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STATEMENT OF ASSURANCE

We have completed the internal audit of the Natural Resources Canada (NRCan) Legal Services Unit (LSU). The overall objective of the audit was to review and assess the framework within which services are delivered by the NRCan LSU and to recommend improvements.

The internal audit was conducted in accordance with the Treasury Board Secretariat (TBS) *Policy on Internal Audit* and the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing*.

The audit team assessed the management control framework against criteria derived from the TBS 2003 Management Accountability Framework (MAF), the *Guidance on Control* issued by the Criteria of Control Board (CoCo) of the Canadian Institute of Chartered Accountants, and TBS audit guides.

In our professional judgment, sufficient and appropriate audit procedures have been conducted and evidence gathered to support the accuracy of the conclusions reached and contained in this report. The conclusions were based on a comparison of situations, as they existed at the time of the audit, against the audit criteria. It should be noted that the conclusions are only applicable for the areas examined.

EXECUTIVE SUMMARY

The Department of Justice has established dedicated departmental legal services units (DLSUs) for most government departments and agencies. These units provide client organizations with legal advice to facilitate their operations. This audit focused on the management practices of the DLSU that is serving Natural Resources Canada (NRCan).

The scope of the audit included the operations and activities of the NRCan Legal Services Unit (LSU) in the National Capital Region. The planning and on-site examination phases for this audit were carried out between June and November 2009.

Management Framework

The NRCan LSU exhibited many elements of an appropriate management framework for an organization of its size. The organizational objectives and priorities are well understood by its lawyers, staff, and client. The NRCan LSU has documented its long-term objectives on the NRCan Intranet Web site. Its short-term priorities are driven by the client department's priorities. These priorities are identified through participation in NRCan management committees and ongoing interactions with the client department. The priorities are reflected in the LSU's input to the Business and Regulatory Law Portfolio Human Resources Plan and its service plan for 2009-10 with NRCan.

The NRCan LSU has identified and assessed the significant risks it faces in achieving its objectives and has taken action to mitigate these risks. The LSU's contribution to the Portfolio Human Resources Plan is consistent with the planned mitigation action.

Responsibilities and accountabilities in the LSU are clearly defined. The processes in place within the LSU for workload distribution and monitoring facilitate the efficient processing of client requests for legal services while maintaining service quality.

The LSU formally monitors performance against its service standards through a triennial survey of client contacts. Direct feedback is also obtained on a regular basis from NRCan's assistant deputy ministers.

In the absence of an administrative procedures manual, the LSU's employees rely on the Office Manager's knowledge of departmental administrative policies and procedures to determine how to manage information and records, obtain bulk photocopying, obtain building passes, etc. A recommendation has been made that an administrative procedures manual be developed.

The LSU's communications practices generally provide staff with the information they need to carry out their responsibilities. The communications practices and exchange and availability of information also help to ensure that consistent legal advice is provided.

Human Resources

There was a widespread sense among management and staff that the LSU may be under resourced. The LSU is operating with a ratio of 14 lawyers to two legal assistants. This ratio is high in comparison to other recently audited DLSUs, where the ratio was usually about four to one. Provision has been made in the budget for a third legal assistant, but we are not aware of any plans to fill this position. A recommendation has been made that the lawyer-to-support-staff ratio be reviewed.

The NRCan LSU does not have an orientation manual for new staff. Such a document would provide background documentation concerning NRCan's programs and organization, information on the laws and regulations governing these, and key legal opinions if appropriate. It would also serve as a key depository of the corporate memory within the LSU. A recommendation has been made that a basic orientation manual for the lawyers be developed.

The LSU's lawyers are encouraged to avail themselves of various forms of professional development. There is no formal tracking of all professional development undertaken, however. As a result, the LSU has not been reporting on the percentage of employees receiving a minimum of five days of professional development per year as required by the Department of Justice *Learning Policy*. A recommendation has been made that a process be implemented to track and report on all professional development taking place in the LSU.

Formal performance appraisals are only provided for the lawyers within the LSU and not for the support staff. Managers at all levels have the responsibility to provide feedback on employees' performance. A recommendation has been made that performance appraisals and learning plans be developed on a regular basis for support staff.

Financial Resources

The measures taken to administer the LSU's financial resources are satisfactory. Regular reports are reviewed, reconciled, and verified. Compliance testing of financial transactions by both NRCAn and the audit team found no errors.

Because of limited resources, the LSU has focused on those requests for legal services having the greatest priority. Some overtime has also been required, but in our opinion it has not been excessive. The LSU has appropriately adjusted priorities to provide a satisfactory level of legal services and remain within planned budgetary levels.

Materiel Resources

Key physical assets are protected in an appropriate manner. Access to the building where the LSU is located is controlled. All the lawyers have lockable, enclosed offices. The inventory list was not up-to-date, but NRCAn has plans under development for replacing the system. The inventory list will be updated as part of that process.

Information Systems

The LSU relies on NRCAn's and the Department of Justice's financial, salary management, and case management information systems for decision-making and accountability purposes. Reasonable efforts are made to validate the LSU's data in these systems to ensure its accuracy. The information in iCase is used primarily to support requests to the client department for additional resources.

Information Management

We were told that while files can be readily found, it can be hard to locate specific opinions. Differing practices are followed across the LSU with respect to who places information on the physical file and the timeliness with which this is done. A recommendation has been made that consistent electronic and print file management practices be implemented.

The NRCAn LSU is making a systematic effort to archive its closed files. Prior to the arrival of the current Records Manager, some of these files had never been entered into RIMS. Three-quarters of these files have now been processed for transfer to archival storage.

Compliance with Legislation and Policies

There is compliance with key government legislation and policies including the *Financial Administration Act* and the *Official Languages Act*.

