



LEGAL AGENT ACCOUNT VERIFICATION PROCESS

April 2011

Internal Audit Branch



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STATEMENT OF ASSURANCE

We have completed the internal audit of Legal Agent Account Verification in the Department of Justice. The overall objective of this audit was to provide assurance that the framework in place for the legal agent account verification process is effective.

The internal audit was conducted in accordance with the requirements of the Treasury Board *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, as well as TBS audit guides.

In our professional judgment, sufficient and appropriate audit procedures have been conducted and evidence has been 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 audit criteria. It should be noted that the conclusions are only applicable to 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

OVERALL OPINION

Overall we found that the verification process for paying legal agent accounts is adequate. The process of entering into contracts using letters of appointment as well as the taxing of legal accounts is understood and consistently applied throughout the Department. We did, however, note areas for improvement in making LPMC guidelines more directive to encourage the standardization of legal agent files through the use of forms and templates; in reviewing and modifying the hourly rate guidelines and delegated approval authorities; and in establishing additional reporting procedures related to the processing and recording of legal agent financial transactions.

BACKGROUND

“Legal Agent” is the term used by the Department of Justice to refer to private sector law practitioners who are retained to provide legal services and to act on behalf of the Minister of Justice. The Policy on Contracting for Legal Services and Legal Agent Appointments (July 2008) establishes the principles and requirements associated with contracting for legal services by the Government of Canada. The contracting is to be conducted in a diligent and accountable manner. Departmental implementation of the policy is the key responsibility of the Litigation Practice Management Centre (LPMC) through the Agent Affairs Program in support of the Assistant Deputy Attorney General (ADAG), Litigation Branch.

This audit focused on reviewing and assessing the adequacy of the verification process for paying legal agent accounts. Since the approval of the policy, LPMC has primarily focused on establishing the contracting procedures and directives for procuring and appointing legal agents. This aspect of the Agent Affairs Program is robust, but with respect to the processing, financial monitoring, and reporting of legal agent accounts, additional improvements and efficiencies are possible.

FINANCIAL CONTROL FRAMEWORK FOR ACCOUNT VERIFICATION

Policies, Procedures and Guidelines

We found that procedures for verifying legal agent accounts in the regional offices audited lack consistency. While LPMC has developed forms and a Compliance and Verification Checklist to assist in taxing legal agent accounts, it is not used by all regional legal portfolios. Most regions use a variety of forms and templates that they have developed for the account verification process. LPMC should prescribe standard procedures, forms and checklists for legal agent account verification that must be used by all regional offices.

We found that the use of the taxing stamp varies across regions. The taxing stamp on the legal agent invoice serves as the certification of the legal agent account by the instructing counsel. The taxing stamp should be signed and dated by the instructing counsel who is responsible for verifying the account and its use should be made mandatory.

Rates and Delegation

We found that hourly rate guidelines for legal counsel have not been increased since 1991/92 and are well below current market rates. This affects both the time it takes regional legal portfolios to find and acquire a legal agent, and the priority the legal agent subsequently gives the file. At the time of audit, a review was under way to revise the hourly rate guidelines paid to legal agents.

While the approval to enter into contract with a legal agent vests with the Minister, all legal agent rates in excess of \$125 are approved by the ADAG Litigation, the Associate Deputy Minister, or the Deputy Minister. In our opinion, the contracting process could be streamlined if delegated approval authorities at each level were adjusted.

PROCESSES FOR VERIFYING AND DETERMINING ACCURACY OF LEGAL AGENT ACCOUNTS

Financial Monitoring of Legal Agent Accounts

LPMC has not been prescriptive enough in the written guidance on the financial monitoring of legal agent accounts. While it is required that instructing counsel conduct a substantive review or “tax” each account rendered by a legal agent, regional legal portfolios do not use a standardized approach to monitor accounts according to the terms of the contract or the progress of the file. In our opinion, written guidelines provided by LPMC for financial monitoring of legal agent

accounts should emphasize the importance of regional compliance with the guidance pertaining to financial monitoring.

We found that from the time the legal agent account is received by Justice Canada to the time the account is paid by the client department, it typically takes more than the 30 days stipulated by the Treasury Board Directive on Payment Requisitioning and Cheque Control. As client departments require on average 15 to 20 days to process a payment, payment is often late, resulting in Justice Canada receiving overdue account notices. LPMC needs to establish standards for instructing counsel to tax and forward the legal agent accounts to client departments. These standards should take into consideration the average time taken by client departments to process a payment. Such standards would provide greater assurance that the requirements of the Treasury Board Directive will be met.

Reporting on Legal Agent Accounts

LPMC uses the IFMS to obtain financial and statistical information on legal agent accounts. However, LPMC acknowledged that the IFMS may present incomplete information when reports are generated, given that IFMS data is not validated for completeness or accuracy. We were told that account reviews conducted by LPMC found that not all taxed accounts sent to client departments for payment were entered into the IFMS. Additionally, regions do not provide routine reports to LPMC on the status of the legal agent contracts that they are managing. LPMC is taking steps to address these issues and advised the audit team that there are plans to develop, over the next fiscal year, a regional reporting system that will meet the needs of both regional legal portfolios and LPMC.

Use of iCase for Financial Monitoring and Reporting

Several regional legal portfolios use the disbursements module of iCase to monitor and prepare reports on legal agent account disbursements and fees activity. They supplement the routine iCase report with additional information from locally developed spreadsheets. During the audit, instructing counsel noted that several improvements to iCase would eliminate the need for these spreadsheets. In our view, consideration could be given to using iCase for the financial monitoring and reporting of all legal agent accounts.

TAXING LEGAL AGENT ACCOUNTS

Consistency in Taxing Legal Agent Accounts

We found that legal agent accounts are being taxed in a consistent manner. We surveyed four client departments and found that all taxed accounts were accepted as rendered. Instructing counsel were knowledgeable in taxing legal agent accounts and were experienced in verifying that the time charged by legal agents was appropriate to the work accomplished. Our review of a sample of legal agent contracts indicated that the verification of the legal agent account included such tests as compliance with contract terms and conditions, and computational correctness of charges. Where adjustments to the account were required, appropriate documentation was retained on file.

File Structure for Legal Agent Account Files

We observed that the regions audited retained a variety of documents on file. Although LPMC has developed a Compliance and Verification Checklist for financial transactions, it is not used by all regional legal portfolios and it is not comprehensive. A requirement exists to stipulate the contents of a structured file in terms of the use of checklists for transactions and the information, both contractual and financial, to be maintained in the legal service portfolios.

PROCESSING OF LEGAL AGENT ACCOUNTS FOR PAYMENT

Account Processing

The payment process of legal agent accounts could be improved. The invoices submitted by legal agents are those commonly used by their firm; there is no requirement to use a standard invoice form when billing for services rendered. Therefore, the invoices received have differing presentation and level of detail. Some invoices may include as many as 30 pages of detailed charges. A copy of each invoice is provided to PPSC for data entry into the IFMS and to the client department for review prior to payment. In our opinion, the regional legal portfolio should use the standard transmittal form that presents the key information from the transaction to simplify data capture by PPSC and improve data integrity.

We also found that there are no procedures in place to confirm that data in the IFMS is complete and timely. Establishing a procedure that would allow regional offices to routinely confirm that information sent for data entry into the IFMS has been entered into the IFMS would provide assurance that the information in the IFMS is complete and timely.

