



DEPARTMENTAL LEGAL SERVICES UNIT
Treasury Board Portfolio

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Internal Audit Branch

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STATEMENT OF ASSURANCE

We have completed the internal audit of the Treasury Board Portfolio (TBP) Legal Services Unit (LSU). The overall objective of the audit was to review and assess the framework within which services are delivered by the LSU to the Treasury Board Portfolio and to recommend improvements.

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

The audit team assessed the management control framework against criteria derived from the TBS Management Accountability Framework (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 situations, as they existed at the time of the audit, against the audit criteria. It should be noted that the conclusions are only applicable for the areas examined.

EXECUTIVE SUMMARY

The Department of Justice has established dedicated departmental legal service units (DLSUs) for most government departments and agencies. These units provide client organizations with legal advice to facilitate their operations. This audit focused on the management practices of the DLSU that is serving the Treasury Board Portfolio (TBP).

The scope of the audit included the operations and activities of the TBP Legal Services Unit (LSU) in the National Capital Region. The planning and the on-site examination phase for this audit were carried out between June and November 2009.

Management Framework

The TBP LSU has a well-developed management framework. It has established and documented its objectives and priorities, and communicated them to the Treasury Board Secretariat of Canada (TBS) and its own staff in a business plan, its mission statement, an employee orientation package, and memorandums of understanding (MOUs) with TBS and the Canada School of Public Service (CSPS), which are the LSU's primary clients. The TBP LSU has assessed the significant risks it faces in achieving its objectives and identified mitigation strategies in its 2009-10 Business Plan. It has taken action to manage the risks.

The TBP LSU is appropriately organized to meet its clients' needs. There are three teams of lawyers within the LSU aligned with the key areas of the law for which the LSU is responsible (e.g. government operations, labour and employment law, and employment equity). Responsibilities and accountabilities of the team leaders are well defined.

The LSU distributes and monitors workload appropriately. The litigation workload is tracked very closely to ensure that a litigator is assigned to each scheduled litigation action. The TBP LSU has published its service standards. Client satisfaction against these service standards is monitored with a formal triennial survey (developed by the Office of Strategic Planning and Performance Measurement (SPPM)) and through discussions with client management. Post mortems are conducted when a case has an unexpected outcome to identify what lessons can be learned.

The TBP LSU's communications practices generally provide staff with the information they need to do their jobs. The LSU also uses satisfactory practices to ensure it provides consistent legal advice. The TBP LSU's policies and procedures manual, however, is not well known to the LSU's employees and is out-of-date. We were told that the LSU has plans under way to review and revise procedures in the manual. It is important that the approved procedures are communicated to all staff. A recommendation has been made that new/revised administrative procedures be developed, documented, and communicated to staff.

Human Resources

The TBP LSU has developed a comprehensive human resources plan as part of its 2009-10 Business Plan. The manual describes several items that may impact on the number of lawyers and support staff in the LSU and the assignment of work.

Appropriate measures are taken by the TBP LSU to ensure staff have the knowledge, skills, and competencies to carry out their respective responsibilities. Yearly training plans are developed for both lawyers and support staff. Work of inexperienced lawyers is reviewed regularly and a welcome binder details the applicable statutes, current hot topics/emerging issues, and the type of legal requests received. Reports on training compiled by the TBP LSU only include information on courses that have an associated cost. The reports do not capture information on informal training that nonetheless meets the Department of Justice's definition of professional development. As a result, the LSU cannot ensure that its employees are receiving the required amount of professional development. A recommendation has been made to implement a process to track and report all professional development taking place in the TBP LSU.

Performance appraisals and associated individual learning plans are completed for all of the LSU's lawyers and support staff in a timely manner.

Management in the LSU are generally satisfied with the level of resources available. When there are increases in demand for services, priorities are adjusted and/or additional funding is requested from the client. Plans were under way to staff several positions. Lawyers reported that workload demands are heavy and that more support staff are required. Based on the information available in iCase, the amount of overtime across the whole LSU is not excessive. The ratio of lawyers to legal assistants of 5:1, based on the TBP LSU's organization chart, is slightly higher than the ratio of 4:1 observed in many other DLSUs recently audited. Most of the other DLSUs audited, however, did not have paralegals.

Financial Resources

The financial resources provided to the TBP LSU by the Department of Justice and its clients have enabled it to provide satisfactory levels of service. The measures taken to administer the LSU's financial resources are satisfactory. Regular reports are reviewed, reconciled, and verified. Compliance testing of financial transactions by the audit team found no errors.

Materiel Resources

Key assets are protected in an appropriate manner. An up-to-date inventory of all easily movable assets is maintained by TBS and access to the LSU's office suite is controlled.

Information Systems

The TBP LSU's management uses relevant information from financial and timekeeping systems to support management decision making and accountability. LOPORS is used as a key repository for legal opinions. Opinions that are restricted to only those individuals in excluded positions are stored separately.

Information Management

Files are opened and tracked using the Recorded Information Management System (RIMS) and are closed on a regular basis. The physical location of all files selected as part of the audit sample was consistent with the information in RIMS.

Not all information is filed correctly and/or on a timely basis in the appropriate file. This generally only occurs with the advisory files. Several factors have contributed to this, including the extensive use of paper records, the heavy workload, lack of knowledge of the appropriate process to follow, and lack of staff. The Department of Justice undertook a proof of concept of the Government of Canada's newest document and records management shared solution during 2009-10. It could be some time before it can be implemented within the LSU. Improved procedures communicated to all staff, as already recommended, should contribute to more correct and timely filing.

Compliance with Legislation and Policies

There is compliance with key government legislation and policies including the *Financial Administration Act* and the *Official Languages Act*.

Interfaces with Other Justice Sectors

The TBP LSU's interfaces with the Department of Justice are satisfactory.

Client Interactions

The TBP LSU is consulted on files that could have a legal issue. Its clients are satisfied with the legal services provided by the LSU. The 2009 survey of the TBP LSU's clients showed a very high degree of positive client feedback.

The management responses to the recommendations contained in this report were provided by the Senior General Counsel, Treasury Board Portfolio Legal Services Unit.