Interfaces with Other Justice Sectors

The NRCan LSU's interfaces with other sectors of the Department of Justice are satisfactory.

Interfaces with the Client

The LSU's client is very satisfied with the quality of the legal services provided. The 2007 survey of NRCan by the Office of Strategic Planning and Performance Measurement (SPPM) showed very high levels of client satisfaction with the LSU's services. The client regularly consults with the LSU on files that could have a legal issue.

The management responses to the recommendations contained in this report were provided by the General Counsel and Executive Director, Natural Resources Canada, Legal Services Unit.

1. INTRODUCTION

1.1 Background

The Department of Justice has established dedicated departmental legal services units (DLSUs) for most government departments and agencies. These units provide client organizations with legal advice to facilitate their operations. This audit focused on the management practices of the legal services unit (LSU) that is serving Natural Resources Canada (NRCan).

NRCan's goal is to create a sustainable resource advantage for Canadians, now and in the future. The Department works to improve the competitiveness of Canada's natural resource sectors, and to ensure that resource development takes place sustainably and advances Canada's leadership on the environment. NRCan also supports some of Canada's basic safety and security obligations through its knowledge of, and expertise on, the country's vast and diverse landmass.¹

Specific areas of current focus for the NRCan LSU include providing legal advice and opinions on the legislative authority for NRCan programs, policies, and new legislative and regulatory initiatives. The LSU also provides legal advice on program initiatives and program administration, particularly in relation to transfer payment programs. The LSU also coordinates with the legislative and regulatory drafting sections of the Department of Justice, provides litigation support and legal risk management, and trains NRCan personnel on legal issues through legal awareness seminars. The quality of the legal services provided to NRCan is of critical importance to NRCan's achievement of its strategic outcome.

The NRCan LSU is part of the Business and Regulatory Law Portfolio of the Department of Justice. A General Counsel and Executive Director is responsible for the LSU and reports to the Assistant Deputy Minister of the Portfolio. The LSU consists of 18 staff, including 14 counsel and four support staff. The counsel are organized into two teams: the Corporate, Commercial, and Intellectual Property Team; and the Energy and Regulatory Law Team. Planned expenditures for operations and maintenance (O&M) and salaries for 2009-10 were

¹ Natural Resources Canada, *Report on Plans and Priorities*, 2009-2010, p. 3.

approximately \$2.3 million². Additional contextual information on the LSU is provided in Appendix A.

Some of the key risk factors that were identified in selecting the NRCan LSU for audit included the impact of the legal work on the programs and activities of NRCan, the appropriateness of linkages with Department of Justice organizations, the ability to respond to client demand for legal services, the level of efficiencies in the organization and in workload management, the adequacy of information for decision making, the accurate reporting of performance information, the provision of consistent legal advice, the management of electronic information, and the appropriateness of linkages with the client department.

1.2 Audit Objectives and Scope

The overall objective of this audit was to review and assess the framework within which the LSU delivers services to NRCan and to recommend improvements to this framework.

The audit team examined and assessed:

- the management control framework (policies, practices, and procedures relating to planning, organizing, controlling, leading, and communicating);
- the management of financial, materiel, and human resources;
- the reliability of information systems for decision-making and accountability purposes;
- the extent of compliance with key legislation, regulations, and central agency/departmental policies relating to the *Financial Administration Act*, *Official Languages Act*, employment equity, and contracting;
- the appropriateness of interfaces with other sectors in the Department of Justice;
- the appropriateness of interfaces with the client department;
- the level of client satisfaction with the services provided.

The audit also addressed:

- mix of resources (including use of paralegals);
- workflow processes;
- workload management;
- forecasting demand for legal services;
- risk management;
- staff recruitment and retention, and succession planning;

² Due to vacant positions, the revised budget as of October 1, 2009 was \$2.1 million.

- adequacy of financial resources received from the Department of Justice and the client department;
- extent to which the NRCAn LSU is consulted by its client department on files that could have a legal issue.

The scope of the audit included the operations and activities of the NRCAn LSU in the National Capital Region. The planning and the on-site examination phases for this audit were carried out between June and November 2009.

Details concerning the audit methodology employed are outlined in Appendix B.

2. OBSERVATIONS—MANAGEMENT FRAMEWORK

2.1 Objectives, Priorities, Planning, and Risk Management

The NRCan LSU's organizational objectives and priorities are well understood by its lawyers, staff, and client department.

Successful organizations set and document organizational objectives and priorities so that professional and support staff, as well as the client, clearly understand expectations.

The NRCan LSU has documented its long-term objectives on the NRCan Intranet site. These are to provide timely, accurate, consistent, and unified legal advice on NRCan activities and issues of interdepartmental interest on matters arising out of NRCan program activities and policy initiatives. In providing these services, the LSU contributes to the Department of Justice's strategic outcome, "a federal government that is supported by effective and responsive legal services".

The LSU's short-term priorities are driven by the client department's priorities. The LSU's General Counsel and Executive Director learns of NRCan's priorities principally through her membership in the NRCan Departmental Management Committee and the NRCan Policy and Science Management Committee—the committees that establish departmental objectives and priorities. Serving on these committees provides the LSU's General Counsel and Executive Director with an understanding of NRCan's management and business priorities. Priorities are also identified through other interactions with the client department. The client's priorities are communicated orally to lawyers by the General Counsel and Executive Director and the team leaders, and through regular biweekly team meetings. Parts of NRCan also use wikis to communicate their objectives and priorities.