MEMORANDUM OF UNDERSTANDING

The Public Prosecution Service of Canada (PPSC) provides services to Justice Canada pertaining to legal agent appointments transacted by Justice Canada. These services vary depending on whether Justice Canada or another government department is the client paying the legal agent account. Justice Canada has a Memorandum of Understanding (MOU) with PPSC for the services the Department provides to the PPSC, but a similar MOU for work PPSC performs for Justice Canada has not been developed.

When Justice Canada is the client for legal agent work, PPSC enters the legal agent account information into the Justice Canada IFMS for tracking purposes and for payment of the account. The audit team found that neither Justice Canada nor PPSC is performing FAA Section 33 payment authority. In our opinion, an MOU is required that describes the specific responsibilities PPSC will perform on behalf of Justice Canada and assigns responsibility for FAA Section 33.

The management responses to the recommendations contained in this report were provided by the Director, Litigation Practice Management Centre.

1. INTRODUCTION

1.1 Background

The *Department of Justice Act* confers upon the Minister of Justice and Attorney General of Canada responsibility for the provision of legal services to individual departments and agencies, and for the legal affairs of the Government as a whole. To carry out this mandate, the Department of Justice relies on in-house counsel located in regional offices, legal services units (LSUs), and litigation divisions across the country, as well as private sector law firms and law practitioners. “Legal agent” is the term used by the Department to describe the status of those private sector law firms and law practitioners retained to provide legal services and to act on behalf of the Minister. Law practitioners include lawyers, law professors, retired judges, and in the Province of Quebec, notaries.

Legal agent appointments are contracts for the provision of legal services that may be entered into only by or under the authority of the Minister of Justice, and that are not subject to the requirements of the Government Contract Regulations or the Treasury Board Contracting Policy. The general policy of the Department of Justice is that in-house counsel should deliver all legal services within the Department’s statutory mandate. However, in some instances certain considerations may indicate that the legal services may be outsourced to legal agents after being duly justified and approved. This is done in consultation with the client department concerned.

In Oct 2005 the Department began implementing a new Legal Services Contracting Framework, and in July 2008 the approach was formalized with the approval of the Policy on Contracting for Legal Services and Legal Agent Appointments. The policy establishes the principles and requirements associated with contracting for legal services by the Government of Canada to ensure that contracting is conducted in a diligent and accountable manner.

Legal agents are primarily engaged to provide legal services where another government department is the client², and occasionally, in matters where the Department of Justice is the

² Paragraphs 5 (b) and (d) of the *Department of Justice Act* refer to the Attorney General’s responsibilities to advise “departments of the Government” and to conduct all litigation for or against “any department”. The term “department” embraces Crown

client. In general, the following types of activities are considered legal services: providing legal advice and opinions, conducting litigation, drafting legislation and regulations, negotiating and drafting legal documents such as contracts or agreements.

The Litigation Practice Management Centre (LPMC) supports the Assistant Deputy Attorney General (ADAG), Litigation Branch, in the delivery of effective and responsive legal services by legal agents. Among other things, LPMC is responsible for the development and management of the Agent Affairs Program. The overall objective of the Agent Affairs Program is to provide functional direction over contracting for legal services, including decisions to outsource as well as sourcing, assessment, selection, supervision, and management of legal agent activities with a view to enhancing the stewardship of public resources and securing improved value for money.

Payment for Legal Agent services is the responsibility of the client department utilizing the services; whether the client department is Justice Canada or another government department or agency. Coordination and monitoring of the financial obligations and expenditure information is the responsibility of both LPMC and the CFO Branch. As a result of the separation between Justice Canada and Public Prosecution Services Canada (PPSC) in December 2006, the CFO Branch relies on PPSC to provide certain corporate services related to Legal Agents.

Some of the key risk factors that were identified in relation to this audit included: appropriateness of agent billings and rates; integrity of information; adequacy of financial controls including taxing procedures; appropriateness of instructions provided to agents; adequacy of financial monitoring at the local level; completeness of billing information provided to Headquarters; accuracy of billing information forwarded to clients; and adequacy of monitoring, guidance, and direction.

1.2 Audit Objectives and Scope

The overall objective of this audit was to provide assurance that the framework in place for the legal agent account verification process is effective.

The scope of the audit focused on:

- a) the financial control framework for account verification, including policies, directives, and procedures that support the verification of legal agent accounts;
- b) the processes in place for verifying and determining the accuracy of legal agent accounts and records;

agencies and corporations, and in the Department of Justice these departments/agencies/Crown corporations are commonly referred to as “clients” or “client departments”.

- c) consistency of processes and practices for taxing legal agent accounts;
- d) the process for informing the LPMC of the payment request submitted to client departments;
- e) linkages with the LPMC;
- f) compliance with the governing policies for the management of legal agent contracts and the processing of legal agent accounts

The audit included the operations and activities related to legal agents at headquarters and in three regional offices (British Columbia, Quebec, and Ontario). The planning and on-site examination phases of this audit were carried out between July and September 2010.

Details of the audit methodology employed are outlined in Appendix A.

1.3 Legal Agent Account Verification Process

All work performed by legal agents is done through a letter of appointment (LOA). Each LOA specifies the terms and conditions related to the appointment; the Statement of Work; the legal practitioners engaged to do the work; the rate of remuneration; frequency of billing, etc. In accordance with the contract, legal agents submit an account (invoice) for payment for work performed, which may be based on specified milestones/deliverables being achieved or on a frequency basis (i.e. monthly/quarterly). The Department of Justice is responsible for ensuring that the account is accurate, the work performed is complete, and the charges are reasonable for the work performed.

Upon receipt of a legal agent's account, the instructing counsel's legal assistant or paralegal taxes portions of the account against the terms and conditions stipulated in the LOA. This includes such tasks as determining that:

- all supporting documents are present;
- computation of charges is arithmetically correct;
- ineligible costs are not included;
- hourly rates are correct;
- approval is on file for days invoiced that exceed 10 hours;
- O&M expenditures over \$500 have been approved by Justice Canada;
- expenditures occurred within the period covered by the contract;
- legal agent practitioners billing are those named in the contract;
- travel rates are appropriate;
- the account has not been previously paid.

Upon completion of these tasks, the account is then passed to the instructing counsel who taxes the substantive portions of the account. This consists of a review of the reasonableness, accuracy, and completeness of the account against the contract's Statement of Work. A taxing stamp is applied to the legal agent account, which the instructing counsel signs and dates. Some instructing counsel use the iCase disbursements module to track the details of the legal agent account. However, this is at the discretion of the instructing counsel. In situations where iCase is used, the legal assistant enters the pertinent information from the taxed legal agent account into the module.

Once the account is taxed, the payment process will follow different steps depending on which organization is the client (i.e. Justice Canada or a client department). (For a graphic overview of the process described, see Chart 1 below.)

