



PORTFOLIO OFFICES

December 2010

Internal Audit Branch

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STATEMENT OF ASSURANCE

We have completed the internal audit of the Business and Regulatory Law, Central Agencies, and Public Safety, Defence and Immigration Portfolio Offices. The overall objective of the audit was to review and assess the framework within which services are delivered by the Portfolio Offices 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.¹

The audit team assessed the management control framework against criteria derived from the TBS Management Accountability Framework (MAF), the *Guidance on Control* issued by the Criteria of Control Board (CoCo) of the Canadian Institute of Chartered Accountants, and TBS audit guides.

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 were based on a comparison of the 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.

¹ The Internal Audit Branch has not undergone an external assessment at least once in the past five years or been subject to ongoing monitoring or to periodic internal assessments of its internal audit activity that would confirm compliance with these standards.

EXECUTIVE SUMMARY

A significant proportion of the counsel in the Department of Justice are assigned to one of the 40 departmental legal services units (LSUs). LSUs provide client organizations with legal advice to facilitate their operations and ensure that the conduct of their affairs is in accordance with the law. Organizationally, each LSU is part of one of five Department of Justice Portfolio Offices. This audit focused on the management practices of three Portfolio Offices in the Department: Business and Regulatory Law (BRL), Central Agencies, and Public Safety, Defence and Immigration (PSDI).

The planning and the on-site examination phases for this audit were carried out between November 2009 and April 2010.

Management Framework

All three Portfolio Offices included in the audit had a well-developed control framework. Each Portfolio Office develops an annual two-section integrated business plan that is consistent with the Management Sector's requirements. The business plan identifies priorities, potential risks, planned mitigation strategies for identified risks, performance indicators, and required resources. Planned strategic directions and priorities for each portfolio are aligned with government, departmental, and client priorities. Specific initiatives are listed for each of the priorities documented in the plan.

Performance against the key performance indicators—client perceptions of the usefulness, responsiveness, and timeliness of the legal services provided—is monitored through client feedback surveys of all LSUs in a portfolio over a three-year period. The surveys are conducted by the Management Sector's Office of Strategic Planning and Performance Management (SPPM).

The three Portfolio Offices examined range in size, comprising from seven LSUs to 19 LSUs plus two secretariats, and an additional planned section. To provide the necessary management direction from the Portfolio Office, the larger offices are supported by one or two deputy

assistant deputy ministers (ADM)/assistant deputy attorneys general (ADAG)². All Portfolio Offices have at least two other counsel providing advice on legal matters and a business office with two to five people. All of the portfolio heads, their deputies, and the 18 LSU heads³ interviewed were satisfied with the existing span of control.

Each Portfolio Office examined uses a range of mechanisms to strengthen the links with its LSUs and the regional offices. These mechanisms include email communications (providing directives, advisories, and other information), regular meetings or teleconferences between the ADM/ADAG and LSU heads and regional directors, monthly bilateral meetings between the ADM/ADAG and LSU heads, and annual meetings.

Human, Financial, and Materiel Resources

Each of the three Portfolio Offices examined prepares a human resources plan as Section 2 of the Department's integrated business planning cycle. All of the plans examined were prepared in a manner consistent with the Management Sector's requirements. Furthermore, all identified human resources priorities were consistent with the Portfolio Offices' business and management priorities.

Plans are under way to address under-resourcing of portfolio business offices based on the results of a multi-year study, known as the "Footprint" Project. The project's goal was "to develop and confirm a structure for the management and operation of the functions for which the Management Sector⁴ is responsible, be they performed by Management Sector personnel or others working under the Sector's functional authority". In response to the findings of the "Footprint" Project, the three Portfolio Offices examined produced three-year plans to increase the size of their business office organizations.

Appropriate measures are taken to ensure that training and development is made available to staff in the three Portfolio Offices and lawyers in their LSUs. Email invitations and notifications regarding departmental/portfolio training events are regularly sent to LSU heads and their administrative assistants. The use of training funds by LSUs is monitored by each Portfolio Office and reminders are sent to LSU heads if the funds are not being used.

² The second deputy ADM position in the BRL Portfolio was eliminated effective August 9, 2010.

³ Different titles are used across the LSUs for the position responsible for the LSU's overall performance. The term "LSU Head" has been used throughout this report for this position that has this overall responsibility. The actual title of the "LSU Head" may be Senior General Counsel, General Counsel, Executive Director, Director, or Legal Advisor.

⁴ Subsequent to the completion of the "Footprint" Project, the Chief Financial Officer (CFO) Branch was created, reporting directly to the Deputy Minister. At the time the "Footprint" Project was undertaken, the finance function was a responsibility of the Management Sector.

All three portfolios are funded by a combination of the Department's A-Base and cost-recovery from their LSU's clients. We were told that LSU client departments typically agree to fund the cost-recoverable component. However, there is always a risk that funds needed may not materialize.

All three Portfolio Offices examined monitor their financial performance on a regular basis. Every month (except for July and August), each Portfolio Office prepares a Financial Situation Report (FSR) that shows variance from the financial plan. Action is taken as appropriate, based on the information.

Physical security of the Portfolio Offices is satisfactory. Access to each Portfolio Office is restricted; active files are kept in individuals' offices or in the Portfolio Offices' records room, both of which are locked at night; and there are high-security cabinets for confidential or secret files.

The three Portfolio Offices are not using the Department's BassetPro system to manage their key physical assets. A 2007 Audit of Materiel Management found that the BassetPro system lacked the rigour necessary to assure management that inventory and asset information is accurate. We were told that Contracting and Materiel Management Division (CCMD) had considered acquiring an asset management module for the financial system, but the necessary funding was not approved. We examined asset listings prepared by the Portfolio Offices. With minor exceptions, these listings were up-to-date and complete within their scope.

Information Systems

Information from departmental systems is used to monitor Portfolio Office performance and to support accountability. Financial reports, resource levels indicated by the Salary Management System, and the utilization of departmental personnel in the LSUs from iCase reports, are all reviewed on a regular basis. Action is taken based on the information.

All three Portfolio Offices report receiving satisfactory support from Information Management Branch, principally through the Help Desk.

The three Portfolio Offices have satisfactory controls to protect the security of electronic information. Access to departmental systems is controlled physically and logically. Access to systems for new employees depends on the employee's security level and the required tasks of his/her position. When employees leave employment with a Portfolio Office, procedures are in place to ensure that their system access is revoked.

Compliance with Key Legislation and Related Policies

There is compliance with the requirements of the *Official Languages Act* and the Contracting Policy.

Interfaces with Other Justice Sections and Regional Offices

The Portfolio Offices' interfaces with the Public Law Sector are satisfactory, but there are concerns regarding the impact of the Department's cost recovery practices on consultations with the Sector. With the introduction of cost recovery, there has been a decline in the number of requests for specialized advice from LSUs and changes in the types of requests for legal services. We were told that LSU lawyers are now more likely to either generally perform more legal analysis themselves and then ask Public Law Sector counsel to review their analysis, or request brief telephone consultations for which they do not want to be billed.

The Portfolio Offices' interfaces with the Management Sector vary, depending on the size of the portfolio's business office. The Central Agencies Portfolio Office, which is the smallest of the three Portfolio Offices, expressed some concerns with respect to the number of reporting requirements to which it must respond and its ability to do so. It should be noted that there has been significant turnover in its business office staff. Management Sector's Administration Directorate also expressed concern with the priority given by the Portfolio Offices to administrative services functions (e.g. safety, security, accommodations). In addition, Client Services and Operations in the Human Resources and Professional Development Directorate noted that there was no common point of contact for portfolios having large numbers of LSUs, and that it would prefer to deal with a business manager at the portfolio level rather than with each individual LSU. As the Portfolio Offices increase the resources in their business offices, they should be better able to provide any required focal points for interactions with Management Sector directorates and address the administrative services functions that may not be accorded as high a priority as warranted.

Portfolio Offices' interactions with regional offices are satisfactory. These occur regularly on substantive legal files through email, teleconferences, periodic face-to-face meetings, and as required ad hoc discussions. The interactions were described as effective.

Business and Regulatory Law Portfolio Office

Most LSU heads interviewed stated that more support from the BRL Portfolio Office on common administrative challenges and horizontal issues not related to legal matters would be

helpful. The level of expertise in LSU administrative offices varies. Some larger LSUs have experienced full-time office managers who have subordinates with considerable expertise. Smaller LSUs tend to have few administrative staff. The portfolio business office stated that it would be difficult to determine the appropriate level of services for these LSUs. In the audit team's experience, there is an opportunity for the BRL portfolio business office to take a more proactive leadership role in identifying and helping LSUs address horizontal management issues and in responding to common administrative requirements. A recommendation has been made to this effect.

We were told that the BRL Portfolio Office communicates best practices as part of its regular interactions with LSUs and regions. We found that there were mixed views on whether these methods of communication were satisfactory. A recommendation has been made to ensure that recommended best practices are clearly communicated as such.

The testing of a sample of financial transactions identified an instance where the business office had been billed twice for a \$6,741 travel claim. A recommendation has been made that the BRL Portfolio Office institute a procedure to ensure that invoices from the travel service are reconciled with its travel record on a regular basis.

The BRL Portfolio Office's information and file management practices are satisfactory and its procedures have been documented.

Management in both the BRL Portfolio Office and the Litigation Branch stated that the relationship between the two is satisfactory. They both recognized the ongoing challenge in ensuring that high risk cases are properly identified. We were told that the approach for managing litigation and sharing information on litigation files is appropriate.

