

<p>TYPE OF DOCUMENT – TYPE DE DOCUMENT : Policy – Politique</p>	<p>EFFECTIVE DATE – ENTRÉE EN VIGEUR : September 1, 2015 Le 1^{er} septembre 2015</p>	<p>DOCUMENT ORDER – No. DU DOCUMENT: Policy – Politique 47</p>
<p>CHAPTER VI – CHAPITRE VI : Particular Proceedings: Equality and Rights Procédures particulières : Égalité et Droits</p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

CONSTITUTIONAL CHALLENGES

1. Introduction

From time to time, an accused will challenge the validity or applicability of federal or provincial legislation. The impact of such a challenge may extend beyond the specific prosecution and have legal implication of general public importance, or concern a systemic issue related to the administration of justice. The purpose of this Policy is to ensure Public Prosecution Services applies a consistent and coordinated response to constitutional challenges.

2. Statement of the Policy

2.1 The Notice Requirement

The *Judicature Act* requires notice to be given to the Attorney General of Canada and the Attorney General of New Brunswick in any case in which

- (a) a question arises as to whether
 - (i) a statute or a provision of any statute of the Legislature is constitutionally valid or operative, or
 - (ii) a statute or a provision of any statute of the Parliament of Canada is constitutionally valid, or
- (b) a question arises as to the interpretation of the *Constitution Acts* or as to whether in relation thereto any regulation or by-law made pursuant to a statute of the Legislature or the Parliament of Canada is constitutionally valid or operative.

The requirement of notice is to ensure that governments have a full opportunity to support the constitutional validity of the legislation and to ensure that the presiding judge or justice has an adequate evidentiary record in constitutional cases.

2.2 Challenges to Federal or Provincial Legislation

The Crown Prosecutor shall advise the Regional Director or the Director of Specialized Prosecutions, as the case may be, in advance of any potential constitutional challenge where such an issue is apparent on the facts of the case.

Upon receipt of notice that an accused intends to challenge the validity or applicability of any federal or provincial legislation, the Crown Prosecutor shall immediately advise the Regional Director or the Director of Specialized Prosecutions, as the case may be, and provide him or her with a copy of the Notice.

The Regional Director or the Director of Specialized Prosecutions shall immediately advise the Director of Public Prosecutions who will advise the Attorney General of New Brunswick. The Director of Public Prosecutions will also decide whether to direct the Crown Prosecutor to maintain carriage of the prosecution or reassign the matter as appropriate.

2.3 Procedure Specific to Constitutional Challenges

In setting a date for the hearing of the constitutional challenge, the Crown Prosecutor should bear in mind the general rule that the application should not be heard prior to trial, but should be heard either during the course of the trial or at the end of it, if necessary.

Immediately upon resolution of the constitutional challenge, the Crown Prosecutor shall notify the Regional Director or the Director of Specialized Prosecutions, as the case may be, who shall notify the Director of Public Prosecutions of the result.

3. Related Documents

None