Payment process when Justice Canada is the client

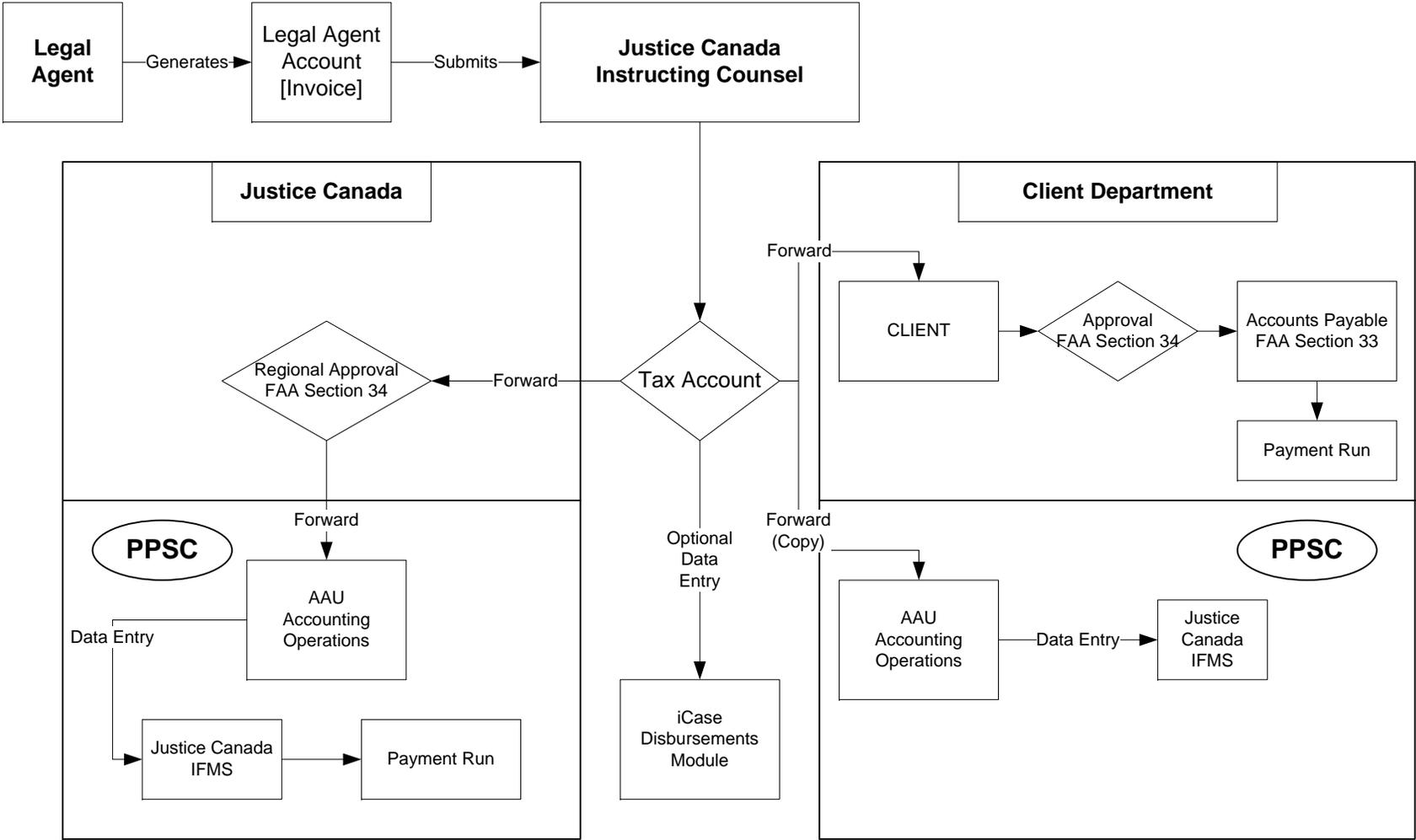
When Justice Canada is the client for a legal agent account, the instructing counsel forwards the taxed account to the regional manager who has appropriate FAA Section 34 signing authority for confirmation of the contract performance. This also provides an opportunity for the instructing counsel to discuss the project with the signing authority, as necessary. Once FAA Section 34 approval is granted, the original of the account is forwarded to the Agent Affairs Unit at PPSC (which provides corporate services to Justice Canada) for data entry in the Justice Canada IFMS and payment.

Payment process when a client department is paying the legal agent account

When another government department is the client that is paying the legal agent account, the instructing counsel forwards the taxed account to the client department³ for completion of FAA Section 34. In addition, two copies of the legal agent account are prepared. One is filed in the legal agent file in the regional legal portfolio and the other is sent to the PPSC Agent Affairs Unit for input into the Justice Canada IFMS.

³ In those cases where a client department has a Justice LSU, the taxed account is sent to the LSU, which then forwards it to the client for approval and payment.

Chart 1 - Legal Agent Account Verification and Processing



2. OBSERVATIONS – FINANCIAL CONTROL FRAMEWORK FOR ACCOUNT VERIFICATION

2.1 Policies, Procedures, and Guidelines

LPMC procedures regarding legal account verification need to be reviewed and updated and the importance of complying with these procedures communicated to the regional offices.

LPMC has made great strides in developing policies and directives for procuring and appointing legal agents and have successfully conveyed the requirements to the regional offices. However, with regard to legal agent account verification, LPMC needs to expand on the procedures they have developed by providing forms and checklists that serve the needs of all regional legal portfolios and by prescribing the use of the standard forms and checklists by the regional offices.

We found that regional legal portfolios have developed their own operational manuals, and have developed and customized their own forms. For example, the ORO uses an Imprest Cheque Voucher as an invoice transmittal form to PPSC rather than the standard memo provided by LPMC. In the BCRO the Checklist for Agent Account Review is significantly different from the Compliance and Verification Checklist provided by LMPC. We note that the BCRO checklist is more comprehensive than the checklist provided by LPMC. It requires that the legal agent provide a quarterly progress report on the file; that a running total of invoices received and available balance on the contract be maintained; and that staff verify by signature that iCase has been updated and the checklist is complete prior to the file being closed. In requiring the completion of the checklist before closing the file, the BCRO has been more prescriptive than LPMC. In the ORO and the QRO, checklists developed by LPMC to assist in taxing legal agent accounts are not on the files. In addition, the checklists used in the ORO and QRO are not as extensive as either the LPMC checklist or the BCRO checklist. As a result, evidence of financial monitoring as well as monitoring for performance milestones varies among the regions.

LPMC has provided a standard memo for transmitting taxing information to the client departments as well as to PPSC for data entry. We found there is inconsistent use of the standard

memo when transmitting the summary taxing information which could lead to errors in data capture and reporting. It is our opinion that LPMC should prescribe standard procedures, forms and checklists in relation to legal agent account verification that must be used by all regional offices. Regional compliance to these procedures would ensure that legal agent accounts are properly taxed; that data captured is complete and accurate; that reporting on the status of legal agent accounts is consistent; that file content is complete; and that a detailed audit trail is provided.

The audit team's review of the legal agent account verification process disclosed inconsistent use of a taxing stamp. Instructing counsel in the BCRO do not use a taxing stamp. The Legal Agent Supervisor or Senior Counsel is signing the standard memo developed by LPMC, which confirms that the invoice has been taxed, and is attaching it to the invoice. The standard memo is generally not signed by the instructing counsel who is responsible for taxing the account. A copy of the memo is attached to the invoice when it is forwarded to the client department and to PPSC. In the ORO and QRO, we found that staff generally apply a taxing stamp to the invoice when processing an agent account. However, when we reviewed the accounts in our sample, we found some instances where the taxing stamp had not been used and instead a memo had been attached to the taxed account.

In our opinion, it should be mandatory for all legal agent accounts to have a standard taxing stamp applied to the account. Unlike a cover letter, a taxing stamp cannot be separated from the invoice. The stamp should be signed and dated by the instructing counsel who is responsible for taxing the account. The use of the taxing stamp should be set out as a mandatory requirement in the procedures provided by LPMC.

