



**TAX LAW SERVICES PORTFOLIO
EVALUATION
Final Report**

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**Evaluation Division
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EXECUTIVE SUMMARY

1. Introduction

The Tax Law Services (TLS) Portfolio provides litigation and legal advisory services to the Canada Revenue Agency (CRA) in all areas of tax law and in other practice areas relevant to the CRA through its headquarters office in Ottawa, a Legal Services Unit (LSU) co-located with the CRA, and regional TLS Sections. The evaluation of the TLS Portfolio was conducted between October 2011 and November 2012. This is the first evaluation of the Portfolio, as well as the first evaluation of legal services under the 2009 Treasury Board Secretariat's *Policy on Evaluation*. In accordance with this policy, the evaluation addresses the core issues of the relevance and performance of the TLS Portfolio.

2. Methodology

The evaluation methodology consisted of a document and data review, key informant interviews with Justice and CRA representatives, a survey of TLS Portfolio counsel, a review of closed litigation and advisory files, case studies of two litigation and one advisory file that included interviews with CRA and Portfolio staff involved in the files, and one focus group each with CRA and Portfolio representatives. Triangulation was used to verify and validate the findings obtained through these methods and to arrive at the overall evaluation findings.

3. Findings

3.1. Relevance

Continued need. The demand for legal services continues to rise, as demonstrated by the increasing number of actively managed files and the number of hours spent by Portfolio counsel providing legal services. In addition, the levels of complexity and legal risk in tax law files have also risen during the last five years, as the federal government has focused on complex tax issues.

Alignment with federal government priorities and departmental strategic outcomes. As the TLS Portfolio is the legal counsel to the CRA and the federal government on all tax matters, its work necessarily responds directly to government priorities related to taxation. Over the past five years, there has been good alignment between governmental priorities and commitments outlined in federal budget reports, Speeches from the Throne, Portfolio activities, and commitments established in the Department of Justice Departmental Performance Reports and Reports on Plans and Priorities. The TLS Portfolio has made efforts to align its structure and services with CRA priorities, thus ensuring that the Portfolio focuses on areas of the law that are important to the Agency.

Alignment with federal roles and responsibilities. The TLS Portfolio assists the Minister of Justice and the Attorney General in fulfilling his responsibilities under the *Department of Justice Act*. Alignment of the Portfolio's legal services with the *Department of Justice Act* is achieved through its work to advise the CRA on matters of law, the representation of the Crown in litigation involving tax issues, and the assurance that CRA's actions and legislative and policy initiatives are in accordance with federal legislation.

3.2. Performance

Effectiveness. Multiple lines of evidence indicate that Portfolio services are high-quality, timely, and generally responsive to client needs. The long-term, positive working relationship between the TLS Portfolio and the CRA is a major contributing factor to this, as Portfolio counsel have a good knowledge of the CRA's requirements, policies and practices, as well as of the nature of the legal issues faced by them. Although overall perspectives of the Portfolio's responsiveness are generally positive, client satisfaction scores with respect to providing updates and involving the CRA in developing legal strategies may indicate opportunities for better communication about the appropriate involvement of the CRA on specific kinds of files, particularly those eligible for resolution strategies.

The TLS Portfolio has practices in place to support timely identification of legal risks. In addition to their participation on CRA risk management committees, involvement of Portfolio counsel at the audit stage through the Agency's International and Large Business Directorate further contributes to the timely identification of legal risks. The vast majority of litigation files were assessed for legal risk within 30 days of being opened. Although Justice Canada's legal risk assessment process is less standardized for advisory files, the Portfolio provides the CRA with narrative, more informal accounts of risks levels on these files.

TLS Portfolio counsel are expected to reassess legal risk of files to ensure that the CRA and Justice Canada managers are kept apprised of any significant changes. Risk assessments are mandatory at pleading and post-discovery for litigation files. The evaluation could not confirm whether legal risk reassessments are occurring when they are required; however, the evaluation found that reassessment is being carried out. The TLS Portfolio's practices for communicating legal risks to the CRA are generally effective. The Portfolio uses a number of structures, tools and processes for communicating legal risk both within the Portfolio and to the CRA, and the evaluation confirms the usefulness of many of them.

The TLS Portfolio has been successful at enhancing the CRA's already sophisticated understanding of legal issues. However, the evaluation found some evidence of CRA's misunderstandings concerning specific issues, such as when to engage the Portfolio, the importance of identifying legal risks, and the potential impacts of legal risks. In addition, evidence suggests that factors such as years of experience may have an influence on CRA employees' understanding of the Portfolio's role in assessing legal risk. These findings point to a potential opportunity for the Portfolio to improve communication and assist in meeting the Agency's training needs on these issues.

In general, the evaluation found that counsel have the appropriate resources to conduct their work, although a few areas of improvement were identified. The TLS Portfolio has access to the Fiscal Path (Intranet to provide information on the Portfolio and its processes) and Justipedia (an online departmental portal launched in 2012 to provide Justice counsel access to legal content). Satisfaction with these tools is not high, but work is underway to enhance them. As knowledge management is a key method for improving efficiency, the TLS Portfolio should continue to work to ensure that counsel are satisfied with these tools and use them.

As the Portfolio's challenges and needs grow more complex, the evaluation found that advancing its technological capabilities has become increasingly critical due to the fact that the Department may be lagging behind the private sector in terms of technological support. In particular, the use of e-discovery software is not widespread, and the Portfolio may want to assess whether there are potential efficiencies to gain from its greater use and, if so, what the barriers are to its use.

The TLS Portfolio has a number of structures and tools in place to assist its counsel in providing high-quality, coordinated, "whole-of-government" services, such as the National Coordination Committees, the file assignment process, and practice directives. Evaluation results show that, in general, these structures and tools are working well and are viewed positively by Portfolio counsel.

Training opportunities are available to TLS Portfolio counsel internally, through a third party and through the CRA. Counsel are generally satisfied with the training offered, although those with more than five years of experience are substantially less satisfied. This may indicate a need for more mid- and senior-level training. The current travel cap limits the ability for counsel to travel for training which, in turn, increases the importance of internal training opportunities or external training offered online or remotely. The evaluation found some limitations in the effectiveness of the Portfolio's use of these technologies.

The TLS Portfolio ensures its whole-of-government approach by coordinating with the Portfolio, as well as with other areas of Justice Canada, as needed. The evaluation found room for improvement with respect to communication between the Portfolio and CRA LSU, when appropriate, and involving specialized sections like the Public Law Sector. There has been an increase in the number of files involving constitutional and Aboriginal law issues; broader consultation may become increasingly important.

Disagreements with TLS Portfolio legal advice are considered rare, as the Portfolio has such a comprehensive understanding of the CRA's practices and policies. As a result, the advice of the TLS Portfolio is not only considered in decision making, but is relied upon by the CRA. This finding goes beyond the outcome identified for the TLS Portfolio, which focuses on the consideration of the advice in recognition of the fact that legal advice is just one factor that affects clients' decisions.

Efficiency and Economy. Between 2008/09 and 2011/12, the cost of legal services (minus disbursements) recovered from the CRA rose by 83% due to additional workload, an increase in the number of full-time equivalents (FTEs), and increases in the rates applied to each FTE.

The TLS Portfolio has undertaken several steps to improve its efficiency while maintaining the quality of legal services. It assigns files based on expertise and workload. It also manages its work by aligning resources with the level of legal risk, complexity and profile of files; higher-risk and complexity files have more counsel assigned to them, a greater level of effort expended on them, and more senior counsel assigned who spend a greater proportion of the hours on the file than more junior counsel. These practices all correspond with approaches to law practice management outlined in the literature, which promote the delegation of work and the alignment of resources based on the "value" of the work.

In collaboration with the CRA, the TLS Portfolio has instituted measures to resolve matters efficiently. The Portfolio supports the CRA's increased focus on compliance activities by

assigning counsel to assist the Agency auditors on complex, large business audits that target aggressive tax planning. CRA and the Portfolio believe that this work better prepares files for possible litigation and leads to the earlier resolution of files.

The TLS Portfolio and the CRA have instituted a process to group project files with similar legal issues that involve thousands of individual taxpayers. This process takes a strategic approach to litigation by selecting a test case that is best suited to determine the legal issues involved, while the other cases are held in abeyance. The efficiency of this approach, however, is outside of the TLS Portfolio and CRA's control, as the courts must agree to hold the similar cases in abeyance and to bind these cases by the decision in the test case in order for the full efficiency of the approach to be realized.

In another effort to contain legal costs and provide efficient services, the TLS Portfolio and the CRA have a resolution process that pursues alternatives to litigation on low-risk, low-impact files that are not expected to change tax law. Preliminary information on the use of the resolution process shows that, although it appears to reduce the time files are open and the hours spent on the files, its impact currently is limited, given the limited number of files using the process. With wider use, the resolution process could have a more substantial impact on legal cost reduction. Although the resolution process has proven effective, the TLS Portfolio has not shown an increase in the use of dispute resolution (DR) more generally during the last five years. The most common DR process used is negotiation.

Another area where the TLS Portfolio has been active but could consider further improvements is in knowledge management. The literature on law practice management points to knowledge management as a key way to reduce risk and improve performance. Making collective knowledge available reduces duplication of efforts and streamlines the provision of legal services.

Managing the demand for legal services and improving the efficiency and economy of the delivery of those services are joint responsibilities of the TLS Portfolio and the CRA. Expanding the resolution process could bring efficiencies to handling more files that are low profile and that will not affect tax law. The potential of the resolution process to reduce legal costs would appear to support the TLS Portfolio and CRA review as to whether its expansion is appropriate.

The evaluation identified two main challenges facing the TLS Portfolio. Losing experienced counsel to the private bar or retirement without being able to replace them is a key challenge. This situation has the potential to affect the efficiency of legal services in complex matters, erode

the experience and knowledge base of the Portfolio, and affect the quality of legal work. In addition, cost recovery in an environment of fiscal restraint will create additional pressures to reduce costs while maintaining the quality of legal services.

1. INTRODUCTION

The Tax Law Services (TLS) Portfolio is one of six portfolios within Justice Canada dedicated to providing government departments and agencies with legal services. The TLS Portfolio provides litigation and legal advisory services to the Canada Revenue Agency (CRA) in all areas of tax law and in other practice areas relevant to the CRA (including administrative law, corporate governance and civil litigation). The TLS Portfolio provides legal services to the CRA through its headquarters' office in Ottawa, a Legal Services Unit (LSU) co-located with the CRA, and regional TLS Sections.

The evaluation of the TLS Portfolio was conducted between October 2011 and November 2012. This is the first evaluation of the Portfolio, and it represents the first legal services evaluation under the 2009 Treasury Board Secretariat's *Policy on Evaluation*. This evaluation is intended to serve as a benchmark for subsequent legal services evaluations.

1.1. Purpose of the Evaluation

In accordance with the 2009 *Policy on Evaluation*, the primary purpose of this evaluation was to assess the relevance and performance of the TLS Portfolio. In terms of relevance, the evaluation considered the continued need for the Portfolio and the alignment of its priorities and activities with government priorities, departmental strategic outcomes, and federal roles and responsibilities. With regard to performance, the evaluation considered both effectiveness (i.e., the extent to which the Portfolio has achieved its objectives) and efficiency and economy (i.e., the degree to which appropriate and efficient means are being employed to achieve the desired outcomes).

The evaluation covers the TLS Portfolio's work between fiscal years 2007/08 and 2011/12. The Department of Justice Evaluation Division directed the evaluation, and an evaluation working group, an advisory group with representatives from the Portfolio headquarters and regional offices, provided ongoing input into the evaluation.

1.2. Structure of the Report

This report contains five sections, including the Introduction. Section 2 provides the background on the TLS Portfolio, describing its structure, resources, services, and the logic behind its activities. Section 3 describes the methodology used in the evaluation, while Section 4 summarizes the key findings, and Section 5 presents the conclusions and Section 6 outlines the issues, recommendations and management response.

2. PROFILE OF THE TAX LAW SERVICES PORTFOLIO

Created in 1995, the TLS Portfolio provides legal services to the CRA. A Memorandum of Understanding between Justice and the CRA establishes the governance, funding and performance regimes that guide the relationship between the CRA and Justice in respect of the demand for and provision of legal services. The mandate of the Portfolio is to provide high-quality legal services to the CRA in a cost-effective manner. In performing its mandate, the Portfolio supports the CRA and the federal government in collecting taxes owing. Whereas most other areas of legal services focus primarily on reducing the legal liability of the Crown, TLS Portfolio legal services are unique in that they contribute to an important government revenue source.

2.1. Structure

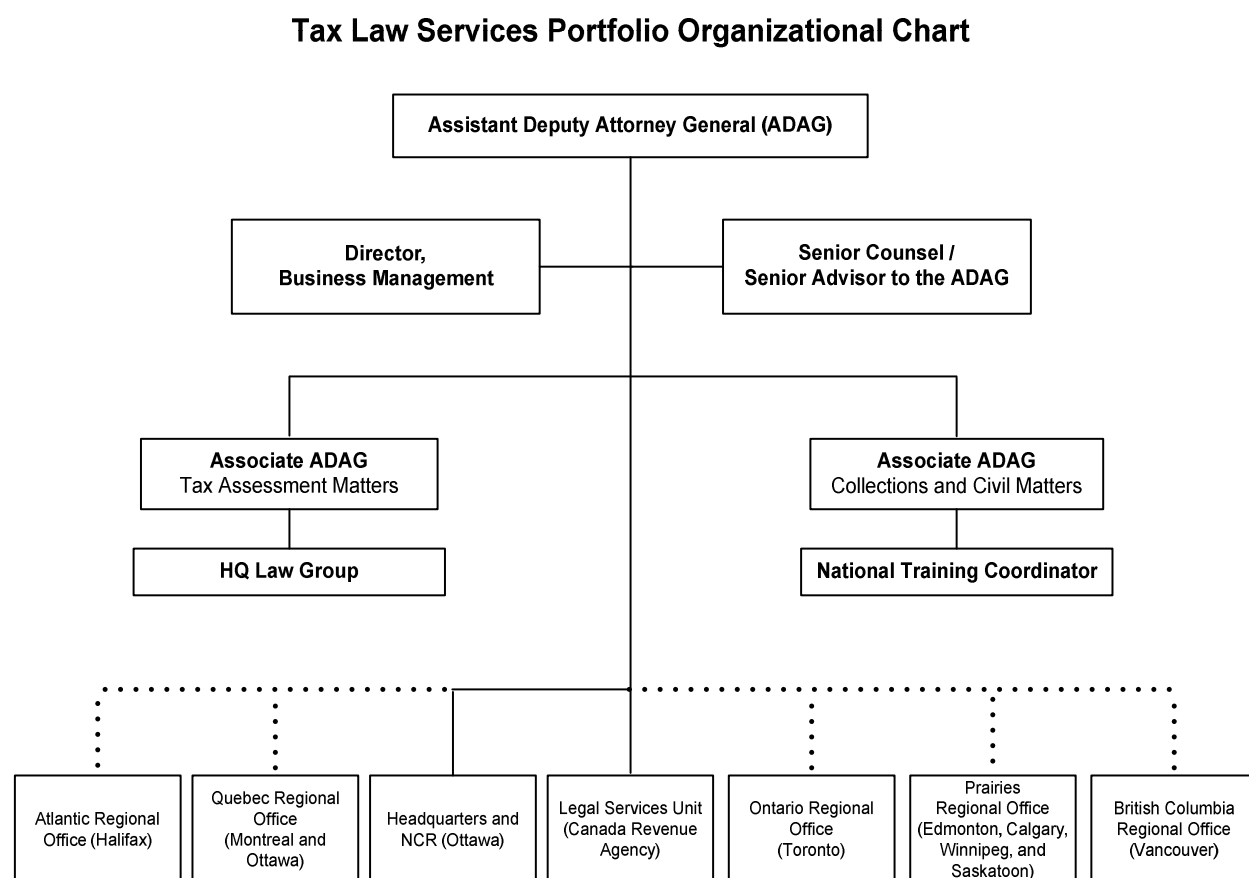
The Portfolio is headed by the Assistant Deputy Attorney General (ADAG), Tax Law Services, who is supported by two Associate ADAGs in the key subject areas of the Portfolio, i.e. Tax Assessment, and Collections and Civil Matters. In the headquarters region, the Portfolio also has an LSU providing legal advisory services to the CRA.

In addition to the ADAG office and the TLS Section in Ottawa, the Portfolio has TLS Sections located in five of the six regional offices, i.e. Atlantic (Halifax), Quebec (Montreal and Ottawa), Ontario (Toronto), Prairies (Calgary, Winnipeg, Saskatoon and Edmonton), and British Columbia (Vancouver)¹. About 75 percent of TLS Portfolio counsel are located in the regional offices outside of the National Capital Region. The Directors of the regional TLS Sections report directly to their Regional Directors General and functionally to the ADAG, Tax Law Services.

Figure 1 provides the organizational structure for the Portfolio.

¹ Although the Northern Region does not have its own TLS Section, tax law services are provided in the territories through Northern Region sections, or TLS Sections in the B.C. or Prairies Regions.

Figure 1: TLS Portfolio organizational chart



Although geographically dispersed, the TLS Portfolio works like a large law firm with counsel working collaboratively across offices. Cases are assigned based on cost effectiveness, workload and expertise rather than only on the location of the file. Supporting this national law firm model, the TLS Portfolio has structures that are intended to coordinate the Portfolio's work. The National Tax Law Board of Directors (NTLB) considers operational and strategic issues for the Portfolio and ensures that regional perspectives are considered in Portfolio decision making. The NTLB comprises members from all areas of the Portfolio, i.e. the ADAG, two Associate ADAGs, the Directors and Deputy Directors of the TLS Sections, the Senior General Counsel of the LSU, the Director, Business Management, and the Senior Advisor to the ADAG. Examples of issues considered by the NTLB include strategic planning, budget allocation, national training, service standards, workload and priorities, and national coordination of legal positions.

Other structures support the operational and strategic decisions of the NTLB:

- The National Coordination Committees have a mandate to enhance the quality and effective delivery of tax law services by coordinating specific areas of the law. The Committees are tasked with providing timely updates on legal developments, conducting structured review and approval of important facts, and ensuring consistency of legal positions nationally. Coordinated legal areas are added and deleted as necessary. Currently, they include Projects, Goods and Services Tax, Tax Avoidance International Taxation, Aboriginal Taxation, Collections, Employment Insurance, Requirements, Practices and Communications, Taxpayer Relief and Voluntary Disclosure, and the Charter. The Committees' primary communication tool with the Portfolio is the Justice intranet, or the Fiscal Path.
- The Good Practices and Communication Committee shares experiences and exchanges ideas on good practices in the TLS Portfolio. Its mandate is to improve the efficiency and effectiveness of the Portfolio's legal work through the development of best practices. The Committee includes representatives from all areas of the Portfolio.
- The TLS Portfolio Professional Development Coordinator is charged with developing and implementing the National Training and Development Program and liaises with the CRA's branches to coordinate professional development and training. According to the terms of the Memorandum of Understanding, while respecting a professional development partnership between the CRA (Compliance Programs Branch) and the Department, Justice will assist in the delivery of legal-based courses to the CRA, and the Agency will offer TLS Portfolio counsel access to its training products.

2.2. Services

The Portfolio provides the CRA with a full array of legal services, including legal advice, litigation services, training, drafting support services, legal issue coordination, and legal risk management (LRM). TLS Portfolio counsel have expertise in all types of tax law matters, as well as other practice areas relevant to the Agency, such as administrative law, corporate governance and civil litigation. Legal services support the CRA to administer tax and benefit programs and ensure compliance across Canada. Legal support is also provided to the CRA Board of Management, the Commissioner, and the Agency Management Committee to enable the CRA to achieve its mandate, policy and program objectives, and management priorities. Legal services are also provided to support the CRA's unique authorities in the area of human resources and

procurement. The Portfolio identifies and manages legal risk, and it assists the CRA in this task by participating in its tri-departmental² and regional risk-management committees.

The work of the Portfolio is roughly distributed as follows:

- The majority (an estimated 80 percent) of the Portfolio's work is in litigation services. TLS Portfolio counsel represent the CRA in litigation matters before all levels of court, including tax appeals, collection matters, and civil lawsuits. In addition, counsel provide advice to the CRA for early resolution and avoidance of disputes, and on litigation strategies for ongoing cases, as well as potential litigation. This advice can include litigation management, dispute prevention and resolution, coordination of national issues, and management of legal risk.
- Legal advisory services account for the balance of the Portfolio's work and include a wide range of activities, such as providing legal advice, negotiating and drafting documents, providing legislative and regulatory drafting support, and providing litigation support. The legal advice provided by TLS Portfolio counsel covers a variety of tax law issues in addition to non-tax legal issues regarding human resources and staffing, contracts, procurement, benefit programs, the CRA's partnerships and new business, and collection of debts, to name a few.

The TLS regional sections conduct litigation and handle regional legal advisory work, while the LSU provides tax law advice to the CRA, as well as legal advice in non-tax areas. TLS counsel serve on various CRA committees and working groups, such as the CRA Policy Committee, and the General Anti-Avoidance Rule Committee. As necessary, counsel also provide litigation support on tax cases, working with litigation counsel.

The TLS Portfolio consults as necessary with other areas within Justice on legal issues. Although the TLS Portfolio specializes in tax law matters, its work can also involve other legal areas. As needed, the TLS Portfolio draws on the expertise of other specialized areas within Justice, such as the Central Agencies Portfolio and the Public Law Sector (PLS).

The TLS Portfolio also shares responsibility and accountability for managing the demand for legal services with the CRA. For example, decisions on litigation strategy or alignment of legal services to government priorities are made in consultation with the CRA. The Memorandum of Understanding between Justice and the CRA outlines areas of shared responsibility. In particular,

² The tri-departmental Risk Management Committee includes the Department of Justice, the Department of Finance, and the CRA.

these include forecasting and responding to the demand for legal services, developing and implementing practices to manage legal risk, cooperating on dispute prevention and resolution to efficiently handle disputes, and establishing collaborative mechanisms for providing information and resolving issues on mega and multi-department files.

Finally, all Portfolio legal services are guided by the rule of law and the *Department of Justice Act*. This means that in providing legal advice and developing litigation strategies, counsel cannot just comply with client demands but must also respond in accordance with these legal obligations.

2.3. Resources

The Portfolio manages both the national budget that is used by TLS Sections for their operations (Table 1, which includes A-base and Net Vote Authority); and the national revenue forecasting and cost recovery process with the CRA (Table 2, which includes full-time equivalent [FTE] and hourly rate charges).

Table 1 presents the actual expenditures of the Portfolio for its operations over the last four fiscal years.

Table 1: Year Over Year Expenditures (\$) for the TLS Portfolio

	2008/09 Actual	2009/10 Actual	2010/11 Actual	2011/12 Actual
Salary before employee benefit plan ²	\$ 39,508,863	\$ 48,377,163	\$ 51,190,337	\$ 51,918,815
Employee benefit plan @ 20%	7,901,773	9,675,433	10,238,067	10,383,763
Subtotal: Salary expenditures	47,410,636	58,052,596	61,428,404	62,302,578
Operating and Maintenance (O&M) ³	4,266,793	4,953,735	4,918,321	5,096,265
Total annual expenditures¹	51,677,429	63,006,331	66,346,725	67,398,843

Source: TLS Portfolio Financial Situation Reports (FSR) for 2008/09, 2009/10, 2010/11, and 2011/12

Notes:

1. Above figures include employee benefit plan, exclude expenditures related to Tobacco Litigation (RJR et al.) from the Departmental Reserve, as this is a temporary Justice priority initiative, and exclude the cost of disbursements over \$200.
2. Salary costs comprise spending in Fund 10, as presented in the FSR.
3. O&M costs comprise spending in Fund 15, 20 and 26, as presented in the FSR.

Table 2 presents the cost of services provided to the CRA by Justice over the last four fiscal years.³

Table 2: Cost of Services Provided by Justice to the CRA

	2008/09 Actual	2009/10 Actual	2010/11 Actual	2011/12 Actual
Cost of legal services	55,107,208	58,664,323	70,844,150	76,466,443
Disbursements over \$200	2,524,535	2,521,590	2,691,908	2,256,826
Fixed costs: ADAG Group	2,077,393	3,053,258	3,228,681	3,353,569
Total cost of services provided to the CRA	59,709,136	64,239,171	76,764,739	82,076,838
Less A-Base	28,936,555	28,351,671	28,999,514	28,163,886
Total cost recovery charged to the CRA	30,772,581	35,887,500	47,765,225	53,912,952
Total collected from the CRA				
Legal services	28,248,798	33,362,146	45,073,317	51,656,127
Disbursements	2,524,535	2,521,590	2,691,908	2,256,826
Total collected	30,773,333	35,883,736	47,765,225	53,912,953

Source: Cost of legal services based on cost recovery MOU tables for 2008/09, 2009/10, 2010/11, and 2011/12. Disbursements over \$200 and collection information based on year-end cost recovery reports.

2.4. Tax Law Services Portfolio Program Logic

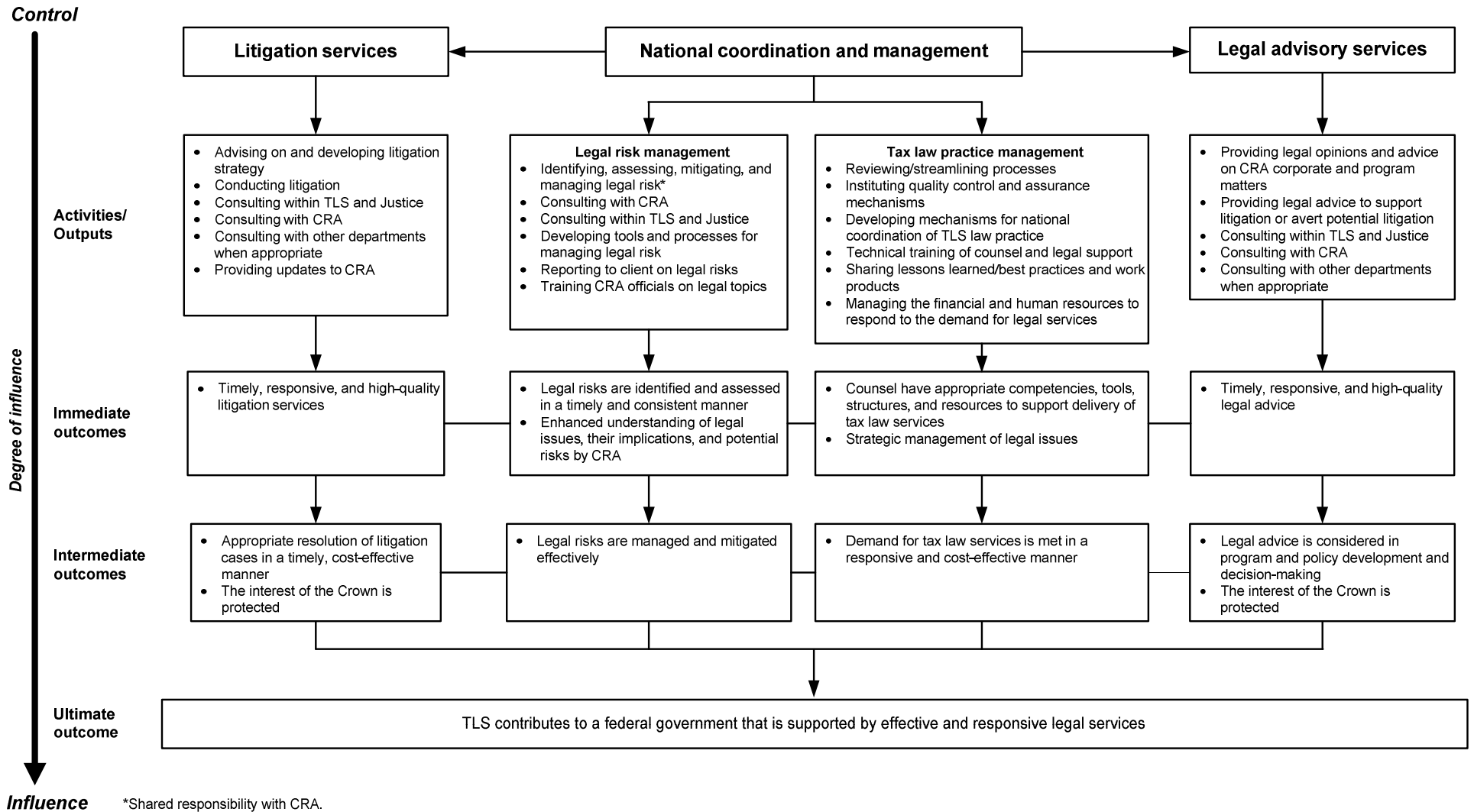
A logic model is a systematic and visual way to illustrate the relationship between the planned activities of a program, in this case legal services and their expected results. In other words, a logic model is a depiction of how a program or service is intended to work and what it is trying to achieve. A basic logic model has the following key elements:

- **Activities:** The processes, tools, events and actions that are part of the implementation of the program or services. The activities should lead to the intended results.
- **Outputs:** The direct product of the identified activities.
- **Outcomes:** The impacts of the program/services. These are results/changes/benefits/consequences. They are usually presented in stages, as change is incremental over time: immediate outcomes should support and lead to the intermediate outcomes, and intermediate outcomes to long-term ones.

³ Table 2 represents all the legal costs for the CRA, which include the costs of lawyers and paralegals outside the TLS Portfolio doing work on CRA files. Also, the Department's Legal Services Rates have a component for the cost of indirect support, which includes all the corporate and administration services provided in headquarters and in the regions (finance, human resources, information management and information technology, etc.).

This section provides a logic model for the TLS Portfolio, including a visual diagram (see next page) and text descriptions of the key elements. The descriptions in this section represent the theory behind the TLS Portfolio. As such, they provide an account of expected results of Portfolio activities. The evaluation findings in Section 4 explore whether TLS Portfolio activities are being implemented as planned and whether expected outcomes are, in fact, being achieved.

Logic Model: Tax Law Services Portfolio (TLS)



2.4.1. Activities and Outputs

The Portfolio conducts numerous activities that can be grouped into three main areas:

- national coordination and management includes activities that support the Portfolio’s approach to LRM as well as tax law practice management;
- litigation services involve legal representation for disputes that are before the courts; and
- legal advisory services provide legal opinions and advice on matters with legal implications.

Each of these areas of activity is described below, including the expected results.

National coordination and management

TLS has a number of activities that, combined, reflect its national “one-stop” approach to providing tax law services. For the purposes of the logic model, these activities fall under two categories:

- **Legal risk management:** To reduce the CRA’s exposure to legal risk, the Portfolio engages in LRM by using Justice LRM tools, processes and procedures, and by supporting LRM through its participation in CRA risk management processes.

LRM includes identifying the legal risk in situations involving the CRA that could have a negative impact on the federal government and/or the CRA’s ability to deliver its services and implement its programs and policies. Legal risk is assessed on all files as part of the delivery of legal services. This assessment is made in consultation with appropriate individuals within the Portfolio, Justice and the CRA. The appropriate course of action to handle the potential impact of high legal risk files is then determined. This can include strategies for the prevention, mitigation or management of the risk. Strategies for handling legal risk are developed in consultation with the appropriate individuals and National Coordination Committees within the Portfolio, as well as with Justice and the CRA. Justice and the Portfolio have tools and processes for managing legal risk that counsel use during all stages of LRM. In addition, TLS provides training to CRA officials to increase their understanding of legal topics, as this will facilitate effective LRM.

- **Tax law practice management:** In managing the Portfolio’s legal practice, TLS undertakes many activities that are intended to ensure its ability to meet the demand for efficient, cost-

effective, quality legal services. Those activities include streamlining processes to improve efficiency; instituting quality control and assurance tools and processes; sharing work products on iCase and the Fiscal Path to increase quality and efficiency; providing professional development opportunities and training for counsel and legal support; developing mechanisms for coordinating the Portfolio's law practice; and managing the Portfolio's human and financial resources in terms of forecasting demand for legal services, aligning legal personnel with files in terms of capacity and expertise, and planning the allocation of resources.

The logic model reflects that the activity area of national coordination and management has its own outcomes, but also supports the achievement of outcomes in the other two activity areas (litigation services and legal advisory services).

Litigation services

As noted in Section 2.2, litigation services comprise the majority of the Portfolio's work. Most of this litigation work requires TLS to respond to claims initiated by taxpayers. In providing litigation services, TLS counsel develop strategies that include settling a matter prior to a final court decision as well as proceeding to litigate the matter before a court. Strategies are formulated with input from the relevant CRA Branch. In addition, when legal issues require expertise in other areas of the law, counsel consult with the specialized sections within Justice. Counsel also consult with other government departments, Portfolio offices and LSUs, as appropriate. In addition, TLS works with the CRA to manage the volume of litigation through early settlement, national issue coordination, and LRM.

Legal advisory services

Legal advisory services include the provision of legal opinions and advice on the CRA's corporate and program matters. In addition to providing advice on various tax law issues with which the CRA needs assistance, Portfolio lawyers provide advice in non-tax areas related to corporate matters. They also provide legal advice on policy development and assistance with drafting instructions, and review of CRA publications (tax forms and tax guides). In providing legal advisory services, TLS works closely with the CRA to ensure strong functional ties and a firm understanding of the CRA's business lines and operational environment. This is accomplished, in part, through serving on various CRA committees, including the Agency Management Committee. As with litigation services, TLS counsel also consult with specialized sections within Justice and other federal departments, as appropriate.

