

March 2015

CANADA

1. What is the title, rank and position of the Legal Adviser?

The Legal Adviser at the Department of Foreign Affairs, Trade and Development ("DFATD") is an Assistant Deputy Minister and reports to the Minister and Deputy Minister of Foreign Affairs, as well as the Minister and Deputy Minister of International Trade.

The Legal Adviser heads the Consular, Security and Legal Branch of DFATD, which includes the Legal Affairs Bureau and the Trade Law Bureau.

The Legal Adviser position is traditionally occupied by a member of the Canadian Foreign Service and is not a political appointment. In Canada, the position of Legal Adviser on international affairs has existed in the foreign ministry since 1913.

2. What are the principal functions of the OLA?

The Office of the Legal Adviser plays a key role in assisting the Minister of Foreign Affairs and the Minister of International Trade in their statutory duties to foster the development of international law, and its application in Canada's external relations. To this end, the legal bureaux are the principal source of legal services and advice to the Government of Canada on an increasingly wide and complex range of international issues in relation to public international law and trade and investment law. In addition to providing advice on Canada's rights and obligations under international law, the legal bureaux also manage and develop policy on international law issues, and collaborate with other Government Departments and agencies to ensure that Canada's domestic legal regime is in accord with its international obligations.

3. Please give a brief description of staff employed by the OLA, including overseas staff. How many staff employed by the OLA are women and what position do they hold?

Staff in the Office of the Legal Adviser includes officer level and administrative staff. Within the broader legal bureaux, staff members include lawyers, Foreign Service officers and administrative professionals. Many of the positions within the legal bureaux are rotational, similar to other positions in Canada's diplomatic service.

4. Are there any specific recruitment and promotion policies/provisions to facilitate diversity within the OLA? If yes, on which criteria: gender, ethnicity, disability, other?

The Government of Canada has implemented a robust employment equity program under the auspices of the federal *Employment Equity Act*. The Act seeks to eliminate employment barriers for four designated groups: women, Aboriginal peoples, persons with disabilities and visible minorities.

The Office of the Legal Adviser, along with the broader legal bureaux, and the Department of Foreign Affairs, Trade and Development, are covered by the Act, and Government of Canada hiring practises which promote employment equity. Additionally, the Department of

Foreign Affairs, through an Employment Equity Committee and a network of Employment Equity Champions, has instituted policies and strategies to reduce under-representation, address disadvantages of the aforementioned groups, and achieve a workforce that is representative of Canada's population.

For more detailed information on these programs, please visit: <http://www.labour.gc.ca> and <http://www.tbs-sct.gc.ca>.

5. Is OLA staff trained on gender equality issues and are these issues mainstreamed into the OLA's work?

Training on workplace equity is available, and all Departmental staff, including staff in the Office of the Legal Adviser, are encouraged to take advantage of this training. The Department's Employment Equity Champions and Committees regularly solicit and incorporate the viewpoints of representatives and employees on employment equity in the workplace and communicate these issues to all employees. Champions are also high-level officials, selected to bring greater visibility and awareness to the Department's Employment Equity Program and promote a workforce that is representative of Canadian society.

6. Briefly describe the organisation and structure of the OLA.

The Legal Branch at DFATD is divided into two Bureaux - the Legal Affairs Bureau and the Trade Law Bureau. The head of each Bureau reports directly to the Legal Adviser. The Branch also has an Area Management Office responsible for administration.

The Legal Affairs Bureau, which is headed by the Deputy Legal Adviser and Director General, consists of five Divisions: the Criminal, Security and Diplomatic Law Division; the Treaty Law Division; the United Nations, Human Rights and Economic Law Division; the Oceans and Environmental Law Division; and, the Continental Shelf Division. Each of these Divisions is led by a Director, with further supervision by Deputy Directors.

The Legal Affairs Bureau provides operational services, including the coordination of written and oral advocacy on behalf of Canada in international litigation, particularly before the International Court of Justice. It also plays an important role in the negotiation of treaties and other international instruments.

The Legal Affairs Bureau's Officers often serve as members of Canadian delegations at international negotiations and meetings. The Bureau further provides expertise on the ratification and interpretation of treaties and maintains Canada's Treaty Registry. Finally, it provides services to the public, including the management and espousal of international claims and the authentication of documents for service abroad.

- **The Criminal, Security and Diplomatic Law Division** provides legal advice on issues relating to international crime, terrorism and security, and privileges and immunities law, both for domestic issues and those facing DFATD employees abroad. The Division also assists Canadians with the authentication of documents for use in foreign jurisdictions.
- **The Treaty Law Division** is the lead division for the negotiation and implementation of Canadian treaties. It provides legal advice on treaty law and maintains Canada's Treaty Registry.
- **The United Nations, Human Rights and Economic Law Division** provides legal advice on areas relating to the United Nations, international peace and security, defence and disarmament, humanitarian law, human rights, children's rights, international health law, economic sanctions, international air and space law,

international claims law and international economic law. The Division is also actively engaged in Canada's support for the International Criminal Court.