Recommendations and Management Responses

1. It is recommended that the Director, LPMC, in consultation with the Chief Financial Officer, review and update procedures regarding account verification for use by all regional offices. (Medium Risk)⁴

Agreed. The LPMC, in consultation with the Chief Financial Officer Branch (CFOB), will review the account verification (taxation) procedures within this fiscal year (2011-2012). This will include the revision of all existing guidelines, forms, templates, and checklists used in the taxation process. Once the procedures have been finalized, they will form the basis for an operational Directive that will be implemented in all regional offices and legal services units across the Department.

⁴ The Risk Assessment Guidelines for Recommendations are found in Appendix B.

Timelines:

Review of the taxation procedures and drafting of the Directive: March 31, 2012

Implementation of the Directive and related training: June 30, 2012

2. It is recommended that the Director, LPMC, in consultation with the Chief Financial Officer, mandate the use of a standard taxing stamp on all legal agent accounts. (Medium Risk)

Agreed. The LPMC will mandate the use of a standard taxing stamp on all legal agent accounts. The LPMC will design the stamp and draft the relevant procedures in consultation with the CFOB. The requirement to comply with the use of the taxing stamp will be implemented by June 30, 2011 and will be communicated to relevant stakeholders by the ADAG, Litigation.

The mandatory use of the taxing stamp will also be referenced in the updated taxation procedures and integrated into the operational Directive described in our response to Recommendation 1.

Timelines:

Implementation of the new taxing stamp: June 30, 2011

2.2 Rates and Delegation

The hourly rate guidelines and the delegated approval authorities need to be reviewed and modified.

Guidelines for the hourly rates legal agents may be paid are set out on the Agent Affairs Program site on JUSnet. We found that these rates are well below current market rates, even for routine work. We were told that the low rates are affecting both the time it takes to engage a legal agent and the priority the agent subsequently gives the file.

Instructing counsel in the Public Safety, Defence and Immigration Section (PSDI) of the BCRO, who have a high volume of legal agent files, indicated that procedures require them to contact a minimum of three firms per file before selecting an agent. Typically, however, they must contact five or six firms before they can find an agent willing to undertake a file. The week prior to the audit interview, they had contacted approximately 15 firms for one file. Counsel also advised that legal agent rates are well below market rates and that this appears to be resulting in more

junior counsel being assigned to files. Instructing counsel in the Advisory Section of the Aboriginal Law Division in the ORO noted difficulties in engaging real estate counsel to act as agents because of the current fee guidelines. They advised that they could not obtain approval for an hourly rate higher than \$125 for real estate work, which is far below the normal market rate. As a result, they have difficulty engaging experienced real estate counsel to act as legal agents or, once appointed as agents, to complete the work in a timely manner. LPMC advised us that the regional perspective concerning the current hourly rate guidelines seems to point to a misunderstanding of how to apply competitive process and guidelines. Regional offices have been advised that the hourly rate guidelines serve only as a point of reference in establishing remuneration. Remuneration is determined on a case-by-case basis by taking into consideration a number of factors, such as complexity of the work, area(s) of expertise and level of experience required of counsel, urgency, and regional market in which services are required. Other factors may include: level of risk; level of effort required for counsel to become sufficiently familiar with key issues; political sensitivities and/or high public profile surrounding work in question; and remuneration paid in the context of previous agent appointments for the provision of similar services. LPMC indicated that, in moving forward in recent years with the introduction of competitive approaches for the identification and selection of legal agents, the fee guidelines have become a secondary factor in establishing remuneration.

Senior General Counsel have delegated authority to approve hourly rates for legal agents up to \$125/hour. Rates in excess of \$125 must be approved by the ADAG Litigation Branch, the Associate Deputy Minister, or the Deputy Minister. From our interviews we found that the process of sourcing and engaging legal agents could be streamlined if rates in excess of \$125 could be approved at the local level.

At the time of the audit, a review was under way to revise the hourly rate guidelines that assist in the establishment of legal agent remuneration. We were told that the hourly rate guidelines have not been increased since 1991/92. It should be noted that delegated approval authorities will need to increase accordingly.

Recommendation and Management Response

3. It is recommended that the Director, LPMC ensure that the hourly rate guidelines and the delegated approval authorities are reviewed and modified. (Low Risk)

Agreed. With the introduction in recent years of competitive processes for the selection of legal agents, the hourly rate guidelines have become a secondary factor in establishing remuneration as market forces come into play through the proposal process. The guidelines

remain relevant in the few cases where the work is assigned to an agent on a sole-source basis or further to a referral to the Minister of Justice.

The LPMC has started to work on the review of the hourly rate guidelines and the delegated approval authorities, and has also initiated consultations with relevant stakeholders with a view to finalizing recommendations for approval this fiscal year. We expect that amendments to the Department's *Supporting Notes to the Delegation of Financial Signing Authorities Chart*, and perhaps to the Chart itself, will be required by CFOB.

Timelines:

Review and recommendations: December 31, 2011

Amendments to Delegation Chart and Supporting Notes by CFOB: March 31, 2012

3. OBSERVATIONS – PROCESSES FOR VERIFYING AND DETERMINING ACCURACY OF LEGAL AGENT ACCOUNTS

3.1 Financial Monitoring of Legal Agent Accounts

Improvements in the written guidelines for financial monitoring of legal agent accounts and regional compliance to the guidelines are required.

LPMC has not been prescriptive enough in their written guidelines on instructing counsel's financial monitoring duties for legal agent accounts. Monitoring is an important tool for ensuring that oversight of legal agent accounts is carried out and appropriate information is collected. The requirements for financial monitoring should be well documented and the importance of regional compliance to those requirements must be clearly articulated by LMPC and understood by the regional legal service portfolios and instructing counsel

Although we found evidence of financial monitoring on each file examined, the methodology used by instructing counsel varied significantly, and as a result, financial monitoring was not consistent across all regions. Some instructing counsel in the regional portfolios are using the iCase disbursements module in conjunction with their own locally developed spreadsheets to monitor legal agent accounts. For example, both the PSDI in the BCRO and the Aboriginal Law Division in the ORO use the iCase disbursements module to track legal agent fees and disbursements. Each portfolio downloads the iCase information into a spreadsheet and then adds to this spreadsheet details from the contract (e.g. the value and term of the contract). In all regions, a summary of information from the contract is typically appended as a form to the legal agent account and is considered in the instructing counsel's review. This summary form varies in level of detail. In the ORO Business and Regulatory Law Division, for example, the form advises the instructing counsel of the contract amount expended to date and the percentage of the budget remaining, and also attests to such things as the counsel working on the case and the arithmetic correctness of the account. Other portfolios rely on LPMC to advise when the contract threshold has been reached.

We also found that the regional portfolios visited did not have a standardized approach to the timing and frequency of financial monitoring. Some portfolios monitor legal agent accounts immediately upon receipt of the legal agent invoice for taxation, others monitor on a monthly basis, and yet others request legal agents to provide the portfolio with quarterly reports on legal agent fees and disbursements.

LPMC needs to provide comprehensive and specific written guidance on the requirements for financial monitoring of legal agent accounts and instructing counsel within the regional portfolios need to demonstrate compliance to the guidelines by performing consistent and complete financial monitoring on all legal agent accounts. Monitoring information should include, for example, the various types of data required by both the regions and LPMC (e.g. total of disbursements or professional fees, agent's years of experience), date the file is closed, changes in personnel or rates of remuneration, etc. Other important monitoring information could include changes in the circumstances of a case that may have contract implications (e.g. delay in court proceedings or early resolution of a case).

