



Crown-Indigenous Relations and Northern Affairs/ Indigenous Services Canada

Internal Audit Report

Audit of Litigation Management

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TABLE OF CONTENTS

TABLE OF CONTENTS i

ACRONYMS ii

EXECUTIVE SUMMARY 1

1. BACKGROUND 4

 1.1 Context 4

 1.2 Litigation Management at CIRNA/ISC 5

2. AUDIT OBJECTIVE AND SCOPE 6

 2.1 Audit Objective..... 6

 2.2 Audit Scope 6

3. AUDIT APPROACH AND METHODOLOGY 6

4. CONCLUSION 7

5. FINDINGS AND RECOMMENDATIONS 7

 5.1 Resolution Mandate..... 7

 5.2 Governance 8

 5.3 Records Management 10

 5.4 Litigation prevention and preparedness 11

6. MANAGEMENT ACTION PLAN 13

Appendix A: Audit Criteria 20

ACRONYMS

ADM	Assistant Deputy Minister
BIA	Business Impact Assessment
CIRNA	Crown-Indigenous Relations and Northern Affairs
DG	Director General
DGLC	Directors General Litigation Committee
ISC	Indigenous Services Canada
JUS	Justice Canada
GoC	Government of Canada
INAC	Indigenous and Northern Affairs Canada
IOAD	Integrated Operations and Analysis Directorate
LMRB	Litigation Management Resolution Branch
LMS	Litigation Management System
LRA	Legal Risk Assessment
LSU	Legal Services Unit
OGD	Other Government Department
PSD	Policy and Strategic Direction sector
RBAP	Risk-Based Audit Plan
SMLC	Senior Management Litigation Committee
TBS	Treasury Board of Canada Secretariat

EXECUTIVE SUMMARY

Background

The Litigation Management Resolution Branch (LMRB) manages litigation in coordination with departmental sectors and regions, and with Justice Canada's (JUS) National Litigation Sector, Aboriginal Affairs Portfolio Sector, which includes the Aboriginal Law Centre, regional litigation offices, and Legal Services Units (LSU).

An Audit of Litigation Management was included in Indigenous and Northern Affairs Canada's (INAC) 2017-2018 to 2019-2020 Risk-Based Audit Plan. The audit was identified as a priority because litigation management is a complex area with a high degree of sensitivity and visibility, and with significant impacts on departmental decisions and Indigenous relationships.

With the Review of Legal Services, led by JUS and performed across the federal government in 2014, as well as the subsequent LMRB realignment, INAC undertook limited internal audit activity in this area since the Preliminary Survey of Litigation Management conducted in 2011-2012.

The audit was launched prior to the dissolution of INAC and the creation of Crown-Indigenous Relations and Northern Affairs (CIRNA) and Indigenous Services Canada (ISC). The findings and recommendations of this report have been provided to both Departments.

Audit Objective and Scope

The objective of the audit was to provide reasonable assurance that adequate controls are in place to support the effective and efficient management of litigation files within CIRNA/ISC, and with CIRNA/ISC's dealings with its legal service providers.

The scope of this audit included an examination of the governance, risk management and control practices in place to ensure that the Departments' objectives with respect to litigation management are met. Specifically, the scope of this audit included an assessment of the activities that LMRB is responsible for to deliver their mandate.

The audit further considered the role of JUS as a provider of legal services in the end-to-end litigation management process, but only to the extent of how the expectations are established and services standards are met from LMRB's perspective. The work of Justice Canada, the Department of Finance Canada, and the Treasury Board of Canada Secretariat are not scoped into the audit¹. These key stakeholders in the Department's litigation management process are considered from the perspective of how the expectations were established. Additionally, the

¹ CIRNA/ISC's Audit and Evaluation Sector does not have the mandate (and/or authority) to audit external departments and agencies such as Justice Canada, the Department of Finance Canada, and the Treasury Board of Canada Secretariat

audit reviewed the roles and responsibilities of the regional offices and sectors that are involved in litigation management.

The scope of the audit included a review of both active and recently closed cases between April 1, 2016 and August 31, 2017 to assess whether key case management activities are effective and efficient, as well as consistent across the directorates.

Statement of Conformance

This audit conforms with the *International Standards for the Professional Practice of Internal Auditing*, as supported by the results of the quality assurance and improvement program.

Conclusion

Overall, an adequate management control framework, including a formalized governance structure, is in place to support the effective and efficient management of litigation files within CIRNA/ISC and CIRNA/ISC's dealings with its legal service providers.

