



Litigation Year in Review 2018

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Message from the Minister of Justice and Attorney General

As Minister of Justice and Attorney General of Canada, I serve a dual role. In my role as Minister of Justice, I have responsibility for legislation and policy that falls within the Justice portfolio. In my role as Attorney General, I act as legal counsel for the Government in litigation involving Canada. It is in that second role that I am pleased to present this Litigation Year in Review 2018. This is the third year that I have published such a Review, and I am proud to do so.

Since becoming Minister of Justice and Attorney General in November 2015, a major focus of my work has been achieving the commitments in my [mandate letter](#) from the Prime Minister. This has included promoting the *Charter of Rights and Freedoms*, and ensuring that the Government's commitment to a transformed nation-to-nation relationship with Indigenous peoples is better reflected in our approach to litigation.

This year, the Review focuses on a range of subjects, from reconciliation with Indigenous peoples and defending federalism, to our efforts to protect public safety and crack down on tax avoidance. These areas canvass the wide range of litigation in which Canada is engaged and demonstrate the breadth and depth of knowledge our department holds.

I invite you to take a look at this Litigation Year in Review and see what the Government of Canada has accomplished in 2018, a year in which we celebrated the Department of Justice's 150th anniversary and reached many other milestones. I look forward to continued progress, and know we must continue to find ways to better use litigation, especially on matters related to the *Charter* and to Canada's relationship with Indigenous peoples. That said, I am proud of what we have done over the last year.

The Honourable Jody Wilson-Raybould, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada

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Introduction

The Attorney General of Canada is responsible for advancing the public interest through her oversight and conduct of litigation involving the federal government, as well as through the constitutional and legal advice she provides to the Government of Canada and its Ministers.

In her mandate letter, the Attorney General was tasked by the Prime Minister to review the Government's litigation strategy, including by making early decisions to end appeals or positions that are not consistent with the Government's commitments, the *Charter of Rights and Freedoms*, or Canadian values. This includes how litigation is used in the work of reconciliation with Indigenous peoples. The Attorney General of Canada continues to be guided by her mandate letter in her conduct of litigation.

In 2018, the Attorney General was responsible for representing the federal government in approximately 36,000 litigation matters. In the fulfillment of her mandate letter commitments, the Attorney General carried out her litigation responsibilities with a particular focus on the following:

- Advancing reconciliation with Indigenous peoples
- Defending federalism
- Respecting the *Charter of Rights and Freedoms*
- Protecting public safety and national security
- Cracking down on tax avoidance

In addition to her litigation responsibilities, the Attorney General plays an important role in reviewing and ensuring that the criminal justice system remains fair and responsive. In December 2018, the Attorney General took a significant step in helping to limit unjust prosecutions of people living with HIV by issuing a [Directive](#) related to the prosecution of HIV non-disclosure cases under the jurisdiction of the Public Prosecution Service of Canada.

In issuing the Directive, the Government of Canada recognizes the over-criminalization of HIV non-disclosure discourages many individuals from being tested and seeking treatment, and further stigmatizes those living with HIV or AIDS. This Directive ensures an appropriate and evidence-based criminal justice system response to cases of HIV non-disclosure. In so doing, it will harmonize federal prosecutorial practices with the scientific evidence on risks of sexual transmission of HIV while recognizing that non-disclosure of HIV is first and foremost a public health matter. The full text of the Directive is appended at Annex A.

The important litigation positions highlighted in this document were taken in collaboration with the relevant Ministers with portfolio responsibility for the issues. The following report lists some key illustrative examples of the litigation that took place between January 1, 2018 and December 31, 2018.



Advancing Reconciliation with Indigenous Peoples

In this Litigation Year in Review, focus is placed primarily on examples of constructive and amicable settlements of litigation matters with Indigenous peoples. The Attorney General and the Government as a whole have placed an important emphasis on changing the Government's approach to litigation involving Indigenous peoples. This approach is aimed at ensuring that section 35 title and rights of Indigenous peoples are respected, recognized and implemented. The Government's endorsement of UNDRIP and the adoption of the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples have also helped guide changes to the Government's approach. The Attorney General also issued internal direction to her litigators to operationalize the 10 Principles in the context of Indigenous litigation. Changing approaches to litigation is also consistent with the Prime Minister's announcement in February 2018 that a new recognition and implementation of rights framework would be developed. This work is ongoing, and will continue to shape how the Government of Canada is managing litigation involving Indigenous peoples, including the way arguments are framed, defences are advanced, and emphasis is placed on resolving rather than litigating claims when possible.