2.4.2. Immediate Outcomes

Timely, responsive and high-quality litigation services

It is expected that the TLS Portfolio will ensure timely, responsive and high-quality litigation services by complying with Justice service standards in the Memorandum of Understanding with the CRA. This will include responding in a timely manner to client requests for litigation services; meeting mutually agreed-upon deadlines; providing regular progress reports; and providing clear and practical guidance, including for the prevention, containment or early resolution of contentious issues. The resulting litigation strategy will respond to the CRA's priorities and objectives, while ensuring that the strategy is guided by the rule of law and the Portfolio's responsibilities under the *Department of Justice Act*. Moreover, the litigation strategies should be commensurate with the available resources and should be appropriate given the complexity of the file.

Timely, responsive and high-quality legal advice

As subject matter experts, TLS counsel must provide timely, responsive and high-quality legal advice that addresses problems, presents options, and offers solutions. Their legal opinions will need to be clear and serve their intended purpose, including the provision of advice at early stages of significant files that have been identified by the CRA. The TLS Portfolio is well integrated with CRA operations, which enables it to have an understanding and appreciation of the Agency's business lines and operational environment. Although the CRA's priorities will be considered, the legal advice is developed so that it addresses the Portfolio's responsibilities under the *Department of Justice Act* and will be guided by the rule of law. The Portfolio should also provide its legal advice in a timely manner, so that CRA officials can consider the advice during their decision-making process.

Legal risks are identified and assessed in a timely and consistent manner

The TLS Portfolio is expected to consider legal risks in the course of providing forward-looking legal advice and assisting the Agency to respond proactively to prevent, mitigate or manage the legal risk. The Portfolio will assess the legal risk for all its files as part of the delivery of legal services. The processes for assessing legal risk ensure that the risk is accurately determined and communicated in a consistent and timely manner.

Enhanced understanding of legal issues, their implications, and potential risks by the CRA

The TLS Portfolio will communicate the potential legal risks of litigation files, as well as legal risks that could arise through the implementation of CRA policies and programs. The Portfolio also provides training to CRA officials to enhance their understanding of legal topics. This communication and training will provide the CRA with the information, advice and support they need to be aware of legal risks and to make informed decisions to support effective LRM.

Counsel have the appropriate competencies, tools, structures and resources to support the delivery of tax law services

The TLS Portfolio should provide counsel with the information, tools, training and resources needed to deliver high-quality tax law services. This includes information sharing on best practices, practice directives and training opportunities to improve technical tax knowledge and to further develop counsel legal skills, and alerting counsel to important developments in the law, primarily through the Fiscal Path. Structures must also be in place to maximize the effective delivery of legal services. At the regional level, these structures will include teams and team leaders, the National Coordination Committee, the Good Practices and Communication Committee, and the Professional Development Coordination Committee.

Strategic management of legal issues

Through coordination and management at the national level, the TLS Portfolio will manage legal issues strategically, including providing guidance to counsel to ensure a national and consistent approach to legal issues. By eliminating inconsistent or contradictory legal positions, the Portfolio will ensure that the CRA's priorities are maintained, regardless of the TLS office or counsel handling the file, and will minimize legal risks that could arise from inconsistent legal positions/advice. This approach should also enable the Portfolio to be strategic about influencing tax law. For example, the Portfolio may determine to take a case to court rather than to settle in order to obtain clarity on a legal issue of importance, or it may advocate for amendments to the *Income Tax Act* or changes to the Tax Court of Canada rules.

2.4.3. Intermediate Outcomes

Appropriate resolution of litigation cases in a timely, cost-effective manner

The TLS Portfolio must monitor litigation results. Appropriate resolution of litigation cases means, on a principled basis, settling cases that should be settled and taking cases to court where there is the desire to advance the state of the law by obtaining legal clarity or to protect the Canadian tax base. Appropriate resolution of litigation cases can include early settlement of litigation cases, dismissal of civil suits filed against the CRA, and court decisions that support the federal government's position. The Portfolio should provide cost-effective services relative to the file outcome, impact and tax amount (if any). Hours spent per file and the experience levels of counsel involved in files will be proportionate to the complexity and/or legal risk of the matter.

The interest of the Crown is protected

Under the *Department of Justice Act*, the TLS Portfolio must ensure that the interests of the Crown in the proper administration of justice are protected through its litigation and legal advisory services. As with all areas of Justice, the Portfolio is responsible for taking an integrated, whole-of-government approach where its legal advice and litigation positions are consistent across government. This measure is accomplished by consulting within Justice and, where appropriate, with other federal departments/agencies. When conflicting positions arise, the TLS Portfolio will try to resolve the conflict and, when necessary, the ADAG office will provide appropriate briefing within Justice to ensure that senior management is aware of the issue.

Legal advice is considered in program and policy development and decision making

By providing responsive, high-quality legal advice that considers options and suggests solutions, the TLS Portfolio will assist the CRA in making its decisions.

Legal risks are managed and mitigated effectively

The TLS Portfolio will provide the CRA with legal advice/information on legal issues, including its assessment of the legal risk. TLS counsel should consult and communicate with CRA officials, and together they may review strategies to prevent, mitigate or manage legal risk.

Demand for tax law services is met in a responsive and cost-effective manner

The demand for tax law services is affected by changing circumstances, such as new tax and benefit policies and legislation, shifting operational and program-related priorities of the CRA, new technology, and the state of the economy. The TLS Portfolio's ability to meet demand is also affected by its own evolving dynamics, such as changes in workforce demographics. In addition, the Portfolio must manage its resources within the broader context of the Department of Justice Canada staffing policies. Moreover, the staffing of litigators is largely the responsibility of regional offices. Within the complexities of its working environment, the Portfolio should take a strategic approach to the allocation and management of financial and human resources, so that it can plan for and respond to the emerging or forecasted future need for legal services.

Meeting this demand means that the TLS Portfolio must be responsive to the priorities and objectives of the CRA, caseload complexity and volume, and other issues that affect its legal practice. The Portfolio must forecast demand for legal services in consultation with the CRA to enable it to have the resources and expertise necessary to address the Agency's legal needs. In addition, the Portfolio will respond to the complexity of files by allocating resources — that is, by having sufficient numbers of counsel for files, counsel with the necessary experience/expertise to handle the legal matter, and the appropriate mix of senior counsel, junior counsel and paralegals given the complexity of the file in order to provide cost-effective legal services. Complex, high-risk files will receive a greater share of resources, including senior counsel time, to ensure that legal risks are effectively managed.

2.4.4. Ultimate Outcome

The TLS Portfolio contributes to a federal government that is supported by effective and responsive legal services.

By providing high-quality, cost-effective legal services that minimize legal risk, the TLS Portfolio will support Justice's strategic outcome of providing effective and responsive legal services to the federal government.⁴

⁴ The TLS Portfolio logic model used for this evaluation is based on the second strategic outcome for Justice (*a federal government supported by effective and responsive legal services*) used during the evaluation study period. In 2012/13 this outcome was changed to *a federal government supported by high-quality legal services*.

3. METHODOLOGY

In accordance with Treasury Board evaluation policies, the Department of Justice used a risk-based approach in planning evaluations to ensure the efficient use of evaluation resources. The Department of Justice Evaluation Division assessed the risk level (low, medium or high) of planned evaluations, taking into consideration six risk factors: the contingent nature of program funding; the complexity of the program or service; materiality (i.e., the level of resources involved in program delivery); skills and expertise (i.e., business risks facing the Department regarding recruitment and retention, and the need for specialized skill sets); time since the last evaluation; and information challenges (i.e., whether program information is available and accessible to fully support an evaluation). The TLS Portfolio was selected as the first legal services evaluation due to its overall high risk rating. The methodology developed also responded to the level of risk by ensuring multiple lines of evidence that would support robust findings.

The evaluation of the TLS Portfolio draws on five lines of evidence, i.e. a document and data review, key informant interviews, a survey of legal counsel, case studies, and focus groups. Each of these methods is described more fully below. This section also includes a brief discussion of methodological challenges.

The methodology was developed with the TLS Portfolio evaluation working group. The data collection methods and instruments were all reviewed and approved by the working group.

The evaluation matrix, which lists the evaluation questions, indicators and lines of evidence and is used to guide the study, is included in Appendix A. The data collection instruments developed to respond to the evaluation matrix are in Appendix B.

3.1. Document and Data Review

The document and data review was conducted both to inform the development of data collection instruments and to address the majority of the evaluation questions.

Documents reviewed were obtained from internal, external and publically available sources. Departmental documents reviewed included Departmental Performance Reports; Reports on Plans and Priorities; departmental audit reports; and Client Feedback Survey results from 2008 and 2011⁵. Internal TLS Portfolio documents and relevant CRA documentation were also reviewed, as well as publically available information, such as Budget speeches and Speeches from the Throne.

In addition to documents, the evaluation involved the review of iCase data from fiscal years 2007/08 to 2011/12. The iCase is the Department's integrated case management, timekeeping and billing, document management and reporting system.

3.2. Key Informant Interviews

The key informant interviews conducted for this evaluation addressed the majority of evaluation questions, and were a key line of evidence in gathering information on the need for the TLS Portfolio, as well as the effectiveness of Portfolio activities. A list of potential key informants was prepared, and interview guides tailored to each key informant group were developed, in consultation with the evaluation working group. Interviews were conducted with a total of 43 key informants representing the TLS Portfolio (n=22) and the CRA (n=19). Representatives from the PLS and the Department of Finance were also interviewed. All interviews were conducted with personnel in managerial-level positions.

Potential interviewees received an invitation to participate in an interview. Key informants who agreed to participate were provided with a copy of the interview guide (in the official language of their choice) prior to the interview. Each interview was conducted in the respondents' preferred official language, and key informants were assured of the confidentiality and anonymity of their responses. This evaluation included a mix of telephone and in-person interviews.

⁵ Justice Canada conducts an annual survey of federal departments and agencies to obtain feedback on the degree to which its legal services respond to needs and expectations. The Client Feedback Survey covers the legal services within the Department on a rotational basis, and in 2008 and 2011, the survey covered TLS Portfolio services. In 2008, the survey was given to 484 CRA employees and 336 surveys were completed (for a response rate of 69%). For the 2011 follow-up survey, 485 CRA clients were invited to participate, and 341 completed the survey (for a response rate of 70%) (Department of Justice, 2008, 2011).

3.3. Survey of Tax Law Services Portfolio Counsel

To gather the input of all TLS Portfolio counsel at headquarters, the LSUs, and in the regions, the evaluation included an anonymous and confidential web-based survey that was delivered through the Department of Justice’s intranet site to all TLS Portfolio counsel. In order to encourage responses, the Department sent each potential survey participant an invitation by email describing the purpose of the survey and the importance of their participation. Email invitations included an electronic link that participants could click on to access and complete the survey.

Prior to the survey going “live”, it was pretested with 14 counsel to ensure that questions were clear and that it functioned properly (with working skip logic, etc.). The survey was revised based on the feedback provided by those involved in the pretest.

The survey was online for a total of three weeks — from June 15 to July 6, 2012. During this period, two reminders were sent to potential participants to increase the response rate. Invitations were sent to 357 counsel. Fourteen of these potential participants were not available during the entire time the survey was online. In total, 159 counsel completed the survey for a response rate of 45%.⁶ Once the survey was finished, open-ended questions were coded and the survey data was analyzed using SPSS, a statistical software package.

Table 3 provides a profile of survey respondents and shows that generally, respondents were representative of the population of TLS Portfolio counsel. Although the information on the types of files most often worked on is not available for all of the counsel in the TLS Portfolio, the sample appears representative.

⁶ Another 76 respondents partially completed the survey, but they did not complete enough questions for their survey responses to be used in the analysis.

Table 3: Comparison of TLS Portfolio and Legal Counsel Survey Respondent Profiles

Characteristics	TLS Portfolio ⁷	Survey Respondents
What is the classification level of the position you currently occupy?	(N=336)⁸	(n=159)
	%	%
LA – 01	26%	25%
LA – 2A	43%	43%
LA – 2B	14%	16%
LA – 3A	8%	6%
LA – 3B	1%	1%
Senior Management	7%	8%
Total		100%
When did you first join the Department?	(n=369)	
Less than one year ago	--	--
Between 1 and 5 years ago	28%	31%
Between 6 and 10 years ago	20%	15%
More than 10 years ago	51%	54%
Total	100%	100%
Where do you currently work?	(n=336)	
Headquarters (excluding LSU)	13%	12%
Regional office	78%	75%
LSU	9%	13%
Total	100%	100%
What kind of files do you work on most often?*	Not available	
Litigation		82%
Advisory		18%
Total		100%

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

**Information not available for all TLS Portfolio counsel.*

⁷ The information for the TLS Portfolio is based on administrative data provided a few months after the survey was completed. Therefore, it is not technically the information on the survey population, but it does provide the overall characteristics of TLS Portfolio counsel near the date of the survey.

⁸ For the classification and work location, the total TLS Portfolio number of 336 is based on the total head count, excluding any type of leave, transfer or secondment. The number of years at the Department of Justice is based on a total head count.

3.4. File Review

A review of a selection of closed litigation and advisory files was conducted to allow for a more in-depth understanding of the life of a file in relation to the performance measures for the TLS Portfolio. This method also allowed the evaluation to explore whether the information obtained from key informants on how the Portfolio conducted its work was supported by a review of selected case files.

The file review involved the examination of 45 files, including 32 litigation files and 13 advisory files. Multiple court levels were reviewed for 16 of the litigation files, so the evaluation could consider changes in risk and complexity rating, counsel assigned to the files, and level of consultation as the case moved through the levels of appeal.

The sample of files was chosen with the input of the evaluation working group and was considered to provide a good representation of the broad spectrum of the TLS Portfolio's work. As files were not chosen by random selection and as the sample is not large (considering the thousands of files worked on by Portfolio counsel during the time period covered by the evaluation), the file review sample is not a strictly representative one. Rather, the file review was intended to be illustrative of the Portfolio's approach to its work.

Two counsel from the Portfolio conducted the file review in order to protect confidential taxpayer information as well as solicitor–client privilege. To ensure that comparable information was collected from the files, counsel completed a standard file review template that was developed for the study (see Appendix B). The template collected information to respond to the evaluation matrix and focused on factual information available in the files.

3.5. Case Studies

Three case studies (two litigation cases and one advisory case) were conducted to allow for an exploration of best practices and the TLS Portfolio's national approach. As such, cases selected were higher-profile files (i.e., those involving complex or high-risk issues, and those involving a high degree of collaboration among Portfolio offices and/or between Portfolio counsel and CRA colleagues).

For each case study, file review templates (completed as part of the file review conducted for the evaluation) were reviewed. In addition, telephone interviews were conducted to supplement documented information, to provide context for the work, and to allow for a more in-depth

assessment of how the file was handled and the effectiveness of the working relationship between the Portfolio and the CRA. Interviews involved TLS Portfolio counsel and CRA representatives who worked on the file that was the subject of the case study (including both headquarters and regional representatives from each organization).

Interviews were conducted with a total of 16 stakeholders. Interviewees took part in either an individual or small group interview. The approach used to schedule and conduct the interviews with case study participants was the same as the approach (described above) for scheduling and conducting key informant interviews.

3.6. Focus Groups

Focus groups were the final line of evidence used in this evaluation. Two focus groups were conducted (one with CRA regional representatives and one with TLS Portfolio regional representatives) after the other lines of evidence were completed. These focus groups were used to follow up on emerging findings and obtain additional details and insights about issues identified by the other lines of evidence.

The focus groups each included seven participants representing four regional offices (British Columbia, Ontario, Quebec and Atlantic). The CRA focus group participants were litigation officers or litigation managers. The TLS Portfolio group involved TLS Section counsel. Focus group participants did not occupy management-level positions; rather, the participants' primary role was handling tax law litigation files.

The CRA focus group was conducted by teleconference. The TLS Portfolio focus group was conducted by videoconference, using the videoconferencing capabilities of the Portfolio. Both focus groups were recorded to ensure accuracy of the notes, but participants were assured of the confidentiality of their responses.

3.7. Limitations

The evaluation faced a few methodological limitations. These are listed below by line of evidence.

Document and data review: iCase limitations. Overall, iCase was a useful source of information for the evaluation. There were, however, some limitations.

- The rating attached to legal risk and complexity changed in 2009/10. Prior to 2009, lead files would have been assessed and given an appropriate risk and complexity rating. All related files were given a risk level of 1 (low) and complexity level of low. After 2008/09, the TLS Portfolio, to be consistent with other portfolios, changed the risk and complexity levels of all related files to match those of the lead file — a process that impacted approximately 5000 files in both 2009/10 and 2010/11. This change means that, as of 2009/10, both the lead file and related files carry the “true” rating, thereby limiting the evaluation to three years of comparable data (2009/10, 2010/11, and 2011/12). For this reason, an analysis of the trends for legal risk and complexity is premature.
- As iCase is an information management system that is not constructed with evaluation needs in mind, its data on dispute resolution (DR) strategies is limited to indicating the use of DR and does not support an analysis of its success in resolving disputes.
- Currently, data to support cost-benefit analyses, such as the cost of legal services relative to the tax recovered on a file, are not collected.

Survey of legal counsel. As with all surveys, the survey with legal counsel will be affected by self-selection bias, which is bias based on who responds and who chooses not to respond. Despite conducting a pretest to ensure relevance, clarity and ease of response, as well as best efforts to build a response rate, less than half (45%) of counsel completed the survey. However, a comparison of the respondents to all of the TLS Portfolio legal counsel on a few key characteristics (LA classification, years in Department, location of work, type of files handled) shows that the respondents were fairly representative of the Portfolio’s legal counsel.

Survey of legal counsel, interviews and focus groups. The survey, interviews and focus groups with key informants and case study participants have the possibilities of self-reported response bias, which occurs when individuals are reporting on their own activities and so may want to portray themselves in the best light, and strategic response bias, whereby the participants answer questions with the desire to affect outcomes.

File review. In any given year during the evaluation (2008/09 to 2011/12), the TLS Portfolio actively managed more than 13,000 files. To obtain a random sample with a reasonable error level would require reviewing hundreds of files, which was not feasible. Instead, the evaluation relied on the opinion of TLS Portfolio members to select files that they believe reasonably represented their work.

Mitigation strategy. The mitigation strategy for the above methodological limitations was to use multiple lines of evidence that seek information from the TLS Portfolio and CRA, management and “front line” staff, file review and more comprehensive administrative data review (iCase). The mitigation strategy also included using both quantitative and qualitative data collection methods to answer evaluation questions. By using triangulation of findings from these different sources, the evaluation was able to strengthen its conclusions.

4. KEY FINDINGS

This section combines information from all lines of evidence and presents the findings according to the broad evaluation issues of relevance and performance.

4.1. Relevance

The evaluation considered the relevance of the TLS Portfolio's legal services with respect to the rationale for the provision of tax law services by Justice Canada, the continued need for its services given the increased demand and complexity of the legal services provided, the responsiveness of the TLS Portfolio to government priorities, and the TLS Portfolio's support of Justice Canada's statutory obligations and strategic outcomes.

4.1.1. Continued Need

The case for Justice providing legal services to the CRA stems back to the 1962 Royal Commission on Government Organization (the Glassco Commission). The Commission was established in 1960 to report on the organization and operation of federal departments and agencies. Despite being written more than 50 years ago, the Glassco Commission's report is still relevant today in terms of the nature of the relationship between the taxing authority (then the Department of National Revenue, now the CRA) and its counsel.

The Glassco Commission observed that the relationship between the taxing authority and legal counsel is defined by two aspects: on the one hand, independent, impartial legal advice (where legal counsel are not involved in policy-making activities) is important for the integrity of the tax system, while, on the other hand, a close relationship between the taxing authority and counsel is important given the inherently legal nature of tax assessment (Glassco, 1962). Thus, the relationship between the taxing authority and its legal counsel has a dual nature. The evaluation found that this observation is still valid, and that the dual nature is still important. The close relationship between the CRA and the TLS Portfolio and the TLS Portfolio's in-depth understanding of the policies and practices of the CRA were considered by most key informants

to be key elements contributing to the quality of legal services provided. At the same time, the need for fair, impartial treatment of taxpayers was emphasized by key informants as essential to maintaining the integrity of the federal tax system.

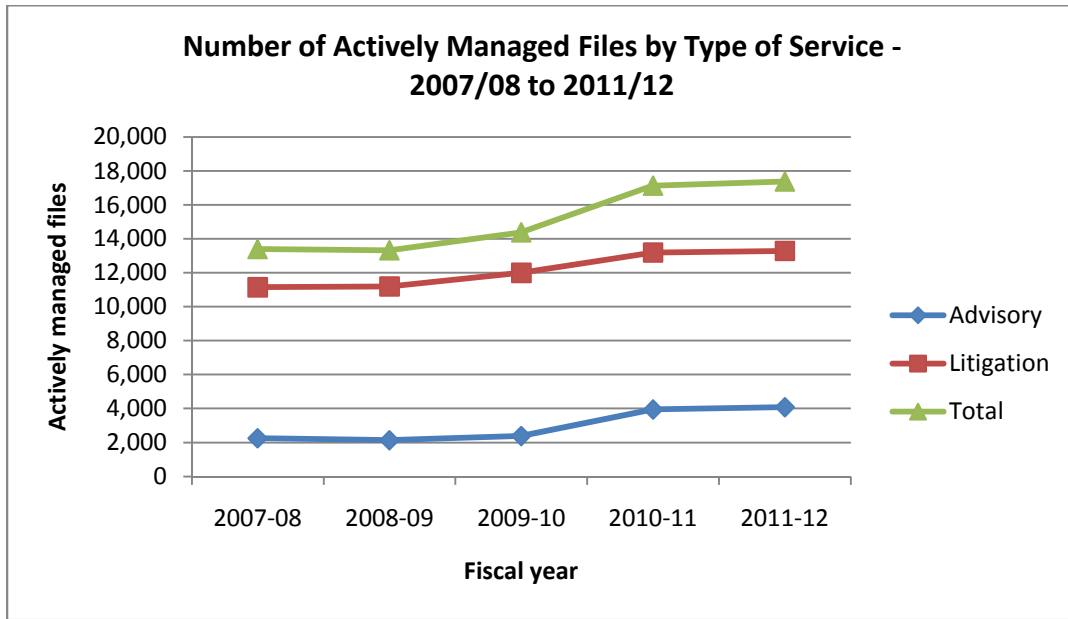
Increasing demand for TLS Portfolio legal services

The continued need for TLS Portfolio legal services is also demonstrated by the increasing demand for legal services over the past five years. As iCase data presented in Figure 2 illustrates, the TLS Portfolio experienced a 30% increase in the number of actively managed files since 2007/08.⁹ The increase in advisory files is especially pronounced; the number of actively managed advisory files increased 81% between 2007/08 and 2011/12, compared to a 19% increase for litigation files over the same period. The increase in advisory files is in part due to the change in the LSU's case management system in 2010/11. Consequently, the LSU began to create a file for each advisory request, therefore increasing significantly the number of files, but not the hours spent on advisory work. The rise in demand may have plateaued, as the number of actively managed files increased by only 1% between 2010/11 and 2011/12.

Correspondingly, according to iCase data, the number of hours spent by TLS Portfolio counsel on providing legal services has risen, with the increase becoming more pronounced beginning in 2008/09 (see Figure 3). This increase occurred for both advisory and litigation files; between 2007/08 and 2011/12, the total hours spent on legal services increased by 17% for advisory files and by 34% for litigation files. As with the number of files, the larger rate of increase between 2008/09 and 2009/10 slowed in the last year, as Figure 3 shows.

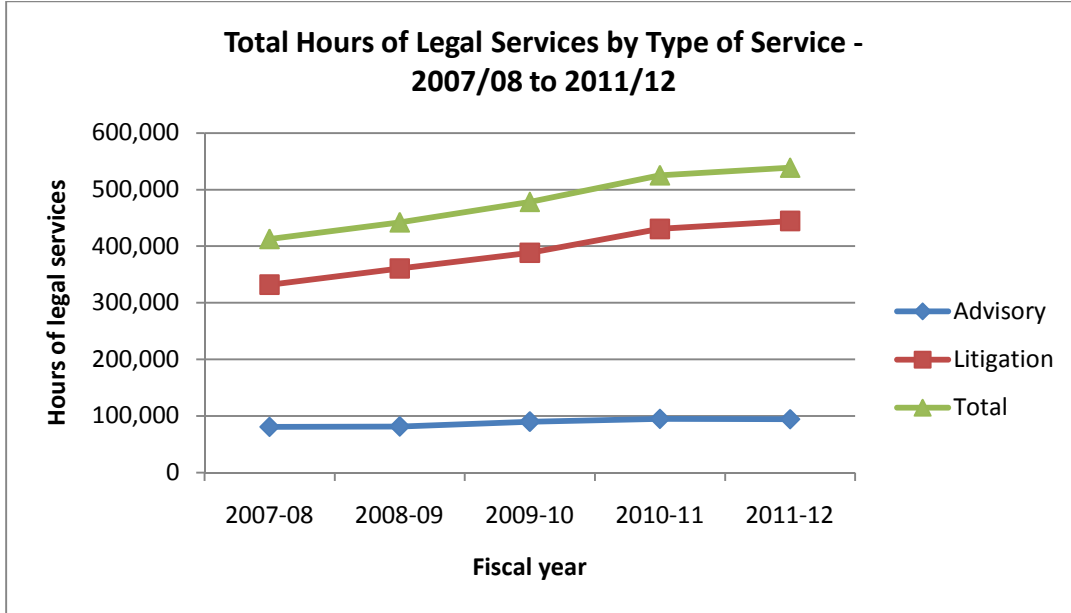
⁹ Files in iCase are considered "active files" once opened. Active files may or may not have time recorded to them. "Actively managed files" are files that have a minimum of five minutes recorded to them within a given reporting period (such as a month, a quarter or a fiscal year).

Figure 2: Number of Actively Managed Files by Type of Service - 2007/08 to 2011/12



Source: iCase¹⁰

Figure 3: Total Hours of Legal Services by Type of Service - 2007/08 to 2011/12



Source: iCase¹¹

¹⁰ The chart is based on actively managed files.

¹¹ The chart is based on actively managed files.

Key informants offered several reasons why the demand for services has increased. In particular, they reported that taxpayers are becoming more willing to incur legal fees and appeal to the Tax Court of Canada. Taxpayers are also more willing to challenge CRA's requests for documents, which has increased the need for legal advice and assistance with compliance orders to compel the production of documents. The number of strategic bankruptcies and other transactions to evade tax collection has also increased. Changes in legislation have affected certain areas of practice by requiring court hearings or other procedures that increase counsel's time in court.¹² In addition, the government and CRA commitments to address aggressive tax planning and avoidance schemes have created greater demand for TLS Portfolio legal services. Some of the tax avoidance schemes targeted by CRA can potentially involve thousands of taxpayers (e.g., Registered Retirement Savings Plan strip schemes, charity tax shelters). Counsel are also becoming more involved in giving advice at the audit stage for complex large business audits involving aggressive tax planning and international tax, complex tax shelter cases, international compliance issues, tax treaty abuses, and residency determinations.

Increasing complexity and legal risk

In addition to the increasing demand, key informants report that the nature of legal services has changed as the complexity and legal risk of the files has increased.¹³ Most commonly identified factors contributing to the increased complexity and legal risk include the federal government's increased emphasis on complex tax issues (such as international tax avoidance, transfer pricing), the increased sophistication of transactions made by taxpayers, and the increase in files where the CRA has assessed multiple taxpayers involved in similar tax avoidance schemes (also noted under reasons for increased demand for legal services).

4.1.2. Alignment with Government Priorities

The TLS Portfolio's work responds directly to the government priorities for its tax regime. This alignment is demonstrated by comparing federal budget reports and Speeches from the Throne with the TLS Portfolio activities listed in departmental annual reports.

¹² Key informants provided two examples: changes to Section 172.1 of the *Bankruptcy and Insolvency Act*, which makes court hearings mandatory for cases involving bankruptcies with tax liabilities of over \$200,000; and changes to the *Companies' Creditors Arrangement Act*, which involves a court-driven bankruptcy protection arrangement that requires lawyers to spend a lot of time in court.

¹³ Trends on legal risk and complexity ratings cannot be provided due to data limitations. See Section 3.7.

- The TLS Portfolio provided advice on a variety of social, tax and financial sector policies and programs, including the GST reduction. The GST cut was identified as a federal priority in the Speech from the Throne 2007 (Department of Justice, 2007a; Speech from the Throne, 2007).
- The TLS Portfolio provided legal support for the implementation of government initiatives, such as the Universal Child Care Benefit, the Working Income Tax Benefit, and the registered disability savings plan — all identified priorities in Throne and/or Budget speeches (Department of Justice, 2007a; Government of Canada, 2007; Speech from the Throne, 2007).
- The TLS Portfolio also has provided legal support to the CRA in provincial tax reform initiatives, such as implementing the harmonized sales tax (HST) in Ontario and British Columbia. Harmonization of taxes was first announced as a government priority in the 2011 Speech from the Throne (Speech from the Throne, 2011).
- The 2007, 2008 and 2012 budgets and the Speech from the Throne 2010 identify the government's commitments to address issues of tax avoidance and abusive tax schemes, and to close tax loopholes. The TLS Portfolio has provided legal support for the CRA's Aggressive International Tax Initiative, with the goal of protecting Canada's tax base (Government of Canada, 2007, 2008a; Speech from the Throne, 2010)
- The 2011 Speech from the Throne and 2012 federal Budget identified government plans for HST initiatives. The TLS Portfolio has supported the CRA in provincial tax reform initiatives, including the implementation of the HST in Ontario and British Columbia. The TLS Portfolio has also supported other tax-administration agreements with provincial, territorial and Aboriginal governments (Department of Justice, 2012; Government of Canada, 2011a, 2012; Speech from the Throne, 2011).

The structure of the TLS Portfolio also demonstrates its responsiveness to both CRA and federal government priorities. The CRA adjusts its priorities every year based on the federal budget (Canada Revenue Agency, 2011, 2012). As the ADAG, TLS Portfolio sits on the CRA's management committee, the TLS Portfolio is aware of how the CRA's priorities are aligned with federal government priorities. This is just one example of the close working relationship between the CRA and the TLS Portfolio, which enables the Portfolio to react in a way that supports both CRA and government priorities.

Another example of the TLS Portfolio's responsiveness to the CRA is the organization of the LSU's work around 20 different areas of the law identified to be the most important to support

the CRA's priorities and mandate. These specialized groups focus on CRA's priorities and adapt in response to priority changes within the CRA.

The TLS Portfolio's work also supports the Department of Justice in achieving its strategic outcomes — in particular, the Department's second outcome, "a federal government that is supported by effective and responsive legal services". This outcome is supported by the TLS Portfolio's responsiveness to government and CRA priorities (discussed above) and by the Portfolio's provision of high quality legal services. These will be discussed further in the following section on performance.

4.1.3. Alignment with Federal Roles and Responsibilities

Under the *Department of Justice Act*, Justice Canada has a mandate to support the roles of the Minister of Justice and Attorney General of Canada. By providing legal advice and assisting the CRA in drafting legislation and developing new services and policies to support government priorities, the TLS Portfolio helps to fulfill Justice Canada's mandate to advise federal department heads on all matters of law connected to their departments (s. 5(b)). By representing the CRA in litigation involving tax and other issues, the Portfolio fulfills the responsibilities under the *Department of Justice Act* to "conduct all litigation for or against the Crown or any department" (s. 5(d)). As TLS Portfolio counsel have a responsibility to ensure that the CRA's actions and legislative and policy initiatives align with federal legislation (such as the *Canadian Human Rights Act* and the *Canadian Bill of Rights*), the Portfolio also assists the Minister in ensuring "that the administration of public affairs is in accordance with the law" (thus fulfilling requirements outlined in Section 4 of the *Department of Justice Act*).

4.2. Performance — Achievement of Expected Outcomes

According to the 2009 Treasury Board *Policy on Evaluation*, evaluating performance involves assessing effectiveness, as well as efficiency and economy. The subsections below discuss the effectiveness of the TLS Portfolio — in other words, the extent to which the Portfolio is achieving its expected outcomes.

4.2.1. Quality, Timeliness and Responsiveness of Litigation Services and Legal Advice

The evaluation found a high level of satisfaction with TLS Portfolio services. Observations regarding the high quality, timeliness, and responsiveness of Portfolio services are supported by multiple lines of evidence and from the perspectives of both counsel and the CRA.

In providing legal services, the TLS Portfolio is guided by a set of service standards intended to set service delivery expectations for both Portfolio counsel and the client. These standards are designed to ensure that services provided are clear, practical, timely, courteous and respectful, responsive to client needs, and appropriate to the CRA's policy and program objectives.¹⁴ Multiple lines of evidence indicate that the TLS Portfolio service standards are being met.

