For anyone drafting a regulation or reviewing it at any stage in the process, Part 4 is a practical tool that sets out the applicable federal drafting conventions. Headings are listed in alphabetical order for ease of consultation, and a number of examples are given.

Part 5 consists of a text that was written in co-operation with the Regulatory Affairs Division of Treasury Board as part of a pilot project on plain language. It highlights all the phases in the development of a regulation, from its conception to its making. It also

INTRODUCTION

provides information on usability tests and on new trends in plain language, and references to more specialized texts.

We hope you will find the manual to be a most helpful tool, and we invite you to send your comments and suggestions to the following address:

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275 Sparks Street
Ottawa, Ontario
K1A 0H8

Telephone: (613) 954-5786
Fax: (613) 952-4080



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PART 1

FEDERAL REGULATIONS AND THE REGULATIONS SECTION — AN OVERVIEW

1. INTRODUCTION

Legislation in Canada consists of statutes and regulations, as interpreted by the courts. For Canadian citizens, statutes and regulations have the same effect: citizens must comply with both and are liable to penalties if they do not. In the event of a court challenge, the same rules of interpretation apply to both regulations and statutes.

To understand the importance of federal regulations, we must consider their legal framework, the reasons for the requirements of the regulatory process and the parties involved in this process. After noting the proliferation of regulations, we will see how the Regulations Section has adapted its services to better carry out its mandate, which is to ensure that federal regulations are legally sound and that their draftsmanship, in both official languages, is of the highest quality. At the same time, the Regulations Section must take into account the needs and roles of regulatory departments and agencies as well as its own.

2. LEGAL FRAMEWORK FOR REGULATIONS

Federal statutes are the expression of policies established by Parliament, whose members have been elected by the people to govern. They create standards of general application with binding legal effect on all Canadians.

The matters to which elected representatives must turn their attention are so numerous and so specialized that, for obvious reasons of efficiency, members of Parliament must delegate to the executive branch the power to deal with these matters. Thus Parliament, whenever it considers it necessary, delegates to the executive the legislative power to complete, through regulations, the policies set out in a statute or to establish, also through regulations, policies that are within the scope of the statute. Just as Parliament does through the enactment of bills, the executive, when exercising the regulatory power delegated to it by Parliament, creates general standards that have binding legal effect.

Although the legislative power exercised by the executive is of the same nature as that exercised by Parliament, its scope is different. Parliament's legislative power is an independent power, constrained only by the Constitution, in particular, the *Canadian*

Charter of Rights and Freedoms, whereas the executive, when exercising its regulation-making power, must also observe the limits established by the enabling Act.

3. FORMALITIES OF THE REGULATORY PROCESS

The creation of laws, whether by statutes or regulations, is subject to certain requirements of the Canadian Constitution, which is based on the fundamental principle of the “rule of law”. The two ideas that define this principle are, first, that everyone is subject to the law and must obey it and, second, that the law must be such that it can serve as a guide to those it governs. Acts and regulations must be written and communicated in such a way that members of the public clearly know what their rights and obligations are, failing which these rules risk being declared unenforceable by the courts. Regulations, furthermore, must stay within the legal framework of the authority delegated by Parliament.

In the late 1960s, the issue of creating rules of law by means of regulations was the subject of a study conducted by the Special Committee on Statutory Instruments, which tabled its report (known as the MacGuigan Report) in 1969. Its recommendations sought chiefly to reassure Canadians that federal regulations would respect the principle of the rule of law.

Several of the recommendations in the MacGuigan Report were enshrined in the *Statutory Instruments Act* of 1972. This Act put in place the formalities of the process for creating rules of law through regulations, that is, the examination by the Department of Justice of the legality and draftsmanship of proposed regulations, the registration of regulations by the Clerk of the Privy Council, their publication in the *Canada Gazette*, and their examination by the Standing Joint Committee for the Scrutiny of Regulations.

