



**LITIGATION BRANCH
EVALUATION
Final Report**

August 2015

**Evaluation Division
Corporate Services Branch**



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TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
1. INTRODUCTION.....	1
1.1. Purpose of the Evaluation	1
1.2. Structure of the Report.....	2
2. PROFILE OF THE LITIGATION BRANCH.....	3
2.1. Structure and Services.....	3
2.2. National Litigation Committee (NLC).....	11
2.3. Resources	12
3. METHODOLOGY	13
3.1. Document and Data Review	13
3.2. Key Informant Interviews	14
3.3. File Review	14
3.4. Case Studies	15
3.5. Survey of Legal Counsel and Paralegals	15
3.6. Limitations	17
4. FINDINGS	21
4.1. Relevance.....	21
4.2. Performance – Achievement of Expected Outcomes (Effectiveness)	28
4.3. Performance – Demonstration of Efficiency and Economy	58
5. CONCLUSIONS	81
5.1. Relevance.....	81
5.2. Effectiveness – Performance.....	82
5.3. Efficiency and Economy	88

6. RECOMMENDATIONS.....	91
REFERENCES.....	95
Appendix A : Logic Model	99
Appendix B : Evaluation Matrix	109
Appendix C : Data Collection Instruments	119

ABBREVIATIONS

AAP	Agent Affairs Program
ADAG	Assistant Deputy Attorney General
ADM	Assistant Deputy Minister
AGC	Attorney General of Canada
CEA	<i>Canada Evidence Act</i>
CLS	Civil Litigation Section
CRPI	Cost Recovery Process Improvement
DLSU	Departmental Legal Services Units
DM	Deputy Minister
DPR	Departmental Performance Report
DRAP	Deficit Reduction Action Plan
eDiscovery	Electronic discovery
FTE	Full-time equivalent
IAG	International Assistance Group
LPMC	Litigation Practice Management Centre
LRM	Legal Risk Management
MCAMLU	Management of Class Actions and Mass Litigation Unit
MLACMA	<i>Mutual Legal Assistance in Criminal Matters Act</i>
MLAT	Mutual Legal Assistance Treaty
NLC	National Litigation Committee
NSC	National Security Coordinator
NSG	National Security Group
NSIC	National Security and Intelligence Committee
PCO	Privy Council Office

ABBREVIATIONS (cont'd)

PSES	Public Service Employee Surveys
SCC	Supreme Court of Canada
S&I	Security and intelligence

EXECUTIVE SUMMARY

1. Introduction

Under the authority granted by the *Department of Justice Act*, the Attorney General of Canada (AGC) has responsibility for all litigation for or against the Crown, any department, or Crown agent corporations. The litigation function within the Department of Justice is handled by the Litigation Branch at headquarters, the regional offices, and some specialized Departmental Legal Services Units (DLSUs). The Assistant Deputy Attorney General Litigation (ADAG Litigation) has functional and coordination responsibility for all litigation conducted by or on behalf of the Department of Justice.

The evaluation of the Litigation Branch was conducted between September 2013 and January 2015. This is the first evaluation of the Litigation Branch. In accordance with the Treasury Board Secretariat's 2009 *Policy on Evaluation*, the evaluation assessed the relevance and performance (effectiveness, efficiency and economy) of the Litigation Branch. It covers the Litigation Branch's work between fiscal years 2008/09 and 2013/14.

2. Methodology

The evaluation methodology consisted of a document and data review, key informant interviews, a legal file review, case studies, and a survey of Litigation Branch counsel and paralegals.

3. Findings

3.1. Relevance

Continued need. The Litigation Branch continues to serve the needs of government — in particular through the role played by the ADAG Litigation in coordinating all litigation involving the government, and the centralized and specialized legal expertise and legal support provided by units

within the Litigation Branch. The ongoing relevance of, and need for, Litigation Branch services are supported by the increasing demand for its services for increasingly complex files.

Alignment with federal government priorities. The evaluation found that the work of the Litigation Branch is closely aligned with federal government priorities. The Litigation Branch supports the Minister of Justice and Attorney General of Canada in fulfilling responsibilities under a variety of federal statutes. In doing so, the Litigation Branch assists the Minister in ensuring that “the administration of public affairs is in accordance with the law” (thus fulfilling requirements outlined in section 4 of the *Department of Justice Act*).

Consistency with federal government’s roles and responsibilities and Justice Canada’s mandate. The Litigation Branch supports the Minister of Justice and Attorney General of Canada in fulfilling his responsibilities under the *Department of Justice Act* by conducting litigation on behalf of the Crown (representing any government department or agency), and coordinating litigation-related services across the government. The Branch also undertakes delegated responsibilities for the Minister, through the work of the International Assistance Group (IAG) and the National Security Group (NSG), under legislation related to extradition, mutual legal assistance, and national security. The Litigation Branch supports both strategic outcomes of the Department of Justice through its work related to access to justice and its provision of high-quality, responsive services to essentially any government department or agency.

3.2. Performance

Effectiveness. Multiple lines of evidence confirm that the Litigation Branch provides timely, high-quality, responsive services to client departments. Additionally, evaluation stakeholders provided evidence that service quality is relatively consistent among units of the Branch. The evaluation found a high level of client satisfaction with the responsiveness and courteousness of Litigation Branch services, as well as the degree to which the Branch keeps clients informed of developments on their files. However, Client Feedback Survey results point to some potential room for improvement in verifying clients’ expectations regarding the nature and extensiveness of consultations and progress reporting at the outset of files, and in clarifying the respective roles of Litigation Branch and DLSU counsel on the file, including relaying information to clients.

The Litigation Branch is contributing to consistency both across the Department of Justice and within the Government of Canada as a whole. Evaluation results indicate that the overarching coordinating functions carried out by the ADAG are effectively contributing to a nationally

consistent approach to litigation issues. At the working level of Branch counsel, a variety of information-sharing mechanisms are in place to ensure regular communications among units within the Branch. All lines of evidence together confirm that the Litigation Branch engages in consultations within the Department of Justice and with other government departments and agencies when necessary, and that these consultations contribute to a whole-of-government approach to litigation-related issues.

Evaluation results concerning consistency are generally positive. However, evaluation stakeholders identified potential for improvement in a few areas, including greater involvement of some DLSUs in the litigation work carried out by the Branch in some cases, and better coordination between the Management of Class Actions and Mass Litigation Unit and the regions to ensure that provincial class action rules and legal cultures are adequately taken into consideration.

Multiple lines of evidence indicate a high level of satisfaction with Branch contributions to the identification, assessment, communication, mitigation and management of legal risks, as appropriate, on files. However, an analysis of data from iCase, along with observations from key informant interviews and the Litigation Branch survey, indicate that counsel may be experiencing some difficulties in complying with iCase reporting requirements related to legal risk assessment, and with implementation of the new legal risk management framework with respect to advisory files.

The evaluation found that the Litigation Branch effectively contributes to informed decision making in a variety of ways:

- The Litigation Branch makes senior government officials aware of legal risks, legal issues and legal options through the advice it provides to client departments. Evidence indicates that clients are indeed considering, and often following, the advice of the Litigation Branch in developing legal strategies and making decisions.
- The Litigation Branch supports ministerial decision making by directly supporting the Minister of Justice in the exercise of his ministerial functions. Evaluation results show that the IAG is meeting its delegated responsibilities under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act*, and that the NSG is effectively carrying out its role as the coordinating office within the Department of Justice regarding section 38.
- The Litigation Branch provides decision-making support to the Minister of Justice regarding outsourcing and the appointment of legal agents through the Litigation Practice Management Centre's (LPMC) management of the Agent Affairs Program (AAP). Evaluation results

indicate that the process for appointing legal agents is effective and appropriate, that legal agents are used appropriately, and that agents' performance is actively monitored. Since the 2011 audit of the AAP, the LPMC has improved the Program by developing national standards and reporting requirements that make the process of hiring and using legal agents more transparent, accountable and efficient.

- The Litigation Branch has a structured and well-documented process in place for providing advice to the Minister of Justice to support decision making related to intervening in court, filing an appeal, and approving positions to be taken and facts to be filed with the Supreme Court of Canada.

The evaluation found that the Litigation Branch supports its employees to work in a bilingual and bilingual legal context. Results from Client Feedback Surveys and key informant interviews indicate a high level of satisfaction with the accessibility of Litigation Branch services — and with the Branch's ability to meet the demand for services — in both official languages. However, key informant interviews pointed to a potential opportunity to improve bilingual capacity within the Branch by expanding opportunities for counsel to participate in second language training.

Although the Litigation Branch considers training a priority and offers various training opportunities for counsel across the Department of Justice, some training gaps were identified. Suggestions for improvement include offering more training in practical skills (particularly in-court skills) required by junior counsel, ensuring adequate training relevant to criminal litigators and civil litigators, and offering more training in specific specialized areas.

The Branch makes use of and/or participates in various quality management practices intended to foster high-quality legal services. The evaluation results indicate that many tools and structures (including departmental practice groups and directives, the Civil Litigation Section Litigation Committee, the National Litigation Committee, internal mentoring practices, and eDiscovery software) are useful to the work of Branch employees.

The evaluation found some room for improvement related to tools, structures and processes to assist the Litigation Branch in handling the increasing volumes of documents and evidence on files, and managing classified documents. Key informant interviews provided evidence of issues with the functionality of Ringtail, as well as challenges in working within the secure context necessary for handling some classified information. Evaluation evidence also indicates that the National eDiscovery and Litigation Support Services are underutilized; in addition, litigation counsel lack awareness of the potential for this group to assist them in efforts to improve the

efficient management of large quantities of documentary evidence, and to deal with increasing document review requirements on litigation files.

Evaluation results also identified needs for greater expertise and additional resources for electronic court procedures and hearings, improved information technology systems that are more coordinated across the Department of Justice, improvements in the “shared services approach” to reduce administrative burdens on counsel, and improvements to iCase and GCDOCS to facilitate more effective file searching.

Efficiency and Economy. The evaluation experienced difficulty assessing the sufficiency of the current staffing resources. Litigation Branch stakeholders raised concerns about the adequacy of certain types of staff (in particular, paralegals and administrative staff), and pointed to workload pressures and the need to work long hours during peaks in demand; nonetheless, iCase data (showing average annual level of effort) suggests that Branch counsel and paralegals are spending a reasonable amount of time on Litigation Branch files. However, the evaluation raised some questions about the accuracy with which Litigation Branch staff record their hours into iCase, and the extent to which work on Litigation Branch files may be underreported. A complete understanding of the work of the Branch and an ability to assess if resources are adequate and deployed to best effect depends on accurate data entry.

The evaluation found evidence of cost-efficient resource use. The Litigation Branch is generally following the Law Practice Model by aligning resources based on the level of legal risk and complexity of the files, and all lines of evidence indicate that files and tasks are appropriately assigned. In addition, as would be expected, the level of effort spent on files typically increases with legal risk and complexity levels.

Counsel and paralegals report that document production is the primary activity for which paralegals are used. However, there is evidence that the Litigation Branch is using paralegals for a variety of activities, especially within the IAG where they are used in very specialized ways. Nonetheless, over half of the paralegals surveyed believe that they have, at least occasionally, worked on files where counsel spent time on tasks that they could have done. This suggests that there may be opportunities to expand the types of activities assigned to paralegals as resources permit.

There may be potential for the Litigation Branch to improve efficiency by expanding the types of dispute resolution options attempted. Negotiation remains the Litigation Branch’s most used approach for dispute resolution outside of the court system. While the Litigation Branch appears

to generally be pursuing dispute resolution processes when appropriate, other options may provide further opportunities to contain legal costs and improve the efficiency of services. However, a more in-depth study would be required to provide a definitive finding on this.

The impact on the workload of the Litigation Branch and indeed on that of the Department as a whole from expanded discovery obligations and the rise of eDiscovery is substantial. The National eDiscovery and Litigation Support Services are intended to create efficiencies for the Department by serving as a single point of access for discovery, eDiscovery, and disclosure resources, services and advice. Although the potential efficiencies and cost savings of this group have not yet been documented, it addresses an issue of concern within the Litigation Branch and the Department.

1. INTRODUCTION

Under the authority granted by the *Department of Justice Act*, the Attorney General of Canada (AGC) has responsibility for all litigation for or against the Crown, any department, or Crown agent corporations.¹ The litigation function within the Department of Justice is handled by the Litigation Branch at headquarters, the regional offices, and some specialized Departmental Legal Services Units (DLSUs). The Assistant Deputy Attorney General Litigation (ADAG Litigation) has functional and coordination responsibility for all litigation conducted by or on behalf of the Department of Justice.

The focus of this evaluation is on the activities of the Litigation Branch, including the ADAG Litigation's coordination and approval function through the National Litigation Committee (NLC). The work of the Litigation Branch includes specialized units, namely the work of the National Security Group (NSG), the International Assistance Group (IAG), the Civil Litigation Section (CLS), the Management of Class Actions and Mass Litigation Unit (MCAMLU), the Litigation Practice Management Centre (LPMC), and the National eDiscovery and Litigation Support Services. Other evaluations address civil litigation in the context of the Department's portfolio structure.

This document constitutes the final report for the evaluation of the Litigation Branch, which was conducted between September 2013 and January 2015. This is the first evaluation of the Litigation Branch.

1.1. Purpose of the Evaluation

In accordance with the Treasury Board Secretariat's 2009 *Policy on Evaluation*, the primary purpose of this evaluation was to assess the relevance and performance of the Litigation Branch. In terms of relevance, the evaluation considered the continued need for the Litigation Branch and

¹ In addition to civil litigation, which is entirely the purview of the Department of Justice, the Department maintains a limited responsibility for criminal litigation, including interventions on constitutional challenges in criminal cases, as well as the work of the International Assistance Group and the National Security Group. Criminal prosecutions are handled by the Public Prosecution Service of Canada.

the alignment of Litigation Branch activities with government priorities, departmental strategic outcomes, and federal roles and responsibilities. With regard to performance, the evaluation considered both effectiveness (i.e., the extent to which the Branch has achieved its objectives) and efficiency and economy (i.e., the degree to which appropriate and efficient means are being employed to achieve the desired outcomes).

The evaluation covers the Litigation Branch's work between fiscal years 2008/09 and 2013/14. The Department of Justice Evaluation Division directed the evaluation, and the Evaluation Working Group (an advisory group with representatives from the Litigation Branch and regional offices) provided ongoing input into the evaluation.

1.2. Structure of the Report

This report contains six sections, including the introduction. Section 2 provides the background on the Litigation Branch, describing its structure, resources and services; Section 3 explains the methodology used in the evaluation; Section 4 summarizes the key findings; Section 5 presents the conclusions; and Section 6 contains the recommendations and management response.

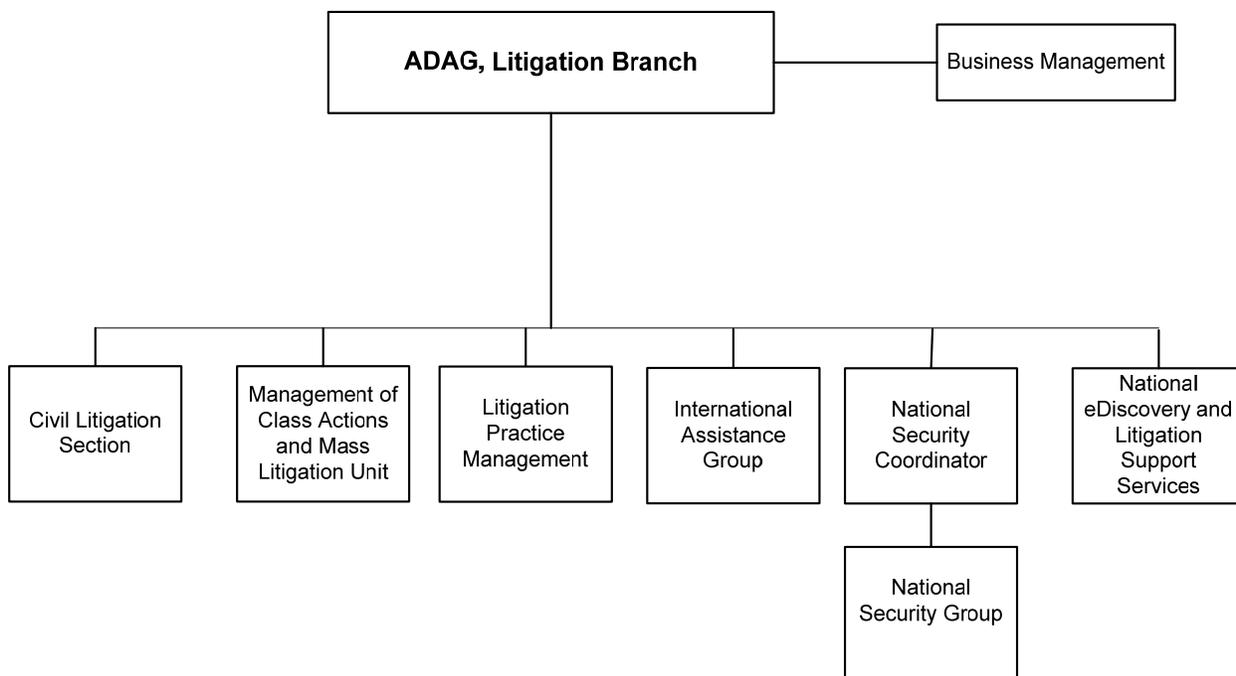
2. PROFILE OF THE LITIGATION BRANCH

The Litigation Branch is one of the specialized groups within Justice that provide legal services to departments and agencies to help them meet their policy and programming priorities and advance the overall objectives of the federal government. Through this program activity, the Department also provides legal services to the Justice Portfolio and supports the Minister as legal advisor to the Cabinet on complex, “whole-of-government” issues. The ADAG Litigation is responsible for the coordination of litigation that involves the Federal Crown in all provinces and territories, under both the civil and common law legal traditions. In addition, the ADAG Litigation must ensure that the Federal Crown fulfills its official languages obligations. A detailed logic model for the Litigation Branch, illustrating the relationship between the Branch’s planned activities and its expected results, is found in Appendix A.

2.1. Structure and Services

The organizational structure of the Litigation Branch is shown in Figure 1. The Branch is led by the ADAG Litigation. All units of the Litigation Branch were included in the evaluation with the exception of Business Management. Although Business Management supports the ADAG Litigation and the Litigation Branch’s activities by providing executive leadership, Business Management is a corporate function, which is outside the scope of evaluation for legal services.

Figure 1: Organizational Chart for the Litigation Branch



ADAG Litigation

The ADAG Litigation is the government’s chief legal advisor in matters affecting litigation by or against the Crown. In addition to overseeing the work of the Litigation Branch, the ADAG Litigation provides substantive and strategic advice to the Minister of Justice, Deputy Minister (DM) Team, and the Privy Council Office (PCO) on any issues arising from the conduct of litigation. As well, the ADAG Litigation coordinates litigation involving the Federal Crown in all provinces and territories.

Civil Litigation Section (CLS)

CLS provides legal advice, legal policy advice and litigation services to federal departments and agencies. Counsel provide legal advice on potentially litigious issues, as well as legal policy advice on possible policy or legislative solutions to issues that have or may come before the courts. Counsel appear before all levels of provincial and federal courts, federal and provincial administrative tribunals, parliamentary committees, and international tribunals.

The responsibility for providing litigation services to the federal government is shared by CLS and the regional offices. The regional offices are responsible primarily for handling litigation within their own regions,² while the Section handles litigation within its geographic region (the Ottawa Region, which contains Eastern and Northeastern Ontario). When a case is commenced in a region and is considered by the ADAG Litigation to be of national significance, he will confer with the Regional Director General and may either require that his office be part of the direct reporting obligation of regional litigation counsel, or, occasionally, have carriage of the litigation transferred to CLS. The Section will also manage litigation when a region does not have the necessary expertise, such as national security or official language cases in certain regions. Unlike the regional offices, CLS is not organized by portfolios. All of its activities fall under the responsibility of the ADAG Litigation.

The CLS counsel work closely with counsel in DLSUs on litigation matters. In cases where CLS counsel is litigating the case, the DLSU counsel provide litigation support to them, as the DLSU counsel would have greater familiarity with the client department/agency's structure, policies and programs. Some areas of specialized litigation work are conducted by specific DLSUs that independently manage their litigation files. For example, employment matters before the Public Service Labour Relations and Employment Board and related judicial review in the Federal Court are handled by Treasury Board Legal Services.³ These DLSUs are only required to consult with the head of the CLS in the event that the different departmental stakeholders have conflicting points of view about the instructions to be issued for a particular matter.

Management of Class Actions and Mass Litigation Unit (MCAMLU)

This unit of the Branch monitors and manages class actions where the Federal Crown is a defendant or a third party to the action. In addition, it monitors cases that may have an impact on the Federal Crown, such as class actions in which principles of broad application are at issue, class actions where the Crown could be a member of the class, or non-class actions that could have implications for class actions.

MCAMLU's role in monitoring and managing these cases is to ensure the coordination and consistency of legal positions taken by the federal government and to consider the potential

² Counsel from regional offices frequently agree to take on work outside their regions, in order to bring particular expertise and experience to bear, or to augment available resources.

³ For files involving federal employment matters in Quebec, the Quebec Regional Office, in collaboration with the Treasury Board of Canada Secretariat, manages these files, since they typically involve rules and procedures based on the Civil Code, and are proceeding in French.

implications of such legal positions on other litigation, legislation or policy initiatives before they are advanced. The Unit also shares information on standards and best practices, and works to develop expertise among counsel in handling class action cases through training and other activities. In addition, the MCAMLU is involved in the litigation of some high-profile or politically sensitive national class actions. Specific activities of the Unit include:

- participating in monthly teleconferences among counsel involved in class actions to share information on best practices and develop consistent legal positions;
- reviewing documents before they are filed with the court to ensure consistent positions are taken;
- collecting filed documents and developing standardized precedent materials;
- participating on working groups that study and make recommendations on key class action issues;
- monitoring and tracking class actions involving or with the potential to involve the Federal Crown and significant non-class action matters that have implications for class actions; and
- litigating class actions, either by serving as lead counsel or by providing expert advice and litigation support to regional counsel as a member of the litigation team.⁴

In any given year, the Unit monitors cases across Canada, as most jurisdictions will have at least one ongoing class action that falls under its purview. The Unit also works with many federal departments/agencies, as single class actions often involve more than one department/agency. There are, in essence, three roles in which the MCAMLU may be involved:

- passive monitoring of cases being handled in the regional offices;
- proactive monitoring of particularly sensitive cases by means of direct participation as a member of the litigation team; and
- carriage of certain high-profile national class actions as lead counsel.

Often, these national class actions are managed in collaboration with regional counsel. The formation of national litigation teams facilitates the development of comprehensive and coordinated responses that permit the management of interlocking and conflicting class action

⁴ Department of Justice Canada. (2007, October). *Class actions against the Federal Crown – A survey of law and implications of the caseload*.

claims that may be commenced in different provinces and/or territories. DLSU counsel also are frequently involved as litigation team members. In these circumstances, their primary responsibility is to ensure that communications to the clients about the teams' strategy and litigation requirements are clear and consistent, and that instructions are received on a timely basis after appropriate consultation with the client. MCAMLU counsel also, on an exceptional basis, may lead certain aspects of a file (examination or pleading) when certain points of law have been addressed in other jurisdictions or before the Supreme Court of Canada.

Litigation Practice Management Centre (LPMC)

The LPMC's core responsibilities relate to managing the Agent Affairs Program (AAP) — a national program created to strengthen the Department's ability to deliver effective and responsive legal services to the Government of Canada through appointing and managing legal agents. Legal agents are private sector law firms or practitioners retained by or under the authority of the Minister of Justice to provide legal services to the Government of Canada and to act on behalf of the Minister of Justice and Attorney General of Canada. Decisions to outsource legal work are based on established criteria such as geographically remote areas, situations in which there are conflicts of interest, considerations related to the capacity and availability (workload-related issues) of Justice counsel, and considerations with respect to situations in which special expertise is required.

The LPMC supports the ADAG Litigation and DM of Justice in establishing and operating the management control framework that governs the outsourcing of legal work, including the selection and appointment of legal agents and the management of agent activities and costs. In accordance with the established framework, the LPMC ensures that Justice Canada conducts due diligence in its decisions to outsource legal work, and that the processes relating to the sourcing, selection, appointment and management of legal agents promote openness, fairness and transparency, and value for money.

The LPMC also supports the ADAG Litigation on a wide range of projects and issues that relate to the delivery of legal services. These include identifying and organizing specific and targeted training sessions, as well as the planning and delivery of the National Litigation Conference that occurs every 18 months.

International Assistance Group (IAG)

The IAG carries out the functions assigned to the Minister of Justice as the central authority for Canada under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act*

(MLACMA), and provides advice to the Minister on his or her responsibilities under these statutes. The Group reviews and coordinates extradition and mutual legal assistance requests made to Canada, as well as those made by Canada to other countries. It maintains a bilateral extradition relationship with over 80 countries and has bilateral mutual legal assistance treaties with 35 countries, as well as a number of international tribunals, including the International Criminal Court.

Litigation under the *Extradition Act* and the MLACMA is conducted by Department of Justice counsel in the region where the litigation arises. Where litigation arises in Ottawa-Gatineau or Northeastern Ontario, it is conducted by members of the IAG. The Group also supports Canada's participation in the Financial Action Task Force on Money Laundering, the international body responsible for setting anti-money laundering and anti-terrorist financing standards to which Canada subscribes. The IAG has one foreign liaison officer in Brussels.

More specifically, the Group's activities include:

- providing general advice to the Department about both statutes and their operation;
- receiving all requests for extradition and mutual legal assistance made by foreign states to Canada (incoming requests);
- assisting Canadian police and prosecution services to make extradition and mutual legal assistance requests to other countries and communicating with foreign countries in relation to the execution of these requests (outgoing requests);
- reviewing both incoming and outgoing requests to ensure they satisfy all legal requirements;
- issuing required authorizations under the legislation on behalf of the Minister of Justice;
- managing and coordinating all international assistance requests to and from Canada;
- for mutual legal assistance requests, consulting with government departments or agencies that hold information or evidence that is relevant to the requests to determine if it can be provided without a court order;
- directing and guiding Justice Canada counsel in the regions and provincial prosecution services who conduct litigation in the area of international assistance;
- conducting extradition and mutual legal assistance litigation in the Ottawa-Gatineau area, as well as in Northeastern Ontario;

- preparing extensive legal advice and draft letters of decision for the Minister in support of his statutory obligation to personally decide surrender on incoming extradition cases;
- fostering relations with Canada's extradition and mutual legal assistance partners; and
- providing training in the area of international assistance.

The IAG also engages in several policy-related activities, such as:

- developing policies related to extradition and mutual legal assistance requests in consultation with other sections within Justice or interested government departments/agencies. For example, IAG developed a policy with respect to situations where the testimony of a Canadian government employee is sought in a foreign proceeding;
- coordinating with other departments and agencies to ensure that national security interests will not be adversely affected by the testimony, and working with the requesting nation on imposing any necessary conditions on the testimony (such as restricting questioning to certain matters); and
- participating in negotiations of international agreements or treaties that involve, or might impact, extradition and mutual legal assistance requests. In addition, IAG supports Canada's participation in relevant international fora, such as the Cross-Border Crime Forum, the Financial Action Task Force on Money Laundering, the Organization of American States, the Mutual Legal Assistance and Extradition Network, and meetings of the Lyon/Roma Group of the G8.

National Security Group (NSG) and National Security Coordinator (NSC)

The NSG serves as a central coordinating office for section 38 of the *Canada Evidence Act* (CEA), which creates a process intended to deal with the protection of sensitive or potentially injurious information. More specifically, the NSG:

- responds to general inquiries about the operation of section 38;
- receives notices under section 38 on behalf of the AGC;
- coordinates the government's response to section 38 notices, which includes consulting with affected departments/agencies;
- decides whether, when, and to whom section 38 proceedings should be disclosed;

- provides legal advice to the NSC and the ADAG Litigation on whether information that is the subject of a section 38 notice should be disclosed;
- communicates the decision of the NSC and the ADAG Litigation to the party making the section 38 notice; and
- instructs the civil litigator on applications brought under section 38 and, on occasion, litigates the matter before the court.

The NSG counsel draw on their experience to provide independent legal advice to clients on security and intelligence (S&I) related issues, and coordinate the Justice Emergency Team — a network of counsel who participate in exercises, provide advice in emergency situations, and develop tools/resources related to emergency management. The staff members of the NSG engage in outreach and training to increase awareness of key S&I legal issues as they arise, particularly in the context of section 38 of the CEA.

The NSG also supports the NSC, a Senior General Counsel position reporting to the ADAG Litigation. The NSC is responsible for the promotion of strategic leadership and the efficient coordination and integration of the Department's S&I-related litigation, advice and policy-related work. On behalf of the NSC, the NSG serves as the interface between the PCO and Justice on matters pertaining to senior-level S&I committees, and prepares the briefing material for these committees. In furtherance of its coordination mandate, the NSG performs the secretariat function for two key S&I-related committees: the National Security and Intelligence Committee (NSIC), an internal body, and the DM Subcommittee on National Security Legal Issues, an interdepartmental committee.

National eDiscovery and Litigation Support Services

National eDiscovery and Litigation Support Services support the ADAG Litigation in all aspects of litigation support services and technology. This includes the provision of litigation support tools and processes, as well as electronic discovery (eDiscovery), disclosure strategy, and practice in litigation. National eDiscovery and Litigation Support Services are responsible for:

- developing and implementing the Department's litigation support and eDiscovery strategy;
- establishing a single point of access for discovery, eDiscovery, and disclosure resources and services;

- providing advice to senior government officials and Ministers on eDiscovery issues and strategy; and
- providing training and learning activities related to discovery, eDiscovery and disclosure.

2.2. National Litigation Committee (NLC)

The NLC is the senior advisory body for all litigation, regardless of court level. The ADAG Litigation chairs the Committee and standing members include the ADAGs and Assistant Deputy Ministers (ADMs) who represent the portfolios, representatives of the sections of the Litigation Branch, chairpersons of the regional offices' litigation committees, the coordinators of appeals to the Supreme Court of Canada, and representatives of the Policy and Public Law Sectors of Justice Canada.

The Committee serves a coordination and advisory role. It monitors significant litigation in which the Federal Crown is a party or in which the government might intervene, as well as trends in litigation. The NLC provides a forum to discuss legal positions before they are taken in court to ensure that the AGC's positions are consistent nationally and take due consideration of government policies. The Committee reviews all recommendations to appeal to the Supreme Court of Canada as well as key pleadings and facts before they are filed in court. It also makes recommendations to the Minister and DM of Justice on whether to intervene in important cases. In addition, the Committee provides oversight to ensure that legal risk is appropriately managed. The matters brought to the attention of the NLC come largely from the regional offices' litigation committees and the Litigation Branch.

The NLC monitors significant litigation which could have an important impact on the law or the government's interests. The Committee also makes recommendations to the Minister and DM of Justice concerning matters such as interventions and submission on any important case, regardless of the level of court.

The Committee provides a forum for resolution of divergent views on legal issues to ensure that the Department of Justice speaks with one voice, that arguments advanced by departmental counsel or agents on behalf of the AGC are consistent, and that the policy concerns of the government, the AGC and client departments receive due consideration.

2.3. Resources

Table 1 presents the actual expenditures of the Litigation Branch for its operations over the last six fiscal years.⁵ During this period, the expenditures of the Branch increased 31%. As shown below, this change is due to a 42% increase in salaries, as expenditures for operations and maintenance have declined (also by 42%).

Table 1: Litigation Branch — Year-over-Year Actual Expenditures (\$)

	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Salary before EBP	13,998,434	16,908,137	18,761,303	18,872,798	18,878,161	19,940,591
EBP @ 20%	2,799,687	3,381,627	3,752,261	3,774,560	3,775,632	3,988,118
Subtotal: salary expenditures	16,798,121	20,289,764	22,513,564	22,647,358	22,653,793	23,928,709
Operating and maintenance	2,555,710	2,495,744	2,764,000	2,772,435	1,614,688	1,486,064
Total annual expenditures	19,353,831	22,785,508	25,277,564	25,419,792	24,268,481	25,414,773

Source: Data provided by Litigation Branch.

As of March 31, 2014, the Litigation Branch had a total of just over 200 full-time equivalents (FTEs) in the categories shown in Table 2.

Table 2: Litigation Branch Human Resources: FTEs for 2013/14

Category	ADAG Litigation ⁶	CLS	LPMC	MCAMLU	eDiscovery	IAG	NSG	Total
Counsel	7.87	38.94	3.0	5.75	6.64	19.95	12.02	94.17
Paralegals	1.13	16.79	1.00	3.96	5.88	9.11	9.33	47.20
Administration	5.94	30.00	7.03	3.17	3.00	6.69	3.00	58.83
Total FTEs	14.93	85.73	11.03	12.88	15.53	35.75	24.35	200.20

Source: Litigation Branch

Note: Business Management Office staff is included under ADAG Litigation.

⁵ The expenditures include the Office of the ADAG, Business Management, CLS, LPMC, MCAMLU, National eDiscovery and Litigation Support Services, IAG and NSG. For 2008/09 to 2010/11, there were also expenditures for criminal matters that are no longer part of the Litigation Branch budgets.

⁶ The human resource numbers for the ADAG Litigation include the Business Management Office.

3. METHODOLOGY

The Litigation Branch evaluation made use of multiple lines of evidence in order to support robust findings. The methodology included five main lines of evidence: a document and data review, key informant interviews, a file review, case studies, and a survey of legal counsel.

The evaluation matrix (which links the evaluation questions, indicators and lines of evidence) and the data collection instruments were developed with the input of the Litigation Branch Evaluation Working Group. The evaluation matrix is included in Appendix B, and the data collection instruments are in Appendix C.

Each of the evaluation methods is described more fully below. This section also includes a brief analysis of methodological challenges.

3.1. Document and Data Review

The document and data review was conducted both to inform the development of data collection instruments and to address the majority of the evaluation questions.

Documents reviewed were obtained from internal, external and publically available sources. Departmental documents reviewed included: Departmental Performance Reports (DPRs), Reports on Plans and Priorities, the results from Public Service Employee Surveys (PSES),⁷ and Client Feedback Survey results.⁸ Internal Litigation Branch documents were also reviewed, as well as publically available information, such as budget speeches and Speeches from the Throne.

⁷ The PSES is conducted every three years by Statistics Canada on behalf of the Office of the Chief Human Resources Officer. Surveys conducted in 2005, 2008 and 2011 were available for the evaluation. The survey had 71, 89 and 177 Litigation Branch respondents in 2005, 2008 and 2011, respectively (Statistics Canada, 2005; 2008; 2011).

⁸ The Corporate Planning, Reporting and Risks Division conducted a Client Feedback Survey in 2009 and 2012. A total of 51 (in 2009) and 120 (in 2012) service users of Litigation Branch services at headquarters responded to the survey, providing feedback on the accessibility, utility and timeliness of legal services provided by the Branch. Different aspects of the legal services were rated on a 10-point Likert scale, with 10 indicating “completely satisfied” and 1 indicating “not at all satisfied” (Office of Strategic Planning and Performance Measurement, 2013).

In addition to documents, the evaluation involved the review of iCase data from fiscal years 2008/09 to 2013/14. iCase is the Department’s integrated case management, timekeeping and billing, document management, and reporting system. Given their small number of files, LPMC, National eDiscovery and Litigation Support Services and ADAG Litigation were not included in the iCase analysis.

3.2. Key Informant Interviews

The key informant interviews conducted for this evaluation addressed the majority of evaluation questions, and represented a key line of evidence in gathering information on the need for the Litigation Branch and the effectiveness of Branch activities. A list of potential key informants was prepared, and interview guides tailored to each key informant group were developed in consultation with the Evaluation Working Group. Interviews were conducted with 58 key informants representing the Litigation Branch (n=24); regional offices, including Regional Directors General, regional Litigation Committee chairs, and regional IAG delegates (n= 14); portfolio representatives and DLSUs (n=14); and client departments/agencies (n=6).

The following scale has been applied to report on interviews:



3.3. File Review

A review of a selection of closed files was conducted to allow for a more in-depth understanding of the life of a file in relation to the performance measures for the Litigation Branch. This method also allowed the evaluation to explore whether the information obtained from key informants on how the Litigation Branch conducted its work was supported by a review of selected case files.

The file review involved the examination of iCase data and, when available, hard copy files for 62 files: 33 CLS files, 32 of which were from six “suites” of related files at different levels of court; five NSG files; five IAG files; six related MCAMLU files; six LPMC files; and seven files (of which five were related) from regional offices that involved the Office of the ADAG Litigation and/or the NLC.

The sample of files was chosen with the input of the Evaluation Working Group and was considered to provide a good selection of the broad spectrum of the work of the Litigation Branch, but a particular focus was higher profile (risk and complexity) files. As files were not chosen randomly, and as the sample is not large (considering the thousands of files worked on by Litigation Branch counsel during the time period covered by the evaluation), the file review sample is not a strictly representative one. Rather, the file review was intended to be illustrative of the Litigation Branch's approach to its work.

To protect confidential information, as well as solicitor-client privilege, staff from the Evaluation Division and, as needed, counsel from the Litigation Branch, conducted the file review.⁹ To ensure that comparable information was collected from the files, counsel completed the standard file review template developed for the study. The template collected information to respond to the evaluation matrix and focused on factual information available in the files.

3.4. Case Studies

Three case studies of litigation files were conducted to allow for an exploration of best practices and lessons learned. For each case study, file review templates (completed as part of the file review conducted for the evaluation) were examined. In addition, telephone interviews were conducted to supplement documented information, to provide context for the work, and to allow for a more in-depth assessment of the way the file was handled and the effectiveness of the working relationship between the Litigation Branch, other areas of Justice (i.e., DLSUs, regional offices, specialized sections within headquarters), and the client representatives. Interviews involved Branch counsel, other counsel within Justice Canada, and client department/agency representatives who worked on the file that was the subject of the case study (including headquarters and regional representatives from each organization). Interviews were conducted with 11 stakeholders.

3.5. Survey of Legal Counsel and Paralegals

To gather the input of all Litigation Branch counsel and paralegals, the evaluation included an anonymous and confidential web-based survey that was delivered by the Department of Justice. The survey was online for a total of three weeks — from June 17 to July 9, 2014. Invitations were sent to all 138 counsel and paralegals of the Litigation Branch. A reminder was sent to participants

⁹ Given the sensitive nature of NSG files, counsel with NSG conducted their file review. MCAMLU also conducted the review of its chosen files.

in order to increase the response rate. Fourteen of these participants were not available during the time the survey was online. In total, 79 respondents completed the survey for a response rate of 64%.¹⁰ Once the survey was finished, open-ended questions were coded and the survey data was analyzed using SPSS, a statistical software package.

Table 3 provides a profile of survey respondents and shows that, generally, respondents were representative of the population of Litigation Branch counsel and paralegals.

Table 3: Comparison of Litigation Branch and Survey Respondent Profiles

Characteristics	Litigation Branch		Survey Respondents	
	Number	Percentage	Number	Percentage
What is the classification level of the position you currently occupy?	(N=138)¹¹		(n=79)	
Paralegal (EC)	46	33%	26	33%
Counsel				
LP-01	22	16%	13	16%
LP-02	37	27%	18	23%
LP-03	15	11%	9	11%
LP-04	9	7%	6	8%
LP-05	4	3%	3	4%
LC-01 to 04	5	4%	4	5%
When did you first join the Department?	(n=138)		(n=79)	
Less than 6 years ago	33	24%	17	22%
Between 6 and 10 years ago	41	30%	20	25%
More than 10 years ago	64	46%	42	53%
Where do you currently work?	(n=138)		(n=79)	
CLS	59	43%	34	43%
MCAMLU	10	7%	4	5%
LPMC	4	3%	4	5%
NSG	19	14%	15	19%
IAG	30	22%	15	19%
National eDiscovery and Litigation Support Services	10	7%	4	5%
Office of ADAG	6	4%	3	4%

¹⁰ Another 10 respondents partially completed the survey, but they did not complete enough questions for their survey responses to be used in the analysis. The 64% response rate compares favourably to the surveys of staff conducted for the other legal services evaluations by the Department of Justice.

¹¹ The Litigation Branch total number of 138 is based on the number of counsel and paralegals in the Litigation Branch at the time of the survey, including those on leave but excluding those on assignment or secondment.

Characteristics	Litigation Branch		Survey Respondents	
	Number	Percentage	Number	Percentage
What kind of files do you work on most often?*	Not available			
Litigation			54	68%
Advisory			21	27%
Policy development			2	2%
Other			2	2%

Note: Some totals do not sum to 100% due to rounding.

*Information not available for all Litigation Branch counsel.

3.6. Limitations

The evaluation faced a few methodological limitations. These are listed below by line of evidence.