According to the results of the 2005 Public Service Employee Survey, most Portfolio counsel believe that the service standards are clearly defined and regularly applied by counsel (Government of Canada, 2005).¹⁵ Although more recent Public Service Employee Surveys (i.e., those conducted in 2008 and 2011) did not ask specifically about service standards, other lines of evidence indicate that service standards continue to be met. Almost all key informants representing both Justice Canada and the CRA believe that the TLS Portfolio complies with its service standards. Audit reports confirm that the service standards are monitored by the Portfolio Office.

In addition to findings about the Portfolio service standards, which address the quality, timeliness and responsiveness of legal services, the evaluation provides further evidence of positive results with regard to these three aspects.

¹⁴ Specifically, TLS Portfolio service standards include provision of legal services in either official language; courteous and respectful treatment; timely response to legal service requests; negotiation of and attention to deadlines; provision of clear and practical guidance on resolving legal issues; provision of ongoing feedback respecting CRA's requests for service; development of drafting options and solutions appropriate to CRA's policy and program objectives; early identification of means to prevent and resolve legal disputes; and provision of advice or recommendations regarding implementation options (e.g., advisory vs. legislative or regulatory) for policies and programs.

¹⁵ The 2005 Public Service Employee Survey was conducted by Statistics Canada on behalf of the Public Service Human Resources Management Agency. According to the results, the majority (almost 90%) of respondents representing the TLS Portfolio agreed that the Portfolio has clearly defined client service standards. In addition, the majority agreed that these service standards are regularly applied (49% mostly agreed and 38% strongly agreed) (Government of Canada, 2005).

Quality

Almost all lines of evidence indicate that TLS Portfolio services are perceived (by both the CRA and Justice counsel) to be of high quality. The results of Client Feedback Surveys conducted by Justice Canada in 2008 and 2011 were generally positive regarding TLS Portfolio services; in 2008 and 2011, the TLS Portfolio scored above 8 out of 10 with regard to the overall satisfaction level or overall quality of legal advisory and litigation services,¹⁶ indicating a high level of satisfaction among CRA employees (Department of Justice, 2008, 2011). Similarly, in the 2008 Public Service Employee Survey, almost all TLS Portfolio respondents agreed or strongly agreed that the Portfolio provides high-quality services to its clients (Government of Canada, 2008b). The findings from the key informant interviews, case studies and focus groups provide further confirmation that the TLS Portfolio continues to provide high-quality litigation and legal advice, as the vast majority of those representing the CRA expressed general satisfaction with TLS Portfolio legal services.

The long-term relationship between the CRA and TLS Portfolio counsel, in particular, was highlighted as a major factor contributing to these high levels of satisfaction and perceptions of high quality. This positive, ongoing relationship means that TLS Portfolio counsel have a good knowledge of the CRA's requirements, policies and practices, and as a result, can better assist the CRA in developing appropriate solutions and approaches. The assignment of Portfolio lawyers in the TLS Portfolio's regional offices to provide advice to the International and Large Business Directorate (ILBD) was also noted as exemplifying the positive, close working relationship between TLS Portfolio counsel and the CRA.

Timeliness

In general, both CRA and TLS Portfolio employees believe that the Portfolio provides timely service. Approximately three quarters of TLS Portfolio counsel surveyed believe that the Portfolio is above average or excellent in responding to legal requests in a timely manner (73%), in meeting CRA deadlines (79%), and in meeting internal department deadlines (75%). According to the results from the 2008 and 2011 Client Feedback Surveys, CRA employees also agree that TLS Portfolio services are timely; in both years, the TLS Portfolio received scores above the departmental target of 8 out of 10 overall for both litigation and advisory services (see Table 4) (Department of Justice, 2008, 2011). In addition, the majority of those interviewed as

¹⁶ The Portfolio scored 8.3 out of 10 for "overall satisfaction" in 2008 and 8.6 out of 10 in 2011 with regard to the overall quality of both legal advisory and litigation services

key informants or as part of the case studies (representing both the CRA and TLS Portfolio counsel) agreed that the Portfolio generally meets time deadlines.

Table 4: CRA Ratings of the Timeliness of TLS Portfolio Services

Service Type	2008 (score out of 10)	2011 (score out of 10)
Overall	8.2	8.3
Litigation services	8.6	8.2
Advisory services	8.1	8.3

Source: Department of Justice Client Feedback Surveys from 2008 and 2011

These findings were confirmed by the file review, which revealed that most client requests were addressed within 10 days, and none of the files reviewed had missed any client-imposed deadlines.¹⁷ Of the litigation files reviewed, one court deadline was missed due to an administrative oversight, which was corrected through an additional court procedure.

Responsiveness

The evaluation generally found that the CRA considers the legal services it receives from the TLS Portfolio to be responsive to their needs.¹⁸ Just as the long-term relationship between the Portfolio and the CRA was found to contribute to the Portfolio's ability to provide high-quality services, this relationship was also credited by both Justice Canada and CRA key informants as a key factor contributing to the TLS Portfolio's responsiveness to the needs of the CRA.

The responsiveness of the TLS Portfolio to strategic CRA priorities is demonstrated through its participation on the CRA management committee and regional committees, through its support of CRA initiatives such as the Aggressive International Tax Initiative, and by assigning lawyers to work with the ILBD at the audit stage.

The TLS Portfolio also demonstrates its responsiveness to the needs of CRA through its work with CRA officers on individual files. According to key informant and case study interviews, TLS Portfolio counsel have a good knowledge of CRA's requirements, policies and practices — knowledge which allows the Portfolio to better assist the CRA in developing appropriate solutions. The Client Feedback Survey results confirm this, as in 2011, the Portfolio scored 8.5

¹⁷ It should be noted that two files did not provide information regarding client-imposed deadlines.

¹⁸ According to results from the 2008 and 2011 Client Feedback Surveys, the Portfolio scored 8.9 out of 10 in 2011 and 8.6 out of 10 in 2008 regarding the overall accessibility/responsiveness of legal service (Department of Justice, 2008, 2011).

out of 10 for both legal and advisory services with regard to its “understanding of the nature of the issue for which assistance was sought” (surpassing the departmental target of 8.0) (Department of Justice, 2011).

Some of the findings indicate that there may be a difference in perspective on some aspects of responsiveness between TLS Portfolio counsel and CRA personnel, namely providing updates and involving CRA in developing legal strategies. Based on the Client Feedback Survey, CRA respondents report lower satisfaction in these two areas of responsiveness, which, in 2011, are at or just below benchmarks established by the Portfolio for itself (see Table 5) (Department of Justice, 2008, 2011).

Table 5: CRA Perspectives on Indicators of Responsiveness

Responsiveness Indicators	2008 (score out of 10)		2011 (score out of 10)	
	Advisory	Litigation	Advisory	Litigation
Regularly provided informative progress reports or ongoing feedback on the status of requests	7.8	8.2	7.7	7.9
Involved departments/agencies in the development of legal strategy and positions	8.1	8.3	7.8	7.8

Source: Department of Justice Client Feedback Surveys from 2008 and 2011

However, other lines of evidence support the interpretation that this survey finding may not reflect a need to provide more updates or to involve the CRA more in the development of legal strategies. Rather, they point to a need to improve communication between the Portfolio and the CRA and to articulate more clearly expectations about the level of involvement in certain types of files. Key informant interviews, case studies and focus groups all indicate that for higher-profile files (high-risk, higher complexity, project files), the consultation with CRA, provision of updates and involvement of CRA in the development of legal strategies is considered appropriate, and CRA representatives expressed satisfaction with Portfolio services. Counsel surveyed (see Table 6) report that regular updates/progress reports are being provided, and a smaller proportion, but still a majority, of counsel report that on the majority of their files in the last two years, they have involved the CRA in the development of legal strategies and positions. Audit reports confirm that the Portfolio maintains appropriate, continuous and ongoing communication with the CRA.

Table 6: Consultations and Collaboration with the CRA (n=159)

Thinking of files you have been involved with over the last two years, how often have you or a member of the legal team...

	Frequently (80%-100%)	Regularly (50%-79%)	Occasionally (25%-49%)	Rarely (1%-24%)	Never (0%)	NA	DK	NR
Provided CRA with regular updates/progress reports?	56%	28%	8%	4%	1%	3%	0%	0%
Consulted with CRA to understand the nature of the legal problem?	40%	31%	13%	13%	1%	3%	0%	0%
Involved CRA in the development of legal strategy and positions?	34%	31%	20%	11%	2%	3%	0%	1%

Source: Survey of legal counsel

Note: Summation of percent values for rows may not equal 100% due to rounding.

The difference in perception may be based on a different opinion on the appropriate involvement of CRA litigation officers on files where counsel are using the resolution process. Some CRA evaluation participants involved on these files identified a desire for more involvement and updates. As discussed in more detail in Section 4.3.2, the resolution process is intended to reduce interactions with the CRA in an effort to contain legal costs. Additional communication to litigation officers on the respective roles of counsel and litigation officers in these files could be beneficial, as the resolution process represents a significant change in the way files are managed.

4.2.2. Legal Risk Identification and Management

LRM is “the process of making and carrying out decisions that reduce the frequency and severity of legal problems that prejudice the government’s ability to meet its objectives successfully” (Department of Justice, 2007b). It includes the identification and assessment of potential legal risks whereby the CRA, with the assistance of the TLS Portfolio, monitors its activities for potential legal risks and assesses the risk. Upon identification and assessment of legal risks, the CRA and the Portfolio work together to mitigate legal risks to the extent possible by addressing policy and legal issues, such as through changes to practices or policies, or by proposing amendments to legislation and/or regulations. Once legal risk has materialized, the Portfolio undertakes measures to manage and reduce the potential costs (monetary and otherwise) that could result (Department of Justice, 2007b).

Legal risk identification and assessment

Evaluation results indicate that the TLS Portfolio has practices in place to support timely identification of legal risks. For example, the involvement of Portfolio lawyers at the audit stage through the ILBD means that legal risks can be identified and addressed earlier than if counsel were brought in at later stages (e.g., at the litigation stage). Documents and key informant interviews identify that the TLS Portfolio's involvement on CRA national and regional risk management committees allows the Portfolio and the CRA to collaborate on identifying legal risk, which, in turn, supports timely identification of legal risk by the Portfolio. In addition, the key informant interviews and case study results provide evidence that the ongoing relationship and regular interaction between the TLS Portfolio and the CRA supports timely risk identification. According to some key informants, the TLS Portfolio involvement in CRA risk management committees keeps the Portfolio up to date on upcoming files, allowing it to pay extra attention to significant files. The CRA also works closely with the TLS Portfolio to keep the Agency's important issues list up to date.¹⁹

Data from iCase provide evidence that the TLS Portfolio is effective in assessing legal risks in a timely manner after the opening of a file. Most (93%) of the Portfolio's litigation files were assessed for legal risk in the first 30 days after they were opened. Of the approximately 50% of advisory files that were assessed for legal risk, most (91%) were also assessed within 30 days.

Although iCase data reveal that half of the advisory files were not formally assessed for legal risk, this does not mean that the Portfolio did not discuss legal risk with the CRA. Key informants and focus group participants noted that the Portfolio often provides the CRA with informal, more narrative accounts of risk levels rather than specific risk levels. This is particularly the case for advisory files, given that Justice Canada's legal risk assessment process is less standardized for advisory files. Justice Canada's LRM grid does not apply as readily to advisory files as it does to litigation files.²⁰

Timely communication of initial legal risk assessment

Evaluation results indicate that, in general, the Portfolio achieves timely communication of legal risks to the CRA. Almost all key informants representing the CRA agreed that the TLS Portfolio

¹⁹ The CRA uses the important issues list as part of its risk management process. This list, issued quarterly, provides information on current high-risk court cases and the associated amounts of tax risk – with risk being defined in terms of the money involved or the case's implications for tax or social policy or tax administration. This list is reviewed by a CRA risk management committee (Office of the Auditor General of Canada, 2004).

²⁰ It should be noted that the LRM grid is currently under review.

identifies legal risks and communicates them to the CRA proactively and in a timely manner. The results of the legal counsel survey support this. Of the 133 counsel surveyed who offered an opinion, almost three quarters (74%) said that the TLS Portfolio is excellent or above average in providing timely assessments of legal risk, so that it can be factored into decision making.²¹

The evaluation did find some discrepancies in the level of communication about legal risk on files that the TLS Portfolio settles under the resolution process. Some CRA participants revealed that Portfolio counsel have different practices when it comes to discussing legal risk with the CRA on these files; some counsel tend to contact the CRA about legal risks and some do not. In addition, CRA employees differ in their opinions on whether it is necessary for the Portfolio to discuss legal risk with them on these files. These observations may indicate an opportunity for clarifying the communication of risk assessments on files subject to the resolution process.

Reassessment of legal risk

Counsel are expected to reassess legal risk to ensure that the client and managers within Justice are kept apprised of any significant changes to the file that would affect legal risk. In fact, the TLS Portfolio has a policy of mandatory risk assessments at pleading and post-discovery for litigation files.

Evidence indicates that risk reassessment is practiced particularly with regard to litigation files (as one would expect, given the inherent challenges associated with assessing risk on advisory files). According to iCase data, for files opened between 2007/08 and 2011/12, legal risk was reassessed at least once on half of litigation files, and the data confirmed that files continued to be monitored, as 13% of files were assessed twice, 9% were assessed three times, and 27% were assessed four times or more. These data under-report reassessments, as only changes in legal risk are recorded.

Whether reassessments of legal risk are occurring when they should be, based on the TLS Portfolio policy, could not be confirmed. Information on when the reassessment occurs during the life of the file is not entered into iCase, and a reassessment is not indicated if the risk level did not change. The available evidence is from the file review; of the litigation files whose risk had been reassessed, it was most commonly reassessed after the appeal was filed or after a court decision, which is later than the mandatory pleading and post-discovery reassessments.

²¹ Twenty-six respondents (16% of the sample) did not offer an opinion.

Although not providing information on the precise timing of reassessment, other lines of evidence indicate that the TLS Portfolio is reassessing legal risk on files responsibly. Of the 139 respondents who provided an opinion, almost three quarters (73%) said that the TLS Portfolio is above average or excellent at reassessing legal risk when factors change that affect the level of risk.²² Key informants and case study results provide further evidence that the Portfolio manages legal risk assessment on an ongoing basis. Changes are made to legal risk levels when necessary. Key informants mentioned that, if the profile of an issue covered by a file increases, the legal risk level may be increased to reflect any added risk. Case studies showed that legal risk was reassessed and raised at key points — such as when litigation cases progressed through the courts.

Clear and consistent communication of legal risk

The evaluation results were generally positive regarding the TLS Portfolio's communication of legal risk to the CRA. Overall, most key informants said that the Portfolio uses clear, consistent language to describe legal risk, and key informants representing the Agency generally agreed that the Portfolio keeps them well informed about legal risk. Two out of three case studies revealed that the Portfolio described legal risk clearly and consistently, and that opinions describing legal risk included a discussion of the factors contributing to the risk. In addition, of the 110 survey respondents who offered an opinion, a majority (59%) indicated that the TLS Portfolio is above average or excellent at using consistent legal risk ratings across Portfolio files.²³ Similarly, a majority (60%) believes that the Portfolio uses consistent language to communicate legal risk so that the CRA can understand the comparative legal risks across files.²⁴

Structures, tools and processes for assessing and communicating legal risk

The TLS Portfolio uses a number of structures, tools and processes available to assist in the assessment and communication of legal risk. For example:

- Early Warning Notes are a briefing tool used by counsel to alert senior officials of activities or developments in high-impact cases; by completing a brief (one-page) Early Warning Notes template, counsel inform senior officials of important events, such as upcoming hearings, anticipated or rendered decisions, etc.

²² Twenty respondents (13% of the sample) did not offer an opinion.

²³ Forty-nine respondents (31% of the sample) did not offer an opinion.

²⁴ For this question, 111 respondents offered an opinion. Forty-eight respondents (30% of the sample) did not offer an opinion.

- The Portfolio's Adverse Reporting Procedure is another briefing process. The Procedure sets out a course of action, timelines and reporting structure to be followed in reporting on an adverse decision from the Tax Court of Canada and other courts.
- Risk management committees are structures to facilitate communication related to risk impact and management for existing and upcoming files. Members of the TLS Portfolio sit on a number of risk committees, including the CRA's regional risk management committees, and the tri-departmental Risk Management Committee, which involves representatives from the departments of Justice, Finance and the CRA.
- The LRM grid is a tool developed for the assessment of legal risks as part of the Department of Justice's 1999 LRM Initiative. The grid operates on two dimensions: the likelihood of an adverse outcome and the impact on the client department or agency or the government as a whole. Using the grid, legal risks are assigned a number ranging from 1 (low likelihood and minor impact) to 9 (high likelihood and significant impact).

The evaluation found that the Adverse Reporting Procedure and Early Warning Notes are effective tools/processes for communicating legal risk within the Portfolio. According to legal counsel survey results, the majority of litigation respondents agreed that the Adverse Reporting Procedure is clear in terms of when to brief/report (69%); effective in notifying senior management about significant files (68%); clear in terms of what to include in briefs/reports (65%); and clear in terms of to whom to brief/report (62%) (see Table 7). Although litigation survey respondents were substantially less familiar with the Early Warning Notes than with the Adverse Reporting Procedure, among those who were aware, approximately twice as many agreed than disagreed that the Early Warning Notes process is clear and that it is effective in notifying senior management about significant files (see Table 8). The key informant interviews support the usefulness of these tools. Key informants highlighted the Portfolio's adverse decisions procedure as a useful risk management tool, and many key informants said that the Early Warning Notes are an effective tool for communicating legal risks to the CRA and the TLS Portfolio.

Evaluation evidence also indicates that the TLS Portfolio's involvement on risk committees is useful with regard to communicating with the CRA about legal risks. According to most key informants representing both Justice Canada and the CRA, these committees, whose members meet to discuss upcoming files, provide an opportunity for the Portfolio and the Agency to engage in discussions on risk impact and management. Key informants noted that, through involvement on CRA committees, the Portfolio informs the Agency of risks, which assists it in considering risk in decision making.

Evaluation results are more divided concerning the usefulness of the LRM grid. About one third (34%) of the counsel survey respondents found the LRM assessment grid/matrix useful, while a quarter (25%) of the respondents indicated they were neutral and about another quarter (26%) said that the tool was not useful. Similarly, although some key informants said that the grid is useful, others identified that its limited application and lack of applicability to advisory files make it less useful. However, it is recognized that the LRM grid is currently under review. The Early Warning Report, which provides a short overview of significant anticipated hearings and decisions on the Adverse Reporting Procedure is another effective tool for communicating legal risks.

Table 7: Adverse Reporting Procedure (Litigation only — n=130)

To what extent do you agree with the following statements about the Adverse Reporting Procedure?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	NA	DK	NR
The process is effective in notifying senior management about significant files.	16%	52%	15%	3%	1%	2%	11%	1%
The process is clear in terms of when to brief/report.	15%	54%	18%	7%	2%	2%	3%	0%
The process is clear in terms of whom to brief/report.	15%	47%	22%	9%	2%	2%	4%	1%
The process is clear in terms of what to include in briefs/reports.	12%	53%	19%	9%	2%	2%	4%	0%
The process is too onerous.	9%	19%	35%	27%	4%	2%	5%	0%
The process creates delays in handling the file.	8%	23%	30%	28%	5%	2%	5%	0%

Source: Survey of legal counsel

Note: Summation of percent values for rows may not equal 100% due to rounding.

Table 8: Early Warning Notes (Litigation only — n=130)

To what extent do you agree with the following statements about Early Warning Notes?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	NA	DK	NR
The process is effective in notifying senior management about significant files.	5%	38%	13%	3%	0%	3%	37%	1%
The process is too onerous.	5%	16%	28%	22%	1%	3%	25%	1%
The process is clear in terms of whom to brief/report.	4%	32%	19%	15%	1%	2%	26%	2%
The process is clear in terms of what to include in briefs/reports.	2%	32%	22%	14%	1%	3%	25%	2%

The process is clear in terms of when to brief/report.	2%	28%	19%	19%	2%	3%	26%	1%
The process creates delays in handling the file.	2%	12%	28%	25%	2%	3%	28%	1%

Source: Survey of legal counsel

Note: Summation of percent values for rows may not equal 100% due to rounding.

Management and mitigation of legal risk

Evaluation results are generally positive regarding the TLS Portfolio’s contributions to risk management and mitigation. Audit reports have concluded that the Portfolio has appropriate risk management practices — which include continuous communication with the CRA and continuous monitoring of legal risk (Internal Audit Branch, 2011a, 2011b). Client Feedback Survey results from 2008 and 2011 indicate that the Portfolio plays a key role in providing the Agency with advice and assistance to identify and mitigate key legal risks, and show that CRA clients are satisfied with the degree to which the Portfolio involves them in the review or development of mitigation options (see Table 9) (Department of Justice, 2008, 2011).

Table 9: CRA Ratings of the TLS Portfolio’s Services Regarding Legal Risk

Indicators Related to Legal Risk Identification, Management and Mitigation	2008 (scored out of 10)			2011 (scored out of 10)		
	Overall	Litigation	Advisory	Overall	Litigation	Advisory
Legal risk management	8.2	8.6	8.1	8.3	8.3	8.1
Worked with client to identify legal risks		8.4	8.3		8.2	8.3
Involved client in review/development of legal options to mitigate identified legal risks		8.5	8.3		7.9	8.1

Source: Department of Justice Client Feedback Surveys from 2008 and 2011

Note: Shaded cells indicate data not available in the survey reports.

Several lines of evidence (key informant interviews, file review, legal counsel survey and case studies) indicate that the CRA considers the TLS Portfolio legal advice in strategies to prevent, mitigate and/or manage risk. Evidence indicates that the Portfolio legal advice and legal risk, in general, are considered by the CRA in decision making. However, the CRA may choose to accept legal risk for a variety of reasons. For example, case studies revealed that the CRA may prefer not to settle in certain situations (such as when dealing with judicial review applications on remission orders) based on policies or principle, despite suggestions from the Portfolio to settle based on the assessment of the likelihood of success.

The evaluation found that the Portfolio considers legal risk and complexity in deciding which counsel to assign to files — a practice that, in turn, helps in managing risk. Documents indicate that the Portfolio’s risk identification and assessment processes are used to assign files to appropriate legal counsel, based on their knowledge, skills, experience level and capacity.²⁵ According to key informants, the Portfolio’s practice of matching the expertise of legal counsel with the complexity or risk level of files is a key way to manage legal risk by ensuring that the work on files is carried out by qualified, appropriate counsel. Evidence from internal documents, key informant interviews, and the file review supports this observation.

4.2.3. Enhanced Understanding of Legal Issues, their Implications and Potential Risks within the CRA

Although the CRA is considered a legally astute client, with two thirds of legal counsel surveyed reporting that the CRA’s understanding of its legal issues is above average or excellent, the TLS Portfolio is still thought to have enhanced this understanding. Legal counsel survey respondents (81%) and most key informants representing both Justice Canada and the CRA agreed that the TLS Portfolio has helped to improve the Agency’s understanding of legal issues and their implications. The role that the Portfolio plays in supporting the CRA’s understanding of its legal issues, their implications, and potential risks comes from a variety of activities.

- The close working relationship between the CRA and the TLS Portfolio is evidenced in the Portfolio’s involvement on the committees that are led by, or also involve members of, the CRA (including the CRA Management Committee, CRA risk committees, the CRA’s Oversight for Procurement Strategy Committee, the General Anti-Avoidance Rule Committee, the Adverse Decision Committee, the Bankruptcy/Insolvency – Dissolved Corporation Committee, the Commercial Taxation Committee, the Aboriginal Issues Committee, the Policy Committee, the National Joint Implementation Committee, the Fairness Committee, etc.). According to key informants, these committees allow the Portfolio the opportunity to share their legal expertise with the CRA on certain issues, raise legal risk issues, and offer suggestions for approaching the risk — all of which enhance the Portfolio’s understanding of the issues and associated risks.

²⁵ As a first step in the LRM process, the Associate ADAG (Tax Assessment) gives a file an initial legal risk and complexity level and assigns it to a regional office. Then, the Directors of the different regional offices or TLS sections, in consultation with the Deputy Director (and in the case of the Prairie Region, team leaders or senior counsel, where appropriate), review the initial legal risk assessment and assign files to appropriate legal counsel, based on their knowledge, skills, experience level and capacity (Internal Audit Branch, 2011a, 2011b).

In addition, the consultations between Portfolio counsel and the CRA on individual files were cited by key informants and case study interviewees as contributing to the Agency's understanding of legal issues and their implications. In particular, case study interviewees (both Justice and CRA) thought that the consultations between the Agency and the Portfolio were effective. Contact was described as being "constant", and it was considered helpful in identifying issues and making other involved departments aware of these issues. Based on the description of the working relationship between the CRA and the Portfolio on these case study files, the Agency was heavily involved in terms of reviewing submissions, preparing for discovery, and discussing strategy. The enhanced understanding worked in both directions, as the CRA explained its procedures to counsel and counsel described legal issues to the CRA.

- The timely, clear communication of legal risks to the CRA by TLS Portfolio counsel helps build this knowledge of legal issues and their potential implications, as does the Portfolio's involvement on CRA national and regional risk committees (discussed in more detail in Section 4.2.2).
- Key informants pointed to the joint CRA and TLS Portfolio training sessions, shared learning events and practice groups as key factors contributing to this improved understanding. Audit reports (2011) and internal documents provide further confirmation that the TLS Portfolio is striving to fulfill commitments to training CRA officials made through the *Memorandum of Understanding Respecting a Professional Development Partnership between the Canada Revenue Agency and the Department of Justice Canada*. Records show that between 2009 and 2012, multiple training sessions were offered to the Agency by Portfolio counsel through headquarters, the CRA LSU, and the regions (including the British Columbia, Alberta, Manitoba/Saskatchewan, Ontario, Quebec and Atlantic regions). Lists published by the CRA's Compliance Programs Branch confirm that the CRA provides a number of training sessions (on topics ranging from corporate reorganizations to international transactions) and reserves a limited number of seats at each session for Justice counsel.²⁶

Even with a legally astute client like the CRA, misunderstandings are possible. In particular, the legal counsel survey results indicate some potential issues in terms of knowing when to engage

²⁶ It should be noted, however, that data on these joint training sessions that took place during the period covered by the evaluation are limited, which, in turn, limits an assessment of the extent to which the terms of the MOU on training are being fulfilled. The TLS Portfolio does not systematically track information on the numbers or types of CRA staff attending Portfolio-led training sessions. CRA tracks these numbers. Since 2012, the participation of Portfolio counsel in CRA training opportunities or any other training event should now be captured in the PeopleSoft system, and this data should be available for the next evaluation of the TLS Portfolio.

the Portfolio, the importance of identifying legal risks, and the potential impacts of legal risks. In all three areas, only about half or less of respondents rated CRA officials' understanding as above average or excellent, even when considering only those counsel who offered an opinion.²⁷ Counsel in LSUs and at headquarters were more likely to assess the understanding as above average or excellent than were counsel in regional offices (see Table 10). In interviews, a few Agency participants appeared to misunderstand counsel's responsibility to communicate legal risk, considering it overly pessimistic on occasion. Based on these results, communicating the role of the CRA and counsel in identifying and assessing legal risk may be useful for increasing understanding.

Table 10: Perspectives of TLS Portfolio on the Level of Understanding of CRA Officials, by Location of Work

Based on your experience over the past two years, how would you assess the level of understanding of CRA officials with whom you have worked, with respect to the following?

	Above average/ Excellent	Average	Below average/ Poor	N/A or no response
When to Engage the Portfolio				
Headquarters (n = 19)	53%	37%	0%	11%
LSU (n = 21)	57%	24%	14%	0%
Regional office (n = 119)	41%	30%	12%	16%
Overall (n=159)	45%	30%	11%	15%
The Importance of Identifying Legal Risks*				
Headquarters (n = 19)	58%	32%	11%	0%
LSU (n = 21)	62%	24%	10%	5%
Regional office (n = 119)	37%	38%	19%	6%
Overall (n=159)	43%	36%	16%	5%
The Potential Impacts of Legal Risks*				
Headquarters (n = 19)	47%	48%	0%	5%
LSU (n = 21)	62%	19%	14%	5%
Regional office (n = 119)	32%	40%	23%	7%
Overall (n=159)	38%	38%	18%	6%

Source: Survey of legal counsel

Note: Summation of percent values for rows may not equal 100% due to rounding.

** Results are statistically significant at the p=.000 level using Chi-square.*

Case studies and key informant interviews confirm these results. In a few interviews, clients sometimes appear to have misinterpreted counsel's discussion of legal risk as being pessimistic

²⁷ When only counsel who offered an opinion are considered, the results for importance of identifying legal risks and potential impacts of legal risks rise by two percentage points. About half (52%) of respondents who offered an opinion believe that the CRA's understanding of when to engage the Portfolio is above average or excellent.

and may not have recognized the role of counsel in informing clients of potential legal risks to ensure “no surprises”. Given that focus group discussions with CRA litigation officers in the regions demonstrated an understanding of counsel’s role in discussing legal risk, the level of understanding may be very dependent on individual factors such as years of experience. These results indicate that there may be a difference in the level of understanding within CRA and point to potential training needs within the Agency with which the Portfolio might be able to assist.²⁸

4.2.4. Supports (Competencies, Tools, Structures and Resources) for TLS Portfolio Counsel

The evaluation found that, generally, counsel believe that they have the appropriate supports in order to meet the service standards set for the TLS Portfolio and provide timely, responsive, high-quality legal services. However, there are areas for potential improvement in terms of tools, structures and training.

Tools

Evaluation results indicate that, overall, TLS Portfolio counsel are satisfied with available tools to support them in their work. In the 2005, 2008 and 2011 Public Service Employee Surveys, the majority of Portfolio counsel (as many as 99% in 2005 and 90% in 2008) reported that they have the materials and equipment to do their job (see Table 11) (Government of Canada, 2005, 2008b, 2011b). However, other lines of evidence (key informant interviews and the legal counsel survey, in particular) reveal some potential issues with specific tools, as discussed below.

Table 11: TLS Portfolio Respondents’ Opinions on the Availability of Materials and Equipment to do their Work

I have the materials and equipment I need to do my job.

Survey Year	Agree	Neither agree nor disagree	Disagree	Don’t know or N/A
2005	99%		2%	0%
2008	90%	1%	10%	0%
2011	86%	4%	10%	0%

Source: Public Service Employee Surveys for 2005, 2008 and 2011

Note: Summation of percent values for rows may not equal 100% due to rounding.

²⁸ The training sessions provided to the CRA by the Department of Justice since 2009 have focused on specific legal issues and topics of interest to the Agency. However, internal lists of the training opportunities provided by the Department to the CRA do not identify specific courses related to legal risk assessment (or the Department’s role in the risk assessment process).

Shaded cells indicate data not available in the survey reports.

Fiscal Path and Justipedia. The Fiscal Path is part of the Department's intranet that supports the TLS Portfolio with internal distribution of Portfolio-related information. For most of the evaluation period, software updates were implemented within the Fiscal Path and the Knowledge Management database which allowed users to contribute legal precedents (legal opinions, pleadings, facta, case law, statutes and other legal content) and to perform full-text searches in the database. This database platform was used by the TLS Portfolio, as well as other areas within the Department, and was one of several such internal databases being used by Department counsel.

Since data were collected for the evaluation, the Fiscal Path has changed, particularly with respect to its interface with Justipedia, the new, unified departmental database for legal precedents that was launched in early 2012. Given the relatively recent development of Justipedia and the changes made to the Fiscal Path, the evaluation findings are directed at systems that are now different. However, the findings are useful as a baseline for later studies of satisfaction with these knowledge management tools.

Although a few key informants noted that the Fiscal Path contains a lot of useful information, the evaluation found some issues with the usability of the Fiscal Path prior to the changes in late 2012. Portfolio audit reports in 2011 revealed that personnel in both the Prairie Region and Ottawa Section did not consider the Fiscal Path to be user-friendly (Internal Audit Branch, 2011a, 2011c). In addition, less than half of legal counsel survey respondents (42%) found the Fiscal Path useful, and among those who did not use it, a relatively high percentage (27%) said they did not do so because they did not know how.

As with the Fiscal Path, the evaluation found evidence of some issues with the usability of Justipedia. Less than half of legal counsel survey respondents (42%) found Justipedia useful in managing their work, and among those who did not use Justipedia, the two most common reasons given were simply that there was no occasion to use it in their work and that they did not know how to use it.²⁹ In addition, a few key informants noted that work is needed on Justipedia to improve ease of access. However, key informants also noted that Justipedia was still under development and that it would later contain an extensive database of legal opinions, which will be useful.

²⁹ It should be noted that most survey respondents who had not used Justipedia or the Fiscal Path said that they were not aware of these tools, or had no occasion to use them in their work.