In ***McLean v Canada***, the Government of Canada reached an agreement in principle with former Indian day school students who filed a class action law suit on behalf of 200,000 survivors who suffered cultural harm, and physical and sexual abuse while attending the schools. The agreement in principle includes individual compensation, in addition to \$200 million for healing, wellness, language, culture and commemoration, and funding for legal fees. For many survivors, the process of healing cannot begin

without recognition of the harms and injustice that they suffered. This agreement is one example of how the Government of Canada is continuing to address this dark and tragic chapter in our history.

The ***Chief Bernard Ominayak et al v Canada*** claim was settled through a historic agreement concluded by Canada, Alberta and the Lubicon Lake Band on October 24, 2018. The Lubicon people were not provided with community infrastructure similar to other Treaty 8 communities when they signed Treaty 8. As a result of this, many Lubicon Lake Band members lived in impoverished conditions. Lubicon is the last of the isolated Treaty 8 communities to have its claims addressed. In fulfillment of Treaty 8 provisions, the terms of the settlement include the creation of a 95 square mile reserve using land provided by Alberta, a commitment from Canada to fund community infrastructure, and a monetary settlement by both Canada and Alberta. This agreement demonstrates the Government's pursuit of all appropriate forms of resolution in order to address historic inequities.

The ***Alderville Indian Band et al v Her Majesty the Queen et al*** action in the Federal Court was discontinued in its entirety after the parties negotiated a settlement agreement. The Alderville litigation deals with a longstanding dispute about the making, interpretation, and implementation of the 1923 Williams Treaties. This settlement advances the Government's commitment to reconciliation and resolves outstanding issues in a way that respects the rights and interests of the seven Williams Treaties First Nations.

In ***Tsleil-Waututh Nation v Canada***, a claim was made based on the alleged breach of fiduciary duty in failing to obtain adequate compensation for lands expropriated by Canada for highway purposes. This claim was settled, resolving a long-standing historical grievance.

In ***Mikisew Cree First Nation v Canada***, the Supreme Court of Canada ruled that Parliament and Ministers acting in a legislative capacity do not have a constitutional duty to consult on draft legislation. The several separate reasons of the judges demonstrate the profound challenge that the court faced in deciding how Parliament's role and reconciliation may work in harmony. The decision underscores the need for governments to redouble their work with Indigenous nations to achieve true reconciliation, including the fulfilment of our commitment to the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*. The Government of Canada has taken some important strides in this direction, but the work is by no means done.





Defending Federalism

The Canadian Constitution provides the fundamental rules and principles that guide Canada. It creates many of the institutions and branches of government, and defines their powers. Canada is also built on regional diversity. As such, the Constitution defines the division of provincial and federal powers.

The Government of Canada works hard to collaborate with provincial and territorial governments to reach mutually acceptable and beneficial outcomes on all matters and issues. One of the important roles of the Attorney General of Canada is to participate in litigation where federalism issues are raised.

In the ***Attorney General of Canada et al v Attorney General of Quebec*** decision, released in November 2018, the Supreme Court of Canada endorsed the creation of a national, co-operative securities regulator to govern Canada's financial industry. Previously, securities regulation was only subject to the laws established by provincial and territorial governments. The Supreme Court ruled that it would be up to each of the provinces and territories to participate in the proposed co-operative system. The introduction of a national securities regulator will help to ensure that securities rules are more consistent across the country.

In ***R v Comeau***, Mr. Comeau, a resident of New Brunswick, was fined for bringing excess liquor from Quebec to New Brunswick. This decision by the Supreme Court of Canada affirmed the constitutionality of a provincial law that limits the possession of alcohol purchased outside of the province. As an intervener before the Supreme Court, the Attorney General argued that the Court should be guided by the principles of federalism, including encouraging cooperative federalism, and maintaining certainty and predictability in the law. The Attorney General's arguments also made clear that the Government is committed to breaking down barriers to trade within Canada, while respecting the jurisdiction of provincial and territorial governments.

In the ***Ontario and Saskatchewan References re Greenhouse Gas Pollution Pricing Act***, Ontario and Saskatchewan challenged the constitutionality of the *Greenhouse Gas Pollution Pricing Act* before their respective courts of appeal. The *Greenhouse Gas Pollution Pricing Act* aims to implement the Government of Canada's commitment to a carbon pollution pricing system across the country. The Saskatchewan reference will be heard in February 2019, and the Ontario reference will be heard in April 2019. As an intervener in both references, the Attorney General of Canada will defend the federal government's constitutional authority to enact legislation to address climate change.



