



**LEGAL RISK MANAGEMENT IN THE  
DEPARTMENT OF JUSTICE  
FORMATIVE EVALUATION  
Final Report**

**October 2008**

**Evaluation Division  
Office of Strategic Planning and Performance Management**





## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>i</b>
<b>1. INTRODUCTION.....</b>	<b>1</b>
1.1. Purpose of the evaluation.....	1
1.2. Structure of the report.....	2
<b>2. Background .....</b>	<b>3</b>
2.1. Context for the LRM Initiative: Integrated Risk Management.....	3
2.2. The development of LRM.....	4
2.3. The changing context: the devolution of LRM.....	5
2.4. Overview of the LRM Initiative .....	6
<b>3. METHODOLOGY .....</b>	<b>17</b>
3.1. Document review .....	17
3.2. Key informant interviews .....	18
3.3. Legal counsel survey.....	18
3.4. Case studies.....	20
3.5. Review of closed files.....	21
3.6. Focus groups .....	22
<b>4. KEY FINDINGS .....</b>	<b>25</b>
4.1. Rationale of the LRM Initiative.....	25
4.2. Implementation .....	27
4.3. Results of the Initiative .....	58
<b>5. CONCLUSIONS .....</b>	<b>63</b>
5.1. Rationale for the LRM Initiative.....	63
5.2. Implementation .....	63
5.3. Results of the LRM Initiative .....	66

<b>6. RECOMMENDATIONS AND MANAGEMENT RESPONSE.....</b>	<b>67</b>
6.1 Introduction.....	67
6.2 Issues.....	67
<b>APPENDIX A - Accountability Framework and Governance Structure.....</b>	<b>77</b>
<b>APPENDIX B - Evaluation Framework.....</b>	<b>89</b>
<b>APPENDIX C - Data Collection Instruments .....</b>	<b>95</b>
<b>APPENDIX D - Bibliography for the Literature Review.....</b>	<b>147</b>
<b>APPENDIX E - Results of Management Accountability Framework Assessments .....</b>	<b>153</b>

## LIST OF ACRONYMS

AA	Aboriginal Affairs
AFGS	the <i>LRM Accountability Framework and Governance Structure</i>
BCRO	British Columbia Regional Office
BRL	Business and Regulatory Law
CATI	Computer Assisted Telephone Interviewing
CIPS	Citizenship, Immigration, and Public Safety
DFO	Department of Fisheries and Oceans
IRM	Integrated Risk Management
Justice	the Department of Justice
LPMD	Law Practice Management Directorate
LRM	Legal Risk Management
LSB	Legislative Services Branch
LSUs	Legal Services Units
MAF	Management Accountability Framework
ORO	Ontario Regional Office
PCH	Department of Canadian Heritage
PRO	Prairie Regional Office
QRO	Quebec Regional Office
SPSS	Statistical Package for the Social Sciences
TBS	Treasury Board Secretariat
the Committee	the Evaluation Advisory Committee
the Department	the Department of Justice
the Initiative	the LRM Initiative
the LRM Office	the LRM Support Office



## **EXECUTIVE SUMMARY**

### **1. Introduction**

Legal risk management involves taking actions to reduce the frequency and severity of legal problems that limit the government's ability to meet its objectives. Recognizing that the management of legal risk has always been an inherent part of every lawyer's work, the federal government developed the Legal Risk Management (LRM) Initiative in 1999 in order to bring a more systematic approach to identifying, mitigating, and managing legal risks. In 2003, the LRM Initiative evolved from a time-limited initiative, with a project office and dedicated human and financial resources, to an ongoing initiative that was integrated into the overall work of the Department.

The LRM Initiative has three main components:

- Identifying issues early and assessing potential legal risks;
- Avoiding and mitigating legal risks; and,
- Managing legal risks as they occur.

The purpose of the evaluation is two-fold: to examine the implementation of LRM in the Department since 2003; and to assess whether the processes and structures established to support LRM have contributed to the effective management of legal risk in the federal government.

### **2. Methodology**

The evaluation was comprised of six lines of evidence: an extensive document review, 48 key informant interviews, a survey of the Department's legal counsel, four case studies, a review of 69 legal cases closed between 2003 and 2008 and three focus groups with 13 client departments.

### **3. Findings**

#### **3.1. Rationale for the LRM Initiative**

The Department continues to face the challenges of increasing demands related to litigation and legal services generally. With its goals of identifying legal risks early, assessing their potential effect, and then using strategies to manage the risk so that legal problems can be reduced or avoided altogether, the LRM Initiative serves to address the expanding need for legal services. Counsel also attest to the continued relevance of LRM. They believe that through its systematic approach to addressing legal risks, LRM helps them to manage files more effectively and to improve the quality of legal services provided to departments and agencies.

#### **3.2. Implementation**

##### **Effects of devolution**

Following the closure of the LRM Office, the Initiative lost momentum nationally as the strong central vision for LRM faded: few new tools or guidelines were developed; and LRM training was not offered department-wide. Moreover, the Department's non-litigation legal activities (advisory, policy, and legislative services) had not yet been fully integrated into the Initiative. As a result, the prevention side of LRM (avoiding and mitigating legal risks before litigation) remains under-developed.

The devolution of responsibility for LRM to all Department employees runs contrary to a central tenet of risk management – the need for an integrated, systematic approach. On the one hand, devolution has resulted in uneven and inconsistent LRM practices across the Department. On the other, it has created robust LRM approaches tailored to the operational needs of particular units within Justice, units that have taken strong ownership of their LRM practices. Indeed, concern has been expressed by LRM practitioners that the renewal of LRM should not be at the expense of such innovative practices and should remain flexible in its approach.

##### **Governance**

The evaluation found that the Accountability Framework and Governance Structure (AFGS) for LRM is out-of-date. Several components of the AFGS, such as the LRM Steering Committee and the LRM Practice Group are no longer active, and some parts of the Department are overlooked



(e.g., the Chief Legislative Counsel). The evaluation found that knowledge of the AFGS is low, and that it is not used as a guiding document for management because it lacks concrete direction, such as objectives for the Initiative, that would assist managers in implementing LRM.

In addition, the governance structure of the LRM Initiative changed in 2007. To support recommendations concerning the management of legal services in the joint Justice-TBS Review of Legal Services 2004–2007, the Department established the Law Practice Management Directorate (LPMD) in August 2007. The development of LPMD and its LRM division are part of the revitalization of the LRM Initiative.

### **Consistency of practice**

The evaluation identified several areas of inconsistency in LRM practices.

- Different risk assessment tools are in use across the Department ranging from the LRM and Integrated Risk Management (IRM) grids to a one-dimensional scale that focuses on the likelihood of an adverse outcome. In advisory and policy work, counsel generally do not use formal risk assessment tools.
- Risk ratings assigned to files using the LRM grid are generally believed to be inconsistent due to the absence of clear criteria on how to assess the potential impact of the legal risk.
- Legal risk is not assessed consistently across the Department. Litigation files are more likely to have risk assessments than other areas of legal practice, such as legislative services and policy.
- Legal risk is not re-assessed systematically.
- Consultations on assessing legal risk and on legal risk management strategies are occurring, although there are inconsistencies in approach with some practice areas consulting more often with the client than others. Consultations with the client are considered essential to the appropriate assessment and management of legal risk.
- Contingency plans are not always developed for high risk files.
- Legal risk is communicated both within the Department and to clients in an inconsistent manner with a variety of terminology used to describe the level of risk.

## **Management of Legal Risk**

Although there are inconsistencies in approach and a reported lack of awareness or understanding of aspects of LRM, the evaluation concluded that legal risk is being managed in high risk litigation, advisory, legislative and policy files. Counsel may not be consciously or systematically performing LRM as envisioned in the Initiative, but they are intuitively managing legal risk. There is widespread agreement among counsel that legal risk management is part of their practice of law.

### **Reporting legal risk**

The evaluation found that the departmental practices for reporting legal risk are generally working as counsel are reporting high risk files to senior officials within Justice and client departments. There are a number of avenues for reporting high risk files, and questions were raised about whether these could be streamlined to avoid duplication. Reporting on advisory, policy, and legislative services files was described as being more informal and less systematic than for litigation, although some counsel believed the informal communication worked in their offices. In order to reduce the perception that LRM reporting is primarily a bureaucratic process, counsel need to understand how these reports are being used and their value to legal work.

### **LRM tools and structures**

The evaluation found that there is limited knowledge and/or use of many LRM tools, including those on the LRM website. The tools that are used most often are: Briefing Notes, Early Warning Report, and Scanning News. Large percentages of survey respondents were either unaware of or have not used most LRM tools or structures. Thus, it appears that many counsel are not involved with LRM processes. Perhaps as a result of this, almost half of counsel did not believe there are sufficient guidelines to assist them in performing LRM.

The evaluation identified the need to create opportunities to share information and best practices among LRM practitioners, managers and clients, in order to enhance the understanding and knowledge of LRM.

### **Partnership**

The LRM Initiative was conceived by the Department of Justice in partnership with the Treasury Board Secretariat. There is a need to revitalize this partnership to ensure that legal risk management is considered routinely by departments and agencies (in consultation with legal

services) as part of the overall management of risk by the government. The evaluation also raises the question of how best to integrate LRM more fully into the IRM processes across the government.

The results of the client survey and focus groups show that clients are generally pleased with their LRM partnership with Justice. This partnership is vital to the effective management of legal risk. However, not all clients are equally engaged in the LRM process. When clients are engaged, particularly at the senior level, the LRM processes are reported to be more robust.

The evaluation found areas to improve the LRM partnership with the client. There is a perception that not all clients understand their role in LRM. There is also a view among clients that Justice sometimes oversteps its role in providing advice that goes beyond strictly legal considerations.

### **3.3. Results of the LRM Initiative**

There is very little information available to support the measurement of the impact of the LRM Initiative. By far, the majority of respondents to the legal counsel survey indicated that they did not know what the impact of the Initiative had been across the Department. That said, through interviews with legal counsel and focus groups with client departments, the evaluation concluded that LRM has had the following impacts:

- increased awareness of legal risks among clients, largely through joint LRM structures with the clients
- improved quality of legal services to clients through LRM's proactive methods in responding to potential legal risks
- improved management of legal risk as client departments incorporate LRM into their corporate decision-making (particularly those departments with a high volume of litigation)
- improved capacity to track high impact files so that there are "no surprises".



## 1. INTRODUCTION

Legal risk management is “the process of making and carrying out decisions that reduce the frequency and severity of legal problems that prejudice the government’s ability to meet its objectives successfully”.<sup>1</sup> Although the management of legal risk has always been an inherent part of every lawyer’s work, since 1999 the federal government has managed potential and realized legal risks within the framework of the Legal Risk Management (LRM) Initiative. Through the LRM Initiative, the Department of Justice (the Department or Justice) brings a more systematic approach to identifying, mitigating, and managing legal risks. Wide in scope, the Initiative reaches into organizational structures and processes, work and management tools, and expected skills and behaviours of legal counsel and managers within Justice and other Government of Canada departments and agencies. In 2003, the LRM Initiative evolved from a time-limited initiative, with a project office and dedicated human and financial resources, to an ongoing initiative that was integrated into the overall work of the Department.

The Department of Justice conducted an evaluation of the implementation of the LRM Initiative, and this document constitutes the evaluation’s final report.

### 1.1. Purpose of the evaluation

The purpose of the evaluation is two-fold: to examine the implementation of LRM in the Department; and to assess whether the processes and structures established to support LRM have contributed to the effective management of legal risk in the federal government. The evaluation also considers the LRM Initiative from two perspectives. First, although all government departments and agencies have LRM roles and responsibilities, the evaluation focuses on

---

<sup>1</sup> Department of Justice Canada. (2007). *Legal Risk Management*. Retrieved on November 20, 2007, from [http://www.jusnet.justice.gc.ca/lpmd\\_e/lrm\\_home.htm](http://www.jusnet.justice.gc.ca/lpmd_e/lrm_home.htm).

Justice's LRM activities.<sup>2</sup> Second, the evaluation focuses on the LRM Initiative since 2003 when the responsibilities for LRM devolved from the central project office to all Department lawyers.

## **1.2. Structure of the report**

This report contains five sections, including the introduction. Section 2 provides the background and an overview of the LRM Initiative, while Section 3 describes the methodology for the evaluation; Section 4 summarizes the key findings; and Section 5 presents the conclusions.

---

<sup>2</sup> The Federal Prosecution Service (FPS) was no longer part of the Department as of December 12, 2006, the effective date of the Office of the Director of Public Prosecutions, now called the Public Prosecution Service of Canada (PPSC). The LRM processes of PPSC are not part of this evaluation.

## 2. BACKGROUND

This section presents the background to the Legal Risk Management (LRM) Initiative and an overview of LRM today.

### 2.1. Context for the LRM Initiative: Integrated Risk Management

For most of the 20<sup>th</sup> century, risk management was a term used primarily by private enterprises and had not reached the public sector. While this began to change in the 1980s, the last ten to fifteen years have seen a rapid adoption of risk management processes by many governments. Canada has been at the forefront of risk management in the public sector. In 1997, the federal government launched the Modern Comptrollership Initiative by empowering an independent review panel to examine the comptrollership function. The idea was to modernize public sector management and improve government performance. As one of its recommendations, the panel called for the development of “a mature risk management environment”.<sup>3</sup> The importance of sound risk management was reiterated in *Results for Canadians (2000)*, which set out the government’s commitment to improving public sector management and made it clear that effective management of risks is central to achieving results.<sup>4</sup>

In response to these initiatives, the Treasury Board Secretariat (TBS) and an interdepartmental Advisory Group on Risk Management began work on developing a government-wide framework for risk management. The result was the 2001 *Integrated Risk Management (IRM) Framework*, which was conceived as a management tool to assist federal departments in establishing their corporate risk profile and risk management function.<sup>5</sup> Risk management, a process of handling

---

<sup>3</sup> *Report of the Independent Review Panel on Modernization of Comptrollership in the Government of Canada*. (1997). Retrieved on November 23, 2007, from [http://www.tbs-sct.gc.ca/cmo\\_mfc/resources2/review\\_panel/report\\_e.pdf](http://www.tbs-sct.gc.ca/cmo_mfc/resources2/review_panel/report_e.pdf)

<sup>4</sup> *Results for Canadians: A Management Framework for the Government of Canada*. Retrieved on November 23, 2007, from [http://www.tbs-sct.gc.ca/report/res\\_can/siglist\\_e.asp](http://www.tbs-sct.gc.ca/report/res_can/siglist_e.asp).

<sup>5</sup> Consistent with the IRM framework, corporate-related risk management activities are currently underway within the Department (e.g., development of a corporate risk profile that will include legal risks being faced by the Department (as appropriate) but not government-wide legal risks). For a further discussion on the relationship of IRM and LRM, see Section 4.2.2 at page 33.

uncertainty by “identifying, assessing, understanding, acting on and communicating risk issues”,<sup>6</sup> was to be integrated into each government organization’s decision-making. This government-wide set of standards for risk management recognized that, even with the different policy environments of each government department or agency, there are common elements of risk, making a horizontal approach to risk management desirable.

Very much related to the *IRM Framework* is the *Management Accountability Framework* (MAF) that the TBS introduced in 2003 to identify expectations for public service management. Here again, a systematic approach to managing risks was identified as one of the ten key components of sound management.

## **2.2. The development of LRM**

In December 1999, the Department and TBS launched the LRM Initiative as a response to the growing volume, cost, and complexity of civil litigation involving the federal Crown as well as to support the government-wide risk management efforts, of which legal risk was considered a key component. To support the Initiative, the Department and TBS undertook a Legal Risk Management Review in 2000 to assess current LRM practices, identify approaches to managing legal risk, and develop recommendations for an integrated, comprehensive, and flexible approach to LRM.

In developing the LRM Initiative, the Department recognized that the management of legal risk was not a new concept. In practice, the Department has always managed legal risks, as that is the essence of what lawyers do. However, the LRM Initiative takes a more systematic approach to managing legal risks with the additional goal of broadening the practitioners of legal risk management to include not just lawyers but also client departments. Because litigation and risk of litigation can affect client department operations, finances, and relationships at home and abroad, the more purposeful involvement of clients in the strategic management of legal risks is an important innovation of LRM. In short, LRM signalled the Department’s intentions to more effectively anticipate, identify, prevent, or mitigate legal risks affecting the Government of Canada.

The LRM Project Support Office (the LRM Office) opened in 2000 to oversee the Initiative with funding largely from the Strategic Investment Fund. The LRM Office served as the functional leader of LRM with the responsibility of planning and implementing the LRM Initiative’s

---

<sup>6</sup> LRM Request for Proposal, p. 7.



projects and promoting a legal risk management culture in the Department. The funding for the LRM Initiative was time-limited and ended in 2003.

### **2.3. The changing context: the devolution of LRM**

As part of the planning for the closure of the LRM Office, the Department decided to devolve the responsibility for legal risk management. To ensure the continuation of LRM practices, the Department adopted the *LRM Accountability Framework and Governance Structure* (AFGS). The AFGS sets out the accountabilities and management responsibilities for the LRM Initiative. The accountabilities cascade down through senior management to every Department employee. As the AFGS explicitly stated, “it is the responsibility of all employees and managers across the Department of Justice to know and apply LRM principles and methods appropriate to their particular positions and areas of responsibilities.” In addition, the AFGS established a new governance structure that included several new committees as well as an LRM Special Counsel to provide functional operational leadership. While the AFGS set out performance expectations for senior managers, it did not establish objectives for LRM.

After devolution, LRM continued in the Department, but in the last two years, a desire to revitalize the Initiative took hold. In January 2007, the Associate Deputy Minister of Justice announced the LRM Renewal Initiative with the goal of re-establishing LRM as a priority in the Department. As part of the renewal, the Associate Deputy Minister, the British Columbia Regional Office (BCRO), and the Office of the LRM Special Counsel organized a May 2007 retreat, which was attended by over 50 Justice counsel. The retreat was the first departmental gathering since the LRM Initiative was renewed to consider best practices, challenges, and the status of LRM in the Department. At this same time, the May 2007 Report of the Auditor General found that the Department “has made progress in managing legal risk”, in particular, citing the LRM framework for assessing and communicating legal risk. The report also identified areas for further improvement, such as incorporating risk assessments into advisory work, ensuring consistent legal risk assessments, and considering the treatment of risk level 6 files.<sup>7</sup> The LRM retreat discussed many of the same issues raised in the Auditor General’s report.

In addition, the governance structure of the LRM Initiative changed in 2007. To support recommendations concerning the management of legal services in the joint Justice-TBS Review

---

<sup>7</sup> Office of the Auditor General. (2007, May). Report of the Auditor General of Canada to the House of Commons: Managing the Delivery of Legal Services to Government – Department of Justice Canada. Retrieved on December 7, 2007 from <http://www.oag-bvg.gc.ca/internet/docs/20070505ce.pdf>.

of Legal Services 2004–2007, the Department established the Law Practice Management Directorate (LPMD) in August 2007. LPMD’s mandate is “to ensure that national policies, processes, and tools are in place to support the efficient and effective delivery of legal services to government”.<sup>8</sup> To fulfill this mandate, LPMD is to provide leadership on law practice issues, including LRM. Its LRM division is responsible for the development and coordination of national policies, structures, tools, and processes that support the integrated and efficient identification, assessment, mitigation, and management of legal risks in government. The development of LPMD and its LRM division are part of the revitalization of the LRM Initiative.

#### 2.4. Overview of the LRM Initiative

The LRM Initiative has three main components:

- ***Identifying issues early and assessing potential legal risks.*** Clients, with the assistance of the Department, monitor their activities for potential legal risks and assess the risk.
- ***Avoiding and mitigating legal risks.*** Avoiding legal problems means that potential issues are foreseen during the policy-making, program development, or legislative process. At this early stage, the Department works with its client departments and agencies to determine how best to address policy and program management problems. This could mean legislation or regulations, but LRM also encourages, where appropriate, innovative approaches that can achieve results without requiring legislation (i.e., instrument choice) or raising the potential for litigation.
- ***Managing legal risks as they occur.*** Once legal risk has materialized, the Department undertakes measures to reduce the potential costs (monetary and otherwise) that could result from the legal risk. This includes measures to strategically and efficiently handle litigation or the potential impacts flowing from high risk policy decisions and can include measures such as dispute resolution processes.

Under the LRM Initiative, the key to achieving these objectives is taking a systematic approach. These objectives are to be achieved through the following activities in Table 1.

---

<sup>8</sup> Department of Justice. (2008, June). *Law Practice Management Directorate*. [Pamphlet].

**Table 1: Main LRM Initiative activities**

Activities	Brief description
Scanning (risk identification)	Client departments and agencies, with the support of the Department, conduct periodic scans of their legislation, policies, programs, and operations for potential legal risks.
Risk assessment	Department counsel assess risk by giving legal advice on the likelihood of an adverse outcome in court proceedings or the likelihood of liability of the Crown resulting from government action or inaction. Risk assessment includes consideration of the potential impact of that outcome on a client department or the government as a whole.
Instrument choice	Counsel should consider the best tool(s) to achieve government objectives and reduce the reliance on traditional legal tools such as legislation or litigation.
Information sharing	All counsel are responsible for sharing information on significant legal risks and identifying high risk files. This information should be reported to management within their office as well as with senior management at the portfolio and department level.
Informing and engaging senior officials and Ministers on key LRM issues	Key LRM issues are to be reported to senior management in Justice and within the client departments and agencies.
Case management and tracking techniques (e.g., iCase)	iCase is the Department's timekeeping and case management system. Counsel are responsible for recording legal risk information in iCase so that high risk files can be tracked and monitored.
Management of high impact legal risks	Once a file is identified as high impact, the legal risks presented in the file are to be actively managed.
Contingency planning	These plans are to be developed for all Supreme Court of Canada files and other high risk files as appropriate so that Justice and the client departments are prepared for any contingency and have options and strategies for how to handle the risks.
Dispute resolution	Counsel should always consider dispute resolution options, where appropriate.
Understanding of roles and responsibilities	Counsel must understand their unique role in that strategies for serving government clients differ from private practice. Good risk management requires understanding the roles of all government parties involved in managing a file.
Identification and analysis of government-wide trends	The Department should work to identify legal risk trends across Government and share this information within Justice and with client departments and agencies.
<p><i>Source: Department of Justice Canada. (2007). Practical LRM. Retrieved on November 20, 2007, from <a href="http://www.jusnet.justice.gc.ca/lpmd_e/lrm_home.htm">http://www.jusnet.justice.gc.ca/lpmd_e/lrm_home.htm</a>.</i></p>	

To support these LRM activities, the Department and its various units have developed tools and processes. The primary tool associated with the Initiative is the LRM grid, which was developed to assess legal risks. The grid 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. These dimensions are assessed based on the criteria in Table 2.

**Table 2: LRM grid dimensions**

<b>Assessing the likelihood of an adverse outcome</b>	
<b>Likelihood level</b>	<b>Description</b>
Low	For litigation files, when the chance of losing the case is less than 30% For advisory files, when the likelihood of an adverse outcome arising is less than 30%
Medium	For litigation files, when the chance of losing the case is between 30-70% For advisory files, when the likelihood of an adverse outcome arising is between 30-70%
High	For litigation files, when the chance of losing the case is over 70% For advisory files, when the likelihood of an adverse outcome arising is over 70%
Unable to assess	If there is not enough information to permit a proper likelihood of adverse outcome assessment. Once more information is available and, at the very least, if the file involves litigation, before the matter is set for trial, a proper likelihood of an adverse outcome must be selected
<b>Assessing the impact</b>	
<b>Impact level</b>	<b>Description</b>
Minor	Minimal effect on the client department or government as a whole
Moderate	Potential for moderate effect on the client department or government as a whole
Significant	Significant effect on client department's policies or programs or to government as a whole due to actions or third parties or where media coverage is high
Unable to assess	If there is not enough information to permit a proper risk level assessment. Once more information is available, a proper risk level must be selected.

To determine whether an impact on the client department/agency or the government is significant, various parts of the Department have developed high impact criteria. Although the lists vary somewhat, they typically include but are not exclusive to, any legal matter that could have a significant impact on items such as: the national interest; the government's policies, laws, programs, or finances; federal/provincial/territorial or international relations; or public confidence in the government or the courts.

These two dimensions form to join a three-by-three grid that provides levels of legal risk as shown in Table 3. The LRM grid is also part of the risk evaluation screen in iCase; once the two dimensions are entered, iCase computes the risk level. The Department considers high risk files those with a risk level of 7-9 because they have the potential of a significant impact on the client department or government and, therefore, should be reported to senior management within Justice and the client department or agency.

**Table 3: LRM grid**

<b>Impact</b>	<b>Risk level (Risk Management Actions)</b>		
Significant	Considerable management required Risk level 7	Must manage and monitor risks Risk level 8	Extensive management essential Risk level 9
Moderate	Risk may be worth accepting with monitoring Risk level 4	Management effort worthwhile Risk level 5	Management effort required Risk level 6
Minor	Accept risks Risk level 1	Accept, but monitor risks Risk level 2	Manage and monitor risks Risk level 3
	Low	Medium	High
	<b>Likelihood of an adverse outcome</b>		

Some areas within the Department have begun adopting their own guidelines for assessing legal risk. For example, the Legislative Services Branch uses the IRM grid where risk levels 6, 8 and 9 (diagonal) are considered high risk rather than the standard LRM grid where risk levels 7–9 (horizontal) are high risk. The Public Law Sector has also drafted guidelines for advisory work. These other methods of assessing legal risk are discussed in more detail in Section 4.2.2.

In addition to the LRM grid, the Department has developed tools and structures to assist with conducting LRM as well as incorporating some pre-existing tools into LRM (e.g., Briefing Notes). These include various committees and other forums to govern the LRM Initiative at the Justice and/or client department or agency level, communication and reporting tools for sharing information on LRM and high impact files, and tools to assist in managing legal risk. Table 4 provides an overview of these LRM supports with a focus on national tools, guidelines, and structures; the evaluation did not conduct an inventory of LRM supports, so this list is not intended to be exhaustive.

**Table 4: LRM tools, processes, structures**

	<b>Description</b>
<b>Risk assessment tools</b>	
LRM risk assessment grid	See above description.
iCase risk evaluation screen	iCase, the Department’s integrated case management, timekeeping and billing document management and reporting system, has a risk evaluation screen for inputting legal risk information, such as likelihood of adverse outcome, impact of risk, potential client impact (drop down list of types of risk), complexity of file, etc.
Specialized risk evaluation grids or scales	Several units of the Department are in the process of or have developed their own risk assessment grids or scales.
<b>Reporting/communications</b>	
Early Warning Notes System  (includes Early Warning Report, Radar Screen, Scanning News, Summary of High Impact Litigation, and Forward Agenda)	<p>Early Warning Notes are produced by litigation counsel (in regions and portfolios). Early Warning Notes advise senior officials of developments in high impact cases or other cases of interest to the Minister. On the Department intranet site for Early Warning Notes, a high-impact case (risk levels 7-9) is defined as a case which “is likely to have significant consequences for the government’s policies, laws, programs or finances; is likely to have significant consequences for federal-provincial/territorial or international relations; or raises issues which may affect public confidence in the government or in the administration of justice”.</p> <p>Each region has its own processes for approving and submitting Early Warning Notes. A template for Early Warning Notes is on the intranet and iCase. The template that is available on iCase is used mainly by the BCRO, the Quebec Regional Office, the Ontario Regional Office, and the Prairie Regional Office.</p> <p>The Early Warning Notes System provides some of the information that is used to produce various reports that are components of the Department’s communication strategy to ensure that legal risk is effectively communicated throughout the Department (Early Warning Report, Upcoming Litigation Activity Report, Radar Screen, Scanning News, Summary of High Impact Litigation, Forward Agenda). The Early Warning Notes System is intended to contribute to national information sharing and LRM.</p>
• Early Warning Report	Early Warning Notes are compiled for the weekly litigation section of the Early Warning Report that is provided to senior management every Friday morning while Parliament is in session. When Parliament is not in session, the same information is compiled and submitted to senior management in the weekly Upcoming Litigation Activity Report.
• Radar Screen	This is a weekly report that is distributed throughout the Department by email and provides information on upcoming hearings, anticipated decisions, and decisions rendered. This report includes most cases reported in the Early Warning Report in addition to other cases that are of interest to the Department as a whole.
• Scanning News	The newsletter provides information on recent decisions as well as other developments of importance to the Department’s legal community. Department legal staff can submit articles that sometimes include LRM best practices. This newsletter provides more detailed information than the Radar Screen.
• Summary of High Impact Litigation	This report of high risk files is produced three times a year. It sometimes includes cases that are not rated as high impact in iCase (i.e., at risk levels 7-9). The various Department units, regions, and sectors can submit files that the Law Practice Management Directorate vets. Early Warning Notes are used to keep the database constantly updated. Initially created as the Top 100 Report, it has since evolved to track high impact litigation more generally, and includes more than 100 entries. This report is distributed primarily to senior management.
• Forward Agenda (section on high impact litigation)	One-pager notes on high impact cases are compiled from the Summary of High Impact Litigation for the Forward Agenda. The Forward Agenda is a binder prepared for the Minister for each Parliamentary Session. One section of it provides information on high impact litigation.

	<b>Description</b>
<b>Reporting/communications (continued)</b>	
DM Daily	This meeting occurs twice a week with direct reports to the Deputy Minister (Senior Regional Directors, Heads of portfolios and sectors). At these meetings, the Deputy Minister is given updates of activities in high impact files (recent or imminent). The DM Daily assists the Department in information-sharing and identification of horizontal linkages.
Briefing Notes (general and Cabinet)	These notes are prepared for the Minister on high impact cases or issues.
iCase LRM reports	<p>iCase produces several LRM reports that are intended to help with planning:</p> <ul style="list-style-type: none"> <li>• Active LRM files by Portfolio, Client – listing of all files by risk level and by client that provides summary statistics on total files by client and risk level for each portfolio or all portfolios.</li> <li>• Files with Significant Risk Level – provides listing of all files by risk level 5 and above by client either overall or by portfolio.</li> <li>• Legal Risk Management – formatted (.pdf) and unformatted information about legal risk on active files that is requested quarterly by Headquarters to provide aggregate information (not portfolio or client-specific).</li> <li>• Active Files with Media Attention as Potential Client Impact – report on all files with potential client impact of “legal issues or events that may be controversial, attract media attention, or involve Cabinet ministers”. Lists files by risk level and by client/concerned agency for each portfolio or all portfolios.</li> <li>• Legal Risk Management Mandatory Data – list of active files which are non-compliant with national LRM requirements for reporting on LRM risk evaluation in iCase. The National Business Analyst runs these reports periodically to monitor compliance. In addition, iCase administrators should run audit reports regularly to monitor compliance with LRM information requirements.</li> <li>• Legal Risk Management Data Currency – list of active files that have LRM data but the risk level has not been reassessed for one year since initially inputted or since last reassessment.</li> </ul>
Contingent Liability Report	This quarterly report is produced from iCase and provides a snapshot of the contingent liabilities on Department files.
<b>Committees/teams</b>	
Law Practice Management Directorate	The LPMD began operations in August 2007 and provides the functional and operational leadership for LRM. In addition to LRM, the LMPD’s responsibilities include iCase, knowledge management across the Department, and dispute resolution and prevention.
LRM Special Counsel	The LRM Special Counsel is part of the AFGS of LRM. This position is intended to provide functional operational leadership for LRM in the Department and offers a challenge function to ensure LRM compliance.
Interdepartmental ADM Steering Committee	This committee is concerned with IRM, which has legal risk management as a component in MAF.
LRM Steering Committee	Chaired by then Associate Deputy Minister responsible for LRM, the LRM Steering Committee included direct reports from both the operational and policy side of Justice. The Committee’s mandate was to coordinate and monitor the implementation of LRM and to work on the strategic development of LRM. The Committee reviews operational plans and scanning plans in use across the Department. However, this Committee only met once after the devolution of LRM.
LRM Practice Group	This group met every two months to discuss LRM implementation and challenges. Members of the group were legal risk management practitioners (working level lawyers, especially from Legal Services Units [LSU]) from all portfolios and regions. This group was intended to share best practices. The LRM Practice Group last met in 2006.

