



**CENTRAL AGENCIES PORTFOLIO  
EVALUATION  
Final Report**

**June 2016**

**Evaluation Division  
Corporate Services Branch**





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## ABBREVIATIONS

ADM	Assistant Deputy Minister
ADMO	Assistant Deputy Minister's Office
CAP	Central Agencies Portfolio
CLEL	Centre for Labour and Employment Law
DR	Dispute resolution
DRAP	Deficit Reduction Action Plan
FAA	<i>Financial Administration Act</i>
FCAC	Financial Consumer Agency of Canada
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FTE	Full-time equivalents
GLS	General Legal Services
LEL	Labour and employment law
LRM	Legal risk management
LSB	Legislative Services Branch
LSU	Legal Service Unit
OSFI	Office of the Superintendent of Financial Institutions
PLS	Public Law Sector
PSC	Public Service Commission
PSLREB	Public Service Labour Relations and Employment Board
PSEA	<i>Public Service Employment Act</i>
PSES	Public Service Employee Surveys
TB	Treasury Board
TBS	Treasury Board Secretariat
TCD	Tax Counsel Division





## **EXECUTIVE SUMMARY**

### **1. Introduction**

This document constitutes the final report for the evaluation of the Central Agencies Portfolio (CAP), one of five portfolios within the Department of Justice Canada (Justice or the Department) dedicated to providing legal services to government departments and agencies. In accordance with the 2009 Treasury Board *Policy on Evaluation*, the evaluation addresses both the relevance and the performance of the Portfolio. The evaluation covers the period from 2010-11 to 2014-15.

### **2. Description of the Portfolio**

The CAP provides legal advisory, litigation, and legislative services to its client departments and agencies, and it manages horizontal legal policy and issues related to the central agency functions of the federal government. The CAP has two main components: the Assistant Deputy Minister's Office (ADMO) and the seven departmental Legal Service Units (LSUs).

As of March 31, 2015, the CAP had a total of approximately 88 full-time equivalents (FTEs). The LSUs had 75.66 FTEs, the ADMO had 6.95, and the regional offices had 5.83 FTEs.<sup>1</sup> The Department allocated approximately \$18 million to the CAP during that year.

### **3. Methodology**

The evaluation made use of multiple lines of evidence in order to address the questions included in the evaluation matrix. The methodology included four lines of evidence: a document and data review, key informant interviews, a survey of legal counsel, and case studies.

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<sup>1</sup> The CAP does not have regional counsel assigned to it as other portfolios do, but does use the services of regional counsel. To estimate the number of regional counsel FTEs for the CAP, iCase data for the total hours devoted to CAP clients in each region were divided by the 1,300 hours per FTE standard.

## **4. Evaluation Findings**

### **4.1. Relevance**

#### **Continued Need for the CAP services**

The evaluation confirmed the continued need for the CAP based on the role it serves within the federal government, the type of expertise it offers, and the ongoing demand for its services. By assigning counsel to clients by portfolio, the Department aligns counsel's expertise with the legal needs of clients. For the CAP, the legal expertise of counsel is in areas that serve the central agency functions, such as financial institutions, public service employment law, labour law, tax law, Crown law, financial law, money laundering, terrorist financing, federal budget, and machinery of government. In addition, the portfolio structure assists with consistency in approach, and it can facilitate information sharing and collaboration, as appropriate. The demand for the CAP's services, measured by hours spent on actively managed files, has remained fairly steady, reflecting the continued need for the Portfolio's services.

#### **Responding to Federal Government Priorities**

The CAP supports and upholds government priorities. There is a close alignment between the Portfolio's work and federal priorities and commitments as outlined in Speeches from the Throne and Budgets. In particular, the areas of tax policy, efforts to combat terrorism, legislation related to pension plans, and initiatives related to "good governance and sound stewardship to enable efficient and effective services to Canadians" all require legal service support from the CAP. The evaluation evidence shows that the Portfolio has responded to its clients' legal needs, which evolve in order to respond to changes in government priorities.

#### **Alignment with Departmental Strategic Outcomes**

Evaluation results also indicate that the CAP supports the Department in meeting its strategic priorities. The Portfolio supports the first strategic outcome of "*A fair, relevant and accessible Canadian justice system*" through exercising its responsibilities under the *Department of Justice Act* to ensure that the federal government acts in accordance with the law. The Portfolio contributes to the Department's fulfillment of its second strategic outcome — "*A federal government that is supported by high-quality legal services*" — through its provision of legal advisory, litigation and legislative services to its client departments and agencies.

## **4.2. Design of the Portfolio**

Overall, the evaluation evidence indicates that the CAP structure is appropriate and supports its objective of high-quality legal services, while indicating an area of potential improvement.

Strengths include the ADM's unique dual role as head of the CAP and as ADM of the Finance Canada Law Branch. Consequently, the ADM reports to the deputy ministers of two departments — Justice and Finance.<sup>2</sup> Almost all CAP counsel consider this dual role to be beneficial, as it gives the ADM a broader perspective that can inform the Portfolio's work.

The Portfolio also has the appropriate mix of departments and agencies. Two central agencies (Finance and the Treasury Board) are in the Portfolio, and the other departments and agencies are natural associates as they either report directly to one of the central agencies' ministers or have a link based on the subject matter of their work.

The other areas of Justice complement and support the Portfolio's work, but do not duplicate or overlap its legal services. The Portfolio LSUs seek assistance from the specialized sections of Justice when they need subject matter expertise for novel or complex matters in those legal areas. Within the CAP, while legal issues may overlap among client departments or agencies, the Portfolio takes measures to ensure that there is no duplication of efforts or inconsistency in its legal advice.

The only potential limitation identified by the evaluation was the information flow from the Portfolio to counsel in the LSUs. The percentage of CAP respondents who believe that essential information flows effectively from senior management to staff has decreased from 66% in 2008, to 49% in 2011, to 46% in 2014. In interviews, some CAP counsel commented that the annual meeting with the ADM was too infrequent and, as a result, the quality of information sharing was very dependent on the environment in the individual LSU.

## **4.3. Outcomes Achieved**

### **Legal Risk is Effectively Managed**

Multiple lines of evidence indicate that legal risk management is occurring and that clients have a high level of satisfaction with the Portfolio's work in the identification, assessment and

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<sup>2</sup> The ADM also provides support to the Secretary of the Treasury Board on select matters.

management of the legal risk on files. However, an analysis of data from iCase, along with observations from key informant interviews, indicate that LSU counsel may be experiencing some difficulties in complying with iCase reporting requirements related to risk assessment with respect to its advisory and legislative files. Few files (3% of advisory files and 2% of legislative files) have numeric risk ratings. Most non-litigation files have received a legal risk assessment of “too remote to materialize in the near future”. According to key informants, the reason for this rating is that until action on the legal advice is taken, the legal risk cannot be assessed. Whether the use of “too remote” for almost all advisory and legislative files aligns with the expectations of the Department for the use of the new legal risk management protocol is an issue for the Department to determine.

### **Provision of High-Quality Legal Services**

Evaluation evidence confirms that the CAP provides timely, high-quality services to client departments and agencies. Clients considered counsel to be responsive to their requests and met their deadlines, despite resource pressures. In terms of responsiveness, the one area of potential improvement, based on the client feedback survey, was in providing updates or progress reports, although it should be noted that overall scores for responsiveness were high. Clients also considered the Portfolio to have a good understanding of their legal issues. The expertise of counsel and the stability of personnel were considered key strengths of LSUs and assisted with counsel’s detailed and sophisticated understanding of clients’ legal issues. The importance of stability of personnel also points to a potential future risk as the Public Service Employee Surveys results indicate a higher level of uncertainty among CAP counsel about remaining in their position, compared to Justice counsel generally. Related to this concern is the suggestion provided by a few clients that the Portfolio provide more written opinions so that institutional memory is not lost when counsel leave or retire.

CAP counsel believe they have the structures and tools to provide high-quality legal advice, although training is a potential area for improvement. Based on counsel survey results, about one-third of respondents considered the amount of training available and the relevance of training to their work to be fair or poor.

### **Contribution to Clients’ Program and Policy Development**

The evaluation found that the Portfolio LSUs contribute to policy and program development by making their client departments aware of legal risks and their legal options. In addition, the level of counsel engagement and consultation with the client is an important factor in whether clients will consider counsel’s legal advice. In interviews and in the client feedback survey, clients

reported that the Portfolio adequately involves clients in the development of legal strategies and positions.

### **Support of Clients' Legislative Needs**

Most Portfolio LSUs are not directly involved in drafting legislation, other than the Finance – Tax Counsel Division. Instead, most LSUs assist clients by drafting instructions and liaising with the Legislative Services Branch. The evaluation found that clients were satisfied with the Portfolio's support of their legislative needs.

### **Effective Resolution of Litigation**

Most lines of evidence indicate that the Portfolio appropriately uses dispute resolution (DR) processes. Mediation is suggested when appropriate and when counsel pursue negotiations on files. CAP counsel noted that it can be difficult to determine whether to use DR on some matters, as counsel cannot conduct a complete risk assessment until more information is available, which is usually later in the case. Based on iCase data, many CAP litigation files are not appropriate for DR, and few cases are settled using DR. Compared to the departmental rate of settlement (23%), the CAP settles few files (15% of regional litigation files and 1% of LSU litigation files). For over half of the Portfolio's closed LSU litigation files, there was no indication in iCase of whether DR was used; however, it is possible that a large complement of labour and employment litigation may well have been the subject of attempts to settle prior to their assignment to the TBS LSU.

### **Protection of the Interests of the Crown**

The Portfolio protects the interests of the Crown by ensuring consistent legal advice and developing legal strategies using a whole-of-government perspective. The CAP does not have many multi-departmental files. Clients who had experienced multi-departmental files believe that Justice was effective in speaking with one voice and that advice was consistent. The Portfolio and the Department overall have tools and structures to assist with providing consistent advice that takes into account the broader, government-wide perspective, such as the specialized sections and the National Litigation Committee. Clients and counsel also agree that consultations with specialized sections of Justice and with other LSUs occur as appropriate. A few key informants noted that the CAP counsel's communication with regional litigators and other LSUs could be improved, as central agencies sometimes assume they have the final decision on files even when they are not the lead on them. This situation was described as having improved in recent years.

#### **4.4. Efficiency and Economy**

The Portfolio has implemented process optimization measures to maximize the achievement of its results, while minimizing the use of its resources. The difficulties for the Portfolio are in demonstrating the efficiency gains from these activities.

In particular, the Portfolio has made efforts to screen client requests, in order to ensure they concern legal issues and to prioritize urgent matters; to use iCase to monitor files; to apply project management techniques to files; and to increase the use of paralegals. Some of these efforts are still in their early stages (e.g., use of paralegals), but for others the impacts cannot yet be measured. For example, applying project management by assigning senior counsel to high-complexity files and junior counsel to low-complexity files cannot be demonstrated as few files have a complexity rating (high, medium or low). As a result, it cannot yet be demonstrated whether this type of counsel assignment has resulted in more efficient handling of cases and/or reduced costs to its clients. Over the five-year period covered by the evaluation, the Portfolio reduced its LP FTEs by 3.8.

The Centre for Labour and Employment Law (CLEL) is intended to create efficiencies for the Department by offering expertise in labour and employment law matters. The CLEL's development is too recent to demonstrate impacts, but Portfolio reports indicate early success in reducing time spent on labour and employment law issues by counsel outside the Treasury Board Secretariat LSU.

# 1. INTRODUCTION

The Central Agencies Portfolio (CAP or the Portfolio) is one of five portfolios within the Department of Justice Canada (Justice or the Department) dedicated to providing legal services to government departments and agencies. The CAP provides legal services to its client departments and agencies, and it manages horizontal legal policy and issues related to the central agency functions of the federal government. This document constitutes the final report for the evaluation of the Portfolio.

## 1.1. Scope and Objectives of the Evaluation

This is the first time that the CAP has been formally evaluated. This evaluation was completed in accordance with the Treasury Board *Policy on Evaluation*, which requires departments to evaluate all direct program spending on a five-year cycle.<sup>3</sup> The evaluation covers both the relevance of the services offered by the Portfolio and the extent to which the Portfolio has efficiently and effectively achieved its expected results.

The scope of the evaluation includes all activities undertaken by the Portfolio between 2010-11 and 2014-15.<sup>4</sup> This includes activities conducted by the departmental Legal Services Units (LSUs) included in the Portfolio, activities that regional offices of Justice carried out for the Portfolio's client departments and agencies, and activities undertaken by the Assistant Deputy Minister's Office (ADMO).<sup>5</sup>

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<sup>3</sup> Treasury Board of Canada. (2013). *Policy on Evaluation*, Ottawa, s. 6.1.8 a).

<sup>4</sup> The Civil Litigation Section of the Litigation Branch, sections of the Public Law Sector, and the Legislative Services Branch provide legal services to the Portfolio client departments and agencies. The work of these areas of the Department of Justice Canada is covered by separate evaluations.

<sup>5</sup> On February 4, 2016, organizational changes were announced within the Department of Justice Canada. The litigation work carried out by the regional offices is now managed within the National Litigation Section. Additionally, the Legislative Services Branch is now part of the Public Law Sector, and some LSUs, including within the CAP, have been merged. The organizational descriptions included and referred to within the report are reflective of the Department's structure prior to the reorganization.

The evaluation was conducted between May 2015 and March 2016. The Department's Evaluation Division directed the evaluation, with the support of a working group composed of representatives from the ADMO and some of the Portfolio's LSUs.

## **1.2. Structure of the Report**

This report contains six sections, including this introduction. Section 2 provides a description of the Portfolio. Section 3 describes the methodology used to address the set of evaluation issues and questions. Section 4 summarizes the key findings that have emerged from the data collection process, Section 5 provides the overall evaluation conclusions, and Section 6 provides the recommendations and the management response.



## **2. DESCRIPTION OF THE CENTRAL AGENCIES PORTFOLIO**

This section includes a brief description of the Portfolio, including its components and resources.

### **2.1. Overview**

The CAP manages legal issues related to the central agency functions of the federal government. More specifically, the Portfolio:

- provides legal expertise with respect to laws governing financial institutions, securities regulation, and the Customs Tariff and trade remedies; tax law; public service labour and employment law; the law relating to public expenditures, government operations, and public management; Crown corporations; money laundering and terrorist financing; federal transfers to the provinces; and the federal budget;
- represents the Treasury Board (TB) as the employer as well as Deputy Heads and Separate Agencies before the Public Service Labour Relations and Employment Board (PSLREB) (created in 2014 when the Public Service Labour Relations Board and the Public Service Staffing Tribunal merged); the Occupational Health and Safety Tribunal Canada; the Public Servants Disclosure Protection Tribunal; the Federal Court; the Federal Court of Appeal; and represents the Public Service Commission before the PSLREB; and
- provides certain drafting services in collaboration with the Legislative Services Branch (LSB) in preparing legislation and regulations, such as the federal budget.

The CAP is responsible for providing legal advisory services, including providing legal opinions, risk analyses, and legal training and seminars to clients and employees. It also provides litigation services before all court levels and administrative and inquiry bodies. The Portfolio offers legislative services including drafting tax legislation, regulations and statutory instruments, and provides support to clients that are working with the LSB on legislation and regulations. It supports policy development and provides legal services related to clients' governance and internal operations. In addition, it provides legal advice in connection with compliance investigations and proceedings, protection of confidential financial information, and consumer education programs.

Ultimately, the Portfolio is expected to deliver high-quality legal support and services to its client departments and agencies, in accordance with the *Department of Justice Act*.<sup>6</sup> This work is expected to contribute to the Department's strategic outcome "A federal government that is supported by high-quality legal services".<sup>7</sup> A detailed description of the CAP's logic model is included in Appendix A.

## **2.2. Portfolio Components**

### **2.2.1. Assistant Deputy Minister's Office (ADMO)**

The Assistant Deputy Minister (ADM) holds a senior management position in two departments — a unique, dual role. As head of the CAP, the ADM is part of the Department of Justice with all seven of the CAP LSUs reporting to her. In addition, she carries the responsibilities of the ADM of the Finance Canada Law Branch. As chief legal advisor to the Department of Finance, the ADM is a member of the client executive team, and oversees the work of four divisions, including the General Legal Services Division and the Tax Counsel Division (both of which are also LSUs within the CAP), the Values and Ethics Division, and the Access to Information and Privacy Division, which are exclusively Department of Finance organizations.<sup>8</sup>

### **2.2.2. Departmental Legal Services Units**

Each CAP LSU provides legal services to its respective client department, agency or office. Responsibilities for each CAP LSU are presented below.

#### **Department of Finance – General Legal Services (GLS)**

GLS provides specialized legal and strategic advice to the Department of Finance, and the federal government as a whole, on a variety of matters, including the regulatory framework governing banks and other federally regulated financial institutions; Canadian payment systems; domestic and international borrowings by the federal government; the financial management of the Government of Canada; securities regulation; the Customs Tariff, trade remedies, and financial services trade; federal transfers to provinces and territories; and privatization initiatives.

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<sup>6</sup> *Department of Justice Act*, R.S.C., 1985, c. J-2, s. 5.

<sup>7</sup> Department of Justice Canada. (2014). *Report on Plans and Priorities 2014-2015*. Ottawa, p. 32.

<sup>8</sup> Department of Justice Canada 2013-2014 Integrated Business Plan.

Additionally, GLS provides legal support in connection with the federal government's fiscal policy, most notably during the preparation of the federal budget, and in the drafting of legislation to implement budget measures where necessary. As well, GLS provides legal advice and assistance to the Department of Finance on a variety of financial and commercial transactions and legislative initiatives of other federal departments or agencies when they could have a significant impact on the fiscal framework. Finally, GLS provides legal advisory and litigation support services with respect to significant litigation implicating the Department of Finance or affecting its business lines and the fiscal framework.

### **Department of Finance – Tax Counsel Division (TCD)**

TCD provides advice on the legal consequences and implications of tax policy decisions and prepares amendments to tax legislation and related statutory instruments. Responsibilities include providing legal support throughout the financial cycle, mainly to the Tax Policy Branch (Finance), on proposals for inclusion in the federal budget and the Update of Economic and Fiscal Projections, as well as providing advice on parliamentary processes, procedures and conventions as they relate to money bills. Support is also provided in drafting budget implementation legislation and regulations. The Division is tasked with examining proposed statutory instruments under the *Statutory Instruments Act*, monitoring court decisions in tax matters for purposes *inter alia* of litigation risk management, and following developments in provincial law. TCD provides legal support in relation to tax agreements with provinces (including agreements for the harmonization of Provincial Sales Tax with the Goods and Services Tax), territories and Indigenous groups.

### **Public Service Commission (PSC) Legal Services Unit**

The PSC LSU provides legal advisory services in connection with employment law. The Unit provides specialized legal advice and services to the PSC as well as to other LSUs across the federal government, which include providing legal opinions on the *Public Service Employment Act* (PSEA), the Public Service Employment Regulations, the Political Activities Regulations, the Public Service Official Languages Exclusion Order, and the interrelation of those pieces of legislation with other relevant legislation in the area of employment law, such as the *Canadian Charter of Rights and Freedoms*, the *Employment Equity Act*, the *Canadian Human Rights Act*, the *Financial Administration Act*, the *Official Languages Act*, and the *Access to Information and Privacy Acts*.

PSC LSU counsel provide:

- legal advice on subjects such as merit and non-partisan appointments, the administration of priority entitlements, audits, investigations, and corporate matters;
- legal advice concerning PSEA provisions respecting the political activities of public service, including instances where public servants wish to be candidates in elections;
- legal advice in areas of commercial, technology and contract law in support of PSC activities related to the provision of staffing services to organizations;
- legal advice to support and implement the clients' policy decisions and policy development;
- legislative support for the drafting of regulations and other statutory instruments, such as exclusion approval orders;
- litigation support for matters before the courts, most often judicial review applications;
- representation for the PSC before the PSLREB; and
- training on employment law to clients and counsel within the Department.

The provision of these legal services requires an understanding not only of the PSC's responsibilities, but also of those with related responsibilities, including Treasury Board Secretariat (TBS), the Office of the Chief Human Resources Officer, and deputy heads.

### **Treasury Board Secretariat (TBS) Legal Services Unit**

The TBS LSU provides legal advice to the Treasury Board (TB), the President of the TB, and the TBS in relation to the TB's role as "management board" and "budget office" for the Government of Canada and "employer" for the core public administration. In addition, the LSU provides specialized legal advice services to the Canada School of Public Service and is consulted regularly by other LSUs from departments across government. TBS LSU counsel are responsible for conducting labour and employment law litigation involving the TB, as the employer and deputy heads of all departments, taking into account Justice's responsibility to protect the whole-of-government legal interests.<sup>9</sup> Legal advice is provided in regard to policy development and other initiatives of the clients, the identification and assistance in the management of legal risks, and the enactment of legislation. Legal advice and litigation support are provided on a broad range of areas

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<sup>9</sup> MOU between the Department of Justice and the TBS (2009-14)

that relate to the TB's mandate, including public management law, commercial and corporate law, pensions, access to information and privacy, procurement, official languages, and public expenditures.<sup>10</sup> The LSU is responsible for the conduct of labour and employment litigation, mainly before the PSLREB and other administrative tribunals, the Federal Court, the Federal Court of Appeal, and the Supreme Court of Canada.

As part of its contribution to the Economic Action Plan 2012, the Department announced that the delivery of legal advisory services in relation to labour and employment law and access to information and privacy law will be streamlined and concentrated in two centres of expertise. One of the centres — the Centre for Labour and Employment Law (CLEL) — is co-located with the TBS LSU and began operations in January 2015. The CLEL provides guidance and expertise to counsel throughout the Department with a goal of providing more efficient advice in this area of law.

#### **Office of the Superintendent of Financial Institutions (OSFI) Legal Services Unit**

The OSFI LSU provides specialized legal services to support OSFI in carrying out its mandate to supervise federally regulated financial institutions and federally registered private pension plans to ensure that they are in sound financial condition. The Unit's work includes legal advisory as well as legislative drafting and litigation support activities. This includes providing legal opinions on issues such as the *Bank Act*, the *Insurance Companies Act*, the *Trust and Loan Companies Act*, the *Cooperative Credit Association Act*, the *Pension Benefits Standards Act, 1985*, and the *Office of the Superintendent of Financial Institutions Act*. The LSU offers legal advice and legal services, including providing legal advice on the interpretation of statutes, regulations and other legal instruments; preparing draft legislation, regulations, contracts, and other legal documents; and providing support to litigation lawyers acting on behalf of the OSFI.

#### **Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) Legal Services Unit**

FINTRAC is an independent agency that collects, analyzes, assesses and discloses information to assist with the detection, prevention and deterrence of money laundering and the financing of terrorist activities. The FINTRAC LSU assists with the development of laws and regulations related to FINTRAC's mandate and provides legal advisory services related to the *Canadian Charter of Rights and Freedoms*, the *Proceeds of Crime (Money Laundering) and Terrorist*

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<sup>10</sup> Department of Justice Canada 2013-2014 Integrated Business Plan

*Financing Act* and its Regulations, as well as administrative law and criminal law. In this context, the LSU provides services including the:

- provision of legal advice focussed on issues concerning the administration of, and compliance with, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
- administration of FINTRAC;
- negotiation and drafting of memoranda of understanding on:
  - the exchange of information with foreign financial intelligence units;
  - access to information contained in databases; and
- negotiation and drafting of agreements for the provision of goods and services to FINTRAC.

### **Financial Consumer Agency of Canada (FCAC) Legal Services Unit**

The FCAC LSU provides legal advisory services to the Agency on the interpretation and application of the consumer protection provisions of the *Bank Act*, the *Insurance Companies Act*, the *Trust and Loan Companies Act*, the *Cooperative Credit Associations Act*, and the associated regulations. The Unit also provides legal advice in connection with compliance investigations and proceedings, protection of confidential financial information, as well as the Agency's consumer education programs, such as financial literacy programs.<sup>11</sup>

## **2.3. Resources**

Table 1 presents the actual expenditures of the CAP over the last five fiscal years.<sup>12</sup> During this period, the expenditures of the Portfolio decreased by 0.22%.

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<sup>11</sup> Department of Justice Canada 2013-2014 Integrated Business Plan

<sup>12</sup> The expenditures include the ADMO, CAP LSUs, regional offices, and other sections of Justice (Civil Litigation Section and Public Law Sector) that have worked on CAP files.

**Table 1: CAP — Year-over-year Actual Expenditures (\$)**

	2010-11	2011-12	2012-13	2013-14	2014-15	% Change
Salary before Employee Benefit Plan	15,231,075	15,778,671	15,041,639	15,678,670	15,149,801	-0.53%
Employee Benefit Plan @ 20%	2,681,828	2,649,684	2,575,998	2,750,629	2,712,027	1.13%
<b>Sub-total: Salary expenditures</b>	<b>17,912,903</b>	<b>18,428,355</b>	<b>17,617,637</b>	<b>18,429,29</b>	<b>17,861,828</b>	<b>-0.29%</b>
Operating and maintenance	452,894	612,590	479,774	386,097	462,931	2.22%
<b>Total annual expenditures</b>	<b>18,365,797</b>	<b>19,040,945</b>	<b>18,097,411</b>	<b>18,815,396</b>	<b>18,324,759</b>	<b>-0.22%</b>

Source: Financial Situation Reports for CAP.

