



TAX LAW SERVICES PORTFOLIO OFFICE

July 2011

Internal Audit Branch

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STATEMENT OF ASSURANCE

We have completed the internal audit of Tax Law Services Portfolio Office in the Department of Justice. The overall objective of this audit was to provide assurance that the management framework within which the Tax Law Services Portfolio Office operates 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 TLS Portfolio Office is fulfilling all functional and operational responsibilities with respect to the CRA LSU and the TLS – Ottawa Section. The satisfaction of the client with the services provided by the Portfolio was ranked as excellent in terms of responsiveness, usefulness, and timeliness. Identified good practices related to the single point of contact with the client, the canvassing of other sections of the Department when preparing the business plan, and the monitoring of service standards. We noted, however, some areas for improvement: communicating to litigation counsel the role of the CRA LSU and the services it provides, and implementing the Management Sector recommendation regarding increasing the size of the BMS workforce.

BACKGROUND

The Tax Law Services (TLS) Portfolio provides legal services to a single client, the Canada Revenue Agency (CRA), through regional TLS sections as well as a legal services unit (LSU) co-located with the CRA. The TLS Portfolio provides integrated litigation and advisory services in all areas of tax law as well as other practice areas relevant to the CRA, such as administrative law, corporate governance, and civil litigation. Legal services support the CRA in administering tax and benefit programs and in ensuring compliance across Canada.

The TLS Portfolio Office, located in Ottawa, is headed by the Assistant Deputy Attorney General (ADAG), supported by two Associate ADAGs (Tax Assessment Matters, and Collections and Civil Matters), the Senior Counsel Advisor to the ADAG, and the Director of the Business Management Section. The TLS Portfolio Office has functional and operational responsibilities with respect to the CRA LSU and the TLS – Ottawa Section.

This audit focused on reviewing and assessing the adequacy of the leadership role played by the TLS Portfolio Office in relation to strategic, operational, and other issues affecting units in the Portfolio. The audit examined the appropriateness of mechanisms related to planning, communicating, and controlling the advice and direction provided by the TLS Portfolio Office to

the regional TLS sections and the CRA LSU, and its interfaces with other sectors in the Department of Justice. The scope of the audit was limited to include the operations and activities of the TLS Portfolio Office as well as linkages with the CRA LSU, the TLS – Ottawa Section, and two regional TLS sections: the Prairie Region and the Ontario Region.

MANAGEMENT FRAMEWORK

Governance and Strategic Direction

The main governance and oversight body of the TLS Portfolio Office is the National Tax Board of Directors (NTBD), which serves as the primary forum of consultation and strategic decision making. Processes have been put in place to actively monitor the Portfolio integrated planning processes to support the key information documents used by the NTBD. The ADAG, TLS Portfolio chairs the NTBD and participates on departmental governance bodies, while NTBD members (including regional TLS directors) also participate on key departmental committees. This ensures that all aspects of departmental and Portfolio initiatives are considered in the governance of the TLS Portfolio.

Organizing

The Business Management Section (BMS) of the TLS Portfolio provides corporate services and reports on the full range of services (including cost recovery activities) provided by the Department of Justice to the CRA, not just those of the TLS Portfolio organizations. Continuing initiatives to reduce the volume and cost of legal services require the BMS to develop monitoring and management reporting procedures. Additional resources received by the BMS since 2006 have been largely devoted to addressing the increased requirements of accountability and have not addressed the workforce gap related to preparing the specialized reports to support the work of the Portfolio and the NTBD. A recent assessment of the resource requirements of the BMS undertaken as part of the Department’s corporate services “footprint” exercise recommended the creation of a senior position to meet the increased range of support requirements. Our review of the organization and workload of the BMS supports this recommendation.

Controlling

The TLS Portfolio has established service standards that set out the commitment of the TLS Portfolio to provide clear and practical guidance on resolving legal issues and the identification of opportunities to implement policies and programs by administrative rather than legislative or regulatory means. The service standards are detailed in the Department’s MOU with the CRA

and have been published and disseminated in brochure format within the Portfolio and made available throughout CRA.

The TLS Portfolio Office is responsible for the processing and assignment of approximately 1,800 General Procedure files each year. The management processes established for these files are effective and coordinated, and enable information to be quickly disseminated throughout the TLS Portfolio, thereby ensuring the consistency of the Department's legal position.

Leading, Communicating, and Professional Development

We found that communication is timely, accurate, and appropriate in achieving planned goals and priorities. In addition to the various committees of the Portfolio, which provide forums for discussion and decision, the ADAG and Associate ADAGs have an open-door policy and hold monthly one-on-ones with direct reports to provide an opportunity to discuss Portfolio matters and address specific issues.

A web-based application known as Fiscal Path developed for the TLS Portfolio is effectively serving as the main communication tool of the Portfolio. Fiscal Path provides access to all of the policies, procedures, and processes specific to the Portfolio as well as tax discussion blogs and links to pertinent sites used by Portfolio staff (e.g. GASPARD, the Federal Tax Court, the CRA).