The priorities are reflected in the LSU's input to the Portfolio Human Resources Plan. The service plan for 2009-10 included in the Memorandum of Understanding (MOU) between the Department of Justice and NRCan for the period April 1, 2009 to March 31, 2012 indicates that additional funding is being sought by NRCan to support aboriginal consultation activities. Several areas where services will be provided are identified (e.g. MacKenzie Gas Pipeline

Project³, Major Project Management Office, Centre of Expertise on Grants and Contributions). It further indicates that the General Counsel will meet on a regular basis (i.e. semi-annually) with NRCan officials who are responsible for significant demand on legal services to determine upcoming issues and file priorities. Senior NRCan managers reported that they are regularly consulted to ensure that their priorities are understood. They also indicated that they are very satisfied with the services they receive from the LSU.

The audit team is of the opinion that the LSU's organizational objectives and priorities are well understood by its lawyers, staff, and client department.

The NRCan LSU has identified and assessed the significant risks it faces in achieving its objectives, and has taken action to mitigate these risks.

Risks to the achievement of objectives and priorities should be identified and assessed, with explicit mitigation strategies for each significant risk.

The NRCan LSU's General Counsel and Executive Director told the audit team that the two most significant risks to the LSU were insufficiently experienced legal staff in areas of law related to pipeline, energy, and mining projects, and the potential loss of corporate memory if a knowledgeable and experienced lawyer leaves the LSU.

The NRCan LSU has recruited an additional senior lawyer with the required expertise. Overlapping practice areas have also been created to increase the needed knowledge and familiarity with the issues, thereby reducing the risk associated with the potential loss of corporate memory. The audit team is of the opinion that these measures are appropriate for the risks that the General Counsel and Executive Director identified.

It is our view that the LSU's current risk management is satisfactory.

2.2 Organizing

Responsibilities and accountabilities in the NRCan LSU are clearly defined.

The NRCan LSU consists of 18 staff, including 14 counsel and four support staff. Legal staff are organized into two teams: the Corporate, Commercial, and Intellectual Property Team; and the Energy and Regulatory Law Team. Team leaders are responsible for supervising the work of the lawyers in their team and changing lawyers' work assignments when required. They do not have

³ The Mackenzie Gas Pipeline is a proposed 1,196-kilometre natural gas pipeline system along the Mackenzie Valley of Canada's Northwest Territories to connect northern onshore gas fields with North American markets.

responsibilities in relation to budgets or staffing. These responsibilities are consistent with those set out in their position descriptions.

It is our conclusion that the LSU is appropriately organized.

2.3 Workload Distribution and Monitoring

The processes in place within the LSU facilitate the efficient processing of client requests for legal services while maintaining service quality.

Workload should be managed so that client requests for legal services can be processed efficiently while maintaining service quality.

Team leaders are responsible for assigning work, monitoring the workload of their team, and tracking the availability of lawyers to work on new files. Lawyers manage their own workload and priorities. Competing priorities that cannot be easily resolved are escalated to the Team Leader level and/or the General Counsel and Executive Director. The system in place works well and no issues were identified.

All of the lawyers commented on their heavy workload but also noted that it was manageable for the most part. They noted that the client understands that the demand for legal services is high and that an immediate response on the part of the LSU is not always possible. Client contacts informed the audit team that they were satisfied with the legal services they received.

It is the audit team's opinion that the processes in place within the LSU facilitate the efficient processing of client requests for legal services while maintaining service quality.

2.4 Performance Monitoring

The NRCAn LSU appropriately monitors performance.

Performance monitoring is the ongoing, systematic process of collecting, analyzing, communicating, and using performance information. Monitoring is essential in assessing an organization's progress toward meeting expected results and making adjustments, if necessary, to ensure that these results are achieved. Monitoring supports decision making, accountability, and transparency.

The NRCAn LSU's service standards are included as an Annex to the 2009-12 MOU with NRCAn for the provision of legal services. These standards were developed by the Department of

Justice's Law Practice Management Directorate for use between an LSU and its client department. The standardized questionnaire used by the Office of Strategic Planning and Performance Measurement (SPPM) in its triennial client feedback survey is also well aligned with these service standards.

Formal feedback on key elements of the quality of the LSU's services was last reported by SPPM in 2007. SPPM provided the LSU with a summary of results, comparing it to other DLSUs in the Business and Regulatory Law Portfolio and all other DLSUs within the Department of Justice. NRCan respondents to the survey rated the NRCan LSU's responsiveness as excellent, its timeliness as very positive, and the usefulness of its services as excellent or very positive.

The General Counsel and Executive Director also told us that she receives direct feedback from NRCan's assistant deputy ministers concerning the work of the LSU's lawyers. Client representatives interviewed by the audit team uniformly rated the LSU's services positively.

It is the audit team's opinion that the NRCan LSU's monitoring of performance is appropriate.

2.5 Communicating

The NRCan LSU has not developed an administrative procedures manual.

Administrative procedures need to be appropriately documented in an organizational unit because they help provide staff with the required information to conduct activities in a consistent, efficient, and economical manner.

The NRCan LSU does not have an administrative procedures manual. In its absence, the LSU's employees rely on the Office Manager's knowledge of NRCan's administrative policies and procedures. This reliance poses little operational risk as long as the current Office Manager, who has extensive experience, remains with the LSU. However, it is the audit team's opinion that without the guidance provided by an up-to-date administrative procedures manual, there is a risk that anyone acting in her place would have difficulty carrying out required tasks, to the detriment of the LSU's productivity. We are of the view that LSU staff should have formal, documented guidance on how to proceed with such administrative matters as managing information and records, bulk photocopying, timekeeping, building security passes, making travel arrangements, and arranging taxi chits.

Recommendation and Management Response

1. It is recommended that the General Counsel and Executive Director ensure that an administrative procedures manual is developed.

I agree. Action to prepare an up-to-date administrative procedures manual is underway. Completion date: December 31, 2010.

The NRCAn LSU's communications practices provide staff with the information they need to do their jobs.

Effective and appropriate communications are essential in any workplace. Information needs to be shared on a timely basis so that actions can be taken based on current and correct information.

