



**CRIMINAL LAW POLICY FUNCTION  
EVALUATION  
Final Report**

**March 2014**

**Evaluation Division  
Office of Strategic Planning and Performance Management**



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## ACRONYMS

CAILS	Constitutional, Administrative and International Law Section
CCJS	Canadian Centre for Justice Statistics
CCSO	Coordinating Committee of Senior Officials
CLPS	Criminal Law Policy Section
DFATD	Department of Foreign Affairs, Trade and Development
DG/SGC	Director General/Senior General Counsel
DLSU	Departmental Legal Services Unit
FCY	Family, Children and Youth Section
F/P/T	Federal/Provincial/Territorial
FTE	Full-time Equivalent
HRLS	Human Rights Law Section
IAG	International Assistance Group
ILPS	International Legal Programs Section
ISF	International Strategic Framework
MC	Memorandum to Cabinet
O&M	Operations and Maintenance
PCVI	Policy Centre for Victims Issues
PICS	Policy Integration and Coordination Section
PILS	Public International Law Section
PLEI	Public Legal Education and Information
PSES	Public Service Employee Survey
RSD	Research and Statistics Division
UNGA	United Nations General Assembly
YJS	Youth Justice Section



## EXECUTIVE SUMMARY

### 1. Introduction

The Criminal Law Policy Section (CLPS) is the federal centre of expertise on criminal law and procedure including offences, enforcement powers, and sentencing and is jointly responsible with other units for advising the government on other policy and legal areas such as national security and terrorism. CLPS' mandate is twofold and includes supporting the Minister of Justice in the *development of criminal law and criminal justice policy* and *advising* the Government of Canada on criminal law and criminal law policy issues.

The evaluation of CLPS was conducted between November 2012 and December 2013. This is the first evaluation of the Section, and the first major policy function evaluation within the Department under the 2009 Treasury Board *Policy on Evaluation*. In accordance with this policy, the evaluation addresses the core issues of the relevance and performance of the Section, that is, the policy development process rather than individual policy initiatives. The evaluation covers the work of CLPS between fiscal years 2008-09 and 2012-13.

### 2. Methodology

The evaluation methodology consisted of a document and data review; key informant interviews with counsel and other professionals in CLPS and in other areas of Justice who have worked with CLPS, and representatives of client/partner departments, provinces and territories, non-government organizations and other bodies; as well as a file review. Triangulation was used to verify and validate the findings obtained through these methods and to arrive at the overall evaluation findings.

### **3. Findings**

#### **3.1. Relevance**

The Government has identified justice and public safety as a priority in Throne Speeches that have occurred during the evaluation period and is actively pursuing an ambitious criminal law reform and national security agenda.

CLPS directly supports the federal government's legislative and policy agenda on criminal law issues through its policy development work and by supporting the Minister of Justice throughout the Cabinet and Parliamentary process. As such, over the past five years, the Section's work as outlined in Departmental annual reports has been closely aligned with governmental priorities and commitments outlined in Throne Speeches.

The basis for the federal role in the development of criminal law policy is found in the *Department of Justice Act* and under the *Constitution Act*, section 91(27) which provides that the criminal law, except the constitution of the courts of criminal jurisdiction, but including criminal procedure, are matters of exclusive federal authority. While the Parliament of Canada is responsible for enacting the criminal law, the administration of justice is a provincial responsibility.

#### **3.2. Performance**

##### **3.2.1. Effectiveness**

The evaluation found that the Section is achieving its expected outcomes, though several external constraints such as the fast pace of policy development, the loss of counsel (particularly senior counsel) and decreased financial resources, are hindering its optimal effectiveness.

The evaluation generally found a high level of satisfaction with CLPS services among all external key informant groups. CLPS counsel are considered to be experts in criminal law by clients and Justice Canada counsel who have worked with the Section. Furthermore, most key informants consider the advice they receive from the Section to be of high-quality in that it is useful, timely, consistent and responsive to their needs.

While multiple lines of evidence show that the Section is producing quality products in terms of what is asked for within established timelines, which are often very short, some respondents (both within and outside the Section) indicated that the level of analysis and development of policy options is adversely affected. The fact that policy and legislative initiatives must proceed quickly, leaves less time for counsel to undertake thorough analyses, fully develop options, build a better, more complete record and conduct comprehensive consultations.

CLPS counsel collaborate with the provinces and territories as well as engage with numerous stakeholders within the Government of Canada such as other federal departments, and with external stakeholder groups, such as the Canadian Bar Association and the Canadian Association of Chiefs of Police to discuss criminal law issues and reforms. Although recognizing the importance and value added of these relationships, CLPS counsel noted that the fast-paced policy environment in which they find themselves often leaves limited time to consult within and outside the Section. Correspondingly, some client/partner departments and jurisdictions expressed concern that they are not always consulted in a timely manner. Some provincial key informants also indicated that the lack of meeting minutes/records of decision for Federal/Provincial/Territorial working groups can result in misunderstanding or differing recollections of meeting outcomes.

CLPS relies on a network of close, positive, collaborative working relationships with many varied stakeholders to deliver high-quality services. As such, it is paramount that the Section maintain a close dialogue with these groups. Multiple lines of evidence (interviews with provinces/territories, other areas of Justice, and client/partner departments) indicate that CLPS generally has a very good working relationship with its many diverse stakeholders. Although all provincial and territorial key informants and stakeholder groups generally indicated that their working relationship with the Section is very positive, some (other areas of Justice and other federal departments with whom the Section works collaboratively) identified a desire for more proactive outreach and systematic information sharing. For example, key informants noted that it would be helpful to know: CLPS' priorities and any upcoming consultation/engagement activities so that they can anticipate and plan ahead for these; and the various points of contact within the Section for specific subject matter expertise. Some key informants also noted a desire for improving the feedback loop since they can be left wondering how helpful their input was to the Section and if/how it was used.

### **3.2.2. Efficiency and economy**

The Section is achieving its expected outcomes using a limited amount of resources, though not in a manner that is sustainable. More than one third of CLPS staff who completed the 2011 Public Service Employee Survey indicated that they are not able to complete their assigned workload during their regular working hours (sometimes, rarely never/almost never). Moreover, multiple lines of evidence indicated that the demanding work environment is beginning to have a negative impact on staff morale.

Although the Section has experienced a rise in demand for its services, there has not been a corresponding increase in financial and human resources. In fact, the Section has experienced a substantial decrease, in both expenditures and full-time equivalents (FTEs) over the evaluation period.

The convergence of several factors, that is, the loss of counsel (particularly at the senior level), an increased demand for the Section's services, and short turnaround times are considered to pose a growing pressure on the Section's limited resources, having prompted it to adopt a more strategic approach to service delivery. The Section has undertaken several steps to improve efficiency such as assigning files based on experience, expertise, workload and operational needs and making use of prior advice when relevant, among others. Even so, the evaluation identified other potential areas, such as the team structure, that could further improve effectiveness and efficiency.

## 1. INTRODUCTION

The Criminal Law Policy Section (“CLPS” or the “Section”), within the Policy Sector of the Department of Justice Canada (the “Department”) is the federal centre of expertise on criminal law and procedure including offences, enforcement powers, and sentencing and is jointly responsible with other units for advising the government on other policy and legal areas such as national security and terrorism.

CLPS’ mandate is two-fold and includes supporting the Minister of Justice in the *development of criminal law and criminal justice policy* and *advising* the Government of Canada on criminal law and criminal law policy issues.

The main activities of the Section revolve around developing policy in relation to the *Criminal Code*. This involves supporting the Minister of Justice throughout the Cabinet and Parliamentary processes (e.g. in preparing submissions, briefing material, speeches), monitoring the progress of legislation and appearing as departmental witnesses before Parliamentary committees. Although the Section’s core policy mandate largely focuses on the *Criminal Code*, it also leads or assists with the development of amendments to a number of other statutes, including the:

- *Anti-terrorism Act*;
- *Canada Evidence Act*;
- *Controlled Drugs and Substances Act*.
- *Corruption of Foreign Public Officials Act*;
- *Crimes Against Humanity and War Crimes Act*;
- *Extradition Act*;
- *Identification of Criminals Act*;
- *Mutual Legal Assistance in Criminal Matters Act*; and the
- *Security of Information Act*.

The Section also provides legal and legal policy advisory services to other government departments. In the case of the former, CLPS will provide advice with respect to the federal criminal law power, for example on the establishment of criminal or regulatory offences, schemes and penalties and advice on how to apply the *Criminal Code* in an operational context. In the case of the latter, CLPS will be called upon to provide advice to the client directly as a policy counterpart, either during the policy development stage or during the subsequent drafting of legislation.

Internationally, the Section participates in bilateral and international meetings dealing with criminal justice issues, advises on the development of international criminal law resolutions, standards and instruments in an effort to ensure that they are consistent with Canadian criminal justice norms and values, provides technical assistance and expertise and evaluates other countries' compliance with international criminal law instruments. The Section also provides extensive support to senior officials and to the Minister of Justice when they participate in meetings with their international counterparts.

The evaluation of CLPS was conducted between November 2012 and December 2013. This is the first evaluation of the Section, and the first major policy function evaluation within the Department under the 2009 Treasury Board *Policy on Evaluation*.

### **1.1. Context for the Evaluation**

The 2009 Treasury Board *Policy on Evaluation* requires that all direct program spending be covered by evaluation. Since evaluation coverage tended to focus primarily, although not exclusively, on transfer payment programs prior to the implementation of the 2009 *Policy on Evaluation*, the policy work conducted by CLPS was an area yet to be fully covered by evaluation. Although CLPS has been involved in evaluations of specific initiatives such as Measures to Combat Organized Crime, Public Safety and Anti-Terrorism, and Integrated Market Enforcement Teams, a formal evaluation of its policy function had never been conducted.

### **Scope of the Evaluation**

The evaluation focused on the Section's activities from 2008-09 to 2012-13. However, some projects or work within the evaluation period had begun earlier, some with completion dates beyond the five-year evaluation period. The Policy Centre for Victim Issues (PCVI), which is part of CLPS, was not included in this evaluation as its work is already covered by the performance measurement strategy for the Federal Victims Strategy. However, the support

provided to CLPS by the Department's Research and Statistics Division is included in the evaluation.

In accordance with the 2009 Treasury Board *Policy on Evaluation*, the primary purpose of the evaluation was to assess the relevance and performance of the Section. In terms of relevance, the evaluation considered the continued need for the Section and the alignment of its priorities and activities with government priorities, departmental strategic outcomes, and federal roles and responsibilities. With regard to performance, the evaluation considered both effectiveness (i.e. the extent to which the Section has achieved its intended outcomes) and efficiency and economy (i.e. the degree to which appropriate and efficient means are being employed to achieve the desired outcomes). The focus of the evaluation was on the policy function, that is, the work done by the Section in relation to policy issues identification, research, analysis, options and positions development, advisory services, monitoring and supporting policy implementation and engagement with stakeholders in the policy process. The evaluation did not assess the content or outcomes of particular policies.

## **1.2. Structure of the Report**

This report contains five sections, including the introduction. Section 2 provides the background on the Criminal Law Policy Section, describing its structure, resources, services, and the logic behind its activities. Section 3 describes the methodology used in the evaluation. Section 4 summarizes the key findings, and Section 5 presents the conclusions, recommendations and management response.

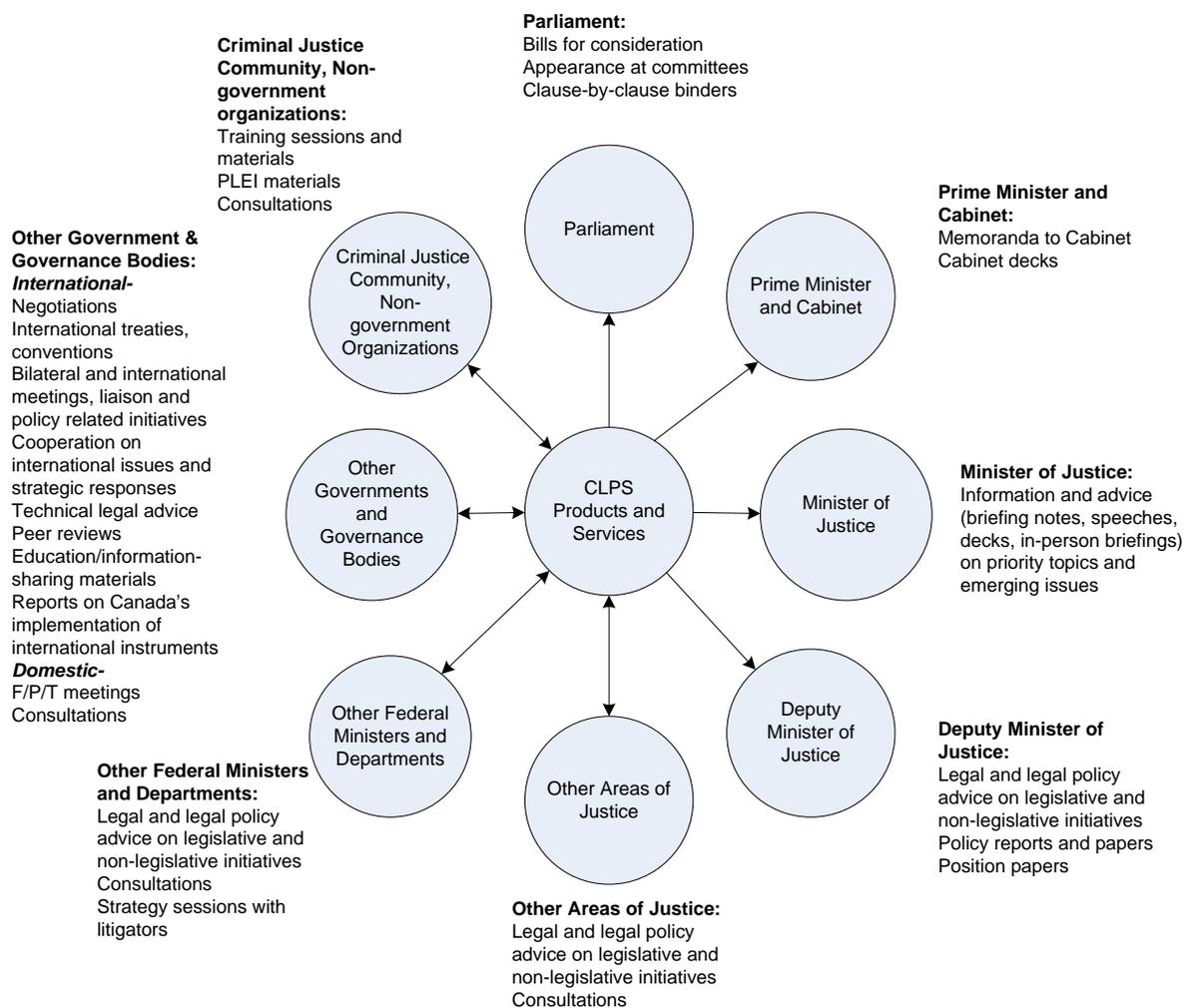


## **2. PROFILE OF THE CRIMINAL LAW POLICY SECTION**

Not unlike other policy functions, CLPS operates in a dynamic, complex, fast-paced policy environment that is significantly influenced by events, shifting priorities and changing landscapes. The Section consults and interacts with a wide range of policy stakeholders, each with their own unique needs and interests. There is significant variation in the nature of these relationships, their depth, duration and the type of engagement (e.g. partnerships, consultations, networking/information sharing). Part of CLPS' role is to help build consensus among stakeholders and achieve a balanced policy approach that takes these different perspectives into consideration. The policy work of CLPS benefits from the contributions and the support of a wide variety of actors and functions within the Department including, but not limited to, the Research and Statistics Division, Communications Branch, Public Law Sector (e.g. Human Rights Law Section which advises CLPS on the Canadian Charter of Rights and Freedoms (the "Charter") risks associated with policy proposals), Cabinet and Legislative Affairs and Legislative Services Branch (which provides drafting services).

Other federal departments and agencies, provinces and territories and non-government organizations also provide input into policy development through the consultation process. Figure 1 below depicts the variety of products and services that the Section delivers to its diverse client and stakeholder base. Lines with two arrowheads denote a reciprocal (partner) relationship between CLPS and the other party. The figure also summarizes the varied nature of the work undertaken by CLPS on behalf of its clients and stakeholders.

**Figure 1: Criminal Law Policy Products and Services for Clients and End Users**



## 2.1. Structure

The Criminal Law Policy Section is part of the Policy Sector, which manages the Department of Justice’s overall policy agenda. The Section consists of nine teams<sup>1</sup> which deal with different criminal law subject area specialties. While the team structure described below accounts for much of the Section’s policy work, it should be noted that some is carried out independent of this structure. Additionally, the Section works on cross-cutting issues that involve multiple teams.

<sup>1</sup> PCVI represents one of the nine teams but as already noted, is excluded from this evaluation.

For example, CLPS provides extensive legal and policy advice on international cooperation and cross border law enforcement initiatives, including extradition, mutual legal assistance, law enforcement information sharing, integrated cross border policing and cooperative policing and plays a lead role in the development of international instruments and protocols to govern cross border policing initiatives.

**Sentencing Reform** – CLPS monitors the policy environment with respect to sentencing, including sentencing patterns and case law on sentencing. The Section provides legislative and policy options to the Minister of Justice. In addition, other federal departments solicit its advice on the penalty provisions in proposed federal legislation. Issues covered under this theme include penalties (maximum and minimum), conditional sentences, alternative measures, restorative justice, and the dangerous offender regime in the *Criminal Code*.

**Cabinet and Legislative Agenda** – The Cabinet and Legislative Agenda group oversees CLPS' support to the Minister of Justice throughout the Cabinet and Parliamentary processes (e.g. in the preparation of Cabinet submissions, briefing material, speeches) and monitors the progress of legislation.

**Criminal Procedure** – Criminal procedure concerns the rules that govern criminal proceedings from the time of arrest through to sentencing and appeals. CLPS policy work in this area includes ensuring that procedures address emerging issues such as new technologies (e.g. electronic disclosure, telewarrants), social and procedural changes that affect the criminal justice process (e.g. the growth of mega-trials, the increase of self-represented accused) and case law developments (e.g. court decisions affecting legislative provisions). This policy work also ensures that the criminal justice system functions effectively, efficiently and fairly.

**Social and Moral Issues** – This subject area focuses on the provision of legal policy advice on social and moral issues in the criminal law context, such as federal legislative or policy responses to sexual morality issues (e.g. prostitution, pornography, obscenity), medical legal issues (e.g. abortion, assisted suicide, euthanasia), protection of vulnerable groups (e.g. violence against women and children including sexual violence, human trafficking), and other legal issues with social and moral implications (e.g. gambling, hate crime, mental disorder, impaired driving).

**External Relations** – Recognizing that increasingly criminal activity crosses national boundaries, CLPS focuses its response on transnational and international crime by participating in international fora, such as the United Nations Commission on Crime Prevention and Criminal Justice, the G8 Roma/Lyon Group on transnational organized crime and terrorism, and the

Canada-U.S. Cross Border Crime Forum. It brings Canadian experience, approaches and interests to the development of international instruments. In addition, protecting Canadian economic and national security interests can involve stabilizing countries that are experiencing serious domestic crime problems. Consequently, CLPS provides technical support and policy-related advice to assist these countries. The Section also provides advice and technical support to countries with effective justice systems that are interested in learning from the Canadian experience.

**High-Tech and Investigative Powers** – As part of its work in the area of high-tech crime, CLPS considers whether the statutory framework for law enforcement investigatory powers is sufficient to support the type of techniques required to keep pace with modern technology and its use in criminal activity.