Recommendation and Management Response

4. It is recommended that the Director, LPMC strengthen the written guidelines for the financial monitoring legal agent accounts. (Medium Risk)

Agreed. The LPMC will strengthen the written guidelines for the financial monitoring of legal agent accounts. This will be undertaken in conjunction with the review of the taxation procedures, which will be completed within this fiscal year, as referenced in our response to Recommendation 1.

Timelines:

Review of the written guidelines and drafting of the Directive: March 31, 2012

Implementation of the Directive and related training: June 30, 2012

Payment of legal agent accounts by the client department is often late, resulting in Justice Canada receiving overdue account notices.

The Treasury Board Directive on Payment Requisitioning and Cheque Control stipulates that accounts should be processed in a timely and accurate manner. The directive stipulates that an account rendered for payment by a supplier of goods and services is to be paid within 30 days of receipt. The directive also states that when gaps in performance are observed, corrective action must be undertaken to ensure compliance with the directive.

Our analysis of a sample of transactions confirmed that, from the date of receipt of a legal agent account (invoice) at Justice Canada to the time the payment is made by the client department, normally more than 30 days have passed. We found that there are no performance standards in place at Justice Canada stating the required timelines for taxing of an account. Some legal agent accounts were forwarded to clients for payment as quickly as four days after receipt of the account, while others took as long as 28 days. However, we were told that it takes on average 15 to 20 days after a taxed account has been received from Justice Canada for the client department to process the account for payment. As a result, the payment made by the client department is often late and the legal agent sends an overdue account notice to Justice Canada. This often includes interest charges for late payment. The overdue account notice then needs to be reviewed by Justice Canada before it is provided to the client department. In one file examined, we found accounts overdue by four months as well as several overdue account notices sent to Justice Canada that were subsequently forwarded to the client department for action. The audit did not include an examination of the payment processes of client departments.

In our view, LPMC needs to establish standards for instructing counsel to tax and forward the legal agent accounts to client departments. These standards should take into consideration the average time taken by client departments to process a payment. Such standards would provide greater assurance that the requirements of the Treasury Board Directive will be met.

Recommendation and Management Response

5. It is recommended that the Director, LPMC institute service standards for instructing counsel to tax and forward legal agent accounts. (Medium Risk)

Agreed. The LPMC will develop service standards expected of instructing counsel in completing the taxation process. The requirement to comply with the service standards will be implemented by June 30, 2011 and will be communicated to all relevant stakeholders by the ADAG, Litigation. The service standards will also be integrated in the updated taxation procedures that will form an integral part of the operational Directive referenced in our response to Recommendation 1.

Timelines:

Implementation of taxation service standards: June 30, 2011

3.2 Reporting on Legal Agent Accounts

There is a need to establish additional regional reporting requirements for legal agent account activity.

With regard to legal agent activities, LPMC maintains reports that provide summary and detailed data on, for example, the number and type of sole-source and competitive contracts being awarded, the contract value, the legal agents engaged, the client served, and the portfolio involved. When LPMC requires additional information on legal agent accounts to address ATIP and senior management requests, it asks for ad hoc reports from instructing counsel in the regions. We were told that no routine regional reports on legal agent accounts are provided to LPMC. Requesting reports on an ad hoc basis is time-consuming and may result in the information not being provided in a timely manner.

LPMC also uses the IFMS to obtain information on legal agent accounts. The IFMS is LPMC's primary tool for financial monitoring account activity and provides reports on the disbursements and fees paid against each legal agent contract. Although LPMC requires the regions to submit copies of taxed invoices so that expenditure information can be captured in the IFMS system, LPMC staff expressed concern that legal agent account data entered in the IFMS is not validated for completeness or accuracy. Most instructing counsel in the regions do not have access to the IFMS and therefore cannot validate information entered. LPMC staff indicated that, as a result, at various stages of the appointment they complete a reporting template developed by LPMC to check whether the legal agent account has been entered in the IFMS by PPSC. If the account has not been entered in the IFMS, LPMC staff contact the instructing counsel in the region to verify the status of the account.

We were told there is no requirement for instructing counsel to inform LPMC when a legal agent file has been closed and there are no means by which LPMC can gather this information from the IFMS. LPMC confirmed with the audit team that account reviews conducted by LPMC found that not all legal agent accounts sent to client departments for payment had been entered into the IFMS by PPSC.

During the audit, we selected 13 legal agent contracts from the IFMS. These contracts amounted to \$332,372 of expenditures during the period April 1, 2009 to March 31, 2010 and reflected the three regions audited. A comparison was made between the amounts client departments had paid and the amounts entered into the IFMS. For these 13 contracts, we found no duplicate payments or overpayments. However, we found a discrepancy of \$83,741 between the amounts that client departments had actually paid and the amounts recorded into the IFMS in the same period.

Moreover, in nine instances, the IFMS did not reflect the full amounts paid by the client departments. In our opinion, without periodic reporting from the regional legal portfolios, LPMC has no assurance that the information in the IFMS is complete.

LPMC is aware of the issues associated with reporting and advised the audit team that there are plans to develop the reporting component of the Agent Affairs Program with a view to having a complete reporting system in place over the next fiscal year. The audit team supports this planned initiative. In our view, regions need to provide LPMC with formal, periodic status reports on legal agent accounts. This will ensure that LPMC receives a reliable and complete source of data for reporting purposes.

Recommendation and Management Response

6. It is recommended that the Director, LPMC, establish additional regional reporting requirements for legal agent account activity. (Medium Risk)

Agreed. The Department uses two systems for recording legal agent information: IFMS, for financial reporting, and iCase, for substantive case management including the monitoring of legal agent appointment activities. To date, the emphasis has been on the use of IFMS to track legal agent activities.

The LPMC is currently exploring how to optimize the use of iCase to facilitate the monitoring and reporting of overall legal agent activities. The LPMC will be identifying standard data elements pertaining to legal agent appointments that regional offices and legal services units will be required to capture in iCase. The use of iCase will facilitate LPMC's capacity for centralized monitoring and reporting of overall legal agent appointment activities and provide a means for LPMC to validate and reconcile the financial data being captured in IFMS. The requirement for standard data capture will be broadly communicated through the existing iCase channels by September 30, 2011.

In addition, all functions pertaining to data entry and reporting in IFMS, which are currently being performed by PPSC, will be transferred to Justice Canada operations as referenced in Recommendation 10. As some of these transferred functions will be performed by the LPMC, this will provide the LPMC with more direct control over agent account activity and the financial information being recorded in IFMS. IFMS remains the system of record in respect of the financial monitoring and reporting of legal agent activities. Discussions are currently ongoing to ensure that we make optimal use of IFMS in that context, as referenced below in our response to Recommendation 7.

Timelines:

Implementation of data capture standards in iCase: September 30, 2011

Implementation of validation and reconciliation process: March 31, 2012

3.3 Use of iCase for Financial Monitoring and Reporting

There is a need to determine whether iCase could be used for financial monitoring and reporting of all legal agent accounts.

iCase is a web-based legal information management system that provides timekeeping, billing, case management, document management, and case-reporting functions for headquarters, regional legal portfolios, and LSUs. We were told that legal agent case files can be identified in iCase, and for each case, there is a disbursements module that may be used to track agent fees and disbursements. While the use of iCase is required for all legal files, LPMC has not made the use of the iCase disbursements module mandatory to track legal agent accounts. Instructing counsel may or may not use the disbursements module at their discretion.