Central Agencies Portfolio Office

The Central Agencies Portfolio Office has developed administrative procedures that include a significant number of references to Internet sites or contact names and telephone numbers. For such a document to remain useful, it must be kept up-to-date. No one person, however, has been assigned that responsibility. A recommendation has been made that clear responsibility for keeping the Portfolio Office's administrative procedures manual up-to-date be assigned.

The heads of smaller LSUs within the Central Agencies Portfolio would like more support on financial management matters in particular. The significant turnover in the Portfolio Office has precluded this from occurring. As a result of the "Footprint" Project, the number of staff in the

Central Agencies Portfolio business office will be increasing. With more staff, the Central Agencies Portfolio will be in a better position to provide leadership and support to LSUs.

A sample of 25 transactions from 2008-09 and 2009-10 was reviewed to determine the compliance of the Central Agencies Portfolio Office with the *Financial Administration Act* (FAA). For the invoices examined from 2008-09, some were missing certification that the goods were received or the services provided, or the certification was found to be inconsistently carried out. Improved controls were implemented in 2009-10 and no errors were found in the sample for 2009-10.

The Central Agencies Portfolio Office's administrative procedures manual does not provide guidance on filing procedures for either paper or electronic records. Despite the absence of procedures, staff reported that they are able to find documents in either format when required. As staff numbers grow as planned under the "Footprint" Project, it will become more difficult to ensure the consistent application of the existing informal procedures. A recommendation has been made that document filing procedures be included in the Portfolio Office's administrative procedures manual.

The Central Agencies Portfolio's working relationship with the Litigation Branch is satisfactory.

Public Safety, Defence and Immigration Portfolio Office

The PSDI Portfolio Office has made progress in developing procedures for use by the LSUs within the portfolio and plans to continue developing procedures in response to LSU issues. Several minor omissions in the procedures were noted, but they were otherwise appropriate.

The PSDI Portfolio Office provides appropriate leadership and communications to LSUs on LSU administrative issues. The business office has been proactive in identifying areas where LSUs are experiencing problems and in preparing guides and delivering training to address common problems. Most LSU heads were generally satisfied with the support and direction received from the Portfolio Office on financial and other administrative matters. The PSDI's National Litigation Coordination Team scans portfolio litigation files for novel or significant legal issues. The team then analyzes them for legal trends, disseminates the information to LSUs and regions, and prepares briefings and opinions. The team also holds regular teleconferences with LSUs and regions.

Some lawyers in the PSDI Portfolio Office keep files in their offices. We were told that the Records Clerk has had limited success in having the lawyers send their files to the records room. This has created a file-processing backlog. In the summer of 2009 the Portfolio Office hired a

student to clear the backlog. It is the audit team's opinion that the PSDI Portfolio Office needs to identify mechanisms that will promote the more timely movement of inactive files from individual lawyer's offices to the records room for file closure and archiving as necessary. A recommendation to that effect has been made.

In some cases, a significant amount of time is spent finding the electronic version of a document. At the time of our on-site audit work, there were no procedures in the PSDI Portfolio Office regarding electronic filing. However, we were advised that the need for procedures for managing electronic information has been given a higher priority.

The current interactions between the PSDI Portfolio and the Litigation Branch are satisfactory. Efforts have been made, in particular since 2008, to improve communications and ensure that key information is shared on a timely basis.

The management responses to the recommendations contained in this report were provided by the Assistant Deputy Minister, Business and Regulatory Law Portfolio; the Assistant Deputy Attorney General, Public Safety, Defence and Immigration Portfolio; and the Assistant Deputy Minister, Central Agencies Portfolio.

1. INTRODUCTION

1.1 Background

Pursuant to the *Department of Justice Act*, Justice Canada is responsible for the legal affairs of the government as a whole and for providing legal services to individual departments and agencies. A significant proportion of the Department's counsel are assigned to one of the 40 departmental legal services units (LSUs), which are co-located with client departments and agencies. LSUs provide client organizations with legal advice to facilitate their operations and ensure that the conduct of their affairs is in accordance with the law. In doing so, LSUs also provide advice with respect to the statutes and regulations that apply to the Government of Canada as well as strategic advice concerning policy development and other initiatives.

Organizationally, each LSU is part of a Department of Justice portfolio. The Assistant Deputy Minister (ADM)/Assistant Deputy Attorney General (ADAG) of the portfolio has functional and operational responsibilities with respect to the LSUs and functional responsibilities with regard to regional offices. This audit examined the activities of three of the five portfolios in the Department: Business and Regulatory Law (BRL), Central Agencies, and Public Safety, Defence and Immigration (PSDI).⁵

The BRL Portfolio provides legal services to 38 client departments and agencies through 19 LSUs, two secretariats (Property Law, and Intellectual Property and Information Technology Law), and the Commercial Law Section. Most of its LSUs are located in the National Capital Region while some others are located in client departments across the country. The BRL Portfolio Office provides senior level guidance on all legal issues affecting the portfolio's clients (including functional direction to the Department's six regional offices in relation to the work undertaken on behalf of the portfolio's client departments and agencies across Canada), manages ongoing client relations, and coordinates all operational aspects of the portfolio (e.g. budget allocation, financial management and reporting, cost-recovery, staffing, timekeeping). Planned 2009-10 expenditures in the BRL Portfolio including regional expenditures were \$83,727,860 for salaries (of which \$59,260,477 was from cost recovery) and \$6,241,341 for O&M (of which

⁵ The other two portfolios are the Aboriginal Affairs Portfolio with two LSUs and the Tax Law Services Portfolio with one LSU.

\$5,315,395 was from cost recovery)⁶. The Assistant Deputy Minister Office (ADMO) O&M was \$400,000.

The Central Agencies Portfolio comprises seven LSUs located in the National Capital Region. It manages horizontal legal policy and operational issues related to the central agency functions of government (e.g. laws governing financial institutions, public service employment law, labour law, tax law, Crown law, Crown corporations, and the federal budget). Regional offices (especially Ontario and Quebec) and the Litigation Branch provide litigation services to Central Agencies Portfolio clients, most frequently in connection with labour and employment law. The Central Agencies Portfolio Office also coordinates administrative and financial management in the portfolio. Planned 2009-10 expenditures were \$11,296,900 for salaries (of which \$7,056,882 was from cost recovery) and \$594,817 for O&M (of which \$441,317 was from cost recovery)⁷.

The Public Safety, Defence and Immigration Portfolio supports the responsibilities of the ministers of National Defence, Public Safety, and Citizenship, Immigration and Multiculturalism by providing legal services through nine LSUs and the Crimes Against Humanity and War Crimes sections. The PSDI Portfolio Office provides support to the government as required in relation to commissions of inquiry (e.g. into the Investigation of the Bombing of Air India Flight 182). Lawyers in the Department's regional offices are responsible for all litigation relating to clients in the regions. There is a high volume of litigation, often involving sensitive and highly publicized anti-terrorism files and immigration matters (e.g. citizenship revocations). The PSDI Portfolio Office coordinates the legal and management functions of the portfolio and maintains relationships with the legal and corporate offices of the Department of Justice, client organizations, and central agencies. Planned 2009-10 expenditures in the portfolio were \$57,087,893 for salaries (of which \$21,995,664 was from cost recovery) and \$5,568,767 for O&M (of which \$1,540,300 was from cost recovery)⁸.

1.2 Audit Objectives and Scope

The main objectives of this audit were to review and assess:

- the management control framework (policies, practices, and procedures related to planning, organizing, controlling, leading and communicating, and the management of human, financial, and materiel resources) in each Portfolio Office;
- the reliability of information systems for decision-making and accountability purposes;

⁶ Business & Regulatory Law Portfolio Office Financial Situation Report, December 31, 2009.

⁷ Central Agencies Portfolio Office Financial Situation Report, December 31, 2009.

⁸ Public Safety, Defence and Immigration Portfolio Office Financial Situation Report, December 31, 2009.

- the extent of compliance with key legislation, regulations, and central agency/departmental policies (*Financial Administration Act, Official Languages Act, Contracting Policy*);
- the appropriateness of communication mechanisms directed at strengthening links with LSUs and regional offices (e.g. committees, meetings, conferences, directives);
- the appropriateness of operational and strategic planning at the portfolio level;
- the appropriateness of interfaces with other sections in the Department of Justice (e.g. Public Law Sector, Civil Litigation, and regional offices);
- the appropriateness of interfaces with the Management Sector (e.g. Strategic Planning and Performance Management (SPPM), Human Resources) and Chief Financial Officer Branch;
- the level of satisfaction with the services/advices provided by each Portfolio Office to LSUs and regional offices (e.g. financial, administrative, human resources, cost recovery).

The audit also examined:

- the leadership role played by the Portfolio Offices in relation to significant LSU operational issues, particularly those that may have horizontal implications;
- the extent to which Portfolio Offices identify and communicate best practices and lessons learned;
- the level and appropriateness of direction provided to LSUs and regional offices (legal, finance, administration, management reporting);
- appropriateness of the span of control (extent and nature).

The scope of the audit included the operations and activities of the three Portfolio Offices: Business and Regulatory Law, Central Agencies, and Public Safety, Defence and Immigration. The planning and the on-site examination phases for this audit were carried out between November 2009 and April 2010.

Details concerning the audit methodology are outlined in Appendix A.