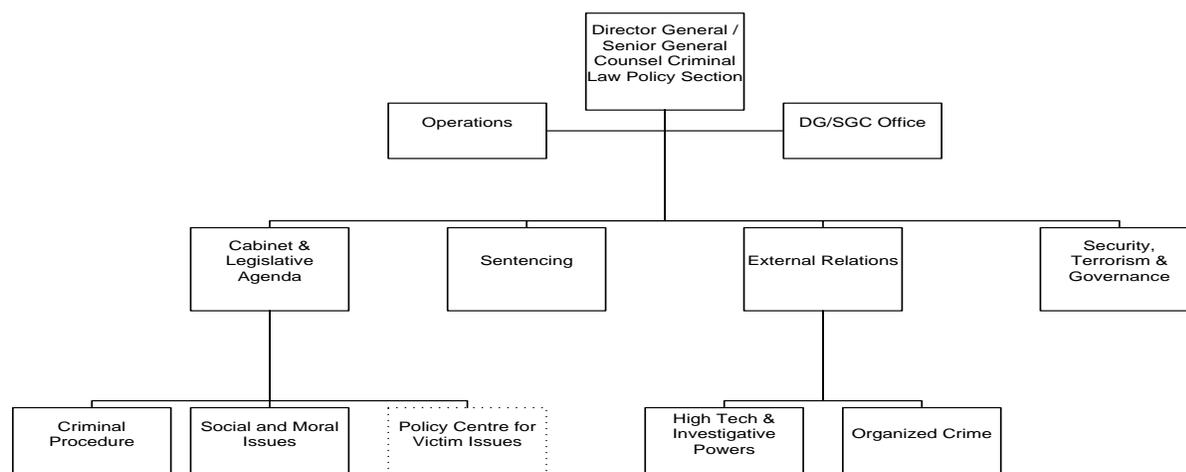
**Organized Crime** – Several *Criminal Code* provisions address organized crime and police investigative powers that federal or provincial law enforcement agencies use to enforce federal statutes. CLPS monitors the Canadian legal framework and provides advice concerning these statutory provisions and their operation. It participates in international fora that address organized crime and assists in the development and implementation of related international instruments.

**Security, Terrorism and Governance** – CLPS provides legal and policy advice on domestic legislation and policy related to security, terrorism and governance (anti-corruption). In particular, CLPS serves as the policy lead within the Department on related legislation, such as the *Anti-terrorism Act*, *Security of Information Act*, *Crimes against Humanity and War Crimes Act*, *Corruption of Foreign Public Officials Act*, and relevant provisions of the *Criminal Code* and the *Canada Evidence Act*. The Section participates in the negotiation of international instruments, implements international conventions into Canadian law, participates in international peer-review bodies and provides technical assistance to other countries undertaking domestic implementation. The Section also has the lead role in supporting the Minister of Justice with regard to the Cross-Cultural Roundtable on Security.

Figure 2 (below), shows the organizational structure of the Section, which is headed by a Director General/Senior General Counsel (DG/SGC). The DG/SGC Office provides executive support to the Director General, while Operations is responsible for corporate planning and reporting, budgeting, staffing, and contracting processes. The Director General is supported by several General Counsel and Team Leaders, each of whom leads one of the nine teams who deliver criminal law policy services. The Sentencing, Cabinet and Legislative Agenda, External

Relations and Security, Terrorism and Governance teams are each managed by a General Counsel (LC-02). The Criminal Procedure, Social and Moral Issues, Policy Centre for Victim Issues, High-Tech and Investigative Powers and Organized Crime teams are each led by a Senior Counsel (LP-03)<sup>2</sup> who reports to one of the four General Counsel.

**Figure 2: Criminal Law Policy Section Organizational Chart**



## 2.2. Resources

Table 1 shows the Section’s actual expenditures between 2008–09 and 2012–13. All of CLPS’ services are funded through Department of Justice allocations as the Section does not cost recover for its services. After a rise in 2009-10, the Section’s expenditures have been decreasing due to a reduction in both salary and Operating and Maintenance (O&M) expenditures. From 2009-10 to 2012–13, the Section’s expenditures decreased by 21% from \$8.1 million to \$6.4

<sup>2</sup> In January 2014, all the Law Group (LA) positions in the Department of Justice converted to the new Law Practitioner Group (LP). Although the period being evaluated is prior to this conversion, the evaluation report uses the new classification standard in place. The conversions are as follows: LA-DEV=LP-00; LA-01=LP-01; LA-2A=LP-02; LA-2B=LP-03; LA-3A=LP-04; and LA-3B=LP-05.

million. The most significant drop has been in O&M expenditures over the five years, which has dropped every year over the evaluation period.

**Table 1: CLPS Actual Expenditures by Year<sup>3</sup>**

	2008-09 (\$)	2009-10 (\$)	2010-11 (\$)	2011-12 (\$)	2012-13 (\$)
Salary	5,391,156	7,103,515 <sup>4</sup>	6,449,968	5,980,007	5,921,055
Operating and Maintenance (O&M)	1,211,836	1,036,656	875,620	814,852	524,136
<b>Total annual expenditures</b>	<b>6,602,992</b>	<b>8,140,171</b>	<b>7,325,588</b>	<b>6,794,859</b>	<b>6,445,191</b>

*Source: Information provided by CLPS Operations Team*

Table 2 shows the Section's actual human resources between 2008-09 and 2013-14. The Section employs 55 staff, a large majority of whom (67%) are counsel. Administrative staff represents 30% of employees, while other professional staff accounts for the remaining 3%. After a rise in 2009-10, total human resources have decreased annually between 2010-11 and 2013-14, which is mostly attributable to a decrease in counsel, particularly at the more senior levels (LP-03 and LC-02).

**Table 2: CLPS Human Resources by Year**

FTEs	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Administrative staff (AS)	16	18	20	17.5	17	16
Other professionals (EC)	3	2.4	1.3	2	2	2
Counsel (LC, LP)	40	47	44.9	43.6	40	37
<b>Total</b>	<b>59</b>	<b>67.4</b>	<b>66.2</b>	<b>63.1</b>	<b>59</b>	<b>55</b>

*Source: Information provided by CLPS Operations Team*

### 2.3. Criminal Law Policy Section Program Logic

A logic model is a systematic and visual way to illustrate the relationship between the planned activities of a program, in this case criminal law policy services and their expected results. In other words, a logic model is a depiction of how a program or service is intended to work and what it is trying to achieve. A basic logic model has the following key elements:

- **Activities:** The processes, tools, events and actions that are part of the implementation of the services. The activities should lead to the intended results.

<sup>3</sup> Policy Centre for Victims Issues expenditures are not included.

<sup>4</sup> Includes \$697,891.00 in retroactive pay paid to LA FTEs due to their salary increases.

- **Outputs:** The direct product of the identified activities.
- **Outcomes:** The impacts of the services. These are results/changes/benefits/consequences. They are usually presented in stages, as change is incremental over time: immediate outcomes should support and lead to the intermediate outcomes, and intermediate outcomes to long-term ones.

This section provides a logic model for CLPS, including a visual diagram (Figure 4) and text descriptions of the key elements. The descriptions in this section represent the theory behind the Section. As such, they provide an account of expected results of the Section's activities. The evaluation findings in Section 4 explore whether CLPS activities are being implemented as planned and whether expected outcomes are, in fact, being achieved.

### **2.3.1. Activities**

The Section's numerous activities that can be grouped into three main categories:

- Legal policy development and analysis;
- Legal advice and assistance; and
- Engagement and collaboration with provinces and territories, criminal justice stakeholders and international partners.

Each of these areas of activity is described below, including the expected results.

#### ***2.3.1.1 Legal Policy Development and Analysis***

Part of the Section's core mandate involves supporting the Minister of Justice in the development of criminal law and criminal justice policy. This includes providing criminal law and policy advice to the Minister and to other government departments as well as to advance Canadian priorities and interests internationally. The outputs of this policy work vary widely and include legal opinions, reports, legislation and international agreements and conventions. A lot of CLPS' work during the evaluation period led to the development and enactment of new criminal laws. The sub-sections that follow describe CLPS' involvement at each stage of the policy development process. Figure 3 depicts the federal policy development process and identifies the stages where CLPS is involved.

### **Step 1: Planning the Legislative Program**

Twice each year, the Department of Justice is asked to submit a list of the legislation that the Minister plans to propose to Cabinet for introduction. CLPS provides input into this process by submitting proposals for the government's legislative program in the area of criminal law and procedure. As part of this function, CLPS responds to policy direction from the government and monitors the legal policy environment in the areas of criminal law and procedure to determine emerging issues, such as gaps in the criminal law framework and issues with implementing recent law reforms. Research, case law and consultations with stakeholders (e.g. Canadian Bar Association) help inform emerging issues. As emerging issues and government priorities are identified, CLPS develops policy options for addressing them. The Minister's chosen policy option forms the basis of the legislative proposal<sup>5</sup>.

### **Step 2: Policy Development**

Generally speaking, after a proposed bill is included in the government's legislative program, CLPS counsel draft a Memorandum to Cabinet (MC) along with accompanying briefing material seeking policy approval and authority to draft the bill. The Memorandum to Cabinet includes an annex of drafting instructions which provides the framework for drafting the bill. As part of the development of the MC, the Section consults with affected departments and with legal advisers within specialized areas of the Department of Justice (e.g. Human Rights Law Section (HRLS) and the Constitutional, Administrative and International Law Section (CAILS)) who advise on the Charter and other constitutional implications of the policy proposal. Once it is approved by the Minister, CLPS follows the progress of the MC through approval by the appropriate Cabinet policy committee to ratification by the full Cabinet. It is usually at this stage that drafting can begin. Pre-drafting may start earlier, as long as Cabinet approval is given.

### **Step 3: Bill Drafting**

CLPS operationalizes the drafting instructions in the MC approved by Cabinet by working with the drafters (from the Legislative Services Branch) to develop the bill. The details of the drafting instructions are often fleshed out by CLPS counsel orally at meetings with a team of two drafters, one of whom is responsible for the English version while the other is responsible for the French. This co-drafting process ensures two original and authentic versions of the bill that reflect both the civil and common law systems, as well as both official languages. CLPS also

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<sup>5</sup> In reality, these steps are not so clearly delineated, with the development of options and consideration of the drafts of Memoranda to Cabinet often occurring at the same time.

drafts briefing and speaking notes, and attends the Government House Leader Review to respond to questions.

#### **Step 4: Parliamentary Process**

As the bill is being drafted, CLPS prepares the necessary briefing materials that will be required for the Parliamentary process. These materials include: briefing books for use by the Minister or Parliamentary Secretary; clause-by-clause binders for use by all Members of the Parliamentary committees studying the bill; draft statements for the Minister, Parliamentary Secretary and government Members during debate at the various stages of the parliamentary process; and a succinct background paper that describes the bill. CLPS also works closely with the Department's Communications Branch to prepare public communications materials such as: highlight sheets, backgrounders, Minister's Press Conference remarks, material for Parliamentarians and media briefings, press releases, and any other communication materials deemed necessary for a particular bill.

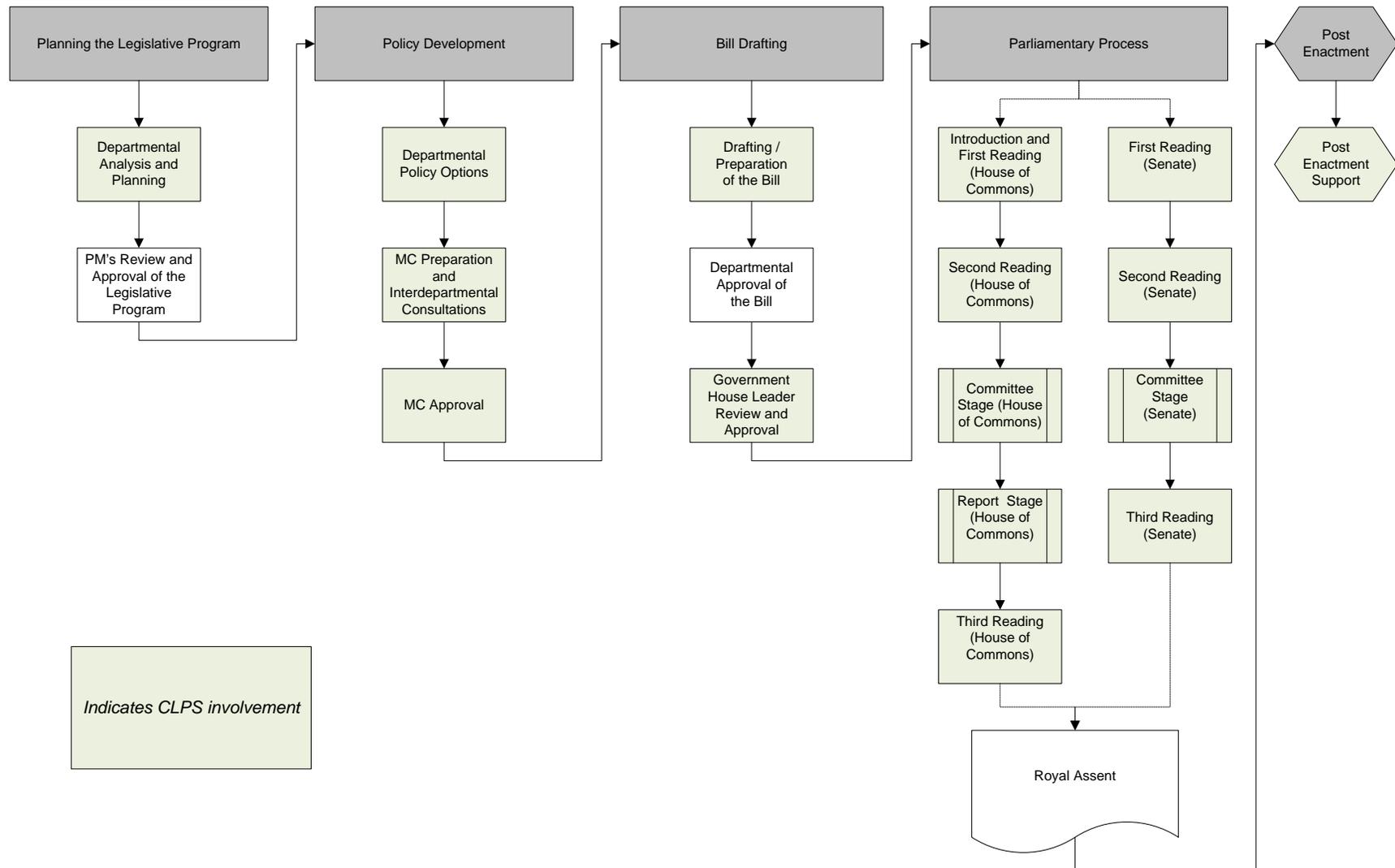
CLPS supports the progress and passage of criminal law reform bills throughout the Parliamentary Process. Bills proceed through three readings in each of the House of Commons and Senate and are studied by committees in each House. CLPS counsel can be asked to support the Minister in the government lobby during each of the readings and at the Report Stage (when the bill, as passed by the committee, is considered by the House). CLPS counsel also appear as witnesses on technical matters at committee or accompany the Minister during Bill Committee Study. Part of CLPS' role in supporting the Minister throughout the Parliamentary process also includes providing technical briefings to Opposition Critics upon request by the Minister's Office.

#### **Step 5: Post Enactment**

The final Parliamentary stage in the enactment of a bill by Parliament is Royal Assent. If the bill comes into force upon proclamation on a date or dates after the bill receives Royal Assent, CLPS prepares the supporting documentation to obtain the Order in Council fixing the date(s) for coming into force. Depending on the nature of the bill, CLPS may provide post-enactment support, for example, by engaging in outreach, training and educational activities that support the bill's implementation. The Section also monitors criminal law reforms by obtaining feedback on implementation issues from provinces and territories and criminal justice stakeholders including other departments and agencies, such as the Royal Canadian Mounted Police and the Public Prosecution Service of Canada, and non-governmental organizations such as the Canadian Bar

Association and the Canadian Association of Chiefs of Police. When legislation for which CLPS is responsible undergoes a parliamentary review process, the Section prepares materials and provides other necessary support, such as counsel serving as witnesses when appropriate. Additionally, CLPS provides litigation support when bills concerning a criminal law matter are contested. CLPS' participation in strategy sessions helps ensure that the litigators have the information necessary to understand the objectives of the legislation being challenged.

**Figure 3: CLPS Involvement the Federal Policy Development Process**



### **Private Members' Business**

CLPS also provides support to the Minister in relation to all Private Members' business related to criminal law, including motions, parliamentary questions, and bills. CLPS advises the government on Private Members' bills on criminal law matters (through Memoranda to Cabinet) and drafts speeches, briefing materials and amendments as necessary for initiatives the government supports. CLPS also works with legislative drafters to develop government motions to amend these bills where necessary. Similar legislative support and public and media relations materials (except clause-by-clause books) required for government bills are generally required for Private Members' bills.

### **Legal Policy Development in Other Departments**

In addition to legal policy development and analysis concerning the Department of Justice's own criminal law and criminal justice policy initiatives, the Section provides legal policy advice to other federal departments/agencies on their own proposed legislation, policies, programs, guidelines or other initiatives either during the development of the policy stage or during the drafting of legislation. The Section will often comment on proposed ideas or options or will be asked to add criminal law aspects to non-criminal policy proposals.

### **International Policy Development**

CLPS provides legal policy advice on the development of international instruments on criminal law and procedure. It does so by attending international meetings (e.g. United Nations, Organisation for Economic Co-operation and Development, Commonwealth, Council of Europe, G8, G-20) to share the Canadian perspective and by providing legal policy advice to Canadian negotiators. In some fora, such as the United Nations Commission on Crime Prevention and Criminal Justice, it is CLPS that leads the Canadian delegation in defending Canada's interests and positions when negotiating international instruments related to crime prevention and terrorism. In addition, CLPS is involved in reporting on Canada's implementation of international instruments and is involved in evaluating other countries' implementation of international legal instruments or international standards in intergovernmental review bodies (e.g. in relation to the United Nations Convention against Corruption, the Inter-American Convention against Corruption, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Financial Action Task Force Recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation).

CLPS can also be involved in bilateral meetings and negotiations. For example, the Section provides legal and policy advice in support of the negotiation of cross-border law enforcement initiatives, including the Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations between the Government of Canada and the Government of the United States of America.

### ***2.3.1.2 Legal Advice and Assistance***

As subject matter experts in the area of criminal law, CLPS provides legal advice to the Minister of Justice, to the Departmental Legal Services Units (DLSUs) and, on behalf of the Minister, to other federal departments. In the context of the former, CLPS, as the lead on the development of criminal law policy, will often provide a mix of legal and policy advice to the Minister of Justice. A typical briefing note, for example, may report to the Minister a factual situation that has occurred or is ongoing, how the existing law is being or may be applied, and then offer options or make policy recommendations as to law amendments or other legal or non-legal options for addressing them.

As with advice to the Minister of Justice, all other advice may contain legal matters or policy matters, and can contain both. A common scenario involves the use of criminal law powers and offences in support of the non-criminal policy proposals of other departments. In this scenario, the policy elements include advice on whether the client's policy objective is an appropriate use of the criminal law, and if so, an assessment of the probable effectiveness of various offences and sentencing options. The legal issues include matters such as advice on how existing criminal law elements of the scheme have been applied and the actual formulation or amendment of offences.

Legal advice is typically sought by counsel in DLSUs who have attempted to find solutions before contacting CLPS and it typically flows from the Section to the DLSU counsel and through them to the client. The nature of the advice sought varies considerably but commonly involves such issues as enforcement powers (e.g. search and seizure); questions about criminal procedure; sentencing-related questions; as well as advice in relation to such things as the creation of offences in regulatory statutes and advice on the interpretation of laws and the legal considerations for operational issues, such as the use of investigative techniques.

For litigation matters, when the federal government intervenes in a case involving the interpretation/application of the criminal law, including Charter challenges on a criminal law matter, the Section provides litigation support (along with the Public Law Sector) to ensure that

the litigators have the information necessary to address the Charter challenge. CLPS counsel often provide support to provincial counsel arguing criminal law issues even where the Government of Canada does not intervene, as well as to federal Crown prosecutors and litigators where the Government of Canada is carrying the case. CLPS also assists other countries in criminal law and procedure matters by giving technical assistance to support their law reform efforts and is occasionally involved in assisting the Government respond to complaints raised with United Nations bodies.

### ***2.3.1.3 Engagement and Collaboration with Provinces and Territories and Criminal Justice Stakeholders***

CLPS engages with the provinces and territories and with numerous stakeholder groups to identify emerging issues, discuss options for addressing them, and monitor reforms by obtaining feedback on implementation issues. This process includes consultations with federal, provincial and territorial officials on criminal law issues, which occur primarily through the Coordinating Committee of Senior Officials (Criminal Justice) and its working groups, as well as through interdepartmental working groups within the federal government. The Section consults with other departments and agencies, such as the Royal Canadian Mounted Police, Public Safety Canada, the Public Prosecution Service of Canada, Canada Border Services Agency, the Canadian Security Intelligence Service, and the Department of Foreign Affairs, Trade and Development (DFATD). In addition, as appropriate to the particular issue, CLPS consults with other relevant criminal justice stakeholders, such as the Canadian Bar Association, Barreau du Québec, the Canadian Criminal Justice Association, and the Canadian Association of Chiefs of Police.