Respecting the Principles of the *Charter of Rights and Freedoms*

The Government of Canada is committed to openness and transparency. As a part of this commitment, the Attorney General has outlined Principles that guide her role in overseeing Charter of Rights and Freedoms litigation against the Crown, specifically when federal legislation is challenged. Occasionally, there are cases in which the Attorney General will defend the constitutionality of legislation that the Government intends to change.

Released in December 2018, the [Principles guiding the Attorney General of Canada in Charter litigation](#) have governed the Attorney General of Canada in Charter cases. These Principles include the constitutionalism and the rule of law, parliamentary democracy, adjudication, continuity, consistent application of the Charter, and access to justice. As demonstrated in the cases below, these Principles ensure that the Attorney General, as guardian of the rule of law, upholds the public interests and ensures that the Crown transcends the transition between governments. The full text of the Principles is appended at Annex B.

The following examples highlight instances in which the Attorney General has ensured that Charter litigation is conducted in a manner in line with the Principles.

In the ***Toth v Her Majesty the Queen*** veterans class action, the Government of Canada and the claimant have reached an agreement in principle to settle the class action over reductions made to disabled veterans' pensions that violated their equality rights under section 15 of the *Charter*. Subject to court approval, the affected veterans will be compensated with an amount of \$100 million inclusive of legal fees. The proposed settlement will bring both parties closer to the end of a legal action that began over four years ago.

In ***Simons et al v Minister of Public Safety and Defence et al***, inmates allege their *Charter* rights to life, liberty and security of the person and to be free from discrimination were breached by the Correctional Service of Canada's choice not to provide clean needles to inmates, and by the classification of sterile injection equipment as prohibited contraband. The inmates assert this increases their risk of contracting HIV or the Hepatitis C virus. On May 14, 2018, the Government of Canada announced it will implement a Prison Needle Exchange Program (PNEP) at one men's and one women's institution as the initial stage of a phased approach to strengthen its ongoing efforts to prevent and manage infectious disease in federal penitentiaries and in the community. The PNEP will provide federal inmates access to clean needles in an effort to limit the transmission of infectious diseases among inmates. The best practices learned at these initial institutions will help to inform a national roll-out. The Correctional Service of Canada began implementation of the PNEP in June 2018. As a result, the Court granted an adjournment of the hearing that was scheduled for fall 2018 to a date in or after September 2019. The adjournment will allow the Correctional Service of Canada to file additional evidence with the Court regarding the workings and efficacy of the PNEP.

In the ***Jennifer McCrea v Canada*** proceeding, a proposed settlement agreement was reached to resolve a class action between the federal government and parents who, between 2002 and 2013, applied for Employment Insurance (EI) sickness benefits while in receipt of EI parental benefits and were denied them. The Government of Canada recognizes the challenges faced by Canadians who cannot work because of illness, injury and other family challenges, and reached a settlement to bring closure to these legal proceedings. This settlement will provide class members with an amount equal to the EI sickness benefits they would have received at the time, had their claims been approved. The Working While on Claim provisions were extended in Budget 2018 to EI maternity and sickness benefits, so that those who wish to gradually return to work after an illness or the birth of a child have flexibility to do so without jeopardizing their EI benefits. These changes came into effect on August 12, 2018.

A number of cases regarding the constitutionality of inmate segregation practices captured public attention in 2018. In ***Canadian Civil Liberties Association v Canada*** and ***British Columbia Civil Liberties Association v Canada***, the claimants challenged the constitutionality of administrative segregation on the basis of the *Charter* right to life, liberty and security of the person, the right not to be punished twice for the same offence, the right not to be subjected to cruel and unusual punishment, and the right not to be discriminated against. On October 16, 2018, the Government of Canada introduced Bill C-83, *An Act to amend the Corrections and Conditional Release Act and another Act*. This Bill comes after court rulings found the long-term use of administrative segregation to be unconstitutional. Bill C-83 will eliminate the use of administrative segregation practices in Correctional Service of Canada institutions, and replace them with structured intervention units (SIU) for inmates who cannot be accommodated in the general population. SIU inmates will be offered more time outside of their cell for meaningful human interaction, a period that includes a minimum of two hours per day for programming, as well as physical and mental health interventions.