As of March 31, 2015, the CAP had a total of approximately 88 full-time equivalents (FTEs) in the categories shown in Table 2.<sup>13</sup> Between 2010-11 and 2014-15, if regional FTEs are not considered, the CAP had a decrease of 3.8 FTEs.

**Table 2: CAP Human Resources (FTEs)**

	2010-11	2011-12	2012-13	2013-14	2014-15	% Change
<b>Counsel (LP &amp; LC)</b>						
<b>ADMO</b>	<b>3.00</b>	<b>3.00</b>	<b>3.00</b>	<b>3.09</b>	<b>3.98</b>	<b>32.8%</b>
<b>LSUs</b>						
Finance (GLS and TCD)	21.22	22.92	21.54	21.65	20.97	-1.2%
FCAC	1.00	0.56	1.00	1.00	0.84	-16.1%
FINTRAC	3.90	3.32	3.37	3.91	2.93	-25.0%
OSFI	2.91	3.00	3.00	3.00	3.25	11.7%
PSC	11.07	10.40	9.58	9.10	9.83	-11.2%
TBS	39.45	41.86	39.24	39.22	37.60	-4.7%
<b>CAP LSUs sub-total</b>	<b>79.55</b>	<b>82.07</b>	<b>77.73</b>	<b>77.88</b>	<b>75.42</b>	<b>-5.2%</b>
<b>ADMO and LSU sub-total</b>	<b>82.55</b>	<b>85.07</b>	<b>80.73</b>	<b>80.97</b>	<b>79.40</b>	<b>-3.8%</b>
<b>Regional sub-total (includes ECs)</b>	<b>No data</b>	<b>No data</b>	<b>5.91</b>	<b>9.75</b>	<b>5.83</b>	<b>N/A</b>
<b>Support Staff</b>						
ADMO	2.63	3.74	4.40	2.45	2.97	12.9%
LSUs	0.58	0.36	0.72	0.57	0.24	-58.5%
<b>Support staff total</b>	<b>3.21</b>	<b>4.10</b>	<b>5.12</b>	<b>3.02</b>	<b>3.21</b>	<b>0.0%</b>
<b>TOTAL FTEs</b>	<b>N/A</b>	<b>N/A</b>	<b>91.76</b>	<b>93.52</b>	<b>88.44</b>	<b>N/A</b>

Sources: Regional data are from Cost Recovery Process Improvement. For all other data: FY 2010-11 are from the Financial Situation Report March 31, 2011 and FY 2011-15 are from Salary Forecasting Tool.

Note: The FTEs for the regional offices include paralegals. The paralegals used by CAP LSUs are employees of the client and not Justice; therefore, they are not included.

<sup>13</sup> The CAP does not have regional counsel assigned to it as other portfolios do, but the CAP does use the services of regional counsel. To estimate the number of regional counsel FTEs for the Portfolio, iCase data for the total hours devoted to CAP clients in each region were divided by the 1,300 hours per FTE standard.





### **3. METHODOLOGY**

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

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 CAP 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 discussion 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 publicly available sources. Departmental documents reviewed included Departmental Performance Reports; Reports on Plans and Priorities; the results from Public Service Employee Surveys (PSES)<sup>14</sup>, and Client Feedback Survey results.<sup>15</sup> Internal Portfolio documents, as well as publicly available information such as Budgets and Speeches from the Throne, were also reviewed.

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<sup>14</sup> The PSES is conducted every three years by Statistics Canada on behalf of the Office of the Chief Human Resources Officer. Surveys conducted in 2008, 2011 and 2014 were available for the evaluation. The survey had 53, 71, and 54 CAP respondents in 2008, 2011 and 2014 respectively. Statistics Canada. (2008, 2011, 2014). Public Service Employee Survey Results by Question for Central Agencies Portfolio.

<sup>15</sup> During the evaluation period, a Client Feedback Survey was conducted in September 2011 (with results reported in 2012). For the 2011 survey, 1,619 employees from the CAP's client organizations were invited to participate in the survey. A total of 881 respondents completed the survey, and of these, 446 identified that they had received

In addition to documents, the evaluation involved the review of iCase data from fiscal years 2010-11 to 2014-15; iCase is the Department’s integrated case management, timekeeping, document management, and reporting system.

### 3.2. Key Informant Interviews

The key informant interviews conducted for this evaluation addressed the majority of evaluation questions, and were a key line of evidence in gathering information on the need for the Portfolio, as well as the effectiveness of Portfolio 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 a total of 31 key informants. The specific categories of key informants are included in Table 3.

The following scale has been applied to report on interviews:



**Table 3: Key Informant Interviews**

Category	Number of Key Informants
ADMO and the CAP LSUs	14
Other areas of the Department of Justice (regional offices, specialized sections within the Public Law Sector, and the LSB)	7
Client departments or agencies	10
<b>TOTAL</b>	<b>31</b>

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legal services from the CAP in the 12 months preceding survey administration. Of these, 96% reported using CAP legal advisory services; 12% reported using litigation services; 14% reported using legislative drafting services; and 15% reported using regulatory drafting services. The respondents provided feedback on the accessibility, utility and timeliness of Portfolio legal services. Different aspects of the legal services provided by the Portfolio were rated on a 10-point Likert scale, with 10 indicating “completely satisfied” and 1 indicating “not at all satisfied”. In the survey report, the 2011 survey results were compared to results from the 2008 administration of the survey. Office of Strategic Planning and Performance Measurement (2012) Department of Justice Canada Client Feedback Survey: Central Agencies Portfolio.

### 3.3. Survey of Counsel

To gather the input of all Portfolio counsel, the evaluation included a confidential web-based survey. The survey was online for approximately two weeks — from September 23 to October 8, 2015. During this period, two reminders were sent to potential participants in order to increase the response rate. Invitations were sent to 64 counsel, but three counsel were away for the entire period of survey.<sup>16</sup> In total, 39 respondents completed the survey for a response rate of 64%. Once the survey was finished, answers to open-ended questions were coded and the survey data were analyzed using SPSS, a statistical software package.

Table 4 provides a profile of survey respondents. Generally, respondents were representative of the population of Portfolio counsel in terms of level, years with the Department, and where they work within the Portfolio.

**Table 4: Comparison of the CAP and Survey Respondent Profiles**

Characteristics	CAP		Survey Respondents	
	Number	%	Number	%
<b>What is your current classification?</b>	<b>(n=64)</b>		<b>(n=39)</b>	
Counsel				
LP-01	17	27%	6	15%
LP-02	30	47%	24	62%
LP-03	12	19%	5	13%
LP-04	2	3%	1	3%
LC-02	2	3%	2	5%
LC-03	1	2%	1	3%
<b>When did you first join the Department?</b>	<b>(n=64)</b>		<b>(n=39)</b>	
Less than a year ago	1	2%	--	--
Between 1 and 5 years ago	17	27%	10	26%
Between 6 and 10 years ago	16	25%	8	21%
More than 10 years ago	30	47%	21	54%
<b>Where do you work?</b>	<b>(n=64)</b>		<b>(n=39)</b>	
ADMO	2	3%	2	5%
Finance – GLS	8	13%	5	13%
Finance – TCD	6	9%	5	13%
FINTRAC LSU	2	3%	--	--

<sup>16</sup> The total CAP number of 64 is based on the number of counsel in the CAP at the time of the survey, but excludes the key informants as they were not asked to participate in both the interviews and the survey.

Characteristics	CAP		Survey Respondents	
	Number	%	Number	%
OSFI LSU	2	3%	1	3%
PSC LSU	8	13%	5	13%
TBS LSU	36	56%	21	54%
<b>Types of services performed regularly or frequently in work for Portfolio LSU *</b>	<b>(n=64)</b>		<b>(n=39) **</b>	
Advisory services			31	79%
Litigation services			7	18%
Legislative drafting			4	10%
Other			1	3%

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

*\*Information not available for all CAP counsel in the survey sample.*

*\*\*Multiple response allowed in survey; total sums to more than 100%.*

### 3.4. Case Studies

Nine case studies of Portfolio files were conducted to allow for an exploration of best practices and lessons learned. The files were a mix of litigation support, advisory, and legislative services files. For each case study, a file review template was completed. In addition, a total of 17 telephone interviews with LSU counsel in the Portfolio, counsel in other areas of Justice, and clients were conducted to supplement documented information and to allow for a more in-depth assessment of how the file was handled and the effectiveness of the working relationship between the Portfolio, other areas of Justice (i.e., other LSUs, regional offices, specialized sections within headquarters), and the client representatives. The case studies included two files for the TBS LSU, two files for Finance – GLS, two files for the PSC LSU, one file for Finance – TCD, one file for FINTRAC LSU, and one file for the OSFI LSU. The files included examples of advisory, litigation and legislative legal services.

### 3.5. Limitations

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

***Review of documents and data.*** In the planning stages of the evaluation, it was anticipated that iCase data could provide information on trends in legal risk and complexity of CAP files, and that it could support an analysis of the effectiveness of process optimization efforts related to file assignment based on legal risk and complexity levels. However, few files were given numeric legal

risk and complexity assessments in iCase. As a result, the evaluation could not use administrative data to address these evaluation issues, and had to rely on the perceptions of CAP counsel and clients.

***Interviews, case studies, and the survey.*** The interviews with key informants and case study participants, as well as the survey of counsel, 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.

***Mitigation strategy.*** The mitigation strategy for the above methodological limitations was to use multiple lines of evidence from different stakeholder groups, as well as different types of evidence in general. For example, the evaluation gathered information from the Portfolio as well as clients. In addition, the evaluation used both quantitative and qualitative data collection methods to answer evaluation questions. By triangulating the findings from these different sources, the evaluation was able to strengthen its conclusions despite the limitations.



## 4. EVALUATION FINDINGS

This section combines information from all lines of evidence and presents the findings according to the broad evaluation issues of relevance, design and performance.

### 4.1. Relevance

The evaluation considered the relevance of the CAP with respect to the continued need for the Portfolio's services; the responsiveness of the Portfolio to federal government priorities, roles and responsibilities; and the Portfolio's support of the Department's strategic outcomes.

#### 4.1.1. Continued Need

The evaluation confirmed the continued need for the Portfolio based on the role it serves within the federal government, the type of expertise it offers, and the ongoing demand for its services.

#### **The Rationale for Centralized Legal Services and the Portfolio Structure**

Under the *Department of Justice Act*, the Minister of Justice serves as the legal advisor to all federal departments and agencies and, as Attorney General of Canada, is responsible for all litigation for and against the Crown.<sup>17</sup> The centralization of legal services within the Department of Justice and the organization of those services into the various portfolios help ensure that the Minister of Justice can fulfill this dual role and meet the legal service needs of the federal government.

The rationale for the centralization of legal services was articulated in the early 1960s, when the Royal Commission on Government Organization (commonly referred to as the Glassco Commission) recommended that legal services, with few exceptions, be centralized in the Department of Justice. The Commission believed that integrated legal services through the Department of Justice would reduce duplication of effort and better ensure the independence of

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<sup>17</sup> S. 4 and 5(b) of the *Department of Justice Act*, 1985, c. J-2.

legal services from the operations of specific departments.<sup>18</sup> This rationale remains tightly bound to Justice's continued commitment to consistency (i.e., the Department speaks with one voice), a whole-of-government approach, and the protection of the best interests of the Crown.<sup>19</sup>

The portfolio organization of the Department is based on business lines and creates a structure where departments and agencies with common legal issues are grouped together. This structure assists with consistency in approach and can facilitate information sharing and collaboration, as appropriate, so that legal services are integrated and responsive to the needs of client departments and agencies, and of the government as a whole. Based on interviews and documents, the evaluation found that the legal services (advisory, legislative, litigation) provided by CAP LSUs provide meaningful support to the ongoing operations of their respective departments and agencies. As will be discussed further in Section 4.2, interviewees believe that the Portfolio structure helps organize Justice's legal resources so that client departments and agencies have counsel with the necessary expertise. In particular, the CAP offers legal expertise in relevant areas, such as financial institutions, public service employment law, labour law, tax law, Crown law, financial law, money laundering, terrorist financing, federal budget, and machinery of government.

### **Demand for CAP Services**

The evaluation found that the legal services (advisory, legislative, litigation) provided by LSUs and regional offices provide meaningful support to the ongoing operations of their respective departments and agencies served by the Portfolio. The CAP's work is primarily conducted by LSUs and constitutes advisory work. In 2014-2015, the Portfolio managed 4,148 files.<sup>20</sup> Of those files, 4,009 (or 97%) involved work of the LSUs, and 3,138 (or 77%) were advisory files.

Overall, demand, as reflected in the hours on actively managed files, has declined slightly during the time period covered by the evaluation. The decline is related primarily to legislative files

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<sup>18</sup> See Royal Commission on Government Organization. (1962). *Report 11: Legal Services*. Ottawa.

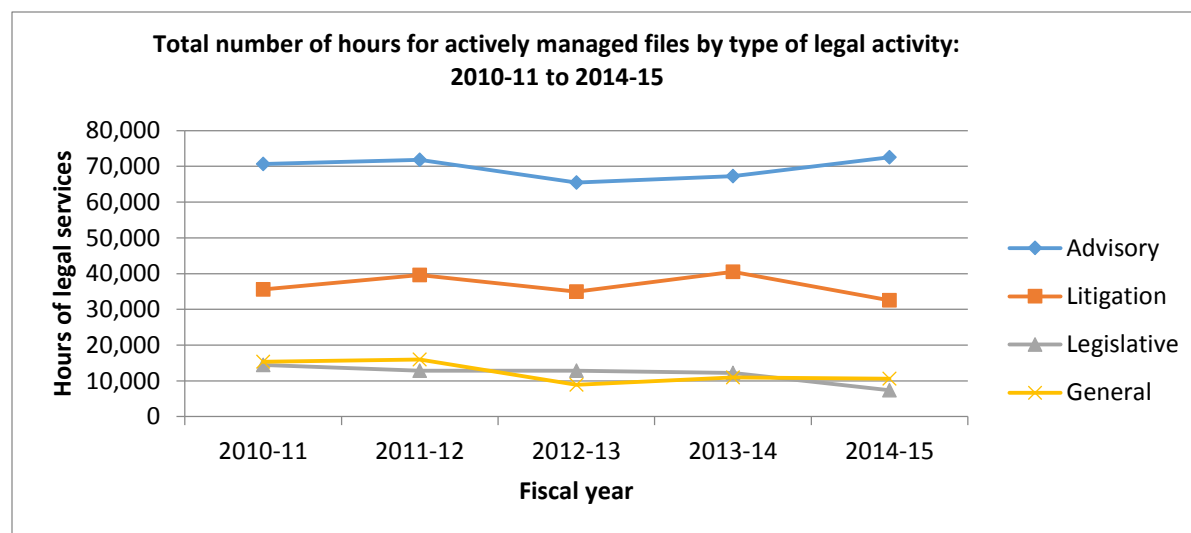
<sup>19</sup> The role of Justice as the mandatory provider of legal services for federal departments and agencies is also reflected in the Treasury Board of Canada's *Common Services Policy*. The Policy designates certain services as mandatory "when a government-wide interest or consideration prevails over, or coincides with, the interest of individual departments and agencies." For the Department of Justice Canada, the Policy notes that the legal services "are centrally controlled in order to assure overall consistency and integrity of approach". Treasury Board of Canada. *Common Services Policy*, s. 1

<sup>20</sup> The number of files is based on actively-managed files, which are files with at least five minutes of work recorded for that fiscal year.



(almost 50% since 2010-11) and general files (31%).<sup>21</sup> There is a slight decline in litigation as well (9%). Advisory, which represents the majority of the Portfolio’s work, has increased slightly (up 3% since 2010-11). The decline in hours mirrors the reduction of approximately four FTEs in the LSUs from 2010-11 to 2014-15.

**Figure 1: Total Number of Hours for Actively Managed Files by Type of Legal Activity: 2010-11 to 2014-15**



Source: iCase

Key informant interviews confirm the iCase results that the volume of work has not changed substantially in the last five years, although the volume of work is still considered heavy. The volume of work is also not uniform across the Portfolio, but has varied dependent on the LSU and even legal areas within the LSU. The modest decline in hours should also not be interpreted as a decline in need for CAP legal services. Some key informants noted that when the client agency was itself new or had new legislation, the demands for legal services were greater, not only in terms of legislative files, but also advice files. For example, when legislation is new, clients typically have more requests for legal advice concerning interpretation or application. In addition, newer agencies are often more risk-averse, which creates greater demand for legal services. Another example is client interactions with new independent tribunals or boards. PSC reported that requests for legal advice declined with respect to cases before the Public Service Staffing Tribunal and the Public Service Labour Relations Board (now merged into the PSLREB), as over

<sup>21</sup> Non-legal time devoted to client work is recorded under general files. This time includes activities such as performance reviews and human resources issues. Department of Justice, *National Time-Keeping Protocol, version 8.5* (April 2014).

the last decade the PSC has become more familiar with the legal issues given their experience with earlier cases. That said, any time clients embark on legislative changes, policy reviews and similar initiatives, or when major litigation arises, the demand for legal services will increase.

Based on the key informant interviews, whether the level of legal risk and complexity of the Portfolio's work has changed during the period of the evaluation also varies by LSU. Examples of files with high legal risk and/or complexity included Charter challenges to new legislation (e.g., litigation arising from the *Expenditure Restraint Act*), and major new policy initiatives in complex legal areas (e.g., venture capital investment) or that required extensive legislative amendments (e.g., 2013 changes to the *Public Service Labour Relations Act*). The evaluation cannot confirm these perceptions of key informants as most advisory, legislative and litigation files handled by LSUs do not have a numeric legal risk or complexity rating in iCase.

#### **4.1.2. Alignment with Federal Priorities, and Roles and Responsibilities**

The CAP has an ongoing role in supporting and upholding government priorities. Evidence indicates close alignment between the work of the Portfolio and documented federal priorities and commitments. Speeches from the Throne and Budgets released during the time period covered by the evaluation highlight goals and commitments that are directly relevant to the Portfolio's work. In particular, the areas of tax policy, efforts to combat terrorism, legislation related to pension plans, as well as initiatives related to "good governance and sound stewardship to enable efficient and effective services to Canadians", which is the TB's strategic outcome, all require legal service support from CAP. The following are examples of government commitments in these and other areas that relate to the work of the Portfolio:

- In the 2015 Speech from the Throne, the government identified among its priorities a tax cut for the middle class, enhancement of the Canada Pension Plan, and an emphasis on open and transparent government — areas that would involve TBS and Finance LSUs. In addition, the government noted its commitment to continue to work with allies to combat terrorism — an area that would involve FINTRAC (through legislation related to money laundering and terrorist financing).
- In the 2013 Speech from the Throne, the government committed to balanced budgets and reduced government cost, which would entail (among other things), reforming the way the government manages spending, reforming government pension plans, amending the *Public Service Labour Relations Act*, and increasing accountability of public service. A government priority was also "defending Canadian consumers", which would involve Portfolio LSUs such

as FCAC and OSFI, as the specific commitments that were made involved the banking and financial sector.

- In the 2011 Speech from the Throne, government priorities included balancing the budget and establishing new tax credits. The law and order agenda of the government also included crime and terrorism. Public service modernization, which is related to the government's "integrity and accountability" priority, also directly relates to the work of the Portfolio's departments/agencies.
- The Portfolio supports the development of the budget, which means its legal advice is part of every budget tabled during the time period covered by the evaluation.

According to key informants (CAP, clients, and other areas of Justice) and internal documents, CAP has responded to its clients' evolving legal service needs, which shift in order to be responsive to government priorities. Specific examples that demonstrated the responsiveness of the Portfolio to client needs were provided in interviews and internal documents, and included:

- assisting with the development and implementation of a comprehensive federal regulatory regime governing securities, which had a major impact on the type and volume of services provided by Finance – GLS LSU;
- responding to the financial crisis in 2008 through work to support FCAC's new objectives related to financial literacy and with OSFI counsel's provision to the client of training on new legislation and insolvency law;
- working on the implementation of harmonized sales tax and other tax agreements with provinces, territories and indigenous governments;
- responding to constitutional challenges related to the public service collective bargaining regime, the *Expenditure Restraint Act*, and the *Public Sector Equitable Compensation Act*;
- working through the government's Deficit Reduction Action Plan and its impact on human resources across the federal government;
- drafting and support for the *Public Sector Equitable Compensation Act*;
- working on the expansion of the Canada Pension Plan, which involved the TBS and Finance LSUs working with other government departments' LSUs; and

- supporting the five-year reviews of various acts relevant to the work of the Portfolio, including the PSEA, the *Public Service Labour Relations Act*, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (concerns FINTRAC), and the *Lobbying Act*.

#### **4.1.3. Alignment with Departmental Strategic Priorities**

Evaluation results indicate that the CAP supports the Department of Justice Canada in meeting its strategic priorities.<sup>22</sup>

The Department has the mandate to support the roles of the Minister of Justice and Attorney General of Canada under the *Department of Justice Act*. By providing legal advice, the Portfolio helps to fulfill Justice’s mandate to advise federal department heads on all matters of law connected to their departments (s. 5(b)). The Portfolio works to “see that the administration of public affairs is in accordance with the law” (s. 4). By representing the Crown in litigation, the Portfolio fulfills the responsibilities under the *Department of Justice Act* to conduct all litigation for or against the Crown or any department (s. 5(d)).

In addition, CAP supports Justice’s two strategic outcomes. The Portfolio supports the first strategic outcome of “*A fair, relevant and accessible Canadian justice system*” through exercising its responsibilities under the *Department of Justice Act* to ensure that the federal government acts in accordance with the law. The Portfolio contributes to the Department’s fulfillment of its second strategic outcome — “*A federal government that is supported by high-quality legal services*” — through its provision of legal advisory, litigation and legislative services to its client departments and agencies.

#### **4.2. Design of the Portfolio**

As described in earlier sections, every portfolio in the Department of Justice is organized similarly in that it is based on lines of business and, in addition to having a senior management position (for

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<sup>22</sup> In addition, results from the PSES conducted in 2011 and 2014 provide evidence that CAP employees are knowledgeable about the departmental mandate and contribute to the achievement of departmental goals. In these surveys, the majority of CAP employees who participated in the survey reported that the Department does a good job of communicating its vision, mission and goals (53% in 2011 and 69% in 2014), and that they are aware of how their work contributes to the achievement of departmental goals (90% in 2011 and 80% in 2014). Statistics Canada. (2008, 2011, 2014). Public Service Employee Survey Results by Question for Central Agencies Portfolio.

CAP, the ADM), each portfolio has LSUs that are co-located with client departments and agencies, as well as regional counsel who work on portfolio files. Generally speaking, the CAP is organized in this same way, although there are a few key differences. First, the ADM has a dual role as head of the CAP and ADM of the Finance Canada Law Branch, which means that the ADM reports directly to two deputy ministers: that of Finance and Justice.<sup>23</sup> In addition, the CAP does not have counsel in regional offices of the Department of Justice designated to work exclusively on its files, as is the case for other portfolios. While regional counsel work on CAP files, they are assigned to other portfolios, such as the Business and Regulatory Law Portfolio or the Public Safety, Defence and Immigration Portfolio.

The design of the CAP was considered in the evaluation in order to assess whether its structure supported the achievement of its objectives. Overall, the evaluation evidence indicates that the CAP structure is appropriate and supports its objective of high-quality legal services, while indicating a few areas of potential improvement.

### **Portfolio Structure Strengths**

As mentioned in Section 4.1.1, the approach of structuring the Department of Justice by portfolios is considered a strength by key informants. The Portfolio structure aligns LSUs with client departments and agencies and ensures that appropriate expertise is available within each LSU, according to both Portfolio and client key informants.

#### ***Dual Role of ADM***

Almost all CAP counsel key informants considered the unique, dual role of the ADM to be beneficial. The dual role is thought to give the ADM a broader perspective that can inform the Portfolio's work. The ADM attends executive committee meetings in Finance, and so is privy to information and has insights that can be either shared or, at least, used to guide the work of the Portfolio. In addition, some of the other agencies in the Portfolio provide recommendations to Finance (OSFI, for one), so having a Portfolio head who brings a unique understanding of Finance is helpful. The ADM also works directly with a client department and, therefore, has a clear understanding of the challenges of LSUs, which a few key informants in the Portfolio considered an added benefit.

The implementation of the Deficit Reduction Action Plan (DRAP) provided an example of the importance of the dual role and how well it serves the central agency functions. Finance was

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<sup>23</sup> The ADM also provides support to the Secretary of the Treasury Board on select matters.

responsible for the DRAP and, as manager of internal government operations, the TB was to put in place the processes for departments and agencies to implement and report on DRAP activities. The ADM's dual role meant that she was well-versed on the intended impact of the DRAP on the government's fiscal framework through her ADM position in Finance, and her role as head of the Portfolio meant that she was involved in the TB work on the DRAP. Without that dual role, it was thought that the DRAP exercise would not have been as smooth.

