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## STATEMENT OF ASSURANCE

We have completed the internal audit of the Competition Bureau's Departmental Legal Services Unit (DLSU). It is known as the Competition Law Division (CLD) of the Department of Justice. The objective of this internal audit was to review and assess the framework within which services are delivered by the DLSU to its clients and to recommend improvements to this framework. The DSLU is part of the Business and Regulatory Law Portfolio and reports to the Assistant Deputy Minister of Business and Regulatory Law.

This internal audit was carried out in accordance with the requirements of the Treasury Board Secretariat *Policy on Internal Audit* and the Institute of Internal Auditors' Standards for the Professional Practice of Internal Auditing. During the audit period, we

- examined relevant documentation concerning the operations of the CLD;
- interviewed management, lawyers, and staff in the DSLU;
- interviewed management and staff in the office of the Assistant Deputy Minister, Business and Regulatory Law Portfolio;
- interviewed the Assistant Deputy Attorney General (Criminal Law) and the Assistant Deputy Attorney General (Civil Litigation);
- interviewed client representatives by telephone.

Our internal audit conclusions were based on the assessment of findings against pre-established criteria and reflect the audit work carried out between August and October 2005.

In our opinion, sufficient and appropriate audit work has been performed and evidence gathered to support the accuracy of the conclusions reached and contained in this audit report.



## **EXECUTIVE SUMMARY**

The Department of Justice has established dedicated Departmental Legal Services Units (DLSUs) to provide legal advice to other government departments. These units are often located in the same building as the client's senior management team and attend their client's departmental management committee meetings on a regular basis. DLSUs provide client organizations with legal advice and assistance to facilitate operations of the department or agency. This audit focused on the management practices of the Department of Justice DLSU that provides legal services to the Competition Bureau (the Bureau). It is known as the Competition Law Division (CLD).

### **Planning**

Planning processes within the CLD have been influenced by the results of a multi-year, joint re-engineering project undertaken with the Bureau that was completed in September 2001. Of the project's recommendations, only the creation of Legal Business Coordinator positions (now known as Practice Coordinators) has been formally and permanently implemented. The creation of these positions has provided opportunities for the CLD to gain insight into the Bureau's requirements and priorities for legal services. Another recommendation was to adopt the Legal Needs Analysis Framework developed by the joint re-engineering project as a bi-annual forecasting tool. This was used temporarily in a few Bureau branches. A combination of issues including workload pressures and changes in personnel caused its use to decline and eventually cease. Under a new departmental business planning process that the Department of Justice is preparing to implement in March 2006, each DLSU will be expected to explicitly consult with its clients to determine a forecast of demand for legal services. The audit team has made recommendations on strengthening the CLD's planning processes in light of the changing Department of Justice requirements.

At the time of the audit, negotiations were under way to replace the 2001 agreement for the provision of legal services to the Competition Bureau. This agreement expired March 31, 2004. We are of the opinion that the next agreement needs to more thoroughly address resourcing, performance management, and reporting. We have made recommendations in this regard.

## **Organizing**

All professional staff in the CLD (at the time of the audit, 23 lawyers and 2 paralegals) plus the Office Manager and Administrative Coordinator report directly to the Senior General Counsel, who heads the unit. While five Practice Coordinators coordinate the work provided to the Bureau, they are not line managers or leaders of teams of lawyers permanently assigned to specific branches. Staff are assigned to cases in response to requests for legal services by the Bureau. The workload by Bureau branch can vary widely from year to year. In our opinion the Senior General Counsel's responsibilities for the management and oversight of professional staff need to be reduced. We have made a recommendation to review the CLD's current organizational structure.

Practice Coordinators are responsible for the interface between their Bureau branch and the CLD, for understanding their branch's priorities with respect to its files, and for securing the resources within the CLD to ensure that these priorities are respected. They oversee CLD's relationship with the branch by monitoring the major steps taken, reviewing and signing off on legal opinions sent to the client, conducting regular meetings with the Deputy Commissioner of their Bureau Branch, and attending the Commissioner's bilateral meetings with each of her deputies. They attend CLD Practice Management Committee meetings that address the management of CLD's resources and matters of law that cut across all Bureau branches. Meetings are also held every two weeks on an alternating basis for two broad practice areas and are chaired by a Practice Coordinator. In addition to these responsibilities, Practice Coordinators have lead counsel responsibilities for specific files that are before the Bureau. This wide range of responsibilities is difficult to fulfill, in particular, when a case for which a Practice Coordinator is responsible is before the courts. When this occurs, the Practice Coordinator is unavailable to do anything else. We have made a recommendation to review the responsibilities of the Practice Coordinators.

The Senior General Counsel introduced a process in September 2005 to collect information on a regular basis on the workload of each lawyer in the CLD. This process, if diligently applied, can be an effective method of assessing workload. Weaknesses, however, remain in the management of workflow to the support staff. Except for being assigned to specific counsel, there is no formal process for assigning tasks or distributing work to them. The resulting workload is irregular and unpredictable. Further, some counsel delegate only routine secretarial tasks while others delegate substantive work, treating support staff as true assistants. We have made recommendations to improve the processes for assigning work and to clarify what types of work should be assigned.

## **Performance Monitoring**

The CLD does not have an ongoing, systematic process for assessing its performance. Anecdotal feedback from clients forms the basis for the CLD's understanding of the quality of its services and its relationship with the Bureau. The Department of Justice's Office of Strategic Planning and Performance Management (SPPM) is planning to implement formal performance monitoring as part of the new departmental business planning process scheduled to be in place by March 2006. While client satisfaction ratings need to be interpreted judiciously, they are key indicators of service quality for professional services. Another DLSU has developed a 13-question survey to assess client satisfaction from the perspectives of quality, timeliness, and interpersonal relations. It could be a useful tool for the CLD to consider.

## **Communications**

Since April 2005, the Senior General Counsel has introduced a number of mechanisms to improve communications by establishing different forums through which information can be exchanged among appropriate stakeholders within the CLD. Nonetheless, certain aspects of the CLD function remain unclear for junior counsel. We have made recommendations to assess the effectiveness of the communication mechanisms recently put into place and to address the areas of staff uncertainty that were identified by this audit.

## **Human Resources**

The CLD is facing human resources challenges with respect to matching staff resources to workload and ensuring that junior counsel acquire the experience and develop the expertise necessary to assume lead counsel responsibilities on files. Matching staff resources to workload will always be challenging, since the timing of preliminary examinations, inquiries, and other work, or court-imposed deadlines drive much of the workload. Agents are utilized to help address the workload variability. The 2001 joint re-engineering project noted that the extent to which agents are relied upon undermines the CLD's ability to provide the litigation experience necessary for junior counsel and the challenging work required to retain its most senior and experienced counsel. There are an insufficient number of junior lawyers within the CLD, however, to create the internal teams necessary for each file as envisaged by the joint re-engineering project. The Bureau is unwilling to commit itself to allocating the additional resources for the creation of more client-funded counsel positions.

A recent Bureau decision to regionalize its investigations further complicates the CLD's ability to match staff resources with workload. To date, the CLD has been able to meet the demand for service in the Bureau's regions with its staff in the National Capital Region. As demand grows in the regions, this is not expected to be sufficient, and Bureau officials are concerned that the

Department of Justice will try to support this demand through its own regional offices where there is a lack of expertise in competition law and economics.

Various potential options exist for addressing the human resource challenges faced by the CLD. These include increasing CLD's indeterminate resources, setting up a formal staff rotation process between the CLD and the Federal Prosecution Service (FPS), and/or reorganizing the CLD to make litigation the responsibility of either FPS and the Civil Litigation Branch depending on the nature of the case. We have recommended that a study be commissioned to examine alternatives for the delivery of litigation services on behalf of the Competition Bureau.

The current ratio of one legal assistant to four lawyers in the CLD is considered insufficient by both CLD counsel and clients. When engaged in litigation, CLD regularly finds that its adversaries have significantly larger teams. We have made a recommendation to review the need for additional junior counsel and legal assistants within the CLD.

The CLD does not have a formal training and orientation process for new lawyers and support staff. An outline of a deskbook for support staff exists but has yet to be developed. We recommend that a standard orientation process should be developed for all staff.

A key concern of CLD counsel is the training and development of junior counsel. The DLSU has few simple, low risk files through which various types of litigation experience can be gained. As a result, junior counsel tend to leave the DLSU to obtain the experience they need to advance. The CLD Senior General Counsel has introduced mechanisms to increase the learning opportunities for junior counsel. However, a formal strategy is required for ensuring that resources are sufficient to respond to surges in demand and to provide appropriate development opportunities for junior counsel, while at the same time not resulting in overstaffing.

Performance appraisals with attached learning plans are developed on an annual basis for all lawyers in the DLSU. The Department of Industry does not require annual performance appraisals for the support staff. None were done in 2003-04 or 2004-05. By not completing regular appraisals for support staff, an opportunity to provide feedback on performance and to identify training requirements was lost, to the detriment of both the employer and the employee. We recommend that performance appraisals be prepared on a regular basis for support staff.

### **Financial and Materiel Resources**

The measures taken to administer the DLSU's financial and materiel resources are adequate.



## **Information Systems**

Many of the CLD's systems are awkward to use so as to compromise productivity and/or usefulness, have incomplete data, or are not complemented by the robust standards and procedures that are needed to ensure that they provide efficient and effective support to the CLD.

Access to the Department of Justice Intranet, JUSnet, was provided to the DLSU in April 2005 via JUSaccess, which is a web-based gateway. JUSaccess uses Public Key Infrastructure (PKI) as a security mechanism to restrict access to Department of Justice employees. Several user IDs and passwords are required to access the applications available on JUSnet. Most DLSU staff find this very inconvenient, which inhibits its use.

LOPORS (Legal Opinions and Precedents On-Line Retrieval System) is used by the Department of Justice to capture information on legal opinions. It has both a departmental collection and a local collection of opinions and precedents. The large departmental collection has little relevance for the CLD. At the time of the audit only three opinions on competition law had been entered into it, and approximately 500 other opinions had not been entered into the local collection due to staff workload pressures. We have made a recommendation to address this backlog.

CLD is currently using only the timekeeping components of iCase (a web-based integrated case management, timekeeping and billing, document, and reporting application). CLD lawyers are experiencing difficulty determining which codes to use to record their time since the categories are quite general. Assurances have been provided that additional categories will eventually be added to the system. Data is not always recorded on a timely basis, which may have an impact on its accuracy and completeness. A premium is likely to be placed on accurate time recording if the DLSU moves, as expected, to billing the Bureau for every hour of service provided. We have made a recommendation to monitor the use of iCase for time reporting to ensure that it is done frequently.

CLD uses the Department of Justice Records Information Management System (RIMS) to manage and track hard copy (paper) records throughout its full lifecycle. It is reliable, easy to use, and has good technical support. An absence of standards for the manual processes supporting RIMS is undermining the system's potential to support efficient and effective records and information management. There is no assurance that when a file is closed, the RIMS record represents a complete listing of all the records relating to a case. We have made recommendations to develop CLD document and information management policies and procedures and to ensure that all documents relating to a file are logged at the time of creation.

The CLD has not established electronic filing standards for its shared computer drive, which has taken on many of the attributes of the traditional file room. No one has been assigned

responsibility for managing the content of the shared drive. We have made recommendations to develop standards for the CLD's retention of its electronic files and to assign responsibility for the management of the shared drive.

CLD has a significant number of files in its records room that should be archived according to the schedule established with the National Archives. We have made a recommendation to this effect.

No system is currently in place to record the borrowing of books from the CLD Law Library. As a result, e-mail broadcasts must regularly be used to locate books that are in use. This is not a very efficient process. We have recommended that a process be implemented for recording the removal of books from the CLD Law Library.

### **Compliance with Legislation and Policies**

The DLSU is in compliance with key government and department legislation and policies, including the *Financial Administration Act*.

### **Interfaces with Other Sections of the Department**

The CLD has limited reason to interact with other sections of the Department. It has little direct contact with either the office of the ADAG, Civil Litigation or the ADAG, Criminal Law on individual cases. However, the Senior General Counsel attends the FPS Management Board meetings and lawyers participate in various meetings organized by the FPS. The principal mechanism for receiving functional direction from Civil Litigation and Criminal Law is through their respective deskbooks. Both offices reported that there are good working relationships with the CLD. The CLD also interfaces on a regular basis with the staff in the office of the Assistant Deputy Minister, Business and Regulatory Law. Staff in both offices reported that the interface between them is good.