4. STAKEHOLDERS

After the *Statutory Instruments Act* came into force, the groups responsible for carrying out the formalities of the regulatory process took steps to ensure that they could execute their mandate under the Act:

- The Department of Justice established the Privy Council Office Section, now known as the Regulations Section, whose role is to review the legality and draftsmanship of all proposed regulations.
- The Office of the Clerk of the Privy Council appointed a registrar to register regulations and established a team of editors to coordinate their publication in the *Canada Gazette*.
- The Standing Joint Committee for the Scrutiny of Regulations hired legal advisers to assist in the execution of its mandate, namely, the examination of the legality and draftsmanship of regulations after their publication in the *Canada Gazette*.

5. PROLIFERATION OF REGULATIONS

In recent years the government's regulatory activity has grown by leaps and bounds. Prior to the 1970s, most rules of law were contained in the statutes, while regulations only set out the details of legislative policies. Since then, as was observed by the House of Commons Standing Committee on Finance in 1993, “[t]he tendency to enact ‘framework’ or ‘shell’ legislation, leaving not only details but substantive provisions and policy to regulations, has increased.”

There are, at the federal level alone, approximately 3,000 regulations comprising over 30,000 pages, compared with some 450 statutes comprising about 13,000 pages. Furthermore, departments and agencies submit to the Regulations Section on average about 1,000 draft regulations each year, whereas Parliament enacts about 80 bills during the same period. The executive thus plays a major role in setting rules of law that apply to Canadian citizens.

The proliferation of regulations reflects the practical reality that creating rules of law through regulations offers greater flexibility than creating them through statutes. Because the regulatory process is not as lengthy or as formal as the legislative process, it allows rules of law to be changed much more quickly, and this has advantages both for Canadian citizens and for the government.

6. THE REGULATIONS SECTION AND ITS MANDATE

It is the mandate of the Regulations Section to examine, under the *Statutory Instruments Act*, all draft regulations to ensure that they are legally valid, that they take both of Canada's legal systems into account, and that the rules of law which they contain are clearly conveyed in both official languages while meeting the standards for form and draftsmanship. To ensure the legal validity of draft regulations, the Section must determine that the regulations are consistent with the powers delegated by Parliament, do not constitute an unusual or unexpected use of those powers, do not trespass unduly on existing rights and freedoms, and are consistent with the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*.

At present, the services of more than 40 Department of Justice lawyers specializing in delegated legislation are dedicated to this mandate. About half of these lawyers are responsible for examining the English version of draft regulations, and the other half, the French version. A technical and linguistic support unit is at the disposal of the lawyers to help ensure that the quality of both versions is high and that they convey the same meaning.

In the early 1980s, the Section came under considerable criticism from regulatory departments and agencies, especially regarding the slow pace at which files were processed and the fact that problems were pointed out at the last minute with no suggestion as to how

they might be resolved. Other criticisms were that the Section was too concerned with details of language and punctuation and that there was a lack of consistency in the legal opinions given. In defence of the Section, it should be stated that it had only about 12 lawyers on staff during that period, each of whom had, at any given time, a workload of 100 to 150 active files.

Since then, the Department of Justice has worked hard to improve the service it provides as part of the regulatory process, by making changes in its structure and, more particularly, in the Regulations Section.

▷ **Creation of the Legislative Services Branch**

To harmonize the drafting of bills and regulations, the Department created the Legislative Services Branch, consisting of the Regulations Section, the Legislation Section, and a technical and linguistic support unit. The Branch is headed by the Chief Legislative Counsel, whose mandate includes promoting communication and exchanges between the two sections so that there will be, to the extent possible, a uniform approach to the creation of rules of law, whether by means of statutes or regulations.