The primary means used to communicate information to LSU staff include:

- biweekly team meetings that are used to discuss current legal issues and files;
- monthly all-staff meetings where administrative matters and items of a more general nature are reviewed;
- ad hoc meetings to convey important client, Department of Justice, or government information;
- email;
- periodic retreats.

Lawyers and support staff interviewed by the audit team generally agreed that these mechanisms ensure that all members of the LSU have the information they require to carry out their responsibilities. Many lawyers informed us that lack of direction from the client department on priorities or lack of understanding on the client's part on the type of information they need to provide to legal staff is a source of frustration. Some lawyers indicated that they would like closer physical proximity to other Department of Justice lawyers so that they could build an informal network. NRCAn is located several kilometres from Justice headquarters.

It is our opinion that communications practices within the LSU are appropriate.

The NRCAn LSU uses satisfactory practices to ensure it provides consistent legal advice.

The LSU employs a number of practices to ensure consistency in the legal advice it provides to client sectors in NRCAn:

- junior lawyers are mentored as they gain experience with the legal issues facing NRCan;
- the team leaders convene bi-weekly team meetings to discuss substantive legal issues;
- the lawyers consult with their team leaders when working on files with novel or challenging issues;
- the relevant Team Leader and the General Counsel and Executive Director review work done by lawyers on complex files or on files that provide advice and opinions to NRCan's Minister or senior management, before the work is sent to the client;
- previous opinions stored primarily in Docs Open (NRCan Legal Services' information management system) and, to a lesser extent, LOPORS (Legal Opinions and Precedents On-Line Retrieval System, a Department of Justice system) are reviewed by the lawyer working on the file;
- specialized sectors that provide expert legal advice and opinions within the Department of Justice are consulted as needed.

The General Counsel and Executive Director and LSU lawyers told the audit team that they are satisfied with the measures in place to ensure consistent legal advice. The results of the 2007 SPPM client feedback survey demonstrated that the LSU's clients in NRCan are highly satisfied with service quality.

It is the audit team's opinion that the practices the LSU uses to ensure consistency in its legal advice are satisfactory.

3. OBSERVATIONS—MANAGEMENT OF HUMAN, FINANCIAL, AND MATERIEL RESOURCES

TBS has established an extensive framework of policies for managing human, financial, and materiel resources. One of the requirements of these policies is that limited resources are to be managed with prudence and probity.

3.1 Human Resources

The NRCan LSU's contribution to its Portfolio's 2008-2009 Human Resources Plan was appropriate.

The LSU provides input to the Business and Regulatory Law Portfolio's human resources planning process using a template provided by the Portfolio. The quarter of the year in which staffing is scheduled to occur must be identified on the form. There is no requirement to identify staffing requirements beyond one year. The General Counsel and Executive Director told the audit team that succession planning will be required in two to three years given that experienced lawyers will be retiring in five or more years.

The information in the LSU's completed template for the 2008-09 planning year was consistent with the human resources requirements stemming from the LSU's key risks that were identified by the General Counsel and Executive Director to the audit team. The Portfolio stated that it was satisfied with the documentation received from the LSU, and that no improvements were required.

It is our opinion that the NRCan LSU's human resources planning process is satisfactory.

The LSU needs to review its current mix of resources.

From our interviews the audit team determined that there was a widespread sense among management and staff that the LSU may be under resourced:

- Management in the Business and Regulatory Law Portfolio were uncertain as to whether the LSU had the structure and capacity to both deal with large legal files and respond to the Department of Justice's corporate management information reporting requirements. They noted that it is a small LSU without many support staff and there is no deputy head.
- The General Counsel and Executive Director acknowledged that they could use another lawyer and another legal assistant. Commercial law requirements are currently outsourced to another LSU and to regional offices.
- The lawyers in the LSU identified a need for more junior lawyers, paralegals who could research prior opinions and precedents, and an administrative assistant. The lawyers stated that the ratio of lawyers to support staff was high, requiring them to spend time on administrative tasks, such as photocopying, for which they were overqualified. We concur that this is a poor use of highly trained professional resources.

The approved positions for the NRCan LSU call for four support staff—an Office Manager, a Records Manager, and two legal assistants. According to the Service Plan 2009-2010 with NRCan, which is annexed to the MOU, there is provision in the budget for a third legal assistant. The Service Plan notes that several positions were vacant. The Office Manager supervises the work of the other support staff and also supports the General Counsel and Executive Director's interactions with NRCan executives and the Department of Justice. These latter interactions include administering financial and human resources, and responding to planned and ad hoc requests for information and reports.

During the on-site examination phase of the audit, one of the NRCan LSU's two legal assistants was on assignment and could not be replaced. Near the conclusion of this phase, this individual left employment with the LSU. The LSU has initiated staffing for a replacement Legal Assistant. When staffing is completed, the LSU will have 14 lawyers supported by two legal assistants. The audit team is not aware of any plans to fill the third legal assistant position, as identified in the Service Plan 2009-2010. In the audit team's experience, a ratio of 14 lawyers to two legal assistants is high compared to other recently audited DLSUs, where the ratio of lawyers to legal assistants was usually about four to one. It is the audit team's opinion that the LSU needs to examine its current mix of resources and determine whether the addition of another Legal Assistant and/or a Paralegal is needed.

Recommendation and Management Response

- 2. It is recommended that the General Counsel and Executive Director review the lawyer-to-support-staff ratio in the NRCAn LSU and determine whether an additional Legal Assistant and/or a Paralegal is required.**

I agree. This review is complete and while at least one additional legal assistant is appropriate, staffing depends on the availability of resources from the client department.

The NRCAn LSU provides its lawyers with appropriate training opportunities.

The acquisition of skills and knowledge, as well as the development of managerial and leadership expertise, is critical for the effective management of the Public Service. Training needs to be provided to staff to address any identified gaps in the existing skill set.