1. INTRODUCTION

1.1 Background

The Department of Justice has established dedicated departmental legal services units (DLSUs) for most government departments and agencies. These units provide client organizations with legal advice to facilitate their operations. This audit focused on the management practices of the LSU serving the Treasury Board Portfolio (TBP).

The Treasury Board is a Cabinet committee of the Queen's Privy Council for Canada. The Treasury Board is responsible for accountability and ethics; financial, personnel and administrative management; comptrollership; and approval of regulations and most Orders-in-Council. The President chairs the Treasury Board. He carries out his responsibility for the management of the Government by translating the policies and programs approved by Cabinet into operational reality, and by providing departments with the resources and the administrative environment they need to do their work. The Treasury Board has an administrative arm, the Treasury Board of Canada Secretariat (TBS).¹

The TBS has a dual mandate: to support the Treasury Board as a committee of ministers and to fulfil the statutory responsibilities of a central government agency. The TBS makes recommendations and provides advice to the Treasury Board on policies, directives, regulations, and program expenditure proposals with respect to the management of the Government's resources. The TBS is also responsible for the comptrollership function of Government. Under the broad authority of sections 5 to 13 of the *Financial Administration Act*, the TBS supports the Treasury Board in its role as the general manager and employer of the public service.

The TBS is the primary client of the TBP LSU. Unless otherwise indicated, the TBS is the organization referred to when the term "client" is used in this report. The TBP LSU also provides legal services to the Canada School of Public Service (CSPS)² as well as to separate agencies and deputy heads.

¹ From the Treasury Board of Canada Secretariat Web site.

² Legal services provided to the CSPS account for approximately one percent of the LSU's time.

Areas of focus for the TBP LSU at the time of the audit included providing legal support in the management of pay equity complaints, the implementation of the *Federal Accountability Act*, policy suite renewal, and development of a legal risk management strategy for cases not managed by an Assistant Deputy Minister committee. The quality of the legal services the LSU provides to the TBS is of critical importance to the Secretariat's achievement of its strategic outcome, namely that Government is well managed, accountable, and resources are allocated to achieve results.

The TBP LSU is part of the Central Agencies Portfolio of the Department of Justice. A Senior General Counsel is responsible for the LSU and reports to the Assistant Deputy Minister of the Portfolio. A Special Assistant, also a lawyer, assists the Senior General Counsel. The LSU comprises three teams, each headed by a General Counsel: the Labour and Employment Law (L&EL) Group with approximately 20 counsel; the Government Operations and Public Management (GOPM) Group with 18 counsel; and the Employment Equity Team with three counsel. The 23 DLSU support staff (which include a Manager, Branch Planning Coordinator who manages the office and a Financial Clerk) are TBS employees. Planned expenditures for 2009-10 were \$12.2 million. Additional contextual information on the LSU is provided in Appendix A.

Some of the key risk factors that were identified in selecting the DLSU for audit included the impact of the legal work on the programs and activities of the Treasury Board, the appropriateness of linkages with Department of Justice organizations, the ability to respond to client demand for legal services, the increasing complexity of litigation, the level of efficiencies in the organization and in workload management, the adequacy of information for decision making, the accurate reporting of performance information, the provision of consistent legal advice and litigation services, the management of electronic information, and the appropriateness of linkages with the client department.

1.2 Audit Objectives and Scope

The overall objective of this audit was to assess the framework within which the LSU delivers services to TBS and to recommend improvements to this framework.

The audit team examined and assessed:

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

- the extent of compliance of systems, procedures, and practices with key legislation, regulations, and central agency/departmental policies relating to the *Financial Administration Act*, *Official Languages Act*, employment equity, and contracting;
- the appropriateness of interfaces with other sectors of the Department of Justice;
- the appropriateness of interfaces with the client department;
- the appropriateness of interfaces, including consultations, information sharing, planning, and forecasting, with the office of the Assistant Deputy Minister;
- the level of client satisfaction with the services provided.

The audit also addressed the following in relation to the TBP LSU's:

- mix of resources (including use of paralegals);
- workflow processes;
- workload management;
- forecasting demand for legal services;
- risk management;
- staff recruitment and retention, and succession planning;
- adequacy of financial resources received from the Department of Justice and the client department;
- the extent to which the LSU is consulted by its clients on files that could have a legal issue.

The scope of the audit included the operations and activities of the Treasury Board Portfolio LSU, which is located in the National Capital Region. The planning and the on-site examination phases for this audit were carried out between June and November 2009.

Details concerning the audit methodology employed are outlined in Appendix B.

2. OBSERVATIONS – MANAGEMENT FRAMEWORK

2.1 Objectives, Priorities, and Risk Management

The TBP LSU has established and documented its objectives and priorities, and communicated them to the TBS and its own staff.

Setting and documenting organizational objectives and priorities are important steps in ensuring that professional and support staff as well as the client receive a clear indication of expectations.

The TBP LSU's long-term objective is to provide high quality, effective, and responsive legal services in areas relevant to the mandate of the TB Portfolio. Expected key projects and special issues for 2009-2010 include:

- legal support to the TBS in the management of pay equity complaints;
- continued support to the *Federal Accountability Act* implementation;
- continued support to the Policy Suite Renewal;
- development of a Legal Risk Management Strategy for cases not already managed by an ADM committee.

Client priorities are determined through formal annual planning meetings with TBS senior management. The timing and expected work content are adjusted regularly throughout the year based on information obtained through participation in meetings (e.g. TBS Executive Committee) and work on files.

The LSU has documented its objectives and priorities in a business plan, its mission statement, an employee orientation package, and Memorandums of Understanding (MOUs) with TBS and CSPS. Objectives and priorities are also communicated in meetings with the LSU's professional and support staff.

It is the audit team's opinion that the TBP LSU establishes, documents, and communicates its objectives and priorities appropriately.

The TBP LSU has assessed the significant risks it faces in achieving its objectives, identified mitigation strategies, and taken action to manage the risks.

