

2007



Report of the
**Auditor General
of Canada**
to the House of Commons

MAY

Chapter 5
Managing the Delivery
of Legal Services to Government—
Department of Justice Canada



Office of the Auditor General of Canada

The May 2007 Report of the Auditor General of Canada comprises A Message from the Auditor General of Canada, Main Points—Chapters 1 to 7, and seven chapters. The main table of contents for the Report is found at the end of this publication.

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Ce document est également publié en français.

© Minister of Public Works and Government Services Canada 2007
Cat. No. FA1-2007/2-5E
ISBN 978-0-662-45622-3



Chapter

5

**Managing the Delivery of Legal Services
to Government**

Department of Justice Canada

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by the Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

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Managing the Delivery of Legal Services to Government

Department of Justice Canada

Main Points

What we examined

Each department and agency of the federal government requires legal counsel to provide it with legal advice, to draft regulations and legislation, and to represent it in court. The Department of Justice Canada (Justice Canada) provides these services to all departments and agencies, with a few exceptions. In addition, it enforces regulations and legislation through prosecution, and examines the need for changes in legislation. We examined whether the Department effectively manages the delivery of legal services to meet the needs of government. We also looked at whether it takes appropriate steps to ensure the quality of the legal services and whether it delivers them in a cost-effective manner.

Up to the end of our examination, prosecution services were provided by the Federal Prosecution Service—a branch of Justice Canada—and were included in our audit scope. Prosecution services became the responsibility of the Public Prosecution Service of Canada when it was created under the *Federal Accountability Act*, which received royal assent on 12 December 2006. This new organization is separate from Justice Canada and reports to the Attorney General. Our findings and recommendations relate to the work now carried out by the Public Prosecution Service of Canada as well as the work of Justice Canada.

Why it's important

Canadians rely on lawyers to provide them with advice on, for example, purchasing or selling property, entering contracts, or settling disputes. Government departments and agencies rely on their lawyers for the same services. Justice Canada also covers a range of legal advisory, litigation (including prosecution), and legislative services. The Department's job is complicated by the fact that its lawyers represent the interests not only of each client department but also of the government as a whole.

Approximately 2,500 lawyers work for Justice Canada. Since our last audit in 1993 the annual cost of the Department's legal services has more than tripled to over \$600 million. This significant increase is attributed to growing complexity and volume of litigation and prosecutions, as well as the growth in demand for legal services to

departments since the introduction of the 1982 Charter of Rights and Freedoms. The Department has also faced more demand for its services in areas such as Aboriginal affairs, taxation, drug prosecutions, and immigration.

What we found

- The Department puts considerable effort into ensuring the quality of the legal services it provides to the government—its stated objective. While it does not have an overall quality management system, it uses several practices to promote quality. To date, its quality management efforts have focused on complex and high-risk litigation. It has also invested in information systems, development of guide books, and training and development of its staff. However, the Department has not expressed what it means by quality. This impedes its ability to deliver consistent quality of service to its 42 client departments and assess whether it is meeting its objective. It also lacks a system to provide senior management with ongoing assurance that all services meet established minimum standards.
- The Department lacks information on the volume of its work and its use of staff—information that would demonstrate whether it is delivering legal services cost-effectively. It has some time-keeping data for some lawyers, but recording time worked has only recently become a department-wide requirement. Justice Canada does not collect and use department-wide financial and workload information for monitoring trends, planning, setting priorities, managing resources, analyzing service delivery options, or identifying opportunities to control costs.
- Justice Canada shares the cost of legal services with departments. It has numerous financial arrangements with client departments—more than 100 arrangements with the eight departments we interviewed. Its financial arrangements are inconsistent, poorly documented, and inefficient to administer. Justice Canada has little incentive to control the costs of its services, because any unanticipated costs of legal services are borne by the client departments involved. Client departments also have little incentive to control their legal costs, which they are able to absorb as a small percentage of their total costs; for significant costs they can seek additional funding through the Treasury Board. Without good information on costs, it is difficult to manage and control the growing demand in departments for legal services and to find more efficient ways of providing them.

- The total costs of legal services incurred across the government are not consolidated for reporting to Parliament. Justice Canada reports the total costs of its legal services and the total amount recovered from departments. Each client department might report the costs of the legal services provided to it by Justice Canada, but other legal costs paid by departments are not readily identifiable because they are not reported separately from other operating expenditures.
- Much of what we found had been identified in our 1993 audit as weaknesses. The Department has made progress in managing legal risk, managing legal agents, and introducing time-keeping into the Department. However, we found no evidence of results in some important areas, despite efforts by the Department—notably the use of department-wide information on workload and human resources and its financial arrangements with client departments.

The Department has responded. The Department of Justice Canada agrees with each of our recommendations. Its detailed response follows each recommendation throughout the chapter.

Introduction

The Role of the Department of Justice Canada

5.1 The Department of Justice Canada (Justice Canada) can be characterized as Canada's largest law firm with approximately 2,500 lawyers and an estimated budget of close to \$1 billion for the 2006–07 fiscal year. This includes approximately \$625 million for legal services provided to government. These services include providing legal advice on departments' policies and programs, drafting new and amending existing legislation and regulations, and representing the government in court—whether in defence of civil litigation or to enforce Canada's laws through federal prosecutions. The remainder of the \$1 billion represents funds for Justice Canada policy development, as well as cost-shared and contribution programs, such as Aboriginal justice, youth justice, and legal aid. These programs and policy development are not within the scope of this audit (Exhibit 5.1).

5.2 At the time of our audit, Justice Canada was responsible for

- developing policies and laws,
- providing legislative services to government,
- providing legal advisory and litigation services to government,
- providing prosecution services, and
- delivering legal programs.

The Minister of Justice is also the Attorney General of Canada. The two titles reflect the two different aspects of the position.

The **Minister of Justice** is responsible for more than 45 statutes and areas of federal law, such as human rights, family and youth law, administrative law, Aboriginal justice, general public law, and private international law. The Minister introduces policies and programs that not only change the law, but are also intended to influence the way the law is applied; how the legal system functions; and how individuals, such as victims of crime, and groups, such as support services in family law, interact with the system. The Department enacts reform and provides advice on all reforms related to criminal law.

The **Attorney General** advises federal departments and agencies on behalf of the Crown, and represents the Crown whenever legal actions are taken against a federal body. The Attorney General also oversees the prosecution of violations of federal law in all the provinces as well as the prosecution of all federal offences, including Criminal Code violations, in the territories.

Source: Department of Justice Canada

Exhibit 5.1 Scope of the audit

Within the scope of this audit	
Departmental responsibility	Examples of departmental responsibilities
Providing legislative services to government	Drafting and reviewing legislation and regulations in both official languages, reflecting both the common and civil law traditions in Canada.
Providing legal advice to government	Providing legal advice on behalf of the Crown to government departments and agencies. The Department is mandated to provide legal advice only to the federal government.
Litigation services to government	Representing the Crown whenever legal actions are taken against a federal body.
Providing prosecution services	Undertaking federal prosecutions and criminal litigation on behalf of the Attorney General of Canada.
Outside the scope of this audit	
Departmental responsibility	Examples of departmental responsibilities
Development of Justice Canada policies and laws	The Minister and the Department are responsible for 45 statutes and laws. The Minister has sole or shared responsibility to Parliament for these laws, including Canadian Human Rights, Youth Criminal Justice, Access to Information, Divorce, and Official Languages.
Programs and initiatives to support Justice Canada policies	The Department develops and administers programs in support of the 45 statutes and laws in areas such as human rights, youth justice, Aboriginal justice, family justice, criminal law, privacy, and official languages.