2. OVERALL OBSERVATIONS - MANAGEMENT CONTROL FRAMEWORK

2.1 Business Planning

Planning processes are appropriate in the three Portfolio Offices examined.

Business planning is used by successful organizations to identify 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, especially in situations where resources are scarce.

Each Portfolio Office develops an annual two-section integrated business plan as part of the Department of Justice's integrated business planning cycle. Section 1 of this plan documents:

- the portfolio's and the Portfolio Office's organization and structure, including the number of LSUs in the portfolio⁹, the number of employees, and the annual budget;
- the results of an environmental scan that identifies new initiatives in the portfolio, key issues, and risks that affect the portfolio, including key client initiatives that will have a major impact on the work done in the portfolio;
- business and management priorities, including human resources, finance, and information management/information technology priorities (Business priorities are related to major client initiatives and issues.);
- risks (Both corporate and portfolio level risks are documented; the portfolio level risk is described; the risk level is assessed; and planned mitigation measures are documented.);
- performance indicators.

Section 2 of the plan, which is completed two months after Section 1, provides detailed operational planning information regarding specific resources (financial, human, information management/information technology, communications) that are needed to address the

⁹In the two portfolios with less than 10 LSUs, each LSU's activities and responsibilities are also described.

requirements and priorities identified in Section 1. Section 2 includes a Human Resources Plan that is based on a series of templates designed by the Management Sector, which must be completed by each Portfolio Office and its LSUs. The templates include a staffing plan that forecasts the number and level of full-time equivalent (FTE) Department of Justice positions that will be filled in each LSU and the Portfolio Office. The templates also identify whether the positions are indeterminate/term or new/existing positions.

We found that the integrated business plans produced by the three Portfolio Offices are consistent with the Management Sector's requirements.

It is the audit team's opinion that the planning process followed by the Portfolio Offices examined is appropriate.

The three Portfolio Offices' business plans document the alignment of their strategic directions and priorities with government, departmental, and client priorities.

Strategic directions should be established and revisited through formal strategic planning activities. Consideration should be given to government and departmental priorities and client needs.

The Department of Justice's annual planning cycle requires each Portfolio Office to align its planned activities with government, ministerial, departmental, and client priorities, as well as with the Department's strategic outcomes¹⁰. Each Portfolio Office's plan therefore includes a description of how the portfolio's activities align with the Department's Program Activity Architecture¹¹. All three portfolios contribute to the same Strategic Outcome—a federal government that is supported by effective and responsive legal services—through program activity B1- Services to Government.

When the Portfolio Offices prepare these plans, they respect government and departmental objectives and priorities that flow down to the portfolio from the Assistant Deputy Minister's (ADM) or the Assistant Deputy Attorney General's (ADAG) Performance Management Agreement (PMA) (e.g. implementing the Law Practice Model¹²). In addition, the Portfolio

¹⁰ The Department's Program Activity Architecture identifies two strategic outcomes: a fair, relevant, and accessible justice system that reflects Canadian values, and a federal government that is supported by effective and responsive legal services.

¹¹ The Program Activity Architecture shows the linkages between the strategic outcomes, program activities, and sub-activities for which the Department is responsible.

¹² The Law Practice Model establishes targets for the percentage of resources at various levels that are to be achieved in each portfolio by the end of the 2011-12 fiscal year. These targets are 25.5% articling students and junior lawyers (LA1), 47% intermediate lawyers (LA2A), and 27.5% senior lawyers (LA2B and above).

Offices consult the LSU heads who have regular contact with their clients. These consultations result in the legal issues and legislative priorities of client departments being incorporated into portfolio business plans.

The Public Safety, Defence and Immigration Portfolio's 2009-2010 Integrated Business Plan, for example, includes priorities to:

- advise the government in relation to commissions of inquiry;
- support the government's national security, information technology security, emergency management, and border management initiatives and strategies, as well as parole and corrections initiatives;
- support the government's citizenship and immigration initiatives;
- efficiently represent and support client organizations in litigation.

Specific initiatives are listed for each of the priorities documented in the plan. The priority to support the government's citizenship and immigration initiatives, for example, includes initiatives regarding foreign credential recognition and amendments to the *Citizenship Act* in relation to overseas adoptions.

It is our view that the three Portfolio Offices have appropriately documented the alignment of their strategic directions and priorities with government, departmental, and client priorities.

The three Portfolio Offices examined identify risks to the achievement of their priorities and develop mitigation strategies for the risks.

Risks to the achievement of objectives and priorities should be identified and assessed, with explicit mitigation strategies for each significant risk.

Each Portfolio Office's integrated business plan contains a section that documents the risks facing the portfolio, the level of the risk (low, moderate, or high), as well as planned mitigation strategies for addressing each risk. Some risks (e.g. the implementation of the Law Practice Model) are common to all three portfolios, as are the mitigation strategies. These include monitoring LSU staffing to ensure departing senior lawyers are replaced by more junior lawyers. Other risks are portfolio-specific. In the Business and Regulatory Law Portfolio, for example, the key risks include:

- legal skills and expertise shortfalls that could affect the Department's ability to meet the needs of the government;
- capacity shortfalls in corporate functions, especially human resources, that will reduce the ability to complete the staffing actions necessary to implement the Law Practice Model and reach its objectives;
- reductions in the portfolio A-Base budget with resulting incremental costs for client departments and agencies that will compromise client relationships and quality and level of legal services provided;
- lack of clear communication of the Law Practice Model to employees and clients that could compromise service delivery;
- timing of changes to cost recovery processes that create funding pressures for client departments and agencies, especially if the Department does not provide sufficient lead time for clients to seek their own funding increases.

The respective mitigation strategies for the above key risks include:

- succession planning, mentoring, enhancing the legal excellence program, active management of individual learning plans;
- preparing detailed human resources plans and setting up service level agreements with the human resources sector;
- planning for legal costs with client departments; clear and transparent discussions with client departments and agencies about the cost recovery model, legal services rates, and available A-Base budgets; and making the effects and impacts of portfolio A-Base budget reductions clear to the Department of Justice;
- clear, focused, and coordinated communications on the implementation of the Law Practice Model by the Department to its own organizational units and client departments and agencies, and ongoing active monitoring of its implementation in LSUs;
- providing advance notice to LSUs of changes in cost recovery processes so that they have time to discuss and negotiate changes to legal services agreements with client departments and agencies.

It is our view that the Portfolio Offices have appropriately identified the risks to the achievement of their priorities and developed reasonable mitigation strategies for these risks.

2.2 Organizing

The span of control in each portfolio is appropriate.

An appropriate span of control is essential for an effective organization. A wide span of control may limit the amount of feedback that can be provided to any one subordinate and/or the amount of time the supervisor has to focus on longer term objectives and plans.

The three portfolios examined differ in size. The Central Agencies Portfolio comprises seven LSUs. Its ADM serves as Counsel to the Department of Finance and is a member of the executive team of that department. The ADM is supported by a Special Advisor and Counsel to the ADM and a two-person business office.

The BRL Portfolio comprises 19 LSUs, plus two secretariats, and the (planned) Commercial Law Section, and is headed by an ADM who is Counsel to Industry Canada. He is supported by two deputy ADMs¹³; three special advisors, who are lawyers; and a three-person business office. Approximately equal numbers of the LSUs report to the ADM and the two deputies for day-to-day operational matters. We were told that the deputy ADMs support the ADM in providing ongoing direction and guidance to the LSU heads¹⁴ on substantive legal issues and are available to meet with LSU heads and their legal staff as required.

The PSDI Portfolio includes nine LSUs, plus the Crimes Against Humanity and War Crimes sections. The ADAG is supported by a Deputy ADAG, who provides direction to the LSUs on substantive legal issues and is available to meet with LSU heads as required. The PSDI Portfolio Office also has a Special Advisor/Inquiries Coordinator, a Special Advisor/Legal Counsel, the National Litigation Coordination Team, and a five-person business office.

All portfolio heads and their deputies stated that the number of LSUs in each portfolio were manageable. For example, the ADM, Business and Regulatory Law, pointed out that the portfolio has decreased in size since the National Defence and Canadian Forces LSU was transferred to the PSDI Portfolio in 2009, and that with two deputy ADMs, the portfolio has increased its capacity to coordinate activity, provide oversight, and deliver services to its LSUs.

¹³ Effective August 9, 2010, one of the deputy ADM positions was eliminated and the responsibilities of the ADM and the remaining deputy ADM were adjusted.

¹⁴ Throughout this report, the term “LSU Head” has been used to refer to the individual who is the manager responsible for the performance of the LSU. Most LSU heads in the BRL Portfolio hold the title of Executive Director. In other portfolios, the titles Senior General Counsel, General Counsel, Executive Director, Director, and Legal Advisor were in use.

The Portfolio Offices have established measures to promote a consistent approach to issues facing their LSUs and the Department of Justice. The BRL Portfolio, for example, has a specialized legal advisory service for matters of intellectual property, information technology, and Internet law, known as the Intellectual Property/Information Technology Secretariat. It provides expertise in areas relating to the protection and exploitation of the government's intellectual property assets and the intellectual property dimensions of the federal government's presence on the Internet. The PSDI Portfolio has a National Litigation Coordination Team that scans files for novel or significant legal issues, analyzes them for legal trends, disseminates them to LSUs and regions, and prepares briefings and opinions. In the Central Agencies Portfolio, copies of case summaries and legal updates are posted on the portfolio's Intranet site.