With respect to professional development, the TLS Portfolio has entered into an MOU with the CRA (Compliance Programs Branch) that provides counsel and CRA tax professionals access to the training opportunities provided by each organization. Three specific programs have been implemented to support the TLS Portfolio's strategic focus on professional development including the National Tax Training and Development Program, the Twinning Program, and the Mobility Program.

In our opinion, the TLS Portfolio Office is providing effective leadership, communication, and appropriate professional development opportunities.

COMMUNICATIONS WITH LSU AND REGIONS

The CRA LSU's role is to provide the client with legal advisory services and corporate counsel. The CRA LSU has 20 active service teams addressing specialized tax issues such as GST, Excise, Trusts, International Tax, and Tax Collections. We reviewed the Fiscal Path information regarding the LSU and found that more detailed descriptions of the role and services the LSU provides is needed. In addition, the topic areas addressed by the LSU's service teams require elaboration and should highlight the specific areas of expertise of LSU counsel.

ADVISORY SERVICES

A Pilot Project with the International and Large Business Directorate (ILBD) of the CRA's Compliance Programs Branch seeks to expand the use of advisory services prior to litigation. The MOU and Operational Guidelines for the pilot project provide for legal advice and legal assistance for significant cases, issues, and trends, and establish the arrangements for consultation and formal review. Such advisory services ensure that appropriate evidence is collected, that substantive and procedural matters are addressed, and that tax assessments are correct in law.

We support the direction of the pilot project in encouraging an expanded use of advisory services as a significant measure to avoid litigation costs.

STRATEGIC AND OPERATIONAL PLANNING

The TLS Portfolio Office has published a Strategic Business Plan for fiscal years 2010-12. The plan sets out the priorities and key factors to ensure that the Portfolio evolves to meet the CRA's current and future demand for legal services. The NTBD, in conjunction with the other governance committees within the TLS Portfolio, ensures that strategic and operational issues are consistently addressed in managing the law.

In addition to participation in the major management exercises of the Department of Justice, the TLS Portfolio has a well-developed Performance Management Framework capable of assisting senior management in the decision-making process. The regular two-way flow of information between CRA and the TLS Portfolio Office and regional TLS sections ensures that TLS Portfolio management are quickly able to identify and address issues and trends that provide context for strategic and operational planning.

Based on the audit interviews and materials reviewed, we found that strategic and operational planning is documented and understood within the Portfolio.

OBSERVATIONS – APPROPRIATENESS OF INTERFACES WITH OTHER DEPARTMENT OF JUSTICE SECTORS

Management Sector

The TLS Portfolio Office participates on Department-wide Management Sector committees and provides advice and assistance in Management Sector initiatives such as the development of iCase and Echo, the departmental business intelligence tool.

Chief Financial Officer (CFO) Branch

The TLS Portfolio Office's interface with the CFO Branch in terms of financial and resource management was reviewed during the audit. In the Annual Financial Situation Report for the year ending March 31, 2010, issued by the CFO Branch Resource Management Directorate, the TLS Portfolio ranked first in the Department with a budget variance of 0.5% on a budget of \$56 million and was one of five direct reports that consistently provided the CFO Branch with the certified Financial Situation Report within the established timelines.

Public Law Sector and Legislative Services Branch

The Public Law Sector and the Legislative Services Branch provide legal services to the CRA, which is invoiced on a cost recoverable basis by the TLS Portfolio's Business Management Section. We found that the TLS Portfolio Office promptly settles these sectors' accounts through the interdepartmental settlements process as soon as the funds are received from the CRA. Each year the TLS Portfolio Office canvasses these two sectors for a forecast of workload and cost estimates of legal services for the next fiscal year for input into the TLS Portfolio Business Plan.

In our opinion, the use of a single point of client contact for all financial matters along with the canvassing of a forecast by legal service providers outside the TLS Portfolio for business planning purposes are considered good practices.

SATISFACTION WITH PORTFOLIO OFFICE LEGAL ADVICE AND DIRECTION

The TLS Portfolio's Strategic Business Plan clearly sets out the strategic priorities and direction the Portfolio is taking to improve the legal services provided to meet the evolving needs of the CRA. Along with the service standards and the work undertaken by the national coordination teams and LSU service teams, a consistent position has been voiced on tax law. The 2008 Client Feedback Survey scored the work of Portfolio counsel and staff as excellent in the areas of responsiveness, usefulness, and timeliness.

In our opinion, the TLS Portfolio Office's provision of legal advice and direction to the LSU and regional TLS sections is adequate and effective.

The management responses to the recommendations contained in this report were provided by the Assistant Deputy Attorney General, Tax Law Services Portfolio.

1. INTRODUCTION

1.1 Background

The Tax Law Services (TLS) Portfolio was created in 1995 and is dedicated to providing legal services to the Canada Revenue Agency (CRA). It is one of six client legal services portfolio organizations within the Department of Justice. The TLS Portfolio provides integrated litigation and advisory services in all areas of tax law such as goods and services tax (GST), income tax, collections, and employment insurance, as well as in other practice areas relevant to the CRA, such as administrative law, corporate governance, and civil litigation.