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

The TBP LSU's 2009-10 Business Plan contains a section on risks, complete with mitigation strategies, based on a gap analysis conducted as part of the business planning process. Identified risks include:

- an inability to fund all positions due to the economic situation and Strategic Review;
- identification of new TBS initiatives requiring legal services beyond the LSU's capacity;
- inability to recover sufficient costs from client departments with respect to labour litigation carried out on their behalf;
- difficulty in retaining support staff due to the under-classification of some positions or the extremely heavy workload of two key positions;
- lack of backup for support staff responsible for key systems;
- insufficient number of legal assistants who have the capacity to write complex documents in French.

The primary means of mitigating the potential financial pressures focuses on prioritizing work and obtaining more cost estimates before acquiring goods and services. Mitigation strategies for dealing with the work place issues include re-evaluating position descriptions, reassigning work, documenting procedures, and training.

Given its client's responsibility for accountability and ethics, the LSU's Business Plan has a section devoted to managing ethical risks that the LSU may face and addresses the standards of the legal profession.

It is our view that the TBP LSU's risk management is satisfactory.

2.2 Planning

The TBP LSU participates in both the Department of Justice's and the TBS's planning processes, preparing a written business plan.

Planning is used by successful organizations to identify initiatives and activities that address issues and contribute to the achievement of stated objectives. Planning is also the process by

which managers identify priorities—an important aspect of managerial responsibilities, especially in situations where resources are scarce.

Members of the TBP LSU’s management team³ participate in annual planning meetings with the senior management team of the TBS and CSPS. The LSU also has periodic meetings with specific client representatives within TBS and CSPS to update its understanding of evolving priorities and pressures. The results of these meetings are combined with direction received from the Central Agencies Portfolio Office to produce a written business plan that details:

- the LSU’s mandate and the legal services provided in support of the mandate;
- an overview of the LSU’s business environment;
- funding sources;
- projects, pressures, and achievements in the previous fiscal year;
- priorities and program activities;
- human resources issues – gap analysis, strategies for addressing gaps, risks, and mitigating strategies for both support and professional staff;
- sector-specific risks and risk management strategies, including a section on ethical risks;
- sector pressures;
- opportunities for savings;
- detailed funding allocation tables.

The Assistant Deputy Minister (ADM) of the Central Agencies Portfolio told us that she was satisfied with the input made by the TBP LSU to the Department of Justice’s planning process.

It is the audit team’s opinion that the TBP LSU’s planning processes are satisfactory.

2.3 Organizing

The TBP LSU is appropriately organized to meet its clients’ needs.

An LSU should be organized so that responsibility and accountability of its managers is well defined and work is undertaken by those with the expertise required to provide quality services.

As noted earlier, a Senior General Counsel, who reports to the ADM of the Portfolio, heads up the LSU. A Special Assistant, also a lawyer, assists the Senior General Counsel. The LSU is

³ This team includes the TBP LSU Senior General Counsel, the two General Counsel responsible for the GOPM and L&EL groups, and the Manager, Branch Planning Coordinator.

organized into three teams: the Labour and Employment Law Group (L&EL), the Government Operations and Public Management (GOPM) Group, and the Employment Equity Team. Each is headed by a General Counsel who manages the team.

The two General Counsel responsible for the L&EL Group and the GOPM Group have delegated staffing authority and limited financial authority (e.g. for external courses and travel).

In our view, the TBP LSU is appropriately organized.

2.4 Controlling

2.4.1 Policies and Procedures

The TBP LSU's policies and procedures manual needs to be revised and communicated to LSU staff.

Written policies and procedures are necessary for promoting the conduct of activities in a consistent, efficient, and economical manner.

The TBP LSU has a policy and procedures manual but it is out-of-date and its existence is not well known to the LSU's employees. The lawyers in the LSU are generally not familiar with the LSU's administrative policies and procedures but rely on their legal assistants to know and apply the applicable procedures. The legal assistants told the audit team that the procedures manual has been under development for many years. The paralegals noted that procedures have been developed for some activities, but more procedural information is required that describes the respective administrative responsibilities of paralegals and legal assistants. The Manager, Branch Planning Coordinator is aware that the procedures manual needs to be updated and improved. We were told that starting in November 2009, she planned on holding monthly meetings with the legal assistants in order to discuss and improve a new procedure each month. Once a procedure is finalized, it will be made available on the shared drive.

In our opinion, the existence of written policies and procedures alone is not a sufficient condition for promoting the conduct of activities in a consistent, efficient, and economical manner. It is important that approved procedures are communicated to staff.

Recommendation and Management Response

1. It is recommended that the Senior General Counsel ensure that new/revised administrative procedures are developed, documented, and communicated to staff.

Management agrees with this recommendation and has already implemented significant corrective measures. In fact, a full review of applicable procedures within our Legal Services Unit has been in progress for the past few months. The review is being conducted by a committee set up in February 2010 and we hope that this exercise can be completed by November 26, 2010.

Once the new procedures have been finalized and approved by the management team, they will be submitted and explained to all Legal Services Unit employees during a special meeting of employees chaired by the Senior General Counsel. These procedures will be kept on file and updated periodically so that they can be easily transmitted to all new employees joining our staff in the future.

2.4.2 Workload Assignment and Monitoring

The LSU distributes and monitors workload appropriately.

Workload should be managed so that client requests for legal services can be processed efficiently while maintaining service quality.

In the TBP LSU, litigators with the Labour and Employment Law Group are often required to travel outside the National Capital Region. The Litigation Schedule Coordinator tracks their workload, maintaining a week-by-week, day-by-day chart that provides such details as which lawyer is assigned to which litigation and the location of the assignment. A senior counsel assisted by the Litigation Schedule Coordinator reviews lawyer availability through discussions with the lawyers on an as-needed basis. Litigators advised us, however, that the focus of the Litigation Schedule Coordinator's responsibility is on ensuring that a litigator is assigned to each scheduled litigation action. Therefore, to ensure that they are not overbooked and have sufficient time between cases to prepare, individual litigators must proactively manage their own schedules.