The audit team interviewed a sample¹⁵ of LSU heads from all three portfolios on whether they required any changes to the span of control in the Portfolio Office. None indicated that any changes were required. The heads were generally in agreement that both the amount and frequency of direction they received from their Portfolio Office on substantive legal issues were sufficient.

It is our opinion that the current span of control in each portfolio is appropriate.

2.3 Controlling

The three Portfolio Offices examined have processes in place to monitor their performance.

Monitoring is the ongoing, systematic process of collecting, analyzing, communicating, and using performance information. Monitoring is an essential component of assessing an organization's progress toward meeting expected results. It supports decision making, accountability, and transparency.

Each portfolio's integrated business plan includes an annex that lists performance indicators that are linked to the Department's Program Activity Architecture's strategic outcomes. The performance indicator for the Strategic Outcome¹⁶ that is common to all three portfolios is trends in client perceptions of the usefulness, responsiveness, and timeliness of the legal services provided.

¹⁵ In total, comments were obtained from 42% of all LSU heads in the three portfolios (i.e. seven (28%) in BRL, three (43%) in Central Agencies, and eight (73%) in PSDI). In each portfolio, the LSUs ranged in size from small to large.

¹⁶ The Strategic Outcome common to all three portfolios is a federal government that is supported by effective and responsive legal services,

Performance against this indicator is monitored by client feedback surveys of all LSUs in a portfolio over a three-year cycle. These surveys are conducted by the Management Sector’s Office of Strategic Planning and Performance Management (SPPM). Each survey provides LSU-specific measurements and comparisons to portfolio averages. The results from each LSU’s survey are provided to both the LSU and the Portfolio Office.

As noted earlier, all portfolio heads have PMAs that include government and departmental objectives and priorities, some of which are flowed down to the PMA established with LSU heads (e.g. implementation of the Law Practice Model). We were told that both the BRL and PSDI Portfolio Offices regularly review progress on PMA commitments, and that a list of portfolio accomplishments is periodically updated as the year progresses. Implementation of the Law Practice Model is a particular focus at present and is monitored in all portfolios, as is financial performance. (See “Monitoring Financial Performance”.)

It is our opinion that the performance monitoring of the Portfolio Offices examined is satisfactory.

2.4 Leading and Communicating

The three Portfolio Offices examined communicate their plans and priorities to their LSUs.

Communicating priorities is an important step in ensuring that each portfolio’s LSUs understand expectations.

LSUs are kept informed about their portfolio’s priorities through a variety of measures. Drafts of each portfolio’s integrated business plan are circulated among its LSUs for review, comment, and input before they are finalized. In two portfolios, the ADM’s or the ADAG’s PMA is provided to the LSU heads for use in preparing their own PMA with the portfolio head. LSU heads are kept up-to-date about changes in priorities through email messages and during meetings that take place throughout the year.

The three Portfolio Offices examined use a variety of communication mechanisms to strengthen links with LSUs and regional offices.

Effective and appropriate communications are essential in any workplace. Information needs to be shared on a timely basis so that actions can be taken based on current and correct information.

All Portfolio Offices use email to communicate with their LSUs and with personnel in the Department of Justice's regional offices who provide services to the portfolio's client departments that have a regional presence. The email communications include directives, advisories, and other information on legal, management, business, financial, human resources, social, and training matters.

Additional communications mechanisms used in the BRL Portfolio are:

- monthly bilateral meetings between the ADM and each LSU head (More frequent meetings may be held with individual LSU heads (i.e., if there is a pressing or high-profile legal issue);
- a monthly lunch meeting with the ADM and all LSU heads and their deputies to discuss legal, management, and human resources issues (regional directors attend by phone, unless they are in Ottawa and can attend in person);
- an annual retreat with the ADM and LSU heads and regional directors that focuses on major legal issues, the Law Practice Model, and new portfolio initiatives.

In addition, the ADM stated that he tries to visit each LSU and region annually.

We were told that LSU heads were satisfied with the amount and frequency of direction they receive on legal issues, adding that the BRLP was very responsive and supportive.

The Central Agencies Portfolio supplements email communications with:

- monthly meetings between the ADM and all LSU heads, at which each LSU head makes a presentation on current activity in the LSU followed by a discussion of horizontal issues (e.g. the Law Practice Model);
- annual all-staff meetings in Ottawa;
- as required ad hoc meetings to discuss urgent or high priority issues.

The PSDI Portfolio holds:

- weekly conference calls between the ADM and LSU heads and regional directors that deal with management of the law and administrative management issues;
- monthly bilateral meetings with the ADM and each LSU head;
- as-required face-to-face meetings between the ADM and LSU heads;
- three all-managers meetings each year.

The LSU heads and regional directors in all portfolios advised that these mechanisms provide a satisfactory amount and frequency of direction on legal issues and priorities. However, in some portfolios there were calls for more support with regard to administrative processes and horizontal issues such as financial reporting, cost recovery, and staffing. This is discussed in more detail in the “Leading and Communicating” sections of the “Observations – Business and Regulatory Law Portfolio” and “Observations – Central Agencies” sections of this report.

It is the audit team’s opinion that the communication mechanisms used by the Portfolio Offices examined serve to strengthen the links with LSUs and regional offices.

3. OVERALL OBSERVATIONS – MANAGEMENT OF HUMAN, FINANCIAL, AND MATERIEL RESOURCES

3.1 Human Resources Planning

Each of the three Portfolio Offices examined prepares a human resources plan as Section 2 of the Department’s integrated business planning cycle.

Human resources plans that support the achievement of an organization’s strategic direction are a key element for organizational success. A sufficient number of people with the necessary skills to support the achievement of organizational objectives need to be in place.

Human resources planning takes place as Section 2 of the integrated business planning cycle. Since the fall of 2005, the Portfolio Offices complete human resources plans using templates developed by Management Sector. Four templates were used in the 2010-11 cycle:

- FY 2010-11 HR Plan. This template identified human resources priorities in support of business and management priorities identified in the plans prepared during Section 1 of the cycle.
- FY 2009-10 HR Plan. This template was the human resources plan completed during the previous cycle. As there had been changes since then (e.g. the Law Practice Model), Portfolio Offices used it to review their existing plans and update them as needed.
- FY 2010-11 Staffing Plan. This template documented planned staffing and recruitment actions and other measures (e.g. succession plans, knowledge transfer strategies, revisions to position descriptions) to respond to gaps identified in the portfolio.
- FY 2009-10 Staffing Plan. This template documented the current, in-year staffing plan developed in the fall of 2008. Portfolios used this template to review changes that may have taken place since then (e.g. the Law Practice Model) and updated the plan by documenting the status of each staffing action (e.g. in process, filled, cancelled).

We observed that each of the Portfolio Offices prepared their human resources plans in a manner consistent with the templates. Furthermore, all identified human resources priorities were consistent with their business and management priorities.

It is the audit team's opinion that human resources planning for the three Portfolio Offices is satisfactory.

3.2 Number and Mix of Resources

Plans are under way to address under-resourcing of portfolio business offices.

A multi-year study, known as the "Footprint" Project, was undertaken within the Department of Justice. The project's goal was "to develop and confirm a structure for the management and operation of the functions for which the Management Sector¹⁷ is responsible, be they performed by Management Sector personnel or others working under the Sector's functional authority". The functions include managing finances, acquisitions, assets, real property, human resources, IM/IT, planning, and performance. ADMs and ADAGs in the Portfolio Offices have a 'footprint' of business office staff who support them in respect of these functions.

The business office staff in each portfolio include the following:

- in the BRL Portfolio – the Business Manager, the Senior Planning Officer, and the Administrative Assistant;
- in the Central Agencies Portfolio – the Business Manager and the Administrative and Resource Management Officer;
- in the PSDI Portfolio – the Business Manager, the Office Manager, the Administrative Manager, the Administrative Officer, and the Records Clerk.

In examining a benchmark of nine other government departments, the "Footprint" Project found that the Department of Justice footprint is "abnormally low" compared to the other departments. It concluded that the ADM/ADAG "business manager organizations are under-resourced". In other departments, these organizations represent on average 6.5% of the overall size of an ADM's workforce, while in the Department of Justice the comparable figure is 3.4%. The study

¹⁷ Subsequent to the completion of the "Footprint" Project, the Chief Financial Officer (CFO) Branch was created reporting directly to the Deputy Minister. At the time the "Footprint" Project was undertaken, the finance function was a responsibility of the Management Sector.

noted that “this exposes the ADM/ADAG, the Deputy Minister, and the Minister to risks related to the handling of ‘footprint’ functions”.

The study developed a flexible, scalable model for the ADM/ADAG business office, which would be headed by a Director of Business Management¹⁸ at the EX-1 level and supported by:

- administrative support for the Director of Business Management
- a Financial Management Advisor supplied by the Chief Financial Officer Branch
- a Financial Assistant
- an Administrative Coordinator
- a Strategic Planning and Performance Management Coordinator
- a Human Resources Coordinator
- a Records - IM/IT Coordinator

In response to the findings of the “Footprint” Project, the portfolios have produced three-year plans to increase the size of their business office organizations by the following FTEs:

- BRL Portfolio – from 3.9 FTEs to 6.0 FTEs
- Central Agencies Portfolio – from 1.6 FTEs to 4.0 FTEs
- PSDI Portfolio – from 4.2 FTEs to 7.2 FTEs

The audit team concurs with these plans to address the current under-resourcing of the portfolio business offices.