Several committees comprising members of both sections have been formed to harmonize standards for drafting statutes and regulations. As well, the Chief Legislative Counsel has established a legal training program for all Branch lawyers to standardize the approach used in the legal opinions they give to clients. To harmonize the practices of both sections, the Chief Legislative Counsel also encourages exchanges of personnel between them. Such exchanges make for greater flexibility in constituting teams of drafters, and improve service to clients by making it possible to assign the same drafting team to a bill and to its regulations.

More recently, a committee co-chaired by the Chief Legislative Counsel and a senior Privy Council official was created to study the possibility of improving the legislative and regulatory processes. The committee will consider the efficiency of these processes and the manner in which they can be better integrated. The committee includes representatives of Treasury Board, the Privy Council Office and a number of regulatory departments and agencies.

▷ **Regulations Section — an improved approach**

To better carry out its mandate, the Regulations Section has made several changes, particularly with respect to its resources, the services it provides, and the mechanisms it uses to determine the needs of its clients.

- ***Resources of the Section***

It became clear over the years that the Section's resources were inadequate. To better meet the needs of its clients — regulatory departments and agencies — the Section has adopted a cost-recovery policy (*see APPENDIX A*) under which some services are funded solely by the Section's budget, some partly by the Section and partly by the client or its legal services unit, and some entirely by the client. Consequently, the resources used to examine the legal validity and draftsmanship of regulations have increased markedly.

The cost-recovery policy makes it possible for the Regulations Section to provide regulatory departments and agencies with a made-to-measure service that can take several forms, for example:

- the creation of satellite units for clients wishing to have a team of lawyers working exclusively for them on all their draft regulations;
- the creation of temporary teams of lawyers to work directly on site with the client on a particular project;
- the creation of teams of lawyers that will give priority to certain draft regulations.

- ***Services provided by the Section***

The Section carries out its mandate in a variety of ways. Instead of confining itself to examining draft regulations at the end of the process, the Section encourages regulatory departments and agencies to communicate with it at the beginning of the process so that drafters can be assigned to work with them as a team and guide them throughout the process. In this way, there are no last-minute surprises and the whole process is much more effective.

As a point of convergence for all federal regulations except those exempt from examination, the Regulations Section is in a strategic position to serve as a “one-stop shop”, providing clients with a wide range of made-to-measure services on request. For example, the Section can

- provide legal opinions on the scope of the regulation-making authority (clients find this service particularly useful in determining which approach to adopt when they are uncertain as to what is authorized by their enabling Act);
- determine whether a document is subject to the regulatory process, including a determination under section 4 of the *Statutory Instruments Act* on whether a document is a regulation (*see PART 2* of this Manual for additional information on the regulatory process);
- draft the regulations from instructions received from clients (*see PART 3* of this Manual, which contains guidelines for clients who choose this type of service);

- examine proposed regulations drafted by clients (*see PART 4* of this Manual for standards governing the form and draftsmanship of federal regulations);
- together with the Legislation Section, assist clients, as they develop a legislative scheme, in distinguishing between what should be dealt with in the statute, what should form part of the regulations, and what should be considered an administrative matter;
- work in partnership with clients throughout the consultation process to ensure that the proposed regulations reflect the concerns expressed during the consultations;
- examine any legislative instrument that is exempt from the regulatory process to ensure its legality and readability, or provide advice on or draft models for these instruments;
- ensure that proposed regulations are consistent with government-wide and departmental policies;
- help clients in their dealings with the Standing Joint Committee for the Scrutiny of Regulations regarding legal and drafting issues; and
- coordinate the translation of drafting instructions or draft regulations prepared by clients.

- ***Mechanisms for determining client needs***

The Regulations Section has put in place several mechanisms for determining clients' needs so that it can respond appropriately to them:

- It has developed service standards (*see APPENDIX B*) that it is committed to observing and that will be revised regularly to take into account the constant changes that clients face.
- Since April 1997, the Section has been sending out a quality-of-service questionnaire with all draft regulations once their legal and drafting examination is completed. To date, the results of the questionnaires indicate a client satisfaction rate of 92% with the services provided by the Regulations Section.
- The Section surveyed the managers of regulatory programs in various regulatory departments and agencies to see if the services provided by the Section were meeting their needs. The results show an average satisfaction rate of about 80%.

