

Results at a glance

Evaluation of Litigation Services

The Department of Justice Canada (Justice Canada) provides litigation services to federal departments and agencies. Litigation services include a variety of activities that are part of representing the federal government in the resolution of litigious or potentially litigious matters, which includes exploring resolution options, preparing cases for litigation, and representing the federal government before courts and administrative tribunals.

Justice Canada litigation services are primarily provided by staff who are part of the National Litigation Sector (NLS). The NLS came into effect on April 1, 2016 and is responsible for the conduct of all litigation involving the Government of Canada or any of its departments or agencies. Justice Canada's regional offices (Atlantic, Québec, Ontario, Prairies, British Columbia, and Northern), as well as the Civil Litigation Section and other groups in the National Capital Region provide litigation services and report directly to the Assistant Deputy Attorney General (ADAG) NLS.

Some litigation services are also directly provided by several additional units outside the NLS, mostly by Legal Services Units (LSUs) that are co-located in client departments/agencies.

Litigators work collaboratively with LSU and Portfolio personnel who provide litigation support services and legal advice to client departments and agencies. Each LSU reports to one of five Portfolios: Tax Law Services Portfolio (TLSP), Public Safety Defense Immigration (PSDI), Aboriginal Affairs Portfolio (AAP), Central Agencies Portfolio (CAP) and Business and Regulatory Law Portfolio (BRLP).

WHAT WAS FOUND

- Justice Canada provides high-quality litigation services and has consistently exceeded its performance target of 70% of litigation files with successful outcomes.
- The NLS has undertaken substantial work in implementing efficient management practices. The NLS structure has facilitated consistency and coherence in the approach to litigation services through the development of frameworks and guidance documents. The NLS structure has also simplified budgeting and planning processes.
- The NLS has supported collaboration among the areas of Justice Canada that provide direct litigation services, including regions within the NLS and other litigation units.

- Justice Canada continues to support clients in resolution of files through various approaches. The majority of cases are resolved through adjudication or settlement; alternative dispute resolution mechanisms such as mediation and arbitration are also employed in the resolution of a minority of files.
- The NLS is resolving cases in a cost-effective manner, as higher risk and complexity files receive more attention in terms of staff time. However, results also indicate that about half of settled files are settled after discovery (i.e., closer to trial), which may mean that there is potential to resolve files earlier.
- The evaluation found that there is an ongoing need to clarify roles and responsibilities, including how and when the NLS, Portfolios, and LSUs should be involved at various stages of litigation. With the creation of the NLS, there has been a lessening of the connection between regional offices and Portfolios/LSUs. In addition, when to involve the Office of the ADAG on litigation files could be clarified for both LSU and NLS counsel.

RECOMMENDATIONS:

Recommendation 1: The NLS, in consultation with other Sectors or Portfolios, should clarify business processes including how and when various groups such as Portfolios (including LSUs), Sectors and client departments should be involved in the litigation process.

Recommendation 2: The NLS, in consultation with other Sectors and Portfolios, should establish opportunities for networking and information sharing among personnel from NLS, Portfolios (including LSUs) and Sectors, as well as within NLS (e.g., across regions).

Recommendation 3: The NLS should further explore opportunities to enhance the use of various alternative dispute resolution processes, as well as the possibility of pursuing settlement at earlier stages in the litigation process.

ABOUT THE EVALUATION: The Evaluation of Litigation Services was conducted by the Department of Justice Evaluation Branch and covered fiscal years 2014-15 to 2018-19. Its main objectives were to examine effectiveness and efficiency of the litigation services, in accordance with the Treasury Board's *Policy on Results* (2016).