### ***Appropriate Mix of Departments and Agencies***

There was a consensus among the CAP key informants that the Portfolio has the appropriate mix of departments and agencies. Two central agencies (Finance and the TB) are in the Portfolio,<sup>24</sup> and the other units are natural associates. More specifically, FINTRAC, FCAC and OSFI all report directly to Finance, and PSC and the TB also have a link to Finance as they both deal with budgetary matters. In addition, the LSUs in the Portfolio have related mandates and, therefore, experience common legal issues. To give a few examples, the Finance – GLS LSU deals with financial institutions and terrorist financing issues; FINTRAC is also involved with that issue, and the PSC and the TB both deal with employment issues related to the public service. Although some LSUs do not interact with many others in the Portfolio, the commonality of issues was thought to serve as an appropriate link.

While the linkages between the different LSUs' clients validate the LSUs being united within one portfolio, the importance of the LSUs remaining distinct units was also noted. In particular, when the clients have different roles, such as policy-maker and regulator, key informants emphasized that having separate LSUs was important to avoid conflicts of interest. For example, the FCAC and Finance – GLS LSUs need to be separate to leave the policy-maker (GLS) free to make policy and the regulator (FCAC) free to promote compliance and sanction non-compliance without any conflict of interest. The separation of the LSUs matches the structure of the clients and serves their interests, while having them in the same portfolio ensures that Justice speaks with one voice.

### ***No Duplication or Overlap***

Portfolio key informants noted that there is no duplication or overlap with programs or services delivered by other LSUs within Justice. They considered their involvement with other areas of Justice, particularly the specialized sections of the Public Law Sector (PLS), as bringing in needed expertise when the issue was novel or complex and in an area of law in which the PLS specializes,

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<sup>24</sup> Only the Privy Council Office is not in the CAP, but as it is an independent entity, it is appropriate for the Office to have its own legal services which are not part of Justice.

such as administrative or constitutional law. Involving the PLS when appropriate is considered the best use of Justice resources, and not as resulting in duplication/overlap of efforts. Portfolio key informants also noted that the legal issues clients experienced might overlap, but not the legal services provided by the Portfolio LSUs. For example, the *Financial Administration Act* (FAA) is part of both Finance's and TB's mandates, so both LSUs are involved with interpreting the FAA, but they do so from the perspective of their clients, while also recognizing the importance of consistency in interpreting the FAA provisions. To reduce any duplication of efforts or inconsistencies in interpretation, Justice has prepared an annotated FAA, an FAA practice group exists, and the two LSUs consult with each other as appropriate.

### **Potential Limitation**

The only potential limitation is the information flow from the Portfolio to counsel in the LSUs. Documentation indicates that there are mechanisms within the Portfolio intended to support information sharing. In particular, there are the CAP Directors meetings, which are weekly conference call and quarterly in-person meetings that are chaired by the CAP ADM and attended by LSU Directors, Deputy Directors and ADMO Senior Counsel. At these meetings, the attendees receive updates and report on current and upcoming Portfolio/departmental and client activities. There is also an annual meeting chaired by the ADM for all staff in the Portfolio. The annual meeting is intended to strengthen interactions across the Portfolio and discuss matters that relate to the CAP and Justice.

Though not specifically asked about these meetings, some Portfolio key informants noted that the sharing of information within the Portfolio could be improved. In particular, the annual meeting was considered too infrequent by these key informants and, as a result, the quality of information sharing became very dependent on the environment within the individual LSU. These concerns with information sharing in the Portfolio were supported by results from the PSES, which indicate a potential downward trend with regard to perceptions of information sharing within the CAP. When asked whether essential information flows effectively from senior management to staff, the percentage of CAP respondents who agreed that this is the case decreased over the three survey years (from 66% in 2008, to 49% in 2011, to 46% in 2014), while the percentage who disagreed with this statement increased (from 19% in 2008, to 25% in 2011, to 33% in 2014). The PSES results appear to reflect that communication is more of an issue between senior managers in Justice or between the Portfolio and LSU counsel. Communications within the LSU do not appear to be the issue as survey results indicate that CAP respondents are more positive about communications

with immediate supervisors; in all three survey years, the majority (over 75%) agreed that their immediate supervisors inform employees about issues affecting their work.<sup>25</sup>

### **4.3. Performance – Effectiveness**

#### **4.3.1. Management of Legal Risk**

Managing legal risk is an essential and integral part of legal practice. In giving legal advice and determining litigation strategies, lawyers are always weighing the legal risks and trying to reduce the frequency and severity of legal problems that might adversely affect their clients. Justice has a more formalized approach to legal risk management, which requires counsel to assess and, when appropriate, reassess legal risk using a legal risk grid.<sup>26</sup> Legal risk management is applicable to litigation, advisory and legislative files.

#### **Ongoing Legal Risk Management**

The evaluation findings indicate that legal risk management is occurring in the CAP, although whether the Portfolio is fully compliant with all aspects of the formal process for documenting legal risk assessments in iCase is less clear. Key informant and survey results indicate that legal risk assessments are occurring and are effective. In the counsel survey, in particular:

- 37 of 39 respondents (95%) reported that legal risk assessments were occurring in a timely manner on most files in which they were involved; and
- 33 of 39 respondents (85%) reported that legal risk was reassessed on files when appropriate.

These survey results included counsel who work on litigation, advisory, and legislative files. Interview findings (key informant and case study) confirm that legal risk assessments are occurring on all types of files.

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<sup>25</sup> Statistics Canada. (2008, 2011, 2014). Public Service Employee Survey Results by Question for Central Agencies Portfolio.

<sup>26</sup> The grid is a tool for the assessment of legal risks. It 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. Using the grid, legal risks are assigned a number ranging from 1 (low likelihood and minor impact) to 9 (high likelihood and significant impact). Risk assessments are then entered into iCase, except for certain files such as secret files.



## **Involvement of and Collaboration with Clients**

As part of assessing and managing legal risk, counsel are expected to involve and work with their clients. Interviewees (clients and those representing the CAP) generally believe that there is strong and effective collaboration on assessing and managing legal risk between clients and counsel. Most clients commented that counsel were valuable in identifying risks they had not considered and providing them with options. A few clients disagreed and expressed frustration with counsel, noting that counsel always recommended the lower-risk option and then were less open to any discussion of mitigation strategies when a client wanted to accept the legal risk, but this was a minority view.

The generally positive perceptions of clients related to legal risk management are confirmed by the 2012 client feedback survey results,<sup>27</sup> where clients rated the CAP highly on its contributions to legal risk management. The Portfolio received an overall score of 8.5 out of 10 for legal risk management. Moreover, each legal service type (advisory, litigation and legislation) was rated above the departmental target of 8.0 out of 10 for almost all of the individual elements of legal risk management included in the survey, namely advising clients on issues and developments that may impact their department or agency; working with clients to identify legal risks; and involving clients in the review or development of legal options to mitigate identified legal risks. The exceptions were legal advisory and litigation services, which received a 7.9 on “involving clients in the review or development of legal options to mitigate identified legal risks.”

CAP counsel survey respondents were somewhat less positive, although they did indicate that clients are involved in legal risk management. Most respondents reported that they frequently (n=28, or 72%) or regularly (n=6, or 15%) worked with the client department to identify legal risks, their impact, and/or options to manage them.<sup>28</sup> While the majority also agree that there are processes in place to support collaboration with clients to identify and assess legal risks (n=22, or 56%), and that clients are actively engaged in developing options to manage legal risks (n=23, or 59%), about one-fifth disagree (see Table 5 for complete results).

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<sup>27</sup> Office of Strategic Planning and Performance Measurement (2012) Department of Justice Canada Client Feedback Survey: Central Agencies Portfolio.

<sup>28</sup> “Frequently” was defined as occurring on 80-100% of files, while “regularly” was defined as occurring on 50-79% of files.

**Table 5: Agreement Ratings with the Identification, Assessment, and Management of Legal Risks on your CAP Files (n=39)**

*Q15. Please read each statement below regarding the identification, assessment, and management of legal risks on your CAP files, and select the response that best represents your opinion.*

	Strongly agree		Somewhat agree		Neutral (neither agree nor disagree)		Somewhat disagree		Strongly disagree		Don't know	
	#	%	#	%	#	%	#	%	#	%	#	%
Clients are actively engaged in developing options to manage legal risks	13	33%	10	26%	6	15%	4	10%	3	8%	3	8%
The Portfolio and client have processes in place that support their collaboration on identification and assessment of risk	8	21%	14	36%	2	5%	4	10%	3	8%	8	21%

*Source: Survey of CAP legal counsel.*

*Note: Row totals may not sum to 100%, due to rounding.*

### **Increasing Client Awareness and Understanding of Legal Risks**

By working with clients on legal risk management, the CAP expects to improve client awareness and understanding of its legal risks. According to key informants, the extent of that improvement depends on the client. Clients who are experienced and sophisticated consumers of legal advice understand their legal risks already. The potential effect of counsel in increasing client awareness and knowledge of its legal risks is greater for newer agencies that are working within recently developed legal frameworks where legal issues are not yet tested. The client feedback survey results indicate that increasing client understanding of legal risks is a potential area for improvement for the Portfolio. While the majority of client respondents (61%) considered their understanding of their legal risks to be good or very good, almost one-third (31%) consider their understanding to be fair or poor.

### **Working with Regional Offices on Legal Risk**

CAP LSU counsel also work with regional counsel to assess and manage legal risk on CAP files where regional counsel are the lead. Generally, when regional counsel are leading CAP files, they will obtain information from LSU counsel related to the clients' legal risk, which they then use to determine the legal risk assessment. The evaluation found that experiences of regional counsel working with LSU counsel varied. Some regional counsel expressed concern that LSUs do not consult with them before giving advice to clients related to the legal risk assessment or prior to submitting briefing notes. Others, however, reported open communication and a productive,

collaborative process where regional and LSU counsel work together to ensure that clients understand the potential implications of various courses of action. The different experiences do not point to any systemic faults in how CAP approaches legal risk management, but rather are indicative of differences in counsel working styles. That said, it may be beneficial for LSU managers to ensure that regional counsel who are leading a CAP file are consulted prior to and/or are informed of advice being given to the client that relates to legal risk.

### **Formal Assessments of Legal Risk in iCase**

The Department has recently undertaken a review of legal risk management and developed a new protocol and grid for assessing legal risk. Use of the new legal risk management 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.

Based on the iCase data provided to the evaluation, it is difficult to assess whether the target for inputting legal risk assessments is being met. Few actively managed advisory and legislative files in 2013-14 and 2014-15 have received a numeric risk rating. In 2014-15, 3% of advisory files and 2% of legislative files had a numeric risk rating. Instead, the assessment of “risks are too remote to materialize in the near future” is used for most non-litigation files.<sup>29</sup> In 2014-15, 83% of legislative files and 84% of advisory files have a risk rating of “too remote”, with most of the remaining files being “not yet evaluated”. A few key informants questioned whether the approach to assessing legal risk in advisory and legislative files was working, as counsel defaulted to “too remote” in many files. It was pointed out that until the client decides to take an action on the advice given, it can be difficult to attach a numeric risk rating. Whether the use of “too remote” for almost all advisory and legislative files is a legitimate application of the new legal risk management protocol is an issue for the Department to determine.

#### **4.3.2. Provision of High-Quality Legal Services**

The CAP is guided by the 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

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<sup>29</sup> It is worth noting that the frequent use of the “too remote” risk rating is observed in some of the other portfolios as well.

the overall quality, as well as the responsiveness and timeliness of CAP services. Findings with regard to service quality, as well as the supports (e.g., tools, training) that CAP counsel receive to assist them in providing high-quality legal services, are discussed in more detail below.

### Quality of Legal Services

In the 2012 client feedback survey,<sup>30</sup> the CAP scored above the departmental target of 8.0 on all areas of service delivery, indicating that clients are generally satisfied with the overall quality, responsiveness, usefulness and timeliness of CAP services, and that satisfaction with the quality of services generally increased among clients since 2008 when the previous client feedback survey was conducted. Specific results are as follows:

- **Overall quality:** The CAP scored above the departmental target of 8.0 out of 10 with regard to the overall quality of each type of legal service that the Portfolio provides; the CAP received a rating of 8.6 for the overall quality of its litigation and regulatory drafting services, and 8.7 for the overall quality of its legal advisory and legislative drafting services. These scores were mostly higher than the 2008 scores for the overall quality of these services, with the exception of litigation services, which received an overall quality rating of 8.7 in 2008.
- **Treatment of clients:** The Portfolio received a score of 9.3 out of 10 for treating clients with courtesy and respect.
- **Usefulness:** The CAP received an overall score of 8.5 out of 10 regarding the usefulness of legal services. Survey results also indicate that CAP counsel have a good understanding of clients' legal issues; with regard to "understanding the nature of the issue for which assistance was sought", the CAP received ratings of 8.7, 8.6, 8.5, and 8.4 out of 10 respectively for its legal advisory, litigation, legislative drafting, and regulatory drafting services.
- **Timeliness:** The CAP received an overall rating of 8.6 out of 10 regarding the timeliness of legal services. For all legal service types, the Portfolio scored 8.5 or higher for "[responding] in a timely manner to requests for legal services". Similarly, all CAP legal service types were scored 8.5 or higher for meeting mutually agreed-upon deadlines. Scores for negotiating mutually agreed-upon deadlines were slightly lower, but still above the departmental target for all CAP legal service types (with a rating of 8.1 out of 10, legislative drafting services were rated lowest among legal service types for this element).

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<sup>30</sup> Office of Strategic Planning and Performance Measurement (2012) Department of Justice Canada Client Feedback Survey: Central Agencies Portfolio.

- **Responsiveness and accessibility:** The CAP generally received very high scores for the accessibility and responsiveness of its legal services. The Portfolio received a rating of 9.0 out of 10 overall for accessibility and responsiveness, and specific legal service types were rated similarly.

The one area for potential improvement based on the client feedback survey was in providing updates or progress reports to clients on advisory files. While overall scores for responsiveness were very high, the CAP received a score of 7.9 (just below the departmental target) for regularly providing “informative progress reports or ongoing feedback on the status of requests” for legal advisory services. All other legal service types received scores above 8.0 for this element.

Key informant and case study interviews with clients confirmed the client feedback survey results. Clients were uniformly satisfied with the quality of the legal services they had received. They specifically noted the responsiveness of counsel to their requests, counsel’s understanding of their legal issues, and counsel’s ability, despite resource pressures, to provide high-quality, timely legal services.

Clients reflected on their experiences with CAP LSU counsel and noted that the expertise and the stability of personnel in the LSUs were key strengths. Together, these qualities have supported the LSUs’ abilities to respond to the complex and evolving legal environment of their central agency clients. Clients placed a high importance on stability of personnel as enabling the LSUs to respond quickly to the legal needs of their clients because of their depth of understanding of the client and of the legal issues. The importance of stability of personnel also points to a potential future risk as concerns were expressed about the ability to retain counsel in the LSUs. Results from the PSES indicate a higher level of uncertainty among CAP counsel about remaining in their current position, compared to Justice counsel generally. Almost one-sixth (14%) of CAP LSU counsel reported that they are likely to leave their current position in the next two years, and half (50%) were unsure. Just over one-third (35%) reported that they do not plan to leave their position in the next two years, which is lower than for Justice generally (40%).<sup>31</sup>

A few clients provided suggestions for how the LSUs in the Portfolio could improve their legal services:

- more written opinions so that institutional memory is not lost when counsel leave/retire;

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<sup>31</sup> Statistics Canada. (2008, 2011, 2014). Public Service Employee Survey Results by Question for Central Agencies Portfolio.

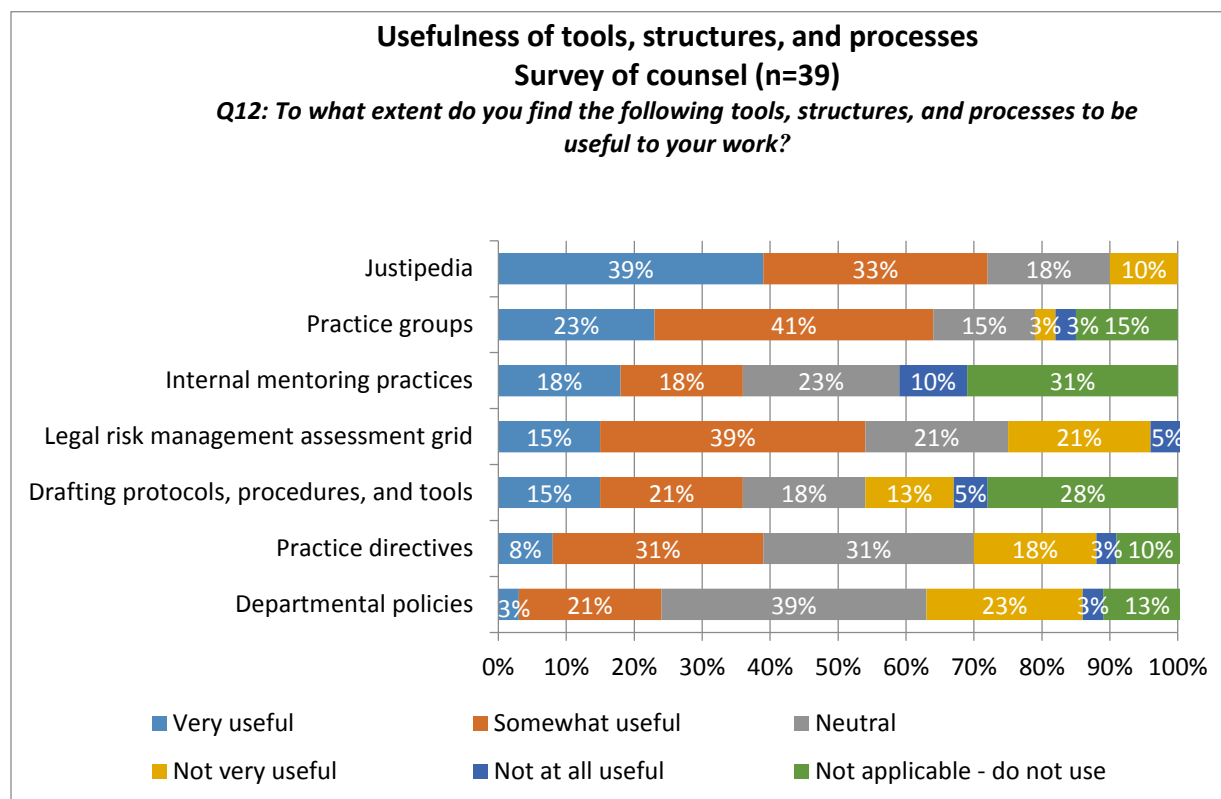
- more willingness to discuss options/mitigation strategies;
- provision of broader context in opinions on the potential impact to government as a whole;
- more segregation of duties so that the lawyer who advises on issuing penalty does not advise on appeal of penalty;
- more counsel with administrative law and litigation experience in LSUs; and
- greater clarity on when the client can or should involve counsel.

### **Tools and Supports for Providing Legal Services**

CAP counsel believe they have the structures and tools to provide high-quality legal advice, although training is a potential area for improvement.

According to counsel survey respondents, the most useful tools were Justipedia and practice groups, followed by the legal risk assessment grid. However, the view of tools was relatively muted as for most tools, less than one-quarter of respondents consider them to be very useful (see Figure 2 below). Key informants also identified some issues with the tools; for example, they noted that the search engine in Justipedia was not user-friendly as it doesn't filter well for relevance of materials based on search results. Other custom tools of the Portfolio or the LSUs that were considered helpful by key informants included the annotated FAA; the *Budget Implementation Act Manual*, which was drafted to guide the preparation of that legislation each year; and the guide on Sections 21(1) (a) and (b) of the *Access to Information Act*.

Figure 2: Usefulness of Tools, Structures, and Processes<sup>32</sup>



The results of the PSES also indicate general satisfaction among CAP employees about the materials and equipment available to them. In all three survey years, a large majority (over 85%) of Portfolio respondents agreed that they have the materials and equipment needed to do their jobs (roughly 85% in 2014, 88% in 2011, and 86% in 2008 agreed). However, it is worth noting that the percentage of those who strongly agreed that they have the materials and equipment they need to do their jobs has decreased each survey year — from 44% in 2008, to 39% in 2011, to 28% in 2014 — which may point to a decline in satisfaction with materials and equipment.<sup>33</sup>

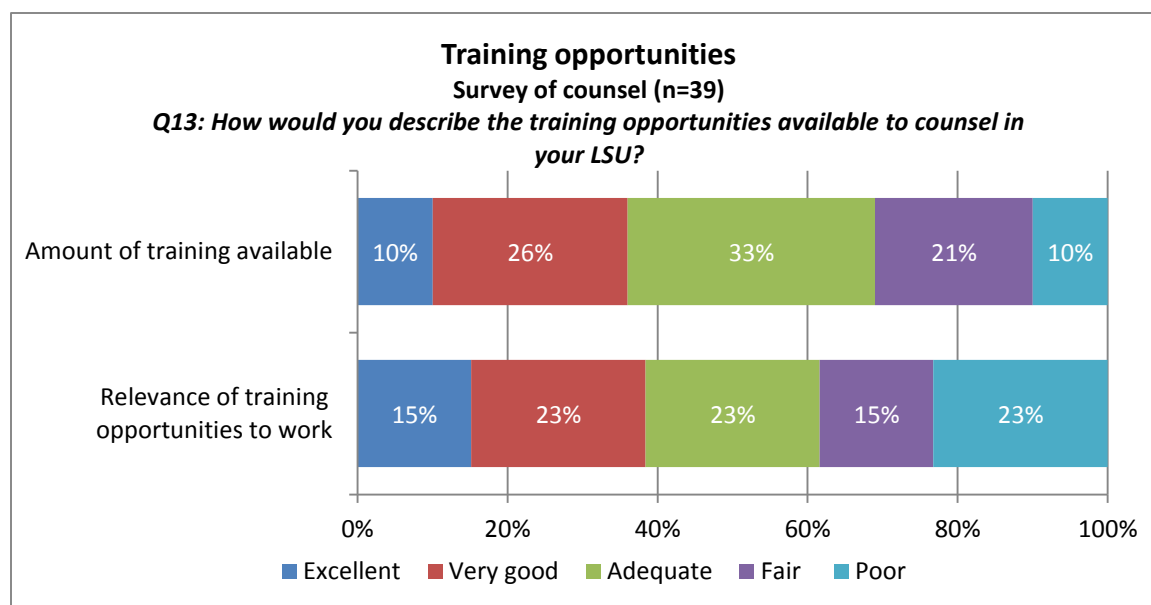
<sup>32</sup> Totals do not sum to 100% due to rounding.

<sup>33</sup> Statistics Canada. (2008, 2011, 2014). Public Service Employee Survey Results by Question for Central Agencies Portfolio.

## Training Opportunities

Results from the PSES indicate general satisfaction with the training opportunities available to CAP employees. The majority of CAP employees who responded to the PSES in 2008 (75%), 2011 (76%), and 2014 (71%) agreed that they receive the training needed to do their jobs.<sup>34</sup> However, “training to do your job” may be a rather low bar, given the evaluation survey results. About one-third of counsel describe the relevance of training opportunities to their jobs or the amount of training available as very good or excellent. About the same proportion of counsel rate them as fair or poor. When asked to provide further details, a few respondents commented that they would like more specialized training relevant to their positions and more variety of training (they felt the same training was offered year to year). Respondents also cited budget constraints as reducing opportunities for training, particularly for external training, which might require travel.

**Figure 3: Training Opportunities<sup>35</sup>**



<sup>34</sup> Statistics Canada. (2008, 2011, 2014). Public Service Employee Survey Results by Question for Central Agencies Portfolio.

<sup>35</sup> Totals do not sum to 100% due to rounding.



### 4.3.3. Contribution to Clients' Program and Policy Development

While counsel provide their clients with legal advice to support their program and policy development, the determination on the course of action is the clients' decision. Clients weigh legal advice against other considerations, such as operational objectives or financial considerations, but relevant, high-quality legal advice should at least be considered in the clients' decision making.

The evaluation found that the Portfolio LSUs contribute to program and policy development by making their client department officials aware of legal risks, legal issues, and legal options. As discussed in Section 4.3.1, the Portfolio engages with clients to make them aware of legal risks and how to mitigate those risks. The ability to contribute to program and policy development also requires that counsel have detailed knowledge of the clients' legal issues. Client feedback survey results from 2012 indicate that clients are satisfied with the extent to which CAP counsel fully understand the nature of their legal issues (the Portfolio received a score of 8.7 out of 10 for this indicator) and advise them of issues or developments that may impact their work (the Portfolio scored 8.5).<sup>36</sup> However, as mentioned earlier, some key informants raised factors that made the legal advice less helpful. In particular, client department interviewees noted the lack of broader perspective or context for the legal advice and its potential impacts, and their desire that counsel be more willing to consider mitigation strategies if the client chooses to accept the legal risk. In addition, a few key informants commented that inexperience of some counsel meant that the legal advice did not add much value to the decision-making process. The concerns raised were definitely the minority view, and most key informants said that the Portfolio made positive contributions to program and policy development.