The NRCAn LSU's General Counsel and Executive Director encourages the LSU's lawyers to participate in departmental working groups and internal courses offered by the Department of Justice. She also sends lawyers on "train the trainer" sessions so that they can return to train other LSU lawyers. The lawyers told the audit team that access to external courses is available and that these are identified on their individual learning plan. All external training must first be approved by the Department of Justice before anyone can be registered. Roughly 70 percent of the funds available for external training were utilized during 2008-09. As of early March 2010, approximately 80 percent of the funds available for 2009-10 had been used.

It is the audit team's opinion that the LSU provides counsel with appropriate training opportunities.

The NRCAn LSU does not have a formal orientation manual.

There is no formal process for orientating new staff to the NRCAn LSU other than orientation provided by the Department of Justice. Each Team Leader or supervisor is responsible for introducing new staff to colleagues in the LSU and contacts within the client's organization. Additional information is gleaned through a review of files, staff meetings, and discussion with the other lawyers in the LSU. Lawyers stated that everyone was helpful in these discussions and that the current practice for orientating new staff is satisfactory.

It is the audit team's opinion, however, that an orientation manual should be developed. It would provide background documentation concerning NRCAn's programs and organization, information on the laws and regulations governing these, and key legal opinions if appropriate.

Lawyers new to the DLSU could use it to quickly familiarize themselves with the kinds of legal issues they would be called upon to address and later use it as a reference manual when providing advice and opinions. Furthermore, since the General Counsel and Executive Director anticipates that experienced staff will begin retiring from the LSU within five years, an orientation manual would serve as a key depository of the corporate memory within the LSU.

Recommendation and Management Response

3. It is recommended that the General Counsel and Executive Director ensure that a basic orientation manual for lawyers is developed.

I agree. The legal practice at NRCan is varied. While tasks are set for incoming counsel to orient them to NRCan and Justice, a more structured orientation process would assist. Electronic and web-based approaches will be considered. Completion date: December 31, 2010.

The NRCan LSU should improve its tracking of employees' professional development.

Section 7.0 of the Department of Justice's *Learning Policy* mandates five days of professional development per year per employee. As defined in the policy, professional development encompasses a wide range of activities including classroom training, formal education, conferences, seminars/workshops, practice forums, practice groups, coaching, mentoring, short-term assignments, secondments, job shadowing, job rotation, and reading.

The *Learning Policy* also requires that all of the Deputy Minister's direct reports report annually for their organization on the percentage of base salary invested in learning, the percentage of employees receiving a minimum of five days of professional development per year, and the percentage of employees with individual learning plans. The NRCan LSU informs the Business and Regulatory Law Portfolio about the completion of individual learning plans and training costs. However, the LSU does not compile information on the percentage of employees receiving a minimum of five days of professional development per year as required by the policy. As a result, since all professional development as defined by the *Learning Policy* is not tracked and reported to the Human Resources and Professional Development Directorate (HRPDD), Portfolio-level records indicate that over three-quarters of the LSU lawyers have not received the mandated minimum level of professional development.

In the absence of formal tracking of all professional development encompassed under the *Learning Policy*, the audit team is of the opinion that the NRCAn LSU cannot ensure that its employees are receiving the amount of professional development required.

Recommendation and Management Response

4. It is recommended that the General Counsel and Executive Director implement a process to track and report all professional development that legal staff receive.

I agree. Individual learning plans are developed and approved annually. Implementation of those plans is monitored on a quarterly basis, and reviewed with counsel at year's end. Reporting mechanisms will be discussed with the Business and Regulatory Law Portfolio. Completion date: September 2010.

Formal performance appraisals are only provided for lawyers within the LSU and not for support staff.

Performance appraisals for all DLSU staff should be prepared annually. Appraisals are important tools for setting objectives, providing feedback on performance, and for identifying training requirements.

Performance appraisals for all lawyers in the NRCAn LSU are on file, are current, and have learning plans attached. Formal performance appraisals are not provided to support staff, although they do have periodic discussions with their supervisor on their performance. Learning plans are also not prepared for support staff.

While support staff are not Department of Justice employees, the LSU head still has a responsibility to ensure that they have the skills to carry out their responsibilities. As noted on the Web site of the TBS Office of the Chief Human Resources Officer: "Managers at all levels have the responsibility to provide feedback regarding their expectation of their employees' performance. Employees at all levels deserve to have information that helps them decide on their performance effort."⁴

It is our opinion that performance appraisals and associated learning plans need to be completed regularly for all NRCAn LSU staff including support staff.

⁴ From the Web site of the Office of the Chief Human Resources Officer, TBS.

Recommendation and Management Response

5. It is recommended that the General Counsel and Executive Director ensure that performance appraisals and learning plans are developed on a regular basis for support staff in the LSU.

I agree. Learning plans for the 2010-11 year will be put in place, and performance appraisals conducted for the 2010-11 performance year. Completion date: April 30, 2011.

3.2 Financial Resources

The NRCan LSU is appropriately adjusting priorities on an ongoing basis so that the cost of legal services to NRCan remains within planned levels.

Like all DLSUs in the Business and Regulatory Law Portfolio, the NRCan LSU is funded via the Department of Justice A-base and cost-recoveries from its client. In addition, funding is provided through specific NRCan initiatives that have been approved by the Treasury Board (e.g. the Mackenzie Gas Pipeline Project).

The General Counsel and Executive Director told the audit team that the combined funding from these sources can fall short of the amount estimated as required to meet projected demand for legal services. We were told that the resulting discrepancy is managed by deferring lower priority requests for legal services, assigning only one lawyer to some files where it might be preferable to assign both a junior and senior lawyer (to provide a learning opportunity), and working longer hours when required.