Experienced, well-known advisory lawyers in the LSU receive requests for legal services directly from the client and manage their own workload. Their group's General Counsel or the Senior General Counsel becomes involved only when there are competing priorities. Within each of the LSU's three legal teams, the General Counsel assigns work when the request is directed to

the team or when an experienced lawyer receives a request outside his or her area of expertise. Factors considered in assigning the work include the expertise required, the availability of lawyers, and the learning opportunity provided (assuming the file is not urgent). General Counsel conduct regular meetings with their groups to track availability and progress on files.

Lawyers we interviewed stated that workload is high and the pace is demanding. Managers constantly monitor availability and adjust assignments to ensure that priorities are met. The lawyers also stated that they thought the LSU needed more resources to meet demand for its services, but otherwise found the LSU's practices for distributing and monitoring workload among its lawyers satisfactory. A client feedback survey developed by the Department of Justice's Office of Strategic Planning and Performance Measurement (SPPM) bears this out: clients rated the LSU's responsiveness as excellent and its timeliness as very positive.

It is the audit team's opinion that the LSU's workload distribution and monitoring practices are appropriate.

2.4.3 Performance Monitoring

The TBP LSU has published its service standards.

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 and of making adjustments, if necessary, to ensure that they are achieved. It supports decision making, accountability, and transparency.

The TBP LSU publishes its service standards in its mission document and as an annex to the MOUs with its clients. The service standards included in the MOUs covered the period April 1, 2009 to March 31, 2014 and were developed by the Department of Justice's Law Practice Management Directorate for use between a department's LSU and its client department. The service standards include detailed operational performance indicators.

It is the audit team's opinion that the LSU's published service standards are appropriate.

The LSU monitors client satisfaction with a formal survey and through discussions with client management.

The LSU's performance is assessed through the SPPM client feedback survey. The survey is administered every three years to gauge timeliness, responsiveness, and usefulness of the LSU's services. The most recent survey report was dated May 22, 2009. All of the TBP LSU's clients responded to the survey. The overall quality and responsiveness of services were rated as excellent and the usefulness and timeliness of the services were rated as very positive. The ratings for the TBP LSU's overall quality and timeliness of services were higher than that received by the rest of the Department of Justice.

The audit team was informed that the LSU's managers supplement the survey's results with discussions with client managers regarding the LSU's performance. Positive feedback is shared with the LSU's lawyers responsible for the work. Negative feedback is discussed privately with the lawyer to identify what should be done differently in future. The Labour and Employment Law Group conducts a post mortem when a case has an unexpected outcome to identify how the case might have been handled differently and what lessons can be learned going forward.

It is the audit team's opinion that the LSU's monitoring of client satisfaction is appropriate.

2.5 Leading and Communicating

The TBP LSU's communications practices provide staff with the information they need to do their jobs.

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.

Information is communicated within the LSU by a variety of means, such as all-staff meetings every six weeks, legal team meetings (weekly or bi-monthly depending on the team of lawyers), support staff meetings (every morning), and management meetings. A monthly newsletter and discussions, as required, also provide context for professional and administrative issues. There was consensus among lawyers and support staff interviewed that these mechanisms ensure that all members of the LSU have the general information they require to carry out their responsibilities.

It is our opinion that the LSU's current communications practices are sufficient. It should be noted, however, that as we recommend in the section on "Policies and Procedures", the LSU needs to develop office procedures that define the respective administrative responsibilities of LSU staff and communicate these to staff.

The LSU uses satisfactory practices to ensure it provides consistent legal advice.

The TBP LSU employs a number of practices to ensure consistency in the legal advice it provides to its clients. These include:

- team meetings to discuss substantive legal issues and progress on files;
- regular “lessons learned” sessions for both litigators and advisory lawyers in the Labour and Employment Law Group (The sessions enable advisory lawyers to learn of the results of litigation and how judges are interpreting the law, and allow litigators to track the evolution of opinion on matters of law.);
- regular informal consultations with peers in the LSU;
- review of previous opinions, advice, litigation, and relevant academic research (The information is stored in LOPORS (Legal Opinions and Precedents On-Line Retrieval System) or specialized databases established by the LSU.);
- monitoring by team managers of lawyers’ work and, depending on the complexity of the issue and the lawyer assigned to it, a review of the work before it is sent to the client;
- recording information on the Legal Services Request Form (“blue sheets”) and storing the information in a searchable database that permits tracking of requests for legal services by client and subject, nature of service required, counsel assigned, due date, reply type, and date of reply. (This enables the TBP LSU to monitor incoming requests for legal services in order to identify similarities to previous work undertaken by the LSU and to identify the relevant files in iRIMS. Files are assigned to lawyers who handled similar service requests in the past, if possible.)

The TBP LSU’s management and its lawyers told the audit team that they are satisfied with the measures in place to ensure consistent legal advice, and that no changes are required to improve them. The results of the 2009 SPPM client feedback survey showed a very high degree of positive feedback from the TBP LSU’s clients in this regard.

It is the audit team’s opinion that the practices the TBP LSU uses to ensure consistency in its legal advice are satisfactory.

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

The Treasury Board has established an extensive framework of policies for managing human, financial, and materiel resources. One of the requirements of these policies is that limited resources are to be managed with prudence and probity.

3.1 Human Resources

The TBP LSU has developed a comprehensive human resources plan as part of its 2009-10 Business Plan.

The TBP LSU's human resources plan describes several items that may affect the numbers of lawyers and support staff in the LSU and the assignment of work:

- the amount of time-limited funding associated with particular initiatives;
- a summary of the results of an in-house study in the summer of 2007, which notes that the reclassification of a few positions is expected in 2009-10;
- the 2008-09 reorganization of support activities, which addresses several of the key workplace risks identified in the plan.

The human resources plan also provides an analysis of the gaps in the LSU's human resources that have the potential to directly impact the LSU's ability to provide service efficiently, strategies for addressing the identified gaps and risks, as well as mitigation activities to address the identified risks. (See "Objectives, Priorities, and Risk Management" for a description of the LSU's key risks.)

It is the audit team's opinion that the TBP LSU's human resources planning is comprehensive.