Protecting Public Safety and National Security

Throughout this past year, the Attorney General participated in several proceedings to protect Canada's national security interests.

In the ***Canada (Attorney General) v Ader*** decision, Ali Omar Ader was found guilty of hostage-taking for his involvement as a negotiator in the kidnapping of two freelance journalists in Somalia, and was sentenced to 15 years in prison. In order to prevent the disclosure of sensitive information that was collected by the RCMP during the kidnapping investigation, the Attorney General of Canada brought a section 38 *Canada Evidence Act* application. As a result, the Federal Court ordered that the majority of the information could not be disclosed in the interest of Canada's national security, and provided limited summaries instead. In keeping with her duty to protect public safety and national security, the Attorney General of Canada was able to protect sensitive information from disclosure, while also ensuring sufficient evidence for a fair trial.

In ***Attorney General of Canada v Helmut Oberlander***, the Governor in Council revoked Mr. Oberlander's Canadian citizenship on the basis that he knowingly concealed his wartime service as an interpreter with a Nazi mobile killing unit during World War II, and was complicit in crimes against humanity. The court ruled that the Government's decision to strip his citizenship was "justifiable, transparent, and intelligible". Canada's success before the Federal Court will end Mr. Oberlander's attempts to restore his Canadian citizenship and evade authorities in Germany.



Cracking Down on Tax Avoidance

The Government of Canada is committed to cracking down on tax avoiders, and to making the tax system fairer for all Canadians.

In ***Loblaw Financial Holdings Inc. v The Queen***, the Court found that Loblaw Financial Holdings Inc. did not meet the requirements to be considered a foreign bank under Canadian law, and was therefore not exempt from paying tax to the Canada Revenue Agency (CRA). Loblaw Financial Holdings Inc. was reassessed by Canada Revenue Agency to include over \$473 million earned by its Barbados-based affiliate, Glenhuron Bank Ltd., as unreported foreign accrual property income. This decision will likely impact similar arrangements in which Canadian corporations have foreign affiliates in Barbados licensed as “international banks” that generate significant income, but are not reported or taxed in Canada.

Similarly, in ***Cooper v The Queen***, the CRA determined that three members of the Cooper family earned income from their foreign investments exceeding \$4 million, which they did not report to the Canada Revenue Agency, from 2002-2010. Tax authorities discovered an offshore shell company, which the CRA maintains was used to knowingly deceive authorities.

Annex A:

Directive Regarding Prosecutions of HIV Non-Disclosure Cases

Whereas HIV is first and foremost a public health issue, and public health authorities' efforts to detect and treat HIV have resulted in significantly improved health outcomes for those living with HIV in Canada, as well as prevention of its onward transmission;

Whereas the Supreme Court of Canada has stated that the criminal law has a role to play in cases involving sexual activity and non-disclosure of HIV where public health interventions have failed and the sexual activity at issue poses a risk of serious harm;

Whereas persons from marginalized backgrounds such as, for example, Indigenous, gay and Black persons, are more likely than others to be living with HIV in Canada such that criminal laws that apply to HIV non-disclosure are likely to disproportionately impact these groups;

Whereas the criminal law applies to persons living with HIV if they are aware of their HIV positive status and that they are infectious, and they fail to disclose, or misrepresent, their HIV status prior to sexual activity that poses a realistic possibility of transmission of HIV;

Whereas the Supreme Court of Canada has clarified that the issue of whether sexual activity poses a realistic possibility of transmission is to be determined on the basis of the most recent medical science on HIV transmission;

Whereas the most recent medical science shows that the risk of HIV transmission through sexual activity is significantly reduced where: the person living with HIV is on treatment; condoms are used; only oral sex is engaged in; the sexual activity is limited to an isolated act; or, the person exposed to HIV, for example as a result of a broken condom, receives post-exposure prophylaxis;

Whereas it is not in the public interest to pursue HIV non-disclosure prosecutions for conduct that medical science shows does not pose a risk of serious harm to others;

Whereas the research, medical science and analysis presented in Justice Canada's 2017 Report on the Criminal Justice System's Response to HIV Non-Disclosure, as well as any future developments in the relevant medical science, should be considered before pursuing a criminal prosecution in HIV non-disclosure cases;

Whereas I have consulted with the Director of Public Prosecutions under subsection 10(2) of the *Director of Public Prosecutions Act*;

1. I direct the Director of Public Prosecutions as follows:

- a. The Director shall not prosecute HIV non-disclosure cases where the person living with HIV has maintained a suppressed viral load, i.e., under 200 copies per ml of blood, because there is no realistic possibility of transmission.

