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STATEMENT OF ASSURANCE

We have completed the internal audit of the Regulatory Law Section in the Ontario Regional Office. The overall objective of the audit was to review and assess the framework within which services are delivered by the Section to its clients and to recommend improvements.

The internal audit was conducted in accordance with the requirements of the Treasury Board Secretariat (TBS) *Policy on Internal Audit* and the Institute of Internal Auditors *Standards for the Professional Practice of Internal Auditing*.

The audit team assessed the management control framework against criteria derived from the TBS Management Accountability Framework as well as TBS audit guides. The audit of the Regulatory Law Section in the Ontario Regional Office incorporates key elements of the TBS's Management Accountability Framework under the various audit objectives.

In our professional judgment, sufficient and appropriate audit procedures have been conducted and evidence gathered to support the accuracy of the conclusions reached and contained in this report. The conclusions are based on a comparison of situations, as they existed at the time of the audit, against the audit criteria. It should be noted that the conclusions are only applicable for the areas examined.

EXECUTIVE SUMMARY

The Department of Justice Business and Regulatory Law Portfolio (BRLP) provides legal services from regional offices across Canada. In the Ontario Regional Office (ORO), the Regulatory Law Section (RLS) provides legal services to a diverse range of client department and agencies. This audit focused on the management practices in the ORO Regulatory Law Section.

Management Framework

The RLS has established a sound management framework that encompasses the following key management functions: planning; organizing; controlling; and, leading. It also has a rigorous governance structure in place.

The audit determined that the key management functions were carried out effectively and overall the RLS was well managed. Efforts are under way to reduce the span of control of the RLS Director through the addition of another Deputy Director to maintain effective management of operations. Furthermore, the need for intermediary positions should be determined and these should be reflected in a revised organization chart. Also, minutes of regional committee meetings should be prepared and communicated to staff.

Management of Human, Financial, and Material Resources

The audit determined that the RLS effectively manages human resource planning, the number and mix of resources, staff recruitment and retention, training, and the performance appraisal process. The audit also concluded that financial planning and the timing of funding allocations were appropriate and that financial resources were managed effectively and in compliance with the *Financial Administration Act*. However, RLS staff need training on contracting, and funding shortfalls identified should be examined.

Information Systems

The audit determined that the RLS uses reliable information systems that provide the required information for decision making. The audit further determined that the RLS receives appropriate support from the ORO IM/IT Operations and Support (O&S). The audit concluded that the security of electronic information is effective. We noted, however, the lack of an ORO IM/IT contingency plan to adequately respond to disaster situations.

Compliance with Legislation and Policies

The RLS is in compliance with key government and departmental legislation and policies including the *Financial Administration Act*, Government Contracting Regulations, the *Official Languages Act*, and Employment Equity.

Risk and Legal File Management and Forecasting of Demand for Legal Services

The audit determined that the RLS has effective legal risk management practices in place. These risk practices conform to the Justice Canada requirements for legal risk management. The RLS also manages its legal files in a diligent manner through the utilization of iCase.

We also noted that effective practices are in place with respect to forecasting the demand for legal services.

Interfaces with other Justice Canada Sectors

The RLS maintains strong interfaces with other Justice Canada organizations such as other regional offices, the Business and Regulatory Law Portfolio (BRLP), and the Law Practice Management Directorate. It also maintains effective interaction with the DLSUs that provide services to the RLS's client departments/agencies. The RLS takes reasonable measures to ensure that client departments are satisfied with the legal services provided to them. Ongoing communication regarding client department needs, service expectations, and results takes place between RLS legal counsel and those in the DLSUs. Furthermore, formal client satisfaction surveys conducted by the BRLP revealed a high level of client department satisfaction with services provided.

The management responses to the recommendations contained in this report were provided by the Regional Director General, Ontario Regional Office and the Regional Director, Regulatory Law, Ontario Regional Office.

1. INTRODUCTION

1.1 Background

The Ontario Regional Office (ORO) is located in Toronto and consists of approximately 530 employees. As is the case with all regional offices, its first client is the Minister of Justice and the Attorney General of Canada. Other clients include the Government of Canada and federal departments and agencies in the south-western and central regions of Ontario. The ORO is organized to mirror the Department's portfolio structure. It includes nine sections, one of which is the Regulatory Law Section (RLS), which is part of the Business and Regulatory Law Portfolio (BRLP). As of April 1, 2009, the Regulatory Law Section includes the Public Law Group, which was formally part of the Government Law Services Section of the ORO. The RLS also continues to provide legal advisory and litigation services to certain specified former client departments or agencies of the BRLP that are now within the Public Safety, Defence and Immigration (PSDI) Portfolio (i.e. Public Safety Emergency Preparedness (PSEP), which includes the Royal Canadian Mounted Police (RCMP), Canadian Security Intelligence Service, Correctional Services Canada, and the National Parole Board).

Clients of the Regulatory Law Section are involved in a diverse range of regulatory and public safety activities that include the safety of food, health, environment, social welfare, personal safety, and public security. The work of counsel in the RLS primarily involves the conduct of civil litigation. The RLS is comprised of 50 lawyers and 30 support staff. The O&M budget for 2009-10 is approximately \$0.5 million. More detailed contextual information is contained in Appendix A.

The potential key risk factors that were considered in relation to this audit entity included: impact of legal work on client departments and agencies; appropriateness of linkages with Department of Justice organizations; ability to respond to client demand for legal services; the level of efficiencies in the organization and in workload management; adequacy of information for decision making; accurate reporting of performance information; provision of consistent legal advice and litigation services; management of electronic information; and appropriateness of linkages with clients.

1.2 Audit Objectives and Scope

The overall objective of this audit was to review and assess the framework within which the RLS delivers services to its clients and to recommend improvements to this framework.

The audit team examined and assessed:

- the management framework (policies, practices, and procedures relating to planning, organizing, controlling, leading, and communicating);
- the management of human, financial, and materiel resources;
- the reliability of information systems for decision-making and accountability purposes;
- the extent of compliance of systems, procedures, and practices with key legislation (i.e. regulations and key central agency/departmental policies relating to the *Financial Administration Act*, *Official Languages Act*, Government contracting regulations, and Employment Equity);
- risk and legal file management and forecasting demand for legal services;
- the appropriateness of interfaces with other Justice Canada sectors and client departments/agencies;
- the level of client satisfaction with the legal services provided.

The planning and the on-site examination phases for this audit were carried out between July and October 2009.

Details on the audit methodology are outlined in Appendix B.

2. MANAGEMENT FRAMEWORK

2.1 Governance and Strategic Direction

The Regulatory Law Section has effective governance in place that provides sound strategic direction.

Effective oversight bodies with clear mandates/terms of reference are essential for ensuring that an organization maintains its strategic focus.

The Regulatory Law Section has a formal governance mechanism in place that ensures strategic direction is provided to its employees. The Director and Deputy Director constitute the management cadre of the RLS. They provide ongoing strategic advice to the core staff that includes various levels of counsel, paralegals, and legal assistants.

The audit examination confirmed that employees of the RLS are active participants in regional and national committees. The ORO has a variety of committees (e.g. Employment Equity, Labour Management, Management, Litigation, Library, Policy Advisory, Training and Development). The auditors selected for detailed examination three regional committees that are most relevant to the oversight of the RLS's business. These are the ORO Management Committee, the Regional Law Practice Management Committee, and the ORO Litigation Committee. The Management Committee, chaired by the RDG, is the central decision-making body for the ORO. The Regional Law Practice Management Committee deals primarily with procedural and law practice issues, standards of quality, consistency in legal services delivered in the ORO, and consistency of regional practices relative to national practices. It is co-chaired by a General Counsel, RLS, and a Director and Senior Counsel, Business Law Section. The ORO Litigation Committee reviews case materials to ensure departmental standards are met, advises the RDG on all of its findings, and decides when, or if, the Deputy Attorney General or Attorney General should intervene. Members include all directors and deputy directors, and designated representatives from each section.