### **Relationship with Client**

During 2005, CLD's relationship with its client significantly improved as a result of the increased number of regularly scheduled meetings involving both parties. Nonetheless, there is some ongoing tension due to the dual role that the CLD must play. The CLD acts as a service organization when it is providing legal advice and opinions and as the Crown when it acts as a prosecutor and is fulfilling its Attorney General function. Instances occur where the CLD chooses not to proceed with a case that the client would like to have prosecuted because in the opinion of the CLD there is not a reasonable prospect of achieving a conviction. A common understanding of the roles of all the parties in the conduct of a regulatory prosecution would help

ameliorate the situation. We have made a recommendation to communicate the CLD's role and responsibilities to all concerned.

There is widespread agreement within the CLD and the Bureau that the improvements in their relationship will be difficult to sustain if the CLD's resources are not better matched with the requests for service from the Bureau and if there is not a clear understanding of the roles and responsibilities of both organizations.

## **Conclusions**

Since being appointed in April 2005, the Senior General Counsel has both maintained reforms instituted by his predecessor and implemented additional reforms designed to improve the performance of the CLD. These actions have had a very positive impact on the relations between the CLD and its clients and have also addressed, or are starting to address, a number of longstanding issues with respect to client satisfaction.

There are opportunities for additional improvements with respect to:

- planning
- organizing and directing staff
- performance monitoring
- communicating
- managing human resources
- interfacing with the client department

Challenges also remain with respect to managing information and ensuring that suitable information is available to support the application of competition law.

***The management response to the recommendations contained in this report was provided by the Senior General Counsel, Competition Law Division Legal Services on May 26, 2006.***



## **1. INTRODUCTION**

In carrying out its responsibility to provide legal advice to other government departments and agencies, the Department of Justice has established dedicated Departmental Legal Services Units (DLSUs) for most government departments and agencies. These units are responsible for:

- providing client organizations with legal advice and assistance to facilitate their operations;
- 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 and to obtain advice on specialized matters such as compliance with the *Canadian Charter of Rights and Freedoms*.

This audit focused on the management practices of the DLSU that provides services to the Competition Bureau (the Bureau). It is known as the Competition Law Division (CLD) of the Department of Justice. The CLD provides a full range of services to the Competition Bureau including litigation (both civil and criminal), legal advice, legislative drafting, general corporate (e.g. personnel, ATIP), and policy advice. The Bureau is frequently in the public's eye whenever, for example, large-scale business mergers occur.

### **1.1 Organizational Structure**

Within the Department of Justice, DLSUs have been organized into groups or portfolios based on areas of commonality in legal practice. The Competition Law Division is part of the Business and Regulatory Law Portfolio. A Senior General Counsel (SGC) is responsible for the CLD and reports to the Assistant Deputy Minister (ADM) of the Business and Regulatory Law Portfolio. The Senior General Counsel is also under the functional direction of either the Assistant Deputy Attorney General (ADAG), Civil Litigation or the ADAG, Criminal Law depending on the nature of the litigation. At the time of the audit, a professional staff of 23 lawyers and 2 paralegals as well as an Office Manager and Administrative Coordinator (who manages 12 support staff) reported to the Senior General Counsel.

A close relationship typically develops between DLSUs and their clients. DLSUs are usually located in the same building as the client’s senior management team, with the client providing each DLSU with a significant level of funding. At the Bureau, client funding covers CLD expenditures for:

- all operations and maintenance (O&M)
- support staff
- office space
- the salary and bar fees for some of the lawyers on staff (The Bureau funds two-thirds of the complement of lawyers in the CLD.)

All CLD lawyers are Department of Justice employees.

At the time of the audit, the financial and human resources allocated to the CLD for fiscal year 2005-06 were as follows.

**Table 1  
Resource Allocations: CLD**

<b>Financial and Human Resources</b>	<b>2005-06</b>
Number of lawyers	23
Number of support staff (including two paralegals)	14
<b>Salaries</b>	
Department of Justice A-Base	\$825,250
Competition Bureau A-Base (support staff)	\$511,000
Competition Bureau A-Base (client-funded lawyers) <sup>1</sup>	\$1,324,700
<b>O&amp;M</b>	
Competition Bureau A-Base	\$196,660
<b>Total Available Funding</b>	<b>\$2,857,610<sup>2</sup></b>

At the time of the audit, the support staff positions currently shown on the CLD organization chart included:

- an Office Manager and Administrative Coordinator;

<sup>1</sup> This is an estimate, based on the 2004-2005 actual. The actual will probably be higher in 2005-2006 because the Department of Justice A-Base has been reduced from its 2004-2005 level (\$857,500).

<sup>2</sup> In addition, the Bureau spends an average of between \$800,000 and \$1,100,000 annually on agent fees and disbursements. In 2004-2005 the expenditure was \$1,051,646.

- a records technician;
- two administrative clerks;
- a receptionist-clerk;
- a financial administrator;
- seven legal assistants (including the Assistant to the Senior General Counsel).

The above support staff are Department of Industry employees<sup>3</sup>. There are also two paralegal professional staff who are Department of Justice employees.

## **1.2 Audit Objectives and Scope**

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

The audit team examined and assessed:

- the management framework, including:
  - policies, practices, and procedures related to planning, organizing, controlling, leading and communicating,
  - the management of human, financial, and materiel resources;
- the reliability of information systems for decision-making and accountability purposes;
- the extent of compliance of systems, procedures, and practices with legislation, regulations, and key central agency/departmental policies;
- the appropriateness of interfaces with other sectors of the Department of Justice, including regional offices, the Business and Regulatory Law Portfolio, and the offices of the ADAG, Civil Litigation and ADAG, Criminal Law;
- the appropriateness of interfaces with the client department;
- the level of client satisfaction with the legal services provided.

In addition to these general elements, the audit team gave specific attention to the mix of resources and workflow processes.

The fieldwork for this audit was carried out from August through October 2005.

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<sup>3</sup> The Competition Bureau reports to Parliament via the Minister of Industry in respect of its independent law enforcement role and to the Deputy Minister of Industry Canada for administrative and resource purposes, including financial and human resources.

### **1.3 Methodology**

Information for this audit was obtained through the following methods:

- review of relevant documentation concerning the operations of the CLD;
- interviews and focus groups with management, lawyers, and staff in the CLD and with management and staff within the ADM's office (Business and Regulatory Law Portfolio);
- interviews with the ADAG, Civil Litigation and the ADAG, Criminal Law;
- telephone interviews with client representatives.



## **2. FINDINGS—MANAGEMENT FRAMEWORK**

The management framework comprises policies, practices, and procedures relating to planning, organizing, controlling, leading and communicating, and the management of human, financial, and materiel resources. The audit team examined:

- the CLD's planning practices and reporting requirements;
- how the CLD organizes and directs staff;
- how the CLD monitors its performance;
- the CLD's communications practices;
- the adequacy of financial, human, and materiel resources to deliver its services.

At the time the fieldwork for the audit was undertaken, several aspects of the CLD's management framework had been in place for only a few months. Other aspects of the organization were evolving. This situation arose because the CLD's former Senior General Counsel was replaced in January 2005 by a Senior Counsel from within the CLD on an acting basis. On his appointment, the Acting Senior General Counsel, in consultation with other senior staff in the CLD, made several changes to the management framework, such as holding more frequent all-staff meetings and clarifying for the client which counsel were nominally aligned to which Bureau branch. These changes were maintained and in some cases modified by the current Senior General Counsel who was appointed in April 2005, having been recruited from another DLSU within the Department of Justice. The audit team was advised by the Senior General Counsel that he would probably be making additional changes, but he was deferring any decision on these changes pending completion of the audit.

### **2.1 Planning**

Planning is an essential function of management. It serves to ensure objectives are met and to identify issues, activities, and initiatives that will contribute to the achievement of stated objectives. It is also the process by which managers identify priorities, which is an important aspect of managerial responsibilities, especially in situations where resources are scarce. The

nature of the function of the Competition Bureau and the type of work undertaken is a major factor for the CLD in its planning.

The Competition Bureau is an independent law enforcement agency responsible for the administration and enforcement of the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*. It promotes and maintains fair competition so that Canadians can benefit from competitive prices, product choice, and quality services. Headed by the Commissioner of Competition, the organization investigates anti-competitive practices and promotes compliance with the laws under its jurisdiction.<sup>4</sup>

At the time of the audit, the Competition Bureau was organized into seven branches (Mergers, Civil Matters, Criminal Matters, Fair Business Practices, Competition Policy, Compliance and Operations, and Communications). Bureau officers in these branches are responsible for pursuing files under applicable legislation.

Bureau officers require knowledge of both the law and economics. The audit team was advised that many of the Bureau's officers have legal training. Similarly, many of the more experienced counsel in the CLD have acquired economics knowledge. Often, officers and counsel will work closely together, during all phases of a file. For litigation files especially, both the investigative phase and the litigation phase of a file can take several years and can have periods of intense activity interspersed with temporary periods of no activity.

The audit team was advised that most of the Bureau's files are large and complex. Many of them take years to resolve and must be litigated. As a result, the CLD has its own litigators and is one of the few DLSUs that has the authority to conduct its own litigation. The ADAG, Criminal Law advised the audit team that CLD is the only DLSU with FPS prosecutors who conduct prosecutions on behalf of the Attorney General of Canada under the *Competition Act*.

### **2.1.1 Joint Re-engineering Project**

In September 2001, the CLD and the Bureau completed a multi-year, joint re-engineering project designed to maximize the CLD's capacity to support the Bureau. The project, which was launched in 1997, was a response to concerns in both the CLD and the Bureau that major changes in the marketplace (e.g. globalization, electronic commerce, deregulation) were outstripping the ability of both organizations to respond to the increasing complexity of their work with the finite resources available to them. The objectives of the project were to improve planning, workload management, and performance monitoring so that both organizations'

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<sup>4</sup> From the website of the Competition Bureau Canada.

resources could be used to maximum effectiveness. Rather than relying on consultants, the project was carried out by resources from both the CLD and the Bureau, and was based on “an iterative process to encourage real commitment to and ownership from both sides.”<sup>5</sup> The project’s recommendations included several designed to improve planning, such as:

- adopting a joint strategic and operational planning process;
- adopting the Legal Needs Analysis Framework developed by the joint re-engineering project as a bi-annual forecasting tool;
- creating Legal Business Coordinator positions.

The audit team was advised that of these recommendations only the creation of Legal Business Coordinator positions (now known as Practice Coordinators) has been formally and permanently implemented. (For details on the role and responsibilities of Practice Coordinators, see “Organizing and Directing Staff”.) The Legal Needs Analysis Framework was used temporarily as a forecasting tool in a few Bureau branches. However, a combination of issues caused its use to decline and eventually cease. These issues included workload pressures in both the Bureau and the CLD, a loss of momentum when the individuals who championed the project moved to other organizations, changes in top management in both the CLD and the Bureau shortly after the final report was released, and the framework’s consistent forecasting of requirements for more counsel than the CLD had on staff<sup>6</sup>. Joint strategic and operational planning was also never implemented. However, the creation of the Practice Coordinator positions has provided opportunities for the CLD to gain insight into the Bureau’s requirements and priorities for legal services, since the Practice Coordinators are responsible for establishing the interface between their respective Bureau branches and the CLD, for understanding their branch’s priorities with respect to its files, and for securing the resources within the CLD to ensure that these priorities are respected. (See discussion in “Practice Coordinators” in the section “Organizing and Directing Staff”.)

Under the new departmental business planning process that the Department of Justice is preparing to implement in March 2006, each DLSU will be expected to explicitly consult with its clients to determine a forecast of demand for legal services and to determine the human resources, training, and crown agent services that will be required to address the forecast demand.

The audit team was advised that the Bureau is about to undertake an exercise to establish priorities on a Bureau-wide basis (as opposed to each individual branch setting its own

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<sup>5</sup> Joint Re-engineering Project, Final Report, p 4.

<sup>6</sup> Interviews with the CLD’s clients revealed a widespread view that the CLD did not have enough counsel to respond to the Bureau’s requirements for legal services.

priorities). It is the audit team's opinion that the CLD should take this opportunity to initiate a joint planning process by formally consulting with the Bureau concerning its requirements for legal services. The Legal Needs Analysis Framework developed during the joint re-engineering project may provide a suitable basis for forecasting demand. In our view, it should be revisited and, if necessary, revised to support joint CLD-Bureau planning.

### Recommendations and Management Response

- 1. It is recommended that the Senior General Counsel ensure that the Legal Needs Analysis Framework is reviewed for its suitability as a tool for forecasting demand for CLD services, and as necessary, revised (or replaced with a new tool) to support joint planning.**

I agree. A review of the suitability of LNAF as one tool among others is warranted and will be done, jointly with the Competition Bureau, during this year's renewal of the Client-driven Services (CDS) Agreement. The Bureau finalized its priorities by April 2006, and these priorities will be taken into account within the framework of the re-negotiation of the CDS Agreement and for the purposes of forecasting the legal services the Bureau will need. However, it is unlikely that any one tool or any combination of them would provide full forecasting for litigation cases.