The Section has compiled the comments from the quality-of-service questionnaires and the survey, and will adapt its services as much as possible to better meet the expectations of clients.

7. WORKING TOGETHER

Despite the many changes that the Regulations Section has made to meet the needs of its clients, the Section cannot hope to meet their expectations without their help, in consultation with their legal services unit. To ensure the most efficient use of the services provided by the Regulations Section, it is important to understand the roles of both the clients and the Section, and the process in place within the Section. The roles differ somewhat depending on the service requested.

Given their distinct roles, it is only by working together that the client, the legal services unit and the Regulations Section will be able to produce the highest quality regulations in the most efficient manner.

▷ Role of clients

Regulations Section lawyers look to the client and its legal services unit for expertise in the subject matter of the regulations and the policy on that subject matter. The instructing officer for a regulation is the official of the regulatory department or agency, or the legal services lawyer, responsible for conveying policy instructions to the drafters and answering any questions that may arise during the drafting and examination of the proposed regulations. The instructing officer is an expert in his or her field, just as the drafters are in the field of legislative drafting. Although more than one person may be responsible for the development of policy, the drafting and examination process progresses most smoothly when only one instructing officer is identified. To fulfil this role adequately, the instructing officer must be

- (a) knowledgeable in the policy area that is the subject matter of the regulations;
- (b) knowledgeable in respect of the enabling Act, any regulations to be amended and any other Acts or regulations that have an impact on the proposed policy;
- (c) knowledgeable about any international agreements to which Canada is a signatory that may have a bearing on the policy area in question;
- (d) at a sufficiently senior level to be able to
 - (i) make policy decisions that will not be overruled, or
 - (ii) where appropriate, obtain decisions from key people in the regulatory department or agency, such as the Deputy Minister;

- (e) either personally competent to verify that both official language versions of the instructions and draft accurately reflect the policy, or able to ensure that a resource person is available to do it;
- (f) able to ensure that a resource person is available to answer questions as to terminology in the two official languages; and
- (g) knowledgeable as to which officials in the regulatory department or agency must be consulted on the draft regulations — for example, the technical experts who give advice on matters such as appropriate test methods or standards, the department's own regulatory affairs group and the enforcement specialists.

▷ **Role of the Regulations Section**

The lawyers of the Regulations Section are specialists in the area of delegated legislation (for example, regulations and orders made by ministers, boards and agencies). They are experts in administrative law, legislative drafting and statutory interpretation who make an objective assessment of a proposed regulation using the criteria set out in the *Statutory Instruments Act*.

▷ **When drafting instructions are submitted**

The regulatory department or agency may choose to submit drafting instructions rather than draft regulations. The instructions must set out, in both official languages, the policy that the department or agency intends to implement in the proposed regulations, as well as such matters as exceptions to the proposed regulatory requirements and international obligations that must be respected. Using this information, a team of drafters gives advice on the legal authority for the regulatory proposals, assists in the process of developing the regulations, and produces drafts that conform to the criteria of the *Statutory Instruments Act*, including government standards for the presentation of legislation (for example, the numbering system and amending formulas). The client is then asked to verify these drafts to ensure that the policy set out therein is the policy that is intended.

▷ **When draft regulations are submitted**

The regulatory department or agency may choose to submit draft regulations for examination of their conformity to the criteria set out in the *Statutory Instruments Act*. If this option is chosen, the draft regulations must be submitted to the Regulations Section in both official languages. A team of drafters is assigned to the file, and in most cases, they will require additional information to facilitate the examination. They will give advice as to the legal authority for the various provisions of the regulations and, where needed, will redraft provisions that do not meet accepted drafting standards. They will draw legal and drafting problems to the attention of the instructing officer, and suggest solution to these

problems. They will submit the redrafted regulations to the client for verification, to ensure that the policy set out in the redraft is the policy intended by the client.

