

Constitutional Questions

INTRODUCTION

1. This *Practice Direction* provides further information about constitutional questions raised in an appeal as discussed in section 12 of the *Code of Procedure*.

CIRCUMSTANCES WHERE NOTICE REQUIRED/ TO WHOM NOTICE MUST BE GIVEN

2. Where a party intends,
 - (a) to raise a question about the constitutional validity or applicability of legislation, a regulation or a by-law made under legislation, or a rule of common law, or
 - (b) to claim a remedy under the *Canadian Charter of Rights and Freedoms* (the “*Charter*”),the party shall serve a notice of constitutional question on the Attorneys General of Canada and Ontario and file the notice with the IPC.

TIME LIMITS

3. The IPC will consider a constitutional question raised by an appellant only if the appellant raises it at the time they file their appeal or within 35 days after filing their notice of appeal with the IPC.
4. The IPC will consider a constitutional question raised by any other party only if that party raises it within 35 days after receiving the notice of the appeal from the IPC.



5. The adjudicator has the discretion to refuse to consider a constitutional question raised after the applicable time limit if the appeal proceeds to inquiry.

FORM OF NOTICE

6. A notice of constitutional question shall be in the form attached to this *Practice Direction*, or in a similar form that contains the same information.
7. When filing the notice of constitutional question, the party shall also file proof of its service on the Attorneys General of Canada and Ontario (e.g. a copy of the fax cover sheet or cover letter sent to the Attorneys General) with the IPC.

WHERE IPC BELIEVES NOTICE REQUIRED

8. If the IPC notifies a party that, in the IPC's opinion, the party appears to be raising a constitutional question or claiming a remedy under the *Charter*, the party shall within the time set out by the IPC either
 - (i) serve and file a notice of constitutional question in accordance with sections 2, 6 and 7, above, or
 - (ii) provide the IPC with representations as to why the party believes a notice of constitutional question is not required.

REPRESENTATIONS ON WHETHER NOTICE REQUIRED

9. The IPC may seek representations from other parties as to whether a notice of constitutional question is required because a constitutional question or a claim for a remedy under the *Charter* is being raised.

OBJECTION TO NOTICE

10. If the party objects to serving a notice of constitutional question, the IPC, after receiving submissions from the parties, will either
 - (i) notify the party that it is not necessary to serve a notice of constitutional question, or
 - (ii) direct the party to serve and file a notice of constitutional question in accordance with sections 2, 6 and 7 above within the time set out by the IPC.

SHARING REPRESENTATIONS

11. The IPC may share representations on constitutional questions with all parties in accordance with the IPC's *Code of Procedure and Practice Direction* number 7.



NOTICE OF CONSTITUTIONAL QUESTION FORM

INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

IN THE MATTER OF Appeal Number (insert appeal number) under the *Freedom of Information and Protection of Privacy Act* (or the *Municipal Freedom of Information and Protection of Privacy Act*)

NOTICE OF CONSTITUTIONAL QUESTION

The (*identify party*) intends to question the constitutional validity or applicability of (*identify the particular legislative provisions or the particular rule of common law*) (or to claim a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of an institution) in an appeal to be argued before the Information and Privacy Commissioner.

The following are the material facts giving rise to the constitutional question: (*Set out concisely the material facts that relate to the constitutional question. Attach the decision that is being appealed and any other relevant documentation where appropriate.*)

The following is the legal basis for the constitutional question: (*Set out concisely the legal basis for each question, identifying the nature of the constitutional principles to be argued.*)

An Attorney General who wishes to participate in the argument must so advise the Information and Privacy Commissioner upon receipt of this notice.

(Date)

(*Name, address, telephone number of the party or the party's counsel or agent*)

To: Attorney General of Ontario
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, Ontario M7A 2S9
Fax: (416) 326-4015

Attorney General of Canada
120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1
Fax: (416) 973-3004 or (416) 952-0298

(or to Ottawa Office at:)
234 Wellington Street
Ottawa, Ontario K1A 0H8
Fax: (613) 954-1920