- b. The Director shall generally not prosecute HIV non-disclosure cases where the person has not maintained a suppressed viral load but used condoms or engaged only in oral sex or was taking treatment as prescribed, unless other risk factors are present, because there is likely no realistic possibility of transmission.
- c. The Director shall prosecute HIV non-disclosure cases using non-sexual offences, instead of sexual offences, where non-sexual offences more appropriately reflect the wrongdoing committed, such as cases involving lower levels of blameworthiness.
- d. The Director shall consider whether public health authorities have provided services to a person living with HIV who has not disclosed their HIV status prior to sexual activity when determining whether it is in the public interest to pursue a prosecution against that person.

Annex B:

Principles Guiding the Attorney General of Canada in Charter Litigation

Introduction: The role of the Attorney General of Canada

As the Chief Law Officer of the Crown, the Attorney General's primary roles are the provision of legal advice to the government and the oversight of litigation by or against the federal Crown. In both her advisory and litigation roles, the Attorney General fulfils her duty by promoting respect for the law in all government affairs. Fundamental to the Attorney General's roles is a responsibility to act in the public interest, which enables the development of principled litigation strategy.

By law, the office of the Attorney General of Canada is held by the Minister of Justice. Several of the Minister of Justice's responsibilities align closely with those of the Attorney General, including her responsibility to see that the administration of public affairs is conducted in accordance with the law, as well as her oversight of all matters connected with the administration of justice. The Minister of Justice also carries a policy portfolio, proposing new legislative initiatives and other measures for Cabinet and parliamentary consideration.

The pairing of the Attorney General's functions with those of a Minister of the Crown may at first glance appear to call into question the independence and impartiality of the Attorney General's conduct of litigation. However, the judicially-recognized responsibility of the Attorney General to "act in the public interest" guides how the Attorney General discharges her legal responsibilities.

In carrying out her responsibilities in the public interest, the Attorney General can turn to several established principles to inform her civil litigation strategy. The principles outlined below make special reference to the Attorney General's role in litigation involving the *Charter*, specifically when federal legislation is challenged. The challenged federal legislation may have been adopted by the current or by a previous Parliament. As reviewed below, the Attorney General's duties transcend transitions between governments.

1. The principle of constitutionalism and the rule of law

The *Charter* is part of the supreme law of Canada, and any law or government decision inconsistent with it is of no force or effect. Both in the provision of legal advice and in litigation, the Attorney General demonstrates the greatest possible commitment to respecting constitutional rights. In this respect, the Attorney General's role can broadly be described as an "ambassador of the *Charter*".

This first principle guides decisions on litigation positions. Where the Attorney General concludes that there is no viable argument in favour of the challenged federal legislation or government action, a *Charter* violation should be conceded.

The structure of the *Charter* invites a more nuanced position than unqualified concessions of unconstitutionality. Section 1 of the *Charter* provides that rights and freedoms may be subject to reasonable limits if those limits are prescribed by law and demonstrably justified in a free and democratic society. This means that Parliament may enact laws that limit rights and freedoms, and that the *Charter* will be violated only where a limit is without justification.

As a result, the Attorney General will sometimes apply the principle of constitutionalism and the rule of law by recognizing that a right or freedom has been limited, but without conceding that the limitation is without justification. Instead, the Attorney General may seek to demonstrate through litigation that federal legislation is justified in limiting rights and freedoms, thereby respecting the *Charter*.

Similarly, the Attorney General may oppose a *Charter* claim for the purpose of making arguments on the appropriate remedy. For instance, while the claimant may seek to have a law struck down in its entirety, the Attorney General may argue for a more limited “reading down” of an impugned provision or may argue that any declaration of unconstitutionality should be suspended so as to afford Parliament time to craft a responsible change in the law.

2. The principle of parliamentary democracy

The Parliament of Canada is the democratic law-making body at the federal level. It enacts, amends, and repeals federal legislation. When the constitutionality of federal legislation is challenged before the courts, the Attorney General seeks to ensure that there is a vigorous defence of the law. Both the constitution and the public interest require the Attorney General to respect Parliament’s legislative authority.

To this end, the Attorney General of Canada bears a responsibility to uphold federal law until it is changed by Parliament or declared unconstitutional by a court. That responsibility is carried out by arguing in defence of the law’s *Charter* compliance, in line with the previous and other principles. The principle of parliamentary democracy favours preserving meaningful scope for ministerial and parliamentary decision-making.