	<b>Description</b>
<b>Committees/teams (continued)</b>	
Thursday Group	This is a formal departmental working group that shares information across portfolios, regions, and sectors. The group meets bi-weekly to discuss high impact cases. This Group was originally named the Thursday Morning Group in the AFGS.
Joint Department–client risk-related committees	Some departments/agencies have joint Department–client department/agency risk management committees. Responsibilities of these committees may include identifying cases for which risk assessments are required. Other departments/agencies have specific LRM committees and some discuss LRM as part of their litigation committees.
Department litigation or risk-related committees	<p>The Department National Litigation Committee is the senior advisory body for all litigation regardless of court level. The Committee monitors significant litigation in which the federal Crown (or its emanations) is a party or in which the government might intervene as well as trends in litigation. The Committee also ensures that the legal positions taken by the Attorney General are consistent and take due consideration of Government policies. The Committee also reviews all recommendations to appeal to the Supreme Court of Canada and reviews key filings before they are made (e.g., Tax Law Services has a factum review process for certain types of cases so that key documents are reviewed before filing in the Supreme Court of Canada, the federal or provincial Courts of Appeal, and the Tax Court of Canada).</p> <p>All regional offices of the Department have litigation and/or other risk-related committees. Many federal departments/agencies also have these committees. The types of activities they perform may include approving contingency plans and settlement mandates; providing direction on significant files (e.g., those that have significant contingent liability or a substantial impact on policies or relationships); and reviewing risk assessments in high and, in some offices, medium risk files.</p>
<b>Intranet tools</b>	
JUSnet intranet on LRM	Site where Department has LRM description and all tools listed below as well as links to resources on LRM or related issues (e.g., early settlement practice advisory) and regional/portfolio/sector sites.
Judicial Review Toolkit	This toolkit is to assist counsel who are involved in a Federal Court judicial review application. The tools outline major steps in the process with procedural issues to consider at each step. The tools also include several procedural charts which are intended to assist counsel with managing judicial review applications, as well as communicating at key points with clients and their LSUs.
Civil Actions Toolkit	This toolkit includes a flow chart of the litigation process with a checklist of the issues at each stage that should be discussed with those involved in managing the case (litigator, LSU, client department/agency, etc.).
Roles and Responsibilities (part of Civil Actions Toolkit)	This is a key component of the Civil Actions Toolkit. The Roles and Responsibilities checklist provides litigation counsel with a reminder of what issues typically should be discussed throughout the litigation process with involved parties (LSU, client department/agency, etc.). This approach should facilitate communication and ensure that expectations are understood. The checklist is shared with clients as it will help them consider in advance when they want to be consulted, and serves as an educational tool in showing clients that they need to consider the impact of the litigation on their strategic plans (financial, policy, operational).
Contingency Planning Guidelines	<p>Contingency planning is where the Department and client department identify and assess risks on a particular case and develop a strategy for handling risks. These plans ensure that the government responds quickly and appropriately to situations that occur throughout the litigation process. All Supreme Court of Canada cases must have a contingency plan. Other files may require a plan that is appropriate to their level of risk. Department documentation is currently unclear on whether all high risk files are required to have contingency plans.</p> <p>Contingency plans are not developed for advisory, policy, or legislation files. In legislative/advisory files, counsel would recommend a strategic plan to minimize identified legal risks and mitigate the risk of litigation. There are no templates on the intranet for these strategic plans.</p>



	<b>Description</b>
<b>Intranet tools (continued)</b>	
Critical Path Template for High Impact Cases	This is part of the Contingency Planning guidelines. This document sets out the roles and responsibilities for the Department and client department/agencies for the management of a case. The Critical Path describes what is to be done and by whom in the days leading up to and shortly after a judicial or quasi-judicial decision. The template is designed for high impact cases in the Supreme Court of Canada but can be adapted to fit other cases in other court jurisdictions.
Effective Communication of Legal Risk	<p>These recommendations on communicating legal risk were drafted in November 2006 by a working group of senior staff. In particular, the report provides recommendations on (taken from JUSnet description of report):</p> <ul style="list-style-type: none"> <li>• Writing legal opinions, briefing notes, and memoranda to Cabinet</li> <li>• Understanding the audience to whom legal risk is being communicated and the particular aspects of legal risk that interest them</li> <li>• Standardizing risk terminology</li> <li>• Contextualizing advice about legal risk, particularly in terms of the Department’s legal advisory role</li> <li>• Follow-up work to connect the recommendations with the broader departmental work on legal risk management.</li> </ul>

The LRM Initiative encompasses all of the legal work of the Department. To understand the operation of the Initiative, the various contexts in which LRM is practiced in the Department must be distinguished. The operational structure is complex as, although Justice is ultimately the legal counsel to the Crown, it directly provides legal services to approximately 50 federal departments and agencies that, for ease of understanding, are referred to as “clients”. Throughout this report, the implementation of LRM is discussed in terms of types of legal activities and various legal actors within the Department.

The main legal activities of the Department are:

- Litigation services – the handling of a case that is in the litigation process
- Legal advice – providing legal opinions or advice on legal matters
- Policy and program development – planning, developing, and implementing laws, policies, and programs in the justice sector dealing with family law, access to justice issues, and criminal law including youth criminal justice, Aboriginal justice, and anti-drug strategy
- Legislative and regulatory services – drafting, updating, and reviewing all government statutes, regulations, and bills.

Table 5 provides a brief description and overview of the structure of the Department for those areas that are directly involved in LRM and notes the legal activities in which they are typically engaged.

**Table 5: Department of Justice units directly involved in the LRM Initiative**

<b>Portfolios</b>				
The Department uses a portfolio structure that organizes its work around strategic business lines.				
<b>Business and Regulatory Law (BRL)</b> This portfolio group includes work for 24 client departments/agencies that have a business or regulatory law component.	<b>Citizenship, Immigration, and Public Safety (CIPS)</b> This portfolio includes departments/agencies that deal with transnational criminal matters and immigration laws.	<b>Aboriginal Affairs (AA)</b> This portfolio includes the Department of Indian and Northern Affairs and other departments/agencies that have policies, programs, or services that target Aboriginal clients.	<b>Tax Law Services</b> This portfolio serves the Canada Revenue Agency.	<b>Central Agencies</b> This portfolio serves central agencies of government, such as the Treasury Board, the Department of Finance and the Public Service Commission.
<b>Regional offices</b>		<b>Departmental Legal Service Units (LSUs)</b>		
The Department has six regional offices: Northern, British Columbia, Prairie, Ontario, Quebec, and Atlantic. Regional offices handle litigation and conduct advisory work. They support the portfolio structure.		The LSUs are grouped into the relevant portfolios and report directly to the portfolio heads. LSUs provide legal advice and assistance to their client department/agency, including operational advice, and legislation and policy development. They also provide litigation support, and some LSUs will handle litigation matters. LSUs are housed in the client department or agency.		
<b>Specialized sectors at headquarters</b>				
<b>Public Law Sector</b>	<b>Policy sector</b>	<b>Litigation Branch</b>	<b>Legislative Services Branch (LSB)</b>	<b>Dispute Prevention and Resolution Services</b>
This sector provides legal and policy advice and assistance on matters pertaining to public law issues. The Sector organizes its legal counsel by area of expertise. For example: <ul style="list-style-type: none"> <li>• Human Rights Law Section</li> <li>• Constitutional and Administration Law Section</li> <li>• Information Law and Privacy Section</li> <li>• Judicial Affairs, Courts, and Tribunal Policy</li> <li>• Public Law Policy Section</li> <li>• Trade Law Bureau</li> <li>• Official Languages Law Group (since April 1, 2008)</li> </ul>	This sector plans, develops, and implements laws, policies, and programs in the justice sector dealing with family law, access to justice issues, and criminal law including youth criminal justice, Aboriginal justice, and anti-drug strategy. It consults with policy partners in other sectors, governments, and non-governmental organizations.	This branch includes two divisions (Civil and Criminal) each of which has many sub-sections, such as the Civil Litigation Section, the Management of Class Actions and Mass Litigation Unit, the International Assistance Group, and the National Security Group. The Branch has functional responsibility over all litigation involving the Government of Canada in the common law jurisdictions.	LSB provides legislative and regulatory drafting, revision, and advisory services to the Government and ensures that statutes and regulations meet the requirements of a bilingual society with two legal systems.	This branch provides legal advisory services on dispute resolution options as well as training, and policy development to assist the Government in preventing disputes that could result in possible litigation. In addition, it conducts systems-design work on conflict prevention resolution. As of August 2007, it is part of LPMD.

Although the LRM Initiative was always intended to include the legal work of the entire Department, it initially had more of a litigation focus. This is, in part, because litigation lends itself to the risk management process: the legal risk has materialized, which makes it easier to identify and assess the legal risk; and the court process creates certain predictable moments that affect risk (production of discovery, hearings, decisions, etc.). The prevention side of LRM incorporates advisory services, policy making, program development, and the legislative process, and although this legal work necessarily involves identifying, assessing, and managing legal risk, the processes are less well defined than for litigation. Therefore, issues arise such as how to assess the likelihood of an adverse outcome or when to assess risk. As a result (and as reflected in Table 4 above), the early tools for LRM tended to address litigation legal risk management. In addition, the legal risk evaluation screen in iCase, a key tool of the Initiative, is not accessible to all counsel in the Department. Litigation counsel have been using iCase for some time, but many other branches and work units have only recently moved to the iCase system, and some only for timekeeping purposes.<sup>9</sup>

The intent for LRM to extend beyond litigation is reflected in the joint responsibility for avoiding and managing disputes and/or litigation between Justice and its client departments and agencies. LRM is considered a partnership that begins with Justice and the client department/agency working together during the program/policy development phase in order to minimize the potential for disputes and develop effective methods for handling disputes within program processes. The partnership continues when disputes do occur through using formal or informal dispute resolution mechanisms and managing any litigation that arises. Finally, the partnership also involves learning from past experience by reporting on litigation outcomes and suggesting legislative or program changes.

---

<sup>9</sup> In 2006–2007, most branches and units were using iCase, although during that period, 15 units had just converted to iCase and a few (3) had not yet begun to migrate to iCase. Department of Justice. *Departmental Performance Report, 2006-2007*, p.38. Retrieved on June 20, 2008, from <http://www.tbs-sct.gc.ca/dpr-rmr/2006-2007/inst/jus/jus-eng.pdf>.

### 3. METHODOLOGY

The evaluation was comprised of six lines of evidence and was guided by an evaluation framework. Data collection instruments were used for the evaluation. The methodological approach and the instruments were developed in consultation with the Evaluation Advisory Committee (the Committee), which included representatives from headquarters, regions, and LSUs and oversaw the evaluation from design through to final reporting. This section of the report describes each of the lines of evidence.

#### 3.1. Document review

The document review included several types of documents and data:

- ***A review of program documents.*** Primary sources of information, provided by the Law Practice Management Directorate, were reviewed. The list of these documents included presentation decks on LRM; the Business Case for LRM; materials on LRM from the Department intranet; the LRM AFGS; internal Department (portfolio/sector/region/legal services unit) documents on LRM practices; and materials from the 2007 Vancouver workshop.
- ***An analysis of iCase data reports.*** The evaluation used information from iCase, a national, Web-based case management and timekeeping system developed by the Department. iCase includes a risk evaluation page that captures information on legal risk provided by counsel. The evaluation included two forms of iCase information:
  - The results of iCase audits. These audits are conducted by the National Business Application Analyst Team and consider compliance with standards established in each Portfolio's iCase Business Standards Manual. The evaluation considered the results of audits conducted during fiscal years 2005–2006 and 2006–2007 (quarterly) and 2007–2008 (three cycles of which two were completed). The results include litigation and advisory files

only, and review whether iCase data is inputted for mandatory LRM fields.<sup>10</sup> The audits do not consider the reliability of the information.

- A review of closed files from 2005–2006 and 2006–2007. This review focused on whether counsel had assigned numeric risk assessment levels to the files.
- ***Results for relevant questions from the Justice Services Satisfaction Survey.*** The Client Feedback Survey was developed by the Department’s Office of Strategic Planning and Performance Management in partnership with Statistics Canada. Relevant results from the survey were provided for this evaluation. This survey was administered between July 2006 and February 2008 on a portfolio by portfolio basis (except for Tax Law). Employees at EX minus 1 and above were invited to participate in the survey. The response rate for the survey was 31%.
- ***A focused literature review.*** There is no publicly available literature on LRM in the public sector outside of that found on the Department’s and Treasury Board’s websites. Therefore, the evaluation focused its review of literature on best practices with respect to the principles and implementation of public sector risk management more generally. Even then, the literature on best practices is scant.

### **3.2. Key informant interviews**

During the months of February to March 2008, a total of 48 representatives from Department headquarters (n=28), regional offices (n=8), and LSUs (n=12) were interviewed.<sup>11</sup> The interviews were conducted either in-person or over the phone in the preferred official language of the key informant. All key informants received an interview guide prior to the interview itself. A representative of the LPMD or the Evaluation Division attended almost all of the interviews.

### **3.3. Legal counsel survey**

The Department hosted a legal counsel survey on its intranet, and all 2,182 Justice counsel were invited to participate in the survey. The survey was online from March 5–March 20. To encourage responses, two reminder emails were sent to counsel. A total of 636 counsel completed the survey for a response rate of 29%. Survey data were analyzed using the Statistical Package for the Social

---

<sup>10</sup> There are two levels of mandatory fields. Some fields are required for all files (basic mandatory LRM data). In addition, particulars must also be provided for high risk files (levels 7-9 and/or files involving an amount of \$50 million dollars and above).

<sup>11</sup> Some of these interviewees were also participants in the case studies.

Sciences (SPSS) program. Table 6 provides a profile of survey respondents and shows that generally respondents were representative of the population of DOJ counsel, although more counsel with less than one year experience responded to the survey.

**Table 6: Profile of survey respondents**

Characteristics	Population	Survey respondents
	%	%
<b>What is the classification level of the position you currently occupy?</b>		
LA – 01	15%	15%
LA – 2A	55%	54%
LA – 2B	19%	20%
LA – 3A	8%	8%
LA – 3B	3%	2%
LA – 3C	<1%	<1%
Senior Management (above LA-3C level)*	<1%	--
No response	--	<1%
<b>Total</b>	<b>101%</b>	<b>101%</b>
<b>When did you first join the Department?</b>		
Less than one year ago	2%	8%
Between 1 and 5 years ago	27%	22%
Between 6 and 10 years ago	35%	33%
More than 10 years ago	36%	38%
<b>Total</b>	<b>100%</b>	<b>101%</b>
<b>Where do you currently work?</b>		
Headquarters	26%	25%
Regional office	40%	40%
LSU/Satellite office	34%	35%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<b>Are you in a management position?</b>	Not available	
Yes		15%
No		85%
Don't know/No response		<1%
<b>Total</b>		<b>&gt;100%</b>

*Note: Totals do not sum to 100% due to rounding.*  
\* Option not offered on survey.

Counsel answered the survey questions relevant to the type of legal work they do most often that involves the management of legal risk. The type of legal work was divided into the following categories (largely based on the main legal activities of the Department described on page 13):

litigation; litigation support (assisting the litigator and the client with a case that is in litigation, including the provision of legal advice); legal advice (providing legal opinion or advice on a non-litigation matter when requested by a client department or agency); policy and program development; and legislative and regulatory services. Where appropriate, results are provided by these categories.

### **3.4. Case studies**

The evaluation included four case studies to provide useful detail on how LRM has been integrated into operations at different levels of the Department. Because the file review (see Section 3.5) encompasses a more detailed study of litigation and advisory/legislative files, the case studies have a broader operational focus and examine how LRM is integrated into different regional/portfolio/LSU settings. The case studies were chosen in consultation with the Committee.

- Two LSUs – the Department of Fisheries and Oceans Canada (DFO) (relatively well-developed LRM that includes regional scanning and an engaged client) and the Department of Canadian Heritage (PCH) (a department that has a less-structured LRM process)
- Two regional offices – BCRO (very highly developed LRM process) and the Ontario Regional Office (ORO) (engaged in LRM but is a less-structured process than British Columbia).

Each case study included interviews and a review of relevant documents, such as operational documents to support LRM including guidelines, procedures, or templates. The research team conducted interviews primarily on-site over one or two days. A few follow-up interviews were conducted by telephone. Interviews were a mixture of individual and small group interviews. Interview participants for each case study were determined in consultation with a key contact person who was typically the person responsible for LRM in the LSU or regional office. Those interviewed were contacted in advance and provided with the interview guide. The number of individuals interviewed for each case study ranged from 5 to 20 and a total of 42 individuals were interviewed.

The evaluation could not conduct a cost comparison of the LRM activities for the case studies because these costs are not tracked. Each counsel working on high risk files spends a portion of his or her time on LRM and various counsel are involved in LRM as part of committee work. The evaluation is able to provide some estimates of time spent by counsel and staff who do a considerable amount of LRM work. These individuals may not be exclusively dedicated to LRM, but some of their responsibilities include ongoing support of the LRM structures in their offices.



Table 7 provides the estimates of time spent on LRM activities that were provided in case study interviews. The table does not include the time devoted to LRM by other litigation and/or risk-related committee members or counsel working on files.

**Table 7: Staff resources devoted to LRM – Case studies**

<b>Regional Offices</b>	
<b>BCRO</b>	<b>Estimated percentage of time on LRM</b>
LRM and Policy Coordinator	50-100% depending on current file load
Consultation and Accommodation Coordinator	50-100% depending on current file load
Chair of the Regional Law and Litigation Committee	25%
Communications Advisor	Currently on leave
Paralegal	60-75%
Legal assistant	60-75%
<b>ORO</b>	
Special Advisor to the Senior Regional Director	20-40%
Chair of the Litigation Committee	10-30%
Paralegal	80-90%
<b>LSUs</b>	
<b>DFO</b>	
Senior General Counsel	10-20%
LRM Coordinator/Senior Counsel Legal Risk Management	<50% depending on current file load
Paralegal	90%
Legal assistant	50%
<b>PCH</b>	
Director and General Counsel	5%
Paralegal	10%

### 3.5. Review of closed files

The file review provides a detailed qualitative analysis of the LRM process through a study of a selection of closed litigation, advisory, legislative services, and policy files.

In all, 69 files closed between 2003 and 2008 were reviewed: 51 litigation files; 7 legislative drafting files; 6 advisory files; and 5 policy files.<sup>12</sup> Of the litigation files, 15 files were appeals or other proceedings that relate to 6 separate cases. The litigation files were identified through iCase and were mainly high risk files (risk level 7-9), as the evaluation focused on the use of processes and tools in high risk cases. A smaller selection of risk level 6 files was also included. The non-litigation files were primarily identified with the assistance of counsel. The files were chosen to

<sup>12</sup> In order to obtain a sufficient number of closed files across all the characteristics to be considered, files opened before 2003 were included in the file review.

represent different regions, portfolios, and level of court (if applicable).<sup>13</sup> Consideration was also given to other factors such as complexity of the file, length of time it was open, type of proceeding, and final outcome to the Crown.

Counsel with the Department conducted the file review using a template developed for the evaluation. The data collected was entered into the Computer Assisted Telephone Interviewing (CATI) program, before transferring it to SPSS for analysis.

Table 8 shows the distribution of the closed files by organizational units, portfolios and sectors.

**Table 8: File review distribution (n=69)**

Organizational Unit	Portfolios			Sector	Total
	Aboriginal	BRL	CIPS		
British Columbia	3 Litigation 1 Advisory	4 Litigation 1 Advisory	8 Litigation 1 Advisory		15 Litigation 3 Advisory
Prairies	2 Litigation 1 Advisory	3 Litigation	1 Litigation		6 Litigation 1 Advisory
Ontario		1 Litigation	5 Litigation		6 Litigation
Quebec	3 Litigation	7 Litigation	7 Litigation 1 Advisory		17 Litigation 1 Advisory
Atlantic	1 Litigation	1 Advisory			1 Litigation 1 Advisory
National Capital Region – Civil litigation	2 Litigation	4 Litigation			6 Litigation
Policy Sector				5 Policy	5 Policy
Legislative Services Branch				7 Legislative Services	7 Legislative Services
Total					51 Litigation 7 Legislative Services 6 Advisory 5 Policy

### 3.6. Focus groups

After completion of the above data collection methods and a preliminary analysis of findings, three focus groups with client departments and agencies were conducted. The focus groups explored issues raised in the evaluation findings and served as a process for validating some of the findings. To ensure that participants would have ample time to discuss the issues, a selection of departments and agencies was invited to participate in the groups. These departments and agencies were chosen

<sup>13</sup> Files from the Tax Portfolio were not included in the file review because of concerns with confidential taxpayer information protected by s. 241 of the *Income Tax Act*.

so that a range of experiences in terms of litigation volume, legal issues, and legal risk management activities would be included.

LSU heads assisted by providing an appropriate client contact, who in turn assisted the evaluation by identifying an individual within their department or agency to participate in the focus groups. To provide some homogeneity among the participants, the groups were formed based on how active the client department or agency is in legal risk management.

The groups were held on May 28-29, 2008 and each focus group lasted approximately 1½ hours. A total of 13 client departments and agencies participated. The participants were roughly evenly divided between managers and working level staff.



## 4. KEY FINDINGS

This section of the report combines information from all lines of evidence. The presentation of the findings follows the main evaluation issues and responds to the questions identified in the evaluation framework.

### 4.1. Rationale of the LRM Initiative

#### **Respond to the volume, complexity, and cost of legal services**

As noted in Section 2.2, the LRM Initiative was developed to respond to concerns with the growing volume, complexity, and cost of civil litigation. For example, from 1996 to 2002, Aboriginal litigation in its general inventory increased from 500 cases to 726 cases, and in 2002, Indian Residential School claims had risen to 4,000 claims with 8,000 plaintiffs.<sup>14</sup> In the area of international trade litigation, Canada went from one dispute in 1993 to 35 in 2000.

Although the volume of litigation files has remained relatively stable over the past several years, the complexity of cases has increased. The reasons for this are many, but include the increased number of parties to each action, the sophistication of litigation strategies employed by interest groups, the volume and complexity of evidentiary issues, and the increasingly protracted nature of litigation. For example, the number of new class actions grew from 35 to 150 between 2000 and 2006 and included areas as diverse as Indian Residential School claims, Mad Cow disease, and Hepatitis C. The complexity is also reflected in the increasing number of lawyer hours. Between 2000 and 2004, the number of lawyer hours increased by approximately one-third from 2,019,626 to 2,720,892. In addition, contingent liabilities are a persistent issue; after peaking in 2000/2001, they have remained in the vicinity of \$10 billion per year.<sup>15</sup>

---

<sup>14</sup> Except where noted, statistics used in Section 4.1 are from Department of Justice administrative data.

<sup>15</sup> Receiver General of Canada, *Public Accounts of Canada, volume 1 – Summary Report and Financial Statements*, Chapter 10, for fiscal years 1997–2006.

## **Support the government's IRM framework and Justice's strategic objectives**

Under the framework developed by the Department, legal risk management is defined as “the process of making and carrying out decisions that reduce the frequency and severity of legal problems that prejudice the government’s ability to meet its objectives successfully”.<sup>16</sup> This definition firmly links LRM to the overall integrated risk management approach: it is a proactive measure to identify potential risks early, and develop and manage a response in order to reduce any negative impacts on the government’s ability to achieve results. In fact, IRM clearly identifies legal risk as one component of risk.<sup>17</sup>

LRM also contributes to the departmental priority of “improving efficiencies in the justice system and the efficient delivery of legal services in government” and the corresponding strategic outcome of “a federal government that is supported by effective and responsive legal services”.<sup>18</sup> The anticipation, mitigation, and effective management of legal risk as well as high quality legal services are key results expected under this strategic outcome. The Department considers LRM vital to improving the operations of government:

The goal of LRM is to develop a sustainable approach to managing legal risks and thereby protect the interests of the Crown and minimize overall costs. Legal risk management is making and carrying out decisions that reduce the frequency and severity of legal problems undermining the Government’s ability to meet its objectives.<sup>19</sup>

## **Continued relevance of LRM**

The evaluation found that the systematic approach promoted by LRM continues to have relevance. Almost all key informants believe that the Department needs this approach to effectively manage legal risks. Their comments demonstrated the link between LRM and the Department’s strategic priorities and outcomes of providing effective legal services to client departments and agencies. In particular, they found that a consistent, systematic approach to

---

<sup>16</sup> *Legal Risk Management*. Retrieved on November 20, 2007, from [http://jusnet.justice.gc.ca/lpmd\\_e/lrm\\_home.htm](http://jusnet.justice.gc.ca/lpmd_e/lrm_home.htm).

<sup>17</sup> *Integrated Risk Management Framework*. (2001). Retrieved on November 23, 2007, from [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/RiskManagement/dwnld/rmf-cgr\\_e.pdf](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/RiskManagement/dwnld/rmf-cgr_e.pdf)

<sup>18</sup> Department of Justice Canada. *Report on Plans and Priorities 2006-2007*. Retrieved on March 28, 2008, from [http://www.justice.gc.ca/eng/dept-min/pub/rpp/2006\\_2007/rpp06\\_07.pdf](http://www.justice.gc.ca/eng/dept-min/pub/rpp/2006_2007/rpp06_07.pdf)

<sup>19</sup> Department of Justice Canada. *Report on Plans and Priorities 2006-2007*. Retrieved on March 28, 2008, from [http://www.justice.gc.ca/eng/dept-min/pub/rpp/2006\\_2007/rpp06\\_07.pdf](http://www.justice.gc.ca/eng/dept-min/pub/rpp/2006_2007/rpp06_07.pdf)

LRM improves service to clients by providing them with clear communication regarding legal risks and ensures that the Department is aware of existing risks so that resources can be directed appropriately. The legal counsel survey supports this view that LRM serves an important function in effective management of legal files with three-quarters of counsel reporting its utility in assisting them with managing their files (see Table 9).

**Table 9: View of LRM (n=636)**

<b>Indicate which response best reflects your view of LRM</b>	<b>%</b>
LRM is essential to successfully manage my files	30%
LRM is helpful to successfully manage my files	45%
LRM is unnecessary to successfully manage my files	20%
LRM detracts from my ability to successfully manage my files	3%
Don't know/No response	2%

## **4.2. Implementation**

This section considers the evaluation issues concerning the implementation of the LRM Initiative.

### **4.2.1. Effects of decentralization and the LRM Accountability Framework and Governance Structure**

The evaluation found that the decentralization of LRM in 2003 has had two countervailing effects. At the national level, it has created a loss of momentum. Since 2003, the Department developed few new national LRM tools and offered no national training.<sup>20</sup> In addition, because the LRM Initiative originally had more of a litigation focus, the practice of LRM in other contexts, such as advisory, policy, and legislative services work, developed independently and more recently. The consensus among key informants was that the removal of the central structure of LRM was premature with the result that LRM lost its profile within the Department as well as with client departments and agencies. They also pointed out that the Department no longer has a central repository for LRM, which has left a void in terms of where to get tools, ask questions, and receive advice on LRM.

---

<sup>20</sup> The *Effective Communication of Legal Risk* and the Contingency Plan Guidelines were developed in 2006 and 2005, respectively.

The loss of national momentum has also created opportunities at the portfolio, regional, LSU and sector levels to develop LRM policies and tools that respond to particular operational contexts. Regional offices have created their own LRM structures and processes and have gone as far as developing tools and detailed guidelines, such as the BCRO’s High Impact Case Strategy. BCRO, ORO, and the Prairie Regional Office (PRO) have opted to expand LRM processes to include risk level 6 files. LSUs also have created their own LRM tools and processes in areas such as case intake, early case management and work plans. In addition, because LRM initially had more of a litigation focus, areas of the Department that conduct legislative drafting, advisory, and policy and programming work found that aspects of the Initiative (such as the LRM grid) did not work for their practice and have recently been developing their own guidelines for LRM. As a result of these efforts, the LRM Initiative has become more meaningful to these areas of the Department, particularly in the regional offices where the sense that LRM is an initiative imposed by Ottawa has lessened.

A challenge created by this multi-centred approach to LRM development is that the shared vision of LRM and counsels’ roles and responsibilities diminished. Interviews showed that counsel do not have a national perspective on LRM as much as knowledge of “how we do it here”. This knowledge is also not uniform within the Department. Based on the legal counsel survey, counsel with longer tenure in the Department have a better understanding of their roles and responsibilities. Overall, just over half of respondents believe their roles and responsibilities in LRM are clear, indicating an area for potential improvement. Table 10 provides the survey results.

**Table 10: Clarity of LRM roles and responsibilities**

<i>Please indicate your level of agreement with the following statement: My roles and responsibilities in LRM are clearly defined.</i>		
	<b>n</b>	<b>Strongly agree/ Agree</b>
<b>Level in Department</b>		
Management position	94	63%
Not in a management position	541	50%
<b>Years of experience</b>		
Less than one year	49	35%
Between 1 and 5 years	140	45%
Between 6 and 10 years	208	51%
More than 10 years	239	60%
<b>Overall</b>	<b>636</b>	<b>52%</b>
<i>Note: Only response categories that indicate agreement are included in the table.</i>		



The survey with counsel yielded seemingly conflicting results about the general understanding of the Initiative. About two-thirds of respondents consider their overall understanding of LRM to be very good or good, and most respondents agree that LRM is well defined by the Department. At the same time awareness and use of LRM tools is low, and few respondents knew their LRM contact person (see Section 4.2.3).

However, these results align with interview and case study findings that counsel have a general, intuitive understanding of managing legal risks but less of a concrete understanding of the LRM Initiative in terms of its tools, processes, and expectations. Several key informants made the distinction between “big LRM” (the Initiative) and “small lrm” (the concept of managing legal risks), with some noting that the national initiative is often viewed narrowly as assessing risk in iCase and, beyond that, as applying only to high risk files. Again, counsel with longer tenure and who are managers have a better understanding of LRM and are more likely to consider it well defined. Therefore, although survey results indicate that a general understanding of LRM and counsel’s corresponding responsibilities exists, the extent of that understanding and whether it is truly shared across the Department remains an open question. Tables 11 and 12 present the legal counsel survey findings on the understanding of LRM.

**Table 11: Overall understanding of LRM**

<i>How would you rate your overall understanding of LRM?</i>					
	<b>n</b>	<b>Very good</b>	<b>Good</b>	<b>Limited</b>	<b>Poor</b>
<b>Level in Department*</b>					
Management position	94	38%	49%	13%	--
Not in a management position	541	13%	50%	33%	4%
<b>Years of experience</b>					
Less than one year	49	--	45%	45%	10%
Between 1 and 5 years	140	6%	48%	41%	4%
Between 6 and 10 years	208	18%	51%	27%	3%
More than 10 years	239	25%	50%	22%	3%
<b>Overall</b>	<b>636</b>	<b>17%</b>	<b>50%</b>	<b>30%</b>	<b>4%</b>
<i>Note: Some row totals do not sum to 100% due to rounding.</i>					
<i>* One respondent did not indicate his level in the Department.</i>					

**Table 12: LRM is well-defined**

<i>Please indicate your level of agreement with the following statement: LRM is well-defined by the DOJ.</i>		
	<b>n</b>	<b>Strongly agree/ Agree</b>
<b>Level in Department*</b>		
Management position	94	68%
Not in a management position	541	55%
<b>Years of experience</b>		
Less than one year	49	47%
Between 1 and 5 years	140	49%
Between 6 and 10 years	208	58%
More than 10 years	239	63%
<b>Overall</b>	<b>636</b>	<b>57%</b>
<i>Note: Only response categories that indicate agreement are included in the table.</i>		
<i>*One respondent did not indicate his level in the Department.</i>		

As discussed in Section 2.3, the Department created the AFGS to serve as a management guide for the decentralized LRM. The evaluation found that the AFGS reflects the loss of national momentum and identified a need to review, update, and revise the AFGS. Several components, such as the LRM Steering Committee and the LRM Practice Group, are no longer active. In particular, the LRM Steering Committee, which met once after devolution, was intended to include TBS and client representation as a mechanism to ensure that these partnerships remained strong as the implementation of LRM went forward. Interviews showed that knowledge of the AFGS is low and that it is not used as a guiding document for management, even though it was intended to “establish accountabilities that must actively cascade down within identified parts of the Department (e.g., portfolios, regions, etc.) so that LRM is well managed at all levels”.<sup>21</sup> Part of the reason for this is that, according to some interviewees, the AFGS is not concrete enough to provide direction as it assumes a common understanding of LRM and overlooks some parts of the Department (e.g., the Chief Legislative Counsel).

Interviews and the legal counsel survey indicated a need to reorient the forum known as the Thursday Group. The Group was intended to serve as a forum to share LRM information across portfolios, regions and sectors, make horizontal linkages, and identify emerging legal trends. The evaluation findings indicate that the Group is not fully meeting its original mandate. Most (38 of 59) legal counsel survey respondents who have had some involvement with the Group have not found it useful. In interviews, the feedback was more positive about the Thursday Group as an

<sup>21</sup> Department of Justice (with assistance from Wiltshire Consulting Inc.). (2004). *Strategic Risk Assessment*.

information sharing forum, but in general, it is considered to have become more of a roundtable report on existing high risk matters than a setting for identifying trends and best practices.

Finally, the AFGS needs to incorporate the LPMD and determine its role within the LRM Initiative, particularly vis-à-vis the LRM Special Counsel.