Litigation Support Software (E-discovery software). E-discovery software uses digitized data to enable organizing, searching and coding documents. According to internal documents, a national e-discovery practice group created by the TLS Portfolio provides the CRA as well as TLS Portfolio counsel with expertise on e-discovery issues, and helps the CRA to meet related production obligations. Based on interviews with key informants, the use of e-discovery software is not widespread within the Portfolio. The evaluation found several potential reasons for this. Many files may not involve the volume of material that would necessitate the use of e-discovery software, and the reciprocal review and provision of e-discovery data could be very expensive for the taxpayer. The need for administrative support to scan and input documents into e-discovery software is also considered a barrier to its greater use within the Portfolio. A few key informants also noted that the current e-discovery software is outdated, which has resulted in their being unable to read the e-discovery data provided by opposing counsel. These key informants reported that more up-to-date and better systems are available.

Technology generally. Some key informants noted that the Portfolio is behind in technology. This appeared to possibly depend on the region, with some regions commenting on this more than others. For example, key informants noted that computers have limited capability to support webinars; an insufficient number of working screens are available to support videoconferencing; and software in some regional offices is out of date, which makes transferring documents difficult. They also expressed general concern about falling behind the private sector in terms of available technology. Departmental policies created some issues, such as not allowing counsel to load the *Income Tax Act* on mobile devices so that they could access it easily in court or while travelling. In addition, contracts for mobile devices mean that coverage is not always optimal; mobile device providers do not provide coverage evenly across the country, which creates difficulties for counsel who are going to court locations not covered as well by selected providers.

Structures

The TLS Portfolio has a number of structures in place to assist Portfolio counsel in providing high-quality, coordinated, “whole-of-government” services. As mentioned in Section 2.1, the National Coordination Committees (12 in total) coordinate specific areas of the law to enhance the quality of tax law services and ensure their effective delivery. Many of these committees involve members of both Justice Canada and the CRA, who meet to discuss files, trends and legal risk. As part of their role, these committees conduct structured review and approval of important facts and provide updates on legal developments to improve the consistency of legal positions nationally. As identified in Section 4.2.2, the Portfolio has a process in place to assign

appropriate counsel to files; files are assigned to counsel considering the experience and skills of individual counsel as well as the complexity, risk level and significance of the files.

Although the TLS Portfolio does not have a formal mentoring program where senior counsel are assigned to oversee specific junior counsel, it does practice a more informal form of mentoring. Mentoring occurs within the Portfolio in a couple of different ways. As part of its fast-tracking initiative to develop junior counsel, the Portfolio assigns senior counsel to files to oversee junior counsel, or to lead teams that include junior counsel. The senior counsel often act as mentors or coaches to the junior lawyers on these specific files. The Portfolio also has an “open door” policy, where junior counsel are encouraged to approach senior counsel for assistance and advice.

Evaluation results show that, in general, these structures are working well and are viewed positively by Portfolio counsel. More than two thirds (68%) of legal counsel survey respondents agreed that the National Coordination Committees are useful in managing their work, and 65% of survey respondents who work most frequently on litigation files said that structured reviews or approvals of facta are useful. A few key informants provided added support for these results by indicating that the National Coordination Committees are helpful tools for sharing expertise.

Evaluation results are also positive with respect to the TLS Portfolio’s mentoring process. The Portfolio’s internal mentoring practices were identified by survey respondents as useful in managing their work, and about three quarters (74%) of the survey respondents agreed that, at least half the time, appropriate mentoring and/or supervision has taken place in the files in which they have been involved over the last two years. Focus group participants also mentioned the Portfolio’s informal mentoring practices (noting the benefits of training sessions that have taken place on how to coach junior lawyers), as well as Justice Canada’s national mentoring program. A few key informants noted the importance of assigning senior counsel, at times, to more low-risk files so they can act as mentors to junior Portfolio counsel.

According to the legal counsel survey results, the majority (69%) of senior managers said that they found the file assignment process useful in managing their work (see Table 12).³⁰ In addition, a few key informants expressed particular satisfaction with the process, noting that it allows for a more equitable distribution of the workload, and improves awareness of the legal opinion requests being made.

³⁰ Overall, a lower percentage of survey respondents (45%) said that they found the file assignment process useful in managing their work. However, as the file assignment process is not typically used by junior lawyers, the perspectives of senior counsel are more indicative of the usefulness of this process.

Table 12: Percentage of TLS Portfolio Counsel who Find the File Assignment Process Useful, by Level of Experience*How useful have you found the [file assignment process] in managing your work?*

	Useful	Neutral	Not useful	Have not used	No response
LA (%) n = 146	43%	36%	13%	8%	1%
Manager – LC (%) n = 13	69%	15%	8%	8%	0%

*Source: Survey of legal counsel**Note: Summation of percent values for rows may not equal 100% due to rounding.*** Results are statistically significant at the p=.000 level using Chi-square.*

Although the evaluation found these structures useful overall, it revealed some notable differences in the perceptions of national and regional Portfolio counsel on these structures that are worth highlighting. The assessment of these structures appears to depend on the location of counsel within the Portfolio; those located at headquarters were generally more positive about them. A higher proportion of counsel at headquarters found structures and tools such as the National Coordination Committees, practice directives and file assignment process more useful in managing their work than did counsel in regional offices or LSU lawyers (see Table 13). Similarly, lawyers at headquarters (84%) were more likely than lawyers in regional offices (73%) and the LSU (71%) to indicate that, at least half of the time, appropriate mentoring and/or supervision was included in managing files.

Table 13: Percentage of TLS Portfolio Counsel who Find Portfolio Structures Useful in Managing their Work, by Location of Work*How useful have you found the following TLS Portfolio tools or structures in managing your work?*

	Useful	Neutral	Not useful	Have not used	No response
TLS Portfolio National Coordination Committees					
Headquarters (%) n=19	84%	11%	5%	0%	0%
LSU (%) n=21	48%	14%	14%	24%	0%
Regional office (%) n=119	69%	8%	15%	8%	0%
Overall (n=159)	68%	9%	14%	9%	0%
Practice Directives*					
Headquarters (%) n = 19	95%	5%	0%	0%	0%
LSU (%) n = 21	29%	29%	19%	24%	0%
Regional office (%) n = 119	76%	14%	5%	3%	2%
Overall (n=159)	72%	15%	6%	6%	1%
File Assignment Process*					
Headquarters (%) n = 19	68%	26%	0%	5%	0%
LSU (%) n = 21	57%	0%	29%	14%	0%
Regional office (%) n = 119	39%	41%	12%	8%	1%

Overall (n=159)	45%	34%	13%	8%	1%
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Source: Survey of legal counsel

Note: Summation of percent values for rows may not equal 100% due to rounding.

** Results are statistically significant at the $p=.000$ level using Chi-square.*

Training

TLS Portfolio employees seem satisfied with the training opportunities available to them. Results from the 2005, 2008 and 2011 Public Service Employee Surveys indicate that the majority of Portfolio respondents feel that they receive the training that they need (Government of Canada, 2005, 2008b, 2011b).³¹ In addition, in all three surveys, the majority of TLS Portfolio respondents agreed that the training they need is available in their preferred official language; that they have opportunities to receive on-the-job coaching and improve and apply skills; and that they receive support from their supervisor or department regarding career development.

Other lines of evidence provide added support for the adequacy of training within the Portfolio and for the generally high level of satisfaction with available training opportunities. The 2011 audit reports confirm that TLS personnel in the Prairie Region and Ottawa Section complete individual learning plans annually, and are fulfilling Justice Canada's requirements under the *Learning Policy* for completing a minimum of five days of training (Internal Audit Branch, 2011a, 2011b, 2011c). Overall, the majority (70%) of respondents to the legal counsel survey conducted for this evaluation said that TLS Portfolio training opportunities were useful. Key informants representing Justice Canada expressed a high level of satisfaction with training opportunities provided to Portfolio counsel, indicating that training needs are being met and that high-quality training is provided at both the national Portfolio and regional level.³²

³¹ According to the results of the Public Service Employee Surveys, over three quarters of respondents in 2005 and 2008, and over 80% of respondents in 2011, agreed that they receive the training they need to do their job (Government of Canada, 2005, 2008, 2011b).

³² Key informants and internal documents also identified a number of specific training opportunities available to Portfolio counsel. Formal and informal training opportunities and initiatives identified by key informants include brown bag lunches; formalized Portfolio training events at the national level held every two years; major tax conferences held every 18 months; yearly tax camps; monthly videoconference training sessions; mandatory individual learning plans that identify individuals' learning and development needs; and Justice Canada-wide training sessions and learning groups. The TLS Portfolio notifies its employees on a monthly basis about upcoming professional development (PD) opportunities offered by the Portfolio. Until recently, pamphlets listing tax training opportunities were distributed each month via email, and Regional Portfolio PD Coordinators were responsible with circulating information on how to attend these PD sessions. Information on upcoming PD opportunities (and how to register for them) is now posted on the Fiscal Path, and emails reminding employees to look at these opportunities on the Fiscal Path are sent out monthly.

As identified in Section 4.2.1, in adherence to the *Memorandum of Understanding respecting a professional development partnership between the CRA (Compliance Programs Branch) and the Department of Justice*, the CRA reserves spaces for Justice counsel in the training sessions it offers. These training sessions, offered in a number of different cities around the country, cover a variety of tax-related issues and topics (including current year losses and losses carried over, shareholder's debt and loans, amalgamations and wind-ups, transactions between corporations and shareholders, provincial income allocation, rollovers under s. 85 (1), related persons and associated corporations, international transactions, corporate reorganizations, etc.).³³ The TLS Portfolio has recently begun tracking participation in training, and more detailed results will be available for the next evaluation of the Portfolio.

During data collection, it was revealed that the Portfolio was in the process of updating its national training program (the TLS Portfolio Professional Development Program), which has now been completed. The purpose of this program is to ensure that Portfolio employees have access to continuous learning opportunities, which, in turn, helps to ensure that high-quality legal services are provided to the CRA. The 2012–14 TLS Portfolio Professional Development Program encompasses the In-House Continuing Education Program for Legal Counsel, the National Training and Development Program for TLS Portfolio Paralegals, and the Portfolio's National Tax Training event³⁴, as well as training provided by the CRA and other external training opportunities³⁵. The In-House Continuing Education Program for Legal Counsel is organized into four streams: substantive law, skills, corporate issues, and orientation. Documents describing the training program provide a basic overview of the type, number, level, delivery method, frequency and cost of courses to be provided under each of these streams.

Although perspectives of Portfolio training were generally positive, the evaluation findings do point to some issues, described in the paragraphs below, which might be useful to consider including in the current or future training programs.

The evaluation found evidence of some possible issues regarding career development opportunities. The results of the 2008 and 2011 Public Service Employee Surveys indicate a

³³ Until recently, the CRA would distribute lists of these training opportunities via email on a quarterly basis. Portfolio counsel can now find information on all training activities in the Fiscal Path's PD section.

³⁴ National Tax Training is a major PD event for TLS Portfolio counsel held every second year. It brings together approximately 150 lawyers to discuss important legal questions and current priorities.

³⁵ Other training includes training offered by the Department of Justice's Professional Development Division, as well as external training offered by third-party organizations (such as law societies, the Canadian Bar Association, the Canadian Tax Foundation, or the *Association de planification fiscale et financière*) that is available to Portfolio counsel and paralegals.

decline in perceptions about career development opportunities among Portfolio counsel; although three quarters of Portfolio respondents agreed that they have the opportunities to develop and apply the skills needed to enhance their career in 2008, only about a third of respondents agreed in 2011 (Government of Canada, 2008b, 2011b).

In addition, the results of the legal counsel survey conducted for this evaluation suggest a potential gap in intermediate and advanced-level training. The majority of counsel find training useful; however, survey results indicate that counsel who have been with Justice Canada for five years or less find training more useful than more senior counsel. As Table 14 shows, the percentage of counsel who find the Portfolio training opportunities useful in managing their work drops with the years of experience. Although this finding should not be overstated³⁶, it is worth mentioning because training initiatives designed to enhance career development could be affected by this potential training gap.

Table 14: Percentage of TLS Portfolio Counsel who Find Training Opportunities Useful in Managing their Work, by Years Employed by Justice Canada

How useful have you found [TLS Portfolio training opportunities] in managing your work?

Years Employed by Justice Canada	Useful	Neutral	Not useful	Have not used
Between 1 and 5 years ago (%) (n=50)	80%	10%	4%	6%
Between 6 and 10 years ago (%) (n=24)	58%	29%	13%	0%
More than 10 years ago (%) (n=85)	67%	11%	17%	6%
Overall (n=159)	70%	13%	12%	5%

Source: Survey of legal counsel

Note: Summation of percent values for rows may not equal 100% due to rounding.

Suggested areas for training (stemming mainly from focus groups) that could be most relevant to mid-career or later-career counsel include the following:

- more training on specific sections of the *Income Tax Act*;
- more opportunities to attend training from third-party service providers on business practices of particular types of industry that are often the subject of litigation (e.g., transfer pricing practices used by insurance firms and pharmaceutical companies);
- more opportunities to attend other sector-specific training, such as training on charities or banking.

³⁶ The survey results for this question were not statistically significant (p-value= 0.200).

Currently, a travel cap is in place that limits counsel's ability to attend tax conferences or off-site training. In light of travel limitations, technological tools (webinars, videos, etc.) were highlighted as especially important in providing training opportunities; as travel budgets are reduced, more online or remote training opportunities (in-house and external) will need to be used. The planned 2012 - 2014 training program indicates provisions for some training to be delivered via WebEx. However, the evaluation found some limitations in the effectiveness of the Portfolio's use of these technologies in training. As mentioned in Section 4.2.4, evaluation results indicate some dissatisfaction with technology used by the Portfolio/Department (a feeling among some Portfolio employees of being behind the private sector in terms of technological capacity). During key informant interviews, Portfolio counsel in some regions noted limited capability for supporting webinars and video conferencing. A few key informants also mentioned that the TLS Portfolio could improve the format of its webinars, as some webinars currently available are short and not as conducive to learning as they could be.

It should be noted that in 2012, the TLS Portfolio began tracking information on training opportunities provided by and available to Portfolio counsel. Therefore, statistics on specific aspects of training (such as the number and types of sessions available, the number of counsel attending each session, etc.) were not available to this evaluation. In addition, the Portfolio does not collect information on the number and types of CRA employees taking part in Portfolio training events but can gather this information from the Agency. This type of tracking of training provided to Portfolio counsel and CRA employees will be useful — both for future evaluations (providing more support for an assessment of the Portfolio's fulfillment of training commitments and obligations) and for the ongoing development of the Portfolio training program.

4.2.5. Strategic Management of Legal Issues and Protecting Crown Interests

For the TLS Portfolio, strategic management of legal issues involves pursuing a national approach to legal issues, providing a consistent approach in addressing and advising on legal issues, and protecting the interests of the Crown in decisions regarding legal issues and strategies. On assessing the Portfolio's strategic management of legal issues, the evaluation considered both the importance of the above-mentioned factors, as well as the degree to which the Portfolio is achieving them.

Evaluation evidence confirms the importance of a national approach to legal advice concerning tax law. Key informants generally agreed that it is essential for Justice to have a national,

coordinated approach to tax law. According to documents and key informants, a national approach yields three primary benefits.

1. It supports the integrity of tax law across the country by ensuring that tax law is consistently applied across the country.
2. It ensures fairness to taxpayers by ensuring equal treatment. This is very much related to the first point, as a consistent approach is necessary for equal treatment to occur, and perceptions of fairness are essential to the integrity of the system.
3. It reduces legal risk by reducing inconsistency, which, in turn, reduces the risk of litigation.

Ultimately, the national approach is also seen as protecting the interests of the Crown in the proper administration of justice by ensuring that the positions taken by the TLS Portfolio do not conflict with other positions taken by government; by treating taxpayers consistently and fairly; and by protecting the rule of law.

The TLS Portfolio must act to ensure that the interests of the Crown in the proper administration of justice are protected through its conduct of litigation and in the legal advice given. As with all areas of Justice, the Portfolio is responsible for taking an integrated, whole-of-government approach where its legal advice and litigation positions are consistent across government. This measure is accomplished by consulting within Justice and, where appropriate, with other federal departments/agencies. When conflicting positions arise, the TLS Portfolio will try to resolve the conflict and, when necessary, the ADAG office will provide appropriate briefing within Justice to ensure that senior management is aware of the issue.

Evaluation findings indicate that the TLS Portfolio is achieving its goal of providing a national, whole-of-government approach to legal issues. Most of legal counsel surveyed for the evaluation agreed (or strongly agreed) that the Portfolio provides the Government of Canada and the CRA with a whole-of-government approach to legal issues (62%, rising to 75% when only those respondents who offered an opinion are considered) with very few disagreeing (see Table 15). In addition, the case studies demonstrated a national approach, as both Portfolio counsel and the CRA were well aware of the broader implications of files. Case studies provided examples of measures implemented by the Portfolio and the Agency to ensure that the positions taken were consistent with past positions and less vulnerable to future legal challenges.

Table 15: Percentage of TLS Portfolio Counsel who Believe that the Portfolio Provides the Government of Canada and the CRA with a Whole-of-government Approach to Legal Issues

Please provide your level of agreement with the following statements...

	Agree	Neutral	Disagree	NA	NR
The TLS Portfolio provides the Government of Canada and CRA with a whole-of-government approach to legal issues (n=159)	62%	17%	3%	1%	17%

Source: Survey of legal counsel

Note: Summation of percent values for the row may not equal 100% due to rounding.

Similarly, evaluation findings indicate that, in general, the TLS Portfolio provides a consistent and coordinated approach to legal issues. The majority (81%) of legal counsel survey respondents agreed or strongly agreed that the Portfolio takes a consistent approach to legal issues, and most key informants agreed that the Portfolio does a good job at coordinating its functions and positions. Documents (in particular the 2011 audit reports and the 2005, 2008 and 2011 Public Services Employee Surveys)³⁷ and key informants cited the Portfolio's good internal communication practices as a factor contributing to a coordinated approach. In addition, internal documents indicate that Portfolio structures and processes (such as the National Coordination Committees³⁸ and bi-weekly Portfolio management of the law meetings) help to ensure a coordinated approach across the Portfolio. Its practice of assigning the most experienced counsel to deal with the most complicated, high-risk, high-profile files (discussed in Sections 4.2.4 and 4.3.2) was considered to help reduce inconsistency in the treatment of files and the quality of work.

Although some lines of evidence point to good communication practices within the Portfolio, evaluation findings — particularly from the legal counsel survey — indicate some room for improvement in the Portfolio's communication and collaboration with the CRA LSU. Of the counsel who responded to survey questions on this issue (n=109), 52% considered the Portfolio to be excellent or above average with respect to communication between the Portfolio and CRA LSU, and 18% considered the Portfolio to be below average or poor in involving the CRA LSU.

Similarly, evaluation results indicate that the TLS Portfolio may be able to improve its communications with other specialized sections within Justice Canada. Although the majority (59%) of counsel who offered an opinion considered the Portfolio to be above average or

³⁷ Government of Canada, 2005, 2008b, 2011b; Internal Audit Branch, 2011a, 2011b, 2011c.

³⁸ The TLS Portfolio has established a number of coordination networks to help it maintain a nationally consistent approach in specific subject areas — for example, international taxation, tax avoidance, Aboriginal tax, GST/HST, employment insurance, tax collections requirements, the Charter, taxpayer relief, and voluntary disclosure.

excellent at involving and consulting specialized sections within Justice Canada when appropriate, over one quarter (27%) of legal counsel survey respondents did not offer an opinion. This is worth noting, as counsel could indicate that consultations with specialized sections are not appropriate to their work, and few did. Other lines of evidence indicate the potential for greater involvement of the Public Law Sector (PLS). The file review and key informant interviews provided evidence of little collaboration with the PLS. Although key informants considered the Portfolio's working relationship with the PLS to be good, the documented increase in files with constitutional and Aboriginal law issues may mean that consultations with specialized sections, including the PLS, will become increasingly important. A few key informants noted that, at times, the CRA and the Portfolio could engage the PLS earlier to provide guidance at the policy development stage.

4.2.6. Consideration of TLS Portfolio Legal Advice

The evaluation results regarding the degree to which the CRA considers TLS Portfolio advice in decision making are somewhat mixed. Although some lines of evidence (mainly key informant interviews and case studies) strongly suggest that the Portfolio's advice is considered in most cases, others (the legal counsel survey, in particular) indicate that the degree to which advice is considered may be affected by the file type (advisory versus litigation).

Almost all key informants agreed that the CRA seriously considers the advice given by the TLS Portfolio in decision making. Many key informants mentioned that the fact that the Portfolio's advice is clear, well-reasoned, high-quality, and grounded in solid analysis contributes to its consideration by the Agency. In addition, some key informants noted that disagreements between the CRA's and the Portfolio's opinions are rare; generally, the advice given by the Portfolio supports the direction that the CRA was thinking of taking. Similarly, all case study interviewees agreed that the advice provided by the Portfolio was considered during the case study files. The case studies also provided concrete examples of the Agency's consideration and use of Portfolio advice, as legal advice on these files led to changes in CRA practice and policy, as well as amendments to the *Income Tax Act*. However, the legal counsel survey results only partially support these findings. According to survey results, advisory counsel are more likely than litigation counsel to think that the CRA considered their legal advice. Most advisory counsel who offered an opinion reported that in at least half of their files, Portfolio advice was considered, whereas litigation counsel were evenly divided between whether Portfolio advice was frequently/regularly or occasionally/rarely considered regarding litigation strategies (see Table 16).

Table 16: CRA’s Consideration of Legal Advice/Legal Risk

Thinking of files you have been involved with in the last two years, how often did CRA consider the legal advice/legal risk...

	Frequently (80%-100%) (%)	Regularly (50%-79%) (%)	Occasionally (25%-49%) (%)	Rarely (24% or less) (%)	NA (%)	DK (%)
In the development or implementation of CRA policies or programs?* (n=29)	35%	31%	10%	3%	7%	14%
To take steps to prevent, mitigate, or manage legal risk? (n=159)	21%	26%	24%	10%	3%	16%
In its discussions with the Portfolio regarding litigation strategies?^ (n=130)	12%	25%	25%	12%	3%	22%

Source: Survey of legal counsel

Note: Summation of percent values may not equal 100% due to rounding.

**Question only asked of those that most frequently work on advisory files (n=29)*

^Question only asked of those that most frequently work on litigation files (n=130)

The evaluation focused on the consideration of TLS Portfolio advice, rather than the degree to which the CRA makes decisions that match the advice. This is in recognition of the fact that Portfolio advice is not the only factor that affects CRA decision making. Although many key informants (representing both Justice Canada and the CRA) expressed the opinion that the Portfolio’s advice is not just considered but also followed by the CRA most of the time, key informants identified the following factors that may make the CRA more or less likely to consider the Portfolio’s advice:

- If the CRA thinks an issue is factual more so than legal, it may make the final judgement; the Agency tends to accept Justice Canada’s advice with regard to legal issues.
- When legal issues arise, CRA personnel know that they should consult Justice Canada.
- Some longstanding CRA policies may override TLS Portfolio advice in some cases; where CRA policies differ from Portfolio advice, the CRA will be less likely to accept the advice.
- The CRA is more likely to consider the Portfolio’s advice regarding international tax law or foreign commercial law (areas in which the CRA does not have expertise) than advice related to issues such as gross negligence, capital versus income, employment income versus business income, etc. (areas that the CRA is more capable of dealing with internally)

4.3. Performance — Demonstration of Efficiency and Economy

The Treasury Board’s 2009 *Policy on Evaluation* defines efficiency as production of “a greater level of output ... with the same level of input or, a lower level of input with the same level of output”, and economy as the achievement of expected outcomes using the minimum amount of resources required (Treasury Board of Canada Secretariat, 2009). Applying these definitions to the TLS Portfolio, an analysis of its efficiency and economy considers actions taken by the Portfolio to reduce cost while maintaining the level and quality of service. This section first considers the cost of TLS Portfolio legal services, followed by a description of actions taken to manage costs and demand for legal services.

4.3.1. Costs of TLS Portfolio Legal Services

Under the TLS Portfolio method of cost recovery, the amount billed to CRA is based on the number of FTE staff (counsel and paralegals) rather than the level of effort (in hours). A rate for legal services that is set annually by the Treasury Board is then applied to each FTE in order to determine the cost to be recovered. Between 2008/09 and 2011/12, the cost of legal services collected from CRA (excluding disbursements) rose by 83% (see Table 17).

Table 17: Tax Law Services Portfolio (Cost of Services Provided to the CRA)

	2008/09 Actual	2009/10 Actual	2010/11 Actual	2011/12 Actual	2008–2012 % change
Cost of legal services	55,107,208	58,664,323	70,844,150	76,466,443	+39%
Disbursements over \$200	2,524,535	2,521,590	2,691,908	2,256,826	-11%
Fixed costs: ADAG Group	2,077,393	3,053,258	3,228,681	3,353,569	+61%
Total cost of services provided to the CRA	59,709,136	64,239,171	76,764,739	82,076,838	+37%
Less A-Base	28,936,555	28,351,671	28,999,514	28,163,886	-3%
Total cost recovery charged to the CRA	30,772,581	35,887,500	47,765,225	53,912,952	+75%
Total Collected from the CRA					
Legal services	28,248,798	33,362,146	45,073,317	51,656,127	+83%
Disbursements	2,524,535	2,521,590	2,691,908	2,256,826	-11%
Total collected	30,773,333	35,883,736	47,765,225	53,912,953	+75%

Source: Cost of legal services based on cost recovery MOU tables for 2008/09, 2009/10, 2010/11, and 2011/12.

Disbursements over \$200 and collection information based on year-end cost recovery reports.

Based on the information provided by the TLS Portfolio, the cost increase to the CRA appears to be due to several factors:

- The A-Base remained constant, while costs rose.
- The number of FTE counsel and paralegals rose by 18% between 2008/09 and 2011/12 (see Table 18).

Table 18: Tax Law Services Portfolio Human Resources (FTEs)

	2008/09	2009/10	2010/11	2011/12	2008–2012 % change
Counsel	292.13	314.51	339.45	344.82	+18%
Headquarters	41.05	43.93	47.93	48.63	+18%
CRA LSU	31.45	31.89	33.28	32.58	+4%
Regional offices	219.63	238.69	258.25	263.62	+20%
Paralegals	37.33	37.78	42.54	45.39	+22%
Headquarters	9.19	10.32	10.00	9.54	+4%
CRA LSU	--	--	--	--	--
Regional offices	28.14	27.46	32.54	35.85	+27%
Total FTEs – Counsel and Paralegals	329.46	352.29	381.99	390.21	+18%

- To cover costs of salary, benefits, and operations and maintenance, the rate applied to each FTE increased by 22%, compounded, during the same time period.

Information provided by the Portfolio to explain the increase in staffing focused on three areas for which the Portfolio received additional funding:

- Additional counsel were required to manage the demands of project files, which target tax avoidance schemes that involve potentially thousands of taxpayers. These files are described in more detail in Section 4.3.2.
- Starting in 2009/10, seven counsel were exclusively assigned to support the CRA in large business audits involving aggressive tax planning and international tax, complex tax shelter cases, international compliance issues, tax treaty abuses, and residency determinations. These files are described in more detail in Section 4.3.2.
- As of 2009/10, the CRA administers most corporate taxes for Ontario, and the TLS Portfolio provides legal support on those files.

Table 19 shows the rise in the cost for legal services, factoring in the rate increase and staffing increases discussed above.

Table 19: Year-to-year Increase in Legal Service Costs Provided to CRA

	2009/10	2010/11	2011/12
Ongoing (previous year total cost of legal services minus disbursements)	57,184,601	61,712,878	74,072,831
Rate increase	1,429,615	8,701,516 ³⁹	1,925,894
Additional funding/specific requirements			
Donations/Projects	2,790,002	5,364,078	5,364,078
Counsel at the Audit Stage	774,359		
Corporate Tax Administration for Ontario	425,651		
Estimated total cost of services (minus disbursements)	62,604,228	75,778,472	81,362,803
Actual total cost of services (minus disbursements)	61,712,878	74,072,831	79,820,012

Source: TLS Portfolio.

The results are an estimate of the total cost of legal services provided to the CRA and exceed the actual cost of legal services (minus disbursements) based on cost recovery. Given the complexity and all the factors involved in cost recovery, an exact alignment is not possible.

Potentially offsetting the cost of TLS Portfolio legal services is the recoupment of taxes owed. As noted in Section 2, the TLS Portfolio supports the government and CRA's efforts in collecting taxes and, as a result, contributes to a source of government revenue. A cost-benefit analysis would weigh the cost of TLS Portfolio legal services against the amount of taxes recovered. This analysis would provide important context for assessing the costs of the TLS Portfolio services to the CRA. In addition, a cost-benefit analysis could also provide useful information for Portfolio management on the ratio of costs to benefits for certain types of files (e.g., by risk or complexity level, by legal issue). Portfolio management could then focus efforts on improving the efficiency in handling files with relatively higher costs to benefits. Currently, the data required for a cost-benefit analysis, such as the amount of taxes recovered through court order or settlement for each file, are not tracked in iCase.

4.3.2. Managing Demand, Reducing Cost, and Improving Efficiency

The TLS Portfolio has taken several actions intended to reduce the cost and/or improve the efficiency of providing legal services to the CRA. The success of these efforts can be measured, in part, by the perception of the CRA, and overall, the evaluation found strong opinions among CRA key informants and case study interviewees that the Portfolio conducts its work in an

³⁹ The collective agreement with counsel was signed prior to the 2010/11 fiscal year and resulted in a cumulative increase in one year, retroactively taking into account increases since 2006.

efficient and cost-effective manner. To provide a more detailed analysis, this section considers several of the key methods used by the Portfolio to manage its workload and contain costs.

Staffing and managing workload on files

Developing practices for the efficient management of its workload are part of the TLS Portfolio's approach to improving efficiency while maintaining the quality of legal services. The steps taken by the Portfolio align with the literature on law practice management by considering the value of the work in the assignment of staff to files and delegating "low value" work (i.e., work that is not of high importance to the client or, in the case of the Portfolio's work, low-risk or low complexity) to more junior counsel who manage the files with senior counsel supervision (Hodgart, 2010). Other examples include taking advantage of resource specialization by assigning lawyers with particular expertise and experience to files that will draw on that expertise.

File assignment: distribution and competencies. The TLS Portfolio's process for assigning files uses a national approach whereby files are not necessarily assigned to the regional office where the litigation or request for legal advice originates. Instead, files are allocated by the Associate ADAG (Tax Assessment) to regional TLS Sections within the TLS Portfolio based on workload and/or expertise required for the files. The Director and Deputy Director of the TLS regional section are then responsible for assigning files to specific lawyers. When assigning files, the Director and Deputy Director also take into consideration the capacity of the counsel in the section, as well as each lawyer's caseload requirements and workloads (Internal Audit Branch, 2011a, 2011c).

The evaluation found that the file assignment process is working effectively. The 2011 internal audit reports for the Prairie Region and Ottawa Section identify that files are assigned to lawyers with appropriate knowledge, skills and experience (Internal Audit Branch, 2011a, 2011c). Justice and CRA key informants and case study interviews confirmed that the TLS Portfolio assigns appropriate counsel to files based on expertise, seniority and expertise, and file complexity. The majority of CRA key informants indicated that the Portfolio rarely assigns a lawyer to the file with whom the Agency was not comfortable. They also said that, when this has occurred, the CRA has been able to approach the Portfolio, and the Portfolio has made changes to assignments accordingly.

The one question raised by Justice and CRA representatives involved the Department of Justice's Supreme Court of Canada Advocacy Program, which relies on a roster of approved counsel to

argue cases before the Supreme Court of Canada. Counsel who have handled the matter before the Tax Court of Canada and/or the Court of Appeal transfer the file to the roster counsel once it reaches the Supreme Court. Opinion was divided on whether this approach adds to the cost of the file over any benefit derived from having a counsel experienced with arguing before the Supreme Court handle the file. Given the complexity of tax files and the level of risk once they have reached the Supreme Court, continued involvement of counsel who handled the file at the lower court levels was preferred by some CRA representatives and Justice counsel interviewed. Concern was also expressed that more tax counsel need to be assigned to the roster, and the Department is making efforts to replace retiring tax lawyers on the roster.

Targeting resources to risk and complexity of file. Based on an analysis of iCase data, the TLS Portfolio is targeting its legal resources based on the risk and complexity of the file, which demonstrate that the Portfolio is using practice management techniques intended to minimize cost and increase efficiency. The three indicators analyzed for the evaluation are the number of counsel, level of counsel, and hours devoted to files by their risk and complexity levels.

The average number of counsel assigned to a file increases with the risk level. For advisory files, the average number of counsel rises from 1.41 for low-risk files to 2.17 for high-risk files. Similarly, the average number of counsel for litigation files rises from 1.68 for low-risk files to 2.89 for high-risk files. The number of counsel assigned to the files also increases by the complexity level for litigation files. For advisory files, there is also an increase with complexity level except for high complexity files, which have fewer lawyers assigned than medium complexity files. See Table 20 and Table 21 for details.

Table 20: Total Number of Counsel Assigned to Files by Risk Level (2009/10 to 2011/12)

	Low	Medium	High	Risk not yet evaluated	Unable to assess	Total
Advisory Files						
Total counsel assigned	3,952	7,366	141	3,225	674	15,358
Total files	2,796	4,864	65	2,339	357	10,421
Average counsel per file	1.41	1.51	2.17	1.38	1.89	1.47
Litigation Files						
Total counsel assigned	23,155	42,500	1,511	858	315	68,339
Total files	13,778	23,401	522	561	194	38,456
Average counsel per file	1.68	1.82	2.89	1.53	1.62	1.78

Note: Counsel are assigned to multiple files so the total number of lawyers assigned to the files exceeds the total number of counsel in the TLS Portfolio.