All three committees have clearly articulated mandates and terms of reference. The examination of committee activities revealed that committee members receive complete, accurate, and timely information for decision making. Participants advised the audit team that the committee chairs provide appropriate direction. Issues that cannot be resolved in one committee are referred to an appropriate committee for resolution. The auditors' examination of these committees' activities confirmed that they are effective and provide reasonable oversight to the RLS.

The recording and communication of the results of regional committee meetings require improvement.

We found that the results of the deliberations of the three committees referred to above are communicated in different ways. The results of the Litigation Committee and the Regional Law Practice Management Committee meetings are documented. Formal minutes are not taken at the Litigation Committee and the notes, which are taken, are used mainly for debriefing and are not distributed. In the case of the Regional Law Practice Management Committee meetings, when substantive issues are discussed and follow-up action is required, notes are sent via email to participants. These notes are not widely distributed. The results of the ORO Management Committee are documented, circulated to committee members, and posted on the ORO Intranet. A review of the minutes of the Management Committee showed that decisions are not included in the minutes.

Minutes of meetings are meant to capture essential information that was discussed during a meeting. They serve as a monitoring tool and a means of communicating information to other managers and staff. Minutes that include a record of decisions need to be taken at all regional committee meetings where this is not already the practice.

Recommendation and Management Response

- 1. It is recommended that the ORO Regional Director General ensure that minutes of regional committee meetings are taken, identify action required, and are communicated to staff.**

I agree. The Regional Director General will direct regional committees in the ORO to improve the recording and communication to staff of the results of regional committee meetings. Specifically, the regional committees that do not already do so will be directed to prepare minutes of their meetings which capture essential information that is discussed during committee meetings, a record of decisions taken, and required follow-up action. All committees will be directed to ensure appropriate distribution to ORO staff after thorough vetting by committee members to ensure the protection of legal privileges such

as solicitor-client privilege as well as the due protection of any privacy or other sensitive interests (such as security interests) pursuant to applicable *ATIP* or other legislation, regulations, policies, directives or guidelines. Timeframe: May 31, 2010.

2.2 Business Planning

The Regulatory Law Section has a comprehensive Business Plan in place for the 2009-10 fiscal year.

Setting and documenting organizational objectives are important steps in ensuring that professional and support staff are clearly informed of expectations. Objectives should be specific, measurable, achievable, and time-related. Business planning is used by successful organizations to identify issues, activities, and initiatives that will contribute to the achievement of stated objectives. It is also the process by which managers identify priorities—an important aspect of managerial responsibilities.

We examined the 2009-10 Business Plan for the ORO Regulatory Law Section, which was dated October 7, 2008. The Business Plan is organized into the following sections:

- **Who We Are and What We Do** – This contains a narrative description of the main areas of focus for RLS, its organizational structure, its legal activities, and its financial resources.
- **Our Environmental Scan** – This provides a list of key environmental factors that may impact the RLS's work in 2009-10, such as increased client demand for legal services arising from overarching federal government priorities and the continued rise in the proportion of complex and truly national files relative to the total number of files handled.
- **Our Priorities** – This provides the priorities of the RLS that are established with reference to the priorities of the government, the Clerk of the Privy Council, and the Department. The business priorities for 2009-10 include negotiating specific key commitments with the DM Team, implementing Public Service renewal, and supporting the national law practice management initiatives. Management priorities include providing high quality legal services; demonstrating excellence in planning; and managing financial, contracting, and human resources.
- **Managing Our Risk** – This identifies a number of risks associated with the pursuit of the Regulatory Law Section's mandate. The major identified risk is that there are too many new external and internal pressures to accommodate realistically when considered against the context of the core mandate. The Section's core mandate already suffers from a chronic shortage of funding, particularly O&M funding.

It is the audit team's opinion that the RLS 2009-10 Business Plan is comprehensive and meets departmental standards. The Business Plan was completed well in advance of the new fiscal year.

2.3 Organizing

The Regulatory Law Section is generally well organized to execute its mandate; however, the need for intermediary positions should be determined and these should be reflected in a revised organization chart.

A clear and effective organizational structure is fundamental to the effective management of an organization.

The Regulatory Law Section has a cadre of counsel, paralegals, and legal assistants who provide general legal services to the clients of the Portfolio. There are four teams created to serve specific clients or for specific specialized litigation purposes (e.g. the Employment Insurance Team that provides services to HRSDC and the class action teams that provide services to Health Canada and to the Department of National Defence). We were told that this operational organization has been in place for a number of years.

We examined the RLS organization chart, which came into effect July 1, 2009 and was approved August 7, 2009. The chart depicts the full complement of positions allocated to the Section. We noted that the chart does not reflect the team structures in place in the RLS. The audit team was advised that the nature of the RLS's litigation practice requires the ongoing reassignment of staff to different teams to ensure teams comprise lawyers with the appropriate mix of skills and expertise. In view of this, it is not practicable to reflect team structures in the organization chart.

We noted that the organization chart indicates that all employees report directly to either the Director or the Deputy Director, including all legal assistants reporting to the Deputy Director. In our view, the need for intermediary positions to better address the Section's operational requirements should be determined and reflected in a revised organizational chart.

Recommendation and Management Response

- 2. It is recommended that the RLS Director, in conjunction with the ORO Human Resources Director, determine the need for intermediary positions and reflect these in a revised organization chart.**

I agree. Some action has already been taken since the on-site examination phase of the audit to address this issue. Specifically, the RLS organizational charts have been revised to reflect the creation of two new positions, Business Manager (AS-04) and Manager, Legal Operations (AS-03), respectively. Responsibility for the immediate supervision of all legal assistants in the RLS (CR-05s) is being transferred from the Deputy Regional Director to the AS-03. This will permit a better reallocation of line reporting relationships of legal counsel to the Regional Director and Deputy Regional Director. Staffing of these new positions has been initiated. Our Human Resources advisors have also advised that our org charts may only reflect the information contained in the PeopleSoft system. Functional (team) relationships are not reflected in PeopleSoft.

Completed, in part, as outlined above. Nevertheless, ongoing efforts by the RLS Regional Director will continue on a regular basis as org charts are revised and updated, to identify opportunities to better reflect actual working relationships of longer duration in the RLS.

Efforts are under way to reduce the span of control of the RLS Director.

Span of control is an important element in the structure of an organization. It refers to the number of subordinates who report directly to a manager or supervisor and includes the functions of planning, organizing, and leading. A narrow span of control occurs when each manager supervises a small number of employees, while a wide span of control occurs when a large number of subordinates report directly to a given manager. Job complexity and job similarity are factors influencing the span of control. Managers should have an appropriate span of control in order to manage effectively.

An examination of the RLS organization charts indicated that all of the RLS employees report directly to either the Director or the Deputy Director. The RLS Director has 62 counsel positions and two administrative officer positions reporting to him directly. We were informed by the RLS Director that his span of control has been steadily increasing in recent years due to increasing demand for legal services and the addition of the Public Law Group to the Regulatory Law Section. The addition of the Public Law Group that took effect on April 1, 2009 added 22 FTEs to the RLS. The Director indicated that managing the growing number of employees has become increasingly challenging. Both he and the Deputy Director confirmed that they are spending a

greater proportion of their time on administrative and human resource matters (e.g. performance appraisals, individual learning plans, succession planning, employment equity). At the same time, they are continuously challenged to manage the operational aspects of the RLS. Given this situation, there is a potential risk that the Director may not be able to focus sufficiently on more strategic management challenges.

The ORO Regional Director General also acknowledged that the RLS Director's wide span of control is a concern and she is actively pursuing options to resolve this issue. A detailed rationale for the addition of another Deputy Director has been developed outlining the span of control problem in the RLS. The rationale will be submitted to the departmental Exceptions Committee. Given the expanding breadth of the RLS's legal work and the number of employees, the addition of a Deputy Director will help to alleviate the management burden placed on the Director and incumbent Deputy Director.