#### **4.2.2. Consistency of LRM practices**

##### **Identifying and assessing risk**

The evaluation found widespread use of legal risk scanning for identifying legal risks. Typically, this involves reviewing various documents such as Early Warning Notes, iCase LRM reports, Supreme Court of Canada decisions, Summary of High Impact Litigation, question period notes and briefing notes, as well as attending meetings such as the National Litigation Committee and the Thursday Group to find out about high impact cases nationally.

However, scanning practices vary. Some regional offices and LSUs have one or two individuals involved in legal risk scanning and tend to focus on high impact litigation, while others have a more developed process that is wider in scope. For example, ORO's Policy and Integration Section also serves a scanning function that considers potential policy implications of litigation when identifying legal risks, and BCRO's watching brief files, which are included in its Significant Cases and Hot Issues Report, document legal matters that may lead to high impact litigation or hold potential significant implications for government.

Similarly, the formality of legal risk scanning varies at the portfolio level. Certain portfolios organize weekly or biweekly roundtable teleconferences with managers and/or lawyers across the country in order to track developments and ensure consistent positions on significant cases, and/or distribute a weekly/quarterly report of significant cases in the portfolio. In other portfolios, communication among regions is more informal. Scanning across portfolios and sectors in order to identify legal trends that have broader implications for either Justice or the government was identified as a gap in current LRM practices.

As for legal risk scanning activities across the government, the most recent MAF Assessments conducted by TBS found that not all departments have regularized processes, but there appears to be some improvement in departments scanning for both litigation and non-litigation risks.<sup>22</sup>

---

<sup>22</sup> See Applied Research Consultants. (2003). *Review of Implementation of Legal Risk Scanning*. p. 9.

These legal risk scanning activities are sometimes collaborative, involving representatives of both the client department and Justice, and are sometimes conducted solely by the LSU.

For assessing legal risk, the variation in approach comes from the use of different grids or scales, and inconsistency in the ratings applied using the standard LRM grid. In addition, the evaluation found evidence of uneven practice in consulting with clients when assessing or reassessing legal risk, particularly concerning the impact of the legal risk on the client department or agency.

**Types of risk assessment tools used.** In the last two years, areas within the Department have begun adopting their own guidelines for assessing legal risk that do not follow the standard LRM grid (a three-by-three matrix with high risk read on the horizontal as opposed to the diagonal plane).

- Legislative Services Branch (LSB) – In 2006, the LSB established its own set of guidelines for LRM that are tailored to its legislative and regulatory drafting activities. LSB has chosen to use the IRM grid where risk levels 6, 8, and 9 (diagonal) are considered high risk rather than the standard LRM grid where risk levels 7–9 (horizontal) are high risk.
- Public Law Sector – In 2007, the Public Law Sector drafted guidelines for its advisory work that are intended to promote the use of consistent language for legal risk in legal opinions. Because its work focuses on questions of law and not the impact of a potential legal result, Public Law asks counsel to conduct their legal risk assessment on the likelihood of an adverse outcome. Therefore, rather than use the two-dimensional LRM grid, Public Law adopts a five-point scale for the likelihood of a successful challenge (Very low, Low, Medium, High, Very high).
- *Effective Communication of Legal Risk* – Developed through a working group in 2006, this document is not intended to supplant the LRM grid, but to assist counsel doing advisory and legislative drafting work to assess and communicate legal risk. The status of the document (e.g., draft/finalized; suggestions/guidelines) within the Department is currently unclear.
- LSUs –Some LSUs are using a five-point scale for assessing legal risk similar to the Public Law Sector and the *Effective Communication of Legal Risk*.
- One of the case studies is developing its own definitions for the LRM grid's axes specifically for advisory files because it has found the grid difficult to use for these files.

**Application of LRM grid risk ratings.** The evaluation found concern that the risk ratings across the Department are not consistent. Two general causes of inconsistency were identified.

First, the two dimensions of the grid are not sufficiently defined to reduce the subjectivity of the risk assessments. Although key informants acknowledged that assessing legal risk is a subjective exercise, they believe that better definitions would assist counsel in applying the grid more consistently. Legal counsel survey respondents agreed (see Section 4.2.3 for a more detailed discussion of survey results). For example, key informants questioned what is meant by a significant impact on government operations, and how should counsel decide what is 70% likelihood of an adverse outcome versus 60% likelihood. They found the criteria for the grid provided in the iCase manual to be too broad and not explicit enough to guide counsel and support a consistent approach. Second, how counsel assign risk levels to certain types of files such as test cases, cases held in abeyance, litigation support files, advisory files, and files opened for timekeeping only vary across the Department, according to key informants.<sup>23</sup> This may be more of a training issue than the need to define rules, as the various portfolio iCase manuals indicate how these files should be treated.

The concern with consistency in risk ratings is being addressed in many parts of the Department. This is typically done by using central bodies within portfolios, regions, LSUs, and sectors to review high risk files. This ensures a body of senior counsel concurs in high risk ratings. The difficulty is that these bodies tend to review only high risk (level 7-9) files so consistency at other levels of legal risk is not known. The exceptions are BCRO, which includes files with risk levels 5-6 in its LRM processes, and ORO and PRO, which include risk level 6 files.<sup>24</sup>

The Department's iCase system cannot currently support a review of the consistency of assessing risk other than the consistency in inputting legal risk data. The quality or reliability of the data cannot be reviewed in part because of the lack of clear criteria for how to assess risk. In addition, the ability to review risk levels assigned to lower risk files is complicated by the fact that iCase particulars (more detailed information that might justify a risk level assignment) are not required. One issue that the Department might consider is whether or how iCase could eventually be used to assess the consistency of legal risk ratings across the Department.

**Frequency of assessing legal risk by type of activity.** The evaluation found that the assessment of risk varied by type of activity. In the legal counsel survey, 60% of litigation respondents

---

<sup>23</sup> Files are sometimes opened for only timekeeping purposes when the main file is held by another part of the Department. The file review found an example of a timekeeping file with its own assessment of legal risk that did not match the risk assessment of the lead file. Besides inconsistent risk ratings, this situation also means that this high risk file would essentially be counted twice in iCase.

<sup>24</sup> BCRO also extends limited LRM processes to risk level 4 files by requiring that counsel discuss risk ratings of 4-6 with a Team Leader or Associate Director. Risk level 5 and 6 files are more fully involved in the LRM process through weekly reporting requirements and management review.

reported that legal risks were identified and assessed frequently (in 75-100% of files), compared to 44% of litigation support respondents and about one-third of advisory, LSB, and policy respondents<sup>25</sup> (see Table 13). The file review results show that legal risks were identified in almost all files, even for non-litigation files, and usually a risk level was assessed either by using iCase or, more often for non-litigation files, by using some other value (e.g., medium, high, or more than minimal). Based on the file review, it appears that in high risk files at least an intuitive assessment of risk is occurring, even if the grid is not used. However, some of the terminology, such as “more than minimal”, may raise more questions about the level of risk than it answers.

**Table 13: Frequency of identifying and assessing legal risks**

<i>Taking into consideration the files you have been involved with in the last two years, how often were legal risks identified and assessed?</i>					
<b>Based on percentage of files in the last two years</b>	<b>Litigation (n=263)</b>	<b>Litigation support (n=32)</b>	<b>Advisory (n=247)</b>	<b>LSB (n=54)</b>	<b>Policy (n=40)</b>
Frequently (75%-100%)	60%	44%	33%	32%	33%
Regularly (50%-74%)	18%	28%	30%	24%	28%
Occasionally (25%-49%)	8%	16%	20%	26%	13%
Rarely (1%-24%)	9%	6%	9%	13%	18%
Never	--	--	2%	2%	3%
Not applicable to my work	1%	--	2%	2%	3%
Don't know/No response	4%	6%	4%	2%	5%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>101%</b>	<b>103%</b>

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

**Assessing risk in advisory files.** The issue of whether legal risks should be identified and assessed for all advisory files is currently unresolved. Key informants and case study participants questioned the utility of doing so by pointing out that some advisory files do not have legal risk attached to them (e.g., basic contract matters). Currently, there is nothing in the LRM Initiative to exclude these files from LRM processes. Therefore, some advisory counsel assess legal risk in iCase and others do not. One suggestion was to assess risks in advisory files only if there was a need for ongoing management of risk, such as a realistic threat of litigation. Another issue for advisory files raised by those interviewed was the question of when to assess risk. Unlike litigation, there is not a clear moment when risk has materialized or changed (after hearing, etc.).

<sup>25</sup> Even for litigation files, one would not expect that risks would be identified and assessed in 100% of files because not all files are the lead or only file for a matter. Counsel who open timekeeping files should not be identifying and assessing risks.

**Consultations with respect to assessing legal risk.** The evaluation found differences in the consultations with respect to assessing legal risk based on the type of legal activity. In the legal counsel survey, litigators most often consulted the client, although they did so less often than other respondent groups, with the exception of policy respondents. Litigators were also least likely to consult the client LSU. These results confirm key informant and case study interviews where it was reported that the consistency of consultations in assessing legal risk with the client and the LSU depends on factors such as the culture within the litigator’s office and the relationship between the litigator and the LSU. This is considered problematic as clients and LSUs are best situated to analyze the potential impact of the legal risk on the client department or agency. In the file review, the findings are similar to the survey results as litigation files were less likely to indicate consultations on assessing risk than non-litigation files. Of these high risk litigation files, 19 out of 51 had documentation that reflected consultations on assessing risk, which usually included the client and/or LSU. Table 14 presents the survey findings.

**Table 14: Frequency of consultations for assessing legal risk**

<i>In assessing legal risk, how often during the last two years have you or a member of the team consulted the following:</i>				
<b>Frequently (75%-100%) or Regularly (50%-74%)</b>	<b>Litigation (n=263)</b>	<b>Litigation support (n=32)</b>	<b>Advisory (n=247)</b>	<b>LSB (n=54)*</b>
Client department/agency	56%	63%	64%	61%
Client LSU	35%	72%	N/A	57%
Specialized units within Justice	17%	41%	36%	41%
Other potentially affected LSUs	14%	38%	40%	N/A
Others within LSB	N/A	N/A	N/A	48%

*Note: Only frequently or regularly responses are included.*  
*\*The question asked was how often these organizations were consulted for files where the proposal or its legal foundations were not clear, which according to the LSB guidelines is when LSB counsel are expected to consider legal risk.*  
*Policy respondents were not asked this question.*

**Reassessing risk.** The evaluation found that reassessment of legal risk is not occurring regularly at least when considering all files. In the legal counsel survey, less than half of respondents reported that they or a member of their team regularly reassessed risk after the initial assessment.<sup>26</sup> Some key informants confirmed that reassessing legal risks is not systematically done, although they believe that counsel may informally reassess risk during discussions with the

<sup>26</sup> In the survey, 47% of litigation respondents, 38% of litigation support, 30% of advisory, and 35% of legislative services reported that they or a member of their team either regularly (50-74% of files) or frequently (75-100% of files) reassessed risk after the initial assessment.

client. Some parts of the Department have put mechanisms in place to promote consistency in reassessing risk, such as requiring a reassessment once discovery is complete or requiring counsel to review risk assessments on a monthly basis. The file review indicates that high risk files may be more likely to be reassessed. Almost two out of three litigation and non-litigation files reviewed had documentation that showed the legal risk was reassessed.

**Suggested improvements.** LRM or Litigation Committees established in some regions and LSUs serve as a central review process of risk assessments. This is credited with improving consistency in risk ratings within those regions and LSUs because one body of senior practitioners confirms the rating given the legal risk. However, there is no cross-portfolio body reviewing legal risk assessments, at least according to some key informants who did not consider the Thursday Group to be performing that function.

The current LRM grid requires review and revision. Even among litigators who likely use the grid most often, more than one-third (38%) found it not very or not at all useful. For advisory work, most counsel who do advisory work have not used the grid (almost 60%), but among those that have, most (almost 60%) do not find it useful. Interviews also indicated a desire to revise the grid, particularly to provide more concrete criteria or definitions for assigning significant, moderate, or minor impact on the client department or agency.

For ensuring reassessments of legal risk, a reminder system in iCase would provide counsel with a prompt to review their risk assessment.

**Mitigating and managing risk.** Because managing legal risk is considered an integral part of a lawyer's job, counsel believe that legal risk management is occurring at an intuitive level, even if not consciously following the LRM processes envisioned by the LRM Initiative. The evaluation found that counsel had a clearer understanding of the LRM Initiative's expectations for identifying and assessing legal risk than for managing or mitigating risk. As mentioned earlier, some key informants separated "big LRM" from "small lrm", which indicates that they had drawn a distinction between LRM Initiative processes and those that counsel consider being part of routine legal practice.

**Consultations on legal risk management strategies.** The evaluation found that consultations are occurring on legal risk management strategies, although there are some inconsistencies in approach. The survey asked about consultations on strategies for all files and found that the majority of respondents consult regularly (in at least 50% of files). The organization or individual consulted varied across types of legal activities, reflecting the different contexts for



each type of work. For example, litigation respondents were most likely to consult the client department or their own manager; litigation support respondents consulted the litigator, their manager, and the client; advisory respondents consulted the client and the LSU; and policy respondents consulted most often with specialized units in the Department and other potentially affected departments and agencies. Specific LRM resources were not consulted regularly. Few respondents consulted with an LRM contact person and for litigation and litigation support respondents, about one-quarter consulted litigation or risk-related committees. See Table 15 for the survey results.

**Table 15: Frequency of consultations for legal risk management strategies**

<i>In developing a legal risk management strategy, how often during the last two years have you or a member of the team consulted the following?</i>				
<b>Frequently (75%-100%) or Regularly (50%-74%)</b>	<b>Litigation (n=263)</b>	<b>Litigation support (n=32)</b>	<b>Advisory (n=247)</b>	<b>Policy (n=40) *</b>
Client department/agency	50%	59%	55%	43%
Client LSU	34%	N/A	46%	43%
DOJ litigation counsel	N/A	69%	N/A	N/A
Specialized units within Justice	12%	34%	29%	70%
Other potentially affected LSUs	7%	31%	30%	38%
DOJ manager	46%	66%	N/A	N/A
Litigation or risk-related committees	22%	28%	N/A	N/A
LRM contact person	12%	25%	9%	5%
ADM committees	N/A	N/A	N/A	38%
Relevant external experts	N/A	N/A	N/A	20%
Federal/provincial/territorial working groups	N/A	N/A	N/A	40%

*Note: Only frequently or regularly responses are included.*  
*\*The question asked was how often these organizations were consulted in addressing legal risk. LSB was not asked this question.*

The file review results indicate that consultations to develop legal risk strategies occur frequently in high risk files (48 out of 51 litigation files and 16 of 18 non-litigation files) and confirm the survey findings regarding which resources are most often consulted. In most files, counsel consulted with either the client department or agency or the client's LSU. Counsel consulted with specialized units within the Department and other potentially affected departments or agencies more often in non-litigation than in litigation files. Counsel consulted the LRM contact person in only a few of the files reviewed, and in litigation files, 13 of the 51 files had documentation that the litigation or risk-related committee was consulted (about one in four which is similar to survey findings).

These litigation or risk-related committees are available in many, but not all LSUs. All of the regional offices interviewed have some form of a committee. Some of these committees serve primarily a monitoring function and do not offer themselves as a forum to obtain advice at key points in a file. Others have a mechanism where counsel can request to appear to seek guidance on legal risk management strategies. Those interviewed who have used these committees to assist with legal risk management strategies have found them helpful, but not all counsel where this opportunity is available are aware of the resource or how/when to access it.

**Communicating and reporting/monitoring high risk files.** Based on interviews, most areas of the Department have some mechanism for monitoring high risk files. Survey results confirm this with almost two-thirds reporting that their office monitors the number of high risk files (just under one-third did not know).

The survey showed that most counsel or a member of the team regularly or frequently report their high risk files to senior Justice managers in headquarters, regional/LSU/unit managers, client officials, the client LSU, and portfolio managers. The file review confirmed these results. High risk advisory files are less likely to be reported to headquarters than litigation files. Whether counsel prepared briefing notes or early warning notes depended on the type of legal activity, but generally the results showed about half of counsel (or a member of the team) regularly or frequently prepared these documents for their high risk files. The file review confirmed these results with less than half of files having these documents. See Table 16 for legal counsel survey results.

**Table 16: Frequency of reporting on high risk files**

<i>Considering only your high risk files, how often during the last two years have you or a member of the team ...</i>					
<b>Frequently (75%-100%) or Regularly (50%-74%)</b>	<b>Litigation (n=184)</b>	<b>Litigation support (n=25)</b>	<b>Advisory (n=163)</b>	<b>LSB (n=32)</b>	<b>Policy (n=40) *</b>
<b>Reported these files to</b>					
Senior managers in DOJ headquarters	69%	76%	54%	N/A	43%
Regional/LSU/unit managers	73%	68%	92%	91%	N/A
Litigation or risk-related committees	55%	44%	N/A	N/A	N/A
Client's LSU	57%	N/A	N/A	N/A	N/A
Client officials	73%	76%	81%	N/A	N/A
Portfolio manager	55%	56%	N/A	N/A	N/A
<b>Prepared for these files</b>					
Briefing Notes	53%	56%	63%	25%	50%
Early Warning Notes	51%	36%	N/A	N/A	N/A
LRM Note to File	N/A	N/A	N/A	19%	N/A
<i>Note: Only frequently or regularly responses are included.</i>					
<i>*Policy respondents were asked about reporting on all of their files, not just high risk files.</i>					

Although the evaluation found that departmental practices for reporting and communicating legal risk are generally working, this is an area identified for improvement in interviews, case studies, and survey results. In the survey, two-thirds of respondents agreed that LRM communication strategies should be improved.

The number of avenues for sharing information within the Department ensures a large measure of information sharing on high risk files and reduces the potential for any surprises (e.g., the Thursday Group, iCase reports, Summary of High Impact Litigation, DM Daily, Early Warning Reports, Briefing Notes, Radar Screen). However, some of those interviewed raised concerns that reporting is still very informal and instinctive rather than formal and systematic. That said, some counsel had concerns about too many reporting requirements and wanted the Department to first consider streamlining reporting so that it was not overlapping and duplicative. They also wanted a better understanding of the importance of reporting practices. Currently, counsel do not generally know how reports are used, which makes the reporting seem bureaucratic rather than relevant to their legal practice.

For advisory, policy, and legislative services files, reporting is currently more informal than for litigation files. Key informants working in these areas noted that the current legal risk

communication strategies do not always include non-litigation work, but some believe that the need for advance notice of events in these files is not as strong as it is for litigation. In addition, given the nature of this work, it is difficult for counsel to decide when reporting should occur because legal risk does not crystallize at a particular moment (e.g., pleadings filed, hearing occurs). If the reporting of non-litigation matters were to become more formalized, counsel would need clear direction on the standards for when to report.

The content of communications on legal risk both within the Department and with clients also received comment on its lack of consistency. The main finding is that the Department currently uses many ways of characterizing legal risk. This is partially the result of different grids or scales for assessing legal risk, but also is created by counsel using the LRM grid for iCase reporting and more plain language approaches in other communications of legal risk, including risk assessments. In the client focus groups, some participants were well aware of the LRM grid and spoke of legal risk with counsel in relation to the grid, while others reported that counsel would use other language (e.g., low, medium, high, very likely, more likely than not). Some found the variety of expressions of legal risk confusing and too vague.

Several key informants mentioned the *Effective Communication of Legal Risk* document as a good example of the type of guidelines the Department should provide. This document provides suggestions for how to communicate risk in legal opinions, briefing notes, and memoranda of cabinet and proposes a five-point (very low to very high) scale for assessing legal risk in the advisory and legislative contexts. Key informants who prefer this method of expressing legal risk want to avoid using percentage assessments of the likelihood of an adverse outcome, which they believe imports accuracy to the risk assessment that it does not have.

**Contingency plans.** The Department considers contingency plans to be an important tool for preparing to respond to court decisions, and a vehicle to involve the client in managing risk. Client departments draft the contingency plan and the accompanying communication plan with assistance from Department counsel. As noted in Table 4, all Supreme Court of Canada cases must have a contingency plan and other files may require a plan that is appropriate to their level of risk. Department documentation is currently unclear on whether all high risk files are required to have contingency plans.

Through interview and survey results, the evaluation found that while some contingency planning may occur informally through discussions between the client and counsel, written contingency plans are not consistently used in high risk files. Just under one-third of litigation respondents, half of litigation support respondents, and one-fifth of LSB respondents reported

that they or their team had regularly or frequently assisted with contingency plans in high risk files. Although key informants cited a few examples of highly effective contingency planning where the Department had predicted the court decision with a high level of accuracy and had options and next steps mapped out before the decision came down, they pointed out that the resources required for formal contingency planning limited its use to particularly high risk, high profile files. The file review confirms the low use of formal contingency plans as in 51 high risk litigation files reviewed, only 5 had contingency plans.

**Dispute resolution.** One tool of LRM is the use of dispute resolution methods where appropriate to resolve issues and avoid litigation or to narrow the issues in dispute. Because dispute resolution may not be considered desirable in all cases, the consideration of dispute resolution is encouraged but not required under the Initiative. In a study of legal risk scanning in the Department, 5 of 11 departments and agencies studied reported that dispute resolution was being widely used and 3 reported limited use.<sup>27</sup>

This evaluation found that some areas of the Department actively promote dispute resolution options, but uncovered little evidence that dispute resolution options are systematically considered. In particular, the Aboriginal Affairs Portfolio has a Resolution Branch that promotes dispute resolution, and the BCRO High Impact Case Strategy encourages counsel to consider opportunities for dispute resolution within 90 days of opening a high impact file. More generally, few key informants commented on the use of dispute resolution options in managing legal risk. In the legal counsel survey, of respondents who have worked on high risk litigation files, less than half have ever used dispute resolution in a high risk file (40% litigation respondents, 16% litigation support respondents). Most respondents who had used dispute resolution in high risk files tended to use it after production of documents or discovery. In the file review, about one-third of litigation files had documentation that indicated that dispute resolution options were considered or used. In the files where counsel used dispute resolution processes, it was typically either negotiation or mediation.

**Instrument choice.** Instrument choice encourages counsel to consider alternatives to the traditional legal tools of statutes, regulations, or lawsuits, which can be costly and more protracted processes for achieving intended results. Key informants involved in policy and legislative services noted the irony that while LRM is fundamentally about avoiding or mitigating legal risks, this prevention side of LRM remains a neglected area. While no standard approach exists for instrument choice, it is believed that instrument options are considered an

---

<sup>27</sup> Applied Research Consultants. (2003). *Review of Implementation of Legal Risk Scanning*.

inherent, if not standardized, part of policy and program development and legislative drafting. The only national tool, the instrument choice framework, is rarely used, with 13% of policy respondents reporting that they have regularly or frequently used the instrument choice framework.

### **Consistency between LRM and IRM within Justice**

As noted in Section 1.4, LRM is intended to support broader IRM efforts across the government, as well as DOJ's strategic outcomes. The Department's 2004 Strategic Risk Assessment noted that LRM had contributed to the advancement of legal risk management across government and would be an important consideration as the Department moved forward with the implementation of its own corporate IRM processes (e.g., the development of DOJ's Corporate Risk Profile).

One issue that has arisen regarding the support that LRM is expected to provide to IRM across the government, as well as within DOJ, is the need for consistency between approaches. In particular, it has been noted that the LRM risk assessment scoring methodology differs from that of TBS's *Integrated Risk Management Framework*, which has been adopted by DOJ for its corporate integrated risk management processes. Specifically, the IRM grid is a three-by-three matrix that identifies high risk files as those on the diagonal rather than the horizontal plane. This means that the Department is using two different scoring methodologies for assessing risk, as is also most likely the case within client departments and agencies.<sup>28</sup>

A few key informants discussed this issue as it pertains to Justice and were divided on whether the Department should move to the IRM grid. One position was that the IRM grid is the industry standard. The other position was that the LRM grid matched the reporting lines of the Department: senior management at DOJ headquarters needs to know about high impact files, even if the risk of loss is low. Whether the use of two scoring methodologies will prove confusing or difficult when incorporating legal risks into the IRM risk assessments remains to be seen, but is something that should be monitored.

**Conclusion.** A major question for the Department is how much consistency is desired: should consistency focus on ensuring that across the Department there are processes in place for LRM functions (scanning, assessing/reassessing risk, managing and mitigating risk), or also that the processes themselves are similar? Should the desire for consistency focus on certain LRM activities such as the risk levels assigned files or encompass more? Under the AFGS, the consistency that is required is for having processes that are "consistent with [d]epartmental

---

<sup>28</sup> In addition, not all departments and agencies are using the TBS IRM grid.

standards and objectives” (for Portfolio heads) and “to ensure that LRM principles and methods are appropriately implemented” (for Senior Regional Directors). This is consistency in its broadest sense and allows for much variation in approach. The AFGS also assumes a common understanding of principles and departmental standards for LRM as it does not define them.

The evaluation found support for more national standards and consistent practices, although the results also show uncertainty with what this might entail. Counsel also desire that LRM remain flexible to respond to different operational contexts. Survey results demonstrate these points, with a large minority of respondents unable to provide an opinion on whether the Department should develop more national standards and consistent LRM practices, but those who did respond expressed support for these approaches. In addition, over two-thirds of respondents agreed that LRM needs to remain flexible to meet the needs of regions/client departments/agencies.

Table 17 provides survey results.

**Table 17: Consistency of LRM (n=636)**

<i>Please indicate your level of agreement with the following: The DOJ needs to ...</i>			
<b>Level of agreement</b>	<b>Develop more national standards</b>	<b>Develop consistent LRM practices</b>	<b>Remain flexible to meet the needs of regions/clients</b>
Strongly agree	10%	13%	18%
Agree	32%	45%	50%
Disagree	13%	7%	3%
Strongly disagree	2%	1%	1%
Don't know/No response	44%	34%	28%
<b>Total</b>	<b>101%</b>	<b>100%</b>	<b>100%</b>

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

Managers and those who have worked in the Department for more than five years were more likely to express an opinion on these topics, which again may reflect that newer lawyers are less well versed in LRM (could be due to loss of profile of LRM nationally and no national training or because junior lawyers have less experience with LRM because they are not lead counsel on high risk files). In addition, it may be unclear what more national standards or consistent practices would mean for counsel in terms of how it might affect their practice and how they handle their files.

Key informant and case study interviews confirm support for more consistency and national standards while maintaining flexibility. In particular, interviewees mentioned the need for more consistent policies and principles on assessing risks, a common risk assessment language for communicating within the Department and with clients, and clear LRM standards for advisory work. However, many interviewees cautioned that any development of national standards should maintain the needed flexibility to respond to operational settings and should be based on consultations across the Department. Some expressed concern that consistency should not reduce the level of LRM practices to a “lowest common denominator” approach. Examples of their comments include that the Department:

- must take into account client preferences and circumstances
- needs to respect regional differences
- needs to allow for variation on how LRM practices are implemented
- cannot impose the daily conduct of LRM from above
- must respect lawyers’ professional judgement on LRM
- needs to recognize that differences are necessary because of the division of roles across the Department
- will not likely get consensus for one approach for litigation, advisory, policy, and legislative services.

#### **4.2.3. Tools, processes, and structures to support LRM**

The evaluation found that there is a general lack of awareness of many national LRM tools. For example, over half (54%) were unaware of their LRM contact person. Legal counsel survey respondents were almost evenly divided on whether there are sufficient guidelines to assist them in performing LRM (51% believe guidelines are sufficient and 48% do not). They were also unaware of what other guidelines might assist them.

Counsel are generally aware of the LRM grid, although among advisory counsel surveyed who have not used the grid, about half reported they were not aware of it. For those who have used the grid, most consider it useful; however, both interview and survey results indicate substantial interest in improving the grid. As shown in Table 18, one-third of litigation respondents who are presumably most versed in using the grid did not find it useful.



**Table 18: Usefulness of the LRM assessment grid**

*Please rate how useful you have found the LRM assessment grid/matrix through iCase or otherwise.*

	<b>Litigation (n=263)</b>	<b>Litigation support (n=32)</b>	<b>Advisory (n=247)</b>	<b>LSB<sup>29</sup> (n=54)</b>	<b>Policy (n=40)</b>
Very useful	7%	3%	3%	6%	3%
Useful	46%	34%	15%	43%	38%
Not very useful	28%	19%	19%	26%	13%
Not at all useful	5%	6%	6%	--	3%
Not applicable/have not used	14%	38%	57%	24%	45%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>99%</b>	<b>102%</b>

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

As briefly discussed in Section 4.2.2, the evaluation found concerns about the clarity of the risk assessment process. The LRM grid is considered vague, and key informants believe it would benefit from more definitions or criteria as this would reduce the subjectivity in assessing risk and assist in bringing more consistency to risk assessments. In particular, both interview and survey results point to the need for more criteria or definitions for assessing the impact on the government. As for the other axis on likelihood of an adverse outcome, some respondents desire more categories to provide more clarity on the likelihood (e.g., medium risk is 30-70% currently), but others objected to the use of percentages as imparting a level of precision that was not possible.

In addition, advisory counsel said that the current grid is difficult to use. As discussed in Section 4.2.2, they question the need to assess legal risk in all advisory files as not all advisory work presents legal risks. They also believe that their work sometimes involves pure legal risk and, therefore, they should only assess the likelihood of an adverse outcome (that a legal challenge would be brought and/or that it would be successful).

Legal counsel survey results are in Table 19.

<sup>29</sup> Although LSB respondents were asked about the LRM grid, they were more likely to use their own tool, the *Statutory Examination and Legal Risk Management in Drafting Services* guidelines, and a majority finds it useful.

**Table 19: Most common reasons why LRM assessment grid not useful**

<i>Why do you find the LRM assessment grid/matrix not useful?</i>	<b>Respondents who find grid not useful (n=171)*</b>
The scale for the level of impact on the government is not well defined	63%
The grid results in inconsistent risk level ratings across the DOJ	50%
The grid does not take into account urgency of time (e.g., high risk but nothing will happen for several years)	44%
The scale for the likelihood of an adverse outcome does not have enough categories	28%
The grid is not relevant for advisory files	**20%
The grid results in over-reporting the number of files that are actually high risk	15%
The grid does not capture other relevant aspects of risk	12%
The grid results in under-reporting the number of files that are actually high risk	11%
<i>Note: Respondents could provide more than one answer. Column does not sum to 100%.</i>	
<i>*This question was not asked of LSB respondents.</i>	
<i>**This was the second most mentioned reason among advisory counsel.</i>	

Few respondents were aware of most LRM tools and structures as shown in Table 20. Some of the communication reports such as the Early Warning Report, the Summary of High Impact Litigation, and iCase reports are not broadly distributed to counsel, which explains the lack of use.

Interviews provided information that gives insight into some of the results. Each comment was made by a few key informants.

- Early Warning Reports are not provided to most counsel, which is unfortunate as it might include cases similar to those on which counsel are working.
- Effective Communication of Legal Risk received high marks as a practical approach. A few key informants believe it is a draft document, so its recommendations need to be made more concrete.
- iCase LRM reports are distributed to managers, but are not provided to most counsel. Some key informants questioned whether iCase is kept current by counsel and, therefore, do not rely on these reports, but rather create their own. In addition, several key informants in management positions desired the ability to make more specific requests of iCase to obtain reports that are tailored to their needs.
- The Thursday Group (as discussed in Section 4.2.1) is not fully meeting its mandate of sharing LRM information across portfolios and making horizontal linkages.

**Table 20: LRM tools and structures (n=636)**

	Very useful/useful	Not very useful/Not at all useful	DK/NR	Have not used/ Not aware of/ Not applicable
<b>Communication tools/reports</b>				
Briefing Notes	57%	12%	3%	28%
Early Warning Report	47%	16%	3%	35%
Scanning News	43%	26%	2%	29%
Radar Screen	33%	16%	3%	48%
Summary of High Impact Litigation (Top 100)	32%	18%	3%	48%
Effective Communication of Legal Risk	31%	8%	3%	58%
iCase LRM reports	19%	15%	3%	63%
<b>Practice methods</b>				
Dispute Resolution Options	18%	13%	4%	67%
Instrument choice	15%	11%	4%	71%
<b>LRM or risk-related committees</b>				
DOJ litigation or risk-related committees	29%	9%	3%	59%
Joint DOJ-client risk-related committees	22%	6%	4%	68%
LRM Practice Group	14%	12%	3%	71%
Thursday Group	3%	6%	3%	88%
<b>Intranet tools</b>				
JUSnet intranet on LRM	19%	15%	4%	62%
Roles and responsibilities checklist	8%	7%	3%	82%
Critical Path Template for High Impact Cases	8%	7%	3%	82%
Judicial Review Toolkit	7%	7%	3%	83%
Civil Actions Toolkit	7%	6%	3%	83%
Contingency Planning Toolkit	6%	6%	3%	85%
<i>Note: Some rows may not sum to 100% due to rounding.</i>				

With the devolution of LRM, portfolios, regions, LSUs, and sectors began developing LRM tools and processes. The evaluation did not include taking an inventory of the types of tools and structures available, but many tools are in use. As discussed in Section 4.2.2, some offices are using a different risk assessment tool or are tailoring the LRM grid by providing more guidelines for its use. The TBS 2005 MAF Assessments also show in very broad terms the LRM activities being conducted by client departments and agencies and their LSUs. Results of the MAF Assessments are discussed in Section 4.2.4. The case studies reflect the variety of LRM

processes from highly developed processes such as those in use by BCRO and DFO to the less involved but also highly functioning processes used by ORO and PCH.<sup>30</sup>

#### **4.2.4. Integration of LRM into the work of the Department and its client departments and agencies**

##### **Integration within the Department**

A major goal of the LRM Initiative is to make legal risk management an integral part of the culture of the Department and a reflexive part of legal practice. All of the evaluation findings collectively serve to answer this essential question of whether LRM has become integrated into the work of the Department. This section will not reiterate these findings but will focus on some additional points.