▷ **Process within the Regulations Section**

When the Regulations Section receives a request to examine proposed regulations or to draft regulations from instructions, it usually assigns two lawyers to the file, one who drafts in English and one who drafts in French. The drafting team discusses the legal and drafting problems in the file. Usually, they will also meet with the client's officials and with legal services lawyers to obtain clarification of certain matters and ensure their own correct understanding of the policy to be set out in the proposed regulations.

As the examination or drafting advances, the drafting team may issue one or more discussion drafts of the regulations. A discussion draft is not the final product; on the contrary, it may be just the beginning. Its purpose is to give the client's officials an opportunity to verify that their instructions as to policy have been understood and carried out by the drafters.

The draft regulations also undergo verification by the legislative editors and linguistic revisors of the Regulations Section. When a regulation is being planned, it is important to allow sufficient time for these verifications to be carried out. As a rule, one third of the overall time allotted to the examination of the regulation should be allowed for editing and revising. It may be necessary to have texts edited and revised more than once, depending on the extent of changes made to each draft.

A legislative editor reviews a regulation in one language only. There are therefore always two editors, one who edits the English version and one who edits the French. Among other things, they verify the logic, grammar, consistency, punctuation, format, citations and references.

The linguistic revisors compare the two language versions to ensure that they have the same meaning. They also provide other services, such as documentary and terminological research and writing assistance.

The wording of the regulations is not finalized until the client's officials and, where applicable, the legal service lawyers involved are satisfied that the policies of the client are correctly reflected in the regulations, and until both members of the drafting team are satisfied that the criteria set out in the *Statutory Instruments Act* are met.

8. CONCLUSION

The quality of regulations must remain high because of their impact on Canadian citizens and because of the high cost of legal challenges. The formalities of the regulatory process

8. CONCLUSION

help to ensure this high quality. However, the Regulations Section also acknowledges its responsibility to review regulations quickly and at the lowest cost.

The Regulations Section has made many changes over the past few years in an effort to better meet the needs of regulatory departments and agencies. Although a great deal of work remains to be done, the Section's objective is clear: to provide a flexible service, tailor-made to clients' needs, whenever possible.

* * * * *

APPENDIX A

COST RECOVERY POLICY

1. Services funded solely by the budget that the Department of Justice allocates to the Regulations Section

- ▷ Examination, and drafting from instructions, of proposed regulations that are not especially urgent.
- ▷ Examination, and drafting from instructions, of proposed regulations that the Regulatory Affairs Division, Treasury Board Secretariat, classifies as files having priority over the other files that are funded solely by the Regulations Section's budget.
- ▷ The consultations, held in connection with most files, that are preparatory to the drafting of proposed regulations. They may take place in writing, by telephone or in person, and include consultations on bills at the drafting stage.
- ▷ Examination of all orders in council and advice to the staff of the Assistant Clerk of the Privy Council.
- ▷ Participation in client training.

2. Services funded in part by the budget that the Department of Justice allocates to the Regulations Section and in part by resources provided by the client's Departmental Legal Services Unit (DLSU) or by the client itself

- ▷ Exclusivity of service from teams of lawyers who work on the examination and the drafting from instructions of all proposed regulations from a particular client. In these cases, the Section calculates the resources that it will provide to the client free of charge by taking the average resources that the Section has allocated to that client over the past five years.
- ▷ The services of a Regulations Section lawyer who is teamed up with a DLSU counsel, a lawyer working for the client or a lawyer in private practice who is retained by the client.

3. Services funded wholly by the client

- ▷ The services provided to a client who wants its file to have priority over the files funded only by the Regulations Section budget, when the file has not been classified as a priority by the Director, Regulatory Affairs Division — in other words, when the file is a priority for the client but not necessarily for the Government.