However, opportunities for improvement were identified to streamline due diligence requirements for out of court settlements; formalize operational risk and performance monitoring; improve records management; and establish strategies to allow for litigation prevention and preparedness.

Recommendations

Based on observations made during the audit, the following recommendations were developed:

1. The Senior ADM, PSD, should initiate discussions with Central Agencies (including JUS, FIN and TBS) around right-sizing due diligence requirements for out-of-court resolutions, including leveraging the condensed version of the legal risk assessment to obtain settlement mandates earlier in the case management process.
2. The Senior ADM, PSD, should strengthen the litigation governance framework, through:
 - a) The development and implementation of an annual (or other agreed-to interval) operational risk identification and assessment exercise. This would include the development of mitigation strategies presented to established governance committees (e.g. Directors General Litigation Committee, Senior Management Litigation Committee), and their monitoring on a pre-determined interval; and
 - b) Establish targets for performance metrics/indicators, where appropriate, and ensure that reporting and monitoring of the metrics/indicators is performed as outlined in the Performance Information Profile.
3. The Senior ADM, PSD, should revise, document, and communicate current case management practices to include:
 - a) A requirement for the maintenance of evidence of key case management activities, and their results in the case file; and
 - b) Standardized records management practices, including official systems of record, a standardized file structure (and where key documents should be maintained), and

naming conventions for documents saved within Comprehensive Integrated Document Management (CIDM)².

- c) Additionally, the Senior ADM, PSD, and the Director General (DG), LMRB, should hold case managers accountable for the timely completion/update of the Litigation Management System³ (LMS) through ongoing monitoring and performance metrics.
4. The Senior ADM, PSD, in collaboration with the various CIRNA/ISC sectors, should develop and communicate litigation prevention and preparedness strategies.

Management Response

Management is in agreement with the findings, has accepted the recommendations included in the report, and has developed a management action plan to address them. The management action plan has been integrated in this report.

² Departmental document storage system

³ Litigation Management System (LMS) – developed for use by LMRB to manage litigation case management files from notification (received from JUS) through to closure. See further information included in body of report.

1. BACKGROUND

An Audit of Litigation Management was included in Indigenous and Northern Affairs Canada's (INAC) 2017-2018 to 2019-2020 Risk-Based Audit Plan. The audit was identified as a priority because litigation management is a complex area with a high degree of sensitivity and visibility, and significant impacts on departmental decisions and Indigenous relationships.

With the Review of Legal Services, led by JUS and performed across the federal government in 2014, as well as the subsequent LMRB realignment, INAC undertook limited internal audit activity in this area since the Preliminary Survey of Litigation Management conducted in 2011-2012.

1.1 Context

Crown-Indigenous Relations and Northern Affairs (CIRNA) and Indigenous Services Canada (ISC) are the lead federal government departments responsible for meeting the Government of Canada's (GoC) obligations and commitments to First Nations, Inuit and Métis and for fulfilling the federal government's constitutional responsibilities in the North. The Departments' responsibilities are largely determined by numerous statutes, negotiated land claims and agreements, historic treaties and relevant legal decisions.

The complexity of Indigenous legal issues is grounded in the centuries-old relationship between the federal Crown and Indigenous Peoples. This relationship has historical, modern program/policy, constitutional and legislative underpinnings, which involve CIRNA/ISC in many litigation cases. Consequently, the volume of litigation against both Departments is higher than most federal government departments. This includes litigation that is complex in nature and may involve several federal government departments. Additionally, the litigation against CIRNA/ISC has the potential to have a large impact on CIRNA/ISC business lines and GoC policy considerations.

In 2014, the Justice Canada (JUS) undertook a Legal Services Review, committing to a cap of the total cost of GoC legal services annually. This resulted in a number of cuts in legal services and management positions over three years. A key goal was to reduce overall demand for legal services by focusing on services where JUS brings its highest value and on better aligning resources with complexity, risk and priorities. Through the Review, JUS, in partnership with its client departments and agencies, launched a series of measures to improve productivity, cost effectiveness and business excellence of its operations to "Redefine the Justice-client Partnership."

1.2 Litigation Management at CIRNA/ISC

The management of litigation within CIRNA/ISC is led by the Litigation Management Resolution Branch (LMRB), which falls within the Policy and Strategic Direction sector.