- **The Oceans and Environmental Law Division** is concerned with the development and maintenance of a rules-based international system to manage our oceans and environment. The Division is involved in the development and implementation of numerous bilateral, regional and multilateral agreements, and handles a diverse array of issues, including international and bilateral fisheries questions, Arctic sovereignty matters, trans-boundary pollution and water resources questions, biodiversity, desertification and bio-safety issues, and energy issues.
- **The Continental Shelf Division** is responsible for Canada's submission to the United Nations Commission on the Limits of the Continental Shelf. The Division is also responsible for related matters, such as the International Seabed Authority and offshore hydrocarbons.

The Trade Law Bureau advises the Government of Canada on its rights and obligations under international trade law, provides legal advice on the negotiation and implementation of multilateral, regional and bilateral trade and investment agreements; and represents Canada in dispute settlement proceedings under the NAFTA and the WTO.

The Bureau is headed by a Deputy Legal Adviser and Director General, consists of two Divisions: the Market Access and Trade Remedies Law Division and the Investment and Services Law Division, each overseen by a Director and further supervised by Deputy Directors.

- **The Market Access and Trade Remedies Law Division** provides legal advice and representation with respect to a broad range of market access issues under the World Trade Organization Agreement and Canada's regional and bilateral free trade agreements.
- **The Investment and Services Law Division** provides legal advice and representation with respect to international trade in services and investment law. Lawyers from the division represent Canada in NAFTA Chapter 11 arbitrations, and at WTO dispute settlement concerning trade in services. The division also negotiates and provides legal advice with respect to Canada's foreign investment promotion and protection agreements and free trade agreements (SPA, CETA).

7. What is the OLA's place within the Ministry of Foreign Affairs?

The Office of the Legal Adviser heads one of fifteen branches of Foreign Affairs, Trade and Development Canada. All of the Branches report to the Ministers through one of three Deputy Minister (Foreign Affairs, International Trade, and Development.)

The Branch is closely engaged in encouraging a consistent and coherent Canadian approach to international law. The Legal Affairs Bureau provides legal advice to policy divisions, as well as to other government departments, whenever a file contains issues related to international law and regarding the negotiation and implementation of international agreements. The lawyers in the Legal Branch work closely with their colleagues in other Branches of DFATD and in other government departments in order to ensure that Canadian foreign policy is consistent with Canada's obligations under international law.

8. What are the main contacts of the OLA within Government?

The legal bureaux work with various divisions throughout the federal government, the Department of Justice, the Department of National Defence, the Department of Fisheries

and Oceans, Natural Resources Canada, Canadian Heritage, Citizenship and Immigration Canada, Environment Canada, Health Canada, Transport Canada, Canada Border Services Agency, Canadian Nuclear Safety Commission, Canadian Space Agency and the Privy Council Office.

In addition, the bureaux consult with the relative departments of the provincial and territorial governments regarding matters that fall within their jurisdiction or may have an impact upon them. The Trade Law bureau, in particular, consults with a wide range of federal and provincial government departments and agencies when representing them as clients at NAFTA or WTO procedures.

9. Please describe the relations of the OLA with lawyers in private practice, academics and legal institutions.

The Legal Branch maintains a strong relationship with lawyers in private practice, academics and legal institutions. Several members of the staff have taught courses at the University of Ottawa and the Norman Paterson School of International Affairs at Carleton University. The Legal Adviser sits on the board of directors of the Canadian Council for International Law, and the Deputy Legal Adviser (Legal Affairs) sits on the board for the International Centre for Criminal Law Reform. Legal officers maintain their required status with provincial law societies, and some contribute to continuing legal education requirements as expert speakers on issues of international law. Some officers also maintain memberships with external institutions and organizations such as the Canadian Council on International Law, the American Society for International Law, and others.

10. Please provide a brief bibliography on the OLA, if available.

J.A. Beesley, **The Sixties to the Seventies: The Perspective of the Legal Adviser** in R. St. John Macdonald ed., *Canadian Perspectives on International Law and Organization*, Toronto 1974.

M. Cadieux & M. Cohen, "*The Position and Function of Legal Advisers to Foreign Ministries*", background paper for Conference on Legal Advisors and Foreign Affairs, Summer 1963.

A.E. Gotlieb, **Legal Advisers and Foreign Affairs - A Comment** (1965) 16 *University of Toronto Law Journal* 158.