- 2. It is recommended that, as part of a joint planning process, the Senior General Counsel ensure that the results of the Bureau's priority-setting exercise are used by the CLD to prepare a forecast of the legal services each Bureau branch expects to consume.**

I agree. The Bureau finalized its priorities by April 2006, and these priorities will be taken into account within the framework of the re-negotiation of the CDS Agreement and for the purposes of forecasting the legal services the Bureau will need.

#### **2.1.2 Client-driven Service Agreement**

In 2001, the Department of Industry and the Department of Justice signed a client-driven service (CDS) agreement for the provision of legal services. The purpose of a CDS agreement is to provide a comprehensive approach to establishing a joint management framework between the Department of Justice and its clients. A CDS agreement addresses the rationalization of demand for legal services, plans for resource allocation, commitments related to shared contribution to the costs of legal services, and reporting requirements. The Bureau and the CLD, as organizational units within the two departments, were encompassed by this agreement. The agreement expired on March 31, 2004, and the audit team was advised that the negotiation of a

new agreement is on the organizational agendas of both the Bureau and the CLD. Workload pressures in both organizations and the changes in management within the CLD have delayed action.

The audit team reviewed the expired agreement and consulted with the CLD's clients concerning the suitability of the expired agreement for forming the basis for a new one. It is the audit team's opinion that while the expired agreement contains a number of worthy principles that should be carried forward into a new agreement, it requires strengthening. In our view its effectiveness is limited because it fails to thoroughly address resourcing, performance management, and reporting.

The Director, Program Support and Business Strategies for the Business and Regulatory Law Portfolio informed the audit team that the currently preferred practice is for each DLSU to develop a CDS agreement that is explicit and detailed with regard to:

- provision of legal resources (number and level of counsel that are Department of Justice-funded and client-funded<sup>7</sup>);
- operational support (e.g. number of support staff, accommodation, travel, training, materials, and supplies);
- the costs associated with each of the above.

The audit team is of the view that this practice is appropriate.

The expired agreement bundled the legal services (and operational support for the provision of legal services) to be provided to the Bureau with those to be provided to the entire Department of Industry. As an enforcement agency, the Bureau has requirements associated with its legal services that are atypical within the Department of Industry. For example, the CLD's counsel often travel to interview witnesses during investigations. Therefore, this component of the O&M budget is higher than it would be for the Department of Industry DLSU. Also, when engaged in active litigation, the CLD's workload may require the use of legal agents<sup>8</sup>. We were told that such a requirement would not normally be present in the Department of Industry DLSU. It is the audit team's opinion that, given these distinctive requirements, transparency for the Competition Bureau would be enhanced if there were a separate CDS agreement between the Bureau and the CLD/Department of Justice. We were advised that this will be the case for the new agreement.

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<sup>7</sup> In each DLSU, funding for lawyers' salaries comes from the Department of Justice (and its appropriation from Parliament) and the client.

<sup>8</sup> In providing legal services, the Department of Justice relies on in-house counsel as well as private sector lawyers, known as legal agents (agents). Agents are used exclusively for criminal and civil litigation, and are managed through a National Agent Affairs Program that was established in 1996.

Also, if the agreement is based on the results of the forecast for demand of legal services, which was recommended above, this will further enhance transparency and both organizations' understanding of the level of service to be delivered.

An additional problem with the expired CDS agreement is that it does not provide service quality standards against which the provision of legal services can be monitored. This is discussed in more detail in "Performance Monitoring".

Monitoring and reporting on workload and resource utilization are vital complements to any planning process. They enable planners to assess the accuracy of their estimates and to make corrections to their estimating processes, thereby improving the accuracy of subsequent estimates. If they are not done, there is a risk that mistakes and any resulting misallocations of resources will be repeated.

#### Recommendations and Management Response

- 3. It is recommended that, when developing the new client-driven service agreement with the Bureau, the Senior General Counsel ensure that it is consistent with the Business and Regulatory Law Portfolio's preferred content for CDS agreements.**

I agree. The proposed agreement, which has been provided to the Bureau, is fully consistent with the Portfolio's precedents.

- 4. It is recommended that the Senior General Counsel ensure that the CLD's actual workload and each Bureau branch's use of legal services are formally monitored.**

I agree. Monitoring of the CLD workload and Branch use of legal services are currently being monitored through the use of iCase, and it is expected that this software will be the key tool to monitor such use.

## **2.2 Organizing and Directing Staff**

Organizing staff and providing direction to them is a key management responsibility. In this section we address issues with the organization of the CLD, the roles and responsibilities of practice coordinators and support staff, and workflow management.

## 2.2.1 Professional Staff

### Counsel

As noted above, the organization of the CLD is evolving. At the time of the audit, there was a nucleus of senior lawyers supporting the Senior General Counsel. These included three General Counsel, five Practice Coordinators (whose positions broadly correspond to the organizational structure of the Competition Bureau’s major branches), and a Special Counsel to the Commissioner of Competition.

One of the General Counsel is a very experienced criminal law prosecutor; another has great breadth of experience in competition law; and the third provides services related to legislative and policy matters. The Special Counsel to the Commissioner of Competition is a private-sector lawyer on executive interchange at the request of the Commissioner.

The remainder of the professional staff (lawyers and paralegals) are in a resource pool. They are assigned to files on the basis of the client’s requirements, their availability, and their qualifications. All professional staff (at the time of the audit, 23 lawyers and 2 paralegals) plus the Office Manager and Administrative Coordinator, who manages the 12 support staff, report directly to the Senior General Counsel. The Senior General Counsel advised the audit team that, in addition to being responsible for all management tasks in the CLD’s flat organizational structure, he attends the management meetings of the Business and Regulatory Law Portfolio and of the FPS Management Board, as well as all the management meetings held in the Bureau.

The approved organization chart for the CLD shows that there are an additional seven counsel positions that were vacant at the time of the audit. We were advised that these positions were vacant because they are client-funded positions for which the Bureau has not provided the funds. It is possible that the Bureau may provide the funds for these positions in the future, as demand for CLD’s services is expected to increase. (For further discussion, see “Management of Human, Financial, and Materiel Resources”.) In that event, the number of positions directly reporting to the Senior General Counsel would increase to 33 (30 counsel, 2 paralegals, and the Office Manager and Administrative Coordinator). It is the audit team’s opinion that such a large number of positions directly reporting to the Senior General Counsel would be excessive. In our view such a large span of control could compromise a manager’s ability to provide effective management and professional oversight of all professional staff and to fulfil administrative management responsibilities.

The Practice Coordinators are not line managers, nor are they leaders of teams of lawyers that are permanently assigned to specific branches or practice areas in the Competition Bureau. The

Senior General Counsel and several Practice Coordinators advised the audit team that permanently assigning teams was neither desirable nor feasible. It is not desirable because, unlike other DLSUs (e.g. Industry Canada DLSU) in which there are various distinct areas of specialization (e.g. consumer protection, bankruptcy, telecommunications, broadcasting, electronic commerce), competition law is a single body of law. The practice of this law can be mastered and applied in all branches of the Bureau. Therefore, in principle, all counsel in the CLD can provide service to every branch within the Competition Bureau. Permanently assigning teams is not feasible because of the unpredictability of demands for specific legal services. For example, depending on the complaints received and the results of the investigations mounted in response, the balance between civil and criminal law matters in the Bureau can vary substantially from year to year as can the level of demand from individual branches. To permanently assign teams of lawyers to Bureau branches or practice areas would undermine the CLD's flexibility to respond to such changes in demand. The ideal organizational model for a Bureau litigation file, therefore, is what might be termed a "flexible case team", which is tailored to the requirements of the file. For a complex file that involves criminal law, the case team would consist of a minimum of two counsel (one senior, one junior), a paralegal, a legal assistant, and (optionally) an agent.<sup>9</sup> We were also advised, however, that resource constraints make it almost impossible to realize this ideal. (This is discussed in more detail in "Management of Human, Financial, and Material Resources".)

Since the Practice Coordinators do not provide line management support to the Senior General Counsel, it is our opinion that a review of the CLD internal organizational structure is required, with a view to reducing the Senior General Counsel's responsibilities for the management and oversight of professional staff.

#### Recommendations and Management Response

- 5. It is recommended that the Senior General Counsel undertake a review of the organizational structure of the CLD with a view to reducing his span of control to ensure the provision of effective management and oversight of all professional staff.**

I would defer any review of organizational structure for the reasons mentioned below.

The *Federal Accountability Act*, being Bill C-2 in the current session of Parliament, contains in Part 3 legislation that would amend the *Department of Justice Act* and would create a new office, the Office of the Director of Public Prosecutions (ODPP). The proposed *Director of Public Prosecutions Act* (the "Act") would remove federal Crown prosecutors from the

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<sup>9</sup> Less complex files that involve purely solicitor-like needs for advisory services would not require as many resources, and the "team" might shrink to a single counsel.



Department of Justice and place them in a separate department, reporting to the Attorney General of Canada. The Director would have responsibility under the Act, among other things, for conducting prosecutions on behalf of the federal Crown, and for advising law enforcement agencies or investigative bodies in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution.

This bill may have a considerable impact on CLD. Until such time as more information is obtained on the impact of the DPP Act, it is unwise to review organizational structure at this time. CLD may have to be re-organized, consequent upon the new legislation, in order to take into account the transfer of prosecutorial functions to the new department.

### Practice Coordinators

At the time of the audit, the Practice Coordinator positions corresponded to six practice areas of the Competition Bureau branches: Mergers, Fair Business Practices, Civil Matters, Criminal Matters, Compliance and Operations, and Competition Policy. Practice Coordinators are not team leaders. However, they do have limited management-oriented responsibilities. They are responsible for establishing the interface between their Bureau branches and the CLD, for understanding their branch's priorities with respect to its files, and for securing the resources within the CLD to ensure that these priorities are respected.

The Practice Coordinators attend the Practice Management Committee meetings of the CLD, which are chaired by the Senior General Counsel. Attendance at these meetings is mandatory for the Practice Coordinators and optional for the General Counsel, although the audit team was advised that the latter usually attend. With respect to the management of resources, the Practice Management Committee deliberates on the assignment of CLD resources to files. Although the final decision concerning which counsel to assign rests with the Senior General Counsel, he seeks advice from the Practice Coordinators. The committee also assesses the capacity of the CLD to assume responsibility for additional files and considers requirements for legal agents for specific files.

Meetings are also held every two weeks on an alternating basis for two broad practice areas: civil/mergers and criminal/fair business practices. These meetings are chaired by Practice Coordinators. Although all lawyers within the two practice areas attend the meetings, which specific meeting or how many meetings a month a lawyer would attend depends on the types of files he or she is working on. If a lawyer has both civil and criminal files, he or she would attend both the civil/mergers and criminal/fair business practice meetings (i.e. two meetings a month). These meetings provide an opportunity for CLD lawyers to review major files, discuss file-specific legal issues, and confer about workload.

The audit team was advised that the Practice Coordinators are also responsible for:

- advising other lawyers in the CLD and clients in the Bureau on the major steps to be taken on a file;
- monitoring the major steps taken on a file;
- reviewing and signing off on legal opinions sent to clients;
- providing mentoring to the CLD's junior lawyers;
- conducting regular meetings with the Deputy Commissioner of their respective Bureau Branch;
- attending the Commissioner's bilateral meetings with each of her deputies.

Finally, like all other experienced counsel in the CLD, the Practice Coordinators also have lead counsel responsibilities for specific files that are before the Bureau. As noted earlier, many of the Bureau's files are large, complex, and require an understanding of both the law and economics. Many of them take years to resolve and often are litigated. We were advised that participating in an active litigation case, whether civil or criminal, can consume all the available time of the lawyer responsible.

Practice Coordinators have mixed views on their responsibilities. We were advised that the creation of their positions has had a dramatic effect on the CLD's relationship with its clients—improving it significantly. Clients, including the Commissioner of Competition, confirmed this, describing it as “transformational”. The Practice Coordinators have regular meetings with their respective Deputy Commissioners. They also attend the Commissioner's bilateral meetings with each of her Deputy Commissioners. Both of these meetings have provided opportunities for the CLD to gather intelligence about their client's plans and priorities, as well as any problems or risks that may be arising with files. This intelligence can be used in the Practice Management Committee meeting and the biweekly practice group meeting to improve the operational management of the CLD's resources.

Offsetting these benefits, the Practice Coordinators noted the following issues with their responsibilities.

- Because of their responsibilities for time-consuming and complex files<sup>10</sup>, it is difficult for Practice Coordinators to gain the level of knowledge they would like on files in their practice

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<sup>10</sup> The counsel who became Practice Coordinators were among the CLD's most experienced and expert counsel in competition law and were therefore the counsel most likely to have responsibility for the most complex and challenging files.

area for which they are not the lead counsel and for which they do not have day-to-day responsibility. Providing advice on, monitoring, and reviewing such files is challenging.