It is our view that the Regional Director General is undertaking appropriate measures to resolve the span of control issue in the RLS.

2.4 Controlling

The RLS has effective workload management practices.

Management is responsible for actively monitoring workload and ensuring that staff are working efficiently and effectively.

Most of the litigation file work arrives in the RLS as a result of documents served daily upon the ORO. These include originating documents such as statements of claim and notices of application, and may also be received from the Litigation Branch in Ottawa, the national Class Actions Coordinator and legal services units in the Business and Regulatory Law Portfolio or the Public Safety, Defence and Immigration Portfolio.

The Director and Deputy Director have primary responsibility for workload management. Initially, cases referred to the RLS are reviewed by the Director and/or Deputy Director to determine/confirm the risks associated with the case. Files are then assigned to counsel who have the required experience and skill sets. Once a file has been assigned to a lead counsel, that individual becomes accountable for the ongoing risk assessment and overall management of the file. Often, a team of counsel will be assembled to handle the case. The selection of the team members is typically predicated on their experience, skill sets, and availability.

We interviewed several senior counsel who lead litigation teams and reviewed supporting documentation to assess how the files were being managed. We noted that cases were re-assessed on a regular basis vis-à-vis their risk; that risk ratings were revised expediently; and that these activities were documented and on file. We also noted that, as risk ratings were revised, changes in the work team complement were made, as necessary, commensurate with the most recent risk rating.

In terms of overall workload management, iCase is used to record and track the progress of all cases handled by the RLS. The system is not only the basis for monitoring operational progress but also for ensuring that counsel assigned to a specific case are recording the time worked on a timely basis.

The audit team's examination revealed adherence to the risk management and resourcing requirements set out in the departmental Risk Management Framework. In our view the workload practices of the RLS are effective and help ensure that productivity is maximized.

Management has in place effective performance monitoring and reporting practices.

The RLS 2009-10 Business Plan indicates that the RLS provides advisory and litigation services to the Business and Regulatory Law and the Public Safety, Defence and Immigration portfolios. The Business Plan further indicates that it reports against the Department's strategic outcomes, which include a fair, relevant, and accessible justice system that reflects Canadian values and a federal government that is supported by effective and responsive legal services.

Business plans are high-level documents that are linked to the Department's Program Activity Architecture as stated in the Departmental Report on Plans and Priorities. At the operational level, business plans are supplemented by operational plans in order to provide the manager with a basis for monitoring actual versus planned results. As noted above, the RLS uses the iCase system to plan and monitor its workload (i.e. its operational activities).

We examined the above-noted Business Plan and found that it provides a foundation against which achievement of priorities and management of risks can be monitored. Business plans are supported by financial plans and human resource plans that indicate the financial and human resources that are required to deliver the Business Plan.

The audit examination revealed that ORO Finance regularly prepares financial situation reports (FSRs) that provide the RDG with the actual versus planned financial resources at the ORO. The information contained in FSRs is based on the input provided by each organizational unit. The

RLS Director regularly monitors input to the FSRs and, in so doing, is exercising effective management of the Section's financial resources. Furthermore, by using iCase and the FSRs, the RLS Director is able to monitor both operational and financial activities. On the basis of this information, the Director identifies variances and takes remedial action.

It is our opinion that the RLS Director has effective monitoring and reporting practices in place.

2.5 Leading and Communicating

The RLS uses an extensive set of policies and procedures that are well communicated to staff.

Written policies and procedures should be in place in any organizational unit, as they help promote the conduct of activities in a consistently effective, efficient, and economical manner, and help provide assurance that the organization's resources are safeguarded.

The RLS uses both departmental and Business and Regulatory Law Portfolio (BRLP) policies and procedures for the conduct of its work. For example, in carrying out its core business of litigation, the RLS follows the guidance provided in the "Civil Litigation Desk Book". This document provides extensive information and guidance on the conduct of civil litigation, crown proceedings, and other particular subject areas. In our view, it is a useful tool for RLS legal counsel involved in the delivery of litigation services.

Departmental and BRLP policies, procedures, directives, and guides pertaining to both operational and administrative matters are readily available to RLS employees on the departmental Intranet, JUSnet.

The auditors' review of the Intranet information and documentation confirmed that clear and comprehensive guidance is readily available to RLS staff. This guidance is intended to foster consistency in practices for both operational and administrative activities.

From our interviews with RLS employees and our review of documentation, we found that staff were regularly provided with clear and sound direction regarding both operational and administrative matters. Direction is communicated in a variety of ways (e.g. through meetings, retreats, e-mail, telephone calls). Also, in the RLS, as in other professional environments, mentoring has proven to be a most effective means of providing direction. For example, we were informed during interviews with senior legal counsel that they spend a significant amount of their time mentoring junior counsel on their teams. Junior counsel advised the audit team that regular mentoring is a very effective way of learning.

It is our opinion that sound direction is provided to the staff of the RLS regarding both operational and administrative matters.

3. MANAGEMENT OF HUMAN, FINANCIAL, AND MATERIEL RESOURCES

3.1 Human Resources

3.1.1 Planning

The RLS has effective human resource planning mechanisms in place.

Sound human resource planning is fundamental to an organization's capability and capacity to effectively deliver services.

The RLS 2009-10 Business Plan contains strategic information with respect to human resource requirements. More specifically, the Business Plan provides a summary of the internal pressures that are expected to have a significant continuing impact on the Section's delivery of legal services in 2009-10. Included in these internal pressures are such HR issues as unionization of counsel, management of change, and placement of the right people for the job. Furthermore, the Business Plan indicates that implementing public service renewal is a key priority for the RLS. This renewal has an impact on such areas as succession planning, recruitment and retention strategies, and the new classification standard that will be implemented for the LA classification. The auditors' review of the Business Plan confirmed that key HR challenges faced by the RLS are well documented therein.

With respect to succession planning, the audit revealed that the ORO, including the Regulatory Law Section, is in the early stages of succession planning. During the audit, we were informed by the ORO HR Director that HR officials had recently completed their interviews with all ORO directors regarding the succession planning needs for their organizations. ORO HR used the standard TBS template to launch its succession planning initiative. Completed templates indicate the key risks of each organization and its top achievers. The ORO HR Director informed us that the next step in the succession planning process is to meet with ORO deputy directors to complete their templates. After these meetings have been completed, the ORO HR Director will

meet with the ORO Regional Director General to confirm the nature of information the RDG requires in order to monitor progress against succession plans.

The RLS Director and Deputy Director are supported in their HR responsibilities by the ORO Human Resources group. This group provides a full range of HR services to the ORO Regional Director General and directors including staffing, classifications, labour relations, pay and benefits, learning and development, official languages, and employment equity.

In addition to human resource planning, we examined other specific HR activities (i.e. number and mix of resources, recruitment and retention, performance appraisals, and training) and concluded that HR expectations outlined in the 2009-10 Business Plan are being implemented effectively. The audit results pertaining to the specific HR activities examined are discussed below.

It is the audit team's view that the fundamental elements for human resources planning are in place and are being implemented effectively.

3.1.2 Number and mix of resources

The RLS has the appropriate number and mix of resources.

The appropriate number and mix of resources deployed to work activities is critical to effective utilization of resources.

The RLS's lawyer complement consists of nine general counsel, seven senior counsel, and 34 counsel. Support staff is comprised of eight paralegals, 20 legal assistants, and two administrative staff.

Work activities in the RLS are conducted on a case-by-case basis. Cases vary in length and complexity and require constant assessment and reassessment of resource needs as the risks associated with the cases change over time. When cases are received in the RLS, the Director and/or the Deputy Director review the files for complexity, identify the risks, and assign the cases to lead counsel. The lead counsel determine the resource requirements in more specific terms (number of counsel, paralegals, and legal assistants to be assigned to the cases). The resourcing proposals are discussed with and approved by the RLS Director.