Document and data review: iCase data. Overall, iCase was a useful source of information for the evaluation. There were, however, some changes in Justice policy that affected iCase data and, consequently, what data were included in the evaluation. Data on the number of files, number of hours, legal issues and outcomes were included for the full evaluation period (2008/09 to 2013/14). However, iCase data on legal risk and complexity were not included for the 2013/14 fiscal year for two reasons. First, the methodology for assessing legal risk has changed, so that the risk levels for that year are not comparable to earlier years' assessments.¹² Second, when the new risk rating took effect for advisory and legislative files on September 30, 2013, all open files of those types had their risk rating set to "not yet evaluated" to increase the accuracy and reliability of the data going forward. However, based on earlier data, many Litigation Branch units were already assessing legal risk for their advisory and legislative files before September 2013. Consequently, when data were re-pulled to obtain 2013/14 data, those risk assessments were now gone. As a

¹² The primary tool associated with Legal Risk Management (LRM) is the LRM framework, which was developed to assess legal risks. The framework operates on two dimensions: the likelihood of an adverse outcome and the impact on the client department or agency or the government as a whole. Each dimension is assessed as being low, medium or high risk, and that assessment is used to situate the file within the 9-cell grid of the framework. Then across the two dimensions, the file is determined to be low, medium or high risk. Until 2013, the risk assessments were divided based on the horizontal axis of the grid as high risk (7–9), medium risk (4–6), or low risk (1–3). The new LRM framework bases risk on the diagonal axis, rather than horizontal axis, so that high risk is 9, 8 and 6, medium risk is 7, 5 and 3, and low risk is 4, 2 and 1. This brings the Department of Justice into alignment with the Integrated Risk Management framework used by most of the Canadian government. The new framework has been mandatory for litigation files since April 15, 2013 and became mandatory for advisory, legislative and litigation files on September 30, 2013.

result, the decision was made to rely on data from 2008/09 through 2012/13 for legal risk and complexity.

Late in the evaluation, it was discovered that the iCase reports included time recorded by non-Litigation Branch staff to Litigation Branch files. In addition, the iCase reports did not include hours recorded by Branch staff to files held by other areas of Justice Canada. This situation does not, however, substantially change the results reported. In fact, for the four units of the Litigation Branch that are most engaged in legal advisory and litigation files, well over 90% of the time recorded to that unit's files was recorded by Litigation Branch staff. In addition, almost all of the legal service hours for each unit are included in the iCase reports (see Table 4). Because the Office of the ADAG and the National eDiscovery and Litigation Support Services record substantial amounts of time to non-Litigation Branch files, they are not included in the iCase analysis of hours. The LPMC does not record time in iCase and is, therefore, also not included.

Table 4: iCase Hours by Timekeeper

Litigation Branch Unit	Percentage of total time recorded by staff from Unit	Percentage of legal services work of Unit accounted for in iCase data
CLS	94.0%	98.0%
MCAMLU	95.0%	96.0%
NSG	99.6%	99.7%
IAG	97.3%	99.9%

Source: iCase data.

Interviews, case studies and the survey. The interviews with key informants and case study participants, as well as the survey of Litigation Branch staff, have the possibilities of self-reported response bias and strategic response bias. Self-reported response bias occurs when individuals are reporting on their own activities and so may want to portray themselves in the best light. Strategic response bias occurs when participants answer questions with the desire to affect outcomes.

File review. In any given year during the evaluation (2008/09 to 2013/14), the Litigation Branch actively managed in excess of 3,000 files. To obtain a representative sample was not feasible. Instead, the evaluation relied on the opinion of the Litigation Branch units to select files that they believed reasonably represented their work.

Mitigation strategy. The mitigation strategy for the above methodological limitations was to use multiple lines of evidence. The evaluation gathered information from the Litigation Branch and those using Branch services, from management and “front line” staff, and from a review of files and more comprehensive administrative data review (iCase). The mitigation strategy also included

using both quantitative and qualitative data collection methods to answer evaluation questions. By using triangulation of findings from these different sources, the evaluation was able to strengthen its conclusions.

4. FINDINGS

4.1. Relevance

The evaluation considered the relevance of the Litigation Branch with respect to the continued need for its services given the demand for the legal services, the responsiveness of the Litigation Branch to federal government priorities, roles and responsibilities, as well as the Branch's support of Justice Canada's strategic outcomes.

4.1.1. Continued Need for the Litigation Branch

The Litigation Branch addresses needs of the government, both in terms of the structure it provides to coordinate litigation services and the type of legal expertise it offers.

Through the ADAG Litigation, the Branch serves a coordination role for all litigation involving the federal government. This coordination role is particularly important given the matrix structure of the Department of Justice, where litigation services are provided primarily by litigators in the Litigation Branch and the regional offices, and litigation support services are provided by counsel in the DLSUs and specialized sections within the Litigation Branch.¹³ The coordination role of the ADAG Litigation includes keeping the government apprised of ongoing litigation by providing regular briefings. According to stakeholders, federal interest and involvement in the litigation process are strong and the ADAG Litigation's role is a critical one.

Beyond the coordination role, the Branch has units that provide centralized support functions to lawyers in the Department.

- The LPMC oversees the procurement of legal services and appointment of legal agents. Agents are required when the Department does not have the necessary expertise or capacity to handle a matter, or when, for various reasons such as geographic distance between regional offices and the relevant court, it is cost effective to hire a local agent. The LPMC is responsible for

¹³ A few specialized DLSUs also provide litigation services.

the contracting and policy framework for outsourcing legal work and supports counsel across the Department with a transparent and objective process.

- The National eDiscovery and Litigation Support Services provide a centre of expertise in handling files with a large volume of documents, which key informants report is becoming commonplace and requires a substantial level of effort to manage. The Group directly assists with discovery and disclosure on some very complex files that have hundreds of thousands of documents. In addition, it provides advice to counsel on issues such as using document management software, assists clients with the identification of relevant documents, and helps determine an efficient document review strategy. Through the National eDiscovery and Litigation Support Services, the Litigation Branch provides support to the Department on pressing litigation management issues.

The Branch's units that provide litigation and litigation-related advisory services serve a unique role within the Department. While CLS operates much like a regional office with a geographic area that it covers, it also handles cases of national significance where central management is necessary. MCAMLU is a specialist unit that handles some of the more complex, inter-provincial/territorial class actions and also serves as a resource to regional offices that are handling class actions. The NSG and the IAG serve very specific functions related to national security litigation, and extradition and mutual legal assistance requests, respectively.¹⁴ The location of these groups within Justice Canada headquarters strengthens the Department's ability to coordinate its response in their legal areas.

Demand for Litigation Branch services

The increasing demand for Litigation Branch services provides further evidence of the ongoing need for the Branch. The evaluation evidence (document review and stakeholder interviews) pointed to a variety of legal practice trends influencing the demand for Litigation Branch services. These sources highlighted a number of trends as factors that, in the past five years, have increased demand for Litigation Branch services (see Table 5).

¹⁴ Given the nature of their work, IAG and NSG have more of a criminal law aspect than the other areas of the Branch and the Department. However, when the Public Prosecution Service of Canada became a separate entity from the Department of Justice, the NSG and the IAG remained within the Department because of the legislative responsibilities they have to support the Minister of Justice and Attorney General of Canada under legislation (see Section 2.1).

Table 5: Examples of Legal Practice Trends Affecting the Litigation Branch

Unit	Trends
CLS	<p>Increased interest-based litigation (including a trend toward increased use of courts to change public policy).¹⁵</p> <p>Increased Aboriginal law cases being handled by CLS.</p> <p>Increased governmental focus on improving access to justice, including amendments to the Ontario <i>Rules of Civil Procedure</i> and “access to justice” initiatives, which took effect January 1, 2010. (The purpose was to provide lower-cost access to the courts to a greater number of people. This resulted in a larger volume of cases and greater demand for junior and mid-level counsel and paralegals.)</p>
IAG	<p>Increased transnational crime and increased international cooperation regarding criminal law (affecting volume of extradition and mutual legal assistance requests handled by IAG).</p> <p>Increased number of legal challenges to Canada’s extradition system.</p>
NSG	<p>Increased global focus on national security issues.</p> <p>Increased challenges to government claims of privilege or immunity, mainly related to national security.</p> <p>Increased number of multi-client national security litigation cases requiring large legal teams.</p>
MCAMLU	<p>Increased class actions brought against government.</p>

The rise in demand for Litigation Branch services is confirmed by the Department’s administrative data in iCase. These data show that the number of files actively managed¹⁶ by the Branch increased by 11% between 2008/09 and 2013/14. The increase was fairly steady, except for a 4% decline in 2012/13. Not surprisingly, the increase is driven by litigation files, which rose from 1,077 in 2008/09 to 1,351 in 2013/14, a 25% increase.¹⁷ Although not all units within the Litigation Branch experienced an increase in files to the same extent,¹⁸ the percentage of actively managed files did increase over the evaluation period for each of the four largest units within the Branch. MCAMLU experienced the greatest increase (26%), followed by CLS (19%), NSG (16%), and IAG (4%) (see Table 6).¹⁹

¹⁵ Examples of this include Canadian Wheat Board reform, gun registry abolition, and criminal law reform.

¹⁶ In iCase, actively managed files are defined as those with at least five minutes of work recorded in a given fiscal year.

¹⁷ The number of actively managed advisory files remained relatively static (1,936 files in 2008/09 and 1,982 files in 2013/14).

¹⁸ The work of the LPMC is not tracked in iCase in the same way as the work of other Branch units. Internal documents show that, after implementation of the contracting/accountability framework for legal agent appointments, these have generally decreased; the number of appointments decreased from 260 in 2008/09 to 171 in 2013/14 (although the low point in appointments was 144 in 2011/12).

¹⁹ Even though the 26% increase in MCAMLU files represents nine additional files, each class action file is a large, complex case that involves a substantial level of effort.

Table 6: Number of Actively Managed Files by Unit — 2008/09 to 2013/14

Unit	2008/09		2009/10		2010/11		2011/12		2012/13		2013/14		Total	
	# of files	% change												
IAG	1,890	--	1,755	(6)*	1,819	3	1,930	6	1,772	(8)	1,957	10	5,980	4
NSG	128	--	159	24	156	(2)	196	25	145	(26)	149	3	349	16
CLS	1,125	--	1,191	6	1,272	7	1,275	0	1,320	4	1,343	2	4,710	19
MCAMLU	34	--	34	0	27	(21)	29	7	37	28	43	16	72	26
Total	3,177	--	3,139	(1)	3,274	4	3,430	6	3,274	(4)	3,492	7	11,111	11

Source: iCase

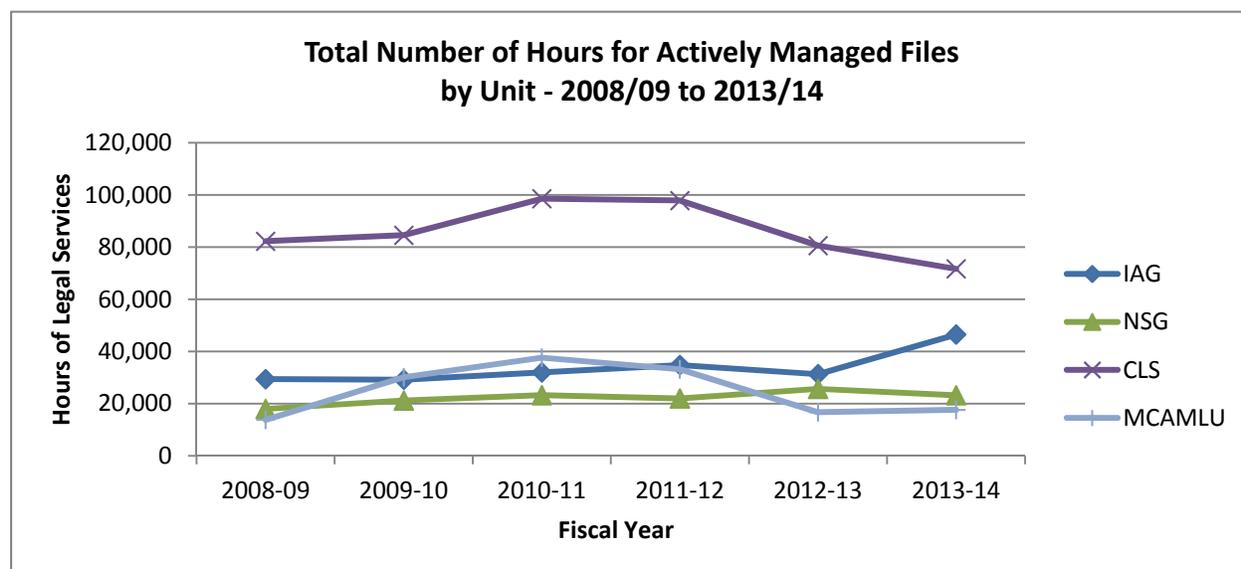
*Bracketed values indicate negative changes.

In addition to an increase in the number of files, iCase data show a concomitant increase of 21% in the hours expended by the Litigation Branch on actively managed files over the evaluation period. Trends regarding the hours spent on files varied among units within the Litigation Branch.²⁰ Of the four largest units within the Litigation Branch, IAG experienced the largest increase in level of effort (58%) from 2008/09 to 2013/14, followed by NSG (29%) and MCAMLU (28%). IAG's increase primarily occurred in 2013/14. By contrast, CLS (which was responsible for about 50% of the total hours for actively managed Litigation Branch files despite seeing an increase in the volume of actively managed files) had a 13% decrease in hours, from 82,258 hours in 2008/09 to 71,675 hours in 2013/14 (see Figure 2).²¹

²⁰ This information should be treated with some caution. The data on hours in iCase may reflect changes in reporting among certain units. For example, IAG's increase may be due, in part, to more emphasis being placed on accurately entering hours into iCase.

²¹ The CLS has recorded a substantial amount of time to corporate files, which are not attached to a particular client. Corporate files are opened to record time spent on prescribed activities related to a specific matter that benefit Justice as a corporate entity (i.e., non-legal work). When corporate time is included, the CLS does not experience a decline in level of effort. In 2013/14, 38% of CLS time was billed to corporate files. The level of effort on corporate files will be analyzed more in Section 4.3.3.

Figure 2: Total Number of Hours for Actively Managed Files by Unit - 2008/09 to 2013/14



Source: iCase

Legal Risk and Complexity

Although the general increase in the number of hours spent on Litigation Branch files is likely partly attributable to the increase in file volume, it is clear that the increase in the number of files actively managed by the Litigation Branch is not entirely responsible for the overall increase in workload. Other factors, such as risk and complexity of files, also affect workload, but do not affect all units uniformly. The administrative data confirm key informant opinion that legal risk ratings have not changed substantially in the last five years. The only exception was CLS, where legal risk has declined.²² MCAMLU files with a risk rating remained generally high risk and most of the files of IAG and NSG are low risk.²³

The complexity of files, however, did change for most units of the Litigation Branch.²⁴ For CLS, high or mega-complexity litigation files declined from about 15% in 2008/09 to 10% in 2012/13,

²² High-risk files represent a relatively small proportion of CLS work. The proportion of high-risk litigation files remained stable at around 8% during the time period included in the evaluation (2008/09 to 2012/13). However, CLS experienced an increase in the proportion of low-risk litigation files, from 48% in 2008/09 to 55% in 2012/13, and a corresponding decrease in medium-risk litigation files, from 33% to 21%. CLS also experienced a substantial decline in the proportion of actively managed, high-risk advisory files — from 31% in 2009/10 to 14% in 2012/13; however, it appears that CLS had no high-risk advisory files in 2008/09.

²³ For MCAMLU, risk data should be interpreted with caution, given, at times, the very high percentage of MCAMLU files with a risk status of “not yet evaluated” or “unable to assess”.

²⁴ Most MCAMLU files with a complexity rating are high or mega-complexity.

and low-complexity litigation files increased substantially from 38% in 2008/09 to 46% in 2012/13.²⁵ In contrast, NSG and IAG experienced increases in complexity. Over the evaluation period, NSG experienced a more than doubling of the proportion of high-complexity litigation files (from 12% to 36%).²⁶ IAG's actively managed advisory files (which make up most of IAG's work) saw a reduction in the percentage of files with low-complexity ratings (from 53% in 2008/09 to 38% in 2012/13), and an increase in the percentage with medium-complexity ratings over the same period (from 37% to 57%).²⁷ Key informants also perceived an increase in the complexity of IAG files, noting changes in the nature of extradition files which have rendered them more complex, and an increased tendency for defence counsel to raise abuse of proceedings allegations against the Crown in extradition cases, which are difficult to defend. In general, key informants attributed the rise in complexity to the increasing number of files with high volumes of documents and other evidence, which places increased pressures on counsel.

4.1.2. Alignment with Federal Priorities and Roles and Responsibilities

The Litigation Branch has an ongoing role to play in supporting and upholding government priorities. Evidence indicates close alignment between the work of the Litigation Branch and documented federal priorities and commitments — and shows that Justice plans and priorities in relation to litigation work shift in order to maintain this close alignment. Speeches from the Throne and budget reports highlight a number of federal priority areas that signal a role for Litigation Branch services. For example, speeches and budget reports released during the time period covered by the evaluation highlight goals and commitments such as the federal government's emphasis and investments related to crime prevention, extradition reform and public safety (including changes to sentencing laws, *the Extradition Act*, and other public safety-related legislation); proposed changes to legislation in the area of Aboriginal law; initiatives involving Aboriginal populations (such as addressing specific claims and exploring opportunities for economic development on reserve land); and commitments to pursuing foreign policy that will advance Canadian interests.

²⁵ CLS representatives report that the increase in low-complexity litigation files is due primarily to two factors: the increased caseload of low-complexity immigration files and client instructions to reduce the use of legal agents on certain low-complexity files.

²⁶ It should be noted that NSG also experienced a substantial increase in the proportion of actively managed low-complexity advisory files (from 32% in 2008/09 to 76% in 2012/13). However, as NSG's high-complexity litigation files use substantially more resources (as measured by FTEs) than its low-complexity advisory files, the increase in high-complexity litigation files can still reasonably be considered a driving force for the overall increase in hours spent on NSG files.

²⁷ Although IAG's high- or mega-complexity advisory files decreased from 2008/09 to 2013/14, these files make up a very small proportion of IAG's work. The percentage of IAG files with high- or mega-complexity ratings decreased from 8% in 2008/09 to 4% in 2012/13.

Branch litigators (particularly from CLS, NSG and IAG) have expertise in these priority areas. Moreover, in highlighting the work of the Litigation Branch in areas such as public safety, criminal law reform, Aboriginal law, and foreign treaty relationships, internal documents and DPRs show good alignment between the work of the Litigation Branch and documented federal priorities.

Evaluation findings also provide evidence that the work of the Litigation Branch supports the Minister of Justice and Attorney General of Canada in fulfilling responsibilities under federal legislation. The following points describe the ways in which the work of the Branch corresponds with federal statutes:

- Under the *Department of Justice Act*, Justice Canada has a mandate to support the roles of the Minister of Justice and Attorney General of Canada. The *Department of Justice Act* specifies that the AGC is to advise federal department heads on all matters of law connected to their departments (s. 5[b]). The Act also gives the AGC authority over the “regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada” (s. 5[d]). By conducting litigation on behalf of the Crown and coordinating litigation-related services across the government, the Litigation Branch as a whole clearly supports the AGC in fulfilling these mandates of the *Department of Justice Act*.
- The IAG supports the Minister in carrying out responsibilities under the *Extradition Act* and the MLACMA. Evidence from documents and stakeholder interviews indicates that the Group adapts its services to maintain alignment with these pieces of legislation and also assists in efforts to change and improve the legislation. In addition, documents and stakeholders indicate that the IAG further supports the priorities of the Government of Canada by prioritizing its requests over those made to Canada by other countries.
- The NSG plays a role in advising the ADAG Litigation on legal matters related to a number of acts, including the CEA, the *Canadian Security Intelligence Service Act*, the *Security of Information Act*, and the *Security Offences Act*. In addition, the NSG carries out duties in relation to the *Anti-terrorism Act*. Of these statutes, the CEA implies the greatest role for the NSG; under the CEA, the AGC is responsible for making appropriate objections when disclosure of national security information is sought in administrative, civil or criminal proceedings.

By supporting the Minister of Justice and Attorney General of Canada in carrying out responsibilities under the above-mentioned statutes, the Litigation Branch also assists the Minister in ensuring that “the administration of public affairs is in accordance with the law” (thus fulfilling requirements outlined in section 4 of the *Department of Justice Act*).

4.1.3. Alignment with Departmental Strategic Priorities

Evaluation results indicate that the Litigation Branch supports the Department of Justice in meeting both of its strategic outcomes.²⁸ Regarding the first strategic outcome (a fair, relevant and accessible Canadian justice system), the Litigation Branch's lawyers are bound by the provisions of the *Department of Justice Act* to ensure that the government acts in accordance with the law. Unlike private counsel, whose focus is on their client's interests, Justice counsel have a primary duty to protect fundamental fairness and the rule of law. An example of this is the Litigation Branch's work related to access to justice. Litigation Branch counsel (along with representatives from other branches, portfolios and sectors across the Department of Justice) take part in the Access to Justice Working Group. This group meets monthly and its mandate is to support the Department of Justice in efforts to improve access to Justice in federal programs, activities and initiatives.

Evidence also indicates that the Litigation Branch contributes to the Department's fulfillment of its second strategic outcome (a federal government that is supported by high-quality legal services). Stakeholders indicate that Litigation Branch services are both high quality and responsive to clients' needs (see Section 4.2.1). In addition, they noted that Branch services are provided to essentially any government department or agency, citing this as further evidence of the Branch's responsive support of the federal government.

4.2. Performance – Achievement of Expected Outcomes (Effectiveness)

According to the 2009 Treasury Board *Policy on Evaluation*, evaluating performance involves assessing effectiveness, efficiency and economy. The subsections below discuss the effectiveness of the Litigation Branch — in other words, the extent to which the Litigation Branch is achieving its expected outcomes.

²⁸ In addition, Litigation Branch employees are knowledgeable about the departmental mandate and contribute to the achievement of departmental goals. In 2008, over 70% of Branch employees agreed that they can clearly explain the Department's direction (vision, values, mission, etc.). In 2011, the majority of Litigation Branch employees agreed that they know how their work contributes to the achievement of the Department's goals (82%), and that Justice Canada does a good job of communicating its vision, mission or goals (65%) (Statistics Canada, 2008; 2011).

4.2.1. Timely, Responsive, High-Quality Litigation Services and Legal Advice

Like all legal services within the Department of Justice, the work of the Litigation Branch is guided by departmental service standards. These standards demonstrate the Department's commitment to delivering high-quality (i.e., timely, responsive and useful) services to government departments and agencies. The evaluation found a high level of satisfaction with the overall quality, as well as the responsiveness and timeliness of Litigation Branch services — indicating that the Branch is upholding this multifaceted departmental commitment to high-quality service provision. Specific findings with regard to the quality, timeliness and responsiveness of Litigation Branch services are discussed in greater detail below.

Quality of Litigation Branch Services

Satisfaction with the quality of Litigation Branch services is confirmed by multiple lines of evidence. Moreover, evaluation results indicate that Litigation Branch representatives, as well as clients and other stakeholders, are in agreement about the quality of Branch services. In the 2012 Client Feedback Survey, the Litigation Branch received a score of 8.4 out of 10 (surpassing the departmental target of 8.0 out of 10) for the overall quality of litigation services provided — up from a score of 8.0 in 2009. Litigation Branch representatives as well as client departments and other areas of the Department of Justice support these findings. The majority of key informants and case study interviewees (representing the Litigation Branch, client departments and DLSU counsel) as well as Litigation Branch survey respondents agreed that the Branch provides high-quality services, or identified that their experience in working with the Litigation Branch was above average or excellent.

Evaluation results also indicate that service quality is relatively consistent among units within the Litigation Branch. Almost all key informants and case study participants (representing both clients and the Branch) agreed that the Litigation Branch provides high-quality services, regardless of their affiliation or experience in working with particular units of the Branch. Survey results support this observation, as the majority of Branch survey respondents who could comment reported above average or excellent working experiences with the NSG (79%), the IAG (65%), the Office of the ADAG (67%), the CLS (63%), National eDiscovery and Litigation Support Services (58%), and MCAMLU (57%). Just under half of survey respondents who could comment reported average or

excellent working experiences with the LPMC (48%). For all units of the Litigation Branch, very few respondents reported below average or poor working experiences.²⁹

Successful outcomes in litigation files can be viewed as an indicator of effective legal service provision; Justice Canada has used this measure for its departmental performance reporting.³⁰ Successful outcomes can be achieved through settlement or adjudication. Results are recorded as successful (a complete win for the government's position), unsuccessful (a complete loss), or partially successful.³¹ For most of the last six years, the proportion of successful CLS litigation files had been relatively stable at about two-thirds. In 2013/14, the percentage of successful files rose to 74%, which exceeds the Department target of 70% and matches the most recently reported departmental average of 74.9% (Department of Justice, 2013) (see Table 7).

Table 7: Crown Results for Closed CLS Files (2008/09 to 2013/14)

	2008/09 (n=447)	2009/10 (n=751)	2010/11 (n=460)	2011/12 (n=701)	2012/13 (n=632)	2013/14 (n=551)
Successful	64%	53%	68%	66%	69%	74%
Partially Successful	15%	9%	17%	12%	15%	14%
Unsuccessful	21%	12%	15%	21%	16%	12%
(Not Indicated)	1%	27%	<1%	-	<1%	--
Total	101%	101%	100%	99%	100%	100%

Note: Totals may not sum to 100% due to rounding.

Source: iCase data (Closed litigation files)

Responsiveness of Litigation Branch Services

All data collection methods provide evidence that Litigation Branch services are responsive to the needs of clients.

²⁹ MCAMLU, IAG, LPMC and National eDiscovery and Litigation Support Services had a large proportion of respondents who could not provide an opinion (don't know, no response, or not applicable). For National eDiscovery and Litigation Support Services, a relatively large proportion (38%) of counsel who primarily handle litigation files reported that they either had no experience with the group or considered it not applicable to their work. The issue of awareness and use of National eDiscovery and Litigation Support Services will be discussed in more detail in Section 4.3.

³⁰ It should be noted, however, that clients sometimes desire that litigation be pursued even if the chance of a successful outcome is low for a variety of reasons.

³¹ Files closed for administrative reasons (e.g., files opened to assist counsel in another region, files closed when the matter is transferred to another area within Justice Canada) are not given an outcome in iCase and, therefore, are not included in the analysis.

Results from Client Feedback Surveys indicate that clients are satisfied with the responsiveness of Branch services; in 2012, the Litigation Branch scored well above the departmental target for providing courteous and responsive legal services (9.1 out of 10) and for identifying the correct service provider to meet clients' needs (8.6 out of 10). In addition, the high ratings given for electronic (8.5), in-person (8.6), and telephone (8.7) communications show that clients are generally satisfied with various modes of communication used by the Branch. Key informant interviews and case study results support these findings, as clients who participated in these lines of evidence reported that the Litigation Branch has been responsive to their requests for assistance, and has kept them informed of developments. According to Litigation Branch survey respondents, clients are kept informed; nearly all respondents reported that they, or a member of their legal team, frequently or regularly provided the client department with progress reports and updates on files (94%), consulted with the client department to understand the nature of the legal problem on a given file (89%), and involved the client department in the development of legal strategies, positions and/or options (84%).

These observations indicate a generally high degree of communication with clients on files; however, the evaluation found variation in both the kinds of issues about which the Litigation Branch consults with clients, and the extent to which files involve direct interaction between the Litigation Branch and clients.

- Although some files and case studies document that Branch counsel consulted the client on a variety of legal issues (including identifying and assessing risk, options to manage risk, developing legal strategies and positions, the impact of legal risk, and possible settlement), others indicate that the client was only consulted on one or two issues (such as background information, case law, or developing legal strategies or positions).
- The Litigation Branch survey and the key informant interviews provide evidence that the Branch interacts to a greater degree with DLSU counsel than directly with client departments; over 8 in 10 survey respondents (82%) reported that they interact frequently or regularly with the client departments' DLSU, while less than half (47%) reported having frequent or regular interactions with client departments directly.
- Similarly, key informant interviews and Litigation Branch survey results indicate that the Branch consults with client departments concerning legal issues more so than policy or program issues; although a very high percentage of survey respondents reported consultation regarding legal issues, far fewer (40%) indicated that they, or a member of their legal team, frequently or regularly discussed policy and/or program objectives with client departments.

Evaluation results point to many reasons for these variations. Case studies, key informant interviews, and survey results indicate that the amount and type of client consultations can depend on the type of case, as well as the client department, with some cases and some clients calling for more consultations on a broader array of issues than others. As key informants pointed out, not all clients have experience in litigation, and not all wish to be extensively involved in the litigation process; in many cases, it is entirely appropriate for the Litigation Branch to interact with DLSU counsel in lieu of interacting directly with client departments, particularly when issues are strictly legal in nature. Regarding the extent to which the Branch engages with clients concerning policy or program issues, key informants and survey respondents identify that policy work is not central to the work of all Litigation Branch units, and that, in many cases, Branch counsel are called on primarily to provide legal rather than policy advice.³²

Considering these reasons and the generally high level of client satisfaction with Branch responsiveness (described above), it is reasonable to conclude that the above-mentioned variations in communications with client departments are appropriate and, for the most part, do not negatively impact the responsiveness of the Litigation Branch to clients' needs. However, one observation is worth mentioning. In Client Feedback Surveys, the Litigation Branch scored slightly below the departmental target in both 2009 and 2012 with regard to the regular provision of informative progress reports or ongoing feedback on the status of service requests to clients.³³ Highlighting this observation is not meant to suggest that the Branch alone is responsible for any communication issues with clients, particularly given the DLSU's role. However, this observation may indicate that, on a case-by-case basis, there may be room for improvement or greater effort in verifying clients' expectations regarding the nature and extensiveness of consultations and progress reporting at the outset of files, and in clarifying the respective roles of Litigation Branch and DLSU counsel on the file, including relaying information to clients.

Provision of Timely Litigation Services

The evaluation found strong evidence that the Litigation Branch provides timely services. The ability to meet deadlines is one indicator of timely service provision, and all lines of evidence for this evaluation show that the Branch is successful in meeting court-imposed, as well as client and

³² About 2 in 10 survey respondents (18%) indicated that discussing policy and program objectives with client departments was not part of their work. Similarly, a few key informants identified that, in some cases, there is less need for the involvement of Branch counsel in policy development, particularly since Justice lawyers who do policy work are often well versed in litigation risk.

³³ On this issue, the Litigation Branch scored 7.7 in the 2009 Client Feedback Survey and 7.9 in the 2012 Client Feedback Survey (Office of Strategic Planning and Performance Measurement, 2013).

other internal deadlines.³⁴ Another indicator of timely service provision is the timeliness with which the Litigation Branch responds to requests for legal services. Again, evaluation results provide evidence of success. Positive results from both the 2012 Client Feedback Survey and Litigation Branch survey show that clients and Branch staff agree that the Litigation Branch responds to client requests in a timely manner.³⁵ Similarly, interview participants (both case study and key informant interviewees) generally agreed that the Branch's responses are timely.

Time Pressures

Although all sources of evidence show that the Litigation Branch is able to complete work and respond to clients in a timely manner, evaluation results provide some evidence of time pressures on the work of Branch employees. Results from the PSES were not entirely positive regarding the timeliness of decision making within the Department of Justice. In 2008, only 43% of Litigation Branch respondents agreed that senior management in the Department makes timely and effective decisions; however, this rose to 59% by 2011 (Statistics Canada, 2008; 2011). If direction or approvals at the managerial level are delayed, this could affect the ability to meet deadlines. Many key informants representing the Branch noted that deadlines are often tight and that they do not always have the time they would like to work on files. The majority of Litigation Branch respondents to the 2011 PSES (58%) reported that they can often or almost always complete their work within regular working hours, but the percentage was less than for the Department (63%) or the public service overall (67%). Many key informants mentioned that they currently must work longer hours in order to manage their workload during peak times.

Given the positive results concerning quality, responsiveness and timeliness described above, these pressures currently do not appear to be affecting the ability of Branch employees to produce high-

³⁴ In the 2012 Client Feedback Survey, the Litigation Branch scored above the departmental target of 8.0 out of 10 for negotiating mutually agreed-upon deadlines (8.1), and meeting these deadlines (8.2) (Office of Strategic Planning and Performance Management, 2013). (The overall Department's timeliness scores were 7.8 and 7.9, respectively, for these two indicators.) Similarly, the majority of respondents to the survey of counsel and paralegals said that Litigation Branch services are above average or excellent with regard to meeting client deadlines (72%) and meeting internal Justice Canada deadlines (68%). The majority of key informants or case study participants interviewed also agreed that the Branch works with clients and DLSU counsel to negotiate appropriate timelines and meets its deadlines. These perceptions are supported by the case studies and file review results, which found almost no evidence of missed work or court deadlines.

³⁵ In the 2012 Client Feedback Survey, the Litigation Branch scored 8.2 out of 10 for responding in a timely manner to requests for legal services (again, surpassing the departmental target) (Office of Strategic Planning and Performance Management, 2013). The majority of counsel and paralegals responding to the survey conducted for this evaluation said that the Litigation Branch is above average or excellent in terms of responding to clients' legal service requests in a timely manner (72%).

quality, responsive legal services. However, they may point to pressures within the Litigation Branch that could, in the future, affect service delivery.

4.2.2. Consistency of Legal Advice and Positions

The evaluation considered the Litigation Branch's contributions to consistency both across the Department of Justice (i.e., the degree to which the Department "speaks with one voice") and within the Government of Canada as a whole (i.e., the degree to which a "whole-of-government" perspective is achieved on legal issues). In general, the evaluation found evidence of appropriate and effective coordination and consultation, which contribute to consistency at both levels.

Overarching Coordination: the Role of the ADAG Litigation and Central Committees

The ADAG Litigation

The ADAG Litigation has functional responsibility not only for each of the five units within the Litigation Branch, but also for coordinating the conduct of litigation department-wide. The national coordination role of the ADAG Litigation is central to ensuring that the Department "speaks with one voice" and that it adopts a "whole-of-government" approach to litigation. In its coordination role, the Office of the ADAG Litigation acts as a central point of contact regarding litigation matters. It provides information to DM and ADM offices, central agencies, portfolios, and regional offices through consultations and reports; plays a direct role in reporting/briefing on litigation issues; and participates in central committees dealing with high-profile litigation issues — namely, the NLC and the National Security Intelligence Committee. The Office of the ADAG Litigation approaches its coordination role with the recognition that the Department has many structures in place (e.g., portfolios, team leaders, regional litigation committees) across the country to manage litigation. The ADAG Litigation does not direct those processes but can become involved should issues arise that require central support.

Evidence indicates that the ADAG Litigation is effectively carrying out his coordination function. Key informants mentioned that the ADAG Litigation communicates regularly with ADM and DM offices as well as with regional offices. The Office of the ADAG Litigation is also a central point of contact with the PCO and other central agencies on litigation matters, providing frequent, regular updates. As part of Deficit Reduction Action Plan (DRAP) measures, the ADAG Litigation has assumed a more direct reporting role in recent years, taking over from the Management Sector in terms of tracking and reporting on steps in significant litigation. Key informants described

weekly reports and tools, such as the “litigation placemat”³⁶ and the “litigation calendar”³⁷ (which are prepared by the Office of the ADAG Litigation), as useful and effective in making senior management aware of high-profile litigation.

A few key informants identified a gap within the Department related to the development of civil litigation policy (e.g., amending civil procedures). While criminal law policy is handled by the Criminal Law Policy Section, there is not a comparable group for civil litigation policy.³⁸ According to a few key informants, this is a gap that could be filled by the Litigation Branch and the Office of the ADAG Litigation.

Central Committees

As mentioned above, participation in central committees is another way in which the ADAG Litigation carries out the position’s coordination responsibility. The ADAG Litigation chairs the NLC — a departmental committee³⁹ that provides a forum for senior-level representatives to deliberate on significant litigation⁴⁰— and is a member of the NSIC.⁴¹ Each of these committees has its own mandate and role to play in ensuring a consistent approach to litigation issues, and the evaluation found evidence of their effectiveness in this area.

Evidence (primarily from key informant interviews and the Litigation Branch survey) indicates that the NLC is a useful structure for ensuring both national coordination and consistency as well as a consistent departmental approach. Although certain matters (such as seeking leave to appeal

³⁶ The litigation placemat is a short list of high-impact cases which serves as a high-level tool for long-term planning purposes. It summarizes known and anticipated litigation upcoming over a two-year period.

³⁷ The litigation calendar is a short-term overview of upcoming litigation activity — looking two weeks ahead. The Office of the ADAG Litigation also compiles a more detailed overview of the litigation activity outlined in the calendar, which is complementary to the calendar.

³⁸ Previously, civil litigation policy work was done by a unit within the Public Law Sector, but due to deficit reduction exercises, that unit is now part of the Human Rights Law Section.

³⁹ Standing committee members include ADMs and Directors from across the Department of Justice, the chairs of Regional Litigation Committees, the ADAG Aboriginal Affairs, and the ADM Central Agencies.

⁴⁰ The mandate of the NLC is to ensure that: the Government of Canada’s interests are appropriately represented in legal proceedings; consistent positions are adopted nationally; appropriate LRM is undertaken; necessary consultations across the government are undertaken; and the Minister and DM of Justice receive sound advice concerning significant litigation.

⁴¹ The NSIC was established in 2008. It involves various ADMs and ADAGs, and meets eight to ten times a year to discuss policy, advisory and litigation issues related to national security. The Committee’s main function is to allow for information sharing between sectors; however, in 2012, the Committee took on a greater role in making recommendations and decisions related to strategic issues affecting the Department of Justice’s national security work. The Committee focusses on national security issues and legal policy, advisory and litigation issues that require a top secret environment.

to the Supreme Court of Canada [SCC], SCC factum review, and interventions on matters of national importance) are required to go before the NLC, the Committee also functions as a “last step” in a chain-like conflict resolution process.⁴² Most key informants agreed that, when the NLC is used in a conflict resolution role, it works well and is an effective mechanism for resolving disputes and ensuring consistency in litigation, particularly with regard to high risk and high-profile litigation matters. Survey results were similarly positive, as the majority of respondents who could provide an opinion said that the Committee is useful to their work.⁴³

In reaching “whole-of-government” decisions, the NLC is aided by its relationship with regional litigation committees and its connections to other government departments. Even though regional litigation committees serve purposes distinct from that of the NLC, they typically review and approve materials and documents that regional counsel plan to submit to the Committee. NLC membership includes regional Litigation Committee chairs (who serve as regular NLC members), as well as senior management representing client interests and counsel who have handled cases for various client departments and areas of the law. Many key informants mentioned that the NLC’s broad representation and, in particular, the regular connection between the NLC and regional litigation committees help the NLC to settle disagreements effectively between counsel and clients, and guide regions dealing with similar cases to a consistent approach — thus promoting national consistency. Key informants expressed the opinion that the working relationship between the NLC and regional litigation committees is effective, and that the regions are actively engaged in the Committee.

Despite an overall positive perception of the NLC, key informants observed the following limitations to the NLC’s functioning:

- Some key informants noted that, at times, NLC members (mostly ADMs) send substitutes to meetings, which can reduce the number of people actively participating in committee meetings.
- A few key informants commented that the NLC tends to focus on particular cases rather than its other possible roles related to developing practice directives or guidelines for litigation.

The NLC generally seems to be fulfilling its coordination function well, but these observations indicate potential areas for improvement.

⁴² If issues cannot be resolved among counsel, they are “moved up the chain” to the manager level, then director level, then the ADM level, and from there, counsel may take issues to the NLC for resolution.

⁴³ Furthermore, very few respondents said that the NLC is not very useful, and none said that it is not at all useful.

Regarding the NSIC, evaluation stakeholders (mainly key informants) highlighted the importance of this committee in facilitating information sharing and ensuring national consistency on files with national security implications. In particular, key informants described the NSIC as “effective and necessary” — especially considering that information sharing on national security issues is made more difficult by the need to protect sensitive information (i.e., the need for secrecy can hinder information sharing). By providing a secure environment for discussion, the NSIC facilitates a coordinated approach to policy, litigation and legal advice, as well as practical issues related to national security and intelligence work.

In addition to the broad role of the ADAG Litigation and central committees in achieving a “whole-of-government” approach to litigation issues, Litigation Branch counsel have a role to play in ensuring national consistency in the way that they work across the Department and with other affected departments on litigation files. How the Litigation Branch contributes to consistency in these ways is discussed below.

Working across the Department

Evidence indicates that the Litigation Branch advice and legal positions are both internally consistent and in line with the departmental approach to litigation issues. Litigation Branch staff and clients believe that the Branch provides consistent legal advice to clients. Many key informants identified that regular interactions and communications help to ensure a consistent approach to litigation issues, and two-thirds of survey respondents (69%) strongly agree or agree that the Branch has structures in place to ensure that Justice provides consistent legal advice. In addition, the Branch scored 8.3 out of 10 regarding consistency of the legal advice provided to clients in the 2012 Client Feedback Survey, a result that is above the departmental target (Office of Strategic Planning and Performance Measurement, 2013).

The ability to provide consistent legal advice is supported by several structures and practices to ensure consultations within the various Litigation Branch units as well as between them. Documents and key informant interviews provide evidence that the four units within the Litigation Branch directly involved in litigation (CLS, MCAMLU, IAG and NSG) have practices in place to ensure regular communication among Branch staff, including regular staff meetings, conference calls, practice groups or working groups. The CLS has a Litigation Committee that reviews high-profile files, which the majority of survey respondents who were able to comment found to be useful to their work. These practices are designed to keep Branch employees up-to-date on files, trends and developments in relevant areas of law. In turn, this information sharing helps to ensure

that those working within Branch units take a consistent approach in dealing with files and addressing legal issues.

Other information-sharing processes contribute to consistency in the Litigation Branch. Documents and key informant interviews provide evidence of regular communication among Litigation Branch unit heads and managers related to files, risks and practice issues. The Litigation Branch Managers' Meeting, chaired by the ADAG Litigation, provides an informal forum for exchange of information across Branch units.

In addition to effective information sharing within the Litigation Branch, ensuring that the Department of Justice "speaks with one voice" regarding litigation-related matters requires effective coordination among those working on litigation issues across the Department, including DLSU counsel, regional offices, and other specialized areas of Justice.