- Their personal responsibilities for complex files make it challenging to provide mentoring to junior counsel.
- When two counsel are involved in a file (the lead counsel and the Practice Coordinator) and are both communicating with the client, there is a risk that the client will receive inconsistent, if not contradictory, advice. Even if both counsel’s advice is sound (based on the facts as known to each counsel), because each may have knowledge of different facts, contradictions remain a possibility. As a result, the Practice Coordinators stated that they try never to give advice to a client concerning a file unless they are the lead lawyers on the file.

It is the audit team’s opinion that the Practice Coordinator’s role is too broad for it to be discharged effectively on a day-to-day basis. At present, the role requires the incumbent to:

- manage the relationship between the CLD and its clients, including developing sufficient knowledge of all the priorities, plans, and activities of a Bureau branch to represent these accurately to the Senior General Counsel and colleagues;
- provide advice, oversight, monitoring, and quality assurance for all files associated with a Bureau branch;
- monitor and report on the status of files and on the workload of the individuals assigned to them (discussed in more detail in “Performance Monitoring”);
- support the professional development of less experienced lawyers within the CLD.

It is also expected that a Practice Coordinator will take lead responsibility for major files – responsibilities we were told that could easily make it impossible for the incumbent to do any of the above. Indeed, the audit team was advised that one particular Practice Coordinator would be unavailable to meet with the audit team after a certain date because of the requirements of a specific case, which was expected to consume all available time. The audit team is of the opinion that the Practice Coordinators’ responsibilities and the associated workload need to be re-examined to consider whether it is feasible that all aspects of the responsibilities and the workload can be adequately fulfilled on a day-to-day basis.

## Recommendations and Management Response

- 6. It is recommended that, as part of the review of the CLD internal organizational structure, the Senior General Counsel review the role of the Practice Coordinators to determine whether their responsibilities can be fulfilled on a day-to-day basis.**

Same response as given under recommendation 5. Until such time as the Act is being implemented, it is not advisable to review the role of the practice coordinators, because the functions and responsibilities of a number of them may be changed or, at the least, affected, by the proposed ODPP.

### Paralegal Staff

The audit team found no issues with the roles and responsibilities of paralegal staff. The only comment made in the focus groups was that the CLD needed more paralegal staff in order to be able to set up a team consisting of a senior lawyer, a junior lawyer, a paralegal, and a legal assistant (i.e. the typical minimum configuration of an adversary's team). (See discussion in "Resource Mix" in the "Human Resources" section of the report.) This comment was part of the widespread belief among lawyers (and clients) that the CLD was under-resourced in relation to its workload.

### **2.2.2 Support Staff**

At the time of the audit, the support staff in the CLD consisted of seven legal assistants, two administrative clerks, a receptionist-clerk, a research and records management technician, and a financial administrator. All fill Department of Industry positions and report to the Office Manager and Administrative Coordinator, who is in charge of staffing employees in her group.

At the time of the audit, there was high turnover among support staff. The Office Manager and Administrative Coordinator informed the audit team that seven staff who had been hired as indeterminate employees had left their employment in the past year so that, at the time of the audit fieldwork, only three of the support staff positions were filled by indeterminate employees. The remainder were agency employees working under short-term contracts while staffing was being carried out to fill the now-vacant positions. The Office Manager and Administrative Coordinator told us that maintaining indeterminate employees in the support staff positions was an ongoing problem. She stated that there have been many instances in the past in which overqualified individuals (e.g. with Masters Degrees) had successfully competed for these positions. In her view, such individuals use the legal assistant position as an entry point to the

public service. They join with the intention of moving to a position that requires their qualifications as soon as possible.

### **2.2.3 Workflow Management**

The Senior General Counsel has taken steps to improve the management of workflow of the CLD's counsel. Weaknesses remain in the management of workflow to its support staff.

The Senior General Counsel advised the audit team that, upon taking up his position, he found that it was necessary to speak to each CLD lawyer individually to determine what active files the CLD was working on in the aggregate, to establish what the workload was across the organization, and to ascertain how it was distributed among lawyers. There was no mechanism in place to permit the SGC to readily determine whether individual lawyers were available to accept additional files.

To this end, the Senior General Counsel has added the following process to the regular civil/mergers and criminal/fair business practices group meetings. At the conclusion of each of these meetings, the Practice Coordinator chairing the meeting conducts a round table during which each lawyer summarizes his or her workload. Notes taken by the chair are copied to the Senior General Counsel, who can review them to determine the overall workload of the CLD and that of its individual lawyers. The Senior General Counsel uses the information to help determine who should be assigned to a new file<sup>11</sup>. (The other important factors that the SGC takes into account are qualifications and experience, which are reviewed at the aforementioned Practice Management Committee meeting). The Senior General Counsel informed the audit team that he implemented this process on a trial basis in September 2005. He stated that he viewed it as a process that might generate useful information with relatively little additional paper burden. It is the opinion of the audit team that in a small organization such as the CLD, such a process, if diligently applied, can be an effective method of assessing workload.

Support staff informed the audit team that, except for being assigned to specific counsel, there is no formal process for assigning tasks or distributing work to them. Counsel approach staff directly with requests for support. We were advised that the resulting workload is irregular and unpredictable. Staff are expected to manage their own priorities, which can be problematic if several different lawyers request immediate support for an urgent task. We were advised that there have also been situations in which two staff discovered that they had been asked to complete the same task at the same time. Finally, individual counsel differ in their working

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<sup>11</sup> At the time of the audit, advisory work requested by the Compliance and Operations Branch and the Competition Policy Branch was assigned in collaboration with the Practice Coordinator for those Branches.

practices and expectations for support. This leads to differences in the amount and type of work they delegate. Some counsel delegate only routine secretarial tasks; others delegate substantive tasks, treating support staff as true assistants.

It is the audit team's opinion that the lack of a process for managing the workflow to support staff, combined with the lack of standards concerning which tasks must be performed by counsel versus which tasks should be performed by support staff, is compromising the efficiency of the CLD. It would be more efficient to establish a process for prioritizing requests before they are allocated to support staff, and to ensure that there are uniform expectations and practices concerning which work must be done by counsel and which work should be delegated to support staff.

#### Recommendations and Management Response

**7. It is recommended that the Senior General Counsel establish a mechanism for the coordination and prioritization of requests for support.**

I agree. The mechanism currently in place is to have counsel and support staff, amongst themselves, coordinate and prioritize requests for support. Workflow will be managed on the basis of a team approach (all counsel and support staff who are assigned to counsel to work this out together and, in certain circumstances, with the Office Administrator). This mechanism has been effective and has been acted upon by all staff.

**8. It is recommended that the Senior General Counsel ensure that standards for working practices for both professional and support staff are developed and implemented, and that these clearly differentiate activities to be performed by both groups.**

I agree: It is a matter to be developed by each work team, depending on the needs, circumstances, aptitudes, skills set, and priorities of each team. Counsel and support staff and, in certain circumstances, the Office Administrator) are directed to resolve priorities on a team approach. This approach is effective, and is currently being acted upon by counsel and support staff.

### **2.3 Performance Monitoring**

Performance monitoring is the ongoing, systematic process of collecting, analyzing, communicating, and using quantitative and qualitative performance information. Monitoring is an essential component of assessing an organization's progress in meeting expected results and,

if necessary, making adjustments to ensure these results are achieved. It supports decision-making, accountability, and transparency.

The CLD completed a portfolio-wide assessment of client satisfaction in 2002-03, and there was an internal review completed by the Bureau's Fair Business Practices Branch in 2004. The CLD does not, however, have an ongoing, systematic process for assessing its performance. The audit team was informed that anecdotal feedback from clients forms the basis for the CLD's understanding of the quality of its services and its relationship with the Competition Bureau. The Senior General Counsel stated that he was awaiting recommendations from this audit before taking action on performance indicators.

Work to establish a basis for performance monitoring is being carried out by the Department of Justice's Office of Strategic Planning and Performance Management (SPPM). It is planning to implement formal performance monitoring as part of the new departmental business planning process that is scheduled to be in place by March 2006. At the time of the audit, the SPPM was examining methods for assessing both workload and service quality, and was pilot testing several tools to ensure their reliability and validity before implementing them across the Department. The Executive Director of the Office informed the audit team that client satisfaction is its preferred qualitative indicator and that it intends to develop a survey that can be used by all DLSUs.

The ADAG, Criminal Law advised the audit team that, while client satisfaction can be a valid performance indicator on the civil side of CLD, it cannot be a determinative factor for the criminal side of CLD since prosecutors act on behalf of the Attorney General of Canada and must act independently. He noted that FPS prosecutors are bound by the FPS Deskbook and that, as such, they must meet the prosecution standards associated with the decision to prosecute—that is, on the basis of the evidence available, whether there is a reasonable prospect of conviction and whether it is in the public interest to prosecute. The FPS Deskbook is the main document governing the conduct of criminal litigation at the federal level. A client investigator who has a weak case, but who may not realize it, may be displeased to learn that the prosecuting agency cannot proceed, particularly if significant time and effort have been invested in an investigation. It is therefore important that investigators be well trained to understand the unique role of prosecutors in the criminal process.

The audit team is of the opinion that while client satisfaction ratings must be interpreted judiciously to ensure that they are not subject to this effect, they are still worthwhile indicators of service quality for complex professional services, such as those provided by the CLD. The audit team is also aware of a proposal for a performance monitoring process based on a client satisfaction rating scheme that has been developed by the Public Works and Government

Services Canada DLSU. This process, which may hold potential for the CLD, is based on a 13-question survey that assesses satisfaction with legal services from the perspectives of quality, timeliness, and interpersonal relations. The survey is brief enough to be administered annually and could be combined with quantitative targets concerning the percentage of clients who state that they are “satisfied” and “fully satisfied” with the advice they have received. It could be a useful addition to the informal feedback the CLD receives from the bilateral meetings the Practice Coordinators hold with the Bureau’s executives.

As noted above, the systematic communication of quantitative and qualitative performance information is an essential component of assessing an organization’s progress in meeting expected results. At present, while the CLD gets informal feedback from the Bureau concerning its performance, it does not have an ongoing, systematic process for assessing and reporting on its performance.

#### Recommendations and Management Response

- 9. It is recommended that the Senior General Counsel review the process developed by the Public Works and Government Services Canada DLSU for its applicability to the CLD and, as appropriate, use it as a basis for implementing annual performance monitoring, starting in the 2006-07 fiscal year.**

I agree. The PWGSC DLSU scheme will be adapted, if appropriate, for the Competition Bureau environment and will be used for performance monitoring for the 2006-07 year.

- 10. It is recommended that, as part of the development of a client-driven service agreement with the Bureau, the Senior General Counsel incorporate into the agreement the communication of quantitative and qualitative performance information from annual performance monitoring.**

I agree. The implementation of this proposal will depend upon when the CDS agreement is finalized, and will be used pursuant to any particular terms and conditions set out in that agreement. I would propose that information be communicated at least once a year.

## **2.4 Communicating**

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.



Since his appointment in April, the Senior General Counsel has introduced a number of mechanisms to improve communications in the CLD. Nonetheless, the audit team was informed that information flow remains informal, from individual to individual, and that staff still do not understand certain important aspects of CLD functioning (e.g. the process for assigning counsel to a file and the role of the Special Counsel to the Commissioner of Competition).

In addition to continuing the practice of holding all-staff meetings every four to six weeks (the timing depends on how long it takes for a sufficient number of issues to accumulate), the Senior General Counsel has established a number of different forums through which information can be exchanged:

- the aforementioned round table following the civil and criminal practice group meetings;
- the Business Committee, which consists of the Senior General Counsel, the Office Manager and Administrative Coordinator, the Senior Paralegal Officer, the Financial Administrator, and the Records Technician. Its focus is the administrative infrastructure (e.g. the CLD's budget, office space, materiel management requirements);
- the Practice Management Committee;
- Hot Issues meetings, which are called on an ad hoc basis (e.g. to review a recent Supreme Court decision on conflict of interest).

There has been little time to feel the effect of these mechanisms. However, it is our view that they are appropriate measures.

It should be noted that junior counsel told the audit team that the process through which counsel are assigned to files is unclear to them. It is their understanding that the Senior General Counsel makes the file assignment decisions, but they are not confident that this understanding is correct. They also questioned why they were not assigned to the more complex files that had initially attracted them to the CLD.

We were told that the role of the Special Counsel to the Commissioner of Competition and the rationale for the existence of this position is unclear and a cause for concern to counsel. The audit team was advised that counsel do not understand why there is a need for this position and that the rationale has never been communicated. As well, counsel stated that it was generating insecurities in some staff.

The audit team is of the opinion that it will be worthwhile to review, within a year of this audit, the effectiveness of the communications mechanisms recently put in place and to ensure that there are not other issues that require special attention.