During the audit, we examined management practices with respect to ensuring the appropriate number and mix of resources. We confirmed that the RLS adheres to the risk management requirements set out in risk management guidance issued by the Law Practice Management

Directorate at headquarters. The number and mix of resources is driven by the risk profile of the specific case in question. Our review of legal files and interviews with counsel involved with these cases revealed that cases were resourced with the appropriate mix of lawyers, paralegals, and legal assistants. During our interview with ORO Human Resources representatives, we were informed that, in general, the RLS has the right mix of resources in place. HR representatives also related that finding the most appropriate balance between counsel and paralegals is an ongoing challenge.

It is our opinion that the appropriate number and mix of resources is being deployed to conduct the work in the RLS.

3.1.3 Staff recruitment and retention

The RLS manages recruitment and retention effectively.

Appropriate recruitment, hiring, and retention practices are fundamental to ensure that current and future operational needs are met

We found that the RLS Director and Deputy Director monitor resource requirements on an ongoing basis and are actively involved in recruiting, hiring, promoting, and retaining employees. The strategies employed focus on meeting current resourcing needs. The recruiting activities of the RLS Director and Deputy Director include recruiting experienced counsel, hiring summer students, and engaging full-time articling students. The audit revealed that RLS recruitment and retention practices are strongly focused on ensuring that both current and long-term operational needs are considered in the hiring process.

During our interview with ORO Human Resources representatives, we were informed that the RLS is regularly involved in a full range of recruiting activities. These representatives also confirmed that RLS resourcing needs are constantly changing as a result of the continuous change in the nature of the RLS's business (i.e. the recent merger of the Public Law Group and the RLS, and the increasing volume of class action lawsuits). Finally, they indicated that the RLS's current resource levels were reasonable.

It is our view that the RLS has appropriate recruitment and retention practices.

3.1.4 Training

The RLS is taking reasonable measures to ensure its employees receive appropriate training.

Sufficient and appropriate training is fundamental to improving an employee's effectiveness in his/her current job and for enhancing the skills required for future challenges.

The ORO has a Corporate Training Plan in place that provides for overall generic training in such areas as negotiation skills, staff relations, health and safety, and employment equity. There are also mandatory departmental training courses, such as the training on financial delegation that is provided to managers before they are given budgetary responsibility. The RLS Director and Deputy Director informed the audit team that the bulk of training for professional staff takes place on the job rather than through formal training courses. They also informed the auditors that meeting with their professional colleagues at conferences is another form of training provided for counsel. We were told that conference attendance is well controlled through HQ, and stringent control over travel costs means that the bulk of conference attendance takes place locally.

During interviews with ORO Human Resources representatives, we were informed that the ORO budget for corporate training had significantly increased in 2009-10 over previous years and that funds allocated for training were spent on training. Our examination of the 2009-10 budget and actual figures for RLS training confirmed that there was a significant increase in training funds provided between 2008-09 and 2009-10. Furthermore, individual learning plans (ILPs) were in place for all RLS personnel and the RLS had a 100% completion rate.

We are of the view that the RLS is taking a reasonable approach to providing training to its employees.

3.1.5 Performance appraisals

The RLS has an effective performance appraisal process.

The performance appraisal process is important as it provides employees with feedback on their work and identifies their training needs.

Performance appraisals are completed annually in a timely manner and both the RLS Director and Deputy Director share the responsibility for managing the performance appraisal process. Both supervisors and employees sign the appraisal form and appraisal documents are completed for the entire staff (i.e. legal counsel, paralegals, legal assistants, and other support staff).

Approximately 50 of the 80 RLS staff are legal counsel who are compensated based on their salary, employee benefits, and performance pay. The performance pay component of their compensation package is a major incentive to ensure appraisals are completed on a timely basis.

ORO Human Resources advised us that there have been no formal complaints regarding the performance pay assessment process in the RLS.

The performance appraisals identify the employee's training needs. There is a correlation between the training needs contained in the appraisals and those contained in ILPs.

It is our view that the RLS has an effective performance appraisal process in place.

3.2 Financial Resources

3.2.1 Planning

The RLS has effective financial planning practices in place and receives strong support from ORO Finance.

Sound financial planning is required to ensure that all of the resourcing requirements of an organization are identified.

ORO Finance provides financial services to the Regional Director General and the directors in the Ontario Regional Office. The ORO Director of Finance reports operationally to the ORO Regional Director General and functionally to the Chief Financial Officer Branch in headquarters. ORO Finance is comprised of the Director; a Manager, Budgeting and Planning; a Manager, Accounting Operations; a Financial Officer; and a support team of three financial advisors, five service agents, and an Administrative Assistant.

ORO Finance provides two key services: planning and budgeting, and accounting services. With respect to the planning and budgeting function, Finance is involved with such activities as providing financial input for the annual Business Plan, preparation and loading of budgets for ORO organizational units, preparation of periodic financial situation reports (FSRs), and cost recovery forecasting and monitoring. With regard to accounting services, the Accounting Operations Unit provides a range of services to the ORO. These services are described in more detail in the "Administration of financial resources" section below.

The RLS Director and Deputy Director informed the audit team that the services provided by ORO Finance were excellent and effective. Budgeting and Planning Unit staff work closely with the RLS both on preparation of the financial component of the Business Plan and on the ongoing monitoring of planned versus actual expenditures, which results in the preparation of periodic financial situation reports. There is also ongoing collaboration with respect to cost recovery activities.

The audit examination revealed that this strong collaboration between RLS and ORO Finance staff ensures that financial planning activity in the RLS is comprehensive, ongoing, accurate, and completed on a timely basis. For example, we examined the financial plan and periodic variance reports for the RLS. These documents provided evidence of ongoing interaction between RLS and Finance officials and resultant remedial action taken. Furthermore, the audit team's discussions with the RLS Director and Deputy Director and with the Director of ORO Finance confirmed that these two organizations work together effectively. This collaborative approach to planning provides a sound basis for controlling resources throughout the year.

It is our view that effective financial planning is undertaken in the RLS.

3.2.2 Resource levels and receipt of funding allocations

There is insufficient funding provided to manage a specific class action lawsuit and to fund support services.

The adequacy and timing of funding provided is fundamental to an organization's ability to achieve desired results.

The operations of the RLS are funded via A-Base allocations and funding obtained through cost recovery from client departments and agencies. The audit team did not perform a comprehensive analysis to assess the adequacy of the funding levels provided to the RLS, as this was beyond the scope of the audit. However, from interviews with the RLS Director and Deputy Director and our documentation review, it is evident that there are concerns regarding resource levels. The concerns are two-fold. [Text Removed]. The secondary concern is with the adequacy of funding for RLS support services in general.

[Text Removed]. The RLS Director stated that, due to the increased activity regarding this lawsuit, resourcing RLS operations within the current RLS resource base has become increasingly challenging. Given these circumstances, there is a need to re-examine the adequacy of funding provided by the client department to service this case. Specific cases that demand an inordinate amount of resources could be funded through Regional Office or Headquarters reserves.

With regard to the adequacy of funding for RLS support staff in general, we reviewed the RLS 2009-10 Business Plan and noted that it articulated the concern regarding the chronic shortage of support resources. During our interview with Business and Regulatory Law Portfolio (BRLP)

management in headquarters, we were also informed of concerns regarding shortages in O&M funding in the BRLP in general.

In our view, the funding shortfalls for the specific class action lawsuit and support services warrant further attention by senior management. The audit team is concerned with the Section's approach to meeting increasing service demands in the long term within the existing resource base.

As part of the examination of resource levels, we also discussed the timing of funding allocations with both the RLS Director and the ORO Director of Finance. Both officials confirmed that funding allocations were timely.

Recommendation and Management Response

3. It is recommended that the RLS Director, in conjunction with the ORO Regional Director General, examine the extent of the funding shortfalls identified.

I agree. Action has already been taken since the on-site examination phase of the audit to address this issue. Specifically, issues related to resources available for managing the class action lawsuit referred to have been settled with the responsible client department. The necessary staff have been recruited and assigned to the class action team, and arrangements have also been made for appropriate assistance from other regional offices and legal agents for specific tasks related to the defence of these actions.