We found that several regional legal portfolios use the iCase disbursements module as their primary tracking and financial monitoring tool for legal agent accounts. After each legal agent account has been taxed by the instructing counsel, the totals of fees and disbursements are entered into iCase using the disbursements module, which enables immediate validation of data. Additional account fee and disbursement details (e.g. printing charges) are available in the legal agent hard copy file. As the majority of instructing counsel do not have access to IFMS, they monitor the file and print routine iCase reports on the amount billed to date by the legal agent. We found that the regional legal portfolios supplement the iCase report with additional data from locally developed spreadsheets. Instructing counsel noted that several improvements could be made to iCase that would eliminate the need for these spreadsheets.

In our view, consideration should be given to using iCase for financial monitoring and reporting of all legal agent accounts.

Recommendation and Management Response

7. It is recommended that the Director, LPMC, in consultation with the Chief Financial Officer, consider and determine whether iCase could be used for financial monitoring and reporting of all legal agent accounts. (Medium Risk)

Agreed. The Department uses two systems for recording legal agent information: IFMS, for financial reporting, and iCase, for substantive case management including the monitoring of legal agent appointment activities.

The LPMC and CFOB have had several discussions regarding the use of iCase as the financial monitoring tool for legal agent accounts. Further to these consultations, LPMC and CFOB have agreed that the Department's system of record in respect of the financial monitoring and reporting of legal agent activities should remain in IFMS. Continued discussions will take place to ensure that we make optimal use of IFMS in the financial monitoring and reporting of legal agent accounts.

As described in our response to Recommendation 6, the LPMC is currently exploring the use of iCase as the system in which regional offices and legal services units can capture standard data elements pertaining to legal agent appointments and related accounts. This improved use of iCase will provide the LPMC with a means of validating and reconciling the financial data being captured and support financial reporting through IFMS.

Timelines:

Consideration of the use of iCase for financial monitoring: Completed

Optimization of the use of IFMS: September 30, 2011

4. OBSERVATIONS –TAXING LEGAL AGENT ACCOUNTS

4.1 Consistency in Taxing Legal Agent Accounts

Legal agent accounts are taxed in a consistent manner.

Our review of a sample of legal agent contracts demonstrated that legal agent accounts are being taxed in a consistent manner. We surveyed four client departments and found that taxed accounts are accepted as rendered. In the sample of transactions reviewed, there was no instance of a client requesting an adjustment to a taxed account. We found instructing counsel were knowledgeable in taxing legal agent accounts and were experienced in verifying that the time charged by legal agents was appropriate to the work accomplished.

The sample of transactions examined indicated that each legal agent account was verified for the hourly rates charged; that the practitioners working on the file were authorized; and that criteria related to disbursements and hours worked per day were in compliance with the legal agent contract terms and conditions. We found evidence that checks were made to ensure that the computation of charges was arithmetically correct; that the account was monitored against payments to date; and that where adjustments to the account were required, appropriate documentation was on file.

4.2 File Structure for Legal Agent Account Files

LPMC needs to develop a standard file structure for legal agent account files for use by all regional offices.

When a legal agent is assigned to a case, a paper file is opened to store financial and appointment documentation. This file should be kept current and should contain all relevant information for financial and appointment monitoring purposes. Appointment monitoring information in the file should include documentation to support outsourcing approvals, security clearance approvals, notifications and approvals of amendments related to personnel working on the mandate and

their per diem rates, a copy of the appointment and any subsequent amendments, as well as a record of all important communications related to the letting of the contract and contract implementation. For financial monitoring, the file should include a checklist of the steps involved in verifying each financial transaction, a copy of the taxed account and letters of transmittal, and any other financial information related to the appointment (e.g. the amount expended to date, balance remaining on contract for current and subsequent years, and any changes in rates or personnel).

We found that LPMC has not developed guidelines for the file structure of documents pertaining to legal agent accounts. LPMC has developed a Compliance and Verification Checklist for financial transactions; however, not all regional offices use the checklist and the checklist is not comprehensive.

The use of a standard file structure for legal agent account files maintained in the legal service portfolios, including a detailed checklist, would help to ensure that information pertaining to financial transactions as well as other relevant information is included in the file. With respect to files where Justice Canada is responsible for paying the legal agent, we found some instances where copies of legal agent accounts with the FAA Section 34 approval were not retained on the regional file. We also found one instance of a duplicate payment in the amount of \$231.38 that was made by the ORO. These situations may have been avoided if a standard file structure and detailed checklist had been used.

Recommendation and Management Response

8. It is recommended that the Director, LPMC develop a standard file structure for legal agent account files for use by all regional offices. (Medium Risk)

Agreed. The LPMC will develop a standard file structure prescribing the content of the legal agent files maintained in regional offices or legal services units. The requirement to comply with the established standard file structure will be implemented by June 30, 2011 and will be communicated to relevant stakeholders by the ADAG Litigation.

This file structure will also be referenced in the updated taxation procedures and integrated into the operational Directive described in our response to Recommendation 1.

Timelines:

Implementation of the standard file structure: June 30, 2011

5. OBSERVATIONS – PROCESSING OF LEGAL AGENT ACCOUNTS FOR PAYMENT

5.1 Account Payment Process

The payment process for legal agent accounts could be improved.

During the audit we identified two issues that would improve the processing of legal agent accounts: a requirement to use the standard transmittal letter to ensure that consistent and correct information can easily be identified by PPSC and client departments, and the need for LPMC to receive confirmation that transactions have been entered into the IFMS.

Legal agents use their own invoice forms when submitting accounts for payment. As a result, the presentation and level of detail of the information on taxed accounts that are forwarded to PPSC and client departments varies widely. Some invoices may include as many as 30 pages of detailed charges. The variations could lead to errors when the invoice data is entered into the IFMS by PPSC or reviewed for payment by the client. In our view, the use of the standard transmittal form that presents the key information from the account would simplify data capture and improve data integrity.

There is no means by which LPMC or instructing counsel in the regional portfolios can know whether a legal agent account has been entered into the Justice IFMS. Most instructing counsel do not have access to IFMS and therefore cannot confirm that legal agent accounts forwarded to PPSC have been entered in the IFMS. Furthermore, PPSC does not confirm with regional portfolios that legal agent accounts have been received and entered into the Justice IFMS. Consequently, when a report from IFMS is produced, LPMC cannot be certain that the information is up-to-date; that all legal agent accounts taxed have been submitted to PPSC and that those received have been input; or that the accounts entered are accurate. A procedure should be established that would allow regional portfolios to routinely confirm that information sent to PPSC has been accurately entered in the IFMS in a timely fashion.

Recommendation and Management Response

9. It is recommended that the Director, LPMC discuss with the Chief Financial Officer opportunities to improve the payment process. (Medium Risk)

Agreed. The LPMC has discussed the payment process with the CFOB and some initiatives have already been identified to improve the payment process.

The function pertaining to the processing for payment of Justice-paid legal agent accounts, currently being performed by PPSC on behalf of Justice Canada, will be transferred to Justice Canada operations effective May 31, 2011. This will enable Justice Canada to exercise control over the timely payment of the accounts that are the responsibility of the Department.

The requirement to use a standard transmittal form that presents key information from the legal agent account to simplify the data capture and improve data integrity does exist, but compliance by regional offices and legal services units must be encouraged and monitored. The LPMC will make the use of the transmittal form mandatory as part of the review of the taxation procedures and resulting Directive referenced in our response to Recommendation 1.

The LPMC will be developing service standards expected of instructing counsel in completing the taxation process and implementing the requirement for compliance by June 30, 2011, as described in our response to Recommendation 5.