The level of counsel engagement and consultation with the client is an important factor in whether clients consider counsel's legal advice in their program and policy development. Key informants (representing the CAP LSU counsel, regional counsel and clients) reported that the Portfolio adequately involves clients in the development of legal strategy and positions. Client feedback survey results indicate satisfaction with the level of consultation. The CAP legal advisory services scored above the departmental target of 8.0 for involving the client in the development of legal strategies and positions (8.2 out of 10), and for involving the client in the review/development of legal options to mitigate identified legal risks (8.3 out of 10).<sup>37</sup>

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<sup>36</sup> Office of Strategic Planning and Performance Measurement (2012) Department of Justice Canada Client Feedback Survey: Central Agencies Portfolio.

<sup>37</sup> Office of Strategic Planning and Performance Measurement (2012) Department of Justice Canada Client Feedback Survey: Central Agencies Portfolio.

#### 4.3.4. Support of Clients' Legislative Needs

The Portfolio is primarily involved in assisting clients with their legislative needs through the provision of legal advice on existing or proposed legislation. Most of the Portfolio LSUs are not directly involved in drafting legislation or regulations; Finance – TCD is the one exception. Instead, the LSU counsel primarily assist their clients by drafting the clients' instructions and liaising with the Legislative Services Branch (LSB), which drafts the legislation or regulations.

Interviewees and client feedback survey results also indicated that the Portfolio's role is more of translating policy into legislative instruments than in helping to frame or develop the policy. This perspective exists both for CAP LSUs that assist with legislative drafting by liaising with the LSB as well as for the Finance – TCD, which directly provides legislative and regulatory drafting services. In the client feedback survey, most users of legislative and regulatory drafting services reported that they required 'to a moderate extent' Justice's services in developing policy that would be expressed in legislation or regulations. Among the other respondents, more said they did not need Justice's assistance at all than those who needed it to a great extent.

As a result, when clients described how their LSU has contributed to their department/agency's ability to meet its legislative goals and objectives, they primarily focused on counsel's assistance with managing legal risk rather than assistance with the drafting of legislation. Legal risk management is discussed in Section 4.3.1.

When clients did consider the Portfolio's role in supporting drafting legislation, regulations, and other statutory instruments, their comments were positive and reflected a close working relationship with counsel. For example, LSU counsel often sit on client legislative/regulatory working groups. For LSUs that are not directly providing legislative and regulatory drafting services, their clients reported that LSU counsel who are working with the LSB have kept them well informed and have ensured that appropriate questions or concerns of drafters were brought back to the client for consideration. Clients of Finance – TCD, which directly provides legislative and regulatory drafting services, were also satisfied. In the 2012 survey, the results for these services exceeded the departmental target of 8.0 for legislative drafting (8.7) and for regulatory drafting (8.6)<sup>38</sup>.

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<sup>38</sup> Both of these results were improvements over the 2008 survey results, although caution must be used in interpreting results given the small sample using those services and the high margin of error. Office of Strategic Planning and Performance Measurement (2012) Department of Justice Canada Client Feedback Survey: Central Agencies Portfolio.

In interviews, CAP counsel mentioned one potential area for improvement in working with the LSB: the timeliness of regulatory work can be an issue. The difficulty is that regulatory drafters do not have a way to prioritize their work as legislative drafters do (the Privy Council Office is involved in determining priorities). A few CAP counsel believe it would be helpful to have more coordination in terms of priority setting between the legislative and regulatory drafters since regulations are sometimes required to implement legislation.

#### **4.3.5. Effective Resolution of Litigation**

Justice has had a long-standing commitment to pursuing early resolution strategies for litigation files when appropriate. This commitment is also reflected in the 2012 Process Optimization Initiative, which includes seeking settlement mandates from clients early in litigation files as a method of ensuring that clients' desired outcomes are achieved in an affordable manner. Of course, pursuing litigation and obtaining a court decision may be preferred in some files, such as cases that involve constitutional or public law issues, significant questions of government policy, rights or principles that require court affirmation, or issues requiring consistency in the application of the law. Therefore, while early dispute resolution (DR) is encouraged, it should not be pursued in every case.

Most lines of evidence indicate that the Portfolio appropriately uses DR processes to resolve litigation cases. The client feedback survey results provide evidence that the CAP identifies appropriate DR options to address client needs; in 2012, CAP legal advisory and litigation services were rated 8.5 and 8.6 out of 10 respectively with regard to “[identifying] opportunities to use DR practices, where appropriate”.<sup>39</sup> CAP counsel survey respondents also reported that DR is adequately utilized (12 of 16 staff who could comment). Interviews (client, CAP, other Justice) confirmed these findings. According to clients interviewed, the Portfolio counsel suggest mediation when appropriate and represent clients effectively in negotiations or mediation. In particular, key informants noted that voluntary mediation is available in some boards or tribunals with which the CAP's clients are involved, such as the PSLREB or the Human Rights Tribunal. One limitation that makes it difficult to use DR on cases before these boards or tribunals is the inability to conduct a complete risk assessment until more information is available, which is usually later in the case. Sometimes the opportunity to engage in effective DR has then passed.

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<sup>39</sup> Office of Strategic Planning and Performance Measurement (2012) Department of Justice Canada Client Feedback Survey: Central Agencies Portfolio.

This situation was not considered to be the fault of the Portfolio, but rather is the nature of the litigation process.

Based on iCase data from 2010-11 to 2014-15, it appears that DR is rarely appropriate for Portfolio files. DR was indicated as not applicable in 45% of closed LSU files and in 63% of closed files by regional offices. The CAP is below the departmental average for settlement of litigation files. The available iCase data indicate that while regional offices settle about 15% of their closed CAP litigation files each year, the 2011-12 Departmental Performance Report indicates that 23% of litigation files were settled.<sup>40</sup> The LSUs also close a large number of litigation files each year. According to iCase, they use DR in less than 1% of their closed litigation files. LSUs and regional offices tend to use negotiation, followed by voluntary mediation. It should also be noted that for LSUs, iCase data are not complete, as for over half of the files, there was no indication of whether DR was used. That said, it is possible that a large complement of labour and employment litigation was the subject of attempts to settle by Treasury Board, Separate Agencies or Deputy Heads prior to their assignment to the TBS LSU.

#### **4.3.6. Protection of the Interests of the Crown**

This outcome is considered from the perspective of developing legal strategies with a whole-of-government perspective. A key feature of that approach is ensuring consistent legal advice, and part of being able to do that is effective coordination across government.

Many of the clients of the Portfolio did not have direct experience with multi-departmental coordination, as they rarely have files that involve more than their department (e.g., TB) or are not part of government (PSC reports directly to Parliament). Other departments in the Portfolio experience working frequently with multiple departments. For example, the Canada Pension Plan is a shared responsibility with Finance, the Canada Revenue Agency, and Employment and Social Development Canada. The three ministers are responsible for different parts of the Canada Pension Plan legislation, resulting in the need for a high level of collaboration and coordination among the departments.

In most situations that require multi-departmental coordination, clients (in key informant interviews and case studies) reported that the Justice LSUs involved spoke with one voice and advice was consistent. Coordination was considered a strength of Justice. If potential conflicts

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<sup>40</sup> The 2011-12 Departmental Performance Report is the most recent Report for which the departmental rate of settlement is available. Department of Justice Canada (2012). Departmental Performance Report 2011-12.

arose, Justice has internal processes for determining what the legal advice should be and ensuring consistency. For example, the National Litigation Committee provides a forum to discuss legal positions in high profile cases before they are taken in court to ensure that the positions are nationally consistent and take due consideration of government policies. The Portfolio structure also provides a platform for discussion of legal issues that cut across several client departments and agencies.

CAP counsel also mentioned tools that assist with consistency, such as the annotated FAA, which is on Justipedia and available to counsel across the country; practice groups, that allow counsel who practice in similar areas of the law to meet and discuss issues; and practice notes, which provide counsel with guidance on legal issues. In addition, within the Portfolio, it is common for working groups to be formed on high profile files to ensure the necessary coordination occurs with other affected departments and agencies.

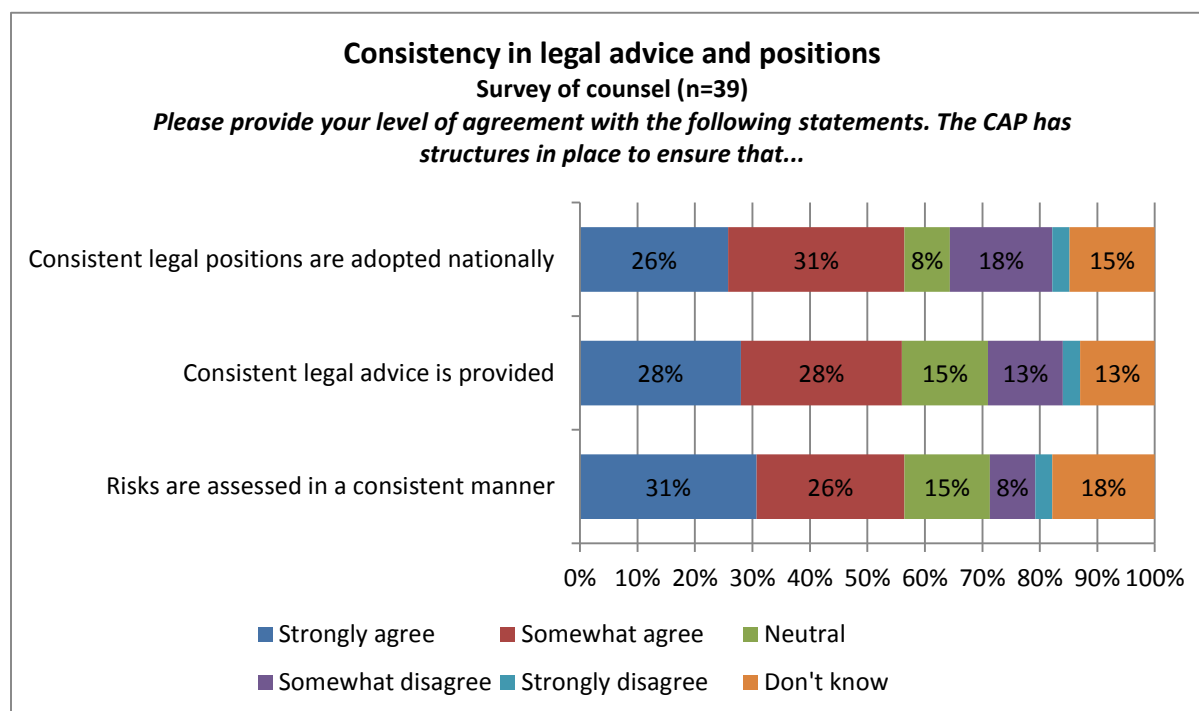
In addition, counsel in the survey and interviews reported that the Portfolio consults specialized sections of Justice and other LSUs outside the Portfolio as appropriate. Clients concurred that this consultation occurs when appropriate. From the CAP counsel and client perspective, involving other affected departments is considered essential to ensuring that the Crown's interests are protected and that consistent advice is given nationally. Similarly, the engagement of the specialized sections of Justice that have expertise in legal areas, such as administrative law, constitutional law and privacy law, provides the Portfolio with a method to ensure its legal advice in these core legal areas is consistent and considers the whole of government.

The evaluation found potential for improvement in CAP structures to manage conflicts and support consistency in legal advice and positions. A few key informants noted that some LSU counsel become protective of their clients' interests (particularly in the case of the central agencies of Finance and the TB), which made it difficult for open communication with litigators and other LSUs. These key informants commented that the central agencies appear to assume that they will have the final say on instructions even when they are not the lead on the files, which has created delays in some cases as well as tension among counsel. More open communication was suggested as a way to improve these situations, although it was noted that this particular situation had improved in recent years.

The survey with counsel conducted for the evaluation also indicates a somewhat muted view of the CAP structures for promoting consistency. While the majority (56%) believe the Portfolio has structures in place to ensure that risks are assessed in a consistent manner, that Justice provides consistent advice, and that consistent legal positions are adopted nationally, less than one-third

strongly agreed and approximately one-sixth could not offer an opinion. Respondents disagreeing ranged from 10% (related to legal risks assessed consistently) to 21% (related to consistent national positions taken).

**Figure 4: Consistency in Legal Advice and Positions<sup>41</sup>**



#### 4.4. Performance – Efficiency and Economy

This section considers the ability of the CAP to manage the cost and demand for legal services and the degree to which legal services provided are cost efficient.

##### Process Optimization Initiative

As part of the DRAP in 2012 and the Legal Services Review in 2014, the Department made commitments to manage the cost and demand for legal services, while still ensuring that the quality of legal services was maintained. Several process optimization measures were adopted to achieve the desired savings. These measures applied to both advisory and litigation services and were

<sup>41</sup> Totals do not sum to 100% due to rounding.

expected to result in a reduction of 72 FTE positions across the Department by fiscal year 2014-15. The CAP was initially expected to contribute with a reduction of five FTEs (four LP FTEs and one AS FTE) between 2012-13 and November 2014. However, with the need for additional human resources for the CLEL, the expectations for the CAP were revised to a reduction of four FTEs (three LP FTEs and one AS FTE).

The reduction of these positions was expected to be supported by the other process optimization initiatives — in particular, increased reliance on paralegals (estimated to account for 30% of savings) and more screening and prioritizing of client requests (estimated to account for 70% of savings). Table 6 provides a listing of the process optimization measures that are most relevant to the CAP.

**Table 6: Process Optimization Measures (2012)**

Advisory Services	Litigation Services
<ul style="list-style-type: none"> <li>• Screen and prioritize client requests</li> <li>• Monitor files with more than two LPs</li> <li>• Monitor files exceeding 75 hours</li> <li>• Apply project management principles to major files</li> <li>• Increase reliance on paralegals</li> </ul>	<ul style="list-style-type: none"> <li>• Reduction of 4.5% in the average number of hours spent on files</li> <li>• Use benchmarks for certain categories of files</li> <li>• Apply project management approach to major files</li> <li>• Negotiate level of services with clients early on</li> <li>• Monitor files exceeding two LPs or 100 hours (reduce by 4.5% time spent on litigation files)</li> <li>• Increase reliance on paralegals</li> </ul>

Based on internal Portfolio reports and interviews, the Portfolio has done the following to meet its obligations under Process Optimization. While some of the efficiencies realized through the process optimization measures are quantifiable as detailed below, key informants specified that for some measures, quantifying the progress that has been made is challenging. Concerns also exist about how applicable the optimization strategies are in a largely non-litigation environment, and with central agencies where many issues are complex or where the number of lawyers in a LSU is small to begin with.

- **Screen and prioritize client requests:** In general, the Portfolio LSUs have begun screening requests to ensure that they relate to legal issues and that urgent requests are identified so they can be dealt with immediately. For example, the PSC LSU established a generic inbox for all client requests to allow for vetting and prioritizing. Approaches to screening requests are discussed at the CAP Directors meetings, which allow sharing of approaches and best practices. The Portfolio has also restricted its work in non-core legal areas to providing advice on Memoranda to Cabinet, TB submissions, and Budget matters. A few clients commented

that they would like more clarity on when it is appropriate to involve the LSU, perhaps because of having work screened out as not a legal matter.

- **Monitor files:** Based on CAP documentation completed as part of the process optimization reporting exercises, the Portfolio actively monitored files with more than two LPs and with more than the set threshold in hours<sup>42</sup>. iCase reports of such files were prepared to allow LSU heads to confirm with their counsel that in these cases, roles were clear and counsel were making efficient use of their time. These reports were also discussed at CAP Directors' meetings. In addition, the Portfolio's monitoring of the level of effort spent on CAP files has resulted in efforts to reduce duplication of effort on litigation files and ensure that advisory time recorded on litigation files is limited to essential advice to support litigation counsel in conducting court actions efficiently. Portfolio iCase reports show a 3-5% reduction in average hours per file in the first two quarters in 2013-14 compared to the same period in the previous fiscal year.
- **Use benchmarks for certain categories of litigation files:** The Portfolio has begun to use benchmarking to examine the administration of financial transactions, such as assessing the time spent and costs of new transactions compared to previous similar transactions. CAP reports indicate that there may be some additional types of files that could benefit from benchmarking, such as applications for judicial review from the PSC. Counsel indicate that in most instances, benchmarking would be difficult to implement widely in the Portfolio due to the specificity of the litigation before administrative tribunals such as PSLREB and of labour and employment litigation.
- **Apply project management to files:** Using project management on files aligns with the Department's Law Practice Model, where low-risk, low-complexity work is to be assigned to more junior counsel as a method to achieve cost savings. The Portfolio reports that it has assigned work based on seniority and expertise of counsel and the nature and complexity of the issue. This includes efforts to transfer lower-complexity files to more junior counsel and to give counsel at all levels increased independence (i.e., less supervision) in managing their files. The evaluation had difficulty verifying this with iCase data as most advisory, litigation and legislative files of CAP LSUs did not include a numeric risk or complexity level.

In addition, the Portfolio has undertaken other project management activities. It has made efforts to consolidate services for clients under specific counsel – to allow counsel to become more specialized in addressing requests for particular clients/issues and provide faster and

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<sup>42</sup> As indicated in Table 6, that is, advisory files exceeding 75 hours and litigation files exceeding 100 hours.



more coherent services (e.g., on pensions, social policy, economic development, aspects of the FAA, etc.). The Department has provided project management training that CAP counsel have attended. According to Portfolio reporting, it has increased the number of files with project management plans in place. It has also increased its focus on best practices, including its creation of FAQs and reference documents for Justipedia and other databases and its efforts to standardize responses to client requests and to respond electronically to such requests.

Reflective of project management efforts to focus lawyers on legal work rather than non-legal services for clients, the non-legal time devoted to client files has declined by 31% over the time period covered by the evaluation.

- ***Negotiate service levels with clients early on:*** Negotiating service expectations and seeking settlement mandates from clients early in litigation files is a method of ensuring that clients' desired outcomes are achieved in an affordable manner. This 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 DR processes, and tools to assist counsel (e.g., templates, toolkits, checklists). Portfolio reporting indicates that discussions are held with clients and/or opposing counsel to examine the possibility of early out of court settlement, when appropriate. For example, in all litigation matters dealing with human resources issues and administrative monetary penalties, when legal action is begun in a court or tribunal, the legal risks and likelihood of success as assessed by the litigation counsel are shared with the client. Given limited DR data in iCase, the evaluation could not confirm that this process improvement was occurring.
- ***Increase use of paralegals:*** The Portfolio reports efforts to increase reliance on paralegals. In particular, one paralegal position was created in the PSC LSU, two LSUs are discussing proposals to hire paralegals with clients, and other LSUs are making greater efforts to make "maximum use" of client-funded paralegal support – conducting preliminary research in advisory files and taking on preparatory tasks for litigation files. The evaluation could not confirm any increase in the use of paralegals because paralegals, as employees of the client departments and agencies, did not record their time in iCase prior to the coming into force of the revised National Timekeeping Protocol in July 2015. However, based on the survey with counsel, this remains an area for improvement. Counsel who had worked with paralegals were evenly divided between those who reported that paralegals were used to their full potential in at least half of the files they had been involved with in the last two years (n=14) and those who reported this occurred in less than half of their files (n=12).

As indicated above, the CAP's target was to reduce its FTE complement by four (three LP FTEs and one AS FTE).<sup>43</sup> This was achieved through the process optimization measures taken by the Portfolio. Further, as noted in Section 2.3, the Portfolio realized a net reduction of an additional 0.8 LP FTE over the entire period covered by the evaluation.

### **Staffing and Ability to Meet Demand**

The decrease in staff has not compromised the Portfolio's ability to meet its demand. Generally, key informants thought that the Portfolio has the capacity to meet demand, but some of the LSUs that had experienced decrease in staffing were thought to be stretched thin (e.g., the TB). That being said, the CAP and client key informants believe that the stability of staff has countered the slightly lower staffing levels. However, a potential future risk is losing this stability as counsel perceived opportunities for promotion as limited. Results from the PSES indicate potential issues regarding promotional opportunities and appropriate compensation of employees. In all three survey years, a much greater percentage of CAP respondents disagreed than agreed that they had opportunities for promotion within their department or agency, given their education, skills and experience. More specifically:

- in 2014, 30% agreed, whereas 57% disagreed;
- in 2011, 27% agreed while 54% disagreed; and
- in 2008, 31% agreed while 55% disagreed.<sup>44</sup>

### **The Centre of Labour and Employment Law**

The creation of the CLEL was part of the DRAP, and while the operations of the CLEL itself are beyond the scope of this evaluation, it is important for the evaluation to recognize the CAP responsibility and results for this initiative. As mentioned in Section 2.2.2, the CLEL is co-located with the TBS LSU. Reports on CLEL operations indicate that regular collaboration is maintained between the CLEL and the TBS LSU, and that this collaboration helps to ensure that consistent advice is provided, duplication of work is avoided, and appropriate resources are identified to address labour and employment law (LEL) issues. In addition, CAP undertook the development and establishment of the CLEL in a number of ways, including: consideration of model options

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<sup>43</sup> Originally, the reduction was expected to be four LP FTEs, but that changed when an additional LP FTE was needed to staff the CLEL.

<sup>44</sup> Statistics Canada. (2008, 2011, 2014). Public Service Employee Survey Results by Question for Central Agencies Portfolio.

for the CLEL; establishment of protocols detailing the role and work of the CLEL; and development of guidelines for LSUs on when to consult the CLEL.

The CLEL is intended to facilitate work being carried out related to LEL, and to achieve efficiencies in this work. Efficiencies are expected to result from the following CLEL activities:

- developing practice directives and position papers on emerging trends and Justice-wide issues;
- assisting counsel across Justice on specific files by providing expertise on LEL (the CLEL primarily supports LEL work carried out by “excluded” practitioners across Justice, which include counsel from LSUs, regional offices, and other areas of Justice) to better enable counsel to advise clients on matters stemming from the “employer” function carried out by deputy heads;
- providing training and development opportunities on recurring issues and trends in LEL; and
- developing information tools, knowledge-sharing tools and resources (including enhancing LEL material available through Justipedia), and practice tools related to recurring LEL issues.

As of March 31, 2015, the CLEL had succeeded in:

- assisting Justice counsel on requests above estimated targets for this activity;
- updating tools, resources and opinions, and reorganizing areas of Justipedia related to LEL (with links to LEL practice tools);
- hosting an LEL Forum involving over 90 participants;
- developing a process for identifying emerging issues and achieving collaboration among those practicing LEL; and
- reducing time spent on LEL issues by counsel outside the TBS LSU.

The next evaluation of the CAP should be able to include a more detailed assessment of the CLEL’s contribution to efficiency and economy for the Department when it comes to work on LEL issues.

## **Overall Achievements**

While some of the process optimization measures cannot yet be measured for their impact, evaluation findings indicate that the Portfolio has taken several steps to maximize the achievement of results while minimizing the use of resources.

## **5. CONCLUSIONS**

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

### **5.1. Relevance**

#### **Continued Need for Portfolio Services**

The evaluation confirmed the continued need for the Portfolio based on the role it serves within the federal government, the type of expertise it offers, and the ongoing demand for its services. The portfolio structure of the Department continues to serve the needs of its client departments and agencies, as well as the government as a whole. By assigning counsel to clients by portfolio, the Department aligns counsel's expertise with the legal needs of clients. In addition, the portfolio structure assists with consistency in approach and can facilitate information sharing and collaboration, as appropriate. The overall demand for the CAP's services, measured by hours spent on actively managed files, has remained fairly steady, albeit with declines in some areas, reflecting the continued need for the CAP's services.

#### **Alignment with Federal Priorities, and Roles and Responsibilities**

The CAP supports and upholds government priorities. There is a close alignment between the Portfolio's work and federal priorities and commitments as outlined in Speeches from the Throne and Budgets. In particular, the areas of tax policy, efforts to combat terrorism, legislation related to pension plans, and initiatives related to "good governance and sound stewardship to enable efficient and effective services to Canadians", all require legal service support from the CAP. The evaluation evidence shows that the CAP has responded to its clients' legal needs, which evolve in order to respond to changes in government priorities.

## **Alignment with Departmental Strategic Outcomes**

Evaluation results also indicate that the CAP supports the Department in meeting its strategic priorities. The Portfolio supports the first strategic outcome of “*A fair, relevant and accessible Canadian justice system*” through exercising its responsibilities under the *Department of Justice Act* to ensure that the government acts in accordance with the law. The Portfolio contributes to the Department’s fulfillment of its second strategic outcome — “*A federal government that is supported by high-quality legal services*” — through its provision of legal advisory, litigation and legislative services to its client departments and agencies.

### **5.2. Design of the Portfolio**

Overall, the evaluation evidence indicates that the CAP structure is appropriate and supports its objective of high-quality legal services, while indicating an area of potential improvement.

#### **Strengths of the Portfolio’s Structure**

The ADM holds a unique role as head of the CAP and as ADM of the Finance Canada Law Branch. Consequently, the ADM reports to the deputy ministers of two departments — Justice and Finance.<sup>45</sup> Almost all CAP counsel consider this dual role to be beneficial, as it gives the ADM a broader perspective that can inform the Portfolio’s work.

The Portfolio also has the appropriate mix of departments and agencies. Two central agencies (Finance and the TB) are in the Portfolio, and the other departments and agencies are natural associates as they either report directly to one of the central agencies’ ministers or have a link based on the subject matter of their work.