The evaluation found substantial acceptance of LRM, which shows some measure of integration. At the same time, there were indications that awareness of LRM components and the understanding of counsels' roles and responsibilities with regard to LRM could be improved, which raise questions about the level of integration of LRM. The legal counsel survey reflects this division. Some results demonstrate the acceptance of LRM: three-quarters of respondents believe that LRM is either essential or helpful to successfully managing their files; and just over nine-tenths of respondents agreed that managing legal risk is part of their practice of law. Acceptance of LRM is also demonstrated in that two-thirds of respondents do not think that LRM takes up too much of their time. Just over half of respondents estimated that they spend 10% or less of their time identifying and assessing legal risks and trends, communicating and reporting on legal risks, and mitigating and managing legal risks. The amount of time varies by where counsel work: counsel in LSUs and headquarters report spending more time on LRM than do counsel in regional offices. See Tables 21 and 22 for these results.

---

<sup>30</sup> Less complicated processes can be appropriate and as effective for an organization's needs. For example, Consulting and Audit Canada has recognized that not all departments/agencies require the same IRM structure. In particular, it has guidelines for establishing a workable IRM framework for smaller organizations. See Consulting and Audit Canada. (2004). *An Integrated Risk Management Framework for Small Agencies*. Retrieved on March 28, 2008 from <http://www.cso-cpo.gc.ca/mm-mm/documents/GENERIC%20IRM%20for%20small%20agencies%202004-04-01.DOC>.)

**Table 21: Integration of legal risk management into law practice (n=636)**

<i>Please indicate your level of agreement with the following statements:</i>		
<b>Level of agreement</b>	<b>Managing legal risk is part of my practice of law</b>	<b>LRM takes up too much of my time</b>
Strongly agree	33%	3%
Agree	59%	10%
Disagree	5%	56%
Strongly disagree	1%	12%
Don't know/No response	2%	20%
Total	100%	101%

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

**Table 22: Percentage of time spent on LRM**

	<b>Where do you currently work?</b>			
	<b>Headquarters (n=156)</b>	<b>Regional Office (n=255)</b>	<b>LSU (n=225)</b>	<b>Total (n=636)</b>
None	4%	5%	6%	5%
1% - 5%	37%	38%	23%	32%
6% - 10%	14%	21%	15%	17%
11% - 25%	17%	17%	19%	18%
More than 25%	21%	11%	26%	19%
Don't know/No response	8%	7%	12%	9%

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

However, other survey results discussed earlier indicate a lack of awareness of certain aspects of LRM. In particular, about half of respondents (54%) did not know their LRM contact person and most respondents were unaware of or had not used LRM tools and structures (see Section 4.2.3). Issues with having an overall understanding of LRM and counsel's roles and responsibilities are discussed in Section 4.2.1 and indicate a need for more clarity regarding counsel's roles and responsibilities in LRM, particularly for more junior counsel.

The interviews and surveys indicate that counsel believe their roles and responsibilities under the LRM Initiative are not clear and that they lack awareness of or do not use many key tools and processes. However, the file review results support the opinion of some key informants that although counsel may not be consciously or systematically doing LRM, they are intuitively

managing legal risk. The file review results provide a snapshot of how counsel are handling high risk files and, therefore, how well integrated LRM is into the legal practice of the Department. These results in Table 23 show that most LRM practices are generally occurring, although caution should be used in interpreting these results because of the small number of files reviewed.

**Table 23: Results on LRM practices from file review**

LRM practices/activities	Litigation (n=51)	Non-litigation (n=18)
Legal risk level (in iCase)	50	5
Potential client impacts (in iCase)	49	6
Legal risks identified (through other documentation in file)	39	17
Legal risks assessed (iCase or through other documentation)	50	11
Risk reassessed	32	7
Formal risk assessment	14	12
Consultations on assessing risk	30	10
Consultations on legal risk management strategies	47	16
Dispute resolution options considered	19	2
Dispute resolution options used	17	2
Contingency plan	5	--
Communication plan	6	4
Briefing Note	23	8
Early Warning Note	13	1
Media monitored	20	7
Key stakeholders advised of legal risks or risk-related events	48	18

Integration of LRM into departmental practices can also be measured by the rate of compliance with inputting mandatory data into iCase on LRM.<sup>31</sup> There are two levels of mandatory fields. Some fields are required for all files (basic mandatory LRM data). In addition, particulars must also be provided for high risk files (levels 7-9 and/or files involving an amount of \$50 million dollars and above). The evaluation reviewed the results of internal audits conducted during fiscal years 2005–2006 and 2006–2007 (quarterly) and 2007–2008 (three cycles, of which two were completed). The results include litigation and advisory files only, and review whether iCase data is inputted for mandatory LRM fields. The audits do not consider the reliability of the

<sup>31</sup> The National Business Application Analyst Team conducts regular audits of iCase information as part of the Legal Information Management Directorate national auditing process. These audits consider compliance with standards established in each Portfolio's iCase Business Standards Manual.

information and the entry of “risk unable to assess” is considered compliant regardless of how long the file has been opened.

The audits show that the Department is generally compliant with inputting mandatory LRM fields into iCase and that there has been substantial improvement over time.

- **Portfolio compliance.** In the most recent cycle of results (April 1–November 30, 2007), portfolios ranged from 93% to 100% compliance for inputting the basic mandatory LRM data that is required for all files. For high risk files, particulars were completed in 89% to 99% of files, depending on the portfolio. These compliance levels have risen substantially over time. For example, in the first two quarters of 2005–2006, the basic mandatory LRM fields ranged from 50% to 96%, and particulars in the third and fourth quarter (they were not audited in the first two quarters) ranged from 67% to 91%.
- **Regional compliance.**<sup>32</sup> Generally, regional compliance is also high. In the most recent cycle of results (April 1–November 30, 2007), five of the eleven regions had 100% compliance for inputting the basic mandatory LRM data and five others were more than 90% compliant. One region had 24% compliance. For high risk files, particulars were completed in 0% to 100% of files, depending on the region. Six regions had compliance of at least 97%, and three had between 80% and 88% compliance. Of the two regions remaining, one had 0% compliance and the other did not have any high risk files. Regional compliance has also increased since the 2005–2006 fiscal year when the audits began.

Another measure of the integration of LRM into the work of the Department is whether legal risk ratings or other assessments of legal risk are used in resource allocation and planning. The evaluation found that this is occurring.

- Some offices use iCase legal risk reports as a management tool. For example, they will ensure that senior counsel are on files with risk levels of 8 or 9, or they will use iCase reports for funding and resourcing class actions.
- Some offices reported that they will use iCase risk ratings, but it is one factor (the available budget, type of proceeding, issues involved, complexity, and current department priorities are other possible factors).

---

<sup>32</sup> The iCase audit uses the term “regions” to denote each of the various sub-offices within the Department’s regions. The regions referred to in the iCase audits include: Atlantic, Quebec, National Capital Region, Toronto, Vancouver, Alberta, Saskatoon, Winnipeg, Whitehorse, Yellowknife, and Iqaluit.

- Other areas of the Department are not using iCase or are using it for timekeeping only (e.g., Policy Sector, LSB, some LSUs). This means that some types of non-litigation legal activities do not have legal risks assessed in iCase. While iCase assessments are not used, these offices typically consider legal risks with other factors such as case complexity, the area of the law involved, and lawyer expertise in assigning resources.

Some key informants reported that they do not use iCase risk assessments in resource allocation and planning because they consider iCase data unreliable or because iCase is not helpful for planning as it cannot demonstrate trends (no historical data), provide reports tailored to their needs (e.g., number of judicial reviews in office), or produce the number of files a particular counsel is working on.

The Departmental Performance Reports also indicate that resources are directed more toward files with high legal risk. (See Table 24)

**Table 24: Managing legal risk in civil litigation files: level of effort by risk level**

Risk level	2004–2005**		2005–2006**		2006–2007*	
	% of active files	% of level of effort	% of active files	% of level of effort	% of active files	% of level of effort
High	3%	25%	2%	18%	2%	25%
Medium	40%	35%	36%	30%	31%	34%
Low	57%	40%	62%	52%	67%	41%

*Source: Department of Justice. Departmental Performance Report 2004/2005 (p. 45), 2005/2006 (p. 41), and 2006/2007 (p. 43).*

*\*Based on active civil inventory for files where a risk level was identified in iCase. Not all cases in iCase have a risk level (too early to assess, unable to assess)*

*\*\*Based on active civil inventory for regional office files where a risk level was identified in iCase. Not all cases in iCase have a risk level (too early to assess, unable to assess)*

### **Integration within client departments and agencies**

As discussed in Section 2.2, the LRM Initiative envisions the practice of legal risk management as a partnership between the Department and its client departments and agencies. The Department informs the client of legal risks and presents options, but the decisions regarding managing and mitigating legal risks are the client’s. The evaluation explored how well this partnership is working and found that, although the extent of client engagement in LRM varies and there are some areas for improvement, the partnership between the Department and its clients appears to be working well.



Based on key informant interviews and focus group discussions, clients' understanding of their role in LRM varies by department/agency. Factors that affect the level of understanding include the volume of litigation (clients with less litigation have less experience with LRM), the leadership of the client's senior executives in adopting LRM, and the culture of the client department or agency. For example, departments and agencies with mandates that are regulatory in character view LRM as a formalized expression of their existing practices and have more fully embraced LRM.<sup>33</sup> Overall, counsel raised a concern about client understanding of LRM and their roles in it. Among legal counsel surveyed, one-quarter agreed or strongly agreed that clients understand their roles and responsibilities in relation to LRM.<sup>34</sup>

In the focus groups, most participants viewed LRM as a partnership with Justice: the client provides the operational context so that Justice can assess the legal risk more accurately; the client department has the responsibility of factoring the legal risk assessment into its business risk; and, to manage legal risk effectively, ongoing dialogue is needed between the client and Justice. However, some acknowledged that the partnership can experience stresses. A perception exists that Justice sometimes goes beyond the legal issues in its legal risk assessments and promotes certain policy choices. Because some clients believe that legal risk assessments and/or legal opinions can serve to dictate policy, they may not engage Justice counsel as early as they should. Although this perception could be caused by a lack of understanding of the Department's role in explaining the impact on a client of a particular course of action or in presenting options as part of a legal risk assessment, several focus group participants believe that Justice's legal advice sometimes goes beyond its role in assessing legal risk. Justice recognizes this potential to be seen as obstructionist. A few key informants stated that the Department must be careful in presenting legal risks and options so that the client does not think that Justice is impeding initiative.

When the client is engaged, the LRM processes tend to be more robust. A review of 11 departments and agencies with advanced LRM processes found that all but one department had senior officials engaged in the LRM process, typically through some form of LRM or Litigation Committee.<sup>35</sup> A review of the 2005 TBS MAF Assessments reflects the variety of LRM processes across the government from those with no reported formal committee structure that engages the client in identifying, assessing, mitigating, or managing legal risk to those where the client is engaged throughout the process, including in the initial scanning for litigation and non-

---

<sup>33</sup> Applied Research Consultants. (2003). *Review of Implementation of Legal Risk Scanning*, p. 5.

<sup>34</sup> Forty-three percent disagreed/strongly disagreed and 31% did not know or did not respond.

<sup>35</sup> Applied Research Consultants. (2003). *Review of Implementation of Legal Risk Scanning*, p. 4.

litigation legal risks. Of the 53 departments and agencies reviewed, 30 provided LRM reports (and one provided information on LRM as part of its IRM report). Of these, 8 reported having LSU representation on senior management committees, and 17 reported having LRM Committees or another risk-related committee that considered legal risk. While uniform LRM processes may not be necessary across government, having a forum where the client routinely engages with Justice on LRM is considered essential for effectively managing legal risks. These forums could include joint LRM committees, joint litigation committees, or risk management committees, which include legal risk on the agenda.

There is a desire on the part of Justice and TBS to revitalize their partnership on the LRM Initiative. Key informants who raised this issue believe that this partnership is critical to effective LRM as it is the role of TBS to help clients understand their responsibilities under the Initiative, and TBS as a more visible partner will encourage more client involvement in managing legal risks. In its 2005 MAF Assessment of Justice, TBS acknowledged this point: “With regard to TBS commitment to support the Department of Justice in this area, both departments should endeavour to strengthen their relationship and to ensure that they are working together in identifying and implementing mechanisms that will lead to a more efficient overall risk management framework for the government”.<sup>36</sup> The removal by TBS of the separate reporting requirement for LRM as part of each department/agency’s MAF seems contrary to strengthening the TBS-Justice partnership in LRM and encouraging client involvement in LRM.

Some offices in the Department have taken a proactive approach to improve client understanding and buy-in for LRM. For example, in four of the last seven years, DFO has conducted client-LSU retreats on LRM and related issues to inform the clients and better engage them in the LRM process. The LSU for the Department of National Defence has provided LRM training to its clients across the country. The BCRO has annual client meetings that include discussions of LRM. However, training sessions and retreats on LRM for clients are not often offered by the Department.

While this discussion indicates areas for improvement, in the focus group discussions, clients emphasized that they were pleased with LRM and their partnership with the Department. The Client Feedback Survey conducted by the Office of Strategic Planning and Performance Management for the Department confirms that clients are satisfied. In particular, clients are very

---

<sup>36</sup> Treasury Board Secretariat. *Management Accountability Framework Assessment – Justice Canada – 2005*. Retrieved on July 10, 2007 from [http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2005/JC-JC/JC-JC\\_e.asp](http://www.tbs-sct.gc.ca/maf-crg/assessments-evaluations/2005/JC-JC/JC-JC_e.asp).

**Table 25: Justice Services Satisfaction Survey**

*Please rate your level of satisfaction with the legal services you have received from DOJ over the last 12 months using the scale where one (1) indicates you are “not at all satisfied” while ten (10) indicates that you are “completely satisfied.”*

*Interpreting scale: 8.4-10 is excellent; 7.9-8.3 is very positive; 7.3-7.8 is moderate; 6.5-7.2 is borderline; lower 6.5 needs management action.*

*Department target is 8.0*

DOJ counsel ...	Mean score			
	Litigation (n=531)	Advisory Services (n=2448)	LSB (n=558)	Dispute Resolution (n=176)
Effectively worked with you to identify legal risks	8.2	8.2	8.2	8.4
Effectively worked with you in managing legal risks	8.1	8.0	8.1	8.2
Fully understood the nature of the problem or issue for which you received assistance	8.5	8.4	8.3	8.5
Advised you of issues or developments which may impact your department/agency	8.3	8.4	8.3	8.3
<b>Provided regular and informative progress reports or ongoing feedback</b>	<b>7.7</b>	<b>7.4</b>	<b>7.7</b>	<b>7.9</b>
Provided clear and practical guidance on resolving the issue	8.3	8.0	8.1	8.3
<b>Involved you in the development of legal strategy and positions</b>	<b>7.9</b>	<b>7.8</b>	N/A	8.2
Developed legal strategies appropriate to your policy and/or program objectives	8.2	8.0	N/A	8.3
Identified opportunities to use alternative dispute resolution practices, where appropriate	8.2	8.0	N/A	8.2
Identified opportunities for early settlement of cases, where appropriate	8.3	8.1	N/A	8.4
Effectively resolved the issue or problem for which you received assistance	8.3	8.1	N/A	8.3
<b>Assisted you in developing policy</b>	N/A	N/A	<b>7.8</b>	N/A
Developed legal and regulatory drafting options appropriate to your policy and/or program objectives	N/A	N/A	8.2	N/A
Proposed appropriate solutions for legal and drafting issues raised	N/A	N/A	8.2	N/A
<b>Identified appropriate opportunities to implement policies or programs by administrative rather than legislative or regulatory means (i.e., instrument choice)</b>	N/A	N/A	<b>7.9</b>	N/A

*Source: Department of Justice, Office of Strategic Planning and Performance Measurement. Client Feedback Survey. July 2006-February 2008.*

*Note: Tax Law Services did not participate. Areas that did not reach the target are in bold.*

positive that Justice counsel work with them to identify and manage legal risks. Table 25 presents the results for questions that touch on areas related to LRM.

#### **4.2.5. Adequacy of LRM resources**

The evaluation considered whether the Department has provided sufficient resources for the LRM Initiative. In particular, the evaluation inquired about training, staffing, financial, and technological resources.

LRM training is the main area where counsel desired more resources. Training offered nationally has not occurred since the devolution of LRM in 2003, and there are few instances of LRM training within regions, sectors, or units. In key informant and case study interviews, most interviewees believe that LRM training is needed, including orientation training for young lawyers and refresher training for more senior lawyers. Some suggested that training be mandatory as it is important to renew LRM by showing lawyers how it relates to their work and why they should do it.

Most interviewees did not comment on the sufficiency of other resources or they indicated that the resources were sufficient if LRM responsibilities remained at current levels and were not expanded. Some key informants reported that their offices needed a full-time person dedicated to LRM. At the regional/LSU level, that person is needed to assist with reporting, inputting information into iCase, and coordinating LRM activities. At the portfolio level, a full-time LRM person is required to produce tools, provide training, and assist with coordinating LRM activities. A few key informant and case study interviewees suggested that iCase required more resources so that it could generate reports tailored to their office's needs and obtain more historical and department-wide information so that trends in risk assessments and legal issues could be generated.

The survey results are presented in Table 26. Most respondents could not provide a response except for training, where almost half disagreed that the Department offers sufficient training opportunities.

**Table 26: Sufficiency of resources devoted to LRM (n=636)**

<i>Please indicate your level of agreement with the following statements:</i>					
	<b>Strongly agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>Don't know/ No response</b>
The DOJ provides sufficient financial resources to support LRM	3%	19%	14%	3%	61%
The DOJ needs to have more staff dedicated to LRM	4%	18%	19%	6%	54%
DOJ offers sufficient training opportunities for LRM	1%	17%	35%	12%	35%
LRM needs more technological support	5%	16%	14%	3%	63%

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

#### **4.2.6. Incomplete implementation or gaps**

Most of the gaps in implementation have been identified in preceding sections:

- Advisory, policy, and legislative services work needs to be included more directly in LRM by establishing guidelines and expectations on how these legal activities should implement LRM.
- The AFGS should be reviewed and revised so that objectives, roles, responsibilities, and accountabilities under LRM are clearly defined and basic expectations are identified.
- The inconsistencies in risk assessments across the Department result in iCase data on risk levels that are unreliable.

In addition, some key informants identified additional gaps that the Department should address:

- Cultural challenges to accepting some aspects of LRM remain in the Department. The Department needs to emphasize to counsel the benefits of LRM and demonstrate how they outweigh the inconveniences. If LRM is made relevant to counsel's work, the view by some that it is a bureaucratic process that creates additional paperwork without enhancing the practice of law will diminish.
- The horizontal communication of legal risk across departments and agencies is lacking as it is not clear whose responsibility it is (regional office, LSU, etc.).

- One key aspect of LRM as it was originally envisioned was identifying and analyzing legal trends. This has not occurred in any systematic way because it is a time-consuming exercise, although a few offices have undertaken some trend analyses.

There was not strong support for extending LRM to risk level 6 files, although several of the regional offices have extended their own processes to include risk level 6. Some key informants support changing the LRM grid to consider risk level 6 files as high risk and, thereby, bring the grid into conformity with the IRM grid. These key informants believe that risk level 6 files should be monitored because they have a high likelihood of an adverse outcome and a moderate impact and, as a result, are potentially costly files, financially or otherwise. A few key informants expressed concerns with any expansion of high risk to risk level 6 because of the resource requirement to actively manage and report on these files. In addition, a few key informants cautioned that before any move to expand high risk to risk level 6, the Department should first consider the types of cases that are in this risk level to determine if they are appropriately categorized as a risk level 6. Key informants noted that because risk level 6 cases are not included in iCase reports, and there is no obligation to include particulars in iCase, it is difficult to express an opinion on whether the LRM processes for high risk files should be expanded to include risk level 6.

### **4.3. Results of the Initiative**

#### **4.3.1. Impacts of LRM**

The evaluation found some evidence of results of the LRM Initiative, but in order to provide stronger evidence of impacts, the Department should finalize the draft logic model for the Initiative with expected immediate, intermediate, and ultimate outcomes and develop a performance measure strategy. The evaluation findings of impact are based largely on perceptions of counsel (and a large proportion did not believe they could provide an answer) and anecdotal accounts.

One impact of the Initiative is increasing awareness of legal risks among clients. This impact is not uniform as some clients, particularly clients with high litigation caseloads, already possessed a sophisticated awareness of legal risks and legal risk management. In the Client Feedback Survey, two-thirds of respondents categorized their level of understanding of legal risk as very good or good. This result can serve as a baseline to measure whether understanding of legal risks improves as the renewal of LRM moves forward.

Another impact is improved quality of legal services provided to clients. Within the Department, LRM is seen as supporting high quality legal services: it is proactive in responding to potential legal risks and ameliorative by improving the response to realized legal risks, particularly by tracking high risk matters and communicating risk to clients and within Justice. The Client Feedback Survey found that clients are very positive in terms of their level of satisfaction with the quality of legal services, although this satisfaction cannot be directly attributed to LRM in the Survey. Focus group findings, however, confirm that clients are generally satisfied with Justice legal services, and they attributed that satisfaction to the assistance they are receiving in managing legal risks.

The evaluation found evidence that legal risks are being considered by clients in the development and implementation of government policies, programs, and services. Although the creation of LRM or other risk-related committees is not uniform across the government, many departments and agencies now have these structures. Important in ensuring that legal risks are incorporated into broader corporate decision-making is including legal risk discussions in departmental executive meetings and incorporating legal risk in departmental IRM processes. Development of IRM strategies is still underway so opportunities are available to promote the explicit inclusion of LRM in IRM processes. One potential roadblock to the consideration of legal risk in program and policy development was discussed in Section 4.2.4, where clients noted that sometimes the Department is not included at these early stages.

Within the Department, the evaluation found a consensus that, although LRM could improve in many areas, the Initiative has improved the ability of Justice to track high risk files and minimize the potential for surprises. It has also improved the culture within the Department for managing files with a goal of mitigating and avoiding legal risks.

For measures of impacts, such as avoiding or mitigating legal risks or reducing government liabilities, few respondents to the evaluation had an opinion. Of the key informants who directly commented, most said that it was simply too difficult to attribute these results to LRM because of the multitude of variables that affect whether lawsuits are filed or settled. However, one example provided was the Aboriginal Affairs Portfolio, which opened its Resolution Branch in 2006 to promote legal risk management though emphasizing dispute resolution and instrument choice. Key informants believe that the Resolution Branch, although still relatively new, is assisting counsel in finding avenues for resolving or avoiding costly litigation. Another example was effective legal risk scanning, which identified potential legal risks so that steps could be taken to reduce the chance of a lawsuit. Finally, mitigating the impact of legal risk does not necessarily mean avoiding, resolving, or winning a lawsuit. Effective contingency planning can

ensure that the government has options to consider so that even a setback in court does not completely derail its ability to meet its objectives.

Legal counsel survey results on impacts of LRM are in Table 27.

**Table 27: Impacts of LRM (n=636)**

<i>Please indicate your level of agreement with the following statements:</i>					
	<b>Strongly agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>Don't know/ No response</b>
<b>Impacts on clients</b>					
My office/unit/section has built effective LRM partnerships with its clients	9%	33%	9%	2%	48%
LRM has improved the quality of legal services provided to clients	6%	33%	9%	1%	52%
Clients are more aware of legal risks	5%	44%	9%	1%	40%
Clients routinely consider legal risks in the development and implementation of policies, programs, and legislation	5%	38%	12%	2%	43%
Understanding of LRM has improved among clients	4%	32%	10%	2%	52%
<b>Reducing the potential impact of legal risks</b>					
LRM has been successful in avoiding or mitigating legal risks	4%	35%	8%	2%	52%
LRM has reduced government liabilities	4%	22%	6%	2%	66%
<i>Note: Some row totals do not sum to 100% due to rounding.</i>					

### 4.3.2. Potential improvements

Many potential improvements have been discussed throughout the report. This section focuses on the suggested improvements that received the most support.

There is strong support for renewing LRM. In explaining the loss of momentum created by decentralization, most key informants pointed out that the Department no longer has an LRM champion within the Department or a central repository for LRM information, which has left a void in terms of where to obtain tools, ask questions, and receive advice. These key informants noted that a central office could assist with coordinating these processes and ensuring department-wide consistency. Given these views, almost all key informants see the creation of the LPMD as a positive development as it could serve the role of LRM champion in the Department.



The evaluation found a concern that any revitalization of LRM not be imposed, but rather be the result of a robust consultation process, particularly on the issue of consistency of practice. While there is support for developing more consistent LRM practices and potentially national standards and guidelines (broad support is more uncertain here), the renewed LRM must remain flexible enough to meet the needs of different legal activities and clients. It must also respect the work already done by units within the Department to implement LRM processes.

Part of this LRM renewal should include a rethinking of the governance structure. The AFGS no longer provides a sufficient framework for the Initiative: it does not include a statement of objectives; some parts of the governance structure have become dormant; the LPMD needs to be incorporated; and the expectations under LRM need to be clarified so that roles and responsibilities are better understood.

Results of the evaluation suggest many other areas on which LRM renewal should focus.

- Review the LRM grid. Should it be adapted to more directly incorporate non-litigation, or should these areas use another risk assessment tool? Should it be consistent with the IRM grid that the Department is using?
- In general, consider what is needed to involve advisory, policy and programming, and legislative and regulatory drafting more directly in LRM.
- Improve and support the operational aspects of LRM (e.g., by preparing templates, tools, and model practices).
- Build consistency in LRM practices by standardizing guidelines and principles where appropriate.
- Revitalize the partnership with TBS.
- Provide a forum for sharing LRM best practices and lessons learned across the Department.
- Explore the potential to conduct trend analyses for legal risks across government.
- Consider improvements to iCase, such as allowing more tailored reports or specific queries to be run, and using it as a more substantive audit of LRM (rather than simply whether risk levels are inputted) so that the data reliability is also tested.
- Improve client partnerships by clarifying roles, educating clients on LRM, and involving the client in assessments of the potential impact of legal risk on the client.

- Consider ways to improve the LRM communication strategies, such as streamline reporting, and ensure that requirements do not overlap and duplicate efforts through tools like common reporting templates that utilize information in iCase.

Once the Department has determined the details of the renewed LRM, training should be offered. Over two-thirds of legal counsel survey respondents agreed that the Department needs to provide training to counsel on LRM. Because national LRM training has not occurred in years, all lawyers would benefit but especially junior lawyers who joined the Department after decentralization. Both orientation training on LRM and refresher training were suggested.

## **5. CONCLUSIONS**

This section of the report presents conclusions and observations emerging from this evaluation. The evaluation issues and questions form the structure for this section.

### **5.1. Rationale for the LRM Initiative**

The Department continues to face the challenges of increasing demands related to litigation and legal services generally. With its goals of identifying legal risks early, assessing their potential effect, and then using strategies to manage the risk so that legal problems can be reduced or avoided altogether, the LRM Initiative serves to address the expanding need for legal services. Counsel also attest to the continued relevance of LRM. They believe that through its systematic approach to addressing legal risks, LRM helps them to manage files more effectively and to improve the quality of legal services provided to departments and agencies.

### **5.2. Implementation**

#### **Effects of devolution**

Following the closure of the LRM Office, the Initiative lost momentum nationally as the strong central vision for LRM faded: few new tools or guidelines were developed; and LRM training was not offered department-wide. Moreover, the Department's non-litigation legal activities (advisory, policy, and legislative services) had not yet been fully integrated into the Initiative. As a result, the prevention side of LRM (avoiding and mitigating legal risks before litigation) remains under developed.

The devolution of responsibility for LRM to all Department employees runs contrary to a central tenet of risk management – the need for an integrated, systematic approach. On the one hand, devolution has resulted in uneven and inconsistent LRM practices across the Department. On the other, it has created robust LRM approaches tailored to the operational needs of particular units within Justice; units that have taken strong ownership of their LRM practices. Indeed, concern

has been expressed by LRM practitioners that the renewal of LRM should not be at the expense of such innovative practices and should remain flexible in its approach.

## **Governance**

The evaluation found that the AFGS for LRM is out of date. Several components of the AFGS, such as the LRM Steering Committee and the LRM Practice Group are no longer active, and some parts of the Department are overlooked (e.g., the Chief Legislative Counsel). The evaluation found that knowledge of the AFGS is low, and that it is not used as a guiding document for management because it lacks concrete direction, such as objectives for the Initiative, that would assist managers in implementing LRM.

In addition, the governance structure of the LRM Initiative changed in 2007. To support recommendations concerning the management of legal services in the joint Justice-TBS Review of Legal Services 2004–2007, the Department established the LPMD in August 2007. The development of LPMD and its LRM division are part of the revitalization of the LRM Initiative.

## **Consistency of practice**

The evaluation identified several areas of inconsistency in LRM practices.

- Different risk assessment tools are in use across the Department ranging from the LRM and IRM grids to a one-dimensional scale that focuses on the likelihood of an adverse outcome. In advisory and policy work, counsel generally do not use formal risk assessment tools.
- Risk ratings assigned to files using the LRM grid are generally believed to be inconsistent due to the absence of clear criteria on how to assess the potential impact of the legal risk.
- Legal risk is not assessed consistently across the Department. Litigation files are more likely to have risk assessments than other areas of legal practice, such as legislative services and policy.
- Legal risk is not re-assessed systematically.
- Consultations on assessing legal risk and on legal risk management strategies are occurring, although there are inconsistencies in approach with some practice areas consulting more often with the client than others. Consultations with the client are considered essential to the appropriate assessment and management of legal risk.
- Contingency plans are not always developed for high risk files.

- Legal risk is communicated both within the Department and to clients in an inconsistent manner with a variety of terminology used to describe the level of risk.

### **Management of Legal Risk**

Although there are inconsistencies in approach and a reported lack of awareness or understanding of aspects of LRM, the evaluation concluded that legal risk is being managed in high risk litigation, advisory, legislative and policy files. Counsel may not be consciously or systematically performing LRM as envisioned in the Initiative, but they are intuitively managing legal risk. There is widespread agreement among counsel that legal risk management is part of their practice of law.

### **Reporting legal risk**

The evaluation found that the departmental practices for reporting legal risk are generally working as counsel are reporting high risk files to senior officials within Justice and client departments. There are a number of avenues for reporting high risk files, and questions were raised about whether these could be streamlined to avoid duplication. Reporting on advisory, policy and legislative services files was described as being more informal and less systematic than for litigation, although some counsel believed the informal communication worked in their offices. In order to reduce the perception that LRM reporting is primarily a bureaucratic process, counsel need to understand how these reports are being used and their value to legal work.

### **LRM tools and structures**

The evaluation found that there is limited knowledge and/or use of many LRM tools, including those on the LRM website. Tools that are used most often are: Briefing Notes, Early Warning Report, and Scanning News. Large percentages of survey respondents were either unaware of or have not used most LRM tools or structures. Thus, it appears that many counsel are not involved with LRM processes. Perhaps as a result of this, almost half of counsel did not believe there are sufficient guidelines to assist them in performing LRM.

The evaluation identified the need to create opportunities to share information and best practices among LRM practitioners, managers and clients, in order to enhance the understanding and knowledge of LRM.

## **Partnership**

The LRM Initiative was conceived by the Department of Justice in partnership with the TBS. There is a need to revitalize this partnership to ensure that legal risk management is considered routinely by departments and agencies (in consultation with legal services) as part of the overall management of risk by the government. The evaluation also raises the question of how best to integrate LRM more fully into the IRM processes across the government.

The results of the client survey and focus groups show that clients are generally pleased with their LRM partnership with Justice. This partnership is vital to the effective management of legal risk. However, not all clients are equally engaged in the LRM process. When clients are engaged, particularly at the senior level, the LRM processes are reported to be more robust.