This recommendation as it relates to funding the specific class action lawsuit mentioned, has already been implemented, as outlined above.

Efforts by the ORO Regional Director General and the RLS Regional Director are continuing on an ongoing basis to improve the support services for the RLS. Some progress has already been made with the creation of the new RLS *iCase Coordinator* position as well as the new AS-03 and AS-04 positions referred to above. The ORO RDG and the Regional Director of the RLS continue to discuss the support services necessary to ensure that appropriate support services are provided to support the legal work of the RLS, consistent with the levels of support provided to the other large legal divisions in the ORO (i.e., the Tax Law Services Division, and the Immigration Division) and in the Department. Requests have been made for additional funding from reserves, but as noted in the draft audit findings, there are "concerns regarding shortages in O&M funding in the BRLP in general." The funding of support services is an issue which will likely require continued and ongoing efforts to risk manage under current conditions.

3.2.3 Administration of financial resources

The measures taken to administer the RLS's financial resources are adequate and the RLS's financial transactions are in compliance with the requirements of the Financial Administration Act.

The RLS receives regular financial reports from IFMS and SMS. The RLS Director reviews the reports, identifies significant variances, and meets with the relevant legal counsel to obtain further details on the variances. Based on these discussions, remedial action is taken, as necessary, to resolve the issues.

The RLS Director and Deputy Director take a proactive approach to managing resources. They meet on a weekly basis to discuss the overall operational and financial status of the Regulatory Law Section and any financial issues with regard to specific cases.

Our examination confirmed that at the time of the audit sound practices were in place with respect to the conduct of Section 33 *Financial Administration Act* (FAA) payment authority. More specifically, our examination of a sample of transactions revealed that current delegation of financial signing authority instruments were in place; up-to-date specimen signature records were on hand; and desk audit procedures were in place. The ORO Accounting Operations Unit has completed its first bi-weekly report on accounting operations activities, processes, and procedures. From our review of this report and discussions with RLS management, we found that RLS management have a thorough understanding of the requirements relating to both sections 33 and 34 of the FAA.

We met with the Manager, Accounting Operations Unit to confirm our understanding of how the Section 33 FAA function is carried out in the RLS. We also reviewed a sample of expenditure transactions related to the Regulatory Law Section's budget. All transactions examined had relevant supporting documentation (e.g. copies of invoices, contracts) and the required approvals under the FAA. They were also properly coded and processed on a timely basis.

We are of the opinion that the measures taken to administer the RLS's financial resources are reasonable and conducted in accordance with the FAA.

3.2.4 Training in finance and contracting

RLS officials have received the required training regarding FAA delegation of financial signing authority; however, training on contracting is required.

Adequate training in the finance and contracting functions is required to foster sound management of these functions.

The Department of Justice requires mandatory training on the FAA delegation of financial signing authorities for officers who have/will have delegated authorities and for those who may be placed in acting positions. This training must be completed before officers are formally delegated these authorities. In the case of the RLS, the Director, the Deputy Director, and the Administrative Officer are the only officials with delegated authorities under the FAA. We found that these officials have received the required training.

From our interviews with the RLS Director, the Deputy Director, and the Administrative Officer, we found that they have a sound understanding of the responsibilities associated with the FAA authorities delegated to them.

With respect to training on contracting, during our interview with the ORO Contracting Officer, we were informed that training of ORO staff regarding government contracting requirements had commenced in 2009-10 with the training of Immigration Law Division staff. We were also informed that prior to this date training on contracting in the ORO had been conducted on an ad hoc basis. The initial training on contracting that the ORO Contracting Officer provided was very successful. We were told that it is planned to expand contracting training to all ORO organizations including the Regulatory Law Section. Based on our discussion with the RLS Director, Deputy Director, and ORO Contracting Officer, we found that RLS management have a sound understanding of government contracting requirements.

It is our view that training for finance as it applies to RLS staff is appropriate and that training on contracting should be provided.

Recommendation and Management Response

- 4. It is recommended that the RLS Director ensure that training on contracting is provided to RLS staff.**

I agree. The RLS Regional Director has instructed the RLS *Training & Development Coordinators* to arrange for training on contracting with a particular emphasis on expert witness contracting to be made available to all Regulatory staff as soon as the ORO *Contracting Officer* is available to do so. (It is noted that this session has already been

provided to the Immigration Law Division and recently to the Business Law Division). The T&D Coordinators will also make arrangements for a second more general presentation later to RLS staff on contracting for services generally. Timeframe: July 30, 2010.

3.3 Materiel Resources

3.3.1 Protection of assets

Mechanisms are in place to protect the physical assets of the RLS.

The RLS uses a variety of physical assets in the conduct of its business. These assets consist primarily of office furniture, computers and related equipment, cell phones, and other communication devices.

During the audit, we interviewed the Manager, Information Holdings, who has functional responsibility for physical assets in the ORO. During the interview, we were informed that physical assets were not considered a high risk in the ORO. He informed us that over the course of the last seven years, since he has had functional responsibility for physical assets, there have been no thefts on the premises. During the audit we observed that access to the ORO premises is secured by card access. Camera surveillance is also used to provide additional security to the already well-secured premises. In our view, precautions are in place that provide for the protection of physical assets.

3.3.2 Physical security

Reasonable precautions are taken to secure the workplace and the well-being of its employees.

Physical security is of prime importance given the sensitive nature of the work conducted in the ORO.

As indicated above, the ORO work premises are reasonably well-secured. During our interview with the Manager, Information Holdings, who has functional responsibility for physical security in the ORO, we were told that there has been only one security incident in recent times. The Manager informed us that last year there was a case of a suspicious package found on ORO premises. The municipal police bomb disposal unit was alerted and removed the package, which

they subsequently confirmed was not a threat. An “Incidents Report” was completed for this situation.

The Manager also informed us that threat risk assessments (TRAs) are conducted on a periodic basis and the results of these assessments are recorded in TRA reports. We were advised that no significant risks were detected as a result of these assessments. Our discussion with the Director, Safety, Security and Emergency Management Division in headquarters confirmed that TRAs are received periodically from the ORO and that no significant risks have been identified.

In our view, precautions are taken to secure the ORO work premises and the well-being of its employees.

4. INFORMATION SYSTEMS

4.1 Reliability of Information Systems

Information systems are reliable and provide the required information for decision making.

The ORO Head of IT Operations and Support (O&S) confirmed that roles and responsibilities for IT management in the ORO are clear. The ORO Head of IT O&S reports to the Director IM/IT, who is located in the Halifax Regional Office. The Director IM/IT is involved in the daily decision making and remains in contact with ORO staff via telephone and e-mail. We were informed that the Director, IM/IT is in attendance on ORO premises on a monthly and “as needed” basis.

iCase is the main operational system used in the ORO. It is used by legal counsel to manage information on a case-by-case basis. For example, iCase is used to store core documents, letters, and memos. We were told that the system performs well, with adequate support from headquarters. There are no significant technical issues with the case management aspect of the iCase system.

The timekeeping component of iCase allows employees to record the hours worked on different case files. We were told that the system works well and there are no technical issues with this system. During our interviews with RLS legal counsel, we were informed that they found time reporting to be time consuming, although they did acknowledge the importance of this task.

Ringtail, a web-based application, is used by ORO legal counsel to obtain litigation support information. Counsel informed the audit team that the application performs well.

The ORO Corporate Services Unit uses RDIMS, a web-based application, as a records management tool. The Head of IT O&S informed the auditors that there are many software issues with the system at the application level and that it is not user-friendly. The current

hardware is sufficient to support the application and there are no technical issues with it. It should be noted that the system is in the process of being replaced.

It is our opinion that the information systems used by the RLS are reliable for decision making.

4.2 Level of support from the Information Management Branch

The RLS receives appropriate support from the ORO Operations and Support section.

Departmental IT systems should be appropriately supported by the functional authorities in order to ensure their ongoing functionality and availability to users.