Within LMRB, case managers act as the primary analyst on individual litigation cases as they move through the court system or resolution. Case managers review the legal risk analysis and litigation strategies proposed by JUS, assessing this information through the lens of CIRNA/ISC's business. As the face of the client, LMRB conveys instructions to JUS after consultation with sector/program areas.

In 2014, LMRB underwent a re-organization, realigning to the following four directorates:

- Integrated Operations and Analysis Directorate (IOAD) at Headquarters;
- Litigation Operations and Policy Directorate – Alberta and the North in Headquarters and Calgary;
- Litigation Operations and Policy Directorate – Eastern in Headquarters; and
- Litigation Operations and Policy Directorate – Western (WLD) in Vancouver.

Each directorate holds distinctive roles and responsibilities. However, in order to effectively deliver on its mandate, LMRB must work closely with departmental sectors and regional offices (as required), and with JUS' Aboriginal Affairs Portfolio sector, which includes the Aboriginal Law Centre, National Litigation Sector, regional litigation offices, and Legal Services Units (LSU).

With the GoC's focus on reconciliation and a renewed relationship with Indigenous Peoples, LMRB works with CIRNA/ISC sectors to identify opportunities to reach out-of-court resolutions with plaintiffs in order to promote cooperation and partnership. LMRB (working alongside CIRNA/ISC sectors) is responsible for assessing cases to determine the most appropriate, effective and efficient resolution mechanisms, in line with the interests of the plaintiff, as well as CIRNA/ISC, its stakeholders and long-term interests of the Crown.

Further, LMRB has been tasked with engaging with departmental sectors to (1) identify opportunities to prevent future litigation by linking litigation trends to departmental policy and program development, and (2) help prepare for potential litigation due to policy shifts or recent court decisions. Through the Deficit Reduction Action Plan, LMRB noted a loss of policy analysis capacity. However, most recently, LMRB initiated strategic outreach with the CIRNA/ISC sectors to develop reporting on common litigation trends.

2. AUDIT OBJECTIVE AND SCOPE

2.1 Audit Objective

The objective of the audit was to provide reasonable assurance that adequate controls are in place to support the effective and efficient management of litigation files within CIRNA/ISC and with CIRNA/ISC's dealings with its legal service providers.

2.2 Audit Scope

The scope of this audit included an examination of the governance, risk management and control practices in place to ensure that the Departments' objectives with respect to litigation management are met.

Specifically, the scope of this audit included an assessment of the activities that LMRB is responsible for, to deliver their mandate.

The audit further considered the role of JUS as a provider of legal services in the end-to-end litigation management process, but only to the extent of how the expectations are established and services standards are met from LMRB's perspective. The work of Justice Canada, the Department of Finance Canada, and the Treasury Board of Canada Secretariat are not scoped into the audit.⁴ These key stakeholders in the Department's litigation management process are considered from the perspective of how the expectations were established. Additionally, the audit reviewed the roles and responsibilities of the regional offices and sectors that are involved in litigation management.

The scope of the audit included a review of both active and recently closed cases between April 1, 2016 and August 31, 2017 to assess whether key case management activities are effective and efficient, as well as consistent across the directorates.

3. AUDIT APPROACH AND METHODOLOGY

The audit was planned and conducted in accordance with the Institute of Internal Auditors *International Professional Practices Framework*, and in alignment with the TBS *Policy on Internal Audit*.

The audit was performed from August 2017 to February 2018 and consisted of three phases: planning, conduct and reporting. Based on information gathered during the planning phase, a risk assessment was completed to identify areas of greatest risk and significance in litigation management. Audit criteria were developed to cover areas of the highest priority, as determined by the risk assessment, and served as the basis for developing the detailed audit program for the conduct phase of the audit. Refer to Appendix A for the audit criteria developed for this audit.

⁴ CIRNA/ISC's Audit and Evaluation Sector does not have the mandate (and/or authority) to audit external departments and agencies such as Justice Canada, the Department of Finance Canada, and the Treasury Board of Canada Secretariat

The conduct phase included the completion of audit procedures at headquarters as well as in Calgary and Vancouver's LMRB offices. During the conduct phase, performed between November 2017 and January 2018, the audit team examined sufficient, reliable and relevant evidence to provide a reasonable level of assurance in support of the audit conclusion. The principal audit techniques applied were:

- Interviews with key stakeholders;
- Walk-throughs;
- Documentation review;
- Detailed testing of a sample of litigation cases; and
- Risk analysis.