Appropriate measures are taken by the TBP LSU to ensure that staff have the knowledge, skills, and competencies to carry out their respective responsibilities.

The acquisition of skills and knowledge, as well as the development of managerial and leadership expertise, is critical for the effective management of the Public Service. Training needs to be provided to staff to address any identified gaps in the existing skill set.

A range of mechanisms are used within the TBP LSU to ensure that lawyers and support staff have the skills and knowledge required:

- A welcome binder describes the LSU's history; its organizational structure; the applicable statutes; the type and volume of requests for legal services received by the LSU; the specific responsibilities of the Government Operations and Public Management Group, the Labour Employment Law Group, and the Pay Equity Team; current hot topics/emerging issues; and the LSU's funding. One group of lawyers we interviewed described this binder as out-of-date, while another described it as useful and helpful. Some lawyers were not familiar with the welcome binder. These lawyers had been with the TBP LSU for some time and recognized that its creation may have post-dated their joining the LSU. The audit team was provided with an updated version of the welcome binder that included events up to at least February 2009.
- Both lawyers and legal assistants have participated in a special session with TBS, in which the role of the TBS analyst and the functions of the TBS are explained.
- While there isn't a formal mentoring process, the appropriate General Counsel regularly reviews the work of inexperienced advisory lawyers before legal opinions are sent to the client. Litigators follow a learning plan that has them work progressively more independently on lawsuits over a three-year period. Those lawyers who advised us that the implementation of a formal mentoring process would be desirable acknowledged that there are insufficient resources in the LSU to implement such a program.
- There is an open-door policy and regular dialogue among colleagues.
- Yearly training plans are developed for both lawyers and support staff. The lawyers told the audit team that ongoing professional development is available, both within the Department of Justice and externally. The lawyers reported that LSU management is very supportive of training, will approve the requested courses, and provide any required funding.

According to the lawyers interviewed, the biggest challenge in obtaining necessary training is finding the available time. Many cited self-study as a key method for obtaining the required annual professional development that is necessary to maintain their professional accreditation.

The audit team is of the opinion that appropriate measures are taken by the TBP LSU to ensure that staff have the knowledge, skills, and competencies to carry out their respective responsibilities.

The TBP LSU's tracking of professional development of its staff requires improvement.

The Department of Justice's *Learning Policy* states that every employee shall receive at least five days of professional development per year. As defined in the policy, professional development encompasses a wide range of activities including classroom training, formal education, conferences, seminars/workshops, practice forums, practice groups, coaching, mentoring, short-term assignments, secondments, job shadowing, job rotation, and reading.

In accordance with the departmental *Learning Policy*, LSU management are responsible for reporting on three key learning performance indicators. These include the percentage of base salary invested in learning, percentage of Department employees with individual learning plans, and the percentage of employees receiving a minimum of five days professional development per year. In the report compiled by the TBP LSU, management provides sufficient information on the first two of these indicators. However, for the third performance indicator, the report includes only those courses taken by staff that have an associated cost. The report does not capture informal training taken such as coaching, mentoring, short-term assignments, secondments, job rotation, and reading that a lawyer may do. As indicated above, these are all professional development as defined within the *Learning Policy*.

In the absence of thorough tracking of all professional development activities, the LSU cannot ensure that its employees are receiving the amount of professional development required under the *Learning Policy*.

Recommendation and Management Response

2. It is recommended that the Senior General Counsel implement a process to track and report all professional development taking place in the TBP LSU.

Management agrees with this recommendation and has already taken measures to correct the situation. In fact, the Office of the Assistant Deputy Minister, Central Agencies Portfolio, has drafted a form that we now use to record all information having to do with training and conferences attended by employees of our Legal Services Unit, whether or not the activities involve costs.

Management is therefore confident that within the next 90 days, information on the professional development of our Legal Services Unit employees will be updated to the utmost and will remain that way in the future.

Performance appraisals are completed in a timely manner.

There is an expectation under the TBS MAF that organizations will have in place a system for the performance evaluation of employees. Performance evaluations/appraisals conducted on a timely and consistent basis serve to establish objectives, provide feedback on performance, and identify learning and developmental opportunities.

We found that performance appraisals for all of the LSU's lawyers and support staff for the most recent reporting period were on file, were complete, and had individual learning plans attached.

The TBP LSU has an appropriate mix of resources in relation to current demand for its services.

Based on the TBP LSU's organization charts, in spring 2009, there was approximately one legal assistant for every five lawyers who were not on secondment or long-term leave without pay. There were 42 counsel including management in the LSU and eight legal assistants. Staffing was under way at the time for two counsel and one legal assistant. A further six counsel positions and two legal assistant positions were vacant. There were five paralegals in the TBP LSU with an additional two positions vacant and 10 other support staff performing financial and human resources, records management, and systems support functions.

The Senior General Counsel told the audit team that the LSU has the resources to deal with most ongoing work, but cannot readily address significant short-term increases in demand that stem from major litigation or client policy initiatives. When this occurs, the LSU must try to adjust priorities and/or seek additional funding from the client to cover the shortfall. Two of the team managers were satisfied with the number of lawyers on their team in light of the plans to fill two vacant positions. The third team manager advised the audit team that additional resources were required for her group. We were further advised that two lawyers had left the LSU because of workload demands, and that although a senior lawyer has been recruited, the workload remains too heavy for the remaining lawyers. One team manager indicated that the LSU plans to ask the client for additional resources to engage another lawyer.

Our review of iCase reports found in each month examined that slightly more than 35% of the lawyers in the LSU reported no overtime, over 40 percent reported 15 hours or less overtime in a month, and up to 20 percent reported more than 15 hours of overtime. Those reporting 30 hours

or more in any one month included the Senior General Counsel, a General Counsel responsible for managing one of the groups in the LSU, two litigators, and a member of the GOPM group. It is the audit team's opinion that the amount of overtime across the whole LSU is not excessive.