The other areas of Justice complement and support the Portfolio’s work, but do not duplicate or overlap its legal services. The Portfolio LSUs seek assistance from the specialized sections of Justice when they need subject matter expertise for novel or complex matters in those legal areas. Within the CAP, while legal issues may overlap among client departments or agencies, the Portfolio takes measures to ensure that there is no duplication of efforts or inconsistency in its legal advice.

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<sup>45</sup> The ADM also provides support to the Secretary of the Treasury Board on select matters.

## **Potential Limitation**

The only potential limitation identified by the evaluation was the information flow from the Portfolio to counsel in the LSUs. The percentage of CAP respondents who believe that essential information flows effectively from senior management to staff has decreased from 66% in 2008, to 49% in 2011, to 46% in 2014. In interviews, some CAP counsel commented that the annual meeting with the ADM was too infrequent and, as a result, the quality of information sharing was very dependent on the environment in the individual LSU.

## **5.3. Performance**

The analysis of performance covers both the achievement of expected outcomes, and the extent to which outcomes have been achieved in an efficient and effective manner.

### **5.3.1. Effectiveness**

#### **Management of Legal Risk**

Multiple lines of evidence indicate that legal risk management is occurring and that clients have a high level of satisfaction with the Portfolio's work in the identification, assessment and management of the legal risk on files. However, an analysis of data from iCase, along with observations from key informant interviews, indicate that LSU counsel may be experiencing some difficulties in complying with iCase reporting requirements related to risk assessment with respect to its advisory and legislative files. Few files (3% of advisory files and 2% of legislative files) have numeric risk ratings. Most non-litigation files have received a legal risk assessment of "too remote to materialize in the near future". According to key informants, the reason for this rating is that until action on the legal advice is taken, the legal risk cannot be assessed. Whether the use of "too remote" for almost all advisory and legislative files aligns with the expectations of the Department for the use of the new legal risk management protocol is an issue for the Department to determine.

#### **Provision of High-Quality Legal Services**

Evaluation evidence confirms that the CAP provides timely, high-quality services to client departments and agencies. Clients considered counsel to be responsive to their requests and met their deadlines, despite resource pressures. In terms of responsiveness, the one area of potential improvement, based on the client feedback survey, was in providing updates or progress reports,

although it should be noted that overall scores for responsiveness were high. Clients also considered the Portfolio to have a good understanding of their legal issues. The expertise of counsel and the stability of personnel were considered key strengths of LSUs and assisted with counsel's detailed and sophisticated understanding of the clients' legal issues. The importance of stability of personnel also points to a potential future risk as the PSES results indicate a higher level of uncertainty among CAP counsel about remaining in their position, compared to Justice counsel generally. Related to this concern is the suggestion provided by a few clients that the Portfolio provide more written opinions so that institutional memory is not lost when counsel leave or retire.

CAP counsel believe they have the structures and tools to provide high-quality legal advice, although training is a potential area for improvement. Based on counsel survey results, about one-third of respondents considered the amount of training available and the relevance of training to their work to be fair or poor.

### **Contribution to Clients' Program and Policy Development**

The evaluation found that the Portfolio LSUs contribute to policy and program development by making their client departments aware of legal risks and their legal options. In addition, the level of counsel engagement and consultation with the client is an important factor in whether clients will consider counsel's legal advice. In interviews and in the client feedback survey, clients reported that the Portfolio adequately involves clients in the development of legal strategies and positions.

### **Support of Clients' Legislative Needs**

Most Portfolio LSUs are not directly involved in drafting legislation, other than the Finance – TCD. Instead, most LSUs assist clients by drafting instructions and liaising with the LSB. The evaluation found that clients were satisfied with the Portfolio's support of their legislative needs.

### **Effective Resolution of Litigation**

Most lines of evidence indicate that the Portfolio appropriately uses DR processes. Mediation is suggested when appropriate and when counsel pursue negotiations on files. CAP counsel noted that it can be difficult to determine whether to use DR on some matters, as counsel cannot conduct a complete risk assessment until more information is available, which is usually later in the case. Based on iCase data, many CAP litigation files are not appropriate for DR, and few cases are settled using DR. Compared to the departmental rate of settlement (23%), the CAP settles few files (15% of regional litigation files and 1% of LSU litigation files). For over half of the Portfolio's



closed LSU litigation files, there was no indication in iCase of whether DR was used; however, it is possible that a large complement of labour and employment litigation may well have been the subject of attempts to settle prior to their assignment to the TBS LSU.

### **Protection of the Interests of the Crown**

The Portfolio protects the interests of the Crown by ensuring consistent legal advice and developing legal strategies using a whole-of-government perspective. The CAP does not have many multi-departmental files. Clients who had experienced multi-departmental files believe that Justice was effective in speaking with one voice and that advice was consistent. The Portfolio and the Department overall have tools and structures to assist with providing consistent advice that takes into account the broader, government-wide perspective, such as the specialized sections and the National Litigation Committee. Clients and counsel also agree that consultations with specialized sections of Justice and with other LSUs occur as appropriate. A few key informants noted that CAP counsel's communication with regional litigators and other LSUs could be improved, as central agencies sometimes assume they have the final decision on files even when they are not the lead on them. This situation was described as having improved in recent years.

#### **5.3.2. Efficiency and Economy**

The Portfolio has implemented process optimization measures to maximize the achievement of its results, while minimizing the use of its resources. The difficulties for the Portfolio are in demonstrating the efficiency gains from these activities.

In particular, the Portfolio has made efforts to screen client requests, in order to ensure they concern legal issues and to prioritize urgent matters; to use iCase to monitor files; to apply project management techniques to files; and to increase the use of paralegals. Some of these efforts are still in their early stages (e.g., use of paralegals), but for others the impacts cannot yet be measured. For example, applying project management by assigning senior counsel to high-complexity files and junior counsel to low-complexity files cannot be demonstrated as few files have a complexity rating (high, medium or low). As a result, it cannot yet be demonstrated whether this type of counsel assignment has resulted in more efficient handling of cases and/or reduced costs to its clients. Over the five-year evaluation period, the Portfolio reduced its LP FTEs by 3.8.

The CLEL is intended to create efficiencies for the Department by offering expertise in LEL matters. The CLEL's development is too recent to demonstrate impacts, but the Portfolio reports indicate early success in reducing time spent on LEL issues by counsel outside the TBS LSU.



## 6. RECOMMENDATIONS

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

### **Issue 1: Information sharing**

Documentation indicates that there are mechanisms within the Portfolio intended to support information sharing. Based on the evaluation findings, there seem to be adequate opportunities for information sharing to occur at the management level, however, the downward communication of information from management to counsel is not consistent.

Key informants noted that the quality of information sharing within the Portfolio is dependent upon the environment within the individual LSU. This concern with respect to the adequate flow of information was supported by results from the PSES, which indicate a potential downward trend with regard to perceptions of information sharing from senior management to staff within the CAP.

### **Recommendation 1:**

**That the Central Agencies Portfolio explore mechanisms to improve the flow of information within the Portfolio, specifically from senior management to staff.**

### **Management Response:**

*Agreed. CAP is committed to exploring mechanisms to ensure that there is a downward flow of information from senior management to staff within the Portfolio.*

### **Issue 2: iCase information**

The Central Agencies Portfolio has been actively working to ensure adherence to the iCase protocol. Most advisory files now have the mandatory risk rating entered in iCase, however, in the majority of cases, the selected risk rating is “too remote to materialize in the near future”. While counsel explain that in many instances, they really are not able to determine the appropriate

numeric risk rating of a file, the fact remains that the implementation of law practice management measures, such as assignment of higher risk, higher complexity files to more senior counsel, cannot be measured.

**Recommendation 2:**

**That the Central Agencies Portfolio, in consultation with the Operations Policy, Planning and Innovation Sector, ensure that the Portfolio's practices with respect to iCase data entry fully align with iCase directives and guidelines, with a view to better support ongoing performance measurement and evaluation.**

**Management Response:**

*Agreed. The Portfolio will review iCase files that do not have a numeric risk rating to ensure risk assessment practices align with iCase directives and guidelines.*

**Issue 3: Training**

The evaluation found that approximately one-third of counsel describe the amount of training available to them, as well as the relevance of that training to their work, as excellent or very good. The evaluation also found that nearly the same proportion of counsel rate the amount and relevance of training available to them as fair or poor. Specifically, some respondents noted that more specialized and more variety of training was needed.

**Recommendation 3:**

**That the Central Agencies Portfolio determine if there are ways of improving training opportunities for counsel with the view of better meeting their needs in this regard.**

**Management Response:**

*Agreed. CAP is determined to improve training opportunities and foster an environment that favours and facilitates continuous learning and professional development for all lawyers, including providing training opportunities offered outside of the Department.*

**Appendix A:  
Logic Model**



## Logic Model

### The Central Agencies Portfolio Logic Model

A logic model is a graphical depiction of a service, program, policy or initiative which depicts its activities, outputs and intended outcomes. As part of the evaluation strategy that was developed in advance of the evaluation, a logic model was developed for the Central Agencies Portfolio (CAP). The following textual description provides the details of and explains the linkages among the elements of the CAP logic model. The graphical depiction of the CAP logic model follows (Figure 3.1).

### Activities and Outputs

In logic model theory, an activity results in an output, product or service that is within direct control of the organization and that can be easily identified or recognized as such. In the case of CAP, it undertakes several different activities which align with the three primary Justice activities:

- Legal advisory services, which include legal advice, direction and legal advice on policy development;
- Litigation services and litigation support, which involve legal representation for disputes that are before the court level and administrative and inquiry bodies; and
- Legislative services and legislative support, including drafting tax bills and motions to amend bills before Parliament, and drafting and examining regulations<sup>46</sup>.

In accordance with the Department's legal risk management approach, CAP identifies and assesses legal risks related to the legal issues of concern to its clients, and/or that may have a broader impact on the Government of Canada.

Each of these areas of activity is described below.

### *Legal Advisory Services*

Legal advisory services include the provision of legal advice to federal government officials on a variety of legal matters affecting the government, including advice on existing litigation and

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<sup>46</sup> Legislative Services Branch, Department of Justice prepares legislation and regulations for all non-tax related matters.

potentially litigious situations, proposed policy or legislative instruments, and legal consequences and implications of policy decisions. In preparing this advice, the CAP counsel consult with officials within the appropriate client departments and agencies. In addition, consultations are held, as appropriate, with specialized sections within Justice and other portfolios. Counsel include identification and assessment of legal risks in their legal advice to federal government departments as well as possible options to prevent or reduce legal risks.

The CLEL will be providing legal advisory services in the area of LEL directly or indirectly to departments throughout the Government of Canada through their legal services. Although counsel from other LSUs will continue to author the legal advice given to their client departments in this area, they will do so with the guidance of the CLEL.

Providing expert legal advice results in several different outputs, including legal opinions, briefing notes and recommendations, working papers, Memoranda to Cabinet, legal documents, legal trends and developments.

### *Litigation Services*

The litigation work of the CAP involves the legal representation of deputy heads of federal departments and agencies associated in labour and employment matters either before the tribunals or courts. CAP counsel in some LSUs provide specialized litigation services and expertise to defend the federal Crown before various federal courts as well as administrative tribunals. These litigation services include providing advice on litigation strategy, and identifying opportunities for early resolution and settlement of litigious matters. In preparing and advising on litigation matters, counsel may consult as appropriate with specialized experts within Justice, with LSU counsel and with other departments or agencies. Litigation counsel also inform government officials of the legal risks on their litigation matters and provide options to reduce those risks through litigation strategies.

TBS counsel represent the Crown before the following board and tribunals:

- Public Service Labour Relations and Employment Board;
- Occupational Health and Safety Tribunal; and
- Public Servants Disclosure Protection Tribunal.



As mentioned earlier, TBS counsel also appear for the Attorney General of Canada before the Federal Court of Canada and the Federal Court of Appeal in labour and employment law matters, and PSC counsel appear before the PSLREB.

The primary outputs of litigation services are litigation strategies (which may include research and exploration of options), briefings to clients and decision makers (through meetings and reports), litigation advice, identification and recommendation of DR options or opportunities, and the conduct of litigation. This may include single-client as well as multi-client files.

### ***Legislative Services***

CAP counsel have two main roles with respect to legislative services: 1) the TCD drafts tax legislation, regulations and statutory instruments, and 2) CAP counsel provide legislative support for the drafting of bills, regulations and other statutory instruments for matters related to their clients' mandates. Legislative support includes collaborating with Department of Finance staff to prepare the federal budget; assisting LSB counsel in drafting legislation and regulations; and providing legal advice and direction in the development and drafting of the legal content of bills, regulations, statutory instruments and guidelines, in regard to the clients' mandate, policies and ongoing operations. CAP counsel also advise clients on legal and policy matters related to compliance with the *Statutory Instruments Act*, the *Canadian Charter of Rights and Freedoms* (the Charter) and the *Canadian Bill of Rights*.

As a result of the legislative services provided, CAP counsel produce or are involved in the production of legislative proposals, draft legislation (government and private Member's bills), regulations, and orders in council copies of enacted legislation, legislative drafting instructions and procedures.

### ***Risk Management***

Counsel consider legal risks in the course of providing forward-looking legal advice and assisting client departments/agencies to respond proactively to 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 utilize Justice legal risk management processes as required, for example, in 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.

## **Outcomes**

Outcomes are the expected results or changes that have occurred as a result of the activities and outputs. Unlike outputs, their achievement is beyond the direct control of the CAP. Once an activity and its outputs are produced, CAP no longer has immediate control or influence over the outcomes; it becomes the clients' responsibility/choice to heed the legal advice or not. However, if the legal advice and/or services are timely, useful, relevant, consistent, identify and assess the legal risks and provide options where appropriate, CAP clients will be better informed in making their decisions.

### **1. Immediate Outcomes**

Immediate outcomes are those that occur in the short term, or most directly as a result of the activities and outputs. Together, the three activity areas – legal advisory services, legislative services, and litigation services – contribute to the achievement of four interrelated outcomes.

#### ***Enhanced awareness and understanding of legal risks***

CAP plays a critical role in enhancing awareness and understanding within the Portfolio, the Department and client departments and agencies, of legal issues and options for mitigating legal risk. Strategic coordination and legal risk management, which are embedded throughout CAP legal services, support client officials in decision making and managing their legal risks, whether for department-specific or broader whole-of-government legal issues related to the central agency functions of government.

In addition, through briefings, training sessions and practice groups, CAP helps federal government officials in developing a broader awareness and understanding of trends, legal issues impacts and implications related to their priority areas, mandates and legal matters. Case-specific, relevant advice, options and strategies also contribute to awareness and understanding, which in turn contribute to sound decision making.

Successful achievement of the first immediate outcome feeds into the achievement of three more immediate outcomes, as outlined below.

#### ***Clients have quality legal advice and support to make informed decisions***

The legal advice provided by counsel is communicated in a manner intended to provide clients with the necessary understanding of their legal obligations and risks, 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.

The CAP ensures the provision of timely, responsive, and useful legal advice by complying with Justice Service Standards in the Memorandum of Understanding with each of its client departments and agencies. This outcome will include responding in a timely manner to client requests for legal services; meeting mutually agreed-upon deadlines; providing regular progress reports; and providing clear and practical guidance, including the provision of legal options for the prevention, containment or early resolution of contentious issues. While the clients' priorities and objectives should be considered, the litigation strategies and legal advice are expected to be guided by the rule of law and the Department's responsibilities under the *Department of Justice Act*. While the evaluation will not assess the accuracy of the legal advice provided by CAP counsel, it will examine the processes, structures and fora available and used to support the provision of accurate legal advice.

#### ***Legislation, regulations and statutory instruments that support government policy***

The CAP is responsible for legislative drafting in tax matters and providing legal and legislative support services in the development of the federal budget, which contribute to the Government of Canada's ability to meet its legal and policy objectives. CAP counsel also work with the LSB who provides revision services for tax legislation, and seeks advice from CAP on financial matters. More broadly, CAP provides legislative support to LSB in the drafting of a variety of legislation and regulations related to CAP responsibilities. Beyond legislative drafting on tax matters and providing legal and legislative services in the development of the federal budget, the CAP counsel provide significant legislative support for the drafting and development of other types of legislation related to their clients' mandates.

#### ***Timely, responsive and quality litigation services***

This outcome includes: responding to client requests for litigation services efficiently; 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 or agency's priorities and objectives, while ensuring that it 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 level of risk and complexity of the file. By continuing to work with client

departments to identify and manage legal risks, the Department ensures that the legal advice and support related to litigation are timely and of high quality.

## **2. Intermediate Outcomes**

CAP's immediate outcomes contribute cumulatively to five interrelated intermediate outcomes. The intermediate outcomes are broader in scope than the immediate outcomes, are further removed from the activities and outputs of CAP counsel, and are subject to the influence of other factors external to the CAP.

### ***Legal advice is considered in program and policy development and decision making***

Clients consider the legal advice and recommendations prepared by CAP counsel, including risk assessment results, in developing policy and in making decisions. By providing timely, responsive, consistent and useful legal advice to departments and agencies, counsel will ensure that government officials are aware of the legal risks and the legal implications of certain proposed decisions, in addition to other relevant factors (operational, political, financial, etc.). As a result, CAP's legal advice is considered in program and policy development and decision making. The legal advice is expected to provide government officials with options to reach their objectives while considering the legal implications associated with their decisions.

### ***Clients are better able to manage their legal risks***

The CAP works collaboratively with clients and other government officials to determine options and strategies to prevent, mitigate or effectively manage legal risk. This in turn helps government departments and agencies to make informed choices and decisions about how to manage their legal risks effectively at policy, operational and case-specific levels. Given the often interrelated nature of CAP client files and issues, it is important that legal risk management encompasses in a strategic and synergistic way, a whole-of-government approach.

The CAP will provide client departments/agencies with legal advice/information on the legal issues and risks that have been identified, including their assessment of the legal risk. Counsel will consult and communicate with client officials and, together, they may review the strategies used to prevent, mitigate or manage legal risk. While the CAP will provide legal advice and, for legal issues before the courts, suggest litigation strategies, the ultimate decision on how to proceed rests with the client departments/agencies, subject to the *Department of Justice Act*. However, the CAP

advice will support the ability of the client departments/agencies to make an informed choice on how to handle their legal risks.

### ***Legislation and regulations that respect the Constitution and other legal obligations***

CAP counsel draft regulations and support the drafting of legislation, regulations and other statutory instruments related to the federal budget, taxation and other matters. They also support the drafting of amendments to legislation related to the client department or agency. Drafted legislation (and amendments to legislation) must meet constitutional, Charter and other legal requirements (as well as bilingual requirements). This outcome also contributes to the management/mitigation of legal risk by meeting legislated obligations and ensuring that the administration of public affairs is in accordance with the law.

### ***Appropriate resolution of litigation cases***

Litigation cases are resolved through the most appropriate means, be it settlement, early DR or litigation. CAP counsel contribute by identifying, assessing and recommending options for the effective management and the appropriate methods to resolve litigious issues or claims against the Crown. It is important that resolution comes about in the most timely and cost-effective manner possible.

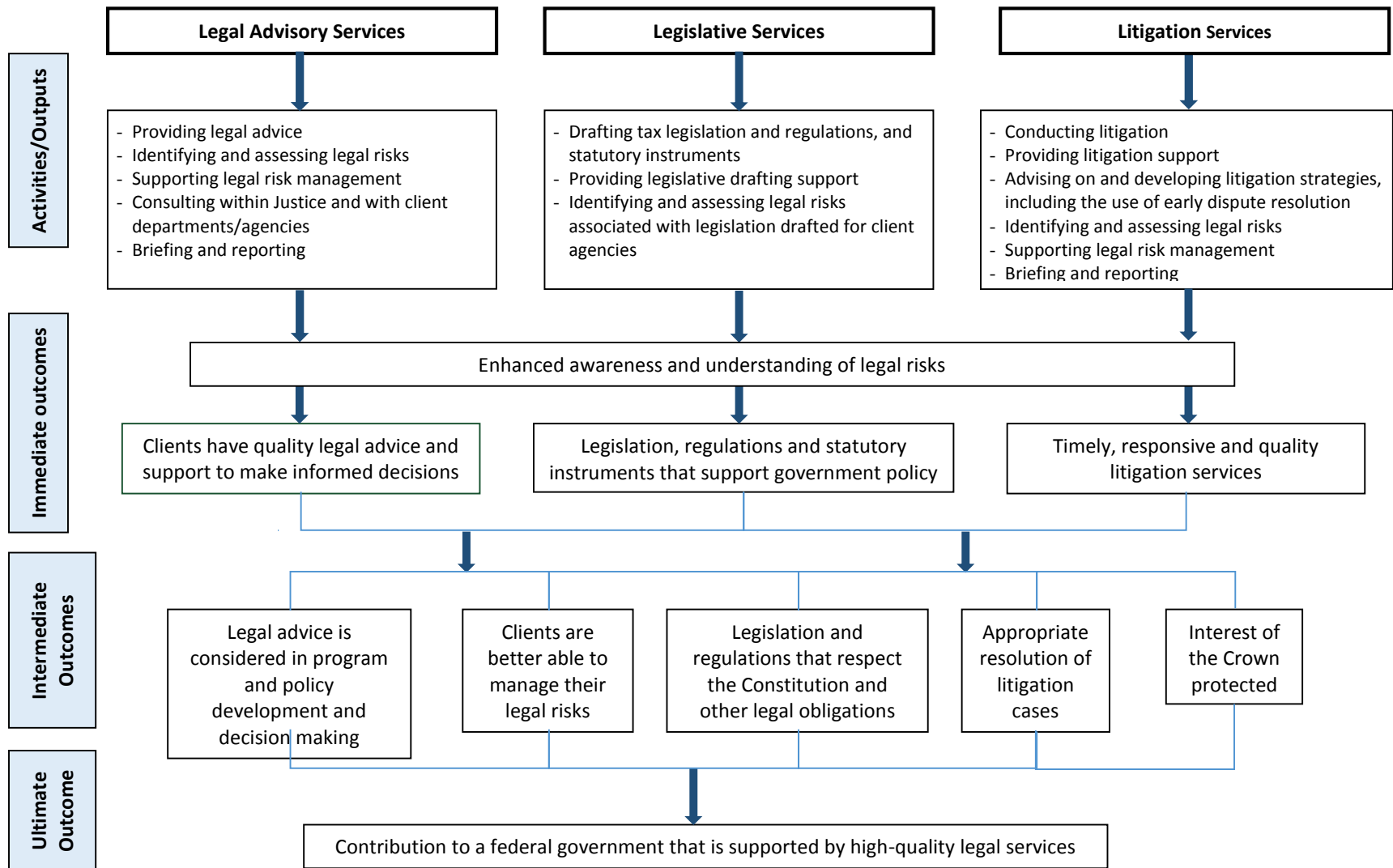
### ***Interest of the Crown protected***

Under the *Department of Justice Act*, the Portfolio must ensure that the interests of the Crown in the proper administration of justice are protected through its litigation and legal advisory services. As with all areas of Justice, the Portfolio is responsible for taking an integrated, whole-of-government approach where its legal advice and litigation positions are consistent across government. This measure is accomplished by consulting within Justice and, where appropriate, with other federal departments/agencies. When conflicting positions arise, the Portfolio will try to resolve the conflict and, when necessary, the ADMO will provide appropriate briefing within Justice to bring the issue to the attention of senior management.

## **3. Ultimate Outcome**

Through the achievement of the immediate and intermediate outcomes and by providing high-quality, cost-effective legal services that minimize legal risk, the CAP will support the Department's strategic outcome: "*A federal government that is supported by high-quality legal services*".