The TLS Portfolio provides legal services through regional TLS sections located in Vancouver, Edmonton, Winnipeg/Saskatoon, Toronto, Ottawa, Montreal, and Halifax. Most tax law services are delivered to the CRA in the regional offices. The TLS Portfolio is comprised of approximately 310 counsel, 35 paralegals, and 125 administrative and support staff located throughout the country, with 75 percent of counsel located outside of the National Capital Region.

The TLS Portfolio Office is located in Ottawa and there is also a legal services unit (LSU) co-located with the CRA. The LSU, which comprises 38 counsel, nine paralegals, and 17 officers and support staff, provides legal advice to the CRA but does not conduct litigation.

The TLS Portfolio is headed by the Assistant Deputy Attorney General (ADAG), supported by two Associate ADAGs (Tax Assessment Matters, and Collections and Civil Matters) and the Business Management Section. The ADAG, Associate ADAGs, and the Senior General Counsel who heads the CRA LSU also provide legal support to the Commissioner, CRA, and the Agency Management Committee to enable the CRA to achieve its mandate, policy and program objectives, and management priorities. The TLS Portfolio Business Management Section provides the ADAG with administration, resource management, and business planning services.

Some of the key risk factors that were identified in relation to this audit included the ability to forecast demand for legal services; the nature of the relationship with regional offices, the LSU

and the other units in the Portfolio; the ability to respond to regional office and LSU resource requirements; the reporting of performance information; the accuracy of management reports; and the level of functional and operational guidance in relation to legal, financial and administrative matters.

1.2 Audit Objectives and Scope

The overall objective of this audit was to provide assurance that the management framework within which the Tax Law Services Portfolio Office operates is effective

The scope of the audit focused on:

- a) the policies, practices and procedures relating to planning, organizing, controlling, leading and communicating;
- b) communication mechanisms directed at strengthening links with the LSU and regional offices (e.g. committees, meetings, conferences, directives);
- c) operational and strategic planning at the Portfolio level;
- d) interfaces with other sections in the Department of Justice (e.g. Public Law Sector, Civil Litigation, and regional offices);
- e) interfaces with the Management Sector (e.g. Finance, Strategic Planning and Performance Management (SPPM), Human Resources);
- f) client satisfaction with the advice and direction provided by the Portfolio Office to the LSU and regional offices with respect to legal matters.

The TLS Portfolio Office has functional and operational responsibilities with respect to the CRA LSU and the TLS – Ottawa Section. It also has functional and limited operational responsibilities for regional TLS offices. The audit examined the leadership role played by the TLS Portfolio Office in relation to operational and other issues affecting units in the Portfolio. In addition, the audit examined the extent to which the TLS Portfolio Office identifies and communicates best practices and lessons learned.

The scope of the audit was limited to the operations and activities of the TLS Portfolio Office as well as linkages with the CRA LSU, the TLS – Ottawa Section, and two regional TLS sections: the Prairie Region and the Ontario Region.

The planning and on-site examination phases of the audit were carried out between October 2010 and February 2011.

2. OBSERVATIONS – MANAGEMENT FRAMEWORK

2.1 Governance and Strategic Direction

An appropriate oversight body is in place and operating effectively.

Governance and strategic direction are essential components of an effective business operation allowing for internal coherence, corporate discipline, and alignment to planned objectives. These components also provide managers with the ability to effectively allocate human and financial resources to address priorities in an ever-changing environment.

The main governance and oversight body for the TLS Portfolio is the National Tax Board of Directors (NTBD). The NTBD is the primary forum of consultation and strategic decision making concerning questions of a functional nature and of national interest within the mandate of the Portfolio. The NTBD is chaired by the ADAG, TLS Portfolio and meets every two weeks via teleconference and two to three times per year in person. The NTBD is comprised of the following members:

- the ADAG
- the Associate ADAGs
- all TLS Portfolio directors and deputy directors
- the Senior General Counsel who heads the CRA LSU
- the Senior Counsel Advisor to the ADAG
- the Director of the Business Management Section

The composition of the NTBD ensures that the different regional perspectives are taken into account in Portfolio decision making. The Business Management Section provides secretariat services to the NTBD.

For each NTBD meeting, the Business Management Section prepares two books of key documents: the Budget Management Update, including the Financial Situation Report, and the

Performance Management Framework. These documents enable the NTBD to address priorities and issues impacting the Portfolio based on a strategic or integrated planning process.

During the audit, TLS regional directors reported that the information provided by the Portfolio Office to support the work of the NTBD is timely, well organized, and complete. NTBD meeting minutes are promptly communicated throughout the TLS Portfolio Office and TLS regional sections, and before the meetings action items are followed up and members canvassed for new agenda items.