At the international level, CLPS is involved in a number of bilateral activities with other countries (e.g. Canada-US Cross-Border Crime Forum, the Canada-India Joint Working Group on Counter-Terrorism) on issues of criminal law policy including national security and anti-terrorism law. CLPS also participates in a number of intergovernmental bodies and expert working groups, including the G8 Roma-Lyon Crime and Terrorism Group, the United Nations Commission on Crime Prevention and Criminal Justice, the Commonwealth and various specialized committees of the Organization of the American States.

## **2.3.2. Immediate Outcomes**

### ***2.3.2.1 Enhanced Knowledge and Understanding of Domestic and International Criminal Law Issues***

As a result of CLPS activities in monitoring the legal and policy environment, conducting legal and policy research, and engaging with stakeholders, activities that are all part of the policy development process, the Section's counsel develop a better understanding of emerging issues, options for addressing them and issues with implementation of recent law reforms.

The Section also enhances stakeholders' knowledge and understanding of criminal law issues through outreach, training and educational activities conducted during the implementation of new laws, regulations and policies. The Section also provides technical assistance and information sessions to other countries that want to learn from the Canadian experience.

### ***2.3.2.2 High-Quality Legal and Policy Advice on Domestic and International Criminal Law Issues***

As subject matter experts, CLPS staff provides high-quality legal and policy advice to assist in the development and implementation of the domestic and international criminal law framework. This advice foresees problems, presents options, and offers solutions. It is clear and serves its intended purpose. It includes legal advice/information on the legal issues and risks that have been identified, including their assessment of the legal risk. Legal and policy advice is provided in a timely manner, so that government officials can adequately consider the advice during their decision-making process.

In the specific context of litigation, CLPS provides legal advice to counsel who are handling cases involving the interpretation/application of the criminal law or Charter challenges. This includes providing support to provincial counsel arguing criminal law issues even where the Government of Canada does not intervene, as well as to federal Crown prosecutors and litigators where the Government of Canada is carrying the case. This advice provides counsel with an enhanced understanding of the objectives of the legislation under scrutiny and other advice that relates to addressing the particular Charter challenge.

### **2.3.3. Intermediate Outcomes**

#### ***2.3.3.1 Government Decision Making is Informed by Legal and Policy Advice***

Through its activities, CLPS is able to provide information upon which the government can base policy decisions. For example, the Section undertakes analyses regarding the potential impacts of legislative, policy or other initiatives. CLPS wants to ensure that the government is aware of the legal effects of any proposed changes and of the potential impacts that new laws or policies will have on the criminal justice system and key stakeholder groups. By offering well-analyzed policy alternatives, CLPS enables the government to make well-informed decisions based on the best available evidence. Although CLPS provides legal policy advice and support, it does not control whether its recommendations are accepted; the government makes the final decisions on the policy direction.

#### ***2.3.3.2 Contribution to the Domestic and International Criminal Law Framework***

CLPS contributes to the domestic criminal law framework through the development of criminal law policy. As mentioned previously, it is responsible for the preparation of Memoranda to Cabinet concerning criminal law policy issues, amendments to the *Criminal Code*, and in some other areas where the criminal law is seen as the primary or core element of an initiative. The Section also contributes to legislative and other initiatives where the criminal law does not form the primary or core element of the initiative.

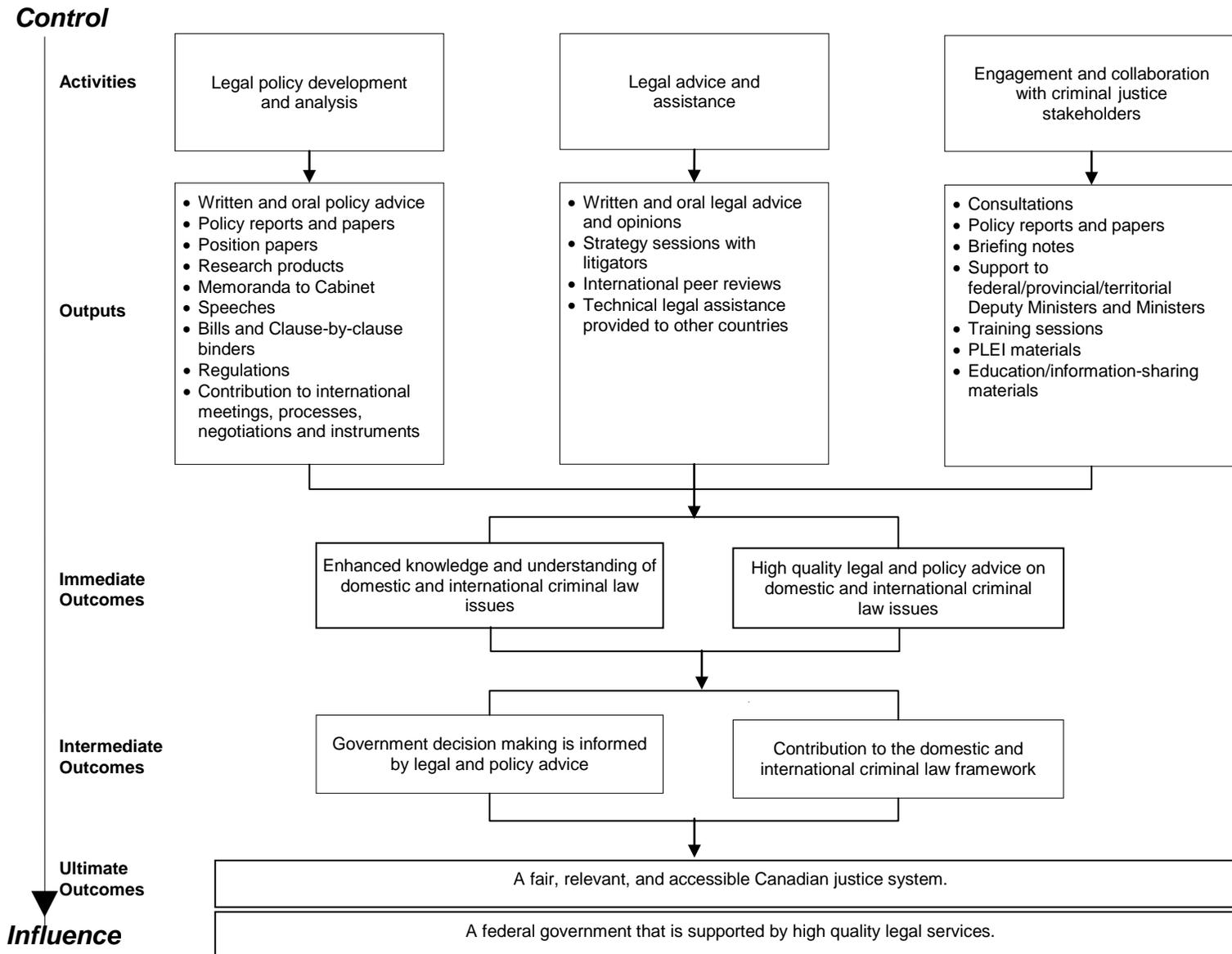
CLPS counsel often carry domestic policy files that involve discussions and cooperation with their international counterparts. This can be explained by the significant increase of transnational crime (e.g. drug trafficking, money laundering, cyber-crime, corruption, terrorism) due to globalization and technological advances. To ensure the effectiveness of Canada's criminal justice system, CLPS must develop coordinated responses with its international counterparts. For this purpose, CLPS engages in a wide-range of ongoing intergovernmental committees and working groups that deal with various criminal justice matters.

The Section also provides legal policy expertise to DFATD during the negotiations of international criminal law instruments, which is used to ensure that these instruments reflect Canadian interests and approaches. In some instances (e.g. United Nations Commission on Crime Prevention and Criminal Justice), it is CLPS, on behalf of DFATD, that directly negotiates international criminal law instruments.

#### **2.3.4. Ultimate Outcomes**

Ultimately, the criminal law reform and policy development of CLPS is intended to support and maintain *a fair, relevant and accessible Canadian justice system*, and to contribute to *a federal government that is supported by high-quality legal services*.

**Figure 4: Criminal Law Policy Section Logic Model**



### **3. METHODOLOGY**

The evaluation of the Section draws on four lines of evidence, that is, a document and data review, key informant interviews with departmental officials and other stakeholders, as well as a review of project-specific files. This section provides further details on each research method.

The methodological approach is largely qualitatively-based as the information and activities associated with policy development do not lend themselves to being quantified or rigidly structured. Qualitative methods permit a more open-ended approach that facilitates communication and permits flexibility in project development and in collecting information, which was key to this evaluation, it being the first major evaluation of a policy function within the Department under the 2009 *Policy on Evaluation*. The knowledge-base of the evaluators was gradually built up with each successive data gathering/analysis step so that better informed questions were asked and answers could be clarified in light of the data already acquired.

The methodology was developed in consultation with the CLPS Evaluation Working Group. All data collection methods and instruments were reviewed by the Working Group.

The evaluation matrix, which identifies the evaluation questions, indicators and lines of evidence and is used to guide the study, is included in Appendix A. The data collection instruments developed to respond to the evaluation matrix are in Appendices B and C.

#### **3.1. Document Review**

A number of reports and administrative documents were reviewed to obtain insight into the mandate, operations and relevance of the Section. Internal documents such as the Section's orientation binder and file plan, the Policy Sector's Business Plans, meeting agendas and minutes, working group terms of reference, memoranda to CLPS counsel, as well as financial and human resources information were reviewed as was publicly available information such as Budget speeches, Speeches from the Throne, Department of Justice Performance Reports and Department of Justice Reports on Plans and Priorities, documentation on the Parliamentary process and guides to making federal acts and regulations.

### 3.2. Secondary and Administrative Data

The evaluation included a review of administrative data from the Department's iCase database from fiscal years 2010-11 to 2012-13, which provided descriptive information about the types of files for which the Section is responsible and the level of effort (number of hours) associated with these. iCase is the Department's integrated case management, timekeeping and billing, document management and reporting system. The evaluation also included a review of results from the latest Public Service Employee Survey (PSES) (2011), providing information on demand for services, capacity and efficiency issues.

### 3.3. Key Informant Interviews

Key informant interviews provided descriptive information and opinions on both relevance and performance, but focused mostly on performance. They were a key line of evidence in gathering information on the effectiveness of the Section's activities. A list of potential key informants was prepared, and interview guides tailored to each key informant group were developed in consultation with the Evaluation Working Group. Interviews were conducted with a total of 77 key informants. Except for CLPS, where interviews were conducted with both senior and junior staff, most of the interviews were conducted with personnel in managerial-level positions. Table 3 below provides a breakdown of the number of key informants interviewed by respondent group.

**Table 3: Key informants**

Category		Number
CLPS	Managers	7
	Other staff	16
Sub total		23
Clients/Stakeholders	Other Department of Justice sections	20
	Departmental Legal Services Units	6
	Federal departments/agencies	16
	Provincial/Territorial representatives	8
	Non-governmental organizations and other bodies	4
Sub total		54
<b>TOTAL</b>		<b>77</b>

Interviews were multi-phased, providing an opportunity to reinvest acquired understandings and insights into the design of subsequent data collection instruments.

Potential interviewees received an invitation to participate in an interview. Those who agreed to participate were provided with a copy of the interview guide (in the official language of their choice) prior to the interview. Each interview was conducted in the respondents' preferred official language, and key informants were assured of the anonymity of their responses. The evaluation included a mix of telephone and in-person interviews. To ensure their accuracy, interview notes were sent to each respondent for their review upon completion of the interview.

### **3.4. File Review**

Six project files were reviewed to allow for a more in-depth understanding of the life of a file in relation to the performance measures for CLPS. The file review also allowed the evaluation to explore whether the information obtained from key informants on how the Section conducts its work was supported by documentation on file. The file review sample was chosen in consultation with the Evaluation Working Group and was selected to illustrate the variety of the Section's work. The evaluators reviewed two legislative (one of which included substantial provincial/territorial involvement through a consultation process), two advisory and two international files.

A thorough examination of the project file was in most cases followed up by discussions with the policy officer to supplement the documentation on file. These discussions provided information on the context for the work and a more in-depth understanding of the file. To ensure that comparable information was collected from each file, the file review was conducted using a file review template. The file review template, which focused on factual information available in the files, is included in Appendix C.

### **3.5. Methodological Limitations**

The evaluation faced a few methodological limitations. These are discussed below by line of evidence.

**Interviews.** The interviews with key informants have the possibility of self-reported response bias, which occurs when individuals are reporting on their own activities and may therefore want to portray themselves in a positive light; and strategic outcomes response bias, whereby the participants answer questions with the desire to affect outcomes.

**File review.** The sample of files was chosen with the input of the Evaluation Working Group and was considered to provide a good representation of the diversity of the Section’s work. As files were not chosen by random selection and the sample is not large, the file review sample is not a representative one. Rather, the file review was intended only to be illustrative of the Section’s approach to its different types of work.

**Data review: iCase.** iCase is the Department’s case management and timekeeping system. The ability to use iCase to respond to evaluation questions was constrained in several ways, primarily due to the limited amount of data available for the evaluation period. As iCase was implemented in CLPS in April 2010, only three full fiscal years of data were available for the evaluation period. Being the first year of implementation, the evaluators were cautioned against using 2010-11 data due to potential limitations with its accuracy and completeness. With only two years of more reliable data available, the evaluators could not use iCase to identify any trends (e.g. in the volume of work) over the five year time period covered by the evaluation.

It was also difficult to determine the amount of policy versus pure advisory work done by the Section using iCase. For instance, a large portion of the Section’s international legal advisory and policy development work is entered into one field, which does not distinguish the nature of the service provided. Additionally, some of the advisory work that occurs on policy files is subsumed under the legislative file in iCase. Although iCase contains records of CLPS’ pure advisory work, the evaluators had some difficulty profiling the nature of this work. The third most common type of advice sought by clients is miscellaneous advice which is captured in iCase as “Advice by Subject”, an all-encompassing category for “one-off” advice that is requested by DLSUs for its client departments.

### **3.5.1. Mitigation Strategy**

The mitigation strategy was to use triangulation to check findings against other sources and perspectives thereby countering the concern that the study’s findings were the result of a single method, a single source, or a single investigator’s observations/interpretation.

**Triangulation of qualitative data sources.** The evaluators compared and cross-checked the consistency of information derived by different means by comparing the perspectives of people from different points of view. By seeking information from the full circle of CLPS stakeholders, the evaluators were able to triangulate the views of CLPS staff, clients, partners, and other stakeholders and check interviews against program documents and other written evidence on file

that can corroborate what interview respondents report. The evaluators found consistency in overall patterns of data from different sources.

**Triangulation with multiple observers and analysts.** Multiple as opposed to singular observers and analysts were used for the evaluation. Using several interviewers helped reduce the potential bias that could come from a single person doing all the data collection and provided another means of more directly assessing the consistency of the data obtained. The evaluation also used the strategy of triangulating analysts, that is, having more than one person independently analyzing the same qualitative data and comparing their findings. This process helped deepen the evaluators' understanding of the issues and maximize their confidence in the evaluation findings.

**Review by evaluation participants.** The evaluators sent their draft interview notes to each key informant for their review. This helped ensure that notes taken during the interview were accurate and complete and served to enhance the overall validity of the interview data.



## 4. KEY FINDINGS

This section combines information from all lines of evidence and presents the findings according to the broad evaluation issues of relevance and performance.

### 4.1. Relevance

The evaluation considered the relevance of CLPS' services with respect to the rationale for the provision of criminal law policy services by the Department, the continued need for its services, the responsiveness of CLPS to government priorities, and the Section's support of the Department's statutory obligations and its contribution to Departmental strategic outcomes.

#### 4.1.1. Alignment with Government Priorities – Criminal Law Reform Agenda

CLPS' work responds directly to the government's priorities for criminal justice as the Section is actively engaged in supporting the Minister's criminal law reform and national security agenda. In support of the government's priorities, the Section provides legal policy advice and supports the progress and passage of key law reform bills in the areas of public safety, sentencing, and criminal procedure and that support the government's security and anti-terrorism initiatives.

CLPS' alignment with federal priorities is also demonstrated by comparing Speeches from the Throne with the Section's activities listed in Departmental annual reports.

- During 2011-12, CLPS provided legal and policy advice and supported the government in the introduction of seven crime bills including Bill C-2, the *Fair and Efficient Trials Act* (mega trials); Bill C-10, the *Safe Streets and Communities Act* that merged nine previous crime bills that had died on the Order Paper and included sentencing reforms addressing child sexual offences, conditional sentences of imprisonment and serious drug offences; Bill C-36, the *Protecting Canada's Seniors Act*; and Bill C-26, the *Citizen's Arrest and Self-Defence Act*. Protecting children from sex offenders, tougher sentences for those who abuse seniors and clarifying and strengthening the laws on self-defence, defence of property and citizen's arrest

were among the federal priorities identified in the 2011 Speech from the Throne. Improving the efficiency of Canada's criminal justice system was identified among the government's priorities in the 2008 and 2010 Speeches from the Throne. The Section also provided support for the introduction of Bill S-7, the *Combating Terrorism Act* which proposed both new amendments as well as amendments to re-enact expired anti-terrorism provisions, and Bill S-9, the *Nuclear Terrorism Act* which included proposals to create new nuclear terrorism offences. National security and terrorism were identified in the 2007, 2010 and 2011 Speeches from the Throne.

- In 2010-11, the Section supported the Minister's introduction of 15 bills (nine of which were re-introductions of bills that had died on the Order Paper in the previous Session of Parliament). These included such bills as: Bill S-6, the *Serious Time for the Most Serious Crime Act* (Faint hope) (proposing laws requiring that violent offenders serve their time in jail was identified as a priority in the 2010 Speech from the Throne); Bill S-9, the *Tackling Auto Theft and Property Crime Act* (tackling property crime, including the problem of auto theft was identified as a priority in the 2007 Speech from the Throne); Bill C-21, the *Standing Up for Victims of White Collar Crime Act* (cracking down on white-collar crime and securing justice for victims through tougher sentences was identified as a priority in the 2010 Speech from the Throne); Bill C-22, *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* (protecting children from Internet luring and cyber abuse was identified as a priority in the 2010 Speech from the Throne); Bill C-30, the *Response to the Supreme Court of Canada Decision in R. v. Shoker Act* and Bill C-48, the *Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act* (proposing laws ensuring that for multiple murderers, life means life and requiring that violent offenders serve their time in jail was identified as a priority in the 2010 Speech from the Throne); and Bill C-51, the *Investigative Powers for the 21<sup>st</sup> Century Act* (the introduction of legislation to improve investigative powers for the twenty-first century was identified as a priority in the 2010 Speech from the Throne).
- In 2009-10, CLPS was actively engaged in supporting the Minister's legislative agenda as evidenced by the 14 criminal justice bills that were introduced in Parliament that year<sup>6</sup>.

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<sup>6</sup> Of the 14 bills that were developed, 11 died on the order paper at prorogation. These included: Bill C-26, *An Act to amend the Criminal Code (auto theft and trafficking in property obtained by Crime)*; Bill C-31, *An Act to amend the Criminal Code, the Corruption of Foreign Public Officials Act and the Identification of Criminals Act and to make consequential amendments to another Act*; Bill C-42, *An Act to amend the Criminal Code (Ending Conditional Sentences for Property and Other Serious Crimes Act)*; Bill C-46, *An Act to amend the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act (Investigative Powers for the 21<sup>st</sup> Century Act)*; Bill C-36, *An Act to amend the Criminal Code (Serious Time for the Most Serious Crime Act)*;

Among these, Bill C-14, *An Act to amend the Criminal Code (organized crime and protection of justice system participants)*, amended the *Criminal Code* in order to enhance the capacity of the criminal justice system to address organized crime. The 2008 Speech from the Throne identified the strengthening of legal provisions related to organized crime as a priority.

- In 2008-09, the Section actively supported the Minister of Justice throughout the Cabinet and Parliamentary processes for the government's various priorities that included the *Tackling Violent Crime Act*. The 2006, 2007, and 2008 Speeches from the Throne identified the government's commitment to curb violent crime. The Section supported the government to help ensure the eventual passage and implementation of Bill C-2, *Tackling Violent Crime Act* in 2008 which groups together five bills that had been dealt with separately in the first session of the 39th Parliament. The five broad categories of legislative measures create two new firearm offences and provide escalating mandatory sentences of imprisonment for serious firearm offences; strengthen the bail provisions for those accused of serious offences involving firearms and other regulated weapons; provides for more effective sentencing and monitoring of dangerous and high-risk offenders; introduces a new regime for the detection and investigation of drug impaired driving and strengthens the penalties for impaired driving; and raises the age of consent for sexual activity from 14 to 16 years. Additionally, the Section supported the Minister in the introduction of several other bills, including Bill C-15, *An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts* and Bill C-25, *An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody)*.
- The 2008 Speech from the Throne indicated that legal provisions would be strengthened in key areas, including organized crime and gang violence. In February 2009, the Minister introduced in Parliament Bill C-14, *An Act to amend the Criminal Code (organized crime and protection of justice system participants)* to address violence associated with organized crime and gangs. The 2008 Speech from the Throne also identified the efficiency of Canada's criminal justice system as a priority. The Section was responsible for legislative changes to enhance the efficiency of criminal procedure through Bill C-13, *An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*, which received Royal Assent in May 2008.