Source: iCase (Actively managed files)

Table 21: Total Number of Counsel Assigned to Files by Complexity Level (2009/10 to 2010/11)

	Low	Medium	High	Mega	Risk not yet evaluated	Not indicated	Total
Advisory Files							
Total counsel assigned	1,626	9,889	2,349	66	751	677	15,358
Total files	1,247	6,678	1,680	21	444	351	10,421
Average counsel per file	1.30	1.48	1.40	3.14	1.69	1.93	1.47
Litigation Files							
Total counsel assigned	7,928	47,457	12,277	534	63	80	68,339
Total files	4,655	27,328	6,202	170	42	59	38,456
Average counsel per file	1.70	1.74	1.98	3.14	1.50	1.36	1.78

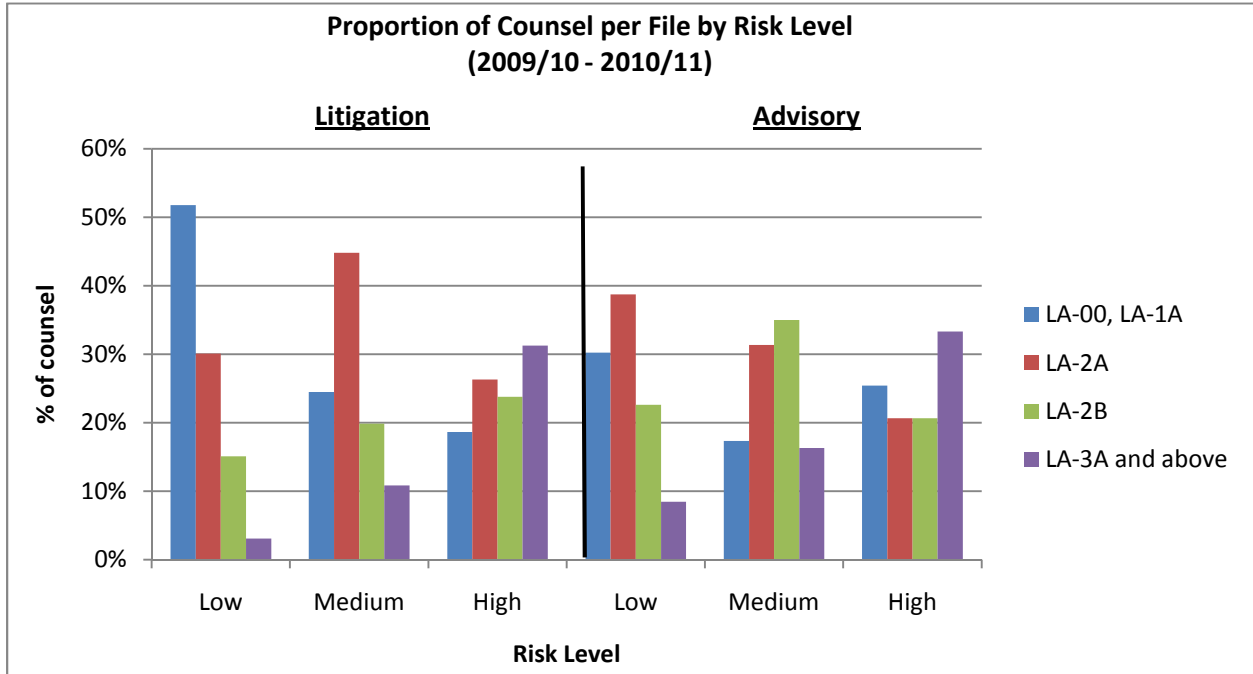
Note: Counsel are assigned to multiple files so the total number of lawyers assigned to the files exceeds the total number of counsel in the TLS Portfolio.

Source: iCase (Actively managed files)

Files with higher risk have a larger proportion of senior counsel assigned to them than lower-risk files.⁴⁰ For example, in low-risk litigation files, more than half (53%) of the lawyers assigned to those files are LA-00 and LA-1A, although these junior counsel constitute only 19% of the lawyers on high-risk files. Conversely, 37% of counsel on high-risk litigation files are LA-3A and above, although they constitute only 8% of lawyers assigned to low-risk files. Advisory files also show that more senior counsel are involved in high-risk files, as opposed to medium or low-risk. Results are similar for file complexity, with high or mega complexity litigation and advisory files staffed with more senior counsel, as compared to low or medium complexity files (see Figures 4 and 5).

⁴⁰ Counsel are categorized by levels, which are based on qualifications and experience. The levels start with an articling counsel at LA-00, and LA-3A and above are the most senior levels. In December 2010, the Department of Justice changed its classification standard; however, the evaluation uses the earlier standard, as it was in place for most of the time period covered by the evaluation.

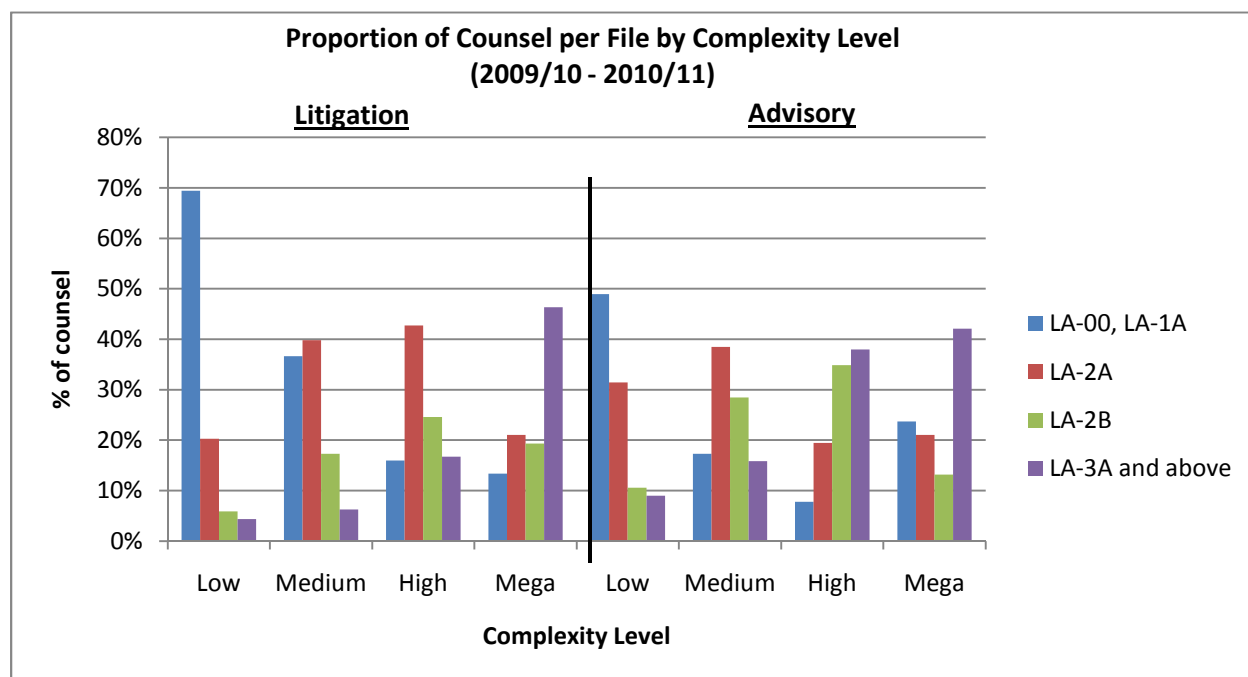
Figure 4: Proportion of Counsel per File by Risk Level (2009/10 - 2010/11)



Source: iCase⁴¹

⁴¹ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Figure 5: Proportion of Counsel per File by Complexity Level (2009/10 - 2010/11)



Source: iCase⁴²

Efficient law practice management goes beyond counsel assignment but also includes the level of effort as evidenced by hours spent on files. The TLS Portfolio is in the process of developing level of effort benchmarks for types of files, which are intended to improve monitoring and efficiency of legal services.

Based on information available to the evaluation, the TLS Portfolio is engaging in efficient utilization of resources. For litigation and advisory files, average hours per file increased as the legal risk and complexity level increased, which indicates that legal resources are targeted on files with higher potential impact. Some key informants noted that lower profile files (low dollar value, risk and complexity) can take a disproportionate amount of resources due to factors outside of the TLS Portfolio's control, such as court rules and taxpayer legal strategies (See Table 22 and Table 23).

⁴² The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Table 22: Average Number of Hours per File by Risk Level — 2009/10 to 2011/12

Risk Level	Litigation	Advisory
Low	32.4	36.3
Medium	68.8	33.1
High	810.4	154.4
Not assessed	49.1	23.9
Total	60.2	30.0

Source: iCase (Completed files)

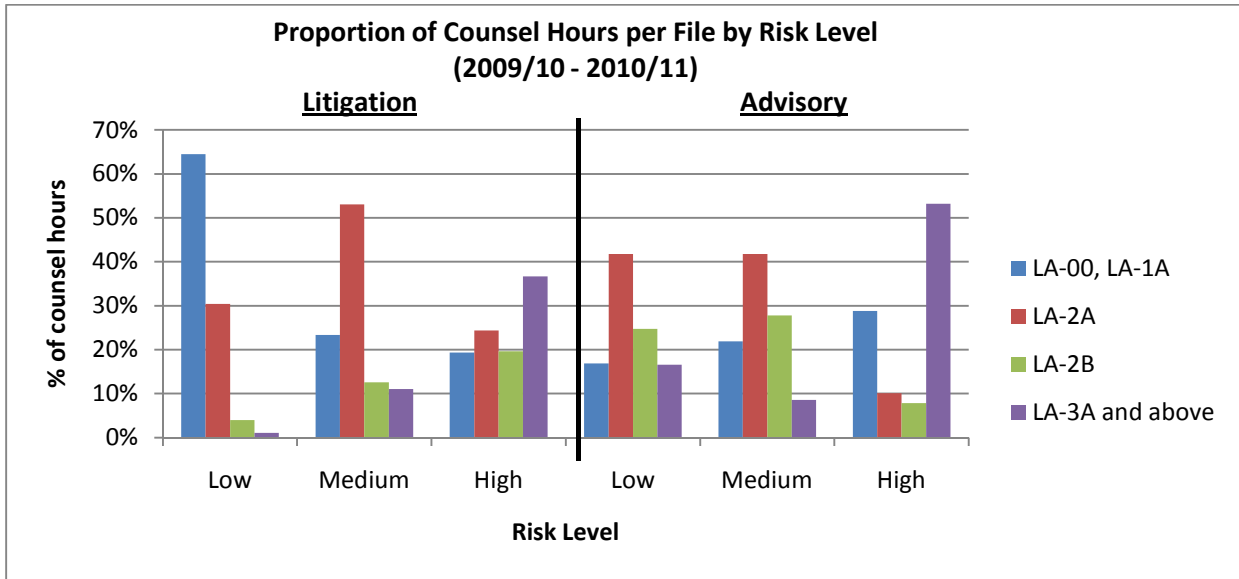
Table 23: Average Number of Hours per File by Complexity Level — 2009/10 to 2010/11

Risk Level	Litigation	Advisory
Low	19.8	17.6
Medium	44.3	28.7
High	181.6	43.0
Mega	360.8	399.6
Not applicable	144.2	301.3
(Not indicated)	13.1	16.0
Total	60.2	30.0

Source: iCase (Completed files)

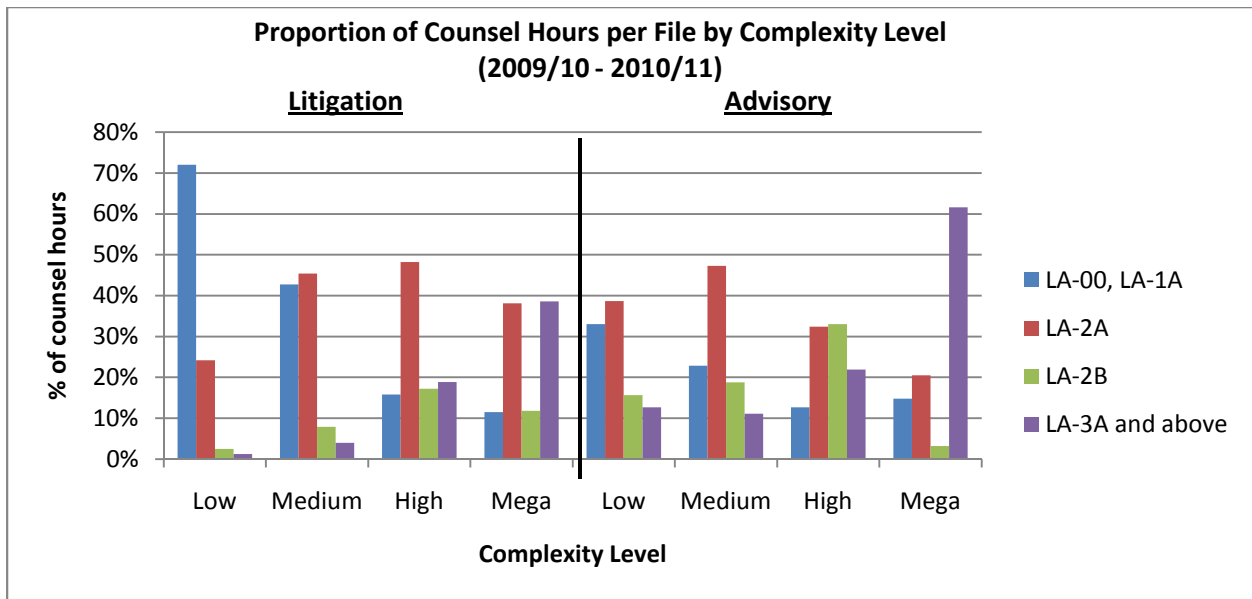
In addition, the proportion of hours billed to files by category of counsel also shows that lower risk and complexity files have more time billed by LA-00, 1A and 2A, while high-risk and complexity files have more time billed by more senior counsel (see Figures 6 and 7 below).

Figure 6: Proportion of Counsel Hours per File by Risk Level (2009/10 - 2010/11)



Source: iCase⁴³

Figure 7: Proportion of Counsel Hours per File by Complexity Level (2009/10 - 2010/11)



Source: iCase⁴⁴

⁴³ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

⁴⁴ The chart is based on actively managed files. It does not include information on files that are not yet evaluated or where no rating is indicated.

Paralegal initiative. According to internal documents, the TLS Portfolio is also increasing its use of paralegals on files. This delegation of suitable tasks to non-lawyers is discussed in the literature as an effective approach to reducing legal costs for clients and/or freeing counsel to focus on work that requires their skills (Hodgart, 2010). Table 24 shows that paralegal hours are increasing over time, particularly for litigation files. However, as a proportion of hours spent on legal services, paralegal time for advisory and litigation files has remained fairly constant at about 4-5% and 10-11%, respectively.

Table 24: Distribution of Paralegal and Counsel Hours by Year (2007–2012)

	Paralegal Hours	Counsel Hours	Total Legal Service Hours	% Hours by Paralegals
Litigation				
2007/08	31,578	300,440	332,018	10%
2008/09	40,570	319,958	360,528	11%
2009/10	40,550	347,771	388,321	10%
2010/11	44,118	386,360	430,478	10%
2011/12	49,007	395,532	444,539	11%
Total	205,824	1,750,060	1,955,884	11%
Advisory				
2007/08	3,338	77,208	80,546	4%
2008/09	3,685	77,679	81,364	5%
2009/10	3,901	85,981	89,882	4%
2010/11	4,391	90,175	94,566	5%
2011/12	3,744	90,213	93,957	4%
Total	19,060	421,256	440,316	4%
Total Legal and Advisory				
2007/08	34,916	377,648	412,564	8%
2008/09	44,256	397,637	441,893	10%
2009/10	44,451	433,752	478,203	9%
2010/11	48,510	476,535	525,045	9%
2011/12	52,751	485,745	538,496	10%
Total	224,884	2,171,316	2,396,200	9%

Source: iCase (Actively managed files)

Note: Total amounts may be different than the sum of annual amounts due to rounding.

The distribution of paralegal work by legal risk and complexity is shown in Table 25 and Table 26. The results show that paralegals are used in files of all levels of risk and complexity. In addition, their use appears strategic. For example, paralegals account for 44% of the total legal service hour for low complexity litigation files.

Table 25: Distribution of Paralegal and Counsel Hours by Risk Level — 2009/10 to 2011/2012

	Paralegal Hours	Counsel Hours	Total Legal Services Hours	% Hours by Paralegals
Litigation				
Low	32,511	217,865	250,375	13%
Medium	81,493	798,936	880,429	9%
High	18,504	98,668	117,172	16%
Not yet evaluated	455	9,317	9,773	5%
Unable to assess	712	4,877	5,589	13%
Total	133,675	1,129,663	1,263,338	11%
Advisory				
Low	2,053	50,129	52,182	4%
Medium	8,119	117,806	125,925	6%
High	603	6,807	7,410	8%
Not yet evaluated	29	75,631	75,660	<1%
Unable to assess	1,232	15,997	17,229	7%
Total	12,037	266,369	278,406	4%

Source: iCase (Actively managed files)

Note: Total amounts may be different than the sum of risk level amounts due to rounding.

Table 26: Distribution of Paralegal and Counsel Hours by Complexity Level — 2009/10 to 2011/2012

	Paralegal Hours	Counsel Hours	Total Legal Services Hours	% Hours by Paralegals
Litigation				
Low	16,663	21,451	38,114	44%
Medium	56,682	649,375	706,057	8%
High	39,911	396,610	436,522	9%
Mega	16,666	60,747	77,412	22%
Not applicable	3,717	135	3,852	96%
Not indicated	36	1,344	1,380	3%
Total	133,675	1,129,663	1,263,338	11%
Advisory				
Low	1,210	13,320	14,530	8%
Medium	7,802	145,671	153,473	5%
High	1,685	43,051	44,736	4%
Mega	545	4,023	4,568	12%
Not applicable	794	22,600	23,394	3%
Not indicated	0	37,705	37,705	0%
Total	12,037	266,369	278,406	4%

Source: iCase (Actively managed files)

Note: Total amounts may be different than the sum of complexity level amounts due to rounding.

The above data show that paralegal time as a proportion of overall legal services effort has not changed during the evaluation period. In light of this finding, the TLS Portfolio should consider a study on whether it is optimizing its use of paralegals on files. If the Portfolio considers its initiative to increase the use of paralegals to be a source of efficiency and cost savings, a more detailed assessment of paralegal use could be beneficial for Portfolio management.

Resolving matters efficiently

The TLS Portfolio has taken steps to resolve litigation cases more efficiently. Four strategies are of particular significance: two involve complex files (legal advice at the audit stage and project files); one involves files of lower legal risk and complexity (resolution process); and the final strategy considers all files (dispute resolution [DR] processes generally).

Enhanced Delivery of Legal Advice at the Audit Stage. The Portfolio has supported the CRA's increased focus on compliance activities by providing assistance with large business audits involving aggressive tax planning and international tax, complex tax shelter cases, international compliance issues, tax treaty abuses, and residency determinations. This initiative, called the Enhanced Delivery of Legal Advice at the Audit Stage, involves specifically assigning advisory counsel at the CRA LSU and regional litigation counsel to assist with these complex audits handled by the ILBD. The rationale is that these files would benefit from earlier counsel involvement, given their complexity and the often intensive involvement of taxpayer counsel at the audit stage. Key informants for both Justice and the Agency believe that this initiative is working well. The early involvement of TLS Portfolio counsel in these files is believed to have improved the preparation of these files for litigation, supported the CRA in discussions with the taxpayers' counsel, and led to earlier resolution for some files.

Project files. The TLS Portfolio and the CRA have begun grouping taxpayers involved in similar tax avoidance schemes into what are termed "project files". This approach has been taken to manage workload, as these schemes involve the same legal issue across potentially thousands of taxpayers. Pursuing the cases against these taxpayers individually would not be feasible, so they are grouped and test cases are selected for the CRA to pursue in court. The intention is that the test case will proceed while the other similar files are held in abeyance. This approach has enabled the TLS Portfolio to meet this new demand, while not sacrificing its ability to provide legal services to the CRA in other types of files. However, key informants raised concerns that, unless the similar files are held in abeyance, which the court can refuse, and unless the similarly situated taxpayers are bound by the court decision in the test case, the workload for the TLS Portfolio has the potential to expand exponentially. The grouping of project files certainly offers

an efficient and cost-effective method for resolving these files, but the effectiveness of this approach is largely outside of the control of the TLS Portfolio.

Resolution process. According to key informants, the TLS Portfolio and the CRA have been placing greater emphasis in the last few years on the resolution of cases and on pursuing alternatives to litigation, particularly with regard to low-risk, low-impact files that are not expected to impact tax law. The resolution process allows counsel more discretion in how to handle a file and reduces the time required to consult with the Agency. That being said, some consultations do occur on these files.

The evaluation found that the support for the resolution process may differ between the TLS Portfolio and the CRA. TLS Portfolio counsel believe that the resolution process is working, and they favor its expansion to more types of files with only factual issues involved (based on key informant and focus group results). In the counsel survey, two thirds of respondents consider the resolution process effective in facilitating settlement. The evaluation found less support among CRA representatives, as there was some discomfort in the reduction in consultation with CRA litigation officers on these files.

Counsel believe that the resolution process reduces the cost to CRA on these files. Data to support that view are very preliminary, as the TLS Portfolio only began tracking the files using the process in January 2012. Based on a review conducted by the Portfolio of files from January to June 2012, the ability of the resolution process to achieve substantial efficiencies appears limited given the level of its use. Although a comparison with similar files shows that the process results in a reduction in average days files remain open (265 compared to 465 days for similar files) and in the average hours spent on files (45 compared to 71 hours), the number of files using the resolution process is small (n=167). Although this reduction in hours is the equivalent of approximately three counsel FTEs, this result must be placed in the context of a Portfolio with approximately 345 counsel FTEs. The Portfolio's review has limitations, as it does not explore the level of use of the resolution process. In particular, the Portfolio may want to investigate the reasons behind the small number of files where the process was used, which could include low usage of the process by counsel, underreporting of its use in iCase, or only a small number of files suitable for the process.

The resolution process may take time to receive widespread acceptance, as it requires a culture shift for both Justice counsel and CRA officials. Counsel who are used to seeking client instructions have more autonomy on these files, which some counsel are embracing more than others. Correspondingly, CRA litigation officers are having less involvement in these files,

which requires them to change their expectations on consultations. As is the case with counsel, acceptance of this shift in practice is likely uneven among litigation officers in the Agency. Changing the expectations and practice of CRA litigation officers may be difficult when they are experiencing different approaches to consultation on early resolution files, depending on the counsel involved. More communication by the TLS Portfolio and more consistent practice by counsel may assist in the adoption of the resolution process, as well as enable the TLS Portfolio and the CRA to consider expanding its use.

Dispute resolution more generally. The percentage of litigation matters settled has not changed substantially during the period covered by the evaluation, varying only a few percentage points, from 42% to 46% (see Table 27).⁴⁵ Overwhelmingly, the type of DR used is negotiation, with very few files resolved using methods such as arbitration or mediation.⁴⁶ Although iCase does not capture whether DR processes are credited with affecting the outcome, it would appear from the data that DR is much more likely to occur in files that are settled. Approximately half of settled files have used some form of DR compared to between 3-4% of files that are adjudicated.

Table 27: Use of Dispute Resolution Type by Case Outcome (2007–2012)

	2007/08 (n=6,318)	2008/09 (n=5,999)	2009/10 (n=6,071)	2010/11 (n=7,537)	2011/12 (n=7,278)	Total (n=33,203)
Adjudicated	40%	38%	37%	40%	36%	38%
No dispute resolution	36%	34%	34%	36%	34%	35%
Arbitration	<1%	<1%	-	<1%	<1%	<1%
Arbitration + Negotiation	<1%	-	-	-	-	<1%
Arbitration + Voluntary Mediation	<1%	-	-	-	<1%	<1%
Mandatory Mediation	<1%	<1%	<1%	<1%	-	<1%
Negotiation	3%	2%	2%	2%	1%	2%
Negotiation + Other Judicial Process	<1%	-	<1%	<1%	<1%	<1%
Other Judicial Process	1%	2%	1%	1%	<1%	1%
Voluntary Mediation	<1%	0%	<1%	<1%	<1%	<1%
Settled	43%	44%	44%	42%	46%	44%
No dispute resolution	23%	26%	27%	24%	31%	26%
Arbitration	<1%	-	<1%	<1%	<1%	<1%
Mandatory Mediation	<1%	<1%	<1%	-	-	<1%
Negotiation	19%	17%	15%	17%	13%	16%
Negotiation + Other Judicial Process	<1%	<1%	<1%	1%	<1%	<1%

⁴⁵ Data for 2006/07 were not used because it was apparent from the data that counsel were not completing the field on the use of DR until 2007/08.

⁴⁶ Although arbitration is not available in tax matters, the TLS Portfolio also handles non-tax litigation where arbitration could be used.

	2007/08 (n=6,318)	2008/09 (n=5,999)	2009/10 (n=6,071)	2010/11 (n=7,537)	2011/12 (n=7,278)	Total (n=33,203)
Negotiation + Voluntary Mediation	-	<1%	-	<1%	-	<1%
Other Judicial Process	1%	<1%	1%	1%	2%	1%
Voluntary Mediation	<1%	1%	<1%	<1%	<1%	<1%
Closed Administratively/Transferred	15%	16%	18%	17%	16%	16%
No dispute resolution	15%	16%	18%	17%	16%	16%
Negotiation	<1%	<1%	<1%	<1%	<1%	<1%
Not Indicated	1%	2%	1%	1%	2%	1%
No dispute resolution	1%	2%	1%	1%	2%	1%
Negotiation	<1%	-	-	-	-	<1%
Other Judicial Process	<1%	-	-	-	-	<1%
Total	99%	100%	100%	100%	100%	99%

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

Source: iCase data (Completed litigation files)

Not all cases can be settled, of course, as the ability to reach agreement between the parties relies on many factors, and in Canada, the ability to settle tax matters is more limited. Compared to other jurisdictions, the CRA is somewhat limited in how it can settle files. Unlike in the United States and the United Kingdom, “compromise settlements” (i.e., those based on litigation risk) are not an option in Canada; according to Canadian law, settlement must be in accordance with the *Income Tax Act* (i.e., it must be “principled”) (Mehrban, 2010). Just over one quarter of TLS Portfolio counsel, however, believe that DR processes are underutilized, which rises to 37% when considering only counsel who offered an opinion (n=96) (see Table 28). The most common reasons provided for this under-utilization are that the Agency wants to take the matter to court and that it would take more time to settle the matter than to proceed to court. This finding may indicate an area where the TLS Portfolio and the CRA could work together to improve the use of DR and thereby enhance efficiency.

Table 28: Utilization of Dispute Resolution Processes (Litigation only — n=130)

In your opinion, are dispute resolution processes over-utilized, adequately utilized, or underutilized?

Response	%
Underutilized	27%
Adequately utilized	44%
Over-utilized	3%
Not applicable	7%
Don't know	19%

Source: Legal counsel survey

Knowledge management

Knowledge management is “the behaviours and processes by which a group of people maintains and increases their personal and collective actionable knowledge to compete, increase performance, and reduce risk” (Parsons, 2004). The literature emphasizes the importance of internal knowledge management to share information within the legal unit (e.g., precedent databases, intranet services, opinions), as well as client relationship systems (e.g., shared system that allows the client to track progress and costs) (Susskind, 2010).

As described in Section 4.2.4, the TLS Portfolio has developed tools and structures that are intended to build a shared knowledge base, manage workload and legal risk, and maintain good communication throughout the Portfolio. Although the evaluation found potential areas for improvement, the TLS Portfolio is currently in the process of improving and enhancing some of these tools — notably, the Fiscal Path. It is also contributing to Justipedia.

The literature identifies other potential areas that the TLS Portfolio could consider to both manage knowledge internally, as well as share it with the CRA. The Portfolio has undertaken some of these types of activities already, such as standard pleadings and letters that are available for the use of CRA litigation officers. Other options include online legal guidance, which provides clients with information for legal matters to encourage self-help (Susskind, 2010). Although this type of assistance must be handled with caution so that the Agency does not fail to seek legal advice when needed, it can be used to reduce legal cost without compromising outcomes. For example, if certain legal requests are posed often, materials that respond to them can be provided through this forum. Online legal guidance can also be expanded to other uses, such as providing the CRA with helpful tips on documentation and other evidence that is important to collect on files, and how to formulate a legal request so that it provides sufficient factual information and is clear. The LSU has provided a set of instructions for drafting requests for legal advice on its page located on the CRA’s intranet, but as some counsel commented that requests could be more specific (see Section 4.3.3), these instructions could perhaps be improved (e.g., they could offer examples of the type of factual information that should be included in a request or provide more guidance on how to formulate the legal question).

4.3.3. The Role of the CRA in the Efficiency and Economy of Legal Services

Managing the demand for legal services and improving the efficiency and economy of the delivery of those services are joint responsibilities of the TLS Portfolio and the CRA.

Consequently, the evaluation explored areas where the Portfolio and the Agency could work together to improve the efficiency and economy of legal services.

The results of the legal counsel survey suggest that there may be a benefit to the TLS Portfolio working with CRA officials to examine ways of improving the management of demand for legal services. Although more counsel responding to the question consider the CRA’s understanding of how to manage the demand for legal services to be above average or excellent, a sizable percentage considered it to be below average or poor. Table 29 provides the results for the entire survey sample; note that 23% of respondents did not answer the question. When considering only those respondents who provided an opinion (n=120), one third (33%) considered the level of understanding to be above average or excellent, and 22% considered it to be below average or poor.

Table 29: Level of Understanding of CRA Officials on Managing Demand (n=159)

Based on your experience over the past two years, how would you assess the level of understanding of CRA officials with whom you have worked, with respect to the following?

	Excellent/ above average	Average	Below average/poor	Not applicable	No response
How to manage the demand for legal services generally	25%	34%	17%	1%	23%

Source: Survey of legal counsel

Note: Summation of percent values for rows may not equal 100% due to rounding.

The evaluation identified several areas through which legal costs could be reduced.

Use of the resolution process. As discussed in Section 4.3.2, the resolution process is a method that is intended to reduce the cost of legal services by reducing the time spent on settling files and encouraging disposition. Based on the evaluation findings, there appear to be different expectations or desires on the level of consultation that should occur on these files between counsel and litigation officers. The TLS Portfolio may need to work with the Agency to address different expectations about the level of consultation on these files, so that the benefit of the process is not reduced.

The potential of expanding the resolution process to further improve efficiencies was suggested for other files that raise issues of fact. This expansion has the support of the TLS Portfolio counsel. The potential of the resolution process to reduce legal costs would appear to support the TLS Portfolio and CRA reviewing whether its expansion is appropriate. Any changes to the

resolution process should be supported by training to ensure that expectations are managed and are fully understood by both Justice counsel and CRA staff.

Other dispute resolution strategies. The CRA does endorse mediation of tax disputes concerning income and/or commodity taxes. Appeals Branch staff and the taxpayer may use mediation as an option (before taking the objection to the Tax Court) when they are not able to reach a settlement concerning a dispute. Mediation is typically an option for settling factual matters, rather than matters of legal interpretation (Drache, 2007). However, although mediation is available for tax disputes in Canada, it is not a commonly used option (Mehrban, 2010). In fact, CRA had a mediation pilot that involved the use of mediation at the objection stage, but TLS Portfolio counsel only recalled it being used once. Understanding the reasons for its non-use (e.g., taxpayers are unaware of it, mediation is cost prohibitive, or taxpayers simply want their day in court) might help the Agency and the TLS Portfolio assess whether the program should be resurrected. In addition, the Portfolio could work with the CRA to consider other DR options, which counsel believe are being underutilized. Slightly more counsel surveyed considered CRA’s knowledge of when to use DR options to avoid the need to engage the TLS Portfolio to be below average or poor, compared to those who considered it to be above average or excellent. Table 30 provides the results for the entire survey sample; note that one quarter of respondents did not answer the question. Of respondents who provided an opinion (n=109), 33% considered the CRA’s level of understanding of when to use DR options to be below average/poor, and 29% considered it to be above average/excellent.

Table 30: Level of Understanding of CRA Officials — Dispute Resolution Options (n=159)

Based on your experience over the past two years, how would you assess the level of understanding of CRA officials with whom you have worked, with respect to the following?

	Excellent/ above average	Average	Below average/poor	Not applicable	No response
When to use early DR options to avoid the need to engage the TLS Portfolio	20%	36%	23%	7%	25%

Source: Survey of legal counsel

Note: Summation of percent values for rows may not equal 100% due to rounding.

