

FAMILY CROWN SERVICES OPERATIONAL MANUAL

CONFIRMATION OF PROVISIONAL ORDERS UNDER THE DIVORCE ACT	New	Office of the Attorney General / Family Crown Services	Policy 35
Policy Title	New or Amended	Division / Branch / Section	Policy #

SLT		June 1, 2022	June 1, 2025
Approved by	This policy was approved on:	This version takes effect on:	This policy will be reviewed by:

CONSTITUTIONAL CHALLENGES

1. Introduction

From time to time, a party to a proceeding will challenge the validity or applicability of federal or provincial legislation. The impact of such a challenge may extend beyond the specific proceedings and have legal implication of public importance, or concern a systemic issue related to the administration of justice. The purpose of this Policy is to ensure Family Crown 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 Family Crown Counsel shall advise the Assistant Deputy Attorney General in advance of any potential constitutional challenge where such an issue is apparent on the facts of the case.

Upon receipt of notice that a party to a proceeding intends to challenge the validity or applicability of any federal or provincial legislation, the Family Crown Counsel shall immediately advise the Assistant Deputy Attorney General and provide him or her with a copy of the Notice.

The Assistant Deputy Attorney General shall immediately advise the Deputy Attorney General who will advise the Attorney General of New Brunswick. The Assistant Deputy Attorney General will also decide whether to direct the Family Crown Counsel to maintain carriage of the proceedings 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 Family Crown Counsel 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 Family Crown Counsel shall notify the Assistant Deputy Attorney General, who shall notify the Deputy Attorney General of the result.

3. Related documents

Judicature Act, S.N.B. 1973, c. J-2