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Bill C-54, *An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act (Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act)*; Bill C-55, *An Act to amend the Criminal Code (Response to the Supreme Court of Canada Decision in R. v. Shoker Act)*; and, Bill C-58, *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service (The Child Protection Act (Online Sexual Exploitation))*.

#### 4.1.2. Demand for CLPS Services

##### Government Bills

An active government agenda on criminal law reform has translated into a sustained demand for the Section's policy development expertise. The Section managed an average of 13 government bills during each of the last three Parliamentary Sessions that occurred during the evaluation period. Five Parliamentary Sessions occurred over this period<sup>7</sup>, and there were 45 government bills under the Minister of Justice's responsibility where the *Criminal Code* was the subject of the reform<sup>8</sup>, 15 of which were reintroductions of previous bills that had died on the Order paper (some including additional provisions). Included in this number are two major omnibus bills (i.e. Bill C-2, the *Tackling Violent Crime Act* and Bill C-10, the *Safe Streets and Communities Act*), that together, included provisions from 14 previous bills. Although Bill C-10, the *Safe Streets and Communities Act*, included provisions of nine bills that had been drafted and introduced in an earlier Parliamentary Session, iCase data indicates that CLPS counsel spent as many as 775 hours or 103 person days on this bill alone. iCase data also indicates that the Section spent approximately 3965 hours or approximately 530 person days working on government bills more generally in each of 2011-12 and 2012-13. However, these figures provide only a partial picture of time spent on government bills as hours are not put against a bill until it has a name and number (which occurs when a bill is introduced in the House of Commons or in the Senate). As such, all of the work completed before a bill is introduced in Parliament is not included and would increase these figures substantially. This preliminary work is recorded under different themes (e.g. security, terrorism, and sentencing) and is difficult to attribute to a specific bill.

##### Private Members' Bills

There has been and continues to be an increased willingness on behalf of the Government to consider and support Private Members' bills<sup>9</sup> on criminal law reform. As a result, the Section is dedicating additional time and effort to monitoring and providing timely policy and legal advice

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<sup>7</sup> 39<sup>th</sup> Parliament, 2<sup>nd</sup> Session; 40<sup>th</sup> Parliament, 1<sup>st</sup> Session; 40<sup>th</sup> Parliament, 2<sup>nd</sup> Session; 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session; and 41<sup>st</sup> Parliament, 1<sup>st</sup> Session.

<sup>8</sup> In addition to legal policy development and analysis concerning the Department of Justice's own criminal law and criminal justice policy initiatives, the Section provides legal policy advice to other federal departments/agencies on their own proposed legislation, policies, programs, guidelines or other initiatives that could impact criminal law issues. These figures do not include legislative initiatives led by Ministers other than the Minister of Justice where CLPS also played a major role.

<sup>9</sup> Private Members' bills are bills introduced in the House of Commons by individual Members of Parliament who are not Cabinet ministers. Bills introduced by Senators who are not members of the Ministry are called Senate public bills.

to the government on these bills than was the case in the past. LEGISinfo, the Parliament of Canada's online research tool for finding information on current and past legislation before Parliament, indicates that fully 38% (n=8) of all Private Members' bills with *Criminal Code* amendments that have received Royal Assent since 1910 were passed by Parliament during the Parliamentary Sessions that occurred during the evaluation period. The Section managed an average of 26 Private Members' bills during each of the last three Parliamentary Sessions that occurred during the evaluation period (from January 2009 to September 2013).

Although Private Members' bills are drafted outside of the Department of Justice, typically with the assistance of Parliamentary counsel, they nevertheless require a considerable amount of time and effort on the part of CLPS staff. CLPS was the lead in providing support to the Minister/advising the government on 52 Private Members' bills during the evaluation period, including 17 that were reinstated in a new Parliamentary session. iCase data indicates that CLPS counsel spent approximately 1900 hours on Private Members' bills from 2010-11 to 2012-13 or 253 person days over the three year period. Similar legislative support and public and media relations materials (except clause-by-clause books) required for government bills are generally required for Private Members' bills. Additionally, CLPS works with legislative drafters to develop government motions to amend these bills where necessary. Although Private Members' bills are typically drafted by a Parliamentary Counsel (Legislation) employed by the House of Commons and are usually much shorter and less complex than government bills, there are added challenges associated with these bills due to the Private Member bill process itself. There is often a lack of background information and no easy way for the Section to test its understanding of the Member of Parliament's objectives/intentions for the bill as there is no direct communication channel or working relationship between CLPS and Private Members.

### **Other Policy Outputs**

The Section's policy outputs are not comprised solely of legislative initiatives. Rather, policy outputs also consist of, but are not limited to regulations, policy options, position papers, and consultation documents.

The Section has instituted the practice of tracking the quantity and types of outputs it produces. Documentation provided by the Section indicates that it produced a large volume of varied products during the evaluation period. From 2008-09 to 2012-13, it produced on average, 928 documents each year including speeches, talking points and briefing notes for senior officials, commonly for the Deputy Minister and the Minister, as well as Cabinet documents (e.g.

Memoranda to Cabinet), correspondence to the public, clause-by-clause binders, Questions and Answers, position papers and presentation decks.

### **Actively Managed Files<sup>10</sup>**

Evidence of the ongoing need for CLPS, in terms of overall demand for its services, is also reflected in the number of files that were managed by the Section during the evaluation period. According to iCase data, the number of actively managed files within the Section increased by approximately 10% between 2010-11 and 2012-13, from 762 to 840 files. This increase is seen in advisory, general and legislative support files but is most predominant for advisory files. Correspondingly, the hours spent by counsel on actively managed files also increased. Over the same time period, the number of hours of legal services provided by CLPS increased by 44%. These results however, must be considered with caution as this increase is also likely due in part to a greater use of timekeeping by the Section in the years following the implementation of iCase.

Although not a complete picture of workload over the full five year evaluation period, available iCase data indicates that the number of actively managed legislative files within the Section increased by an average of 11% from 2010-11 to 2012-13 and the number of hours spent on these saw an average increase of 36% over the same time period. On average, the Section actively managed 629 legislative files during each fiscal year.

Similar to legislative files, the number of advisory files and the number of hours spent on these also increased from 2010-11 to 2012-13. More specifically, the Section saw an average increase of 21% in the number of actively managed advisory files from 2010-11 to 2012-13 and an average increase of 13% in hours spent managing these. On average, the Section actively managed 48 advisory files during each of the three fiscal years. However, due to the informal nature of some of the legal and policy advice provided by CLPS counsel which may not necessarily be reflected in iCase, together with the differing practices in recoding advisory work, this data is likely not a true reflection of the extent of advisory work within the Section.

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<sup>10</sup> Actively managed files are defined as those having accumulated at least five minutes of billable time per fiscal year.

### 4.1.3. Ongoing Need for Criminal Law Expertise

There is an ongoing need for criminal law expertise within the Government of Canada and a continued role for CLPS in providing that expertise.

The development of criminal law policy is highly complex and requires the specialized legal knowledge and expertise of CLPS counsel. Evaluation results show that perceptions of the need for CLPS are linked to the unique criminal law expertise of the Section's counsel. Internal documentation indicates that advice is typically sought by counsel in a number of departments and Justice headquarters sections who have attempted to find solutions before contacting CLPS and seek the Section's input only on more obscure or difficult issues. Many of the Section's clients who participated in an interview, noted that CLPS is a tremendous source of legal expertise in a specialized area and its advice and input adds great value to their work. In describing the risks to the Government of Canada if criminal law reforms go forward without the benefit of the best expertise on criminal law and the *Criminal Code* that is available through CLPS, respondents indicated that:

- criminal law reforms could go forward that undermine the policy attached to the *Criminal Code* (for example by legislating something outside the *Criminal Code* which should be in the *Criminal Code* or which undermines a rule or offence in the *Criminal Code*);
- what is negotiated at the international level through treaties and agreements may not be able to be incorporated in Canada's domestic law;
- the domestic legal framework may not adequately support international efforts to combat crime; and
- initiatives may not be optimal, thereby resulting in unnecessary litigation.

CLPS also plays a fundamental role in the development of Canada's legislative framework. It serves the important and unique purpose of assisting the Minister in delivering on the Government's criminal law reform agenda, monitoring the implementation and application of criminal law, identification of trends and concerns, identification of options for reform, and where reforms are needed, the legal and criminological development of reforms and all tasks associated with amending legislation.

Government priorities continue to signal the need for CLPS. As mentioned earlier in the report, the government has identified justice and public safety as a priority in Throne Speeches that have been delivered over the evaluation period and is actively pursuing an ambitious criminal law

reform and national security agenda. CLPS is responsible for delivering on the government's criminal law reform and national security agenda through its policy development activities.

#### **4.1.4. Alignment with Departmental Strategic Outcomes**

The Department's two strategic outcomes reflect the dual roles of the Minister of Justice and the Attorney General of Canada.

Although the program sub-activity *criminal justice*, which is inclusive of the work of CLPS, falls under the first strategic outcome within the Department's Program Alignment Architecture, the Section does in fact contribute to both Departmental strategic outcomes.

##### **Strategic Outcome 1: A fair, relevant and accessible Canadian justice system.**

In developing new or amended legislation and regulations, CLPS contributes to the Department of Justice's first strategic outcome. Ensuring its achievement requires continuous law reform activities to fulfill the commitments and top priorities of the government. This work responds to the changes needed in criminal law to address the evolving legal, social, technological and moral issues facing Canadians. For instance, the rapidly changing technological environment creates challenges for the criminal justice system, as new types of criminal activity emerge that may necessitate new investigative techniques. The ongoing and accelerated pace of such change creates pressure on the justice system both to update legislation to respond to these changes and to develop new approaches to protect Canadians.

The international justice environment is also an increasingly important consideration in the development of the Canadian justice system and in promoting Canadian security and prosperity more generally. The Section has become more implicated in international work due to globalization and technological advancements that have favored an increase in transnational crime and terrorism, which cannot effectively be dealt with by domestic means alone. The government not only has to take action domestically, but also has to take part at an international level to develop and implement measures there that are coordinated with Canadian criminal law and criminal law policy and that advance and protect Canadian interests and values. International conventions and protocols, to which Canada is party, must be reflected in domestic law.

## **Strategic Outcome 2: A federal government supported by high-quality legal services.**

CLPS is a provider of legal advisory services to the Government of Canada, and as such directly supports the Department of Justice's second strategic outcome. CLPS contributes to this outcome by providing formal legal opinions on criminal law, including on criminal procedure and sentencing, as well as advice in relation to such issues as the creation of offences in regulatory statutes or the granting of powers to enforcement officers or inspectors. The Section provides legal advice to the Minister of Justice, to other parts of the Department and to other federal departments.

### **4.1.5. Alignment with Federal Roles and Responsibilities**

The basis for the federal role in the development of criminal law policy is found in the *Constitution Act*, section 91(27) which provides that the criminal law, except the constitution of the courts of criminal jurisdiction, but including criminal procedure, are matters of exclusive federal authority. Responsibility for Canada's criminal justice system is divided between the federal and provincial/territorial governments. While federal responsibility encompasses matters related to the peace, order and good government of Canada as well as the specific subject-matter of the criminal law, provinces are responsible for the administration of justice.

The *Department of Justice Act* establishes the powers, duties and functions of the Minister as the official legal advisor of the Governor General and the legal member of the Queen's Privy Council for Canada, with responsibility to "see that the administration of public affairs is in accordance with law; have superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the governments of the provinces, advise on legislative Acts and proceedings of each of the legislatures of the provinces and generally advise the Crown on all matters of law referred to the Ministry of the Crown, and carry out such other duties as are assigned by the Governor in Council to the Minister."

Section 5.1 of the *Common Service Policy* identifies the Department of Justice as being responsible "Pursuant to the *Department of Justice Act* for the legal affairs of the government as a whole and for providing legal services to individual departments and agencies through functions related to the office of the Attorney General and the Minister of Justice. These services include the provision of 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."

Thus, the role of CLPS in supporting the development and implementation of criminal law policy is an appropriate role for federal government and falls within its authority.

## **4.2. Performance – Achievement of Expected Outcomes**

According to the Treasury Board's 2009 *Policy on Evaluation*, evaluating performance involves assessing effectiveness, as well as efficiency and economy. The subsections below discuss the effectiveness of CLPS – in other words, the extent to which the Section is achieving its expected outcomes.

### **4.2.1. Enhanced Knowledge and Understanding of Domestic and International Criminal Law Issues**

The evaluation considered the enhancement of knowledge and understanding of domestic and international criminal law issues from two perspectives: 1) within the Section – in other words, the activities undertaken by CLPS counsel to enhance their personal knowledge and understanding; and 2) outside the Section, that is, the educational/training activities undertaken by CLPS counsel to enhance the knowledge and understanding of criminal justice partners and stakeholders (e.g. judges, crowns and police) of domestic and international criminal law issues.

#### ***4.2.1.1 Proactive Monitoring***

CLPS counsel monitor the legal and policy environment as an integral part of their job—maintaining their subject matter expertise demands that they maintain a high level of awareness regarding case law trends and emerging policy issues. However, CLPS counsel indicated that an active criminal law reform and national security agenda has meant that they have had to focus on responding to immediate government priorities, leaving less time for proactive monitoring. Some CLPS counsel noted that this focus on myriad short-term urgent items has reduced their capacity to undertake core strategic policy planning and research. This in turn poses a risk in that the Section may not be as able to respond to emerging future policy priorities in a timely manner.

Even though most CLPS counsel indicated that they have less time to dedicate to this, they still proactively monitor the legal and policy environment. This is done in order to identify policy and legislative responses that would improve the Canadian criminal justice system and/or international legal framework activity and is accomplished by: monitoring and reviewing press clippings and legal periodicals; attending conferences and international meetings; participating in

interdepartmental, Federal/Provincial/Territorial, and international meetings, working groups and committees; undertaking comparative law work; and monitoring case law. This work is essential to, for example, developing an awareness of the use of existing offences, challenges in applying the law, and changing patterns of crime.

#### ***4.2.1.2 Consultations***

CLPS engages with the provinces and territories, as well as with numerous stakeholders within the Government of Canada such as other federal departments and with other external stakeholder groups including bodies such as the Uniform Law Conference of Canada, the Canadian Bar Association and the Barreau du Québec. Consultations occur at all stages of policy development – from initiation (e.g. to further counsel’s understanding of a problem, provide a forum to inquire as to whether a given issue is something that needs to be addressed, and to help identify possible solutions to a problem) through to implementation (e.g. input on coming into force dates, challenges with implementation). CLPS counsel reported that these consultations are very effective in helping them understand the broader implications of a given policy initiative/legislative reform in that they offer an operational or front-line perspective. Additionally, input from end users allows CLPS to identify and resolve problems with various policy options in advance of them becoming law.

Although recognizing the importance and value added of these consultation processes, CLPS counsel noted that the fast-paced policy environment in which they find themselves often leaves limited time to consult within and outside the Section. Correspondingly, some partner departments indicated that they are not always consulted in a timely manner. Although recognizing that timelines are often outside of the Section’s control, partner key informants suggested that CLPS should provide as much advance notice as possible of upcoming consultation/engagement activities so that stakeholders and partners can anticipate and plan ahead for these.

#### **Coordinating Committee of Senior Officials (CCSO) – Criminal Justice**

The process of engaging and collaborating with other criminal justice partners includes consultations with the provinces and territories as they have constitutional responsibility for the administration of justice. CLPS consults the provinces and territories on the identification of emerging issues, the development of policy and legislative options and the implementation of reforms (e.g. input on implementation dates) to improve the justice system. Communications are two-way in that CLPS also shares information with its provincial/territorial partners, for

example, by providing legislative updates concerning current bills as well as those coming into force.

Consultations occur primarily through the Coordinating Committee of Senior Officials (Criminal Justice) and its working group structures. The working groups are organized by subject matter area (e.g. Sentencing)<sup>11</sup> and most are co-chaired by a provincial/territorial and a federal representative from CLPS. There is a record of meeting minutes for several, but not all working groups. When asked about whether there are processes/practices that could improve communications between CLPS and their ministry, a few provincial/territorial respondents noted that the lack of meeting minutes/records of decision taken in the working groups can result in misunderstandings or differing recollections of meeting outcomes. The increased use of technological means to convene F/P/T meetings makes meeting minutes ever more important given that teleconferencing/videoconferencing can sometimes be unreliable (e.g. sound quality). Given that the CCSO working groups are a shared F/P/T responsibility, the Section may want to consider collaborating with the provinces and territories to gauge the level interest among members of the various working groups in having access to meeting minutes/records of decision.

Provincial and territorial representatives who were interviewed indicated that there has been less collaboration and information sharing between CLPS and provincial/territorial jurisdictions over the evaluation period than had been the case in the past. Key informants indicated that the extent of consultations with the provinces/territories varies from file to file as does the adequacy of time to provide input, both of which are a function of the increased pace of policy development. Multiple lines of evidence (key informant interviews and file review) found that in the case of Bill C-2, *the Fair and Efficient Criminal Trials Act* (assented to June 26, 2011), for example, reforms were a product of a great deal of consultation and collaboration with P/T partners, and in particular the Criminal Procedure Working Group. Recognizing that the provinces would likely need time to prepare for the implementation of this legislation<sup>12</sup>, the views of the provinces and territories were also sought regarding coming into force dates for this bill.

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<sup>11</sup> The CCSO Working Groups include: Sentencing, Criminal Procedure, Organized Crime, Proceeds of Crime, Drug Issues, Gambling, Cumulative Impact, High Risk Offenders, Mental Disorder, Anti-Corruption, Trafficking in Persons, Counter-terrorism, Cybercrime, Impaired Driving, Firearms, and Compensation of the Wrongfully Convicted. Missing Women and Victims of Crime are also among the CCSO Working Groups, however these are managed by the Policy Centre for Victim Issues.

<sup>12</sup> Bill C-2 the *Fair and Efficient Criminal Trials Act* proposed to increase from twelve to a maximum of fourteen the number of jurors forming a jury, therefore requiring significant adjustments to infrastructure of superior court rooms as most jury boxes are enclosed and do not offer sufficient space to comfortably accommodate one or two additional jurors.

Some provincial/territorial respondents indicated however that there have been instances where they have been notified of some bills right before and at times after coming into force/proclamation dates. Respondents noted that while outside of CLPS' control, this lack of information sharing has a negative impact on F/P/T relations in that it can leave the provinces and territories unprepared for implementation. Despite this, provincial/territorial respondents are generally very satisfied with their working relationship with CLPS and have found that appropriate CLPS counsel have been assigned to the CCSO (Criminal Justice) and its working groups.

#### ***4.2.1.3 Research to Support Policy Development***

The evaluation examined the processes and practices related to departmental research in the area of criminal law policy. The Research and Statistics Division (RSD) of the Department facilitates legal policy development within CLPS by providing research and statistical services to support an evidence-based policy process and decision making. The Division focuses on a wide variety of justice-related issues including, but not limited to, criminal procedure reform, *Criminal Code* reform, sentencing, terrorism and security, and victims.

The Department's Research and Statistics Division provides research support to CLPS through a range of services including undertaking data collection, conducting and managing research studies, providing statistical support, interpreting data, identifying collaborative F/P/T research projects and providing support on international work (e.g. responding to information requests, coordinating Canada's input on research/statistical tools).

The evaluation found that RSD involvement on criminal law policy files is generally *ad hoc* and dependent on the nature of the file and the desire of the policy officer lead to involve RSD. CLPS counsel who have used RSD services noted that the products provided by the Division have helped inform the 'lay of the land' and to scope out an issue providing a more thorough and clearer picture to policy and decision makers. RSD services and products provide CLPS counsel with contextual information that helps them respond to common questions such as "how big is this problem", "what is going on in other countries", information that is also helpful in responding to Parliamentary queries, appearing before Parliamentary Committees and responding to correspondence from the public. A large majority of CLPS counsel interviewed did not note any changes that could be made to the research services/support provided by the RSD to better meet their needs and further noted the high-quality of services and products offered by the Division. Some key informants also cited specific research studies that have been led by RSD that they found to be particularly useful and to which they still refer today.