Communication with the TLS Portfolio. Communication issues almost always affect efficiency, as they can adversely impact decision making by confusing lines of authority, create duplication of efforts or unnecessary work, and result in unclear instructions, among numerous other impacts. The communication issues identified by the evaluation have the potential for these effects. Some issues with communication have been discussed elsewhere in the report, namely

the need to clarify counsel's role in identifying and assessing legal risk (Section 4.2.4), and the expectations on the level of consultation between counsel and CRA litigation officers on files in which the resolution process is used (Section 4.2 and this section). There also appears to be some confusion regarding the respective roles of counsel and the Agency concerning who is ultimately responsible for making decisions on files. TLS Portfolio counsel also commented that legal costs could be reduced by having greater clarity and specificity in the legal questions posed to the Portfolio counsel (see also Section 4.3.2). The findings suggest considerable value in the TLS Portfolio continuing to work closely with the CRA to resolve these issues.

Early involvement of counsel. The early involvement of counsel at the audit stage in the ILBD is considered to have improved the preparation of those files and is cited as a good practice. In addition, involvement of a litigator is considered useful when there is a high likelihood that the file will be contentious and could end in litigation. The early intervention of counsel assists in the preparation of the file for the court process. This was considered to be a particularly good practice for large files that are not project files, as the TLS Portfolio is already heavily involved in project files.

File preparation. Several TLS Portfolio counsel reported that they have to spend substantial time collecting factual information and documents on files that have incomplete documentation. There appear to be considerable opportunities for the TLS Portfolio to work with the CRA to develop standards for legal file preparation, thereby reducing counsel time spent on non-legal matters. Counsel noted that a short document setting out the facts on which they are relying and their rationale behind the assessment would be very helpful. Counsel would also like more information about access to information requests, so that they know what material has been disclosed to the taxpayer. Some suggestions included potential training possibilities, such as obtaining information from third parties. It was recognized that most files do not have a high potential for litigation, so CRA resources in file preparation must also be considered. Given that this issue affects the efficiency of both the TLS Portfolio and the CRA, a collaborative effort in addressing it is needed.

Management of demand. Managing demand is critical to managing legal cost. Key informants from both the CRA and the TLS Portfolio indicated that collective effort is needed to address this issue through actions such as prioritizing the cases initiated by the Agency.

4.3.4. Alternatives

The main alternative explored through the evaluation was the greater involvement of private counsel. Almost all key informants and case study participants (CRA and Justice) preferred the idea of having legal services provided to the CRA through the TLS Portfolio than through the private sector. Most key informants feel that TLS Portfolio services are more appropriate than private sector services with regard to meeting the needs of the Agency. Key informants identified a number of advantages of using TLS Portfolio services over private sector services. They are:

- TLS Portfolio employees have developed a strong relationship with the CRA; the trust and understanding between the Portfolio and the CRA allows them to work effectively together. In addition, given the complexity of the Agency’s work, it is more efficient to use Portfolio legal counsel who understand the client more fully than would private sector counsel — the TLS Portfolio has substantial knowledge of the CRA and the federal government.
- The TLS Portfolio has a national perspective on practice and good national coordination practices, which allow it to provide the CRA with similar services across the country. It would be more difficult for the private sector to achieve the same level of consistency in service provision across the country and to “speak with one voice”.
- Private law firms are vulnerable to conflicts of interest, as they may have other clients who work in the same industry or are in the same tax situation as a taxpayer that is involved in a CRA case.
- The private sector may have a different view from the TLS Portfolio — one more focused on winning for the client (here, the CRA). Whereas the private sector’s ultimate goal may be to win, the Portfolio must also consider policy and larger impacts. The TLS Portfolio’s primary responsibility is protecting the interest of the Crown, which means ensuring that the rule of law is followed and that taxpayers are treated consistently regardless of location.
- The legal rates applied through cost recovery are less than the hourly rates of private sector lawyers.
- The TLS Portfolio has lawyers dedicated to particular CRA priority areas (e.g., international aggressive tax planning). In addition, TLS Portfolio lawyers work closely with CRA staff. These practices allow for a convenient and efficient working relationship that a private law firm could not provide.
- Working with the TLS Portfolio through Justice Canada means that the Agency also has access to wider Justice Canada services (specialized legal groups, practice groups, etc.).

4.3.5. Challenges Facing the TLS Portfolio

The TLS Portfolio has the following two major challenges that could potentially affect efficiency and effectiveness in providing legal services:

- The biggest concern mentioned by most key informants is the loss of senior counsel, both to retirement and to the private sector, where wages are higher than those that Justice Canada can offer, and where tax experience is in demand. Some key informants also mentioned the effect of the Law Practice Model, which has limited the Portfolio's ability to promote counsel and replace senior counsel. Audit reports confirm this view (Internal Audit Branch, 2011a, 2011b, 2011c). The increases in the volume and complexity of work, coupled with the loss of senior counsel, are considered to pose a growing pressure on the Portfolio. This situation may affect efficiency and adversely impact effectiveness, if the ability to assign appropriately experienced counsel to files is compromised.

Another staffing concern involved changes to the Department's staffing practice within the last year, which requires that all staffing be approved at the national Portfolio level. This measure is a response to Budget 2012 and the staffing limitations it implies (Government of Canada, 2012). However, according to a few key informants, this practice is somewhat inefficient, as it causes delays for sections in managing their resource needs; TLS Section directors must wait for approval before counsel or legal assistants can be hired.

- Cost recovery pressures will grow, as legal costs have increased for the CRA (see Section 4.3.1). The TLS Portfolio recognizes that this will increase pressures to reduce legal costs for the Agency while maintaining the level of service. Moreover, cost recovery in an environment of fiscal restraint will create added pressures to reduce costs while maintaining the quality of legal services.

5. CONCLUSIONS

This section of the report presents conclusions based on the findings presented in the previous sections. The information is structured along the main evaluation issues and questions.

Relevance

Is there a continued need for TLS Portfolio legal services?

The TLS Portfolio provides legal services to a single client, the CRA, because of the volume, complexity and inherently legal nature of the Agency's work. The nature of the relationship of the TLS Portfolio and the CRA remains important to the effective delivery of legal services, with the Portfolio offering independent, impartial legal services while also having an in-depth understanding of the policies and practices of the CRA that contributes to the high quality of legal services.

The CRA's need for legal services continues to rise, as demonstrated by the increasing number of actively managed files and the number of hours spent by Portfolio counsel on providing legal services. In addition, the complexity and legal risk of tax law issues addressed by the Portfolio have risen during the last five years due to factors such as the federal government's increased emphasis on complex tax issues. These factors provide confirmation of the continued need for legal expertise on issues related to tax law.

Does the delivery of legal services by the TLS Portfolio continue to respond to federal government priorities and departmental strategic outcomes?

As the TLS Portfolio is the legal counsel to the CRA and the Government of Canada on all tax matters, its work necessarily responds directly to government priorities related to taxation. Over the past five years, there has been good alignment between governmental priorities and commitments outlined in federal budget reports, Speeches from the Throne, Portfolio activities, and commitments established in the annual Department of Justice Reports on Plans and Priorities and Departmental Performance Reports.

The TLS Portfolio also makes efforts to align its structure and services with CRA priorities (which, in turn, are adjusted to respond to federal priorities). The Portfolio's involvement in the CRA's management committee and its close working relationship with the Agency enable it to better respond to changes in CRA priorities. Continuous alignment with the CRA's lines of business helps to ensure that the TLS Portfolio focuses on areas of the law that are important to the CRA's priorities and mandate.

The work of the Portfolio also supports the Department of Justice in achieving its second strategic outcome: the high quality of Portfolio services and the Portfolio's alignment with government and CRA priorities help to ensure that the federal government is supported by effective and responsive legal services.

Does the provision of legal services by the TLS Portfolio align with federal roles and responsibilities?

The TLS Portfolio assists the Minister of Justice and Attorney General in fulfilling his responsibilities under the *Department of Justice Act*. Alignment of the Portfolio's legal services with the *Department of Justice Act* is achieved through the Portfolio's work to advise the CRA on matters of law connected to the Agency, represent the Crown in litigation involving tax issues, and ensure that the CRA's actions and legislative and policy initiatives are in accordance with federal legislation.

Effectiveness

Does the TLS Portfolio provide timely, responsive, high-quality litigation services and legal advice?

Satisfaction with TLS Portfolio legal services is high. The Portfolio is meeting its service standards, which help to ensure that the services provided are clear, practical, timely, courteous and respectful, responsive to client needs, and appropriate to the CRA's policy and program objectives.

Multiple lines of evidence indicate that Portfolio services are high-quality, timely, and generally responsive to client needs. CRA employees are highly satisfied with the quality of Portfolio services, and evidence indicates that the Portfolio is successful at responding to legal requests in a timely manner and meeting CRA and internal departmental deadlines.

The long-term, positive working relationship between the TLS Portfolio and the CRA is a major contributing factor to the Portfolio's ability to provide high-quality services that are responsive to the needs of the Agency. As Portfolio counsel have a good knowledge of the CRA's

requirements, policies, practices, and the nature of the legal issues faced by the Agency, they are able to assist it in developing appropriate solutions to legal issues.

Overall, perspectives of the Portfolio's responsiveness are generally positive; however, the client satisfaction scores that the Portfolio received on two areas of responsiveness (namely, providing updates and involving the CRA in developing legal strategies) may indicate an opportunity for better communication about the appropriate involvement of the CRA on specific kinds of files — i.e., those eligible for resolution strategies. Although the resolution process is intended to reduce interactions with the Agency in an effort to contain legal costs, some CRA evaluation participants expressed a desire for more involvement in, and updates concerning, these files. Therefore, more communication between the TLS Portfolio and the CRA on the respective roles of counsel and litigation officers on files where counsel are using resolution strategies may be beneficial.

Are legal risks identified and assessed in a timely and consistent manner, and managed and mitigated effectively?

Risk identification and assessment. The TLS Portfolio has practices in place to support timely identification of legal risks. Once again, the long-term, ongoing relationship and regular interaction between the Portfolio and the CRA supports timely risk identification. In addition, Portfolio involvement on CRA risk management committees and the involvement of Portfolio lawyers at the audit stage through the CRA's ILBD further contribute to collaboration between the Portfolio and the Agency on risk identification and the timely identification of legal risks (i.e., identification earlier in the file than would be achieved without these practices).

The Portfolio is also effective in assessing legal risks in a timely manner. Most litigation files (93% over the past five years) are assessed for legal risk within 30 days of being opened. Although Justice Canada's legal risk assessment process is less standardized for advisory files, the Portfolio provides the CRA with narrative, more informal accounts of risks levels on these files.

Risk reassessment. TLS Portfolio counsel are expected to reassess legal risk on files to ensure that the CRA and Justice Canada managers are kept apprised of significant changes to the file affecting legal risk. This expectation is articulated in the policy for mandatory risk assessments at pleading and post-discovery for litigation files.

Based on available evidence, the evaluation could not confirm whether legal risk reassessments are occurring *when* they should be (i.e., according to the policy); however, it found that reassessment is being carried out. iCase data indicate that risk reassessment is being practiced by

the Portfolio on the majority of litigation files. In addition, evidence indicates that the Portfolio is reassessing legal risk responsibly (i.e., at key points or developments in the file or when factors change that affect the level of risk).

Communication of legal risks – timeliness, consistency, structures, tools and processes. The TLS Portfolio’s practices for communicating legal risks to the CRA are generally effective. The Portfolio not only identifies and assesses legal risks in a timely manner, but it communicates them to the CRA proactively so that the Agency can factor legal risk into decision making. In addition, both Portfolio counsel and CRA employees generally feel that the Portfolio describes legal risk clearly and consistently.

The Portfolio uses a number of structures, tools and processes for communicating legal risk both within the Portfolio and to the CRA, and the evaluation confirms the usefulness of many of them. Internal briefing tools and procedures, such as Early Warning Notes and the Adverse Reporting Procedure, help to ensure that legal risks are communicated to senior management effectively and at the right time. The Portfolio’s involvement on risk committees (including the CRA’s regional risk management committees and the tri-departmental Risk Management Committee) allows the Portfolio and the Agency to engage in discussions on legal risks, which, in turn, assist the CRA in considering risk in decision making.

Evaluation results were more divided about the usefulness of the Department’s LRM grid as a tool for assessing and communicating legal risk. Its limited application and lack of applicability to advisory files reduce its usefulness. However, it should be noted that this grid is currently under review.

Risk management and mitigation. The Portfolio has appropriate risk management practices. The Portfolio’s practice of considering legal risk in assigning counsel to files promotes risk management, as it ensures that work on files is carried out by appropriate, qualified counsel. In addition, the Portfolio’s continuous communication with the CRA and the monitoring of legal risk contribute to the CRA’s high level of satisfaction with the Portfolio’s role in the development of mitigation strategies and options. Although the Agency may, in some cases, choose to accept legal risk and diverge from Portfolio advice concerning legal risk, evidence indicates that the CRA generally considers Portfolio legal advice in the development of strategies to prevent, mitigate and/or manage legal risk.

Has the TLS Portfolio contributed to the enhanced understanding of legal issues, their implications and potential risks by the CRA?

The TLS Portfolio has been successful at enhancing the CRA's already sophisticated understanding of legal issues. The Portfolio's contributions to the Agency's understanding of legal issues, their implications and potential risks are the result of a range of Portfolio activities and practices, including its involvement in a wide variety of committees that are led by, or also involve, members of the CRA; the ongoing consultations between Portfolio counsel and the CRA on individual files; the timely, clear communication of legal risks to the CRA by Portfolio counsel; and the joint CRA and Portfolio training sessions, shared learning events and practice groups.

Although the CRA's level of understanding is generally high, the evaluation found some evidence of misunderstandings concerning specific issues, such as when to engage the Portfolio, the importance of identifying legal risks, and the potential impacts of legal risks. In addition, evidence suggests that factors such as years of experience may have an influence on CRA employees' understanding of the Portfolio's role in assessing legal risk. These findings point to a potential opportunity for the Portfolio to improve communication and assist in meeting the Agency training needs on these issues.

Do counsel have the appropriate competencies, tools, structures and resources to conduct their work?

In general, the evaluation found that counsel have the appropriate resources to conduct their work, although a few areas of improvement were identified. The TLS Portfolio has two key tools for sharing information internally - the Fiscal Path (intranet site to provide information on the Portfolio and its processes) and Justipedia (an online portal launched in 2012 to provide access to legal content). Satisfaction with these tools is not high, but work is underway to enhance them. As knowledge management is a key method for improving efficiency, the TLS Portfolio should continue to work to ensure that counsel are satisfied with and use these tools.

As the Portfolio's challenges and needs grow more complex, the evaluation found that advancing its technological capabilities has become increasingly critical due to the fact that Justice may be lagging behind the private sector in terms of its technological support. The evaluation found that the Portfolio can certainly look to improve its use of technology. In particular, the use of e-discovery software is not widespread, and the Portfolio may want to assess whether there are potential efficiencies to gain from its greater use and, if so, what are the barriers to its use.

The TLS Portfolio has a number of structures and tools in place to assist Portfolio counsel in providing high-quality, coordinated, “whole-of-government” services, such as National Coordination Committees, the file assignment process, and practice directives. Evaluation results show that, in general, these structures and tools are working well and are viewed positively by Portfolio counsel.

Training opportunities are available to TLS Portfolio counsel internally, externally (third-party training) and through the CRA. Counsel are generally satisfied with the training offered, although those with more than five years of experience are substantially less satisfied, which may indicate a need for more mid- and senior-level training. Counsel provided some suggestions for training that appeared to address this possible gap by requesting training on business practice of particular industries and sector-specific training. In addition, the current travel cap limits the ability for counsel to obtain outside training, which, in turn, increases the importance of internal training opportunities or external training offered online or remotely. However, the evaluation found some limitations in the effectiveness of the Portfolio’s use of these technologies in training (e.g., connectivity or other technical support issues, content and format need improvements). The Portfolio may want to take these suggestions into consideration in its current or future training programs.

Does the TLS Portfolio strategically manage legal issues and protect the interest of the Crown?

For the TLS Portfolio, strategic management of legal issues involves pursuing a national, whole-of-government approach to legal issues, providing a consistent approach in addressing and advising on legal issues, and protecting the interests of the Crown in decisions regarding legal issues and strategies. The TLS Portfolio takes a national, coordinated approach, which supports the integrity of the tax system and fairness to taxpayers by ensuring its consistent application of tax law across the country. This approach reduces legal risk by minimizing the potential for inconsistent application of the law and by supporting the CRA’s compliance with the rule of law.

The TLS Portfolio ensures its whole-of-government approach by coordinating with the Portfolio, as well as with other areas of Justice Canada, as needed. The evaluation found room for improvement in consulting with the CRA LSU, when appropriate, as well as in involving specialized sections like the PLS. Although tax is a very specialized area of the law, there is evidence of an increase in files involving constitutional and Aboriginal law issues, so this type of broader consultation may become increasingly important.

Is the TLS Portfolio legal advice considered by CRA decision makers?

Disagreements with TLS Portfolio legal advice are considered rare, as the Portfolio has such a comprehensive understanding of the practices and policies of the CRA. As a result, the advice of the TLS Portfolio is not only considered in decision making, but is also most often relied upon by the CRA. This finding goes beyond the outcome identified for the TLS Portfolio, which focuses on the consideration of the advice in recognition of the fact that legal advice is just one factor that affects clients' decisions. Clients can choose not to follow the advice given. However, the detailed understanding of the Agency by the Portfolio developed over two decades, coupled with the legal sophistication of the CRA, have led to the advice being not only considered but usually followed by the CRA.

Efficiency and economy

Could the work of the TLS Portfolio be undertaken/conducted more efficiently and economically?

Between 2008/09 and 2011/12, the cost of legal services (minus disbursements) recovered from the CRA rose by 83% due to additional workload which resulted in an increase in number of FTEs, and increases in the rates applied to each FTE.

The TLS Portfolio has undertaken several steps to improve its efficiency while maintaining the quality of legal services. To best serve the CRA, the Portfolio operates like a national law firm and assigns files based on expertise and workload to ensure timely, high-quality work on each file. The Portfolio also manages its work by aligning resources with the level of legal risk, complexity and profile of files; higher risk and complexity files have more counsel assigned to them, a greater level of effort expended on them, and more senior counsel assigned who spend a greater proportion of the hours on the file than more junior counsel. These practices all correspond with approaches to law practice management emphasized in the literature, which promote the delegation of work and the alignment of resources based on the "value" of the work. These approaches in the literature, which are being used by the TLS Portfolio, are considered to efficiently and effectively utilize the resources of the legal unit providing the services.

The TLS Portfolio has also instituted measures, in collaboration with the CRA, to resolve matters efficiently. The Portfolio supports the Agency's increased focus on compliance activities by assigning counsel to assist CRA auditors on complex, large business audits that target aggressive tax planning. TLS Portfolio counsel support CRA auditors on these files, which has improved file preparation and enabled auditors to benefit from legal advice on files that often involve

intensive involvement with taxpayers' counsel. CRA and the Portfolio believe that this work better prepares files for possible litigation and leads to the earlier resolution of files.

The TLS Portfolio and the CRA have also instituted a process to group project files with similar legal issues that involve literally thousands of individual taxpayers. This approach has managed what might otherwise be an unmanageable workload and takes a strategic approach to litigation by selecting a test case that is best suited to determine the legal issues involved, while the other cases are held in abeyance. The efficiency of this approach, however, is outside of the TLS Portfolio and CRA's control, as the courts must agree to hold the similar cases in abeyance and to bind these cases by the decision in the test case in order to realize the full efficiency of the approach.

In another effort to contain legal costs and provide efficient services, the TLS Portfolio and the CRA have a resolution process that pursues alternatives to litigation on low-risk, low-impact files that are not expected to affect tax law. Preliminary information on the use of the resolution process shows that, although it appears to reduce the time files are open and the hours spent on the files, its impact is currently limited, given the number of files that use the process. With wider use, the resolution process could have a more substantial impact on legal cost reduction.

Although the resolution process has proven effective, the TLS Portfolio has not shown an increase in the use of DR more generally during the last five years. The percentage of files concluded by adjudication has remained essentially unchanged, and the most common DR process used is negotiation. About one quarter of counsel believe that DR is currently underutilized, and the evaluation found support for the expansion of the resolution process to other files that pose only factual questions.

Another area where the TLS Portfolio has been active but could consider further improvements is in knowledge management. The literature on law practice management points to knowledge management as a key way to reduce risk and improve performance. Making collective knowledge available reduces duplication of efforts and streamlines the provision of legal services. The Portfolio is undertaking improvements in key areas of knowledge management, such as the Fiscal Path and Justipedia. Further knowledge management enhancements could also increase efficiencies or reduce the cost of legal services, such as online legal guidance for the CRA.

What is the role of the CRA in the efficiency and economy of legal services?

Managing the demand for legal services and improving the efficiency and economy of the delivery of those services are joint responsibilities of the TLS Portfolio and the CRA. The evaluation identified several areas through which legal costs could be reduced. Potential approaches require discussion and a collaborative effort with the CRA, recognizing resources and other implications on both sides.

Expanding the resolution process could bring efficiencies to handling more files that are low profile and will not affect tax law. The potential of the resolution process to reduce legal costs would appear to support the TLS Portfolio and the Agency reviewing whether its expansion is appropriate. There may also be opportunities for additional use of other DR options, such as mediation on tax files that should be discussed.

The CRA is recognized as a legally astute client, but experiences the usual staff turnover. Consequently, the understanding of counsel's and CRA's roles may be a useful subject of continued professional development. The evaluation found some misunderstandings of the role of counsel in identifying, assessing and communicating legal risk; of the level of consultation to be expected on files where the resolution process is used; and of the division of roles on providing and acting on legal advice.

The TLS Portfolio may also want to work with the CRA to assist its personnel in knowing when to seek legal advice and how to make clear and well-defined legal requests that do not lead to the unnecessary expenditure of legal resources. Similarly, the CRA and the TLS Portfolio might want to consider how best to improve file preparation so that counsel are not collecting factual information on files, and the Agency is focusing its efforts on improved file preparation on those files that are contentious and for which the potential for litigation is high.

Just as the CRA has a role in creating demand for legal services, it can also play a role in managing that demand. Some suggestions were to decide whether to proceed with certain matters more strategically and perhaps prioritize cases to assist the Portfolio in managing its workload in a way that aligns with CRA priorities.

Is the TLS Portfolio facing any challenges that are affecting its ability to achieve its expected outcomes?

The evaluation identified two main challenges facing the TLS Portfolio. The first is losing senior counsel to the private bar or retirement without being able to replace them. This situation has the potential to affect efficiency in the provision of legal services on complex matters; erode the

experience and knowledge base of the Portfolio; and affect the quality of legal work. The second challenge is that cost recovery in an environment of fiscal restraint will create added pressure to reduce costs while maintaining the quality of legal services.

6. RECOMMENDATIONS AND MANAGEMENT RESPONSE

Issue 1: Clarifying Roles and Responsibilities

The evaluation identified some areas where a better understanding of roles and responsibilities between counsel and client officials is needed. While the CRA is recognized as a legally astute client, it experiences the usual staff turnover. Consequently, the understanding of counsel's role and CRA's role may be a useful subject of continued professional development.

The evaluation found some misunderstandings of the role of counsel in identifying, assessing and communicating legal risk, of the level of consultation to be expected on files where the resolution process is used and of the division of roles on providing and acting on legal advice.

Recommendation 1:

That the TLS Portfolio work with CRA officials to clarify respective departmental roles and responsibilities.

Management Response:

Agreed. The Department of Justice's role for the entire Portfolio, including the Legal Services Unit, has changed in recent years with the establishment of a number of initiatives. The recent introduction of a resolution process is an example of this. Also, the CRA is going through a time of change. Under the circumstances, it is important to ensure that everyone's roles and responsibilities are well established and understood.

Issue 2: Use of Dispute Resolution

The evaluation found that the percentage of litigation files settled through DR has not changed substantially over the period covered by the evaluation. The principal type of DR process used is negotiation, with very little use of other methods such as mediation. There may be other DR options for the TLS Portfolio and CRA to consider to try to settle files.

The resolution process was introduced to streamline and expedite the resolution of low-risk, low-impact files that are not expected to create legal precedents impacting tax law. This process gives counsel more discretion in how to handle the file and limits the need to consult with CRA. The evaluation found that this process has the potential to reduce costs on these files but it is

currently having a limited impact given the relatively small number of files that meet the criteria for this process. The practice in handling these files is uneven and more communication by the TLS Portfolio with CRA and a more consistent practice by counsel might assist in the adoption of this process and possibly a consideration of an expansion of its use for a greater number of files.

Recommendation 2:

That the TLS Portfolio work with CRA to examine the feasibility of expanding the use of DR on appropriate files, including the use of the resolution process.

Management Response:

Agreed. Our analysis demonstrates the effectiveness of early dispute resolution. That analysis also establishes the importance of a simple, effective process. Moreover, we have already approached the CRA for expanding the current process.

Issue 3: Use of Paralegals

The evaluation concluded that the Portfolio is targeting its legal resources based on the risk and complexity of the file with the intention of minimizing cost and increasing efficiency.

The Portfolio has increased its use of paralegals on files, but as a proportion of hours spent on legal services, paralegal time has remained fairly constant about 4-5% on advisory files and 10-11% on litigation files. Paralegals account for 44% of the total legal service hours for low complexity litigation files. Since the proportion of paralegal time has not changed over the evaluation period, the Portfolio could consider a study on whether it is optimizing its use of paralegals on files. If it considers an increase of the use of paralegals to be a source of efficiency and cost savings, a more detailed assessment of paralegal use could be beneficial for Portfolio management.

Recommendation 3:

That the TLS Portfolio assess the feasibility of making increased use of paralegals as a means of increasing cost efficiency.

Management Response:

Agreed. Distribution of work based on type of duties to be performed and their complexity is an aspect of effectiveness that is key to our legal service delivery. Moreover, several years ago, the Portfolio conducted an analysis on, among other things, all the work that can be done by a paralegal, on the efficiency measures relating to their work and on paralegals' development. The findings from that study were then presented to the managers.

Issue 4: Information Technology

In general, the evaluation found that the TLS Portfolio is falling behind the private sector in terms of available technology to support the delivery of legal services. The evaluation concluded that the use of a software that can handle e-discovery is not widespread within the Portfolio. There are several reasons for this including the fact that the software currently available in the Portfolio is outdated, and has resulted in litigators being unable to read the e-discovery data disclosed by opposing counsel.

Moreover, increased access to video-conferencing facilities, updated software and electronic access to work-related legal information, (such as the *Income Tax Act* on mobile devices), would support counsel in providing legal services. Computers currently being used by counsel have limited capability to support webinars. Given that the current cap on travel limits counsel's ability to attend tax conferences or off-site training, the Portfolio should consider technological tools such as webinars, videos, etc. to increase their legal staff's access to training opportunities.

Recommendation 4:

That the TLS Portfolio provide the results of this evaluation to the Information Solutions Branch and to present these findings at Management Committee with respect to available technology that would support the more efficient delivery of legal services.

Management Response:

Agreed. The Portfolio has already contacted the Information Solution Branch to obtain the technical and technological support required for providing its training

on a national basis through video communication software like “skype”. Access to other technological tools could also enable greater efficiency in delivering our services.

Issue 5: Training

The evaluation found that Portfolio counsel at the more senior levels (over 5 years), reported that current training opportunities are not very useful in managing their work. This suggests that some training gaps for counsel who are interested in enhancing their career opportunities may exist. Given that one of the key challenges for the Portfolio is the loss of senior counsel, development of more advanced training focused on the needs of these counsel would be useful.

The TLS Portfolio is in the process of updating their national training program. They already track some statistics related to training provided to counsel. It would also be useful for them to track statistics on training provided to CRA employees. Ideally, course evaluation forms should be distributed to all course participants. Collection and analysis of this information would support decision-making about future courses and support future evaluations as well.

Recommendation 5:

That the Portfolio examine the training needs of more senior counsel working in the Portfolio, and develop training opportunities to meet these needs.

Management Response:

Agreed. Training is a priority for the Portfolio, and we are committed to fostering an environment that favours and facilitates continuous learning and professional development for all our lawyers.

Recommendation 6:

That the TLS Portfolio systematically collect information about the training provided to TLS Portfolio legal counsel and CRA clients, including information about the quality and usefulness of the training.

Management Response:

Agreed. We have already begun gathering all the information pertaining to the training provided within the Portfolio and are about to implement a similar mechanism for training given at the CRA.

Issue 6: iCase Data

The evaluation identified several areas where additional iCase data could be useful to the TLS Portfolio in the management of and reporting on their legal services.

TLS Portfolio legal work contributes to the recoupment of taxes owed. It contributes to a source of government revenue. Ideally, a cost-benefit analysis would weigh the cost of providing legal services compared with the amount of taxes recovered. The data required for such a cost-benefit analysis, are not readily available as the CRA is responsible for the collection of court judgments or settlements.

Instead, a report of the outcomes of litigation files (either judgement or settlement amounts) could support a cost-benefit analysis of appropriate litigation files.

Recommendation 7:

That the TLS Portfolio regularly track and report on the outcomes of litigation files (i.e., either judgement or settlement amounts) and identify which files can appropriately be managed on a cost-benefit basis.

Management Response:

Agreed. While a cost-benefit approach may be appropriate in relation to certain litigation files, for example in some collections and civil litigation files, it cannot be used in tax appeals files. This is because the Minister of National Revenue has a statutory duty to assess each taxpayer in accordance with the law and these files can only be settled in accordance with the law.

The Portfolio will identify which files can appropriately be managed on a cost-benefit basis and regularly track the amount awarded or settlement amounts on litigation files. Moreover, the Portfolio regularly does performance reports geared to the operational reality of the Portfolio and the CRA.

Recommendation 8:

That the TLS Portfolio record and track legal risk on appropriate advisory files in iCase using available LRM tools.

Management Response:

Technologically, the Departmental Legal Services Unit migrated to iCase during the year 2012, which will help implement this recommendation. Also, the Department will soon implement its new legal risk grid and it can then be introduced in the Departmental Legal Services Unit.

Issue 7: Strategies to Reduce Legal Costs

Managing the demand for legal services and improving the efficiency and economy of the delivery of those services are joint responsibilities of the TLS Portfolio and CRA. The evaluation identified some areas through which legal costs could be reduced in collaboration with CRA, recognizing resource and other implications on both sides.

The Portfolio has already undertaken some Knowledge Management activities and developed some standardized tools for its clients. The TLS Portfolio could assist CRA in clarifying when to seek legal advice and how to make clear and well-defined legal requests that do not lead to unnecessary expenditure of legal resources. Consideration could be given to expand the types of on-line tools, templates and checklists that could provide such guidance. In addition, the evaluation found that there may be opportunities for the TLS Portfolio to work with CRA to develop strategies to improve the practices involved in the preparation of litigation files.

Recommendation 9:

That the TLS Portfolio work with the CRA to explore strategies to reduce the cost of legal services, and improve the efficient and effective delivery of legal services.

Management Response:

Agreed. During preparation of the 2012 Economic Action Plan, the Portfolio worked with the CRA and identified several strategies for reducing legal service costs, which include legislative amendments, a reduction in the number of files sent by the CRA and a number of efficiency measures. Performance indicators were also developed and presented to the CRA.