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- ▷ Services relating to projets for which Treasury Board has allocated regulatory drafting resources to the client.

* * * * *

APPENDIX B

March 31, 1996

REGULATIONS SECTION SE

ACTIVITY: LEGISLATIVE SERVICES			
QUALITY: SUB-ACTIVITY: EXAMINATION AND DRAFTING OF REGULATIONS			
STANDARD	CLIENT	PRACTICE GUIDE	PERFORMANCE INDICATORS
<p>1. We ensure a thorough legal examination of proposed regulations that is comprehensive and responsive to the needs of the client.</p> <p>2. We draft regulations that are legally sound, clear, comprehensive and responsive to the needs of the client.</p>	<p>- Governor in Council</p> <p>- Clerk of PCO</p> <p>- regulatory authorities</p> <p>- lawyers of regulatory authorities, including Department of Justice lawyers</p> <p>- public at large</p>	<p>The following practice guide applies to both standards</p> <p>- meet with clients to * receive instructions * clarify policies and instructions</p> <p>- evaluate the legal risks of making certain provisions in regulations</p> <p>- propose solutions to legal and drafting issues in draft regulations, and instructions for the drafting of regulations</p> <p>- examine draft regulations and instructions for the drafting of regulations as well as draft regulations from instructions, all in light of the legal requirements of the <i>Statutory Instruments Act</i> that regulations * be authorized by the statute under which they are made * not constitute an unusual or unexpected use of the authority pursuant to which they are made * not trespass unduly on existing rights and freedoms and not, in any case, be inconsistent with the purposes and provisions of the <i>Canadian Charter of Rights and Freedoms</i> and the <i>Canadian Bill of Rights</i></p>	<p>- feedback from clients</p> <p>- comments of the Standing Joint Committee for the Scrutiny of Regulations</p> <p>- comments and decisions of courts and tribunals</p> <p>- clients' approval of drafts for stamping</p>

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ACTIVITY: LEGISLATIVE SERVICES			
QUALITY: SUB-ACTIVITY: EXAMINATION AND DRAFTING OF REGULATIONS			
STANDARD	CLIENT	PRACTICE GUIDE	PERFORMANCE INDICATORS
		<ul style="list-style-type: none"> - examine draft regulations and instructions for the drafting of regulations as well as draft regulations from instructions, all taking into account <ul style="list-style-type: none"> * the effect on the consistency of federal regulations * government policies, both legal and political - advise and assist the client in the development of legislative schemes - examine and draft regulations to ensure that the two language versions have the same legal effect, taking into account that Canada is a bijural country - in units constituted to provide one-stop shopping, examine documents incorporated by reference in regulations to determine whether they are within the regulation-making authority and are consistent with the provisions of the regulations - examine and draft regulations <ul style="list-style-type: none"> * in light of the drafting requirements of the <i>Statutory Instruments Act</i>, taking into account drafting practices in amending formulae, format and styles * taking into account the plain language policies of the government - taking into account that Canada has two official languages and that each language version has equal force of law, examine and draft each language version of regulations to ensure that <ul style="list-style-type: none"> * it is clear and consistent within itself * it is consistent with the other language version 	

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ACTIVITY: LEGISLATIVE SERVICES			
QUALITY: SUB-ACTIVITY: EXAMINATION AND DRAFTING OF REGULATIONS			
STANDARD	CLIENT	PRACTICE GUIDE	PERFORMANCE INDICATORS
		<ul style="list-style-type: none"> - where a bill and its regulations are developed at the same time, we will try, where possible, to assign the same drafters to both - carry out jurisprudential, doctrinal and legislative research - maintain a library of up-to-date materials on <ul style="list-style-type: none"> * the law in relation to regulations and statutory interpretation * grammar and terminology - maintain up-to-date manuals of drafting practices and procedures - through linguistic specialists <ul style="list-style-type: none"> * conduct documentary and grammatical research * give linguistic opinions * act as a resource centre for information on language matters * consult with specialists, in particular specialists in the Department of Justice, the Translation Bureau and the Canadian Permanent Committee on Geographical Names - use computer technology in drafting and conducting research - take an active role in <ul style="list-style-type: none"> * Access to the Law Committee * Plain Language Committees 	