As noted in Section 4.2.1, Litigation Branch counsel interact more often with DLSUs than directly with client departments. Consequently, communications between DLSUs and the Branch are important to the Department speaking with one voice. The evaluation evidence shows that consultations with DLSU counsel are regular. A large majority of survey respondents (80%) indicated that the client department's DLSU was frequently or regularly consulted on their files, and that the Litigation Branch does an excellent or above average job at consulting or involving DLSUs. The file review supports the extensiveness of Branch consultations with DLSUs, as it provided evidence that multiple units within the Litigation Branch consulted DLSUs on several occasions about a wide variety of legal issues.

Evaluation results, however, are somewhat mixed with regard to the working relationship between the Branch and DLSU counsel on litigation files. Many key informants representing both Litigation Branch and DLSU counsel commented that relationships between Litigation Branch and DLSU counsel are positive and that both informal and formal communication and information-sharing practices (e.g., status reports, the monthly national conference call on litigation trends) are effective at promoting consistency. Although Litigation Branch and DLSU counsel do not always agree on issues, key informants identified that differences of opinion are worked out effectively through discussion at the counsel level. Given the respectful relationships between Litigation Branch and DLSU counsel, more formal mechanisms for resolving differences of opinion, such as the NLC, are rarely needed to ensure consistency in the work of DLSU and Litigation Branch counsel. Survey responses, however, are not as positive. Less than half of respondents (40%)

considered their experience working with the DLSUs to be excellent or above average⁴⁴ — a less positive result than for other areas of the Department, such as regional offices. In written feedback, survey respondents indicated that, at times, a greater role for (and greater assistance from) DLSU counsel on files would be appropriate and appreciated. Indeed, one in five survey respondents from CLS cited issues working with DLSU counsel as a factor constraining the Branch’s ability to provide high-quality legal services. A few key informants also supported a greater role for DLSUs on Litigation Branch files, including portfolio-level representatives who indicated that some DLSUs do not feel that they are being involved enough in the document production process. It should be noted that both key informants and survey respondents identified that the working relationship does vary from one DLSU to another. Litigation Branch representatives also pointed out that the Branch does not work as consistently with the same client departments/DLSUs as counsel in portfolios do, which limits their opportunity to build a close working rapport with DLSU counsel. These results indicate that the working relationship between the Litigation Branch and at least some DLSUs could be improved.

Consultations with regional offices and specialized sections within Justice Canada occur less on Litigation Branch files than do consultations with DLSUs and other affected departments and agencies.⁴⁵ However, evidence indicates that the Litigation Branch consults with these areas when appropriate and that, for the most part, these consultations help to ensure a consistent departmental approach. Key informants identified regular communication and good coordination between Branch headquarters and regional offices — particularly on major cases — and described consultations with subject matter experts in other areas of the Department as a common occurrence. Similarly, the majority of survey respondents who could provide an opinion reported that the Litigation Branch’s work involving or consulting with these areas of the Department was excellent or above average. The case studies and file review results provide further evidence that consultations with regional offices and specialized sections have taken place on files as needed. Furthermore, the majority of respondents who could provide an opinion reported excellent or above average working relationships or experiences with both regional litigators and specialized sectors.

⁴⁴ Roughly the same proportion (41%) reported their experience to be average, and 13% considered it below average or poor. The remaining respondents did not have enough experience working with DLSUs to provide a response.

⁴⁵ Only about a quarter (28%) of those who responded to the survey of counsel and paralegals reported that they frequently or regularly consulted with specialized sections within Justice Canada on their files; however, results from all lines of evidence indicate that consultations with these sections are appropriate.

Although the evaluation results are very positive regarding the extent to which appropriate consultations take place to ensure that the Department speaks with one voice, key informant interviews provided some suggestions worth mentioning for achieving greater regional coordination on class actions files. Some key informants indicated some room for improvement in communications between the MCAMLU and regional litigators involved in class actions files, noting the importance of ensuring that provincial class action rules and legal cultures are adequately considered when the MCAMLU has the lead on class actions cases. Others also pointed to a need for clearer criteria regarding whether the MCAMLU or the regions will have responsibility for litigating in class actions cases.

Involving Other Affected Departments

Together, all lines of evidence help to confirm that the Litigation Branch engages in consultations with other government departments and agencies when necessary, and that these consultations contribute to a whole-of-government approach to litigation-related issues.

The file review and case studies provided evidence of interaction and consultation with multiple departments and agencies on several files.⁴⁶ Survey results support these findings, as the majority (55%) of respondents reported frequent or regular consultations with other potentially affected departments and agencies on their files.

While consultations with potentially affected departments and agencies do not occur on all Litigation Branch files, the evaluation did not find evidence to suggest that departments and agencies are not being consulted when they should be. Key informants identified the practice of forming steering committees or working groups for litigation files or issues involving multiple departments and portfolios (e.g., the long-gun registry) as an effective strategy for ensuring good coordination and managing the need for instructions and approvals. Survey results also indicate an above average working relationship between the Litigation Branch and government departments and agencies affected by litigation, with clearly delineated roles and responsibilities.⁴⁷

⁴⁶ In all three case studies, all departments and agencies affected by the issue were consulted.

⁴⁷ Of the respondents who could provide an opinion, over 7 in 10 indicated that the work of the Litigation Branch was above average or excellent in involving/consulting with other potentially affected departments/agencies (71%). Nearly two-thirds (65%) said that roles and responsibilities were clear or very clear when working with portfolios (Aboriginal Affairs, PSDI, BRLP, etc.), though over a third (36%) did not know enough to respond or indicated that they did not work with portfolios.

4.2.3. Legal Risk Management (LRM)

LRM is “the process of making and carrying out decisions that reduce the frequency and severity of legal problems that prejudice the government’s ability to meet its objectives successfully” (Department of Justice, 2007b). As such, LRM involves a number of different stages and activities, including:

- identification and assessment of potential legal risks;
- communication of potential risks to stakeholders, as necessary;
- mitigation of legal risks to the extent possible by addressing policy and legal issues (such as through changes to practices or policies, or by proposing amendments to legislation and/or regulations); and
- management of legal risks that have materialized and reduction of their potential costs (monetary and otherwise) (Department of Justice, 2007b).

The LRM process also involves reassessment of legal risks, as necessary, as issues develop over time.

Evaluation results indicate that the role of the Litigation Branch in the LRM process varies among files. In part, this variation is due to the responsive nature of the Litigation Branch’s services; its role in identifying, assessing, managing or mitigating risks depends to some extent on client (or DLSU) requests for Branch services in these areas. Despite its varied role, however, the evaluation found that the Litigation Branch makes important contributions to LRM on most files,⁴⁸ and that these contributions are valued.

Multiple lines of evidence indicate that the Litigation Branch makes contributions to risk assessment on most files. Data from iCase show that the vast majority of Branch files opened between 2008/09 and 2012/13 were assessed for legal risk and assigned a risk level,⁴⁹ and, for the most part, it appears that the timing of risk assessments is appropriate. Data from iCase show that a large proportion of files are assigned a risk assessment early on in the file (within 30 days), and the majority of stakeholders — including survey respondents and key informants — agreed that

⁴⁸ The majority (64%) of survey respondents reported that they frequently or regularly worked with client departments on files to identify legal risks, their impact and/or options to manage them.

⁴⁹ As discussed in the Methodology Section, iCase data regarding legal risk assessment was not available for the most recent fiscal year (2013/14), mainly due to changes in the way this information is to be entered into iCase, which came into effect in 2013.

the Litigation Branch assesses and reassesses risks in a timely manner.⁵⁰ In addition, case studies and the file review provide evidence that the Branch engages in risk assessments and reassessments at appropriate times in files. Initial risk assessments typically take place post-pleadings, and legal risk is generally reviewed at critical junctures later on in the file, such as after exchanging pleadings, examinations for discovery, motions, etc. Key informants indicated that Branch counsel conform to requirements for the regular review and update of risk assessments, and that these assessments are regularly reviewed (even if they are not revised), particularly with regard to high-complexity files. Although iCase does not provide a record of all reassessments of risk (and, therefore, cannot confirm whether requirements for risk reassessment are being met),⁵¹ data from iCase show multiple risk assessments on the majority of advisory files for CLS, IAG, NSG and MCAMLU.

Results from the case studies and key informant interviews indicate that the Litigation Branch also plays a role in assisting clients with risk management and mitigation — particularly in high-risk cases. The file review provided evidence of written contingency plans on only a few files. However, stakeholders (key informant and case study interviewees) identified that the Litigation Branch's contributions to risk mitigation and management include providing ongoing risk analyses and advice, answering questions about the effects of certain actions on legal proceedings, and helping clients to determine whether efforts should be made to settle. Key informants also mentioned that the coordinating role that the Litigation Branch plays in monitoring cases across Canada (such as through the class actions database, which includes a comprehensive list of active, non-active and closed files) allows the Branch to assess the effectiveness of strategies and more accurately advise clients about how litigation will proceed.

The evaluation found a high level of satisfaction with the contribution of the Litigation Branch to LRM. Results from the Client Feedback Surveys provide evidence that clients are satisfied with the extent to which the Branch works with them to identify legal risks, and communicates with them about legal risks, legal options to mitigate identified legal risks, and the development of legal

⁵⁰ For the CLS, 47% of advisory files and 60% of litigation files were assessed within 30 days — greater than the 18% of advisory and 12% of litigation files that did not receive risk assessments until after 90 days. For the IAG and the NSG, the vast majority of both advisory and litigation files opened were assessed within 30 days (for advisory files, around nine-tenths for the IAG and 86% for the NSG; for litigation files, most of the IAG's few and 91% of the NSG's files were assessed within 30 days). For MCAMLU, about half of both advisory and litigation files were assessed within 30 days, compared to only about 10% of both types of files that did not receive an assessment until after 90 days.

⁵¹ In iCase, reassessments are documented only if the risk assessment changed. Counsel may review a risk assessment and leave it unchanged, which will not appear in iCase.

strategy and positions (Office of Strategic Planning and Performance, 2013).⁵² The key informant interviews, case studies and file review support the Client Feedback Survey results. Key informant and case study interviewees representing clients and DLSU counsel generally agreed that the Litigation Branch and DLSUs work well together to assist clients in managing their legal risks, and that Branch strategies to mitigate or manage legal risk are generally clearly communicated and effective. In the files selected for case studies and file review, clients generally considered the legal advice provided by the Litigation Branch in determining how to handle the legal risks involved.

Compliance with Risk Assessment Protocol and Risk Assessment Limitations

Although evaluation results concerning the Litigation Branch's work related to LRM are very positive, the results point to some potential limitations to the risk assessment protocol and tools used by the Litigation Branch to guide the assessment and communication of risks.

Litigation Branch counsel are required to enter risk assessment information into iCase and to review and revise (if necessary) this information every 90 days. With this in mind, a few observations based on data from iCase on risk assessments entered between 2008/09 and 2012/13 are worth mentioning.

- First, for MCAMLU, a relatively high proportion of litigation files each fiscal year did not receive a risk assessment. This is likely due to the fact that class actions involve several separate files, and MCAMLU assesses a risk on the file that is currently proceeding to court. As a comparison, CLS litigation files listed as "unable to assess" were in single digits.
- Second, a relatively high proportion of CLS and MCAMLU advisory files had a risk status of "unable to assess", in comparison to the other Branch units' advisory files.⁵³
- Third, it appears that the timeliness of risk assessments on CLS files has declined over the evaluation period. The percentage of advisory files receiving a risk rating within 30 days of file opening dropped from 90% in 2008/09 to 31% in 2012/13. Similarly, the percentage of litigation files assessed within 30 days dropped from 95% in 2008/09 to 48% in 2012/13.

These observations are worth pointing out because they may be indicative of some difficulties in complying with iCase risk reporting requirements. Counsel are expected to enter a risk assessment

⁵² The Litigation Branch scored 8.0 or above on all of these indicators in the 2012 Client Feedback Survey, meeting or surpassing the departmental target.

⁵³ For CLS, the proportion of advisory files for which a risk assessment could not be made ranged from 15% to 38%, and for MCAMLU, it ranged from 50% to 64%. For IAG and NSG, advisory files that had an iCase entry of "unable to assess" were in the single digits throughout the time period (2008/10 to 2012/13).

into iCase quickly upon receipt of a file; however, key informants identified difficulties in making accurate risk assessments this early on. Key informants mentioned that, in some cases, counsel can feel pressured to enter risk levels into iCase before they have had sufficient time to gather (via document review, interviews, and/or discussions with clients and witnesses) the information they need to make an accurate risk assessment. Key informants also identified difficulties in identifying risk at an early stage in certain files — class actions files in particular — given the need to evaluate both the merits of individual files as well as their suitability to go forward as a class action (a difficult task to perform at an early stage). Often, individual files that are part of class action can be considered low risk, but when multiplied in a class action, the risk level can become very high.

Evaluation results also point to some potential issues with implementation of the new LRM framework. As mentioned in Section 3.6, use of the new LRM framework became mandatory for litigation files on April 14, 2013, and for advisory and legislative files, on September 13, 2013. The expectation was that advisory and legislative files opened on or before September 2013 with timekeeping entered in the previous 12 months were to have their legal risk assessed using the new framework and entered into iCase by May 1, 2014. However, based on the iCase data provided to the evaluation in June 2014, this target was not being met as most actively managed advisory files in 2013/14 were still listed as “not yet evaluated”.

Reactions to the LRM toolkit and grid (both the previous and revised LRM framework) were mixed. According to some key informants, by establishing standard risk terminology and guidelines, the LRM tool kit and grid have increased the consistency with which risk is assessed and communicated. However, other key informants (representing the Litigation Branch, DLSU counsel, and other government departments and agencies) identified some issues with the standardized approach, and, in particular, with the LRM grid. These key informants noted the following:

- The LRM grid involves assigning a numerical value to risk, but as risk can be difficult to quantify with “mathematical precision”, a numerical value may lead clients to develop fixed views about the risk level, which may not be entirely appropriate. Detailed written risk analyses are more helpful than using the LRM grid or assigning numerical risk levels.
- Due to the large dollar value of class actions cases, using the LRM grid for risk analysis on class actions files always results in a high-risk rating.
- The scope of the “moderate” or medium risk category is very broad, and captures a large proportion of files with varying risk levels. A few key informants said that this leads to the perception that the Department of Justice is overly averse to risk.

- The grid itself does not provide clients with a sufficient level of detail. As legal risks are nuanced, a more detailed explanation is necessary to provide clients with enough information on the range of possibilities.
- The use of standardized language hinders the ability of counsel to tailor communication to the client, and communicate risk in a way that makes the most sense to the client.

The survey results also show some ambiguity about risk assessment structures in general. Respondents were fairly divided on whether the Litigation Branch has structures in place to ensure that risks are assessed in a consistent manner across portfolios and regions. About 4 in 10 survey respondents (41%) strongly agree or agree that such structures exist, with just over a third indicating they are neutral (24%) or disagree (11%). About a quarter (24%) reported that they either did not know enough to respond or this issue was not applicable to their work.

4.2.4. Contribution to Informed Decision Making

The Litigation Branch contributes to informed decision making by making senior government officials aware of legal risks, legal issues and legal options. Even though clients ultimately decide whether to accept legal risks and what strategies to adopt, the advice of the Branch should, if it is useful and of high quality, at least be considered by client departments/agencies.

The Litigation Branch engages in several activities that are intended to enhance the understanding of decision-makers of legal issues involved in files. Primary among these activities are consultations with clients and other affected departments/agencies. As discussed in Section 4.2.2, the Branch engages in regular consultations. Not only do these consultations support a “whole-of-government” approach to legal issues, but they ensure that the Litigation Branch understands the client’s context and provides the Branch with the opportunity to inform the client of the legal issues involved. Client Feedback Survey results indicate that clients are satisfied with the extent to which Litigation Branch counsel fully understand the nature of their legal issues (the Branch received a score of 8.2 out of 10 in both 2009 and 2012 for this indicator) and advise them of issues or developments that may impact their work (the Branch scored 8.0 in 2009 and 8.3 in 2012).

Many key informants (representing the Litigation Branch, DLSU counsel and clients) also reported that the Litigation Branch adequately involves clients in the development of legal strategy and positions. It was reported that the Branch involves clients by asking for instructions throughout the process and providing clients with options. However, some key informants pointed out that the extent to which clients are involved varies among clients; some clients are more experienced with,

and interested in, litigation than others. A few representatives of client departments expressed dissatisfaction with the extent to which they were involved in the development of legal strategy. For example, these clients noted that:

- at times, they have been told that legal strategy is the role of counsel, not clients;
- they were not provided with options, and did not understand why their situation meant that they were “out of options”; and
- on particular files, they have encountered difficulties in getting Litigation Branch counsel to meet with them (although this was identified as a rare occurrence).

Although counsel provide clients with legal advice, the determination on the course of action is, of course, the client’s decision.⁵⁴ Clients must weigh Litigation Branch advice against other considerations (such as policy, business, or operational objectives, or financial considerations). Evaluation evidence (key informant interviews, case studies) showed that the advice provided by the Branch is considered by clients in developing legal strategies and making decisions most of the time, and many said that Litigation Branch advice is followed in the majority of cases. A few key informants identified the expertise of Branch counsel in specific areas of the law and the litigation process, and clients’ desires to minimize potential risk of future cases, as main factors contributing to the high degree of consideration given to Litigation Branch advice. Clients attested to the quality of the advice provided in the 2012 Client Feedback Survey; they gave the Litigation Branch a score of 8.3 out of 10 for providing clear and practical guidance to resolve legal issues (up from 7.9 in 2009).

Supporting Ministerial Decision Making

The Litigation Branch supports informed decision making by government officials through the direct support it provides the Minister of Justice through the regular briefing process and specific ministerial functions that are delegated to certain units of the Litigation Branch.

As described in Section 2.1, the Litigation Branch is involved in directly supporting the Minister in the exercise of his ministerial functions. Its work keeping the Minister informed of litigation involving the Crown is discussed above. This section considers several discrete areas where the Litigation Branch has a role that goes beyond briefing. Two of the areas involve “delegated

⁵⁴ A few Litigation Branch key informants pointed to a difference between legal advice and litigation strategy, stating that once a file is in court, clients are kept apprised of how litigation is proceeding, but litigation strategy is determined by the litigator.

authority”, where counsel are responsible for certain statutory duties assigned to the Minister of Justice. These include highly specialized areas of the law (such as extradition, mutual legal assistance, and section 38 CEA requests), where the Minister is very reliant on IAG and NSG advice to make decisions, particularly when these must be made within statutory deadlines. IAG and NSG counsel are involved in drafting decisions for the Minister and may meet directly with the Minister to discuss the details of cases.

The IAG supports the Minister of Justice in meeting his responsibilities under the *Extradition Act* and the MLACMA. Based on the information from key informants and survey respondents, the IAG is meeting its responsibilities under these pieces of legislation. Key informants mentioned that the IAG is acting on all ministerial responsibilities delegated to the Group, noting that the IAG briefs the Minister extensively on these issues. Briefings to the Minister are comprehensive, and include a ministerial summary, all submissions made by the person sought for extradition or their counsel, any additional information provided by counsel or foreign countries, a comprehensive legal analysis, and a draft decision for the Minister’s approval. Most IAG and Office of the ADAG survey respondents strongly agreed or agreed that the IAG contributes to making informed ministerial decisions (83%), and that it effectively manages its delegated functions (94%).⁵⁵ File review results support key informant and survey findings, as the five IAG files reviewed showed general compliance with the statutory requirements in terms of receiving appropriate authorities and approvals, obtaining reviews of key documents by unit leaders, providing briefing materials to support the Minister’s decision, and updating the foreign states that made the extradition and mutual legal assistance request.

Evaluation evidence indicates that the NSG effectively carries out its role as the central coordinating office within the Department of Justice regarding section 38 of the CEA, thereby helping to protect sensitive government information that might be injurious to national security, defence or international relations. The NSG has established procedures and best practices (documented in protocols, guidelines, Deskbooks and other outreach materials), and delivers training on section 38 CEA matters to raise awareness of section 38 requirements and to ensure that its delegated ministerial functions are properly exercised. Key informants indicated that the NSG makes efforts to be proactive on section 38 CEA matters by being involved in cases prior to litigation and identifying when section 38 might come into play. In addition, most of the Office of the ADAG and NSG respondents strongly agreed or agreed that the NSG contributes to informed

⁵⁵ The remaining respondents did not know enough to provide an opinion.

ministerial decision making (66%), and that the NSG effectively managed its delegated functions (89%).⁵⁶

The file review results support these findings, as all five NSG files included memoranda of legal advice prepared by the NSG. In preparing these documents, NSG consulted with the client, specialized sections within Justice (e.g., Public Law Sector), litigators in the underlying prosecution, and the Public Prosecution Service of Canada, as appropriate. In most files, all of the memoranda were also reviewed by the Director of the NSG.

The LPMC provides support for the outsourcing to legal agents and makes recommendations to the Minister regarding the appointment of legal agents based on the selection process. The Centre has put in place a number of directives and guidelines to ensure that it fulfills the Department of Justice's *Policy on Contracting for Legal Services and Legal Agent Appointments* through the AAP. These directives and guidelines, which took effect on April 10, 2013, aim to result in "a systematic and consistent approach" to all aspects of dealing with legal agents, including decisions to outsource legal work; sourcing, selecting, appointing and remunerating agents; instructing, monitoring and evaluating legal agents; and taxing legal agents.

Key informants generally consider that the process for appointing legal agents works effectively and that outsourcing is necessary to manage the litigation caseload. The file review confirmed that the steps for outsourcing found in the Directive on Outsourcing Legal Services were followed. The six LPMC files reviewed included documentation required by the Directive, including a detailed explanation that outlined the rationale for outsourcing. The reasons were the unavailability of resources within Justice Canada, expertise/experience, urgency (as delay would be injurious to the public interest or the Crown's position), geographical considerations, and conflict of interest.

The process for appointing agents varied among the six LPMC files and appeared justified based on the considerations involved in each file: one was a sole source (this was a high-profile, complex file that had an urgent need for the appointment and conflict of interest issues); two were informal processes of appointment for relatively low cost files (\$14,000 to \$24,000 estimated costs) where the outsourcing was necessary because of unavailability of Justice Canada resources and geographic considerations (e.g., court appearance in remote community); and three were high cost

⁵⁶ Approximately one-quarter (22%) of the Office of the ADAG and NSG respondents could not provide an opinion to whether the NSG contributes to informed ministerial decision making, either responding that they did not know or that it was not applicable to their work. One-tenth (11%) of respondents did not know enough to provide an opinion on whether the NSG effectively managed its delegated functions.

files (estimated costs ranged from \$450,000 to \$1,500,000) that used the more formal process of a detailed Expression of Interest.⁵⁷

The evaluation also reviewed three CLS files that had legal agent involvement. These files were less likely to document the process for appointing the agent, but they included correspondence and instructions from Justice counsel to the legal agent. The files demonstrated active monitoring of the agent: two files included evidence of monitoring costs and two files indicated that remedial actions were taken when there were issues with the performance of the agent (e.g., the agent redrafted a factum to respond to Justice Canada's concerns with the quality of the original draft).

In response to recommendations from the 2011 audit of the Legal Account Verification Process, LPMC has also taken steps to improve the AAP. First, LPMC improved the ability to monitor costs and report on legal agent disbursements and fees by developing national standards for iCase and mandatory iCase data capture, and reporting requirements for files involving legal agents (Internal Audit Branch, 2011). Second, the LPMC revised the hourly rate as the audit concluded that the rates were well below current market rates, which was affecting the retention of legal agents and the priority that legal agents were giving files.

Although not a delegated function, the Litigation Branch also supports ministerial decision making related to intervening in court, filing an appeal, and approving positions to be taken and facts to be filed with the Supreme Court of Canada. The Litigation Branch has a structured process in place for providing advice to the Minister that is documented in Branch policies and the Civil Litigation Deskbook.⁵⁸

- The NLC makes recommendations to the Minister about whether the AGC should intervene in court.
- Key informants pointed to the importance of the NLC in flagging for the Minister the interests of the AGC in whether or not to file a leave to appeal, particularly in cases where clients may have a strong preference that may not align with the AGC's interests.
- Memoranda supporting the recommendations are sent first to the ADAG level, then the Associate DM level, then to the ministerial level.

⁵⁷ The \$1,500,000 file included interviews of prospective agents.

⁵⁸ Regional offices (Regional Directors General, regional litigation committees) also have a role, as the initial requests often come from them to the NLC.

4.2.5. Litigation Branch contribution to Justice Canada's Support of a Bijural and Bilingual Legal System

The evaluation found evidence of ways in which the Litigation Branch supports its employees in working within a bilingual legal context. The document review and key informant interviews provided evidence that internal training sessions and materials, policies and tools (such as a practice directive on language rights in litigation and official languages litigation rules outlined in the Civil Litigation Deskbook) are available to support counsel in dealing appropriately and effectively with language issues that arise during proceedings. Results from the PSES indicate a high level of satisfaction with the ways in which the Litigation Branch supports its employees in working in the official language of their choice.⁵⁹

It stands to reason that, by facilitating work in either official language, the Litigation Branch supports its employees in responding to clients' official language needs. Indeed, evidence indicates agreement among Branch employees and clients that the Litigation Branch is meeting official language needs; results from Client Feedback Surveys indicate a very high level of satisfaction with the accessibility of Litigation Branch services in both official languages,⁶⁰ and almost all key informants representing the Litigation Branch and many representing DLSU counsel indicated that the Litigation Branch is able to meet the demand for services in both official languages (in particular, by representing clients and providing materials to clients in either official language as needed). Key informants noted various practices in place to facilitate the Branch's response to bilingual demands, including employment of bilingual litigators and bilingual managers capable of working in either official language, as well as deliberate assignment of counsel on files to ensure the right mix of staff to meet file-specific language requirements. Although evaluation results regarding the Branch's bilingual capacity are positive overall, key informants mentioned that this capacity could be improved by expanding opportunities for counsel to participate in second language training.⁶¹

⁵⁹ In all survey years, a large majority of Litigation Branch employees agreed that work materials and tools are available in the official language of their choice (over 90%); they felt free to use their official language of choice in preparing written materials (over 85%), and they felt free to use either official language in meetings and in communications with their immediate supervisors (Statistics Canada, 2005; 2008; 2011).

⁶⁰ The Litigation Branch scored over 9 out of 10 in both 2009 (9.4) and 2012 (9.1) regarding accessibility of legal services in the official language of their choice (Office of Strategic Planning and Performance Management, 2013).

⁶¹ A few key informants mentioned that cutbacks to in-house second language training have reduced opportunities for counsel to participate in French language training that could benefit their work.

Information on the extent to which the Litigation Branch's functions as a centre of expertise in both the common and civil law systems was somewhat limited; however, available evidence (mostly from key informant interviews) indicates that the Branch does support Justice Canada's ability to work effectively within a bijural legal context. Training records indicate that Litigation Branch lawyers have taken part in training sessions dealing with Canada's bijural legal system. In addition, the few key informants who discussed bijural issues agreed that the Litigation Branch has the capacity to work effectively in both legal contexts and represents a centre of expertise in this area. Key informants noted that practices such as the employment of bijural counsel and use of structures (such as the MCAMLU's monthly national call) to facilitate discussion about bijural issues support the Branch in addressing both common and civil law matters.

4.2.6. Supports (Training, Tools, Structures and Resources) for the Work of the Litigation Branch

Training

Internal planning documents indicate that training is a priority for the Litigation Branch. In line with this commitment, the Litigation Branch offers various training opportunities for its counsel as well as for Justice litigation counsel more generally. For its own counsel, the Litigation Branch hosts annual Learning Days that cover a range of topics, such as litigation skills, practice management, ethics and substantive law. Training records show that in 2011/12, a total of 158 individual Litigation Branch employees took part in 159 distinct training events. In 2012/13, 168 individual Branch employees took part in 207 distinct training events and activities. (Employees took part in multiple events both years, hence the greater number of training events than employees taking part.) Since the Litigation Branch had approximately 200 FTEs in each of these years (including administrative staff), most employees had attended at least one training session in those years.

The Litigation Branch also hosts a variety of training opportunities for Justice litigation counsel, such as its National Litigation Symposia, which are two-day events held every other year.⁶² These symposia provided all Justice litigators with the opportunity to learn about emerging issues relevant to their work, including use of new technologies and social media in court, the increasing number of multi-jurisdictional class actions, the impact of economic crisis on litigators,

⁶² The evaluation was provided with information on two years of National Symposia. In each year (2010 and 2012), approximately 240 participants took part. About 40% were from the National Capital Region and the remaining 60% were mainly from the six regional offices. A few participants did not have a regional office designation.

ethics, national security, developments in substantive law, and litigation skill development. Certain groups within the Litigation Branch — IAG and NSG — also offer annual training sessions on their specialized legal areas (e.g., extradition, mutual legal assistance, national security law). More generally, the Litigation Branch also offers “in house” training opportunities on legal subjects to Justice employees.⁶³

Feedback from participants indicates that the Litigation Branch should consider how to improve its training offerings, particularly for its own staff. Participants in the 7th and 8th National Litigation Symposia were generally positive on the subject of symposia events, but comments suggest that the Branch could improve symposia services in both official languages. Other external training does not appear to have mechanisms for obtaining participant feedback.

The evaluation found that the Litigation Branch employees are less enthusiastic about their training opportunities. While the majority of Branch employees who responded to the PSES generally believe they receive the training needed to do their job, the percentage agreeing with this statement has declined over time from 84% in 2005, to 71% in 2008, and to 67% in 2011. The survey of counsel and paralegals confirmed that a large minority (43%) consider the amount of training and its relevancy to their work to be fair or poor. These results, combined with the priority placed on training by the Litigation Branch, highlight training as an area for improvement.

Key informants and survey respondents provided some specific suggestions for improvements:

- more training in practical skills that counsel (junior counsel, in particular) require (e.g., cross-examination skills, trial experience, trial techniques, expert evidence, litigation strategy, the writing and use of risk assessments, and advocacy — trial, court and appellate);
- a greater focus on training relevant to criminal litigators (as currently the Department of Justice focuses more on providing training relevant to civil litigators); and
- more training in specific and specialized areas.

Tools and Structures

The Litigation Branch makes use of and/or participates in various quality management or quality control tools, structures or processes. Departmental practice groups, which are informal voluntary

⁶³ According to internal documents, Litigation Branch counsel did not provide training through the Professional Development Division’s Continuing Legal Education Program in 2011/12 or 2012/13. However, between October 2011 and September 2012, Litigation Branch members spent 158.3 hours providing “in-house” training opportunities on legal subjects to Department of Justice employees.

communities of Justice counsel interested in a particular legal specialty, are one mechanism for improving the quality of legal services. Members of the Litigation Branch take part in a number of practice groups that deal with issues relevant to the work of the Branch, including dispute resolution, access to information and privacy, eDiscovery, international law, and national security law.

In addition to practice groups, tools such as practice directives, best practice documents, reference manuals, and work tools are intended to foster high-quality legal services. The Litigation Branch has an extensive set of practice directives that provide litigation counsel and litigation managers with instructions regarding specific issues related to civil litigation work.⁶⁴ Evidence from the document review and key informant interviews indicates that practice directives are issued on an ongoing basis as new issues arise. Work tools, best practice documents, and reference materials and manuals vary among units within the Branch; however, each of the four largest Branch units (CLS, NSG, MCAMLU and IAG) makes use of a wide variety of quick-reference tools covering a broad array of information relevant to the work of Litigation Branch counsel. Key informants also identified more informal practices in place to support the Litigation Branch's work, such as having senior counsel review communications before they go out, and returning emails and phone calls from clients and DLSU counsel within 24 hours.

As seen in Section 4.2.2, the majority of Litigation Branch survey respondents indicated that they consider practice groups and directives to be very useful or useful. Similarly, key informants representing the Litigation Branch indicated that the above-mentioned practice directives and tools are effective at compiling relevant information for litigators, as well as assisting litigators in proceeding with cases and providing high-quality advice. In addition, key informants pointed out that when practice groups involve a mix of junior and senior counsel, they support the provision of high-quality legal services, in part by supporting mentoring practices.

Other tools or processes that are considered very useful or useful by the majority of survey respondents who have enough experience using them to provide an opinion include the CLS Litigation Committee, the NLC, internal mentoring practices, and eDiscovery software. Tools or processes considered less useful by survey respondents include departmental policies, file

⁶⁴ These directives cover a range of issues, including making Access to Information requests; overseeing class action litigation involving the Government of Canada as a defendant or third party; coordinating official language issues and rights in litigation; representing Ministers and exempt staff; managing litigation related to elections; providing representation for boards, tribunals or courts; retaining expert witnesses on contract; document collection, review, and the production of ministerial records; hearings before deputy judges of the Federal Court; and many others.

assignment process, Early Warning Notes, the LRM assessment grid/matrix, and Justipedia. Key informants were particularly critical of the LRM assessment process (see Section 4.2.3) and Justipedia, which was criticized for not being user-friendly and for having materials of variable quality and relevance. Many key informants commented that they do not use Justipedia.

Table 8: Usefulness of Tools, Structures and Processes (n=75)

Q14. To what extent do you find the following tools, structures and processes to be useful to your work?								
	Very useful	Useful	Neutral	Not very useful	Not at all useful	DK	N/A	NR
Legal risk management assessment grid/matrix	7%	11%	29%	20%	9%	8%	16%	-
File assignment process	9%	21%	31%	4%	11%	12%	12%	-
Practice directives	16%	41%	21%	4%	4%	11%	3%	-
Early Warning Notes	5%	17%	24%	13%	7%	12%	21%	-
eDiscovery Software	8%	19%	16%	3%	5%	24%	24%	1%
Justipedia	5%	17%	21%	19%	20%	9%	7%	1%
Internal mentoring practices	19%	24%	15%	13%	5%	12%	12%	-
Practice groups	20%	37%	12%	8%	3%	9%	11%	-
Civil Litigation Section Litigation Committee	16%	15%	16%	4%	1%	23%	25%	-
National Litigation Committee	11%	17%	16%	4%	-	31%	21%	-
Departmental policies	5%	32%	33%	11%	5%	9%	4%	-

Note: Summation of percent values may not equal 100% due to rounding.

As will be discussed in Section 4.3, a major workload and capacity issue for the Litigation Branch is the increasing number of files that involve high volumes of documents and evidence. The evaluation considered how well the available tools, processes and structures assist the Branch in handling high volumes of documents and evidence and, in particular, classified documents.

Handling High Volumes of Documents and Evidence

Documents and interviews have identified the need for a more efficient electronic document system to manage the large quantities of documentary evidence required for commissions of inquiry and other large cases. Ringtail is the litigation support software application used by the Department of Justice. Based on audits in 2007 and 2008, Ringtail's functionality met the needs of most users; however, concerns were raised over the capacity of the database server and the workload of technical specialists to meet future demand for Ringtail, and an anticipated increase in the use of Ringtail for large, complex litigation cases. The audit recommended database server

upgrades and preparation of resource plans to meet future demands and to resolve system bottlenecks (Internal Audit Branch, 2008).

Some issues anticipated by the audit appear to have materialized. Many key informants noted problems with the speed of the system and difficulties with remote access (it cannot be accessed via Wi-Fi due to security issues); they expressed the opinion that the Litigation Branch is behind the private sector in terms of up-to-date technologies related to document review and eDiscovery software, although they recognized that the Branch is making progress in these areas.

A key component of that progress is the formation of the National eDiscovery and Litigation Support Services, which was established to respond to increasing electronic discovery (i.e., eDiscovery) needs. The Group aims to better align litigation support services and evidence management through capacity building related to eDiscovery and litigation support tools and processes. Many key informants representing the Litigation Branch noted that the creation of the Evidence Management Team and its operation over the past few years have helped the Branch to deal with increasing document review requirements on litigation files. Some pointed out that the Team has made efforts to ensure that the Branch has access to up-to-date eDiscovery tools, which have increased the speed with which documents can be reviewed. A few also pointed out that this team could play an important role in national security files, given that it has tools and resources to work in a top secret environment.

While managers and senior counsel who participated in interviews were well aware of the National eDiscovery and Litigation Support Services, the survey results indicate that many litigation counsel are not aware of the potential for the Group to assist them. A large proportion of CLS respondents could not provide an opinion on the usefulness of the eDiscovery software (35%), either answering that they did not know or that it was not applicable to their work. In addition, when asked to assess the extent to which they are adequately utilized, three-quarters of eDiscovery and Litigation Support Services respondents consider themselves to be under-utilized.

Tools and Processes for Handling Classified Information

Several Litigation Branch units handle classified information as part of their work (NSG, IAG and CLS, in particular). The evaluation findings indicate that the Litigation Branch has the tools and processes necessary to appropriately handle classified information. The Branch follows government standards in the storage and access of classified materials. In addition, units that work the most with classified materials (e.g. NSG) have ‘ensuring awareness of security procedures’ as

a management/human resources priority and train staff extensively on handling sensitive information.

Key informants identified some challenges related to security requirements:

- Locked computers prohibit counsel from adding programs that would assist them in their day-to-day responsibilities, such as software needed to view certain types of client materials, without approval.
- The connections that provide secure Internet access to counsel are unreliable, which limits the extent to which counsel can work remotely.
- Ringtail has limitations for work involving highly sensitive documents, including the lack of capacity to track redactions when they are removed.
- There are significant limitations to receiving classified materials from colleagues outside of their building (since secure fax is unreliable).
- A better information security system is needed for managing and working with files containing protected and classified information. Shared Services Canada's Government of Canada Secret Infrastructure could assist in this area, but it is years away from implementation. The Department is looking at interim solutions (e.g. C5) but access for everyone will continue to be a challenge.

Other Technology Needs

In addition to the technology issues related to eDiscovery and classified information, a few other technological and information management systems issues identified included the need for the following:

- more expertise and resources for electronic court procedures and hearings — in part, to ensure that the Litigation Branch can assume a leadership role in efforts to streamline and modernize hearings;
- improved information technology systems that are more coordinated across the Department of Justice;
- improvements in the “shared services approach”, which has resulted in frequent changes to technological tools (to which it can prove difficult to adjust), and a reduced email capacity (which reduces the ability of counsel to use email to gain quick access to relevant

communications and information, and requires them to spend a lot of time cleaning out their inbox); and

- improvements to iCase and GCDOCS, as they do not facilitate file searching as effectively or easily as iRims did.

The concerns cited above may explain the decline in satisfaction with materials and equipment over time; the percentage of PSES respondents who agreed that they have the materials and equipment to do their job dropped from 94% in 2005, to 88% in 2008, and to 83% in 2011 (Statistics Canada, 2005; 2008; 2011).

Resources

The Litigation Branch employees believe that the Branch has made appropriate hires and they have confidence in senior management.⁶⁵ Key informants, however, identified concerns related to staff retention and the capacity to meet demand for Branch services. In terms of staff retention, two potentially related concerns were identified: the lack of ability to promote senior counsel, and the fact that some senior counsel tend to leave litigation work to work in other areas within the Department of Justice. In fact, 2011 PSES results revealed that 19% of Litigation Branch respondents planned to leave their current position within two years, while a further 27% indicated that they were not sure. A few key informants mentioned difficulties in replacing counsel, due to the long time needed to gain skills/experience/expertise in the complex issues with which the Litigation Branch works.

Key informants also identified several resource challenges that affect the Litigation Branch's capacity to provide legal services.

- Many key informants (including representatives of multiple sectors within the Litigation Branch, and a few representatives of other areas of Justice) identified a need for more paralegals and counsel within the Branch.
- Travel restrictions and the difficulties in gaining approval for travel are hindering the work of some Branch litigators. Internal documents listed the cap on travel as a key risk (assigned a

⁶⁵ A large majority of Litigation Branch employees responding to PSES over the evaluation period (83% in 2005, 68% in 2008, and 73% in 2011) agreed that those hired by the Litigation Branch are capable of doing the job (Statistics Canada, 2005; 2008; 2011). In 2011, the majority (almost 70%) of Litigation Branch respondents reported that they have confidence in senior management.

risk level of 8 out of 9) to the effective operation of the Litigation Branch, and as a factor limiting training opportunities for Litigation Branch counsel.

- An insufficient number of counsel may have the security clearances required for working on national security files as capacity issues have arisen in some cases. This was mainly raised by CLS respondents.
- Some IAG representatives mentioned that when big cases arise, they do not always have enough qualified lawyers — particularly those with criminal law experience — to draw from within the Department of Justice.
- Some key informants identified a need for stronger administrative support. The Litigation Branch is inhibited to some degree by the resources available for, and government restrictions on, contracting. Given short timeframes for hiring experts to support the litigation process, the Branch could use better support related to contracting.

Information on financial resources will be discussed in more detail in Section 4.3. Key informants did not express their opinions on the adequacy of financial resources, but they implied a link between the current availability of financial resources and issues related to staffing, such as retention.

4.3. Performance – Demonstration of Efficiency and Economy

The Treasury Board Secretariat’s 2009 *Policy on Evaluation* defines efficiency as production of “a greater level of output ...with the same level of input or, a lower level of input ... the same level of output”, and that economy “is achieved when the cost of resources used approximates the minimum amount of resources needed to achieve expected outcomes” (Treasury Board of Canada Secretariat, 2009). Applying these definitions to the Litigation Branch, an analysis of its efficiency and economy considers the ability of the Branch to manage the cost and demand for legal services and the degree to which the legal services provided are cost efficient.

4.3.1. Trends in Expenditures, Resources and Resource Use

As noted in Section 2.2, during the six-year period covered by the evaluation, the expenditures of the Litigation Branch have increased 31%. Table 9 below shows that this increase is due to salaries (up by 42%), as expenditures for operations and maintenance have declined (down by 42%). Expenditures related to salaries rose, in part, because the number of FTEs increased by about 25%

between 2008/09 and 2013/14; however, FTEs have been decreasing since 2011/12 (see Table 10). The remaining increase occurred primarily between 2008/09 and 2009/10 when a new collective agreement took effect.