Timelines:

Discussion of opportunities with CFOB: Completed

Transfer of functions from PPSC to Justice Canada: May 31, 2011

Implementation of taxation service standards: June 30, 2011

Review of taxation procedures and drafting of Directive: March 31, 2012

Implementation of the Directive and related training: June 30, 2012

6. OBSERVATIONS – MEMORANDUM OF UNDERSTANDING

6.1 Memorandum of Understanding for Services PPSC Provides to Justice Canada

A Memorandum of Understanding for the services PPSC provides to Justice Canada is required and responsibility for FAA Section 33 needs to be assigned.

On December 12, 2006, the PPSC was formed as a new department of the Government of Canada. It replaced the former Federal Prosecution Service of the Department of Justice.

Justice Canada has a Memorandum of Understanding (MOU) with the PPSC for the services the Department provides to PPSC. However, a similar MOU for work PPSC performs on behalf of Justice Canada has not been developed.

PPSC provides services to Justice Canada with respect to legal agent appointments by Justice Canada. The services provided vary depending on whether the legal agent work was performed for Justice Canada or for other government departments.

When Justice Canada is the client, PPSC enters the legal agent account (invoice) information into the Justice Canada IFMS for tracking purposes and arranges for payment. We were advised that PPSC verifies the legal agent accounts to ensure that they have been taxed; that FAA Section 34 has been signed off by an authorized person in Justice Canada; and that the total amounts (for fees and disbursements) are accurate. We learned, however, that neither Justice Canada nor PPSC signs for FAA Section 33. PPSC advised that it was under the impression that FAA Section 33 payment authority was being performed by Justice Canada. Justice Canada advised that it was under the impression that PPSC was performing FAA Section 33, because PPSC was arranging for payment of legal agent invoices on behalf of Justice Canada.

For client departments other than Justice Canada, PPSC enters the legal agent account into the Justice Canada IFMS for tracking purposes. Client departments perform FAA Section 34 and Section 33.

The Payment Authority under Section 33 of the FAA is generally delegated to financial officers. This delegation ensures that all payments and other charges requisitioned against the Consolidated Revenue Fund are timely, properly authorized, and legal. As far as we could determine, signing authority under FAA Section 33 has not been delegated to PPSC with respect to legal agent work paid for by Justice Canada.

In our opinion, an MOU outlining the services PPSC provides to Justice Canada with respect to legal agent accounts is required. The MOU should describe the specific responsibilities PPSC will perform on behalf of Justice Canada and assign responsibility for FAA Section 33.

Recommendation and Management Response

10. It is recommended that the Chief Financial Officer develop an MOU to identify the services to be provided by PPSC on behalf of Justice Canada with respect to legal agent work and determine who will sign off under FAA Section 33.

We agree that an MOU was required; however, as of May 31, 2011, all functions pertaining to data entry, reporting, and processing for payment of legal agent accounts, which are currently being performed by PPSC on behalf of Justice Canada, will be transferred into Justice Canada operations. CFOB will undertake the processing of Justice-paid legal agent accounts, and specifically, the associated sign-off under section 33 of the FAA.

Accordingly, an MOU will no longer be required.

Timelines:

Transfer of functions from PPSC to Justice Canada: May 31, 2011

7. RECOMMENDATIONS AND MANAGEMENT RESPONSES

- 1. It is recommended that the Director, LPMC, in consultation with the Chief Financial Officer, review and update procedures regarding account verification for use by all regional offices. (Medium Risk).....8**

Agreed. The LPMC, in consultation with the Chief Financial Officer Branch (CFOB), will review the account verification (taxation) procedures within this fiscal year (2011-2012). This will include the revision of all existing guidelines, forms, templates, and checklists used in the taxation process. Once the procedures have been finalized, they will form the basis for an operational Directive that will be implemented in all regional offices and legal services units across the Department.

Timelines:

Review of the taxation procedures and drafting of the Directive: March 31, 2012

Implementation of the Directive and related training: June 30, 2012

- 2. It is recommended that the Director, LPMC, in consultation with the Chief Financial Officer, mandate the use of a standard taxing stamp on all legal agent accounts. (Medium Risk).....9**

Agreed. The LPMC will mandate the use of a standard taxing stamp on all legal agent accounts. The LPMC will design the stamp and draft the relevant procedures in consultation with the CFOB. The requirement to comply with the use of the taxing stamp will be implemented by June 30, 2011 and will be communicated to relevant stakeholders by the ADAG, Litigation.

The mandatory use of the taxing stamp will also be referenced in the updated taxation procedures and integrated into the operational Directive described in our response to Recommendation 1.

Timelines:

Implementation of the new taxing stamp: June 30, 2011

3. It is recommended that the Director, LPMC ensure that the hourly rate guidelines and the delegated approval authorities are reviewed and modified. (Low Risk)10

Agreed. With the introduction in recent years of competitive processes for the selection of legal agents, the hourly rate guidelines have become a secondary factor in establishing remuneration as market forces come into play through the proposal process. The guidelines remain relevant in the few cases where the work is assigned to an agent on a sole-source basis or further to a referral to the Minister of Justice.

The LPMC has started to work on the review of the hourly rate guidelines and the delegated approval authorities, and has also initiated consultations with relevant stakeholders with a view to finalizing recommendations for approval this fiscal year. We expect that amendments to the Department's *Supporting Notes to the Delegation of Financial Signing Authorities Chart*, and perhaps to the Chart itself, will be required by CFOB.

Timelines:

Review and recommendations: December 31, 2011

Amendments to Delegation Chart and Supporting Notes by CFOB: March 31, 2012

4. It is recommended that the Director, LPMC strengthen the written guidelines for the financial monitoring legal agent accounts. (Medium Risk)14

Agreed. The LPMC will strengthen the written guidelines for the financial monitoring of legal agent accounts. This will be undertaken in conjunction with the review of the taxation procedures, which will be completed within this fiscal year, as referenced in our response to Recommendation 1.

Timelines:

Review of the written guidelines and drafting of the Directive: March 31, 2012

Implementation of the Directive and related training: June 30, 2012

5. It is recommended that the Director, LPMC institute service standards for instructing counsel to tax and forward legal agent accounts. (Medium Risk)15

Agreed. The LPMC will develop service standards expected of instructing counsel in completing the taxation process. The requirement to comply with the service standards will be implemented by June 30, 2011 and will be communicated to all relevant

stakeholders by the ADAG, Litigation. The service standards will also be integrated in the updated taxation procedures that will form an integral part of the operational Directive referenced in our response to Recommendation 1.

Timelines:

Implementation of taxation service standards: June 30, 2011

6. It is recommended that the Director, LPMC, establish additional regional reporting requirements for legal agent account activity. (Medium Risk)17

Agreed. The Department uses two systems for recording legal agent information: IFMS, for financial reporting, and iCase, for substantive case management including the monitoring of legal agent appointment activities. To date, the emphasis has been on the use of IFMS to track legal agent activities.

The LPMC is currently exploring how to optimize the use of iCase to facilitate the monitoring and reporting of overall legal agent activities. The LPMC will be identifying standard data elements pertaining to legal agent appointments that regional offices and legal services units will be required to capture in iCase. The use of iCase will facilitate LPMC's capacity for centralized monitoring and reporting of overall legal agent appointment activities and provide a means for LPMC to validate and reconcile the financial data being captured in IFMS. The requirement for standard data capture will be broadly communicated through the existing iCase channels by September 30, 2011.