3.3 Training and Development

Appropriate measures are taken to ensure that training and development is made available to staff in the three Portfolio Offices examined and lawyers in their LSUs.

The portfolios’ business office staff have all received training on the Department of Justice systems used in the business offices. We were told that taking training on some of these systems (e.g. IFMS) was mandatory to gain access to the system. Some staff have also received training on other software (e.g. software used to prepare organization charts in the PSDI Portfolio).

¹⁸ Between February and June of 2010 the Director of Business Management replaced the Business Manager position in each of the Portfolio Offices. The terms “Business Manager” and “Director of Business Management” are used interchangeably within the report.

To encourage counsel in their LSUs to complete the five days of professional development mandated by the *Department of Justice Learning Policy*, the Portfolio Offices email invitations and notifications regarding departmental/portfolio training events to LSU heads and their administrative assistants. The Portfolio Offices provide a training budget to LSUs, which is included in the Department's legal services rate structure formula, so that LSUs can use the funds to send lawyers to courses and conferences. Spreadsheets maintained by each portfolio track the use of the training budget, and we were told that reminders are sent to LSU heads if the spreadsheets show that the LSUs are not using their allocated budget. We were also told that the Portfolio Offices monitor the percentage of individual learning plans that have been created and signed by employees and managers.

The audit team is of the opinion that appropriate measures are taken to ensure that training and development is available for Department of Justice staff in the Portfolio Offices and the LSUs.

3.4 Financial Planning

Portfolio Office financial planning is consistent with the requirements established by the Chief Financial Officer Branch.

As noted earlier, Section 2 of the business planning cycle is completed two months after Section 1 and requires the Portfolio Offices to provide detailed operational planning information on specific resources (particularly, financial and human) needed to address the requirements and priorities identified in Section 1.

All portfolios are funded by a combination of the Department's A-Base and cost recovery from their LSUs' clients. We were told that the A-Base is distributed to the portfolios based on an historical allocation dating back to 1995; that the A-Base is shrinking in real terms; and that it is insufficient to meet demand for legal services. Demand for legal services that cannot be met from the A-Base must be met through cost recovery. In preparing their financial plans, portfolios consult with both their LSUs and the regions to estimate the number and level of resources (FTEs) needed to meet client demand for legal services. For example, in the case of LSUs, the FTE estimates are translated at approved departmental rates by the portfolio into a financial forecast for each LSU. This forecast is separated into a Department of Justice A-Base component and a cost recoverable component that the clients must fund. The cost-recoverable components are incorporated into service agreements with the client departments.

We were told that LSU client departments typically agree to fund the cost-recoverable components. However there is always a risk that funds needed to meet the forecast demand for legal services may not materialize (e.g. if there are issues obtaining a signed service agreement or with invoicing, or if planned funding via a Treasury Board submission is not approved). Portfolio Offices therefore closely monitor financial performance (i.e. salary expenditures for the portfolio’s lawyers and cost recoveries).

It is our opinion that Portfolio Office financial planning is consistent with the Chief Financial Officer Branch’s requirements.

3.5 Monitoring Financial Performance

All three Portfolio Offices examined monitor their financial performance on a regular basis.

Portfolio Offices have small O&M budgets. O&M budgets for the portfolios’ LSUs are provided by their client departments/agencies, and the Portfolio Offices do not monitor these budgets. Portfolio salary budgets, which include an A-Base and a cost-recoverable component for all lawyers in the portfolio, are the primary source of financial risks, that is, if portfolios cannot fully recover the cost-recoverable component from their LSUs’ clients, they will incur a deficit.

Every month (except for July and August), each Portfolio Office prepares a Financial Situation Report (FSR) that shows variance from the financial plan. The report is reviewed by the Business Manager¹⁹, before being approved by the ADM/ADAG. Action is taken as appropriate, based on the information in the FSR. For example, towards the end of the 2009-10 fiscal year, the BRL Portfolio noted that cost recoveries were behind schedule. The portfolio consequently mounted a campaign to encourage clients to pay outstanding charges.

It is our view that the Portfolio Offices monitor their financial performance appropriately.

3.6 Materiel Management

Portfolio Office physical security is satisfactory.

¹⁹ At the time of the audit’s on-site examination phase, a Financial Management Advisor from the Department’s Chief Financial Officer Branch was reviewing this report in the Central Agencies Portfolio in the absence of a full-time Business Manager. The Business Manager’s position was staffed in April 2010.

Access to each Portfolio Office is restricted to individuals who have valid building passes. Visitors must report to a ground-floor control desk, have a verified appointment, show or surrender photo identification, and be escorted to the offices by a staff member.

Active files are kept in individuals' offices or in the Portfolio Offices' records room. Both are locked at night. There are high-security cabinets for confidential or secret files.

The audit team is of the opinion that Portfolio Office physical security is satisfactory.

Portfolio Offices are maintaining their own inventory records pending direction from Contracting and Materiel Management Division.

None of the Portfolio Offices is using BassetPro, the Department's asset management system, to record their key physical assets. We reviewed inventory listings printed from the system and observed that some were not up-to-date. For example, in these listings, assets are shown as being assigned to specific employees and the inventory listing for the PSDI Portfolio Office still included the names of some employees who were no longer with the Portfolio Office.

A 2007 Audit of Materiel Management found that documentation, procedures, and controls surrounding the user side of the BassetPro system lacked the rigour necessary to assure management that inventory and asset information is accurate.

We were told by the Director, Contracting and Materiel Management Division (CMMD), that few users across the Department of Justice have access to BassetPro, which limits its use. We were told that CMMD had considered acquiring an asset management module for the financial system, but the necessary funding was not approved. CMMD is now considering other options for ensuring the accuracy of inventory records.

The Portfolio Offices had previously developed, or during the audit prepared for the audit team, their own asset listings. These varied in scope: some included only printers and computers; others included these items as well as label printers and BlackBerrys. With minor exceptions (i.e. newly received printers in the Central Agencies Portfolio²⁰), these listings were up-to-date and complete within their scope.

²⁰ We were told that the inventory listing for these printers was temporarily out-of-date because the individual maintaining it had left the Portfolio Office. We were advised that it has since been updated.

We were told that there have been no reported losses in one and a half years and that the incident at that time was a BlackBerry that was reported to security as lost.

It is our view that the Portfolio Offices should continue to maintain their own inventory records pending direction from the CMMD on revised corporate system requirements for asset management.

4. OVERALL OBSERVATIONS – INFORMATION SYSTEMS

4.1 Support for Decision Making and Accountability

Information from departmental systems is used to monitor Portfolio Office performance and to support accountability.

Management requires reliable and timely information on which to base decisions. A significant amount of that information comes from computerized information systems.

Portfolio Office management receives regular financial reports. These are reviewed by portfolio personnel to verify their accuracy and ensure that portfolio costs are accurately accumulated and controlled. As noted earlier, the reports are approved by the ADM/ADAG.

The Portfolio Offices also monitor resource levels (indicated by the Salary Management System) and the utilization of departmental personnel in the LSUs (from iCase reports). iCase reports are used to monitor case files by client, overtime spent on a case, and lawyer timekeeping per case. The Portfolio Office sends reminders to LSU heads if lawyers' time is not being correctly reported (i.e. time not submitted or follow-up questions not answered).

It is our view that the Portfolio Offices are using information systems appropriately.

4.2 Support Received from IMB

The three Portfolio Offices examined report receiving satisfactory support from IMB.

IMB provides technical support for departmental staff including Portfolio Offices through its Help Desk. The Portfolio Offices told the audit team that they receive satisfactory levels of support from the Help Desk, which can be contacted by email or telephone.

4.3 Security of Information

The three Portfolio Offices examined have satisfactory controls to protect the security of electronic information.

Access controls should ensure that access to systems and data is restricted to authorized individuals.

Access to departmental systems is controlled physically and logically. Individuals can only enter each Portfolio Office with a valid pass or an escort. For new employees, either the ADM or the portfolio's business office must authorize specific system access (via a user ID and password), depending on the employee's security level and the required tasks of his/her position. When employees cease employment with the Portfolio Office, procedures are in place to ensure that their system access is revoked.

The audit team is of the opinion that the physical and logical controls used to protect the security of electronic information are appropriate.

5. OVERALL OBSERVATIONS – COMPLIANCE WITH KEY LEGISLATION AND RELATED POLICIES

There is compliance with the requirements of the *Official Languages Act* and the *Contracting Policy*.

Portfolio Office staff are bilingual, and meetings are held in both English and French. Correspondence sent from the Portfolio Offices to their LSUs is consistently in both official languages. Performance appraisals for Portfolio Office staff are completed in the employee's language of choice.

Acquisitions in Portfolio Offices are made via standing offers whenever possible. We reviewed a sample of transactions in each of the Portfolio Offices. All were compliant with the Contracting Policy.

It is the opinion of the audit team that there is compliance with the key government legislative and central agency policy requirements concerning official languages and contracting.

6. OVERALL OBSERVATIONS – INTERFACES WITH OTHER JUSTICE SECTORS AND REGIONAL OFFICES

6.1 Public Law Sector

The Portfolio Offices’ interfaces with the Public Law Sector are satisfactory, but there are concerns with the impact of the Department’s cost recovery practices on consultations with the Sector.

Counsel in the Public Law Sector are a core resource of the Department of Justice, offering highly specialized legal advisory and policy expertise²¹ to counsel in other sectors of the Department on an as-needed basis.