4. CONCLUSION

Overall, an effective management control framework is in place to support the effective and efficient management of litigation files within CIRNA/ISC and CIRNA/ISC's dealings with its legal service providers. However, opportunities for improvement were identified in the areas of resolution management; governance, including operational risk and performance management; records management; and litigation prevention and preparedness.

5. FINDINGS AND RECOMMENDATIONS

Based on a combination of evidence gathered through interviews, a detailed review of a sample of litigation cases, examination of documentation and risk analysis, each audit criterion was assessed and observations were made. Where a significant difference between the audit criterion and the observed practice was found, the risk of the gap was evaluated and used to develop relevant recommendations.

The findings and recommendations presented below focus on key control areas of the management control framework with observed weaknesses or opportunities for improvement.

5.1 Resolution Mandate

As previously mentioned, LMRB is supporting the federal government's focus on reconciliation and a renewed relationship with Indigenous Peoples by seeking mechanisms to reach out-of-court resolution with plaintiffs, including both financial and non-financial settlements.

Currently, as required by Finance Canada, cases for which approval for an out-of-court settlement mandate is being sought require a formal Legal Risk Assessment (LRA) by JUS, in addition to a Business Impact Assessment (BIA). The LRA is an assessment of the case's legal risks, and includes a financial quantification of Canada's exposure in court. The settlement mandate (i.e. funding amount requested) is currently based on this exposure amount. The BIA, which outlines the key business considerations with the proposed settlement, including policy implications, is developed by LMRB in consultation with the sector/program representatives, OGDs (as relevant) and JUS. The BIA considers the results of the LRA.

Generally, JUS prepares a formal LRA later in the case's lifecycle. This is typically undertaken after the discovery phase is complete, and there is a better understanding of Canada's exposure. In certain cases, this LRA is completed later in the litigation life-cycle, after significant legal costs have already been incurred by both the plaintiff and Canada, and potentially impacting the Departments' ability to get consensus on the proposed settlement amount before trial. As such, in order to achieve early case resolution, the Departments must accept a certain level of risk.

Under certain circumstances, the Departments may request an abbreviated version of an LRA from JUS earlier in the case. However, no clear guidance has been provided on when and how it is appropriate to leverage this abbreviated version of the LRA since it does not provide the same level of assurance as a formal one. The formal LRA is often required by Central Agencies before granting a financial mandate for out-of-court resolution.

In addition to the due diligence requirements set forth by CIRNA/ISC, additional requirements may be imposed by central agencies prior to pursuing an out-of-court settlement. For example, if the Departments are seeking a settlement mandate in excess of a specific threshold, a Treasury Board Submission may be required, after a source of funds is identified. Additionally, if a case requires access to the federal Fiscal Framework because it is of a historical nature (preceding the 1990s), approval from Finance Canada is needed. Approval for funding from Finance Canada has been difficult to obtain for cases where the LRA is assessed as medium risk or lower, despite the BIA being assessed as high. With these additional requirements, CIRNA/ISC is facing challenges in obtaining approval to start negotiating out-of-court settlements and, as a result, in meeting their resolution mandate and, ultimately, Canada's commitment to reconciliation with Indigenous Peoples.

Recommendation:

1. The Senior ADM, PSD, should initiate discussions with Central Agencies (including JUS, FIN and TBS) around right-sizing due diligence requirements for out-of-court resolutions, including leveraging the condensed version of the legal risk assessment to obtain settlement mandates earlier in the case management process.

5.2 Governance

A robust oversight and governance structure is required for both the effective and efficient management of litigation cases, as well as guidance and approval of litigation strategies or resolution opportunities.

Within LMRB, clearly defined governance and oversight roles and responsibilities have been established to support ongoing case management activities. These activities include the review and challenge of court pleadings by the Director General (DG), LMRB and the Senior ADM, PSD. Additionally, several bilateral meetings are held between the various management-levels within LMRB and JUS to discuss the status of cases, upcoming timelines/deadlines and proposed strategies.

Supporting LMRB's governance structure, two oversight committees have been established to review and discuss the status of high profile or high-risk cases, proposed litigation strategies

and to approve settlement mandates. The first committee is the Directors General Litigation Committee (DGLC) with DG-level membership across CIRNA/ISC and is chaired by the DG of LMRB. The second committee is the Senior Management Litigation Committee (SMLC) whose membership is at the ADM-level and is chaired by the Deputy Minister. Settlement mandates with a value of \$50 million and above, or with management or policy implications for whole of CIRNA/ISC or government-wide, must be reviewed by the SMLC.