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Appendix A
Evaluation Matrix

Evaluation Matrix

Issues/Questions	Indicators	Data Sources	Timing of Data Collection	Responsibility for Data Collection
Relevance				
1. Is there a continued need for TLS Portfolio legal services? TB core issue 1	<ul style="list-style-type: none"> • Trends in demand for TLS Portfolio services <ul style="list-style-type: none"> • Number of active files by fiscal year and type of service (litigation, advisory, other) • Total hours of legal services by fiscal year and type of service (litigation, advisory, other) • Legal practice trends (type of legal issues by fiscal year) • Trends in file complexity and risk level by fiscal year and type of service (litigation, advisory, other) 	<ul style="list-style-type: none"> • Document review (e.g., iCase) 	Ongoing	TLS Portfolio
	<ul style="list-style-type: none"> • Legislative and policy requirements • Evolving legal needs in the area of taxation 	<ul style="list-style-type: none"> • Document review 	Evaluation	Evaluation Division
	<ul style="list-style-type: none"> • Assessment of continued need for TLS Portfolio services in all current areas of practice 	<ul style="list-style-type: none"> • Key informant interviews 	Evaluation	Evaluation Division
2. Does the delivery of legal services by the TLS Portfolio continue to respond to federal government priorities? TB core issue 2	<ul style="list-style-type: none"> • Alignment of the TLS Portfolio mandate and activities with federal priorities/policy commitments in the area of taxation • Assessment of how the TLS Portfolio contributes to the priorities and objectives of the federal government 	<ul style="list-style-type: none"> • Document review • Key informant interviews 	Evaluation	Evaluation Division
3. Is the provision of legal services by the Portfolio consistent with the <i>Department of Justice Act</i> and the departmental mandate? TB core issues 2 and 3	<ul style="list-style-type: none"> • Assessment of extent to which TLS Portfolio legal services are consistent with the <i>Department of Justice Act</i> and the departmental mandate 	<ul style="list-style-type: none"> • Document review 	Evaluation	Evaluation Division

Issues/Questions	Indicators	Data Sources	Timing of Data Collection	Responsibility for Data Collection
Performance of the TLS Portfolio (effectiveness): TB core issue 4				
Immediate Outcomes				
4. Does the TLS Portfolio provide timely, responsive high-quality litigation services and legal advice?	<ul style="list-style-type: none"> • Compliance with TLS Portfolio service standards • Assessments by the TLS Portfolio and the CRA on litigation services and legal advice in terms of: <ul style="list-style-type: none"> • clarity • timeliness • meeting deadlines • understanding nature of problem • providing updates/progress reports • involving the CRA in development of legal strategy and positions • developing legal strategies appropriate to CRA policy and/or program objectives • effectively working with the CRA to identify and manage legal risks • overall quality 	<ul style="list-style-type: none"> • Document review (Client Feedback Survey; semi-annual reports on client feedback) • Key informant interviews • Legal counsel survey • File review • Case studies • Focus groups 	Ongoing	TLS Portfolio
5. Are legal risks identified and assessed in a timely and consistent manner?	<ul style="list-style-type: none"> • Use of processes, tools and standards for assessing legal risk • Number and percentage of files “unable to assess” and length of time before assessment entered • Average number of risk assessments/reassessments per file • Consistency of language used in assessing and communicating legal risk • Consistency of risk ratings • Timeliness of assessments/reassessments of legal risk 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey • File review • Case studies • Document review (iCase reports) • File review • Case studies • Key informant interviews • Legal counsel survey • File review • Case studies • Focus groups 	Evaluation	Evaluation Division

Issues/Questions	Indicators	Data Sources	Timing of Data Collection	Responsibility for Data Collection
6. Has the TLS Portfolio contributed to the enhanced understanding of legal issues, their implications, and potential risks by the CRA?	<ul style="list-style-type: none"> • Level of TLS Portfolio involvement in training of appropriate CRA officials on legal issues and risks • Nature and extent of TLS Portfolio involvement on regional risk committees and Tri-departmental Risk Committee • Assessment of the TLS Portfolio contribution to improved understanding of legal issues and legal risks by the CRA 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
7. Do counsel have the appropriate competencies, tools, structures and resources to conduct their work?	<ul style="list-style-type: none"> • Nature and type of tools and structures <ul style="list-style-type: none"> • Fiscal path • Best practices • Practice directives • Teams • Committees • Structured review and approval of facta • Resolution process for cases before the Tax Court of Canada • Use of tools and structures • Satisfaction with tools, structures and resources 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey • File review • Case studies 	Evaluation	Evaluation Division
	<ul style="list-style-type: none"> • Nature and frequency of training • Number of counsel and support staff trained 	<ul style="list-style-type: none"> • Document review 	Ongoing	TLS Portfolio
	<ul style="list-style-type: none"> • Satisfaction with training 	<ul style="list-style-type: none"> • Key informant interviews • Legal counsel survey 	Evaluation	Evaluation Division
	<ul style="list-style-type: none"> • Level and sufficiency of resources (human, financial, information, training, technological) to support TLS Portfolio work 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey 	Evaluation	Evaluation Division
8. Does the TLS Portfolio strategically manage legal issues?	<ul style="list-style-type: none"> • Provision of guidance to counsel of a national approach to legal issues • Consistency in approach to legal issues • Assessment of the Portfolio's ability to make strategic decisions regarding legal issues and strategies 	<ul style="list-style-type: none"> • Document review 	Ongoing	TLS Portfolio
		<ul style="list-style-type: none"> • Key informant interviews • Legal counsel survey • Case studies • Focus groups 	Evaluation	Evaluation Division

Issues/Questions	Indicators	Data Sources	Timing of Data Collection	Responsibility for Data Collection
9. What is the role of the CRA in the effectiveness of legal services?	<ul style="list-style-type: none"> • Involvement of the CRA in TLS Portfolio practice groups and committees 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey • Case studies • Focus groups 	Evaluation	Evaluation Division
Intermediate Outcomes				
10. Is the TLS Portfolio able to achieve appropriate resolution of litigation cases in a timely, cost-effective manner?	<ul style="list-style-type: none"> • Cost of legal services relative to file outcome (success rate), impact and tax amount • Hours spent per closed file by complexity and legal risk • Number and percentage of files settled/closed without going to court • Results of tracking closed litigation files for the potential need for management action 	<ul style="list-style-type: none"> • Document review (iCase) 	Ongoing	TLS Portfolio
	<ul style="list-style-type: none"> • Use and effectiveness of strategies to promote timely, cost-effective resolution <ul style="list-style-type: none"> • Early resolution strategies • Alternative DR practices, where appropriate • Assessment of whether litigation cases are resolved in a timely, cost-effective manner 	<ul style="list-style-type: none"> • Key informant interviews • Legal counsel survey • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
11. Does the TLS Portfolio protect the interests of the Crown?	<ul style="list-style-type: none"> • Counsel work collaboratively within Justice • Counsel consult with specialized sections within Justice, where appropriate • Assessment that an integrated, whole-of-government approach is used in provision of legal services 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey 	Ongoing	TLS Portfolio
		<ul style="list-style-type: none"> • File review • Case studies • Focus groups 	Evaluation	Evaluation Division

Issues/Questions	Indicators	Data Sources	Timing of Data Collection	Responsibility for Data Collection
12. Is the TLS Portfolio legal advice considered in program and tax law policy development and decision-making?	<ul style="list-style-type: none"> • Active participation of the Portfolio in CRA committees and management structures • Consideration of TLS Portfolio legal advice by decision-makers in program and policy development • TLS Portfolio and CRA assessment of legal advice in terms of: <ul style="list-style-type: none"> • involving the CRA in development of legal strategy and positions • developing legal strategies appropriate to CRA policy and/or program objectives 	<ul style="list-style-type: none"> • Document review (Client Feedback Survey) • Key informant • Legal counsel survey • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
13. Are legal risks managed and mitigated effectively?	<ul style="list-style-type: none"> • Consideration of legal risk in the development and implementation of CRA policies, programs and litigation strategies • Use of legal advice to prevent, mitigate and/or manage legal risk • Use of contingency plans for high-risk files 	<ul style="list-style-type: none"> • Document review (Client Feedback Survey, iCase) • Key informant interviews • Legal counsel survey • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
14. Is demand for legal services met in a responsive and cost-effective manner?	<ul style="list-style-type: none"> • Mix of legal resources (FTEs/hours by group and level) by file complexity and level of risk • Resources are allocated in line with Portfolio Business Plan and Service Agreement with the CRA 	<ul style="list-style-type: none"> • Document review (iCase reports) 	Ongoing	TLS Portfolio
	<ul style="list-style-type: none"> • Measures in place to manage demand for legal services and their effectiveness • Assignment of counsel to files based on complexity and level of risk • Assessment of the Portfolio's ability to meet demand for legal services in terms of: <ul style="list-style-type: none"> • Human resources • Financial resources • CRA priorities 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey • File review • Case studies • Focus groups 	Evaluation	Evaluation Division

Issues/Questions	Indicators	Data Sources	Timing of Data Collection	Responsibility for Data Collection
Ultimate Outcomes				
15. To what extent does the TLS Portfolio contribute to a federal government that is supported by effective and responsive legal services?	<ul style="list-style-type: none"> • Contribution of the TLS Portfolio to provision of effective, responsive legal services 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey • File review • Case studies • Focus groups 	Evaluation	Evaluation Division
16. What factors are contributing to or constraining the achievement of expected outcomes?	<ul style="list-style-type: none"> • Constraints on ability to achieve outcomes • Factors supporting achievement of outcomes 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey • Case studies • Focus groups 	Evaluation	Evaluation Division
Performance of the TLS Portfolio (efficiency, economy): TB core issue 5				
17. Is the TLS Portfolio facing any challenges in terms of available funding, organizational structure/staffing, or internal support (training, technological, research) that are affecting its ability to achieve its expected outcomes?	<ul style="list-style-type: none"> • Forecasted resource needs compared to available resources • Identified resource challenges • Assessment of the effectiveness of the TLS Portfolio organizational structure 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey • Case studies • Focus groups 	Evaluation	Evaluation Division

Issues/Questions	Indicators	Data Sources	Timing of Data Collection	Responsibility for Data Collection
<p>18. Could the work of the TLS Portfolio be undertaken/ conducted more efficiently and economically?</p>	<ul style="list-style-type: none"> • Mix of legal resources (FTEs/hours by group and level) by file complexity and level of risk • Hours by types of files • Cost by types of files • Standard of 1300 hours of legal services per FTE is met • Caseload per FTE by complexity • Contingent liability trends 	<ul style="list-style-type: none"> • Document review (iCase reports) 	Ongoing	TLS Portfolio
	<ul style="list-style-type: none"> • Measures in place to manage efficiency and cost of legal services and their effectiveness (e.g., Law Practice Model; practice groups; use of standardized processes, practices, approach to assigning work and determining when to outsource, information management tools such as iCase) • Suggestions for improvements in efficiency 	<ul style="list-style-type: none"> • Key informant interviews • Legal counsel survey • Case studies • Focus groups 	Evaluation	Evaluation Division
	<ul style="list-style-type: none"> • Alternative approaches to service delivery • Trends in law practice/service delivery models 	<ul style="list-style-type: none"> • Literature review 	Evaluation	Evaluation Division
<p>19. What is the role of the CRA in the efficiency and economy of legal services?</p>	<ul style="list-style-type: none"> • Role and responsibility of the CRA in managing demand for legal services • Involvement of the CRA in TLS Portfolio practice groups and committees • Assessment of the CRA’s effectiveness in managing its demand for legal services • Number and proportion of files settled in early DR by the CRA that do not require TLS Portfolio services • Timely involvement of the TLS Portfolio by the CRA 	<ul style="list-style-type: none"> • Document review • Key informant interviews • Legal counsel survey • Case studies • Focus groups 	Evaluation	Evaluation Division

Appendix B
Data Collection Instruments

Key Informant Interview Guide for Department of Justice

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Tax Law Services (TLS) Portfolio. One aspect of the study is key informant interviews with representatives of Canada Revenue Agency (CRA) and the Department of Justice.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Department of Justice Evaluation Division. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

Introduction

1. Please describe briefly your current roles and responsibilities. If you are involved in any TLS Portfolio committees or CRA committees, please include them in your response.
2. Please describe briefly your involvement with the TLS Portfolio.

Rationale and Relevance

3. Have you noticed any changes in the demand for TLS Portfolio services in the last five years? Please consider the volume, type of legal issues, complexity, and legal risk level, or any other characteristics of your work. How has the TLS Portfolio responded to these trends?
4. In your view, how have the CRA's priorities regarding tax law services changed over the last five years (e.g., a focus on appeals versus compliance)? How has the TLS Portfolio responded to meet CRA's priorities?
5. Have federal government priorities in the area of taxation law and policies changed over the past five years? How has the TLS Portfolio responded to meet federal priorities?

Performance – Effectiveness

6. As you know, the TLS Portfolio is guided by service standards in its dealings with the CRA. These standards include:
 - Provision of legal services in either official language
 - Courteous and respectful treatment

- Timely response to legal service requests
- Negotiation of and attention to deadlines
- Provision of clear and practical guidance on resolving legal issues
- Provision of ongoing feedback respecting CRA's requests for service
- Development of drafting options and solutions appropriate to CRA's policy and program objectives
- Early identification of means to prevent and resolve legal disputes
- Provision of advice or recommendations regarding implementation options (e.g., advisory versus legislative or regulatory) for policies and programs

In your view, are these service standards being met? In instances where the service standards are not met, please identify which are not, and what you believe are the most common contributing factors.

7. Please describe how the TLS Portfolio and the CRA work together to identify and assess legal risks. In your answer, please include TLS involvement in CRA risk committees or other committees. In your opinion, how effective is this collaboration?
8. In your opinion, has the CRA's level of awareness and understanding of legal risks improved over the last five years? If yes, to what extent do you feel this improvement is attributable to the TLS Portfolio or TLS regional sections? If no, why do you say that?
9. Based on your experience, do you think the Portfolio uses consistent language to describe legal risk? In your opinion, are the legal risk descriptions useful to the CRA, the regional office(s) involved, and the Department generally? Why or why not?
10. Do you find the Department and Portfolio's processes, tools and standards for assessing legal risk helpful? Please explain.
11. In general, are the consultations/collaboration between the CRA and the TLS Portfolio effective? Why or why not? In your response, please consider whether the consultations assist the TLS Portfolio in understanding the CRA's policy and program objectives; whether the consultations enhance the CRA's understanding of legal issues, their implications, and potential risks as well as possible options to manage those risks; and how the consultations/collaboration affect the progress and ultimate outcome of the file.

12. In your experience, to what extent is the advice provided by the TLS Portfolio considered by the CRA in developing legal strategies and making decisions? What factors make it more or less likely that advice will be considered?
13. In general, are the consultations/collaboration between the TLS Portfolio and the specialized sections in Justice effective? Why or why not? In your response, please think of the various ways the Portfolio and the specialized sections may work together such as identifying and assessing legal risks, managing and mitigating legal risks, determining litigation strategies, and assessing legal options.
14. How well does the coordination/consultation within the Portfolio work, including across regional offices and between regional offices and headquarters? Please explain.
15. In your view, how well does the briefing process work (e.g., in terms of clarity of the process and level of effort required)? In your answer, please consider the processes relevant to your work (e.g., Early Warning Notes, Adverse Reporting Procedure, process through the National Coordination Network). Are senior managers/officials in Justice made sufficiently aware of complex and high profile cases? Please explain.
16. How helpful are the following Portfolio tools and structures in managing the Portfolio's files?
 - National Coordinating Committees
 - Resources on the Fiscal Path
 - Justipedia
 - Documents from the Good Practices and Communication Committee
 - Practice directives
 - Structured review and approval of facta
 - Resolution process for cases before the Tax Court of Canada
 - File assignment process
17. What is your opinion of the current training provided to TLS Portfolio counsel? Are any training needs not being met?

18. Please describe the strategies used by the TLS Portfolio to ensure a nationally coordinated approach to legal issues. In your opinion, are these strategies effective? What, in your opinion, is the purpose of/need for a national approach in the provision of legal services to the CRA?
19. What factors contribute to or constrain the TLS Portfolio's ability to provide timely, high-quality, cost effective legal services?

Performance – Efficiency and Economy

20. In your opinion, are adequate resources (e.g., human, financial, technological) in place to support the work of the TLS Portfolio? How does the TLS Portfolio manage resource challenges? (Regional Directors) How do the TLS regional sections manage their resource challenges?
21. In your opinion, what role does the CRA play in improving the effectiveness, efficiency and economy of legal services? In your response, please consider issues such as:
- The role and responsibility of the CRA in managing demand for legal services
 - The involvement of the CRA in TLS Portfolio practice groups and committees
 - The involvement of TLS Portfolio counsel in CRA risk committees and other committees
 - The use of early dispute resolution or alternative dispute resolution processes
 - The timeliness in which the CRA involves the TLS Portfolio in files
22. In your opinion, are the legal services provided by the TLS Portfolio cost-effective? In your response, please consider issues such as:
- Use of alternative dispute resolution practices and early resolution strategies, when appropriate
 - The hours spent on a case/file in proportion to legal risk and/or complexity
 - Availability of counsel at the appropriate level for the file risk/complexity
 - Other tools or practices used to reduce the cost of legal services
23. What, if any, suggestions do you have for improving the efficiency or cost effectiveness of legal services provided by the TLS Portfolio?

Alternatives

24. In your opinion, how would a private sector approach to the provision of legal services to the CRA differ from the TLS Portfolio approach? What are the advantages and disadvantages of using the TLS Portfolio to provide services to the CRA, as opposed to using a private law firm? Do the advantages outweigh any disadvantages? Why or why not?

Conclusion

25. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Key Informant Interview Guide for Canada Revenue Agency

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Tax Law Services (TLS) Portfolio. One aspect of the study is key informant interviews with representatives of Canada Revenue Agency (CRA) and the Department of Justice.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Department of Justice Evaluation Division. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

Introduction

1. Please describe briefly your current roles and responsibilities. How do they relate to the TLS Portfolio?

Rationale and Relevance

2. Have you noticed any changes in the demand for TLS Portfolio services in the last five years? Please consider the volume, type of legal issues, complexity, and legal risk level, or any other characteristics of your work. How has the TLS Portfolio responded to these trends?
3. In your view, how have the CRA's priorities regarding tax law services changed over the last five years (e.g., a focus on appeals versus compliance)? How has the TLS Portfolio responded to meet CRA's priorities?
4. Have federal government priorities in the area of taxation law and policies changed over the past five years? How has the TLS Portfolio responded to meet these priorities?

Performance – Effectiveness

5. As you know, the TLS Portfolio is guided by service standards in its dealings with the CRA. These standards include:
 - Provision of legal services in either official language
 - Courteous and respectful treatment
 - Timely response to legal service requests

- Negotiation of, and attention to, deadlines
- Provision of clear and practical guidance on resolving legal issues
- Provision of ongoing feedback respecting CRA’s requests for service
- Development of drafting options and solutions appropriate to CRA’s policy and program objectives
- Early identification of means to prevent and resolve legal disputes
- Provision of advice or recommendations regarding implementation options (e.g., advisory versus legislative or regulatory) for policies and programs

In your view, are these service standards being met? In instances where the service standards are not met, please identify which are not, and what you believe are the most common contributing factors.

6. Please describe how/if the TLS Portfolio and the CRA work together to identify and assess legal risks, and how/if they work together to develop options to manage or mitigate those risks. In your answer please include TLS involvement in CRA risk committees or other committees. In your opinion, how effective is this collaboration?
7. In your opinion, has the CRA’s level of awareness and understanding of legal risks improved over the last five years? If yes, to what extent do you feel this improvement is attributable to the TLS Portfolio? If no, why do you say that? If you are aware of the training provided by the TLS Portfolio, please include your assessment of it in your response.
8. How satisfied are you with how legal risks are communicated to the CRA in terms of timeliness, clarity and consistency? In your opinion, are the legal risk descriptions useful to the CRA? Why or why not?
9. In general, are the consultations/collaboration between the CRA and the TLS Portfolio (or TLS regional sections) effective? Why or why not? In your response, please consider whether the consultations assist the TLS Portfolio in understanding the CRA’s policy and program objectives; whether the consultations enhance the CRA’s understanding of legal issues, their implications and potential risks; and whether the consultations/collaboration affect the progress and ultimate outcome of the file.

10. In your experience, to what extent is the advice provided by the TLS Portfolio (or TLS regional sections) considered in the legal strategies pursued and decisions made by the CRA? What factors make it more or less likely that advice will be considered?
11. In your experience, how well coordinated is the TLS Portfolio in working on matters that involve more than one CRA office and/or multiple regional offices within the Department of Justice?
12. How does the TLS Portfolio (or TLS regional sections) support the briefing process within CRA? Are senior managers/officials in CRA made sufficiently aware of complex and high profile cases? Please explain.
13. In your view, how important to the CRA is a nationally coordinated approach to legal services? Is the TLS Portfolio successful in ensuring a nationally coordinated approach to legal services? Why or why not?

Performance – Efficiency and Economy

14. In your view, how accurate is the CRA’s approach to forecasting demand for legal services? Are the measures that the CRA currently has in place to manage demand for legal services effective? Why or why not?
15. Does the TLS Portfolio have adequate resources (e.g., human, financial, technological) in place to support the CRA’s Portfolio-related work? What, if any, resource challenges has the CRA encountered in working with the TLS Portfolio?
16. Based on your experience, are appropriate counsel assigned to files (in terms of counsel years of experience and areas of expertise, and the level of complexity of files)? Please explain.
17. In what ways (if any) does the CRA contribute to the effectiveness, efficiency, and economy of legal services? In your response, please consider issues such as:
 - The degree to which the CRA is involved in TLS Portfolio practice groups, committees, and working groups
 - The involvement of TLS Portfolio counsel in CRA risk committees and other committees

- The use of early dispute resolution or alternative dispute resolution processes, including the degree to which the CRA tries to resolve disputes prior to involving the TLS Portfolio or regional sections
- The degree to which the CRA involves the TLS Portfolio in files in a timely manner

18. In your opinion, are the legal services provided by the TLS Portfolio cost effective? In your response, please consider issues such as:

- Use of alternative dispute resolution practices and early resolution strategies, when appropriate
- Whether the time spent on a case/file is in proportion to legal risk and/or complexity

19. What factors contribute to or constrain the TLS Portfolio's ability to provide timely, high-quality, cost effective legal services?

20. What, if any, suggestions do you have for improving the efficiency or cost effectiveness of legal services engaged by the CRA?

Alternatives

21. In your opinion, how would a private sector approach to the provision of legal services to the CRA differ from the TLS Portfolio approach? What are the advantages and disadvantages of using the TLS Portfolio to provide services to the CRA, as opposed to using a private law firm? Do the advantages outweigh any disadvantages? Why or why not?

Conclusion

22. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Key Informant Interview Guide for Finance –Tax Counsel Division

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Tax Law Services (TLS) Portfolio. One aspect of the study is key informant interviews with representatives of the Department of Finance Legal Services Unit as well as the Department of Justice Litigation Branch and Public Law Sector.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Department of Justice Evaluation Division. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

Not all questions will be relevant to your work. We have noted below which questions we believe to be applicable to each group. However, please feel free to answer any of the questions.

Introduction

1. Please describe briefly your current roles and responsibilities. What type of work do you do with the TLS Portfolio?

Performance — Effectiveness

2. Please describe how/if the TLS Portfolio and your group work together. Are risks discussed? If not, why?
3. If so, to what extent has this collaboration affected the level of awareness and understanding of legal risks in matters where the Department of Finance and the Canada Revenue Agency have a shared interest? In your response, please consider the effects on the level of awareness and understanding of legal risks for the Finance LSU, the TLS Portfolio, and their client departments/agencies. We understand that you may only be able to comment on some of these groups.
4. In areas where the Finance LSU and the TLS Portfolio work collaboratively (e.g., amendments to legislation and regulations, policy amendments), how satisfied are you with the way legal risks are communicated between the Finance LSU and the TLS Portfolio in terms of timeliness, clarity and consistency?

5. In general, are the consultations/collaboration between your group and the TLS Portfolio effective? Why or why not? In your response, please consider whether the consultations enhance the understanding of legal issues, their implications and potential risks; and whether the consultations/collaboration affect the progress and ultimate outcome of the file.
6. Please describe the type and frequency of consultations that occur between your group and the TLS Portfolio. Based on your experience, do they occur when they should? Are they effective? How, if anything, could the TLS Portfolio improve these consultations?
7. Do you have anything you would like to add about your group's relationship with the TLS Portfolio?

Thank you. We greatly appreciate your participation.

Key Informant Interview Guide for the Department of Justice Public Law Sector

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Tax Law Services (TLS) Portfolio. One aspect of the study is key informant interviews with representatives of the Department of Finance Legal Services Unit as well as the Department of Justice Litigation Branch and Public Law Sector.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Department of Justice Evaluation Division. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

Not all questions will be relevant to your work. We have noted below which questions we believe to be applicable to each group. However, please feel free to answer any of the questions.

Introduction

1. Please describe briefly your current roles and responsibilities. What type of work do you do with the TLS Portfolio?

Rationale and Relevance

2. Have you noticed any changes in the demand from the TLS Portfolio in the last five years? Please consider the volume, type of legal issues, complexity and legal risk level, or any other characteristics of your work.

Performance — Effectiveness

3. In general, are the consultations/collaboration between your group and the TLS Portfolio effective? Why or why not? In your response, please consider whether the consultations enhance the understanding of legal issues, their implications and potential risks; and whether the consultations/collaboration affect the progress and ultimate outcome of the file.
4. Please describe the type and frequency of consultations that occur between your group and the TLS Portfolio. Based on your experience, do they occur when they should? Are they effective? How, if anything, could the TLS Portfolio improve these consultations?
5. In your experience, to what extent is the advice provided by your group considered in the development of legal strategies by the TLS Portfolio? Are there any systemic barriers to

advice being incorporated into decision making? What factors make it more or less likely that advice will be incorporated?

6. Do you have anything you would like to add about your group's relationship with the TLS Portfolio?

Thank you. We greatly appreciate your participation.

Key Informant Interview Guide for the Department of Justice Litigation Branch

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Tax Law Services (TLS) Portfolio. One aspect of the study is key informant interviews with representatives of the Department of Finance Legal Services Unit as well as the Department of Justice Litigation Branch and Public Law Sector.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Department of Justice Evaluation Division. You will have an opportunity to review our written summary of the interview and make any corrections or additions.

Not all questions will be relevant to your work. We have noted below which questions we believe to be applicable to each group. However, please feel free to answer any of the questions.

Introduction

1. Please describe briefly your current roles and responsibilities. What type of work do you do with the TLS Portfolio?

Rationale and Relevance

Performance — Effectiveness

2. In general, are the consultations/collaboration between your group and the TLS Portfolio effective? Why or why not? In your response, please consider whether the consultations enhance the understanding of legal issues, their implications and potential risks; and whether the consultations/collaboration affect the progress and ultimate outcome of the file.
3. Please describe the type and frequency of consultations that occur between your group and the TLS Portfolio. Based on your experience, do they occur when they should? Are they effective? How, if anything, could the TLS Portfolio improve these consultations?
4. How does the TLS Portfolio support the briefing process within Justice? Are senior managers in Justice made sufficiently aware of complex and high profile cases? Please explain. (Prompt: include in your response the TLS Portfolio's participation in the National Litigation Committee).

5. In your view, how important is a nationally coordinated approach to litigation services in Justice? Is the TLS Portfolio successful in contributing to a nationally coordinated approach to litigation? Please explain.
6. Do you have anything you would like to add about your group's relationship with the TLS Portfolio?

Thank you. We greatly appreciate your participation.

Case Study Guide for the Department of Justice

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Tax Law Services (TLS) Portfolio. One aspect of the study is an in-depth review of three files to provide more detailed information of the TLS Portfolio's approach to managing files. Each case study includes interviews with representatives of the Canada Revenue Agency (CRA) and the Department of Justice, as well as a review of the file, which is conducted by TLS Portfolio staff.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Department of Justice Evaluation Division. You will have an opportunity to review our written summary of the interview and make any corrections/additions.

1. What was your role on the file that we will be discussing today?
2. If you are aware of it, please describe the process used to engage the TLS Portfolio's legal services in this file. In your opinion, was the Portfolio engaged in a timely manner? Why or why not?

Legal Risk Management

3. Were you involved in the identification and assessment of legal risk on the file? If yes, were others from the Portfolio, Justice regional offices, specialized sections of Justice, and/or the CRA consulted to assist in the identification and assessment of the legal risk? How were they involved? Was this involvement effective in identifying and assessing the legal risks?
4. To the best of your recollection, how were the legal risks described in this file in terms of risk level or other language used? Based on your experience on this file, do you think the Portfolio uses consistent language to describe legal risk? In your opinion, were the legal risk descriptions useful to the CRA? Why or why not?
5. In this file, how was TLS Portfolio legal advice used to manage and mitigate legal risks? In your response, consider how the TLS Portfolio responded to manage and mitigate legal risks and how the CRA used TLS Portfolio (or TLS regional section) advice to manage and mitigate legal risks.
6. Did you find the Department's and Portfolio's processes, tools, and standards for assessing legal risk helpful?

7. Was a contingency plan developed for this file? Why or why not? Was the Portfolio consulted in the preparation of the contingency plan? If so, to what extent?

Consultation and Communication

8. How often and for what purposes did the TLS Portfolio consult with the CRA on this file? To what extent was the CRA involved in the development of legal strategy and positions?
9. Was the file brought to the attention of CRA risk committees or other committees? Why or why not? To what extent, if any, did committee discussions concerning the file affect the approach or strategy taken by the CRA or the TLS Portfolio in dealing with the file?
10. In general, was the consultation/collaboration between the CRA and the TLS Portfolio on this file effective? Why or why not? In your response, please consider whether the consultations assisted the TLS Portfolio in understanding the CRA's policy and program objectives; whether the consultations enhanced the CRA's understanding of legal issues, their implications, and potential risks; and whether the consultations/collaboration affected the progress and ultimate outcome of the file.
11. Were any of the specialized sections of Justice consulted on this file? Please explain why the specialized sections were consulted, and what value, if any, this consultation brought to the file.
12. Were other Justice regional offices consulted on this file? Why or why not? In your opinion, what value, if any, did this consultation bring to this file?
13. What other offices and structures within the TLS Portfolio were involved in the file, if any? How well did the coordination/consultation within the Portfolio work? Was your experience in this file consistent with the TLS Portfolio's national approach to legal issues and legal service delivery? Please explain.
14. What, if any, briefing or reporting was done on this file (e.g., Early Warning Notes, Adverse Reporting Procedure, reporting through the National Coordination Network)? If none occurred, please explain why. If briefing occurred, please consider who was briefed, and when and why they were briefed. In your view, how well did the briefing process work (e.g., in terms of clarity of the process and level of effort required)? Were senior managers/officials made sufficiently aware of this file? Please explain.

Resources

15. What, if any, resources challenges (human, financial, technical) did you experience in your work on this file? How were these challenges managed?
16. Did you use any of the following Portfolio tools and structures on this file and, if so, were they helpful in managing the file and obtaining a satisfactory result?
 - National Coordinating Committees
 - Resources on the Fiscal Path
 - Justipedia
 - Documents from the Good Practices and Communication Committee
 - Practice directives
 - Structured review and approval of facta
 - Resolution process for cases before the Tax Court of Canada

Results

17. (For litigation files only) Were early resolution strategies or alternative dispute resolution strategies considered or used in this file? Why or why not? If they were used, what caused them to be successful or unsuccessful in resolving the file?
18. In your opinion, was this file handled in a cost-effective manner? What, if anything, could have been done differently by the TLS Portfolio and/or the CRA to reduce costs?
19. To what extent was the legal advice provided by the TLS Portfolio considered in the legal strategies pursued and decisions made by the CRA in this file? Please explain.
20. Do you believe that the Portfolio provided timely, responsive, high-quality legal services on this file? Why or why not? What feedback, if any, did the TLS Portfolio team receive from the CRA on your legal services?
21. Are there any best practices/lessons learned from this file that you would like to share?

22. Based on your legal experience, how do the TLS Portfolio's legal services differ from what the private sector would provide the client? Please answer based on this file and your work with the TLS Portfolio more generally.

Conclusion

23. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Case Study Guide for Canada Revenue Agency

The Department of Justice has hired PRA Inc. to conduct an evaluation of the Tax Law Services (TLS) Portfolio. One aspect of the study is an in-depth review of three files to provide more detailed information of the TLS Portfolio's approach to managing files. Each case study includes interviews with representatives of the Canada Revenue Agency (CRA) and the Department of Justice, as well as a review of the file, which is conducted by TLS Portfolio staff.

The information we gather through this interview will be summarized in aggregate form. Interview notes will not be shared outside of PRA and the Department of Justice Evaluation Division. You will have an opportunity to review our written summary of the interview and make any corrections/additions.

1. What was your role on the file that we will be discussing today?
2. If you are aware of it, please describe the process used to engage the TLS Portfolio's legal services in this file. In your opinion, was the Portfolio engaged in a timely manner? Why or why not?

Legal Risk Management

3. Were you involved in the identification and assessment of legal risk on the file? If yes, were others from the Portfolio, regional offices, specialized sections of Justice, and/or the CRA consulted to assist in the identification and assessment of the legal risk? How were they involved? Was this involvement effective in identifying and assessing the legal risks?
4. To the best of your recollection, how were the legal risks described in this file in terms of risk level or other language used? Based on your experience on this file, do you think the Portfolio uses consistent language to describe legal risk? In your opinion, were the legal risk descriptions useful to the CRA? Why or why not?
5. In this file, how was TLS Portfolio legal advice used to manage and mitigate legal risks? In your response, consider how the TLS Portfolio responded to manage and mitigate legal risks and how the CRA used TLS Portfolio (or TLS regional section) advice to manage and mitigate legal risks.
6. Was a contingency plan developed for this file? Why or why not? Was the Portfolio consulted in the preparation of the contingency plan? If so, to what extent?

Consultation and Communication

7. How often and for what purposes did the TLS Portfolio consult with the CRA on this file? To what extent was the CRA involved in the development of legal strategy and positions?
8. Was the consultation/collaboration between the CRA and the TLS Portfolio on this file effective? Why or why not? In your response, please consider whether the consultations assisted the TLS Portfolio in understanding the CRA's policy and program objectives; whether the consultations enhanced the CRA's understanding of legal issues, their implications, and potential risks; and whether the consultations/collaboration affected the progress and ultimate outcome of the file.
9. Did the TLS Portfolio and the CRA work across regional offices on this file? If so, in your view, was the collaboration between regional offices effective? Why or why not? To what extent would you say that national, as opposed to regional, legal issues and legal service delivery was maintained? Please explain.
10. Was the file brought to the attention of CRA risk committees or other committees? Why or why not? To what extent, if any, did committee discussions concerning the file affect the approach or strategy taken by the CRA or the TLS Portfolio in dealing with the file?
11. To your knowledge, what, if any, briefing or reporting was done on this file? If none occurred, please explain why. If briefing occurred, did the TLS Portfolio (or TLS regional sections) support the briefing process within CRA? Were senior managers/officials in CRA made sufficiently aware of this file? Please explain.

