



Generic Valuation Tool

Legal Services

Recordkeeping Liaison Centre
Library and Archives Canada
Telephone: 819-934-7519 or 1-866-498-1148 (toll free in Canada and the US)
Email: bac.centredeliasion-liaisoncentre.lac@canada.ca



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Generic Valuation Tool (GVT)

LEGAL SERVICES

How to use this tool:

- This tool is designed for IM specialists to use with relevant business areas when identifying information resources of business value (IRBV) and retention specifications.
- The IRBV and retention specifications contained in this document are recommendations only and should be customized to apply in each institutional context. The complete document should be read before using any recommendations.
- **This GVT does not provide Government of Canada institutions with the authority to dispose of information.** GVTs are not Records Disposition Authorities (RDA) and do not replace the Multi-Institutional Disposition Authorities (MIDA).

Validation: The business processes and IRBV of this GVT have been validated by subject matter experts from the following departments: lawyers and information management staff from the Department of Justice (JUS).

Defining the Activity

According to the Treasury Board of Canada Secretariat *Profile of Government of Canada (GC) Internal Services*, Legal Services involve “activities undertaken to enable government departments and agencies to pursue policy, program and service delivery priorities and objectives within a legally sound framework” and “the provision of policy and program advice, direction in the development and drafting of the legal content of bills, regulations, and guidelines; assistance in the identification, mitigation and management of legal risks; legal support in ensuring compliance and enforcement of standards, regulations and guidelines; and representing the Crown’s interests in litigation.”¹

Legal Services are also identified by the Treasury Board of Canada Secretariat *Common Services Policy* as a *common service* of the Government of Canada (GC), which includes “providing legal advice, preparing legal documents, drafting legislation, regulating or conducting litigation, and overseeing all legal mechanisms used to achieve the overall objectives of the government.”²

¹ Treasury Board of Canada Secretariat, *Profile of Government of Canada Internal Services* (<http://publiservice.tbs-sct.gc.ca/mrrs-sgr/about-apropos/instructions-consignes/profil-eng.asp>) Appendix A – Definitions. If the hyperlink does not work, please contact im-gi@tbs-sct.gc.ca to request a copy of the document.

² Treasury Board of Canada Secretariat, *Common Services Policy* (<http://publiservice.tbs->

The *Department of Justice Act* identifies the Minister of the Department of Justice as the Attorney General of Canada and, as such, ascribes him or her with the responsibility to advise the heads of departments on all matters of law.³

Pursuant to this Act, the *Common Services Policy* identifies the Department of Justice (JUS) as the *common service organization* (CSO) responsible for providing Legal Services to GC institutions. Further, the policy states that institutions listed in schedules I, I.I, and II of the *Financial Administration Act* “must use these services for their requirements unless they are exempted by the Treasury Board or granted the necessary delegation of authority from the CSO.”⁴ A GC institution not listed in the schedules above may enter into an agreement with JUS for the provision of Legal Services; however, it is not obliged to do so.

Organizationally, some institutions have created permanent units to support legal matters, while others rely on staff closely linked to or knowledgeable of a given situation. Moreover, the type of unit that manages Legal Services may vary from one institution to another. For example, institutions:

- frequently assign responsibility for legal matters to organizational units responsible for developing corporate policies or strategies;
- often involved in litigation may have a litigation support office;
- often involved in establishing or modifying regulations may have an office that deals exclusively with this activity.

Relationship to Other GVTs

Business processes often overlap. When the IRBV for a sub-activity is also identified in another GVT, there is a note in the table of IRBV and retention recommendations (below) to direct the user to the proper tool.

It should be noted that information resources of business value and retention recommendations related to the provision of legal training and seminars are addressed in the GVT for Human Resources Management Services under the Employee Performance, Learning, Development and Recognition sub-sub-sub-activity.

Business Processes

The business processes herein were defined according to a variety of policy instruments and contextual documents produced by JUS, Privy Council Office (PCO) and Treasury Board of Canada Secretariat (TBS).

sct.gc.ca/pol/doc-eng.aspx?id=12025), Appendix E, section 5 If the hyperlink does not work, please contact im-gi@tbs-sct.gc.ca to request a copy of the document.