The NRCan LSU's lawyers indicated that their workload is high. They pointed out that their client's budget tripled between 2002-03 and 2007-08⁵, and that there were ever-increasing demands for legal services. In the same period, the LSU's professional staff doubled from seven to 14 lawyers. According to the iCase reports examined by the audit team, two of the 14 lawyers in the LSU reported working as much as 45 minutes of overtime daily over a three-month period. Over half of the lawyers in the LSU reported working less than an average of 15 minutes of overtime daily. In our opinion, this level of overtime is not excessive.

While the LSU has been required to focus on those requests for legal services having the greatest priority, a satisfactory level of service has nonetheless been provided. The 2007 SSPM client feedback survey concluded that its results demonstrated a high degree of satisfaction with

⁵ Departmental performance reports show that in 2002-03, total expenditures were \$1,028.4 million. In 2007-08, these had grown to \$3,134.1 million.

services. The audit team conducted interviews with a sample of the LSU's current clients in NRCan, who voiced similar levels of satisfaction.

It is our opinion that the NRCan LSU is appropriately adjusting priorities so that the cost of legal services to NRCan stays within planned levels.

The measures taken to administer the NRCan LSU's financial resources are satisfactory.

On a monthly and quarterly basis, the NRCan Financial Management Branch sends the LSU financial reports that document expenses, budget, year-to-date commitments, outstanding commitments, and balances. The Office Manager reviews the monthly reports to ensure that the reported information is accurate and consults with a Sector Financial Advisor in NRCan if she has any questions. The General Counsel and Executive Director reviews the quarterly reports to assess year-to-date expenditures and to project whether the LSU will have a surplus or deficit at the end of the fiscal year. Because NRCan's financial system does not provide reports comparing expenditures to budget, the projection is based on manual calculations done in the LSU. We were told that an initiative to replace NRCan's financial system is expected to start in 2011-12.

Our review of financial transactions showed that all were supported with the required documentation. NRCan's Shared Services Office (SSO) processes all procurements except for office supplies, which the LSU acquires with its acquisition card. NRCan also audits the transactions on a sample basis. The audits have not identified any issues with the processes being followed by the LSU.

It is our opinion that the measures taken to administer the LSU's financial resources are sufficient and reasonable.

3.3 Materiel Resources

Key physical assets are protected in an appropriate manner.

NRCan provides the LSU's key physical assets. The SSO is responsible for maintaining an inventory of office furnishings and equipment valued at \$1,000 or more. We reviewed an asset listing provided by the SSO and noted that it was outdated. It included the names of individuals who no longer work in the DLSU and a colour printer that had been disposed of. NRCan is planning to update the current inventory system in the next few years and will update the inventory list at that time. Most of the assets will become the responsibility of NRCan's

Information Technology SSO and the LSU will be left with responsibility for two shredders and a storage/display unit. There have been no reported losses of inventoried assets in 22 years.

The LSU is housed in NRCan's Ottawa headquarters. All visitors to the building must present themselves to a reception desk on the ground floor. Reception staff verify the visitor's identity (a photo ID must be surrendered in exchange for a wearable badge). Reception staff also call the appropriate NRCan LSU staff member to verify the appointment. Visitors are escorted to and from the LSU's suite of offices. Although the suite is not closed off from other offices on the floor, all lawyers have lockable, enclosed offices. The records room is locked at night, and there is always someone present in the suite during lunch hour.

We are of the opinion that the measures taken by the LSU to protect key physical assets are appropriate.

4. OBSERVATIONS—INFORMATION SYSTEMS

4.1 Information Systems

The LSU relies on NRCan's and the Department of Justice's information systems for decision-making and accountability purposes.

Management requires reliable and timely information on which to base decisions and provide accountability. A significant amount of that information comes from various computerized information systems.

As noted in “Financial Resources,” the DLSU receives financial reports from the NRCan financial system on a monthly and quarterly basis. The Office Manager reviews the reports monthly and identifies required changes, where appropriate. Timing differences between the Department of Justice's Salary Management System and NRCan's financial system are reconciled. The NRCan Sector that received legal services from a Department of Justice regional office or a headquarters group (e.g. Civil Litigation, Public Law Sector) is identified, and approval for the internal charge-back is sought. The reports provide basic information about expenses and commitments, but the LSU's General Counsel and Executive Director noted that the reports do not allow the LSU to track its expenditures against budget without additional manual manipulation. NRCan is planning to change its financial system starting in 2011-12.

The NRCan LSU can generate timekeeping reports from iCase data for the LSU when required. The LSU also receives reports from other Justice offices, generally at least quarterly. Lawyers are encouraged by the General Counsel and Executive Director to record all of their time and not just the standard day (7.5 hours). The Office Manager follows up to ensure that the LSU's lawyers enter their timekeeping data before the deadlines set by the Department of Justice, thereby ensuring that the timekeeping reports are complete. The LSU uses the reports to make year-over-year comparisons of the client department sectors that are using the LSU's services, and to substantiate requests to the client department for additional resources.

The audit team is of the opinion that although the LSU must perform additional manual calculations to track its expenditures against budget, its information systems provide sufficient information for decision making and accountability.

4.2 Information Management

The NRCan LSU's file management practices are inconsistent and require improvement.

Except for a general policy that staff must work from both print and electronic files, there are no written procedures for file management in the NRCan LSU. As a result, practices differ from person to person. The LSU's lawyers complete a form in order to open electronic files in the Recorded Information Management System (RIMS), and the legal assistants are responsible for placing documents in the corresponding physical file. However, some lawyers print the documents themselves, while others depend on their assistants. Some print information on a weekly basis, some do not. In the interim, physical files are incomplete, sometimes for several months.