RSD has been subject to cost-cutting exercises and subsequent budgetary and staffing reductions. From 2008-09 to 2012-13, the Division faced gradual reductions in its staff complement. In 2008-09, the Division employed 35 staff, which decreased to 17 staff in 2012-13, a reduction of 51%.

A decrease in resources coupled with the accelerated pace of policy development where policy and legislative initiatives are proceeding very quickly has meant that RSD has had to adapt its products and services to these new realities. CLPS counsel are now relying less on large scale research studies that examine broad policy questions and require primary data collection that take years to complete. Rather, CLPS research requests now tend to be more focused and the deliverable more condensed and expected within a much shorter turnaround. To make the most efficient use of time, RSD and CLPS are increasingly looking to secondary or existing research (e.g. from the Canadian Centre for Justice Statistics (CCJS) at Statistics Canada).

The changing policy development environment has lessened, but has not entirely eliminated the need for Departmental primary data collection or original research. For example, some CLPS counsel noted the limitations in the coverage and comparability of national data from the CCJS, which they rely on frequently to scope out criminal law policy issues. Primary data collection is still needed in order to help fill information gaps such as these.

During the evaluation period there was no formal mechanism within the Department for identifying research priorities in the area of criminal law policy. Rather, policy officers within CLPS worked directly with researchers to identify research information needs, which were not always aligned with areas of senior management focus and departmental priorities. However, RSD and CLPS are now taking a more strategic approach to the research planning process. Both parties critically assess requests for research services to ensure that they are reflective of departmental/governmental priorities and address a real need. Additionally, CLPS management collectively reviews and identifies priority items in the Section's research plan, which now requires their endorsement. With this new planning process, RSD anticipates being able to better support CLPS in its work by having a better understanding of the Section's needs and priorities through CLPS management input into the planning process and regular communication with the Section. It is expected that this planning process will also help RSD better direct its diminished research capacity.

Over the evaluation period there was no formal mechanism in place to facilitate information exchange/communication between RSD and CLPS. Given the increased pace of policy discussions in particular, there needs to be an effective mechanism for information exchange

between RSD and CLPS so that researchers are aware as policy decisions are made and priorities change and can therefore resynchronize their work accordingly. Regular, ongoing communication between RSD and CLPS is key to ensuring that criminal law policy research remains aligned with changes in policy direction.

#### ***4.2.1.4 Training and Other Post-Legislative Enactment Support***

The evaluation had limited evidence on the effectiveness of training and other post-legislative enactment support, though key informants did provide some examples of the Section's work in this area. For example, CLPS advises clients and partners on the application and meaning of amendments to the *Criminal Code* and provides interpretation and legislative history. It also provides input on communications products to introduce criminal law reforms and develops material for CCSO explaining the intent of new legislation. The Section provides litigation support on cases involving criminal law application or interpretation and related Charter challenges, including for example, by providing litigators with background material on the rationale for legislation, occasionally does presentations to CCSO or at international meetings/conferences, reviews and helps develop training material (e.g. for police and prosecutors) and has been consulted on occasion by provincial jurisdictions regarding some of their training and public legal education and information (PLEI) material. Most key informants who indicated that CLPS has supported their organization with the implementation of new policy/criminal law reforms or international instruments dealing with criminal law matters stated that the support provided met their needs. Of note is that many key informants were not aware that CLPS provides training and education/information material to criminal justice stakeholders which may indicate a need for the Section to increase awareness of its role in this area.

### **4.2.2. High-Quality Legal and Policy Advice on Domestic and International Criminal Law Issues**

#### **Satisfaction with CLPS Services**

The evaluation generally found a high level of satisfaction with CLPS services among all external key informant groups. CLPS counsel are considered to be experts in criminal law by clients and Justice Canada counsel who have worked with the Section and most key informants indicated that the legal and policy advice provided by the Section is of high-quality<sup>13</sup> in that it is

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<sup>13</sup> The question of whether the advice is accurate in law was outside the scope of the evaluation and as such is not discussed in this report.

timely, useful, and responsive to their needs. Some key informants noted that requests are not always fulfilled in a timely manner, but also acknowledged that the Section seems overworked and very busy with other priorities. This, however, can still be frustrating for clients with time-sensitive requests who are also operating in a fast-paced policy environment with quick turnaround times. That being said, the file review did not reveal any missed client-imposed deadlines.

Although a very strong majority of key informants consider the Section's services to be of high-quality, some did express the desire for a more client-service oriented approach from CLPS in terms of the legal and policy advisory services it delivers to other departments. While recognizing that CLPS manages many competing priorities, key informants noted that it would be helpful if CLPS counsel would help manage expectations by specifying the amount of time needed to fulfill specific requests and provide a date for delivery of the work-product.

Although key informants from international bodies (e.g. United Nations, foreign states) were not interviewed as part of the evaluation, domestic partners/clients indicated that CLPS has an excellent reputation at the international level and further noted that positive feedback is often received from foreign delegations mentioning CLPS' high level of competency in international discussions, particularly during negotiations. Another indication that CLPS is highly regarded internationally stems from the recent appointment of a CLPS counsel as Chair of a G8 Roma-Lyon working group<sup>14</sup>, the appointment of a CLPS counsel as the Vice-Chair of the Committee of Experts of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption<sup>15</sup>, and the appointment of a CLPS counsel as the Rapporteur of the United Nations study on cybercrime.

### **Accessibility of CLPS Counsel**

The Section's clients and partners are generally aware of when they should consult with CLPS counsel and find that the roles and responsibilities of the Section are clear. Requests are made both formally and informally, with some requests being transmitted formally through senior management and others made more informally to CLPS counsel directly. Key informants

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<sup>14</sup> The G8 Roma-Lyon Group, which is comprised of G8 partners (Canada, France, Germany, Italy, Japan, Russia, United Kingdom, the United States, and the European Union), pursues practical projects in counterterrorism, transportation security, high-tech crime, criminal legal affairs, law enforcement, and migration.

<sup>15</sup> The Committee of Experts is an inter-governmental body established within the framework of the Organization of American States. It supports the 31 States Parties in the implementation of the provisions of the Convention through a process of reciprocal evaluation, based on conditions of equality among the states. A CLPS counsel has always been the Lead Expert for Canada.

indicated that there are no barriers to seeking advice from the Section and that CLPS counsel are very accessible. While client/partner departments appreciate having a direct line to CLPS counsel, some noted that it would be helpful to know the points of contact within the Section for specific subject matter expertise. Although a File Responsibilities List itemizing the Section's files and the counsel responsible for each one is updated and circulated within the Section on a regular basis, it may want to consider sharing this information with clients and partners.

### **Constraints in Providing High-Quality Advice**

The pace of policy development has accelerated over the evaluation period. The associated short timelines, which were confirmed during the file review, were noted by almost all CLPS counsel as a constraint in their ability to provide high-quality legal policy advice. Similarly, 81% of CLPS employees indicated that the quality of their work suffers because of unreasonable deadlines in the last PSES in 2011. While multiple lines of evidence show that the Section is producing quality products in terms of what is asked for within established timelines, which are often very short, some respondents (both within and outside the Section) indicated that the level of analysis and development of policy options is adversely affected. The fact that policy and legislative initiatives must proceed quickly, leaves less time for counsel to undertake thorough analyses, conduct comprehensive consultations, fully develop options and build a complete record.

In the last PSES in 2011, 72% of CLPS employees also indicated that the quality of their work suffers because of constantly changing priorities. Changes in priorities affect the work of CLPS in that it can require considerable reorganization to transition from one priority to another. Shifts in policy direction can also result in the loss of momentum on long-term files and can create compressed time frames for responding to new policy issues. Although changing priorities are a function of policy work generally and largely outside of the Section's control, management is trying to keep staff up to date with these changes. This is accomplished through regular staff meetings. The Section has implemented: team leader meetings which occur on a bi-weekly basis; all staff meetings which occur on a monthly basis; legal counsel meetings which occur on a monthly basis; and team meetings (the frequency of which is determined by the Team Leader) to encourage information sharing within the Section.

### **Distinguishing Between Legal and Policy Advice**

The advice produced by the Section can consist of either legal opinions or policy advice, but commonly incorporates elements of both. Some clients noted that the distinction between the

policy (*what the client should or should not do* within a framework which is not circumscribed by the rule of law) and legal advice (*what the client can and cannot do* within the rule of law and whatever specific legislative and case law rules may apply) is not always clear. In legal matters, the DLSU counsel act as gatekeepers for their client as legal advice flows from the Section to DLSU counsel and through them to the client. However, policy advice does not follow the same path. As policy advice is a matter between policy experts in the departments concerned, CLPS counsel acting in their policy capacity will generally work directly with their counterparts in the relevant departmental policy units. In policy matters, where there are issues that involve both policy and law, non-lawyers have difficulty distinguishing between the two. Some clients indicated that it would be helpful if CLPS would separate, to the extent possible, legal from policy analysis.

### **Consistency of Policy Advice**

As mentioned previously, CLPS provides both legal policy and legal advice and some of the advice provided by the Section combines elements of both. In policy matters, differences of opinion within or between departments are not unusual as there is not necessarily any single “right” or “wrong” answer. In fact, with regard to criminal law policy matters, one of the central mandates of the Section is to assimilate differing perspectives and either resolve conflicts through negotiations and consensus where possible or put them to senior officials in the form of options. While the practice is to present coherent and consistent policy advice, senior officials are well-equipped to consider disagreements and inconsistencies, and may be better advised when presented with a range of options and the arguments raised in favor of and against each. In other words, the requirement for the Department of Justice to “speak with one voice” when providing legal advice, does not necessarily apply to policy advice.

### **Internal Consistency within CLPS**

Given that the Section’s organizational structure is based on specific areas of subject matter expertise and that files can involve cross-cutting issues that fall within the mandates of more than one team with potentially varying interests (e.g. human trafficking in which the Social and Moral Issues Team and Organized Crime Team are involved), it is important that the Section ensures that advice is consistent among the different teams in the Section.

One way consistency in legal advice is achieved is through consultation within CLPS among peers, team leaders and managers. The file review allowed for an exploration of consultations, collaborations and interactions occurring on files. Both the file review and interview findings

indicate that internal consultations within the Section, both within and between teams (when files involve multiple CLPS teams) and between counsel and managers, occur regularly. Key informants also cited the Section's regular internal communication practices as a factor contributing to a coordinated approach. As mentioned earlier, the Section has instituted bi-weekly team leader meetings, monthly Section meetings which alternate between counsel and all-staff, and team meetings to facilitate policy information exchange and communication across teams. Legal advice provided by CLPS counsel is also subject to a formal approval process and flows through the CLPS management structure, thus ensuring it is being seen through a broader lens. The team structure was also noted as helping protect against inconsistent advice in that CLPS staff know where the subject matter expertise is within the Section, and therefore know with whom they should be consulting internally.

### **Consistency within the Department of Justice**

As with the consistency of advice within the Section, CLPS counsel rely on consultations to ensure that the legal advice provided is consistent with other advice provided or position taken by the Department on the same topic. It is up to the policy officer to reach out to other areas of the Department when needed. CLPS counsel maintain a network of close working relationships with counsel in other areas of the Department through its participation in a number of working group and committee structures that help ensure consistency in the advice that is provided. Multiple lines of evidence (interview findings and file review) indicate for example that CLPS counsel participate on interdepartmental legal committees (either as members or chairs). These committees typically consist of DLSU counsel working at the various client-departments involved as well as Public Law Sector counsel and help ensure a Justice-wide view on legal issues surrounding multi-departmental initiatives. CLPS also appears to be well connected to other areas of Justice as it is represented on various Departmental committees at the Senior Assistant Deputy Minister and Director General levels.

CLPS counsel, DLSU counsel and client departments interviewed, indicated that legal advice flows from the Section to DLSU counsel and through them to the client. In the case of legal advice, DLSU counsel act as a gatekeeper for its client and are professionally responsible to the client for the advice. DLSU counsel are also responsible for integrating legal advice from a range of different sources into a final legal opinion which gives a clear and internally-consistent response to the client's needs.

### **Contribution of CLPS' Internal Partners**

Various support networks within the Department, such as the specialized sections, research, legislative drafting and communications functions feed into the Section's policy work thereby contributing to the quality of the end product. Memoranda to Cabinet, for example, combine financial, communication, research, and legal and policy elements, the two latter being frequently intermingled with parallel advice from other parts of the Department. Some key informants representing various other areas of the Department indicated that the Section would benefit from more effective support if there was more rigour in the requests being made of them by CLPS. Key informants indicated that the level of information provided for requests is variable. By providing the right level of information, for example on the background/context of the issue and the request to the extent that CLPS has or is able to obtain this information, both parties can be more helpful to one another. Of note is that CLPS counsel indicated that they too often lack appropriate background information regarding the request, which many identified as a factor that impacts their ability to provide high-quality advice. However, as will be discussed later in the report, CLPS management indicated that it is trying to obtain more complete information at the time it receives the requests for its services, which should in turn serve to clarify the requests made by CLPS to other areas of the Department.

Some respondents representing other areas of the Department also noted a desire for improving the feedback loop. They mentioned that they often do not receive feedback from CLPS after they have provided input/services to the Section and are left wondering how helpful their input was and if/how it was used. By receiving feedback from CLPS, these sections can make adjustments as necessary to ensure that the provision of support to the Section is as effective as possible.

### **4.2.3. Contribution to the International Criminal Law Framework**

#### **Advancing Canadian Interests during International Negotiations**

The Section engages with its international partners in order to advance Canadian interests and values in the development of international standards and norms and treaties, particularly global anti-crime and terrorism measures. The Section's treaty law work includes the preparation of negotiation strategies, participation in negotiations, the development of domestic implementation laws, and the development and delivery of technical support in relation to the ratification or accession of a treaty by other countries, as well as the evaluation of other states' compliance with international instruments.

CLPS leads the Canadian Delegation at the United Nations Commission on Crime Prevention and Criminal Justice, which is the central policy-making body within the United Nations system providing policy guidance in the field of crime prevention and criminal justice. The United Nations Commission on Crime Prevention and Criminal Justice adopts resolutions and decisions in the area of crime prevention and criminal justice, including terrorism. CLPS initiates consultations and legal research in order to develop Canada's positions in relation to draft resolutions. Key informants noted that the preparation work carried out by CLPS is essential to defending Canadian interests since resolutions are often negotiated simultaneously in different meeting rooms and there is no time to go back to Canada for further consultation. As a further example, a CLPS official has participated as the Head of the Canadian delegation at meetings of the Working Group on Criminal Justice and the Rule of Law of the Global Counter Terrorism Forum<sup>16</sup> and has negotiated the *Rabat Memorandum* on Good Practices for Effective Counterterrorism Practice in the Criminal Justice System<sup>17</sup>.

Although CLPS is responsible for leading the Canadian Delegation at the United Nations Commission on Crime Prevention and Criminal Justice, the DFATD generally has the lead on issues related to Canada's foreign policy and international relations. Multiple lines of evidence (key informant interviews, file review and document review) indicate that CLPS is often called upon by the DFATD to provide advice during the preparation work for negotiations and/or in real-time during actual negotiations that have an impact on the Canadian criminal law framework and where substantive subject-matter expertise lies in CLPS (e.g. human trafficking). For example, CLPS has been heavily involved in providing advice on resolutions being negotiated at the United Nations General Assembly (UNGA). Key informants noted that CLPS' criminal law expertise is essential in addressing UNGA resolutions dealing with crime related issues such as cybercrime and terrorism.

### **Provision of Technical Assistance Internationally**

Governments and justice system stakeholders are increasingly eager to learn from international examples. Countries such as Canada that have effective justice systems, are approached for advice, information and guidance by countries that want to improve their own systems of justice. The evaluation found that CLPS plays an important role in this regard. Key informants indicated

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<sup>16</sup> The Working Group on Criminal Justice and the Rule of Law of the Global Counter Terrorism Forum focuses on the critical role the criminal justice sector plays in combating terrorism.

<sup>17</sup> The *Rabat Memorandum* on Good Practices for Effective Counterterrorism Practice in the Criminal Justice System includes a set of good practices for police, prosecutors, judges, and other criminal justice officials to implement and promote a rule of law-based criminal justice sector response to terrorism.

that the Section is frequently asked by the DFATD to provide technical assistance to countries seeking to reform their justice system. In this respect, CLPS has participated in United Nations expert working groups, presented Canadian anti-terrorism efforts at United Nations technical assistance conferences, and presented international instruments and Canadian laws to representatives of other countries to enhance their comprehension of the issue at hand. CLPS has also been heavily involved in the drafting of the Model Law on Mutual Legal Assistance in Criminal Matters and in the Budapest Convention on Cybercrime and its Additional Protocol. The first aims to facilitate the assistance given and received by a country in investigations, prosecutions and judicial proceedings in relation to criminal matters. The second seeks to address cybercrime by harmonizing national laws, improving investigative techniques, and increasing cooperation among nations.

Occasionally, CLPS has provided advice directly to another country. For example, advice has been sought by other countries on how Canada's laws in a particular area of organized crime are being used as they may be contemplating amending their law in a similar fashion. CLPS has also received requests to assist other countries in reviewing their laws (e.g. human trafficking).

### **Assistance with the Implementation and Monitoring of International Instruments**

The evaluation found that CLPS has effectively supported the implementation of international instruments. Key informants indicated that CLPS has been involved in the development of assessment guides that allow countries to determine whether their domestic laws are in compliance with international obligations, and in the development of technical guides identifying international obligations. CLPS has also been involved in the implementation of bilateral initiatives, such as the Framework Agreement on Integrated Cross-Border Maritime Law Enforcement Operations between the Government of Canada and the Government of the United States of America<sup>18</sup> (Shiprider), through the development of domestic legislation.

Typically, an international treaty includes a formal follow-up mechanism, which consists of peer monitoring, to ensure that signatory countries are in compliance with the international obligations under the treaty. The evaluation found that CLPS has participated in expert working groups to monitor the progress of implementation in certain countries and to formulate recommendations to ensure an effective implementation of legal, regulatory and operational measures. The evaluation also found that CLPS has provided assistance to expert working groups

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<sup>18</sup> The purpose of this Agreement is to provide the Parties additional means in shared waterways to prevent, detect, suppress, investigate, and prosecute criminal offences or violations of law including, but not limited to, illicit drug trade, migrant smuggling, trafficking of firearms, the smuggling of counterfeit goods and money, and terrorism.

who come to Canada to verify the implementation of international instruments in this country. Although key informants provided examples of CLPS' work in peer monitoring and in assisting working groups who verify Canada's implementation of international instruments, there was limited evidence regarding the effectiveness of this support as the perspectives of international organizations were not sought for this evaluation.

#### **4.2.4. Government Decision Making is Informed by Legal and Policy Advice**

The evaluation focused on how government decision making is informed by CLPS legal and policy advice, rather than the degree to which clients make decisions that match the advice. This is in recognition of the fact that CLPS provides legal policy advice and support, but does not control whether their recommendations are accepted; the government makes the final decisions on the policy direction. These decisions are based on a complex consideration of many factors. Therefore, it cannot be assumed that any decision not to follow CLPS' advice is a negative indication of the quality of their work.

Due to the very nature of the policy development process, that is, through the drafting of a Memorandum to Cabinet which contains Ministerial Recommendations, the Section's advice is considered in government decision-making at the Ministerial level. The documentation and file review also provided concrete examples of the government's consideration and use of the Section's advice, as legal and policy advice on these files led to changes to the *Criminal Code*. Additionally, key informants identified examples of the Section's contributions to legislative and other initiatives of other departments where criminal law matters (e.g. criminal offences, punishments, enforcement) within the Section's expertise were incidental to non-criminal policy initiatives (e.g. implementing international treaty obligations). Similarly, the evaluation found that CLPS advice is considered to a large extent by DLSU counsel and client departments. CLPS staff indicated that they are generally consulted by client departments and other areas of Justice when they should be and as CLPS counsel are considered criminal law experts within the government, their perspectives are generally respected and valued by key informants. Client groups identified some of the risks of not consulting with CLPS: not being able to incorporate what is negotiated at the international level through treaties and agreements into Canada's domestic law; law reforms that undermine the policy attached to the *Criminal Code*; and unnecessary litigation. The potential significance of the legal risks that can arise if CLPS is not consulted, presumably also contributes to the consideration of the advice by clients.

### **4.3. Performance – Demonstration of Efficiency and Economy**

The Treasury Board's 2009 *Policy on Evaluation* defines efficiency as the production of "a greater level of output...with the same level of input or, a lower level of input with the same level of output," and economy as the achievement of expected outcomes using the minimum amount of resources required (Treasury Board of Canada Secretariat, 2009). Applying these definitions to the work of CLPS, an analysis of its efficiency and economy considers the actions of the Section to manage costs and demand for criminal law policy services.