## Recommendations and Management Response

### **11. It is recommended that the Senior General Counsel:**

- a) **communicate to counsel the nature of the file assignment process;**
- b) **explain to staff the rationale for establishing the Special Counsel to the Commissioner of Competition position, the position's role and responsibilities, and its relationship to the Senior General Counsel.**

I agree. This will be communicated to counsel and to staff within this fiscal year.

### **12. It is recommended that the Senior General Counsel undertake a brief review of the effectiveness of internal communications processes and practices in 2006-07.**

I agree. Internal communications processes and practices will be reviewed on an ongoing basis, and any changes will be implemented following full discussion with staff. For example, the agendas of all internal meetings will be circulated in advance prior to the scheduled date of the meeting, and staff will be invited to make suggestions as to proposed agenda items. Minutes of certain meetings (the bilateral meetings with the Commissioner and the all-staff meetings) are currently being taken, and will be circulated to all staff. CLD has developed a Litigation Status Report, which is updated several times a year, and is posted on the public web site of the Bureau. This will also assist in informing staff of the status of litigation files. Practice coordinators have prepared on a monthly basis an active file list for each of the major branches, which indicate the status of files for which CLD has carriage. This information is updated with the assistance of counsel.

## **2.5 Management of Human, Financial, and Materiel Resources**

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

In addition to implementing Treasury Board policies, management is expected to ensure that the required resources are available and that the staffing mix is balanced so that required work can be executed in the most efficient manner possible.

### **2.5.1 Human Resources**

The audit found that the CLD is facing human resources challenges with respect to matching staff resources to workload and ensuring that junior counsel acquire the experience and develop the expertise necessary to assume lead counsel responsibilities for the Bureau's files.

Matching staff resources to workload is challenging for the Competition Bureau and, by extension, its legal services provider, the CLD. The challenges pertain primarily to the environment in which the two organizations operate:

- A significant part of the Competition Bureau's activities are carried out in response to events. For example, its investigations into unfair and anti-competitive business practices are initiated in response to complaints, and proposals for mergers are reviewed only after they have been notified. This makes workload volumes both uneven and difficult to predict.
- The Bureau's files are generally complex, and work on these usually unfolds over a period of several years. Furthermore, periods of intense activity on some investigation files are interspersed with temporary periods of no activity. In the latter instance, employees are available to take on additional work. During the former instance, it may be necessary to cease work on all other files.
- Litigation is one of the CLD's primary services. It is by design an adversarial process that requires the CLD to not only have a litigation strategy and plan but also to respond to both court-imposed deadlines and the tactics of its adversary.

The Legal Needs Analysis Framework recommended by the joint re-engineering project was a response to these challenges. As noted earlier, one of the reasons it is no longer used is that it consistently revealed a need for more counsel than the CLD had on staff.

The longstanding response to the CLD's shortfall in resources has been to hire agents. The joint re-engineering project report acknowledged that there will always be a requirement to retain the services of agents from time to time. However, the report observed that the extent to which they were being relied upon was undermining the CLD's ability to provide both the litigation experience necessary to develop its junior counsel and the challenging work needed to retain its most senior and experienced counsel. It therefore recommended that agents be retained, as much as possible, for routine legal work, and that more demanding work on complex files be handled in-house, using teams composed of junior lawyers working under the direction of a senior counsel. This approach would foster the development of junior staff as well as assist in retaining senior staff.

The audit team was advised that, since the completion of the joint re-engineering project, the number of counsel in the CLD has increased, and the departure of senior counsel has decreased. However, it was emphasized to the audit team that, in order to implement the project's recommendation that complex files be handled in-house by a senior lawyer/junior lawyer team, the CLD would require "a lot more lawyers". At present, there is an insufficient number of junior lawyers to form such teams for each file.

Counsel pointed out to the audit team that the problem of having an inadequate number of lawyers on staff to form in-house teams of senior and junior lawyers would persist as long as the Bureau continued to rely on agents. They also raised the question of whether the money spent on agents might not be better spent on increasing the number of in-house lawyers. As noted earlier, agent expenses in 2004-05 were \$1,051,646.

The Assistant Deputy Commissioner responsible for negotiating the new client-driven service agreement advised the audit team that she is aware of this issue. She noted that the Department of Justice's response was to suggest that the Bureau allocate additional resources for the creation of client-funded counsel positions. The Bureau has resisted this approach in the past for several reasons:

- First, until recently, there were serious problems with client satisfaction, with some clients preferring the services provided by agents. (For a more detailed discussion, see "Level of Client Satisfaction".)
- Second, the Bureau is concerned that because demand for legal services is uneven and difficult to predict, the Bureau may become responsible for lawyers who may not always be gainfully employed.
- Finally, the Assistant Deputy Commissioner stated that, as a matter of principle, the responsibility for managing federal government legal resources rests with the Department of Justice, not the Competition Bureau.

A recent Bureau decision to regionalize its investigations further complicates the CLD's ability to match staff resources to workload. Both the CLD's counsel and their clients advised the audit team that the Bureau is trying to expand its national coverage, particularly in the areas of fair business practices and criminal enforcement. The Bureau has been increasing its staff resources to support regionalization of its activities in the various branches. There is concern within the Bureau that recent increases in CLD staff numbers will be insufficient to address the increased workload that the Bureau's staff will generate in the regions. Senior managers in the Bureau have raised questions as to how the CLD, which has only one regional counsel (in Toronto), will be able to support the demand for legal services that will arise within the Bureau's regional offices. Until recently, there was little demand from these offices, and the CLD's Ottawa-based counsel

were able to provide the required support. Demand from these offices is expected to increase, and the Bureau's officials expressed concerns that in the absence of sufficient CLD resources, the Department of Justice would try to support the demand through its own regional offices. Both the CLD's counsel and their clients expressed doubts about the feasibility of this approach—the Department's regional offices not only lack expertise in competition law and economics, but their priorities are elsewhere (e.g. drug trafficking, gang violence).

The ADAG, Criminal Law stated that the unique arrangement under which the CLD operates sometimes created tensions and a feeling of isolation from the main FPS prosecution stream. He suggested that if the responsibilities of the CLD were to be realigned in the manner of a traditional DLSU, it might be easier to address the issues related to prosecutions in a more transparent way. The ADAG advised the audit team that the CLD was given this authority 20 years ago as a result of a real or perceived lack of service from the Department. The ADAG noted that the situation has evolved over the last 20 years, and that it might be timely to review the current arrangement in a way that would address the Bureau's need for timely and expert service, as well as the FPS's need for independence and transparency. In addition, the co-location of CLD prosecutors within the Bureau has also created several problems:

- CLD prosecutors are isolated from the FPS and, as such, do not have regular contact with their peers in the prosecution community. This means they do not have the opportunity to benefit from informal, daily exchanges of information about files and exposure to a broad range of litigation. There is the risk that their professional skills and development will be affected. The ADAG, Civil Litigation expressed a similar concern.
- When the CLD acts in a prosecution capacity, it receives functional direction from the FPS to ensure consistency regarding settlement terms and sentencing recommendations. The physical location of CLD prosecutors within the Bureau offices presents practical difficulties in ensuring that this happens. The ADAG, Civil Litigation expressed a similar concern.

Crown counsel are required to exercise the prosecution function in accordance with the principle of independence and the policies of the Attorney General contained in the Federal Prosecution Service Deskbook, which is the main document governing the conduct of criminal litigation at the federal level. The location of CLD prosecutors within the Bureau offices can make this very difficult because of their ongoing client relationship with the Bureau for the provision of civil litigation and advisory services. One of the responsibilities of a prosecutor is to challenge an investigator. A prosecutor must ensure that the standards set by the Deskbook have been met and resist client pressures to attempt to prosecute inadequately supported files. If the CLD prosecutor resists such pressure, its client may be dissatisfied and may consider the prosecutor as being risk averse.

The ADAG, Criminal Law acknowledged that a reorganization of the CLD along the lines of a traditional DLSU would be significant, but notes that the long-term benefits outweigh the possible short-term disruptions. In our view, it is appropriate to consider a reorganization at this juncture, given the long period of time (20 years) without any change and given the complexity of the issues facing the CLD as an entity that provides both advisory and litigation services.

It is the audit team's opinion that any action to reorganize the CLD should only be contemplated as one option among several. Options could include increasing the CLD's indeterminate in-house resources, setting up a formal staff rotation process that would allow FPS prosecutors to gain specific experience in competition law and allow CLD prosecutors to broaden their experience, and reorganizing the CLD.<sup>12</sup> In our view, no action should be taken until all options have been formally analyzed and a strategy developed for balancing the competing requirements in the current situation. These requirements include:

- providing responsive advisory, civil litigation and prosecutorial services related to competition law on a national scale;
- maintaining prosecutorial independence while being sufficiently knowledgeable and well-informed about complex economic crime to support the investigative phase of cases and to subsequently mount effective prosecutions that uphold and enforce Canada's competition law;
- maintaining prosecutorial independence while ensuring appropriate levels of client satisfaction with respect to legal advisory and civil litigation services;
- maintaining sufficient resources to be able to respond to surges in demand and to provide professional development and career paths to junior counsel while not being overstaffed.

#### Recommendations and Management Response

**13. It is recommended that the Senior General Counsel, in collaboration with the ADM, Business and Regulatory Law and the ADAGs, Criminal Law and Civil Litigation, commission a study to examine alternatives for the delivery of litigation services on behalf of the Competition Bureau.**

Same response as given under recommendation 5. Until such time as the ODPP is created, and the legislation is implemented, it would be advisable to defer the consideration of alternatives for delivering litigation services to the Bureau.

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<sup>12</sup> There may be additional options that should be studied. The audit team offers these as a starting point for the analysis.

### 2.5.2 Resource Mix

There is an average ratio of one legal assistant to four lawyers in the CLD. There was unanimous agreement that this ratio is too low, particularly for a DLSU that provides litigation services. Counsel advised the audit team that when engaged in litigation, they are often facing adversaries who not only deploy teams of counsel, but who also support these teams with legal assistants and paralegals in a ratio of one to two. The CLD's clients confirmed that its lawyers are often "outgunned", and that significant amounts of overtime are required to compensate for their fewer numbers. One client stated that since his officers were paid overtime in these situations, it would be preferable if the CLD counsel could be paid overtime as well, but they are not.

In addition to having a low ratio of legal assistants to counsel, the audit team was advised that the CLD has a higher than typical (for DLSUs) number of senior counsel on staff for its size. Inspection of its organization chart shows that, of a total of 31 counsel positions (not all of which are staffed), only 8 are entry level. (For a discussion of issues related to retaining junior counsel, see "Training and Career Development" below.) We were advised that this is intentional and the current mix was an explicit response to client concerns that the CLD did not have enough experienced counsel to provide effective litigation services to the Bureau. It is our view that the levels of additional junior counsel and legal assistants should be reviewed.

#### Recommendations and Management Response

**14. It is recommended that the Senior General Counsel review the need for additional junior counsel and legal assistant resources in the CLD as part of the study recommended previously to examine alternatives for the delivery of litigation services on behalf of the Competition Bureau.**

Same response as given under recommendation 5. Any such review would be part of a study that should be done only when it is clear what the role and responsibilities CLD will have, in the light of the mandate of the ODPP.

#### Training and Career Development

In recent years Treasury Board has placed considerable emphasis on training and developing staff. The 2003 Treasury Board of Canada Secretariat (TBS) *Management Accountability Framework* includes "people" as one of its ten elements for success. Indicators of success include renewed/sustained capacity and opportunities to grow. To support this direction, all permanent employees who wished to have a personal learning plan were to be given the opportunity by March 31, 2004.

The Department of Justice has set a minimum requirement of five days of professional development each year for each of its lawyers.

The CLD does not have a formal orientation process for new lawyers and support staff. We found that there is an outline of a deskbook that the Assistant to the Senior General Counsel plans to develop for new support staff. At the time of the audit, the outline did not provide explanations of the functioning/structure of the Bureau or descriptions of the services available to support staff on other floors of the building in which the Bureau and the CLD are housed (e.g. large-scale photocopying). Lacking a ready reference that they can consult, newly hired staff must disrupt the work of experienced staff to obtain basic information needed to do their jobs. This situation is unproductive.

Furthermore, CLD counsel advised the audit team that their primary concern with respect to training and development is the difficulty that junior lawyers face in gaining experience in litigation. In other DLSUs, a junior lawyer is assigned simple, low risk files through which various types of litigation experience (filings, motions, court appearances) can be obtained. At the Bureau, most files are complex and many are high risk and therefore inappropriate for inexperienced counsel to undertake. As a result, junior counsel tend to leave the CLD for other organizations where they are able to gain basic litigation experience.

The Senior General Counsel advised the audit team that he is aware of this problem and that he has implemented two mechanisms to improve junior counsel's access to litigation experience.