All three Portfolio Offices described as useful their interactions with the Public Law Sector. These interactions take place primarily through the portfolios’ LSUs. All Portfolio Offices noted that the requirement for the specialized sections of the Public Law Sector to invoice the LSUs for legal services has an impact on the nature of the interactions.

Interviews with section heads in the Public Law Sector corroborated the Portfolio Offices’ view of the positive nature of the interactions. However, they also expressed concern over the impact of cost recovery on these interactions. The heads indicated that it has resulted in both a decline in requests for specialized advice from LSUs and changes in the types of requests for legal services. Furthermore, it is their view that since cost recovery was introduced, LSU lawyers are more likely to either generally perform more legal analysis themselves and then ask Public Law Sector counsel to review their analysis, or request brief telephone consultations for which they do not want to be billed.

²¹ The Public Law Sector has nine legal advisory and policy sections and one secretariat with experts in human rights law, constitutional and administrative law, information law and privacy, language rights, judicial affairs, international trade law, public international law, private international law, aviation law, and public law policy.

It is not surprising that the move to cost recovery has resulted in a change in behaviour on the part of LSUs and their clients, and that this has had an impact on consultation with the Public Law Sector.

6.2 Management Sector

The Portfolio Offices' interfaces with the Management Sector vary, depending on the size of the portfolio's business offices.

The Management Sector provides support to the Portfolio Offices in a variety of areas (e.g. human resources, administration, planning and performance management).

The Portfolio Offices act as conduits between their LSUs and organizations in the Management Sector, passing on directives, advisories, and requests for information from these organizations. The Portfolio Offices also respond directly to requests for information from the Management Sector.

The PSDI Portfolio, which of the three Portfolio Offices audited has the largest and most proactive business office, stated that it had good relationships with the Management Sector. The BRL Portfolio also reported a satisfactory overall relationship with the Management Sector. The Central Agencies Portfolio expressed concerns with respect to the number of reporting requirements to which it must respond and its ability to do so. It should be noted that the Central Agencies Portfolio has experienced significant turnover in its business office staff including the Business Manager.

Most executives in the Management Sector described the interactions with the Portfolio Offices as productive and professional. One noted that portfolio business offices vary in size and expertise, so that the quality of the interactions also varies. The Management Sector's Administration Directorate expressed concern that the administrative services functions (i.e. safety, security, and emergency management; accommodations and telecommunications; contracting and materiel management) are not accorded as high a priority by the Portfolio Offices as may be warranted. In addition, Client Services and Operations in the Human Resources and Professional Development Directorate noted that there was no common point of contact for portfolios having large numbers of LSUs, and that it would prefer to deal with a business manager at the portfolio level rather than with each individual LSU.

As noted earlier, the "Footprint" Project noted that these functions in the ADM/ADAG business office organizations are under-resourced in comparison to other government departments. In

response to the findings of the “Footprint” Project, the Portfolio Offices have developed and implemented plans to increase the size of their business management organizations.

It is our view that as the Portfolio Offices increase the resources in their business offices, they will be better able to provide any required focal points for interactions with the Management Sector.

6.3 Regional Offices

Portfolio Offices’ interactions with regional offices are satisfactory.

The three Portfolio Offices we examined interact with their counterparts in the regions on substantive legal files through email, teleconferences, periodic face-to-face meetings, and as-required ad hoc discussions. We were told that they do not provide administrative direction, advice, or services to regional offices. Either headquarters functional specialists or regional specialists provide these administrative functions. Each regional office also has its own regional corporate services staff.

Regional offices advised that they were generally satisfied with their overall interactions with the Portfolio Offices. These interactions were described as effective and changes were not requested.

The audit team is of the opinion that the Portfolio Offices’ interactions with the regional offices are satisfactory.

7. OBSERVATIONS - BUSINESS AND REGULATORY LAW

7.1 Leading and Communicating

The BRL Portfolio Office has developed detailed policies and procedures manuals.

Documented policies and procedures help promote the conduct of activities in a consistent, efficient, and economical manner.

The BRL Portfolio Office provided policies and procedures documents to the audit team at the start of the on-site examination phase of the audit. We were told that the material had been compiled as part of an initiative to ensure that the Portfolio Office had documented everything that was being done in the office before the audit started. The Portfolio Office advised that this has proven a useful exercise since 90 percent of the staff in the office have been working there less than two years. We were also told that the policies and procedures will be updated each summer and that throughout the year the Executive Assistant to the ADM plans to compile information on new procedures or changes as they occur. In this way, the necessary information will be readily available when the annual updates are made to the manuals.

We concur with this approach.

The BRL Portfolio Office needs to take a more proactive role in assisting LSUs to identify and address horizontal management issues and respond to departmental administrative requirements.

Effective and appropriate leadership and communications are essential in ensuring that LSUs have the information they need to follow consistent practices when responding to departmental administrative requirements.

The BRL Portfolio business office serves mainly as a conduit for information and requests to and from its LSUs, the Management Sector, and the Chief Financial Officer Branch. Email that is

forwarded/distributed to LSUs provides them with directives, instructions, advisories, and information on legal, management, business, financial, human resources, social, and educational matters. As noted earlier, email is supplemented by meetings, conference calls, and retreats.

Despite the variety of mechanisms used to communicate to LSUs, most LSU heads interviewed by the audit team stated that more support from the Portfolio Office on common administrative challenges and horizontal issues not related to legal matters would be helpful (e.g. establishing a common approach within the BRL Portfolio to responding to requests for language training and management leave, assistance with staffing practices, iCase implementation, setting up a business office, and cost recovery).

Support from the BRL business office could take the form of developing guides, working groups, one-on-one mentoring or training for LSU administrative staff on these administrative challenges. We found that the business office has not provided guidance to LSUs through any of these means. The business office indicated to us that the range of expertise in its LSU administrative offices is wide: small LSUs have few administrative staff and the staff themselves are often quite junior; larger LSUs have larger administrative staff complements, sometimes with experienced full-time office managers who have subordinates with considerable expertise. The portfolio business office stated that it would be difficult to determine the appropriate services for these varying levels of expertise, especially as it is a small business office with limited resources.

In the audit team's experience, the difficulty in accommodating a broad scope of expertise is a legitimate but not overriding concern. Audits of LSUs since 2000 have found that small LSUs are the most likely to need guidance on administrative matters. They often have only one or two junior level staff members handling administrative matters who are often unfamiliar with departmental systems and procedures. Larger LSUs are generally more autonomous and capable of processing most business-related transactions themselves. The smaller LSUs also told us that they needed assistance from the portfolio business office on administrative issues.

The audit team is of the opinion that the BRL Portfolio Office should be more proactive in providing administrative guidance and assistance to the LSUs within the portfolio, in particular the smaller ones. As the Portfolio Office implements the recommendations of the recent "Footprint" study, additional resources should be available to its business office. This should make it easier to provide these types of services.

Recommendation and Management Response

1. It is recommended that the ADM, BRL Portfolio, ensure that the portfolio's business office takes a more proactive leadership role in assisting LSUs to identify and address horizontal management issues and respond to common administrative requirements.

Agreed. As noted in Section 3.2 of the audit report, the Business Management Function is under-resourced as found under the Footprint project. BRLP has already taken measures to increase its Business Management capacity to take a more proactive leadership role in assisting LSUs to identify and address horizontal management issues and respond to common administrative requirements.

The Transformation of the Business Management Function, a multi-year initiative, is included in the BRLP Business Plan for 2011-12 and is subject to funding from the departmental Footprint allocation process.

There is a need for the BRL Portfolio Office to ensure that best practices are clearly communicated to LSUs and regions.

We were told that the BRL Portfolio Office communicates best practices as part of its regular interactions with LSUs and regions (i.e. through email messages, monthly lunches, and annual retreats). We were given copies of two email communications: a litigation practice directive and a joint communiqué (from the BRL and Aboriginal Affairs portfolios) on providing advice relating to Aboriginal consultations.

From our interviews with the LSUs and regional offices, we found that there were mixed views on whether these methods of communication were satisfactory, with some LSUs and regional offices indicating a need for more formal communication mechanisms. About half the LSUs indicated that the monthly lunches provided a satisfactory mechanism. Regional offices, on the other hand, saw the greatest need for more formal mechanisms, with some suggesting that part of the annual retreat be devoted to this.

It is important that best practices be clearly communicated to all staff.

Recommendation and Management Response

2. It is recommended that the ADM, BRL Portfolio, ensure that best practices are clearly communicated to the LSUs and regions.

Agreed. BRLP already communicates extensively with DLSUs and regional representatives through email messages, monthly lunches, and annual retreats for all DLSUs and regions. The ADMO BRLP has instituted a new Business Council to discuss and collaborate on horizontal issues and best practices. It includes DLSUs Executive Directors or their representatives and their administrative staff and will meet quarterly. In addition, BRLP will review all its communication practices in response to the audit.

7.2 Administration of Financial Resources

The BRL Portfolio Office complies with the requirements of the *Financial Administration Act*, but needs to ensure that invoices from the government travel service are reconciled on a regular basis.

The BRL Portfolio Office follows the Department of Justice's *Delegation of Financial Signing Authorities*, and controls are in place to ensure that financial transactions are processed in accordance with the requirements of the FAA. However, our testing of a sample of transactions identified an instance where it appeared that the Portfolio Office had been billed twice by the government travel service for a \$6,761 travel claim. The claim was for airfare for a trip with a complex itinerary that had changed several times. Subsequent investigation, prompted by the audit team, revealed that the invoice had been paid twice. The BRL Portfolio Office obtained a refund on April 4, 2010.