Table 9: Litigation Branch: Year-over-Year Actual Expenditures (\$)

	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Salary before EBP	13,998,434	16,908,137	18,761,303	18,872,798	18,878,161	19,940,591
EBP @ 20%	2,799,687	3,381,627	3,752,261	3,774,560	3,775,632	3,988,118
Subtotal: salary expenditures	16,798,121	20,289,764	22,513,564	22,647,358	22,653,793	23,928,709
Operating and Maintenance	2,555,710	2,495,744	2,764,000	2,772,435	1,614,688	1,486,064
Total annual expenditures	19,353,831	22,785,508	25,277,564	25,419,792	24,268,481	25,414,773

Source: Data provided by Litigation Branch

Hiring clearly focused on legal staff, as the number of administrative FTEs rose by 3% compared to 31% for legal counsel and 59% for paralegals. Every unit of the Litigation Branch saw an increase in the number of legal counsel — with some of the smaller units experiencing the greatest proportionate increase in staff (the Office of the ADAG went from 2.41 to 7.87 FTEs and LMPC went from 1.00 to 3.00 FTEs). The percentage staff increases for the other units of the Branch are NSG (37%), MCAMLU (16%), and IAG and CLS (both 11%).⁶⁶ In addition, almost all units of the Branch (LPMC is the exception) experienced an increase in paralegals (see Table 10).

As reflected in the number of hours spent on actively managed files each year, resource use increased by 20%, which is slightly below the increase in level of staffing. The increase in staffing cannot be directly mapped onto resource usage for a number of reasons. First, some units (IAG in particular) have made an effort to increase compliance with iCase reporting requirements, so its substantial increase in level of effort (58%), which was the largest increase among the Litigation Branch units, is not reflected in increased staffing, which is likely appropriate. Second, other units such as LPMC do not record hours in iCase. Given that NSG and MCAMLU both had substantial increases in level of effort (26% and 28%, respectively), the increase in staffing appears to align with this increased workload. CLS has a more modest staffing increase (14%), but this has occurred during a time when its level of effort on client files has declined by the same percentage. The issue of resource sufficiency and CLS is dealt with in more detail in Section 4.3.3.

⁶⁶ The National eDiscovery and Litigation Support Services did not exist as a separate entity for the entire period covered by the evaluation and so is not comparable to the other units.

Table 10: Litigation Branch Human Resources (FTEs)

	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Counsel						
ADAG Office	2.41	6.58	6.7	8.75	7.97	7.87
CLS	35.18	40.63	47.54	44.29	40.86	38.94
LPMC	1.00	1.53	2.00	2.78	3.00	3.00
MCAMLU	4.94	10.13	11.29	10.72	5.90	5.75
eDiscovery	--	--	--	--	5.75	6.64
IAG	18.02	15.24	16.37	18.33	17.78	19.95
NSG	8.80	9.71	12.69	12.29	12.28	12.02
Other ⁶⁷	1.80	--	--	--	--	--
Paralegals						
ADAG Office	--	--	--	0.92	0.56	1.13
CLS	13.86	15.14	18.11	18.14	17.46	16.79
LPMC	1.79	2.00	2.67	1.62	1.00	1.00
MCAMLU	2.95	8.29	9.67	11.21	2.23	3.96
eDiscovery	--	--	--	--	5.65	5.88
IAG	5.77	7.18	7.78	9.02	9.08	9.11
NSG	4.77	4.77	4.70	6.61	7.94	9.33
TOTALS						
Counsel	72.16	83.82	96.58	97.15	93.55	94.17
Paralegals	29.14	37.38	42.94	47.51	43.93	47.20
Administration	58.12	58.60	67.45	67.48	64.60	58.83
Total FTEs	159.42	179.80	206.97	212.14	202.08	200.20

4.3.2. Costs Recovered

Litigation Branch expenditures are covered by cost recovery from client departments/agencies and A-base funding.⁶⁸ The cost-recovery mechanism is complex and as cost-recovery guidelines were considered lacking, Justice Canada began a Cost Recovery Process Improvement (CRPI) Project in the fall of 2010.⁶⁹ As a result, the revenue from cost recovery is not considered comparable pre-

⁶⁷ LRM was a unit in the Branch with FTEs in 2008–09, but has been disbanded.

⁶⁸ As noted in Departmental Performance Reports, the Department has to manage fluctuating demands for legal services, which means that its funding shifts between Net Voting Authority, which includes cost recovery from clients, and A-base funding (Department of Justice, 2014). This fluctuation in types of funding sources does not apply to some units within the Litigation Branch, which are entirely funded by A-base (i.e., IAG). Although the breakdown of Net Voting Authority to A-base is available at the Department level, it is not possible to provide this information specifically for the Litigation Branch.

⁶⁹ The CRPI Project responded, in part, to a 2010 audit that found that the management control framework was “insufficiently robust to support recovery”. (Internal Audit Branch, 2010).

and post-CRPI. Table 11 presents the cost of legal services collected from clients over the last two fiscal years (post-CRPI). During this period, the Branch recovered more than half of its expenditures through cost recovery.⁷⁰

Table 11: Costs of Services Collected from Clients of the Litigation Branch (in \$)

	2012/13	2013/14
Total annual expenditures	24,268,481	25,414,773
Cost Recovery		
Legal services	11,728,699	10,521,617
Disbursements	998,671	1,065,944
Total collected	12,727,370	11,587,561
Cost recovery as a percentage of total expenditures	52%	46%

Source: Data provided by Litigation Branch

4.3.3. Managing Demand, Reducing Cost, and Improving Efficiency

Sufficiency of Resources

To a large degree, demand management is affected by the sufficiency of resources available. As discussed in Section 4.2.6, the evaluation found that, in general, the materials and equipment available to Litigation Branch staff are sufficient, with some noted areas for improvement. In addition, overall, the Branch is able to provide timely, responsive, high-quality work with current resources (see Section 4.2.1).

Although resources for the Branch appear to be sufficient, the evaluation results raised some potential area-specific concerns. The available data, however, limit the ability to draw firm conclusions. Considering the 2013/14 fiscal year, the average number of hours recorded to actively managed files by legal staff in MCAMLU and IAG (see Table 12) are substantially higher than the other two units (CLS and NSG) that conduct litigation and carry advisory files. This result raises the question of whether the lower increase in legal counsel staffing for IAG and MCAMLU adequately covers resource needs so that capacity issues do not arise. However, the completeness and accuracy of the time recorded in iCase makes it difficult to offer a definitive answer. For example, IAG representatives noted that they have made recent efforts to ensure more accurate timekeeping by IAG staff, which resulted in a large increase in hours in 2013/14, so hours for

⁷⁰ When considering only those units of the Litigation Branch that engage in cost recovery, the costs recovered essentially match the total expenditures for those units.

earlier years are presumably less accurate. Using IAG as an example, it is likely that the diligence of entering hours into iCase may vary by unit within the Litigation Branch.

A complete understanding of the work of the Branch depends on accurate entry and allocation of hours. For example, CLS has a reduction in hours spent on actively managed files during the period covered by the evaluation (see Section 4.1.1); however, CLS also has recorded a substantial portion of hours to corporate files, which are files opened to record time spent on activities related to a matter that benefits the Department of Justice as a corporate entity (i.e., non-legal work).⁷¹ Time recorded to corporate files by CLS rose from 9% of counsel and paralegal time recorded in iCase in 2008/09 to 28% in 2013/14.⁷² If corporate files are included in the level of effort for CLS during the evaluation period, instead of a 13% decrease, CLS has experienced an approximate 30% increase. However, the rise in corporate files raises questions about the nature of the demand for CLS services and potentially the accuracy with which legal staff are recording their time in iCase.⁷³ If time recorded to corporate files is included, the Litigation Branch units in Table 12 are more similar in hours per staff member.

Table 12: Hours Spent on Actively Managed Files per Staff by Unit, 2013/14

	Total number of staff (counsel and paralegals)	Total hours	Hours per staff member (counsel and paralegals)
MCAMLU	9.71	17,631	1815.76
IAG	29.06	46,495	1599.97
CLS	55.73	71,675	1286.11
NSG	20.35	23,185	1139.31

Source: iCase.

Note: Because of the limitations noted in Section 3.6, not all Litigation Branch units are included in the table.

Staffing and Managing Workload on Files

Project management, with its focus on reducing cost, improving efficiency and performance measurement, as well as its emphasis on measurable results, is increasingly becoming part of practice management for lawyers (Barrett, 2010; Hodgart, 2010). The Department of Justice

⁷¹ Corporate files can include various activities such as attending training (when not for a particular client), attending/participating in staff or committee meetings, managing human resource issues (e.g., assessing performance), handling an Access to Information request on a Justice file, and reading case reports to keep current, to name a few examples. Corporate hours recorded for leave are not included in the analysis.

⁷² A substantial portion of the corporate time is recorded by paralegals and junior counsel.

⁷³ Other Litigation Branch units have also experienced a rise in the percentage of total hours recorded to corporate files during the time period covered by the evaluation: NSG, from 18% to 30% and, more modestly, MCAMLU, from 8% to 12%. IAG's proportion of corporate hours has remained stable at approximately 10%.

recognized this, when, as part of its 2012 Process Optimization measures, it announced that it would apply project management principles and provide project management training to litigation managers, and that it would use benchmarks for certain file types and set as a goal to reduce the average number of hours spent on files by 4.5%.

While it is still too early to measure results for Process Optimization, the evaluation did consider other aspects of project management that have been more long term and ongoing in the Department and the Branch. The Department instituted the Law Practice Model (LPM), where low-risk, low-complexity work is to be assigned to more junior counsel as a method to achieve cost savings. The model follows law practice management literature, which discusses assigning work based on its “value” (Hodgart, 2010). High value files in the Litigation Branch are those with high risk and/or high complexity, as those files have been assessed as being higher profile, having a larger potential impact on the client, and presenting more challenges to manage. Using project management principles, these files should have more resources directed to them (e.g., greater level of effort, larger teams) and more senior counsel attention. In addition, the law practice management literature emphasizes that the most efficient use of resources involves appropriate delegation of “low value” work (i.e., low risk/complexity files or more routine tasks on higher risk/complexity files) to more junior counsel and paralegals. This section will consider both the allocation of resources based on risk and complexity and the use of paralegals on files.

Alignment of Resources to Level of Risk and Complexity

Many key informants (representing the Litigation Branch as well as client departments and DLSUs) and Litigation Branch survey respondents believe that files are assigned appropriately to counsel at the right level, given the risk and complexity level of the files. Tasks are considered to be appropriately delegated to junior counsel and paralegals to keep costs down for clients. Most Branch survey respondents also consider junior counsel to be well supported by senior counsel, which ensures high-quality services (see Table 13 for survey results).

Although managers within the Litigation Branch do initial risk assessments on files to guide the assignment of files to counsel, some key informants said that, at times, a shortage of available counsel at the appropriate level makes file assignment more challenging. A few key informants mentioned that, even though the Litigation Branch makes substantive attempts to allocate files appropriately, at times, the availability of counsel is what drives file assignment. According to these key informants, given that more Branch counsel are working at capacity, sometimes files are assigned to whoever has some capacity to do the work.

Table 13: File and Task Assignments (n=38)

Q28. Thinking of files you have been involved with in the last two years, how often...							
	Frequently (80%-100%)	Regularly (50%-79%)	Occasionally (25%-49%)	Rarely (1%-24%)	Never (0%)	DK	N/A
Were files assigned to the appropriate level of counsel given the legal risk/complexity of the file?	42%	37%	8%	5%	3%	5%	-
Were tasks allocated appropriately (level and experience) within the team assigned to manage the file?	42%	40%	8%	11%	-	-	-
Were appropriate levels of mentoring and/or supervision provided to support the management of your files?	34%	34%	18%	5%	5%	3%	-

Note: Summation of percent values may not equal 100% due to rounding.

Source: Litigation Branch survey (CLS and MCAMLU respondents only)

An analysis of iCase data confirms the opinion of key informants and survey respondents that, in general, the Litigation Branch is targeting its legal resources based on the risk and complexity of the file, demonstrating that the Branch is using practice management techniques intended to minimize cost and increase efficiency. The indicators analyzed for the evaluation are the hours devoted to files and the assignment of legal staff by the files’ risk and complexity levels.

Table 14 shows the average number of hours spent on files based on their level of risk and complexity. As would be expected, but with a few exceptions, there is a corresponding increase in the level of effort spent on files as risk and complexity rise. Exceptions involve:

- legal areas where the unit of the Branch has a relatively small number of actively managed files (e.g., IAG and litigation files), so the results in one or two files can greatly affect the average level of effort;
- legal areas where the unit of the Branch is involved in monitoring/supporting, but another area in the Department is leading the file (e.g., NSG’s litigation or advisory work); and
- related files that are all highly complex, but the level of effort is expended on the file that is proceeding to court (e.g, MCAMLU class action litigation).

Table 14: Average Number of Hours per File Risk Level – 2008/09 to 2012/13

	Risk Level		Complexity Level		
	Advisory	Litigation		Advisory	Litigation
IAG					
Low	13.7	111.3	Low	10.8	30.8
Medium	22.0	241.8	Medium	19.0	101.2
High	70.7	3.5	High	28.7	303.9
Not yet evaluated	20.4	59.0	Mega	42.1	-
Unable to assess	18.7	0.3	Not applicable	66.8	43.9
--	--	--	(Not indicated)	7.5	-
Total	15.8	112.1	Total	15.8	114.9
NSG					
Low	62.9	266.4	Low	233.0	115.2
Medium	73.4	516.8	Medium	61.8	364.1
High	-	57.8	High	29.8	730.5
Not yet evaluated	103.2	213.9	Mega	-	-
Unable to assess	1.0	-	Not applicable	35.6	-
--	--	--	(Not indicated)	-	-
Total	64.2	327.7	Total	64.2	335.9
CLS					
Low	11.1	33.6	Low	29.9	18.7
Medium	25.1	108.7	Medium	45.2	79.8
High	87.0	249.4	High	82.6	246.0
Not yet evaluated	25.6	60.3	Mega	-	300.9
Unable to assess	59.0	43.4	Not applicable	25.3	19.0
--	--	--	(Not indicated)	30.0	9.0
Total	42.0	72.9	Total	42.0	72.9
MCAMLU					
Low	16.4	14.0	Low	16.4	56.1
Medium	-	79.7	Medium	68.2	880.7
High	20.4	489.1	High	62.4	58.7
Not yet evaluated	265.8	66.8	Mega	2,323.4	635.3
Unable to assess	2,313.4	886.1	Not applicable	2,720.0	-
--	--	--	(Not indicated)	621.1	1.5
Total	1,416.3	447.0	Total	1,416.3	447.2

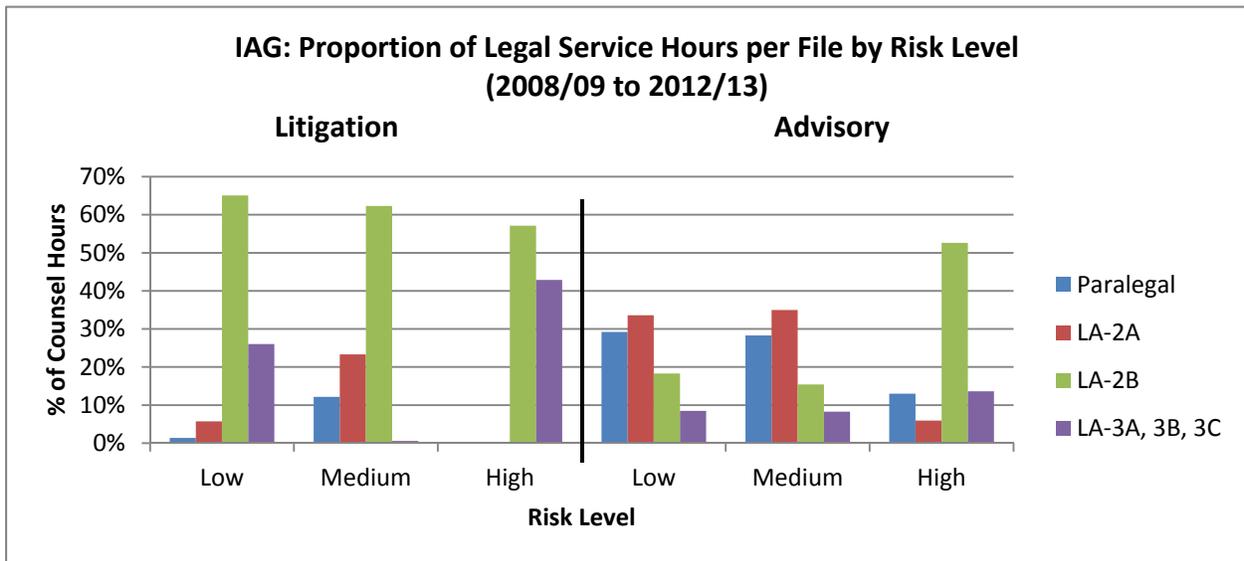
Source: iCase, actively managed files

Figures 3 to 10 show the alignment of staffing with legal risk and complexity for each of the four units of the Litigation Branch that manage litigation and advisory files. As demonstrated by these figures, the general trend is for the level of effort of senior counsel (LA-2B and LA-3A, 3B, and

3C) to increase with legal risk and complexity levels. That being said, each unit within the Branch has its own pattern that reflects its type of work.

For IAG (Figures 3 and 4), high risk litigation and advisory files receive more senior counsel time. Advisory files, which constitute the vast majority of IAG’s work, show a balance of various levels of staff across risk and complexity levels but with a higher proportion of level of effort provided by senior counsel compared to junior counsel and paralegals.

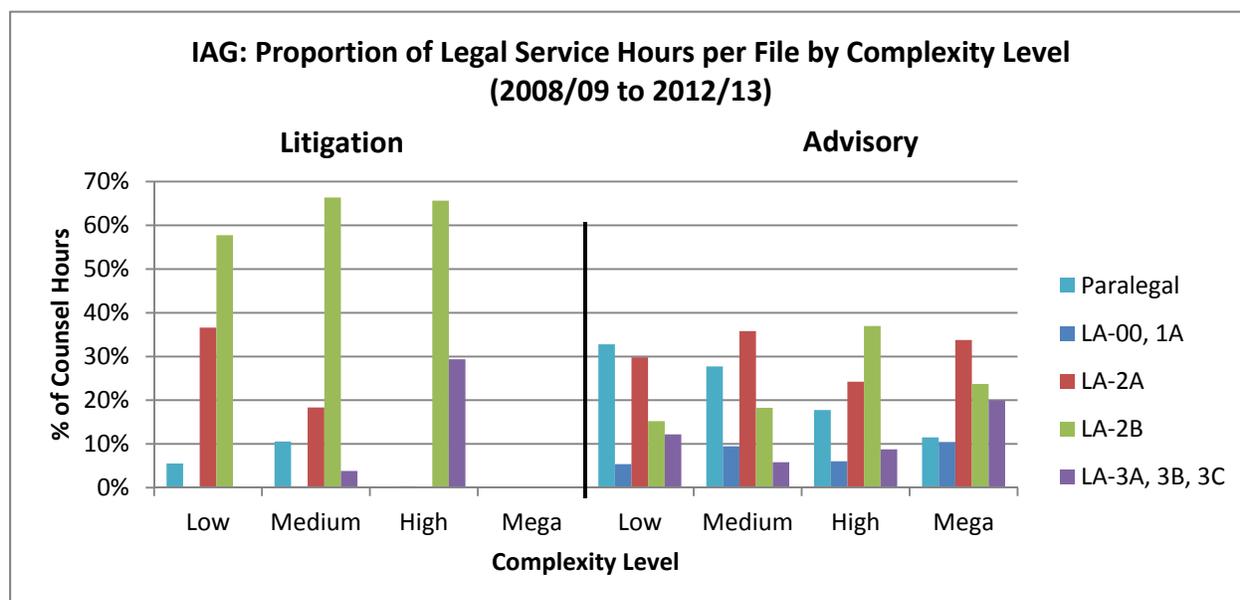
Figure 3: IAG: Proportion of Legal Service Hours per File by Risk Level (2008/09 to 2012/13)



Source: iCase⁷⁴

⁷⁴ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Figure 4: IAG: Proportion of Legal Service Hours per File by Complexity Level (2008/09 to 2012/13)

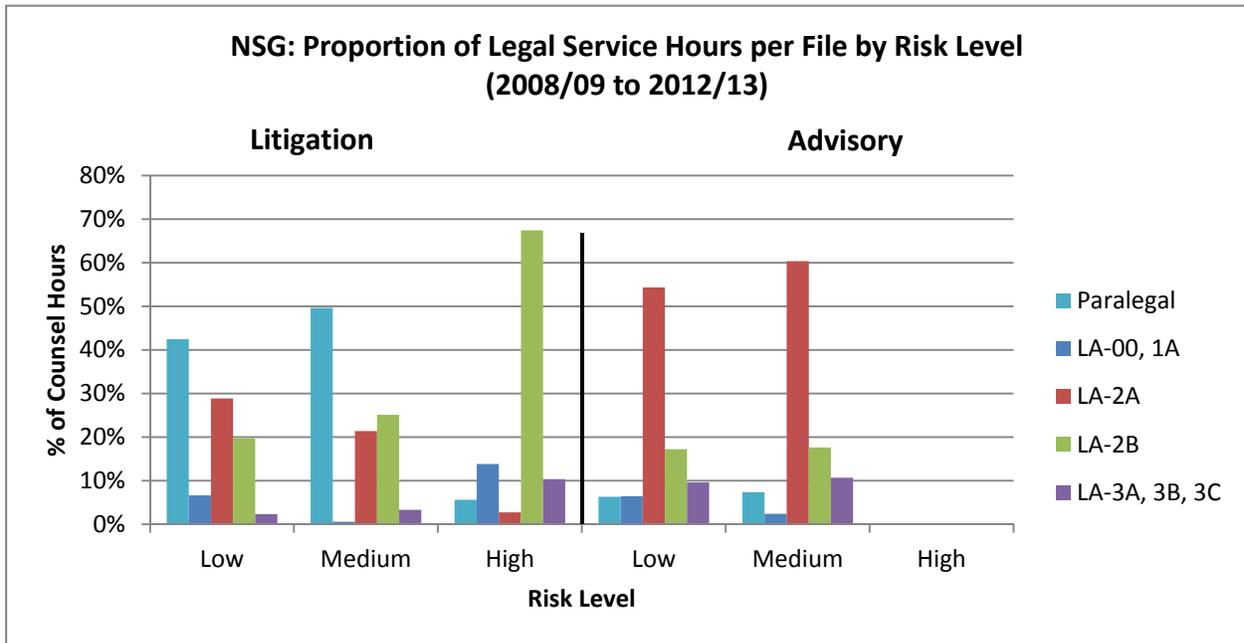


Source: iCase⁷⁵

NSG also shows increased senior counsel time spent in higher risk and complexity files. The trend is somewhat less clear than for IAG due to the substantial amount of time spent by counsel at the LA-2A level, who constituted most of the NSG counsel between 2008/09 and 2012/13.

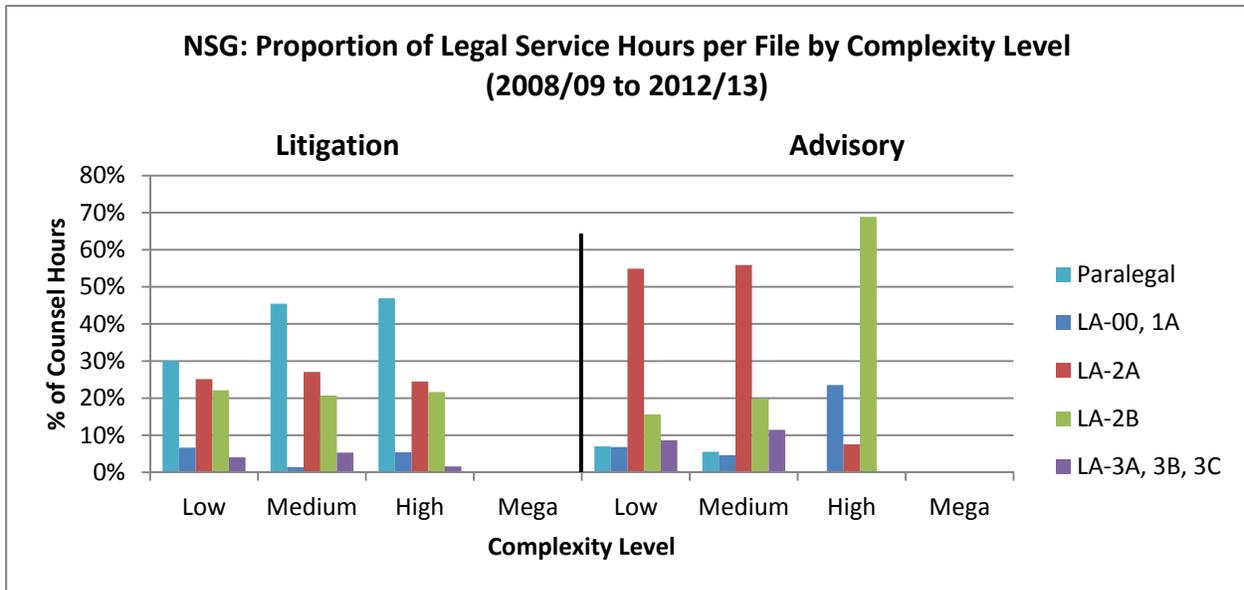
⁷⁵ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Figure 5: NSG: Proportion of Legal Service Hours per File by Risk Level (2008/09 to 2012/13)



Source: iCase⁷⁶

Figure 6: NSG: Proportion of Legal Service Hours per File by Complexity Level (2008/09 to 2012/13)



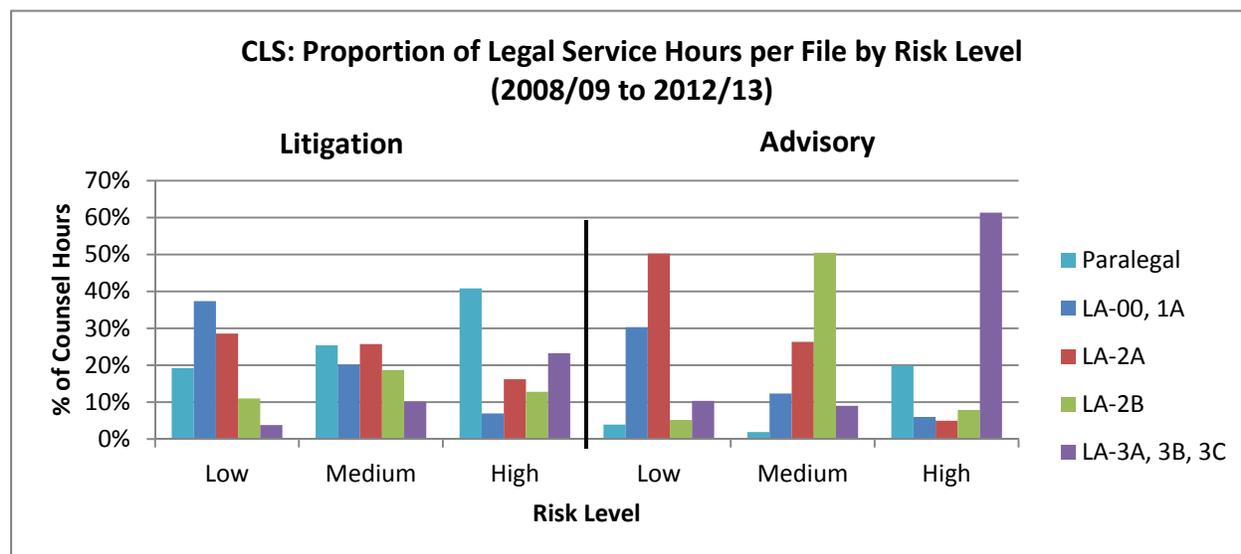
⁷⁶ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Source: iCase⁷⁷

For CLS, Figures 7 and 8 reflect a balanced approach to litigation teams with all levels of counsel involved regardless of legal risk and complexity levels. However, as would be expected, higher legal risk and complexity litigation files do show more senior than junior counsel time. These files also have a substantial level of effort from paralegals, which reflects the comments made by many key informants that these litigation files create extensive document production demands. Both the increasing amount of senior counsel involvement and the increased use of paralegals for higher legal risk and more complex files match what would be expected from the literature on practice management — more senior counsel involvement in “high value” (i.e., high impact, high importance) work, and delegating “low value” (i.e., less strategic, more routine) tasks, such as document production, to less costly staff.

For advisory files, the pattern is as would be expected with the proportion of senior time increasing in correspondence with the legal risk level. That trend is less marked when considering complexity, but that may be due to the nature of the issues in even lower complexity advisory files.

Figure 7: CLS: Proportion of Legal Service Hours per File by Risk Level (2008/09 to 2012/13)

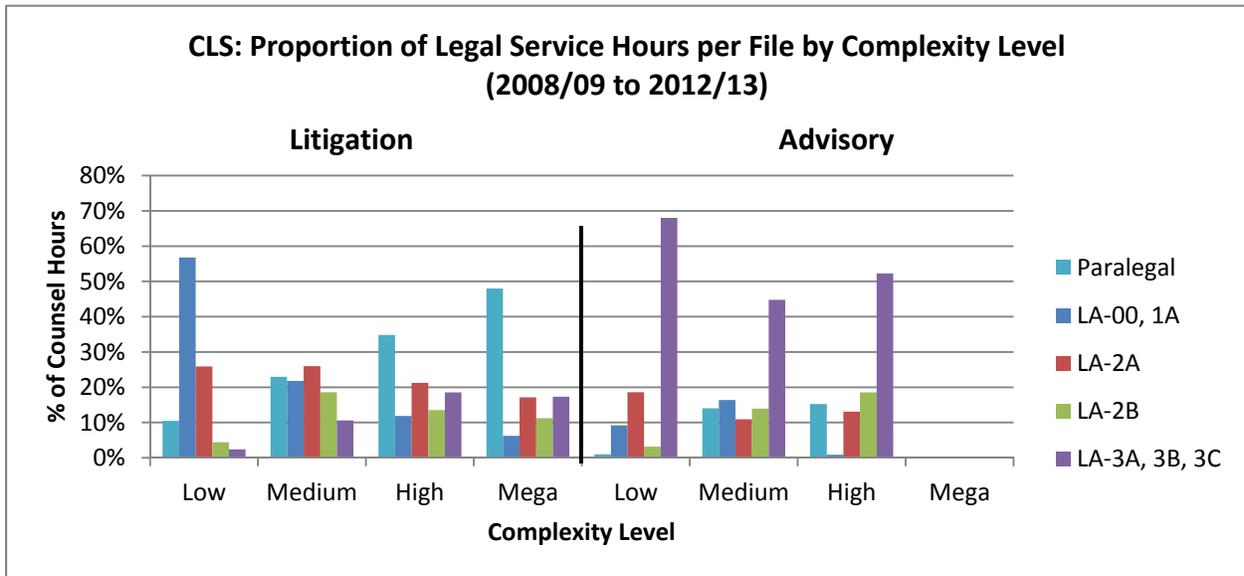


Source: iCase⁷⁸

⁷⁷ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

⁷⁸ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Figure 8: CLS: Proportion of Legal Service Hours per File by Complexity Level (2008/09 to 2012/13)

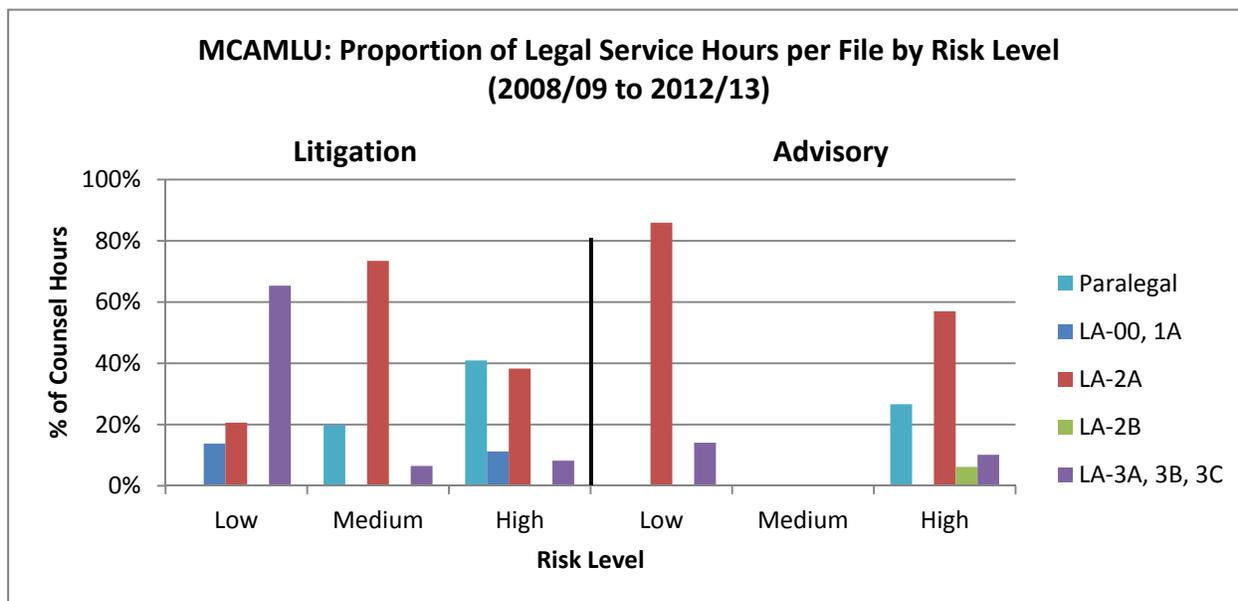


Source: iCase⁷⁹

For MCAMLU, the patterns are harder to determine because this unit has both few files and few lawyers, most of whom were at the LA-2A level between 2008/09 and 2012/13. In addition, some files at high legal risk or high-complexity levels, as noted above, may be monitored or supported while most effort is put toward the related class action file that is proceeding to court.

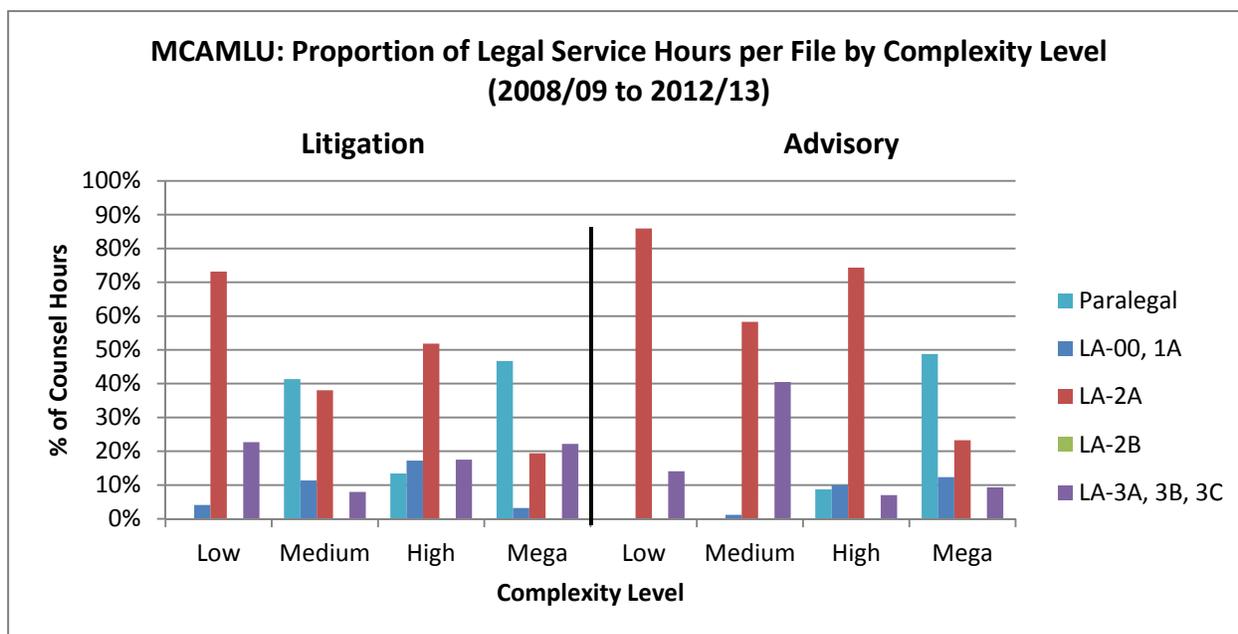
⁷⁹ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Figure 9: MCAMLU: Proportion of Legal Service Hours per File by Risk Level (2008/09 to 2012/13)



Source: iCase⁸⁰

Figure 10: MCAMLU: Proportion of Legal Service Hours per File by Complexity Level (2008/09 to 2012/13)



⁸⁰ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Source: *iCase*⁸¹

Use of Paralegals

As mentioned earlier, the law practice literature identifies the delegation of suitable tasks to non-lawyers as an effective approach to reducing legal costs for clients and/or freeing counsel to focus on work that requires their skills (Hodgart, 2010). The Department of Justice effectively endorsed this approach when it included increased reliance on paralegals as one of its Process Optimization measures announced in 2012. Certainly, the 59% increase in paralegal FTEs in the Litigation Branch between 2008/09 and 2013/14 indicates support for the use of paralegals that pre-dates the Process Optimization measures.

Across the Litigation Branch, there was positive feedback on the role of paralegals, but the findings also indicate a potential lack of sufficient paralegal resources, as well as a somewhat restricted use of paralegals. Comments on paralegals focused primarily, although not exclusively, on their role in document review and production, which is not surprising given the increasing volume of documents involved in many litigation files. Key informants noted that the Branch benefits from high-quality paralegal support — which includes paralegals with legal as well as IT backgrounds — capable of dealing with complex electronic document production requirements. Given the demanding nature of document production, the need for more paralegals was identified by both key informants (including representatives of multiple sectors within the Litigation Branch, and a few representatives of other areas of Justice) and Litigation Branch survey respondents. The focus of paralegal work on document review and production aligns with counsel and paralegal survey respondents on how paralegals are most often used (see Table 15 and Table 16). The other main tasks in which paralegals are engaged involve work done by IAG (i.e., review of extradition/Mutual Legal Assistance Treaty (MLAT) requests).

The concentrated use of paralegals on document production may be overlooking other areas where they could be of assistance to counsel. Over half of paralegals surveyed believe that they have, at least occasionally, worked on files where counsel spent time on tasks that paralegals could have done (43% of paralegal respondents reported that this frequently or regularly occurs; in contrast, 28% reported that it rarely or never occurs).

⁸¹ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Table 15: Counsel Reported Use of Paralegals (n=51)

Q29. (Counsel only) Thinking of files you have been involved with in the last two years, how often have you used paralegals in the following activities?								
	Frequently (80%-100%)	Regularly (50%-79%)	Occasionally (25%-49%)	Rarely (1%-24%)	Never (0%)	DK	N/A	NR
Document production	69%	10%	8%	4%	-	-	10%	-
Redaction of documents for privileges (national security and solicitor-client privilege)	33%	24%	12%	6%	8%	-	18%	-
Review of public interest immunity claims and redactions	24%	6%	8%	4%	12%	2%	45%	-
Preparation of responses to undertakings given at discovery	12%	22%	8%	14%	2%	-	43%	-
Preparation of documents for submission to PCO for certification of Cabinet confidences	12%	14%	2%	2%	12%	6%	53%	-
Preparation of affidavits	10%	14%	18%	26%	8%	-	24%	2%
Review of extradition/MLAT requests	10%	8%	-	-	8%	2%	73%	-
Legal research	8%	10%	28%	33%	14%	2%	6%	-
Initial drafts of pleadings	6%	6%	8%	22%	20%	-	39%	-
Interviewing potential witnesses	2%	10%	12%	10%	26%	-	41%	-
Initial draft of written submissions	-	-	16%	24%	26%	-	35%	-
Initial draft of questions for discovery	-	2%	10%	14%	22%	-	53%	-

Note: Summation of percent values may not equal 100% due to rounding.

Source: Litigation Branch survey (National eDiscovery and Litigation Support Services and the ADAG Office counsel were not included)

Table 16: Paralegals Self-reported Use by Counsel (n=21)

Q30. (Paralegals only) Thinking of files you have been involved with in the last two years, how often have you been engaged in the following activities?								
	Frequently (80%-100%)	Regularly (50%-79%)	Occasionally (25%-49%)	Rarely (1%-24%)	Never (0%)	DK	N/A	NR
Document production	76%	-	-	-	-	-	14%	10%
Redaction of documents for privileges (national security and solicitor-client privilege)	38%	29%	10%	-	5%	-	14%	5%

Q30. (Paralegals only) Thinking of files you have been involved with in the last two years, how often have you been engaged in the following activities?								
	Frequently (80%-100%)	Regularly (50%-79%)	Occasionally (25%-49%)	Rarely (1%-24%)	Never (0%)	DK	N/A	NR
Review of extradition/MLAT requests	24%	-	-	-	29%	-	43%	5%
Legal research	14%	19%	33%	24%	-	-	5%	5%
Preparation of affidavits	14%	10%	10%	38%	5%	-	19%	5%
Preparation of responses to undertakings given at discovery	14%	10%	5%	10%	14%	-	38%	10%
Interviewing potential witnesses	14%	10%	19%	-	10%	-	43%	5%
Review of public interest immunity claims and redactions	14%	10%	5%	5%	10%	-	52%	5%
Initial drafts of pleadings	10%	14%	14%	19%	14%	-	24%	5%
Initial draft of written submissions	10%	5%	5%	19%	19%	-	38%	5%
Initial draft of questions for discovery	5%	5%	19%	5%	19%	-	43%	5%
Preparation of documents for submission to PCO for certification of Cabinet confidences	-	-	14%	24%	14%	-	43%	5%

Note: Summation of percent values may not equal 100% due to rounding.