#### **4.3.1. Efficiency**

##### **Measures Taken by CLPS to Enhance Efficiency**

The Section operates efficiently as it has been producing a greater level of output, that is, policy products and legal policy and legal advice with a lower level of input (financial resources and full-time equivalents). Increasing demands and shorter timelines have placed significant pressures on the Section's limited human and financial resources, prompting the Section to adopt a more strategic approach to service delivery. The Section has undertaken several steps to improve its efficiency while maintaining the quality of its services. It assigns files based on experience, expertise, workload and operational needs and some key informants indicated that there is 'buddying up' on files so that realignment is easier if there is a shift in priorities. Although not noted explicitly by key informants, this process also likely promotes corporate knowledge sharing so when counsel leave the Section for other opportunities or retire there is some continuity on the file. It should be noted however, that this buddy system does not seem to be a Section-wide measure as some key informants noted that some counsel still maintain exclusive ownership of their files.

The Section also endeavours to keep track of the advice it provides so that it can make use of it again and is trying to acquire more information with respect to client requests up front as a lack of contextual/background information around the request can slow the process down. The Section has also implemented an "X drive" which allows counsel to share secret information electronically within the Section rather than having to hand deliver it, and is relying less on formal briefing notes as a means of providing advice and more on oral briefings, email replies and shorter memos which are less resource intensive. The Department's organizational structure also creates efficiencies in that there are few layers between the Director General of CLPS and the Minister's Office, the Section's primary client for legal policy advice and development.

Internal documentation indicates that advice to the Minister is transmitted directly, via the Senior Assistant Deputy Minister, Policy Sector and Deputy Minister.

### **Training, Equipment, Tools and Resources**

The evaluation found that, in general, the training, equipment, tools and non-financial resources available to CLPS counsel are sufficient. The large majority of CLPS counsel who responded to the last PSES agree that they have the materials and equipment needed to do their work (88% of CLPS respondents agreed or strongly agreed), and that material and tools provided are available in the official language of their choice (94% agreed or strongly agreed). Additionally, fully 80% of CLPS employees indicated that they get the training they need to do their job. Some counsel also noted that it has been helpful having access to an in-house translator and paralegal in the Section.

Some key informants indicated however, that the Section is behind in technology. Although noting that the Section's implementation of the "X drive" now allows them to share secret electronic information within the Section, it does not yet have the technology in place to share secret information electronically outside the Section with the other areas of the Department with which it often collaborates. Rather, the Section is still having to hand deliver secret documentation that it shares with stakeholders. The evaluation also found that CLPS has encountered difficulties producing iCase reports that would be useful to it as a policy function. However, ongoing discussions between CLPS and the Business Practices Division are occurring to address these issues.

#### ***4.3.1.1 Improving Efficiency***

Key informants identified potential areas for increasing efficiency, which are described in the sub-sections that follow.

#### **Approval / Review Process**

The results of the last PSES indicate that 86% of CLPS employees feel that the quality of their work suffers because of too many approval stages. This issue was reiterated by some key informants who indicated that there are too many levels of approval within the Section and further noted the approval process as a potential area for improving efficiency. The review process was also noted by some key informants as being overly stringent.

Many client/partner departments and key informants in other areas of Justice noted the high-quality of CLPS products, which is likely a function of the Section's thorough approval and editing processes. These processes provide an opportunity for more senior counsel who are aware of broader issues and developments to ensure consistency in the advice provided by the Section. They also allow more senior counsel to verify, and if necessary, correct or amend legal or policy analysis. Recognizing the need to ensure quality on the one hand, and efficiency on the other, the Section may want to assess its approval and review processes to ensure that they are not excessive as they do add to the length of time taken to deliver the work-product and leave less time for the actual formulating of the advice.

### **Team Structure**

The team structure within the Section, which is organized by subject matter area (e.g. Sentencing, High-Tech Crime) helps ensure that it can effectively deliver policy development services as counsel possess expertise in substantive areas. Some counsel noted however, that the team structure does not necessarily continue to reflect the scope of the Section's work and the Government's emphasis on certain priorities over others. The Section may need to be more flexible in aligning its resources with changing government priorities so when there is a focus on a specific area (e.g. on sentencing or high-tech crime) within the legislative agenda, there are people who can help out. This would not only create efficiencies, but would help ensure that no one team/individuals are overburdened.

There has been some realignment of existing resources through the creation of virtual teams where CLPS counsel are shared between teams for cross-cutting issues where the work falls within the mandates of more than one team. On the human trafficking file, for example, counsel from the Social and Moral Issues Team and Organized Crime Team worked together and on the cyber bullying file counsel from the Social and Moral Issues and High-tech Crime Teams worked together. However, the mobility of counsel across teams and the assignment of files outside of a team on files that are not cross-cutting seem to occur less frequently. Evaluation findings indicate that the file assignment process could be working more effectively as some key informants noted that there is an uneven distribution of work within the Section. This suggests that the sharing of counsel across teams could be more fluid in order to help ensure a more even distribution of the workload within the Section.

## **Record Keeping / Filing System**

Record keeping is not only important for capturing institutional memory, it is also important for constitutional challenges as CLPS counsel are often called upon to provide background material (e.g. rationale behind legislation) to litigators to aid in defending legislation. Although there are departmental standards for information management and CLPS has a formalized filing system in place, some CLPS counsel indicated that they have nevertheless encountered difficulties retrieving documentation, either because a file was incomplete or they had difficulty locating the file itself. Some further expressed a desire for a directive on file keeping, which may be indicative of a lack of awareness of the standards/filing system that are already in place.

## **Managing Demand through Knowledge Dissemination**

Both internal documentation and key informants identified external information sharing as an area that the Section could consider to improve efficiency by helping it manage demand. These options include contributing to Justipedia (the Department's legal database for opinion work) as well as the provision of other online legal guidance. While recognizing that there are restrictions in terms of the sharing of secret information outside the Section, it is likely that some advice could still be shared, as well as products which outline general principles about criminal law, for example, considerations in crafting offence provisions. Also, if certain questions are posed often or there are topics where advice is repeatedly requested, materials that respond to them could be provided through this forum.

## **Information Exchange and Collaboration within CLPS**

Information exchange/sharing issues can affect efficiency in that they can create duplication of efforts or unnecessary work, result in unclear instructions or direction and consequently lower productivity. They also have the potential to create a knowledge deficit in an organization if there is no corporate knowledge sharing.

The Section has implemented a series of management, all-staff, team, and legal counsel meetings to encourage information sharing within the Section. Some key informants indicated that the Section is also exploring other avenues to promote information sharing such as the use of a CLPS Sharepoint site to encourage more sharing of previous advice within the Section, which would not only improve efficiency but also promote consistency in the advice provided. As discussed earlier, there is also some sharing of counsel across teams where files involve cross-

cutting issues and some ‘buddying up’ on files to encourage more corporate knowledge sharing within the Section.

The file review also provided evidence that peer review or a “second opinion” from a colleague also occur within the Section. These reviews provide a means of verifying legal analysis or incorporating the expertise of a colleague who deals with a related area or has past experience in the area and may identify issues or options that others may have missed. The evaluators found evidence during the file review of consultations and peer reviews among counsel in the Section and also between counsel and managers. Though, as noted previously in the report, some find the review/approval process somewhat burdensome in that the right balance between quality and efficiency has not yet been achieved.

In addition, the Section has organized and offered in-house training (CLPS counsel training CLPS counsel) to promote information sharing and exchange between counsel/policy officers. For example, there have been sessions on tips and advice for providing testimony at parliamentary committees and on lessons learned on specific substantive files.

### **Information Exchange and Collaboration outside CLPS**

The policy work of CLPS benefits from the contributions and the support of a wide variety of actors and functions within the Department including, but not limited to, research, communications, and legislative drafting. Outside the Department, other federal departments and agencies, government bodies and non-government organizations provide input into policy development through the consultation process.

CLPS relies on a network of close, positive, collaborative working relationships with many varied stakeholders to deliver high-quality services. As such, it is paramount that the Section maintains a close dialogue with these groups. Multiple lines of evidence (interviews with provincial/territorial key informants, other areas of Justice, and client/partner departments) indicate that CLPS generally has a very good working relationship with its diverse partners and stakeholders. Although all stakeholder groups indicated that their working relationship with the Section is very positive, some (other areas of Justice and other federal departments with whom the Section works collaboratively) identified a desire for more proactive outreach and systematic information sharing, particularly in the area of forward planning and prioritization of work. Respondents noted that Speeches from the Throne and new mandate letters represent appropriate junctures to set up meetings between CLPS and their work unit/organization for joint planning purposes.

## **Integration and Coordination of International Activities**

Due to its substantial involvement in the international realm, CLPS often plays a coordinating role in sharing information regarding international and bilateral meetings, gathering Justice input to assist DFATD and international reporting, and sharing the results of international meetings with colleagues. However, some key informants indicated that there is no clearly identified structure within the Department to coordinate its international activities. Although this is a larger Departmental issue that is outside the scope of the evaluation, it has the potential to affect the integration and coordination of CLPS' international activities with other areas of the Department. Different groups within the Policy Sector, including CLPS, International Legal Programs Section (ILPS), Youth Justice Section (YJS), Policy Integration and Coordination Section (PICS), and the Family, Children and Youth Section (FCY) are also actively involved in international criminal justice activities as are groups from the Public Law Sector (i.e. Public International Law Section (PILS) and HRLS) and the Litigation Branch (i.e. International Assistance Group (IAG)).

Even though these groups have different mandates (e.g. some focus on the policy side such as CLPS, while others focus more on the advisory/operational side), some key informants indicated that there are times where the distinction between policy and operations is not always clear. This could lead to potential duplication of work.

The increasing demands for international engagements and bilateral partnerships are putting pressure on the Policy Sector, but particularly on CLPS' limited financial and human resources. In order to enhance the Sector's strategic planning, coordination and reporting mechanisms regarding its international work, CLPS developed an International Strategic Framework (ISF) in 2011. The ISF identifies general principles and criteria for determining international priorities, and applies to the entire Policy Sector. At the time of the evaluation, the first year of implementation of the ISF was being assessed and its impact had not yet been determined. Although the ISF aims to create a more strategic approach within the Policy Sector, it was not developed for use by other sectors or branches of the Department.

Another impact arising from the lack of a centralized/coordination function within the Department for international activities is that CLPS' engagement at the international level is not always known outside the Department, or at times internally. Some key informants indicated that discussions regarding certain policy initiatives with an international component did not include CLPS, particularly during the preliminary stages. Federal and departmental stakeholders are not necessarily aware of the need to contact CLPS at the outset when developing initiatives with an

international dimension, indicating a potential need for the Section to better communicate its role in the international realm.

#### **4.3.2. Economy**

##### **Financial and Human Resources**

The Section is achieving its expected outcomes using a limited amount of resources. As mentioned in previous sections of this report, key informants generally indicated that the Section is providing high-quality advice and most were very satisfied with the services provided by the Section. Although the Section is effective, it may not be operating in a manner that is sustainable.

Roughly half (52%) of CLPS employees who responded to the 2011 PSES indicated that the quality of their work suffers because of having to do the same or more work, but with fewer resources, a sentiment that was reiterated by key informants. The convergence of several factors, that is, the loss of counsel (particularly at the senior level), an increased demand for the Section's services, and short turnaround times are considered to pose a growing pressure on the Section's limited resources. As mentioned in earlier sections of this report, CLPS has experienced a rise in demand for its services, however there has not been a corresponding increase in financial and human resources. In fact, the Section has experienced a substantial decrease, in both expenditures (by 21% from 2009-10 to 2012-13) and FTEs (by 18% from 2009-10 to 2012-13) due to attrition and salary reductions. The Section has lost five senior level counsel, without being able to replace them. This has the potential to affect the effectiveness and the efficiency of the Section's services in complex matters, erode the experience and knowledge base of the Section and affect the quality of legal work. Internal documentation indicates that CLPS is in a salary deficit position and is experiencing significant challenges in terms of backfilling vacancies. The Section has to look within the Department to fill positions as there is no new hiring, but many counsel do not have criminal law expertise. Now that the Public Prosecution Service of Canada is no longer part of the Department of Justice, there has been a further narrowing of the potential pool of available talent. Although facing a shortage of FTEs, almost all client and partner departments indicated that appropriate counsel are assigned to work with them considering the expertise and experience of the counsel and the nature of the file.

Key informants (CLPS staff, managers and other areas of Justice) indicated that CLPS counsel are continually working at a very fast pace and some indicated that resources are not sufficient to

complete the tasks required of the Section in the timelines requested and to the degree they should be done. Of note, more than one third (37%) of CLPS staff who completed the 2011 PSES indicated that they are not able to complete their assigned workload during their regular working hours (sometimes, rarely never/almost never). Moreover, multiple lines of evidence indicated that the demanding work environment is beginning to have a negative impact on staff morale.

Although multiple lines of evidence indicate that the Section is facing a resource deficit, internal documents and key informants indicated that the Section may not be fully optimizing the resources it has at its disposal. There was a marked difference in perspective among CLPS key informants regarding the sufficiency of human resources in the Section. Roughly half of CLPS key informants indicated that the Section has a sufficient human resources complement. They noted that the team structure, on which the file assignment process is largely based, has led to an uneven distribution of work within the Section.

As mentioned previously, CLPS has experienced a significant drop (by 57% from 2008-09 to 2012-13) in its O&M expenditures, including travel. Although travel budget reductions have translated into some cost savings for the Section in that there is now a greater use of alternative means of participation in external meetings (e.g. teleconferencing and videoconferencing), some key informants indicated that they are having a negative effect on CLPS' ability to promote and protect Canadian interests in the international context. Some key informants noted that CLPS counsel have had to decline invitations to participate in international and domestic meetings as subject-matter experts and have had to prioritize their participation at different international negotiation sessions. The value of direct CLPS participation in negotiations was iterated by a number of respondents who indicated that CLPS counsel must be present in order to understand the intent of a treaty, why specific words were chosen and to have input regarding the wording.

Key informants across all federal respondent groups (CLPS staff, other Justice staff, partner departments) indicated that CLPS' involvement in international negotiations has declined over the evaluation period. In this situation, the risk is that if CLPS is not present (e.g. at Organisation for Economic Co-operation and Development), the other negotiators may agree on an interpretation binding all members that does not work for Canada constitutionally. For example, multiple lines of evidence (key informant interviews and file review) indicate that the Canadian Delegation at the 2013 annual session of the United Nations Commission on Crime Prevention and Criminal Justice, which was led by CLPS, was very small compared to those that had attended in previous years. The limited size of the Delegation did not allow for complete coverage of the negotiation sessions. As a result, the Delegation had to prioritize its participation

in the different negotiation sessions and work closely through like-minded partners to ensure that Canada's interests were covered to the extent possible. It should be noted that in 2011, under the leadership of CLPS, member states of the United Nations Commission on Crime Prevention and Criminal Justice developed new procedures to extend to one month prior to the annual session the deadline for countries to submit their draft resolutions; previously the deadline had been the first day of the annual session. Key respondents indicated that these new timelines have increased CLPS' capacity to strategically prioritize its participation in United Nations Commission on Crime Prevention and Criminal Justice negotiation sessions.

Some key informants also noted that due to travel restrictions, CLPS counsel are not as able to attend international conferences and meetings dealing with current topics of concern. These fora are important since they enhance counsel's understanding of the file so they can better advise the government. To play their role in the development of criminal law policy in Canada effectively, CLPS counsel must be able to closely monitor the positions of other countries and the evolution of international consensus in this regard.

The current travel cap also limits the ability of counsel to travel for training which, in turn, increases the importance of internal training opportunities. The Section has organized and offered in-house training for policy officers (CLPS counsel training CLPS counsel) for example on tips and advice for providing testimony during parliamentary committees and sessions have been offered on lessons learned on specific substantive files. Additionally, there have been sessions offered by other specialized sections in the Department specifically for CLPS counsel. Key informants noted that these sessions not only help meet the needs of counsel in terms of the continuing professional development requirements of their law society, they promote a better awareness of specific files and their challenges and build camaraderie within the Section. Although the evaluation did not specifically assess the effectiveness of this training (e.g. in meeting the needs and expectations of counsel and in increasing their knowledge and understanding), 80% of CLPS employees did indicate that they get the training they need to do their job in the last PSES.

## **5. CONCLUSIONS, RECOMMENDATIONS AND MANAGEMENT RESPONSE**

This Section of the report presents conclusions based on the findings outlined in the previous sections. The information is structured along the main evaluation issues.

### **5.1. Relevance**

CLPS plays a fundamental role in the development of Canada's legislative framework. It serves the important and unique purpose of monitoring the implementation and application of criminal law, identifying trends and concerns, identifying options for reform, and where reforms are needed, the legal and criminological development of reforms and all tasks associated with the development of legislative proposals.

The work of CLPS responds directly to the government's priorities for criminal justice as the Section is actively engaged in supporting the Minister's criminal law reform and national security agenda. An ambitious government agenda on criminal law reform has translated into a sustained demand for the Section's policy development expertise.

The basis for the federal role in the development of criminal law policy is found in the *Department of Justice Act* and under the *Constitution Act*, section 91(27) which provides that the criminal law, except the constitution of the courts of criminal jurisdiction, but including criminal procedure, are matters of exclusive federal authority.

### **5.2. Performance**

#### **5.2.1. Achievement of Expected Outcomes**

The evaluation generally found a high level of satisfaction with CLPS services among all external key informant groups who indicated that the legal and policy advice provided by the Section of high-quality in that it is timely, useful, and responsive to their needs.

Various stakeholders such as the specialized sections within the Department, DLSUs and other departments feed into the Section's policy work thereby contributing to the quality of the end product. Although CLPS' partners indicated that they generally have a very good working relationship with the Section, they did identify a desire for more proactive outreach and information sharing. In particular, key informants noted that it would be helpful to know: CLPS' priorities and any upcoming consultation/engagement activities so that they can anticipate and plan ahead for these; and the various points of contact within the Section for specific subject matter expertise. Additionally, some key informants noted a desire for improving the feedback loop since they can be left wondering how helpful their input was to the Section and if/how it was used. The evaluation also found that federal and departmental stakeholders are not necessarily aware of the need to contact CLPS at the outset when developing criminal justice initiatives with an international dimension, indicating a potential need for the Section to better communicate its role in this area.

**Recommendation 1:** That CLPS explore opportunities for enhancing proactive outreach and communication with key partners.

**Management Response:**

*Agreed.*

*While sometimes there are limits imposed on the Section in relation to the extent to which it can engage in outreach or undertake consultations on particular files or share information about certain matters, there is always room for improvement, for example, in closing the feedback loop as is suggested.*

*We also take note of the view that the services we offer may not be as widely known throughout the government as perhaps they could be.*

The pace of policy development has accelerated over the evaluation period. The associated short timelines were noted by almost all CLPS counsel as a constraint in their ability to provide high-quality legal policy advice. While multiple lines of evidence show that the Section is producing quality products in terms of what is asked for within established timelines, which are often very short, some respondents indicated that the level of analysis and development of policy options is adversely affected. The fact that policy and legislative initiatives must proceed quickly, leaves less time for counsel to undertake thorough analyses, fully develop options, build a complete record and conduct comprehensive consultations.

The process of engaging and collaborating with the provinces and territories, given their constitutional responsibility for the administration of justice, occurs primarily through the Coordinating Committee of Senior Officials (Criminal Justice) and its working groups. There is a record of meeting minutes for several, but not all working groups. Some key informants noted that the lack of meeting minutes/records of decisions taken in CCSO working groups can result in misunderstandings or differing recollections of meeting outcomes.

**Recommendation 2:** That CLPS work with the provinces and territories to assess the feasibility of implementing a process whereby short reports or summaries of decisions taken are recorded and distributed to CCSO Working Group members.

**Management Response:**

*Agreed.*

*As a matter of practice, the Coordinating Committee of Senior Officials (Criminal Justice) (CCSO) has agreed upon the drafting a Decision Summary following its meetings. For example, a Decision Summary of the last CCSO plenary meeting was prepared and sent to CCSO members.*

*At the outset of each plenary meeting of CCSO, reports are provided on the results of the working group meetings, which are held in advance of the plenary meeting. These oral reports at the plenary meeting are reflected in the CCSO Decision Summary.*

*CCSO Working Groups are mostly co-chaired by federal and provincial officials, so a collaborative effort is required.*

**5.2.2. Efficiency**

The Section operates efficiently as it has been producing a greater level of output, that is, policy products and legal policy and legal advice with a lower level of input (financial resources and FTEs). Increasing demands and shorter timelines have placed significant pressures on the Section's limited human and financial resources, prompting it to adopt a more strategic approach to service delivery. The Section has undertaken a number of steps to improve its efficiency while maintaining the quality of its services such as assigning files based on experience, expertise, workload and operational needs and keeping track of the advice it provides so that it can make use of it again, among others. Still, the evaluation identified other potential areas, such as the

team structure, for further increasing efficiency given the pressures posed by an increased workload, less staff to carry out the work and the fast pace of policy development.