Source: Based on information provided by the Department of Justice Canada

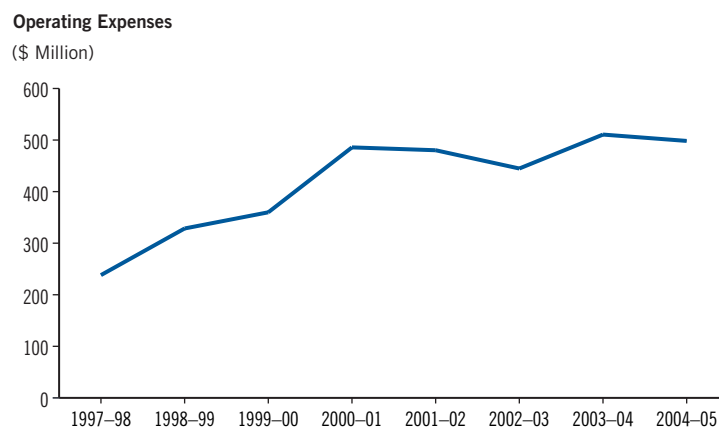
5.3 From its headquarters in Ottawa, Justice Canada delivers legal services to departments and agencies (referred to as departments throughout the chapter) and in six regions located across the country that primarily provide litigation and prosecution services. In 1995 the Department introduced a “portfolio” structure intended to deliver legal services to client departments more effectively. These portfolios include Business and Regulatory Law; Tax Law; Aboriginal Affairs; Citizenship, Immigration, and Public Safety; and Central Agencies. The Department also developed specialized centralized branches for civil litigation, federal prosecution and public law. While the regions report to one of three associate deputy ministers for operational purposes, they obtain their budgets and receive functional guidance from each of the portfolios and branches. As well, 42 legal services units located on the client departments’ premises deliver advisory services to client departments with oversight from headquarters.

5.4 Justice Canada told us that it faces many challenges.

The complexity and volume of litigation has continued to increase, as has the demand for legislation and legal advice to departments since the 1982 *Charter of Rights and Freedoms*. Pressures are particularly significant in such areas as taxation, drug prosecutions, immigration, and Aboriginal issues. Unlike a private sector law firm, the Department does not have the option to choose the cases it will undertake. It must respond to incoming lawsuits in civil litigation and criminal prosecution from police agencies and, as a result, does not control the volume of incoming work. Consequently, there has been a significant increase in the costs of the legal services the Department delivers to government. We found that Justice Canada's total operating expenses more than doubled from 1997–98 to 2004–05 (Exhibit 5.2).

5.5 Canadians see the role Justice Canada plays almost every day in the news. The Department is involved in challenges to immigration and deportation decisions and rulings, class action suits against the government on lost revenue from Bovine Spongiform Encephalopathy (BSE or Mad Cow Disease) and tainted blood. Other cases involving Aboriginal rights, security certificates, and prosecution of individuals and groups involved in organized crime can include constitutional challenges.

Exhibit 5.2 Justice Canada's operating expenses more than doubled from 1997–98 to 2004–05



1. In 2003–04 the Department revised its reporting of expenditures to include approximately \$117 million for lawyers providing services to other government departments, whose salaries had been reimbursed by the departments.
2. Operating expenses included the Canadian Firearms Centre until 2003–04, when it was transferred to the Minister of Public Safety and Emergency Preparedness and renamed the Canada Firearms Centre.

Source: Public Works and Government Services Canada, *Public Accounts of Canada*

5.6 Less visible are cases where Justice Canada lawyers represent the Crown, for example, in challenges to an individual's income tax assessment or claims for compensation for injuries sustained when a dog bites a postal worker. On a daily basis Justice Canada also provides advice to every government department in developing government policy, legislation, and regulations, as well as administrative matters related to staffing and contracting.

Focus of the audit

5.7 In this audit we examined whether the Department was effectively managing the delivery of legal services to meet the needs of government. We also examined whether the Department has assurance it is delivering quality legal services, and whether it is delivering these services in a cost-effective manner. In the course of our audit, we determined whether the Department had made progress since our last audit in 1993.

5.8 More details on the audit objectives, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations and Recommendations

Progress since our 1993 audit

5.9 In 1993, the Office of the Auditor General conducted an audit of Justice Canada's Legal Advisory and Litigation Services (Chapter 17). We found certain weaknesses in its management of the delivery of legal services. In this audit, we revisited some of these issues—specifically strategic planning, management of external legal agents, alternative dispute resolution initiatives, and reporting to Parliament.

The Department has made recent efforts to improve strategic planning

5.10 In 1993 we found the Department had neither a corporate plan nor equivalent plans at the sector level and was only beginning to implement processes for priority-setting and planning.

5.11 At the time of this audit, we expected to see improvements in the Department's corporate strategic planning processes. These processes provide a framework to assess and set priorities and to allocate resources required to deliver legal services. A strategic plan is also the basis for managing overall financial resources and coordinating the strategies and action plans for all Department sectors.

5.12 Since 1993 the Department has made efforts to implement better strategic planning and management practices. For example, the Department had developed a document—Strategic Plan 2001–2005. However, in this period, operational plans were not formally aligned with this corporate strategic plan. Without this alignment, there is a risk that the Department is not coordinated in achieving its corporate objectives. Further, we found that the former strategic plan had not been updated over the four-year period, rendering it out of date. At the time of this audit, the Department was in the process of establishing a new strategic plan as well as improving its operational planning and performance measurement systems. However, the Department has not completed implementing these improvements.

5.13 Recommendation. Justice Canada should complete its corporate strategic planning and develop strategies to meet its long-term goals.

The Department’s response. The Department agrees with the Auditor General’s recommendation. The Department created the Office of Strategic Planning and Performance Management in February 2005 to begin to strengthen the Department’s strategic planning and performance management capabilities, including integrating planning and strategic analysis, and performance measurement and reporting for the Department. The Department is also developing a corporate human resources strategy, which encompasses the key strategic human resources priorities of the Department as well as other human resources management initiatives in support of government-wide priorities. The Department will continue its efforts to implement planning frameworks and processes that reflect the unique needs and challenges that it faces in meeting its strategic outcomes.

The Department has improved its management of external legal agents in some areas

5.14 The Department hires two types of external legal agents for its litigation services. Standing agents provide prosecution services for indeterminate periods, while civil agents work on a case-by-case basis. Note that Justice Canada is not required to follow government procurement policies when appointing legal agents. The Minister of Justice is responsible for all appointments of external legal agents both for Justice Canada and client departments and has primary responsibility and accountability for agents’ performance.