The evaluation found areas to improve the LRM partnership with the client. There is a perception that not all clients understand their role in LRM. There is also a view among clients that Justice sometimes oversteps its role in providing advice that goes beyond strictly legal considerations.

### **5.3. Results of the LRM Initiative**

There is very little information available to support the measurement of the impact of the LRM Initiative. By far, the majority of respondents to the legal counsel survey indicated that they did not know what the impact of the Initiative had been across the Department. That said, through interviews with legal counsel and focus groups with client departments, the evaluation concluded that LRM has had the following impacts:

- increased awareness of legal risks among clients, largely through joint LRM structures with the clients
- improved quality of legal services to clients through LRM's proactive methods in responding to potential legal risks
- improved management of legal risk as client departments incorporate LRM into their corporate decision-making (particularly those departments with a high volume of litigation)
- improved capacity to track high impact files so that there are “no surprises”.

## **6. RECOMMENDATIONS AND MANAGEMENT RESPONSE**

### **6.1 Introduction**

The evaluation concludes that legal risk is being managed by the Department of Justice. However, the need for a consistent, flexible and integrated approach to LRM across the Department is the over-arching message from this report. DOJ counsel have an intuitive understanding of how to manage legal risk “lrm” but a more limited understanding of “LRM” – the LRM Initiative – its tools, processes and expectations. Following the devolution of LRM in 2003, portfolios, regions, LSUs and sectors developed LRM processes and tools that responded to their respective operational contexts. While devolution strengthened LRM at the local level, it also resulted in a diminished national vision particularly since few new national LRM tools have been developed and no national training has been offered during this period. These and other factors have led to inconsistent practices with respect to: identifying and assessing (and re-assessing) legal risk; communicating legal risk; consulting about legal risk (inter- and intra-departmentally); and managing risks using LRM tools and processes.

This chapter discusses eight issues arising from the LRM evaluation and provides ten recommendations. It also contains the management response to these recommendations, which has been prepared by LPMD.

### **6.2 Issues**

#### **Issue 1: Common Objectives**

The evaluation identified the need for department-wide, results-based objectives for LRM. These objectives should be developed as part of a broadly-based consultation process with legal counsel, managers and client departments. What is it that the DOJ is trying to accomplish through LRM? What results are we seeking? How would we know when we have achieved these results? Do other departments and agencies agree with, and support our approach? Ideally all practice areas of the Department and organizational units (i.e., regions, portfolios, LSUs, sectors) should have the capacity to articulate, measure and report how their legal risk

management process supports the department-wide objectives and contributes to the overall management of legal risk. The common objectives will result in a more consistent and integrated approach to LRM in the Department, and should allow for considerable flexibility in the implementation of LRM tools and processes provided that the agreed-upon objectives are being achieved.

### **Recommendation 1:**

**Develop results-based objectives for LRM that encompass the range of practice areas in the Department (including litigation, advisory work, legislative services, policy and programs), supported by a modest performance measurement and reporting strategy.**

### **Management Response:**

*Agreed. The LRM Division in the Law Practice Management Directorate will lead a departmental process to arrive at an agreed-upon set of objectives for LRM spanning all areas of DOJ's practice. Consultation will also be conducted with the Treasury Board Secretariat and departments and agencies. A modest performance management and reporting strategy will be developed to support measuring achievement of the objectives.*

### **Issue 2: Standardized Principles and Guidelines**

In consultation with legal counsel and managers in the DOJ and with client departments, there is a need to work towards a more horizontal approach to legal risk management, in which standardized principles and guidelines are developed for key stages of the LRM process in each of the practice areas (e.g., identifying when to involve client departments in assessment/re-assessment of legal risk; characteristics of high risk files – how to define a “6, 7, 8 or 9” file; when a contingency plan should be developed; expectation regarding the management of medium risk files; consistent data entry practices in iCase; if and/or when to report an advisory file). These principles and guidelines would establish the framework for legal risk management across the Department but would not prescribe how they must be implemented or managed. This would allow for a consistent, integrated, yet flexible approach to LRM that would accommodate the needs of various sectors, regions and departments.



## **Recommendation 2:**

**Develop standardized principles and guidelines to build greater consistency into LRM practices across the Department.**

## **Management Response:**

*Agreed. The LRM Division will lead a process to establish departmental working groups to develop and/or confirm national principles and guidelines for LRM, in all areas of the Department's practice. The development of standardized principles and guidelines will include a review of existing LRM tools and processes and the identification of gaps.*

## **Issue 3: Partnership with TBS and links to Integrated Risk Management**

In 2000, TBS partnered with the DOJ to establish the LRM Initiative. Involving TBS at the early stages of the Initiative was integral to developing a systematic approach to the management of legal risk across government. As the Department of Justice consults with client departments about the future direction of LRM, there would be considerable benefit from also involving the TBS in this process to ensure that the management of legal risk is considered routinely by all departments and agencies (in consultation with legal services) as part of the management of overall risk by the government. There is more likely to be sustained client “buy-in” and compliance with LRM principles and practices if they are supported by the central agency and client departments are required to report on their LRM activities. Renewal of the DOJ-TBS partnership would underscore the shared responsibility for the management of legal risk at the highest level of government.

Just as client departments are expected to consider legal risk as part of their overall risk management process, the DOJ should also look at ways of strengthening the links, as well as communicating the distinctions between LRM and IRM within the Department.

## **Recommendation 3:**

**Re-establish the partnership with the TBS in an effort to integrate LRM more fully into the IRM processes across government. Within the Department of Justice, strengthen the linkages between LRM and corporate risk management.**

### **Management Response:**

*Agreed. Contact will be made with the TBS in the near future with a view to renewing this important LRM partnership. Representatives of the TBS will be invited to participate in an LRM Inter-departmental Advisory Committee which will provide views and input respecting the practice of LRM in the Department, including its relationship to IRM.*

*Within DOJ, the LRM Division will work in collaboration with the Strategic Planning, Risks and Scans Division to ensure an appropriate relationship between LRM and overall risk management at Justice, and to communicate any differences in methodology and/or application.*

### **Issue 4: Roles and Responsibilities**

The LRM AFGS defined the roles and responsibilities of senior management, management committees and individual legal counsel in the management of legal risk. While there is not necessarily a continued need for a document like the AFGS, there is a need to examine the roles and responsibilities of the various structures supporting LRM to determine which are useful, how they can work together effectively and which can either be re-oriented or discontinued. The evaluation has identified some low-functioning groups; others which have not been functioning for some time; and gaps, in particular, the need to include all non-litigation areas of the Department. All sectors/portfolios/regions and practice areas of the Department share the responsibility for managing legal risk and their roles and responsibilities should be formally recognized and included in this process. In addition, the role of the TBS and government departments and agencies and their risk-related committees should also be incorporated into this process.

### **Recommendation 4:**

**Review the governance structure for LRM in the Department of Justice in light of the newly formed Law Practice Management Directorate and LPM.Com, the structures defined in the AFGS, and the need to integrate LRM across the Department and across government.**

## **Management Response:**

*Agreed. Work has already begun to replace the LRM Accountability Framework and Governance Structure, in a manner that includes the new Law Practice Management Directorate and LRM Division, as well as other formal LRM structures. The new approach will confirm roles and responsibilities throughout the Department, as well as those of TBS and other departments and agencies.*

## **Issue 5: Communicating and Reporting Legal Risk**

The evaluation found a need to ensure that senior managers and client departments and agencies receive the information needed to support decision making. Communicating legal risk was an area identified for improvement in the key informant interviews, case studies and legal counsel survey.

Legal risk should be communicated in plain language using consistent terminology that is well defined and understood by both DOJ counsel and client departments. The file review noted that while legal risk was being managed, the communication of risk levels was very general - “high” or “medium” – terms which were undefined. In none of the files reviewed was there any mention of a level of risk that was derived from the risk grid (even though each file chosen for review had been assigned a risk level of “6” or more).

In terms of reporting on risks, a number of litigation counsel stated that they found existing reporting requirements to be a “burden”; they did not understand why information was requested and how it would be used. This is partly a training issue, as it underscores the importance of demonstrating the value of the information collected to a broad audience. It is also an LRM process issue. Respondents believed that there were some duplicative reporting processes. There is a need to assess which reporting processes are most useful.

In addition, there is a need to assess whether LRM reporting processes should be formalized outside the context of litigation. For policy, advisory and legislative services files, LRM reporting processes are currently more informal than for litigation. Reporting on non-litigation files is particularly challenging because it can be difficult to decide when to report. It is not always clear when or if, the legal risk will occur. Consideration should be given to whether more standardized reporting processes are needed, and if so, how to implement them.

### **Recommendation 5:**

**Establish a common language to communicate legal risk.**

#### **Management Response:**

*Agreed. Building (among other things) on the good work done by a small senior group and their Report of June 2007 called “The Effective Communication of Legal Risk”, the LRM Division will lead a process involving all sectors of Justice to ensure broad consultation on this important priority. Recommendations will be developed for senior management to decide on a common language to communicate legal risks in Justice and to departments and agencies.*

### **Recommendation 6:**

**Streamline the Department’s legal risk litigation reporting processes to make them as efficient as possible. Also, consider whether and the extent to which more formalized processes for reporting on non-litigation risks are desirable.**

#### **Management Response:**

*Agreed. Work has already begun in the LRM Division to study the reporting requirements for litigation and how this information is used, with a view to avoiding duplication in this area. Consultation will be required with departments and agencies to ensure that all reporting needs are being met. Consideration will also be given to improved technological solutions in this area.*

*Reporting processes in other legal practice areas in the Department will also be examined to assess the merits of more formalized national reporting processes for non-litigation risks.*

### **Issue 6: Prevention of Legal Risk**

The prevention of legal risk was always considered an important part of the legal risk management activity spectrum. Early LRM Initiative documents commonly referred to the prevention of legal risk and the use of such mechanisms as Instrument Choice and Dispute Resolution. They focused on the importance of avoiding litigation where possible, and finding

alternate, perhaps more cost-effective solutions to achieve a policy outcome, while reducing reliance on traditional tools, such as a law (a statute or regulations) or recourse to the courts. The evaluation noted that the prevention side of LRM remains an underdeveloped area that needs to be more fully integrated into LRM. There is a need to examine how DOJ advisory, legislative services and policy and programs could work together more effectively to prevent or reduce legal risk and what processes and training need to be put in place to effect this.

### **Recommendation 7:**

**Renew efforts to promote practices that help to prevent legal risk.**

### **Management Response:**

*Agreed. The prevention of legal risk is an important element of legal risk management, exercised in partnership with departments and agencies. The renewed LRM strategy will focus on promoting the regular exchange of information across areas of practice, with a view to enhancing the Department's ability to identify and manage horizontal legal trends. We will actively pursue opportunities to work with other federal departments and agencies to promote practices that help to prevent or minimize legal risks where possible. LRM training will also include tools, processes and strategies regarding the prevention or mitigation of legal risk, including instrument choice and dispute resolution.*

### **Issue 7: LRM Training and Continuous Learning**

Another way to improve consistency of practice is to provide a standardized LRM training program to DOJ legal counsel and clients. While there was a broadly-based recognition that “lrm” is part of what lawyers always do, the legal counsel survey showed that while counsel say they have a good understanding of “LRM”, they are largely unaware and/or have never used a significant number of the existing LRM tools, committees, advisors or processes.

Consideration should be given to developing training that includes, but is not be limited to: standard principles and guidelines for all LRM practice areas; how to identify, assess, communicate, mitigate and manage legal risk; how to advise and provide options to prevent legal risk; use of LRM tools, including iCase; roles and responsibilities; instrument choice and dispute resolution. While training should be provided to all legal counsel in the Department, priority should be given to those who have worked for the DOJ for less than five years, who have not

received any LRM training and whose knowledge of LRM is less complete than that of the more experienced lawyers. Consideration should be given to requiring this training as part of every lawyer's departmental orientation training. More senior lawyers and those who have worked for the Department for more than five years and who are most likely to have a better understanding of LRM, should also receive training but at a more advanced level. Training should also be developed for client departments to ensure that the shared responsibility for the management of legal risk and the implications of this shared responsibility are fully understood.

Beside formal training sessions, there is also the need for opportunities to share experiences and to talk to other LRM practitioners across the country. The 2007 Vancouver Retreat was viewed as an extremely valuable experience because it represented the first opportunity people had had to talk about the practical aspects of implementing LRM. People are interested in learning about things that work and don't work and would like to have the opportunity to meet on a more regular basis to talk about the challenges facing LRM practitioners. Consideration should also be given to inviting client departments to participate in these sessions as well.

**Recommendation 8:**

**Develop a comprehensive LRM training program.**

**Management Response:**

*Agreed. Once LRM objectives are clarified and standardized principles and guidelines agreed upon, a comprehensive training plan will be developed and rolled out through the Department. This will include orientation on LRM for lawyers new to the DOJ, and refresher modules for those with more LRM experience. Work will also be done to ensure appropriate LRM training is also available to departments and agencies, where required.*

**Recommendation 9:**

**Develop ongoing opportunities to share information and best practices among LRM practitioners, managers and departments and agencies.**

### **Management Response:**

*Agreed. An LRM Network will be confirmed in the Department that will provide an institutional mechanism for ongoing information sharing and exchange of best practices with respect to LRM. Processes will also be developed to ensure that LRM information and best practices are more widely communicated to Justice counsel to enhance their understanding and knowledge of LRM.*

### **Issue 8: Information to Support LRM**

Currently, the Department does not have the information to fully support scanning and trends analysis in LRM. There is a need to build capacity to analyze legal risks across sectors/portfolios/regions and the Department as a whole. Consideration also has to be given to deciding the nature of the information needed to support the prevention, management and reporting of legal risk in each area of legal practice.

The Department will also want to be able to measure the extent to which each sector/portfolio/region is working towards the achievement of the common LRM objectives. The performance measurement strategy proposed in Recommendation 1 will require the establishment of a modest number of practical performance measures for all areas of legal practice. This measurement strategy should be supported by data collected from the LSUs, regions, portfolios and DOJ headquarters and be used to inform management decision-making about LRM.

### **Recommendation 10:**

**Improve the quality and reliability of information to support LRM.**

### **Management Response:**

*Agreed. Work is already underway to improve the quality and accuracy of data captured in iCase, the Department's case management system. In order to be useful, this data needs to be relevant, consistent and up to date. Communication and training activities will be conducted to raise awareness on the role of managers and practitioners in ensuring integrity of LRM data. In addition, consideration will be given to what additional data is required and how to obtain it if it is not currently captured, in order to perform trends analysis; improve reporting in all areas of practice; assess the*

*achievement of LRM objectives in each sector of the Department; and to inform management decision making in this area.*



## **APPENDIX A**

### **Accountability Framework and Governance Structure**



## **Accountability Framework and Governance Structure for Legal Risk Management**

- Legal Risk Management (LRM) is a priority of the Department of Justice.
- LRM is the process of making and carrying out decisions that reduce the frequency and severity of legal problems that prejudice the government's ability to meet its objectives successfully. Its main components are the detection, avoidance, mitigation and management of legal risks. LRM is linked to Integrated Risk Management, which is a component of the TBS Management Accountability Framework.
- LRM is practiced by client departments in partnership with Justice. It is one of the principal processes used by the Department to provide the highest quality legal service to the government of Canada and its institutions.
- LRM is also the responsibility of Justice itself, with respect to the legal risks of its own policies and legislation.
- LRM includes: scanning (risk identification), risk assessment, information sharing, management of high impact legal risks, contingency planning, informing and engaging senior officials and Ministers (individually and collectively) on key LRM issues, identification and analysis of government-wide trends, instrument choice, dispute resolution, understanding of roles and responsibilities, case management and tracking techniques (e.g. I-Case).
- It is the responsibility of all employees and managers across the Department of Justice to know and apply LRM principles and methods appropriate to their particular positions and areas of responsibility.
- In addition, certain individuals or units have responsibility to provide functional direction and to coordinate the activities of others as they carry out their LRM duties.
- An accountability framework for a devolved system for LRM requires that senior managers in the Department ensure that responsibility and accountability cascades down within their areas of management.

## **Accountability Framework**

### **Roles & Responsibilities**

#### **Deputy Minister of Justice**

- has overall responsibility for ensuring effective Departmental management, including LRM

#### **Expected Performance**

- PMP commitments and PREA objectives appropriately reflect LRM as a Departmental priority

#### **Associate Deputy Minister**

- has overall responsibility for leading LRM in Justice
- chairs Justice Steering Committee to provide on-going direction in respect of LRM
- senior point of contact with TBS for LRM including with respect to linkages to integrated risk management

#### **Expected Performance**

- PMP commitments and PREA objectives appropriately reflect responsibility for practicing and promoting LRM
- ensures Ministers are informed and engaged (individually and collectively) on key LRM issues
- chairs the LRM Steering Committee
- works with TBS to ensure LRM is supported by TBS and is linked with integrated risk management
- provides annual report on LRM to TBS
- provides regular updates to DM Team on corporate LRM activities and priorities
- leads and carries out audit function for management of LRM including through periodic reviews

## **Portfolio Heads**

- have primary responsibility for development, management and operation of LRM within their portfolios consistent with Departmental standards and objectives
- have primary responsibility for assisting clients within their portfolios to implement an LRM regime
- ensure that portfolio lawyers have the necessary training, knowledge, tools, ability and commitment to fully carry out LRM responsibilities within the portfolio

## **Expected Performance**

- PMP commitments and PREA objectives appropriately reflect responsibilities for practicing and promoting LRM
- develop operational plans for the implementation and management of LRM including how to support, and deliver LRM services to, clients (plan should propose suitable goals, monitoring & reporting requirements)
- ensure that responsibility for LRM cascades down within portfolios through DLSU's
- assist clients to implement LRM principles and practices
- LRM principles & methods are applied to portfolio legal risks including, for example, ensuring that:
  - principles governing instrument choice are applied;
  - high impact cases are managed appropriately;
  - contingency plans appropriate to the level of risk are developed;
  - high impact trends and cases are reported to DM Team; and,
  - information is properly shared on horizontal issues and that others having functional or coordinating roles are properly involved
- regular periodic reporting on performance of LRM to DM & Associates
- prepare operational plans (which are sent to LRM Steering Committee)

## **ADAG, Civil Litigation**

- as functional Departmental leader on civil litigation, has primary responsibility for the development and management of LRM on multi-client civil litigation matters
- as functional Departmental leader on civil litigation, ensures that LRM principles & methods are applied to manage high-impact multi-client litigation
- as a functional Departmental leader on civil litigation, ensures that supra-portfolio and supra-regional LRM principles & methods are developed and appropriately implemented
- As Chair of National Litigation Committee ensures that LRM is integrated into the operation and decisions of that Committee

## **Expected Performance**

- PMP commitments and PREA objectives appropriately reflect responsibilities for practicing and promoting LRM
- develop operational plans for the implementation and management of LRM for multi-client litigation
- LRM principles are appropriately considered in particular for high risk cases (*e.g.* contingency planning, *etc.*) during Litigation Committee proceedings
- LRM principles & methods are applied to horizontal litigation risks including, for example, ensuring that:
  - high impact multi-client cases are managed appropriately including by identifying an appropriate portfolio lead (including at times the ADAG Civil Litigation);
  - contingency plans appropriate to the level of risk are developed;
  - high impact trends and cases are reported to DM Team; and,
  - information properly is shared on horizontal issues and that others having functional or coordinating roles are properly involved
- regular periodic reporting on performance of LRM to DM & Associates
- prepare operational plans (which are sent to LRM Steering) Committee

## **ADAG, FPS**

- has primary responsibility for the development and management of LRM for federal prosecutions
- as a Departmental leader for FPS, ensures that LRM principles & methods are applied to manage high-impact cases
- as a functional manager and Departmental leader for FPS, ensures that LRM principles & methods are appropriately implemented by prosecutors
- responsible for practicing and promoting LRM with respect to Justice (as opposed to client) legal risks in the criminal area

## **Expected Performance**

- PMP commitments and PREA objectives appropriately reflect LRM as a Departmental priority
- develop operational plans for the implementation and management of LRM for prosecutions
- LRM principles & methods are applied to prosecution related legal risks including, for example, ensuring that:
  - high impact prosecutions are managed appropriately;
  - contingency plans appropriate to the level of risk are developed;
  - high impact trends and cases are reported to DM Team;
  - the management of horizontal legal risks in relation to prosecutions, including regulatory prosecutions is coordinated across portfolios and,
  - information is properly shared on horizontal issues and that others having functional or coordinating roles are properly involved
- regular periodic reporting on performance of LRM to DM & Associates
- prepare operational plans (which are sent to LRM Steering Committee)

## **Senior Regional Directors**

- ensure that LRM principles and methods are appropriately implemented in their regions

- ensure that their region supports Portfolio Heads in the identification, assessment and management of legal risks affecting portfolio clients
- ensure that their region supports the ADAG Civil Litigation in the identification, assessment and management of multi-client litigation risks
- ensure that their region supports the ADAG FPS in the identification, assessment and management of prosecution related legal risks

### **Expected Performance**

- PMP commitments and PREA objectives appropriately reflect responsibilities for practicing and promoting LRM
- develop operational plans for the implementation and management of LRM in the region
- ensure that responsibility for LRM cascades down within regions
- LRM principles & methods are applied to legal risks in regions including, for example, ensuring that:
  - high impact cases are identified and reported (e.g., ensuring that protocols for completing the reporting of legal risks in Caseview/I-case are followed);
  - regions support the management of legal risks by Portfolio Heads, the ADAG Civil Litigation or the ADAG FPS as appropriate;
  - high impact trends and cases in regions are reported to DM Team; and,
  - information is properly shared on horizontal issues and that others having functional or coordinating roles are properly involved
- regular periodic reporting on performance of LRM to DM & Associates
- prepare operational plans (which are sent to LRM Steering Committee)

### **Senior ADM, Policy Sector; ADM Criminal Law Policy; and Chief Counsel Public Law**

- responsible for practicing and promoting LRM for Justice's own (as opposed to client) policy related legal risks



### **Expected Performance**

- PMP commitments and PREA objectives appropriately reflect LRM as a Departmental priority
- effective LRM scanning practices for policy related legal risks are developed and implemented
- Justice's own policy related legal risks are identified, reported and managed
- regular periodic reporting on performance of LRM to DM & Associates
- prepare scanning plans (which are sent to LRM Steering Committee)

### **ADM Corporate Services**

- has responsibility for ensuring the development of appropriate corporate tools (e.g., software) for implementing and sustaining LRM based on the direction of the LRM Steering Committee
- responsible for practicing and promoting LRM for Justice's own (as opposed to client) corporate legal risks

### **Expected Performance**

- PMP commitments and PREA objectives appropriately reflect LRM as a Departmental priority
- appropriate LRM corporate tools are developed
- effective LRM scanning practices for corporate legal risks are developed and implemented
- Justice's own corporate risks are identified, reported and managed
- regular periodic reporting on performance of LRM to DM & Associates
- prepares scanning plans (which are sent to LRM Steering Committee)

### **Governance Structure**

In addition to the individual responsibilities outlined above, a number of other bodies have important roles to play in managing LRM. These include:

### **LRM Steering Committee**

- chaired by Associate Deputy Minister with representative membership from among key senior and working level LRM players and eventually including TBS and client representatives
- mandate is to coordinate and monitor overall departmental direction and implementation of LRM within Justice including identifying priorities for the next steps in the development and implementation of LRM
- advises Associate Deputy Minister on corporate and policy issues related to LRM
- reviews operational plans submitted by Portfolio Heads, ADAG Civil Litigation, ADAG FPS and Senior Regional Directors
- reviews scanning plans submitted by Senior ADM, Policy Sector, ADM Criminal Law Policy, ADM Corporate Services and Chief Counsel Public Law
- assisted and supported by DM Team Secretariat and LRM Special Counsel
- possible agenda items, beyond operational plans, scanning plans and project updates from specific actors, include: use of I-Case Reports, establishment of integrated scanning process for DOJ legal risks, best practices & recommended approach to contingency planning, relationship of DOJ LRM role to TBS initiatives, development of an “annual report” on LRM

### **LRM Special Counsel**

- functional operational leadership for LRM in the Department
- functional reporting to Associate DM with line reporting and support to ADAG Civil Litigation
- challenge function with Portfolio Heads and others to ensure that LRM being
- effectively carried out within existing structures (e.g., with respect to contingency planning or responses to legal risks that materialize)
- key point of contact in Department on LRM information
- attends DM Daily as key point of contact on LRM information
- member of Litigation Committee

- chairs Thursday morning group (whose crucial role in effective LRM to be confirmed/formalized and expanded)
- supported by LA, paralegal & support staff
- direct relationship, including substantive leadership, to DM Team Secretariat on LRM
- responsible with DMT Secretariat for organizing & supporting LRM Steering Committee
- responsible with DMT Secretariat for supporting Associate DM in LRM audit function

### **DM Team Secretariat**

- LRM mandate is to assist the Associate Deputy Minister and DM Team to manage LRM within Justice by providing secretariat support
- responsible for final stage reporting of legal risks to DM Team and Minister (*e.g.* through Early Warning, Forward Agenda, high impact case reports etc.)
- reviews PMP and PREA commitments relating to LRM
- supports LRM Steering Committee working with LRM Special Counsel
- design and oversee scanning process for DOJ legal risks working with LRM Special Counsel
- works closely with and assists LRM Special Counsel

### **Thursday Morning Group**

- to become formal Departmental Working Group supporting LRM
- represents all portfolios and sectors
- shares LRM information across portfolios, regions and sectors
- makes horizontal linkages and identifies emerging trends
- tracks and confirms operational follow-up (*e.g.*, existence of contingency plans, communications plans and briefing strategies) when legal risks are identified, especially in regard to imminent events
- contributes to Early Warning and other reports for DMT

### **LRM Practice Group**

- practice group made up of working level lawyers with significant LSU representation
- working level cooperation and sharing of information on LRM best practices and information
- participants identify and discuss corporate and administrative challenges in the day to day practice of LRM
- report to LRM Steering Committee on challenges in the day to day practice of LRM
- identify areas of need for training and tools development for LRM

### **Litigation Committee**

- makes recommendation to Minister on appeals to SCC and interventions
- reviews and approves litigation strategies aimed at managing legal risks
- identifies need for horizontal consultation, communications strategies and contingency planning

### **DM Daily**

- identifies in advance impending legal risks
- confirms preparations for managing impending legal risks
- information sharing across portfolios and sectors on high impact legal risks
- makes horizontal linkages
- allows for clarification of roles and responsibilities in regard to the management of specific horizontal legal risks

### **Inter-Departmental ADM Steering Committee**

- inter-departmental committee chaired by Justice, with full client participation

## **APPENDIX B**

### **Evaluation Framework**



## Evaluation Framework — Evaluation of Legal Risk Management in the Department of Justice

Issues/questions	Indicators	Data sources
<b>Rationale of the LRM Initiative</b>		
1. How has the context within which LRM is operating changed since 2003? What are the implications of any changes?	<ul style="list-style-type: none"> <li>• Trends in number and complexity of cases involving the federal government</li> <li>• Changes in administration/management structure of LRM (devolution)</li> <li>• Opinion on effects of any changes</li> <li>• Opinion on continued need for LRM</li> </ul>	<ul style="list-style-type: none"> <li>• Document review/iCase</li> <li>• Key informant interviews</li> </ul>
2. Is LRM consistent with the principles of Integrated Risk Management and the achievement of DOJ's strategic objectives?	<ul style="list-style-type: none"> <li>• Alignment of LRM with Integrated Risk Management and the DOJ's strategic objectives</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> </ul>
<b>Implementation of the LRM Initiative</b>		
3. Does the LRM Accountability Framework and Governance Structure (AFGS) provide an effective framework for systematically managing legal risk?	<ul style="list-style-type: none"> <li>• Opinion on continued relevance of LRM AFGS</li> <li>• Existence of shared understanding of roles and responsibilities for LRM</li> <li>• Existence of shared understanding of LRM</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> </ul>
4. What structures and processes have been put in place in the DOJ to support the identification, assessment, mitigation, and management of legal risk?	<ul style="list-style-type: none"> <li>• Monitoring activities to identify risks</li> <li>• Standards to assess risks</li> <li>• Risk mitigation and management strategies</li> <li>• Communication and consultation strategies within DOJ and with client departments/other affected departments/central agencies</li> <li>• Appropriateness/adequacy of LRM structures and processes to support effective LRM practices</li> <li>• Adequacy of communications strategy to support LRM</li> <li>• Role of Law Practice Management Directorate</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• File review</li> </ul>
5. Is LRM integrated into the work (policy/advisory/legislative /litigation) of the DOJ?	<ul style="list-style-type: none"> <li>• Level of integration of LRM into work of the DOJ</li> <li>• Level of integration of LRM in risk practices of government departments and agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Document review/iCase</li> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• File review</li> </ul>
6. How consistent are LRM practices?	<ul style="list-style-type: none"> <li>• Consistency of assessing, managing and reporting risk (particularly files with risk rating of 6)</li> <li>• Variations by type of legal activity (advisory, legislative drafting, litigation)</li> <li>• Variations by LSU, region, portfolio</li> <li>• Consistency/comparability of tools</li> <li>• Consistency of use of tools including iCase</li> </ul>	<ul style="list-style-type: none"> <li>• Document review/iCase</li> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• File review</li> </ul>

Issues/questions	Indicators	Data sources
7. What are the advantages and disadvantages of having different LRM practices across the DOJ?	<ul style="list-style-type: none"> <li>• Opinion on advantages/disadvantages of different LRM practices across the DOJ</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• Focus groups</li> </ul>
8. Are the necessary tools in place to support LRM?	<ul style="list-style-type: none"> <li>• Types of tools available</li> <li>• Adequacy of tools to support LRM</li> <li>• Adequacy of legal risk reporting</li> <li>• iCase data quality integrity</li> </ul>	<ul style="list-style-type: none"> <li>• Document review/iCase</li> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• File review</li> <li>• Focus groups</li> </ul>
9. To what extent are counsel aware of these tools and use them?	<ul style="list-style-type: none"> <li>• Awareness of availability of tools to support LRM</li> <li>• Use of current tools by counsel</li> <li>• Satisfaction with tools</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• File review</li> </ul>
10. Are there adequate resources (human, financial, information, training, technological) to support the management of legal risk in the DOJ?	<ul style="list-style-type: none"> <li>• Opinion on adequacy of resources to support LRM decision-making</li> <li>• Costs associated with different LRM models</li> <li>• Capacity to measure and report on results</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• Focus groups</li> </ul>
11. Are risk assessments used in resource allocation and planning in advisory/legislation/litigation files?	<ul style="list-style-type: none"> <li>• Opinion on whether risk assessments are used to allocate resources and plan</li> <li>• Evidence in files that risk assessments are used to allocate resources and plan</li> </ul>	<ul style="list-style-type: none"> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• File review</li> </ul>
12. Are there elements of LRM that have not been implemented? Are there any gaps that should be addressed?	<ul style="list-style-type: none"> <li>• Components of Accountability Framework and Governance Structure not implemented</li> <li>• Gaps in processes and practices for the mitigation/management of legal risk</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• File review</li> </ul>



Issues/questions	Indicators	Data sources
<b>Results of the LRM Initiative</b>		
13. Are current DOJ practices making an impact in terms of mitigating/managing legal risks across the federal government?	<ul style="list-style-type: none"> <li>• Government stakeholders are routinely informed about legal risks</li> <li>• DOJ understands clients' main legal risks</li> <li>• Level of understanding of legal risk management in government departments and agencies</li> <li>• Consideration of legal risks in the development and implementation of government policies, programs, and legislation</li> <li>• Helpfulness of legal advice on legal risk</li> <li>• Effective LRM partnerships with client departments</li> <li>• Level of success in avoidance/mitigation of legal risks due to LRM (timely responses, effective strategies)</li> <li>• Capacity to measure and report on results</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• Justice Services Satisfaction Survey</li> <li>• File review</li> <li>• Focus groups</li> </ul>
14. Does the DOJ approach to LRM reflect effective risk management practices? What are the commonalities/divergences?	<ul style="list-style-type: none"> <li>• Lessons learned and best practices in risk management from other jurisdictions</li> <li>• Opinion on whether LRM reflects best practices in risk management</li> </ul>	<ul style="list-style-type: none"> <li>• Document/literature review</li> <li>• Focus groups</li> </ul>
15. What are the key lessons learned and best practices with LRM? Are they being effectively communicated and shared within the DOJ?	<ul style="list-style-type: none"> <li>• Lessons learned and best practices</li> <li>• Process to share best practices</li> </ul>	<ul style="list-style-type: none"> <li>• Document review</li> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• File review</li> <li>• Focus groups</li> </ul>
16. How could LRM be improved?	<ul style="list-style-type: none"> <li>• Identified areas for improvement</li> </ul>	<ul style="list-style-type: none"> <li>• Document review/iCase</li> <li>• Key informant interviews</li> <li>• Legal counsel survey</li> <li>• Case studies</li> <li>• File review</li> <li>• Focus groups</li> </ul>



**APPENDIX C**  
**Data Collection Instruments**



## **Evaluation of Legal Risk Management Key Informant Interview Guide**

Since 1999, the federal government has managed potential and realized legal risks within the framework of the Legal Risk Management (LRM) Initiative. Wide in scope, the Initiative reaches into organizational structures and processes, work and management tools, and expected skills and behaviors of legal counsel and managers within the Department of Justice and Government of Canada departments and agencies.