According to the RLS Director and Deputy Director, the RLS is satisfied with the support it receives from the ORO IT Operations and Support (O&S) section. Furthermore, the audit team met with the Head of IT O&S and reviewed documentation to assess the extent of information systems support provided by HQ. The audit examination determined that ORO IT O&S receives sound support from the Information Management Branch (IMB), Business Support, Applications and Services (BSAS) Directorate. The ORO IT O&S reports to the BSAS Directorate regularly and conducts monthly conference calls with this group. The Director IM/IT in the ORO also indicated that the support received from the BSAS Directorate in IMB is sound.

It is our view that the support received by RLS from ORO Operations and Support is appropriate.

4.3 Security of Electronic Information

Effective measures are in place for the security of electronic information, with the exception of a documented and approved ORO IM/IT contingency plan.

Managers should have mechanisms in place to ensure the security of information managed electronically.

The ORO Manager, Information Holdings has functional responsibility for the security of electronic information. The audit team confirmed that the ORO has instituted a rigorous password regime for accessing systems. For example, the ORO uses SecureDoc for the encryption of documents on laptops, and servers are secured by using Entrust. The audit team

further noted that the security standards are well-documented on the Intranet and are available to all employees who have access to the Intranet.

We determined that regular backup practices are sound. For example, incremental backups take place on a daily basis and full backups are completed weekly. Also, backup files are properly secured in a safe off-site location.

We were informed, however, that there is no ORO IM/IT contingency plan in place to respond to a disaster situation. On the other hand, the ORO Manager, Information Holdings advised us that a Business Continuity Plan was currently under development in the ORO. In our view, contingency plans for IM/IT related disasters should be developed as a stand-alone document and incorporated in the overall ORO Business Continuity Plan. The IM/IT contingency plan would provide detailed information regarding the alternative arrangements available to maintain continuity of IM/IT services.

Our examination of the security of electronic information also included an inspection of the ORO computer room. Our inspection revealed that the room is satisfactory (i.e. air-conditioned, fire extinguishers readily available) and access to the room is rigidly controlled via keypad access. Password codes are changed on a regular basis.

It is our view that appropriate measures have been taken in the ORO to secure electronic information with the exception of a documented and approved ORO IM/IT contingency plan.

Recommendation and Management Response

5. It is recommended that the ORO Regional Director General ensure that an ORO IM/IT contingency plan is developed and approved.

I agree. As noted in the draft audit findings, an updated ORO *Business Continuity Plan* was currently under development. An updated written *BCP* for the ORO *Information Management Group*, with specific application to information management and information technology recovery, was implemented effective January 4, 2010. A copy of the ORO IM/IT Business Continuity Plan will be made available if required.

5. COMPLIANCE WITH KEY LEGISLATION AND RELATED POLICIES

The RLS is compliant with key government and departmental legislation and policies.

Managers should take measures to ensure compliance with key legislation and related policies.

The auditors' review covered compliance with the *Financial Administration Act*, Government contracting requirements, the *Official Languages Act*, and Employment Equity.

RLS employees have access to the departmental Intranet where key information is contained in relation to the above-noted legislation and related policies. Furthermore, the Intranet is appropriately linked to various federal government central agency websites such as the Treasury Board Secretariat website. Employees seeking further detail on the above-noted subjects can access these websites and/or obtain direction from their managers or functional experts within Justice Canada.

As noted in "Financial Resources", the RLS was found to be compliant with the *Financial Administration Act*.

Contracting practices in the ORO are centrally controlled through the Contracting Unit in the Administration Directorate. The Contracting Unit works closely with ORO managers throughout the entire contracting process (i.e. request for proposal, competitive bid process, final contract) to ensure compliance with the Government Contract Regulations (GCRs). Based on our review and discussions with the ORO Contracting Officer, there was an effective challenge mechanism in place to ensure strict compliance with the GCRs. We found that the Unit actively enforced key contracting elements such as needs definition, accurate statements of work, appropriateness of the competitive bid process, and justifications for sole sourcing. Close attention is also paid to ensure that managers are contracting within their delegated authority levels. The ORO also has a Contracts Review Committee in place, comprised of senior ORO managers, to provide oversight of the ORO's contracting activities.

The auditors' examination of compliance with the *Official Languages Act* (OLA) was limited to Part 7 of the Act "Language of Work" and Part 4 of the Act "Service to the Public". The mechanisms in place in the ORO to monitor adherence to the *Official Languages Act* are straightforward and effective. We were informed by the RLS Director that English was the language of work for virtually all the business conducted by RLS. However, to ensure compliance with the OLA, the RLS Director informed us and our documentation review confirmed that three positions in the RLS are classified as bilingual. With regard to "Service to the Public", the ORO Director of Human Resources informed us that there is an active offer of service¹ to the public at the main reception desk. In addition, mechanisms are in place to ensure the same active offer of service is available for telephone calls. We observed that there is appropriate signage at the main reception desk regarding services in both official languages. She also informed us that there have not been any complaints in the ORO regarding non-compliance with the requirements of the OLA.

The Employment Equity Goals and Commitments are identified in the RLS 2009-10 Business Plan. The RLS Director informed the audit team that careful attention is given to meeting Employment Equity goals during the staffing process. Consequently, the RLS has consistently been successful in meeting its Employment Equity goals. Notwithstanding the RLS's track record in this regard, the challenge to meet and exceed Employment Equity targets remains. During our interviews with the ORO Director of Human Resources, she informed us that the Employment Equity Program is an integral part of ORO management practices; that Employment Equity requirements/expectations indicated in ORO Business Plans were monitored as part of overall Business Plan monitoring; and that there have been no complaints in the ORO regarding non-compliance with the Employment Equity requirements.

In our view, the RLS is taking reasonable measures to ensure compliance with key legislation and related policies.

¹ An active offer of service means that federal institutions must ensure that appropriate measures are taken, including the provision of signs, notices, and other information on services and the initiation of communication, to make it known to members of the public that services are available in either official language at the choice of the member of the public.

6. RISK AND LEGAL FILE MANAGEMENT AND FORECASTING DEMAND FOR LEGAL SERVICES

6.1 Legal Risk Management

The RLS has effective legal risk management practices in place to manage its case files.

Excellence in risk management is fundamental to the effective delivery of litigation services.

The auditors assessed the RLS's legal risk management practices in place to mitigate risk at the case level (i.e. estimating the risk of an adverse action occurring and the impact if that risk occurs).

The auditors conducted several interviews with the RLS Director, Deputy Director, and a sample of senior legal counsel to gain a general understanding of RLS legal risk management practices at the case level. We subsequently met with these officials to assess the legal risk management practices associated with specific cases.

We found that the RLS adheres to the risk management practices prescribed by Justice Canada's Law Practice Management Directorate. For each case, the initial risk assessment is carried out by the RLS Director and Deputy Director. The risk assessment takes into account such factors as the complexity of the case, risk, financial exposure to the Crown, potential media attention, and political impact. Cases are assigned to senior legal counsel based on their availability and expertise. From that point on, the lead counsel become accountable for ensuring that the risk profile of the case is regularly reviewed and updated.

Cases are assigned a numerical rating between 1 and 10 in accordance with departmental risk management requirements. Cases that are considered high risk are rated between 6 and 10. The risk profiles of all cases being handled by the RLS are reviewed regularly by the Director, Deputy Director, and lead counsel as well as by the Regional Litigation Committee. Those cases rated as high risk are given closer scrutiny than those of lower risk.

The audit team reviewed the notes of the Regional Litigation Committee. We found that this committee regularly scrutinized the highest risk cases. Early Warning Notes² are prepared periodically for these cases and are sent to the BRLP at HQ. These Notes are reviewed by the Assistant Deputy Minister and/or the Deputy Assistant Deputy Ministers, BRLP, and are processed expeditiously.

It is our opinion that the RLS has effective legal risk management practices.

6.2 Management of Legal Files

RLS legal counsel manage legal files effectively using iCase.