5.15 Standing agents. In our 1993 audit we reported problems where standing agents of the Federal Prosecution Service (FPS) received little supervision. The Department recognized the need for

Standing agents—lawyers or law firms contracted to carry out prosecutions in areas where the Department does not have a regional office or where travel costs would be prohibitive. As well, the Department uses standing agents in larger cities for routine prosecution cases.

improvements in its information on what agents are doing and how they are performing. We expected to find that the Department had corrected these deficiencies and that it effectively manages its use of standing agents.

5.16 In 2000 the Federal Prosecution Service (FPS) implemented an Agent Affairs Program to better manage its standing agents. A subsequent internal audit in 2003 found that certain procurement problems continued to exist. In our current audit we found that since 1993 there have been improvements to the procurement and management of agents hired for federal prosecution. These improvements include better processes to identify agents whose charges exceed expected amounts, and to take follow-up action.

5.17 We selected 25 FPS standing agent files. In our review we found

- evidence that screening processes were used for those counsel who were recently engaged,
- documentation on the ongoing communication and supervision of the agents, and
- reviews for reasonableness of invoices submitted by standing agents were performed and signed by the supervision unit.

However, in the file review we found no formal evaluations of the standing agents and no documentation of corrective action taken where poor performance had been noted.

Civil agents (or ad-hoc agents)—lawyers or law firms contracted to carry out civil litigation or other civil work on behalf of the Department due to their specific area of expertise or the lack of available Justice Canada lawyers.

5.18 Civil agents. In our review of 21 contracts for legal agents for civil litigation and civil work, we examined the processes for the selection, appointment, and management of these agents. We found

- no documentation of an in-house search for qualified counsel prior to seeking outside counsel;
- no documented rationale for the selection of the legal agent;
- no consistent basic information, such as start and end dates, estimated number of hours, estimated total value of the work, and terms of work in the agreement between the outside lawyer and the Department;
- no consistent monitoring of the ongoing costs of an agreement. In some agreements, numerous detailed invoices received were not summarized and added together to inform the Department of the ongoing cost of the case; and
- no documented evaluation of the performance of civil litigation agents was required for their files, according to the Department's

policy for civil litigation agents—whether for good or poor performance. Only poor performance would be brought to the attention of a supervisor. It was not clear how performance information on an agent would be used in the negotiation or selection of agents for future work.

5.19 While we are aware that the Department is taking a number of steps to improve the processes for hiring and managing civil agents—such as establishing a pool of eligible law firms for civil agent work—it is too early to assess the results.

5.20 Recommendation. Justice Canada should examine the weaknesses noted in its management of legal agents used for civil work and take corrective action.

The Department’s response. The Department agrees with the Auditor General’s recommendation. In fact, the Department has an action plan to support the continued implementation of improvements to the management of legal agents. This action plan will also address the issues raised by the Auditor General.

Management improvements are required for alternative dispute resolution initiatives

5.21 In our 1993 audit we noted that the Treasury Board approved recommendations arising from the first phase of the joint review of the justice and legal system and recommended the Department review alternative dispute resolution mechanisms as a means to reduce costs.

5.22 In this audit we found that Justice Canada, in conjunction with client departments, has implemented a number of alternate strategies to litigation over the years in order to avoid costly court processes. We assessed five strategies:

- the Competition Bureau’s use of Alternate Case Resolution,
- Fisheries and Oceans Canada’s project for Controlling Prosecution Costs,
- Indian and Northern Affairs Canada’s Saskatchewan Treaty Land Entitlement Settlement program,
- Justice Canada’s pilot project in its Prairie Region to promote mediation in Alberta for resolution of litigation files, and
- the establishment of the Canadian Food Inspection Agency’s centre of expertise on Dispute Resolution to avoid litigation by using alternate dispute resolution.

5.23 We expected each of the initiatives to have clear objectives, scope, reasonable timelines, adequate resources, and ongoing monitoring and review mechanisms in place, and that the initiatives were implemented within the timelines established and within budget.

5.24 We found that most of the documentation on the initiatives lacked clear objectives and estimates of potential cost savings. We did not find an identified project management structure that would guide the initiatives, and there was no formal review of outcomes against the original objectives.

5.25 Recommendation. In addition to its current management of alternative dispute resolution initiatives, Justice Canada should ensure that it clearly defines each initiative's objectives, estimates the potential cost savings and formally reviews the outcome of initiatives against their objectives.

The Department's response. The Department agrees with the Auditor General's recommendation, which is consistent with the recent review of the Department's dispute resolution initiative that has resulted in a new mandate focused on providing services to departments supporting long-term prevention and early resolution of disputes. These client-focused services include systems design, legal advisory support, and training, all of which are linked to the departmental priorities of improving practice management and managing the volume of litigation.

Reporting to Parliament needs improvements

5.26 In our 1993 audit, we noted that Parliament was not aware of the full cost of delivering litigation and advisory services because client departments bore significant proportions of the costs.

5.27 In our current audit we found there is still no reporting to Parliament on the overall cost incurred across government for legal services. Justice Canada reports the total costs of its legal services and the total amount recovered from departments. Each client department might report the costs of the legal services provided to it by Justice Canada, but other legal costs paid by departments are not readily identifiable because they are not reported separately from other operating expenditures. For example, we reviewed a study of estimated costs for the 2003–04 fiscal year prepared by the Justice Canada legal services unit for Transport Canada, which is a large user of legal services, and found that Justice Canada paid \$7.8 million in legal services provided to Transport, of which \$5.2 million was cost

recovered. However, Transport Canada incurred an additional \$1.3 million for legal services support and legal agents. Some of these additional costs are not easily identifiable as legal costs because they are included in Transport Canada's reports to Parliament as operating expenditures. There is no consolidated report to Parliament on the total costs incurred by government for legal services. We were not able to estimate this amount as the data is not available from Justice Canada.

5.28 We also reviewed the Department's annual reports to Parliament: the Report on Plans and Priorities and the Departmental Performance Report. In our assessment of the performance reporting, we found that the Department clearly outlined its main objectives and provided financial information on the costs of these objectives. However, there were few meaningful performance measures in its reports to Parliament. As well, the information provided in the annual performance report was not aligned with the plans and priorities for the period. Justice Canada is undertaking an initiative to improve its performance reporting.

5.29 Recommendation. Justice Canada should define performance measures for its corporate priorities and improve its performance reporting to Parliament.

The Department's response. The Department agrees with the Auditor General's recommendation. As part of its departmental performance report to Parliament, the Department will incorporate relevant measures from the annual assessment of our Management Accountability Framework completed by the Treasury Board Secretariat.

More broadly, the Department has implemented a number of changes to its annual reports on plans and priorities and departmental performance reports in an effort to improve reporting to Parliament and the public on the results of departmental initiatives and priorities. Also, as part of its efforts to improve reporting, the Department has implemented a practice whereby a committee of performance measurement specialists within the Department, as well as one external adviser, assess the quality of data used to arrive at management's assessments of the degree to which the Department is achieving its priorities each year. The results of these reviews are reported in the departmental performance report.

Quality assurance

5.30 Central to Justice Canada’s mission is the delivery of high-quality legal services to government. Quality assurance is a systematic process that should provide senior management with ongoing and reliable assurance that all services meet minimum quality standards.