### Central Agencies Portfolio Logic Model



**Appendix B:**  
**Evaluation Matrix**





Evaluation Issue	Question	Performance Indicator	Measures	Data Sources/Methods
<b>1. Relevance</b>				
Continued need for the CAP	1.1 To what extent do CAP services address the legal needs of its clients? Is there a continued need for the CAP?	<ul style="list-style-type: none"> <li>Extent, scope and nature of demand for:               <ul style="list-style-type: none"> <li>Legal advisory services</li> <li>Legislative drafting services</li> <li>Litigation services</li> </ul> </li> <li>CAP advisory, drafting and litigation services meet client needs.</li> </ul>	<ul style="list-style-type: none"> <li>Number of actively managed files over the evaluation period<sup>47</sup></li> <li>Trends in the types of files actively managed (advisory, litigation, legislative drafting)</li> <li>Number of files closed</li> <li>Perceived relevance of CAP services to the needs of clients</li> </ul>	<ul style="list-style-type: none"> <li>Document review and analysis</li> <li>CAP clients/survey</li> <li>Interviews</li> <li>CAP staff<sup>48</sup>/interviews, survey</li> <li>iCase/analysis</li> <li>CAP client files/analysis</li> </ul>
	1.2 Has the demand for CAP services changed and if so, how?	<ul style="list-style-type: none"> <li>Nature of and extent to which demand for CAP services has changed over the past five years</li> <li>Nature and extent to which demand for CAP services is expected to change over the next five years</li> </ul>	<ul style="list-style-type: none"> <li>Trends in client requests for legal services by type of service (advisory, litigation, legislative drafting)</li> <li>Changes in types of requests, including new or special requests</li> <li>Changes in the complexity of requests for services</li> <li>Trends in risk levels</li> <li>Expected trends/emergent issues</li> </ul>	<ul style="list-style-type: none"> <li>CAP clients/survey, interviews</li> <li>Justice officials/interviews</li> <li>CAP clients/survey, interviews</li> <li>CAP staff/interviews, survey</li> <li>CAP administrative records/analysis</li> <li>CAP client files/analysis</li> </ul>
Alignment with Government Priorities and Departmental Strategic Outcomes	1.3 To what extent are the activities of the CAP aligned with 1. Government of Canada priorities? and 2. The second strategic outcome of Justice?	<ul style="list-style-type: none"> <li>Extent to which the CAP mandate and activities are aligned with Government of Canada priorities</li> </ul>	<ul style="list-style-type: none"> <li>Consistency between CAP mandate and activities with the priorities of the federal government</li> <li>Contribution to drafting legislation and regulation required to support Government of Canada priorities</li> <li>Perceived relevance of CAP to the needs/priorities of the Government of Canada</li> </ul>	<ul style="list-style-type: none"> <li>Documentation/analysis</li> <li>Speech from the Throne, federal budget/analysis</li> <li>CAP staff/interviews</li> <li>Clients/interviews</li> </ul>
		<ul style="list-style-type: none"> <li>Extent to which CAP activities are aligned with the second strategic outcome of Justice</li> </ul>	<ul style="list-style-type: none"> <li>Consistency between CAP activities and the Justice strategic outcome</li> </ul>	<ul style="list-style-type: none"> <li>Justice strategic priorities/analysis</li> <li>CAP Business Plan/analysis</li> <li>Documentation/analysis</li> <li>CAP staff/interviews</li> <li>Justice officials/interviews</li> </ul>
Alignment with Federal Roles and Responsibilities	1.4 To what extent do the activities of the CAP align with federal roles and responsibilities?	<ul style="list-style-type: none"> <li>Extent to which the CAP mandate and activities are aligned with the federal government's role and responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>Alignment of CAP services with federal government's roles and responsibilities</li> <li>Alignment of CAP services with clients' mandates</li> </ul>	<ul style="list-style-type: none"> <li>Documentation/analysis</li> <li>Constitutional &amp; Statutory</li> <li>Authorities/analysis</li> <li>PAA/analysis</li> </ul>

<sup>47</sup> Note that a file could contain multiple requests.

<sup>48</sup> CAP staff refers to counsel and management.

Evaluation Issue	Question	Performance Indicator	Measures	Data Sources/Methods
<b>2. Portfolio Design</b>				
CAP Design	2.1 Are the mandate and objectives of the CAP clear?	<ul style="list-style-type: none"> <li>• Scope and clarity of CAP mandate and objectives</li> </ul>	<ul style="list-style-type: none"> <li>• Clarity of stated mandate and objectives of CAP</li> <li>• Awareness of the stated mandate and objectives of CAP among client agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Constitutional &amp; Statutory</li> <li>• Authorities/analysis</li> <li>• Documentation/analysis</li> <li>• PAA/analysis</li> <li>• CAP staff/interviews</li> <li>• CAP clients/interviews</li> </ul>
	2.2 Is the CAP governance structure appropriate?	<ul style="list-style-type: none"> <li>• Clarity of CAP roles and responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>• Clarity of the roles and responsibilities of CAP counsel</li> <li>• Adherence to the roles and responsibilities of the CAP by counsel</li> <li>• Awareness of CAP counsel role/responsibilities among client departments/agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Documentation/analysis</li> <li>• CAP staff/interviews</li> <li>• CAP legal counsel/survey</li> <li>• CAP clients/interviews</li> <li>• Justice officials/interviews</li> </ul>
	2.3 Do the program/services duplicate or overlap with programs/services delivered by other legal service areas of Justice?	<ul style="list-style-type: none"> <li>• Areas of overlap with other legal services provided by Justice</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence of duplicative services</li> </ul>	<ul style="list-style-type: none"> <li>• Document review and analysis</li> <li>• CAP legal staff and management/interviews</li> <li>• Justice legal staff/interviews</li> </ul>
	2.4 Is the CAP structured in such a way that it is likely to achieve its objectives?	<ul style="list-style-type: none"> <li>• Organizational structure and delivery strategies support achievement of CAP objectives</li> </ul>	<ul style="list-style-type: none"> <li>• Organizational factors and activities that contribute to/detract from achieving CAP objectives</li> </ul>	<ul style="list-style-type: none"> <li>• CAP governance structure/analysis</li> <li>• CAP documentation/analysis</li> <li>• CAP staff and client interviews</li> <li>• CAP legal counsel survey</li> </ul>
CAP Performance Monitoring	2.5 Is there sufficient capacity within CAP to support ongoing quality improvement, and performance measurement?	<ul style="list-style-type: none"> <li>• Sufficiency of capacity and resources, including methods/systems to support ongoing quality improvement, performance measurement</li> </ul>		<ul style="list-style-type: none"> <li>• CAP administrative files/analysis</li> <li>• CAP staff/interviews</li> </ul>
<b>3. Performance</b>				
<b>Achievement of Expected Outcomes</b>				
<b>3.1 Direct Outcomes</b>				
Effectiveness	3.1.1 To what extent has the CAP enhanced the awareness and understanding of legal risk management of clients?	<ul style="list-style-type: none"> <li>• Change in level of awareness/ understanding by clients of the legal risks relevant to their agency or business line</li> </ul>	<ul style="list-style-type: none"> <li>• Client decision-makers are aware of legal risks</li> <li>• Counsel identify or assess legal risks</li> <li>• Number of files where legal risks have been identified and assessed</li> <li>• Client awareness of potential legal risk</li> </ul>	<ul style="list-style-type: none"> <li>• CAP clients/interviews, survey</li> <li>• CAP counsel/interviews, survey</li> <li>• Case files/analysis</li> <li>• iCase data/analysis</li> </ul>

Evaluation Issue	Question	Performance Indicator	Measures	Data Sources/Methods
Effectiveness (cont'd)	3.1.2 To what extent has the CAP produced high quality legal advice and support in response to client requests?	<ul style="list-style-type: none"> <li>Extent to which legal services provided by CAP responds to client needs</li> </ul>	<ul style="list-style-type: none"> <li>Legal advice addresses client needs</li> <li>Legal options are provided to the client</li> <li>Usefulness of the legal advice and services provided</li> </ul>	<ul style="list-style-type: none"> <li>Document review and analysis</li> <li>iCase data/analysis</li> <li>CAP clients/interviews, survey</li> <li>CAP counsel/interviews</li> </ul>
		<ul style="list-style-type: none"> <li>Extent to which CAP staff has effective tools and resources necessary to support the provision of legal services</li> </ul>	<ul style="list-style-type: none"> <li>Processes, tools and resources available to support the delivery of legal services that are consistent across Justice</li> <li>Evidence of quality assurance mechanisms in place in a regular use</li> <li>Evidence of consultations to ensure consistency of law and the Government of Canada position</li> <li>CAP counsel levels of satisfaction with tools and resources to support delivery of legal services</li> </ul>	<ul style="list-style-type: none"> <li>Documentation/review</li> <li>CAP staff/interviews, survey</li> <li>Other Justice counsel/interviews</li> </ul>
		<ul style="list-style-type: none"> <li>Responsiveness of the CAP to meeting client requests</li> </ul>	<ul style="list-style-type: none"> <li>CAP meets or exceeds established departmental services standards for timeliness, usefulness, responsiveness</li> </ul>	<ul style="list-style-type: none"> <li>Clients/interviews, survey</li> <li>CAP staff/interviews, survey</li> <li>iCase data/analysis</li> <li>CAP client files/analysis</li> <li>Case studies</li> </ul>
	3.1.3 To what extent has the CAP contributed to the creation of regulations and statutory instruments that support government related legislative needs?	<ul style="list-style-type: none"> <li>Regulations and statutory instruments drafted by CAP contribute to the making of legislation, regulations and statutory instruments that support government legislative needs</li> </ul>	<ul style="list-style-type: none"> <li>Usage of drafting protocols/ procedures, tool and resources available</li> <li>Legislative drafting services and products meet federal government needs (e.g., enacting federal budget)</li> </ul>	<ul style="list-style-type: none"> <li>Document review and analysis</li> <li>CAP counsel/interviews, survey</li> <li>iCase data/analysis</li> <li>CAP client files/analysis</li> <li>CAP client/interviews</li> <li>Case studies</li> </ul>
	3.1.4 To what extent does CAP provide timely and responsive litigation services	<ul style="list-style-type: none"> <li>Responsiveness of the CAP to clients'/Government of Canada litigation needs</li> </ul>	<ul style="list-style-type: none"> <li>Evidence of consultations to ensure consistency of law and the Government of Canada position in litigation cases</li> <li>Evidence of options considered</li> <li>Number of files where DR was used</li> <li>Appropriate dispute resolution (DR) options are identified to address client needs</li> <li>Client is kept informed of the status of the litigation</li> </ul>	<ul style="list-style-type: none"> <li>Clients/interviews, survey</li> <li>CAP counsel/interviews, survey</li> <li>DoJ counsel/interviews</li> <li>iCase data/analysis</li> <li>CAP client files/analysis</li> <li>Case studies</li> </ul>

Evaluation Issue	Question	Performance Indicator	Measures	Data Sources/Methods
<b>3.2 Intermediate Outcomes</b>				
Effectiveness (cont'd)	3.2.1 To what extent do the legal services provided by CAP counsel contribute to program and policy development, and to decision making of client departments and agencies?	<ul style="list-style-type: none"> <li>Extent to which legal advice provided by CAP counsel is considered by decision-makers</li> </ul>	<ul style="list-style-type: none"> <li>Legal advice provided responds to needs of the client</li> <li>Usefulness of the advice to support clients' decision making</li> <li>Client satisfaction with the legal advice</li> </ul>	<ul style="list-style-type: none"> <li>CAP case files/analysis</li> <li>Clients/interviews, survey</li> <li>CAP staff/interviews, survey</li> <li>Case studies</li> </ul>
	3.2.2 To what extent has the CAP contributed to client departments and agencies being better able to manage their legal risks?	<ul style="list-style-type: none"> <li>Nature and extent of CAP contribution to legal risk management</li> </ul>	<ul style="list-style-type: none"> <li>Number/% of files where legal risk is assessed/reassessed</li> <li>Number/% of files where legal risk mitigation/management options are provided to clients</li> <li>Number/% of high-risk or high impact files where contingency plans have been developed</li> <li>Clients understand/consider mitigation options</li> </ul>	<ul style="list-style-type: none"> <li>CAP client files/analysis</li> <li>Clients/interviews, survey</li> <li>Case studies</li> </ul>
	3.2.3 To what extent has the CAP contributed to the creation of federal legislation that respects the Constitution and other legal requirements?	<ul style="list-style-type: none"> <li>Extent/nature of measures available and used to ensure that legislative drafts respect the Constitution and other legal requirements</li> </ul>	<ul style="list-style-type: none"> <li>Nature of quality assurance mechanisms in place in regular use</li> <li>Evidence of collaboration with LSB drafting experts</li> <li>Among CAP counsel, level of satisfaction with tools to support legal services</li> </ul>	<ul style="list-style-type: none"> <li>CAP client files/analysis</li> <li>CAP staff/interviews</li> <li>Other Justice counsel</li> <li>Interviews</li> <li>Case studies</li> </ul>
	3.2.4 To what extent is there appropriate resolution of litigation cases?	<ul style="list-style-type: none"> <li>Extent to which litigation cases are effectively resolved/litigated</li> </ul>	<ul style="list-style-type: none"> <li>Evidence that alternatives to litigation were explored</li> <li>Extent that DR is used in litigation cases where feasible</li> <li>Number/% of potential litigation cases resolved through different options (e.g., withdrawn by party, court, DR, etc.)</li> <li>Level of client satisfaction with CAP management of litigation files</li> </ul>	<ul style="list-style-type: none"> <li>iCase</li> <li>CAP client files/analysis</li> <li>CAP counsel interviews</li> <li>CAP clients/interviews</li> <li>Case studies</li> </ul>

Evaluation Issue	Question	Performance Indicator	Measures	Data Sources/Methods
Effectiveness (cont'd)	3.2.5 In what ways do CAP services protect the interests of the Crown?	<ul style="list-style-type: none"> <li>Legal issues/risks are addressed so that the Crown's interest is protected</li> </ul>	<ul style="list-style-type: none"> <li>Protocols, processes and resources available to assist in developing strategies to protect Crown's interests</li> <li>Legal strategies developed with a whole-of-government perspective</li> <li>Extent to which the Government of Canada's position is consistently communicated and represented by CAP counsel</li> </ul>	<ul style="list-style-type: none"> <li>CAP client files/analysis</li> <li>CAP counsel/interviews</li> <li>CAP clients/interviews</li> <li>Case studies</li> </ul>
<b>3.3 Ultimate Outcome</b>				
Effectiveness (cont'd)	3.3.1 To what extent has the CAP contributed to a federal government that is supported by high-quality legal services?	<ul style="list-style-type: none"> <li>Cumulative</li> </ul>	<ul style="list-style-type: none"> <li>Achievement of direct and intermediate outcomes</li> </ul>	<ul style="list-style-type: none"> <li>Cumulative/contribution analysis</li> <li>CAP staff/interviews</li> <li>Justice officials/interviews</li> </ul>
<b>4. Demonstration of Efficiency and Economy</b>				
Efficiency and Economy	4.1 Has the CAP's resource utilization been appropriate in relation to the resources allocated, activities and outputs produced and demand for services?	<ul style="list-style-type: none"> <li>Budget and work plan priorities and activities in relation to outputs delivered</li> </ul>	<ul style="list-style-type: none"> <li>Cost of legal inputs for each type of service (e.g., advisory, litigation)</li> <li>Change in level of effort for each type of services</li> <li>Analysis of planned versus actual inputs/resources used</li> </ul>	<ul style="list-style-type: none"> <li>CAP financial data/analysis</li> <li>iCase data/analysis</li> <li>CAP staff/interviews, survey</li> </ul>
	4.2 Is the CAP's capacity to deliver services sufficient given current and future demand for services?	<ul style="list-style-type: none"> <li>Level and scope of services available in relation to demand for services (past, current, projected) by area of service delivery and LSU</li> <li>Appropriateness of Labour Law Continuing Education to support efficient and economical service to clients in the area of labour law.</li> </ul>	<ul style="list-style-type: none"> <li>Volume of requests per type of service and LSU</li> <li>Capacity to complete requests (within reasonable timelines)</li> <li>Capacity to cover all court/tribunal proceedings</li> <li>Capacity to assign counsel to all court/tribunal proceedings</li> <li>Impact of the Law Practice Model on human resource needs</li> <li>Evidence of initiatives to improve efficiency</li> <li>Evidence that the level of CAP counsel assigned to a file is appropriate given its level of risk and complexity</li> </ul>	<ul style="list-style-type: none"> <li>iCase/analysis</li> <li>CAP staff/survey, interviews</li> <li>Clients/interviews, survey</li> <li>Case studies</li> </ul>

Evaluation Issue	Question	Performance Indicator	Measures	Data Sources/Methods
Efficiency and Economy (cont'd)	4.3 Does the financial model utilized by the CAP provide appropriate and sufficient funding to meet current and future demand for services?	<ul style="list-style-type: none"> <li>• Sufficiency of A-base funding to discharge the Minister's responsibilities</li> <li>• Level of satisfaction that CAP and its clients have with                             <ol style="list-style-type: none"> <li>1. the CAP funding model, and</li> <li>2. the specific agreements/MOUs</li> </ol> </li> <li>• Trends in financial models for supporting/funding legal services</li> </ul>	<ul style="list-style-type: none"> <li>• Gap between financial inputs and resource requirements for outputs</li> <li>• Examples from other jurisdictions that provide similar types of legal services within government</li> </ul>	<ul style="list-style-type: none"> <li>• CAP staff/interviews</li> <li>• Financial documentation/ review</li> <li>• Clients/interviews</li> <li>• Literature /environmental scan</li> <li>• Financial documentation/ review</li> <li>• CAP managers/interviews</li> <li>• FIN staff/interviews</li> </ul>
	4.4 Are there alternative ways of delivering the same services to CAP clients?	<ul style="list-style-type: none"> <li>• Trends in practices/service delivery models</li> </ul>	<ul style="list-style-type: none"> <li>• Examples from other jurisdictions/private sector</li> <li>• Alternative models to deliver similar types of services in a government context.</li> </ul>	<ul style="list-style-type: none"> <li>• Literature/environmental scan</li> <li>• CAP managers/interviews</li> <li>• Justice officials/interviews</li> </ul>

**Appendix C:**  
**Data Collection Instruments**





## **Interviews**



## **Interview Guide – Representatives of the Central Agencies Portfolio**

The Department of Justice hired Prairie Research Associates Inc. (PRA), a research company, to support the evaluation of the legal services provided by the Central Agencies Portfolio (CAP), through the:

- Assistant Deputy Minister’s Office;
- Department of Finance General Legal Services;
- Department of Finance Tax Counsel Division;
- Office of the Superintendent of Financial Institutions Legal Services Unit;
- Public Service Commission Legal Services Unit;
- Treasury Board Secretariat Legal Services Unit;
- Financial Transactions and Reports Analysis Centre of Canada Legal Services Unit; and
- Financial Consumer Agency of Canada Legal Services Unit.

The evaluation includes interviews with those working within the CAP and its Legal Services Units, with other representatives of Justice Canada, and with representatives of CAP client departments and agencies.

The evaluation covers a five-year period (2010-11 — 2014-15) and focuses on the relevance and performance (effectiveness, efficiency and economy) of the CAP.

The information we gather through this interview will be summarized in aggregate form only. 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.

With your permission, we would like to digitally record the interview to ensure the accuracy of our notes. The audio file will be deleted after the completion of the study.

Finally, some questions may not be applicable to the work you do. Please let us know, and we will skip those questions.

## **Introduction**

1. Please describe your current roles and responsibilities for the CAP. Probes: *Who are your clients? Do you work regularly with other Justice HQ, regional or LSU offices? Are you involved in any Portfolio-wide or Department-wide initiatives, meetings or committees?*

## **Relevance**

2. Over the last five years, have you observed any changes in the demand for legal services? (Please consider any changes in the volume, complexity, and legal risk level, as well as the type of legal issues being dealt with, the types of legal services requested, and the urgency of the requests.) How has the CAP/LSU responded to these trends? [Q 1.1, 1.2]
3. In your opinion, how have the government's and/or your clients' roles and priorities with respect to central agency function affected the legal services provided by CAP/LSU counsel? How has the CAP/LSU responded to meet changes in federal and/or client priorities? What future impact, if any, are changes in priorities expected to have on legal service demand and the role played by the CAP/LSU? [Q 1.3]

## **Design of the Portfolio**

4. Are both the current mandate and objectives pursued by the CAP/LSU clearly understood within your team? What factors contribute to or limit understanding of the CAP/LSU's mandate and objectives? [Q 2.1]
5. Considering the current structure and composition of the CAP/LSU, how would you describe the key strengths? What changes, if any, could be considered to enhance the efficiency and/or the effectiveness of the CAP/LSU's structure and composition or service delivery strategies? In your view, does the CAP provide legal services to the most appropriate mix of departments and agencies to support the government in carrying out central agency functions? [Q 2.2, 2.4]
6. The CAP Assistant Deputy Minister (ADM) holds a unique, dual role, as both the head of the CAP and the ADM of the Finance Canada Law Branch. To what extent, if any, do you feel that this unique structure helps to ensure a coordinated, whole-of-government approach to legal issues dealt with by the CAP/LSU? Please explain. [Q 3.2.5]
7. Do you believe that your clients have a clear understanding of the roles and responsibilities of CAP/LSU counsel? Why or why not? [Q 2.2, 2.4]

8. Do the legal services provided by the CAP/LSU relate to those provided by other areas within the Department of Justice? Are you aware of any areas of overlap between CAP legal services and other Justice legal services? Please explain. [Q 2.3]
9. Please describe what, if any, resources, methods, or systems are used within the CAP/LSU for performance measurement? To what extent do current performance measurement resources, methods, or systems support ongoing quality improvement within the CAP/LSU? [Q 2.5, 3.1.2]

### **Performance – Effectiveness**

10. Please describe how the CAP/LSU identifies, assesses, and manages legal risks, in cooperation with client departments. In particular, what are the key tools, strategies, committees or structures currently used to assist in managing legal risks? In your opinion, how efficient and/or effective have these tools/strategies/structures been? What role do clients play in identifying, assessing, and managing these risks? In your opinion how effective is the collaboration between counsel and clients in managing legal risks? Please explain. [Q 3.1.1, 3.2.2]
11. In your opinion, has the level of awareness and understanding of legal risks among client departments and agencies improved over the last five years? If so, what do you consider to be the key contributions of the CAP/LSU towards this outcome? If not, please explain. What more needs to be done? [Q 3.1.1, 3.2.2]
12. As you know, the CAP/LSU 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
  - timely response to legal service requests
  - negotiation of and attention to deadlines
  - provision of clear and practical guidance on resolving legal issues
  - provision of ongoing feedback respecting client requests for service
  - involvement of clients in developing legal strategies and positions
  - development of legislative and regulatory drafting options and solutions appropriate to clients' policy and program objectives
  - early identification of means to prevent and resolve legal disputes

- identification of opportunities to implement policies or programs by administrative, as opposed to legislative or regulatory, means:

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 factors challenging the CAP/LSU's ability to meet these standards? [Q 3.1.2, 3.1.4]

13. How well does the coordination/consultation work within the CAP/LSU and between regional offices and CAP/LSU counsel working in the National Capital Region? Please explain. [Q 3.1.2]
14. In general, are the consultations/collaboration between the CAP/LSU and the specialized sections in Justice effective? Why or why not? [Q 3.1.2]
15. Please describe the strategies used by the CAP/LSU to ensure a nationally coordinated, whole-of-government approach to legal issues. In your opinion, are these strategies effective? What, in your opinion, is the purpose of/need for a national approach in the provision of legal services to clients? [Q 3.1.2, 3.2.5]
16. What is your opinion of the current training/professional development provided to CAP/LSU counsel? Are any training needs not being met? [Q 3.1.4, 3.3.1]
17. Please list any tools or resources that you are aware of which are available to support CAP/LSU counsel in their provision of high-quality legal services and accurate legal advice to clients. In your response, to the extent possible, please identify the tools and resources available at the Department, Portfolio and LSU levels. In your opinion, how helpful are these tools, resources, and structures? Are you aware of any gaps? What (if anything) could be done to improve current tools and resources so that they better support the work of CAP/LSU counsel? [Q 3.1.2, 3.3.1]
18. **[For those who provide legislative drafting services]:** CAP/LSU counsel contribute to the creation of federal regulations and statutory instruments through provision of legislative drafting services. To what extent do CAP/LSU services in this area support the government's legislative needs? In your response, please consider factors such as: the availability of drafting protocols, procedures, tools, and resources to support the CAP in providing drafting services; and collaborations with the Legislative Services Branch to ensure that legislative drafts respect the *Constitution* and other legal requirements. [Q 3.1.3, 3.2.3]

19. What factors (if any) contribute to or constrain the CAP/LSU's ability to provide timely, high quality, responsive legal services? [Q 3.1.2, 3.1.4, 3.3.1]
20. In your experience, to what extent is the advice provided by the CAP/LSU considered by clients in developing programs or policies and making decisions? What factors make it more or less likely that advice will be considered? Are there any barriers to CAP/LSU advice being considered by client departments or agencies in the decision-making process? [Q 3.2.1]
21. **[For those who provide litigation services]:** To what extent are client litigation cases effectively resolved? In your view, are alternatives to litigation explored and used when they should be? [Q 3.2.4]

### **Performance – Efficiency and Economy**

22. In your opinion, are adequate resources (e.g., human, financial, technological) in place to support the current and forecasted demand for CAP/LSU services? How does the CAP/LSU manage resource challenges? *Probe: Can you comment on the capacity of CAP/LSU staff to meet current demand for its legal services? To respond to client requests in a timely manner?* [Q 4.1, 4.3]
23. Since 2012, the Department of Justice has been implementing a number of strategies to increase the efficiency of its resource utilization (such as those initiatives related to process optimization, including: reducing time on files, reducing legal services requests, screening and prioritizing requests, reducing the number of counsel per file, meeting the 1300 hours target per counsel, applying project management approach to major advisory or litigation files, etc.). In your opinion, how well have these strategies been communicated and implemented by the CAP/LSU? [Q 4.1, 4.2]
24. Do you make use of paralegals to support you in your work? **If yes:** what types of tasks do paralegals assist you with? **If no:** please explain why you do not receive/use support from paralegals. Do you feel that paralegals are used to their full potential by your area of the CAP/LSU? Why or why not? [Q 4.2]
25. Please describe what you perceive to be the key results achieved to date in maximizing efficiency. In your opinion, what role does the client play in improving the effectiveness, efficiency and economy of legal services, e.g. what are the clients' role and responsibility in managing demand for legal services within the available resources? [Q 4.2]

26. Are there remaining challenges that influence the Portfolio's ability to achieve its expected outcomes effectively? What changes, if any, are needed to enhance the processes and tools to maximize resource utilization within the CAP/LSU? [Q 4.1]
27. Are you aware of any alternative funding or service delivery models for the provision of similar types of legal services within government? If so, do these alternative models offer insights into any potential strategies for improving the efficiency or economy of CAP/LSU legal services? [Q 4.1, 4.3]

**Conclusion**

28. Do you have any further comments relating to the work of the CAP/LSU?

*Thank you for your participation*



## **Interview Guide – Representatives of the other areas within the Department of Justice**

The Department of Justice hired Prairie Research Associates Inc. (PRA), a research company, to support the evaluation of the legal services provided by the Central Agencies Portfolio (CAP), through the:

- Assistant Deputy Minister’s Office;
- Department of Finance General Legal Services;
- Department of Finance Tax Counsel Division;
- Office of the Superintendent of Financial Institutions Legal Services Unit;
- Public Service Commission Legal Services Unit;
- Treasury Board Secretariat Legal Services Unit;
- Financial Transactions and Reports Analysis Centre of Canada Legal Services Unit; and
- Financial Consumer Agency of Canada Legal Services Unit.