The LSU lawyers use the DOCS Open information system to manage the information on their personal computers. All lawyers have been trained or are scheduled to be trained in using this system. However, because there are no procedures regarding electronic filing, each lawyer files documents differently. Some lawyers were of the opinion that the NRCan LSU would be more efficient if it became a totally paperless office, with all information regarding legal files in a searchable database. Nonetheless, the lack of a single, searchable database is not compromising the LSU's effectiveness. Its lawyers stated that files can be found when needed, although it could be hard to locate specific opinions. In between file opening and closing, the file's location is to be recorded in RIMS. We selected a judgmental sample of 13 files from RIMS and verified the physical location. RIMS was also queried to confirm that a further 12 files selected from the records room were recorded as being there. All the files were found in the recorded location.

It is the audit team's opinion that, while a single searchable database of legal information is a desirable goal, its presumed efficiencies are unlikely to be realized unless file management practices become more consistent. Inconsistencies in file management practices harm productivity, whether the files are on paper or recorded electronically. They make it hard to ensure that all relevant information is associated with a file so that it can be readily passed from one lawyer to another if it changes hands, or if a dormant file needs to be reviewed for its relevance to a current file.

Recommendation and Management Response

- 6. It is recommended that the General Counsel and Executive Director ensure that consistent electronic and print file management practices are implemented in the NRCAn LSU.**

I agree. A records management protocol is being developed and will be implemented by September 2010.

The NRCAn LSU has improved its archiving practices.

The NRCAn LSU is making a systematic effort to archive its closed files. Prior to the arrival of the current Records Manager, the person who handled records management used word processing software to track the LSU's files. As a result, some of the NRCAn LSU's files have never been entered into RIMS. This must be done so that the files can be closed in the system and archived. At present, the NRCAn LSU has entered 60 boxes of closed files into RIMS for transfer to archival storage, and it estimates there are another 20 boxes remaining.

The audit team concurs with the NRCAn LSU's archiving efforts.

5. COMPLIANCE WITH LEGISLATION AND POLICIES

There is compliance with key government legislation and policies.

Procurement in NRCan is centralized in its Shared Services Office (SSO). The SSO is responsible for the procurement of all goods and services (e.g. furniture, computers, temporary help services) except office supplies. The LSU purchases office supplies with an acquisition card. We reviewed a sample of acquisition card and other financial transactions for 2008-09 and 2009-10. We were able to trace back the expenses to the invoices and ensure that they showed the required approvals under the *Financial Administration Act*.

The NRCan LSU is in compliance with the requirements of the *Official Languages Act*. Services are provided to the client in the language of choice. As per the *Employment Equity Act*, which promotes the hiring of Aboriginal peoples, women, disabled people, and visible minorities, there are several visible minorities working in the NRCan LSU.

It is the opinion of the audit team that there is compliance with the *Financial Administration Act*, the *Official Languages Act*, and other key government legislative and central agency policy requirements governing the NRCan LSU's operations.

6. OBSERVATIONS—INTERFACES WITH OTHER JUSTICE SECTORS

The NRCan LSU's interfaces with the Department of Justice are satisfactory.

The NRCan LSU receives direction, advice, and support from the Department of Justice's Business and Regulatory Law Portfolio regarding financial, human resources, and administrative matters. The LSU also participates in monthly and annual meetings with the Portfolio Office and responds to requests for information from the Portfolio Office to support its accountabilities. Management at the Portfolio Office is satisfied with the information it receives from the NRCan LSU.

The NRCan LSU's other main interactions with the Department of Justice are with specialist HQ sectors, as needed, for expert advice and opinions, and with regional office litigators. The LSU's lawyers provide the interface between the HQ specialists and regional litigators and the client sectors in NRCan. The LSU's lawyers described these relationships as open, productive, and professional. They stated that there were no requirements for changes. Interviews with a sample of lawyers at headquarters and in three regional offices revealed that they were satisfied with their interactions with the LSU. Half of those contacted described the NRCan LSU as among the best LSUs that they deal with.

The LSU's lawyers also deal with lawyers in other DLSUs (e.g. Environment Canada, Fisheries and Oceans Canada, Indian and Northern Affairs Canada, and Transport Canada) on projects such as the construction of new pipelines. The purpose of these interactions is to ensure that differing opinions are reconciled so that all of the DLSUs are providing consistent advice to their respective clients. These discussions were described as cumbersome but necessary.

It is the audit team's opinion that the NRCan LSU's interfaces with Justice sectors are satisfactory.

7. OBSERVATIONS—INTERFACES WITH THE CLIENT

The NRCan LSU is consulted on files that could have a legal issue.

As stated in “Objectives and Risk Management,” the General Counsel and Executive Director is a member of the NRCan Departmental Management Committee and the NRCan Policy and Science Management Committee. As such, she gets copied on the Minister’s priorities and assesses these for potential requirements for legal services. She also participates semi-annually in joint planning processes with key client sectors to review their work plans and priorities, and to assess the urgency and time frames of potential requirements for legal support. The General Counsel and Executive Director stated that there had been no instances in the last two years when she learned of any issue about which the client should have consulted the LSU, but had not. Team leaders were also of the view that they were adequately consulted on files by client sectors.

It is our opinion that the NRCan LSU is adequately consulted on files that could have a legal issue.

NRCan is satisfied with the quality of the legal services provided by the LSU.

SPPM conducts a client feedback survey every three years. The survey solicits feedback on the responsiveness, timeliness, and usefulness of DLSU services. The 2007 survey of NRCan showed that, overall, client satisfaction with the delivery of services was either excellent (legislative and regulatory drafting services) or very positive (legal advisory and non-criminal litigation). The results of the survey indicated a high degree of satisfaction with service quality.

Client representatives interviewed as part of this audit stated that they were satisfied with all aspects of the LSU’s service delivery, and that they have good relationships with the LSU’s lawyers.