In 2003, the LRM Initiative evolved from a time-limited initiative, with a project office and dedicated human and financial resources, to an ongoing initiative that was integrated into the overall work of the Department. As a result, the LRM Accountability Framework and Governance Structure (AFGS) was put into effect (see Annex A). The AFGS stipulates that it is “the responsibility of all employees and managers across the DOJ to know and apply LRM principles and methods appropriate to their particular positions and areas of responsibility”. It also establishes defined roles and responsibilities for senior managers.

The Department’s Evaluation Division is now evaluating the implementation of the LRM Initiative. As part of the data collection process, interviews will be conducted with a range of key informants within the Department.

All information that you provide is confidential and will be used only for research purposes. No individual participant will be identified in any of the reports submitted to Justice Canada. The information that you provide will be reported in aggregate form, and individual responses will not be shared outside of PRA Inc. and the Department’s LRM Evaluation Team, which includes representatives of the Evaluation Division and the Law Practice Management Directorate.

The interview should take about 60 minutes and, with your permission, will be tape-recorded to ensure the accuracy of information reported. All tape recordings will be erased at the end of the study. Finally, we would like to remind you that your participation in this interview is completely voluntary.

### **Introduction**

1. Please describe your current role and responsibilities. How do they relate to LRM?

### **Rationale for the LRM Initiative**

2. How has the context within which LRM is operating changed since 2003? In particular, how is decentralization of LRM under the 2003 LRM Accountability Framework and Governance Structure working? Has this had any positive or negative effects on the DOJ's ability to systematically manage legal risks?
3. What is the need, if any, for a systematic approach to managing legal risks?

### **Implementation of LRM**

4. In your opinion, is there a common or shared understanding of LRM roles, responsibilities, and accountabilities across the Department?
5. How consistent is the DOJ in its approach to identifying and assessing legal risks? In your answer, please consider issues such as the following:
  - Consistency in rating risk levels (particularly levels 6, 7, 8, and 9)
  - Standards used to assess legal risk and possible overuse of risk ratings 5 and/or 6
  - Assessing legal risk in all DOJ activities (litigation, advisory, legislative services, policy)
  - Approach to reassessing legal risk
6. How consistent is the DOJ in its approach to mitigating and managing legal risks? In your answer, please consider issues such as the following:
  - Use of contingency and communication plan models
  - Managing and reporting on legal risk in files with comparable risk ratings (particularly levels 6, 7, 8, and 9)
  - Managing legal risk in all DOJ activities (litigation, advisory, legislative services, policy).
7. What initiatives, if any, has your sector, portfolio, region, legal services unit/client department or agency implemented to assess or manage legal risks more systematically?
8. What are the advantages and disadvantages of having different LRM practices across the DOJ? Are there areas where LRM practices should be better coordinated or where national practices/standards should be used?

9. Are the tools that the DOJ has put in place adequate to support LRM? (*Probe: Does the risk matrix accurately capture risk that should be actively managed? Does the matrix work for advisory/legislative services/policy files?*) To what extent are counsel aware of these tools? Are they routinely used when circumstances warrant?
10. Which tools are most effective? Which are least effective and why? What other tools are needed?
11. Are the current practices for communicating or reporting legal risk within the DOJ effective? Why or why not? (*Probe: Are DOJ senior managers receiving adequate and timely information? Does the assessment grid ensure that all high risk files are communicated to senior management? Does the current communication strategy appropriately consider advisor, legislative services, and policy files?*)
12. How do client departments/agencies understand their role in managing legal risks? To what extent is legal risk integrated into their corporate decision making?
13. Has your sector, portfolio, region, legal services unit undertaken any activities to engage client departments/agencies and enhance their understanding of LRM? (*Probe: Does your sector, portfolio, region, legal services unit have any joint LRM-related committees?*) Have these activities resulted in effective LRM partnerships? (*Probe: Are client department/agency senior managers receiving adequate and timely information? Are they actively engaged in LRM?*) How could partnerships be improved?
14. Are there adequate resources (human, financial, information, training, technological) to support the management of legal risk in the DOJ? What additional resources, if any, are needed? (*Probe: Dedicated/additional staff, training opportunities, resources to overcome any technological challenges, etc.*)
15. Are risk assessments used in resource allocation and planning? Please explain how they are used. (*Probe: what measures might be taken, such as additional counsel, reassignment of senior counsel to file, etc., and are there criteria for when these steps might occur?*)
16. What have been the main challenges in implementing LRM? (*Probe: Are there elements of LRM that have not been implemented? Are there elements that are too difficult/time-consuming/not helpful? Are counsel having difficulties integrating LRM into their daily work?*)

17. Are there any gaps in processes and practices for the identification, assessment, and management of legal risk? Should LRM processes extend to monitor and manage level 6 files?
18. What do you see as the role of the Law Practice Management Directorate in LRM?

## **Results**

19. How have DOJ practices had an impact, if any, on the mitigation or management of legal risks in the federal government? For example,
- Has the level of awareness of legal risks changed among client departments/agencies?
  - Has the understanding of legal risk management improved among client departments/agencies?
  - Do client departments/agencies routinely consider legal risks in the development and implementation of policies, programs, legislation, and regulations?
  - Has LRM been successful in avoiding or mitigating legal risks?
  - Has LRM reduced government liabilities?
  - Others? Please explain.
20. What measurement of success would you need to determine if LRM has been effective in identifying, managing, and mitigating legal risk? Do you think that the DOJ measures the results of LRM in a way that assists managers in planning? (*Probe: iCase LRM reports*) What other measures or tools would assist you?
21. What are the key lessons learned and best practices from the various models of LRM used by sectors/portfolios/regions/legal services units/sectors? Are they being effectively communicated and shared across the DOJ? If not, how could this be improved?
22. What suggestions do you have for improving LRM?
23. Do you have any other comments?

***Thank you. We greatly appreciate your participation.***



## Legal Counsel Survey

Si vous préférez y répondre dans l'autre langue officielle, veuillez changer de texte maintenant ([lien vers la version française](#)); vous ne pourrez pas le faire une fois que vous aurez commencé à répondre aux questions.

Since 1999, the federal government has managed potential and realized legal risks within the framework of the Legal Risk Management (LRM) Initiative. Wide in scope, the Initiative reaches into organizational structures and processes, work and management tools, and expected skills and behaviours of legal counsel and managers within the Department of Justice (DOJ) and Government of Canada departments and agencies.

The DOJ Evaluation Division is conducting an evaluation of LRM in the Department. The purpose of the evaluation is to examine how LRM has been implemented in the Department and to assess whether the structures and processes put in place to support LRM are contributing to the effective management of legal risk in the federal government. The evaluation is being conducted by PRA Inc., an independent research firm working in collaboration with the Justice Evaluation Division, the Law Practice Management Directorate and the Research and Statistics Division. This survey of legal counsel is being conducted as part of the evaluation.

Your response is very important to us. We want to hear from all DOJ counsel, even if legal risk management is not part of your daily work.

The survey is easy and quick to answer. Most questions only ask you to click on the appropriate response. The questionnaire should take about 15 minutes to complete. You can only access the survey site once, **so please complete the survey in one sitting**. (Please note that if you click on your browser's "back" button while completing the survey, you will need to respond again to the questions that follow the one you returned to.)

All information you offer is confidential and will be used only to create aggregate results to be included in the evaluation report. No individual's responses will be identified.

We would appreciate receiving your completed questionnaire by **March 18, 2008**.

If you have questions about the survey, please contact Susan Kelly, Evaluation Division at (613) 957-7657. For technical questions, please contact Jo-Anne Chrétien at (613) 957-9610.

## Background

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

1. When did you first join the Department of Justice?
  - Less than a year ago
  - Between 1 and 5 years ago
  - Between 6 and 10 years ago
  - More than 10 years ago
  
2. Where do you currently work?
  - Headquarters
  - Regional Office
  - Legal Services Unit
  - Satellite Office
  
3. What is the classification level of the position you currently occupy?
  - LA-1
  - LA-2A
  - LA-2B
  - LA-3A
  - LA-3B
  - LA-3C
  - a) Are you in a management position?
    - Yes
    - No

## Shared Understanding

The following questions ask about your experience with legal risk management.

A legal risk is a risk arising out of an issue or event giving rise to legal considerations. A legal risk may arise from a government action or decision (or proposed action or decision), or from exterior actions or decisions that have legal implications and that require a government response or action of a legal, communication-related, organizational or political nature.

4. How would you rate your overall understanding of legal risk management (LRM)?
- Very good
  - Good
  - Limited
  - Poor
5. Please indicate your level of agreement with the following statements:
- a) LRM is well defined by DOJ.  Strongly agree
  - b) My role and responsibilities in relation to LRM are clearly defined.  Agree  
 Disagree
  - c) Client departments and agencies understand their roles and responsibilities in relation to LRM.  Strongly disagree  
 Don't know
  - d) Managing legal risk is part of my practice of law.
6. Which kind of files do you work on **most often** that require the management of legal risk?
- Litigation
  - Litigation support
  - Advisory
  - Legislative services (legislation and regulation drafting)
  - Policy and program development

### **Implementation of the LRM - Litigation Files**

7. Taking into consideration the **litigation files** you have been involved with in the last two years, how often were legal risks identified and assessed?
- Frequently (75%-100% of files)
  - Regularly (50%-74% of files)
  - Occasionally (25%-49% of files)
  - Rarely (1%-24% of files)
  - Never (0% of files)
  - Don't know
  - Not applicable to my work

8. In **assessing legal risk**, how often during the last two years have you or a member of the litigation team...

- |   | Percentage of files                             |
|---|---|
| a) consulted the client's Legal Services Unit (LSU)?  | <input type="radio"/> Frequently (75%-100%)     |
| b) consulted the client department?   | <input type="radio"/> Regularly (50%-74%)       |
| c) consulted with specialized units within DOJ (e.g., units within the Public Law Sector or Policy Sector, etc.)? | <input type="radio"/> Occasionally (25%-49%)    |
| d) consulted other potentially affected LSUs?   | <input type="radio"/> Rarely (1%-24%)           |
| e) reassessed risk after the initial assessment?  | <input type="radio"/> Never (0%)                |
| f) inputted risk assessments in iCase?  | <input type="radio"/> Don't know                |
|   | <input type="radio"/> Not applicable to my work |

9. Please rate how useful you have found the LRM assessment grid/matrix through iCase or otherwise.

- Very useful
- Useful
- Not very useful
- Not at all useful
- Not applicable / have not used this tool

10. Why do you find the LRM assessment grid/matrix not useful? (Check all that apply)

- The scale for the level of impact on the government (significant, moderate, minor) is not well defined.
- The scale for the likelihood of an adverse outcome (low - less than 30%; medium - 30%-70%; high - over 70%) does not have enough categories.
- The grid results in under-reporting the number of files that you believe are actually high risk.
- The grid results in over-reporting the number of files that you believe are actually high risk.
- The grid results in inconsistent risk level ratings across DOJ.
- The grid does not take into account urgency or time (e.g. high risk but nothing will happen for several years).
- The grid does not capture other relevant aspects of risk (please specify): \_\_\_\_\_
- Other, please specify: \_\_\_\_\_

11. Why have you not used the LRM assessment grid/matrix? (Check all that apply)

- I am not aware of the LRM assessment grid.
- I do not know how to use the grid.
- The grid will not accurately capture risk.
- Other, please specify: \_\_\_\_\_

12. Please rate how useful you have found the iCase risk evaluation screen.

- Very useful
- Useful
- Not very useful
- Not at all useful
- Not applicable / have not used this tool

13. Have you used another risk assessment tool?

- Yes, please specify: \_\_\_\_\_
- No

a) Please rate the other risk assessment tool that you have used.

- Very useful
- Useful
- Not very useful
- Not at all useful

14. In developing **legal risk management strategies**, how often during the last two years have you or a member of the litigation team...

- |  | Percentage of files                             |
|--|---|
| a) consulted the client department?  | <input type="radio"/> Frequently (75%-100%)     |
| b) consulted the client's LSU?   | <input type="radio"/> Regularly (50%-74%)       |
| c) consulted your manager?   | <input type="radio"/> Occasionally (25%-49%)    |
| d) consulted litigation or risk-related committees?  | <input type="radio"/> Rarely (1%-24%)           |
| e) consulted LRM contact person for portfolio/region/LSU?  | <input type="radio"/> Never (0%)                |
| f) consulted specialized units within DOJ (e.g., units within the Public Law Sector or Policy Sector, etc.)? | <input type="radio"/> Don't know                |
| g) consulted other potentially affected LSUs?  | <input type="radio"/> Not applicable to my work |

15. Please estimate the combined number of high risk files (risk levels 7, 8, and 9) that you have been involved with in the last two years.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

16. Considering **only** your high risk files (risk levels 7, 8, and 9), how often during the last two years have you or a member of the litigation team...

- |   | Percentage of files                             |
|---|---|
| a) reported these files to senior managers in DOJ headquarters?   | <input type="radio"/> Frequently (75%-100%)     |
| b) reported these files to regional/legal unit managers?  | <input type="radio"/> Regularly (50%-74%)       |
| c) reported these files to litigation or risk-related committees?   | <input type="radio"/> Occasionally (25%-49%)    |
| d) reported these files to the client's LSU?  | <input type="radio"/> Rarely (1%-24%)           |
| e) reported these files to client officials?  | <input type="radio"/> Never (0%)                |
| f) reported these files to portfolio managers?  | <input type="radio"/> Don't know                |
| g) prepared Briefing Notes for these files?   | <input type="radio"/> Not applicable to my work |
| h) prepared Early Warning Notes for these files?  |   |
| i) assisted in the development of a contingency plan for these files?   |   |
| j) Have you ever used dispute resolution for your high risk files (risk levels 7, 8, and 9)?                    |   |
| <input type="radio"/> Yes   |   |
| <input type="radio"/> No  |   |
| k) In your risk level 7, 8, and 9 files, at what stage do you <b>most often</b> use dispute resolution options? |   |
| <input type="radio"/> Post-Pleading   |   |
| <input type="radio"/> Post-production of documents  |   |
| <input type="radio"/> Post-discovery  |   |
| <input type="radio"/> Just prior to trial or hearing  |   |
| <input type="radio"/> Other, please specify: _____  |   |
| <input type="radio"/> Don't know  |   |

17. Please estimate the number of risk level 6 files you have been involved with in the last two years.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

18. Considering **only** your risk level 6 files, how often during the last two years have you or a member of the litigation team...

- |   | Percentage of files                             |
|---|---|
| a) reported these files to senior managers in DOJ headquarters?                                       | <input type="radio"/> Frequently (75%-100%)     |
| b) reported these files to regional/legal unit managers?  | <input type="radio"/> Regularly (50%-74%)       |
| c) reported these files to litigation or risk-related committees?                                     | <input type="radio"/> Occasionally (25%-49%)    |
| d) reported these files to the client's LSU?  | <input type="radio"/> Rarely (1%-24%)           |
| e) reported these files to client officials?  | <input type="radio"/> Never (0%)                |
| f) reported these files to portfolio managers?  | <input type="radio"/> Don't know                |
| g) prepared Briefing Notes for these files?   | <input type="radio"/> Not applicable to my work |
| h) prepared Early Warning Notes for the files?  |   |
| i) assisted in the development of a contingency plan for these files?                                 |   |
| j) Have you ever used dispute resolution for risk level 6 files?                                      |   |
| <input type="radio"/> Yes   |   |
| <input type="radio"/> No  |   |
| k) In your risk level 6 files, at what stage do you <b>most often</b> use dispute resolution options? |   |
| <input type="radio"/> Post-Pleading   |   |
| <input type="radio"/> Post-production of documents  |   |
| <input type="radio"/> Post-discovery  |   |
| <input type="radio"/> Just prior to trial or hearing  |   |
| <input type="radio"/> Other, please specify: _____  |   |
| <input type="radio"/> Don't know  |   |

19. Please estimate the number of files that you have been involved with in the last two years, where the level of risk was **reassessed** from medium to high.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

20. Considering **only** files that you have been involved with that have been **reassessed** from medium to high risk in the last two years, how often have the following occurred after the risk level was raised?

- a) The number of counsel increased
- b) Senior counsel were assigned
- c) Increased consultations
- d) Increased reporting

Percentage of files

- Frequently (75%-100%)
- Regularly (50%-74%)
- Occasionally (25%-49%)
- Rarely (1%-24%)
- Never (0%)
- Don't know
- Not applicable to my work

### Implementation of the LRM - Litigation Support Files

21. Taking into consideration the **litigation support files** you have been involved with in the last two years, how often were legal risks identified or assessed?

- Frequently (75%-100% of files)
- Regularly (50%-74% of files)
- Occasionally (25%-49% of files)
- Rarely (1%-24% of files)
- Never (0% of files)
- Don't know
- Not applicable to my work

22. In **assessing legal risk**, how often during the last two years have you or a member of the litigation support team...

- a) consulted the client department?
- b) consulted DOJ litigation counsel (regional office, headquarters) handling the file?
- c) consulted specialized units within DOJ (e.g. units within the Public Law Sector, or Policy Sector, etc.)?
- d) consulted other potentially affected LSUs?
- e) reassessed risk after the initial assessment?
- f) inputted risk assessments in iCase?

Percentage of files

- Frequently (75%-100%)
- Regularly (50%-74%)
- Occasionally (25%-49%)
- Rarely (1%-24%)
- Never (0%)
- Don't know
- Not applicable to my work



23. Please rate how useful you have found the LRM assessment grid/matrix through iCase or otherwise.
- Very useful
  - Useful
  - Not very useful
  - Not at all useful
  - Not applicable/have not used this tool
24. Why do you find the LRM assessment grid/matrix not useful? (Check all that apply)
- The scale for the level of impact on the government (significant, moderate, minor) is not well defined.
  - The scale for the likelihood of an adverse outcome (low - less than 30%; medium - 30%-70%; high - over 70%) does not have enough categories.
  - The grid results in under-reporting the number of files that you believe are actually high risk.
  - The grid results in over-reporting the number of files that you believe are actually high risk.
  - The grid results in inconsistent risk level ratings across the DOJ.
  - The grid does not take into account urgency or time (e.g. high risk but nothing will happen for several years).
  - The grid does not capture other relevant aspects of risk (please specify): \_\_\_\_\_
  - Other, please specify: \_\_\_\_\_
25. Why have you not used the LRM assessment grid/matrix? (Check all that apply)
- I am not aware of the LRM assessment grid.
  - I do not know how to use the grid.
  - The grid will not accurately capture risk.
  - Other, please specify: \_\_\_\_\_
26. Please rate how useful you have found the iCase risk evaluation screen.
- Very useful
  - Useful
  - Not very useful
  - Not at all useful
  - Not applicable/have not used this tool

27. Have you used another risk assessment tool?

Yes, please specify: \_\_\_\_\_

No

a) Please rate the other risk assessment tool that you have used.

Very useful

Useful

Not very useful

Not at all useful

28. In developing **legal risk management strategies**, how often during the last two years have you or a member of the litigation support team...

a) consulted the client department?

b) consulted your manager?

c) consulted litigation or risk-related committee?

d) consulted LRM contact person for portfolio/region/LSU?

e) consulted DOJ litigation counsel (regional office, headquarters) handling the file?

f) consulted specialized units within DOJ (e.g., units within the Public Law Sector or Police Sector, etc.)?

g) consulted other potentially affected LSUs?

Percentage of files

Frequently (75%-100%)

Regularly (50%-74%)

Occasionally (25%-49%)

Rarely (1%-24%)

Never (0%)

Don't know

Not applicable to my work

29. Please estimate the combined number of high-risk files (risk levels 7, 8, and 9) that you have been involved with in the last two years.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

30. Considering **only** your high risk files (risk levels 7, 8, and 9), how often during the last two years have you or a member of the litigation support team...

- |  | Percentage of files                             |
|--|---|
| a) reported these files to senior managers in DOJ headquarters?  | <input type="radio"/> Frequently (75%-100%)     |
| b) reported these files to LSU managers?   | <input type="radio"/> Regularly (50%-74%)       |
| c) reported these files to client officials?   | <input type="radio"/> Occasionally (25%-49%)    |
| d) reported these files to litigation or risk-related committees?  | <input type="radio"/> Rarely (1%-24%)           |
| e) reported these files to portfolio managers?   | <input type="radio"/> Never (0%)                |
| f) prepared Briefing Notes for these files?  | <input type="radio"/> Don't know                |
| g) prepared Early Warning Notes for these files?   | <input type="radio"/> Not applicable to my work |
| h) assisted in the development of contingency plans for these files?                                     |   |
| i) Have you ever used dispute resolution for your high risk files (risk levels 7, 8, and 9)?             |   |
| <input type="radio"/> Yes  |   |
| <input type="radio"/> No   |   |
| j) In your risk level 7, 8, and 9 files, at what stage do you most often use dispute resolution options? |   |
| <input type="radio"/> Post-pleading  |   |
| <input type="radio"/> Post-production of documents   |   |
| <input type="radio"/> Post-discovery   |   |
| <input type="radio"/> Just prior to trial or hearing   |   |
| <input type="radio"/> Other, please specify: _____   |   |
| <input type="radio"/> Don't know   |   |

31. Please estimate the number of risk level 6 files that you have been involved with in the last two years.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

32. Considering **only** your risk level 6 files, how often during the last two years have you or a member of the litigation support team...

- |  | Percentage of files                             |
|--|---|
| a) reported these files to senior managers in DOJ headquarters?                                | <input type="radio"/> Frequently (75%-100%)     |
| b) reported these files to LSU managers?   | <input type="radio"/> Regularly (50%-74%)       |
| c) reported these files to client officials?   | <input type="radio"/> Occasionally (25%-49%)    |
| d) reported these files to litigation or risk-related committees?                              | <input type="radio"/> Rarely (1%-24%)           |
| e) reported these files to portfolio managers?   | <input type="radio"/> Never (0%)                |
| f) prepared Briefing Notes for these files?  | <input type="radio"/> Don't know                |
| g) prepared Early Warning Notes for these files?   | <input type="radio"/> Not applicable to my work |
| h) assisted in the development of contingency plans for these files?                           |   |
| i) Have you ever used dispute resolution for risk level 6 files?                               |   |
| <input type="radio"/> Yes  |   |
| <input type="radio"/> No   |   |
| j) In your risk level 6 files, at what stage do you most often use dispute resolution options? |   |
| <input type="radio"/> Post-pleading  |   |
| <input type="radio"/> Post-production of documents   |   |
| <input type="radio"/> Post-discovery   |   |
| <input type="radio"/> Just prior to trial or hearing   |   |
| <input type="radio"/> Other, please specify: _____   |   |
| <input type="radio"/> Don't know   |   |

33. In the last two years, please estimate the number of files that you have been involved with where the risk level was **reassessed** from medium to high.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

34. Considering **only** files that you have been involved with that have been **reassessed** from medium to high risk in the last two years, how often have the following occurred after the risk level was raised?

- a) The number of counsel increased.
- b) Senior counsel were assigned.
- c) Increased consultations.
- d) Increased reporting.

Percentage of files

- Frequently (75%-100%)
- Regularly (50%-74%)
- Occasionally (25%-49%)
- Rarely (1%-24%)
- Never (0%)
- Don't know
- Not applicable to my work

### Implementation of the LRM - Advisory Files

35. Taking into consideration the **advisory files** you have been involved with in the last two years, how often were legal risks identified and assessed?

- Frequently (75%-100% of files)
- Regularly (50%-74% of files)
- Occasionally (25%-49% of files)
- Rarely (1%-24% of files)
- Never (0% of files)
- Don't know
- Not applicable to my work

36. In **assessing legal risk**, how often during the last two years have you or a member of the advisory team...

- a) consulted the client department?
- b) consulted specialized units within DOJ (e.g., units within the Public Law Sector, etc.)?
- c) consulted other potentially affected LSUs?
- d) reassessed risk after the initial assessment?
- e) inputted risk assessments in iCase?

Percentage of files

- Frequently (75%-100%)
- Regularly (50%-74%)
- Occasionally (25%-49%)
- Rarely (1%-24%)
- Never (0%)
- Don't know
- Not applicable to my work

37. Please rate how useful you have found the LRM assessment grid/matrix through iCase or otherwise.

- Very useful
- Useful
- Not very useful
- Not at all useful
- Not applicable, have not used this tool

38. Why do you find the LRM assessment grid/matrix not useful? (Check all that apply)

- The scale for the level of impact on the government (significant, moderate, minor) is not well defined.
- The scale for the likelihood of an adverse outcome (low - less than 30%; medium - 30%-70%; high - over 70%) does not have enough categories.
- The grid results in under-reporting the number of files that you believe are actually high risk.
- The grid results in over-reporting the number of files that you believe are actually high risk.
- The grid results in inconsistent risk level ratings across DOJ.
- The grid does not take into account urgency or time (e.g. high risk but nothing will happen for several years).
- The grid does not capture other relevant aspects of risk (please specify):  
\_\_\_\_\_
- The grid is not relevant for advisory files as it is litigation-focused.
- Other, please specify: \_\_\_\_\_

39. Why have you not used the LRM assessment grid/matrix? (Check all that apply)

- I am not aware of the LRM assessment grid.
- I do not know how to use the grid.
- The grid is not relevant for advisory files as it is litigation-focused.
- The grid will not accurately reflect the level of risk.
- Other, please specify: \_\_\_\_\_

40. How useful you have found the iCase risk evaluation screen?

- Very useful
- Useful
- Not very useful
- Not at all useful
- Not applicable/have not used this tool

41. Have you used another risk assessment tool?

- Yes, please specify: \_\_\_\_\_
- No

a) Please rate the other risk assessment tool that you have used.

- Very useful
- Useful
- Not very useful
- Not at all useful

42. In developing **legal risk management strategies**, how often during the last two years have you or a member of the advisory team...

- |   | Percentage of files                             |
|---|---|
| a) consulted the client department?   | <input type="radio"/> Frequently (75%-100%)     |
| b) consulted the LSU?   | <input type="radio"/> Regularly (50%-74%)       |
| c) consulted with specialized units within the DOJ (e.g., units within the Public Law Sector or Policy Sector, etc.)? | <input type="radio"/> Occasionally (25%-49%)    |
|   | <input type="radio"/> Rarely (1%-24%)           |
| d) consulted with other potentially affected LSUs?  | <input type="radio"/> Never (0%)                |
|   | <input type="radio"/> Don't know                |
| e) consulted LRM contact person for portfolio/region/LSU?   | <input type="radio"/> Not applicable to my work |

43. Please estimate the combined number of high risk files that you have been involved with in the last two years.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

44. Considering **only** your high risk files, how often in the last two years have you or a member of the advisory team...

- |   | Percentage of files                             |
|---|---|
| a) reported these files to senior managers in DOJ headquarters?   | <input type="radio"/> Frequently (75%-100%)     |
| b) reported these files to your manager?  | <input type="radio"/> Regularly (50%-74%)       |
| c) reported these files to client officials?  | <input type="radio"/> Occasionally (25%-49%)    |
| d) prepared Briefing Notes for these files?   | <input type="radio"/> Rarely (1%-24%)           |
| e) recommended a strategic plan to minimize identified legal risks and mitigate the risk of litigation? | <input type="radio"/> Never (0%)                |
|   | <input type="radio"/> Don't know                |
|   | <input type="radio"/> Not applicable to my work |

45. Please estimate the number of medium risk files that you have been involved with in the last two years.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

46. Considering **only** your medium risk files, how often in the last two years have you or a member of the advisory team...

- |   | Percentage of files                             |
|---|---|
| a) reported these files to senior managers in DOJ headquarters?   | <input type="radio"/> Frequently (75%-100%)     |
| b) reported these files to your manager?  | <input type="radio"/> Regularly (50%-74%)       |
| c) reported these files to client officials?  | <input type="radio"/> Occasionally (25%-49%)    |
| d) prepared Briefing Notes for these files?   | <input type="radio"/> Rarely (1%-24%)           |
| e) recommended a strategic plan to minimize identified legal risks and mitigate the risk of litigation? | <input type="radio"/> Never (0%)                |
|   | <input type="radio"/> Don't know                |
|   | <input type="radio"/> Not applicable to my work |

47. Please estimate the number of files that you have been involved with in the last two years where the risk level was **reassessed** from medium to high?

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_



48. Considering **only** files that you have been involved with that have been **reassessed** from medium to high risk in the last two years, how often have the following occurred?

- |                                  |   |
|----------------------------------|---|
|                                  | Percentage of files                             |
| a) Number of counsel increased.  | <input type="radio"/> Frequently (75%-100%)     |
| b) Senior counsel were assigned. | <input type="radio"/> Regularly (50%-74%)       |
|                                  | <input type="radio"/> Occasionally (25%-49%)    |
|                                  | <input type="radio"/> Rarely (1%-24%)           |
|                                  | <input type="radio"/> Never (0%)                |
|                                  | <input type="radio"/> Don't know                |
|                                  | <input type="radio"/> Not applicable to my work |

### Implementation of the LRM - Legislative Services

49. Taking into consideration the **legislative services files** that you have been involved with in the last two years...

- |   |   |
|---|---|
|   | Percentage of files                             |
| a) How often are legal risks identified and assessed?   | <input type="radio"/> Frequently (75%-100%)     |
| b) How often are there concerns about a provision that cannot readily be addressed within the framework of your instructions?               | <input type="radio"/> Regularly (50%-74%)       |
| c) How often are the files <b>initially reportable</b> under the <i>Department of Justice Act</i> or the <i>Statutory Instruments Act</i> ? | <input type="radio"/> Occasionally (25%-49%)    |
|   | <input type="radio"/> Rarely (1%-24%)           |
|   | <input type="radio"/> Never (0%)                |
|   | <input type="radio"/> Don't know                |
|   | <input type="radio"/> Not applicable to my work |

50. Taking into consideration your work over the last two years, for those files where the proposal or its legal foundations are not clear, how often have you or a member of the legislation or regulatory drafting team....

- |  |   |
|--|---|
|  | Percentage of files                             |
| a) used the <i>Statutory Examination and Legal Risk Management in Drafting Services</i> guidelines?  | <input type="radio"/> Frequently (75%-100%)     |
| b) consulted others within the Legislative Services Branch (such as Advisory and Development Services Group, Legislative Revision Services Group)? | <input type="radio"/> Regularly (50%-74%)       |
| c) consulted the LSU?  | <input type="radio"/> Occasionally (25%-49%)    |
|  | <input type="radio"/> Rarely (1%-24%)           |
|  | <input type="radio"/> Never (0%)                |
|  | <input type="radio"/> Don't know                |
|  | <input type="radio"/> Not applicable to my work |

- d) consulted the client department?
- e) consulted with specialized units within DOJ (e.g., units within the Public Law Sector or Policy Sector, etc.)?
- f) consulted with Justice Policy Units?
- g) consulted LRM contact person for your section?
- h) asked for a formal legal opinion?
- i) reassessed risk after the initial assessment?
- j) inputted your risk assessments in iCase?

51. Please rate how useful you have found the *Statutory Examination and Legal Risk Management in Drafting Services* guidelines and its assessment grid/matrix.

- Very useful
- Useful
- Not very useful
- Not at all useful
- Not applicable/have not used this tool

52. Why do you find the *Statutory Examination and Legal Risk Management in Drafting Services* guidelines and its assessment grid/matrix not useful? (Check all that apply)

- The scale for the level of impact on the government (significant, moderate, minor) is not well defined.
- The scale for the likelihood of an adverse outcome (low - less than 30%; medium - 30%-70%; high - over 70%) does not have enough categories.
- The grid results in under-reporting the number of files that you believe are actually high risk.
- The grid results in over-reporting the number of files that you believe are actually high risk.
- The grid results in inconsistent risk level ratings across DOJ.
- The grid does not take into account urgency or time (e.g., high risk but nothing will happen for several years).
- The grid does not capture other relevant aspects of risk, please specify:  
\_\_\_\_\_
- Other, please specify \_\_\_\_\_

53. Why have you not used the *Statutory Examination and Legal Risk Management in Drafting Services* guidelines and its assessment grid/matrix? (Check all that apply)

- I am not aware of the guidelines and assessment grid.
- I do not know how to use the grid.
- The grid will not accurately reflect the level of risk.
- Other, please specify: \_\_\_\_\_

54. How useful have you found these tools?

- a) LRM assessment grid/matrix (assess likelihood of adverse outcome and impact of loss for assessment of risk levels 1-9) through iCase or otherwise.
  - Very useful
  - Useful
  - Not very useful
  - Not useful
- b) iCase risk evaluation screen
  - Not applicable, have not used this tool
- c) Instrument choice framework.
- d) LRM Note to File reports.