The ADAG participates on departmental governance and oversight committees (e.g. Departmental Finance Committee) and NTBD members also participate on departmental committees. HQ Portfolio managers participate at the weekly Management Meeting. This participation ensures that all aspects of departmental initiatives (e.g. Expenditure Review, Law Practice Model, collective bargaining) are considered in the governance of the TLS Portfolio.

In our opinion, the NTBD is operating effectively and achieving its mandate as the primary oversight body for the TLS Portfolio.

2.2 Organizing

There is a need to implement the recommendation of the Department’s corporate services “footprint” exercise that addresses the resource requirements of the Business Management Section.

A clear and effective organizational structure is fundamental to the effective management of an organization. To support the achievement of organizational objectives, the organizational structure requires a sufficient number of people with the necessary skills.

Corporate services within Justice Canada are provided by the Management Sector in conjunction with the Chief Financial Officer (CFO) Branch. The Management Sector provides such services as human resources and professional development, security, informatics, and strategic planning. The CFO Branch provides financial services that include corporate accounting and resource management. The Department’s Review of Legal Services conducted in 2006 indicated that a significant workforce gap was present with respect to the provision of corporate services. This review used benchmarking based on the legal service costing model to derive the ‘footprint’ for the provision of corporate services. Footprint activities were calculated for four categories; Regional Administration, Local ADM Support, Functional Authorities (NCR), and Functional Authorities (National). This workforce gap was found to be present across the Department, and

additional resources devoted to narrow the gap were only sufficient to meet additional government-wide accountability initiatives. Appendix C presents an overview of the increased accountabilities that have transpired since 2006.

With respect to the TLS Portfolio, funding to date has addressed its corporate risk capacity by strengthening financial and administrative services, and providing key support for managers in the areas of human resources management, training and development, and the Fiscal Path application. However, in the key areas of performance management, business planning, records management, and communications, which in the TLS Portfolio are Business Management Section activities, workload has increased since 2006 without a concomitant increase in human resources.

The audit team identified that the Business Management Section in the TLS Portfolio has a wide range of responsibilities and significant workload. For example, the TLS Portfolio Office has taken extraordinary steps to coordinate participation in several ongoing client initiatives to facilitate a reduction in the volume of litigation and the costs of conducting litigation. These initiatives require the Business Management Section to develop monitoring and management reporting procedures. Furthermore, the section provides customized information-intensive Performance Management Framework and Budget Management Update reports to the NTBD as well as monthly reporting to the CRA. The Business Management Section also reports on the full range of services provided by the Department of Justice to the CRA, not just those of the TLS Portfolio. For example, the section provides a single point of contact for client invoicing for all departmental sectors and portfolios. In our opinion, while having a single point of contact for the client is a good practice, this increases the workload of the Business Management Section.

In 2010-11, as part of the Department’s corporate services “footprint” exercise, the Senior Director, Portfolio Design and Development, Management Sector reviewed the resource requirements of the Business Management Section of the TLS Portfolio and recommended the creation of a senior position reporting to the Director. This review took into account that the TLS Portfolio is a single client portfolio and recognized the greater range of support requirements being performed by the TLS Portfolio Business Management Section than that typically observed for similar sections in other portfolios.

As part of the audit, the audit team reviewed the organization and workload of the Business Management Section. In our opinion, the approach recommended in the Department’s corporate services “footprint” exercise is reasonable.

Recommendation and Management Response

1. It is recommended that the ADAG, TLS Portfolio ensure that the recommendation of the Department's corporate services "footprint" exercise is implemented to address the resource requirements of the Business Management Section. (Medium risk)²

Agreed. Further to the "footprint" exercise of the Department's corporate services, the first round of funding in 2010-11 was used to fund approximately two FTEs in the Business Management Section. In 2011-12, additional funding was received for approximately one FTE to assist with cost increases for the section. The funding continues to be insufficient to cope with current cost increases. The Portfolio will work with the Chief Financial Officer to implement its review of "footprint" recommendations given the current economic climate. Completion date: March 31, 2012, and updated each year.

2.3 Controlling

The TLS Portfolio has established service standards.

Service standards enable clients to define their expectations in terms of timelines and costs of delivery as well as the recourse available to clients when expectations are not met. Service standards typically include pledges or principles that address such things as mutual respect, courtesy, integrity of process, and fairness, which serve to establish the expected business environment.

The TLS Portfolio has established service standards, which are detailed in the Department's MOU with the CRA, and has published and disseminated these in brochure format within the Portfolio and made them available throughout the CRA. The service standards set out the commitment of the TLS Portfolio to provide clear and practical guidance on resolving legal issues and the identification of opportunities to implement policies and programs by administrative rather than legislative or regulatory means. The service standards also require counsel to work with the client in an advisory capacity to enhance client program and policy implementation. Compliance with the service standards is monitored by the NTBD on a national basis, by the Directors for their regions, by the Department through client surveys, and is tracked in the Performance Management Framework.

² The Risk Assessment Guidelines for Audit Recommendations are found in Appendix B.