It is the audit team’s opinion that the NRCan LSU’s services to the client are satisfactory.

8. OBSERVATIONS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

The NRCan LSU's organizational objectives and priorities are well understood by its lawyers, staff, and client department.

The NRCan LSU has identified and assessed the significant risks it faces in achieving its objectives, and has taken action to mitigate these risks.

Responsibilities and accountabilities in the NRCan LSU are clearly defined.

The processes in place within the LSU facilitate the efficient processing of client requests for legal services while maintaining service quality.

The NRCan LSU appropriately monitors performance.

The NRCan LSU has not developed an administrative procedures manual.

1. It is recommended that the General Counsel and Executive Director ensure that an administrative procedures manual is developed.....9

I agree. Action to prepare an up to date administrative procedures manual is underway.
Completion date: December 31, 2010.

The NRCan LSU's communications practices provide staff with the information they need to do their jobs.

The NRCan LSU uses satisfactory practices to ensure it provides consistent legal advice.

The NRCan LSU's contribution to its Portfolio's 2008-2009 Human Resources Plan was appropriate.

The LSU needs to review its current mix of resources.

- 2. It is recommended that the General Counsel and Executive Director review the lawyer-to-support-staff ratio in the NRCan LSU and determine whether an additional Legal Assistant and/or a Paralegal is required.13**

I agree. This review is complete and while at least one additional legal assistant is appropriate, staffing depends on the availability of resources from the client department.

The NRCan LSU provides its lawyers with appropriate training opportunities.

The NRCan LSU does not have a formal orientation manual.

- 3. It is recommended that the General Counsel and Executive Director ensure that a basic orientation manual for lawyers is developed.14**

I agree. The legal practice at NRCan is varied. While tasks are set for incoming counsel to orient them to NRCan and Justice, a more structured orientation process would assist. Electronic and web-based approaches will be considered. Completion date: December 31, 2010.

The NRCan LSU should improve its tracking of employees' professional development.

- 4. It is recommended that the General Counsel and Executive Director implement a process to track and report all professional development that legal staff receive.15**

I agree. Individual learning plans are developed and approved annually. Implementation of those plans is monitored on a quarterly basis, and reviewed with counsel at year's end. Reporting mechanisms will be discussed with the Business and Regulatory Law Portfolio. Completion date: September 2010.

Formal performance appraisals are only provided for lawyers within the LSU and not for support staff.

5. It is recommended that the General Counsel and Executive Director ensure that performance appraisals and learning plans are developed on a regular basis for support staff in the LSU.16

I agree. Learning plans for the 2010-11 year will be put in place, and performance appraisals conducted for the 2010-11 performance year. Completion date: April 30, 2011.

The NRCAn LSU is appropriately adjusting priorities on an ongoing basis so that the cost of legal services to NRCAn remains within planned levels.

The measures taken to administer the NRCAn LSU's financial resources are satisfactory.

Key physical assets are protected in an appropriate manner.

The LSU relies on NRCAn's and the Department of Justice's information systems for decision-making and accountability purposes.

The NRCAn LSU's file management practices are inconsistent and require improvement.

6. It is recommended that the General Counsel and Executive Director ensure that consistent electronic and print file management practices are implemented in the NRCAn LSU.21

I agree. A records management protocol is being developed and will be implemented by September 2010.

The NRCAn LSU has improved its archiving practices.

There is compliance with key government legislation and policies.

The NRCAn LSU's interfaces with the Department of Justice are satisfactory.

The NRCAn LSU is consulted on files that could have a legal issue.

NRCAn is satisfied with the quality of the legal services provided by the LSU.

APPENDIX A—CONTEXTUAL INFORMATION

DLSUs are responsible for providing client organizations with legal advice and assistance to facilitate their operations, and ensuring that DLSU policies, programs, and operations conform to the law. The DLSUs interact with other sectors of the Department of Justice with respect to litigation that their clients may be involved in, and to obtain advice on specialized matters, such as compliance with the *Canadian Charter of Rights and Freedoms*.

A close relationship typically develops between DLSUs and their clients. DLSUs are generally located in the same building as the client's senior management team. Most DLSU heads regularly attend their client's departmental management committee meetings.

All DLSU lawyers are Department of Justice employees. Support staff are employees of the client department. The costs of the DLSU's lawyers are covered by a rate structure formula based on the average salary of all lawyers at a given level (i.e. LA1 or LA2), as well as an O&M charge of two percent of salary for training plus \$1,600 for bar fees; central administrative support costs, set at \$4,266 per employee; and employee benefits, set at 20 percent of salary.

All lawyers working in a DLSU are costed according to this rate structure, whether they are funded by the Department of Justice or by the client department. This allows a total cost for all lawyers working in each DLSU to be calculated. The DLSU A-base is then subtracted from that total cost, and the client department or agency is billed quarterly for the difference.

The client department is also billed for services provided via the DLSU by lawyers in the Department of Justice's headquarters units, such as the Constitutional and Administrative Law Section. In addition, the client department directly funds the salaries of the support staff, provides funding for office materials and supplies, and directly furnishes computer equipment and accommodation.

APPENDIX B—METHODOLOGY

The criteria for the audit were based on:

- the TBS 2003 Management Accountability Framework
- the Canadian Institute of Chartered Accountants' *Guidance on Control*
- other TBS guidance on auditing management frameworks

Information for this audit was obtained employing the following methods:

- a review of relevant documentation concerning the operations of the NRCan LSU;
- interviews and focus groups with management, lawyers, and staff of the NRCan LSU and with management within the Department of Justice Business and Regulatory Law Portfolio;
- requests for information from other sectors in the Department of Justice (e.g. Human Resources and Professional Development Directorate);
- telephone interviews with client and Department of Justice regional representatives.