The team structure within the Section, which is organized by subject matter area helps ensure that it can effectively deliver policy development services as counsel possess expertise in substantive areas. However, the evaluation found that the team structure may not continue to reflect the scope of the Section's work and the government's emphasis on certain priorities over others. The Section may need to be more flexible in aligning its resources with changing government priorities so that it is fully optimizing the resources it has at its disposal.

**Recommendation 3:** That the Section explore opportunities to re-align resources to more effectively and efficiently address the demand for services, including new priority issues.

**Management response:**

*Agreed.*

*The Section has in place a team structure, which assists in the management of the Section.*

*Team organizations enable officers working on related issues to share knowledge, expertise and workload. They also frequently involve officers from other teams where issues intersect. Opportunities for such intersection between teams are encouraged and supported in practice.*

*Where large issues arise that demand immediate attention, the Section has drawn from various teams to put in place a surge capacity. Examples include the development and support of the Anti-terrorism Act following September 11, 2001 and, more recently, in supporting the Government's proposed legislative initiative in relation to the Victims Bill of Rights.*

*As part of the Section's response to the Public Service Employee Survey 2011, various actions have been undertaken as a means to optimize resources and promote career and people management, among other objectives, including: promoting Individual Learning Plans; Talent Management; mentoring and training, including in-house training and information sessions; and having back-ups on files.*

*Given our resource challenges, we have increasingly been seeking expressions of interest throughout the Section in respect of various acting opportunities and particular tasks to be performed or positions to be filled.*

*We are aware of the advantages to be gained by the employees themselves, and by the Department, in having employees learn new skills and gain new experience by working on different files and on multi-disciplinary teams and by being exposed to new work.*

### **5.2.3. Economy**

Although the Section is achieving its expected outcomes using a limited amount of financial and human resources, it is not operating in a manner that is sustainable. More than one third of CLPS staff who completed the 2011 Public Service Employee Survey indicated that they are not able to complete their assigned workload during their regular working hours (sometimes, rarely never/almost never). Moreover, multiple lines of evidence indicated that the demanding work environment is beginning to have a negative impact on staff morale.

The convergence of several factors, that is, the loss of counsel (particularly at the senior level), an increased demand for the Section's services, and short turnaround times are considered to pose a growing pressure on the Section's limited resources. Although the Section has experienced a rise in demand for its services, there has not been a corresponding increase in financial and human resources. In fact, the Section has experienced a substantial decrease, in both expenditures and FTEs over the evaluation period. While this has translated into some cost savings in that there is now a greater use of alternative means of participation in meetings, some key informants indicated that travel restrictions are negatively impacting CLPS' ability to promote and protect Canadian interests in the context of the elaboration of international instruments.

The travel cap has also limited counsel's ability to attend training. In response, the Section has organized and offered in-house training for policy officers (CLPS counsel training CLPS counsel). Key informants noted that these sessions not only help meet the needs of counsel in terms of the continuing professional development requirements of their law society, they promote a better awareness of specific files and their challenges and build camaraderie within the Section.



**Appendix A:**  
**Evaluation Matrix**



**Evaluation Matrix — Evaluation of the Criminal Law Policy Function (including the support provided by the Research and Statistics Division)**

Issues/Questions	Indicators	Data Sources	Responsibility for Collecting
<b>Relevance (TB core issues 1–3)</b>			
1. Do the activities of CLPS align with Department of Justice’s strategic objectives?	<ul style="list-style-type: none"> <li>Perception of whether CLPS activities align with the Department of Justice’s strategic objectives and core expected results</li> </ul>	<ul style="list-style-type: none"> <li>Key informant interviews</li> <li>Document review</li> </ul>	Department of Justice Evaluation Division
2. Do the activities of CLPS align with federal priorities/policy commitments?	<ul style="list-style-type: none"> <li>Perception of whether CLPS activities align with federal priorities</li> </ul>	<ul style="list-style-type: none"> <li>Key informant interviews</li> <li>Document review</li> </ul>	Department of Justice Evaluation Division
3. What need is the legal policy work of CLPS intended to address? Is there evidence of an ongoing need?	<ul style="list-style-type: none"> <li>Legal trends/policy gaps/emerging issues (identified policy needs on issues based on case law, media scan, consultations, international fora)</li> </ul>	<ul style="list-style-type: none"> <li>Document review</li> <li>Key informant interviews</li> </ul>	CLPS Department of Justice Evaluation Division
	<ul style="list-style-type: none"> <li>Perception of continued need for legal policy work</li> </ul>	<ul style="list-style-type: none"> <li>Key informant interviews</li> </ul>	Department of Justice Evaluation Division
4. To what extent are the activities of CLPS appropriate to the federal government and a core federal role?	<ul style="list-style-type: none"> <li>Constitutional and statutory authority for federal involvement</li> <li>Constitutional and statutory authority for Department of Justice involvement</li> </ul>	<ul style="list-style-type: none"> <li>Document review</li> </ul>	Department of Justice Evaluation Division
	<ul style="list-style-type: none"> <li>Activities of CLPS that fall outside of the role of the federal government under constitutional and statutory authority</li> </ul>	<ul style="list-style-type: none"> <li>Key informant interviews</li> </ul>	Department of Justice Evaluation Division
<b>Achievement of Expected Outcomes (TB core issue 4)</b>			
5. To what extent has CLPS achieved its expected outcomes?	<b>Immediate Outcomes</b>		
	<p><i>Enhanced knowledge and understanding of domestic and international criminal law issues:</i></p> <ul style="list-style-type: none"> <li>Number and type of training sessions and other activities to promote education and awareness (i.e training for individual lawyers within the Dept/Section, public, CJ professionals)</li> <li>Perceptions of effectiveness of training/educational sessions conducted by CLPS</li> </ul>	<ul style="list-style-type: none"> <li>Post-training surveys/briefings</li> <li>Key informant interviews</li> <li>Document review</li> </ul>	Department of Justice Evaluation Division
<ul style="list-style-type: none"> <li>Perceptions of how (1) proactive monitoring of the policy environment, (2) research, and (3) stakeholder engagement contributes</li> </ul>	<ul style="list-style-type: none"> <li>Key informant interviews</li> </ul>	Department of Justice Evaluation	

Issues/Questions	Indicators	Data Sources	Responsibility for Collecting
	to an enhanced knowledge and understanding of domestic criminal law issues and international instruments dealing with criminal law matters		Division
	<ul style="list-style-type: none"> <li>• Key stakeholder groups with whom CLPS teams consult/collaborate</li> <li>• Number and nature of meetings/consultations with stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> </ul>	CLPS
	<ul style="list-style-type: none"> <li>• Perceptions of effectiveness of partnerships with stakeholders</li> <li>• Satisfaction of key groups with engagement approaches</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> </ul>	Department of Justice Evaluation Division
	<ul style="list-style-type: none"> <li>• Documented results of collaborative work</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> </ul>	Department of Justice Evaluation Division
	<p><i>High- quality legal and policy advice on domestic and international criminal law issues:</i></p> <ul style="list-style-type: none"> <li>• Perceptions regarding quality of legal and policy advice (Consistency, Timeliness, Responsiveness, and Usefulness)</li> <li>• Perceptions of stakeholders on CLPS contribution to legal risk management</li> <li>• Use of research and statistics</li> <li>• Satisfaction of CLPS with RSD services</li> <li>• Number and nature of Research and Statistics Division (RSD) products that support CLPS' work</li> <li>• Usefulness /timeliness of RSD's research products and support</li> <li>• Nature and extent to which legal and policy advice is informed by stakeholder engagement</li> <li>• Nature of CLPS contribution to legislative drafting process</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Case studies</li> </ul>	Department of Justice Evaluation Division
	<ul style="list-style-type: none"> <li>• Number and nature of corrective amendments (to legislation supported by CLPS)</li> <li>• Nature and extent of CLPS engagement in legal challenges to legislation or policy</li> <li>• Extent to which appropriate Sections (HRLS, Public International Law, CALS) are engaged at appropriate time</li> <li>• Effort by CLPS in developing legal arguments to address Charter challenges (hours spent conducting litigation support, type of activities)</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> </ul>	CLPS

Issues/Questions	Indicators	Data Sources	Responsibility for Collecting
	<b>Intermediate Outcomes</b>		
	<p><i>Contribution to the domestic and international criminal law framework:</i></p> <ul style="list-style-type: none"> <li>• Domestic legislation and policy developed by CLPS (bills tabled, legislation passed, Memoranda to Cabinet)</li> <li>• Types of assistance with implementing law reforms</li> <li>• Extent stakeholders believe they are supported in the implementation of new policy/law reforms</li> <li>• Perception that CLPS legal policy advice has contributed to domestic criminal law framework</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> <li>• Case studies</li> </ul>	<p>Department of Justice Evaluation Division</p>
	<ul style="list-style-type: none"> <li>• Perception that CLPS legal policy advice has been effective in facilitating the consideration of Canadian interests and the inclusion of Canadian approaches in international instruments dealing with criminal law matters</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Case studies</li> </ul>	<p>Department of Justice Evaluation Division</p>
	<ul style="list-style-type: none"> <li>• Nature and extent of international criminal law policy work (international fora attended, negotiations where legal policy advice was provided)</li> <li>• Nature and extent of international peer reviews</li> <li>• Nature and extent of direct technical assistance internationally</li> <li>• Examples where CLPS policy work was incorporated in international instruments dealing with criminal law matters</li> <li>• Assistance with implementing international instruments</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> <li>• Case studies</li> </ul>	<p>CLPS Department of Justice Evaluation Division</p>
	<p><i>Government decision making is informed by legal and policy advice:</i></p> <ul style="list-style-type: none"> <li>• Perception that CLPS' legal and legal policy advice enables the government to make well-informed decisions regarding government legislation, private members bills and parliamentary reviews.</li> <li>• Observed use and nature of the use of legal and policy advice</li> <li>• Assessed degree of value for policy services and products</li> <li>• Demand for policy function services</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Case studies</li> </ul>	<p>Department of Justice Evaluation Division</p>

Issues/Questions	Indicators	Data Sources	Responsibility for Collecting
	<b>Ultimate Outcome</b>		
	<i>A fair, relevant and accessible Canadian justice system:</i> <ul style="list-style-type: none"> <li>• Perception of CLPS contribution</li> </ul>	Key informant interviews	Department of Justice Evaluation Division
	<i>A federal government that is supported by high-quality legal services:</i> <ul style="list-style-type: none"> <li>• Perception of CLPS contribution</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> </ul>	Department of Justice Evaluation Division
6. Does CLPS have in place appropriate methods/systems for monitoring performance and reporting on outcomes?	<ul style="list-style-type: none"> <li>• Extent to which appropriate mechanisms are in place to monitor performance and report on outcomes</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> </ul>	Department of Justice Evaluation Division
<b>Efficiency and Economy (TB core issue 5)</b>			
7. Could the work of CLPS be undertaken/conducted more efficiently and economically?	<ul style="list-style-type: none"> <li>• Evidence of strategies to achieve outputs and outcomes in the most cost-effective way</li> <li>• Assessment of the effectiveness of CLPS' organizational structure</li> <li>• Measures in place to manage efficiency</li> <li>• Suggestions for improvement in efficiency of performance</li> <li>• Alternative approaches to service delivery</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Case studies</li> <li>• Document review</li> </ul>	Department of Justice Evaluation Division
8. Has CLPS' resource utilization been appropriate, in relation to the resources allocated, activities and outputs produced and demands for services, by area of service delivery?	<ul style="list-style-type: none"> <li>• Assessment of resource allocation and utilization in relation to activities, outputs and results achieved</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> </ul>	Department of Justice Evaluation Division
9. Are CLPS' activities sufficiently integrated and coordinated to support the achievement of results?	<ul style="list-style-type: none"> <li>• Level of coordination/integration of CLPS activities</li> <li>• Identified mechanisms/structures that facilitate information exchange internally and externally, and improvements that could strengthen collaboration</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Document review</li> <li>• Case studies</li> </ul>	Department of Justice Evaluation Division
10. Are there any best practices or lessons learned in the delivery of CLPS services?	<ul style="list-style-type: none"> <li>• Evidence of best practices and lessons learned</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Case studies</li> <li>• Document review</li> </ul>	Department of Justice Evaluation Division
11. Have the activities of CLPS led to any unintended or unanticipated impacts?	<ul style="list-style-type: none"> <li>• Instances of unintended impacts and their effects</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Case studies</li> </ul>	Department of Justice Evaluation Division

Issues/Questions	Indicators	Data Sources	Responsibility for Collecting
<p>12. Is CLPS facing any resource challenges in terms of available funding, organizational structure/staffing, or internal support (training, technological, research) that are affecting its ability to conduct its policy work and achieve its expected outcomes?</p>	<ul style="list-style-type: none"> <li>• Number of staff by category/team by year</li> <li>• Funding by year</li> <li>• Appropriate workload indicator by year – e.g., requests for legal policy advice, volume of documentation produced such as briefing notes, Memoranda to Cabinet, etc.)</li> <li>• Training/professional development by year</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> </ul>	<p>CLPS</p>
	<ul style="list-style-type: none"> <li>• Description of allocation and resource demands</li> <li>• Sufficiency of resources (human, financial, technical, competencies, training) to meet demand for services</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Document review</li> </ul>	<p>Department of Justice Evaluation Division</p>



**Appendix B:**  
**Interview Guides**



## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for CLPS Counsel**

The Department of Justice Evaluation Division is conducting *an evaluation of the Criminal Law Policy Section (CLPS)*. The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the federal government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice and of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions. Some questions may not be applicable to the work you do. Please let us know and we will skip those questions.

The evaluation focuses on 2008-2012, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues (PCVI) is not part of this evaluation. Therefore, please do not consider the work of the PCVI in your responses.

### **Introduction**

1. Please describe your current role and responsibilities within CLPS.
2. Please briefly describe the process you follow on a typical policy file.

### **Relevance**

3. Over the last five years, have you observed any changes in the nature or volume of requests for your team's services? How has your *team responded to these trends*?

### **Performance — Effectiveness**

4. To what extent do you proactively monitor the legal and policy environment to identify policy and legislative responses that would improve the criminal justice system? Has this changed in the last five years?

5. What types of internal and/or external consultation activities have you undertaken with principal stakeholders over the past five years?
6. How effective are these consultations in identifying issues and options with regard to the development and implementation of law reform? (please provide some examples)
7. What factors contribute to or constrain your ability to provide high-quality legal policy advice? How might these factors *be addressed*?
8. What structures are in place to ensure that the advice provided by the Section is consistent with other advice provided or position taken by Justice on the same topic (i.e., “Justice speaks with one voice”)? How well do these structures *work*?
9. Please describe how you work with client departments and other areas of the Department of Justice to identify and assess legal risks and develop options to manage or mitigate those risks.
10. In general, is your team’s consultations/collaboration with the specialized sections in Justice effective? Why or why not?
11. Over the past five years, have you provided assistance with the implementation of new policy/criminal law reforms (e.g. by providing training sessions, assisting with the preparation of education/information sharing materials)? Please provide some concrete examples.

Research (if key informant has not used RSD services, skip to the next section on international work).

12. What key research services/products have you requested from the Department’s Research and Statistics Division over the past five years? Have you received this information?
13. Generally speaking, how do you use the information you request from the Research and Statistics Division (for example in the development of MCs, in support of Parliamentary commitments, developing policy options)? To what extent does this information contribute to a fuller understanding of the policy issues involved and possible responses? Please provide some examples.

14. What, if any, changes could be made to the research services/support delivered by the Research and Statistic's Division to better meet your needs?

International Work (if key informant is not involved in international work, skip to the next section on efficiency and economy).

15. Please describe the level and nature of your involvement in meetings of international bodies/negotiating international *treaties and agreements*.

16. Based on your experience, how effective has your team's legal policy advice been in facilitating the consideration of Canadian interests and the inclusion of Canadian approaches in international instruments dealing with criminal law matters?

17. Please provide some examples where the legal policy work in which you have been involved has been considered in the development of international instruments dealing with criminal law matters.

18. Have you provided assistance with the implementation of international instruments? Please provide specific examples.

19. Please describe the level and nature of your involvement in the provision of direct technical assistance internationally.

### **Performance — Efficiency and Economy**

20. Is your team generally consulted by client departments or other areas of Justice when you should be? In your response, please consider whether the requests for your team's assistance are timely and appropriate.

21. Are the resources available within your team sufficient to complete the tasks required of it, both in terms of quality and quantity?

22. Are there any improvements that could be made to improve efficiency within your team or within the Section more generally?

23. Do you have any other comments?

Thank you. We greatly appreciate your participation.

## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for CLPS Managers**

The Department of Justice Evaluation Division is conducting an evaluation of the Criminal Law Policy Section (CLPS). The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the federal government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice and of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions. Some questions may not be applicable to the work you do. Please let us know and we will skip those questions.

The evaluation focuses on 2008-2012, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues (PCVI) is not part of this evaluation. Therefore, please do not consider the work of the PCVI in your responses.

### **Introduction**

1. Please briefly describe your current role/position and responsibilities within CLPS.

### **Relevance**

2. Over the last five years, have you observed any changes in the nature or volume of requests for your team's services? How has your team responded to these trends?

### **Performance — Effectiveness**

3. To what extent do you proactively monitor the legal and policy environment to identify policy and legislative responses that would improve the Canadian criminal justice system and/or international legal framework? Has this changed in the last five years?
4. What significant policy and legislative changes has your team been involved in over the past five years?

5. One of the outcomes identified for CLPS is that the Section's legal and policy advice informs government decision making. Please provide some examples of where CLPS' work has been considered in government decision making. Are there any barriers to CLPS advice being considered in the decision-making process?
6. In your view, how well does the briefing process work (e.g., in terms of providing senior managers, the Deputy Minister, and the Minister with the necessary advice to make timely, informed decisions)? Please explain.
7. What structures are in place to ensure that the advice provided by the Section is consistent with other advice provided or position taken by Justice on the same topic (i.e. "Justice speaks with one voice")? How well do these structures work?
8. How does your team determine what research is needed to support policy development? Is this research generally available to your team?
9. The 2011 Public Service Employee Survey identified several factors that employees feel are affecting the quality of work within the Criminal Law Policy Section. These factors include: constantly changing priorities, too many approval stages, unreasonable deadlines and having to do the same or more work but with fewer resources. What, if anything, has been done within your team or within the Section more generally to address the Survey's findings?
10. What criteria do you use when assigning counsel to files? Please consider how you manage changing priorities in your answer.

### **Performance — Efficiency and Economy**

11. Based on your experience, is CLPS generally consulted by client departments or other areas of Justice when it should be? In your response, please consider whether the requests for assistance from CLPS are timely and appropriate.
12. What mechanisms and structures are in place within the Section to facilitate policy information exchange/communication across teams? With other policy groups and stakeholders in the Department? Outside the Department? Are there improvements that could be made?
13. Are the resources available within your team sufficient to complete the tasks required of it, both in terms of quality and quantity?

14. What measures are in place to ensure that the Section's activities are carried out efficiently? Cost-effectively? Are there improvements that could be made?
15. Are there any factors beyond the Section's control that impact its ability to provide services efficiently? Please describe.
16. In your view, what (if any) best practices or lessons learned have emerged from the delivery of the Section's services over the past five years?
17. Do you have any other comments?

Thank you. We greatly appreciate your participation.

## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for ADMO**

The Department of Justice Evaluation Division is conducting an evaluation of the Criminal Law Policy Section (CLPS). The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the federal government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice and of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

The evaluation focuses on 2008-2012, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues (PCVI) is not part of this evaluation. Therefore, please do not consider the work of the PCVI in your responses.

### **Introduction**

1. Please describe your current role/position and responsibilities, specifically as they relate to working with CLPS.

### **Relevance**

2. In your opinion, to what extent do the advisory and policy development services of CLPS meet the needs of the Department of Justice/the Minister of Justice/the Government of Canada (as the case may be)?
3. Over the last five years, have you observed any changes to the nature or volume of requests being made of CLPS? How has CLPS responded to these changes?

### **Performance - Effectiveness**

4. To what extent is the policy and legal advice provided by CLPS responsive to the needs of the Government of Canada? Useful? Timely? Please explain.