- One is to assign junior counsel to work on litigation teams with agents.
- The other is to encourage junior counsel to become involved in assisting with the less time-consuming and typically more straightforward litigation pursued by other government departments.

It is the audit team's opinion that while both mechanisms will be helpful, these cannot replace appropriate training and development.



## Recommendations and Management Response

**15. It is recommended that the Senior General Counsel ensure that a standard orientation process is developed for all new lawyers and support staff to orient them to the CLD, the client, and the Department of Justice.**

I agree. This is being developed at the present time by CLD counsel, and an intranet website available only to CLD staff will be developed. This website will contain relevant orientation material by way of governmental, DOJ, CLD, and Bureau policies and procedures; links to other sites; templates; and other electronic resources. CLD's practice notes on critical areas of practice are made available to all lawyers and support staff that join the unit. CLD is also working on a database for legal precedents and templates. It is expected that the database and website will be operational by the end of this fiscal year.

The Bureau itself will be rolling out a Bureau Toolbox in this or in the next fiscal year, containing similar information, including Bureau legislation, policies, procedures, case law, practice notes, scenario-based learning modules, training information, and other electronic resources.

There is a deskbook for support staff that is developed and up-to-date. New support staff that have been hired during this fiscal year have commented on it as being a useful tool in orientation.

Finally, new counsel will be offered ongoing orientation by the Director and practice coordinators with whom they work, or, in the case of support staff, by the Office Administrator and the Records Technician. They will also be invited to attend orientation sessions offered by the Department of Justice and Competition Bureau, where they are available.

**16. It is recommended that the Senior General Counsel examine options for ensuring that junior counsel gain the required litigation experience.**

I agree: the two options outlined in the Audit Report have been recommended to counsel and have been implemented on an ongoing basis, where possible. Another possibility is to ensure that senior counsel or outside agents delegate some litigation work to junior counsel in any particular file, such as pleading a motion or examining or cross-examining a witness. Other options will be discussed in conjunction with junior counsel in this and future fiscal years.

### Performance Feedback

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

Performance appraisals were done for all lawyers for the 2003-04 fiscal year. All appraisals had a learning plan attached, and all were signed by both the individual lawyer and the line manager. The performance appraisal process for 2004-05 has been initiated but at the time of the audit had not been completed. Our review of the appraisal files indicated that all appraisals should be completed soon. Most have a learning plan attached, but there are still some plans that need to be finalized.

We found that performance appraisals for the 2003-04 period were not done for support staff. Also, the audit team was advised that the CLD has not initiated a formal performance appraisal process for support staff for the fiscal year 2004-05. We were advised that it is not mandatory at the Department of Industry, and therefore the Competition Bureau, to do annual performance appraisals. It is our view that by not completing regular appraisals, an opportunity to provide feedback on performance and to identify training requirements is lost, to the detriment of both the employer and the employee.

### Recommendations and Management Response

**17. It is recommended that the Senior General Counsel ensure that performance appraisals be prepared on a regular basis for support staff.**

I agree: the support staff in CLD are employees of Industry Canada, and are subject to Industry Canada's programs and policies. There is an Industry Canada Employee Performance Feedback Policy, and the support staff will be able to receive appraisals under that policy. This policy calls for an annual review of the employee's performance at the end of the feedback period.

### Flexible Work Arrangements

Treasury Board is committed to providing policies and provisions designed to help employees balance their work, personal, and family responsibilities.<sup>13</sup> It has developed policies on part-time work, flexible hours, variable work week (compression and extension), and teleworking.

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<sup>13</sup> Treasury Board of Canada Secretariat, *Telework Policy*, December 9, 1999.

All CLD counsel are eligible for flexible work arrangements. Only two have taken advantage of this to establish non-traditional working schedules. No other counsel is using flexible work arrangements. We were advised by most counsel that such arrangements are not practical for the nature of their work.

### **2.5.3 Financial Resources**

The audit team found that the overall management of the CLD's financial resources is adequate. The CLD receives regular financial reports that are produced by the financial systems of both the Department of Industry (Integrated Financial Management System, IFMS) and the Competition Bureau (Bureau Information Management System, BIMS). The reports are reviewed, reconciled, and verified by the Office Manager and Administrative Coordinator and signed off by the Senior General Counsel.

The Bureau's Management Policy and Services Directorate provides centralized services and controls related to the acquisition of goods and services (e.g. office supplies, travel, training). A sample of transactions relating to the acquisition of goods and services revealed that appropriate safeguards are in place.

### **2.5.4 Materiel Resources**

It is our view that the measures taken to track and protect the CLD's materiel resources are adequate.

The CLD is located in separate offices in its client's building. Physical access to the CLD is restricted. External visitors must be signed in at a security desk by a CLD staff member before entering the elevators. Access is further restricted to the CLD's offices: the main doors to the offices are always locked, and a receptionist at the front desk controls access to those individuals without passes. Bureau employees with passes have access to CLD offices during normal working hours.

All CLD employees have recently received formal training on security (Spring 2005). All employees have secret level security clearance.

Information/files are kept in a separate Records Room, which is a secure room that is locked every night. There is one employee on-site all day.

The CLD's informatics assets are managed by the Bureau's Compass Information Management Centre. There is an inventory system for all informatics equipment and software. Each item is bar coded, tagged, and recorded in a database. Each computer is linked to the inventory system for maintenance purposes. Any losses would be reported to the Security Group of the Competition Bureau. We were informed that there have been none.

### **3. FINDINGS—PROGRAM OPERATIONS**

#### **3.1 CLD Information Management/ Information Technology (IM/IT) Systems**

The CLD uses several different IM/IT systems in its provision of legal services. It is imperative that these systems provide reliable information in a timely manner in order to ensure clients receive correct information and CLD management has the required information to manage the CLD as effectively as possible.

The audit team found that many of the CLD's systems are awkward to use, so as to compromise productivity and/or usefulness (e.g. access to Department of Justice systems via JUSnet/JUSaccess and iCase), have incomplete data (i.e. LOPORS), or are not complemented by the robust standards and procedures that are needed to ensure that they provide efficient and effective support to the CLD (i.e. RIMS).

##### **3.1.1 JUSnet/JUSaccess**

The Department of Justice Intranet, which is known as JUSnet, makes information available to departmental staff across the country. It comprises over 200 sub-sites that are maintained on a decentralized basis by the branches and divisions within the Department. JUSnet is a vehicle for making information (e.g. concerning training opportunities) readily available to departmental employees. The legal application system LOPORS (Legal Opinions and Precedents On-line Retrieval System) is maintained on JUSnet.

Access to JUSnet was provided to the CLD in April 2005 by way of JUSaccess. JUSaccess is a web-based gateway that provides secure access to JUSnet and thence to the Department's corporate and legal applications such as LOPORS. JUSaccess uses Public Key Infrastructure (PKI)<sup>14</sup> as a security mechanism to restrict access to Department of Justice employees. It requires a password and a special diskette that holds a PKI certificate (a PKI ID). Once connected by way of JUSaccess, users require another user ID and password to log on to JUSnet. Once logged on to

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<sup>14</sup> PKI is an encryption service that enables users to establish secure connections for remote access to the departmental network.

JUSnet, most applications (e.g. Leave Self-Service) require yet another user ID and password. Most DLSU staff find this procedure very inconvenient, which inhibits use of the system. Furthermore, during the first few weeks, employees were disconnected from the system after three minutes, which further discouraged use. Although we were advised that this problem had been corrected, we learned subsequent to the audit that the problem of access was still continuing.

### **3.1.2 LOPORS**

LOPORS is a legal application system used to capture information on legal opinions provided to client departments. It is an essential tool for the Department, as it facilitates the provision of consistent advice across the country and over time.

All CLD lawyers have on-line access to LOPORS by way of JUSaccess. LOPORS has both a departmental collection and a local collection of opinions and precedents. We were told that the large departmental collection is not necessarily relevant to the CLD's work, which is focused on the relatively narrow and specialized area of competition law. We were also told that none of the CLD lawyers uses the local collection, as it contains only three legal opinions on competition law. There are about 500 other opinions related to competition law that have not been entered into the CLD's local collection because of staff workload pressures. These legal opinions are a source of precedent that help ensure continuity and consistency in the advice the CLD provides to the Bureau and should be entered into LOPORS.

There is a training guide available for LOPORS. However, we were advised that the guide has never been used and no training sessions have been conducted. A recently completed audit of LOPORS (July 2004) noted that the system needs to be more intuitive to encourage its use by new or infrequent users. When the use of a system is not intuitive, training is important for ensuring that the full benefits of the system are realized to support the legal services being provided by the CLD.

#### Recommendations and Management Response

#### **18. It is recommended that the Senior General Counsel ensure that all CLD legal opinions are entered into LOPORS.**

I agree. This is being implemented progressively in this fiscal year. As of March 31, 2006, forty-eight legal opinions have been entered into LOPORS. All counsel have made a commitment, which is found in their work objectives for this year, to provide their legal opinions to the Records Technician for purposes of entry into LOPORS.

**19. It is recommended that the Senior General Counsel ensure that, once all CLD legal opinions are entered into LOPORS, all staff are scheduled for LOPORS training.**

I agree. Staff will be encouraged to take LOPORS training. LOPORS training has in previous years been provided on site, and this could be considered.

### **3.1.3 iCase**

iCase is a web-based integrated case management, timekeeping and billing, document management, and reporting application developed by the Law Practice Applications group within the Information Management Branch of the Department of Justice. The development of iCase involved the re-engineering and integration of several older departmental applications into a single, national system.

The CLD was provided with access to iCase in May 2005. At the time of the audit, CLD lawyers were only using the timekeeping component of the system and had received training on this aspect.

CLD lawyers told the audit team that the task descriptions the system uses for time recording are very general and that they are finding it difficult to determine exactly where to enter their time in iCase. This problem has been reported, and the lawyers have been advised that additional categories will eventually be added to the system. Meanwhile, a procedure on the use of the timekeeping component as well as a national protocol for categorizing time had also been distributed (September 2005) to help lawyers determine how to record their time.

CLD lawyers also stated it would be easier to use the system for recording time if client names could be displayed on screen instead of having only a file identification number displayed. (Names are not displayed for security reasons.) The Records Technician maintains a separate cross-referencing list that lawyers must access to use the system correctly.

Entering data on a regular basis (i.e. daily) provides better assurance that the information provided is accurate and complete. Also, we were told that the *Legal Services Review*<sup>15</sup> is

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<sup>15</sup> The Department of Justice has been working in collaboration with the Treasury Board Secretariat on this review, which is aimed at identifying improvements to the delivery of legal services, recommending a sustainable funding regime, and considering approaches to managing litigation effectively in the federal government overall. The final recommendations from the review were to be presented to the Expenditure Review Subcommittee of the Treasury Board in late 2005.

expected to recommend that DLSUs bill their clients for every hour of service provided. Hourly billing, when implemented, will place a premium on accurate time recording.

It is our view that frequent and up-to-date timekeeping will be required to ensure that lawyers' time is accurately recorded.

### Recommendations and Management Response

**20. It is recommended that the Senior General Counsel monitor the use of iCase for time reporting and ensure that CLD counsel are recording time frequently to ensure the accuracy of information.**

I agree. All counsel have made a commitment, which is found in their work objectives for this year, to record their time using iCase. Monitoring is done on a quarterly basis, when the national iCase coordinator transmits data.

### **3.1.4 Records Management**

An efficient records management system is critical for any legal practice so that relevant information and precedents can be quickly retrieved. Good practices include:

- prompt filing of all correspondence and related documents, including e-mails;
- indexing files;
- removing multiple copies of the same document.

Completed files should be archived in accordance with the Treasury Board *Policy on the Management of Government Information* and the associated National Archives approved Records Disposition Authorities so that on-site space requirements can be minimized.

### Records Information Management System (RIMS)

The CLD uses RIMS, the Department of Justice's system that manages records from their creation to their final disposition. RIMS tracks departmental files and folders and provides advanced searching and reporting capabilities. It facilitates the full life-cycle management and tracking of hard copy (paper) records.



The audit team was told and also observed that RIMS is reliable, easy to use, and has good technical (help desk) support from the Department of Justice. There is readily available user documentation to support its use.

The absence of standards for the management of the CLD's records, however, is undermining the system's potential to support efficient and effective records and information management. In turn, this is jeopardizing the CLD's ability to support the Bureau in enforcing the legislation for which the Commissioner of Competition is responsible. For example, we were told that there are no standards for structuring the information contained in a file. As noted earlier, the CLD's files tend to be large and complex and can have many volumes. We were told of files with up to 22 volumes. Retrieving information that might be needed for a court appearance from a 22-volume, unstructured file can be very challenging. We were advised that previously it was only possible because the former employee responsible for records knew the history of all files "by heart". This employee has since left the CLD. It is difficult and time consuming for her successor to retrieve information from files relating to ongoing investigations and cases. There is a risk, if the required information cannot be found, that investigations and prosecutions will be compromised.