In our opinion, the service standards established by the TLS Portfolio reflect all of the criteria of the “Service Standards: A Guide to the Initiative” established by Treasury Board. The continuous monitoring of the standards and reporting in the Performance Management Framework is indicative of a commitment to improve quality of services provided as well as to maintain an atmosphere of mutual respect and understanding.

The TLS Portfolio Office file assignment process is working effectively.

Efficient control and administration over the workload assignment process is a fundamental aspect of management’s ability to use human resources prudently. In a legal environment, the file assignment process must consider both the experience level and skill sets of resources.

The TLS Portfolio Office is responsible for the processing and assignment of approximately 1,800 General Procedure files each year. The Tax Court of Canada rules for General Procedure files and Informal Procedure files (effective January 1, 1990) are intended to expedite objections to tax assessments or reassessments through the least expensive determination. Typically, every proceeding where the matter requiring resolution meets a specific dollar threshold will follow either the General Procedure or the Informal Procedure of the Tax Court. The General Procedure is followed when the amount in issue is greater than \$12,000. The Associate ADAG, Tax Assessment, TLS Portfolio assigns each General Procedure file to a specific regional TLS office.

Eleven subject matter-specific coordination networks, each led by a National Coordinator located in a TLS office, have been established. Each TLS office has a Regional Coordinator on each network who reports to the National Coordinator on a regular basis in respect of any important litigation and/or development in the law in the coordinated subject area. The national coordinators report to the appropriate Associate ADAG in respect of any important litigation and/or development in the law in the coordinated subject area. The national coordinators organize conference calls, where information is exchanged and issues are discussed. TLS colleagues across the country as well as CRA and other government officials are invited to attend the conference calls. This coordinated approach, buttressed by information on the Fiscal Path Intranet site, including subject-matter-specific discussion blogs, enables information to be quickly disseminated throughout the TLS Portfolio and ensures the consistency of the Portfolio’s legal positions. This process is working effectively and allows centres of expertise to develop.

2.4 Leading, Communicating, and Professional Development

Leadership, communication, and professional development in the TLS Portfolio Office are appropriate.

Communication directly impacts an organization's ability to achieve success. Management must effectively design strategies to help ensure communication is timely, accurate, and appropriate in achieving planned goals and priorities.

In the TLS Portfolio Office, the ADAG and Associate ADAGs have an open-door policy. They also hold monthly one-on-ones with direct reports, which provide an opportunity to discuss Portfolio matters and address specific issues. In addition, every two to three years the ADAG and Associate ADAGs make cross-country visits to the regional TLS sections to discuss functional issues and canvass views. Furthermore, the TLS Portfolio Office holds a bi-weekly meeting on Management of the Law at which any TLS Portfolio legal counsel may participate.

The TLS Portfolio has developed an Intranet site known as Fiscal Path, which is available to all Portfolio staff on a password-protected basis. Once staff have logged on, Fiscal Path's various modules provide information on all Portfolio policies, practice directives, operational guidelines, committees (membership and minutes), training, as well as contacts within TLS. The three TLS regional directors we interviewed noted that the repository of Portfolio information available on Fiscal Path is especially invaluable to new counsel, not only as a learning tool but also for obtaining contacts and news, and following blog discussions related to the Portfolio's work.

Fiscal Path also provides access to the Portfolio newsletter, the 'Tax Tribune', which provides monthly updates on activities, programs, and personnel within the Portfolio. News clipping services as well as a Portfolio-specific daily news section provide current information on such matters as upcoming professional development; court activities; new policies, procedures, and practices; activities of the ADAG and Associate ADAGs; as well as information on the status of specific files before the courts. We found that the e-learning module is an important aspect of Fiscal Path in the provision of guidance on such matters as practice, advocacy, administration of the law, and replies to Notice of Appeal. Major links to other sites accessible from Fiscal Path include GASPARD, Quicklaw, the CRA, the Tax Court of Canada, the Federal Court of Canada, the Supreme Court of Canada, and the Federal Court of Appeal. Based upon the audit interviews, in our opinion, Fiscal Path is effectively serving as the main communications tool of the Portfolio.

Professional development is a high priority for the TLS Portfolio as files are becoming increasingly complex and new legal topics are emerging. The Portfolio has entered into an MOU with the CRA's Compliance Programs Branch regarding professional development, in recognition of the need for increased technical tax training as a professional development priority. The MOU provides counsel and CRA tax professionals access to the training opportunities provided by each organization, space permitting, without the imposition of course fees.

Furthermore, three specific programs have been implemented to support the TLS Portfolio's focus on professional development. First, the TLS Professional Development Coordinator is charged with developing and implementing the TLS National Training and Development Program, which delivers technical tax training courses for counsel nationally, a national training event every two years, and specialized training for paralegals and support staff. Second, the Twinning Program allows counsel the opportunity to broaden their work experience without relocating by drawing on the experience of counsel in another office who specialize in a particular area of tax law. For example, counsel working on a resource file in the Maritimes may twin with counsel located in the Prairies who work on these types of files on a day-to-day basis. Third, the Mobility Program enables counsel who wish to broaden their work experience by relocating to a different city to work in another TLS section. We were told that people who have participated in the Mobility Program have found it to be an enriching experience personally and professionally, as they work with new colleagues in a new city and often in a second language.