The audit team is of the opinion that the BRL Portfolio Office should implement a process to reconcile the invoice from the travel service with its record of travel taken to ensure that there are no errors.

Recommendation and Management Response

3. It is recommended that the ADM, BRL Portfolio, ensure that the Portfolio Office institute a procedure to ensure that invoices from the government travel service are reconciled on a regular basis.

Agreed. BRLP has put in place additional mechanisms to ensure improved tracking and reconciling of any travel arrangements and costs.

7.3 Information Management

The BRL Portfolio Office's information and file management practices are satisfactory.

The BRL Portfolio Office has documented its procedures for information and file management, including an electronic document management protocol for the shared drive. The protocol states that storing electronic documents on the shared drive is not intended to replace employee responsibilities for ensuring that hard copies of documents are filed. We were told that the Executive Assistant to the ADM is responsible for reinforcing the procedures by advising staff on the appropriate procedure when she sees a file not being handled correctly. Confidential files or secret files are stored in locked cabinets, and there is a register where sensitive information is logged. Documents (hard copy and electronic) are placed on file and recorded in a timely manner. When a file is closed at the Portfolio Office, it is sent to the Department of Justice's Records Services.

The audit team is of the opinion that the BRL Portfolio Office's information and file management practices are satisfactory.

7.4 Interactions with the Litigation Branch

The BRL Portfolio's interactions with the Litigation Branch are satisfactory.

Most of the interactions between the BRL Portfolio and the Litigation Branch are through the BRL Portfolio's LSUs. Cases can occur anywhere in the country and involve litigators located in the regional offices. The Litigation Branch relies on the regional offices and/or the LSUs to identify high risk cases.

Management in both the BRL Portfolio Office and the Litigation Branch stated that the relationship between the two is satisfactory. They both recognized the ongoing challenge in ensuring that high risk cases are properly identified. We were told that the approach for managing litigation and sharing information on litigation files is appropriate.

The audit team is of the opinion that the BRL Portfolio's interactions with the Litigation Branch are satisfactory.

8. OBSERVATIONS - CENTRAL AGENCIES PORTFOLIO

8.1 Leading and Communicating

The Central Agencies Portfolio Office needs to assign clear responsibility for keeping its administrative procedures manual up-to-date.

Documented policies and procedures help promote the conduct of activities in a consistent, efficient, and economical manner.

The Central Agencies Portfolio Office provided procedural documents to the audit team at the start of the on-site examination phase of the audit. These included an Assistant Deputy Minister Office (ADMO) Desk Guide, which contained detailed daily procedures for the Administrative Assistant to the ADM, and an administrative procedures manual, which is watermarked WIP (work in process).

The ADMO Desk Guide details the procedures to be followed at the start, during, and end of the day. It also covers the procedures to follow for telephone calls, meeting files, signature files, maintaining files lists, emails from the Deputy Minister's Office, translation, travel, conferences and training, correspondence, memos to the deputy ministers of Finance and Justice, and access to information requests. As the primary user of this document, the Administrative Assistant to the ADM is expected to keep it up-to-date.

We reviewed the administrative procedures manual and observed that there is an emphasis on financial issues. In addition, while some sections describe a procedure, many sections contain only an Internet site where more information on the subject can be found, or the name or phone number of a contact is given. The audit team is of the opinion that this practice is acceptable provided the material is up-to-date. No one person, however, has responsibility for keeping the document up-to-date.

Recommendation and Management Response

4. It is recommended that the ADM, Central Agencies Portfolio, assign clear responsibility for keeping the Portfolio Office's administrative procedures manual up-to-date.

Agreed. Responsibility for maintaining the Portfolio Office Administrative Procedures Manual will be assigned to the new Administrative Assistant to the Director of Business Management. This position has recently been created and is expected to be staffed on a permanent basis in December 2010. Implementation of this recommendation will be complete once the employee takes on this task.

The Central Agencies Portfolio will be in a better position to provide leadership and support to LSUs when the business office is fully staffed.

Effective and appropriate leadership and communications are essential for ensuring that a Portfolio Office's LSUs have the information they need to follow consistent practices when responding to departmental administrative requirements.

LSU heads interviewed by the audit team advised that significant turnover has occurred in the Central Agencies Portfolio Office. They also noted that the financial officers in the ADMO require more training. The heads of smaller LSUs would like more support on financial management matters: they noted that the Portfolio Office did not offer concrete assistance to improve LSU knowledge of cost recovery rules, which they indicated were complex and not well understood in the LSUs. LSU heads in general also stated that the Portfolio Office could improve its support for implementation of the Law Practice Model.

We were told that as a result of the "Footprint" Project, the Central Agencies Portfolio Office plans to increase the number of staff in its business office. Also, a Financial Management Advisor from the Chief Financial Officer Branch has been located in the Portfolio Office since August 2009, and a new Portfolio Business Manager was appointed in April, 2010.

The audit team is of the opinion that with the planned increase in the number of staff in its business office, the Central Agencies Portfolio will be able to address many of the concerns raised by the LSUs.

The Central Agencies Portfolio Office communicates best practices to its LSUs.

It is important that best practices be communicated to all staff. As noted earlier, the Portfolio Office maintains regular communications with its LSUs via email. This includes sending out examples of best practices drawn from other LSUs in the portfolio. The LSU heads interviewed by the audit team varied in their opinion on whether the Portfolio Office should do more to communicate best practices. Two LSU heads indicated that the Portfolio Office could do better, but they noted that staffing problems had limited the capacity of the Portfolio Office to do more. Another LSU head stated that monthly meetings were an adequate forum for communicating best practices.

In our opinion, no specific action is required to improve the communication of best practices with the LSUs in the portfolio. The planned growth of the business office will improve the Portfolio Office's capacity.

8.2 Compliance with Key Legislation and Related Policies

Controls to ensure compliance with the FAA have been improved.

We reviewed a sample of 25 transactions from 2008-09 and 2009-10 to determine the compliance of the Central Agencies Portfolio Office with the FAA. For the invoices examined from 2008-09, some were missing certification that the goods were received or the services provided (Section 34, FAA), or the certification was found to be inconsistently carried out. Two of the 2008-09 invoices for LSU training costs we examined were certified by the LSU Head because he/she had authority for the cost centre, and two invoices had no certification. In 2008-09 the ADM certified payment of her own bar fees, while the Deputy Minister certified payment of the bar fees for the other LSU heads in the portfolio. Furthermore, an invoice for translation was not approved by either the Portfolio ADM or the business manager, and the attached spreadsheet could not be reconciled to the invoices. We were told that there was confusion over who should approve these invoices.

Since August 2009, a Financial Management Advisor has been located in the Central Agencies business office. The FMA has been working to put in place proper controls for 2009-10 and has made improvements. Within our sample, all the invoices for training or bar fees for 2009-10 were approved by either the ADM or the LSU Head. A selected translation invoice was approved by the ADM and the invoice had been reconciled to the individual requests for service.

We observed improvement in the controls for 2009-10 over those observed for 2008-09. Based on our observations, it is our opinion that the Central Agencies Portfolio Office now has adequate controls in place to ensure compliance with the FAA.

8.3 Information Management

Given its planned staff increases, the Central Agencies Portfolio needs to document filing procedures in its administrative manual to ensure appropriate information and file management practices.

The Central Agencies Portfolio Office's administrative procedures manual does not include guidance on filing procedures for paper records, nor are there any directives for filing on the shared drive. Despite the absence of procedures, we found that physical files can be found when required; that the staff in the office place documents as required on file; and that file closures and archiving are up-to-date. Portfolio Office staff are aware that the shared drive could be better organized, but stated that they lack the time and staff to do this. They indicated that documents can be found when required. Because this is a small group, consultation also occurs before a new folder is created on the shared drive.

In our opinion, as staff numbers increase in the Central Agencies Portfolio Office (as planned under the "Footprint" Project), it will become more difficult to ensure the consistent application of the existing informal procedures. The development of written procedures will help to ensure consistency as new staff join the portfolio business office.

Recommendation and Management Response

5. It is recommended that the ADM, Central Agencies Portfolio, ensure that Portfolio Office filing procedures are documented in its administrative manual.

Agreed. The Central Agencies Portfolio Office will develop and implement a new filing procedure to enhance its information and file management practices. This project will be led by the new Administrative Assistant to the Director of Business Management with support from various members of the Portfolio Office team. The new filing procedures will be fully implemented by July 2011 and will be included in the Administrative Procedures Manual.

8.4 Interactions with the Litigation Branch

The Central Agencies Portfolio’s working relationship with the Litigation Branch is satisfactory.

The Treasury Board Portfolio (TBP) LSU within the Central Agencies Portfolio handles all litigation relating to employment matters before administrative tribunals. The Litigation Branch assumes responsibility for a case if it is appealed to the federal courts. This only occurs with a small number of cases.

Management in both the Central Agencies Portfolio and the Litigation Branch told the audit team that occasionally in the past information was not shared between the two on a timely basis. However, we understand that this is no longer an issue.

The audit team is of the opinion that the current working relationship between the Central Agencies Portfolio and the Litigation Branch is satisfactory.

9. OBSERVATIONS - PUBLIC SAFETY, DEFENCE AND IMMIGRATION

9.1 Leading and Communicating

The PSDI Portfolio Office has made progress in developing procedures.