In addition to lacking standards for document and information management, the CLD is not using the functionality available in RIMS as intended, which is to track physical files to ensure there is a complete record of all documents created relating to a file. Each time a new file is opened, it is logged into RIMS and an e-mail is sent to everyone in the CLD to inform them about the new file. Rather than logging each document relating to the new file in RIMS as it is captured or created, the CLD waits until the file is about to be closed. Since the Competition Bureau's investigations and prosecutions can take years, file closure may not occur for many years. In the meantime, there is no central electronic record that is accessible to all CLD counsel of all the documents that are relevant and that should be included in the file. This lack of centralized access makes it much more difficult to make court preparations, particularly if the lawyer(s) who is(are) assigned to a case change. Changing the lawyers assigned to a case is happening less frequently now than in the past, although such a change may still occur. Furthermore, lawyers also keep information on the shared drive or on the hard drive of their personal computer. In the absence of standards and a protocol for storing such information, there can be no assurance that when the file is closed the RIMS record represents a complete listing of all hard copy (paper) records relating to a case. Finally, there is no central backup done of the information kept on the hard drives of personal computers. There is a risk therefore that vital information could be lost if there is a hard drive failure.

### Recommendations and Management Response

**21. It is recommended that the Senior General Counsel ensure that document and information management policies, procedures, and standards are developed and implemented in the CLD.**

I agree. This will also be discussed by the working group set up to implement recommendation 23 below.

**22. It is recommended that the Senior General Counsel ensure that each document relating to a file in RIMS is logged as it is captured or created.**

I agree. This recommendation has already been implemented.

### Shared Drive

In today's electronic office, the shared drive has taken on many of the attributes of the file room. The same filing principles apply: information that is no longer required should be archived or purged, and standards for filing electronic information need to be established. The CLD has not established electronic filing standards for its shared drive, nor has it assigned responsibility to anyone for managing the content of the shared drive. If the CLD is to continue to store information on a shared drive, it should have standards for electronic file retention and have defined accountabilities with respect to file retention. It is also important that someone be given responsibility for monitoring and reporting on file creation, usage, and archiving. Regular reports to management are required to ensure that management has the information it needs to take timely action if the defined protocol is not being followed.

### Recommendations and Management Response

**23. It is recommended that the Senior General Counsel in consultation with the Chief Information Officer ensure that standards for the CLD's retention of its electronic files are developed.**

I agree. Following an all-staff meeting of April 28, 2006, a committee has been struck consisting of myself, the Chief Information Officer (called the Research and Records Management Technician), two assistants, and two counsel to deal with this issue and with those mentioned in recommendation 21 above. It is proposed, among other things, that lawyers' files be kept on the shared drive, and that the files will be identified according to their Justice file number. Consideration is also being given to using iCase as a document

creation, retrieval, and storage system. The committee will develop standards for file creation, usage, and storage over the course of this fiscal year.

**24. It is recommended that the Senior General Counsel assign responsibility for monitoring electronic file creation, usage, and archiving, and for the preparation of regular reports to management.**

I agree. This role has been given to our Research and Records Management Technician. The support staff will assist her.

Records Storage

The CLD records room is poorly organized. The audit team's inspection of the room revealed that it is crowded and that there are piles of files everywhere. There is no file rotation process. Active, dormant, closed, and archived files are all located in the same small room, taking up valuable space and making it time consuming to locate active files. Dormant files are those to which reference is neither frequent nor urgent enough to warrant keeping the file in a lawyer's office; these are transferred to the records room. Closed files are those pertaining to a closed case about which no additional activity is expected to occur and which can be archived. Files to be archived are initially sent to a local storage facility (sometimes to an inexpensive off-site location) and eventually to the National Archives (if the files are of national significance). The audit team was informed that archiving is not done on a regular basis. We were also advised that many files have been lost (or at least misplaced). We were told that previously no records were kept of who removed files. At the time of the audit this had changed—the Records Technician was keeping records, and students had been hired on a temporary basis to review all the files. These students have produced a list of missing files so that a process to retrieve them can be undertaken.

Recommendations and Management Response

**25. It is recommended that, in addition to ensuring that missing files are retrieved, the Senior General Counsel ensure that closed files are not stored in the records room and are transferred to archival storage.**

I agree. CLD will coordinate with Justice Archives the transfer of any closed files to ensure that the shipment can be processed by Archives.

## Library

The library in any legal practice is an important resource. It is used to research precedents in different jurisdictions and differing legal perspectives in particular areas of the law.

The CLD Law library is a small room that can be accessed at any time by the CLD's lawyers, who also have access to the Bureau's larger library. There is no system for recording that a book has been taken out of the CLD library. E-mail broadcasts must be used to determine who has a book. While a book can be located in this way, this is not very efficient, particularly if the lawyer who has taken the book out is away or too busy to respond to the e-mail.

## Recommendations and Management Response

### **26. It is recommended that the Senior General Counsel ensure that a system for recording the removal of books from the Law Library is implemented.**

I agree. Various systems have been tried in the past, and have failed. We will look into other methods. CLD will seek the views of the Competition Bureau's Resource Centre in order to find a workable system.

## **3.2 Compliance with Legislation and Policies**

We found the CLD to be compliant with key government and departmental legislation and policies (including the *Financial Administration Act* and the *Government Contracts Regulations*).

Hiring is done through a competitive process, and the CLD complies with the requirements of the *Official Languages Act*. Services are provided to clients in the language of their choice, and staff meetings are held in English and French. In group meetings with lawyers and support staff, the audit team found that the conversation kept shifting quite naturally between English and French.

## **3.3 Appropriateness of Interfaces with Other Sections of the Department**

The CLD has its own litigators and is one of the few DLSUs that has the authority to conduct its own litigation. Therefore, it has relatively little direct contact on individual cases with either the office of the ADAG, Civil Litigation or the ADAG, Criminal Law. Both offices reported that the

CLD is a relatively autonomous unit and that their main responsibility is to provide functional direction. The principal mechanism for doing this is through their respective deskbooks. (There are separate books for civil and criminal litigation). In addition, the CLD's Senior General Counsel attends the FPS Management Board meetings, which take place four times a year and last four days each, and CLD lawyers participate in conferences, seminars, and training retreats organized by the FPS.

Both offices reported that there are good working relationships with the CLD. However, both also expressed concern about the ability of the CLD to maintain its independence from the Bureau and the Bureau's ability to maintain appropriate respect for the independence of the CLD's Attorney General function.

The CLD must also interface on a regular basis with the staff in the office of the Assistant Deputy Minister, Business and Regulatory Law Portfolio. Staff in both offices reported that the interface between them is good.

### **3.4 The Appropriateness of Interfaces with the Client Department**

As noted earlier, the CLD has established a number of mechanisms to ensure that it has regular dialogue with the Bureau. Following are some examples: the Practice Coordinators hold meetings with their respective Deputy Commissioners, and the Senior General Counsel has a regularly scheduled meeting with the Commissioner and her Executive Assistant. (All Practice Coordinators also attend this meeting.) These various meetings not only provide opportunities to share information about the status of current files and to confirm priorities, but they are also a means for learning about forthcoming requirements. In our interviews, the CLD's clients informed us that they find all these meetings to be valuable and that they have had a significant positive impact on client relations.

Notwithstanding the impact of these interfaces, the audit team is of the opinion that there is room for improvement in the Bureau's understanding of the critical distinction between the CLD as a service organization when it is providing legal advice and opinions during an investigation, and as an independent representative of the Crown when it acts as a prosecutor and is fulfilling its Attorney General function.

We were advised by CLD lawyers that their clients at times expect them to pursue cases that are of questionable merit from a prosecutorial perspective. The Federal Prosecution Service Deskbook, which guides the actions of all prosecutors, states that "a bare *prima facie* case is not enough" to justify proceeding with a prosecution, and that "the evidence must demonstrate that

there is a *reasonable prospect of conviction*.”<sup>16</sup> Clearly, achieving a common understanding of what is meant by “reasonable prospect of conviction” can be difficult.

The 2001 Federal Prosecution Service Review<sup>17</sup> came to a similar conclusion: “There is a need to clarify the respective roles of DLSU counsel, client department officials and members of the FPS specifically in relation to the conduct of regulatory prosecutions”<sup>18</sup>. It recommended increased dialogue and training to help ensure that all parties understood their respective roles and responsibilities in the context of the well-established principle of prosecutorial independence. It is the audit team’s opinion that training for DLSU counsel, client department officials, and members of the FPS would be helpful in the current situation.

### Recommendations and Management Response

**27. It is recommended that the Senior General Counsel, in collaboration with the Competition Bureau and with the support of the ADAGs, Criminal Law and Civil Litigation, and the ADM Business and Regulatory Law communicate to all concerned the CLD’s role and responsibilities vis-à-vis the Bureau and its mandate, and provide training as appropriate.**

Same response as given under recommendation 5. Until such time as the role of the ODPP and its relationship and impact on CLD and the Bureau are clarified, it would be advisable to defer implementation of this recommendation.

### **3.5 Level of Client Satisfaction**

In November 2002, the ADM Business and Regulatory Law conducted a client satisfaction survey of DLSUs in his portfolio. The CLD was included in the DLSUs surveyed. The results showed that with one exception (i.e. conducting witness preparation), the CLD was rated lower than the portfolio average on every aspect of client satisfaction assessed. In many files, the ratings were substantially lower. It was noted, “The LSU results are noticeably different from the Portfolio results and there is a difference of 0.5 or more on more than half the questions.”

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<sup>16</sup> Federal Prosecution Service Deskbook, 2005, Section 15.3.1 (italics in the original).

<sup>17</sup> The review was undertaken by two senior Department of Justice lawyers under terms of reference approved by the Justice and Legal Affairs Committee, a committee of Deputy Ministers. A copy of the report is available on the Department of Justice website.

<sup>18</sup> Federal Prosecution Service Review, 2001, p. 16.

The results from this survey were corroborated by the interviews the audit team held with the CLD's clients and its counsel. Both freely admitted that until as recently as late 2004 when the Fair Business Practices Branch commissioned a stock-taking exercise<sup>19</sup>, there were issues with client satisfaction in certain areas of the CLD's practice. For example:

- accessibility of counsel, particularly for work on low to mid-priority files;
- high turnover in DLSU counsel assigned to files, caused in part by the departure of senior, experienced counsel;
- timeliness of services;
- respect for and ability to address the Bureau's priorities;
- lack of confidence on the part of clients in the advice they were receiving, due in part to inconsistencies;
- lack of communications between CLD lawyers and Bureau investigators concerning the status of work on files;
- difficulty in coming to an agreement with CLD on the merits of pursuing litigation based on the evidence available from an investigation;
- time delays in hiring agents once a decision was made that an agent was required.<sup>20</sup>

It was also clear from these meetings, however, that service quality was variable. Some Bureau branches reported receiving very good levels of service and others reported that service levels were very poor.

Starting in January 2005, the CLD made a concerted effort to address these problems. The effort has clearly been successful: several clients told us that there have been noticeable improvements in service quality in many areas. The creation of the Practice Coordinator role and the regular meetings that Practice Coordinators have with their counterparts in the Bureau are regarded by the CLD's clients as instrumental to the improvements that have been made.

Nonetheless, it is evident to the audit team that more can be done. The CLD's clients and its counsel noted in our meetings with them two particular issues that, if not addressed, could make it difficult to sustain the recent improvements:

- Resources: Both the CLD and some of its client branches agree that the CLD is under-resourced in relation to the workload generated by the Bureau. The Fair Business Practices

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<sup>19</sup> The results were provided to the audit team for its review and are documented in "A Stock Taking Exercise of the Relationship and Work Processes of the Fair Business Practices Branch of the Competition Bureau and the Competition Law Division of Justice Canada".

<sup>20</sup> The Department of Justice's Agent Affairs Unit, which is responsible for this process, is conducting a pilot project with the Bureau to set up a rapid contracting mechanism, known as a Standing Offer, to address this concern.

Branch, the Bureau's main user of CLD's services, is particularly concerned. It stated that the CLD's capacity to respond to requests for services is the biggest determinant of its productivity, but that the CLD is clearly "strapped for resources".

- Roles and responsibilities: Like the CLD, the Bureau's branches have experienced turnover among senior and experienced officers. As a result, there is a risk that their replacements may not understand the appropriate division of responsibilities between themselves and the CLD lawyers. This can lead not only to friction between staff, but also to undermining the productivity of both the CLD and the Bureau. The results of the stock-taking exercise and our interviews highlighted the need to clarify the definition and understanding of roles and responsibilities in both organizations.

We made earlier recommendations to examine alternatives for the delivery of litigation services on behalf of the Competition Bureau, and to create a training program to clarify the CLD's role and responsibilities vis-à-vis the Bureau and its mandate. These recommendations should help to address the above concerns.