Although the established governance and oversight structure supports ongoing case management activities, limited operational risk and performance measurement activities are formally undertaken.

Operational Risk Management

The key risks facing LMRB's ability to meet its stated objectives have not been formally identified and documented. These risks may include potential challenges relating to human resources/capacity, information technology/systems and/or reliance on third parties, etc.

Although risks, such as the loss of specialized expertise due to inadequate succession planning, may be discussed informally; no formal mitigation plans are being developed and monitored to reduce the risk. Without the identification and mitigation of key operational risks, there is an increased possibility that a risk, not effectively mitigated, may manifest itself, preventing LMRB from meeting its objectives.

Performance Measurement

Performance measurement is key to the continuous monitoring and assessment of LMRB's results against its stated objectives.

Although the Departmental Plan (previously the Report on Plans and Priorities) outlines priorities in mitigating the legal risk to the Departments, no formal performance metrics/indicators have been established for LMRB.

The audit team learned that in November 2017, a Performance Information Profile was developed and submitted to TBS. This document outlines some key performance metrics/indicators for LMRB and the frequency of their reporting. However, performance targets were not established for any of the metrics/indicators. Although, establishing targets may be difficult in certain cases due to LMRB's lack of control over certain elements, such as whether a plaintiff will accept an out-of-court settlement agreement; consideration should be given to establishing targets for certain indicators, such as number/percentage of court filings made on time.

Previously, quarterly reports were being prepared and reviewed by the DGLC. These reports included some performance reporting, such as the number of settled cases, for monitoring purposes. However, these reports did not include reporting on all indicators identified in the Performance Information Profile. In the summer of 2017, these reports were discontinued.

Without the establishment of performance reporting, there is the potential for a misalignment between the activities undertaken by LMRB and its strategic objectives.

Recommendation:

2. The Senior ADM, PSD, should strengthen the litigation governance framework, through:
 - a) The development and implementation of an annual (or other agreed-to interval) operational risk identification and assessment exercise. This would include the development of mitigation strategies presented to established governance committees (e.g. Directors General Litigation Committee, Senior Management Litigation Committee), and their monitoring on a pre-determined interval; and
 - b) Establish targets for performance metrics/indicators, where appropriate, and ensure that reporting and monitoring of the metrics/indicators is performed as outlined in the Performance Information Profile.

5.3 Records Management

Robust records management is critical to ensuring that the Departments are well positioned to respond to inquiries on key litigation management activities, the effective sharing of information and creating complete and reliable reporting for the discharge of oversight responsibilities.

Evidence of Litigation Management Activities

The Litigation Management Deskbook has been designed to guide case management activities. The audit revealed that although the deskbook is outdated, effort is being undertaken to update it to reflect current practices.

There is a limited amount of guidance in the Deskbook on what specific documentation must be maintained, and where. The level of documentation maintained as evidence of the performance and results of certain key litigation management activities therefore varies between directorates and case managers.

Additionally, the location of where certain key documents are being saved differs between directorates, and at times between case managers within the same directorate. For example, some case managers are saving all documentation within the Departments' Comprehensive Integrated Document Management (CIDM) system and limited documentation in the Litigation Management System (LMS), while others are saving most documentation in paper files or LMS.

Further, certain directorates using CIDM do not have a naming convention for documents, making it difficult to efficiently identify key case management documentation. Given that complex cases can accumulate up to thousands of documents, the ability to quickly sift through and identify key documentation is essential for effective information management.

Through a sampling of cases, the audit team was unable to obtain evidence that the following key case management activities were consistently being performed:

- Early case management meeting, including initial litigation strategies and the assignment of key responsibilities over next steps;
- Early research assessment, including the identification of research needs and priorities, as well as assigned responsibilities;

- Review of research products and contractor invoices; and
- Review of court pleadings by sector/program representatives.

A lack of documentation substantiating the performance and results of certain key litigation management activities increases the potential that non-compliant activities are not identified in a timely manner. Additionally, without sufficient documentation, LMRB may be unable to answer questions regarding the performance and results of certain key activities if challenged. Lastly, strong records management is necessary for the sharing of information between litigation files, helping promote consistency in litigation practices and positions, as well as ensuring that cases are leveraging relevant information from past cases.