Documented policies and procedures help promote the conduct of activities in a consistent, efficient, and economical manner.

The PSDI Portfolio Office provided the audit team with a document of procedures that was characterized as a work in process. The Office indicated that it plans to continue developing procedures (e.g. on preparing and authorizing training forms) as required by its LSUs. When we reviewed these procedures, we noted several minor omissions, but observed that they were otherwise appropriate.

We concur with the PSDI Portfolio Office's plan to continue to develop procedures that are responsive to LSU issues.

The PSDI Portfolio Office provides appropriate leadership and communications to its LSUs on administrative issues.

Effective and appropriate leadership and communications are essential in ensuring that departmental LSUs have the information they need.

The PSDI Portfolio's business office has been proactive in identifying areas where LSUs are experiencing problems and in preparing guides and delivering training to address common problems. The Business Manager told the audit team that the business office planned to develop additional guidance for LSUs to assist them with various administrative issues.

Most LSU heads interviewed were satisfied with the services they received from the Portfolio Office, especially with regard to budgeting, forecasting, and reporting back to the centre of the Department. LSU heads were also generally satisfied with the support and direction they received from the Portfolio Office on administrative matters, such as setting up standard service agreements with clients and staffing procedures.

The PSDI Portfolio Office also has a variety of mechanisms for communicating best practices on legal matters. The National Litigation Coordination Team, which operates at the Portfolio level and manages all litigation, scans portfolio litigation files (primarily immigration-related) for novel or significant legal issues. The team then analyzes them for legal trends, disseminates the information on the trends to LSUs and regions, and prepares briefings and opinions. The National Litigation Coordination Team holds weekly conference calls with LSU heads. A roundtable, which is part of these weekly meetings, also helps to identify substantive advisory issues that multiple LSUs regularly face. There is also a teleconference every two weeks involving the team leader, LSU heads, and key litigators from the Quebec, Ontario, and British Columbia regional offices.

It is our opinion that the PSDI Portfolio Office's leadership and communications are appropriate.

9.2 Information Management

Improvements are required to the PSDI Portfolio Office's paper file management practices.

We were told that the PSDI Portfolio Office's Records Clerk opens files in RDIMS and places on file the documents provided when the request is made to open the file. Assistants print the paper version of documents subsequently created and ensure they are placed on file. It is expected that files will be kept up-to-date and that the assistants will print the documents on an ongoing basis. The Records Clerk provides periodic email reminders to the assistants on the importance of keeping filing up-to-date as well as specific details on the requirements of the process.

Some of the PSDI Portfolio Office's lawyers keep files in their offices. We were told that the Records Clerk has tried repeatedly to have lawyers send their files to the records room after they are finished working with them, but has had limited success. Instead, lawyers tend to allow files to accumulate in their offices for quite some time before giving them to the Records Clerk. This has created a file-processing backlog for the Records Clerk (i.e. in eliminating duplicate copies and ensuring that all documents are on file). In the summer of 2009 the Portfolio Office hired a

student to clear the backlog. The student continued to work one day a week from September 2009 until May 2010, which has helped keep the records up-to date.

It is the audit team's opinion that the PSDI Portfolio Office needs to identify mechanisms (e.g. a periodic file clean-up day) that will promote the more timely movement of inactive files from individual lawyer's offices to the records room for file closure and archiving as necessary.

Recommendation and Management Response

6. It is recommended that the ADAG, PSDI Portfolio, identify mechanisms that will encourage the Portfolio Office's lawyers to turn over their files to the Records Clerk as soon as they have finished working on them.

Agreed. PSDI has already taken steps to improve file management in general. Before the end of January, 2011, we will be organizing an information session for all Portfolio staff to "refresh" and clarify our file management responsibilities, including the need to turn over files in a timely way to our records clerk. We will also be encouraging Portfolio staff to take the online DOJ Information Management training. PSDI will also be undergoing the File Plan exercise during this fiscal year, which will allow us to sort and regularize our files and institute new and more robust record keeping practices that are in line with DOJ policies and obligations.

The PSDI Portfolio Office has undertaken to improve its management of electronic information.

We were told that in the absence of procedures regarding electronic filing, the PSDI Portfolio Office does not have a standard approach for managing electronic information. As a result, in some cases a significant amount of time has been spent trying to find the electronic version of a document. We were also told that developing procedures for managing electronic information has recently been given a higher priority. We concur that managing electronic information should be a priority in the Portfolio Office's development of additional information management procedures.

9.3 Interactions with the Litigation Branch

The current interactions between the PSDI Portfolio and the Litigation Branch are satisfactory.

Because of the extensive amount of litigation involving the PSDI Portfolio, the Portfolio created the National Litigation Coordination Team, which is located in the Portfolio Office. The National Litigation Coordination Team is in regular communication with the Litigation Branch.

We were told that the roles and responsibilities for litigation associated with immigration matters are well understood. Most of this litigation is undertaken by the regional offices in British Columbia, Ontario, and Quebec.

Roles and responsibilities for litigation associated with national security, which is handled by the National Security Group within the Litigation Branch, are less clear. This area of law has taken on considerable importance since 2001 and the law is still evolving. The PSDI Portfolio Office and the Litigation Branch were finalizing the statement of roles and responsibilities at the time of the audit.

We were told that structures have been put in place since 2008 between the PSDI Portfolio Office and the Litigation Branch to provide greater assurance that key information is shared. The ADAG, PSDI Portfolio, and the ADAG, Litigation Branch, have regular discussions. Neither advised the audit team of any need for additional changes at this time.

We are of the opinion that the current interactions between the PSDI Portfolio and the Litigation Branch are satisfactory.

10. RECOMMENDATIONS AND MANAGEMENT RESPONSES

- 1. It is recommended that the ADM, BRL Portfolio, ensure that the portfolio's business office takes a more proactive leadership role in assisting LSUs to identify and address horizontal management issues and respond to common administrative requirements.**

Agreed. As noted in Section 3.2 of the audit report, the Business Management Function is under-resourced as found under the Footprint project. BRLP has already taken measures to increase its Business Management capacity to take a more proactive leadership role in assisting LSUs to identify and address horizontal management issues and respond to common administrative requirements.

The Transformation of the Business Management Function, a multi-year initiative, is included in the BRLP Business Plan for 2011-12 and is subject to funding from the departmental Footprint allocation process.

- 2. It is recommended that the ADM, BRL Portfolio, ensure that best practices are clearly communicated to the LSUs and regions.**

Agreed. BRLP already communicates extensively with DLSUs and regional representatives through email messages, monthly lunches, and annual retreats for all DLSUs and regions. The ADMO BRLP has instituted a new Business Council to discuss and collaborate on horizontal issues and best practices. It includes DLSUs Executive Directors or their representatives and their administrative staff and will meet quarterly. In addition, BRLP will review all its communication practices in response to the audit.

- 3. It is recommended that the ADM, BRL Portfolio, ensure that the Portfolio Office institute a procedure to ensure that invoices from the government travel service are reconciled on a regular basis.**

Agreed. BRLP has put in place additional mechanisms to ensure improved tracking and reconciling of any travel arrangements and costs.

- 4. It is recommended that the ADM, Central Agencies Portfolio, assign clear responsibility for keeping the Portfolio Office's administrative procedures manual up-to-date.**

Agreed. Responsibility for maintaining the Portfolio Office Administrative Procedures Manual will be assigned to the new Administrative Assistant to the Director of Business Management. This position has recently been created and is expected to be staffed on a permanent basis in December 2010. Implementation of this recommendation will be complete once the employee takes on this task.

- 5. It is recommended that the ADM, Central Agencies Portfolio, ensure that Portfolio Office filing procedures are documented in its administrative manual.**

Agreed. The Central Agencies Portfolio Office will develop and implement a new filing procedure to enhance its information and file management practices. This project will be led by the new Administrative Assistant to the Director of Business Management with support from various members of the Portfolio Office team. The new filing procedures will be fully implemented by July 2011 and will be included in the Administrative Procedures Manual.

- 6. It is recommended that the ADAG, PSDI Portfolio, identify mechanisms that will encourage the Portfolio Office's lawyers to turn over their files to the Records Clerk as soon as they have finished working on them.**

Agreed. PSDI has already taken steps to improve file management in general. Before the end of January, 2011, we will be organizing an information session for all Portfolio staff to "refresh" and clarify our file management responsibilities, including the need to turn over files in a timely way to our records clerk. We will also be encouraging Portfolio staff to take the online DOJ Information Management training. PSDI will also be undergoing the File Plan exercise during this fiscal year, which will allow us to sort and regularize our files and institute new and more robust record keeping practices that are in line with DOJ policies and obligations.

APPENDIX A – AUDIT METHODOLOGY

The criteria for the audit were based on:

- the TBS Management Accountability Framework (MAF)
- the Canadian Institute of Chartered Accountants' *Guidance on Control*
- other TBS guidance on auditing management frameworks

Information for this audit was obtained by employing the following methods:

- a review of relevant documentation concerning the operations of the Business and Regulatory Law, Central Agencies, and Public Safety, Defence and Immigration Portfolio Offices;
- reviews of a sample of financial transactions in each of the Portfolio Offices;
- interviews with management and administrative staff in each of the Portfolio Offices,
- telephone interviews with a sample of LSU heads in each portfolio and with regional directors;
- telephone interviews with managers in the Management Sector, Civil Litigation Branch, and the Public Law Sector.