55. Have you used another risk assessment tool?

- Yes, please specify: \_\_\_\_\_
- No

a) Please rate the other risk assessment tool that you have used.

- Very useful
- Useful
- Not very useful
- Not at all useful

56. Please estimate the combined number of high risk files (risk levels 6, 8, and 9) that you have been involved with in the last two years.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

57. Considering **only** your high risk files (risk levels 6, 8, and 9), how often in the last two years have you or a member of the Legislative Services team...

- |  | Percentage of files                          |
|--|--|
| a) consulted the LSU?  | <input type="radio"/> Frequently (75%-100%)  |
| b) consulted the client department?  | <input type="radio"/> Regularly (50%-74%)    |
| c) consulted with the Legislative Services Branch Advisory Section or other specialized sections within DOJ (e.g., units | <input type="radio"/> Occasionally (25%-49%) |
|  | <input type="radio"/> Rarely (1%-24%)        |
|  | <input type="radio"/> Never (0%)             |

within the Public Law Sector or Policy Sector, etc.)?

- Don't know
- Not applicable to my work

- d) brought these files to the attention of management in your unit?
- e) completed an LRM Note to File?
- f) recommended a strategic management plan to minimize identified legal risks and mitigate the risk of litigation?
- g) prepared Briefing Notes?
- h) prepared a contingency plan?

58. Please estimate the number of risk level 7 files that you have been involved with in the last two years.

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

59. Considering **only** your risk level 7 files, how often in the last two years have you or a member of the Legislative Services team...

- a) consulted the LSU?
- b) consulted the client department?
- c) consulted with the Legislative Services Branch Advisory Section or other specialized sections within DOJ (e.g., units within the Public Law Sector or Policy Sector, etc.)?
- d) brought these files to the attention of management in your unit?
- e) completed an LRM Note to File?
- f) recommended a strategic plan to minimize identified legal risks and mitigate the risk of litigation?
- g) prepared Briefing Notes?
- h) prepared a contingency plan?
- i) prepared a Note to File on the level of risk?

Percentage of files

- Frequently (75%-100%)
- Regularly (50%-74%)
- Occasionally (25%-49%)
- Rarely (1%-24%)
- Never (0%)
- Don't know
- Not applicable to my work

60. Please estimate the number of files that you have been involved with in the last two years where the risk level was **reassessed** from medium to high?

**Estimated** number of files: (enter 0 if none) \_\_\_\_\_

61. Considering **only** files that you have been involved with that have been **reassessed** from medium to high risk in the last two years, how often has senior counsel been assigned after the risk was raised?
- Frequently (75%-100% of files)
  - Regularly (50%-74% of files)
  - Occasionally (25%-49% of files)
  - Rarely (1%-24% of files)
  - Never (0% of files)
  - Don't know
  - Not applicable to my work

### **Implementation of the LRM - Policy and Program Development**

62. Taking into consideration the **policy and program development files** you have been involved with in the last two years, how often are legal risks identified and assessed?
- Frequently (75%-100% of files)
  - Regularly (50%-74% of files)
  - Occasionally (25%-49% of files)
  - Rarely (1%-24% of files)
  - Never (0% of files)
  - Don't know
  - Not applicable to my work
63. In addressing legal risk, how often during the last two years have you or a member of the policy team...
- |  | Percentage of files                             |
|--|---|
| a) consulted the client department?  | <input type="radio"/> Frequently (75%-100%)     |
| b) consulted the LSU?  | <input type="radio"/> Regularly (50%-74%)       |
| c) consulted with relevant ADM level committees?   | <input type="radio"/> Occasionally (25%-49%)    |
| d) consulted relevant federal/provincial/territorial working groups?                       | <input type="radio"/> Rarely (1%-24%)           |
| e) consulted specialized units within DOJ (e.g. units within the Public Law Sector, etc.)? | <input type="radio"/> Never (0%)                |
| f) consulted other affected portfolios?  | <input type="radio"/> Don't know                |
|  | <input type="radio"/> Not applicable to my work |

- g) consulted other potentially affected LSUs?
- h) consulted relevant external experts?
- i) consulted LRM contact person for portfolio/  
region/sector?
- j) used the instrument choice framework?
- k) reported legal risks to senior managers in  
DOJ headquarters?
- l) documented risks in the file?
- m) prepared Briefing Notes?

64. Please rate how useful you have found the LRM assessment grid/matrix.

- Very useful
- Useful
- Not very useful
- Not at all useful
- Not applicable, have not used this tool

65. Why do you find the LRM assessment grid/matrix not useful? (Check all that apply)

- The scale for the level of impact on the government (significant, moderate, minor) is not well defined.
- The scale for the likelihood of an adverse outcome (low - less than 30%; medium - 30%-70%; high - over 70%) does not have enough categories.
- The grid results in under-reporting the number of files that you believe are actually high risk.
- The grid results in over-reporting the number of files that you believe are actually high risk.
- The grid results in inconsistent risk level ratings across DOJ.
- The grid does not take into account urgency or time (e.g., high risk but nothing will happen for several years).
- The grid does not capture other relevant aspects of risk, please specify:  
\_\_\_\_\_
- Other, please specify \_\_\_\_\_

66. Why have you not used the LRM assessment grid/matrix? (Check all that apply)

- I am not aware of the LRM assessment grid.
- I do not know how to use the grid.
- The grid is not relevant for policy files as it is litigation-focused.

- The grid will not accurately reflect the level of risk.
- Other, please specify: \_\_\_\_\_

67. Do you regularly use another risk assessment tool to assist you in your policy work?

- Yes, please specify: \_\_\_\_\_
- No

a) Please rate the other risk assessment tool that you have used.

- Very useful
- Useful
- Not very useful
- Not at all useful

68. Does your unit/section identify the risk level of policy files (e.g., high, medium, low)?

- Yes
- No
- Don't know

69. How do you communicate legal risk to the federal government? (Check all that apply)

- Briefing Notes
- Memoranda to Cabinet
- Treasury Board Submissions
- Other, please specify: \_\_\_\_\_
- Don't know

### **Implementation**

70. Does your region/portfolio/sector/unit monitor the number of high risk files?

- Yes
- No
- Don't know

71. Does your region/portfolio/sector/unit monitor legal risk trends in litigation?

- Yes
- No
- Not applicable
- Don't know

72. Overall, are there sufficient guidelines to assist you in performing LRM?

- Yes
- No

73. Are you aware of other guidelines that would assist you?

- Yes, please specify: \_\_\_\_\_
- No

74. Do you know the contact person for LRM for your region/portfolio/sector/unit?

- Yes
- No
- Not applicable/Do not have a contact person.

75. In general, what percentage of your time is spent on LRM, including activities such as identifying and assessing legal risks and trends; communicating and reporting legal risks; and mitigating and managing legal risks?

- None
- 1% - 5%
- 6% - 10%
- 11% - 25%
- More than 25%
- Don't know

76. Please indicate which response **best** reflects your view of LRM.

- LRM is **essential** to successfully manage my files.
- LRM is **helpful** to successfully manage my files.
- LRM is **unnecessary** to successfully manage my files.
- LRM **detracts** from my ability to successfully manage my files.

77. How useful have you found the following structures or tools for LRM?

- |  |  |
|--|--|
| a) Instrument Choice                           | <input type="radio"/> Very useful                          |
| b) Scanning News                               | <input type="radio"/> Useful                               |
| c) Early Warning Report                        | <input type="radio"/> Not very useful                      |
| d) Briefing Notes                              | <input type="radio"/> Not at all useful                    |
| e) Summary of High Impact Litigation (Top 100) | <input type="radio"/> Have not used/Not aware of this tool |
| f) LRM Practice Group                          | <input type="radio"/> N/A                                  |
| g) Thursday Group                              |  |
| h) Radar Screen                                |  |



- i) iCase LRM reports
- j) Joint DOJ-client risk-related committees
- k) DOJ litigation or risk-related committees
- l) JUSnet intranet on LRM
- m) Judicial Review Toolkit
- n) Civil Actions Toolkit
- o) Checklist - Roles and Responsibilities
- p) Civil Actions
- q) Contingency Planning Toolkit
- r) Critical Path Template for High Impact Cases
- s) Dispute Resolution Options
- t) Effective Communication of Legal Risk
  
- u) Have you used other structures or tools?
  - Yes, please specify: \_\_\_\_\_
  - No
  
- v) Please rate the other risk structure or tool that you have used.
  - Very useful
  - Useful
  - Not very useful
  - Not at all useful

78. The following statements are about the support necessary for LRM (human, financial, information, training, technological). Please indicate your level of agreement.

- a) DOJ provides sufficient financial resources to support LRM.  Strongly agree
- b) DOJ needs to have more staff dedicated to LRM.  Agree
- c) LRM takes up too much of my time.  Disagree
- d) DOJ offers sufficient training opportunities for LRM.  Strongly disagree
- e) LRM needs more technological support.  Don't know

### Results of the LRM Initiative

79. The following statements are about possible results of LRM. Please indicate your level of agreement with each statement.

- |  |  |
|--|--|
| a) My office/unit/section has built effective LRM partnerships with its clients.   | <input type="radio"/> Strongly agree                               |
| b) Understanding of LRM has improved among client departments/agencies.  | <input type="radio"/> Agree  |
| c) Client departments/agencies are more aware of their legal risks.  | <input type="radio"/> Disagree                                     |
| d) Client departments/agencies routinely consider legal risks in the development and implementation of policies, programs and legislation. | <input type="radio"/> Strongly disagree                            |
| e) LRM has been successful in avoiding or mitigating legal risks.  | <input type="radio"/> Don't know/I am not in a position to respond |
| f) LRM has reduced government liabilities.   |  |
| g) Risk assessments are used in resource allocation and planning by the DOJ.   |  |
| h) LRM has improved the quality of legal services provided to client departments/agencies.   |  |

### Possible Areas of Improvement

80. The following statements are about possible areas of improvement for LRM. Please indicate your level of agreement with each statement.

- |   |  |
|---|--|
| a) DOJ needs to develop more national standards for LRM.                                  | <input type="radio"/> Strongly agree                               |
| b) DOJ needs to develop consistent LRM practices.   | <input type="radio"/> Agree  |
| c) LRM needs to remain flexible to meet the needs of regions/client departments/agencies. | <input type="radio"/> Disagree                                     |
| d) LRM communication strategies within DOJ should be improved.                            | <input type="radio"/> Strongly disagree                            |
| e) LRM partnerships with client departments/agencies.                                     | <input type="radio"/> Don't know/I am not in a position to respond |

agencies should be improved.

- f) DOJ needs to do more to share best practices/lessons learned.
- g) DOJ needs to provide more training to counsel on LRM.

81. Do you have any suggestions for how to improve LRM?

---

---

---

---

---

---

**Thank you for filling out our survey!**

Don't hesitate to contact us:  
Susan Kelly  
Evaluation Division  
(613) 957-7657

## **Evaluation of Legal Risk Management Case Study Interview Guide**

Since 1999, the federal government has managed potential and realized legal risks within the framework of the Legal Risk Management (LRM) Initiative. Wide in scope, the Initiative reaches into organizational structures and processes, work and management tools, and expected skills and behaviours of legal counsel and managers within the Department of Justice and Government of Canada departments and agencies.

The Department of Justice Canada's Evaluation Division is now evaluating the implementation of the LRM Initiative. As part of the data collection process, case studies of selected models of LRM will be conducted. The case studies focus on LRM processes and practices within your region/legal services unit (LSU) and not on any case-specific information.

All information that you provide is confidential and will be used only for research purposes. No individual participant will be identified in any of the reports submitted to Justice Canada. The information that you provide will be reported in aggregate form, and individual responses will not be shared outside of PRA Inc. and the DOJ LRM Evaluation Team, which includes representatives of the Evaluation Division and the Law Practice Management Directorate.

The interview should take about 60 minutes and, with your permission, will be tape-recorded to ensure the accuracy of information reported. All tape recordings will be erased at the end of the study. Finally, we would like to remind you that your participation in this interview is completely voluntary.

### **Roles and Responsibilities**

1. Please describe your current role and responsibilities. How do they relate to LRM?
2. Within your region/LSU, is there a common or shared understanding of each staff member's role and responsibilities under LRM? What is your understanding of those roles and responsibilities?
3. What is the staffing and organizational structure for LRM in your region/LSU?
  - Are there employees exclusively dedicated to LRM functions?
  - If not, are there employees who contribute significant time to LRM, outside the LRM requirements of daily practice?

- In either instance, please describe the staffing, including number of staff, their classification groups, their duties.
- Does your region/LSU have any LRM-related committees? If so, what are their responsibilities and who serves on them?

### **Identifying and Assessing Legal Risks**

4. How does your region/LSU identify and assess legal risks for litigation/litigation support/advisory files?
  - How are the activities in your region/LSU monitored to identify potential legal risks?
  - What standards/criteria are considered in assessing legal risks and what tools are used?
  - Are risk assessments entered into iCase? When would that be done and by whom?
  - Who is involved in assessing legal risks?
5. If your region/LSU uses the LRM risk matrix, what standards are used to determine the likelihood level or the impact level of loss? (*Probe: How do you decide 60% versus 80%, for example?*)
  - Do you believe that the assessed risk levels are comparable across your region/legal services unit's files? Why or why not?
6. Does your region/LSU have any standards for reassessing legal risks? If yes, what are they, and when would this reassessment typically occur? Who would be involved in reassessing risk?

### **Mitigating and Managing Legal Risks**

7. Has your region/LSU developed any structures, practices, or tools to mitigate or manage legal risk? Is the use of these various structures, practices, or tools based on the assessed level of risk (e.g., certain ones are used only in high risk cases, etc.)? Please describe these structures, practices, and tools and specify, as applicable, the level of risk to which they apply.
8. Does your region/LSU have certain standards or templates for developing contingency plans? (*Probe: At what stage in litigation are they done; who does them; when and why might they be revised, if ever?*)

9. What practices for communicating or reporting legal risk, if any, does your region/LSU use to coordinate its legal risk management with any of the following:

- DOJ headquarters
- senior management in your region/legal services unit
- relevant LSU(s)
- specialized advisory groups of the DOJ (i.e., specialized units within the Public Law Sector and Policy Sector)
- your client department(s)/agency(ies)
- other affected DOJ portfolios
- other potentially affected LSUs

How well do these practices work?

10. Has your region/legal services unit undertaken any activities to engage client departments/agencies and enhance their understanding of LRM? Please describe those activities and any best practices or lessons learned.

11. Are there any key components of your region/LSU approach to LRM that we have not yet discussed? If yes, please describe those components and who is responsible for them.

### **Resources for LRM**

12. **(Managers only)** Are there adequate resources (human, financial, information, training, technological) to support the management of legal risk in your region/legal services unit? What additional resources, if any, are needed? *(Probe: dedicated/additional staff, training opportunities, resources to overcome any technological challenges, etc.)*

13. **(Managers only)** Are risk assessments used in resource allocation and planning in your region/LSU? Please explain how they are used. *(Probe: What measures might be taken, such as additional counsel, reassignment of senior counsel to file, etc., and are there criteria for when these steps might occur?)*

### **Results**

14. In your opinion, does LRM as practiced in your region/LSU improve the quality of legal work provided to clients? If yes, in what ways? If not, why not?

15. Does LRM as practiced in your region/LSU improve client understanding, acceptance, and use of LRM? Why or why not?
16. Can you provide any examples of when LRM as practiced in your region/LSU has successfully avoided or mitigated legal risks? Has it reduced government liabilities?
17. Are there any other benefits/results from LRM in your region/LSU that we have not discussed? Are there any lessons learned?
18. Are there any aspects of your region's/LSU's LRM model that should be adopted as a standard practice nationally?
19. What suggestions, if any, do you have for improving LRM in your region/LSU?

**Thank you. We greatly appreciate your participation.**

## Evaluation of Legal Risk Management File Review — Litigation File

### Overview

1. File number: \_\_\_\_\_
2. Name of case: \_\_\_\_\_
3. Date file opened: \_\_\_\_\_(mm/dd/yy)      Date file closed: \_\_\_\_\_(mm/dd/yy)
4. Lead counsel  
Organizational unit:   ±<sub>1</sub> British Columbia           ±<sub>2</sub> Prairies                   ±<sub>3</sub> Ontario  
                                  ±<sub>4</sub> Quebec                   ±<sub>5</sub> Atlantic               ±<sub>6</sub> NCR – Civil Litigation  
                                  ±<sub>7</sub> NCR – Tax
5. Portfolio of file:  
      ±<sub>1</sub> Aboriginal           ±<sub>2</sub> Business and Regulatory   ±<sub>3</sub> Citizenship and Immigration   ±<sub>4</sub> Tax
6. Number of counsel on file: \_\_\_\_\_
7. Lead client department/agency: \_\_\_\_\_
8. Number of client departments/agencies: \_\_\_\_\_
9. Client is:   ±<sub>1</sub> Claimant   ±<sub>2</sub> Respondent   ±<sub>3</sub> Appellant   ±<sub>4</sub> Respondent on appeal   ±<sub>8</sub> Can't tell
10. 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> Tax Court of Canada       ±<sub>05</sub> Provincial Court of Appeal       ±<sub>06</sub> Provincial/territorial Superior Court  
      ±<sub>07</sub> Provincial Court           ±<sub>66</sub> Other, please specify \_\_\_\_\_
11. Legal issue and brief description of case (without waiving solicitor-client privilege):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. What was the outcome of the case?  
      ±<sub>01</sub> Settled           ±<sub>02</sub> Court decision on merits   ±<sub>03</sub> Court decision on merits in favour of other party  
                                  in favour of government  
      ±<sub>04</sub> Case dismissed   ±<sub>05</sub> Case withdrawn           ±<sub>66</sub> Other, please specify  
\_\_\_\_\_  
\_\_\_\_\_
13. Has the case been appealed or judicially reviewed?  
      ±<sub>1</sub> Yes (If yes, remember to   ±<sub>0</sub> No   ±<sub>7</sub> Not applicable (cannot appeal from   ±<sub>8</sub> No decision on appeal  
          complete Appeal/JR section.)           decision – e.g., Supreme Court file)       yet/can't determine



**iCase information**

14. Potential client impact:

± <sub>01</sub> Affects administration of justice/public confidence	± <sub>02</sub> Affects federal, provincial or international relations, treaties or agreements	± <sub>03</sub> Legal issues or events that may be controversial, attract significant national media attention, or involve Cabinet Ministers or prominent public figures
± <sub>04</sub> Limitations of federal jurisdiction	± <sub>05</sub> Major effect on fiscal resources of client or government	± <sub>06</sub> Major effect on human rights, personnel, access and privacy, gender or diversity issues
± <sub>07</sub> Major effect on law/regulations of client or government	± <sub>08</sub> Major effect on programs/policies/initiatives of client or government	± <sub>09</sub> Major effect on relations with Aboriginal people, Métis
± <sub>10</sub> Major effect on the Charter or Constitution		± <sub>77</sub> Not applicable ± <sub>88</sub> Unable to assess

15. Complexity:

±<sub>1</sub> Low            ±<sub>2</sub> Medium            ±<sub>3</sub> High            ±<sub>4</sub> Mega            ±<sub>7</sub> Not applicable

16. Amount claimed (\$): \_\_\_\_\_ ±<sub>8</sub> Unable to assess

17. Possibility of settlement:

±<sub>1</sub> Low            ±<sub>2</sub> Medium            ±<sub>3</sub> High            ±<sub>7</sub> Not applicable            ±<sub>8</sub> Unable to assess

18. Settlement estimate (\$): \_\_\_\_\_ to \_\_\_\_\_ ±<sub>8</sub> Unable to assess

19. Risk level (1-9): \_\_\_\_\_ b. Earlier risk level (if available through iCase) \_\_\_\_\_

20. Amount at risk (\$): \_\_\_\_\_ ±<sub>8</sub> Unable to assess

21. Contingent gain (\$): \_\_\_\_\_ ±<sub>8</sub> Unable to assess

22. Flags:            ±<sub>1</sub> Important/test            ±<sub>2</sub> Publication ban

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

23. What legal risks are identified? Please check all that apply. 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 Q14). 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.

- |   |  |   |
|---|--|---|
| ± <sub>01</sub> New/novel legal issue                                 | ± <sub>02</sub> Constitutional or charter issue                            | ± <sub>03</sub> Issue with availability of evidence |
| ± <sub>04</sub> Issue with availability of affiants/witnesses         | ± <sub>05</sub> Difficult facts to support claim/defence                   | ± <sub>06</sub> Unfavourable case law               |
| ± <sub>07</sub> Significant media interest                            | ± <sub>07</sub> Potential to lead to termination or elimination of program | ± <sub>08</sub> Class action                        |
| ± <sub>08</sub> Cabinet Ministers or other prominent figures involved | ± <sub>09</sub> Legal issue considered controversial                       | ± <sub>10</sub> Case involves national security     |
| ± <sub>66</sub> Other, please specify _____                           |  | ± <sub>88</sub> Can't tell                          |

24. Is there a risk level indicated in the file?

- ±<sub>1</sub> Yes                      ±<sub>0</sub> No (GO TO Q38)

25. What is the **initial (or only)** risk level (1-9)? \_\_\_\_\_

26. Date of **initial (or only)** risk assessment: \_\_\_\_\_(mm/dd/yy)

- ±<sub>88</sub> Can't tell

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

- |                                    |   |  |                                |
|------------------------------------|---|--|--------------------------------|
| ± <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     |

28. Who was consulted in the **initial (or only)** risk assessment?

- |   |                            |   |   |
|---|----------------------------|---|---|
| ± <sub>00</sub> No one indicated in file    |                            |   |   |
| ± <sub>01</sub> Client department/agency    | ± <sub>02</sub> Client LSU | ± <sub>03</sub> Specialized unit within the Department (e.g., Public Law Sector or Policy Sector, etc.) | ± <sub>04</sub> Other potentially affected LSUs |
| ± <sub>66</sub> Other, please specify _____ |                            |   | ± <sub>88</sub> Can't tell                      |

29. Was risk **reassessed**?

- ±<sub>1</sub> Yes                      ±<sub>0</sub> No (GO TO Q36)                      ±<sub>8</sub> Can't determine (GO TO Q36)

30. What is the **final** risk level (1-9)? \_\_\_\_\_

31. Date of **final** risk assessment: \_\_\_\_\_(mm/dd/yy)

- ±<sub>88</sub> Can't tell

32. Reasons risk was **reassessed** (from notes field in iCase, information found in file – circle which source used):

---



---



---

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

- ±<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

34. Who was consulted in **reassessing** risk?

- ±<sub>00</sub> No one indicated in file  
 ±<sub>01</sub> Client department/ agency      ±<sub>02</sub> Client LSU      ±<sub>03</sub> Specialized unit within the Department (e.g., Public Law Sector or Policy Sector, etc.)      ±<sub>04</sub> Other potentially affected LSUs  
 ±<sub>66</sub> Other, please specify \_\_\_\_\_      ±<sub>88</sub> Can't tell

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

- ±<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

36. Was outcome of the case affected by the risk rating? (Only indicate if this is clear in the file – e.g., settled after risk level assessed at high and counsel indicates this as reason)

- ±<sub>1</sub> Yes      ±<sub>0</sub> No      ±<sub>8</sub> Can't determine

37. Was the decision on whether to appeal affected by the risk rating? (only indicate if this is clear in the file)

- ±<sub>1</sub> Yes      ±<sub>0</sub> No      ±<sub>7</sub> Not applicable (cannot appeal from decision – e.g., Supreme Court file)      ±<sub>8</sub> No decision on whether to appeal yet/Can't determine

38. At what stage were dispute resolution (DR) options considered?

- ±<sub>00</sub> DR not considered (GO TO Q41)  
 ±<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

39. At what stage were DR options used?

- ±<sub>00</sub> DR not used (GO TO Q41)  
 ±<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



- ±<sub>01</sub> Senior management in DOJ headquarters    ±<sub>02</sub> Regional managers    ±<sub>03</sub> Litigation or risk-related committees    ±<sub>04</sub> Client's LSU
- ±<sub>05</sub> Client officials    ±<sub>06</sub> Portfolio managers
- ±<sub>66</sub> Other (please specify) \_\_\_\_\_    ±<sub>88</sub> Can't tell

44. Was the case included in any of the following?

- ±<sub>01</sub> Early Warning Reports    ±<sub>02</sub> Top 100 High Impact Reports    ±<sub>03</sub> Radar Screen    ±<sub>04</sub> Scanning News

45. Please include any other information that you believe would be useful in understanding how risk was assessed or managed in this file.

---



---



---



---



---

**For all files where Q13 is yes (was appealed/JR)  
iCase information (from Appeal/JR file)**

46. Potential client impact:

- ±<sub>01</sub> Affects administration of justice/public confidence    ±<sub>02</sub> Affects federal, provincial or international relations, treaties or agreements    ±<sub>03</sub> Legal issues or events that may be controversial, attract significant national media attention, or involve Cabinet Ministers or prominent public figures
- ±<sub>04</sub> Limitations of federal jurisdiction    ±<sub>05</sub> Major effect on fiscal resources of client or government    ±<sub>06</sub> Major effect on human rights, personnel, access and privacy, gender or diversity issues
- ±<sub>07</sub> Major effect on law/regulations of client or government    ±<sub>08</sub> Major effect on programs/policies/initiatives of client or government    ±<sub>09</sub> Major effect on relations with Aboriginal people, Métis
- ±<sub>10</sub> Major effect on the Charter or Constitution    ±<sub>11</sub> Matter of national interest    ±<sub>77</sub> Not applicable  
±<sub>88</sub> Unable to assess

47. Complexity:

- ±<sub>1</sub> Low    ±<sub>2</sub> Medium    ±<sub>3</sub> High    ±<sub>4</sub> Mega    ±<sub>7</sub> Not applicable

48. Amount claimed (\$): \_\_\_\_\_    ±<sub>8</sub> Unable to assess

49. Possibility of settlement:

- ±<sub>1</sub> Low    ±<sub>2</sub> Medium    ±<sub>3</sub> High    ±<sub>7</sub> Not applicable    ±<sub>8</sub> Unable to assess

50. Settlement estimate (\$): \_\_\_\_\_ to \_\_\_\_\_    ±<sub>8</sub> Unable to assess

- 51. Risk level (1-9): \_\_\_\_\_
- 52. Amount at risk (\$): \_\_\_\_\_ ±<sub>8</sub> Unable to assess
- 53. Contingent gain (\$): \_\_\_\_\_ ±<sub>8</sub> Unable to assess
- 54. Flags:            ±<sub>1</sub> Important/test            ±<sub>2</sub> Publication ban

**Evaluation of Legal Risk Management  
File Review — Non-litigation File**

**Overview**

- 1. File number: \_\_\_\_\_
- 2. Name of case: \_\_\_\_\_
- 3. Date file opened: \_\_\_\_\_ (mm/dd/yy)      Date file closed: \_\_\_\_\_ (mm/dd/yy)
- 4. Type of file
  - ±<sub>1</sub> Advisory            ±<sub>2</sub> Policy/Program            ±<sub>3</sub> Legislative Services
- 5. Lead counsel:
  - Organizational unit:      ±<sub>1</sub> British Columbia            ±<sub>2</sub> Prairies            ±<sub>3</sub> Ontario
  - ±<sub>4</sub> Quebec            ±<sub>5</sub> Atlantic            ±<sub>6</sub> NCR – Civil Litigation
  - ±<sub>7</sub> Policy Sector            ±<sub>8</sub> Legislative Services            ±<sub>9</sub> Public Law Sector
- 6. Portfolio of file:
  - ±<sub>1</sub> Aboriginal      ±<sub>2</sub> Business and Regulatory      ±<sub>3</sub> Citizenship and Immigration
- 7. Number of counsel on file: \_\_\_\_\_
- 8. Lead client department/agency: \_\_\_\_\_
- 9. Number of client departments/agencies involved: \_\_\_\_\_
- 10. Legal issue and brief description of case (without waiving solicitor-client privilege):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. What was the outcome of the file?

- |  |  |  |
|--|--|--|
| ± <sub>01</sub> Client accepted legal risks identified and proceeded as originally planned | ± <sub>02</sub> Client accepted legal advice and adopted option to reduce/mitigate legal risks | ± <sub>03</sub> Litigation action/challenge brought against government |
| ± <sub>04</sub> Litigation action/challenge brought by government                          | ± <sub>66</sub> Other, please specify<br>_____<br>_____  | ± <sub>88</sub> Can't determine  |

**iCase information**

12. Potential client impact:

- |   |  |  |
|---|--|--|
| ± <sub>01</sub> Affects administration of justice/public confidence     | ± <sub>02</sub> Affects federal, provincial or international relations, treaties or agreements | ± <sub>03</sub> Legal issues or events that may be controversial, attract significant national media attention, or involve Cabinet Ministers or prominent public figures |
| ± <sub>04</sub> Limitations of federal jurisdiction                     | ± <sub>05</sub> Major effect on fiscal resources of client or government                       | ± <sub>06</sub> Major effect on human rights, personnel, access and privacy, gender or diversity issues  |
| ± <sub>07</sub> Major effect on law/regulations of client or government | ± <sub>08</sub> Major effect on programs/policies/initiatives of client or government          | ± <sub>09</sub> Major effect on relations with Aboriginal people, Métis  |
| ± <sub>10</sub> Major effect on the Charter or Constitution             | ± <sub>11</sub> Matter of national interest  | ± <sub>77</sub> Not applicable<br>± <sub>88</sub> Unable to assess   |

13. Complexity:

- ±<sub>1</sub> Low      ±<sub>2</sub> Medium      ±<sub>3</sub> High      ±<sub>4</sub> Mega      ±<sub>7</sub> Not applicable

14. Amount at risk (\$): \_\_\_\_\_ ±<sub>8</sub> Unable to assess

15. Risk level (1-9): \_\_\_\_\_ b. Earlier risk level (if available through iCase) \_\_\_\_\_

16. Amount at risk (\$): \_\_\_\_\_ ±<sub>8</sub> Unable to assess

17. Contingent gain (\$): \_\_\_\_\_ ±<sub>8</sub> Unable to assess

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

18. What legal risks are identified? Please check all that apply. 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 Q12). 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.