Based on the results of our examination and interviews, we found that the TLS Portfolio Office is providing effective communication and leadership and appropriate professional development opportunities.

3. OBSERVATIONS – COMMUNICATIONS WITH LSU AND REGIONS

Improvements are needed in communicating to litigation counsel the role of the CRA LSU and the services it provides.

The CRA LSU's role is to provide the client with legal advisory services and corporate counsel (e.g. for drafting amendments, revising legislation, issuing interpretation bulletins). The CRA LSU has 20 active service teams addressing such specialized issues as GST, excise, trusts, international tax, and tax collections. Although the LSU does not conduct tax litigation, each National Coordination network of the Portfolio has a representative from the appropriate LSU service team.

During the audit, we reviewed the Fiscal Path information regarding the LSU and found that more detailed descriptions of the role and services the LSU provides is needed. Although the service teams have been identified, there is no identification of the lead counsel and no indication of the specific area of expertise of each team counsel. For example, with regard to the 11 topics for which one of the service teams (the Confidentiality Service Team) provides legal advice, the Fiscal Path description states only the team's role and the topic area. It does not provide phone numbers for the 12 counsel team members listed or a description of their individual areas of expertise.

Improvements in communicating to all TLS Portfolio litigators more specific information on the areas of expertise of LSU counsel would facilitate contact with the LSU.

The CRA LSU is ideally situated to provide assistance and guidance to Portfolio litigators on CRA contacts. It was also noted during interviews that improving the awareness of Portfolio litigators on the role and services of the CRA LSU could also encourage and enhance mutually beneficial contact between LSU counsel and litigation counsel.

Recommendation and Management Response

2. It is recommended that the ADAG and Senior General Counsel ensure that the role of the LSU and the services it provides are communicated to litigation counsel. (Low risk)

Agreed. The offices of the ADAG and the LSU have already taken steps to communicate to litigation counsel the role and services of the LSU. A presentation on the role and services of the LSU was made to the TLS Portfolio National Tax Board of Directors' meeting on January 13, 2011. A similar presentation was made on March 22, 2011 at the Portfolio Retreat event, which was attended by litigation lawyers in the Ottawa office.

In addition to the presentations made, the office of the ADAG is currently updating the information about the role and services of the LSU on the Fiscal Path Intranet site.

Over the course of the year, the ADAG and Senior General Counsel will continue to develop ways of communicating the role of the LSU to the litigation counsel in the Tax Law Services offices in all the regions. For example, the next National Tax Training event will include a component to address this issue. Completion date: March 31, 2012.

4. OBSERVATIONS – ADVISORY SERVICES

A pilot project is under way that encourages the expanded use of advisory services prior to litigation.

The volume of high complexity litigation cases proceeding to the Tax Court of Canada continues to increase annually with many of them being large and resource-intensive. Failure to adequately defend these cases can result in risk not only to the tax base but also to future areas of tax compliance. The International and Large Business Directorate of the CRA's Compliance Programs Branch and the TLS Portfolio have jointly undertaken a Pilot Project aimed at increasing the use of advisory services at the audit stage of the tax assessment process.

During the audit, TLS regional directors and CRA LSU counsel noted that expanded use of advisory services such as that contemplated by the pilot project could lead to program savings through a reduced volume of litigation. The Operational Guidelines for the pilot project, which set out its mandate, require the provision of legal advice and legal assistance for significant cases, issues, and trends, and establish the arrangements for consultation and formal review. The LSU is providing and coordinating advice to the CRA on major files at the assessing stage and regional litigators are supporting tax auditors by providing formal and informal legal advice. Such advisory services ensure that appropriate evidence is collected, that substantive and procedural matters are addressed, and that tax assessments are correct in law.

We support the direction of the pilot project in encouraging an expanded use of advisory services as a significant measure of avoiding litigation costs. As the TLS Portfolio Office pursues further areas where potential savings are possible, this will only further strengthen and build the trust relationship that has developed with the client.

5. OBSERVATIONS – STRATEGIC AND OPERATIONAL PLANNING

Strategic and operational planning is documented and understood within the TLS Portfolio.

Effective business planning activities and documentation are essential for directing an organization toward the achievement of management's strategic goals, priorities, and objectives. Formal plans need to incorporate objectives for all key areas of the organization.

The TLS Portfolio Office has published a Strategic Business Plan for fiscal years 2010-12. The plan sets out the Portfolio's current position with respect to organization, resources, caseload, etc., and the priorities and key factors that will be acted upon during the period of the plan. The Strategic Business Plan is designed to ensure that the Portfolio evolves to meet the CRA's current and future needs for legal services. The plan emphasizes the importance of national coordination, risk management, capacity development, and knowledge transfer, and the use of information management/technology. Both the Strategic Business Plan and the service standards, which were professionally published in report and brochure format respectively, have been circulated throughout the TLS Portfolio and within the CRA.