Litigation Management System

The Litigation Management System (LMS) is the official case management application used across all LMRB directorates. The system includes fields for documenting the status of the case and key case management activities.

Certain management reports are extracted from LMS in order to provide oversight of the status of cases. Additionally, briefing notes are often prepared for the Deputy Ministers and Ministers based on the information contained in LMS.

Per a review of a sample of litigation cases, the audit revealed that LMS is not being consistently updated with the current status of each case. As such, oversight reporting extracted from LMS requires a significant amount of review and manual updates to ensure its accuracy and reliability. This results in unnecessary rework, time delays in providing information being requested and the risk of inaccuracies within the information being provided.

Recommendation:

3. The Senior ADM, PSD, should revise, document, and communicate current case management practices to include:
 - a) A requirement for the maintenance of evidence of key case management activities, and their results in the case file; and
 - b) Standardized records management practices, including official systems of record, a standardized file structure (and where key documents should be maintained), and naming conventions for documents saved within CIDM.
 - c) Additionally, the Senior ADM, PSD, and the DG, LMRB, should hold case managers accountable for the timely completion/update of LMS through ongoing monitoring and performance metrics.

5.4 Litigation prevention and preparedness

The LMRB Mandate, Vision Statement and Key Activities document stipulate that LMRB is responsible for litigation management, litigation resolution, and litigation prevention and preparedness.

Litigation prevention and preparedness is critical to reducing both the number of litigation claims received by the Departments, and their impact. The goal is to identify and analyze root causes of litigation and develop strategies with a view to preventing future litigation.

In order for litigation prevention and preparedness to be effective, it needs to be a shared responsibility across CIRNA and ISC with LMRB responsible for creating awareness around litigation trends in a timely manner.

Since the dissolution of the Litigation Portfolio, Outreach and Negotiations Directorate in 2012, followed by the dissolution of the Litigation Policy Directorate as part of the LMRB reorganization in 2014, the LMRB directorates noted limited capacity for litigation prevention and preparedness activities, including policy and trend analysis.

However, in the last few months, a need for dedicated resources to these essential activities has been identified and some measures have been undertaken to address the weakness. Specifically, cluster reporting was recently developed and presented to oversight committees. This reporting outlines the high-profile cases within specific litigation portfolios, for example the Childhood Claims, Policies and Programs, and Consultation and Accommodation clusters, with an aim at identifying litigation trends and informing policy analysis.

Additionally, the Director of the Western Litigation Directorate recently assigned an individual within his team to identify and analyze litigation trends. However, since this position is within the Western Directorate, obtaining visibility into overarching trends across all directorates may be more challenging without dedicated resources within the other directorates and/or established forums for information sharing.

A sub-committee to the DGLC was established to identify opportunities and priorities in litigation prevention and preparedness through trend analysis. At the completion of the conduct phase of the audit, the committee had only had the opportunity to meet once.

Despite this renewed focus on litigation prevention and preparedness, to date, no formal litigation prevention and preparedness strategies have been developed. Without defined strategies, there is no focused and streamlined approach to proactively addressing recurring litigation issues through informed policy analysis.

Recommendation:

4. The Senior ADM, PSD, in collaboration with the various CIRNA/ISC sectors, should develop and communicate litigation prevention and preparedness strategies.