5.31 In particular, we expected the Department to

- have articulated an expression of quality and communicated it across Justice Canada and with client departments in order to promote a consistent understanding and expectation of quality services;
- manage the quality of its legal services, by assessing the level of risk and assigning appropriately qualified staff who deliver relevant legal services in a timely and reliable manner; and
- have a system in place to provide senior management with ongoing and reliable assurance that all services meet established minimum standards.

5.32 During our audit we found few areas where the Department was doing well and more areas where it could make improvements. The following observations provide details on our findings. At the end of this section, we provide one recommendation that addresses the need for a comprehensive quality assurance system.

The Department has not articulated what it means by quality legal services

5.33 We found that the department has not articulated what it means by quality legal services. Most lawyers we asked had their own definition of quality, for example, performing thorough research on the legal issue, providing advice that is consistent with previous positions taken, and writing clearly, to name a few. However, without a departmental expression of quality, it is difficult to have a consistent understanding of quality legal services across the Department. Further, this lack of an expression of quality makes it difficult for the Department to assess whether it is delivering legal services that meet its quality expectations.

5.34 Justice Canada delivers legal services to 42 client departments across the government. We expected that Justice Canada would reach an agreement with each client department on the quality of legal services to be provided. We did not find an agreed-upon, written expression of quality legal services used consistently for all client departments. Without this shared understanding, it is difficult for Justice Canada to meet client department’s expectations and to determine whether it is delivering quality consistently across the government.

5.35 Justice Canada needs to clearly articulate what it means by quality legal services and ensure that this is understood and used across the Department and with all client departments.

The Department has elements of quality management

5.36 We found that the Department does not have a formal, systematic approach to managing quality; however, it provided us with a list of its quality management practices:

- legal risk management;
- staff training and development;
- tools for lawyers such as information systems and guide books;
- service standards defined for a number of portfolios, branches, and regions; and
- practices to deliver services to client departments.

In the absence of an overall framework, we examined these practices and present the following observations.

5.37 Legal risk management. Since 2000 the Department has sought to manage legal risks more effectively, starting with a focus on litigation services. While the Department is not yet consistently using legal risk assessment in its advisory work, we were informed that it is developing new principles and practices specific to advisory services. Our audit focused on the systems in place to manage litigation risk.

5.38 The Department uses litigation risk management to guide the ongoing monitoring and reporting of civil litigation and prosecution cases. Justice Canada lawyers assess the level and impact of risk to the government's policies, laws, programs, or finances; to federal/provincial/territorial or international relations; and to public confidence in government or the courts. They evaluate the likelihood of an adverse outcome of a case—low, medium, or high—and assess the potential impact—minor, moderate, or significant (Exhibit 5.3). The Department uses a three-by-three grid and standard criteria to assess risks and develop management actions. This risk assessment is prepared by the lead counsel on the case who is expected to change the assessment if necessary as the case proceeds.

5.39 We found the litigation risk management framework to be a good tool that provides an effective means of analyzing new cases and communicating their risk in a consistent fashion. This practice is designed to share the understanding of the risks and rankings of cases

Exhibit 5.3 The Department has a good risk assessment tool that incorporates management actions

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

Source: Department of Justice Canada

across the Department and to support the management and mitigation of the risks. As well, resources are assigned depending on the risk level and complexity of the case.

5.40 At the Department, files with higher risk levels receive more attention from senior management. Cases assessed as having a potentially significant impact (risk levels 7 to 9) are supposed to be reported to the Deputy Minister on a regular basis, while cases assessed from 1 to 6 are not likely to be discussed beyond the regional level. Central committees discuss key litigation cases and class action litigation in order to develop broad litigation strategies, resolve differing views on legal issues, and ensure consistency in arguments. In our review of 91 files, we found evidence that portfolio heads and committees reviewed and approved strategies and arguments for high-risk litigation cases, as required by the Department.

5.41 While the litigation risk management framework is a good tool, its effective use depends on the correct initial assessment made by individual lawyers. We found that, in some instances, the lead counsel’s risk assessment was not challenged. This could lead to inadequate preparation for the case. While we have some evidence that Justice Canada and client departments did joint risk assessments, we found no documented evidence of this in the case files we reviewed. Justice Canada and client departments need to review and approve the initial risk assessment score and any subsequent need for changes to the score.

5.42 The current litigation risk model assigns senior management attention to a case assessed as a 7, which has a low probability of an adverse outcome. Meanwhile, a case assessed as a 6, which has a high likelihood of an adverse outcome with a moderate impact, does not receive senior management attention, but receives attention in the region. We consider the level 6 designation may not ensure the appropriate management action to mitigate risk. The Department is aware of this issue and has decided to continue with this grid. However, it needs to ensure that special attention is given to cases where a potentially incorrect score could have a considerable impact on its oversight of the case.

5.43 As noted earlier, the Department does not consistently use risk management in its advisory services at this time. As a result, it is not in a position to properly assess these legal risks and to mitigate them. Furthermore, Justice Canada does not have the risk assessment information that would help allocate the appropriate quantity and quality of legal resources to advisory work.

5.44 Human resources management. Planning and managing human resources are important in the delivery of quality legal services. However, we did not find a human resources strategy in place at Justice Canada to ensure it can meet its goals, including ensuring the quality of staff. The Department did inform us that it has an initiative under way to identify its human resource management priorities based on operational business plans and government priorities. Still, we did not find a corporate retention strategy or a succession plan. Without a human resource strategy and related plans, the Department risks making staffing decisions that are inconsistent with its long-term goals, as well as not having appropriately qualified staff who deliver timely, reliable, and relevant legal services.

5.45 Client departments rely on the quality and professionalism of lawyers assigned to their department. Maintaining and further developing this expertise is important. Justice Canada's training and development policy includes five days of professional development per year per employee. However, we found that the Department did not consistently provide funds for professional development to support this policy. We also found that the Department does not consistently record training days taken, which limits the information available to monitor training and development.

5.46 The Department has some programs for recruiting articling students and has a performance assessment program that identifies objectives and training needs, which provides feedback to individual

lawyers. It has also made efforts over the past 10 years to integrate defined competencies for lawyers and managers (skills, behaviours, and capabilities) into the human resource management system. However, a list of expected competencies for lawyers and managers was not in place at the time of our audit.

5.47 The Department needs to have a human resource strategy and practices in place to ensure it has appropriately qualified staff to meet its needs for quality. These practices need to include a retention strategy and succession plan, as well as defined competencies for lawyers and managers.

5.48 Quality and professionalism of lawyers. The Department relies heavily on the quality of the individual lawyers for all of its services. Lawyers specialize in certain types of law or services such as litigation, prosecution, legal drafting, or advisory services. They bring to their work the education, skills, expertise, and judgment of their profession. As lawyers gain experience with a client department, they develop knowledge of the department's legislation, regulations, policies, and programs, and are better able to contribute to resolving the legal issues it faces. We found that the client departments we interviewed were satisfied with the quality of individual lawyers assigned to them, and were quite satisfied with the overall services provided. As well, the Justice Canada counsel who heads the legal services unit routinely sits as a full member on departmental executive committees. Client departments informed us that Justice Canada lawyers have improved their advice by identifying possible solutions to legal issues.