The TLS Portfolio Office participates in the major management exercises of the Department of Justice, such as the Estimates cycle, strategic planning, and performance management initiatives, as well as other government-wide initiatives including the expenditure review. The Performance Management Framework for the Portfolio, which provides information on all of the legal services that the Department provides to CRA, is well developed and maintained, and assists senior management in the decision-making process.

The National Tax Board of Directors (NTBD) ensures that strategic and operational issues are consistently addressed in managing the law. To assist the work of the NTBD, the Tax Committee pilot project was established to support the delivery of litigation and advisory services. The Tax Committee pilot project was comprised of 45 members (with 10 from the CRA LSU) representing various practice groups. The pilot was a success and the Tax Committee, which has

now been made permanent, plays a key role in reviewing factums and adverse decision recommendations in key cases on a national basis.

Furthermore, the regular two-way flow of information between CRA and the TLS Portfolio Office and regional TLS sections ensures that TLS Portfolio management are quickly able to identify and address issues and trends. TLS regional directors meet on a routine basis with their CRA counterparts in the regions. The information coming from these meetings provides early warning to the TLS Portfolio Office of emerging issues and files, thereby providing a context for strategic and operational planning. Based upon the audit interviews and materials reviewed, we found that strategic and operational planning is documented and understood within the Portfolio.

6. OBSERVATIONS – APPROPRIATENESS OF INTERFACES WITH OTHER DEPARTMENT OF JUSTICE SECTORS

6.1 Management Sector

The TLS Portfolio Office’s interfaces with the Management Sector are appropriate.

The TLS Portfolio Office participates on Department-wide Management Sector committees. The Portfolio Office provides ongoing advice and assistance in the development of iCase, the departmental legal information management system, and Echo, the departmental business intelligence tool. We were told that, in addition, the Portfolio Office will be assisting in the development of the next Client Satisfaction Survey being undertaken by the Office of Strategic Planning and Performance Management.

In our opinion, interfaces with the Management Sector are appropriate.

6.2 Chief Financial Officer (CFO) Branch

The TLS Portfolio interfaces with the CFO Branch are timely and effective.

During the audit, we reviewed the TLS Portfolio Office’s interface with the CFO Branch in terms of financial and resource management. It was observed that of a total of 18 direct reports, the Portfolio Office is one of five direct reports that consistently provide the certified Financial Situation Report to the CFO within established timelines. In the Annual Financial Situation Report for the year ending March 31, 2010, issued by the CFO Branch Resource Management Directorate, the TLS Portfolio reported a variance of 0.5% on a budget of \$56 million. This was the lowest variance among all of the direct reports.

In our opinion, interfaces with the CFO Branch are timely and effective.

6.3 Public Law Sector and Legislative Services Branch

Interfaces with Public Law Sector and Legislative Services Branch are working efficiently.

In addition to the TLS Portfolio, the Public Law Sector and the Legislative Services Branch, provide annual legal services to the CRA (in the combined amount of \$160,000). Except for the TLS Portfolio, the Public Law Sector and the Legislative Services Branch are the two largest recurring providers of legal services to the CRA. Other areas of the Department provide services on an as-needed basis. The Public Law Sector's main legal service areas are Privacy, Information Law, Administrative Law, and Human Rights, while those of the Legislative Services Branch are Remission Orders and Orders in Council.

The MOU between the CRA and Justice Canada (managed by the TLS Portfolio Office) covers all legal services provided by all sectors/portfolios of the Department. The settlement process for cost recoverable services establishes the TLS Portfolio Office as the single point of contact for these transactions. This approach facilitates ease of contracting and avoids multiple FIS codes for settling accounts, since invoices from the various departmental sectors/portfolios for services rendered are forwarded to the TLS Portfolio Office for settlement with the client.

During our examination, we found that the TLS Portfolio Office promptly settles the sectors'/portfolios' accounts through the interdepartmental settlements process as soon as the funds are received from the CRA. For example, there were no outstanding accounts with the Public Law Sector as of December 2010.

At the beginning of each fiscal year, the TLS Portfolio Office canvasses the Public Law Sector and Legislative Services Branch for a forecast of the services they expect to provide for the coming year. During interviews, business planning directors for both sectors stated that they are able to provide quality estimates based upon historical data for their area, availability of staff suitable for the work, as well as ongoing workload. The canvassing of workload and cost estimates of legal service providers outside the TLS Portfolio to be input into the TLS Portfolio Business Plan is considered a good practice.

Based upon our limited testing and interviews, in our opinion, the interfaces with the Public Law Sector and Legislative Services Branch are working efficiently.

7. OBSERVATIONS – SATISFACTION WITH PORTFOLIO OFFICE LEGAL ADVICE AND DIRECTION

Legal advice and direction provided by the TLS Portfolio Office to the CRA LSU and regional TLS sections is adequate and effective.