Resources/Counsel

12. In your opinion, were appropriate counsel assigned to this file (considering the years of experience of the counsel and the level of complexity of the file)? Did the TLS Portfolio assign adequate resources to undertake the work required? Please explain. Were you aware of any other resources challenges (human, financial, technical) in your work on this file? How were these challenges managed?

Results

13. (For litigation files only) Were early resolution strategies or alternative dispute resolution strategies considered or used in this file? Why or why not? If they were used, what caused them to be successful or unsuccessful in resolving the file?
14. Have you ever worked on a legal matter for the CRA with the private bar? Based on your experience(s), what are the advantages and disadvantages of a private sector approach, as opposed to the TLS Portfolio approach to legal services? If this file had been handled by the private bar, as opposed to the TLS Portfolio, do you think that it would have been handled better, worse, or similarly? Why or why not?
15. In your opinion, was this file handled in a cost-effective manner? What, if anything, could have been done differently by the TLS Portfolio and/or the CRA to reduce costs?
16. To what extent was the legal advice provided by the TLS Portfolio considered in the legal strategies pursued and decisions made by the CRA in this file? Please explain.
17. Do you believe that the Portfolio provided timely, responsive, high-quality legal services on this file? Why or why not? In your opinion, did the CRA provide feedback to the TLS Portfolio on the quality of its legal services?
18. Are there any best practices/lessons learned from this file that you would like to share?

Conclusion

19. Do you have any other comments?

Thank you. We greatly appreciate your participation.

Survey of Legal Counsel Tax Law Services Portfolio

The Department of Justice is conducting an evaluation of the Tax Law Services (TLS) Portfolio. This evaluation comes in response to the Treasury Board Secretariat's *Policy on Evaluation*, which requires government departments to evaluate all direct expenditures (including legal services) every five years. The Department of Justice has hired PRA Inc., an independent research company, to assist in conducting the evaluation. The purpose of the evaluation is to assess the extent to which the TLS Portfolio provides effective and responsive legal services to the Canada Revenue Agency (CRA). In addition to this survey of legal counsel, the evaluation will also rely on other lines of evidence, including a review of documents and data, key informant interviews with representation from the Department of Justice and the CRA, a file review, case studies, and focus groups.

Your response is very important to us. We want to hear from all TLS Portfolio counsel. The survey is easy and can be answered quickly. Most questions only ask you to click on the appropriate response. The questionnaire should take about 20 minutes to complete. All information you provide is confidential and will be used only to create aggregate results to be included in the evaluation report. No individual responses will be identified. We would appreciate receiving your completed questionnaire by **Date**.

If you have questions about the survey, please call Amy Richmond of PRA at 1-888-877-6744 (toll-free) for service in English, Francois Dumaine of PRA at 1-866-422-8468 (toll-free) for service in French, or email your questions to admin@pra.ca. If you encounter any technical problems with the questionnaire, please contact Jo-Anne Chrétien at 613-957-9610. For questions about the evaluation in general, you may contact Marilyn Doering, Evaluation Division, Department of Justice, at 613-954-3963.

Background

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

1. When did you first join the Department of Justice?
 - Less than a year ago
 - Between 1 and 5 years ago
 - Between 6 and 10 years ago
 - More than 10 years ago

2. Where do you work?

- DOJ Headquarters (excluding LSU)
- DOJ Regional Office
- Legal Services Unit (LSU)

3. What is your classification level?

- Counsel (LA-1 and LA-2A)
- Senior Counsel (LA-2B)
- General Counsel (LA-3A)
- Senior General Counsel (LA-3B)
- Manager (LC)

4. Which kind of files do you work on most often?

- Litigation
- Advisory
- Legislative services (legislative and regulatory drafting)

Consultations and Collaborations

5. Thinking of files you have been involved with in the last two years (where the CRA–Justice resolution process did not apply), how often have you or a member of the legal team...

	Frequently (80%-100% of files)	Regularly (50%-79% of files)	Occasionally (25%-49% of files)	Rarely (1%-24% of files)	Never (0%)	Don't know	Not applicable to my work
a) consulted with CRA to understand the nature of the legal problem?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) provided CRA with regular updates/progress reports?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) involved CRA in the development of legal strategies and positions?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) provided advice or recommendations regarding legal options?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) consulted with CRA about its policy and/or program objectives?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) worked with CRA to identify legal risks?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g) worked with CRA to discuss the impact of legal risks?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h) worked with CRA to discuss options to manage legal risks?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
i) consulted with specialized sections within the Department of Justice?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
j) consulted or briefed the CRA Legal Services Unit?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Frequently (80%-100% of files)	Regularly (50%-79% of files)	Occasionally (25%-49% of files)	Rarely (1%-24% of files)	Never (0%)	Don't know	Not applicable to my work
k) consulted with other potentially affected departments/agencies?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
l) briefed or reported on your files to senior management either in the TLS Portfolio, Regional Director, or Department of Justice Headquarters?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Adverse Reporting Procedure

6. To what extent do you agree with the following statements about the Adverse Reporting Procedure?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	Not applicable to my work
a) The process is effective in notifying senior management about significant files.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) The process is too onerous.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) The process is clear in terms of to whom to brief/report.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) The process is clear in terms of when to brief/report.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) The process is clear in terms of what to include in briefs/reports.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) The process creates delays in handling the file.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Early Warning Notes

7. To what extent do you agree with the following statements about Early Warning Notes?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	Not applicable to my work
a) The process is effective in notifying senior management about significant files.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) The process is too onerous.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) The process is clear in terms of to whom to brief/report.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) The process is clear in terms of when to brief/report.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) The process is clear in terms of what to include in briefs/reports.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) The process creates delays in	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

handling the file.

Strongly agree Agree Neutral Disagree Strongly disagree Don't know Not applicable to my work

Assessment of Portfolio Work

8. How would you assess the work of the Portfolio generally in terms of the following areas?

	Excellent	Above average	Average	Below average	Poor	Don't know	Not applicable to my work
a) Responding to legal service requests by CRA in a timely manner.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Meeting CRA deadlines.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Meeting internal Department of Justice deadlines.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Providing legal services in both official languages.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) Involving/consulting with specialized sections within the Department of Justice when appropriate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) Involving/consulting with other regional offices or headquarters when appropriate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g) Involving/consulting with the CRA Legal Services Unit.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h) Involving/consulting with the CRA.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
i) Involving/consulting with other potentially affected departments/agencies.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
j) Using consistent language to communicate legal risk so that CRA can understand the comparative legal risks across files.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
k) Using consistent legal risk ratings across Portfolio files.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
l) Providing timely assessments of legal risk so that it can be factored into decision making.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
m) Reassessing legal risk when factors change that affect the level of legal risk.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Tools and Structures

9. How useful have you found the following TLS Portfolio tools or structures in managing your work?

	Very useful	Useful	Neutral	Not very useful	Not at all useful	Have not used
a) Legal risk management assessment grid/matrix	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Effective Communication of Legal Risk (intranet tool)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Fiscal Path (intranet site)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Justipedia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) TLS Portfolio National Coordination Committees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) Structured review of facta/approval of facta	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g) Resolution process for cases before the Tax Court of Canada	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h) Practice directives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
i) TLS Portfolio training opportunities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
j) File assignment process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

9a. Are there other tools or structures that you have found useful in managing your work?

Please specify:

Please specify:

9b. Why have you not used the legal risk management assessment grid/matrix yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

9c. Why have you not used the Effective Communication of Legal Risk (intranet tool) yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

9d. Why have you not used the Fiscal Path (intranet site) yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

9e. Why have you not used Justipedia yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

9f. Why have you not used the TLS Portfolio National Coordination Committees yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

9g. Why have you not used the structured review of facta/approval of facta yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

9h. Why have you not used the resolution process for cases before the Tax Court of Canada yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

9i. Why have you not used the practice directives yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

9j. Why have you not used the TLS Portfolio training opportunities yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

9k. Why have you not used the file assignment process yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

CRA Working Groups

10. Are you involved in any CRA committees or working groups?

- Yes
- No

10a. Please specify the CRA committees or working groups with which you are involved.

10b. How useful have you found your participation in these groups to be in managing/conducting your work?

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

Outcomes

11. Please provide your level of agreement with the following statements. The TLS Portfolio...

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	Not applicable to my work
a) takes a consistent approach to legal issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) has the structures in place to make strategic decisions regarding legal issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) has the structures in place to manage the demand for legal services.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) provides the Government of Canada and CRA with a whole-of-government approach to legal issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) has contributed to enhancing CRA's understanding of legal issues and their implications.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Dispute Resolution

12. Use of Dispute Resolution (DR) includes negotiated settlement of files, as well as other DR processes such as mediation and pre-trial settlement. Thinking of the files you have been involved with in the last two years, how often has a member of the litigation team...

	Frequently (80%-100% of files)	Regularly (50%-79% of files)	Occasionally (25%-49% of files)	Rarely (1%-24% of files)	Never (0%)	Don't know	Not applicable to my work
a) considered using DR options?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) used neutral evaluation to try to resolve/settle a file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) used negotiation to try to resolve/settle a file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) used voluntary mediation to try to resolve/settle a file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) used court-mandated mediation to resolve/settle a file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

13. In your opinion, are DR processes:

- Over-utilized (please explain): _____
- Adequately utilized
- Underutilized (please explain, including what obstacles may exist in the use of DR):

- Don't know
- Not applicable to my work

CRA-Justice Resolution Process

14. In your opinion, how effective has the CRA–Justice resolution process been in facilitating early settlement of eligible files?

- Very effective
- Effective
- Neutral
- Not very effective
- Ineffective
- Not applicable to my work

14a. What could be done to improve the effectiveness of the CRA–Justice resolution process?

Legal Training for CRA Officials

15. Have you been involved in training CRA officials on legal issues and risks? (Check all that apply.)

- Yes, through formal training sessions
- Yes, informally through working together on files
- No
- Not applicable to my work

Level of Understanding of Legal Issues by CRA Officials

16. Based on your experience over the past two years, how would you assess the level of understanding of CRA officials with whom you have worked, with respect to the following?

	Excellent	Above average	Average	Below average	Poor	Don't know	Not applicable to my work
a) The most frequently encountered legal issues for CRA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) The importance of identifying legal risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) The potential impacts of legal risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) When to engage the TLS Portfolio	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) When to use early dispute resolution options to avoid the need to engage the TLS Portfolio	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) How to manage the demand for legal services generally	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Legal Risk Management

17. Thinking of files you have been involved with in the last two years, how often did CRA consider the legal advice/legal risk...

	Frequently (80%-100% of files)	Regularly (50%-79% of files)	Occasionally (25%-49% of files)	Rarely (1%-24% of files)	Never (0%)	Don't know	Not applicable to my work
a) to take steps to prevent, mitigate or manage legal risk?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) in its discussions with the Portfolio regarding litigation strategies?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Consultations and Collaborations

18. Thinking of files you have been involved with in the last two years (where the CRA–Justice resolution process did not apply), how often have you or a member of the legal team...

	Frequently (80%-100% of files)	Regularly (50%-79% of files)	Occasionally (25%-49% of files)	Rarely (1%-24% of files)	Never (0%)	Don't know	Not applicable to my work
a) consulted with CRA to understand the nature of the legal problem?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) provided CRA with regular updates/progress reports?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) involved CRA in the development of legal strategies and positions?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) provided advice or recommendations regarding legal options?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) consulted with CRA about its policy and/or program objectives?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) worked with CRA to identify legal risks?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g) worked with CRA to discuss the impact of legal risks?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h) worked with CRA to discuss options to manage legal risks?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
i) consulted with specialized sections within the Department of Justice?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
j) consulted or briefed the CRA Legal Services Unit?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
k) consulted with other potentially affected departments/agencies?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
l) briefed or reported on your files to senior management either in the TLS Portfolio, Regional Director Office, or Department of Justice Headquarters?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Assessment of Portfolio Work

19. How would you assess the work of the Portfolio generally in terms of the following areas?

	Excellent	Above average	Average	Below average	Poor	Don't know	Not applicable to my work
a) Responding to legal service requests by CRA in a timely manner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Meeting CRA deadlines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Meeting internal Department of Justice deadlines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Providing legal services in both official languages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) Involving/consulting with specialized sections within the Department of Justice when appropriate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) Involving/consulting with other regional offices or headquarters when appropriate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g) Involving/consulting with the CRA Legal Services Unit	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h) Involving/consulting with the CRA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
i) Involving/consulting with other potentially affected departments/agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
j) Using consistent language to communicate legal risk so that CRA can understand the comparative legal risks across files	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
k) Using consistent legal risk ratings across Portfolio files	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
l) Providing timely assessments of legal risk so that it can be factored into decision making	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
m) Reassessing legal risk when factors change that affect the level of legal risk	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Tools and Structures

20. How useful have you found the following TLS Portfolio tools or structures in managing your work?

	Very useful	Useful	Neutral	Not very useful	Not at all useful	Have not used
a) Legal risk management assessment grid/matrix	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Effective Communication of Legal Risk (intranet tool)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Fiscal Path (intranet site)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Justipedia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) TLS Portfolio National Coordination Committees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) Practice directives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
g) TLS Portfolio training opportunities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
h) File assignment process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

20a. Are there other tools or structures that you have found useful in managing your work?

Please specify:

20b. Why have you not used the legal risk management assessment grid/matrix yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

20c. Why have you not used the Effective Communication of Legal Risk (intranet tool) yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

20d. Why have you not used the Fiscal Path (intranet site) yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

20e. Why have you not used Justipedia yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

20f. Why have you not used the TLS Portfolio National Coordination Committees yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

20g. Why have you not used the practice directives yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

20h. Why have you not used the TLS Portfolio training opportunities yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

20i. Why have you not used the file assignment process yet? (Check all that apply.)

- Not aware of it
- No occasion to use it in my work
- Issues in accessing it
- Don't know how to use it
- Other (please specify): _____

CRA Working Groups

21. Are you involved in any CRA committees or working groups?

- Yes
- No

21a. Please specify the CRA committees or working groups with which you are involved.

21b. How useful have you found your participation in these groups to be in managing/conducting your work?

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

Outcomes

22. Please provide your level of agreement with the following statements. The TLS Portfolio...

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Don't know	Not applicable to my work
a) takes a consistent approach to legal issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) has the structure in place to make strategic decisions regarding legal issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) has the structures in place to manage the demand for legal services.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) provides the Government of Canada and CRA with a whole-of-government approach to legal issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) has contributed to enhancing CRA's understanding of legal issues and their implications.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Legal Training for CRA Officials

23. Have you been involved in training CRA officials on legal issues and risks? (Check all that apply.)

- Yes, through formal training sessions
- Yes, informally through working together on files
- No
- Not applicable to my work

Level of Understanding of Legal Issues by CRA officials

24. Based on your experience over the past two years, how would you assess the level of understanding of CRA officials with whom you have worked, with respect to the following?

	Excellent	Above average	Average	Below average	Poor	Don't know	Not applicable to my work
a) The most frequently encountered legal issues for CRA	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) The importance of identifying legal risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) The potential impacts of legal risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) When to engage the TLS Portfolio	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) When to use early dispute resolution options to avoid the need to engage the TLS Portfolio	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) How to manage the demand for legal services generally	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Legal Risk Management

25. Thinking of files you have been involved with in the last two years, how often did CRA consider the legal advice/legal risk...

	Frequently (80%-100% of files)	Regularly (50%-79% of files)	Occasionally (25%-49% of files)	Rarely (1%-24% of files)	Never (0%)	Don't know	Not applicable to my work
a) to take steps to prevent, mitigate or manage legal risk?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) in the development or implementation of CRA policies or programs?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Management of Portfolio Files

26. Thinking of files you have been involved with in the last two years, how often ...

	Frequently (80%-100% of files)	Regularly (50%-79% of files)	Occasionally (25%-49% of files)	Rarely (1%-24% of files)	Never (0%)	Don't know	Not applicable to my work
a) were files completed in a timely manner without undue delays within the control of the Portfolio?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) were files conducted in a cost-effective manner?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) were files assigned to the appropriate level of counsel given the legal risk/complexity of the file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) were tasks allocated appropriately (level and experience) within the team assigned to manage the file?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) was appropriate mentoring and/or supervision included in managing your files?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Factors Contributing to the Provision of High-Quality Legal Services

27. What factors contribute to the TLS Portfolio's ability to provide timely, high-quality, cost-effective legal services?

Factors Constraining the Provision of High-Quality Legal Services

28. What factors constrain the TLS Portfolio's ability to provide timely, high-quality, cost-effective legal services?

Suggestions for Improvement

29. Do you have any other suggestions for how to improve the legal services provided by the TLS Portfolio?

File Review

Overview

1. File Code Number: _____
2. Date file opened: _____ (mm/dd/yy) Date file closed: _____ (mm/dd/yy)
3. Lead counsel
 Organizational unit: ___1 British Columbia ___2 Prairies ___3 Ontario
 ___4 Quebec ___5 Atlantic ___6 NCR – Tax
4. Case type: ___1 Litigation ___2 Advisory
5. Number of counsel on file: _____
6. CRA Branch: ___01 Appeals ___02 Compliance Programs ___03 Tax payer services and Debt Management
 ___66 Other (specify): _____
7. CRA Order: _____

Questions 8 and 9 are for litigation files only.

8. CRA is ___1 Claimant ___2 Respondent ___3 Appellant ___4 Respondent on appeal ___8 Can't tell
9. Level of court:
 ___01 Supreme Court of Canada ___02 Federal Court of Appeal ___03 Federal Court
 ___04 Tax Court of Canada ___05 Provincial Court of Appeal ___06 Provincial/Territorial Superior Court
 ___07 Provincial Court ___66 Other, please specify _____
10. Legal issue and brief description of the nature of the file (i.e., constitutional issue, relating to a particular section of the *Income Tax Act*, etc.), without waiving solicitor-client privilege. Do not reference any specific tax payer information.

Questions 11 and 12 are for litigation files only.

11. What was the outcome of the case?
 ___01 Settled ___02 Court decision on merits in favour of government ___03 Court decision on merits in favour of other party ___04 Case dismissed without a decision on the merits
 ___05 Case withdrawn ___06 Partially successful ___66 Other, please specify _____

12. Has the case been appealed?

- Yes No Not applicable (cannot appeal from decision – e.g., Supreme Court file) No decision re: appeal yet/can't determine

If yes, remember to complete Appeal section.

Question 13 is for advisory files only.

13. What was the outcome of the file? (Check all that apply.)

- Legal advice was given Client considered advice given Client did not consider advice given Unclear from the file

iCase information (to extent available)

14. Potential client impact:

- | | | |
|--|---|---|
| <input type="checkbox"/> Affects administration of justice/public confidence | <input type="checkbox"/> Affects federal, provincial, or international relations, treaties, or agreements | <input type="checkbox"/> Legal issues or events that may be controversial, attract significant national media attention, or involve Cabinet Ministers or prominent public figures |
| <input type="checkbox"/> Limitations of federal jurisdiction | <input type="checkbox"/> Major effect on fiscal resources of client or government | <input type="checkbox"/> Major effect on human rights, personnel, access and privacy, gender, or diversity issues |
| <input type="checkbox"/> Major effect on law/regulations of client or government | <input type="checkbox"/> Major effect on programs/policies/initiatives of client or government | <input type="checkbox"/> Major effect on relations with Aboriginal people, Métis |
| <input type="checkbox"/> Major effect on the Charter or Constitution | <input type="checkbox"/> Matter of national interest | <input type="checkbox"/> Not applicable |
| | | <input type="checkbox"/> Unable to assess |

15. Risk level (1-9): _____

15b. Earlier risk level (if available through iCase) _____

16. Complexity:

- Low Medium High Mega Not applicable

17. What was the seniority level of lead counsel:

- LA0 LA1 LA2A LA2B LA3A LA3B LA3C Can't tell

Contingent Liability files only

18. Amount claimed (\$): _____ Not applicable Unable to assess

19. Possibility of settlement:

- Low Medium High Not applicable Unable to assess

20. Settlement estimate (\$): _____ to _____

- Not applicable Unable to assess

21. Amount at risk (\$): _____ Not applicable Unable to assess

22. Contingent gain (\$): _____ Not applicable Unable to assess

To be completed by the Business Management Section (Q23-25)

23. How many hours did lead counsel spend on the file? _____ hours
24. Indicate the number of additional counsel on the file by seniority level and indicate the number of hours spent on the file:
- ___1 LA0 _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____
- ___2 LA1 _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____
- ___3 LA2A _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____
- ___4 LA2B _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____
- ___5 LA3A _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____
- ___6 LA3B _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____
- ___7 LA3C _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____
25. Indicate the number of paralegals on the file and indicate the number of hours spent on the file by each paralegal:
- _____ Hours for 1: _____; 2: _____; 3: _____; 4: _____; 5: _____

Information from file [Answer the following questions based on documents in the file]

26. Did TLS Portfolio miss any client-imposed deadlines? ___1 Yes ___0 No ___8 Unable to assess
27. (If yes to Q26) How many times, and for what reason(s) (if an explanation to the client is available on file)?
- _____
- _____
- _____
- _____
28. (Litigation files only) Did TLS Portfolio miss any court deadlines? ___1 Yes ___0 No ___8 Unable to assess
29. (If yes to Q28) How many times? _____
30. (If yes to Q28) Were additional court procedures required (e.g., motions)?
- | | | |
|------|---|-----------------------|
| — | — | ___8 Unable to assess |
| ___1 | — | |
| Y | 0 | |
| es | N | |
| | o | |
31. Approximately, how often did TLS Portfolio consult with CRA? Consultations can include oral/written updates or oral/written discussions of possible strategies, options, approaches to the file (please check the most appropriate choice):
- ___1 Weekly ___2 Bi-weekly ___3 Monthly ___3 Less than monthly ___4 Only at critical times in the file
- ___7 Not applicable, file handled by early resolution ___8 Unable to assess
- (Go to Q34)**

32. Is there documentation in the file that shows what the CRA was consulted about? (Check all that apply.) (If none apply, go to Q34.)

- | | | |
|---|--|--|
| <input type="checkbox"/> _01 Identifying and assessing legal risk | <input type="checkbox"/> _02 Options to manage legal risk | <input type="checkbox"/> _03 Developing legal strategies and positions |
| <input type="checkbox"/> _04 To discuss the impact of legal risk | <input type="checkbox"/> _05 To discuss possible settlement (including early resolution) | <input type="checkbox"/> _66 Other _____ |
| <input type="checkbox"/> _08 Unable to assess | | _____ |
| | | _____ |
| | | _____ |

33. (If you identified any categories listed in Q32) What evidence is there in the files?

34. How often did the TLS Portfolio respond to documented client requests?

- | | | | | | |
|--|--|--|---|---|--|
| <input type="checkbox"/> _1 Always (100-90%) | <input type="checkbox"/> _2 Usually (90-60%) | <input type="checkbox"/> _3 About half the time (40-60%) | <input type="checkbox"/> _4 Rarely (40-10%) | <input type="checkbox"/> _5 Never (Less than 10%) | <input type="checkbox"/> _8 Unable to assess |
|--|--|--|---|---|--|

35. On average, how soon after documented client requests did the TLS Portfolio respond?

- | | | | | |
|--------------------------------------|---------------------------------------|--|--|---|
| <input type="checkbox"/> _1 2-3 days | <input type="checkbox"/> _2 4-10 days | <input type="checkbox"/> _3 11-20 days | <input type="checkbox"/> _4 21-30 days | <input type="checkbox"/> _5 More than 30 days |
|--------------------------------------|---------------------------------------|--|--|---|

36. Was the file brought to the attention of any CRA committees? _1 Yes _0 No _8 Unable to assess

37. (If yes to Q36) Which committees? _01 Regional risk committees _02 Tri-departmental Risk Committee _66 Other _____

38. Was the file brought to the attention of other Justice officials/structures?

- _1 Yes _0 No _8 Unable to assess

39. (If yes to Q38) Which ones? (Check all that apply.)

- | | | |
|---|---|---|
| <input type="checkbox"/> _01 Minister/Deputy Minister | <input type="checkbox"/> _02 National Coordination Committees | <input type="checkbox"/> _03 Regional Litigation Committees |
| <input type="checkbox"/> _04 ADAG TLS Portfolio | <input type="checkbox"/> _05 Regional Director | <input type="checkbox"/> _06 National Litigation Committees |
| <input type="checkbox"/> _07 Team leader | <input type="checkbox"/> _66 Other _____ | |

40. Is there documented evidence in the file that the TLS Portfolio considered CRA policy and program objectives when developing legal strategies?

- _1 Yes _0 No _8 Unable to assess

41. (If yes to Q40) What evidence is there in the files?

42. Did lead counsel work with other Tax Law Services units within Justice?

_1 Yes _0 No _8 Unable to assess

43. (If yes to Q42) Which ones? _____

44. How were the other units involved? (Check all that apply):

<input type="checkbox"/> _01 Serving as co-counsel on file	<input type="checkbox"/> _02 Serving as litigation counsel on related files	<input type="checkbox"/> _03 Identifying and assessing legal risk	<input type="checkbox"/> _04 Managing legal risk	<input type="checkbox"/> _05 Determining potential legal options
<input type="checkbox"/> _06 Determining potential litigation strategies	<input type="checkbox"/> _07 Researching questions of law and legal advice	<input type="checkbox"/> _66 Other _____ _____		<input type="checkbox"/> _08 Unable to assess

45. Did counsel consult with specialized sections within Justice? _1 Yes _0 No _8 Unable to assess

46. (If yes to Q45) Which ones: _____

47. Were the specialized sections consulted about? (Check all that apply):

<input type="checkbox"/> _01 Identifying and assessing legal risk	<input type="checkbox"/> _02 Managing legal risk	<input type="checkbox"/> _03 Potential legal options
<input type="checkbox"/> _04 Potential litigation strategies	<input type="checkbox"/> _05 Questions of law	<input type="checkbox"/> _66 Other

48. Were other potentially affected departments and agencies consulted? _1 Yes _0 No _8 Unable to assess

49. (If yes to Q48) Were they consulted about? (Check all that apply):

<input type="checkbox"/> _01 Identifying and assessing legal risk	<input type="checkbox"/> _02 Managing legal risk	<input type="checkbox"/> _03 Potential legal options
<input type="checkbox"/> _04 Potential litigation strategies	<input type="checkbox"/> _05 Questions of law	<input type="checkbox"/> _66 Other
		<input type="checkbox"/> _08 Unable to assess

Questions 50-53 are for litigation files only.

50. At what stage were dispute resolution options considered? (Check all that apply.)

<input type="checkbox"/> _00 DR not considered (GO TO Q55)			
<input type="checkbox"/> _01 Post-pleading	<input type="checkbox"/> _02 Post-production of documents	<input type="checkbox"/> _03 Post-discovery	<input type="checkbox"/> _04 Just prior to trial or hearing
<input type="checkbox"/> _66 Other (please specify) _____			<input type="checkbox"/> _88 Don't know/can't tell

51. At what stage were dispute resolution options used?

<input type="checkbox"/> _01 Post-pleading	<input type="checkbox"/> _02 Post-production of documents	<input type="checkbox"/> _03 Post-discovery	<input type="checkbox"/> _04 Just prior to trial or hearing
<input type="checkbox"/> _66 Other (please specify) _____			<input type="checkbox"/> _88 Don't know/can't tell

52. What dispute resolution options were used?

<input type="checkbox"/> _01 Negotiation	<input type="checkbox"/> _02 Voluntary mediation	<input type="checkbox"/> _03 Court-mandated mediation	<input type="checkbox"/> _04 Neutral evaluation
--	--	---	---

_66 Other
(please specify) _____

_88 Don't
know/can't tell

53. (Advisory files only) Is there documented evidence in the file that CRA considered TLS Portfolio legal advice in program and policy development?

_1 Yes _0 No _8 Unable to assess

54. (If yes to Q53) What evidence is there in the files?

55. Is there documented evidence in the file that CRA considered TLS Portfolio legal advice to prevent, mitigate, and/or manage legal risk?

_1 Yes _0 No _8 Unable to assess

56. (If yes to Q55) What evidence is there in the files?

57. Is there documentation in the file that shows that any of the following were used/prepared?

_01 Risk assessment document (e.g., letter/memo to client re: likelihood of success and impact on client)

_02 Contingency plan

_03 Communication plan (should be part of contingency plan, but check to ensure it is)

_04 Briefing notes

_05 Documents on roles and responsibilities from Civil Actions toolkit or similar document (e.g., for litigation strategy, dispute resolution, risk assessment, communication strategy, contingency planning, etc.)

_06 Early Warning Note for file

_07 Documentation on structured review of facta/approval of facta

_08 Resolution process for cases before the Tax Court of Canada

_09 Practice directives

58. Was the file included in any of the following?

_01 Early Warning Notes _02 Top 100 High Impact Report _03 Radar Screen _04 Scanning News

_05 Justice Practice Group discussion

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

59. What legal risks are identified? Please check all that apply. Only include if there is documentation that specifies risks (in iCase or in file); do not try to interpret information (e.g., counsel indicates difficult facts in memo in file; the researcher should not make their own decision that facts are difficult). You do not have to enter risks that are already listed under potential client impact in iCase (see Q14). You should include other risks that might be identified in the Background, Impact, and Status sections of iCase as well as risks identified in the paper files.

- | | | |
|---|--|---|
| ___01 New/novel legal issue | ___02 Constitutional or Charter issue | ___03 Issue with availability of evidence |
| ___04 Issue with availability of affiants/witnesses | ___05 Difficult facts to support claim/defence | ___06 Unfavourable case law |
| ___07 Significant media interest | ___07 Potential to lead to termination or elimination of program | ___08 Class action |
| ___08 Cabinet Ministers or other prominent figures involved | ___09 Legal issue considered controversial | ___10 Case involves national security |
| ___66 Other, please specify
_____ | | ___88 Can't tell |
-

60. Is there a discussion/indication of risk level indicated in the file?

- ___1 Yes ___0 No (**GO TO Q69**)

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

- _____ ___88 Can't tell

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

- _____ (mm/dd/yy) ___88 Can't tell

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

- | | | | |
|--------------------------------------|----------------------|--------------------------------|----------------------|
| ___01 Post-pleadings | ___02 Post-discovery | ___03 Pre-scheduled trial date | ___04 After decision |
| ___05 After appeal filed | | | |
| ___66 Other, please specify
_____ | | | ___88 Can't tell |

64. Was risk **reassessed**?

- ___1 Yes ___0 No (**GO TO Q67**) ___8 Can't determine (**GO TO Q67**)

65. (Litigation only) At what stage in the case was the risk reassessed?

- | | | | |
|--------------------------------------|----------------------|--------------------------------|----------------------|
| ___01 Post-pleadings | ___02 Post-discovery | ___03 Pre-scheduled trial date | ___04 After decision |
| ___05 After appeal filed | | | |
| ___66 Other, please specify
_____ | | | ___88 Can't tell |

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

- | | | | |
|---|--|---|---|
| ___01 Increased number of counsel on file | ___02 Assignment of senior counsel to file | ___03 Consideration of dispute resolution process | ___04 Use of dispute resolution process |
| ___05 Increased consultations | ___06 Increased reporting | | |
| ___66 Other, please specify
_____ | | | ___88 Can't tell |

67. What language was used to describe the level of legal risk to clients? Please give verbatim examples that show the range of language used.

68. Was it consistent? _1 Yes _0 No _8 Unable to assess

For all files where Q12 is yes (was appealed)

iCase information (from Appeal file)

69. Potential client impact:

- | | | |
|--|---|---|
| <input type="checkbox"/> _01 Affects administration of justice/public confidence | <input type="checkbox"/> _02 Affects federal, provincial, or international relations, treaties, or agreements | <input type="checkbox"/> _03 Legal issues or events that may be controversial, attract significant national media attention, or involve Cabinet Ministers or prominent public figures |
| <input type="checkbox"/> _04 Limitations of federal jurisdiction | <input type="checkbox"/> _05 Major effect on fiscal resources of client or government | <input type="checkbox"/> _06 Major effect on human rights, personnel, access and privacy, gender, or diversity issues |
| <input type="checkbox"/> _07 Major effect on law/regulations of client or government | <input type="checkbox"/> _08 Major effect on programs/policies/initiatives of client or government | <input type="checkbox"/> _09 Major effect on relations with Aboriginal people, Métis |
| <input type="checkbox"/> _10 Major effect on the Charter or Constitution | <input type="checkbox"/> _11 Matter of national interest | <input type="checkbox"/> _77 Not applicable
<input type="checkbox"/> _88 Unable to assess |

70. Risk level (1-9): _____ 70b. Earlier risk level (if available through iCase) _____

71. Complexity:

- _1 Low _2 Medium _3 High _4 Mega _7 Not applicable

Contingent Liability files only

72. Amount claimed (\$): _____ _7 Not applicable _8 Unable to assess

73. Possibility of settlement:

- _1 Low _2 Medium _3 High _7 Not applicable _8 Unable to assess

74. Settlement estimate (\$): _____ to _____
_7 Not applicable _8 Unable to assess

75. Amount at risk (\$): _____ _7 Not applicable _8 Unable to assess

76. Contingent gain (\$): _____ _7 Not applicable _8 Unable to assess