5.49 Guidance, information, and documentation. To help ensure the quality and consistency of legal services, the Department has developed extensive guide books for both civil litigation and federal prosecution lawyers. All lawyers must follow the policies, processes, and templates provided. However, we found that the Department does not periodically assess compliance with these guides. Without periodic assessment, management will not know if the guides are effective and followed consistently.

5.50 The Department also uses a number of information systems to help lawyers provide consistent litigation and advisory services. These systems provide Justice Canada lawyers with desktop access to electronic information such as legal precedents and previous key policy advice. They help manage electronic evidence as well as a large number of documents, and help ensure the quality advisory services by making legal opinions available to lawyers situated across the country.

5.51 Unfortunately, lawyers housed in client departments find these information systems difficult to access. As well, we found that the Justice Canada database of legal opinions was not up to date. Without this, lawyers do not have the most recent information available, thus increasing the risk they may provide inconsistent advice. The Department has recognized that these systems are important to deliver quality legal services and that they need improvement. It recently approved a knowledge management strategy. However, full implementation of improvements to the systems will take years to accomplish. In the interim, the Department needs to improve the accessibility of the information systems and establish procedures to ensure the databases are up to date.

5.52 In our review of files, we found a lack of documentation regarding key decisions. We expected documented legal advice supporting decisions to be in the files since it represents communication with client departments. We also expected this documentation to be readily available should there be a change in lawyers during the course of a trial or hearings. The Department needs to review and improve its documentation practices.

5.53 Consistent legal decisions and advice. Given the decentralized delivery of legal services to all departments, we expected Justice Canada to have established mechanisms to provide consistent legal decisions and advice. The Department established a portfolio structure, which allows for numerous points of review to promote consistency when providing advice and opinions and drafting legislation. This structure includes extensive communication and peer review.

5.54 We found that the portfolio structure requires a complicated flow of communications within Justice Canada and with its client departments for both litigation and advisory services. Exhibit 5.4 provides an example of the communications required for a high-impact litigation case with Fisheries and Oceans Canada.

5.55 We find that this structure, while providing multiple points of review, involves significant overhead (cost and time) for Justice Canada. While the Department believes that the structure is appropriate, it has not assessed whether its costs are reasonable. The Department needs to examine the appropriateness of the cost of this structure.

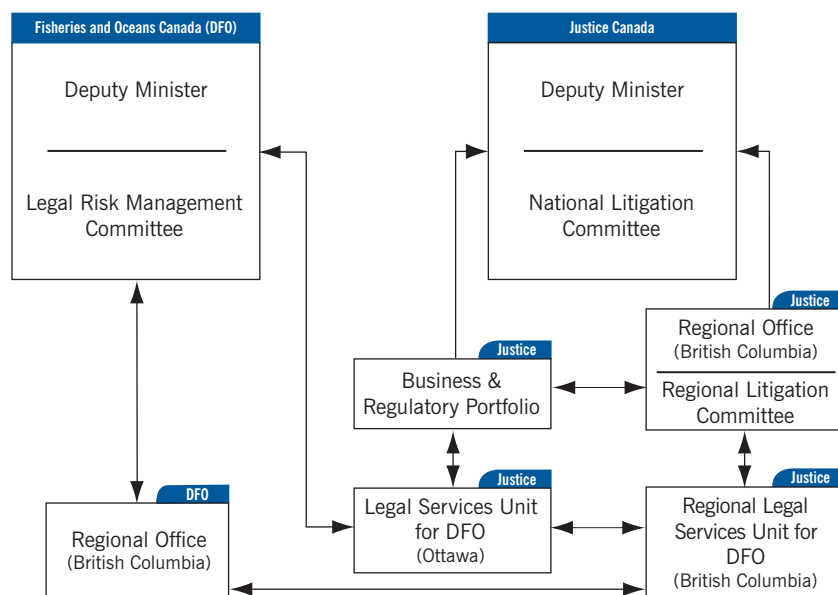
5.56 In the majority of instances, the Department's practices to ensure consistency appear to function well. However, in our interviews with departmental officials regarding advisory services, we found isolated instances where clients received more than one opinion on the

same issue from different Justice Canada lawyers. The departmental officials had expected and wanted a single national opinion from Justice Canada. We were also told of one instance where the differing positions were played out in front of the client who then had to act as conciliator.

5.57 Service standards. Service standards are another tool Justice Canada has to ensure consistency in the delivery of quality legal services to client departments. The service standards we found addressed areas such as responsiveness, clarity of legal advice, and use of plain language. Establishing service standards has been a work-in-progress at the Department since our 1993 audit. At the time of this audit, we found that not all of the portfolios, regions, and branches had service standards in place. Some standards were drafted with client departments, but had not been implemented. Consequently, the practice of using service standards in discussion with clients is not consistent across the Department. Justice Canada needs to complete its service standards and use them consistently in discussions with all client departments.

5.58 Formal feedback. Senior managers at Justice Canada are in touch with government departments on a regular basis in order to receive feedback on their services. Of the eight client departments we reviewed, portfolio heads at Justice Canada meet at least once a year

Exhibit 5.4 Communications within Justice Canada and with its client departments are complex for high-impact cases



with departmental senior officials to discuss the performance of the legal services unit. Managers of the legal services units also seek ongoing informal feedback throughout the year. We were told that client departments would not hesitate to bring quality issues to the attention of senior management at Justice Canada.

5.59 The Department has also used client satisfaction surveys to receive formal feedback on its service. However, we found that the survey results were not comparable or done regularly. This does not allow the Department to compare the feedback across government or track changes in satisfaction over time. The Department recognized that there were problems with its survey methodology and is currently taking steps to improve surveys in order to have a government-wide perspective. It needs to complete these improvements in a timely manner.

The Department does not have systematic and reliable assurance of the quality of its services

5.60 We expected to find that Justice Canada would have a system in place to provide senior management with ongoing and reliable assurance that all products and services meet established minimum standards. This system would include the periodic assessment of the appropriateness of the design and whether the quality management framework provides it with assurance that it is delivering quality legal services. This assessment would help to identify weaknesses, allowing the organization to take corrective action.

5.61 We found, however, that the Department is not assessing whether it has the appropriate design in place and whether it is functioning as intended. The weaknesses in the practices that we have noted in earlier paragraphs could have been identified through such an assessment. The Department does not have assurance that these practices are appropriate and effective in delivering quality in its legal services. Without measuring and assessing its quality practices, the Department is unable to manage quality.

5.62 Recommendation. Justice Canada should develop a quality management system or systems for each of its practices to provide senior management with ongoing and reliable assurance that all services meet established minimum quality standards.

The Department's response. The Department agrees with the Auditor General's recommendation and will build on the elements of its quality work recognized by the Office of the Auditor General with a view to having a sound quality management approach.

Resource management

5.63 In light of the significant increases in legal services costs at Justice Canada since our 1993 audit, we expected the Department to have systems and practices in place to effectively manage its resources—that is, to know its costs and workload and to manage the delivery of legal services in a cost-effective and economical way.

The Department does not use workload and human resources information to manage cost-effective legal services

5.64 In our 1993 audit, we noted a lack of management information on workload, costs, and performance, which had an impact on the Department's ability to manage its workload.