The lawyers from both the Government Operations and Public Management Group and the Labour Employment Law Group told the audit team that more support staff of all types (e.g. legal assistants, paralegals, clerical support) are required. In at least one instance, one legal assistant is supporting six lawyers. We were told that lawyers are entering data, photocopying, and conducting basic research, tasks that could be carried out by less specialized resources. The lawyers also indicated that turnover in legal assistants has contributed to the work inefficiencies as many of the legal assistants haven't worked long enough in the LSU to become familiar with lawyers' individual approaches and work preferences.

The Manager, Branch Planning Coordinator told the audit team that existing vacant support staff positions need to be filled. Only short-term funding is available from the client for this purpose and as a result the positions can be filled only on a temporary basis. Both legal assistants and paralegals identified the addition of more legal assistants as a priority.

The audit team is of the opinion that while the TBP LSU may be facing some resource pressures, its current resource mix is close to appropriate levels. The ratio of lawyers to legal assistants of 5:1 is slightly higher than the ratio of 4:1 observed in many other recently audited DLSUs. Most of the other DLSUs audited, however, did not have paralegals. Staffing existing vacant positions and the development of new/revised administrative procedures as recommended (see "Policies and Procedures") will help to improve the situation.

3.2 Financial Resources

The financial resources provided to the TBP LSU by the Department of Justice and its clients have enabled it to provide satisfactory levels of service.

The TBP LSU is funded both from the Department of Justice A-base (approximately one-quarter of its funding) and through cost-recovery from its clients. Resource requirement projections are based on the LSU's expectation of how emerging issues will impact the demand for legal services. The LSU identifies to the client any potential gaps between its capacity to provide services and the projected requirement(s). We were told that if there is an expected shortfall, the client receiving the services is expected to provide the funding and that thus far TBS and CSPS have usually been willing to do so. The LSU was unable to recover approximately \$160,000⁴ of

⁴ This was almost 10 percent of the total amount billed.

the costs it incurred in providing services to departments other than TBS and CSPA. We were also told that this process has provided sufficient resources to enable the LSU to meet ongoing legal work, but that it cannot readily address workload surges that stem from major litigation or client policy initiatives (e.g. policy and legal implications of the *Accountability Act*). In such cases, the surges are addressed by reallocating resources internally.

The practices that the LSU uses to manage temporary increases in demand for its legal services have enabled it to provide satisfactory levels of service. The 2009 SPPM client feedback survey of the TBP LSU showed a very high degree of positive feedback from clients, meeting or surpassing Department of Justice targets. Interviews the audit team conducted with a sample of clients showed similar levels of satisfaction with the LSU's ability to meet client demand for services.

The measures taken to administer the TBP LSU's financial resources are satisfactory.

The LSU receives financial reports from the TBS financial system on a quarterly basis. The reports are reviewed and approved by the Senior General Counsel. In addition, the LSU's management team, which includes the Manager, Branch Planning Coordinator, meets weekly to review management issues, including the LSU's financial position if required. The LSU's financial position is also monitored by the LSU's Financial Clerk, who daily tracks the LSU's revenue and expenditures on a spreadsheet⁵. Reports are provided to the Manager, Branch Planning Coordinator as required.

Our review of financial transactions showed that all were supported with the required documentation. Acquisitions are made via a Standing Offer, wherever one is in place.

It is our opinion that the measures taken to administer the LSU's financial resources are sufficient and reasonable.

⁵ The LSU maintains its own records because of the delay between the time the LSU receives an invoice and the time it is entered in the TBS financial system.

3.3 Materiel Resources

Key assets are protected in an appropriate manner.

The TBP LSU's key physical assets are provided by the TBS, which maintains an up-to-date inventory of all easily movable assets (e.g. computers, monitors, printers, Cerlox machines, electric staplers, smart phones). No losses have been reported.

In order to control access to the LSU's electronic assets (systems, shared drives), the LSU maintains a central registry of authorized users. The registry is culled regularly to ensure that only current employees have access.

Measures are in place to protect the LSU's physical assets. The LSU is housed in the TBS's Ottawa headquarters. All visitors to the building must present themselves to a reception desk on the ground floor. Reception staff verify the visitor's identity and call the specified LSU staff member to confirm the appointment. Visitors are escorted while in the LSU's suite of offices.

We are of the opinion that the TBP LSU takes appropriate measures to protect key physical and electronic assets.

4. OBSERVATIONS – INFORMATION SYSTEMS

4.1 Information Systems

The TBP LSU's management uses relevant information from information systems to support decision making and accountability.

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

As noted earlier, the TBP LSU uses both the TBS financial system and internally maintained spreadsheets to monitor its financial performance.

The TBP LSU also receives timekeeping reports from the Department of Justice's iCase system. The Senior General Counsel and the General Counsel use the reports to determine who is eligible for management leave based on the amount of overtime worked. If the reported hours are considerably higher than what was expected, the specifics are reviewed with the lawyer involved to determine the reasons for the variance. The iCase Coordinator sends out monthly reminders to lawyers and paralegals to enter their time. Following review of the information with a General Counsel, she follows up if hours have not been reported or if the reported hours seem to be too high. Particular attention is also paid to the reported time of those providing litigation and advisory services to departments other than the TBS or the CSPS since accurate and timely information is required to support cost recovery.⁶

LOPORS is used as a key repository for legal opinions. Access to some opinions (e.g. on labour and employment law) is restricted to only those individuals in excluded positions (i.e. excluded from collective bargaining). These opinions are stored separately. Logical and physical controls to the computer where the information is stored limit who has access to the information.

⁶ As the Department of Justice's centre of expertise for labour and employment law, the TBP LSU serves as the exclusive representative of the employer before various boards, administrative tribunals, and the Federal Court, and recovers the costs of conducting the litigation from other government departments/agencies.

In our view, the TBP LSU makes appropriate use of relevant information from information systems to support decision making and accountability.

4.2 Information Management

Files are opened and tracked using the Recorded Information Management System (RIMS) and are closed on a regular basis.