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ACTIVITY: LEGISLATIVE SERVICES			
QUALITY: SUB-ACTIVITY: LEGAL ADVICE			
STANDARD	CLIENT	PRACTICE GUIDE	PERFORMANCE INDICATORS
<p>3. We ensure that the legal advice that we give is legally sound, clear, comprehensive and responsive to the needs of the client, in particular:</p> <ul style="list-style-type: none"> * advice on issues pertaining to regulations * advice pertaining to our corporate counsel role 	<ul style="list-style-type: none"> - Privy Council Office <ul style="list-style-type: none"> * Senior Personnel * Machinery of Government * Clerk of Privy Council * Assistant Clerk to the Privy Council (Orders in Council) - Government House, including the Chief Herald - regulatory authorities - sections of the Department of Justice 	<ul style="list-style-type: none"> - provide a specialist service in the field of regulations <ul style="list-style-type: none"> - work together with specialist sections of the Department of Justice and other specialist services of the Public Service, where necessary - evaluate the risks in pursuing certain actions and propose alternate solutions - on request of the client or the Legislation Section, advise on the drafting of enabling provisions in draft bills - examine and advise on Orders in Council - advise the Registrar of the <i>Canada Gazette</i> on matters pertaining to the <i>Statutory Instruments Act</i> - advise and assist the client in the development of legislative schemes - monitor the quality and consistency of opinions by means of an internal opinion review committee - maintain a data base of opinions given - maintain a library of up-to-date materials on <ul style="list-style-type: none"> * the law in relation to regulations and statutory interpretation * grammar and terminology - carry out jurisprudential, doctrinal and legislative research - through linguistic specialists, <ul style="list-style-type: none"> * conduct documentary and grammatical research 	<ul style="list-style-type: none"> - requests from clients - feedback from clients - number of opinions given - frequency of consultation by other sections of the Department of Justice of opinions given - comments and decisions of courts and tribunals

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ACTIVITY: LEGISLATIVE SERVICES			
QUALITY: SUB-ACTIVITY: LEGAL ADVICE			
STANDARD	CLIENT	PRACTICE GUIDE	PERFORMANCE INDICATORS
		<ul style="list-style-type: none"> * give linguistic opinions * act as a resource centre for information on language matters * consult with specialists, in particular specialists in the Department of Justice, the Translation Bureau and the Canadian Permanent Committee on Geographical Names - take into account the effect of our opinions on the body of federal legislation - take into account government policies, both legal and political - determine whether a particular text is subject to the regulatory process 	

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ACTIVITY: LEGISLATIVE SERVICES			
QUALITY: SUB-ACTIVITY: TRAINING			
STANDARD	CLIENT	PRACTICE GUIDE	PERFORMANCE INDICATORS
<p>4. We provide, on request, training in</p> <ul style="list-style-type: none"> * the law respecting regulations * the interpretation of legislation * the drafting of regulations * the regulatory process 	<ul style="list-style-type: none"> - officials of regulatory authorities - Canadian Centre for Management Development - Department of Justice lawyers 	<ul style="list-style-type: none"> - develop training modules appropriate to the work of the client - negotiate with clients the content and timing of training - explain our role to clients 	<ul style="list-style-type: none"> - feedback from clients - demand for training - number of requests for training - number of training sessions - quality of drafts and instructions submitted