6. MANAGEMENT ACTION PLAN

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>1. The Senior ADM, PSD, should initiate discussions with Central Agencies (including JUS, FIN and TBS) around right-sizing due diligence requirements for out-of-court resolutions, including leveraging the condensed version of the legal risk assessment to obtain settlement mandates earlier in the case management process.</p>	<p>An LMRB-JUS Working Group has recently been established to streamline and improve the efficiency and effectiveness of the settlement process. One of the key items the Working Group will be reviewing is the legal risk assessment process, including the use of condensed risk assessments, and the timing for requesting risk assessments. The Working Group will make recommendations to LMRB Management.</p> <p>The LMRB-JUS Working Group will also align its work with the larger interdepartmental ADM Working Group on settlement that is addressing barriers to settlement, from a government wide perspective, to ensure that approaches to obtaining out-of-court settlements are consistent.</p> <p>The Senior SADM of PSD will initiate discussions with Central Agencies (including Justice Canada, Finance Canada and Treasury Board) around reducing due diligence requirements for out-of-court settlements, including leveraging the condensed version of the legal risk assessment to obtain settlement mandates earlier in the case management process.</p>	<p>Senior ADM, PSD</p>	<p>Current - The LMRB-JUS Working Group is planning now to meet, and discuss next steps to formulate recommendations</p> <p>Summer 2018 – LMRB-JUS Working Group to present recommendations to senior Management</p> <p>Winter 2019 – Implementation of approved recommendations from the LMRB-JUS Working Group to commence.</p> <p>Summer/Fall 2018 – SADM will initiate discussions. Outcome of this engagement will feed into recommendations (above) regarding settlement.</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>2. The Senior ADM, PSD, should strengthen the litigation governance framework, through:</p> <p>a) The development and implementation of an annual (or other agreed-to interval) operational risk identification and assessment exercise. This would include the development of mitigation strategies presented to established governance committees (e.g. Directors General Litigation Committee, Senior Management Litigation Committee), and their monitoring on a pre-determined interval; and</p> <p>b) Establish targets for performance metrics/indicators, where appropriate, and ensure that reporting and monitoring of the metrics/indicators is performed as outlined in the Performance Information Profile.</p>	<p>Recommendation #2(A)</p> <p>LMRB Management will prepare an LMRB Operational Risk Management Framework which will: (1) identify the key risks which may prevent LMRB from meeting its stated objectives; and (2) identify mitigation strategies to address each of those operational risks.</p> <p>This LMRB Operational Risk Management Framework will be presented to DGLC and SMLC annually.</p> <p>In context of the above, LMRB Management will also prepare an LMRB Staffing Action Plan which will be presented to DGLC/SMLC each year.</p> <p>Recommendation #2(B)</p> <p>The Departmental Plan for CIRNA for 2018-19 is currently being drafted. This Departmental Plan will specify performance indicators for LMRB, and LMRB will be reporting its performance against those indicators according the specific schedule to be set out by the department for all programs and sectors.</p>	<p>Senior ADM, PSD</p>	<p>Spring 2018 – LMRB will prepare an LMRB Staffing Action / Operational Risk Management Framework Plan</p> <p>Summer 2018 – the LMRB Staffing Action / Operational Risk Management Framework Plan to be presented to DGLC and SMLC</p> <p>Current – LMRB is currently providing its input regarding performance indicators for the CIRNA Departmental Plan for 2018-19.</p> <p>Spring/Summer 2018 - LMRB will consult with the Integrated Planning Management Directorate with the</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
			<p>objective of establishing targets, where appropriate, by the end of Summer 2018.</p> <p>FY 2018-19 (ending March 31, 2019)– During 2018-19, LMRB will report its progress against the Departmental Plan performance indicators in accordance with the reporting scheduled to be set out by the department for all programs and sectors.</p>
<p>3. The Senior ADM, PSD, should revise, document, and communicate current case management practices to include:</p> <p>a) A requirement for the maintenance of evidence of key case management activities, and their results in the case file; and</p>	<p>Recommendation #3(A)</p> <p>LMRB Management will direct all staff that evidence associated with key litigation management activities (such as early case assessment meetings, early research assessment, review of research products and contractor invoices, and review of court pleadings by sector/program representatives) needs to formally documented and saved to the appropriate file or repository. This requirement will also be included in each employee's performance management agreement.</p>	<p>Senior ADM, PSD</p>	<p>Current – LMRB will start now to advise and remind staff of the need to document and save evidence of key litigation activities. Commitments will be included in 2018/19 EPMs and PMA's</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>LMRB Management went forward with a purchase of Ringtail, a modern software solution, to: Manage the Department's ongoing litigation obligations to the Courts; respond and produce documents in a timely manner to the parties in litigation and the courts to meet court-imposed deadlines, and at reduced cost; maintain and manage the evidentiary data residing within the Department; securely manage documents in accordance with IM and IT policy guidelines; and maintain strong collaborative relationships with Justice.