## **4. CONCLUSION**

Since being appointed in April 2005, the Senior General Counsel has both maintained reforms instituted by his predecessor and implemented additional reforms designed to improve the performance of the CLD. These actions have had a very positive impact on the relations between the CLD and its clients and have also addressed, or are starting to address, a number of longstanding issues with respect to client satisfaction.

There are opportunities for additional improvements with respect to:

- planning
- organizing and directing staff
- performance monitoring
- communicating
- managing human resources
- interfacing with the client department

Challenges also remain with respect to managing information and ensuring that suitable information is available to support the application of competition law.



## **5. RECOMMENDATIONS AND MANAGEMENT RESPONSE**

- 1. It is recommended that the Senior General Counsel ensure that the Legal Needs Analysis Framework is reviewed for its suitability as a tool for forecasting demand for CLD services, and as necessary, revised (or replaced with a new tool) to support joint planning. ....16**

I agree. A review of the suitability of LNAF as one tool among others is warranted and will be done, jointly with the Competition Bureau, during this year's renewal of the Client-driven Services (CDS) Agreement. The Bureau finalized its priorities by April 2006, and these priorities will be taken into account within the framework of the re-negotiation of the CDS Agreement and for the purposes of forecasting the legal services the Bureau will need. However, it is unlikely that any one tool or any combination of them would provide full forecasting for litigation cases.

- 2. It is recommended that, as part of a joint planning process, the Senior General Counsel ensure that the results of the Bureau's priority-setting exercise are used by the CLD to prepare a forecast of the legal services each Bureau branch expects to consume. ....16**

I agree. The Bureau finalized its priorities by April 2006, and these priorities will be taken into account within the framework of the re-negotiation of the CDS Agreement and for the purposes of forecasting the legal services the Bureau will need.

- 3. It is recommended that, when developing the new client-driven service agreement with the Bureau, the Senior General Counsel ensure that it is consistent with the Business and Regulatory Law Portfolio's preferred content for CDS agreements. ....18**

I agree. The proposed agreement, which has been provided to the Bureau, is fully consistent with the Portfolio's precedents.

- 4. It is recommended that the Senior General Counsel ensure that the CLD's actual workload and each Bureau branch's use of legal services are formally monitored. ....18**

I agree. Monitoring of the CLD workload and Branch use of legal services are currently being monitored through the use of iCase, and it is expected that this software will be the key tool to monitor such use.

**5. It is recommended that the Senior General Counsel undertake a review of the organizational structure of the CLD with a view to reducing his span of control to ensure the provision of effective management and oversight of all professional staff. ...20**

I would defer any review of organizational structure for the reasons mentioned below.

The *Federal Accountability Act*, being Bill C-2 in the current session of Parliament, contains in Part 3 legislation that would amend the *Department of Justice Act* and would create a new office, the Office of the Director of Public Prosecutions (ODPP). The proposed *Director of Public Prosecutions Act* (the “Act”) would remove federal Crown prosecutors from the Department of Justice and place them in a separate department, reporting to the Attorney General of Canada. The Director would have responsibility under the Act, among other things, for conducting prosecutions on behalf of the federal Crown, and for advising law enforcement agencies or investigative bodies in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution.

This bill may have a considerable impact on CLD. Until such time as more information is obtained on the impact of the DPP Act, it is unwise to review organizational structure at this time. CLD may have to be re-organized, consequent upon the new legislation, in order to take into account the transfer of prosecutorial functions to the new department.

**6. It is recommended that, as part of the review of the CLD internal organizational structure, the Senior General Counsel review the role of the Practice Coordinators to determine whether their responsibilities can be fulfilled on a day-to-day basis. ....24**

Same response as given under recommendation 5. Until such time as the Act is being implemented, it is not advisable to review the role of the practice coordinators, because the functions and responsibilities of a number of them may be changed or, at the least, affected, by the proposed ODPP.

**7. It is recommended that the Senior General Counsel establish a mechanism for the coordination and prioritization of requests for support. ....26**

I agree. The mechanism currently in place is to have counsel and support staff, amongst themselves, coordinate and prioritize requests for support. Workflow will be managed on the basis of a team approach (all counsel and support staff who are assigned to counsel to work

this out together and, in certain circumstances, with the Office Administrator). This mechanism has been effective and has been acted upon by all staff.

- 8. It is recommended that the Senior General Counsel ensure that standards for working practices for both professional and support staff are developed and implemented, and that these clearly differentiate activities to be performed by both groups.....26**

I agree: It is a matter to be developed by each work team, depending on the needs, circumstances, aptitudes, skills set, and priorities of each team. Counsel and support staff and, in certain circumstances, the Office Administrator) are directed to resolve priorities on a team approach. This approach is effective, and is currently being acted upon by counsel and support staff.

- 9. It is recommended that the Senior General Counsel review the process developed by the Public Works and Government Services Canada DLSU for its applicability to the CLD and, as appropriate, use it as a basis for implementing annual performance monitoring, starting in the 2006-07 fiscal year.....28**

I agree. The PWGSC DLSU scheme will be adapted, if appropriate, for the Competition Bureau environment and will be used for performance monitoring for the 2006-07 year.

- 10. It is recommended that, as part of the development of a client-driven service agreement with the Bureau, the Senior General Counsel incorporate into the agreement the communication of quantitative and qualitative performance information from annual performance monitoring. ....28**

I agree. The implementation of this proposal will depend upon when the CDS agreement is finalized, and will be used pursuant to any particular terms and conditions set out in that agreement. I would propose that information be communicated at least once a year.

- 11. It is recommended that the Senior General Counsel:.....30**
- a) communicate to counsel the nature of the file assignment process;**
  - b) explain to staff the rationale for establishing the Special Counsel to the Commissioner of Competition position, the position's role and responsibilities, and its relationship to the Senior General Counsel.**

I agree. This will be communicated to counsel and to staff within this fiscal year.

- 12. It is recommended that the Senior General Counsel undertake a brief review of the effectiveness of internal communications processes and practices in 2006-07.....30**

I agree. Internal communications processes and practices will be reviewed on an ongoing basis, and any changes will be implemented following full discussion with staff. For example, the agendas of all internal meetings will be circulated in advance prior to the scheduled date of the meeting, and staff will be invited to make suggestions as to proposed agenda items. Minutes of certain meetings (the bilateral meetings with the Commissioner and the all-staff meetings) are currently being taken, and will be circulated to all staff. CLD has developed a Litigation Status Report, which is updated several times a year, and is posted on the public web site of the Bureau. This will also assist in informing staff of the status of litigation files. Practice coordinators have prepared on a monthly basis an active file list for each of the major branches, which indicate the status of files for which CLD has carriage. This information is updated with the assistance of counsel.

**13. It is recommended that the Senior General Counsel, in collaboration with the ADM, Business and Regulatory Law and the ADAGs, Criminal Law and Civil Litigation, commission a study to examine alternatives for the delivery of litigation services on behalf of the Competition Bureau. ....34**

Same response as given under recommendation 5. Until such time as the ODPP is created, and the legislation is implemented, it would be advisable to defer the consideration of alternatives for delivering litigation services to the Bureau.

**14. It is recommended that the Senior General Counsel review the need for additional junior counsel and legal assistant resources in the CLD as part of the study recommended previously to examine alternatives for the delivery of litigation services on behalf of the Competition Bureau. ....35**

Same response as given under recommendation 5. Any such review would be part of a study that should be done only when it is clear what the role and responsibilities CLD will have, in the light of the mandate of the ODPP.

**15. It is recommended that the Senior General Counsel ensure that a standard orientation process is developed for all new lawyers and support staff to orient them to the CLD, the client, and the Department of Justice. ....37**

I agree. This is being developed at the present time by CLD counsel, and an intranet website available only to CLD staff will be developed. This website will contain relevant orientation material by way of governmental, DOJ, CLD, and Bureau policies and procedures; links to other sites; templates; and other electronic resources. CLD's practice notes on critical areas

of practice are made available to all lawyers and support staff that join the unit. CLD is also working on a database for legal precedents and templates. It is expected that the database and website will be operational by the end of this fiscal year.

The Bureau itself will be rolling out a Bureau Toolbox in this or in the next fiscal year, containing similar information, including Bureau legislation, policies, procedures, case law, practice notes, scenario-based learning modules, training information, and other electronic resources.

There is a deskbook for support staff that is developed and up-to-date. New support staff that have been hired during this fiscal year have commented on it as being a useful tool in orientation.

Finally, new counsel will be offered ongoing orientation by the Director and practice coordinators with whom they work, or, in the case of support staff, by the Office Administrator and the Records Technician. They will also be invited to attend orientation sessions offered by the Department of Justice and Competition Bureau, where they are available.

**16. It is recommended that the Senior General Counsel examine options for ensuring that junior counsel gain the required litigation experience. ....37**

I agree: the two options outlined in the Audit Report have been recommended to counsel and have been implemented on an ongoing basis, where possible. Another possibility is to ensure that senior counsel or outside agents delegate some litigation work to junior counsel in any particular file, such as pleading a motion or examining or cross-examining a witness. Other options will be discussed in conjunction with junior counsel in this and future fiscal years.

**17. It is recommended that the Senior General Counsel ensure that performance appraisals be prepared on a regular basis for support staff. ....38**

I agree: the support staff in CLD are employees of Industry Canada, and are subject to Industry Canada's programs and policies. There is an Industry Canada Employee Performance Feedback Policy, and the support staff will be able to receive appraisals under that policy. This policy calls for an annual review of the employee's performance at the end of the feedback period.

**18. It is recommended that the Senior General Counsel ensure that all CLD legal opinions are entered into LOPORS.....42**

I agree. This is being implemented progressively in this fiscal year. As of March 31, 2006, forty-eight legal opinions have been entered into LOPORS. All counsel have made a commitment, which is found in their work objectives for this year, to provide their legal opinions to the Records Technician for purposes of entry into LOPORS.

**19. It is recommended that the Senior General Counsel ensure that, once all CLD legal opinions are entered into LOPORS, all staff are scheduled for LOPORS training. ....43**

I agree. Staff will be encouraged to take LOPORS training. LOPORS training has in previous years been provided on site, and this could be considered.

**20. It is recommended that the Senior General Counsel monitor the use of iCase for time reporting and ensure that CLD counsel are recording time frequently to ensure the accuracy of information. ....44**

I agree. All counsel have made a commitment, which is found in their work objectives for this year, to record their time using iCase. Monitoring is done on a quarterly basis, when the national iCase coordinator transmits data.

**21. It is recommended that the Senior General Counsel ensure that document and information management policies, procedures, and standards are developed and implemented in the CLD. ....46**

I agree. This will also be discussed by the working group set up to implement recommendation 23 below.

**22. It is recommended that the Senior General Counsel ensure that each document relating to a file in RIMS is logged as it is captured or created.....46**

I agree. This recommendation has already been implemented.



**23. It is recommended that the Senior General Counsel in consultation with the Chief Information Officer ensure that standards for the CLD’s retention of its electronic files are developed.....46**

I agree. Following an all-staff meeting of April 28, 2006, a committee has been struck consisting of myself, the Chief Information Officer (called the Research and Records Management Technician), two assistants, and two counsel to deal with this issue and with those mentioned in recommendation 21 above. It is proposed, among other things, that lawyers’ files be kept on the shared drive, and that the files will be identified according to their Justice file number. Consideration is also being given to using iCase as a document creation, retrieval, and storage system. The committee will develop standards for file creation, usage, and storage over the course of this fiscal year.

**24. It is recommended that the Senior General Counsel assign responsibility for monitoring electronic file creation, usage, and archiving, and for the preparation of regular reports to management. ....47**

I agree. This role has been given to our Research and Records Management Technician. The support staff will assist her.

**25. It is recommended that, in addition to ensuring that missing files are retrieved, the Senior General Counsel ensure that closed files are not stored in the records room and are transferred to archival storage.....47**

I agree. CLD will coordinate with Justice Archives the transfer of any closed files to ensure that the shipment can be processed by Archives.

**26. It is recommended that the Senior General Counsel ensure that a system for recording the removal of books from the Law Library is implemented. ....48**

I agree. Various systems have been tried in the past, and have failed. We will look into other methods. CLD will seek the views of the Competition Bureau’s Resource Centre in order to find a workable system.

**27. It is recommended that the Senior General Counsel, in collaboration with the Competition Bureau and with the support of the ADAGs, Criminal Law and Civil Litigation, and the ADM Business and Regulatory Law communicate to all concerned the CLD's role and responsibilities vis-à-vis the Bureau and its mandate, and provide training as appropriate.....50**

Same response as given under recommendation 5. Until such time as the role of the ODPP and its relationship and impact on CLD and the Bureau are clarified, it would be advisable to defer implementation of this recommendation.