³ *Department of Justice Act* (<http://laws-lois.justice.gc.ca/eng/acts/J-2/index.html>)

⁴ *Common Services Policy*, Appendix E, section 1

Insofar as JUS is the primary provider of Legal Services, the business processes herein were first defined in reference to a number of JUS policies and contextual documents including:

- The *Service Standards for the Provision of Legal Services in Government*
- The *Template Memorandum of Understanding (MOU) between the Department of Justice and XXX (Name of Department or Agency)*
- The accompanying *User's Guide to the Memorandum of Understanding between the Department of Justice and Federal Government and Agencies for the Provision of Legal Services*.⁵

The definitions contained in the latter documents form the basis of agreements with some 60 GC institutions for the provision of these services.

The business processes were also influenced by a number of PCO,⁶ TBS⁷ and JUS⁸ guidelines and directives that regulate or explain legislative and regulatory creation or modification. The *Statutory Instruments Act* and the *Statutory Instruments Regulations*, which govern the creation of regulations, were also examined in detail, as were various requirements that also govern the institutions' obligations during litigations, including the *Evidence Act* and guidelines on accounting for contingent liabilities.⁹

The Legal Services sub-sub-activity has five sub-sub-sub-activities, with a number of associated business processes. For the purposes of this GVT, the Legal Advice and Legal Oversight have been combined.

1. Legal Advice and Oversight:

Includes requesting and receiving legal opinions, risk analyses, and advice concerning ongoing operations and programs of government institutions, as well as identifying and signalling legal trends and developments.

2. Preparation of Legal Documents:

Encompasses the development of legal agreements, such as contracts, treaties, authorizations, permits, real property documents, and memoranda of understanding.

⁵ These documents were retrieved from the Department of Justice intranet site on March 25, 2011.

⁶ Privy Council Office, *Guide to Making Federal Acts and Regulations*. <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/table-eng.htm> (accessed September 28, 2011)

⁷ *Cabinet Directive on Streamlining Regulation; Guide to the Federal Regulatory Development Process; A Guide to the Regulatory Process; Regulatory Impact Analysis Statement Writer's Guide; Guidelines for Effective Regulatory Consultations; Handbook for Regulatory Proposals: Performance Measurement and Evaluation Plan; Canadian Cost-Benefit Analysis Guide: Regulatory Proposals; the Policy on Legal Assistance and Indemnification.*

⁸ Department of Justice, *Regulations Manual: Legislation Deskbook*.

⁹ Treasury Board of Canada Secretariat, *Guidance on accounting for contingent liabilities stemming from claims and litigation and contingent gains*. <http://www.tbs-sct.gc.ca/fm-gf/tools-outils/guides/acl-cpe-eng.asp> (accessed September 28, 2011).

3. Litigation Services:

Include proceedings before all court levels and before administrative and inquiry bodies, domestically and internationally, both for civil and criminal litigation. Litigation Services also involve representing the institution in the resolution of litigious or potentially litigious matters, gathering and challenging evidence in accordance with applicable rules of evidence, and developing legal positions and making submissions to preserve the interests of the institution or those of the federal government as a whole.

4. Legislative Drafting:

Encompasses everything an institution does in relation to the adoption or modification of an Act, Regulation, or other statutory instrument.

Retention

Recommended retention specifications in GVTs are determined based on traditional or best practices, a review of government-wide legislation and policy, and validation with subject matter experts. Retention periods are suggestions only; departments must take into account their own legislative requirements and business needs.

Recommended retention specifications were developed based on the *Department of Justice Retention and Disposition Schedule* (2012). The department considered section 437 of the *Federal Court Rules* to arrive at the recommended retention specifications, which may be presumed standard across LSUs.

Business Value and Retention Recommendations

1. Legal Advice and Oversight

Business Processes	Recommendations: Information Resources of Business Value (IRBVs)	Recommendations: Retention Period
<p> Providing policy and program advice Ensuring compliance to standards and regulations Providing legal opinions Requesting legal advice Requesting legal documents </p>	<p>Pertinent legal advice and/or strategies found in, for example:</p> <ul style="list-style-type: none"> Requests Risk analysis Legal opinions/decisions Memoranda Draft authorizations, permits, licences, etc. Reports Title searches Correspondence Minutes of meetings Copy of Memoranda to Cabinet Briefing notes Backgrounders Draft TBS submissions <p>*Includes correspondence documenting decisions or substantive opinions, and substantive drafts (i.e., drafts reflecting substantive content-based modifications rather than simple editorial alterations).</p>	<p>12 years after file closes, except:</p> <p>25 years after file closes—where the resources relate to aboriginal matters or to real property and land</p>

2. Preparation of Legal Documents

Business Processes	Recommendations: Information Resources of Business Value (IRBVs)	Recommendations: Retention Period