5.65 In this audit we expected the Department to be using management information on workload volumes and costs for legal advisory services and litigation in order to monitor trends, plan, set priorities, manage resources, analyze service delivery options, and identify opportunities for controlling costs.

5.66 We found that the Department has taken some steps since 1993 to improve its collection of detailed timekeeping by lawyers for all types of legal services. The Department informed us that it introduced timekeeping in 1996. By 2003, timekeeping was used by most counsel, although not consistently. In December 2006, the Department made timekeeping mandatory for all counsel and paralegals that provide legal services to government departments regardless of the type of work performed—advisory, litigation, or legal drafting. Since consistent timekeeping across the Department was relatively new at the time of our audit, the Department did not have complete information to analyze and compare workload volumes and costs for all of its services.

5.67 Without proper department-wide timekeeping data, the Department lacks information on work volume and its use of staff, and as a result, it has difficulty understanding and controlling its costs. Department managers need timekeeping and human resource information, not only to manage their workloads in the short term, but also to plan and prepare for the future.

5.68 As with timekeeping information, we found that the department does not use its human resource information for department-wide analysis. While we found detailed human resource and cost information, the Department was not using it to estimate the future number and types of positions it will need or its future salary costs. Nor did we find departmental reports that tracked key human resource statistics such as vacancy and turnover rates. This lack of summary

level information limits the Department's ability to analyze its resources, detect trends as they emerge, and make informed decisions.

5.69 For example, we found that the Department had difficulty providing us with department-wide reports. It could not provide a summary report on historical salary expenses and the number of positions by staffing level with information from both its financial and human resources information systems, since these systems have not been reconciled. Also, some employee information available prior to the 2002–03 fiscal year is inconsistent with data collected after that year, making it difficult to analyze trends over time.

5.70 We found the Department manages its finances in a decentralized manner and at a transactional level. Managers in portfolios, branches, and regions know what they have spent and can compare this against their budget. In addition, within the past year, the Department has begun to review a monthly overview of its expenses against its budget.

5.71 In our review of 96 files as well as eight legal services units in key client departments, we found little evidence of Justice Canada using financial and workload information to monitor trends, plan, set priorities, manage resources, analyze service delivery options, and identify opportunities for controlling costs.

5.72 Without key departmental work volume data, and financial and human resource management information that is collected, analyzed, and reported to senior management on a regular basis, the Department does not know whether it is delivering legal services cost-effectively.

Financial arrangements with government departments continue to provide few reasons to improve resource management

Glassco Commission—*The Royal Commission on Government Organization* (1962), headed by J. Grant Glassco, included recommendations to place legal services and lawyers under the responsibility of one department. The benefits of integrating legal services included giving one department responsibility for long-term planning of costs and resources. The Department of Justice implemented integration in 1966.

5.73 From the **Glassco Commission** in 1962 to the late 1980s, Justice Canada paid for almost all legal services for the entire government with the exception of the payment of judgments and settlement of claims. As the demand for legal services exceeded the Department's resources, it sought to recover costs from its clients and adopted different financial arrangements with each department. The departments also directly pay for certain other legal costs, such as paralegals and administrative support staff.

5.74 The government's Common Services Policy requires that all departments across government use Justice Canada for its legal services. This policy prevents these departments from seeking other sources of legal services that could be more cost-effective but could

place the Crown at risk. The policy does require, among other things, that Justice Canada provide services in a cost-effective manner.

5.75 In response to our 1993 audit where we raised a number of issues related to the financial arrangements with client departments, the Department agreed to undertake a study to identify the positive and negative features of current arrangements and options for them. We expected the Department to have analyzed alternatives to its financial arrangements with client departments, developed a clear rationale for using cost recovery, and to have implemented an appropriate system.

5.76 During our current audit we found that the Department and the Treasury Board Secretariat had performed a number of studies on cost recovery and client service since the early 1990s. By the mid-1990s the Department had developed, through consultation with its client departments, a legal services policy framework. This framework was based on principles of joint planning; shared responsibility for costs; and shared accountability for performance, allocation, and use of resources. The Department considered this framework to be a means to manage day-to-day services more effectively, thus reducing the overall costs of legal services to government. The assumption was that departments would moderate or control their demand if they were paying part of the bill.

5.77 A 2003 internal Justice Canada report stated that there continued to be few, if any, incentives to both manage and control the increasing demand for legal services, or identify more efficient ways to deliver legal services. In addition, the report noted that dedicating the same amount of funds as the previous year to each client department limits Justice Canada from reallocating funds from one department to another that may have a greater need for legal services. This report then outlined alternatives to the current financial arrangements that would provide a more consistent approach and better control over increasing demand and costs. The executive agreed to proceed with the proposed changes; however, we found no evidence that these changes were implemented.

5.78 In 2004, the Department continued to address this issue by initiating a Review of Legal Services. The objectives of this initiative were two-fold:

- to improve the sustainability of legal services delivery through improved strategies and a sustainable funding regime; and
- to identify approaches to cost-effectively manage litigation.

5.79 At the time of our audit, this initiative was still under way, although most short-term efforts were focused on the first objective of sustainable funding for legal services. While the Department has developed a number of proposals for changes to the financial arrangements and continues its efforts and discussions, we found no tangible progress on the management and control of the demand and cost for legal services.

5.80 We found that, in the process of developing these proposals, the Department had done little analysis to assess the assumption that cost sharing and recovery would control demand and reduce costs. In fact, since legal costs represent less than one percent of client departments' total budgets, the additional costs are often not a significant factor in deciding whether or not to obtain additional services. Also, if unanticipated legal costs arise during the year for significant issues, client departments may seek additional funds through the Treasury Board. Thus, the current financial arrangements will continue to lack incentives to control costs. Since our last audit, Justice Canada has not been able to find a way to work with client departments to manage demand and thereby reduce costs.

The administration of financial arrangements is inefficient

5.81 At the time of our audit, we were informed that there were multiple financial arrangements, with Justice Canada recovering up to 100 percent for its services. For the 8 client departments we reviewed, we found more than 100 financial arrangements. When we examined the administration related to these financial arrangements, we found it poorly organized and controlled, inconsistent, and with incomplete documentation. We found that the Department's financial services area does not maintain a central collection of all the agreements between Justice Canada and client departments; instead, they are held in each portfolio. By the end of our fieldwork, we were not confident that we had received all of the agreements.

5.82 Justice Canada has estimated a total cost of more than \$2 million per year for all Department staff involved in running this overly complicated system. This estimate does not include the administration costs incurred by each client department.

Financial information provided to client departments is weak and inconsistent

5.83 Both the Department and its clients are stewards of the resources under their control. Effective stewardship requires information to effectively plan and manage demand for legal services and the use of resources.

5.84 We expected Justice Canada to be able to inform and report to client departments on the services provided and their overall cost and to have a written agreement in place. We believe that, as the service provider, Justice Canada is responsible for providing this information. In addition, we expected that Justice Canada would routinely provide client departments with the estimated costs of individual cases to improve client department's decision making regarding the cases.

5.85 In our review of eight client departments, we found a variety of financial planning practices in place. Three departments had good joint department-Justice Canada work plans, supported by detailed resource estimates, as well as periodic tracking against these plans. In others, no documentation of consultations was available.