In addition, all functions pertaining to data entry and reporting in IFMS, which are currently being performed by PPSC, will be transferred to Justice Canada operations as referenced in Recommendation 10. As some of these transferred functions will be performed by the LPMC, this will provide the LPMC with more direct control over agent account activity and the financial information being recorded in IFMS. IFMS remains the system of record in respect of the financial monitoring and reporting of legal agent activities. Discussions are currently ongoing to ensure that we make optimal use of IFMS in that context, as referenced below in our response to Recommendation 7.

Timelines:

Implementation of data capture standards in iCase: September 30, 2011

Implementation of validation and reconciliation process: March 31, 2012

- 7. It is recommended that the Director, LPMC, in consultation with the Chief Financial Officer, consider and determine whether iCase could be used for financial monitoring and reporting of all legal agent accounts. (Medium Risk).....19**

Agreed. The Department uses two systems for recording legal agent information: IFMS, for financial reporting, and iCase, for substantive case management including the monitoring of legal agent appointment activities.

The LPMC and CFOB have had several discussions regarding the use of iCase as the financial monitoring tool for legal agent accounts. Further to these consultations, LPMC and CFOB have agreed that the Department's system of record in respect of the financial monitoring and reporting of legal agent activities should remain in IFMS. Continued discussions will take place to ensure that we make optimal use of IFMS in the financial monitoring and reporting of legal agent accounts.

As described in our response to Recommendation 6, the LPMC is currently exploring the use of iCase as the system in which regional offices and legal services units can capture standard data elements pertaining to legal agent appointments and related accounts. This improved use of iCase will provide the LPMC with a means of validating and reconciling the financial data being captured and support financial reporting through IFMS.

Timelines:

Consideration of the use of iCase for financial monitoring: Completed

Optimization of the use of IFMS: September 30, 2011

- 8. It is recommended that the Director, LPMC develop a standard file structure for legal agent account files for use by all regional offices. (Medium Risk).....22**

Agreed. The LPMC will develop a standard file structure prescribing the content of the legal agent files maintained in regional offices or legal services units. The requirement to comply with the established standard file structure will be implemented by June 30, 2011 and will be communicated to relevant stakeholders by the ADAG Litigation.

This file structure will also be referenced in the updated taxation procedures and integrated into the operational Directive described in our response to Recommendation 1.

Timelines:

Implementation of the standard file structure: June 30, 2011

9. It is recommended that the Director, LPMC discuss with the Chief Financial Officer opportunities to improve the payment process. (Medium Risk)24

Agreed. The LPMC has discussed the payment process with the CFOB and some initiatives have already been identified to improve the payment process.

The function pertaining to the processing for payment of Justice-paid legal agent accounts, currently being performed by PPSC on behalf of Justice Canada, will be transferred to Justice Canada operations effective May 31, 2011. This will enable Justice Canada to exercise control over the timely payment of the accounts that are the responsibility of the Department.

The requirement to use a standard transmittal form that presents key information from the legal agent account to simplify the data capture and improve data integrity does exist, but compliance by regional offices and legal services units must be encouraged and monitored. The LPMC will make the use of the transmittal form mandatory as part of the review of the taxation procedures and resulting Directive referenced in our response to Recommendation 1.

The LPMC will be developing service standards expected of instructing counsel in completing the taxation process and implementing the requirement for compliance by June 30, 2011, as described in our response to Recommendation 5.

Timelines:

Discussion of opportunities with CFOB: Completed

Transfer of functions from PPSC to Justice Canada: May 31, 2011

Implementation of taxation service standards: June 30, 2011

Review of taxation procedures and drafting of Directive: March 31, 2012

Implementation of the Directive and related training: June 30, 2012

10. It is recommended that the Chief Financial Officer develop an MOU to identify the services to be provided by PPSC on behalf of Justice Canada with respect to legal agent work and determine who will sign off under FAA Section 33.....26

We agree that an MOU was required; however, as of May 31, 2011, all functions pertaining to data entry, reporting, and processing for payment of legal agent accounts, which are currently being performed by PPSC on behalf of Justice Canada, will be transferred into Justice Canada operations. CFOB will undertake the processing of

Justice-paid legal agent accounts, and specifically, the associated sign-off under section 33 of the FAA.

Accordingly, an MOU will no longer be required.

Timelines:

Transfer of functions from PPSC to Justice Canada: May 31, 2011

APPENDIX A – METHODOLOGY

The criteria for the audit were based on the *Guidance on Assessing Control* issued by the Criteria of Control Board (CoCo) of the Canadian Institute of Chartered Accountants, the TBS *Management Accountability Framework* (MAF), and other TBS guidance on auditing management frameworks.

The audit methodology consisted of:

- an analysis of the management and financial control framework in place using a risk-based approach related to key elements of the framework;
- a review of relevant policies at the departmental and central agency level;
- preparing a detailed audit program with criteria;
- interviewing the following stakeholder groups:
 - LPMC and CFO Branch staff at HQ;
 - staff at the British Columbia, Ontario, and Quebec regional offices;
 - PPSC and LSU staff involved in processing legal agent accounts.
- selecting a transaction sample:

For fiscal year 2009-10 the Department of Justice statistical sampling (IDEA) system was used to select a transaction sample using the statistical parameters of a 95% confidence level with an approximate error rate of 5%. This resulted in the selection of 128 transactions with an amount for fees or disbursements, or as was the case in the majority of transactions, an amount for both fees and disbursements. A template was developed to assess the reasonableness of each transaction by ensuring such things as:

 - there is compliance with the terms and conditions of appointment;
 - appropriate rates of remuneration have been applied;
 - all fees charged are reasonable and necessary in the delivery of the mandated legal services;
 - all activities have been properly itemized;
 - case and billing numbers are appropriately inscribed on the account;
 - all disbursements have been itemized and recorded against the appropriate file;
 - all disbursements charged are reasonable and necessary, appropriately approved, and supported by receipts as required;

- all amounts have been correctly totalled;
- GST/HST has been appropriately applied on fees and disbursements;
- the account has been properly certified by the legal agent.
- reviewing the following documents:
 - business plans, audits, MOUs, reports, and written procedures;
 - policies and procedures within each regional office related to legal agent accounts;
 - accounting/charging and file procedures;
 - internal reporting procedures aimed at providing LPMC management with timely and accurate information on services to departments/agencies and associated costs.

The audit was undertaken in a manner consistent with the Treasury Board *Policy on Internal Audit* and related guidelines and procedures, and with generally accepted auditing standards.

APPENDIX B – RISK ASSESSMENT GUIDELINES FOR AUDIT RECOMMENDATIONS

Examples of criteria used for assessing the risk level of audit recommendations are outlined below:

Assessment	Criteria
High	<ul style="list-style-type: none"> • Controls are not in place or are inadequate. • Compliance with legislation and regulations is inadequate. • Important issues are identified that impact the achievement of program/operational objectives.
Medium	<ul style="list-style-type: none"> • Controls are in place but are not being sufficiently complied with. • Compliance with central agency/departmental policies and established procedures is inadequate. • Issues are identified that impact the efficiency and effectiveness of operations
Low	<ul style="list-style-type: none"> • Controls are in place but the level of compliance varies. • Compliance with central agency/departmental policies and established procedures varies. • Opportunities are identified that could enhance operations.

It should be noted that, in applying the above criteria to a recommendation, Internal Audit Branch takes into consideration the nature, scope, and significance of the audit finding(s), the impact of the recommendation on the organization, and the auditors' professional judgment.