The evaluation includes interviews with those working within the CAP and its Legal Services Units, with other representatives of Justice Canada, and with representatives of CAP client departments and agencies.

The evaluation covers a five-year period (2010–11 — 2014–15) and focuses on the relevance and performance (effectiveness, efficiency and economy) of the CAP.

The information we gather through this interview will be summarized in aggregate form only. 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.

With your permission, we would like to digitally record the interview to ensure the accuracy of our notes. The audio file will be deleted after the completion of the study.

Finally, some questions may not be applicable to the work you do. Please let us know, and we will skip those questions.

## **Introduction**

1. Please describe your current roles and responsibilities. What roles have you played on CAP client files?

## **Relevance of the CAP**

2. Over the last five years, have you observed any changes related to your work on CAP client files? Have you noticed any changes in the volume, complexity, and legal risk level, as well as the type of legal issues being dealt with, the types of legal services requested, and the urgency of the requests? Please explain. What has been the most significant change, if any? [Q 1.1, 1.2]
3. If you have worked on cases/files for CAP clients, or observed the legal services provided by the CAP/LSU, to what extent do you feel these services meet the needs of the Government of Canada (e.g., their alignment with government priorities and the Justice outcome of a federal government that is supported by high-quality legal services)? Are you aware of any changes in government priorities related to central agency functions that would impact the way that the CAP/LSU provides legal services? Please explain. [Q 1.3]

## **Design of the Portfolio**

4. In your view, are the CAP/LSU's current mandate and objectives as well as its roles and responsibilities clearly understood within your team? What factors contribute to or limit understanding of the Portfolio's mandate and objectives? [Q 2.1]
5. Considering the current structure and composition of the CAP/LSUs, how would you describe the key strengths of the CAP/LSUs? What changes, if any, could be considered to enhance the efficiency and/or the effectiveness of the CAP/LSUs' structure and composition or service delivery strategies? In your view, does the CAP provide legal services to the most appropriate mix of departments and agencies to support the government in carrying out central agency functions? [Q 2.2, 2.4]
6. In CAP client files involving multiple departments or agencies, have you observed CAP/LSU coordination of legal services? To what extent are you aware of CAP/LSU coordination efforts in these files? If so, are you satisfied with the level of coordination achieved? To what extent does this coordination contribute to a whole-of-government approach to the legal issues being addressed? [Q 2.4, 3.1.2, 3.2.5]

7. Do the legal services provided by the CAP/LSUs relate to those provided by other areas within the Department of Justice? Are you aware of any areas of overlap between CAP/LSU legal services and other Justice legal services? Please explain. [Q 2.3]

**Performance – Effectiveness**

8. To what extent, if any, have you been involved in the identification, assessment, and/or management of legal risk on CAP client files? In your opinion, has the CAP/LSU sufficiently involved counsel from your region or specialized section in identifying, assessing, and managing legal risks? Why or why not? [Q 3.1.1, 3.2.2]
9. Please describe your level of satisfaction with the following dimensions of your work with the CAP/LSUs: [Q 3.1.2]
- a. The extent to which your group is consulted in a timely manner.
  - b. The extent to which the timeframes for completing requests are appropriate.
  - c. The extent to which you are consulted on the appropriate issues, at an appropriate level, etc.
10. In general, are the consultations/collaboration between the CAP/LSUs and your area of the Department of Justice effective? Why or why not? [Q 3.1.2]

*Probes for representatives of the Legislative Services Branch:*

- *To what extent does your group assist the CAP clients in supporting the government's legislative needs?*
  - *How essential are services from your group in ensuring that CAP/LSU legislative drafting services respect the Constitution and other legal requirements?* [Q 3.1.3, 3.2.3]
11. Over the past five years, has your group provided training either to CAP/LSU legal counsel or to their clients? If yes, what was the nature of this training? Did the training improve the effectiveness of the Portfolio? [Q 3.1.2, 3.3.1]
12. **[For those who provide litigation services]:** To what extent are CAP client litigation cases effectively resolved? In your view, are alternatives to litigation explored and used when they should be? [Q 3.2.4]

**Performance – Efficiency and Economy**

13. Since 2012, the Department of Justice has been implementing a number of strategies to increase the efficiency of its resource utilization (such as those initiatives related to process optimization, including benchmarking, reducing time on files, reducing legal services requests, screening and prioritizing requests, reducing the number of counsel per file, applying project management approach to major files, etc.). Have you seen any changes in your working relationship with the CAP/LSUs as a result of these strategies? If so, please explain. [Q 4.2]
14. What, if any, suggestions do you have for improving efficiency or cost-effectiveness in terms of how the CAP/LSUs or CAP clients work with your area of Justice? [Q 4.1, 4.3]

**Conclusion**

15. Do you have any further comments relating to the work of the CAP/LSUs?

*Thank you for your participation*

## **Interview Guide – Representatives of client departments and agencies**

The Department of Justice hired Prairie Research Associates Inc. (PRA), a research company, to support the evaluation of the legal services provided by the Central Agencies Portfolio (CAP), through the:

- Assistant Deputy Minister’s Office;
- Department of Finance General Legal Services;
- Department of Finance Tax Counsel Division;
- Office of the Superintendent of Financial Institutions Legal Services Unit;
- Public Service Commission Legal Services Unit;
- Treasury Board Secretariat Legal Services Unit;
- Financial Transactions and Reports Analysis Centre of Canada Legal Services Unit; and
- Financial Consumer Agency of Canada Legal Services Unit.

The evaluation includes interviews with those working within the CAP and its Legal Services Units, with other representatives of Justice Canada, and with representatives of CAP client departments and agencies.

The evaluation covers a five-year period (2010-11 — 2014-15) and focuses on the relevance and performance (effectiveness, efficiency and economy) of the CAP.

The information we gather through this interview will be summarized in aggregate form only. 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.

With your permission, we would like to digitally record the interview to ensure the accuracy of our notes. The audio file will be deleted after the completion of the study.

Finally, some questions may not be applicable to the work you do. Please let us know, and we will skip those questions.

## Introduction

1. Please describe briefly your current roles and responsibilities. How do they relate to the legal services provided by the CAP/LSU? *Probe: with which CAP LSU do you work, and do you work with the CAP ADMO? On what types of matters (litigation, legal advisory, legislative services) have you (or has your department/agency) consulted the CAP/LSU? For litigation matters, did LSU counsel or regional litigators handle the files?*

## Relevance of the CAP

2. Over the last five years, have you observed any changes in the demand for legal services? (Please consider any changes in the volume, complexity, and legal risk level, as well as the type of legal issues being dealt with, the types of legal services requested, and the urgency of the requests.) How has the CAP/LSU responded to these trends? [Q 1.1, 1.2]
3. In your opinion, how have the federal government's and/or your department/agency's roles and priorities with respect to central agency functions affected your legal services needs? How has the CAP/LSU responded to meet changes in federal priorities or the priorities of your department/agency? What future impact, if any, are changes in priorities expected to have on legal service demand and the role played by the CAP/LSU? [Q 1.3]

## Design of the Portfolio

4. In your view, are the current mandate and objectives pursued by the CAP/LSU, as well as its roles and responsibilities clearly understood within your department/agency? Why or why not? [Q 2.1, 2.2]
5. In your department/agency's legal files involving multiple departments or agencies, have you observed CAP/LSU coordination of the legal services being offered. To what extent are you aware of these coordination efforts in these files? If so, are you satisfied with the level of coordination achieved? To what extent does this coordination contribute to a whole-of-government approach to the legal issues being addressed? [Q 2.4, 3.1.2, 3.2.5]
6. From your perspective or the perspective of your department/agency, what are the strengths of the current structure and composition of the CAP/LSU? Do you have any suggestions for any improvements in the CAP/LSU's organizational structure and composition or service delivery strategies which would allow the CAP/LSU to better serve your department/agency? Please explain. [Q 2.4]

## Performance – Effectiveness

7. Please describe how/if the CAP/LSU works together with your department/agency to identify and assess legal risks, and develop options to manage legal risks. In your opinion, how effective is this collaboration? [Q 3.1.1, 3.2.2]
8. In your opinion, has the level of awareness and understanding of legal risks improved within your department/agency over the last five years? **If yes:** to what extent do you feel this improvement is attributable to the CAP/LSU? **If no:** why do you say that? [Q 3.1.1, 3.2.2]
9. Based on your experience, overall, how satisfied are you with the services provided by the CAP/LSU? [Q 3.1.2]
10. More specifically, and again based on your experience, please comment on the following dimensions of the quality of the overall services provided by the CAP/LSU: [Q 3.1.2, 3.1.4]
  - a. Their current capacity to respond to your requests in a timely manner.
  - b. The extent to which the guidance your department/agency receives on resolving legal issues is clear and practical.
  - c. The extent to which the CAP/LSU provides ongoing feedback to your department/agency.
  - d. The extent to which your department/agency is involved in the development of legal strategies and positions.
  - e. The extent to which your department/agency is provided with legal advice/options/solutions appropriate to your policy and program objectives.
  - f. The extent to which the CAP/LSU assists in identifying opportunities for early resolution of legal disputes.
  - g. The extent to which the CAP/LSU assists in identifying opportunities for implementing policies or programs by administrative, as opposed to legislative or regulatory, means.
  - h. The extent to which your department/agency receives consistent legal advice.
11. What factors (if any) contribute to or constrain the CAP's ability to provide timely, high quality, responsive legal services? [Q 3.1.2, 3.1.4, 3.3.1]

12. How would you describe the CAP/LSU's contribution to your department/agency's ability to meet its legislative goals and objectives? To what extent does the CAP/LSU work with your department or agency on legislative drafting? How effective is this collaboration? To what extent does the CAP/LSU work with the Legislative Services Branch on legislative drafting? To what extent do consultations with the Legislative Services Branch help to ensure that legislative drafts respect the *Constitution* and other legal requirements? [Q 3.1.3]
13. In your experience, to what extent is the advice provided by the CAP/LSU considered by your department/agency in developing programs or policies and making decisions? What factors make it more or less likely that advice will be considered? Are there any barriers to CAP/LSU advice being considered by your department/agency in the decision-making process? [Q 3.2.1]
14. **[For those who have been involved in litigation files]:** To what extent has the CAP/LSU assisted in the effective resolution of litigation cases? In your view, were alternatives to litigation explored and used when they should have been? [Q 3.2.4]

### **Performance – Efficiency and Economy**

15. In your opinion, does the CAP/LSU have adequate resources (e.g., human, financial, technological) in place to support the current and forecasted demand for its services? What, if any, resource challenges have you encountered in your work with the CAP/LSU? *Probe: Can you comment on the capacity of CAP/LSU staff to complete all requests for services? To complete requests in a timely manner?* [Q 4.1, 4.3]
16. In your opinion, are the legal services provided by the CAP/LSU cost-effective? In your response, please consider issues such as the following:
- is the time spent and number of counsel assigned on cases/files reasonable relative to legal risk and/or complexity
  - are appropriate counsel assigned to cases/files, in terms of years of experience and areas of expertise, relative to legal risk and/or complexity
  - is a project management approach applied to major cases/files
  - use of alternative dispute resolution practices and early resolution strategies, when appropriate
  - other tools or practices used to improve the efficiency of legal services



17. To your knowledge, do CAP/LSU counsel make effective use of the paralegals to support them in their work? Why or why not?
18. What, if any, suggestions do you have for improving the efficiency or cost-effectiveness of legal services provided by the CAP/LSU? [Q 4.1, 4.3]

**Conclusion**

19. Do you have any further comments relating to your work with the CAP/LSU?

*Thank you for your participation*



## **Case studies**



## **Case Study Guide — Representatives of the Central Agencies Portfolio**

The Department of Justice hired Prairie Research Associates Inc. (PRA), a research company, to support the evaluation of the legal services provided by the Central Agencies Portfolio (CAP), through the:

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- Public Service Commission Legal Services Unit;
- Treasury Board Secretariat Legal Services Unit;
- Financial Transactions and Reports Analysis Centre of Canada Legal Services Unit; and
- Financial Consumer Agency of Canada Legal Services Unit.

The evaluation comprises a number of data sources, including ten case studies that focus on specific files involving counsel from the CAP. These case studies are providing a unique opportunity to better understand the work of the CAP and its Legal Services Units (LSUs) at an operational level.

The information we gather through this interview will be summarized in aggregate form only. 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.

We understand that some questions may not be applicable to the work you do. Please let us know if a question is not applicable to you, and we will skip it.

### **Introduction**

1. Please describe the key legal issues raised in the file we selected for our discussion today.

2. How were the roles and responsibilities among the various legal counsel involved in this file distributed? What role did you specifically play? In your opinion, were the roles and responsibilities clearly defined and well understood by those involved in the file? Why or why not? [Q 2.2, 4.2]

### **Effectiveness (achievement of expected outcomes)**

#### ***Legal risk management***

3. How was the legal risk assessed on this file? Who was responsible for assessing the legal risk, and what process was used to complete the assessment? [Q 3.1.1]
4. How was the legal risk communicated to the client department or agency? How well did the client department or agency understand the legal risks involved in the file? To what extent did CAP/LSU advice increase the clients' awareness or understanding of the legal risks on this file? [Q 3.1.1]
5. Was the CAP/LSU involved in providing risk management or mitigation options to the client on this file? If yes, to what extent did the client use CAP/LSU legal advice to manage and mitigate legal risks? [Q 3.2.2]
6. What challenges, if any, did you face in assessing or communicating the legal risk associated to this file? [Q 3.1.1, 3.2.2]

#### ***Provision of timely, responsive, high-quality legal services***

7. Do you believe that the CAP/LSU provided high-quality legal services on this file? Why or why not? What feedback, if any, did the CAP/LSU team receive from the client on your legal services? [Q 3.1.1]
8. Were you in a position to deliver your services in a timely, responsive manner? What challenges, if any, did you face in attempting to meet the time frame required by the client department or agency on this file? [Q 3.1.4]
9. Were you assisted in your work on this file by any tools and/or resources provided by, or available through, the CAP/LSU? If so, please specify which tools and/or resources you used. Were they helpful? Why or why not? What, if anything, could be improved to make these tools and/or resources more useful to you in your work? [Q 3.1.2]

### ***Consultation and communication***

10. How often, and for what purposes, did the CAP/LSU consult with the client on this file? To what extent was the client actively involved in the file? In your view, was this involvement sufficient? Why or why not? [Q 3.1.2, 3.1.4]
11. What other legal counsel, within CAP or in other areas of Justice (e.g., regional offices, specialized units from the Public Law Sector, Legislative Services Branch, or Civil Litigation Branch), were involved on this file? What processes were used to coordinate the work of legal counsel? Based on your experience, what worked well with these processes and what challenges, if any, did you encounter? [Q 3.1.2]

### ***Supporting decision making***

12. How would you describe the impact of the legal services you provided on the decisions made by the client department or agency? [Q 3.2.1]

### **Efficiency and economy (deployment of resources)**

13. What, if any, resources challenges (human, financial, technical) did you experience in your work on this file? How were these challenges managed? [Q 4.3]
14. Since 2012, the Department of Justice has been implementing a number of strategies to increase the efficiency of its resource utilization (such as those initiatives related to process optimization and benchmarking). To your knowledge, what, if any, impact did these initiatives have on the management of, or work carried out on, this file? [Q 4.2]
15. To your knowledge, were paralegals engaged to support the work of counsel on this file? Why or why not? In your view, were paralegals used to their full potential on this file? Please explain.
16. In your opinion, were the appropriate resources assigned to this file (in the extent to which sufficient resources were assigned in relation to the nature, risk, or complexity of the file, level of expertise, etc.)? [Q 4.2]
17. If applicable, please comment on the use of alternative dispute resolution practices on this file. Were early resolution strategies identified and used when appropriate? Why or why not? If they were used, what caused them to be successful or unsuccessful in resolving the file? [Q 4.2]

18. Please describe what changes, if any, could have been done to achieve a greater level of efficiency in managing this file? [Q 4.2]

**Conclusion**

19. Do you have any further comments relating to this file?

*Thank you for your participation.*



## Case Study Guide — Representatives of Regional Offices

The Department of Justice hired Prairie Research Associates Inc. (PRA), a research company, to support the evaluation of the legal services provided by the Central Agencies Portfolio (CAP), through the

- Assistant Deputy Minister’s Office;
- Department of Finance General Legal Services;
- Department of Finance Tax Counsel Division;
- Office of the Superintendent of Financial Institutions Legal Services Unit;
- Public Service Commission Legal Services Unit;
- Treasury Board Secretariat Legal Services Unit;
- Financial Transactions and Reports Analysis Centre of Canada Legal Services Unit; and
- Financial Consumer Agency of Canada Legal Services Unit.

The evaluation comprises a number of data sources, including ten case studies that focus on specific files involving counsel from the CAP. These case studies are providing a unique opportunity to better understand the work of the CAP and its Legal Services Units (LSUs) at an operational level.

The information we gather through this interview will be summarized in aggregate form only. 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.

We understand that some questions may not be applicable to the work you do. Please let us know if a question is not applicable to you, and we will skip it.

### Introduction

1. Please describe the key legal issues raised in the file we selected for our discussion today.

2. How were the roles and responsibilities among the various legal counsel involved in this file distributed? Please describe your role as a regional litigator on this file. *Probe: How were you engaged and for what reason(s)?* In your opinion, were the roles and responsibilities clearly defined and well understood by those involved in the file? Why or why not? [Q 2.2, 4.2]

### **Effectiveness (achievement of expected outcomes)**

#### ***Legal risk management***

3. How was the legal risk assessed on this file? Who was responsible for assessing the legal risk, and what process was used to complete the assessment? (To the extent possible, please consider both your own role as well as the role of CAP/LSU counsel in assessing legal risk on this file.) [Q 3.1.1]
4. To what extent, if any, did you collaborate/coordinate with CAP/LSU counsel in communicating with the client about legal risk? In your view, did CAP/LSU advice increase the clients' awareness or understanding of the legal risks on this file? Why or why not? [Q 3.1.1]
5. Was the CAP/LSU involved in providing risk management or mitigation options to the client on this file? If yes, to what extent did the client use CAP/LSU legal advice to manage and mitigate legal risks? [Q 3.2.2]

#### ***Provision of timely, responsive, high-quality legal services***

6. Do you believe that the CAP/LSU provided high-quality legal services on this file? Why or why not? [Q 3.1.1]
7. In your view, were CAP/LSU services on this file provided in a timely, responsive manner? To the best of your knowledge, what factors, if any, affected the CAP/LSU's ability to respond in good time to requests? [Q 3.1.4]

#### ***Consultation and communication***

8. Please discuss your working relationship with CAP/LSU counsel on this file. In your response, please consider factors such as the frequency and mode of communication, any processes (formal or informal) used for consulting, and the nature of consultations.
9. How often, and for what purposes, did you consult with the client on this file? Were CAP/LSU counsel involved in these consultations? Why or why not? [Q 3.1.2, 3.1.4]

10. To what extent was the client actively involved in the file? In your view, was this involvement sufficient? Why or why not? [Q 3.1.2, 3.1.4]
11. What other legal counsel (if any) (e.g., specialized units from the Public Law Sector, Legislative Services Branch, or Civil Litigation Branch) were involved on this file? What processes were used to coordinate the work of legal counsel? Based on your experience, what worked well with these processes and what challenges, if any, did you encounter? [Q 3.1.2]

***Supporting decision making***

12. How would you describe the impact of the legal services provided on the decisions made by the client department or agency? [Q 3.2.1]

**Efficiency and economy (deployment of resources)**

13. What, if any, resources challenges (human, financial, technical) did you experience in your work on this file? Are you aware of any resource challenges faced by CAP counsel? Please explain. How were these challenges managed? [Q 4.3]
14. Since 2012, the Department of Justice has been implementing a number of strategies to increase the efficiency of its resource utilization (such as those initiatives related to process optimization and benchmarking). To your knowledge, what, if any, impact did these initiatives have on the management of, or work carried out on, this file? [Q 4.2]
15. To your knowledge, were paralegals engaged to support the work of counsel on this file? Why or why not? In your view, were paralegals used to their full potential on this file? Please explain.
16. In your opinion, were the appropriate resources assigned by the CAP/LSU to this file (in the extent to which sufficient resources were assigned in relation to the nature, risk, or complexity of the file, level of expertise, etc.)? [Q 4.2]
17. If applicable, please comment on the use of alternative dispute resolution practices on this file. Were early resolution strategies identified and used when appropriate? Why or why not? If they were used, what caused them to be successful or unsuccessful in resolving the file? [Q 4.2]
18. Please describe what changes, if any, could have been made to achieve a greater level of efficiency in the management of this file? [Q 4.2]

## **Conclusion**

19. Do you have any further comments relating to this file?

*Thank you for your participation.*

## **Case Study Guide — Representatives of client departments and agencies**

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We understand that some questions may not be applicable to the work you do. Please let us know if a question is not applicable to you, and we will skip it.

### **Introduction**

1. Please describe the key legal issues raised in the file we selected for our discussion today.

2. To your knowledge, which legal counsel (i.e., counsel from CAP headquarters, Departmental Legal Service Units, regional offices, other specialized sections within the Department of Justice) was involved in the file? Are you aware of how the roles and responsibilities were divided among the various legal counsel involved in the file? What role did you play in this file? In your opinion, were the roles and responsibilities clearly defined and well understood by those involved in the file? Why or why not? [Q 2.2, 4.2]

### **Effectiveness (achievement of expected outcomes)**

#### ***Legal risk management***

3. Were you involved in the identification and assessment of legal risk on this file? What was the involvement of legal counsel in the identification and assessment of legal risk, and how effective/important was this involvement? [Q 3.1.1]
4. To the best of your recollection, how was the legal risk communicated to your department or agency? In your view, did CAP/LSU advice help to increase the awareness or understanding of the legal risks on this file within your department or agency? Why or why not? [Q 3.1.1]
5. Was the CAP/LSU involved in providing risk management or mitigation options to your department or agency on this file? If yes, to what extent did your department or agency use CAP/LSU legal advice to manage and mitigate legal risks? [Q 3.2.2]

#### ***Provision of timely, responsive, high-quality legal services***

6. In general, were you satisfied with the quality of legal services provided by the CAP/LSU on this file? Why or why not? [Q 3.1.2]
7. Were CAP/LSU services provided to your department or agency in a timely, responsive manner? To the best of your knowledge, what factors, if any, affected the CAP/LSU's ability to respond in good time to requests from your department or agency? [Q 3.1.4]

#### ***Consultation and communication***

8. How often, and for what purposes, did the CAP/LSU consult with your department or agency on this file? Was the consultation/collaboration between the CAP/LSU and your department of agency on this file effective? Why or why not? In your view, was your department or agency kept up to date on this file?