- |   |  |   |
|---|--|---|
| ± <sub>01</sub> New/novel legal issue                                 | ± <sub>02</sub> Constitutional or charter issue                            | ± <sub>03</sub> Issue with availability of evidence |
| ± <sub>04</sub> Issue with availability of affiants/witnesses         | ± <sub>05</sub> Difficult facts to support claim/defence                   | ± <sub>06</sub> Unfavourable case law               |
| ± <sub>07</sub> Significant media interest                            | ± <sub>07</sub> Potential to lead to termination or elimination of program | ± <sub>08</sub> Class action                        |
| ± <sub>08</sub> Cabinet Ministers or other prominent figures involved | ± <sub>09</sub> Legal issue considered controversial                       | ± <sub>10</sub> Case involves national security     |
| ± <sub>66</sub> Other, please specify _____                           |  | ± <sub>88</sub> Can't tell                          |

19. Is there a risk level indicated in the file?

- ±<sub>1</sub> Yes                      ±<sub>0</sub> No (GO TO Q31)

20. What is the **initial (or only)** risk level (1-9)?

\_\_\_\_\_

21. Date of **initial (or only)** risk assessment:

\_\_\_\_\_ (mm/dd/yy)                      ±<sub>88</sub> Can't tell

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

- |   |  |   |
|---|--|---|
| ± <sub>01</sub> During policy, program, legislation or regulation development | ± <sub>02</sub> After policy, program, legislation or regulation development and during implementation phase | ± <sub>03</sub> In anticipation of or in preparation for litigation challenge |
| ± <sub>66</sub> Other, please specify _____                                   |  | ± <sub>88</sub> Can't determine   |

23. Who was consulted in the **initial (or only)** risk assessment?

- |   |                            |   |   |
|---|----------------------------|---|---|
| ± <sub>00</sub> No one indicated in file    |                            |   |   |
| ± <sub>01</sub> Client department/ agency   | ± <sub>02</sub> Client LSU | ± <sub>03</sub> Specialized unit within the Department (e.g., Public Law Sector, Policy Sector, Legislative Services) | ± <sub>04</sub> Other potentially affected LSUs |
| ± <sub>66</sub> Other, please specify _____ |                            |   | ± <sub>88</sub> Can't tell                      |

24. Was risk **reassessed**?

- ±<sub>1</sub> Yes                      ±<sub>0</sub> No (GO TO Q31)                      ±<sub>8</sub> Can't determine (GO TO Q31)

25. What is the **final** risk level (1-9)?

\_\_\_\_\_

26. Date of **final** risk assessment: \_\_\_\_\_(mm/dd/yy)

±<sub>88</sub> Can't tell



27. Reasons risk was **reassessed** (from notes field in iCase, information found in file – note which source used):

---



---



---



---



---



---



---

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

- |   |  |   |
|---|--|---|
| ± <sub>01</sub> During policy, program, legislation or regulation development | ± <sub>02</sub> After policy, program, legislation or regulation development and during implementation phase | ± <sub>03</sub> In anticipation of or in preparation for litigation challenge |
| ± <sub>66</sub> Other, please specify _____                                   |  | ± <sub>88</sub> Can't determine   |

29. Who was consulted in **reassessing** risk?

- |  |   |                            |   |   |
|--|---|----------------------------|---|---|
| ± <sub>00</sub> No one indicated in file | ± <sub>01</sub> Client department/ agency   | ± <sub>02</sub> Client LSU | ± <sub>03</sub> Specialized unit within the Department (e.g., Public Law Sector, Policy Sector, Legislative Services) | ± <sub>04</sub> Other potentially affected LSUs |
|  | ± <sub>66</sub> Other, please specify _____ |                            |   | ± <sub>88</sub> Can't tell                      |

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

- |   |  |   |   |
|---|--|---|---|
| ± <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                        |

31. Were dispute resolution (DR) options considered?

- |                    |                               |                                       |
|--------------------|-------------------------------|---------------------------------------|
| ± <sub>1</sub> Yes | ± <sub>0</sub> No (GO TO Q33) | ± <sub>88</sub> Don't know/can't tell |
|--------------------|-------------------------------|---------------------------------------|

32. What DR options were used?

- |                                      |  |                                       |
|--------------------------------------|--|---------------------------------------|
| ± <sub>00</sub> DR not used          |  |                                       |
| ± <sub>66</sub> DR method used _____ |  | ± <sub>88</sub> Don't know/can't tell |

**Communications**

33. Which of the following documents related to assessing and managing legal risk are in the file:  
(Check each type of document found in file)

<b>Types of documents</b>	<b>Time frame (Check all that apply)</b>
± <sub>01</sub> Risk assessment document (including legal opinions setting out risks and options to mitigate/avoid risks)	43a. Initial date on document (mm/dd/yyyy) _____
± <sub>02</sub> Contingency plan	43b. When were contingency plans drafted? ± <sub>1</sub> After risk was initially assessed ± <sub>2</sub> After risk assessment level changed
± <sub>03</sub> Communication plan (should be part of contingency plan, but check to ensure it is)	N/A
± <sub>04</sub> Briefing Notes	43c. When were the Briefing Notes drafted? ± <sub>1</sub> After risk was initially assessed ± <sub>2</sub> After risk assessment level changed
± <sub>07</sub> Media monitored (e.g., press clippings in file, etc.)	N/A
± <sub>66</sub> Other risk-related documents (please specify) _____ _____	

34. In developing **legal risk management strategies**, is there an indication in the file that any of the following were consulted?

± <sub>00</sub> No consultation indicated in file				
± <sub>01</sub> Client department	± <sub>02</sub> Client's LSU	± <sub>03</sub> DOJ Manager	± <sub>04</sub> Litigation or risk-related committee	
± <sub>05</sub> LRM contact person for region/section	± <sub>06</sub> Specialized unit within the DOJ (e.g., Public Law Sector or Policy Sector, etc.)		± <sub>07</sub> Potentially affected LSU	
± <sub>66</sub> Other (please specify) _____			± <sub>88</sub> Can't tell	

35. Is there an indication in the file that any of the following stakeholders were advised of legal risks and risk-related events (i.e., did counsel report the files to senior management and others)?

± <sub>00</sub> No indication that anyone was advised of legal risks in file			
± <sub>01</sub> Senior management in DOJ headquarters	± <sub>02</sub> Regional managers	± <sub>03</sub> Litigation or risk-related committees	± <sub>04</sub> Client's LSU
± <sub>05</sub> Client officials	± <sub>06</sub> Portfolio managers		
± <sub>66</sub> Other (please specify) _____			± <sub>88</sub> Can't tell

36. Please include any other information that you believe would be useful in understanding how risk was assessed or managed in this file.

---



---



---



---



---



---

## **Evaluation of Legal Risk Management Focus Group Moderator's Guide**

### **Introduction**

Hello everyone. Thank you for coming to our meeting. My name is (*name*), and I work for PRA, an independent research company. We have been hired by the Department of Justice (DOJ) to conduct an evaluation of legal risk management in the DOJ. The purpose of the evaluation is to examine how legal risk management has been implemented in the Department of Justice and to assess whether the structures and processes put in place to support legal risk management are contributing to the effective management of legal risk in the federal government. The results of the evaluation will be used to provide strategic advice to senior management of the Department.

As part of this study, we are holding three discussion groups like this one with selected client departments and agencies.

Before we begin, I have some meeting guidelines I would like to review.

- There are no right or wrong answers, so please feel free to provide your honest opinions.
- If you have a cell phone, please make sure that it is turned off.
- Because we are audio-taping our discussion, please try to speak up and talk one at a time. We audio-tape the group in order to make sure that our notes accurately reflect what everyone says. In our report, we will not use your name or any information that might identify you or your department or agency. After the report is complete, we destroy the tapes.

Does anyone have any questions?

Please feel free to discuss the questions in the official language of your choice.

1. To begin our discussion, what do you consider to be the respective roles of the DOJ and client departments and agencies in legal risk management?

I'd like to ask a few questions about the consultations between your department or agency and the DOJ concerning legal risks.

2. What are your expectations for the frequency and content of consultations with DOJ lawyers concerning the assessment of legal risk, in particular the impact of the legal risk on your department/agency? (*Probe: Do you agree with DOJ counsel's risk assessments? If not, why not? Which level of the client department/agency management should be consulted in assessing the potential impact of the legal risk [e.g., regions, headquarters, both]?*)
3. What are your expectations for the frequency and content of consultations with DOJ lawyers concerning the management of legal risk? (*Probe: Are you provided with options or alternative means of resolving disputes? Is contingency planning occurring? Do you find it useful?*)
4. How do you prefer that legal risks be communicated? (*Probe: a number on a risk rating grid, percentage likelihood of adverse outcome, high/medium/low*). Is consistent language used in communicating legal risk? Does that matter to you?
5. Do DOJ communications about legal risk assist your department or agency with its corporate decision making? (*Probe: Do legal risks affect your department or agency's priorities, strategic planning, allocation of resources?*)

I'd like to explore a bit further the partnership between the DOJ and your department or agency with respect to legal risk management.

6. What factors affect your department/agency's level of involvement in legal risk management? Are there any barriers to engaging with the DOJ on managing legal risk? (*Probe: cost recovery; perceptions of DOJ – its role does not extend to policy and program advice, DOJ seen as roadblock, etc.*)
7. Has your department/agency experienced any benefits from legal risk management? (*Probe: Has your department or agency's awareness of legal risks improved? Has legal risk management helped your department or agency to avoid or mitigate legal risks? Has legal risk management affected your relationship with the DOJ?*)

8. In your view, how could client–DOJ partnerships for managing legal risk be improved?

**Thank you for your participation.**



**APPENDIX D**  
**Bibliography for the Literature Review**





## Bibliography

Audit and Evaluation Directorate. (2006, July). *Department of Fisheries and Oceans Corporate Risk Profile*. Retrieved May 13, 2008, from [http://www.dfo-mpo.gc.ca/communic/cread/irm/profile\\_2006\\_e.htm](http://www.dfo-mpo.gc.ca/communic/cread/irm/profile_2006_e.htm)

Auditor General Victoria. (2007). *Managing Risk Across the Public Sector. Toward Good Practice. Auditing the Public Interest*. State of Victoria. Retrieved March 6, 2008, from [http://www.vmia.vic.gov.au/skillsEDIT/clientuploads/48/VMIASeminar12Sep07\\_1.pdf](http://www.vmia.vic.gov.au/skillsEDIT/clientuploads/48/VMIASeminar12Sep07_1.pdf)

Borraz, O. (2007). Risk and Public Problems. *Journal of Risk Research*, 10(7), 941-957.

British Columbia Ministry of Sustainable Resource Management. (February 12, 2002). *Project Management - Risk Management Standards*. Retrieved May 13, 2008, from [http://srmwww.gov.bc.ca/imb/3star/sdlc/8manage/risks/risk\\_std.html#Appendix%20A](http://srmwww.gov.bc.ca/imb/3star/sdlc/8manage/risks/risk_std.html#Appendix%20A)

Cardona, O.D. (2003). The Need for Rethinking the Concepts of Vulnerability and Risk from a Holistic Perspective: A Necessary Review and Criticism for Effective Risk Management. In Bankroff, G., Freks, G., & Hillhorst D. (Eds.) *Mapping Vulnerability: Disasters, Development and People* (Chapter 3). London: Earthscan Publishers.

Consulting and Audit Canada. (2004, March). *An Integrated Risk Management Rramework for Small Agencies*. (Version 1.1). Retrieved May 13, 2008, from: [http://www.cso-cpo.gc.ca/mm-mm/documents/GENERIC\\_IRM\\_for\\_small\\_agencies\\_2004-04-01.DOC](http://www.cso-cpo.gc.ca/mm-mm/documents/GENERIC_IRM_for_small_agencies_2004-04-01.DOC)

Frewer, L. (2004). The public and effective risk communication. *Toxicology Letters*, 149 (1-3), 391-397.

Government of British Columbia. (2006). *Enterprise Risk Management (ERM) Guideline*. Risk Management Branch and Government Security Office.

Health and Safety Executive. (2001). *Reducing risks, protecting people: HSE's decision-making process*. Retrieved May 13, 2008, from <http://www.hse.gov.uk/risk/theory/r2p2.pdf>

Health Canada. (2006). *A Framework for Strategic Risk Communications Within the Context of Health Canada and the PHAC's Integrated Risk Management*. Retrieved May 13, 2008, from [http://www.hc-sc.gc.ca/ahc-asc/alt\\_formats/cmcd-dcmc/pdf/pubs/ris/ris-comm\\_e.pdf](http://www.hc-sc.gc.ca/ahc-asc/alt_formats/cmcd-dcmc/pdf/pubs/ris/ris-comm_e.pdf)

- Health Canada. (2000, August 1). *Health Canada Decision-Making Framework for Identifying, Assessing, and Managing Health Risks*. Retrieved May 13, 2008, from [http://www.hc-sc.gc.ca/ahc-asc/alt\\_formats/hpfb-dgpsa/pdf/pubs/risk-risques\\_e.pdf](http://www.hc-sc.gc.ca/ahc-asc/alt_formats/hpfb-dgpsa/pdf/pubs/risk-risques_e.pdf)
- Hill, S. (2001). *A Primer on Risk Management in the Public Service*. University of Calgary: A background document for CCMD's Action-Research Roundtable on Risk Management.
- HM Government. (2006, March). *Risk: Good Practice in Government*. Retrieved May 13, 2008, from [http://www.hm-treasury.gov.uk/media/5/1/goodpractice\\_guidance\\_inngovernment\\_vol1\\_0306.pdf](http://www.hm-treasury.gov.uk/media/5/1/goodpractice_guidance_inngovernment_vol1_0306.pdf)
- HM Treasury. (2004, October). *The Orange Book: Management of Risk – Principles and Concepts*. Retrieved May 13, 2008, from <http://www.hm-treasury.gov.uk/media/3/5/FE66035B-BCDC-D4B3-11057A7707D2521F.pdf>
- Hood, J., Asenova, D., Bailey, S., & Manochin, M. (2007). The UK's Prudential Borrowing Framework: A Retrograde Step in Managing Risk? *Journal of Risk Research*, 10(1), 49-66.
- Indian and Northern Affairs Canada (INAC). (2002, May). *Integrated Management of Risk Framework*. (Version 4.2). (Originally published in February 2002). Retrieved May 13, 2008, from [http://www.ainc-inac.gc.ca/mc/lnk/fram\\_e.pdf](http://www.ainc-inac.gc.ca/mc/lnk/fram_e.pdf)
- Klinke, A, Dryer, M, Renn, O., Stirling, A, & Van Zwanenbert, P. (2006). Precautionary Risk Regulation in European Governance. *Journal of Risk Research*, 9(4), 373-392.
- KMPG (1999). *Best practices in risk management: Private and public sectors internationally*. Prepared for Treasury Board Secretariat: Ottawa, Ontario. Retrieved March 6, 2008, from [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/RiskManagement/dwnld/rm-pps\\_e.rtf](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/RiskManagement/dwnld/rm-pps_e.rtf)
- Leysen, J. & Van Nuffel, L (date unknown). *A Framework for the Evaluation of Integrated Risk and Performance Management*. Department of Economics, Management and Leadership Royal Military Academy, Brussels (Belgium).
- Lofstedt, R.E. (2007). The 'plateau-ing' of the European Better Regulation Agenda: An analysis of activities carried out by the Barroso Commission. *Journal of Risk Research*, 10(4), 423-447.

- Mackie, K., & Shoylekov, R. (2003). ADR - A useful tool in legal risk management. *Oil, Gas and Energy Law Intelligence*, 1(2). Retrieved March 6, 2008, from [http://www.gasandoil.com/ogel/samples/freearticles/article\\_61.htm](http://www.gasandoil.com/ogel/samples/freearticles/article_61.htm)
- Macaulay. (2007, September). Risky Business: Managing Risk in the Public Service of Canada. *Public Policy Forum*. Retrieved May 13, 2008, from [http://www.pppforum.ca/common/assets/publications/en/risky%20business\\_reportfn.pdf](http://www.pppforum.ca/common/assets/publications/en/risky%20business_reportfn.pdf)
- Monpetit, E., & Rouillard, C. (2008). Culture and the Democratization of Risk Management: The Widening Biotechnology Gap between Canada and France. *Administration & Society*, 39:907.
- Office of the Auditor General of Canada. (2003). *Report of the Auditor General of Canada to the House of Commons - Chapter 1 Integrated Risk Management*. Government of Canada. Retrieved March 6, 2008, from <http://www.oag-bvg.gc.ca/internet/docs/20030401ce.pdf>
- Performance Management Network Inc. (1999). *Review of Canadian Best Practices in Risk Management: Summary of Findings*. Prepared for Treasury Board of Canada Secretariat. Retrieved March 6, 2008, from [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/RiskManagement/dwnld/rm-rcbp\\_e.rtf](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/RiskManagement/dwnld/rm-rcbp_e.rtf)
- Power, M. (2007). *Organized Uncertainty: Designing a World of Risk Management*. Oxford University Press.
- Privy Council Office. (2000). *Risk Management for Canada and Canadians: Report of the ADM Working Group on Risk Management*. Government of Canada. Retrieved March 6, 2008, from [http://www.pco-bcp.gc.ca/docs/information/Publications/social-dev/risk-management\\_e.PDF](http://www.pco-bcp.gc.ca/docs/information/Publications/social-dev/risk-management_e.PDF)
- Public Service Commission (2002). *Integrated Risk Management in the Public Service: A Provincial Perspective*. New Zealand. Retrieved March 6, 2008, from <http://www.psc.gov.za/docs/reports/2002/riskman.pdf>.
- RiskCover. (2007, January). *Western Australian Government Risk Management Guidelines*. (First Edition). Retrieved May 13, 2008, from [http://www.riskcover.wa.gov.au/riskmanagement/pdf/rm\\_guidelines.pdf](http://www.riskcover.wa.gov.au/riskmanagement/pdf/rm_guidelines.pdf)

- Torrity, J. (2007). Impact Assessment in the EU: A Tool for Better Regulation, Less Regulation or Less Bad Regulation? *Journal of Risk Research*, 10(2), 239-276.
- Transport Canada. (2004, August). *Risk Management & Decision Making in Civil Aviation: Type 2A, Short Process*. (4<sup>th</sup> edition). Retrieved May 13, 2008, from: <http://www.tc.gc.ca/publications/BIL/TP13905/PDF/HR/TP13905b.pdf>
- Treasury Board of Canada Secretariat (TBS). (2005). *Applied Risk Management: Examples from Federal Departments and Agencies*. Retrieved May 13, 2008, from [http://www.tbs-sct.gc.ca/rm-gr/arm-pgr/exfed\\_e.pdf](http://www.tbs-sct.gc.ca/rm-gr/arm-pgr/exfed_e.pdf)
- Treasury Board of Canada Secretariat (2003). *Integrated Risk Management - Implementation Guide*. Government of Canada. Retrieved March 6, 2008, from [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/RiskManagement/dwnld/guide\\_e.pdf](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/RiskManagement/dwnld/guide_e.pdf)
- Treasury Board of Canada Secretariat (2001). *Integrated Risk Management Framework*. Government of Canada. Retrieved March 6, 2008, from [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/RiskManagement/dwnld/rmf-cgr\\_e.pdf](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/RiskManagement/dwnld/rmf-cgr_e.pdf)
- Treasury Board of Canada Secretariat. (1999, April 26). *Review of Canadian Best Practices in Risk Management: Summary of Findings*. Retrieved May 13, 2008, from [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/RiskManagement/dwnld/rm-rcbp\\_e.rtf](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/RiskManagement/dwnld/rm-rcbp_e.rtf)
- University of Canterbury. (2008, February 15). *Risk Management & Compliance Framework*. (Originally published February 2005). Available May 13, 2008, from <http://www.canterbury.ac.nz/piru/>
- Yiallourous, C. & Bruhn, D. (Year unknown). *Risk Management in the S.A. Public Sector*. PowerPoint Presentation for the Government of South Australia: Department of Treasury and Finance.

**APPENDIX E**  
**Results of Management Accountability Framework Assessments**



### Level of client engagement as evidenced by Management Accountability Framework (MAF) Assessments (2005)

Department/Agency	Rating <sup>37</sup>	LRM-related information
Agriculture and Agrifood Canada	Unrated	<ul style="list-style-type: none"> <li>• Legal Services and Human Resources to engage in risk identification/assessment and advice on training</li> </ul>
Atlantic Canada Opportunities Agency	Unrated	<ul style="list-style-type: none"> <li>• Senior Legal Counsel sits on Agency's Executive Committee</li> <li>• Senior management in consultation with Senior Legal Counsel are involved in developing legal risk management strategies, including contingency plans</li> <li>• Senior Legal Counsel approves all TBS submissions, memoranda to Cabinet, contribution agreements</li> </ul>
Canada Border Services Agency (CBSA)	Unrated	<ul style="list-style-type: none"> <li>• Legal Services Unit (LSU) is represented and participates in all senior management committees</li> <li>• CBSA and its LSU are discussing a process to more regularly monitor and review policies and programs for legal risks</li> </ul>
Canada Industrial Relations Board	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Canada Revenue Agency (CRA)	Unrated	<ul style="list-style-type: none"> <li>• Appeals Branch has a Risk Management Committee</li> <li>• Tri-departmental Legal Risk Management Committee with CRA, Justice, and Finance. Senior managers oversee highest risk tax litigation</li> <li>• LSU monitors non-program litigation against CRA</li> <li>• LSU provides legal awareness training</li> </ul>
Canada School of Public Service	Unrated	<ul style="list-style-type: none"> <li>• Contingency planning is occurring</li> <li>• TBS publication on legal risk is distributed to senior officials</li> </ul>
Canadian Environmental Assessment Agency	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Canadian Firearms Centre	Unrated	<ul style="list-style-type: none"> <li>• Litigation Committee is chaired by Commissioner and has representation from senior executives. Committee discussions used to develop legal risk management strategies and to assess risk</li> </ul>
Canadian Food Inspection Agency (CFIA)	Unrated	<ul style="list-style-type: none"> <li>• Conduct legal environmental scanning daily. Formal scanning has not occurred since 2002 but is scheduled to begin again in 2006-07</li> <li>• LSU provides quarterly Litigation Reports on litigation involving CFIA</li> <li>• LSU conducted workshops on how to reduce risk of litigation</li> <li>• Contingency planning framework is being developed</li> <li>• LSU briefs senior executives on legal issues and trends</li> <li>• Briefing Notes are provided on important steps in major litigation, and senior executives provide instruction on managing legal risk</li> <li>• Provides information for Justice's legal risk reports (Top 100, High Impact Cases, Early Warning Cases, etc.)</li> </ul>

<sup>37</sup> This terminology for ratings is used in the MAF Assessments. The meaning of these ratings is not defined.

Department/Agency	Rating <sup>37</sup>	LRM-related information
Canadian Heritage (PCH)	Unrated	<ul style="list-style-type: none"> <li>• PCH Committee on Legal Services Priorities and Planning that LSU Head and senior executives sit on</li> <li>• LSU prepares an inventory of all active and potential litigation</li> <li>• LSU prepares a profile of all high risk files involving PCH that is also provided to Justice Canada</li> <li>• Provides information for Justice's legal risk reports (Top 100, High Impact Cases, Early Warning Cases, etc.)</li> </ul>
Canadian Intergovernmental Conference Secretariat	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Canadian International Development Agency (CIDA)	Acceptable	<ul style="list-style-type: none"> <li>• LSU and CIDA are identifying legal risks and are incorporating into IRM process</li> <li>• Legal risks are shared with Justice and other departments as appropriate</li> </ul>
Canadian International Trade Tribunal	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Canadian Radio-television and Telecommunications Commission	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Canadian Security Intelligence Service	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Canadian Space Agency	Unrated	<ul style="list-style-type: none"> <li>• LSU Head sits on Executive Committee, which reviews all projects, MOUs, contracts, and Cabinet documents</li> </ul>
Canadian Transportation Agency	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Citizenship and Immigration Canada (CIC)	Unrated	<ul style="list-style-type: none"> <li>• CIC Law Portfolio has a National Litigation Coordinator who chairs the Scratch Legal Issues Committee, which ensures that consistent positions are taken in litigation and legal advice within the portfolio</li> <li>• National Litigation Coordinator produces monthly CIC Litigation Report and ensures communication exchange between portfolio, client and Justice on litigation matters</li> <li>• LSU lawyers attend CIC meetings and committees to scan for legal risks and assist management with developing legal risk management strategies</li> </ul>
Correctional Service of Canada (CSC)	Unrated	<ul style="list-style-type: none"> <li>• Regions regularly report legal risks as part of legal risk scanning system</li> <li>• CSC reports high impact cases to PSEPC and Justice as appropriate</li> <li>• Regional offices provide regular reports to CSC on risk ratings</li> <li>• LSU reviews inventory of litigation regularly and presents to Legal Risk Management Committee</li> </ul>
Courts Administration Services	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Department of Public Safety and Emergency Preparedness Canada (PSEPC)	Acceptable	<ul style="list-style-type: none"> <li>• LSU Head sits on Senior Management Committee</li> <li>• LSU provides managers with a weekly litigation update</li> <li>• LSU provides monthly calendar of litigation action</li> <li>• Provides quarterly report estimating contingent liabilities</li> <li>• Provides a document on Statutory Responsibilities of the Minister of PSEPC</li> </ul>
Environment Canada	Unrated	<ul style="list-style-type: none"> <li>• Has a Litigation Committee for managing civil litigation and disputes that also provides advice on possible implications of its practices</li> </ul>



Department/Agency	Rating <sup>37</sup>	LRM-related information
Finance Canada	Unrated	<ul style="list-style-type: none"> <li>• Internal Audit and Evaluation Divisions include legal risk in its risk-based internal audits</li> <li>• Law Branch provides legal risk assessments for matters under consideration</li> <li>• ADM of the Law Branch participates in meetings of Finance Executive</li> <li>• Finance Tax Counsel and CRA track cases and discuss with CRA, Justice and Finance</li> <li>• Tri-departmental Legal Risk Management Committee with CRA, Justice and Finance. Senior managers oversee highest risk tax litigation.</li> <li>• Contingency plans are prepared on major litigation cases</li> <li>• Provides information for Justice’s legal risk reports (Top 100, High Impact Cases, Early Warning Cases, etc.)</li> </ul>
Fisheries and Oceans Canada (DFO)	Unrated	<ul style="list-style-type: none"> <li>• Has a Legal Risk Management Committee that has client and LSU representation and is engaged in developing legal risk management strategies</li> <li>• LSU and client high impact coordinators scan for high impact legal issues, high impact litigation and legal trends</li> <li>• Prepare high impact Briefing Notes and work plans to provide to LRM committee</li> <li>• Also provides LRM Committee with contingent liability reports, Early Warning Reports, table of high impact cases/issues and ad hoc Briefing Notes</li> <li>• Provides Justice head office with table of high impact cases/issues and Briefing Notes as required</li> <li>• LSU makes recommendations to DFO on contingency planning</li> <li>• DFO prepares work plans in response to recommendations</li> </ul>
Foreign Affairs Canada	Unrated	<ul style="list-style-type: none"> <li>• None</li> </ul>
Health Canada (HC)	Unrated	<ul style="list-style-type: none"> <li>• HC has a legal risk management framework that includes identification of high impact litigation and non-litigation legal risks</li> <li>• LSU sits on Branch executive and risk management committees</li> <li>• Departmental Executive Committee Legal Risk Management Sub-Committee has LSU and HC representatives</li> </ul>
Human Resources and Skills Development (HRSD)	Unrated	<ul style="list-style-type: none"> <li>• HRSD has a legal risk management framework that includes scanning for high impact litigation, non-litigation legal risks and legal trends that may be indicated through these scans.</li> <li>• The framework also includes assessment of legal risks and development of contingency plans</li> </ul>

Department/Agency	Rating <sup>37</sup>	LRM-related information
Indian and Northern Affairs Canada (INAC)	Unrated	<ul style="list-style-type: none"> <li>• Senior Counsel/Head of INAC LSU is on Executive Committee and Policy and Management Committee</li> <li>• Policy and Management Committee approves litigation prevention principles; reviews materials for Supreme Court of Canada proceedings; discusses case or portfolio management issues that have government or INAC-wide resource, management or policy implications; and provides litigation settlement mandates for amounts above \$25 million.</li> <li>• LSU signs off on memoranda to Cabinet, TBS submissions and submissions for Governor in Council orders</li> <li>• INAC Directors General Litigation Committee provides instructions/views to Justice on issues that require corporate guidance and consultation on litigation issues and has LSU and portfolio representation</li> <li>• Other committees that consider legal risk and on which LSU lawyers sit: Steering Committee on Self-Government and Comprehensive Claims, FTNO Steering Committee, Claims Advisory Committee, and Legislative Steering Committee</li> </ul>
Indian Claims Commission	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Industry Canada	Unrated	<ul style="list-style-type: none"> <li>• LSU prepares quarterly litigation reports</li> <li>• Senior policy committee oversees and provides directions on major litigation</li> <li>• There is a policy on LRM that is being updated (how to handle litigation, scanning for legal risks)</li> </ul>
Infrastructure Canada	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
International Trade Canada (ITCan)	Unrated	<ul style="list-style-type: none"> <li>• ITCan reviews trade law risks, and senior management is involved as required in legal risk management strategies of identified legal risks</li> <li>• Trade Policy Branch and Trade Law Bureau are required to assess the risk of any proposed measure for non-compliance with Canada’s international trade and investment obligations. Other government departments and agencies are not consistently consulting them, however.</li> </ul>
Justice Canada	Unrated	<ul style="list-style-type: none"> <li>• Justice scans its programs and policies for legal risks</li> <li>• Policy Committee reviews important policy and program proposals for legal risks</li> <li>• Chairs of Regional Litigation Committees meet monthly to identify and coordinate issues across regions</li> <li>• Senior management meetings, including DM Daily, discuss LRM</li> <li>• Justice monitors top 100 high impact cases to ensure their legal risks are effectively managed and that they have contingency plans</li> <li>• Works with departments and agencies to provide legal advice to minimize legal risks</li> <li>• National Litigation Committee meets weekly to discuss important litigation and contingency plans</li> </ul>
Library and Archives Canada	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Military Policy Complaints Commission	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>

Department/Agency	Rating <sup>37</sup>	LRM-related information
National Defence (DND)	Unrated	<ul style="list-style-type: none"> <li>• LRM Committee discusses issues of major significance to DND, including important litigation and non-litigation issues. Deputy Minister chairs the committee and senior managers are members</li> <li>• Lawyers and DND managers are involved in legal risk scanning</li> <li>• LSU has provided training sessions to clients across the country</li> </ul>
National Research Council (NRC)	Unrated	<ul style="list-style-type: none"> <li>• LSU scans NRC programs for legal risk but also reduces legal risk through instrument choice</li> <li>• Director of LSU reports directly to NRC President</li> <li>• LSU has final review of various policies and contracts</li> <li>• Contingency planning is occurring</li> <li>• Monitoring of legal trends is conducted by LSU</li> </ul>
Natural Resources Canada	Unrated	<ul style="list-style-type: none"> <li>• Internal risk scanning network has been established to identify risks</li> <li>• Departmental Risk Committee</li> <li>• LSU participates in the Risk Management Working Group, which also addresses LRM</li> <li>• General Counsel is on departmental Management Committee</li> <li>• Senior management is involved in identification, avoidance and mitigation of legal risks</li> <li>• Counsel are involved in briefings to senior management</li> <li>• LSU has provided legal awareness training sessions</li> <li>• Contingency planning occurs where warranted and LSU supports client officials in developing these plans</li> <li>• Litigation report tracks litigation involving department and is updated monthly</li> <li>• Conduct post mortem analysis to identify lessons learned so future risks can be mitigated or avoided</li> </ul>
Office of Indian Residential Schools Resolution of Canada	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Office of the Co-ordinator Status of Women	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Office of the Commissioner for Federal Judicial Affairs	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Office of the Superintendent of Financial Institutions	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Patented Medicine Prices Review Board	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Privy Council Office		<ul style="list-style-type: none"> <li>• Legal risk is identified and discussed in Senior Management Committee meetings for both litigation and non-litigation matters</li> <li>• Contingency planning occurs</li> <li>• Receives Justice's Radar Screen</li> <li>• Justice assists with drafting legal risk component of memoranda to Cabinet</li> </ul>
Public Health Agency of Canada	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>

Department/Agency	Rating <sup>37</sup>	LRM-related information
Public Service Commission of Canada	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Canada Public Service Agency	Unrated	<ul style="list-style-type: none"> <li>• Policy Council checklist for policy proposals includes legal consultation</li> <li>• Legal risk assessment is part of TBS submissions as TBS counsel reviews</li> <li>• Litigation coordinator monitors, manages and provides information on litigation</li> <li>• Plans to have TBS counsel and senior management determine legal services priorities which will be part of annual planning process</li> <li>• TBS Counsel scans legal developments and trends that might be of relevance to portfolio activities and distributes this information to branches</li> <li>• TBS Counsel provides horizontal advice on legal risk management strategies</li> </ul>
Royal Canadian Mounted Police	No rating	<ul style="list-style-type: none"> <li>• None</li> </ul>
Social Development Canada	Unrated	<ul style="list-style-type: none"> <li>• Social Development Litigation Committee with senior officials and legal services manages legal risks on high risk litigation files</li> <li>• Have developed a legal risk management framework that includes identification of high impact litigation involving department, assessment of legal risks, development of contingency plans as well as identification of non-litigation legal risks and legal trends</li> <li>• Contingency plans are jointly prepared with department and LSU</li> <li>• Provides information for Justice’s legal risk reports (Top 100, High Impact Cases, Early Warning Cases, etc.)</li> </ul>
Transport Canada	Unrated	<ul style="list-style-type: none"> <li>• LSU works with department policy and program managers and uses instrument choice to minimize risk</li> <li>• LSU provided courses on instrument choice to inspectors across Canada</li> <li>• Contingency planning and dispute resolution processes are current issues for the department</li> </ul>
Treasury Board Secretariat (TBS)	Unrated	<ul style="list-style-type: none"> <li>• TBS Counsel signs off on TBS submissions so legal risk assessments are an integral part of process</li> <li>• TBS Counsel is implementing meetings with senior management to determine portfolio’s priorities for legal services as part of annual planning process</li> <li>• TBS Counsel scans legal developments and trends that might be of relevance to portfolio activities and distributes this information to branches</li> <li>• TBS Counsel provides horizontal advice on legal risk management strategies</li> </ul>
Veterans Affairs Canada	Unrated	<ul style="list-style-type: none"> <li>• There is not a LRM Committee because there are few litigation cases</li> <li>• Receives quarterly iCase reports on legal risk for department</li> <li>• LSU Head and Director General discuss whether strategic management of any cases is required</li> <li>• For one major litigation file, the departmental Executive Board served as ad hoc, case-specific LRM Committee</li> </ul>
Western Economic Diversification Canada	Unrated	<ul style="list-style-type: none"> <li>• All new programs or partnerships are subject to a legal review and consultation to identify risk or liability</li> </ul>