</p> <p>LMRB wants to expand both its in-house efficiency and technical capacity to produce all required evidence to Justice and fulfil its court obligations in a timely manner. The new solutions software will: Allow individual researchers and case managers to work in either Official Language; update the technology of the current software solution (Summation); and allow full remote and secure access functionality in order to allow for a large number of external contractors' use of the system.</p> <p>LMRB Management will explore how Ringtail may be able to assist LMRB staff in documenting evidence associated with key litigation management activities (such as early case assessment meetings, early research assessment, review of research products and contractor invoices, and review</p>		<p>Summer 2018 – Implementation of specific instructions to LMRB staff as to the requirements on how to document key litigation activities.</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>b) Standardized records management practices, including official systems of record, a standardized file structure (and where key documents should be maintained), and naming conventions for documents saved within Comprehensive Integrated Document Management (CIDM).</p> <p>c) Additionally, the Senior ADM, PSD, and the Director General (DG), LMRB, should hold case managers accountable for the timely completion/update of the Litigation Management System (LMS) through ongoing monitoring and performance metrics.</p>	<p>of court pleadings by sector/program representatives), and save to the documentation to appropriate file or repository.</p> <p>Recommendation #3(B)</p> <p>LMRB Management is updating the LMRB Desk Book. One of the updates will be to provide guidance to staff regarding what specific documentation must be maintained and saved where (CIDMS, GC DOCS, LMS), including proper naming convention for saving documents. This requirement will also be included in each employee's performance management agreement.</p> <p>Recommendation #3(C)</p> <p>LMRB Management has been and will continue to direct all staff to ensure that LMS is kept up to date, and hold staff accountable for ensuring that their information is regularly updated. This will include the case status information. In addition, LMRB has been adding new fields and information to LMS to respond to new information and reporting requests from senior management.</p> <p>LMS is now being used to generate placemats and top cases reports for each</p>		<p>Summer 2018 – LMRB will update the LMRB Deskbook to provide direction to staff as to what specific documentation must be maintained and saved where (CIDMS, GC DOCS, LMS), including proper naming convention for saving documents.</p> <p>Current – LMRB DGO is process of reminding and directing all staff via Branch-wide email of the need to ensure LMS is kept up to date.</p> <p>Commitments will be included in EPM and PMA agreements for 18/19</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>sector. These reports have been very well received, and demonstrate the value of generating these reports from LMS.</p> <p>These placemats and top cases reports will be used to monitor and hold accountable employees for the timely updating of case information in LMS.</p> <p>The requirement to keep LMS updated will be incorporated into each employee's performance management agreement.</p>		
<p>4. The Senior ADM, PSD, in collaboration with the various CIRNA/ISC sectors, should develop and communicate litigation prevention and preparedness strategies.</p>	<p>LMRB Management has recently established the DGLC Policy Sub-Committee. The DGLC Policy Sub-Committee will be the forum to engage programs and sectors regarding litigation prevention, policy development and resolution approaches.</p> <p>This work will be supported by a newly formed LMRB horizontal policy working group consisting of senior project managers tasked with taking on policy functions, identifying policy gaps and working horizontally with sector clients with the objective of integrating policy and litigation.</p> <p>Through the DGLC Policy Sub-Committee, and the LMRB horizontal policy working</p>	<p>Senior ADM, PSD, in collaboration with the various CIRNA/ISC sectors</p>	<p>Current – Both the DGLC Policy Sub-Committee and the LMRB Horizontal Policy Working Group have started to meet.</p> <p>March / April 2018 – The LMRB Horizontal Policy Working Group will submit its draft Work Plan to the DGLC Policy Sub-Committee for consideration and approval. And, eventually to DGLC and SMLC</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>group, LMRB Management will identify risk areas within sectors, and develop litigation prevention, policy and resolution mechanisms and strategies to address those risks.</p> <p>Also, the Senior ADM, PSD, will continue to engage sector ADMs/SADMs to discuss litigation trends and top cases, as well as discuss litigation prevention and preparedness strategies being developed through the DGLC Policy Sub-Committee, and the LMRB horizontal policy working group.</p>		

Appendix A: Audit Criteria

To acquire an appropriate level of assurance to meet the audit objective, the following audit criteria were developed.

Audit Criteria	
1.	Roles, responsibilities and accountabilities of key personnel involved in the litigation management processes within the Department have been clearly defined, are well understood, and have been assigned to individuals with sufficient authority.
2.	A governance framework is in place to support litigation management activities within the Department.
3.	Processes are in place to ensure the consistent engagement of legal services providers in litigation management activities.
4.	A process has been established and consistently applied for the assignment of cases to appropriate LMRB and Program representatives on a timely basis.
5.	Mechanisms are in place to facilitate resolution.
6.	Litigation cases are consistently managed across the Departments considering the legal, business, and financial risks to the Crown.
7.	Litigation prevention and preparedness activities are undertaken by the Departments.
8.	A performance measurement framework over key litigation management activities has been established.