Source: Litigation Branch survey (National eDiscovery and Litigation Support Services and the ADAG Office paralegals were not included)

Table 17 shows that, generally, paralegal hours are increasing over time. The importance of paralegals to the teams across the Litigation Branch is evident in that for most types of work, paralegals constitute one-quarter to almost one-half of the total legal service effort. Although there are some fluctuations across the years, the proportion of paralegals' level of effort has remained fairly unchanged.

Table 17: Distribution of Paralegal and Counsel Hours (2008/09 to 2013/14)

	Litigation Files			Advisory Files		
	Paralegal hours	Total legal service hours	% hours by paralegals	Paralegal hours	Total legal service hours	% hours by paralegals
CLS						
2008/09	19,040	76,353	25%	185	2,119	9%
2009/10	20,247	77,456	26%	299	2,768	11%

	Litigation Files			Advisory Files		
	Paralegal hours	Total legal service hours	% hours by paralegals	Paralegal hours	Total legal service hours	% hours by paralegals
2010/11	25,098	92,176	27%	553	2,292	24%
2011/12	27,003	89,750	30%	40	2,860	1%
2012/13	21,519	75,517	28%	59	1,810	3%
2013/14	18,607	67,305	28%	59	1,722	3%
Total	131,514	478,557	27%	1,195	13,571	9%
MCAMLU						
2008/09	1,739	4,780	36%	2,120	5,045	42%
2009/10	2,700	7,276	37%	10,807	20,146	54%
2010/11	3,570	6,995	51%	13,327	28,573	47%
2011/12	4,591	9,114	50%	10,001	20,953	48%
2012/13	1,926	5,371	36%	4,309	10,267	42%
2013/14	3,333	9,198	36%	2,998	5,803	52%
Total	17,859	42,734	42%	43,562	90,787	48%
NSG						
2008/09	5,057	11,014	46%	615	6,820	9%
2009/10	6,596	13,991	47%	55	6,955	1%
2010/11	5,758	15,304	38%	543	7,078	8%
2011/12	6,153	14,514	42%	725	6,472	11%
2012/13	9,415	19,058	49%	129	5,117	3%
2013/14	7,576	16,618	46%	174	4,983	3%
Total	40,555	90,499	45%	2,240	37,425	6%
IAG						
2008/09	20	373	5%	7,730	26,527	29%
2009/10	16	1,161	1%	6,569	25,521	26%
2010/11	34	2,420	1%	7,941	26,760	30%
2011/12	36	363	10%	8,536	30,685	28%
2012/13	164	1,428	11%	8,984	27,229	33%
2013/14	2	996	0%	12,197	41,688	29%
Total	272	6,741	4%	51,957	178,410	29%

Source: iCase

Use of National eDiscovery and Litigation Support Services

The document review and stakeholder interviews highlighted the substantial impact that expanded discovery obligations and the rise in eDiscovery are having on Litigation Branch workload. Document disclosure during the course of litigation requires substantial technological and paralegal support, and is a large part of the work of the Litigation Branch. In recent years, disclosure requirements have become larger and more complex for a number of reasons. In part, additional document requirements are due to the increased use of email as a primary means of communication within client departments; the volume of potentially relevant material has expanded and the review requires more time. In addition, documents and stakeholders identify an increase in demand for disclosure of sensitive information as well as an increase in the complexity of disclosure exemptions and redaction requirements.

National eDiscovery and Litigation Support Services is a relatively new addition to the Litigation Branch that provides a single point of access to Justice Canada for discovery, eDiscovery and disclosure resources and services; substantive legal, practical and procedural advice to counsel in litigation offices and legal service units; advice to senior government officials and Ministers on eDiscovery issues and strategy; and training and learning activities related to discovery, eDiscovery and disclosure. The Group includes lawyers and paralegals who work exclusively on helping litigation teams review and analyze documents for relevance, privilege and other issues. They use software and specialized techniques to review large volumes of documents quickly, efficiently and accurately. The evidence management team is available to support all Justice litigators, and is intended to support litigation teams (rather than taking work away from them) and to reduce the need for outsourcing information processing work.

These improvements to document review and evidence processing are expected to increase efficiency in a number of ways, including:

- reducing the need for outsourcing tasks related to document review and evidence processing (although internal documents indicated that certain tasks, such as scanning and coding, will continue to be outsourced);
- ensuring a consistent approach to working with electronic evidence in litigation files; and
- providing a source of expertise in how evidence is organized and structured.

The Group is still too new to demonstrate its cost savings to the Department, but projections are a cost avoidance “soft savings” of \$9.5 million by 2016/17. The savings are not projected to result

in reduced FTEs or outsourcing costs because of the projected increase in demand for handling eDiscovery. Instead, they are expected to reduce the increase in costs through their efficiency gains. Currently, the goal of the Group is to handle 25% of the total document workload (focusing on the largest files), with 25% to be outsourced, and 50% to be handled by counsel (smaller files). Estimates are that the Group is currently handling closer to 12% of the total document workload. Litigation Branch survey results indicated low awareness of the Group, with 37% of counsel who primarily handle litigation files reporting they either had no experience with the Group or considered it not applicable to their work. Experience with the Group was generally positive as just over one-third (35%) of respondents assessed their experience as excellent or above average, 24% of respondents considered their experience to be average, and 2% considered it to be poor.

Resolving Matters Efficiently and Effectively

Dispute Resolution

Another area targeted by 2012 Process Optimization involves negotiating service expectations and seeking settlement mandates from clients early in litigation files as a method of ensuring that clients' desired outcomes are achieved in an affordable manner. The Process Optimization measure aligns with a long-standing Justice Canada commitment to pursuing early resolution strategies that has included policy development, a commitment to training on effective dispute resolution processes, and tools to assist counsel (e.g., templates, toolkits, checklists). The CLS has also developed its own resources related to dispute resolution, including checklists, competencies and guidance materials.

Not all files are appropriate for dispute resolution, so attempts to negotiate settlement or use other dispute resolution processes, such as arbitration or mediation, may not be desired. Early dispute resolution may not suit cases involving constitutional or public law issues, significant questions of government policy, rights or principles that require court affirmation, or issues requiring consistency in application of the law. In these cases, litigation may be preferred. Therefore, even if early dispute resolution is encouraged, it should not be pursued in every case.

Based on multiple lines of evidence (key informant interviews, client and Litigation Branch surveys, case studies), the Litigation Branch appears generally to be pursuing dispute resolution processes, when appropriate. Over three-quarters of counsel survey respondents (77%) frequently or regularly consider using dispute resolution options on their files. In addition, nearly three-quarters (73%) of survey respondents considered that dispute resolution processes are adequately

utilized.⁸² Results from Client Feedback Surveys confirm that the Litigation Branch assists clients in early resolution; in 2012, the Branch received a score of 8.0 out of 10 (up from 7.7 in 2009) for identifying means to prevent or resolve legal disputes at the earliest opportunity.

The evaluation evidence points to a potential area of improvement in the types of dispute resolution options considered, although a more in-depth study would be required to provide a definitive finding. According to Litigation Branch survey respondents, the dispute resolution option most frequently used to try to settle a file is negotiation, followed by court-mandated mediation. Very few respondents reported working on files that attempted to use other options such as voluntary mediation or neutral evaluation (or non-binding arbitration) to settle the dispute. This result is similar to the conclusions from internal reviews, which found that, while negotiation was used substantially in litigation files, the use of other forms of dispute resolution (voluntary mediation, case management conferences for settlement purposes, and settlement conferences) was low. The more limited use of types of dispute resolution processes might account for the Branch scoring 7.9 out of 10 in the 2012 Client Feedback Survey (0.3 less than its 2009 score, and below the departmental target of 8.0) for identifying opportunities to use dispute resolution practices, where appropriate. However, this score had a high margin of error, so results must be interpreted with caution.

Whether to use dispute resolution is a decision that typically rests with the client, so its use (or not) points to issues beyond the Litigation Branch's direct control. Key informants from the Branch noted that clients do not typically engage in early dispute resolution prior to Litigation Branch involvement. In addition, many key informants (representing the Litigation Branch and DLSUs) said that the Branch keeps alternative dispute resolution in mind and makes good use of dispute resolution practices (including mediation, case conferences, counsel-to-counsel discussion, and settlement) when they are appropriate. However, a few key informants identified that, since some clients are averse to settling, the Litigation Branch has fewer opportunities for engaging in alternative dispute resolution than it may like. Client hesitance to engage in settlements is not universal: key informants representing client departments who discussed the use of early dispute resolution mentioned that they consider these forms of alternative dispute resolution, and that they consider the court a last resort. Similarly, a few DLSU representatives mentioned that their clients are open to early dispute resolution.

⁸² Very few respondents reported that dispute resolution options were under-utilized (7%) or over-utilized (2%). About 2 in 10 respondents (17%) could not provide an opinion, either answering that they did not know or that it was not applicable to their work.

The available iCase data indicate that CLS settles litigation cases at a comparable rate to the rest of Justice Canada.⁸³ In the most recent Departmental Performance Report (2011/12) for which the rate of settlement is available, 23% of litigation files were settled (Department of Justice Canada, 2012a). The method of settlement most often indicated in iCase by CLS is negotiation.⁸⁴ Other methods of dispute resolution combined (e.g., mandatory mediation, voluntary mediation, and other judicial processes) are used about 30% of the time in settlements, compared to 70% for negotiation.

Table 18: Use of Dispute Resolution Type by Case Outcome by CLS (2008/09 to 2013/14)

	2008/09 (n=534)	2009/10 (n=926)	2010/11 (n=566)	2011/12 (n=835)	2012/13 (n=768)	2013/14 (n=391)
Adjudicated	51%	37%	50%	62%	59%	62%
Settled	32%	22%	31%	22%	24%	28%
Closed administratively/ transferred	16%	19%	19%	16%	18%	10%
Not indicated	1%	22%	<1%	-	<1%	-
Total	100%	100%	100%	100%	100%	100%

Note: Totals may not sum to 100% due to rounding.

Source: iCase data (closed CLS litigation files)

Gaining a better understanding of dispute resolution, including whether there are opportunities for expanding the types of dispute resolution processes attempted in files and whether these processes could be used earlier (even before the Litigation Branch is involved), is part of Process Optimization and goes beyond the scope of this evaluation. However, the evaluation findings indicate that the Branch is currently using dispute resolution and successfully settling matters at about the same rate as the Department as a whole.

⁸³ Other Litigation Branch units are not covered in this section as they do not conduct the type of litigation that is likely to be resolved outside of court or, for MCAMLU, the issue of related files makes an assessment of the use of dispute resolution not meaningful based on iCase data.

⁸⁴ The iCase data are difficult to interpret as withdrawn/abandoned is considered to fall under the outcome of “settled”. For purposes of determining the settlement rate, in order to be comparable with Justice Canada statistics, these files are included. However, only the other categories for “settled” are considered for determining the types of dispute resolution used to settle files, since they are methods of dispute resolution.

5. CONCLUSIONS

This section of the report presents conclusions based on the findings presented in the previous sections. The information is structured along the main evaluation issues and questions.

5.1. Relevance

Is there a continued need for Litigation Branch services?

The Litigation Branch continues to provide services relevant to the needs of the Government of Canada. In particular, the Branch serves the needs of government through the role played by the ADAG Litigation in coordinating all litigation involving the government, and through the centralized and specialized legal expertise (CLS, MCAMLU, NSG and IAG) and legal support (LPMC and National eDiscovery) provided by its units.

The ongoing relevance of, and need for, Litigation Branch services are supported by the increasing demand for the Branch services. Although changes in demand indicators varied among units within the Litigation Branch, data from iCase show an increase over the evaluation period in both the number of files actively managed by the Branch, and the overall number of hours expended by the Branch on actively managed files. The increased level of effort on litigation files appears to be driven by legal practice trends, as well as increases in both the complexity of files and the volume of documents and evidence associated with files.

Does the delivery of legal services by the Litigation Branch continue to respond to federal government priorities and roles and responsibilities?

The evaluation found that the work of the Litigation Branch is closely aligned with federal government priorities, and that Justice's plans and priorities in relation to litigation work shift in response to changes in federal priorities. Evaluation findings also provide evidence that the work of the Litigation Branch supports the Minister of Justice and Attorney General of Canada in fulfilling responsibilities under a variety of federal statutes, including the *Department of Justice Act*, the *Extradition Act*, the MLACMA, the *Canada Evidence Act*, the *Canadian Security*

Intelligence Service Act, the *Security of Information Act*, and the *Security Offences Act*. In doing so, the Litigation Branch assists the Minister in ensuring that “the administration of public affairs is in accordance with the law” (thus fulfilling requirements outlined in section 4 of the *Department of Justice Act*).

Is the provision of legal services by the Litigation Branch consistent with federal roles and responsibilities and the departmental mandate?

Under the *Department of Justice Act*, Justice Canada has a mandate to support the roles of the Minister of Justice and Attorney General of Canada. By conducting litigation on behalf of the Crown (representing any government department or agency) and coordinating litigation-related services across the federal government, the Litigation Branch as a whole supports the Attorney General in carrying out its responsibilities under the Act — namely, to regulate and conduct litigation for or against the Crown or any department (s. 5[d]), and to advise federal department heads on matters of law affecting their departments (s. 5[b]). In addition, the Litigation Branch undertakes delegated responsibilities for the Minister, through the work of the IAG and the NSG, under legislation related to extradition, mutual legal assistance, and national security.

Evaluation results also demonstrate that the Litigation Branch supports the Department of Justice in meeting its strategic outcomes. The Branch’s work related to access to justice (e.g., through participation in the Access to Justice Working Group) helps to support the Department in ensuring a fair, relevant and accessible Canadian justice system (the first strategic outcome). Its provision of responsive, high-quality services to essentially any government department or agency contributes to the Department’s fulfillment of its second strategic outcome (a federal government that is supported by high-quality legal services).

5.2. Effectiveness – Performance

To what extent is the Litigation Branch achieving its expected outcomes?

High-quality, responsive and timely litigation services and legal advice: Evaluation results provide strong evidence that the Department of Justice is upholding its commitment to deliver high-quality legal services to government departments and agencies that are timely, responsive and useful.

Multiple lines of evidence confirm that the Litigation Branch provides high-quality services to client departments. Results from key informant and case study interviews, the Litigation Branch

survey, and Client Feedback Surveys show a high level of satisfaction with the quality of Litigation Branch services, and provide evidence that positive perceptions about the quality of Branch services are shared by representatives of the Litigation Branch, client departments, and other areas of the Department of Justice. Evaluation stakeholders also provided evidence that service quality is relatively consistent among units of the Litigation Branch; perceptions of quality were high among key informants and survey respondents, regardless of their affiliation or experience in working with particular units of the Branch.

Evidence from all sources indicates that Litigation Branch services are responsive to the needs of clients. Results from Client Feedback Surveys and stakeholder interviews indicate a high level of client satisfaction with the responsiveness and courteousness of Branch services, and the degree to which clients are kept informed of developments on their files. In general, the kinds of issues about which the Litigation Branch consults with clients and the extent to which files involve direct interaction between the Branch and clients (or the extent to which DLSU counsel mediate Litigation Branch/client interactions) vary appropriately according to the file type and the client department involved. However, the Litigation Branch received Client Feedback Survey scores slightly below the departmental target with regard to the “regular provision of informative progress reports or ongoing feedback on the status of service requests to clients”. This may indicate some room for improvement in verifying clients’ expectations regarding the nature and extensiveness of consultations and progress reporting at the outset of files, and in clarifying the respective roles of Litigation Branch and DLSU counsel on the file, including relaying information to clients.

The evaluation found strong evidence that the Litigation Branch provides timely services. All sources of evidence demonstrate that the Branch is successful in meeting deadlines (court-imposed deadlines as well as client and other internal deadlines) and responding to client requests in a timely manner.

Consistent advice and legal positions, and effective advocacy of a whole-of-government approach: The evaluation found that the Litigation Branch is contributing to consistency both across the Department of Justice and within the Government of Canada as a whole. At both of these levels, consistency is facilitated by the overarching coordinating functions carried out by the ADAG Litigation and central committees, as well as by Litigation Branch counsel in the way that they work across the Department and with other affected departments on litigation files.

Evaluation results indicate that the ADAG Litigation is effectively carrying out the position’s national coordinating role — in particular, through direct contributions to tracking and briefing/reporting on litigation issues, and through active participation on central committees

dealing with high-profile litigation issues, namely the NLC and the NSIC. Each committee has its own mandate and role to play in ensuring a consistent approach to litigation issues; the evaluation found evidence of the effectiveness of each of these committees in this area.

- The NLC is an effective mechanism for resolving disagreements within the Department on litigation approaches/strategies and ensuring consistency in litigation. In reaching “whole-of-government” decisions, the NLC is aided by its broad membership, as well as the effective working relationship between the NLC and regional litigation committees.
- The NSIC is a coordinating structure that provides a secure environment for discussion, thus facilitating information sharing on files with national security implications — which, in turn, supports a coordinated approach to litigation, advisory and policy work involving national security and intelligence issues.

At the working level of Branch counsel, the evaluation found that, for the most part, the Litigation Branch has effective mechanisms and practices in place to ensure that advice and legal positions are internally consistent and in line with the departmental approach to litigation issues, and that they contribute to a whole-of-government approach to litigation issues. Internally, the Litigation Branch has a variety of information-sharing mechanisms in place to ensure regular communications among units within the Branch. Its staff engages in regular consultations with other areas of Justice Canada — thus helping to ensure a consistent departmental approach to litigation matters. Similarly, all lines of evidence together confirm that the Litigation Branch engages in consultations with other government departments and agencies when necessary. These consultations contribute to a whole-of-government approach to litigation-related issues.

Although evaluation results concerning consistency are generally positive, key informants identified a few gaps or areas for improvement — both in the functioning of broad, high-level coordinating structures, and in Branch-level communication/consultation practices. According to a few key informants, the mandate of the Litigation Branch and the Office of the ADAG Litigation could be expanded to include responsibilities related to the development of civil litigation policy, as the Department currently has a gap in this area. Key informants also identified potential areas for improvement in the functioning of the NLC — in terms of ensuring active participation of all meeting participants, and considering the development of practice directives or guidelines for litigation, in addition to providing case-specific direction. At the Branch level, results from the Litigation Branch survey and key informant interviews indicate some room for improvement in the relationship between the Branch and at least some DLSUs. As the working relationship naturally varies from one DLSU to another, in some cases, potential benefits could be achieved

through greater involvement of DLSUs in the litigation work carried out by the Branch. A number of key informants also identified some room for improvement in communications and coordination between the Litigation Branch (MCAMLU, in particular) and the regions on class actions files — in particular, to ensure that provincial class action rules and legal cultures are adequately taken into consideration on class actions cases.

Timely and effective contributions to the identification, assessment, management and mitigation of legal risks: The evaluation found that the Litigation Branch makes important contributions to LRM on most files. Although the involvement of the Branch in the various aspects of LRM is responsive to requests for services and, therefore, varies among files, multiple lines of evidence indicate a high level of satisfaction (among clients as well as Litigation Branch and DLSU representatives) with Branch contributions to the identification, assessment, communication, mitigation and management of legal risks, as appropriate, on files.

Evaluation results, however, point to some potential limitations to the risk assessment protocol and tools used by the Litigation Branch to guide the assessment and communication of risks. An analysis of data from iCase, along with observations from key informant interviews and the Litigation Branch survey, indicate that counsel may be experiencing some difficulties in complying with iCase reporting requirements related to legal risk assessment, and with implementation of the new LRM framework with respect to advisory files. Gaps in risk assessment data collected by the Branch may be explained, at least in part, by the challenges that counsel face in making accurate risk assessments at an early stage (particularly for class actions files), and by limitations to the use of a standardized approach (through the new LRM toolkit and grid) in the assessment and communication of legal risk.

Contributions to informed decision making: The Litigation Branch contributes to informed decision making by making senior government officials aware of legal risks, legal issues and legal options. Clients must weigh Litigation Branch advice against other considerations in making decisions, and evidence indicates that the advice is considered by clients in developing legal strategies and making decisions most of the time, and that it is often followed. The evaluation found that Branch practices (such as regular consultations with clients and other affected departments/agencies, involvement of clients in the development of legal strategy and positions, and provision of clear, practical guidance), as well as the expertise of Branch counsel in specific areas of the law and the litigation process, help to ensure the usefulness of Litigation Branch advice to clients. These practices are major factors contributing to the high degree of consideration given to Branch advice.

The Litigation Branch also supports informed decision making by directly supporting the Minister of Justice in the exercise of his ministerial functions. Results from key informant interviews, the Litigation Branch survey and the file review show that the IAG is meeting its delegated responsibilities under the *Extradition Act* and the MLACMA, and that the NSG is effectively carrying out its role as the coordinating office within the Department of Justice regarding section 38. Through effective management of these delegated functions and comprehensive briefing, these units contribute to informed ministerial decision making.

The Litigation Branch, through the LPMC's management of the AAP, also provides decision-making support to the Minister of Justice regarding outsourcing and the appointment of legal agents. Evaluation results indicate that the process for appointing legal agents is effective and appropriate, that legal agents are used appropriately (i.e., when necessary), and that units within the Litigation Branch have engaged in active monitoring of agent performance. Since the 2011 audit of the AAP, LPMC has improved the program by developing national standards and reporting requirements that make the process of hiring and using legal agents more transparent, accountable and efficient.

Although not a delegated function, the Litigation Branch also supports ministerial decision making related to intervening in court, filing an appeal, and approving positions to be taken and facts to be filed with the Supreme Court of Canada. The Litigation Branch has a structured process in place for providing advice to the Minister that is documented in its policies and the Civil Litigation Deskbook.

Contributions to Justice Canada's support of a bijural and bilingual legal system: The evaluation found that the Litigation Branch supports its employees to work in a bilingual legal context and to respond to clients' official language needs. Results from Client Feedback Surveys and key informant interviews indicate a high level of satisfaction with the accessibility of Litigation Branch services — and with the Branch's ability to meet the demand for services — in both official languages. However, key informant interviews pointed to a potential opportunity to improve bilingual capacity within the Branch by expanding opportunities for counsel to participate in second language training.

The Litigation Branch also supports Justice Canada's ability to work effectively within a bijural legal context. Training sessions dealing with Canada's bijural legal system and practices, such as employment of bijural counsel and use of structures to facilitate discussion about bijural issues, support the Branch in addressing both common and civil law matters.

Availability of appropriate training, tools, structures and resources to support the delivery of legal services:

Training

The Litigation Branch considers training a priority. This priority is exemplified through the various training opportunities that the Branch offers for its counsel as well as for Department litigation counsel more generally. Training records show that a substantial proportion of Litigation Branch employees took part in training events in 2011/12 and 2012/13. Nevertheless, multiple sources highlight training as an area for improvement. Suggestions for improvement include offering more training in practical skills required by junior counsel (particularly in-court skills), ensuring adequate training relevant to criminal litigators as well as civil litigators, and offering more training in specific, specialized areas.

Tools, structures and processes

The Litigation Branch makes use of and/or participates in various quality management or quality control tools, structures and processes. These include formal tools and structures, as well as informal practices intended to foster high-quality legal services. The evaluation results indicate that many tools and structures (including departmental practice groups and directives, the CLS Litigation Committee, the NLC, internal mentoring practices, and eDiscovery software) are useful to the work of Branch employees. However, issues were identified with both the LRM assessment process and Justipedia, which reduce their usefulness.

The evaluation also found some room for improvement related to tools, structures and processes to assist the Litigation Branch in handling the increasing volumes of documents and evidence on files, and in managing classified documents:

- Key informant interviews provided evidence of issues with the functionality of Ringtail (the litigation support software application used by the Department of Justice), noting problems with the speed of the system and with remote access.
- The formation of the National eDiscovery and Litigation Support Services is a key component of the Branch's efforts to improve the efficient management of large quantities of documentary evidence, and to deal with increasing document review requirements on litigation files. Evaluation findings indicate that the Group is underutilized, and litigation counsel lack awareness of the potential for the Group to assist them.

- Findings indicate that the Litigation Branch has the tools and processes necessary to appropriately handle classified information, and is appropriately following government standards in the storage and access of classified materials. However, key informant interviews provided evidence of a number of challenges faced by Branch employees in working within a secure context — including limitations in transferring information, accessing up-to-date programs, and working remotely in a secure context.

Evaluation results also identified needs for greater expertise and additional resources for electronic court procedures and hearings, improved information technology systems that are more coordinated across the Department of Justice, improvements in the “shared services approach” to reduce administrative burdens on counsel, as well as improvements to iCase and GCDOCS to facilitate more effective file searching.

Human resources

Although PSES results indicate a high degree of confidence in the capability of Branch employees, the evaluation found evidence of concerns regarding the retention of staff and the adequacy of certain types of staff, in particular paralegals and administrative staff.

5.3. Efficiency and Economy

Is the Litigation Branch facing any challenges in terms of available resources?

Between 2008/09 and 2013/14, Litigation Branch expenditures increased by 31%. This increase is due to salaries, as expenditures on operations and maintenance have declined. Salary expenditures have risen largely due to the increase in staff, which rose 25% during the time period covered by the evaluation. The additional staffing covered the rising workload as most units of the Branch experienced increased demand for their services.

The evaluation experienced difficulty assessing the sufficiency of the current staffing resources. Of course, Litigation Branch stakeholders pointed to workload pressures and the need to work long hours during peaks in demand. However, the average annual level of effort for counsel and paralegals for most units of the Branch appeared reasonable, based on iCase data. There are two limitations to this conclusion. One is that IAG noted that their staff was not accurately entering hours and made an effort to ensure that hours were appropriately recorded, which led to a sizeable increase in hours. This raises the question of whether other units are similarly underreporting in iCase. A second issue is the recording of time to corporate files (i.e., non-legal work for the

Department), which rose considerably for CLS during the period covered by the evaluation (from 9% of total time to 28%). Time recorded to corporate files was not unique to senior counsel, as junior counsel and paralegals also recorded substantial time to corporate matters. If the expectation is that most counsel and paralegals should maximize their time on client files, the trend for CLS is in the opposite direction. This again may be due to inaccurate recording of hours, given the rapid, unexplained increase. A complete understanding of the work of the Branch and an ability to assess if resources are adequate and deployed to best effect depends on accurate entry and allocation of hours.

To what extent are Litigation Branch services provided in a cost-efficient manner?

The evaluation found that the Litigation Branch is generally following the Law Practice Model by aligning resources based on the level of legal risk and complexity of the files. This approach emphasizes the efficient use of resources by assigning low-risk, low-complexity work to junior counsel, and more complex and higher risk files to senior counsel. All lines of evidence indicate that files and tasks are appropriately assigned. In addition, as would be expected, the level of effort (number of hours) spent on files typically increases with legal risk and complexity levels.

Delegation also includes the use of paralegals on files. Counsel and paralegals report that document production is the primary activity for which paralegals are used. However, there is evidence that the Litigation Branch is using paralegals for a variety of activities, especially within the IAG where they are used in very specialized ways. Nonetheless, over half of the paralegals surveyed believe that they have, at least occasionally, worked on files where counsel spent time on tasks that paralegals could have done. This suggests that there may be opportunities to expand the types of activities assigned to paralegals as resources permit.

The impact on the workload of the Litigation Branch and indeed on that of the Department as a whole from expanded discovery obligations and the rise of eDiscovery is substantial. The National eDiscovery and Litigation Support Services is intended to create efficiencies for the Department by serving as a single point of access for discovery, eDiscovery, and disclosure resources, services and advice. Although the potential efficiencies and cost savings of the Group have not yet been documented, it addresses an issue of concern within the Litigation Branch and the Department.

Another way to contain legal costs and provide efficient services is to work toward an efficient and effective resolution of cases. Not all files are appropriate for dispute resolution processes, as for some issues there is the need and desire to receive a court decision. Based on multiple lines of evidence, the Litigation Branch appears to generally be pursuing dispute resolution processes when

appropriate. A potential area of improvement is expanding the types of dispute resolution options attempted (negotiation remains the most used approach), although a more in-depth study would be required to provide a definitive finding.

6. RECOMMENDATIONS

This final section of the report presents the recommendations and management response.

Issue 1: Communication and Collaboration

Although the evaluation found that consultations between Litigation Branch counsel and DLSUs occur regularly, results from the Litigation Branch survey and key informant interviews indicate some room for improvement in the relationship between the Litigation Branch and at least some DLSUs. In some cases, potential benefits could be achieved through greater involvement of DLSUs in the litigation work carried out by the Branch.

With respect to class actions files, some key informants pointed to a need for clarification of roles and responsibilities and an improvement in communications and coordination between the Litigation Branch and the regional offices.

Recommendation 1:

That the Litigation Branch apply litigation project management principles to clarify, at the outset of any litigation proceeding, the tasks and responsibilities of each team member, appropriately tailored to each unique file.

Management Response:

Agreed. The Department's legal project management principles will be applied at the outset of litigation proceedings and the Litigation Branch will liaise with the Department's Legal Project Management Leader.

Issue 2: Training

The evaluation concluded that the Litigation Branch considers training a priority and that various training opportunities are offered by the Branch. However, the evaluation identified some gaps in the training opportunities available, particularly with respect to in-court skills for junior counsel.

Recommendation 2:

That the Litigation Branch determine if there are ways of improving opportunities to meet the training needs of its counsel.

Management Response:

Agreed. The ADAG Litigation and the Litigation Branch will work with the Regional Directors General, the Professional Development Directorate and other stakeholders to survey the training needs of litigation counsel within the Department of Justice national, the training opportunities currently available, the best practices and lessons learned, in order to provide a better overview of how best to cost effectively meet litigation training needs over the coming years.

Issue 3: Use of the National eDiscovery and Litigation Support Services

The National eDiscovery and Litigation Support Services were established to respond to increasing eDiscovery needs. Many managers and senior counsel noted that the Group's support services and evidence management team have helped the Branch deal with increasing document review requirements. However, evaluation findings indicate that the Group is underutilized and that Branch counsel lack awareness of the potential for the Group to assist them.

Recommendation 3:

That the Litigation Branch determine how the National eDiscovery and Litigation Support Services can best be used to support both the Branch and the legal services portfolios more broadly.

Management Response:

Agreed. Legal Services Review implementation targets have overtaken the activities described in the evaluation, which began before the Legal Services Review commitments were made. Legal Services Review commitments are to be concluded by March 31, 2017.

The Litigation Branch will continue to pursue its 3-year implementation targets within the Legal Services Review, to increase the use of electronic document processing and review tools, supported by the National eDiscovery and Litigation Support Services team.

eDiscovery targets within Legal Services Review are being met: increased use of the tools is occurring, cost avoidance and savings are being documented, and national training is being undertaken.

Issue 4: Compliance with Legal Risk Assessment Protocols

The evaluation found that the Litigation Branch makes important contributions to LRM on most files. In addition, there is a high level of satisfaction among clients as well as Litigation Branch and DLSU representatives with Branch contributions to the identification, assessment, communication, mitigation and management of legal risks.

However, evaluation results point to some potential issues with compliance with iCase reporting requirements related to risk assessment and with implementation of the new LRM framework, especially with respect to advisory files.

Recommendation 4:

That the Litigation Branch improve compliance with legal risk assessment protocols.

Management Response:

Agreed. Enhance quality of compliance with iCase reporting requirements, including the new LRM framework, through training and ongoing monitoring.

Since the evaluation was initiated, Legal Services Review commitments regarding 1400 hours of client work have been implemented and iCase reporting compliance has been fully addressed in the Litigation Branch.

Within the units with mixed litigation and advisory files – the National Security Group and the International Assistance Group – implementation of the Department’s new Legal Risk Management Grid is being undertaken, as for all advisory groups within Justice.

Issue 5: Compliance with the iCase Timekeeping Protocol

The evaluation experienced difficulty in assessing the efficiency of Litigation Branch services. The evaluation noted a concern that various units of the Branch may be underreporting their hours in iCase. Additionally, the evaluation found that a considerable number of counsel and paralegal hours are recorded to corporate files (i.e., non-legal work for the Department), making it difficult to determine if resources are deployed to best effect.

Recommendation 5:

That the Litigation Branch refine and ensure compliance with the iCase timekeeping protocol, so that Branch efficiency can more easily be assessed.

Management Response:

Agreed. Ensure that files in which time is kept have the appropriate profile in iCase and that the completeness, accuracy, and timeliness of timekeeping is monitored annually, recognizing that unit managers track and manage data compliance monthly.

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**Appendix A:
Logic Model**

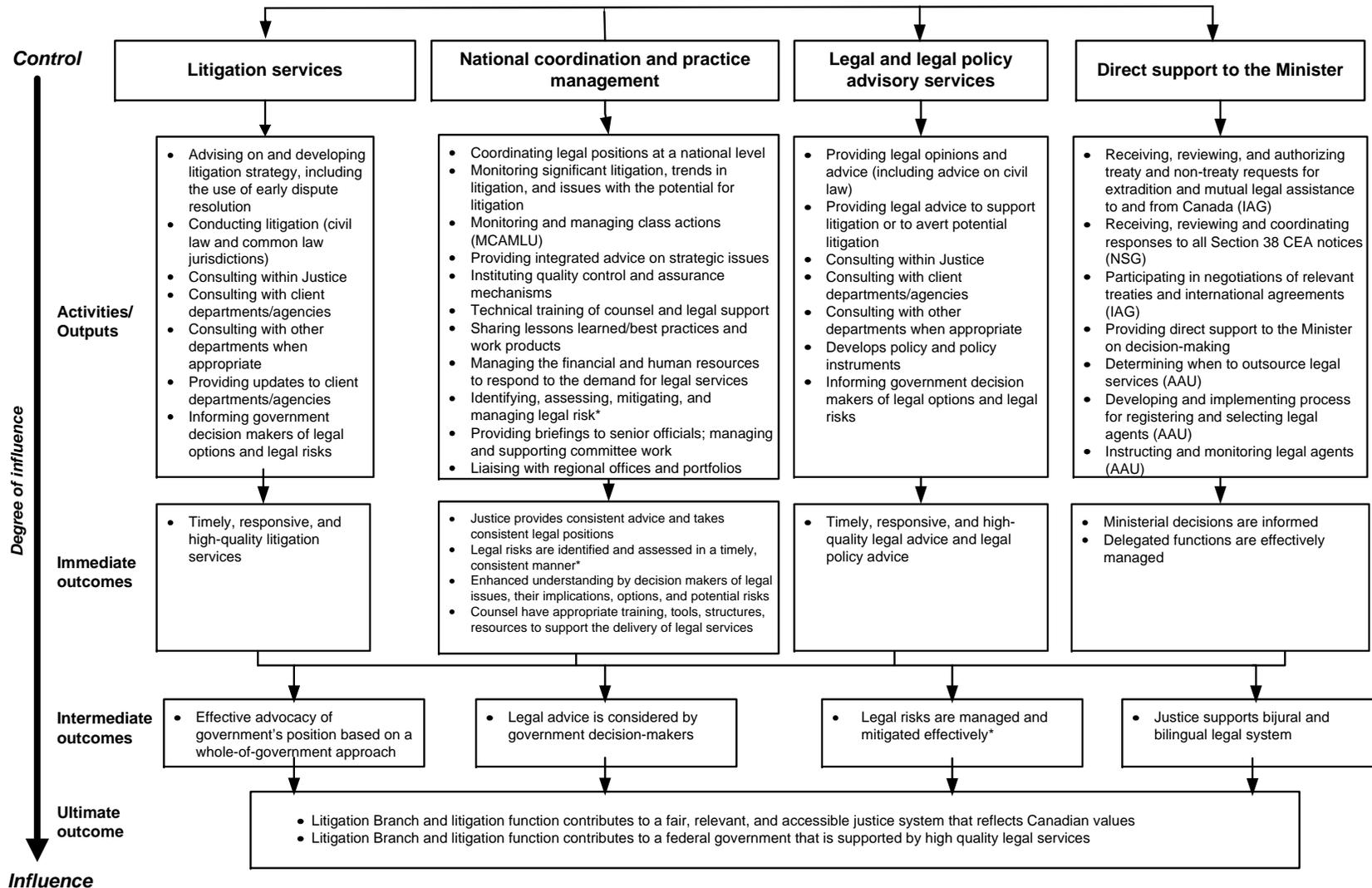
Logic Model

A logic model is a systematic and visual way to illustrate the relationship between the planned activities of a program and its expected results. In other words, a logic model is a depiction of how a program works and what it is trying to achieve. A basic logic model has the following key elements:

- **Activities:** The processes, tools, events, and actions that are part of the implementation of the program. The activities should lead to the intended results.
- **Outputs:** The direct product of the identified activities.
- **Outcomes:** The impacts of the program. These are results/changes/benefits/ consequences. They are usually presented in stages, as change is incremental over time; immediate should support and lead to the intermediate outcomes, and intermediate to long-term outcomes.

This section provides a logic model for the Litigation Branch, including a visual diagram followed by text descriptions of the key elements.

Overall objective of the Litigation Branch: Support the ministerial and attorney general responsibilities found in the *Department of Justice Act* and other relevant legislation



* Shared responsibility with client departments/agencies.

Activities and outputs

The Litigation Branch coordinates numerous activities that can be grouped into four main areas:

- litigation services, which involve legal representation in matters before the courts that involve the Federal Crown
- national coordination and practice management, which provide functional guidance to ensure consistency of approach across the country and across government
- legal and legal policy advisory services to federal departments and agencies
- direct support to the Minister of Justice in his capacity as Minister rather than as the Attorney General of Canada

Each of these areas of activity is described below.

Litigation services

The litigation work of the Branch involves the provision of legal representation to federal departments and agencies involved in matters either before the courts or potentially leading to court proceedings. Litigation Branch counsel provide specialized litigation services and expertise to defend or make claims on behalf of the Federal Crown before various provincial and federal courts as well as administrative tribunals. These litigation services include providing advice on litigation strategy and identification of opportunities for early resolution and settlement of litigious matters. In preparing and advising on litigation matters, counsel consult as appropriate with specialized experts within Justice, with DLSU counsel and with other departments or agencies as appropriate. Litigation counsel also inform government officials of the legal risks on their litigation matters and provide options to reduce those risks through litigation strategies.

National coordination and practice management

The Litigation Branch and the ADAG Litigation are centrally involved in the coordination of the Department's litigation activities. Although all units of the Branch and the Department as a whole participate in law practice management and coordination activities, three key units have specific roles in the national coordination and management of litigation services:

- the National Litigation Committee
- MCAMLU

- LPMC

National coordination and practice management includes: monitoring and analyzing litigation trends and how these court decisions or legal issues could impact the government's overall liability and legal risk; developing and providing strategic and integrated legal advice to manage, plan for, and possibly avoid potential litigation; actively participating in ongoing litigation in order to provide strategic advice and ensure that nationally consistent positions are adopted by regional litigators; and briefing and supporting senior departmental officials in managing their legal risks. It also includes the development and training of counsel and paralegals, sharing lessons learned and best practices, and managing resources to meet the demand for legal services.

Legal and legal policy advisory services

Legal advisory services include the provision of legal advice to federal government officials on a variety of matters with respect to legal issues affecting the government, including advice on existing litigation and potentially litigious situations, and proposed policy or legislative instruments. In preparing this advice, Litigation Branch counsel consult with officials within the appropriate client departments or agencies and/or DLSUs. In addition, consultations are held, as appropriate, with specialized sections within Justice, portfolios, and regional offices. Counsel include identification and assessment of legal risks in their legal advice to government departments, as well as possible options to prevent or reduce legal risks.

Direct support to the Minister

The Litigation Branch provides direct support to the Minister in his ministerial role, ensuring that he meets his responsibilities under various statutes and areas of federal law. Direct support is provided in the areas of national security, international assistance, and the outsourcing of legal work and appointment of private sector law firms and law practitioners to provide legal services to the government. The NSG and IAG provide legal opinions and advice to the Minister of Justice on relevant legislation, its operation, and issues related to the possible disclosure of sensitive or potentially injurious information. In addition, these groups provide briefing materials to the Minister and the Deputy Minister of Justice on national S&I issues, and extradition and mutual legal assistance requests. Both NSG and IAG also provide legal policy advice within their areas of expertise, as well as exercise decision-making powers that have been delegated under relevant legislation.

The LPMC establishes the framework in support of the outsourcing of legal work to the private sector and provides functional direction over the outsourcing decision-making process. It also oversees the selection and legal agent appointment process and establishes the framework for managing and monitoring the activities of legal agents and associated costs.

Immediate outcomes

Litigation services

Timely, responsive, and high-quality litigation services

This outcome includes efficiently responding to client requests for litigation services; meeting mutually agreed-upon or court-imposed deadlines; providing regular progress reports; and providing clear and practical guidance, including for the prevention, containment, or early resolution of contentious issues. The resulting litigation strategy responds to the client department/agency's priorities and objectives, while ensuring that the strategy is guided by the rule of law and the Department's responsibilities under the *Department of Justice Act*. The litigation services are also commensurate with the available resources and are assigned to counsel with the appropriate level of experience given the complexity of the file.

National coordination and practice management

Justice provides consistent advice and takes consistent legal positions

The Litigation Branch adheres to the "whole-of-government" approach in providing consistent legal advice and taking consistent legal positions on litigation matters. Various structures and processes have been established to ensure that positions taken by Justice counsel on litigation matters and in the legal advice provided are consistent across Justice and across the government. Consultation and communication support this outcome. The work of the National Litigation Committee is central to enhancing this coordination function for litigation within the Department.