This principle aligns with the constitutional separation of powers between the executive branch and the legislative branch, according to which the Attorney General, as a member of the executive, should not undermine parliamentary authority by conceding the unconstitutionality of laws that have been enacted by Parliament. The Government may seek to amend legislation in order to improve legislation from a *Charter* perspective in circumstances where the existing legislation is not unconstitutional. In such cases, where there are viable arguments to support the existing law’s constitutionality, it may be in the public interest for the Attorney General to defend the *Charter* compliance of federal legislation at the same time that the Government promises to amend or repeal it. In such cases, the Attorney General may seek an adjournment of the litigation pending legislative reform.

3. The principle of adjudication

In Canada's constitutional order, the adjudication of contested questions of law is the responsibility of our independent courts. Where a dispute arises as to the compliance of legislation or government action with the *Charter*, it falls on the courts to determine authoritatively the outcome of the dispute. In arriving at a conclusion on the merits, courts in our adversarial judicial system are assisted by full and fair argument by counsel, each putting forward the best case for and against the compliance of federal legislation with the *Charter*.

The Attorney General plays an indispensable role in *Charter* litigation by ensuring that courts have the benefit of full and fair argument, which they require in order to carry out their constitutional responsibility to adjudicate disputes according to the law. Unqualified admissions by the Attorney General on constitutional questions may frustrate the courts' ability to arrive at informed conclusions on a law's *Charter* compliance.

In some past instances where Attorneys General have made large-scale concessions on *Charter* compliance, the courts have expressed reservations on their ability to arrive at informed conclusions without the benefit of full and fair argument. For these reasons, the public interest will usually be served by the Attorney General's decision to present the best case for the constitutionality of federal law.

4. The principle of continuity

The reference to the "Crown" in the description of the Attorney General as the "Chief Legal Officer of the Crown" captures the importance of the principle of continuity. The Crown transcends transitions between governments. It signals the continuity, from Attorney General to Attorney General and from ministry to ministry, of the duties of government. The adversarial nature of civil proceedings should not suggest that the Attorney General's litigation positions are those of a given Minister. Consistent with the Attorney General's constitutional responsibilities, litigation positions are always those of the Crown and are developed in the public interest.

It follows that the Crown's legal position, as advanced by the Attorney General, should be coherent and consistent over time. A change in government should not be grounds for an Attorney General to undo a previous Government's legislative agenda by conceding constitutional arguments before the courts. However, this principle does not prevent an Attorney General from changing the litigation positions and strategies of her predecessor. It rather signals that such changes should be informed by the Attorney General's evaluation of what is in the public interest, which includes an interest in maintaining coherent legal positions before the courts.

Different Attorneys General will differ in their assessments of the public interest, just as changing circumstances will inform different assessments of the public interest over time, but their evaluations should always be true to what is in the public interest. Different governments and different Parliaments recognize the importance of having an Attorney General who will defend their decisions when challenged and who will seek to maintain decision-making authority.

5. The principle of consistent application of the *Charter*

Federal law presumptively applies uniformly across the country. A finding of unconstitutionality by a court in one province or territory has immediate effect only in that province or territory. Therefore, a decision by the Attorney General not to challenge or appeal a finding of unconstitutionality could result in the uneven application of *Charter* rights. The decision of a court in one province or territory would invalidate federal legislation in that province, but not in others. In many contexts, the inconsistent application of *Charter* rights between provinces and territories will be contrary to the public interest.

Pursuant to this principle, the Attorney General may conclude that it is in the public interest to appeal a *Charter* decision to the Supreme Court of Canada in order to allow for a pan-Canadian determination of the legislation's constitutionality, as well as a pan-Canadian interpretation of the relevant *Charter* right.

6. The principle of access to justice

The Government of Canada's decision to reinstate the Court Challenges Program was based on the recognition that the costs of litigation can impede access to justice. For many marginalized individuals and groups, seeking relief in courts may not be a realistic or viable option absent financial assistance.

Where the issue in dispute is discrete and limited to the parties before the courts, access to justice may be served by the quick resolution of the matter, reserving scarce judicial resources for other matters that are the subject of broader legal disputes. In other cases, where a judicial declaration on a constitutional issue may have broader importance for individuals or groups who are not directly before the courts, access to justice may favour the continuation of litigation so that the issue can be decisively resolved for the parties before the court and many others affected by the outcome.