The efficient management of legal files and records is critical for any legal practice so that relevant information and precedents can be quickly retrieved.

iCase is used by the RLS for case management, document management (generation and retrieval), and timekeeping related to legal files. The auditors reviewed the iCase Business Standards Manual – Business and Regulatory Law, Justice and Central Agencies Portfolios and found that it provided the key information required to use iCase. The auditors reviewed case files in the presence of RLS counsel and noted that they contained the key information specified in the manual.

The RLS Director informed the audit team that all RLS counsel use iCase to manage their case files. Legal counsel advised that they found iCase to be an effective tool for the management of legal files.

The auditors examined the iCase system to verify its reliability and usefulness as an operational system. We found that there were no technical or operational issues with iCase. Appropriate ORO employees have access to iCase and all the files therein.

The iCase Administrator informed the audit team that she regularly verifies the iCase application to ensure data quality is maintained. We noted that regular iCase Standards Reports containing the results of these verifications are produced. iCase also generates an adequate number of standard reports to detect errors and initiate the necessary remedial action. We reviewed a

² Early Warning Notes are the Department's mechanism for alerting senior officials to developments in high-impact cases (e.g. an upcoming trial, anticipated decision, sentencing). Lead counsel are responsible for advising senior officials of anticipated milestones or activity in high-impact cases by means of an Early Warning Note.

sample of the iCase Standards Reports. There is documented evidence on file in situations where mandatory information was missing. Furthermore, the iCase Administrator's work includes a verification of the risk rating to ensure it is current.

Finally, we reviewed the timekeeping audit report that is used to detect errors in time reporting and found that it is run on a weekly basis. Timekeeping errors for legal counsel and paralegals are reported promptly to the RLS Director who initiates the necessary remedial action.

It is our opinion that RLS has effective legal file management practices.

6.3 Forecasting Demand for Legal Services

The RLS has effective practices in place to ensure timely forecasts of demand for legal services.

Effective forecasting of demand for legal services is fundamental to the effective management of the RLS's legal business.

The RLS is involved primarily in litigation; however, some advisory work is also undertaken. Both aspects of work are included in forecasting demand for legal services. From a review of sample correspondence and information provided to the audit team, we found that various methods are used to forecast demand. These include such activities as ongoing communication within the ORO and with other regional offices, HQ, and client departments and agencies. There is daily communication with these constituents by telephone, email, etc. RLS legal counsel also participate in regional and national committees.

During interviews with three heads of the legal services units, which constitute the RLS's largest clients, we were informed that communications between them and the RLS are excellent and include frequent discussions on demand for legal services. More detailed information in this regard may be found under "Interfaces With Other Justice Canada Sectors" below.

It is our view that RLS effectively manages demand for legal services.

7. INTERFACES WITH OTHER JUSTICE CANADA SECTORS

7.1 Interfaces with Regional Offices, the Business and Regulatory Law Portfolio (BRLP), and the Law Practice Management Directorate (LPMD)

RLS managers maintain effective interfaces with regional offices, the BRLP, and the LPMD.

It is important for managers to maintain strong interfaces with other organizational units in the Department. By doing so, managers are better positioned to be informed of recent changes in policy and procedures, and latest trends in the practice of law such as precedents set as a result of recent court proceedings. In addition, maintaining sound interfaces helps legal practitioners ensure they have explored all avenues for securing the best legal expertise possible, sharing best practices, and fostering consistency in the delivery of legal services.

The RLS is very proactive in terms of maintaining strong ties with key Justice Canada organizations such as other ORO organizations, other regional offices, the BRLP, and the LPMD. RLS legal counsel communicate daily with these organizations (e.g. by telephone, conference call, email) and participate actively in regional and national committees.

The above-noted interaction is supplemented through ongoing participation by RLS counsel in regional and national committees. We found that the RLS's participation in these committees is effective in ensuring that RLS professional staff maintain sound interfaces with these key Justice organizations.

The RLS Director, Deputy Director, and several legal counsel informed the audit team that maintaining interfaces with key Justice Canada constituents is a vital part of their work. In general, they stated that they are satisfied with the very cooperative and collaborative relationships they had fostered. Our meetings with BRLP and LPMD managers confirmed that RLS's interactions with them were consistently strong.

It is our view that RLS managers maintain effective interfaces with regional offices, the BRLP, and the LPMD.

7.2 Interfaces with DLSUs

RLS managers maintain effective interfaces with the DLSUs in client departments/agencies.

The RLS has a client base of 21 departments and agencies. The RLS has minimal direct interfacing with client departments/agencies located in the Metro Toronto area. The only notable exception is that the RLS does service the RCMP in London, Ontario pursuant to the provisions of a Service Agreement. Consequently, virtually all of the RLS's interfacing is conducted through client department DLSUs in the National Capital Region and not directly with client department managers.

The audit team interviewed the heads of the DLSUs for Human Resources and Skills Development Canada, Health Canada, and the Canadian Food Inspection Agency, which represent three major client departments/agencies of the RLS.

All three heads of these DLSUs confirmed unequivocally that the quality and level of service provided by the RLS were sound. To substantiate their views the DLSU heads provided the auditors with examples of cases that are currently being managed on a collaborative basis with RLS counsel. As a result of our discussions and documentation review, it is clear that day-to-day interaction between legal counsel in the DLSUs and the RLS is effective.

During our interview with the RLS Director, he advised the audit team that interfacing between the RLS and its client departments DLSUs is very much a responsibility that all RLS legal counsel share. He further stated that multiple approaches are maintained to ensure ongoing effective interfaces with the DLSUs. Informal means of interaction used include telephone calls, conference calls, email, and facsimiles. More formal interfacing takes place when the RLS Director attends such fora as national committee meetings, which DLSU management also attend.

It is our view that RLS managers maintain effective interfaces with the DLSUs of their key client departments/agencies.

The RLS is taking reasonable measures to ensure that client departments are satisfied with the legal services provided.

We reviewed the measures undertaken by the RLS to ensure that client departments are satisfied with the legal services provided. Our review consisted of interviews with RLS management and the three aforementioned DLSU heads.

The RLS Director, Deputy Director, and several legal counsel advised that they maintained collaborative working relationships with their counterparts in the client departments and agencies. An integral part of this relationship is ongoing information sharing between the two parties vis-à-vis the specific needs and requirements of the client department managers. This ongoing communication includes feedback on the RLS's performance in relation to client expectations.

Our interviews with the DLSU heads focused on obtaining feedback regarding the quality of services provided by the RLS. We discussed the means and frequency of interaction, what works well and what requires improvement, and the overall level of satisfaction.

Our interviews revealed that ongoing communication regarding client department needs, service expectations, and results takes place at the legal counsel level. The majority of interactions are related to specific cases. Strong collaborative working relationships have been established in order to provide the client department with the best level of service possible. All three DLSU heads related that communications with the RLS are effective and the level of service received is consistently of high quality, timely, and focused on meeting client needs.

It is our view that the RLS, through ongoing interfaces with DLSUs, is taking reasonable measure to ensure client department needs are being met and satisfaction with services is provided.

7.3 Formal Client Surveys

Formal client surveys conducted by the Business and Regulatory Law Portfolio revealed a high level of client department satisfaction with services provided.

Formal client satisfaction surveys are important tools for obtaining feedback on client satisfaction and provide information for effecting improvement.

The RLS does not conduct formal client surveys. However, surveys are conducted at the Portfolio level in headquarters. We reviewed two client satisfaction surveys that had been commissioned by the Assistant Deputy Minister of the Business and Regulatory Law Portfolio in 2002 and 2008. Both surveys were conducted by parties independent of the BRLP. Our review of

these completed surveys concluded that both surveys were reasonably comprehensive and covered key service criteria such as responsiveness, usefulness, and timeliness. The results of both surveys were very favourable regarding the level of service provided by the BRLP including those related to regulatory law.

It is our view that the formal client satisfaction tools we examined are important tools for assessing the level of client department satisfaction. BRLP management should continue to use formal client surveys to assess client department satisfaction.