9. In your opinion, did the CAP/LSU counsel working on this file have a good understanding of your department's/agency's policy and program objectives? Please explain. Did the CAP/LSU offer your department or agency options for meeting these objectives within the confines of the law? Why or why not?
10. How often, and for what purposes, did the CAP/LSU consult with your department or agency on this file? To what extent was your department or agency actively involved in the file? In your view, was this involvement sufficient? Why or why not? [Q 3.1.2, 3.1.4]
11. Are you aware of any processes used to coordinate the work of legal counsel on this file? In your response, please consider the involvement of counsel from CAP headquarters, LSUs, regional offices, and/or other groups within Justice Canada (e.g., specialized units from the Public Law Sector, Legislative Services Branch, or Civil Litigation Branch) as applicable.
  - a. In your opinion, was the work of legal counsel well coordinated? Why or why not?
  - b. If regional counsel and/or counsel from specialized units within Justice Canada were consulted, please comment on the value, if any, that these consultations brought to the file. [Q 3.1.2]

### ***Supporting decision making***

12. How would you describe the impact of the legal services provided on the decisions made by your department or agency? In your view, how useful was CAP/LSU advice in supporting decision making within your department or agency? [Q 3.2.1]

### **Efficiency and economy (deployment of resources)**

13. Were you aware of any resource challenges (human, financial, technical) faced by the CAP/LSU in their work on this file? How were these challenges managed? [Q 4.3]
14. 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 CAP/LSU assign adequate resources to undertake the work required? In your response, please consider the number of counsel assigned to the file, as well as the use of other resources, such as paralegals. [Q 4.2]

15. To your knowledge, were paralegals engaged to support the work of counsel on this file? Why or why not? In your view, were paralegals used to their full potential on this file? Please explain.
16. If applicable, please comment on the use of alternative dispute resolution practices on this file. In your view, were early resolution strategies identified and encouraged by CAP/LSU counsel when appropriate? Why or why not? If early resolution strategies were used, what caused them to be successful or unsuccessful in resolving the file? [Q 4.2]
17. In your opinion, was this file handled in a cost-effective manner? What, if anything, could have been done differently by the CAP/LSU and/or your department/agency to reduce costs? [Q 4.2]

**Conclusion**

18. Do you have any further comments relating to this file?

*Thank you for your participation.*



## Survey



## **Evaluation of the Legal Services provided by the Central Agencies Portfolio (CAP)**

### **Survey Questionnaire — CAP Legal Counsel**

Welcome to the survey of CAP counsel. This survey includes counsel from all areas within the Portfolio, namely, the Assistant Deputy Minister's Office and the following legal services units (LSUs):

- Department of Finance General Legal Services;
- Department of Finance Tax Counsel Division;
- Office of the Superintendent of Financial Institutions Legal Services Unit;
- Public Service Commission Legal Services Unit;
- Treasury Board Secretariat Legal Services Unit;
- Financial Transactions and Reports Analysis Centre of Canada Legal Services Unit;
- Financial Consumer Agency of Canada Legal Services Unit

The survey should take approximately 20 minutes to complete. Participation in the survey is voluntary. You may leave the survey at any time and come back later to complete the questions. If you do leave the survey prior to completion, we ask that you wait approximately 15 minutes to re-enter, in order to give the survey a chance to refresh. The survey will be online until October 8, 2015.

#### **Background**

The following questions will be used to establish a profile of survey respondents.

1. When did you first join the Department of Justice Canada?

- <sub>01</sub> Less than a year ago
- <sub>02</sub> Between 1 and 5 years ago
- <sub>03</sub> Between 6 and 10 years ago
- <sub>04</sub> More than 10 years ago

2. How long have you worked/been working in a position that is part of the Central Agencies Portfolio?

- <sub>01</sub> Less than a year
- <sub>02</sub> Between 1 and 3 years
- <sub>03</sub> Between 4 and 6 years
- <sub>04</sub> More than 6 years

3. What is your current classification?

- <sub>01</sub> LP-00
- <sub>02</sub> LP-01
- <sub>03</sub> LP-02
- <sub>04</sub> LP-03
- <sub>05</sub> LP-04
- <sub>06</sub> LP-05
- <sub>07</sub> LC-01
- <sub>08</sub> LC-02
- <sub>09</sub> LC-03
- <sub>10</sub> LC-04

4. The table below lists different types of legal services performed by CAP counsel. Please read the statements below and indicate the extent to which you perform each type of service in your work for your Portfolio LSU.

In my work for my LSU, I perform the following services...	Frequently (in 80-100% of files)	Regularly (in 50-79% of files)	Occasionally (in 25-49% of files)	Rarely (in 1-24% of files)	Never (in 0% of files)
a) Litigation services.....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>
b) Advisory services.....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>
c) Legislative drafting.....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>
d) Other (please specify _____):.....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>

**CAP design and structure**

5. Please read each statement below regarding the structure and design of the CAP, and check the response that best represents your opinion. [Q 2.2, 2.4]

	Strongly agree	Somewhat agree	Neutral (neither agree nor disagree)	Somewhat disagree	Strongly disagree	Don't know
<b>Structure and administration</b>						
a) The roles and responsibilities of counsel are clearly defined within your Portfolio LSU.....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>8</sub>
b) Counsel within your LSU have sufficient understanding of their roles and responsibilities.	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>8</sub>
c) Client departments/agencies have sufficient understanding of the roles and responsibilities of counsel working within your LSU .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>8</sub>
d) CAP LSUs effectively coordinate their work when files involve more than one client department/agency .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>8</sub>
e) The Portfolio's objectives are clear to, and well known by, counsel .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>8</sub>

6. Do you have any suggestions for how the organization and/or operation of the CAP could be improved to better assist the Portfolio in providing timely, responsive, high-quality, coordinated legal services to client departments/agencies? [Q 2.4]

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<sub>88</sub> No suggestions

**CAP performance (achievement of expected outcomes)**

7. In your view and based on the files you have been involved with in the last two years, how often were the following goals achieved? [Q 3.1.2]

	Frequently (in 80-100% of files)	Regularly (in 50-79% of files)	Occasionally (in 25-49% of files)	Rarely (in 1-24% of files)	Never (in 0% of files)	Not applicable to my work	Don't know/ information not available
a) Responding to legal service requests by clients in a timely manner .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
b) Meeting internal Department of Justice deadlines .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
c) Providing legal services in both official languages as necessary ....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
d) Providing clients with ongoing feedback.....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
e) Involving clients in the development of legal strategies and positions .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
f) Developing legislative and regulatory drafting options appropriate to clients' policy and program objectives.....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
g) Identifying means to prevent and resolve legal disputes at an early stage .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
h) Identifying opportunities to implement policies or programs by administrative, as opposed to legislative or regulatory, means ..	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
i) Assessing legal risk on files in a timely manner .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
j) Reassessing legal risk on files when appropriate and necessary (e.g., when factors affecting risk level changed).....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>

8. Thinking of the 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... [Q 3.1.1, 3.1.2, 3.2.1]

	Frequently (in 80-100% of files)	Regularly (in 50-79% of files)	Occasionally (in 25-49% of files)	Rarely (in 1-24% of files)	Never (in 0% of files)	Not applicable to my work	Don't know/ information not available
a) Consulted with the client department to understand the nature of the legal problem?.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
b) Provided the client department with updates/progress reports?.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
c) Involved the client department in the development of legal strategies, positions, and/or options?.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
d) Worked with the client department to identify legal risks, their impact, and/or options to manage them? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
e) Consulted with specialized sectors within the Department of Justice (i.e., Public Law, Legislative Services, Civil Litigation)? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
f) Consulted with other potentially affected departments/agencies?.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8

9. Thinking of the files you have been involved with in the last two years, how would you assess the work of your LSU in the following areas?

	Excellent	Above average	Average	Below average	Poor	Not applicable to my work	Don't know/ information not available
a) Involving/consulting with specialized sectors within the Department of Justice (e.g., Public Law, Legislative Services, Civil Litigation) .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
b) Involving/consulting with regional offices when appropriate.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
c) Involving/consulting with other potentially affected departments/ agencies	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8

10. Considering your collaborations/consultations on CAP files with other areas of the Portfolio and the Department of Justice within the past two years, please assess the quality of your experience working with the following groups: [Q 3.1.2, 3.1.4]

	Excellent	Above average	Average	Below average	Poor	Do not work with this area	Don't know/information not available
<b>Portfolio</b>							
a) Office of the Assistant Deputy Minister (ADMO) .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
b) Department of Finance General Legal Services (GLS) LSU .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
c) Department of Finance - Tax Counsel Division (TCD) LSU .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
d) Office of the Superintendent of Financial Institutions (OSFI) LSU.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
e) Public Service Commission (PSC) LSU ...	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
f) Treasury Board Secretariat (TBS) LSU ....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
g) Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) LSU.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
h) Financial Consumer Agency of Canada (FCAC) LSU.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
<b>Department of Justice</b>							
i) Regional litigators.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
j) Public Law Sector.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
k) Civil Litigation Branch .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
l) Legislative Services Branch.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
m) Other Portfolios or sectors .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
n) DM and or other ADM offices.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8

11. Please provide your level of agreement with the following statements. The CAP... [Q 3.1.2, 3.1.4]

	Strongly agree	Somewhat agree	Neutral (neither agree nor disagree)	Somewhat disagree	Strongly disagree	Don't know
a) Has structures in place to ensure that Justice provides consistent legal advice.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
b) Has structures in place to ensure that consistent legal positions are adopted nationally .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
c) Has structures in place to ensure that risks are assessed in a consistent manner across portfolios and regions.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8

12. To what extent do you find the following tools, structures, and processes to be useful to your work? [Q 3.1.2, 3.1.3]

	Very useful	Somewhat useful	Neutral	Not very useful	Not at all useful	N/A -do not use
a) Legal risk management (LRM) assessment grid/matrix .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7
b) Practice directives .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7
c) Justipedia .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7
d) Drafting protocols, procedures, and tools .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7
e) Departmental policies .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7
f) eDiscovery software .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7
g) Internal mentoring practices.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7
h) Practice groups.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7
i) Other (please specify:_____)	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7
j) Other (please specify:_____)	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7

13. How would you describe the training opportunities available to counsel from your LSU, in terms of...

	Excellent	Very good	Adequate	Fair	Poor	Not applicable to my work	Don't know/information not available
a) The amount of training available?.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
b) The relevance of training opportunities to your work? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8

14. In your opinion, what training gaps, if any, exist for counsel from your LSU?

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- 00 No training gaps exist
- 88 No opinion/don't know

15. Please read each statement below regarding the identification, assessment, and management of legal risks on your CAP files, and select the response that best represents your opinion. [Q 3.1.1, 3.2.2]

	Strongly agree	Somewhat agree	Neutral (neither agree nor disagree)	Somewhat disagree	Strongly disagree	Don't know
a) The Portfolio and client have processes in place that support their collaboration on identification and assessment of risk.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
b) Clients are actively engaged in developing options to manage legal risks.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8
c) Client departments'/agencies' understanding of their legal risks and the implications of these risks has improved over the last two years .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 8



16. Please explain what (if anything) could be done to improve the Portfolio’s contributions to legal risk identification, assessment, and/or management. [Q 3.1.1, 3.2.2]

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<sub>88</sub> No opinion/don't know

17. 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 litigation 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... [Q 3.1.4]

	Frequently (in 80-100% of files)	Regularly (in 50-79% of files)	Occasionally (in 25-49% of files)	Rarely (in 1-24% of files)	Never (in 0% of files)	Not applicable to my work	Don't know/ information not available
a) Considered using DR options?.....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
b) Used neutral evaluation (or non-binding arbitration) to try to resolve/settle a file? .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
c) Used negotiation to try to resolve/settle a file? .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>
d) Used court-mandated mediation to resolve/settle a file? .....	<input type="checkbox"/> <sub>5</sub>	<input type="checkbox"/> <sub>4</sub>	<input type="checkbox"/> <sub>3</sub>	<input type="checkbox"/> <sub>2</sub>	<input type="checkbox"/> <sub>1</sub>	<input type="checkbox"/> <sub>7</sub>	<input type="checkbox"/> <sub>8</sub>

18. In your opinion, are dispute resolution processes...

- <sub>01</sub> Over-utilized
- <sub>02</sub> Adequately utilized
- <sub>03</sub> Under-utilized
- <sub>88</sub> Don't know/not enough information available
- <sub>77</sub> Not applicable to my work

**If 01 is selected:** Please explain why you feel this way:

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<sub>88</sub> No opinion/don't know

**If 03 is selected:** Please explain why you feel this way, noting any obstacles that may exist in the use of DR:

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<sub>88</sub> No opinion/don't know

**CAP efficiency and economy**

19. Thinking of files you have been involved with in the last two years, how often... [4.1, 4.2]

	Frequently (in 80-100% of files)	Regularly (in 50-79% of files)	Occasionally (in 25-49% of files)	Rarely (in 1-24% of files)	Never (in 0% of files)	Not applicable to my work	Don't know/ information not available
a) Were files completed in a timely manner without undue delays within the CAP/your LSU's control? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
b) Were files conducted in a cost-effective manner?.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
c) Were files assigned to the appropriate level of counsel, given the legal risk/complexity of the file? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
d) Were tasks allocated appropriately (level and experience) within the team assigned to manage the file? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
e) Was the appropriate number of counsel assigned to undertake the work required by the file? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
f) Were appropriate levels of mentoring and/or supervision provided to support the management of your files? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
g) Were paralegals used to their full potential on files? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8

20. 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 (in 80-100% of files)	Regularly (in 50-79% of files)	Occasionally (in 25-49% of files)	Rarely (in 1-24% of files)	Never (in 0% of files)	Not applicable to my work	Don't know/ information not available
a) Providing an estimate of expected costs? .....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
b) Sharing the work (e.g., having the client do initial drafts of documents)?.....	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8
c) Other? (Please specify:.....)	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 7	<input type="checkbox"/> 8

21. What factors contribute to the CAP's ability to provide timely, high-quality, cost-effective legal services?

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88 No opinion/don't know

22. What factors constrain the CAP's ability to provide timely, high-quality, cost-effective legal services?

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<sub>88</sub> No opinion/don't know

23. Do you have any other suggestions for improving the legal services provided by the CAP?

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<sub>88</sub> No suggestions

24. Do you have any further comments relating to your work with the CAP?

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<sub>88</sub> No further comments

**Thank you for taking the time to complete this survey.**



## **File review**



**Evaluation of the legal services of the Central Agencies Portfolio (CAP)  
File Review**

**Overview**

1. File Number:
2. Date file opened: (mm/dd/yy)                      Date file closed: (mm/dd/yy)
3. Lead counsel  
Organizational unit:    <sub>1</sub> Financial Consumer Agency of Canada (FCAC) Legal Services Unit  
                                 <sub>2</sub> Department of Finance — General Legal Services (GLS)  
                                 <sub>3</sub> Department of Finance — Tax Counsel Division (TCD)  
                                 <sub>4</sub> Public Service Commission (PSC) Legal Services Unit  
                                 <sub>5</sub> Treasury Board Secretariat (TBS) Legal Services Unit  
                                 <sub>6</sub> Office of the Superintendent of Financial Institutions (OSFI) Legal Services Unit  
                                 <sub>7</sub> Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) Legal Services Unit  
                                 <sub>8</sub> Regional office (provide location): \_\_\_\_\_
4. Other counsel involved in the file:  
Organizational unit:    <sub>1</sub> LSU (provide name): \_\_\_\_\_  
                                 <sub>2</sub> Regional office (provide location): \_\_\_\_\_  
                                 <sub>3</sub> Public Law Sector  
                                 <sub>4</sub> Legislative Services Branch  
                                 <sub>5</sub> Litigation Branch  
                                 <sub>66</sub> Other: \_\_\_\_\_
5. Client department/agency: \_\_\_\_\_
6. File type:    <sub>1</sub> Litigation    <sub>2</sub> Advisory    <sub>3</sub> Legislative and regulatory drafting    <sub>4</sub> Litigation support
7. Brief description of the legal issue of the file (without waiving solicitor-client privilege): \_\_\_\_\_

8. What legal services were requested? (Check all that apply): [Q 1.1, 3.1.3]

- <sub>1</sub> Litigation services (i.e., legal representation)
- <sub>2</sub> Provision of advice to support litigation
- <sub>3</sub> Provision of advice to support policy development
- <sub>4</sub> Direct drafting of bills, regulations, or statutory instruments
- <sub>5</sub> Preparation of federal budget
- <sub>6</sub> Provision of advice related to compliance with legislation
- <sub>7</sub> Provision of advice related to drafting of bills, regulations, or statutory instruments
- <sub>66</sub> Other, please specify \_\_\_\_\_

9. If selected 1 to Q8: please indicate the level of court.

- <sub>01</sub> Supreme Court of Canada      <sub>02</sub> Federal Court of Appeal      <sub>03</sub> Federal Court
- <sub>04</sub> Provincial Court of Appeal      <sub>05</sub> Provincial/Territorial Superior Court      <sub>06</sub> Provincial Court
- <sub>07</sub> Administrative Tribunal      <sub>66</sub> Other, please specify \_\_\_\_\_

10. Brief description of the file's outcome/results: [Q 1.1, 3.2.1, 3.2.4] \_\_\_\_\_

**Achievement of expected outcomes [information from the file]**

11. Did legal counsel miss any client-imposed hard deadlines? <sub>1</sub> Yes    <sub>0</sub> No    <sub>8</sub> Unable to assess  
[Q 3.1.2, 3.1.4]

12. (If yes to Q11) How many times, and for what reason(s) (if an explanation to the client is available on file)? [Q 3.1.2, 3.1.4] \_\_\_\_\_

13. Is there documented evidence that timelines were negotiated with clients? <sub>1</sub> Yes    <sub>0</sub> No    <sub>8</sub> Unable to assess

14. (If yes to Q11) What evidence is there in the files? \_\_\_\_\_

15. (Litigation files only) Did legal counsel miss any court deadlines? <sub>1</sub> Yes    <sub>0</sub> No    <sub>8</sub> Unable to assess  
[Q 3.1.4]

16. (If yes to Q15) How many times? \_\_\_\_\_

17. (If yes to Q15) Were additional court procedures required (e.g., motions)? <sub>1</sub> Yes    <sub>0</sub> No    <sub>8</sub> Unable to assess

18. How did CAP legal counsel consult with client department(s)? Consultations can include oral/written updates or oral/written discussions of possible strategies, options, approaches to the file. [Q 3.1.2] \_\_\_\_\_

- <sub>7</sub> Not applicable, file handled by early resolution      <sub>8</sub> Unable to assess

**(GO TO Q22)**



19. Is there documentation in the file that shows what the client department(s) was consulted about? (Check all that apply.) (If none apply, go to Q22.) [Q 3.1.1, 3.1.2, 3.1.4]

- <sub>01</sub> Identifying and assessing legal risk    <sub>02</sub> Options to manage legal risk    <sub>03</sub> Developing legal strategies and positions  
<sub>04</sub> To discuss the impact of legal risk    <sub>05</sub> To discuss possible settlement (including early resolution)    <sub>66</sub> Other \_\_\_\_\_  
<sub>08</sub> Unable to assess

20. (If identify any categories listed in Q19) What evidence is there in the files? \_\_\_\_\_

21. Have client department(s) expressed any concerns relating to a lack of consultation? [Q 3.1.2, 3.1.4]    <sub>1</sub> Yes    <sub>0</sub> No    <sub>8</sub> Unable to assess

22. Is there any indication in the file that CAP counsel did not respond to client requests in a timely manner? [Q 3.1.4]

- <sub>1</sub> Yes    <sub>0</sub>No    <sub>8</sub> Unable to assess

If yes, please explain: \_\_\_\_\_

23. Was the file brought to the attention of other Justice officials/ structures? [Q 3.2.5]    <sub>1</sub> Yes    <sub>0</sub>No    <sub>8</sub> Unable to assess

24. (If yes to Q23) Which ones?

25. Did counsel consult with specialized sections within Justice? [Q 3.2.5]    <sub>1</sub> Yes    <sub>0</sub>No    <sub>8</sub> Unable to assess

26. (If yes to Q25), which one(s)? [Q 3.1.3, 3.2.3, 3.2.5]

- <sub>01</sub> Public Law Sector    <sub>02</sub> Litigation Branch    <sub>03</sub> Legislative Services Branch  
<sub>66</sub> Other (please specify): \_\_\_\_\_

27. (If yes to Q25), what were the specialized sections consulted about? (Check all that apply): [Q 3.2.3, 3.2.5]

- <sub>01</sub> Identifying and assessing legal risk    <sub>02</sub> Managing legal risk    <sub>03</sub> Potential legal options  
<sub>04</sub> Preparation of legislation or regulations    <sub>05</sub> Questions of law    <sub>06</sub> Potential litigation strategies  
<sub>66</sub> Other (please specify): \_\_\_\_\_    <sub>08</sub> Unable to asses

28. Were other potentially affected departments and agencies consulted? [Q 3.2.5]

- <sub>1</sub> Yes    <sub>0</sub>No    <sub>8</sub> Unable to assess

If yes, which ones: \_\_\_\_\_

29. (If yes to Q28) What were other departments and agencies consulted about? (Check all that apply):

- <sub>01</sub> Identifying and assessing legal risk    <sub>02</sub> Managing legal risk    <sub>03</sub> Potential legal options  
<sub>04</sub> Preparation of legislation or regulations    <sub>05</sub> Questions of law    <sub>06</sub> Potential litigation strategies  
<sub>66</sub> Other (please specify): \_\_\_\_\_    <sub>08</sub> Unable to asses

Questions 30-32 are for litigation files only.

30. At what stage were dispute resolution options considered? (Check all that apply.) [Q 3.2.4]

- <sub>00</sub> DR not considered **(GO TO Q33)**      <sub>01</sub> Post-pleading    <sub>02</sub> Post-production of documents    <sub>03</sub> Post-discovery    <sub>04</sub> Just prior to trial or hearing  
<sub>66</sub> Other (please specify) \_\_\_\_\_      <sub>88</sub> Don't know/can't tell

31. At what stage was dispute resolution used? [Q 3.2.4]

- <sub>01</sub> Post-pleading    <sub>02</sub> Post-production of documents    <sub>03</sub> Post-discovery    <sub>04</sub> Just prior to trial or hearing  
<sub>66</sub> Other (please specify) \_\_\_\_\_      <sub>88</sub> Don't know/can't tell

32. What dispute resolution options were used? [Q 3.2.4]

- <sub>01</sub> Negotiation    <sub>02</sub> Voluntary mediation    <sub>03</sub> Court-mandated mediation    <sub>04</sub> Neutral evaluation  
<sub>66</sub> Other (please specify) \_\_\_\_\_      <sub>88</sub> Don't know/can't tell

33. Does the file documentation provide evidence of the preparation or use of any standardized tools or resources (e.g., risk assessment tools, toolkits, practice directives, communications tools such as Early Warning Notes or Briefing Notes)? [Q 3.1.2]

- <sub>1</sub> Yes      <sub>0</sub>No      <sub>8</sub> Unable to assess  
If yes, please specify the tool(s)/resources documented: \_\_\_\_\_

**Risk assessment [from file or from text fields in iCase (background, impact, and status)]**

34. What was the potential impact on the client (e.g., effect on fiscal resources of client or government; effect on programs/policies/initiatives of client or government; effect on law/regulations of client or government; effect on human rights, personnel, access and privacy, gender, or diversity issues; effect on the *Charter* or *Constitution*; legal issues or events that may be controversial or attract media attention; effect on relations with Aboriginal people, Métis; etc.)? [Q 3.2.2] \_\_\_\_\_

- <sub>77</sub> Not applicable      <sub>88</sub> Unable to assess

35. Briefly explain the legal risks identified in the file (e.g., constitutional or Charter issue; new/novel or controversial legal issue; significant media interest or involvement of prominent figures; issue with availability of affiants, witnesses): \_\_\_\_\_

- <sub>77</sub> Not applicable      <sub>88</sub> Unable to assess

\*Note: Only include if there is documentation that specifies risks (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 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 Q34). 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.

36. Is there a discussion/indication of risk level indicated in the file? [Q 3.1.1]

- <sub>1</sub> Yes      <sub>0</sub> No **(GO TO Q43)**

37. What is the **initial (or only)** risk level (1-9 or Low-Medium-High)? \_\_\_\_\_ <sub>88</sub> Can't tell

38. Date of **initial (or only)** risk assessment: \_\_\_\_\_ (mm/dd/yy) <sub>88</sub> Can't tell

39. (Litigation only) At what stage in the case was the **initial (or only)** risk assessment done? [Q 3.1.1, 3.2.2]

- <sub>01</sub> Post-pleadings      <sub>02</sub> Post-discovery      <sub>03</sub> Pre-scheduled trial date      <sub>04</sub> After decision  
<sub>05</sub> After appeal filed      <sub>06</sub> Leave stage      <sub>07</sub> Post-leave stage      <sub>08</sub> Prior to judicial review hearing  
<sub>09</sub> Post-hearing      <sub>10</sub> Prior to decision on the judicial review  
<sub>66</sub> Other, please specify \_\_\_\_\_      <sub>88</sub> Can't tell

40. Was risk **reassessed**? [Q 3.1.1, 3.2.2]

- <sub>1</sub> Yes      <sub>0</sub> No **(GO TO Q43)**      <sub>8</sub> Can't determine **(GO TO Q43)**

41. (Litigation only) At what stage in the case was the risk **reassessed**? [Q 3.1.1, 3.2.2]

- <sub>01</sub> Post-pleadings      <sub>02</sub> Post-discovery      <sub>03</sub> Pre-scheduled trial date      <sub>04</sub> After decision  
<sub>05</sub> After appeal filed      <sub>66</sub> Other, please specify \_\_\_\_\_      <sub>88</sub> Can't tell

42. If case was **reassessed** to a higher risk level, did any of the following occur after the reassessment? [Q 3.2.2]

- <sub>01</sub> Increased number of counsel on file      <sub>02</sub> Assignment of senior counsel to file      <sub>03</sub> Consideration of dispute resolution process      <sub>04</sub> Use of dispute resolution process  
<sub>05</sub> Increased consultations      <sub>06</sub> Increased reporting      <sub>66</sub> Other, please specify \_\_\_\_\_      <sub>88</sub> Can't tell

43. What was the complexity level of the file?

- <sub>1</sub> Low      <sub>2</sub> Medium      <sub>3</sub> High      <sub>4</sub> Mega      <sub>7</sub> Not applicable      <sub>8</sub> Can't determine

**Conclusion**

44. Any additional comments? (indicate applicable Q, if appropriate). \_\_\_\_\_