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

The LSU's records staff are responsible for recording the existence of a new file in RIMS. They do this based on information provided by the LSU's lawyers, after checking to ensure that the file does not already exist in the system. When records staff are advised that the file is closed, they ensure that all associated documents are in the file. In between file opening and closing, the file's location is to be recorded in RIMS. We selected a judgmental sample of 13 files from RIMS and verified their physical location. RIMS was also queried to confirm that a further 12 files selected from the records room were recorded as being there.

Files that can be closed are identified on an ongoing basis. We observed that the LSU had 113 boxes of closed files for which a disposition calendar has been established. We were advised that these boxes will be transferred to archival storage in accordance with the calendar.

It is our opinion that the TBP LSU appropriately opens, tracks, and closes files.

Document management requires improvement.

With respect to litigation files, we were told that litigators in the TBP LSU are satisfied with the quality of filing. Because it is imperative that litigators have all the necessary information in advance of a court or tribunal hearing, they take direct responsibility for ensuring their files include all relevant documents. Both litigators and paralegals involved with litigation files noted that they do not use Ringtail, the Department of Justice document management system for litigation cases. A number of factors have contributed to this decision. First, since the litigation in the TBP LSU relates to employment and labour law, all staff who may have access to the information stored in Ringtail need to be in a position that is excluded from collective bargaining. The Department of Justice staff who are responsible for supporting the system and could have access to the information are not in excluded positions. Furthermore, since the TBP

LSU deals typically with relatively small cases (requiring only one or two days before a tribunal and few exhibits), the use of a document management system is less critical.

With respect to advisory cases, the LSU's advisory lawyers we interviewed told the audit team that files were frequently not up-to-date or complete. Advice provided by e-mail, in particular, was not consistently filed in the appropriate location on a timely basis. The lawyers indicated that eventually they find the information when they need it, but that this requires more time and effort.

In our view, several factors have contributed to information not being filed in a timely manner and/or in the appropriate file. These factors include: extensive use of paper records, heavy workload (answering the client's latest query will always take precedence over filing), lawyers' lack of knowledge of the appropriate process to follow, lack of up-to-date procedures on filing physical and electronic information, and insufficient number of legal assistants (one position was being staffed at the time of the audit and an additional two positions were vacant).

For some years, government departments, including the Department of Justice, have been implementing the shared solution Records, Document and Information Management System (RDIMS). The TBP LSU is not using RDIMS. As noted in the management response to the Department's April 2009 internal audit of RDIMS, this system has now reached the end of its product development lifecycle and does not support home use or use with a BlackBerry, both important requirements to support the Department of Justice client base. Information Management Branch (IMB) undertook a proof of concept of the Open Text⁷ document management offering, known as Livelink, during 2009-10.

The audit team is of the opinion that it could be some time before the Department of Justice has a new document and records management system ready for implementation in the TBP LSU. The LSU needs a product that will handle the full range of documents the LSU must store, including those that only excluded employees may access and those with a security classification. As noted earlier, we were told that the Manager, Business Planning Coordinator has begun a process to update the LSU's administrative policies and procedures. This process is expected to include document management procedures. In the short term, updating these policies and procedures and ensuring they are communicated to staff should improve document management within the LSU.

⁷ Open Text Corporation is now the Government of Canada's service provider for document and records management.

5. COMPLIANCE WITH LEGISLATION AND POLICIES

There is compliance with key government legislation and policies.

We reviewed a sample of financial transactions from the 2008-09 and 2009-10 fiscal years. All transactions had relevant supporting documentation (e.g. copies of invoices, contracts) and showed the required approvals under the *Financial Administration Act*.

The TBP LSU complies with the requirements of the *Official Languages Act*. Services are provided to the client in the language of choice⁸, and staff meetings are bilingual. The LSU tracks its commitment to employment equity and its statistics show that it exceeds both departmental and portfolio percentages.

It is the opinion of the audit team that there is compliance with the key government legislative and central agency policy requirements governing the LSU's operations.

⁸ The SPPM client feedback survey report dated May 22, 2009 included an assessment of whether services are provided in the language of the client's choice. The TBP LSU was rated as excellent.

6. OBSERVATIONS – INTERFACES WITH OTHER JUSTICE SECTORS

The TBP LSU's interfaces with the Department of Justice are satisfactory.

The TBP LSU's interfaces differ for its two specialty legal areas. First, as the centre of expertise for labour and employment law, the LSU is consulted both to provide advisory services and to take the lead in defending the Crown against lawsuits in this area of law. Secondly, as experts in government operations and public management issues, counsel consult specialist headquarters sectors as needed for expert advice and opinions. Department of Justice regional offices and other DLSUs may consult the TBP LSU on the *Financial Administration Act*. The LSU's lawyers described these interfaces as professional and advised that no changes were required. Interviews with a sample of lawyers at departmental headquarters and in other DLSUs revealed that they were satisfied with the interactions they had with the TBP LSU. They stated that they would not change any aspect of the relationship.

According to the Assistant Deputy Minister, Central Agencies Portfolio, consultation and information sharing by the TBP LSU has increased since she assumed her current position. Initially, she held bilateral meetings with each DLSU head every month. She now has a monthly meeting with the heads of all of the DLSUs in the Portfolio and periodic bilateral meetings as required.

It is the audit team's opinion that the LSU's interfaces with the Department of Justice are satisfactory.

7. OBSERVATIONS – CLIENT INTERACTIONS

The TBP LSU is consulted on files that could have a legal issue.

The Senior General Counsel is a member of the TBS Executive Committee, has bilateral meetings with the Secretary of the Treasury Board, and attends Treasury Board meetings. He told the audit team that there are no restrictions on information sharing and that it is rare that the LSU is not consulted. LSU group managers have regular meetings with the senior managers within those sectors of the TBS for which they have responsibility. They also participate in the annual planning processes of individual TBS sectors. The LSU's lawyers stated that the LSU is adequately consulted on files that have a legal issue, although requests for advisory services occasionally come in at the last minute.

It is our opinion that the TBP LSU is adequately consulted on files that could have a legal issue.

The TBP LSU's clients are satisfied with the legal services provided by the LSU.