Legal risks are identified and assessed in a timely and consistent manner

Counsel consider legal risks in the course of providing forward-looking legal advice and assisting client departments/agencies to respond proactively and prevent, mitigate, or manage their legal risks. Counsel apply the Justice legal risk grids to ensure that legal risks are consistently assessed following the same criteria across Justice, and they utilize Justice legal risk management processes as required, for example, the preparation of contingency plans on high-risk files. The Justice

processes for assessing the level and impact of legal risk ensure that the level of risk is accurately determined and communicated in a consistent and timely manner.

Enhanced understanding by decision-makers of legal issues, their implications, options, and potential risks

The legal advice provided by counsel is communicated in a matter to provide government decision-makers with the necessary understanding of their legal risk, what options are available to avoid or minimize those risks and to provide decision-makers with the information they require to make informed, timely, and strategic decisions related to their programs, policies, and operations.

Counsel have training, tools, structures, and resources to support the delivery of legal service

As part of law practice management and coordination, the Litigation Branch ensures that litigation and advisory counsel have access to the training, tools, structures, and resources needed to provide high-quality legal services and to develop their legal skills. This includes information sharing on best practices, practice directives, training opportunities, and mechanisms to alert counsel to important developments in the law.

Legal and legal policy advisory services

Timely, responsive, and high-quality legal and legal policy advice

The Litigation Branch counsel provide timely, responsive, and high-quality legal and legal policy advice that foresee problems, present options, and offer solutions. Legal opinions are clear and serve their intended purpose, including the provision of advice at early stages of significant files. While the client department/agency's priorities are considered, the legal and legal policy advice are developed so that they are guided by the rule of law, the *Department of Justice Act*, and the *Statutory Instruments Act*. Legal and legal policy advice are provided in a timely manner, so that client department/agency officials can adequately consider the advice during their decision-making process.

Direct support to the Minister

Ministerial decisions are informed

The Litigation Branch provides legal advice and legal policy advice to the Minister in support of his ministerial functions. By providing the Minister with high-quality and timely legal advice that

considers legal risks and options, including their implications, the Litigation Branch supports the ability of the Minister to make informed legal and legal policy decisions. For example, the National Litigation Committee makes recommendations to the Minister concerning matters such as interventions and submissions on important cases, the IAG provides advice with respect to matters under the *Extradition Act* which must be decided personally by the Minister, and the LPMC makes recommendations to the Minister for the appointment of legal agents, based on sound outsourcing decisions and agent selection processes.

Delegated functions are effectively managed

Some ministerial decision-making is delegated to units within the Litigation Branch. The Branch effectively manages these delegated functions by ensuring that processes are followed and handled in a manner that ensures that the functions assigned to the Minister of Justice by legislation are fulfilled. For example, LPMC provides functional direction over the outsourcing decision-making process, agent selection, and appointment and management of agent activities and costs. Similarly, IAG carries out functions assigned to the Minister of Justice as the central authority for Canada under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act*. The NSG makes recommendations to the ADAG Litigation on whether to authorize disclosure of information for which notice has been received under section 38 of the CEA, and on what conditions, if any.

Intermediate outcomes

The intermediate outcomes are not specific to the activity area, as all of the activity areas support these outcomes.

Effective advocacy of the government's position based on a whole-of-government approach

The Litigation Branch must act to ensure that the interests of the Crown in the proper administration of justice are protected through its conduct of litigation, its use of settlement where appropriate, and the legal advice given. As with all areas of Justice, the Litigation Branch is responsible for taking an integrated, “whole-of-government” approach where its legal advice and litigation positions consider the overall impact on the government and not just particular client interests. This is accomplished by consulting within Justice and, where appropriate, with other federal departments/agencies. Central Agencies are briefed and consulted as appropriate to ensure that Justice takes legal positions that consider and respond to the potential risks to the federal government as a whole.

Legal advice is considered by government decision-makers

By providing timely, responsive, consistent, and useful legal advice to departments and agencies, government officials are able to consider the legal risks and the legal implications of certain proposed decisions in addition to other relevant factors (e.g., operational, political, financial) in their decision-making process. Legal advice provides government officials with options to reach their objectives while considering the legal implications associated with their decisions.

Legal risks are managed and mitigated effectively

The Litigation Branch ensures that client departments/agencies are provided with legal advice that includes an assessment of their legal risks and options that can be considered by those departments to either prevent or reduce those risks. Counsel consult and communicate with client officials to make them aware of the legal risks and to discuss the impact of the identified risks. Counsel also provide options and strategies that departments or agencies can consider to manage or reduce those legal risks as part of their overall business and integrated risk considerations. The ultimate decision on how to proceed rests with the client departments/agencies, subject to the *Department of Justice Act*. However, the Litigation Branch's advice supports the ability of the client departments/agencies to make informed choices on how to manage their legal risks.

Justice supports Canada's bijural and bilingual legal system

The Litigation Branch ensures that legal services are offered in both official languages and under both judicial traditions: the common law and civil law. The Litigation Branch and the QRO have the expertise and capacity to support Canada's bijural and bilingual legal system. They are able to manage litigation files in situations where other regional offices may not have the necessary bilingual capacity. Furthermore, the QRO handles all civil law litigation services for the federal government in consultation with the Litigation Branch where appropriate.

Ultimate outcomes

Through the achievement of the immediate and intermediate outcomes, the Litigation Branch supports the Department's two strategic objectives:

- a fair, relevant, and accessible Canadian justice system
- a federal government that is supported by high-quality legal services.

Appendix B:
Evaluation Matrix

Evaluation Matrix — Evaluation of the Litigation Branch

Issues/questions	Indicators	Data sources	Timing of data collection	Responsibility for data collection
Relevance				
1. Is there a continued need for Litigation Branch legal services? TB core issue 1	<ul style="list-style-type: none"> • Trends in demand for Litigation Branch services <ul style="list-style-type: none"> – Number of actively managed files by fiscal year and type of service (litigation, advisory, other) – Total hours of legal services by fiscal year and type of service (litigation, advisory, other) • Legal practice trends (type of legal issues by fiscal year) • Trends in file complexity and risk level by fiscal year and type of service (litigation, advisory, other) 	<ul style="list-style-type: none"> • Document review (e.g., iCase, environmental scan of practice trends, action plan reports) 	Ongoing	Litigation Branch
2. Does the delivery of legal services by the Litigation Branch continue to respond to federal government priorities? TB core issue 2	<ul style="list-style-type: none"> • Alignment of the Litigation Branch mandate and activities with federal priorities/policy commitments • Assessment of how the Litigation Branch contributes to the priorities and objectives of the federal government 	<ul style="list-style-type: none"> • Document review (documentation describing Litigation Branch mandate/ activities and relevant federal priorities) • Key informant interviews 	Evaluation	Evaluation Division
3. Is the provision of legal services by the Litigation Branch consistent with the <i>Department of Justice Act</i> and the departmental mandate? TB core issues 2 and 3	<ul style="list-style-type: none"> • Assessment of extent to which Litigation Branch legal services are consistent with <i>Department of Justice Act</i> and departmental mandate 	<ul style="list-style-type: none"> • Document review (legislation and policy documents) • Key informant interviews 	Evaluation	Evaluation Division
Performance of Litigation Branch(effectiveness): TB core issue 4				
Immediate outcomes				
4. Does the Litigation Branch provide timely, responsive, high-quality litigation services and legal advice?	<ul style="list-style-type: none"> • Compliance with Service Standards • Assessments by the Litigation Branch and the client departments on litigation services and legal advice in terms of: <ul style="list-style-type: none"> – clarity – timeliness – meeting deadlines – understanding nature of problem – providing updates/progress reports 	<ul style="list-style-type: none"> • Document review (Justice Canada Client Feedback Survey) • Key informant interviews • File review • Case studies • Focus groups 	Ongoing	Litigation Branch

Issues/questions	Indicators	Data sources	Timing of data collection	Responsibility for data collection
	<ul style="list-style-type: none"> – involving the client department in development of legal strategy and positions – developing legal strategies appropriate to client department policy and/or program objectives – effectively working with the client department to identify and manage legal risks – overall quality 			
5. To what extent does the Litigation Branch provide consistent advice and take consistent legal positions?	<ul style="list-style-type: none"> • Existence of structures to ensure consistency (e.g., Litigation committees, practice groups, practice directives, knowledge management system, Justice National Security and Intelligence Committee) • Use of consultations for the purpose of ensuring consistent advice is given and consistent legal positions are taken across government • Assessment of the consistency in approach to legal issues 	<ul style="list-style-type: none"> • Document review • Key informant interviews • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
6. Are legal risks identified and assessed in a timely and consistent manner?	<ul style="list-style-type: none"> • Use of processes, tools, and standards for assessing legal risk 	<ul style="list-style-type: none"> • Document review • Key informant interviews • File review • Case studies 	Evaluation	Evaluation Division
	<ul style="list-style-type: none"> • Number and percentage of files “unable to assess” and length of time before assessment entered • Average number of risk assessments/reassessments per file 	<ul style="list-style-type: none"> • Document review (iCase reports) • File review • Case studies 	Evaluation	Evaluation Division
	<ul style="list-style-type: none"> • Consistency of language used in assessing and communicating legal risk • Consistency of risk ratings • Timeliness of assessments/ reassessments of legal risk • Use of consultations to discuss and assess legal risks 	<ul style="list-style-type: none"> • Key informant interviews • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
7. Has the Litigation Branch contributed to the enhanced understanding of legal issues, their implications, and potential risks by decision-makers?	<ul style="list-style-type: none"> • Memoranda of understanding outlining roles and responsibilities related to legal risk • Communication of legal risk management strategies and mitigation measures to client departments 	<ul style="list-style-type: none"> • Document review • Key informant interviews • File review • Case studies • Focus groups 	Evaluation	Evaluation Division

Issues/questions	Indicators	Data sources	Timing of data collection	Responsibility for data collection
	<ul style="list-style-type: none"> Assessment of the Litigation Branch contribution to improved understanding of legal issues and legal risks by clients 			
<p>8. Do counsel have the appropriate training, tools, structures, and resources to support the delivery of legal services?</p>	<ul style="list-style-type: none"> Nature and type of tools and structures <ul style="list-style-type: none"> Best practices Practice directives Practice groups Committees Use of tools and structures Satisfaction with tools, structures, and resources Nature and frequency of training Alignment of training with individual learning plans Number of counsel and support staff trained Satisfaction with training Level and sufficiency of resources (human, financial, information, training, technological) to support Litigation Branch work 	<ul style="list-style-type: none"> Document review Key informant interviews File review Case studies Document review (reports on training activities) Key informant interviews Document review Key informant interviews 	<p>Evaluation</p> <p>Ongoing</p> <p>Evaluation</p> <p>Evaluation</p>	<p>Evaluation Division</p> <p>Litigation Branch</p> <p>Evaluation Division</p> <p>Evaluation Division</p>
<p>9. To what extent does the Litigation Branch contribute to informed ministerial decision making?</p>	<ul style="list-style-type: none"> Provision of timely legal advice with options, implications, and recommendations Development of operational frameworks and policies to guide decision making (e.g., Legal Services Contracting Framework) Decision-making processes are followed and documented (e.g., for decisions on court interventions, appointing agents, and whether to surrender individuals to foreign countries) 	<ul style="list-style-type: none"> Key informant interviews File review 	<p>Evaluation</p>	<p>Evaluation Division</p>
<p>10. To what extent are delegated ministerial functions effectively managed?</p>	<ul style="list-style-type: none"> Decision-making and monitoring processes are followed and documented (e.g., for delegated responsibilities under the <i>Extradition Act</i>, the <i>Mutual Legal Assistance in Criminal Matters Act</i>, and section 38 of the CEA) Appropriate information management practices are followed in offices with delegated functions to support accurate measurement of resource utilization 	<ul style="list-style-type: none"> Key informant interviews Case studies File review 	<p>Evaluation</p>	<p>Evaluation Division</p>

Issues/questions	Indicators	Data sources	Timing of data collection	Responsibility for data collection
Intermediate outcomes				
11. To what extent does the Litigation Branch provide effective advocacy of a whole-of-government approach?	<ul style="list-style-type: none"> • Assessment that an integrated, whole-of-government approach is used in provision of legal services, where appropriate • Counsel work collaboratively within Justice • Counsel consult with clients and other stakeholders to develop legal positions and strategies that consider the interests of government, where appropriate, as opposed to exclusively considering individual client interests • Use of peer review processes, such as Litigation committees 	<ul style="list-style-type: none"> • Key informant interviews • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
12. Is Litigation Branch legal advice considered by government decision-makers?	<ul style="list-style-type: none"> • Consideration of Litigation Branch legal and legal policy advice by decision-makers in program and policy development (e.g., evidence of consideration of legal advice in client instructions) • Litigation Branch and client’s assessment of legal advice in terms of : <ul style="list-style-type: none"> – involving the client in development of legal strategy and positions – developing legal strategies appropriate to the client’s policy and/or program objectives 	<ul style="list-style-type: none"> • Document review (Justice Canada Client Feedback Survey) • Key informant interviews • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
13. Are legal risks managed and mitigated effectively?	<ul style="list-style-type: none"> • Consideration of legal risk in the development and implementation of client policies, programs, and litigation strategies • Use of legal advice to prevent, mitigate, and/or manage legal risk • High-risk files are resourced and communicated appropriately (e.g., early warning reports, level of senior counsel involvement) • Contingency plans are used for high-risk files • Assessment of the effectiveness of management and mitigation strategies 	<ul style="list-style-type: none"> • Document review (Justice Canada Client Feedback Survey, iCase) • Key informant interviews • File review • Case studies • Focus groups 	Evaluation	Evaluation Division

Issues/questions	Indicators	Data sources	Timing of data collection	Responsibility for data collection
14. How does the Litigation Branch contribute to Justice Canada's support of a bijural and bilingual legal system?	<ul style="list-style-type: none"> • Consultations regarding bijural aspects of legal issues • Practice groups and other structures within the Litigation Branch that involve practitioners of both legal systems • Internal policies that reflect and support the bijural and bilingual legal system • Assessment of the Litigation Branch and litigation function as a centre of expertise for providing litigation services in a bijural and bilingual legal system 	<ul style="list-style-type: none"> • Document review • Key informant interviews • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
Ultimate outcome				
15. To what extent does the Litigation Branch contribute to a federal government that is supported by effective and responsive legal services?	<ul style="list-style-type: none"> • Contribution of Litigation Branch to provision of effective, responsive legal services 	<ul style="list-style-type: none"> • Document review • Key informant interviews • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
16. To what extent does the Litigation Branch contribute to a fair, relevant, and accessible justice system that reflects Canadian values?	<ul style="list-style-type: none"> • Contribution of Litigation Branch to a fair, relevant, and accessible justice system that reflects Canadian values 	<ul style="list-style-type: none"> • Document review • Key informant interviews • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
17. What factors are contributing to or constraining the achievement of expected outcomes?	<ul style="list-style-type: none"> • Constraints on ability to achieve outcomes • Factors supporting achievement of outcomes 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Case studies • Focus groups 	Evaluation	Evaluation Division
Performance of Litigation Branch(efficiency, economy): TB core issue 5				
18. Is the Litigation Branch facing any challenges in terms of available funding, organizational structure/staffing, or internal support (training, technological, research)?	<ul style="list-style-type: none"> • Forecasted resource needs compared to available resources • Identified resource challenges • Assessment of the effectiveness of Litigation Branch organizational structure 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Case studies • Focus groups 	Evaluation	Evaluation Division

Issues/questions	Indicators	Data sources	Timing of data collection	Responsibility for data collection
<p>19. Could the work of the Litigation Branch be undertaken/conducted more efficiently and economically?</p>	<ul style="list-style-type: none"> Mix of legal resources (FTEs/hours by group and level) by file complexity and level of risk Resources are allocated in line with Business Plan and agreements with clients 	<ul style="list-style-type: none"> Document review (including iCase data) 	Ongoing	Litigation Branch
	<ul style="list-style-type: none"> Measures in place to manage efficiency and cost of legal services and their effectiveness (e.g., Law Practice Model; practice groups; use of standardized processes, practices, approach to assigning work and determining when to use agents, information management tools such as iCase) Suggestions for improvements in efficiency 	<ul style="list-style-type: none"> Document review Key informant interviews Case studies Focus groups 	Evaluation	Evaluation Division
	<ul style="list-style-type: none"> Alternative approaches to service delivery Trends in law practice/service delivery models 	<ul style="list-style-type: none"> Literature review 	Evaluation	Evaluation Division
	<ul style="list-style-type: none"> Comparison of billing rates with private bar 	<ul style="list-style-type: none"> Comparison of rates (iCase data with private bar rates from Canadian Lawyer survey and/or queries with large and mid-size law firms about rates for litigators based on years of experience) 		
<p>20. What is the role of the client in the effectiveness, efficiency and economy of legal services?</p>	<ul style="list-style-type: none"> Role and responsibility of the client in managing demand for legal services Assessment of the client's effectiveness in managing its demand for legal services Use of early dispute resolution by the client to settle files without involving Litigation Branch services Receptiveness to use of alternative dispute resolution practices Timely involvement of Litigation Branch by the client 	<ul style="list-style-type: none"> Document review Key informant interviews Case studies Focus groups 	Evaluation	Evaluation Division
<p>21. Is Litigation Branch able to achieve appropriate resolution of litigation cases in a timely, cost-effective manner?</p>	<ul style="list-style-type: none"> Cost of legal services relative to file outcome (success rate), and impact Hours spent per closed file by complexity and legal risk Number and percentage of files settled/closed without going to court 	<ul style="list-style-type: none"> Document review (iCase) 	Ongoing	Litigation Branch
	<ul style="list-style-type: none"> Use and effectiveness of strategies to promote timely, cost-effective resolution 	<ul style="list-style-type: none"> Key informant interviews File review 	Evaluation	Evaluation Division

Issues/questions	Indicators	Data sources	Timing of data collection	Responsibility for data collection
	<ul style="list-style-type: none"> - Early resolution strategies - Alternative dispute resolution practices, where appropriate • Assessment of whether litigation cases are resolved in timely, cost-effective manner 	<ul style="list-style-type: none"> • Case studies • Focus groups 		

Appendix C:
Data Collection Instruments

Key Informant Interview Guides

Evaluation of the Litigation Branch

Key Informant Interview Guide for Litigation Branch Representatives

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. The evaluation covers the work of all areas within the Litigation Branch. The Assistant Deputy Attorney General (ADAG), Litigation has functional and coordination responsibility for all litigation conducted by or on behalf of the Department of Justice and chairs the National Litigation Committee. In addition, the units within the Litigation Branch include: the Litigation Practice Management Centre; the Civil Litigation Section; the Management of Class Actions and Mass Litigation Unit; the National Security Group; National Security Coordinator; and the International Assistance Group.

The evaluation includes interviews with those working within the Litigation Branch, with representatives of Justice Canada, and with representatives of other government departments who are familiar with the work of the Litigation Branch.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

****The following questions refer to the Litigation Branch, but we understand that you may not have direct knowledge of the Litigation Branch as a whole. If that is the case, please respond for the unit within the Litigation Branch with which you have experience.****

In addition, some questions may not be applicable to the work you do. Please let us know, and we will skip that question.

The evaluation focuses on 2008–2013, so please consider your experiences during those years in your responses.

Introduction

1. Please describe briefly your current roles and responsibilities.

Relevance

2. Over the last five years, have you observed any changes in the demand for Litigation Branch services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics of your work (e.g., self-represented litigants). How has the Litigation Branch responded to these trends?
3. How does your work support the current policy and legislative objectives of the Government of Canada?

Performance — effectiveness

4. As you know, the Litigation Branch is guided by Service Standards in its dealings with its clients. These standards include the following:
 - Provision of legal services in either official language
 - Courteous and respectful treatment
 - Regular and informative progress reports or ongoing feedback in respect of client requests for services
 - Provision of clear and practical guidance on resolving legal issues
 - Identification of means to prevent and resolve legal disputes at the earliest opportunity
 - Respond in a timely manner to requests for legal services
 - Negotiate and meet mutually agreed-upon deadlines
 - Involvement of the client in the development of legal strategy and positions

In your view, are these Service Standards being met? In instances where the Service Standards are not met, please identify which are not, and what you believe are the most common contributing factors?

5. Part of the mandate of the National Litigation Committee (NLC) is to ensure that consistent legal positions are adopted nationally. In your opinion, how well is it fulfilling its mandate?
6. How would you describe the working relationship between the NLC and the regional litigation committees? Do you have any suggestions for the NLC, including how it coordinates with the regional litigation committees?

7. How would you describe the working relationship between the Litigation Branch and regional offices more generally? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and regional offices coordinate/collaborate with each other?
8. How would you describe the working relationship between the Litigation Branch and Departmental Legal Services Units (DLSUs)? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and DLSUs coordinate/collaborate with each other?
9. What other processes or structures, if any, does the Litigation Branch have in place to resolve any areas of disagreement between the client and Justice or within Justice, and to ensure that consistent legal positions are taken? (Probe: Justice National Security and Intelligence Committee for NSG)
 - a. In your opinion, are these processes and strategies effective in ensuring that the Litigation Branch takes an integrated, whole of government approach? Why or why not?
10. What role, if any, do you play in the process of appointing legal agents? Approximately how many times in the last three years have you been involved in legal agent appointments? What factors do you consider when determining the need for a legal agent? How is the client involved in the decision to use an agent, if at all?
11. Have you instructed or managed legal agents? If yes, how do you monitor and evaluate agent activities? Can you think of a time that you had an issue with agent performance? If so, what factors did you consider when addressing these issues? What, if any, remedial action did you take to rectify the issues?
12. How effective is the LPMC in the management and operations of the Agent Affairs Program? Overall, do you have any suggestions for how to improve when and how legal agents are used?
13. Legal risk management within Justice Canada includes the identification, assessment, mitigation, and management of legal risk.
 - a. How effective is the Litigation Branch in early identification and assessment of legal risk? (Probe: consultations with client; use of processes and tools for assessing legal risk) How consistent and/or helpful to the client is the language used to communicate legal risk?

- b. In your opinion, are high-risk files sufficiently resourced?
 - c. In your view, how well does the briefing process work (e.g., in terms of clarity of the process and level of effort required)? In your answer, please consider the processes relevant to your work (e.g., Early Warning Notes, Adverse Reporting Procedure). Are senior managers/officials in Justice made sufficiently aware of complex and high-risk cases? Please explain.
 - d. How does the Litigation Branch contribute to its clients' understanding of the implications and potential legal risks of their legal issues?
 - e. How effective is the Litigation Branch in assisting clients with managing and mitigating legal risk?
 - f. To what extent do clients understand their role and Justice's role in managing legal risk?
 - g. Do you have any suggestions for how to improve clients' understanding of the implications and potential risks of their legal issues?
14. In your experience, to what extent is the advice provided by the Litigation Branch considered by clients in developing legal strategies and making decisions? What factors make it more or less likely that advice will be considered? (Probe: timeliness of advice; provision of advice with options, implications, recommendations)
15. How does the Litigation Branch contribute to ministerial decision making (e.g., whether to intervene in court, appoint agents, surrender individuals to foreign countries)?
16. Do Litigation Branch staff have the appropriate tools, technology, and resources to support their work? (Probe: practice groups; practice directives; knowledge management system; Justipedia; best practice documents; e-discovery software) What is lacking/missing?
17. Do Litigation Branch staff have adequate training opportunities? What gaps in training exist, if any? (Probe: subject matter; does training address needs of senior and junior lawyers)
18. How does the Litigation Branch's work support Canada's bijural and bilingual legal system? To what extent is the Litigation Branch a centre of expertise for providing litigation services in this context? In your response, please consider how internal policies, procedures, and processes reflect and respond to the bijural and bilingual nature of the legal system.

Performance — efficiency and economy

19. In your opinion, are adequate resources (e.g., human — sufficiency in number and level for paralegals and counsel; financial; technological) in place to support the work of the Litigation Branch? How does the Litigation Branch manage resource challenges?
20. In your opinion, what role do clients play in improving the effectiveness, efficiency and economy of legal services? In your response, please consider issues such as the following:
- the role and responsibility of clients in managing demand for legal services
 - the use of early dispute resolution or alternative dispute resolution processes by clients
 - the timeliness in which clients involve the Litigation Branch in files
 - the timeliness in obtaining client instructions
21. In your opinion, are the legal services provided by the Litigation Branch cost-effective? In your response, please consider issues such as the following:
- use of alternative dispute resolution practices and early resolution strategies, when appropriate
 - appropriate use of agents
 - the hours spent on a case/file in proportion to legal risk and/or complexity
 - availability of counsel at the appropriate level for the file risk/complexity
 - use of paralegals
 - other tools or practices used to reduce the cost of legal services
22. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by the Litigation Branch?

Conclusion

23. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch

Key Informant Interview Guide for International Assistance Group Representatives

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. The evaluation includes interviews with those working within the Litigation Branch, with representatives of Justice Canada, and with representatives of other government departments who are familiar with the work of the Litigation Branch.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

****The following questions refer to the Litigation Branch, but we understand that you may not have direct knowledge of the Litigation Branch as a whole. If that is the case, please respond for your unit within the Litigation Branch.****

****For brevity's sake, the questions refer to Litigation Branch legal services or advice. Please respond based on the work you do for the Litigation Branch, including litigation, litigation support, legal advice, policy advice, and legal policy advice.****

In addition, some questions may not be applicable to the work you do. Please let us know, and we will skip that question.

The evaluation focuses on 2008–2013, so please consider your experiences during those years in your responses.

Introduction

1. Please describe briefly your current roles and responsibilities.

Relevance

2. Over the last five years, have you observed any changes in the demand for Litigation Branch services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics of your work (e.g., self-represented litigants). How has the Litigation Branch responded to these trends?

3. How does your work support the current policy and legislative objectives of the Government of Canada?

Performance — effectiveness

4. As you know, the Litigation Branch is guided by Service Standards in its dealings with its clients. These standards include the following:
 - Provision of legal services in either official language
 - Courteous and respectful treatment
 - Regular and informative progress reports or ongoing feedback in respect of client requests for services
 - Provision of clear and practical guidance on resolving legal issues
 - Identification of means to prevent and resolve legal disputes at the earliest opportunity
 - Respond in a timely manner to requests for legal services
 - Negotiate and meet mutually agreed-upon deadlines
 - Involvement of the client in the development of legal strategy and positions

In your view, are these Service Standards being met? In instances where the Service Standards are not met, please identify which are not, and what you believe are the most common contributing factors?

5. Part of the mandate of the National Litigation Committee (NLC) is to ensure that consistent legal positions are adopted nationally. In your opinion, how well is it fulfilling its mandate?
6. How would you describe the working relationship between the NLC and the regional litigation committees? Do you have any suggestions for the NLC, including how it coordinates with the regional litigation committees?
7. How would you describe the working relationship between the Litigation Branch and regional offices more generally? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and regional offices coordinate/collaborate with each other?

8. How would you describe the working relationship between the Litigation Branch and Departmental Legal Services Units (DLSUs)? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and DLSUs coordinate/collaborate with each other?
9. What other processes or structures, if any, does the Litigation Branch have in place to resolve any areas of disagreement between the client and Justice or within Justice, and to ensure that consistent legal positions are taken? (Probe: Justice National Security and Intelligence Committee for NSG)
 - a. In your opinion, are these processes and strategies effective in ensuring that the Litigation Branch takes an integrated, whole of government approach? Why or why not?
10. Legal risk management within Justice Canada includes the identification, assessment, mitigation, and management of legal risk.
 - a. How effective is the Litigation Branch in early identification and assessment of legal risk? (Probe: consultations with client; use of processes and tools for assessing legal risk) How consistent and/or helpful to the client is the language used to communicate legal risk?
 - b. In your opinion, are high-risk files sufficiently resourced?
 - c. In your view, how well does the briefing process work (e.g., in terms of clarity of the process and level of effort required)? In your answer, please consider the processes relevant to your work (e.g., Early Warning Notes, Adverse Reporting Procedure). Are senior managers/officials in Justice made sufficiently aware of complex and high-risk cases? Please explain.
11. In your experience, to what extent is the advice provided by the Litigation Branch considered by clients in developing legal strategies and making decisions? What factors make it more or less likely that advice will be considered? (Probe: timeliness of advice; provision of advice with options, implications, recommendations)
12. How does the Litigation Branch contribute to ministerial decision making (e.g., whether to intervene in court, appoint agents, surrender individuals to foreign countries)?

13. How does the Litigation Branch ensure that it properly exercises its delegated ministerial functions (e.g., Extradition Act; Mutual Legal Assistance in Criminal Matters Act, section 38 of the Canada Evidence Act; use of agents/outsourcing)? Do you have any suggestions for improvements to how the Litigation Branch manages its delegated ministerial functions?
14. How does the Litigation Branch manage information in a way that respects and maintains the security levels associated with the classification of that information? Do you have any suggestions for improvements to the handling of sensitive information?
15. Do Litigation Branch staff have the appropriate tools, technology, and resources to support their work? (Probe: practice groups; practice directives; knowledge management system; Justipedia; best practice documents; e-discovery software) What is lacking/missing?
16. Do Litigation Branch staff have adequate training opportunities? What gaps in training exist, if any? (Probe: subject matter; does training address needs of senior and junior lawyers)
17. How does the Litigation Branch's work support Canada's bijural and bilingual legal system? To what extent is the Litigation Branch a centre of expertise for providing litigation services in this context? In your response, please consider how internal policies, procedures, and processes reflect and respond to the bijural and bilingual nature of the legal system.

Performance — efficiency and economy

18. In your opinion, are adequate resources (e.g., human — sufficiency in number and level for paralegals and counsel; financial; technological) in place to support the work of the Litigation Branch? How does the Litigation Branch manage resource challenges?
19. In your opinion, are the legal services provided by the Litigation Branch cost-effective? In your response, please consider issues such as the following:
 - the hours spent on a case/file in proportion to legal risk and/or complexity
 - availability of counsel at the appropriate level for the file risk/complexity
 - use of paralegals
 - other tools or practices used to reduce the cost of legal services
20. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by the Litigation Branch?

Conclusion

21. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch Key Informant Interview Guide for Litigation Practice Management Centre Representatives

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. The evaluation includes interviews with those working within the Litigation Branch, with representatives of Justice Canada, and with representatives of other government departments who are familiar with the work of the Litigation Branch.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

****The following questions refer to the Litigation Branch, but we understand that you may not have direct knowledge of the Litigation Branch as a whole. If that is the case, please respond for your unit within the Litigation Branch.****

****For brevity's sake, the questions refer to Litigation Branch legal services or advice. Please respond based on the work you do for the Litigation Branch, including litigation, litigation support, legal advice, policy advice, and legal policy advice.****

In addition, some questions may not be applicable to the work you do. Please let us know, and we will skip that question.

The evaluation focuses on 2008–2013, so please consider your experiences during those years in your responses.

Introduction

1. Please describe briefly your current roles and responsibilities.

Relevance

2. Over the last five years, have you observed any changes in the demand for Litigation Branch services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics of your work (e.g., self-represented litigants). How has the Litigation Branch responded to these trends?

3. How does your work support the current policy and legislative objectives of the Government of Canada?

Performance — effectiveness

4. As you know, the Litigation Branch is guided by Service Standards in its dealings with its clients. These standards include the following:
 - Provision of legal services in either official language
 - Courteous and respectful treatment
 - Regular and informative progress reports or ongoing feedback in respect of client requests for services
 - Provision of clear and practical guidance on resolving legal issues
 - Identification of means to prevent and resolve legal disputes at the earliest opportunity
 - Respond in a timely manner to requests for legal services
 - Negotiate and meet mutually agreed-upon deadlines
 - Involvement of the client in the development of legal strategy and positions

In your view, are these Service Standards being met? In instances where the Service Standards are not met, please identify which are not, and what you believe are the most common contributing factors?

5. Part of the mandate of the National Litigation Committee (NLC) is to ensure that consistent legal positions are adopted nationally. In your opinion, how well is it fulfilling its mandate?
6. How would you describe the working relationship between the NLC and the regional litigation committees? Do you have any suggestions for the NLC, including how it coordinates with the regional litigation committees?
7. How would you describe the working relationship between the Litigation Branch and regional offices more generally? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and regional offices coordinate/collaborate with each other?

8. How would you describe the working relationship between the Litigation Branch and Departmental Legal Services Units (DLSUs)? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and DLSUs coordinate/collaborate with each other?
9. What other processes or structures, if any, does the Litigation Branch have in place to resolve any areas of disagreement between the client and Justice or within Justice, and to ensure that consistent legal positions are taken? (Probe: Justice National Security and Intelligence Committee for NSG)
 - a. In your opinion, are these processes and strategies effective in ensuring that the Litigation Branch takes an integrated, whole of government approach? Why or why not?
10. Legal risk management within Justice Canada includes the identification, assessment, mitigation, and management of legal risk.
 - a. How effective is the Litigation Branch in early identification and assessment of legal risk? (Probe: consultations with client; use of processes and tools for assessing legal risk) How consistent and/or helpful to the client is the language used to communicate legal risk?
 - b. In your opinion, are high-risk files sufficiently resourced?
 - c. In your view, how well does the briefing process work (e.g., in terms of clarity of the process and level of effort required)? In your answer, please consider the processes relevant to your work (e.g., Early Warning Notes, Adverse Reporting Procedure). Are senior managers/officials in Justice made sufficiently aware of complex and high-risk cases? Please explain.
 - d. How does the Litigation Branch contribute to its clients' understanding of the implications and potential legal risks of their legal issues?
 - e. How effective is the Litigation Branch in assisting clients with managing and mitigating legal risk?
 - f. To what extent do clients understand their role and Justice's role in managing legal risk?

- g. Do you have any suggestions for how to improve clients' understanding of the implications and potential risks of their legal issues?
11. In your experience, to what extent is the advice provided by the Litigation Branch considered by clients in developing legal strategies and making decisions? What factors make it more or less likely that advice will be considered? (Probe: timeliness of advice; provision of advice with options, implications, recommendations)
12. How does the Litigation Branch contribute to ministerial decision making (e.g., whether to intervene in court, appoint agents, surrender individuals to foreign countries)?
13. How does the Litigation Branch ensure that it properly exercises its delegated ministerial functions (e.g., Extradition Act; Mutual Legal Assistance in Criminal Matters Act, section 38 of the Canada Evidence Act; use of agents/outsourcing)? Do you have any suggestions for improvements to how the Litigation Branch manages its delegated ministerial functions?
14. Based on your experience, are there any issues, gaps, or areas for improvement in how Justice counsel (e.g., requesting manager or instructing counsel) appoint and/or manage legal agents?
15. Do Litigation Branch staff have the appropriate tools, technology, and resources to support their work? (Probe: practice groups; practice directives; knowledge management system; Justipedia; best practice documents; e-discovery software) What is lacking/missing?
16. Do Litigation Branch staff have adequate training opportunities? What gaps in training exist, if any? (Probe: subject matter; does training address needs of senior and junior lawyers)
17. How does the Litigation Branch's work support Canada's bijural and bilingual legal system? To what extent is the Litigation Branch a centre of expertise for providing litigation services in this context? In your response, please consider how internal policies, procedures, and processes reflect and respond to the bijural and bilingual nature of the legal system.

Performance — efficiency and economy

18. In your opinion, are adequate resources (e.g., human — sufficiency in number and level for paralegals and counsel; financial; technological) in place to support the work of the Litigation Branch? How does the Litigation Branch manage resource challenges?

19. In your opinion, what role do clients play in improving the effectiveness, efficiency and economy of legal services? In your response, please consider issues such as the following:

- the role and responsibility of clients in managing demand for legal services
- the use of early dispute resolution or alternative dispute resolution processes by clients
- the timeliness in which clients involve the Litigation Branch in files
- the timeliness in obtaining client instructions

20. In your opinion, are the legal services provided by the Litigation Branch cost-effective? In your response, please consider issues such as the following:

- use of alternative dispute resolution practices and early resolution strategies, when appropriate
- appropriate use of agents
- the hours spent on a case/file in proportion to legal risk and/or complexity
- availability of counsel at the appropriate level for the file risk/complexity
- use of paralegals
- other tools or practices used to reduce the cost of legal services

21. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by the Litigation Branch?

Conclusion

22. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch Key Informant Interview Guide for National Security Group and National Security Coordinator

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. The evaluation includes interviews with those working within the Litigation Branch, with representatives of Justice Canada, and with representatives of other government departments who are familiar with the work of the Litigation Branch.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

****The following questions refer to the Litigation Branch, but we understand that you may not have direct knowledge of the Litigation Branch as a whole. If that is the case, please respond for your unit within the Litigation Branch.****

****For brevity's sake, the questions refer to Litigation Branch legal services or advice. Please respond based on the work you do for the Litigation Branch, including litigation, litigation support, legal advice, policy advice, and legal policy advice.****

In addition, some questions may not be applicable to the work you do. Please let us know, and we will skip that question.

The evaluation focuses on 2008–2013, so please consider your experiences during those years in your responses.

Introduction

1. Please describe briefly your current roles and responsibilities.

Relevance

2. Over the last five years, have you observed any changes in the demand for Litigation Branch services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics of your work (e.g., self-represented litigants). How has the Litigation Branch responded to these trends?

3. How does your work support the current policy and legislative objectives of the Government of Canada?

Performance — effectiveness

4. As you know, the Litigation Branch is guided by Service Standards in its dealings with its clients. These standards include the following:
 - Provision of legal services in either official language
 - Courteous and respectful treatment
 - Regular and informative progress reports or ongoing feedback in respect of client requests for services
 - Provision of clear and practical guidance on resolving legal issues
 - Identification of means to prevent and resolve legal disputes at the earliest opportunity
 - Respond in a timely manner to requests for legal services
 - Negotiate and meet mutually agreed-upon deadlines
 - Involvement of the client in the development of legal strategy and positions

In your view, are these Service Standards being met? In instances where the Service Standards are not met, please identify which are not, and what you believe are the most common contributing factors?

5. Part of the mandate of the National Litigation Committee (NLC) is to ensure that consistent legal positions are adopted nationally. In your opinion, how well is it fulfilling its mandate?
6. How would you describe the working relationship between the NLC and the regional litigation committees? Do you have any suggestions for the NLC, including how it coordinates with the regional litigation committees?
7. How would you describe the working relationship between the Litigation Branch and regional offices more generally? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and regional offices coordinate/collaborate with each other?

8. How would you describe the working relationship between the Litigation Branch and Departmental Legal Services Units (DLSUs)? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and DLSUs coordinate/collaborate with each other?
9. What other processes or structures, if any, does the Litigation Branch have in place to resolve any areas of disagreement between the client and Justice or within Justice, and to ensure that consistent legal positions are taken? (Probe: Justice National Security and Intelligence Committee for NSG)
 - a. In your opinion, are these processes and strategies effective in ensuring that the Litigation Branch takes an integrated, whole of government approach? Why or why not?
10. Legal risk management within Justice Canada includes the identification, assessment, mitigation, and management of legal risk.
 - a. How effective is the Litigation Branch in early identification and assessment of legal risk? (Probe: consultations with client; use of processes and tools for assessing legal risk) How consistent and/or helpful to the client is the language used to communicate legal risk?
 - b. In your opinion, are high-risk files sufficiently resourced?
 - c. In your view, how well does the briefing process work (e.g., in terms of clarity of the process and level of effort required)? In your answer, please consider the processes relevant to your work (e.g., Early Warning Notes, Adverse Reporting Procedure). Are senior managers/officials in Justice made sufficiently aware of complex and high-risk cases? Please explain.
 - d. How does the Litigation Branch contribute to its clients' understanding of the implications and potential legal risks of their legal issues?
 - e. How effective is the Litigation Branch in assisting clients with managing and mitigating legal risk?
 - f. To what extent do clients understand their role and Justice's role in managing legal risk?

- g. Do you have any suggestions for how to improve clients' understanding of the implications and potential risks of their legal issues?
11. In your experience, to what extent is the advice provided by the Litigation Branch considered by clients in developing legal strategies and making decisions? What factors make it more or less likely that advice will be considered? (Probe: timeliness of advice; provision of advice with options, implications, recommendations)
 12. How does the Litigation Branch contribute to ministerial decision making (e.g., whether to intervene in court, appoint agents, surrender individuals to foreign countries)?
 13. How does the Litigation Branch ensure that it properly exercises its delegated ministerial functions (e.g., Extradition Act; Mutual Legal Assistance in Criminal Matters Act, section 38 of the Canada Evidence Act; use of agents/outsourcing) Do you have any suggestions for improvements to how the Litigation Branch manages its delegated ministerial functions?
 14. How does the Litigation Branch manage information in a way that respects and maintains the security levels associated with the classification of that information? How does the Litigation Branch track the redaction of sensitive information and any changes that are made to those redactions over the course of a section 38 case? Do you have any suggestions for improvements to the handling of sensitive information?
 15. Do Litigation Branch staff have the appropriate tools, technology, and resources to support their work? (Probe: practice groups; practice directives; knowledge management system; Justipedia; best practice documents; e-discovery software) What is lacking/missing?
 16. Do Litigation Branch staff have adequate training opportunities? What gaps in training exist, if any? (Probe: subject matter; does training address needs of senior and junior lawyers)
 17. How does the Litigation Branch's work support Canada's bijural and bilingual legal system? To what extent is the Litigation Branch a centre of expertise for providing litigation services in this context? In your response, please consider how internal policies, procedures, and processes reflect and respond to the bijural and bilingual nature of the legal system.