5.86 In our interviews with client departments, most managers using the services had little understanding of the overall cost of legal services provided to their department. While the client departments approve each individual detailed invoice, Justice Canada could not easily provide a roll-up of the financial information on the overall costs of legal services to each client department. In a few instances, we found that client departments tried to develop their own reports in order to better understand and predict the overall costs of their legal services.

5.87 On a case-by-case basis, when a client department requests an opinion or needs legal services, Justice Canada discusses the client's priorities and deadlines. However, it does not consistently provide cost information to allow the client department to make informed decisions about the legal services it requests.

5.88 We reviewed 53 cases that proceeded to litigation or cases that were appealed. While most of the Justice Canada files contained documentation of its advice to clients on whether to proceed, we did not find documentation on the estimated costs. We did, however, find a forecast of expenditures for the coming year for certain significant cases. Still, the client departments did not receive cost information from Justice Canada to help them make an informed decision.

The Department needs better professional management

5.89 During our audit we found that the Department has continued to make efforts, over the past 10 years, to develop and implement a number of initiatives to improve administrative practices. We noted many of these earlier in the chapter, including strategic planning, legal risk management, information systems for lawyers, formal client

surveys, timekeeping, cost recovery through a legal services policy framework, financial and human resource information and reporting, and the Review of Legal Services project.

5.90 We found that the implementation of these initiatives had been ongoing for many years and, at the time of our audit, were still not fully implemented. As a result, we found inconsistent administrative practices across the Department. In our view, Justice Canada does not have the tools in place to provide management with the information it needs to support departmental decision-making.

5.91 The responsibility for management lies with the Deputy Minister. However, given the size of the Department, we expected to find a senior manager with clear delegated authority for the management of administration. This position would complement the Deputy Minister's responsibilities for the law. The Assistant Deputy Minister (ADM) for Corporate Services co-chairs three committees—finance, human resources and information technology—that make recommendations to the main decision-making body—the Senior Management Board. The ADM is also a member of the Senior Management Board. However, this ADM position does not have the authority to make significant decisions for these areas.

5.92 In our opinion, the lack of a senior executive position with delegated authority for management practices has limited the Department's ability to focus on and implement the improvements necessary to manage a large department that is responsible for delivering cost-effective professional services.

5.93 Recommendation. Justice Canada should make improvements to its resource management. The Department should

- use management information on workload volumes and costs for all of its legal services to better monitor trends, plan, set priorities, manage resources, analyze service delivery options, and identify opportunities for controlling costs;
- work with client departments to effectively plan, manage, and improve the cost-effectiveness of their financial arrangements with a view to managing demand for legal services and thereby reducing costs; and
- ensure that a senior manager with the necessary authority leads the improvement of management practices at the Department and oversees implementation of these changes.

The Department's response. The Department agrees with the Auditor General's recommendation. The Department of Justice Canada will continue the work underway to develop approaches to further develop its capacity to use management information to enhance management decisions, and regularize its cost recovery agreements with government departments.

The Department is currently working on putting in place an initiative to better coordinate and integrate its law management practices. The Department will, at the same time, review its management practices to identify and put in place corporate reports to provide management information to support departmental decision making. Senior management authority to lead our work on management practices will be strengthened.

Conclusion

5.94 Justice Canada has made progress since our 1993 audit, mainly in the area of managing external legal agents for prosecutions. There remains, however, the need for improvements in managing legal agents for civil work, strategic planning, and managing important initiatives. The Department also needs to improve its performance reporting to Parliament.

5.95 We found that the Department does not have the necessary system or systems to provide assurance that it is delivering quality legal services to government; but it does have some elements of quality management that it can build on. The Department has not assessed whether it had the appropriate design in place and whether it was functioning as intended. We found some practices in place to manage quality such as litigation risk management. However, we also identified weaknesses, which could have been identified through such an assessment. The Department needs to develop a quality management system or systems for each of its practices to ensure that quality is built into its services and to provide senior management with ongoing and reliable assurance that all services meet established minimum quality standards.

5.96 The Department does not have the systems and practices in place to know whether it is delivering its services cost-effectively. It is not using financial and human resource information to its full extent for departmental analysis, to inform senior management, to improve its strategic planning, or in discussions with client departments. Without key corporate work volume data, and financial and human resource

management information that is collected, analyzed, and reported to senior management on a regular basis, the Department does not know if it is delivering legal services cost-effectively.

5.97 We found that the Department has the key systems and practices in place to effectively manage the delivery of legal services to meet the needs of government; however it has not worked with departments to help manage the demand for legal services and thereby reduce costs. The current financial arrangements with client departments have few incentives to manage the increasing demand for legal services and costs. In addition the administration of the numerous cost recovery arrangements is inefficient. The Department has been aware of these problems for a number of years and, despite much effort on its part, we found no progress on this issue.

5.98 In our opinion, the lack of a senior executive position with delegated authority for management practices has limited the Department's ability to focus on and implement the improvements necessary to manage a large department responsible for delivering cost-effective professional services.

About the Audit

Objectives

Our objective was to determine whether

- the Department of Justice Canada (Justice Canada) has the systems, practices, and processes to provide assurance that it is delivering quality at a level commensurate with the assessed risk and that it is managing the delivery of legal services cost-effectively; and
- the Department has key systems, practices, and processes in place to effectively manage the delivery of legal services to meet the needs of government.

Scope and approach

The scope of our audit was the delivery of legal services to government provided by Justice Canada. These services include providing legal advice on departments' policies and programs, drafting new and amending existing legislation and regulations, and representing the government in court—whether in defence of civil litigation or to enforce Canada's laws through federal prosecutions.

Provisions of the *Federal Accountability Act* came into force on 12 December 2006. This act created the independent Public Prosecution Service of Canada to prosecute offences under federal law. The new Public Prosecution Service of Canada is separate from Justice Canada and reports to the Attorney General. At the time of our detailed audit work, these prosecution services were provided by the Federal Prosecution Service—a branch of Justice Canada—and were included in our audit scope. Our findings and recommendations now relate to the work of the Public Prosecution Service of Canada as well as Justice Canada.

We conducted our audit of the delivery of legal services to meet the needs of government through three general approaches—interviews, document reviews, and case file reviews. We also interviewed officials in other legal jurisdictions and in large private sector organizations with sizeable legal services units.

To assess the management of resources for legal services we interviewed senior officials and collected and assessed strategic and business planning documentation from across the Department. We examined the Department's reporting to Parliament over the past three years. To examine the planning and management of resources on a case-by-case basis, we selected a purposeful sample of litigation files on the basis of specific criteria. We stratified files based on the six regions and the Department's defined risk ratings. We selected files from three regions (British Columbia, Ontario, and the Prairies) to allow examination of a range of management styles and risk levels assessed by the Department (high and low). Files were selected evenly across a region with slightly more files in the higher risk category. Files were randomly sampled within the strata. We reviewed 43 of the 45 randomly selected files, as the Department did not have 2 of the files.