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ACTIVITY: LEGISLATIVE SERVICES			
TIMELINESS: SUB-ACTIVITY: ALL			
STANDARD	CLIENT	PRACTICE GUIDE	PERFORMANCE INDICATORS
We strive to provide a timely service that accommodates governmental and departmental priorities and urgencies.	<ul style="list-style-type: none"> - Privy Council Office <ul style="list-style-type: none"> * Senior Personnel * Machinery of Government * Clerk of Privy Council * Assistant Clerk to the Privy Council (Orders in Council) - Government House, including the Chief Herald - regulatory authorities - lawyers of regulatory authorities, including Department of Justice lawyers - officials of the <i>Canada Gazette</i> - regulatees - public at large 	<ul style="list-style-type: none"> - on request, provide assistance to clients in determining realistic time frames as early as possible in the client's planning process - establish mutually acceptable deadlines with clients - re-evaluate deadlines with clients when they introduce policy changes - ensure that regulations are examined and drafted within deadlines agreed on with the client - ensure that the advice we give is given within the time frame agreed on with the client - follow government priorities set by Regulatory Affairs - verify and confirm priorities with clients - carry out the work in accordance with a portfolio system that identifies the lawyers responsible for the regulations of each regulatory authority 	<ul style="list-style-type: none"> - extent to which negotiated deadlines are met - feedback from clients - average turn-around time per file stamped in a year is less than the Cabinet-mandated 90 days - average turn-around time per opinion given in a year

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ACTIVITY: LEGISLATIVE SERVICES			
COMMUNICATION AND ACCESSIBILITY: SUB-ACTIVITY: ALL			
STANDARD	CLIENT	PRACTICE GUIDE	PERFORMANCE INDICATORS
We treat our clients in a professional and business-like manner and aim to create a cooperative venture type of environment in our relations with our clients.	<ul style="list-style-type: none"> - officials of the Privy Council Office <ul style="list-style-type: none"> * Senior Personnel * Machinery of Government * Clerk of Privy Council * Assistant Clerk to the Privy Council (Orders in Council) - officials of <ul style="list-style-type: none"> * Government House, including the Chief Herald * <i>Canada Gazette</i> - regulatory authorities - lawyers of regulatory authorities, including Department of Justice lawyers 	<ul style="list-style-type: none"> - inform clients of the services provided by the Regulations Section and be flexible in the arrangements for the provision of those services to meet the clients' needs - inform clients as to the names of the lawyers assigned responsibility for their files, and notify them promptly of any change in responsibility - avoid, as far as possible, changing the lawyers responsible for a file - where a bill and its regulations are developed at the same time, we will try, where possible, to assign the same drafters to both - carry out the work in accordance with a portfolio system that identifies the lawyers responsible for the regulations of each regulatory authority - keep clients informed of the status of the file - explain the process internal to the Regulations Section: <ul style="list-style-type: none"> * co-drafting * equal attention to, and scrutiny of, both language versions * meetings to receive and clarify instructions and give advice * issuance of discussion drafts * editing * linguistic revision and comparison of English and French versions * stamping * opinion committee * consultation with specialist sections of the Department of Justice and other specialist services of the Public Service, where necessary 	<ul style="list-style-type: none"> - feedback from clients

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ACTIVITY: LEGISLATIVE SERVICES			
COMMUNICATION AND ACCESSIBILITY: SUB-ACTIVITY: ALL			
STANDARD	CLIENT	PRACTICE GUIDE	PERFORMANCE INDICATORS
		<ul style="list-style-type: none"> - maintain a co-operative attitude in working with clients and be open-minded to clients' suggestions and ideas - explain changes to drafts and reasons for them - keep clients informed of changes in priorities, drafting practices and regulatory procedures - provide, where possible, a tracking system integrated with that of the client - encourage the use of electronic transmission of instructions, drafts and memos - take an active role in regulatory coordinators' meetings - be courteous and helpful - be accessible in person and by E-mail and voice mail during business hours and at other times by arrangement 	

PART 2

THE REGULATORY PROCESS

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