Performance — efficiency and economy

18. In your opinion, are adequate resources (e.g., human — sufficiency in number and level for paralegals and counsel; financial; technological) in place to support the work of the Litigation Branch? How does the Litigation Branch manage resource challenges?
19. In your opinion, what role do clients play in improving the effectiveness, efficiency and economy of legal services? In your response, please consider issues such as the following:
- the role and responsibility of clients in managing demand for legal services
 - the use of early dispute resolution or alternative dispute resolution processes by clients
 - the timeliness in which clients involve the Litigation Branch in files
 - the timeliness in obtaining client instructions
20. In your opinion, are the legal services provided by the Litigation Branch cost-effective? In your response, please consider issues such as the following:
- the hours spent on a case/file in proportion to legal risk and/or complexity
 - availability of counsel at the appropriate level for the file risk/complexity
 - use of paralegals
 - other tools or practices used to reduce the cost of legal services
21. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by the Litigation Branch?]

Conclusion

22. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch Key Informant Interview Guide for Regional Justice Representatives

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. The evaluation covers the work of all areas within the Litigation Branch. The Assistant Deputy Attorney General (ADAG), Litigation has functional and coordination responsibility for all litigation conducted by or on behalf of the Department of Justice and chairs the National Litigation Committee. In addition, the units within the Litigation Branch include: the Litigation Practice Management Centre; the Civil Litigation Section; the Management of Class Actions and Mass Litigation Unit; the National Security Group; the National Security Coordinator; and the International Assistance Group.

The evaluation includes interviews with those working within the Litigation Branch, with representatives of Justice Canada, and with representatives of other government departments who are familiar with the work of the Litigation Branch.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

****The following questions refer to the Litigation Branch, but we understand that you may not have direct knowledge of the Litigation Branch as a whole. If that is the case, please respond for the unit within the Litigation Branch with which you have experience. We are particularly interested in your experience with the coordinating function of the Litigation Branch.****

In addition, some questions may not be applicable to the work you do. Please let us know, and we will skip that question.

The evaluation focuses on 2008–2013, so please consider your experiences during those years in your responses.

Introduction

1. Please describe briefly your current roles and responsibilities. In addition, please describe the level and nature of your involvement with the Litigation Branch. Which Litigation Branch units have you worked with the most?

If you have worked with more than one unit, please specify to which unit you are referring in your answer and how you interact with the Litigation Branch.

Relevance

2. Over the last five years, have you experienced a change in your demand for Litigation Branch services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics of your work. How has the Litigation Branch responded to these trends?
3. (For Regional Offices that have work with IAG) Over the last five years, has the demand for your services by the IAG changed? In what ways has it changed? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics of your work.

Performance — effectiveness

4. Part of the mandate of the National Litigation Committee (NLC) is to ensure that consistent legal positions are adopted nationally. In your opinion, how well is it fulfilling its mandate?
5. We are interested in your experiences working with the NLC. Is it clear when a matter should come before the NLC? What is your opinion of the submission process? How useful is the feedback your regional office has received from the NLC?
6. How would you describe the working relationship between the NLC and the regional litigation committees? Do you have any suggestions for the NLC, including how it coordinates with the regional litigation committees?
7. How would you describe the working relationship between the Litigation Branch and regional offices? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and regional offices coordinate/collaborate with each other?
8. (Note to interviewer: not applicable for regional office work with IAG) From your perspective, how well is the briefing process working between regional offices and the Litigation Branch? How does the briefing process work when different regional offices are involved in a national legal issue (e.g., who is responsible for briefing)?

9. What other processes or structures, if any, does the Litigation Branch have in place to resolve any areas of disagreement between the client and Justice or within Justice, and to ensure that consistent legal positions are taken? (Probe: Justice National Security and Intelligence Committee for NSG)
 - a. In your opinion, are these processes and strategies effective in ensuring that the Litigation Branch takes an integrated, whole of government approach? Why or why not?
10. Has your region worked with the Management of Class Actions and Mass Litigation Unit? In what capacity? How was that experience? (Probe: did MCAMLU clearly communicate with your office on the file? How effective was the working relationship with MCAMLU?)
11. Has your region worked with the International Assistance Group? In what capacity? How was that experience? (Probe: did IAG give clear instructions? How effective was the working relationship with IAG?)
12. Has your region worked with the Litigation Practice Management Centre (oversees the Agents Affairs Program) when it has used agents on files? How was that experience in terms of providing a clear operational framework for how to work with agents and assisting with the management of the file?
13. What role, if any, do you play in the process for appointing legal agents? Approximately how many times in the last three years have you been involved in legal agent appointments? What factors do you consider when determining the need for a legal agent? How is the client involved in the decision to use an agent, if at all?
14. Have you instructed or managed legal agents? If yes, how do you monitor and evaluate agent activities? Can you think of a time that you had an issue with agent performance? If so, what factors did you consider when addressing these issues? What, if any, remedial action did you take to rectify the issues?
15. How effective is the LPMC in the management and operations of the Agent Affairs Program? Overall, do you have any suggestions for how to improve when and how legal agents are used?

Conclusion

16. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch

Key Informant Interview Guide for Assistant Deputy Ministers of Justice Portfolios

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. The evaluation covers the work of all areas within the Litigation Branch. The Assistant Deputy Attorney General (ADAG), Litigation has functional and coordination responsibility for all litigation conducted by or on behalf of the Department of Justice and chairs the National Litigation Committee. In addition, the units within the Litigation Branch include: the Litigation Practice Management Centre; the Civil Litigation Section; the Management of Class Actions and Mass Litigation Unit; the National Security Group; National Security Coordinator; and the International Assistance Group.

The evaluation includes interviews with those working within the Litigation Branch, with representatives of Justice Canada, and with representatives of other government departments who are familiar with the work of the Litigation Branch.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

****The following questions refer to the Litigation Branch, but we understand that you may not have direct knowledge of the Litigation Branch as a whole. If that is the case, please respond for the unit within the Litigation Branch with which you have experience.****

In addition, some questions may not be applicable to the work you do. Please let us know, and we will skip that question.

The evaluation focuses on 2008–2013, so please consider your experiences during those years in your responses.

Introduction

1. Describe the level and nature of your portfolio's involvement with the Litigation Branch. Which Litigation Branch units have you worked with the most?

If you have worked with more than one unit, please specify to which unit you are referring in your answer.

Relevance

2. Over the last five years, have you observed any changes in your client department/ agency's demand for Litigation Branch services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics. How has the Litigation Branch responded to these trends? (Probe: IAG, NSG, CLS, Class Actions)

Performance — effectiveness

3. As you know, the Litigation Branch is guided by Service Standards in its dealings with its clients. These standards include the following:
 - Provision of legal services in either official language
 - Courteous and respectful treatment
 - Regular and informative progress reports or ongoing feedback in respect of client requests for services
 - Provision of clear and practical guidance on resolving legal issues
 - Identification of means to prevent and resolve legal disputes at the earliest opportunity
 - Respond in a timely manner to requests for legal services
 - Negotiate and meet mutually agreed-upon deadlines
 - Involvement of the client in the development of legal strategy and positions

In your view, are these Service Standards being met? In instances where the Service Standards are not met, please identify which are not, and what you believe are the most common contributing factors?

4. Based on your experience, how would you describe the working relationship between the Litigation Branch and DLSUs in your portfolio? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and DLSUs coordinate/collaborate with each other?
5. How would you describe the working relationship between the Litigation Branch and regional offices more generally? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and regional offices coordinate/collaborate with each other?

6. Part of the mandate of the National Litigation Committee (NLC) is to ensure that consistent legal positions are adopted nationally. In your opinion, how well is it fulfilling its mandate?
7. What other processes or structures, if any, does the Litigation Branch have in place to resolve any areas of disagreement between the client and Justice or within Justice, and to ensure that consistent legal positions are taken? (Probe: Justice National Security and Intelligence Committee for NSG)
 - a. In your opinion, are these processes and strategies effective in ensuring that the Litigation Branch takes an integrated, whole of government approach? Why or why not?
8. How effective is the LPMC in the management and operations of the Agent Affairs Program? Overall, do you have any suggestions for how to improve when and how legal agents are used?
9. Legal risk management within Justice Canada includes the identification, assessment, mitigation, and management of legal risk.
 - a. How effective is the Litigation Branch in early identification and assessment of legal risk?
 - b. In your opinion, are high-risk files sufficiently resourced?
 - c. In your view, how well does the briefing process work (e.g., in terms of clarity of the process and level of effort required)? In your answer, please consider the processes relevant to your work (e.g., Early Warning Notes, Adverse Reporting Procedure). Are senior managers/officials in Justice made sufficiently aware of complex and high-risk cases? Please explain.
10. What do you consider to be the respective roles of the Litigation Branch, the DLSU, and the client department/agency in managing legal risk? Do you have any suggestions for how the Litigation Branch can work with DLSUs and client department/agencies to improve the management of legal risk?
11. In your experience, to what extent is the advice provided by the Litigation Branch considered by clients in developing legal strategies and making decisions? What factors make it more or less likely that advice will be considered? (Probe: timeliness of advice; provision of advice with options, implications, recommendations)

12. Has your portfolio worked with the International Assistance Group and/or the National Security Group? In what capacity? How was that experience?

Performance — efficiency and economy

13. Based on your experience with the Litigation Branch, are appropriate counsel assigned to files (in terms of counsel years of experience and areas of subject matter expertise, and the level of complexity of files)? Please explain.

14. In your opinion, are adequate resources (e.g., human — sufficiency in number and level for paralegals and counsel; financial; technological) in place to support the work of the Litigation Branch? How does the Litigation Branch manage resource challenges?

15. In your opinion, what role do clients play in improving the effectiveness, efficiency and economy of legal services? In your response, please consider issues such as the following:

- the role and responsibility of clients in managing demand for legal services
- the use of early dispute resolution or alternative dispute resolution processes by clients
- the timeliness in which clients involve the Litigation Branch in files
- the timeliness of client instructions

16. In your opinion, are the legal services provided by the Litigation Branch cost-effective? In your response, please consider issues such as the following:

- use of alternative dispute resolution practices and early resolution strategies, when appropriate
- appropriate use of agents
- the hours spent on a case/file in proportion to legal risk, complexity, or other complicating factors
- availability of counsel at the appropriate level for the file risk/complexity
- use of paralegals
- other tools or practices used to reduce the cost of legal services

17. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by the Litigation Branch?

Conclusion

18. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch

Key Informant Interview Guide for Assistant Deputy Minister of the Public Law Sector

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. The evaluation covers the work of all areas within the Litigation Branch. The Assistant Deputy Attorney General (ADAG), Litigation has functional and coordination responsibility for all litigation conducted by or on behalf of the Department of Justice and chairs the National Litigation Committee. In addition, the units within the Litigation Branch include: the Litigation Practice Management Centre; the Civil Litigation Section; the Management of Class Actions and Mass Litigation Unit; the National Security Group; National Security Coordinator; and the International Assistance Group.

The evaluation includes interviews with those working within the Litigation Branch, with representatives of Justice Canada, and with representatives of other government departments who are familiar with the work of the Litigation Branch.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

****The following questions refer to the Litigation Branch, but we understand that you may not have direct knowledge of the Litigation Branch as a whole. If that is the case, please respond for the unit within the Litigation Branch with which you have experience.****

In addition, some questions may not be applicable to the work you do. Please let us know, and we will skip that question.

The evaluation focuses on 2008–2013, so please consider your experiences during those years in your responses.

Introduction

1. Describe the level and nature of the Public Law Sector's involvement with the Litigation Branch. Which Litigation Branch units have you worked with the most?

If you have worked with more than one unit, please specify to which unit you are referring in your answer.

Relevance

2. Over the last five years, have you observed any changes in the demand for Litigation Branch services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics. How has the Litigation Branch responded to these trends? (Probe: IAG, NSG, CLS, Class Actions)

Performance — effectiveness

3. As you know, the Litigation Branch is guided by Service Standards in its dealings with its clients. These standards include the following:
 - Provision of legal services in either official language
 - Courteous and respectful treatment
 - Regular and informative progress reports or ongoing feedback in respect of client requests for services
 - Provision of clear and practical guidance on resolving legal issues
 - Identification of means to prevent and resolve legal disputes at the earliest opportunity
 - Respond in a timely manner to requests for legal services
 - Negotiate and meet mutually agreed-upon deadlines
 - Involvement of the client in the development of legal strategy and positions

In your view, are these Service Standards being met? In instances where the Service Standards are not met, please identify which are not, and what you believe are the most common contributing factors?

4. Based on your experience, how would you describe the working relationship between the Litigation Branch and the Public Law Sector? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and Public Law Sector coordinate/collaborate with each other?
5. Part of the mandate of the National Litigation Committee (NLC) is to ensure that consistent legal positions are adopted nationally. In your opinion, how well is it fulfilling its mandate?

6. What other processes or structures, if any, does the Litigation Branch have in place to resolve any areas of disagreement between the client and Justice or within Justice, and to ensure that consistent legal positions are taken? (Probe: Justice National Security and Intelligence Committee for NSG)
 - a. In your opinion, are these processes and strategies effective in ensuring that the Litigation Branch takes an integrated, whole of government approach? Why or why not?
7. Legal risk management within Justice Canada includes the identification, assessment, mitigation, and management of legal risk.
 - a. How effective is the Litigation Branch in early identification and assessment of legal risk?
 - b. In your opinion, are high-risk files sufficiently resourced?
 - c. In your view, how well does the briefing process work (e.g., in terms of clarity of the process and level of effort required)? In your answer, please consider the processes relevant to your work (e.g., Early Warning Notes, Adverse Reporting Procedure). Are senior managers/officials in Justice made sufficiently aware of complex and high-risk cases? Please explain.
8. What do you consider to be the respective roles of the Litigation Branch, the Public Law Sector, and the client department/agency in managing legal risk? Do you have any suggestions for how the Litigation Branch can work with the Public Law Sector and client department/agencies to improve the management of legal risk?
9. Has the Public Law Sector worked with the International Assistance Group and/or the National Security Group? In what capacity? How was that experience?

Performance — efficiency and economy

10. Based on your experience with the Litigation Branch, are appropriate counsel assigned to files (in terms of counsel years of experience and areas of subject matter expertise, and the level of complexity of files)? Please explain.

11. In your opinion, are adequate resources (e.g., human — sufficiency in number and level for paralegals and counsel; financial; technological) in place to support the work of the Litigation Branch? How does the Litigation Branch manage resource challenges?
12. In your opinion, are the legal services provided by the Litigation Branch cost-effective? In your response, please consider issues such as the following:
 - use of alternative dispute resolution practices and early resolution strategies, when appropriate
 - appropriate use of agents
 - the hours spent on a case/file in proportion to legal risk, complexity, or other complicating factors
 - availability of counsel at the appropriate level for the file risk/complexity
 - use of paralegals
 - other tools or practices used to reduce the cost of legal services
13. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by the Litigation Branch?

Conclusion

14. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch Key Informant Interview Guide for Client Representatives

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. The evaluation covers the work of all areas within the Litigation Branch. The Assistant Deputy Attorney General (ADAG), Litigation has functional and coordination responsibility for all litigation conducted by or on behalf of the Department of Justice and chairs the National Litigation Committee. In addition, the units within the Litigation Branch include: the Litigation Practice Management Centre; the Civil Litigation Section; the Management of Class Actions and Mass Litigation Unit; the National Security Group; National Security Coordinator; and the International Assistance Group.

The evaluation includes interviews with those working within the Litigation Branch, with representatives of Justice Canada, and with representatives of other government departments who are familiar with the work of the Litigation Branch.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

****The following questions refer to the Litigation Branch, but we understand that you may not have direct knowledge of the Litigation Branch as a whole. If that is the case, please respond for the unit within the Litigation Branch with which you have experience.****

In addition, some questions may not be applicable to the work you do. Please let us know, and we will skip that question.

The evaluation focuses on 2008–2013, so please consider your experiences during those years in your responses.

Introduction

1. Do you work directly with the Litigation Branch or only indirectly, through the Departmental Legal Services Unit? Describe the level and nature of your involvement with the Litigation Branch. Which Litigation Branch units have you worked with the most?

If you have worked with more than one unit, please specify to which unit you are referring in your answer.

Relevance

2. [Note to interviewer: Clients working only with MCAMLU have typically only worked with them on large issues, so they won't be able to assess trends. Please confirm with interviewee and skip this question] Over the last five years, have you observed any changes in your department/agency's demand for Litigation Branch services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics of your work. How has the Litigation Branch responded to these trends?

Performance — effectiveness

3. As you know, the Litigation Branch is guided by Service Standards in its dealings with its clients. These standards include the following:
 - Provision of legal services in either official language
 - Courteous and respectful treatment
 - Regular and informative progress reports or ongoing feedback in respect of client requests for services
 - Provision of clear and practical guidance on resolving legal issues
 - Identification of means to prevent and resolve legal disputes at the earliest opportunity
 - Respond in a timely manner to requests for legal services
 - Negotiate and meet mutually agreed-upon deadlines
 - Involvement of the client in the development of legal strategy and positions

In your view, are these Service Standards being met? In instances where the Service Standards are not met, please identify which are not, and what you believe are the most common contributing factors?

4. Please describe how/if the Litigation Branch and your department/agency work together to identify and assess legal risks, and how/if they work together to develop options to manage or mitigate those risks. In your opinion, how effective is this collaboration?

5. In your opinion, has your department/agency's level of awareness and understanding of legal risks improved over the last five years? If yes: to what do you attribute that improvement? (Probe: role of Litigation Branch and DLSU in increasing awareness) If no: how might Justice assist in improving your department/agency's awareness and understanding of legal risks?
6. When you have worked with the Litigation Branch, how satisfied were you with how legal risks were communicated to your department/agency in terms of timeliness, clarity, and consistency? In your opinion, were the legal risk descriptions useful to your department/agency? Why or why not?
7. How effective is the Litigation Branch in assisting clients with managing and mitigating legal risk? In your opinion, are high-risk files appropriately resourced by the Litigation Branch?
8. What do you consider to be the respective roles of the Litigation Branch and the client department/agency in legal risk management?
9. Have you experienced any disagreement with the legal advice given or litigation strategy suggested by the Litigation Branch? If so, how was that disagreement resolved? Were you satisfied with how this was handled by the Litigation Branch?
10. In your experience, to what extent was the advice provided by Litigation Branch considered in the legal strategies pursued and decisions made by your department/agency? What factors make it more or less likely that advice will be considered?
11. Have you been involved in a file where the litigation work was outsourced to an agent? If so, were you consulted prior to the legal agent being assigned and did you approve the decision to outsource the work? Were you satisfied with the rationale provided for the assignment of a legal agent? Please describe your experience in terms of the quality and responsiveness of the legal services received, as well as the effectiveness of the monitoring by Justice of the agent's work.

Performance — efficiency and economy

12. Based on your experience with the Litigation Branch, are appropriate counsel assigned to files (in terms of counsel years of experience and areas of expertise, and the level of complexity of files)? Please explain.

13. In your opinion, what role do clients play in improving the effectiveness, efficiency and economy of legal services? In your response, please consider issues such as the following:

- the role and responsibility of clients in managing demand for legal services
- the use of early dispute resolution or alternative dispute resolution processes by clients
- the timeliness in which clients involve the Litigation Branch in files
- the timeliness of client instructions

14. In your opinion, are the legal services provided by the Litigation Branch cost-effective? In your response, please consider issues such as the following:

- use of alternative dispute resolution practices and early resolution strategies, when appropriate
- appropriate use of agents
- the hours spent on a case/file in proportion to legal risk and/or complexity
- availability of counsel at the appropriate level for the file risk/complexity
- other tools or practices used to reduce the cost of legal services

15. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by the Litigation Branch?

Conclusion

16. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch

Key Informant Interview Guide for Departmental Legal Services Unit Representatives

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. The evaluation covers the work of all areas within the Litigation Branch. The Assistant Deputy Attorney General (ADAG), Litigation has functional and coordination responsibility for all litigation conducted by or on behalf of the Department of Justice and chairs the National Litigation Committee. In addition, the units within the Litigation Branch include: the Litigation Practice Management Centre; the Civil Litigation Section; the Management of Class Actions and Mass Litigation Unit; the National Security Group; National Security Coordinator; and the International Assistance Group.

The evaluation includes interviews with those working within the Litigation Branch, with representatives of Justice Canada, and with representatives of other government departments who are familiar with the work of the Litigation Branch.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

****The following questions refer to the Litigation Branch, but we understand that you may not have direct knowledge of the Litigation Branch as a whole. If that is the case, please respond for the unit within the Litigation Branch with which you have experience.****

In addition, some questions may not be applicable to the work you do. Please let us know, and we will skip that question.

The evaluation focuses on 2008–2013, so please consider your experiences during those years in your responses.

Introduction

1. Describe the level and nature of your involvement with the Litigation Branch. Which Litigation Branch units have you worked with the most?

If you have worked with more than one unit, please specify to which unit you are referring in your answer.

Relevance

2. Over the last five years, have you observed any changes in your client department/ agency's demand for Litigation Branch services? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics. How has the Litigation Branch responded to these trends?
3. (For DLSUs that have worked with IAG) Over the last five years, have you observed any changes in your interaction with the International Assistance Group? In what ways has it changed? In your response, please consider the volume, type of legal issues, complexity, legal risk level, and any other characteristics of your work.

Performance — effectiveness

4. As you know, the Litigation Branch is guided by Service Standards in its dealings with its clients. These standards include the following:
 - Provision of legal services in either official language
 - Courteous and respectful treatment
 - Regular and informative progress reports or ongoing feedback in respect of client requests for services
 - Provision of clear and practical guidance on resolving legal issues
 - Identification of means to prevent and resolve legal disputes at the earliest opportunity
 - Respond in a timely manner to requests for legal services
 - Negotiate and meet mutually agreed-upon deadlines
 - Involvement of the client in the development of legal strategy and positions

In your view, are these Service Standards being met? In instances where the Service Standards are not met, please identify which are not, and what you believe are the most common contributing factors?

5. Based on your experience, how would you describe the working relationship between the Litigation Branch and DLSUs? Are the roles and responsibilities of each clear? Do you have any suggestions for possible improvements in how the Litigation Branch and DLSUs coordinate/collaborate with each other?

6. Part of the mandate of the National Litigation Committee (NLC) is to ensure that consistent legal positions are adopted nationally. In your opinion, how well is it fulfilling its mandate?
7. What role, if any, do you play in the process for appointing legal agents? Approximately how many times in the last three years have you been involved in legal agent appointments? What factors do you consider when determining the need for a legal agent? How is the client involved in the decision to use an agent, if at all?
8. Have you instructed or managed legal agents? If yes, how do you monitor and evaluate agent activities? (Probe: please describe your experience in terms of the quality and responsiveness of the legal services received) Can you think of a time that you had an issue with agent performance? If so, what factors did you consider when addressing these issues? What, if any, remedial action did you take to rectify the issues?
9. How effective is the LPMC in the management and operations of the Agent Affairs Program? Overall, do you have any suggestions for how to improve when and how legal agents are used?
10. (Not applicable to DLSUs that have only worked with IAG) Please describe how/if the Litigation Branch, the DLSU, and your client department/agency work together to identify and assess legal risks, and how/if they work together to develop options to manage or mitigate those risks. In your opinion, how effective is this collaboration?
11. (Not applicable to DLSUs that have only worked with IAG) In your opinion, has your client department/agency's level of awareness and understanding of legal risks improved over the last five years? **If yes:** To what do you attribute that improvement and what role does the DLSU and LB play? **If no:** how might your client department/agency's awareness and understanding of legal risks be improved?
12. (Not applicable to DLSUs that have only worked with IAG) When you have worked with the Litigation Branch, how satisfied were you with how legal risks were communicated to you in terms of timeliness, clarity, and consistency? In your opinion, were the legal risk descriptions useful to you and your client department/agency? Why or why not? [Evaluation matrix Q6]
13. (Not applicable to DLSUs that have only worked with IAG) In your opinion, are high-risk files appropriately resourced by the Litigation Branch?

14. What do you consider to be the respective roles of the Litigation Branch, the DLSU, and the client department/agency in managing legal risk? Do you have any suggestions for how the Litigation Branch can work with DLSUs and client department/agencies to improve the management of legal risk?
15. Have you experienced any disagreement with the legal advice given or litigation strategy suggested by the Litigation Branch? If so, how was that disagreement resolved? Were you satisfied with how this was handled by the Litigation Branch?
16. (Not applicable to DLSUs that have only worked with IAG) In your experience, to what extent was the advice provided by Litigation Branch considered in the legal strategies pursued and decisions made by your client department/agency? What factors make it more or less likely that advice will be considered?
17. Have you worked with the International Assistance Group? In what capacity? How was that experience? (Probe: did IAG give clear instructions? How effective was the working relationship with IAG?)

Performance — efficiency and economy

(Questions 18 to 21 are not applicable to DLSUs that have only worked with IAG)

18. Based on your experience with the Litigation Branch, are appropriate counsel assigned to files (in terms of counsel years of experience and areas of subject matter expertise, and the level of complexity of files)? Please explain. (Probe added after pre-test: In your opinion, are adequate resources in place to support the work of the Litigation Branch? How well can the Litigation Branch handle e-discovery?)
19. In your opinion, what role do clients play in improving the effectiveness, efficiency and economy of legal services? In your response, please consider issues such as the following:
 - the role and responsibility of clients in managing demand for legal services
 - the use of early dispute resolution or alternative dispute resolution processes by clients
 - the timeliness in which clients involve the Litigation Branch in files
 - the timeliness of client instructions

20. In your opinion, are the legal services provided by the Litigation Branch cost-effective? In your response, please consider issues such as the following:

- use of alternative dispute resolution practices and early resolution strategies, when appropriate
- appropriate use of agents
- the hours spent on a case/file in proportion to legal risk, complexity, or other complicating factors
- availability of counsel at the appropriate level for the file risk/complexity
- use of paralegals
- other tools or practices used to reduce the cost of legal services

21. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by the Litigation Branch?

Conclusion

22. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Case study guides

Evaluation of the Litigation Branch Case Study Guide for Litigation Branch

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. One aspect of the study is an in-depth review of three files to provide more detailed information on the Litigation Branch's approach to managing files. Each case study includes interviews with representatives of Justice and the client department/agency, as well as a review of the file, which is conducted by Justice Canada staff.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

1. What was your role on the file that we will be discussing today?
2. If you are aware of it, please describe the process used to engage the Litigation Branch's legal services in this file. In your opinion, was the Litigation Branch engaged in a timely manner? Why or why not?

Legal risk management

3. Were you involved in the identification and assessment of legal risk on the file? If yes, were others from Justice Canada and the client department/agency consulted to assist in the identification and assessment of the legal risk? How were they involved? Was this involvement effective in identifying and assessing the legal risks?
4. To the best of your recollection, how were the legal risks described in this file in terms of risk level or other language used? Based on your experience on this file, do you think the Litigation Branch and Justice Canada use consistent language to describe legal risk? In your opinion, were the legal risk descriptions useful to the client department/agency? Why or why not?
5. In this file, how was Litigation Branch legal advice used to manage and mitigate legal risks?
6. Was a contingency plan developed for this file? Why or why not? Was the Litigation Branch consulted in the preparation of the contingency plan? If so, to what extent?

Consultation and communication

7. How often and for what purposes did the Litigation Branch consult with other areas of Justice (Departmental Legal Services Units, regional offices, specialized units at headquarters) on this file? Were the appropriate areas within Justice consulted? How effective were those consultations in managing the file?
8. How often and for what purposes did the Litigation Branch consult with the client department/agency on this file? To what extent was the client involved in the development of legal strategy and positions?
9. How well did the client understand the legal issues and risks involved in the file?
10. Was the file brought to the attention of the National Litigation Committee, regional Litigation Committees, and/or client litigation or risk committees? If yes, please describe the process and what impact it had on managing the file, developing a consistent legal position, and/or making senior officials aware of the file and its implications.
11. What, if any, briefing or reporting was done on this file (e.g., Early Warning Notes, Adverse Reporting Procedure, reporting through the National Coordination Network)? If none occurred, please explain why. If briefing occurred, please consider who was briefed, and when and why they were briefed. In your view, how well did the briefing process work (e.g., in terms of clarity of the process and level of effort required)? Were senior managers/officials made sufficiently aware of this file? Please explain.

Resources

12. If you are aware of it, what process was used within the Litigation Branch to assign staff to this file? In your opinion, was the file sufficiently and appropriately resourced in terms of number of staff, experience of staff, or any other attributes that you want to mention?
13. What, if any, resources challenges (human, financial, technical) did you experience in your work on this file? How were these challenges managed?

Results

14. Were early resolution strategies or alternative dispute resolution strategies considered or used in this file? Why or why not? If they were used, what caused them to be successful or unsuccessful in resolving the file?
15. In your opinion, was this file handled in a cost-effective manner? What, if anything, could have been done differently by the Litigation Branch and/or the client department/agency to reduce costs?
16. To what extent was the legal advice provided by the Litigation Branch considered in the legal strategies pursued and decisions made by the client in this file? Please explain.
17. Do you believe that the Litigation Branch provided timely, responsive, high-quality legal services on this file? Why or why not? What feedback, if any, did the Litigation Branch team receive from the client on your legal services?
18. Are there any best practices/lessons learned from this file that you would like to share?
19. Based on your legal experience, how do the Litigation Branch's legal services differ from what the private sector would provide the client? Please answer based on this file and your work with the Litigation Branch more generally.

Conclusion

20. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch Case Study Guide for Client Department Representatives

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. One aspect of the study is an in-depth review of three files to provide more detailed information on the Litigation Branch's approach to managing files. Each case study includes interviews with representatives of Justice and the client department/agency, as well as a review of the file, which is conducted by Justice Canada staff.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

1. What was your role on the file that we will be discussing today?
2. If you are aware of it, please describe the process used to engage the Litigation Branch's legal services in this file. In your opinion, was the Litigation Branch engaged in a timely manner? Why or why not?

Legal risk management

3. Were you involved in the identification and assessment of legal risk on the file? If yes, were others from Justice Canada and your department/agency consulted to assist in the identification and assessment of the legal risk? How were they involved? Was this involvement effective in identifying and assessing the legal risks?
4. To the best of your recollection, how were the legal risks described in this file in terms of risk level or other language used? Based on your experience on this file, do you think the Litigation Branch and Justice Canada use consistent language to describe legal risk? In your opinion, were the legal risk descriptions useful for your department/agency? Why or why not?
5. In this file, how was Litigation Branch legal advice used to manage and mitigate legal risks?
6. Was a contingency plan developed for this file? Why or why not? Was the Litigation Branch consulted in the preparation of the contingency plan? If so, to what extent?

Consultation and communication

7. How often and for what purposes did the Litigation Branch consult with your department/agency on this file? To what extent was your department/agency involved in the development of legal strategy and positions?
8. How well did your department/agency understand the legal issues and risks involved in the file?
9. To your knowledge, how effective was the collaboration of Justice (Litigation Branch, Departmental Legal Services Units, regional offices, specialized units at headquarters, as applicable) for resolving this file?
10. To your knowledge, was the file brought to the attention of the National Litigation Committee, regional Litigation Committees, and/or your departmental litigation or risk committees? If yes, please describe the process and what impact it had on managing the file, developing a consistent legal position, and/or making senior officials aware of the file and its implications.
11. To your knowledge, what, if any, briefing or reporting was done on this file? If none occurred, please explain why. If briefing occurred, did the Litigation Branch support the briefing process within your department/agency? Were senior managers/officials in your department/agency made sufficiently aware of this file? Please explain.

Resources

12. In your opinion, were appropriate counsel assigned to this file (considering the years of experience of the counsel and the level of complexity of the file)? Did the Litigation Branch assign adequate resources to undertake the work required? Please explain. Were you aware of any other resource challenges (human, financial, technical) in your work on this file? How were these challenges managed?

Results

13. Were early resolution strategies or alternative dispute resolution strategies considered or used in this file? Why or why not? If they were used, what caused them to be successful or unsuccessful in resolving the file?

14. In your opinion, was this file handled in a cost-effective manner? What, if anything, could have been done differently by the Litigation Branch and/or your department/agency to reduce costs?
15. To what extent was the legal advice provided by the Litigation Branch considered in the legal strategies pursued and decisions made by your department/agency in this file? Please explain.
16. Do you believe that the Litigation Branch provided timely, responsive, high-quality legal services on this file? Why or why not?
17. Are there any best practices/lessons learned from this file that you would like to share?

Conclusion

18. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch Case Study Guide for Public Law Sector

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. One aspect of the study is an in-depth review of three files to provide more detailed information on the Litigation Branch's approach to managing files. Each case study includes interviews with representatives of Justice and the client department/agency, as well as a review of the file, which is conducted by Justice Canada staff.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

Depending on your role on this file, you may not be able to answer all of the questions below.

1. What was your role on the file that we will be discussing today?
2. If you are aware of it, please describe the process the Litigation Branch used to engage your services in this file. In your opinion, was your Section engaged in a timely manner? Why or why not?

Legal risk management

3. Were you involved in the identification and assessment of legal risk on the file? If yes, were others from Justice Canada and the client department/agency consulted to assist in the identification and assessment of the legal risk? How were they involved? Was this involvement effective in identifying and assessing the legal risks?
4. To the best of your recollection, how were the legal risks described in this file in terms of risk level or other language used? Based on your experience on this file, do you think the Litigation Branch and Justice Canada use consistent language to describe legal risk? In your opinion, were the legal risk descriptions useful to the client department/agency? Why or why not?
5. In this file, how was your advice used by the Litigation Branch to manage and mitigate legal risks?

Consultation and communication

6. How often and for what purposes did the Litigation Branch consult with other areas of Justice (Departmental Legal Services Units, regional offices, specialized units at headquarters) on this file? Were the appropriate areas within Justice consulted? How effective were those consultations in managing the file?
7. Was the file brought to the attention of the National Litigation Committee, regional Litigation Committees, and/or client litigation or risk committees? If yes, please describe the process and what impact it had on managing the file, developing a consistent legal position, and/or making senior officials aware of the file and its implications.
8. What, if any, briefing or reporting was done on this file (e.g., Early Warning Notes, Adverse Reporting Procedure, reporting through the National Coordination Network)? If none occurred, please explain why. If briefing occurred, please consider who was briefed, and when and why they were briefed. In your view, how well did the briefing process work (e.g., in terms of clarity of the process and level of effort required)? Were senior managers/officials made sufficiently aware of this file? Please explain.

Resources

9. What, if any, resources challenges (human, financial, technical) did you experience in your work on this file? How were these challenges managed?

Results

10. In your opinion, was this file handled in a cost-effective manner? What, if anything, could have been done differently by the Litigation Branch and/or the client department/agency to reduce costs?
11. Are there any best practices/lessons learned from this file that you would like to share?

Conclusion

12. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Evaluation of the Litigation Branch Case Study Guide for Departmental Legal Services Units and Regional Offices

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Litigation Branch. One aspect of the study is an in-depth review of three files to provide more detailed information on the Litigation Branch's approach to managing files. Each case study includes interviews with representatives of Justice and the client department/agency, as well as a review of the file, which is conducted by Justice Canada staff.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Evaluation Division of Justice Canada. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

Depending on your role on this file, you may not be able to answer all of the questions below.

1. What was your role on the file that we will be discussing today?
2. If you are aware of it, please describe the process used to engage the Litigation Branch's legal services in this file. In your opinion, was the Litigation Branch engaged in a timely manner? Why or why not?

Legal risk management

3. Were you involved in the identification and assessment of legal risk on the file? If yes, were others from Justice Canada and the client department/agency consulted to assist in the identification and assessment of the legal risk? How were they involved? Was this involvement effective in identifying and assessing the legal risks?
4. To the best of your recollection, how were the legal risks described in this file in terms of risk level or other language used? Based on your experience on this file, do you think the Litigation Branch and Justice Canada use consistent language to describe legal risk? In your opinion, were the legal risk descriptions useful to the client department/agency? Why or why not?
5. In this file, how was Litigation Branch legal advice used to manage and mitigate legal risks?
6. Was a contingency plan developed for this file? Why or why not? Was the Litigation Branch consulted in the preparation of the contingency plan? If so, to what extent?

Consultation and communication

7. How often and for what purposes did the Litigation Branch consult with other areas of Justice (Departmental Legal Services Units, regional offices, specialized units at headquarters) on this file? Were the appropriate areas within Justice consulted? How effective were those consultations in managing the file?
8. How often and for what purposes did the Litigation Branch consult with the client department/agency on this file? To what extent was the client involved in the development of legal strategy and positions?
9. How well did the client understand the legal issues and risks involved in the file?
10. Was the file brought to the attention of the National Litigation Committee, regional Litigation Committees, and/or client litigation or risk committees? If yes, please describe the process and what impact it had on managing the file, developing a consistent legal position, and/or making senior officials aware of the file and its implications.
11. What, if any, briefing or reporting was done on this file (e.g., Early Warning Notes, Adverse Reporting Procedure, reporting through the National Coordination Network)? If none occurred, please explain why. If briefing occurred, please consider who was briefed, and when and why they were briefed. In your view, how well did the briefing process work (e.g., in terms of clarity of the process and level of effort required)? Were senior managers/officials made sufficiently aware of this file? Please explain.

Resources

12. If you are aware of it, what process was used within the Litigation Branch to assign staff to this file? In your opinion, was the file sufficiently and appropriately resourced in terms of number of staff, experience of staff, or any other attributes that you want to mention?
13. What, if any, resources challenges (human, financial, technical) did you experience in your work on this file? How were these challenges managed?

Results

14. Were early resolution strategies or alternative dispute resolution strategies considered or used in this file? Why or why not? If they were used, what caused them to be successful or unsuccessful in resolving the file?
15. In your opinion, was this file handled in a cost-effective manner? What, if anything, could have been done differently by the Litigation Branch and/or the client department/agency to reduce costs?
16. To what extent was the legal advice provided by the Litigation Branch considered in the legal strategies pursued and decisions made by the client in this file? Please explain.
17. Do you believe that the Litigation Branch provided timely, responsive, high-quality legal services on this file? Why or why not? To your knowledge, what was the client department/agency's opinion of the legal services they received from the Litigation Branch?
18. Are there any best practices/lessons learned from this file that you would like to share?
19. Based on your legal experience, how do the Litigation Branch's legal services differ from what the private sector would provide the client? Please answer based on this file and your work with the Litigation Branch more generally.

Conclusion

20. Do you have any other comments?

Thank you. We greatly appreciate your participation.

File review templates

**Evaluation of the Litigation Branch
Civil Litigation Section (CLS) and
Management of Class Actions and Mass Litigation Unit (MCAMLU)
File Review**

Overview

1. File Code Number: _____
2. Date file opened: _____ (dd/mm/yy) Date file closed: _____ (dd/mm/yy)
3. Organizational unit: CLS MCAMLU
4. Lead counsel:
 CLS Regional office DLSU MCAMLU
 Other _____
5. Case type: Litigation Litigation support
6. Number of counsel on file: _____
7. Number of paralegals on file: _____
8. Client department/agency: _____
9. Client is Claimant Respondent Appellant Respondent on appeal Can't tell
10. Level of court:
 Supreme Court of Canada Federal Court of Appeal Federal Court
 Provincial Court of Appeal Provincial/Territorial Superior Court Provincial Court
 Other, please specify _____
11. Legal issue and brief description of the nature of the file, without waiving solicitor–client privilege.

12. What was the outcome of the case in the lower court?
 Settled Court decision on merits in favour of government Court decision on merits in favour of other party Case dismissed without a decision on the merits
 Case withdrawn Partially successful Other, please specify: _____

13. Has the case been appealed?

- _1 Yes
 _2 No
 _7 Not applicable (cannot appeal from decision – e.g., Supreme Court file)
 _8 No decision re: appeal yet/ can't determine



If yes to Q13:

13a. How many levels of appeal were there? _____

13b Please list the file code number of the related appeal files: _____

13c To which courts was the case appealed? (Check all that apply.)