As noted earlier, SPPM conducts a client feedback survey every three years. The survey solicits feedback on the responsiveness, timeliness, and usefulness of DLSU services. The 2009 survey of the TBP LSU showed a very high degree of positive client feedback that meets or surpasses Department of Justice targets. Overall quality was rated as excellent. The results for individual components were:

- responsiveness – excellent
- usefulness – very positive
- timeliness – very positive

Client representatives interviewed by the audit team stated that they were satisfied with the TBP LSU's service delivery and would not change any aspect of their relationship with the LSU's lawyers.

It is the audit team's opinion that the LSU's services to its clients are satisfactory.

8. OBSERVATIONS, RECOMMENDATIONS AND MANAGEMENT REPOSES

The TBP LSU has established and documented its objectives and priorities, and communicated them to the TBS and its own staff.

The TBP LSU has assessed the significant risks it faces in achieving its objectives, identified mitigation strategies, and taken action to manage the risks.

The TBP LSU participates in both the Department of Justice's and the TBS's planning processes, preparing a written business plan.

The TBP LSU is appropriately organized to meet its clients' needs.

The TBP LSU's policies and procedures manual needs to be revised and communicated to LSU staff.

1. It is recommended that the Senior General Counsel ensure that new/revised administrative procedures are developed, documented, and communicated to staff.....9

Management agrees with this recommendation and has already implemented significant corrective measures. In fact, a full review of applicable procedures within our Legal Services Unit has been in progress for the past few months. The review is being conducted by a committee set up in February 2010 and we hope that this exercise can be completed by November 26, 2010.

Once the new procedures have been finalized and approved by the management team, they will be submitted and explained to all Legal Services Unit employees during a special meeting of employees chaired by the Senior General Counsel. These procedures will be kept on file and updated periodically so that they can be easily transmitted to all new employees joining our staff in the future.

The LSU distributes and monitors workload appropriately.

The TBP LSU has published its service standards.

The LSU monitors client satisfaction with a formal survey and through discussions with client management.

The TBP LSU's communications practices provide staff with the information they need to do their jobs.

The LSU uses satisfactory practices to ensure it provides consistent legal advice.

The TBP LSU has developed a comprehensive human resources plan as part of its 2009-10 Business Plan.

Appropriate measures are taken by the TBP LSU to ensure that staff have the knowledge, skills, and competencies to carry out their respective responsibilities.

The TBP LSU's tracking of professional development of its staff requires improvement.

2. It is recommended that the Senior General Counsel implement a process to track and report all professional development taking place in the TBP LSU.15

Management agrees with this recommendation and has already taken measures to correct the situation. In fact, the Office of the Assistant Deputy Minister, Central Agencies Portfolio, has drafted a form that we now use to record all information having to do with training and conferences attended by employees of our Legal Services Unit, whether or not the activities involve costs.

Management is therefore confident that within the next 90 days, information on the professional development of our Legal Services Unit employees will be updated to the utmost and will remain that way in the future.

Performance appraisals are completed in a timely manner.

The TBP LSU has an appropriate mix of resources in relation to current demand for its services.

The financial resources provided to the TBP LSU by the Department of Justice and its clients have enabled it to provide satisfactory levels of service.

The measures taken to administer the TBP LSU's financial resources are satisfactory.

Key assets are protected in an appropriate manner.

The TBP LSU's management uses relevant information from information systems to support decision making and accountability.

Files are opened and tracked using the Recorded Information Management System (RIMS) and are closed on a regular basis.

Document management requires improvement.

There is compliance with key government legislation and policies.

The TBP LSU's interfaces with the Department of Justice are satisfactory.

The TBP LSU is consulted on files that could have a legal issue.

The TBP LSU's clients are satisfied with the legal services provided by the LSU.

APPENDIX A – CONTEXTUAL INFORMATION

Departmental legal services units (DLSUs) are responsible for providing client organizations with legal advice and assistance to facilitate their operations, and ensuring that DLSU policies, programs, and operations conform to the law. The DLSUs interact with other sectors of the Department of Justice with respect to litigation that their clients may be involved in, and to obtain advice on specialized matters, such as compliance with the *Canadian Charter of Rights and Freedoms*.

A close relationship typically develops between DLSUs and their clients. DLSUs are generally located in the same building as the client's senior management team. Most DLSU heads regularly attend their client's departmental management committee meetings.

All DLSU lawyers are Department of Justice employees. Support staff are employees of the client department. The costs of the DLSU's lawyers are covered by a rate structure formula approved by the TB that applies across government to all DLSUs.

All lawyers working in a DLSU are costed according to this rate structure, whether they are funded by the Department of Justice or funded by the client. This allows a total cost for all lawyers working in each DLSU to be calculated. The DLSU A-Base and any amount recovered from a department other than the client are then subtracted from that total cost, and the client department or agency is billed quarterly for the difference.

The TBP LSU differs from most other DLSUs. It conducts its own litigation regarding labour and employment law since it is the exclusive representative of the Government as employer, representing it before such boards and tribunals as the Public Service Labour Relations Board, the Public Service Staffing Tribunal, the Occupational Health and Safety Tribunal, the Public Servants Disclosure Protection Tribunal, the Federal Court, and the Federal Court of Appeal. The TBP LSU recovers costs for its litigation services from other government departments. It also provides advisory services to other legal service units on the *Financial Administration Act*.

The client is also billed for services provided via the LSU by lawyers in the Department of Justice's headquarters units, such as the Constitutional and Administrative Law Section, and

regional offices. In addition, the client furnishes office materials, supplies, and accommodation and directly funds the salaries of the support staff.

APPENDIX B – METHODOLOGY

The criteria for the audit were based on:

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

Information for this audit was obtained employing the following methods:

- a review of relevant documentation concerning the operations of the TBP LSU;
- interviews and focus groups with management, lawyers, and staff of the TBP LSU and with management within the Department of Justice Central Agencies Portfolio;
- requests for information from others in the Department of Justice (i.e. other DLSUs, HQ specialized law groups (e.g. Constitutional and Administrative Law Section, the Information Law and Privacy Section) and the Human Resources and Professional Development Directorate;
- telephone interviews with client and Department of Justice representatives.