5. In your opinion, are there processes/practices that could improve communications between CLPS and your office?
6. In your experience, to what extent is the advice provided by CLPS considered in the decisions made by the Department of Justice/the Government of Canada?
7. In your opinion, how effective is CLPS in facilitating the consideration of Canadian interests and the inclusion of Canadian approaches in international instruments dealing with criminal law matters?
8. In general, how satisfied are you with the legal/policy services your office has received from CLPS?

**Efficiency and Economy**

9. Based on your experience working with CLPS, what would you identify as best practices or lessons learned in the delivery of CLPS services?
10. Do you have anything you would like to add about your office's relationship with CLPS or about CLPS more generally?

Thank you. We greatly appreciate your participation.

## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for Other Areas of Justice**

The Department of Justice Evaluation Division is conducting *an evaluation of the Criminal Law Policy Section*. The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the federal government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice and of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions. Some questions may not be applicable to the work you do. Please let us know and we will skip those questions.

The evaluation focuses on 2008-2012, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues (PCVI) is not part of this evaluation. Therefore, please do not consider the work of the PCVI in your responses.

### **Introduction**

1. Please describe your current role/position and responsibilities, specifically as they relate to working with CLPS.
2. Please briefly describe your involvement with CLPS.

### **Relevance**

3. Over the last five years, have you observed any changes in your group's work with and/or use of CLPS services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics. How has CLPS responded to these changes?

### **Performance - Effectiveness**

4. Please describe any involvement CLPS has had in providing your group with legal or legal policy advice concerning domestic or international criminal law issues (including legal advice regarding the Canadian Charter of Rights and Freedoms challenges on a criminal law matter). What, if anything, could be improved, and how might CLPS support any improvements?
5. Are there any barriers to consulting with CLPS? What are the potential risks to the Department of Justice and the Government of Canada if CLPS is not appropriately consulted?
6. To what extent is the policy and legal advice provided by CLPS responsive to your group's needs? Useful? Timely?
7. Please describe any involvement CLPS has in helping your group manage its legal risks.
8. Please describe the type and frequency of consultations that occur between your group and CLPS. Are they effective? What works particularly well? What, if anything, could be improved, and how might CLPS support any improvements?
9. Please describe any work that your group does with CLPS concerning meetings of international bodies / negotiating international treaties and agreements.
10. Has CLPS supported your group in the implementation of new policy/criminal law reforms or international instruments dealing with criminal law matters? If yes, please provide some concrete examples. Did the support provided meet your needs?
11. In general, how satisfied are you with the legal/policy services your group has received from CLPS?

### **Efficiency and Economy**

12. Is your Unit/Division aware when it should consult with CLPS? Are there ways in which CLPS could communicate its roles and responsibilities more clearly to its clients/partners?
13. Based on your experience working with CLPS, what would you identify as best practices or lessons learned in the delivery of CLPS services?

14. In general, have appropriate CLPS counsel been assigned to work with your group (considering the expertise and experience of the counsel and the nature of the file)?
15. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by CLPS?
16. Do you have anything you would like to add about your group's relationship with CLPS?

Thank you. We greatly appreciate your participation.

## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for the Legislative Services Branch**

The Department of Justice Evaluation Division is conducting an evaluation of the Criminal Law Policy Section (CLPS). The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice and of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions. Some questions may not be applicable to the work you do. Please let us know and we will skip those questions.

The evaluation focuses on 2008-2012, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues (PCVI) is not part of this evaluation. Therefore, please do not consider the work of the PCVI in your responses.

### **Introduction**

1. Please describe your current role/position and responsibilities, specifically as they relate to working with CLPS.
2. Please describe the stages at which you are generally involved on a typical policy file led by CLPS.

### **Relevance**

3. Over the last five years, have you observed any changes in your work with CLPS? In your response, please consider the volume, type of legal issues, level of urgency, complexity, legal risk level, and any other characteristics. How has CLPS responded to these changes?

### **Performance - Effectiveness**

4. In general, how satisfied is your group with CLPS' assistance in the legislative and regulatory drafting process?

5. What improvements, if any, could be made by CLPS to better support the legislative and regulatory drafting process?

**Efficiency and Economy**

6. What mechanisms and structures are in place to facilitate information exchange/communication between your group and CLPS? Are there improvements that could be made?
7. In general, have appropriate CLPS counsel been assigned to work with your group (considering the expertise and experience of the counsel and the nature of the file)?
8. Based on your experience working with CLPS, what would you identify as best practices or lessons learned in the delivery of CLPS services?
9. Do you have anything you would like to add about your group's relationship with CLPS?

Thank you. We greatly appreciate your participation.

## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for Research and Statistics Division**

The Department of Justice Evaluation Division is conducting *an evaluation of the Criminal Law Policy Section (CLPS)*. The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the federal government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice and of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions. Some questions may not be applicable to the work you do. Please let us know and we will skip those questions.

The evaluation focuses on 2008-2012, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues (PCVI) is not part of this evaluation. Therefore, please do not consider the work of the PCVI in your responses.

### **Introduction**

1. Please describe your current role/position and responsibilities, specifically as they relate to working with CLPS.
2. Please briefly describe your involvement with CLPS.

### **Relevance**

3. What is the rationale for the provision of the Research and Statistics Division (RSD)'s services to CLPS?
4. Have you observed any changes in the demand for research and statistical services from CLPS over the last five years? In your response, please consider the volume, type of issues, complexity, turnover time and any other characteristics of your work. How has RSD responded to these changes?

5. How are research priorities in the area of criminal law policy generally identified? Are there improvements that could be made? How might CLPS support any improvements?

**Performance - Effectiveness**

6. What research and statistical services/support has RSD provided to CLPS over the last five years? Roughly, what proportion of RSD services are provided to CLPS?
7. In which situations does CLPS generally request RSD services/support?
8. In general, how has RSD been included on a typical CLPS file?
9. To what extent has the research carried out informed criminal law policy (i.e. had an impact on CLPS' policy work)? Can you provide any examples?
10. In what CLPS working groups/meetings does RSD regularly participate? What is the role of RSD on these working groups/in these meetings?
11. Are there any improvements that could be made by RSD to provide better support to CLPS in its work?

**Performance – Efficiency**

12. What mechanisms and structures are in place to facilitate information exchange/communication between RSD and CLPS? Are there improvements that could be made?
13. Do you have anything you would like to add about your Division's relationship with CLPS?

Thank you. We greatly appreciate your participation.

## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for CLPS Client Departments**

The Department of Justice Evaluation Division is conducting an evaluation of the Criminal Law Policy Section. The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice and of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions. Some questions may not be applicable to the work you do. Please let us know and we will skip those questions.

The evaluation focuses on 2008-2012, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues (PCVI) is not part of this evaluation. Therefore, please do not consider the work of the PCVI in your responses.

### **Introduction**

1. Please describe your current role/position and responsibilities, specifically as they relate to working with CLPS. On what projects have you worked with CLPS over the past five years?

### **Relevance**

2. Over the last five years, have you observed any changes to the nature or volume of requests being made of CLPS by your department or agency? How has CLPS responded to these changes?

### **Performance - Effectiveness**

3. Please describe any involvement CLPS has had in providing your department or agency with legal or legal policy advice concerning domestic criminal law issues (including legal advice regarding the Canadian Charter of Rights and Freedoms challenges on a criminal law matter). What, if anything, could be improved, and how might CLPS support any improvements?

4. When does your unit/department consult with CLPS? Generally, do you consult directly with CLPS or through your Legal Services Unit? If you work within a Legal Services Unit, are you aware of situations where your client department has consulted directly with CLPS?
5. Are there any barriers to consulting with CLPS? What are the potential risks to your department or agency and/or the Government of Canada if CLPS is not appropriately consulted?
6. To what extent is the legal and policy advice provided by CLPS responsive? Useful? Timely?
7. In your opinion, are there processes/practices that could improve communications between CLPS and your department/agency?
8. Please describe any involvement CLPS has in helping your department/agency manage its legal risks.
9. How effective are CLPS' consultations with your department or agency in identifying issues and options with regard to the development and implementation of law reform? Please provide some examples. What, if anything, could be improved, and how might CLPS support any improvements?
10. Please describe any work that your department or agency does with CLPS that involves meetings of international bodies/negotiations of international treaties and agreements. How effective is CLPS' involvement?
11. Has CLPS supported your unit/department in the implementation of new policy/criminal law reforms or international instruments dealing with criminal law matters? If yes, please provide some concrete examples. Did their support meet your needs?
12. In general, how satisfied are you with the legal/policy services your department/agency has received from CLPS?

### **Efficiency and Economy**

13. Is your department or agency aware when it should consult with CLPS? Are there ways in which CLPS could communicate its roles and responsibilities more clearly to clients?
14. Based on your experience working with CLPS, what would you identify as best practices or lessons learned in the delivery of CLPS services?

15. In general, have appropriate CLPS counsel been assigned to work with your department/agency (considering the expertise and experience of the counsel and the nature of the file)?
16. Do you have anything you would like to add about your department/agency's relationship with CLPS?

Thank you. We greatly appreciate your participation.

## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for PCO**

The Department of Justice Evaluation Division is conducting an evaluation of the Criminal Law Policy Section (CLPS). The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the federal government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice and of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

The evaluation focuses on 2008-2012, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues (PCVI) is not part of this evaluation. Therefore, please do not consider the work of the PCVI in your responses.

### **Introduction**

1. Please describe your current role/position and responsibilities, specifically as they relate to working with CLPS.

### **Relevance**

2. In your opinion, to what extent do the advisory and policy development services of CLPS meet the needs of the Department of Justice/the Minister of Justice/the Government of Canada (as the case may be)?
3. Over the last five years, have you observed any changes to the nature or volume of requests being made of CLPS by your office? How has CLPS responded to these changes?

### **Performance - Effectiveness**

4. To what extent is the policy and legal advice provided by CLPS responsive to the needs of your office? Useful? Timely? Please explain.

5. In your opinion, are there processes/practices that could improve communications between CLPS and your office?
6. In your experience, to what extent is the advice provided by CLPS considered in the decisions made by your office?
7. In general, how satisfied are you with the legal/policy services your office has received from CLPS?

**Efficiency and Economy**

8. Is your office aware when it should consult with CLPS? Are the roles and responsibilities of CLPS clearly communicated to your office?
9. Based on your experience working with CLPS, what would you identify as best practices or lessons learned in the delivery of CLPS services?
10. Do you have anything you would like to add about your office's relationship with CLPS?

Thank you. We greatly appreciate your participation.

## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for Provincial and Territorial Justice Officials**

The Department of Justice Evaluation Division is conducting *an evaluation of the Criminal Law Policy Section (CLPS)*. The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the federal government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice, the provinces and territories, and with representatives of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions. Some questions may not be applicable to the work you do. Please let us know and we will skip those questions.

The evaluation focuses on the 2008-2012 period, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues is not part of this evaluation. Please do not consider the work of the Centre in your responses.

1. Please describe the nature of your ministry's relationship with CLPS (i.e. the ways/context in which you work together).
2. Over the last five years, have you observed any changes to the nature or volume of your or your ministry's work with CLPS?
3. When consulted by CLPS, is your ministry generally given enough time to provide its input?
4. Do you feel that your Ministry's input is given due consideration by CLPS? On what basis do you form this view?
5. In your opinion, are there processes/practices that could improve communications between CLPS and your ministry?
6. Has CLPS supported your ministry in the implementation of any new policy/criminal law reforms or international instruments dealing with criminal law matters? If yes, please provide some concrete examples. Did this support meet your needs?

7. Based on your experience working with CLPS, what would you identify as best practices in the federal/provincial/territorial consultation process (i.e. the Coordinating Committee of Senior Officials, Criminal Justice, and its working groups)? What, if anything, could be improved, and how might CLPS support any improvements?
8. In general, have appropriate CLPS counsel been assigned to the Coordinating Committee of Senior Officials, Criminal Justice, and its working groups (considering the expertise and experience of the counsel and the nature of the file)?
9. In general, how satisfied are you with your relationship with CLPS?
10. Do you have anything you would like to add about your ministry's relationship with CLPS?

Thank you. We greatly appreciate your participation.

**Evaluation of the Criminal Law Policy Function  
Key Informant Interview Guide for Representative of  
Heads of Prosecution / Heads of Corrections**

The Department of Justice Evaluation Division is conducting *an evaluation of the Criminal Law Policy Section (CLPS)*. The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the federal government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice, the provinces and territories, and with representatives of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions. Some questions may not be applicable to the work you do. Please let us know and we will skip those questions.

The evaluation focuses on the 2008-2012 period, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues is not part of this evaluation. Please do not consider the work of the Centre in your responses.

1. Please describe the nature of your work with CLPS (i.e. the ways/context in which you work together).
2. Over the last five years, have you observed any changes to the nature or volume of your work with CLPS?
3. When consulted by CLPS, are you generally given enough time to provide your input?
4. Do you feel that your input is given due consideration by CLPS? On what basis do you form this view?
5. In your opinion, are there processes/practices that could improve communications between CLPS and the Heads of Prosecution/Heads of Corrections?

6. Based on your experience working with CLPS, what would you identify as best practices in the consultation process? What, if anything, could be improved, and how might CLPS support any improvements?
7. In general, how satisfied are you with your relationship with CLPS?
8. Do you have anything you would like to add about your relationship with CLPS or about CLPS more generally?

Thank you. We greatly appreciate your participation.

## **Evaluation of the Criminal Law Policy Function Key Informant Interview Guide for Non-Governmental Organizations**

The Department of Justice Evaluation Division is conducting *an evaluation of the Criminal Law Policy Section (CLPS)*. The purpose of the evaluation is to assess the extent to which CLPS provides relevant and effective criminal law policy services to the federal government. The evaluation includes interviews with those working within CLPS, with representatives of the Department of Justice, the provinces and territories, and with representatives of other organizations who are familiar with the work of CLPS.

The information we gather through this interview will be summarized in aggregate form and will not be attributed to individual informants. You will have an opportunity to review our written summary of the interview and make any corrections or additions. Some questions may not be applicable to the work you do. Please let us know and we will skip those questions.

The evaluation focuses on the 2008-2012 period, so please consider your experiences during those years in your responses.

As it is subject to a separate evaluation process, the Policy Centre for Victims Issues is not part of this evaluation. Please do not consider the work of the Centre in your responses.

1. Please describe the nature of your organization's relationship with CLPS.
2. Please describe CLPS initiatives on which you have been consulted over the past five years.
3. How was your organization consulted on these initiatives?
4. Was your organization consulted in a timely manner?
5. Does your organization generally provide input when consulted by CLPS?
6. Do you feel that your organization's input is given due consideration by CLPS?
7. When consulted by CLPS, is your organization generally given enough time to provide its input?
8. In your opinion, are there processes/practices that could improve the consultation process between CLPS and your organization?

9. In general, how satisfied are you with your relationship with CLPS?
10. Do you have anything else you would like to add about your organization's relationship with CLPS?

Thank you. We greatly appreciate your participation.

**Appendix C:**  
**File Review Template**



## Criminal Law Policy Evaluation File Review Guide

### Overview

1. File title: \_\_\_\_\_
2. File number: \_\_\_\_\_
3. Any related file code numbers: \_\_\_\_\_
4. Date file opened: \_\_\_\_\_ Date file closed: \_\_\_\_\_
5. Security level of the file: \_\_\_\_\_
6. CLPS Team in charge of file:  

<input type="checkbox"/> Sentencing	<input type="checkbox"/> Cabinet & Legislative Agenda
<input type="checkbox"/> External Relations	<input type="checkbox"/> Security, Terrorism and Governance
<input type="checkbox"/> Criminal Procedure	<input type="checkbox"/> Social and Moral Issues
<input type="checkbox"/> High-Tech & Investigative Powers	<input type="checkbox"/> Organized Crime
7. What was the level of the primary counsel?  
 LA0  LA1  LA2A  LA2B  LA3A  Unable to assess
8. Did the primary counsel change over the life of the file?  Yes  No  
If yes, level of other primary counsel assigned to the file:  
 LA0  LA1  LA2A  LA2B  LA3A  Unable to assess
9. File type:  Policy  Advisory  General
10. Client: \_\_\_\_\_
11. Brief description of nature of file (i.e. general / high level description of the file, without information related to the advice provided):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Advisory Services**

12. Nature of the request:

Legal Opinion                      Yes      No

Litigation Support                Yes      No

Interpretation/review            Yes      No

Other [specify]: \_\_\_\_\_

13. Request initiated by:    \_\_\_ JUS    Which area of JUS? \_\_\_\_\_

   \_\_\_ Other (Specify): \_\_\_\_\_

14. At what point in the process was the request made (e.g. policy development stage, drafting of legislation)?

\_\_\_\_\_

15. What information was provided to CLPS when the request was made (e.g. background information to support services requested)?

\_\_\_\_\_

16. Deadline for advice contained in request:    \_\_\_ Yes    \_\_\_ No

17. Deadline request made by: \_\_\_\_\_

18. Reason for deadline: \_\_\_\_\_

19. Was the advice/opinion provided within the requested deadline?

   \_\_\_ Yes    \_\_\_ No    \_\_\_ Unable to assess

20. Is there evidence on file that:    \_\_\_ the advice was given

   \_\_\_ the client considered the advice

   \_\_\_ the client did not consider the advice

**Quality Assurance Processes**

21. Quality assurance processes completed evident in the file documentation (e.g. peer review, editing, consultations with Public Law Sector, management review, committee review):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Risk and Complexity Assessment**

22. Is there a discussion/indication of risk level and/or complexity level indicated in the file?  Yes  No If yes, specify:

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23. Were any changes made as a result of the risk and/or complexity assessment (e.g. more senior counsel assigned to a high risk/complexity file)? If yes, specify:

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**Research**

24. Is there evidence on file that research was used?  Yes  No

If yes, specify (e.g. source, context for use):

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**Consultation Activities**

25. Based on the documentation on file, did counsel consult with other areas within CLPS? (Note: can include oral/written updates or discussions of possible strategies, options, approaches to the file, peer review)

No  Yes Specify section: \_\_\_\_\_

If yes, reason for consultation:

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26. Based on the documentation in the file, did counsel consult and/or work with other areas within Justice?

- No  Yes PLS
- No  Yes LSB
- No  Yes DLSU: \_\_\_\_\_
- No  Yes Portfolio: \_\_\_\_\_
- No  Yes Regional Office: \_\_\_\_\_
- No  Yes Other: \_\_\_\_\_

If yes, reason(s) for consultation/work with other Justice Units:

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27. Evidence of consultation with central agencies:

- No  Yes Specify: \_\_\_\_\_
- Specify: \_\_\_\_\_
- Specify: \_\_\_\_\_
- Specify: \_\_\_\_\_

If yes, reason(s) for consultation with central agencies:

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28. Evidence of consultation with other federal departments:

- No  Yes Specify: \_\_\_\_\_
- Specify: \_\_\_\_\_
- Specify: \_\_\_\_\_
- Specify: \_\_\_\_\_
- Specify: \_\_\_\_\_

If yes, reason(s) for consultation with other federal departments:

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29. Evidence of consultation with internal or external committees:

No  Yes CCSO Working Groups: \_\_\_\_\_

No  Yes Departmental committees: \_\_\_\_\_

No  Yes Federal committees: \_\_\_\_\_

No  Yes Other: \_\_\_\_\_

If yes, reason(s) for consultation with committees:

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30. Evidence of consultation with outside organizations:

No  Yes governmental: \_\_\_\_\_

No  Yes non-governmental: \_\_\_\_\_

No  Yes provincial: \_\_\_\_\_

No  Yes territories: \_\_\_\_\_

If yes, reason(s) for consultation with outside organizations:

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31. Were any other key actors involved?

No  Yes Specify: \_\_\_\_\_

Specify: \_\_\_\_\_

Specify: \_\_\_\_\_

If yes, how?

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32. Is there evidence on file that briefings were made?  Yes  No If yes, specify (e.g. at what level, by who, context)

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33. Did CLPS miss any client-imposed deadlines?  Yes  No  Unable to assess

If yes, how many times and for what reason(s) (if an explanation to the client is available on file)?

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34. Did CLPS consult/brief the client at key points on the file? (e.g. Approximately, how often did CLPS consult with the client? \_\_\_\_\_)

**iCase information**

35. How many hours did CLPS lead counsel spend on the file? \_\_\_\_\_

36. How many additional counsel or paralegals (and at what level) worked on the file and how many hours have they spent on the file?

\_\_\_\_\_ Level \_\_\_\_\_ Number of hours  
\_\_\_\_\_ Level \_\_\_\_\_ Number of hours