- _01 Supreme Court of Canada
 _02 Federal Court of Appeal
 _03 Provincial Court of Appeal
_66 Other, please specify: _____

Please remember to complete a separate form for the appeal.

iCase information (to extent available)

14. Potential client impact:

- | | | |
|--|---|---|
| <input type="checkbox"/> _01 Affects administration of justice/public confidence | <input type="checkbox"/> _02 Affects federal, provincial, or international relations, treaties, or agreements | <input type="checkbox"/> _03 Legal issues or events that may be controversial, attract significant national media attention, or involve Cabinet Ministers or prominent public figures |
| <input type="checkbox"/> _04 Limitations of federal jurisdiction | <input type="checkbox"/> _05 Major effect on fiscal resources of client or government | <input type="checkbox"/> _06 Major effect on human rights, personnel, access and privacy, gender, or diversity issues |
| <input type="checkbox"/> _07 Major effect on law/regulations of client or government | <input type="checkbox"/> _08 Major effect on programs/policies/initiatives of client or government | <input type="checkbox"/> _09 Major effect on relations with Aboriginal people, Métis |
| <input type="checkbox"/> _10 Major effect on the Charter or Constitution | <input type="checkbox"/> _11 Matter of national interest | <input type="checkbox"/> _77 Not applicable |
| | | <input type="checkbox"/> _88 Unable to assess |

15. Risk level (1–9): _____ 15b. Earlier risk level (if available through iCase) _____

16. Complexity: _1 Low _2 Medium _3 High _4 Mega _7 Not applicable

17. What was the seniority level of lead counsel?

- _1 LA0
 _2 LA1
 _3 LA2A
 _4 LA2B
 _5 LA3A
 _6 LA3B
 _7 LA3C
 _8 Can't tell

To be completed by the Business Management Section

18. Indicate the number of staff on the file by level and indicate the number of hours spent on the file:

Check	# of staff	Hours for each staff resource
<input type="checkbox"/> _1 LA0	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _2 LA1	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _3 LA2A	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _4 LA2B	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _5 LA3A	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _6 LA3B	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _7 LA3C	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _8 EC	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _9 AS	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _10 CR	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____

Information from file [Answer the following questions based on documents in the file]

19. Were any court deadlines missed? _1 Yes _0 No _8 Unable to assess
20. (If yes to Q19) How many times? _____
21. (If yes to Q19) Were additional court procedures required as a result of the missed deadlines (e.g., motions)?
_1 Yes _0 No _8 Unable to assess
22. Is there documentation in the file that shows what the client was consulted about? (Check all that apply.)
- | | | |
|---|--|--|
| <input type="checkbox"/> _01 Identifying and assessing legal risk | <input type="checkbox"/> _02 Options to manage legal risk | <input type="checkbox"/> _03 Developing legal strategies and positions |
| <input type="checkbox"/> _04 To discuss the impact of legal risk | <input type="checkbox"/> _05 To discuss possible settlement (including early resolution) | <input type="checkbox"/> _66 Other _____ |
| <input type="checkbox"/> _08 Unable to assess | | _____ |
23. Is there documented evidence in the file that the CLS/MCAMLU considered client policy and program objectives when developing legal strategies?
_1 Yes _0 No _8 Unable to assess
24. Was the file brought to the attention of any client committees? _1 Yes _0 No _8 Unable to assess
25. (If yes to Q24) Which committees? _01 Risk Committees _02 Litigation committees
_66 Other _____
26. Was the file brought to the attention of other Justice officials/structures?
_1 Yes _0 No _8 Unable to assess
27. (If yes to Q26) Which ones? (Check all that apply.)
- | | | |
|---|--|---|
| <input type="checkbox"/> _01 Minister/Deputy Minister | <input type="checkbox"/> _02 National Litigation Committee | <input type="checkbox"/> _03 Regional Litigation Committees |
| <input type="checkbox"/> _04 ADAG, Litigation | <input type="checkbox"/> _05 Regional Director | <input type="checkbox"/> _66 Other _____ |

Files brought before National Litigation Committee

28. Why was the file brought to the National Litigation Committee? (Check all that apply.)
 ___01 Request to approve a course of action ___02 Direction sought
 ___66 Other _____
29. Who requested that the file be brought to the National Litigation Committee? (Check all that apply.)
 ___01 CLS ___02 MCAMLU ___03 Regional Litigation Committee ___66 Other _____
30. Did the memoranda prepared for the National Litigation Committee contain any of the following?
 ___01 Concise statement of legal issue involved ___02 Recommended options
 ___03 Pros and cons for each option
 ___04 Factors to be considered (communication issues, Federal/Provincial/Territorial considerations)
31. What was the result of the National Litigation Committee meeting on this file?
 ___01 Course of action/recommendations approved ___02 Course of action/recommendations approved, with amendments
 ___03 Course of action not approved, additional submission requested
 ___66 Other _____

32. Did counsel consult with specialized sections or Portfolio structures within Justice?
 ___1 Yes ___0 No ___8 Unable to assess
33. (If yes to Q32) Which ones? _____
34. (If yes to Q32) What were the specialized sections or Portfolio structures consulted about? (Check all that apply.)
 ___01 Identifying and assessing legal risk ___02 Managing legal risk ___03 Potential legal options
 ___04 Potential litigation strategies ___05 Questions of law ___66 Other
35. Were other potentially affected departments and agencies consulted?
 ___1 Yes ___0 No ___8 Unable to assess
36. (If yes to Q35) What were they consulted about? (Check all that apply.)
 ___01 Identifying and assessing legal risk ___02 Managing legal risk ___03 Potential legal options
 ___04 Potential litigation strategies ___05 Questions of law ___66 Other
 ___08 Unable to asses

Dispute resolution

37. At what stage were dispute resolution options considered? (Check all that apply.)
 ___00 DR not considered (**GO TO Q40**)
 ___01 Post-pleading ___02 Post-production of documents ___03 Post-discovery
 ___04 Just prior to trial or hearing ___66 Other (please specify): _____
 ___88 Don't know/can't tell

47. At what stage in the case was the **initial (or only)** risk assessment done?

- _01 Post-pleadings _02 Post-discovery _03 Pre-scheduled trial date
_04 After decision _05 After appeal filed
_66 Other, please specify: _____ _88 Can't tell

48. Was risk **reassessed**?

- _1 Yes _0 No (**GO TO Q52**) _8 Can't determine (**GO TO Q52**)

49. To what risk level? _____

50. At what stage in the case was the risk **reassessed**?

- _01 Post-pleadings _02 Post-discovery _03 Pre-scheduled trial date
_04 After decision _05 After appeal filed
_66 Other, please specify: _____ _88 Can't tell

51. If case was **reassessed** to a higher risk level, did any of the following occur after the reassessment?

- _01 Increased number of counsel on file _02 Assignment of senior counsel to file
_03 Consideration of dispute resolution process _04 Use of dispute resolution process
_05 Increased consultations _06 Increased reporting
_66 Other, please specify: _____ _88 Can't tell

52. Were the levels of risk clearly communicated throughout the file?

- _1 Yes _0 No _8 Unable to assess

53. (If no to Q52) What language was used to describe the level of legal risk to clients? Please give verbatim examples that show the range of language used.

Files with legal agent involvement (Q54 – 65)

54. What was the rationale behind outsourcing (from Outsourcing Rationale document and/or other documents in the file)

- _01 Unavailability of resources within Justice Canada _02 Urgency — delay injurious to public interest or Crown's position _03 Official language requirements
_04 Geographical considerations _05 Infrastructure/capacity _06 Expertise/experience
_07 Conflict of interest issues _66 Other, please specify: _____ _88 Can't tell

55. Is there a detailed explanation outlining the rationale for outsourcing in the file (on Outsourcing Rationale document or separate memo)?

- _1 Yes _0 No _8 Can't tell

56. Was outsourcing initiated:

- _1 At client request _2 By Justice Canada _8 Can't tell

57. (If answer 2 to Q56) Was the client consulted about the outsourcing?
_1 Yes _0 No _8 Can't tell
58. (If answer 2 to Q56) Does the file show that the client approved outsourcing?
_1 Yes _0 No _8 Can't tell
59. Does the file contain Ministerial approval of the appointment?
_1 Yes _0 No _8 Can't tell
60. Does the file contain correspondence and instructions from the instructing counsel to the legal agent?
_1 Yes _0 No _8 Can't tell
61. Does the file contain evidence of monitoring costs?
_1 Yes _0 No _8 Can't tell
62. Did projected expenditures have to be adjusted?
_1 Yes _0 No _8 Can't tell
63. (If yes to Q62) Was the Requesting Manager notified?
_1 Yes _0 No _8 Can't tell
64. Does the file indicate any issues with agent performance?
_1 Yes _0 No _8 Can't tell
65. (If yes to Q64) What, if any, remedial actions were taken to rectify the issues?
-
-
-
-
-
66. Any additional comments? (Indicate applicable question number, if appropriate.)
-
-
-
-

___7 LA3C _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
 ___8 EC _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
 ___9 AS _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
 ___10 CR _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____

Information from file [Answer the following questions based on documents in the file]

11. Based on the documentation in the file, what was the client consulted about? (Check all that apply.)
- ___01 Identifying and assessing legal risk ___02 Options to manage legal risk ___03 Developing legal strategies and positions
 ___04 Developing legal strategies and positions ___05 To discuss possible settlement (including early resolution) ___66 Other _____
 ___08 Unable to assess
12. Was the file brought to the attention of any client committees? ___1 Yes ___0 No ___8 Unable to assess
13. (If yes to Q12) Which committees? ___01 Risk Committees ___02 Litigation committees
 ___66 Other _____
14. Was the file brought to the attention of other Justice officials/structures?
 ___1 Yes ___0 No ___8 Unable to assess
15. (If yes to Q14) Which ones? (Check all that apply.)
- ___01 Minister/Deputy Minister ___02 National Litigation Committee ___03 Regional Litigation Committees
 ___04 ADAG, Litigation ___05 Regional Director ___66 Other _____

Files brought before National Litigation Committee

16. Why was the file brought to the National Litigation Committee? (Check all that apply.)
- ___01 Request to approve a course of action ___02 Direction sought
 ___66 Other _____
17. Who requested that the file be brought to the National Litigation Committee? (Check all that apply.)
- ___01 CLS ___02 MCAMLU ___03 Regional Litigation Committee ___66 Other _____
18. Did the memoranda prepared for the National Litigation Committee contain any of the following?
- ___01 Concise statement of legal issue involved ___02 Recommended options
 ___03 Pros and cons for each option
 ___04 Factors to be considered (communication issues, Federal/Provincial/Territorial considerations)
19. What was the result of the National Litigation Committee meeting on this file?
- ___01 Course of action/recommendations approved ___02 Course of action/recommendations approved, with amendments
 ___03 Course of action not approved, additional submission requested
 ___66 Other _____

20. Did counsel consult with specialized sections within Justice?
- ___1 Yes ___0 No ___8 Unable to assess

21. (If yes to Q20) Which ones? _____
22. (If yes to Q20) What were the specialized sections consulted about? (Check all that apply.)
- __01 Identifying and assessing legal risk __02 Managing legal risk __03 Potential legal options
__04 Potential litigation strategies __05 Questions of law __66 Other
23. Is there documentation in the file that shows that any of the following were used/prepared?
- __01 Contingency plan __02 Briefing notes
__03 Documentation on structured review of facta/approval of facta
24. Was the file included in any of the following?
- __01 Early Warning Notes __02 Top 100 High Impact Report __03 Radar Screen __04 Scanning News
__05 Justice Practice Group discussion

Risk assessment

25. Is there a discussion/indication of risk level indicated in the appeal file?
__1 Yes __0 No (GO TO Q29)
26. What is the risk level for this level of appeal (1–9)? _____ __88 Can't tell
27. If the case was **reassessed** from its earlier level of risk to a higher risk level at this appeal stage, did any of the following occur after the reassessment?
- __01 Increased number of counsel on file __02 Assignment of senior counsel to file
__03 Consideration of dispute resolution process __04 Use of dispute resolution process s
__05 Increased consultations __06 Increased reporting
__66 Other, please specify: _____ __88 Can't tell
28. Complexity: __1 Low __2 Medium __3 High __4 Mega __7 Not applicable

Files with legal agent involvement (Q29 – 40)

29. What was the rationale behind outsourcing (from Outsourcing Rationale document and/or other documents in the file)
- __01 Unavailability of resources within Justice Canada __02 Urgency — delay injurious to public interest or Crown's position __03 Official language requirements
__04 Geographical considerations __05 Infrastructure/capacity __06 Expertise/experience
__07 Conflict of interest issues __66 Other, please specify: _____ __88 Can't tell
30. Is there a detailed explanation outlining the rationale for outsourcing in the file (on Outsourcing Rationale document or separate memo)?
- __1 Yes __0 No __8 Can't tell
31. Was outsourcing initiated:
- __1 At client request __2 By Justice Canada __8 Can't tell
32. (If answer 2 to Q31) Was the client consulted about the outsourcing?
- __1 Yes __0 No __8 Can't tell

33. (If answer 2 to Q31) Does the file show that the client approved outsourcing?

_1 Yes _0 No _8 Can't tell

34. Does the file contain Ministerial approval of the appointment?

_1 Yes _0 No _8 Can't tell

35. Does the file contain correspondence and instructions from the instructing counsel to the legal agent?

_1 Yes _0 No _8 Can't tell

36. Does the file contain evidence of monitoring costs?

_1 Yes _0 No _8 Can't tell

37. Did projected expenditures have to be adjusted?

_1 Yes _0 No _8 Can't tell

38. (If yes to Q37) Was the Requesting Manager notified?

_1 Yes _0 No _8 Can't tell

39. Does the file indicate any issues with agent performance?

_1 Yes _0 No _8 Can't tell

40. (If yes to Q39) What, if any, remedial actions were taken to rectify the issues?

41. Any additional comments? (Indicate applicable question number, if appropriate.)

iCase information (to extent available)

11. Potential client impact:

- | | | |
|--|---|---|
| <input type="checkbox"/> _01 Affects administration of justice/public confidence | <input type="checkbox"/> _02 Affects federal, provincial, or international relations, treaties, or agreements | <input type="checkbox"/> _03 Legal issues or events that may be controversial, attract significant national media attention, or involve Cabinet Ministers or prominent public figures |
| <input type="checkbox"/> _04 Limitations of federal jurisdiction | <input type="checkbox"/> _05 Major effect on fiscal resources of client or government | <input type="checkbox"/> _06 Major effect on human rights, personnel, access and privacy, gender, or diversity issues |
| <input type="checkbox"/> _07 Major effect on law/regulations of client or government | <input type="checkbox"/> _08 Major effect on programs/policies/initiatives of client or government | <input type="checkbox"/> _09 Major effect on relations with Aboriginal people, Métis |
| <input type="checkbox"/> _10 Major effect on the Charter or Constitution | <input type="checkbox"/> _11 Matter of national interest | <input type="checkbox"/> _77 Not applicable |
| | | <input type="checkbox"/> _88 Unable to assess |

12. Risk level (1–9): _____ 15b. Earlier risk level (if available through iCase) _____

13. Complexity: _1 Low _2 Medium _3 High _4 Mega _7 Not applicable

14. What was the seniority level of lead counsel?

_1 LA0 _2 LA1 _3 LA2A _4 LA2B _5 LA3A _6 LA3B _7 LA3C _8 Can't tell

To be completed by the Business Management Section

15. Indicate the number of staff on the file by level and indicate the number of hours spent on the file:

Check	# of staff	Hours for each staff resource
<input type="checkbox"/> _1 LA0	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _2 LA1	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _3 LA2A	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _4 LA2B	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _5 LA3A	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _6 LA3B	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _7 LA3C	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _8 EC	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _9 AS	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____
<input type="checkbox"/> _10 CR	_____	Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____; 6: _____

Information from file [Answer the following questions based on documents in the file]

16. Were any of the below statutory requirements missed for extradition?
- __7 File did not involve extradition (Go to Q18)
- a. Did the file involve an extradition request **made to Canada**? 1 Yes 0 No 8 Unable to assess
 - b. (If yes to Q16a) Was an authority to proceed issued? (If yes to Q16b, answer the below sub-parts) 1 Yes 0 No 8 Unable to assess
 - c. Was the issuance of the authority approved by the DG/team leader? 1 Yes 0 No 8 Unable to assess
 - d. Was there a surrender decision? 1 Yes 0 No 8 Unable to assess
 - e. (If yes to Q16d) Were the briefing materials for the Minister’s surrender decision reviewed by the team leader and the DG? 1 Yes 0 No 8 Unable to assess
 - f. Was the decision on surrender made within the statutory deadline? 1 Yes 0 No 8 Unable to assess
 - g. Did the IAG update the foreign state on the status of the extradition request? 1 Yes 0 No 8 Unable to assess
 - h. Did the file involve an extradition request **made by Canada**? 1 Yes 0 No 8 Unable to assess
 - i. (If yes to Q16h) Was the request approved by the Team Leader? (Is there a record in the file, i.e., memo?) 1 Yes 0 No 8 Unable to assess
 - j. (If yes to Q16h) Was the request approved by the Director General? (Is there a record in the file, i.e., memo?) 1 Yes 0 No 8 Unable to assess
17. (If no to any part of Q16) If any statutory requirements described above were missed, why were they missed? What were the consequences of missing them, if any?
-
18. Were any of the below statutory requirements missed for mutual legal assistance?
- __7 File did not involve mutual legal assistance
- a. Does the file involve an **incoming** mutual legal assistance request? 1 Yes 0 No 8 Unable to assess
 - b. (If yes to Q18a) Was the incoming request reviewed by the DG? (Is there a record in the file, i.e., memo?) 1 Yes 0 No 8 Unable to assess
 - c. (If yes to Q18a) Was an authorization issued? 1 Yes 0 No 8 Unable to assess
 - d. (If yes to Q18a) Was the request reviewed by the team leader before the file was assigned? 1 Yes 0 No 8 Unable to assess
 - e. (If yes to Q18a) Did the IAG update the foreign state on the status of the mutual legal assistance request? 1 Yes 0 No 8 Unable to assess
 - f. Was this an **outgoing** mutual legal assistance request? 1 Yes 0 No 8 Unable to assess

- g. (If yes to Q18f) Was the request approved by the Team Leader? (Is there a record in the file, i.e., memo?) _1 Yes _0 No _8 Unable to assess
- h. (If yes to Q18f) Was the request approved by the Director General? (Is there a record in the file, i.e., memo?) _1 Yes _0 No _8 Unable to assess
19. (If no to any part of Q18) If any statutory requirements described above were missed, why were they missed? What were the consequences of missing them, if any?
-
-

20. Was the file brought to the attention of Justice officials/structures?
_1 Yes _0 No _8 Unable to assess
21. (If yes to Q20) Which ones? (Check all that apply.)
_01 Minister/Deputy Minister _02 National Litigation Committee _03 ADAG, Litigation
_66 Other _____

Files brought before National Litigation Committee

22. Why was the file brought to the National Litigation Committee? (Check all that apply.)
_01 Request to approve a course of action _02 Direction sought
_66 Other _____
23. Who requested that the file be brought to the National Litigation Committee? (Check all that apply.)
_01 IAG _02 Minister/Deputy Minister _03 ADAG, Litigation _66 Other _____
24. Did the memoranda prepared for the National Litigation Committee contain any of the following?
_01 Concise statement of legal issue involved _02 Recommended options
_03 Pros and cons for each option
_04 Factors to be considered (communication issues, Federal/Provincial/Territorial considerations)
25. What was the result of the National Litigation Committee meeting on this file?
_01 Course of action/recommendations approved _02 Course of action/recommendations approved, with amendments
_03 Course of action not approved, additional submission requested
_66 Other _____

26. Did counsel consult with specialized sections or Portfolio structures within Justice?
_1 Yes _0 No _8 Unable to assess
27. (If yes to Q26) Which ones? _____
28. What were the specialized sections or Portfolio structures consulted about? (Check all that apply.)
_01 Identifying and assessing legal risk _02 Managing legal risk _03 Potential legal options
_05 Questions of law _66 Other _____
29. Were other potentially affected departments and agencies consulted?
_1 Yes _0 No _8 Unable to assess

30. (If yes to Q29) What were they consulted about? (Check all that apply.)

- __01 Identifying and assessing legal risk __02 Managing legal risk __03 Potential legal options
- __04 Whether information can be provided without a court order __05 Questions of law
- __06 Other __08 Unable to assess

Risk assessment

31. What legal risks are identified? Please check all that apply. Only include if there is documentation that specifies risks (in-text fields in iCase or in file); do not try to interpret information (e.g., counsel indicates difficult facts in memo in file; the researcher should not his their own decision that facts are difficult). You do not have to enter risks that are already listed under potential client impact in iCase (see Q11). You should include other risks that might be identified in the Background, Impact, and Status sections of iCase, as well as risks identified in the paper files.

- __01 New/novel legal issue __02 Constitutional or Charter issue __03 Issue with availability of evidence
- __04 Issue with availability of affiants/witnesses __05 Difficult facts to support claim/defence __06 Unfavourable case law
- __07 Significant media interest __08 Potential to lead to termination or elimination of program __09 Class action
- __10 Cabinet Ministers or other prominent figures involved __11 Legal issue considered controversial __12 Case involves national security
- __66 Other, please specify: _____ __88 Can't tell

32. Is there a discussion/indication of risk level indicated in the file or in iCase?

- __1 Yes __0 No (GO TO Q41)

33. What is the **initial (or only)** risk level (1–9)? _____ __88 Can't tell

34. Date of **initial (or only)** risk assessment: _____ (dd/mm/yy) __88 Can't tell

35. At what stage in the case was the **initial (or only)** risk assessment done?

- __01 Same day file was opened __02 Within five working days
- __03 Within 10 working days __66 Other, please specify: _____
- __88 Can't tell

36. Was risk **reassessed**?

- __1 Yes __0 No (GO TO Q39) __8 Can't determine (GO TO Q39)

37. At what stage in the case was the risk **reassessed**?

- __01 At the executive/ministerial stage
- __66 Other, please specify: _____ __88 Can't tell

38. If case was **reassessed** to a higher risk level, did any of the following occur after the reassessment?

- __01 Increased number of counsel on file __02 Assignment of senior counsel to file
- __03 Consideration of dispute resolution process __04 Use of dispute resolution process
- __05 Increased consultations __06 Increased reporting
- __66 Other, please specify: _____ __88 Can't tell

39. Were the levels of risk clearly communicated throughout the file?

1 Yes 0 No 8 Unable to assess

40. (If no to Q39) What language was used to describe the level of legal risk to clients? Please give verbatim examples that show the range of language used.

41. Any additional comments? (Indicate applicable question number, if appropriate.)

**Evaluation of the Litigation Branch
National Security Group (NSG)
File Review**

Overview

1. File Code Number: _____
2. Date file opened: _____ (dd/mm/yy) Date file closed: _____ (dd/mm/yy)
3. Type of file:
 __01 Section 38 __02 Legal advice __66 Other _____
4. Number of counsel on file: _____
5. Number of paralegals on file: _____
6. Client department/agency: _____
7. Legal issue and brief description of the nature of the file, without waiving solicitor–client privilege or disclosing national security information.

8. (Section 38 files) Before which court/tribunal was the request for information initiated?

iCase information (to extent available)

9. Potential client impact:

__01 Affects administration of justice/public confidence	__02 Affects federal, provincial, or international relations, treaties, or agreements	__03 Legal issues or events that may be controversial, attract significant national media attention, or involve Cabinet Ministers or prominent public figures
__04 Limitations of federal jurisdiction	__05 Major effect on fiscal resources of client or government	__06 Major effect on human rights, personnel, access and privacy, gender, or diversity issues
__07 Major effect on law/regulations of client or government	__08 Major effect on programs/policies/initiatives of client or government	__09 Major effect on relations with Aboriginal people, Métis
__10 Major effect on the Charter or Constitution	__11 Matter of national interest	__77 Not applicable __88 Unable to assess
10. Risk level assessed by NSG (1–9): _____
- 10b. Risk level of underlying proceeding _____

22a2. (If yes to Q22a) Were the following groups consulted in preparation of the legal advice? (Check all that apply.)

01 Litigators in the underlying proceeding 02 Client departments responsible for the information in question
66 Other (specify: _____)

22a3. (If yes to Q22a) Were the memoranda of legal advice in the file reviewed by the Director of the NSG?

2 Yes, all 1 Yes, some 0 No 8 Unable to assess

22b. **Attorney General of Canada decisions** made pursuant to section 38?

1 Yes 0 No 8 Unable to assess

22b1. (If yes to Q22b) How many decisions? _____

23. Were any of the Attorney General of Canada section 38 decisions taken to the Federal Court of Canada?

1 Yes 0 No 8 Unable to assess

23a. (if yes to Q23) How many decisions? _____

23b. (If yes to Q23) How many of the Federal Court rulings were consistent with the Attorney General section 38 decisions? _____

24. Was the file brought to the attention of Justice officials/structures?

1 Yes 0 No 8 Unable to assess

25. (If yes to Q24) Which ones? (Check all that apply.)

01 Minister/Deputy Minister 02 National Litigation Committee 03 ADAG, Litigation
04 National Security Intelligence Committee 05 ADAG, Public Safety, Defence and Immigration Portfolio 06 ADAG, Business and Regulatory Law Portfolio
66 Other _____

Files brought before National Litigation Committee

26. Why was the file brought to the National Litigation Committee? (Check all that apply.)

01 Request to approve a course of action 02 Direction sought
66 Other _____

27. Who requested that the file be brought to the National Litigation Committee? (Check all that apply.)

01 NSG 02 Minister/Deputy Minister 03 ADAG, Litigation 66 Other _____

28. Did the memoranda prepared for the National Litigation Committee contain any of the following?

01 Concise statement of legal issue involved 02 Recommended options
03 Pros and cons for each option
04 Factors to be considered (communication issues, Federal/Provincial/Territorial considerations)

29. What was the result of the National Litigation Committee meeting on this file?

01 Course of action/recommendations approved 02 Course of action/recommendations approved, with amendments
03 Course of action not approved, additional submission requested
66 Other _____

30. Did counsel consult with specialized sections or Portfolio structures within Justice?
_1 Yes _0 No _8 Unable to assess
31. (If yes to Q32) Which ones? _____
32. (If yes to Q32) What were the specialized sections or Portfolio structures consulted about? (Check all that apply.)
_01 Identifying and assessing legal risk _02 Managing legal risk _03 Potential legal options
_04 Potential litigation strategies _05 Questions of law _66 Other
33. Were other potentially affected departments and agencies consulted?
_1 Yes _0 No _8 Unable to assess
34. (If yes to Q35) What were they consulted about? (Check all that apply.)
_01 Identifying and assessing legal risk _02 Managing legal risk _03 Potential legal options
_04 Potential litigation strategies _05 Questions of law _66 Other
_08 Unable to assess

Risk assessment

35. What legal risks are identified? Please check all that apply. Only include if there is documentation that specifies risks (in-text fields in iCase or in file); do not try to interpret information (e.g., counsel indicates difficult facts in memo in file; the researcher should not make his own decision that facts are difficult). You do not have to enter risks that are already listed under potential client impact in iCase (see Q11). You should include other risks that might be identified in the Background, Impact, and Status sections of iCase, as well as risks identified in the paper files.
_01 New/novel legal issue _02 Constitutional or Charter issue _03 Issue with availability of evidence
_04 Issue with availability of affiants/witnesses _05 Difficult facts to support claim/defence _06 Unfavourable case law
_07 Significant media interest _08 Potential to lead to termination or elimination of program _09 Class action
_10 Cabinet Ministers or other prominent figures involved _11 Legal issue considered controversial _12 Case involves national security
_66 Other, please specify: _____ _88 Can't tell

36. Is there a discussion/indication of risk level indicated in the file or in iCase?
_1 Yes _0 No (**GO TO Q54**)
37. What is the **initial (or only)** risk level (1–9)? _____ _88 Can't tell
38. Date of **initial (or only)** risk assessment: _____ (dd/mm/yy) _88 Can't tell
39. At what stage in the case was the **initial (or only)** risk assessment done?
_01 Same day file was opened _02 Within five working days
_03 Within 10 working days _66 Other, please specify: _____
_88 Can't tell
40. Were the levels of risk clearly communicated throughout the file?
_1 Yes _0 No _8 Unable to assess

41. (If no to Q40) What language was used to describe the level of legal risk to clients? Please give verbatim examples that show the range of language used.

42. Any additional comments? (Indicate applicable question number, if appropriate.)

Survey Questionnaire

Litigation Branch Evaluation

Table 1: Skip logic for survey of legal counsel and paralegals

Questions	Type of respondents (Q2)						
	CLS (1)	Class Actions (2)	MCAMLU (3)	NSG (4)	IAG (5)	Litigation Support (6)	ADAG (7)
1	✓	✓	✓	✓	✓	✓	✓
2	✓	✓	✓	✓	✓	✓	✓
3	✓	✓	✓	✓	✓	✓	✓
4	✓	✓	✓	✓	✓	✓	✓
5	✓	✓		✓	✓		
6	✓	✓		✓	✓		
7	✓	✓	✓	✓	✓	✓	✓
8	✓	✓	✓	✓	✓		✓
9	✓	✓	✓	✓	✓		
10	✓	✓	✓	✓	✓		✓
11	✓	✓	✓	✓	✓	✓	✓
12					✓		✓
13				✓			✓
14	✓	✓	✓	✓	✓		✓
15	✓	✓	✓	✓	✓		✓
16						✓	
17	✓	✓	✓	✓	✓	✓	✓
18	✓	✓	✓	✓	✓	✓	✓
19	✓	✓					
20	✓	✓					✓
21	✓	✓					
22	✓	✓					
23	✓	✓					
24			✓				
25	✓	✓					
26	✓	✓	✓				✓
27	✓	✓	✓				✓
28	✓	✓					
29	✓	✓	✓	✓	✓		
30	✓	✓	✓	✓	✓		
31	✓	✓	✓	✓	✓		
32	✓	✓	✓	✓	✓		
33	✓	✓					
34	✓	✓	✓	✓	✓	✓	✓
35	✓	✓	✓	✓	✓	✓	✓
36	✓	✓	✓	✓	✓	✓	✓

Background

The following questions will be used to establish a profile of survey respondents.

1. When did you first join the Department of Justice?

- Less than a year ago
- Between 1 and 5 years ago
- Between 6 and 10 years ago
- More than 10 years ago

2. Where do you work?

- Civil Litigation Section
- Management of Class Actions and Mass Litigation Unit
- Agent Affairs (LPMC)
- National Security Group
- International Assistance Group
- National eDiscovery and Litigation Support Services
- Office of the ADAG

3. What is your classification?

- EC
- LP-00
- LP-01
- LP-02
- LP-03
- LP-04
- LP-05
- LC-01
- LC-02
- LC-03
- LC-04

4. What kind of files do you work on most often?

- Litigation
- Advisory
- Policy development
- Other

Note to IAG

For questions regarding "clients", consider the foreign authorities from whom you receive MLA and extradition requests, and/or the Canadian investigative/prosecutorial authorities on whose behalf you make MLA and extradition requests to foreign authorities, as appropriate, as the client.

5. Thinking of files you have been involved with in the last two years, how often have you or a member of the legal team on the file...

	Frequently (80-100% of files)	Regularly (50-79% of files)	Occasionally (25-49% of files)	Rarely (1-24% of files)	Never (0%)	Don't know	Not applicable to my work
Consulted with the client department to understand the nature of the legal problem?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provided the client department with updates/progress reports?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Involved the client department in the development of legal strategies, positions and/or options?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Discussed policy and/or program objectives with the client department?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Worked with the client department to identify legal risks, their impact, and/or options to manage them?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consulted with specialized sectors within the Department of Justice (e.g., Public Law, Legislative Services)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consulted or briefed the client department's DLSU?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consulted with other potentially affected departments/agencies?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Briefed or reported on your files to senior management in the Litigation Branch?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Briefed or reported on your files to the Associate DM or DM's office?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Briefed or reported on your files to the Minister's office?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

6. Thinking of files you have been involved with in the last two years, how often has your primary contact regarding a file been with...

	Frequently (80-100% of files)	Regularly (50-79% of files)	Occasionally (25-49% of files)	Rarely (1-24% of files)	Never (0%)	Don't know	Not applicable to my work
The client department's DLSU?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The client department directly?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7. Please indicate your overall experience working with the Litigation Branch areas listed below. Feel free to explain or qualify your response in the space provided.

	Excellent	Above average	Average	Below average	Poor	Don't know	Not applicable to my work
Civil Litigation Section	<input type="radio"/>						
Management of Class Actions and Mass Litigation Unit	<input type="radio"/>						
Agent Affairs (LPMC)	<input type="radio"/>						
National Security Group	<input type="radio"/>						
International Assistance Group	<input type="radio"/>						
National eDiscovery and Litigation Support Services	<input type="radio"/>						
Office of the ADAG	<input type="radio"/>						

Comments:

8. Please indicate your overall experience working with the areas of Justice listed below. Feel free to explain or qualify your response in the space provided.

	Excellent	Above average	Average	Below average	Poor	Don't know	Not applicable to my work
Departmental Legal Services Units	<input type="radio"/>						
Regional litigators	<input type="radio"/>						
Specialized sectors (e.g., Public Law, Legislative Services)	<input type="radio"/>						
Portfolios (e.g., Aboriginal Affairs, PSDI, BRLP, Central Agencies)	<input type="radio"/>						
DM and/or Associate DM Offices	<input type="radio"/>						

Comments:

9. When you work together on a file, are the roles and responsibilities clear between your area of the Litigation Branch and the areas of Justice listed below?

	Very clear	Clear	Not very clear	Totally unclear	Don't know	Not applicable to my work
Departmental Legal Services Units	<input type="radio"/>					
Regional litigators	<input type="radio"/>					
Specialized sectors (e.g., Public Law, Legislative Services)	<input type="radio"/>					
Portfolios (e.g., Aboriginal Affairs, PSDI, BRLP, Central Agencies)	<input type="radio"/>					

10. Thinking of files you have been involved with in the last two years, how would you assess the work of the Litigation Branch in the following areas?

	Excellent	Above average	Average	Below average	Poor	Don't know	Not applicable to my work
Responding to legal service requests by clients in a timely manner	<input type="radio"/>						
Meeting client deadlines	<input type="radio"/>						
Meeting internal Department of Justice deadlines	<input type="radio"/>						
Providing legal services in both official languages	<input type="radio"/>						
Involving/consulting with specialized sectors within the Department of Justice (e.g., Public Law, Legislative Services)	<input type="radio"/>						
Involving/consulting with regional offices when appropriate	<input type="radio"/>						
Involving/consulting with the client department's DLSU	<input type="radio"/>						
Involving/consulting with the client department directly	<input type="radio"/>						
Involving/consulting with other potentially affected departments/agencies	<input type="radio"/>						
Providing timely assessments of legal risk so that it can be factored into decision-making	<input type="radio"/>						
Reassessing legal risk when factors that affect the level of risk change	<input type="radio"/>						

11. Please provide your level of agreement with the following statements. The Litigation Branch...

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	Not applicable to my work
Has structures in place to ensure that Justice provides consistent legal advice.	<input type="radio"/>						
Has structures in place to ensure that consistent legal positions are adopted nationally.	<input type="radio"/>						
Has structures in place to ensure that risks are assessed in a consistent manner across portfolios and regions.	<input type="radio"/>						
Has contributed to enhancing clients' understanding of legal issues and their implications.	<input type="radio"/>						

12. Please provide your level of agreement with the following statements. The IAG...

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	Not applicable to my work
Informs ministerial decisions.	<input type="radio"/>						
Effectively manages its delegated functions.	<input type="radio"/>						

13. Please provide your level of agreement with the following statements. The NSG...

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	Not applicable to my work
Informs ministerial decisions.	<input type="radio"/>						
Effectively manages its delegated functions.	<input type="radio"/>						

14. To what extent do you find the following tools, structures and processes to be useful to your work?

	Very useful	Useful	Neutral	Not very useful	Not at all useful	Don't know	Not applicable to my work
Legal risk management (LRM) assessment grid/matrix	<input type="radio"/>						
File assignment process	<input type="radio"/>						
Practice directives	<input type="radio"/>						
Early Warning Notes	<input type="radio"/>						
eDiscovery Software	<input type="radio"/>						

	Very useful	Useful	Neutral	Not very useful	Not at all useful	Don't know	Not applicable to my work
Justipedia	<input type="radio"/>						
Internal mentoring practices	<input type="radio"/>						
Practice groups	<input type="radio"/>						
Civil Litigation Section Litigation Committee	<input type="radio"/>						
National Litigation Committee	<input type="radio"/>						
Departmental policies	<input type="radio"/>						

15. Are there other tools or structures that you have found useful in managing your work?

- No other tools/structures
- Other, please specify: _____
- Other, please specify: _____

16. In your opinion, are the services of the National eDiscovery and Litigation Support group utilized to the extent they should be?

- Over-utilized
- Adequately utilized
- Under-utilized
- Don't know

(If Over-utilized is selected) Please explain:

(If Under-utilized is selected) Please explain, including what obstacles may exist in the use of the Centre's services:

17. How would you describe the available training opportunities in terms of...

	Excellent	Very Good	Adequate	Fair	Poor	Don't know	Not applicable to my work
Amount of training?	<input type="radio"/>						
Relevance to your work?	<input type="radio"/>						

18. In your opinion, what gaps exist in the training available, if any?

- No gaps exist

19. Use of Dispute Resolution (DR) includes negotiated settlement of files, as well as other DR processes such as mediation and pre-trial settlement. Thinking of the files you have been involved with in the last two years, how often have you or a member of the litigation team on the file...

	Frequently (80-100% of files)	Regularly (50-79% of files)	Occasionally (25-49% of files)	Rarely (1-24% of files)	Never (0%)	Don't know	Not applicable to my work
Considered using DR options?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Used neutral evaluation (or non-binding arbitration) to try to resolve/settle a file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Used negotiation to try to resolve/settle a file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Used voluntary mediation to try to resolve/settle a file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Used court-mandated mediation to resolve/settle a file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

20. In your opinion, are Dispute Resolution processes...

- Over-utilized
- Adequately utilized
- Under-utilized
- Don't know
- Not applicable to my work

(If Over-utilized is selected) Please explain:

(If Under-utilized is selected) Please explain, including what obstacles may exist in the use of DR:

21. In the last two years, have you worked with legal agents?

- Yes
- No

22. (If yes to Q21) Did you experience any issues with agent performance?

- Yes
- No

23. (If yes to Q22) What, if any, remedial actions were taken to rectify the issues?

24. (If yes to Q21) Thinking of files you have been involved with in the last two years, how often...

	Frequently (80-100% of files)	Regularly (50-79% of files)	Occasionally (25-49% of files)	Rarely (1-24% of files)	Never (0%)	Don't know	Not applicable to my work
Were requests for agents made in appropriate circumstances?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Were requests for agents made in a timely manner?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did counsel provide adequate business cases for the use of legal agents without the need for LPMC intervention/feedback?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Did counsel follow the policies and directives related to the use of legal agents without the need for LPMC intervention/feedback?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

25. (If yes to Q21) Thinking of your experience working with Agent Affairs in the assignment of legal agents to files, to what extent do you agree with the following statements?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	Not applicable to my work
Provision of a business case for requesting a legal agent was a useful process.	<input type="radio"/>						
Requests for legal agents were handled in a timely manner.	<input type="radio"/>						
Legal agents with appropriate experience were assigned to the file.	<input type="radio"/>						
Policies and directives related to the use of legal agents are clear.	<input type="radio"/>						
Policies and directives related to the use of legal agents are easy to apply.	<input type="radio"/>						
The processes in place have brought transparency to the use of legal agents.	<input type="radio"/>						

26. In your opinion, are legal agents...

- Over-utilized
- Adequately utilized
- Under-utilized
- Don't know

(If Over-utilized is selected) Please explain:

(If Under-utilized is selected) Please explain, including what obstacles may exist in the use of agents:

27. In your opinion, does the use of legal agents primarily...

- Increase the cost of legal services
- Decrease the cost of legal services
- Don't know

(If Increase or Decrease is selected) Please explain:

28. Thinking of files you have been involved with in the last two years, how often...

	Frequently (80-100% of files)	Regularly (50-79% of files)	Occasionally (25-49% of files)	Rarely (1-24% of files)	Never (0%)	Don't know	Not applicable to my work
Were files completed in a timely manner without undue delays within the control of the Branch?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Were files conducted in a cost-effective manner?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Were files assigned to the appropriate level of counsel given the legal risk/complexity of the file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Were tasks allocated appropriately (level and experience) within the team assigned to manage the file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Were appropriate levels of mentoring and/or supervision provided to support the management of your files?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

29. (Counsel only) Thinking of files you have been involved with in the last two years, how often have you used paralegals in the following activities?

	Frequently (80-100% of the time)	Regularly (50-79% of the time)	Occasionally (25-49% of the time)	Rarely (1-24% of the time)	Never (0%)	Don't know	Not applicable to my work
Document production	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Initial drafts of pleadings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Initial draft of written submissions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Initial draft of questions for discovery	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Preparation of affidavits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Preparation of responses to undertakings given at discovery	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Frequently (80-100% of the time)	Regularly (50-79% of the time)	Occasionally (25-49% of the time)	Rarely (1-24% of the time)	Never (0%)	Don't know	Not applicable to my work
Preparation of documents for submission to PCO for certification of Cabinet confidences	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Redaction of documents for privileges (national security and solicitor-client privilege)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interviewing potential witnesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review of extradition/MLAT requests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review of public interest immunity claims and redactions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

30. (Paralegals only) Thinking of files you have been involved with in the last two years, how often have you been engaged in the following activities?

	Frequently (80-100% of the time)	Regularly (50-79% of the time)	Occasionally (25-49% of the time)	Rarely (1-24% of the time)	Never (0%)	Don't know	Not applicable to my work
Document production	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legal research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Initial drafts of pleadings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Initial draft of written submissions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Initial draft of questions for discovery	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Preparation of affidavits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Preparation of responses to undertakings given at discovery	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Preparation of documents for submission to PCO for certification of Cabinet confidences	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Redaction of documents for privileges (national security and solicitor-client privilege)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interviewing potential witnesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review of extradition/MLAT requests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review of public interest immunity claims and redactions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

31. (Paralegals only) Are there additional tasks that you believe you could perform to contribute more efficiently to the Litigation Branch?

- No additional tasks
- Other, please specify: _____
- Other, please specify: _____

32. (Paralegals only) Thinking of files you have been involved with in the last two years, how often have you felt that counsel spend time on tasks paralegals could do?

- Frequently (80-100% of files)
- Regularly (50-79% of files)
- Occasionally (25-49% of files)
- Rarely (1-24% of files)
- Never (0%)
- Don't know
- Not applicable to my work

33. Thinking of files you have been involved with in the last two years, how often have you worked with the client to monitor and/or conserve costs by:

	Frequently (80-100% of files)	Regularly (50-79% of files)	Occasionally (25-49% of files)	Rarely (1-24% of files)	Never (0%)	Don't know	Not applicable to my work
Providing an estimate of expected costs?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sharing the work (e.g. having the client do initial drafts of documents)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If other, please specify:

34. What factors contribute to the Litigation Branch's ability to provide timely, high-quality, cost-effective legal services?

- Don't know

35. What factors constrain the Litigation Branch's ability to provide timely, high-quality, cost-effective legal services?

- Don't know

36. Do you have any other suggestions for improving the legal services provided by the Litigation Branch?

- No suggestions