TLS Portfolio Office leadership with respect to the provision of legal advice and direction is exercised through a broad range of governance structures, a continuous learning environment, well-developed processes and procedures that have been effectively communicated, and a performance management framework that provides timely and key information to enable effective decision making.

The departmental committees, such as the National Litigation Committee, the TLS committees, along with the national coordination networks have ensured a consistency of voice in their respective areas of expertise. The publication of the Strategic Business Plan has identified the strategic priorities and direction the TLS Portfolio is taking to improve the legal services provided to meet the evolving needs of the CRA.

The 2008 Department of Justice Client Feedback Survey assessed the client’s perception of legal service quality across the TLS Portfolio in terms of responsiveness, usefulness, and timeliness. The TLS Portfolio achieved a client rating of “excellent” (8.6 or above out of 10) in all three areas measured. The ADAG presented the survey results at the CRA Agency Management Committee, which is comprised of the CRA Commissioner and CRA direct reports, and these were formally endorsed by the CRA Commissioner.

In our view, the TLS Portfolio Office’s leadership in the provision of legal advice and direction to the CRA is adequate and effective.

8. RECOMMENDATIONS AND MANAGEMENT RESPONSES

1. **It is recommended that the ADAG, TLS Portfolio ensure that the recommendation of the Department’s corporate services “footprint” exercise is implemented to address the resource requirements of the Business Management Section. (Medium risk).....6**

Agreed. Further to the “footprint” exercise of the Department’s corporate services, the first round of funding in 2010-11 was used to fund approximately two FTEs in the Business Management Section. In 2011-12, additional funding was received for approximately one FTE to assist with cost increases for the section. The funding continues to be insufficient to cope with current cost increases. The Portfolio will work with the Chief Financial Officer to implement its review of “footprint” recommendations given the current economic climate. Completion date: March 31, 2012, and updated each year.

2. **It is recommended that the ADAG and Senior General Counsel ensure that the role of the LSU and the services it provides are communicated to litigation counsel. (Low risk).....12**

Agreed. The offices of the ADAG and the LSU have already taken steps to communicate to litigation counsel the role and services of the LSU. A presentation on the role and services of the LSU was made to the TLS Portfolio National Tax Board of Directors’ meeting on January 13, 2011. A similar presentation was made on March 22, 2011 at the Portfolio Retreat event, which was attended by litigation lawyers in the Ottawa office.

In addition to the presentations made, the office of the ADAG is currently updating the information about the role and services of the LSU on the Fiscal Path Intranet site.

Over the course of the year, the ADAG and Senior General Counsel will continue to develop ways of communicating the role of the LSU to the litigation counsel in the Tax Law Services offices in all the regions. For example, the next National Tax Training event will include a component to address this issue. Completion date: March 31, 2012.

APPENDIX A – AUDIT METHODOLOGY

The criteria for the audit were based on the *Guidance on Access 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 the 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:
 - TLS Portfolio Office management and staff;
 - Director, Ottawa TLS Section;
 - regional directors of the Prairie and Ontario TLS sections;
 - CRA LSU directors;
- reviewing the following documents:
 - Strategic Plan, business plans, audits, MOUs, reports and written procedures;
 - Performance Management Framework, Financial Situation Report, and Budget Management Update;
 - protocols, operational guidelines, pilot studies, and client satisfaction surveys.

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.

APPENDIX C – OVERVIEW OF INCREASED ACCOUNTABILITIES

The following increased accountabilities were identified and presented to the Executive Management Board on December 1, 2010 in the context of the footprint exercise.

Increased accountabilities in the financial area include the need to:

- contribute to a review of the financial management framework and policies, further to the TBS Policy Suite Renewal exercise;
- produce departmental financial statements;
- respond to the *Policy on Internal Control*;
- produce Report on Plans and Priorities (RPP) Future-Oriented Financial Statements;
- produce Quarterly Financial Reporting;
- implement the *Policy on the Stewardship of Financial Management Systems*;
- meet enhanced requirements for reporting externally, in particular to Parliamentary Committees;
- participate in strategic reviews and a review of administrative functions and overhead costs.

Increased accountabilities of the Management Sector include the need to:

- comply with new TBS policies and directives that call for updating applications, infrastructure, and the IM/IT management model;
- oversee the establishment of IM/IT policies, directives, standards, and protocols to align with the TBS Information and Technology Framework;
- comply with enhanced workforce reporting requirements;
- respond to the new *Policy on Government Security* that requires deputy heads to develop a comprehensive Departmental Security Plan that is linked with and complements Departmental Risk Profiles, DPR, RPP;
- implement the Investment Plan;
- contribute to Policy Suite Renewal within the limits of existing resources;
- meet the expectations related to administering the *Values and Ethics Code for the Public Service*;

- develop and implement the new Code of Conduct;
- administer the *Public Service Disclosure Protection Act* and the *Lobbying Act*;
- address responsibilities identified in the *Federal Accountability Act*;
- support in general a continued focus on transparency, accountability, and reporting by departments and agencies, central agencies (i.e. Public Service Renewal, Strategic Review implementation, administrative services review).