To assess the quality management processes, we interviewed management from Justice Canada and 8 client departments (Canada Revenue Agency, Canadian Food Inspection Agency, Citizenship and Immigration Canada, Fisheries and Oceans Canada, Health Canada, Human Resources and Social Development Canada, Indian and Northern Affairs Canada and Transport Canada). The 8 were selected from 42 client departments, based on the complexity of law required for their operations and their heavy

use and reliance on Justice Canada legal services. We reviewed documentation where it was available. We also examined and assessed quality management processes on a case-by-case basis. We selected a purposeful sample of files to review on the basis of specific criteria. The files were stratified based on eight legal service units; risk (high and low); and type of case (for example, appeal, litigation, or advisory). We selected low-risk or high-risk files in order to capture the variation of the practices in place to manage quality. We selected a purposeful sample of 91 files that were randomly sampled within the strata.

To assess the Department's knowledge of its costs and its rationale for the current cost recovery system we interviewed key officials on past, current, and potential future practices for cost recovery. We also collected relevant documentation and requested the agreements supporting the financial arrangements and cost recovery. We examined whether costs played a factor in decisions to proceed with litigation and appeals on a case-by-case basis. We selected a purposeful sample of files to review on the basis of specific criteria. The files were stratified based on the same eight legal service units, risk (high and low), and type of case (appeal and litigation). We selected a purposeful sample of 55 files that were randomly sampled within the strata. Two of these files were not included in our results, as the characteristics of the case were not applicable to our audit test, leaving 53 for which results are reported. We also selected five important initiatives designed to reduce the cost of litigation implemented over the past 10 years to assess the management of the initiative as well as the use of financial information and analysis.

To assess the selection, appointment, and management practices for legal agents, we interviewed management and reviewed documents. In addition, we conducted a file review of the legal agents to examine their procurement process and supervision. These results should not be applied or generalized to the entire population of 7,282 files of the agents and firms selected between fiscal years 2002–03 and 2006–07. Since there are two different types of legal agents, two different samples were selected: Federal Prosecution Services (FPS) and civil litigation. For FPS, we selected three of the six regions—Ontario (Toronto), Quebec, and British Columbia—to capture differing management practices. In addition, two levels of dollar values were chosen (less than \$250,000 and \$250,000 and greater) to review the level of supervision for higher value agent files. A total of 25 firms were randomly selected within the strata. For civil litigation agents, we randomly sampled 21 cases, selecting the same three regions. However, three dollar-value levels were selected: under \$25,000, \$25,000 to \$250,000, and over \$250,000, because the contracts in place were more evenly distributed across these ranges. We sampled a greater number of agents in the middle dollar range from \$25,000 to \$250,000.

Criteria

We expected to find the following:

- The Department has assurance that it has an appropriate and effective quality management framework in place.
- The Department has the systems and practices in place to effectively manage resources and align them with the needs of government for legal services.
- The Department effectively manages the use of legal agents.
- The Department has appropriate cost management information that it uses to manage the delivery of legal services efficiently and economically.

- The Department has assurance that its cost recovery system is the appropriate mechanism for providing legal services to government in a cost-effective manner.
- The Department develops and implements alternatives to litigation and enforcement as a means to reduce the potential future cost of legal services.

Audit work completed

Audit work for this chapter was substantially completed on 5 December 2006.

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Appendix List of recommendations

The following is a list of recommendations found in Chapter 5. The number in front of the recommendation indicates the paragraph where it appears in the chapter. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation	Response
Progress since our 1993 audit	
<p>5.13 Justice Canada should complete its corporate strategic planning and develop strategies to meet its long-term goals. (5.9–5.12)</p>	<p>The Department agrees with the Auditor General’s recommendation. The Department created the Office of Strategic Planning and Performance Management in February 2005 to begin to strengthen the Department’s strategic planning and performance management capabilities, including integrating planning and strategic analysis, and performance measurement and reporting for the Department. The Department is also developing a corporate human resources strategy, which encompasses the key strategic human resources priorities of the Department as well as other human resources management initiatives in support of government-wide priorities. The Department will continue its efforts to implement planning frameworks and processes that reflect the unique needs and challenges that it faces in meeting its strategic outcomes.</p>
<p>5.20 Justice Canada should examine the weaknesses noted in its management of legal agents used for civil work and take corrective action. (5.14–5.19)</p>	<p>The Department agrees with the Auditor General’s recommendation. In fact, the Department has an action plan to support the continued implementation of improvements to the management of legal agents. This action plan will also address the issues raised by the Auditor General.</p>
<p>5.25 In addition to its current management of alternative dispute resolution initiatives, Justice Canada should ensure that it clearly defines each initiative’s objectives, estimates the potential cost savings and formally reviews the outcome of initiatives against their objectives. (5.21–5.24)</p>	<p>The Department agrees with the Auditor General’s recommendation, which is consistent with the recent review of the Department’s dispute resolution initiative that has resulted in a new mandate focused on providing services to departments supporting long-term prevention and early resolution of disputes. These client-focused services include systems design, legal advisory support, and training, all of which are linked to the departmental priorities of improving practice management and managing the volume of litigation.</p>

Recommendation	Response
<p>5.29 Justice Canada should define performance measures for its corporate priorities and improve its performance reporting to Parliament. (5.26–5.28)</p>	<p>The Department agrees with the Auditor General’s recommendation. As part of its departmental performance report to Parliament, the Department will incorporate relevant measures from the annual assessment of our Management Accountability Framework completed by the Treasury Board Secretariat.</p> <p>More broadly, the Department has implemented a number of changes to its annual reports on plans and priorities and departmental performance reports in an effort to improve reporting to Parliament and the public on the results of departmental initiatives and priorities. Also, as part of its efforts to improve reporting, the Department has implemented a practice whereby a committee of performance measurement specialists within the Department, as well as one external adviser, assess the quality of data used to arrive at management’s assessments of the degree to which the Department is achieving its priorities each year. The results of these reviews are reported in the departmental performance report.</p>
<hr/>	
<p>Quality assurance</p> <p>5.62 Justice Canada should develop a quality management system or systems for each of its practices to provide senior management with ongoing and reliable assurance that all services meet established minimum quality standards. (5.30–5.61)</p>	<p>The Department agrees with the Auditor General’s recommendation and will build on the elements of its quality work recognized by the Office of the Auditor General with a view to having a sound quality management approach.</p>

Recommendation	Response
<p>Resource management</p> <p>5.93 Justice Canada needs to make improvements to its resource management. The Department should</p> <ul style="list-style-type: none"> • use management information on workload volumes and costs for all of its legal services to better monitor trends, plan, set priorities, manage resources, analyze service delivery options, and identify opportunities for controlling costs; • work with client departments to effectively plan, manage, and improve the cost-effectiveness of their financial arrangements with a view to managing demand for legal services and thereby reducing costs; and • ensure that a senior manager with the necessary authority leads the improvement of management practices at the Department and oversees implementation of these changes. (5.63–5.92) 	<p>The Department agrees with the Auditor General’s recommendation. The Department of Justice Canada will continue the work underway to develop approaches to further develop its capacity to use management information to enhance management decisions, and regularize its cost recovery agreements with government departments.</p> <p>The Department is currently working on putting in place an initiative to better coordinate and integrate its law management practices. The Department will, at the same time, review its management practices to identify and put in place corporate reports to provide management information to support departmental decision making. Senior management authority to lead our work on management practices will be strengthened.</p>

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