8. OBSERVATIONS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

The Regulatory Law Section has effective governance in place that provides sound strategic direction.

The recording and communication of the results of regional committee meetings require improvement.

- 1. It is recommended that the ORO Regional Director General ensure that minutes of regional committee meetings are taken, identify action required, and are communicated to staff.....4**

I agree. The Regional Director General will direct regional committees in the ORO to improve the recording and communication to staff of the results of regional committee meetings. Specifically, the regional committees that do not already do so will be directed to prepare minutes of their meetings which capture essential information that is discussed during committee meetings, a record of decisions taken, and required follow-up action. All committees will be directed to ensure appropriate distribution to ORO staff after thorough vetting by committee members to ensure the protection of legal privileges such as solicitor-client privilege as well as the due protection of any privacy or other sensitive interests (such as security interests) pursuant to applicable *ATIP* or other legislation, regulations, policies, directives or guidelines. To be completed by May 31, 2010.

The Regulatory Law Section has a comprehensive Business Plan in place for the 2009-10 fiscal year.

The Regulatory Law Section is generally well organized to execute its mandate; however, the need for intermediary positions should be determined and these should be reflected in a revised organization chart.

- 2. It is recommended that the RLS Director, in conjunction with the ORO Human Resources Director, determine the need for intermediary positions and reflect these in a revised organization chart.7**

I agree. Some action has already been taken since the on-site examination phase of the audit to address this issue. Specifically, the RLS organizational charts have been revised to reflect the creation of two new positions, Business Manager (AS-04) and Manager, Legal Operations (AS-03), respectively. Responsibility for the immediate supervision of all legal assistants in the RLS (CR-05s) is being transferred from the Deputy Regional Director to the AS-03. This will permit a better reallocation of line reporting relationships of legal counsel to the Regional Director and Deputy Regional Director. Staffing of these new positions has been initiated. Our Human Resources advisors have also advised that our org charts may only reflect the information contained in the PeopleSoft system. Functional (team) relationships are not reflected in PeopleSoft.

Completed, in part, as outlined above. Nevertheless, ongoing efforts by the RLS Regional Director will continue on a regular basis as org charts are revised and updated, to identify opportunities to better reflect actual working relationships of longer duration in the RLS.

Efforts are under way to reduce the span of control of the RLS Director.

The RLS has effective workload management practices.

Management has in place effective performance monitoring and reporting practices.

The RLS uses an extensive set of policies and procedures that are well communicated to staff.

The RLS has effective human resource planning mechanisms in place.

The RLS has the appropriate number and mix of resources.

The RLS manages recruitment and retention effectively.

The RLS is taking reasonable measures to ensure its employees receive appropriate training.

The RLS has an effective performance appraisal process.

The RLS has effective financial planning practices in place and receives strong support from ORO Finance.

There is insufficient funding provided to manage a specific class action lawsuit and to fund support services.

3. It is recommended that the RLS Director, in conjunction with the ORO Regional Director General, examine the extent of the funding shortfalls identified.19

I agree. Action has already been taken since the on-site examination phase of the audit to address this issue. Specifically, issues related to resources available for managing the class action lawsuit referred to have been settled with the responsible client department. The necessary staff have been recruited and assigned to the class action team, and arrangements have also been made for appropriate assistance from other regional offices and legal agents for specific tasks related to the defence of these actions.

This recommendation as it relates to funding the specific class action lawsuit mentioned, has already been implemented, as outlined above.

Efforts by the ORO Regional Director General and the RLS Regional Director are continuing on an ongoing basis to improve the support services for the RLS. Some progress has already been made with the creation of the new RLS *iCase Coordinator* position as well as the new AS-03 and AS-04 positions referred to above. The ORO RDG and the Regional Director of the RLS continue to discuss the support services necessary to ensure that appropriate support services are provided to support the legal work of the RLS, consistent with the levels of support provided to the other large legal divisions in the ORO (i.e., the Tax Law Services Division, and the Immigration Division) and in the Department. Requests have been made for additional funding from reserves, but as noted in the draft audit findings, there are “concerns regarding shortages in O&M funding in the BRLP in general.” The funding of support services is an issue which will likely require continued and ongoing efforts to risk manage under current conditions.

The measures taken to administer the RLS’s financial resources are adequate and the RLS’s financial transactions are in compliance with the requirements of the Financial Administration Act.

RLS officials have received the required training regarding FAA delegation of financial signing authority; however, training on contracting is required.

4. It is recommended that the RLS Director ensure that training on contracting is provided to RLS staff.....21

I agree. The RLS Regional Director has instructed the RLS *Training & Development Coordinators* to arrange for training on contracting with a particular emphasis on expert witness contracting to be made available to all Regulatory staff as soon as the ORO *Contracting Officer* is available to do so. (It is noted that this session has already been provided to the Immigration Law Division and recently to the Business Law Division). The T&D Coordinators will also make arrangements for a second more general presentation later to RLS staff on contracting for services generally. To be completed by July 30, 2010.

Mechanisms are in place to protect the RLS's physical assets.

Reasonable precautions are taken to secure the workplace and the well-being of its employees.

Information systems are reliable and provide the required information for decision making.

The RLS receives appropriate support from the ORO Operations and Support section.

Effective measures are in place for the security of electronic information, with the exception of a documented and approved ORO IM/IT contingency plan.

5. It is recommended that the ORO Regional Director General ensure that an ORO IM/IT contingency plan is developed and approved.27

I agree. As noted in the draft audit findings, an updated ORO *Business Continuity Plan* was currently under development. An updated written *BCP* for the ORO *Information Management Group*, with specific application to information management and information technology recovery, was implemented effective January 4, 2010. A copy of the ORO IM/IT Business Continuity Plan will be made available if required. Completed.

The RLS is compliant with key government and departmental legislation and policies.

The RLS has effective legal risk management practices in place to manage its case files.

RLS legal counsel manage legal files effectively using iCase.

The RLS has effective practices in place to ensure timely forecasts of demand for legal services.

RLS managers maintain effective interfaces with regional offices, the BRLP, and the LPMD.

RLS managers maintain effective interfaces with the DLSUs in client departments/agencies.

The RLS is taking reasonable measures to ensure that client departments are satisfied with the legal services provided.

Formal client surveys conducted by the Business and Regulatory Law Portfolio revealed a high level of client department satisfaction with services provided.

APPENDIX A – CONTEXTUAL INFORMATION

The activities of the Ontario Regional Office (ORO) Regulatory Law Section (RLS) include providing litigation and legal advisory services to the federal Crown and, in particular, to regulatory government clients within the Business and Regulatory Law Portfolio (BRLP), such as Health Canada, and to specific clients of the CIPS Portfolio, such as the RCMP. The Section participates in the management of legal risk in cooperation with client departments and other Justice officials and also supports Department of Justice corporate priorities, including improved performance reporting, managing litigation volume, sustainable funding, and people management.

The legal work of counsel in the RLS mainly involves the conduct of a broad range of civil litigation on a wide variety of issues in all courts at all levels in Ontario. The litigation includes actions in contract and in tort, judicial review of decisions of various administrative tribunals and other government decisions, Coroner's inquests, proceedings before certain federal tribunals, and rendering advice on commercial agreements and appeals.

APPENDIX B – METHODOLOGY

The criteria for the audit were based on the TBS guidance on auditing management frameworks provided in the “Core Management Controls: A Guide for Internal Auditors”.

Information for this audit was obtained through the following methods:

- a review of relevant documentation concerning the operations of the RLS;
- interviews with:
 - management, lawyers, and staff in the RLS;
 - ORO human resources, finance, and administration management and staff;
 - the heads of the legal services units in Human Resources Skills Development Canada, Health Canada, and the Canadian Food Inspection Agency;
 - the Assistant Deputy Minister, the Deputy Assistant Deputy Minister, and the Director, Program Support & Business Strategies in the Business and Regulatory Law Portfolio;
 - the Director General, Law Practice Management Directorate.