<p>Negotiating the content of the document Assessing legal issues Drafting</p>	<p>Agreements Contracts Memoranda of understanding Title searches Authorizations Permits Treaties</p> <p>Real property documents, including: Leases Covenants, rights of way, easements, transfer documentation and other land title documents Transfers of administration and control</p> <p>Relevant drafts of above information resources that reflect significant change in direction Reports Party positions</p> <p>*Includes correspondence documenting decisions or substantive opinions, and substantive drafts (i.e., drafts reflecting substantive content-based modifications rather than simple editorial alterations).</p>	<p>12 years after file closes, except: 25 years after file closes—where the resources relate to aboriginal matters or to real property and land</p>
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3. Litigation Services (applies to civil and criminal litigation):

Business Processes	Recommendations: Information Resources of Business Value (IRBVs)	Recommendations: Retention Period
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<p>Preparation and filing of pleadings Producing affidavits/documents/evidence Examination for discovery Preparation for and conduct of trial Appeals process</p>	<p>Witness statements Subpoena Expert reports Evidence Risk analysis reports Assessments of the likelihood of adverse outcomes Input from related business areas Statement defence/statement of claim (all pleadings) Notices of appeal/factums Injunctions Argumentation plans/legal positions/legal opinions Formal notices Sworn statements/affidavits Investigation reports Writs of mandamus Transcripts of examination for discovery Transcripts of hearings Disclosure packages Briefing notes</p> <p>Records from litigation committees: Records of decision Minutes Agendas</p> <p>Strategies for litigation concerning, for example: Strategic plans Memoranda Risk analysis reports Assessments of the likelihood of adverse outcomes Contingency plans</p> <p>Financial records, for example: Quarterly reports on claims and pending and threatened litigation Estimates of potential liability or recoveries Correspondence</p> <p>*Includes correspondence documenting decisions or substantive opinions, and substantive drafts (i.e., drafts reflecting substantive content-based modifications rather than simple editorial alterations).</p>	<p>12 years after file closes, except:</p> <p>25 years after file closes—where the information resources relate to aboriginal matters</p>
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4. Legislative Drafting

Business Processes	Recommendations: Information Resources of Business Value*	Recommendations:
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	(IRBVs)	Retention Period
Development of statutes	<p>Proposals, memos, plans, etc., for example:</p> <ul style="list-style-type: none"> Policy proposals Copy of Memoranda to Cabinet ⁱⁱ Drafting instructions Draft bills Bill as tabled Committee proceedings and materials prepared for that purpose Bill as amended in committee if applicable Project plan Consultation plan Profiles of affected industries or other groups Input from stakeholders Analysis of the debates Overview of additional questions raised during the debates Written critique of the proposed amendment Briefing notes Briefing to the minister <ul style="list-style-type: none"> Questions and answers Speeches <p>Parliamentary information packages, for example:</p> <ul style="list-style-type: none"> Backgrounder Clause-by-clause analysis Issues papers General Qs and As Caucus and opposition briefing deck Highlight sheet Description of the consultation process 	12 years after file closes
Developing Regulations and other statutory instruments	<ul style="list-style-type: none"> Policy proposal and relevant memos to minister Legal analysis of enabling authorities or other legal concerns Drafting instructions Drafts of regulation Regulation as published in <i>Canada Gazette: Part 1</i> Stakeholder consultation records Notice of registration of final instrument Communications plan Performance Measurement and Evaluation Plan (PMEP)ⁱⁱⁱ Regulatory Impact Analysis Statement (RIAS)^{iv} <p>*Includes correspondence documenting decisions or substantive opinions, and substantive drafts (i.e., drafts reflecting substantive content-based modifications rather than simple editorial alterations).</p>	12 years after file closes

i Please note that final versions of Memoranda to Cabinet (MC) are held at PCO and are addressed by institution-specific disposition authorities for PCO. However, copies of those MCs that are retained by an institution have business value within the context of its own Legal Advice and Oversight sub-act.

ii Please note that final versions of Memoranda to Cabinet (MC) are held at PCO and are addressed by institution-specific disposition authorities for PCO. However, copies of those MCs that are retained by an institution have business value within the context of its own Legislative Drafting sub-activity.

iii Please note that final versions of the PMEPE are held at TBS and are addressed by institution-specific disposition authorities for TBS. However, copies of those PMEPE that are retained by an institution have business value within the context of its own Legislative Drafting sub-sub-sub-activity.

iv Please note that final versions of the RIAS are held at TBS and are addressed by institution-specific disposition authorities for TBS. However, copies of those RIAS that are retained by an institution have business value within the context of its own Legislative Drafting sub-sub-sub-activity.